Rep. Lane, Merr. 16
March 14, 2023
2023-0986h
08/07

Amendment to HB 195

Amend the bill by replacing section 1 with the following:

1 Political Action Committee; Definitions. RSA 664:2, XXII is repealed and reenacted to read as follows:

XXII. "Political advocacy organization" means any entity that makes expenditures of $2,500 or more in a calendar year for communication that is functionally equivalent to express advocacy such that, when taken as a whole, such communication is likely to be interpreted, all or in part, by a reasonable person as advocating the election or defeat of a candidate or candidates, or the success or defeat of a measure or measures, taking into account whether the communication involved mentions a candidacy, a political party, or takes a position on a candidate's character, qualifications, or fitness for office.

HB 195 - AS INTRODUCED

2023 SESSION

23-0493
08/04

HOUSE BILL ***195***

AN ACT relative to the definition of political advocacy organization.

SPONSORS: Rep. Lane, Merr. 16

COMMITTEE: Election Law

ANALYSIS

This bill modifies the definition of political advocacy organization for purposes of political expenditure and contribution laws.

- -

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

23-0493
08/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to the definition of political advocacy organization.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Political Expenditures and Contributions; Definition of Political Advocacy Organization. Amend RSA 664:2, XXII to read as follows:

XXII. "Political advocacy organization" means any entity***, including but not limited to, an organization described in RSA 664:2, III,*** that [~~spends $5,000~~] ***makes expenditures of $2,500*** or more in a calendar year to pay for [~~a communication that is functionally equivalent to express advocacy because, when taken as a whole, such communication is likely to be interpreted by a reasonable person only as advocating the election or defeat of~~] ***communications that refer to*** a clearly identified candidate or candidates or the success or defeat of a measure or measures, [~~taking into account whether the communication involved mentions a candidacy or a political party, or takes a position on a candidate's character, qualifications, or fitness for office~~] ***and are publicly distributed within 60 days before a primary or general election to an audience that includes members of the electorate for the office sought by the candidate or one or more of the candidates, regardless of whether the communication or communications expressly advocate a vote for or against the candidate or candidates or for the success or defeat of a measure or measures. In this paragraph, expenditures do not include expenses for candidate forums, including, but not limited to, spending for advertisements, marketing, or event expenses***.

2 Effective Date. This act shall take effect 60 days after its passage.

CONSENT CALENDAR

March 15, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Election Law to which was referred HB 195,

AN ACT relative to the definition of political advocacy organization. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Connie Lane

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**Election Law**
Bill Number:	**HB 195**
Title:	**relative to the definition of political advocacy organization.**
Date:	**March 15, 2023**
Consent Calendar:	**CONSENT**
Recommendation:	**OUGHT TO PASS WITH AMENDMENT 2023-0986h**

STATEMENT OF INTENT

This bill changes the current law to require independent political organizations that spend $2,500 or more in a calendar year for communication that advocates for or against a candidate, or a measure, to register as a political advocacy organization. The purpose of the bill is to make clear who is paying for the mailings, social media, or other communication that is often dumped on voters shortly before an election. Current NH law requires that independent political organizations involved in NH elections, but not associated with a candidate, must register with and report their activities to the Secretary of State. The committee heard testimony that some organizations have avoided registration by claiming that their materials were related to political "issues" rather than to "candidates" – even where a candidate is named in the communication. This bill closes that distinction. The amendment deleted a requirement that the communication must be made within 60 days of the election to qualify for disclosure and revised language concerning the characterization of the communication. The majority believe that it is important for NH voters to know from where the political advocacy in their state is coming and support this effort to bring more transparency to the election process. Passing this bill will strengthen the integrity of political debate in NH and ensure accountability within the election process. This bill does not limit free speech, it only discloses who is speaking.

Vote 19-0.

Rep. Connie Lane
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Election Law

HB 195, relative to the definition of political advocacy organization. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Connie Lane for Election Law. This bill changes the current law to require independent political organizations that spend $2,500 or more in a calendar year for communication that advocates for or against a candidate, or a measure, to register as a political advocacy organization. The purpose of the bill is to make clear who is paying for the mailings, social media, or other communication that is often dumped on voters shortly before an election. Current NH law requires that independent political organizations involved in NH elections, but not associated with a candidate, must register with and report their activities to the Secretary of State. The committee heard testimony that some organizations have avoided registration by claiming that their materials were related to political "issues" rather than to "candidates" – even where a candidate is named in the communication. This bill closes that distinction. The amendment deleted a requirement that the communication must be made within 60 days of the election to qualify for disclosure and revised language concerning the characterization of the communication. The majority believe that it is important for NH voters to know from where the political advocacy in their state is coming and support this effort to bring more transparency to the election process. Passing this bill will strengthen the integrity of political debate in NH and ensure accountability within the election process. This bill does not limit free speech, it only discloses who is speaking. **Vote 19-0.**

Original: House Clerk
Cc: Committee Bill File

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill #: HB195 Date: 1/24/23

Committee: Election Law

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con
BOB PERRY	STRAFFORD	269-4651		✓	
Linda Bundy	Antrim	603 588 2254		✓	
SARA LORDELL	KEENE	603 715 8197	OpenDemocracy	✓	
JR Hoell	Durham Law		New Hampshire Gun Rights Coalition		X
Tiani Coleman	32 Simeon Wilson Rd. Amherst	801-709-8295	Self	✓	

HOUSE COMMITTEE ON ELECTION LAW

PUBLIC HEARING ON HB 195

BILL TITLE: **relative to the definition of political advocacy organization.**

DATE: **January 24, 2023**

LOB ROOM: **306-308** **Time Public Hearing Called to Order:** **1:02 pm**

Time Adjourned: **2:39 pm**

Committee Members: Reps. S. Smith, Berry, Grill, Prudhomme-O'Brien, Boehm, Qualey, Ankarberg, Burnham, Kennedy, Wherry, Wood, Lane, Ward, Hamer, Hamblet, Bay, Brennan and H. Howard, Paige, Palmer

Bill Sponsors:
Rep. Lane

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.
Chairman Smith opened the public hearing.

Rep. Lane, sponsor, introduced the bill and spoke in favor. She said that transparency is the goal so voters know who is sending them communication, whether via email, flyers, or other methods. She said that the bill has been around for a while, and it lowers the threshold to $2.5K to qualify for registration as a PAC under RSA 664. If an organization sends mailers, emails, or TV ads within 60 days before an election that cost more than $2.5K, they must register as a PAC with the Secretary of State. She stated that all the bill does is expand the threshold for who must register when providing voter communications.

Rep. Smith asked for an example of a group that might be affected by this bill. Rep. Lane answered no, because such organizations would not yet qualify. Rep. Smith asked to clarify over what period of time would the $2.5K qualify. Rep. Lane stated that if the $2.5K was spent prior to an election, they would have to register.

Rep. Berry asked whether the qualification period would be $2.5K within 60 days or a calendar year. Rep. Lane clarified that the spend would qualify within the 60 days prior to an election OR a full calendar year.

Rep. Wherry asked whether there are any enforcement measures or if the bill would just inform voters. Rep. Lane confirmed that there are no enforcement measures included in the bill. Rep. Wherry asked what is currently done. Rep. Lane said that this bill would give candidates more time to respond to communication and inform them who was responsible for communication materials.

Rep. Bay asked whether the $2.5K was for a single ad or in total. Rep Lane clarified that this would be in total.

Rep. Berry asked if this bill expands the definition of political communication. Rep. Lane confirmed that this is the case.

Olivia Zink* of Open Democracy Action testified in support of the bill. She shared her collection of political material received in 2022 and said that the disclosures varied greatly between materials and that some were in compliance with the law and others were not. She said that this bill requires entities who are spending money on a candidate to register and report their spend, essentially striking the loophole that allows organizations to send communications without using "vote for" language. She stated that voters don't make a distinction between mail that discusses a candidate and mail that explicitly encourages the recipient to vote for a certain candidate. She said that she learned of this loophole after passing an earlier disclosure bill and that this bill works to plug the loophole and try to provide more transparency among larger groups that are sending political materials. With regards to court decisions, she stated that political speech is different and disclosure can be required if groups are spending money to influence an election. She said that this committee has seen the bill before and it has passed both the Senate and House unanimously in 2019 but was vetoed by the governor, but encouraged support for the bill nonetheless. She shared more examples of political mail she has received for past elections.

Rep. Berry said that the bill does not define "publicly distributed" and that letters to the editor are a common political strategy. He asked whether LTEs would count towards the $2.5K under this bill. Ms. Zink said that the

Attorney General's office had referenced LTEs previously and said that the defining question was whether the communication was intended to reach voters in a particular district.

Chairman Smith asked for clarification on the type of media included in this bill. Ms. Zink gave examples of the type of content included under the bill and said that if the communications were paid for and distributed to the voters in a district, it would count towards the spend.

Rep. Prudhomme-O'Brien asked of all the letters Ms. Zink had with her, how many could not be identified by the group or sender? Ms. Zink stated that there was one mailer received with no disclosure or contact information otherwise.

Rep. Bay asked how we can hold groups accountable if they do not follow the disclosure laws. Ms. Zink urged Rep. Bay to ask the DA's office and said that citizens can report communications that are not disclosed properly. She stated that it is important for voters to be informed on who is paying for political communications.

Re. Prudhomme-O'Brien stated that she received political mail without disclosures previously and pushed for an investigation and asked whether Ms. Zink had investigated the sender. Ms. Zink stated that Open Democracy had sent complaints previously and that she uses the mail to train voters to make reports themselves.

Rep. Qualey asked how this bill would apply to organizations or people based outside of NH. Ms. Zink said that our disclosure laws state that PAC treasurers must be based in NH for state elections. She stated that she sees a lot of national groups with NH treasurers.

Greg Moore of Americans for Prosperity spoke in opposition to the bill. He said that he has spent significant time understanding compliance law, and said that there are essentially 5 types of political communication recognized legally: providing information (voter scorecards, Ballotpedia, ect.) with no ask, direct lobbying (communication from an interest group), grassroots lobbying (encouraging voters to take a position on legislation) that always includes a call to action, expressed advocacy (using "vote for" "elect" language), and functional equivalent of expressed advocacy (communication without specific language, but that speaks to a candidate's fitness to hold office; i.e. "Candidate Smith Murders Kittens"). He stated that states have broad ability to regulate lobbying and that expressed advocacy is covered under 664. He said that in the past, this law has also included functional equivalent of expressed advocacy. He explained that states have mixed ability to regulate grassroots lobbying and states have different policies; most recent court decisions have struck down the ability to regulate grassroots lobbying. He said that the problem with this bill is it includes all categories of communication under a single bucket without distinguishing between the groups, requiring more groups who are not making explicit asks to register as a PAC. He said that similar legislation was viewed as overly broad in NY and NJ court decisions. He said that within 60 days before an election, legislatures have veto days, contracts before the Executive Council, and other activity where groups may spend more than $2.5K to influence activities. He said that a lot of these groups are relatively unsophisticated and we would see many instances of noncompliance. He suggested that the functional equivalent of expressed advocacy would only be regulated within 60 days before an election, and groups could make wild accusations about a candidate prior to that period. He said that he was concerned about the ability of smaller groups to send communications prior to an election under this bill.

Rep. Smith asked whether a group of citizens who partnered to send a mailer about a community center would need to register. Mr. Moore said he believes the bill would only impact state elections and encouraged him to ask the DOJ.

Rep. Berry asked how AFP would be impacted by this legislation. Mr. Moore said that the bill would not have a great impact on his organization but might impact how soon they would be able to release their legislative scorecard, and also said that the AFP Foundation helped bring the NJ case and would look closely at the legislation if it were to pass. Rep. Berry asked whether the bill would apply to when a publication endorses someone for elected office, given the costs of running a newspaper. Mr. Moore said that this question bumps up against a constitutional provision and that this legislation is so broad, it might apply to news organizations. He stated that this is why he encourages the committee to contact the DOJ to learn how they would try to enforce this in light of its challenges.

Deputy SOS Hennessey spoke to provide information to the committee. She did not take a position on the bill. She said that she prefers new election legislation to help clean up current law, and stated that this bill creates more confusion than clarification, citing the reference to political committees within PACs as an example; which group's spend would qualify? She said that it is also confusing that the bill refers to spend within either a calendar year or the 60 days prior to an election and she was unsure whether public distribution applied to the date of receipt or when the information was sent. She encouraged the committee to contact the DOJ as well.

Chairman Smith read the entries on the blue sign-in sheet: 4 in favor, 1 opposed.

Chairman Smith adjourned the public hearing.

House Remote Testify

Election Law Committee Testify List for Bill HB195 on 2023-01-24

Support: 37 Oppose: 4 Neutral: 0 Total to Testify: 0

Export to Excel

Name	City, State Email Address	Title	Representing	Position	Testifying	Non-Germane
Smith, Julie	Nashua, NH cantdog@comcast.net	A Member of the Public	Myself	Oppose	No	No
Huberman, Anne	Peterborough, NH Anne.Huberman@gmail.com	A Member of the Public	Myself	Support	No	No
Dodge, Corinne	Derry, NH corinnedodge@hotmail.com	A Member of the Public	Myself	Support	No	No
Coon, Kate	Peterborough, NH kate2coon@gmail.com	A Member of the Public	Myself	Support	No	No
Moore, Susan	Franconia, NH susan.moore.franconia@gmail.com	A Member of the Public	Myself	Support	No	No
Smith, Hayden	Hanover, NH hasmith1520@gmail.com	A Member of the Public	Myself	Support	No	No
Andrews, David	Chichester, NH davidandrewsnh@gmail.com	A Member of the Public	Myself	Support	No	No
Reed, Barbara	North Swanzey, NH BDReed74@gmail.com	A Member of the Public	Myself	Support	No	No
Farnum, Ellen	Tamworth, NH Ellenlynnfarnum@gmail.com	A Member of the Public	Myself	Support	No	No
thompson, julia	durham, NH maple371@gmail.com	A Member of the Public	Myself	Support	No	No
Bushueff, Catherine	Sunapee, NH agawawdesigns@gmail.com	A Member of the Public	Myself	Support	No	No
Bundy, Linda	Antrim, NH n_bundy@mcttelecom.com	A Member of the Public	Myself	Support	No	No
Cote, Lois	Manchester, NH, NH lcote06@outlook.com	A Member of the Public	Myself	Support	No	No
Couture, Matthew	Rochester, NH coochdog@gmail.com	A Member of the Public	Myself	Support	No	No
Spencer, Louise	Concord, NH lpskentstreet@gmail.com	A Member of the Public	Myself	Support	No	No
LeClerc, Dan	Amherst, NH djl91862@gmail.com	An Elected Official	Myself	Support	No	No
Davidson, Geri	Nashua, NH geridavidson15@gmail.com	A Member of the Public	Myself	Support	No	No
Cotton, Bev	Weare, NH bevcott@gmail.com	A Member of the Public	Myself	Support	No	No
Muns, Chris	Hampton, NH chris.muns@leg.state.nh.us	An Elected Official	Myself	Support	No	No
Maldonado, Ursula	Concord, NH ursula.m.maldonado@gmail.com	A Member of the Public	Myself	Support	No	No
Hatcher, Phil	Dover, NH phil.hatcher@gmail.com	A Member of the Public	Myself	Support	No	No
Lobdell, Sara	Keene, NH sara@opendemocracy.me	A Lobbyist	Open Democracy	Support	No	No

Mercier, Jody	Goffstown, NH jodymercier53@gmail.com	A Member of the Public	Myself	Support	No	No
Schapiro, Joe	Keene, NH joe.schapiro@leg.state.nh.us	An Elected Official	Cheshire 16	Support	No	No
Kelley, Mary	Dover, NH midgekelley1@gmail.com	A Member of the Public	Myself	Support	No	No
Hansen, Lorraine	Rollinsford, NH lhansennh@gmaol.com	A Member of the Public	Myself	Support	No	No
Beihl, Brian	Alton Bay, NH brian@beihl.org	A Member of the Public	Myself	Support	No	No
Richman, Susan	Durham, NH susan7richman@gmail.com	A Member of the Public	Myself	Support	No	No
Maldonado, Luis	Concord, NH luis.n.maldonado@outlook.com	A Member of the Public	Myself	Support	No	No
Dickler, Jeffrey	Rindge, NH gsgstriker@aol.com	A Member of the Public	Myself	Support	No	No
Berrio, Simon	Holderness, NH quahog319@gmail.com	A Member of the Public	Myself	Oppose	No	No
Perry, Carol	Strafford, NH cperrynh1@gmail.com	A Member of the Public	Myself	Support	No	No
Benham, Linda	Greenland, NH benhamblab@outlook.com	A Member of the Public	Myself	Support	No	No
Palmer, William	Cornish, NH wpalmernh@gmail.com	An Elected Official	Myself	Support	No	No
Cline, Andrew	Bedford, NH cline@jbartlett.org	A Member of the Public	Josiah Bartlett Center for Public Policy	Oppose	No	No
Feller-Kopman, Michelle	Meriden, NH michelle@shore.net	A Member of the Public	Myself	Support	No	No
BALDWIN, HEATHER	Thornton, NH hpbaldwin48@gmail.com	An Elected Official	Myself	Support	No	No
Spier, Carry	Nashua, NH carry.spier@leg.state.nh.us	An Elected Official	Myself	Support	No	No
Allen, Gordon	Antrim, NH wgordonallen@gmail.com	A Member of the Public	Myself	Support	No	No
Almy, Susan	Lebanon, NH susan.almy@comcast.net	An Elected Official	Myself	Support	No	No
davis, sally j	Thorntn, NH sally.davis36@gmail.com	A Member of the Public	Myself	Oppose	No	No

HCS Memorandum

New Hampshire House of Representatives
House Committee Services

Christina.Dyer@leg.state.nh.us
603-271-3385

TO: **Rep. Steven Smith**
Chairman, Election Law Committee

FROM: **Christina Dyer,**
Committee Researcher

DATE: **January 23, 2023**

SUBJ: **HB 195: relative to the definition of political advocacy organization.**

SUMMARY

This bill proposes to change the definition of "political advocacy committee" to include entities that make an expenditure of $2,500 or more on communications regarding candidates or measures and require registration with the Secretary of State's office.

Similar legislation has been proposed three times to the House and three times to the Senate. It passed both chambers once, in 2019, however it was vetoed by the governor.

NH Law

III. " Political committee " means:

(a) Any organization of 2 or more persons that promotes the success or defeat of a candidate or candidates or measure or measures, including the political committee of a political party;

(b) Any segregated fund established by any organization the purpose of which is to promote the success or defeat of a candidate or candidates or measure or measures;

(c) Any organization that has as its major purpose to promote the success or defeat of a candidate or candidates or measure or measures and whose receipts or expenditures total $2,500 or more in a calendar year for that purpose;

(d) Any organization that does not have as its major purpose to promote the success or defeat of a candidate or candidates or measure or measures but that makes expenditures that total $5,000 or more in a calendar year; or

(e) Any segregated fund that is voluntarily registered with the secretary of state for the purpose of reporting its receipts and expenditures under this chapter or any organization that voluntarily registers with the secretary of state, without regard to whether such segregated fund or organization meets the receipt or expenditure thresholds described in this paragraph.

As used in this paragraph, " organization " includes, but is not limited to, one or more natural persons; entities formed under state law, except those entities qualified under section 501(c)(3) of the United States Internal Revenue Code of 1986; committees formed by a candidate, exploratory

campaign, or political party; and any other association of natural persons or entities formed under state law that is not registered as a business entity.

XXII. " Political advocacy organization " means any entity that spends $5,000 or more in a calendar year to pay for a communication that is functionally equivalent to express advocacy because, when taken as a whole, such communication is likely to be interpreted by a reasonable person only as advocating the election or defeat of a clearly identified candidate or candidates or the success or defeat of a measure or measures, taking into account whether the communication involved mentions a candidacy or a political party, or takes a position on a candidate's character, qualifications, or fitness for office.

Previous Legislation

HB 533 (2018), relative to political advocacy organizations.

Referred to Election Law Committee
1/12/2017, Retained in committee
1/03/2018, Inexpedient to Legislate

Rep. Norman Silber for Election Law. This bill modified the definition of political advocacy organization for purposes of registration and reporting of expenditures and contributions. The committee also considered a bill which was exactly the same, SB 33. Given the duplicate legislation, the committee felt this bill was unnecessary.

SB 33 (2018), relative to the definition of political advocacy organization.

Referred to Election Law Committee
5/10/2017, Retained in committee
1/03/2018, Referred to Interim Study, Vote 18-2

Rep. Norman Silber for Election Law. This bill addresses the definition of political advocacy organizations as to registration requirements for the origination and registration of expenditures and donors. While the committee heard testimony supporting the bill, because of a belief it would provide full transparency, the committee also heard testimony that it failed to appropriately distinguish issue advocacy and candidate advocacy. While the ideas expressed were of interest for legislation, given the concerns of its effect the committee recommended referring the bill for Interim Study.

Final Outcome: Laid on the Table

SB 106 (2019), relative to the definition of political advocacy organization.

Referred to Election Law Committee
Ought to Pass, Vote 20-0

Rep. William Pearson for Election Law. This bill requires organizations that spend over $2,500 annually on political advocacy, and that distribute those political communications within 60 days of an election, to register with the Secretary of State. The committee continues to believe that it is important for New Hampshire citizens to know where the political advocacy in their state is coming from and supports this effort to bring more transparency to the process.

Final outcome: Vetoed by the Governor

Governor's Veto Message:
By the authority vested in me, pursuant to part II, Article 44 of the New Hampshire Constitution, on July 10, 2019, I have vetoed Senate Bill 106, relative to the definition of political advocacy organization. This bill would force organizations who seek to foster discussion on important issues of the day to register as a political advocacy organization. Registration would be required even if the organization does not expressly advocate the success or defeat of a candidate in an election. Such an expansion of government regulation of speech is unnecessary and would have a chilling effect on our citizens' rights to advocate for and support causes which are important to them. For the reasons stated above, I have vetoed Senate Bill 106.

Respectfully submitted, Christopher T. Sununu

HB 1525 (2020), relative to the definition of political advocacy organization.

Referred to Election Law Committee, Vote 13-7
Majority: Ought to Pass

Rep. Wayne Moynihan for Election Law. NH election law generally requires that independent political organizations, involved in NH elections, but not associated with a candidate, must register with and report their activities to the Secretary of State. The committee received compelling testimony and evidence of a recurring problem where, within 60 days of recent elections, some unregistered organizations sent out mailings which clearly identified candidates for office. These mailings clearly challenged candidates and political positions. Heretofore some of these organizations have avoided registration, under NH election laws regarding political contributions, by claiming that their materials were related to political "issues" rather than to individual "political candidates." This bill corrects this circumstance, called a loophole by some. The bill requires an organization that pays for distribution of a communication, within 60 days of an election, that refers to a candidate or to the success or defeat of a measure, and costs $2,500.00 or more, to register and report as required for other political organizations.

Final Outcome: Laid on the Table in the Senate

HB 468 (2021), relative to the definition of political advocacy organization.

Referred to Election Law Committee, Vote 11-9
Majority: Inexpedient to Legislate
Minority: Ought to Pass

Rep. Joe Sweeney for the Majority: This bill modifies the definition of political advocacy organization for purposes of political expenditure and contribution laws. It seeks to decrease the expenditure reporting limit from $5,000 to $2,500 which is contrary to the direction of costs and expenditures in campaigns. It requires the registration of any entity that purchases campaign material costing more that $2,500 that is distributed in the 60 day period before an election in which a candidate or measure is mentioned, regardless of whether there is a specific reference to a vote. The majority of the Election Law Committee believes that there are significant issues of organization and enforceability with this proposed legislation. The types of free speech that would be covered is too

broad; for example, it was agreed that a voter's guide would be covered. The reduction from $5,000 to $2,500 in spending as the reporting threshold is a significant change that could hurt smaller advocacy groups that may not have a formal organization in a position to comply with the legislation. Finally the enforceability issues led the majority of the committee to agree that the bill was not a benefit to our campaign structure.

Rep. Connie Lane for the Minority: NH election law requires that independent political organizations involved in NH elections, but not associated with a candidate, must register with and report their activities to the Secretary of State. The committee received compelling testimony and evidence of a recurring problem where, within 60 days of recent elections, some unregistered organizations sent out mailings which clearly identified candidates for office. These mailings clearly challenged candidates and political positions. Previously, some of these organizations have avoided registration by claiming that their materials were related to political "issues" rather than to individual "political candidates." The bill closes this loophole. The bill requires an organization that pays for distribution of a communication, within 60 days of an election, that refers to a candidate or to the success or defeat of a measure, and costs $2,500.00 or more, to register and report as required for other political organizations. This bill does not limit free speech, it only discloses who is speaking.

Please do not hesitate to reach out if you have additional questions.

OPEN
DEMOCRACY
ACTION

January 24, 2023

The Honorable Steven Smith, Chairman
Election Law
Legislative Office Building, Room 308
Concord, NH 03301

TESTIMONY in SUPPORT of HB 195

Dear Chairman Smith and members of the Election Law Committee,

Transparency is critical to a democracy that's open and accountable, HB 195 is a simple disclosure bill which would shine a light on secret money in NH politics. Currently, the law has a definition that says functionally equivalent to express advocacy. This bill strikes functionally equivalent to express advocacy and ADDS clearly identified candidate or candidates.

This bill closes a loophole. It creates more transparency when it comes to independent expenditures and electioneering communications. An independent expenditure is a political campaign communication which expressly advocates the election or defeat of a clearly identified candidate. This is a simple change to New Hampshire's disclosure laws and HB 195 will close an important loophole.

HB 195, clarifies the Definitions of Political Advocacy Organization.

This also ADDS a limit only to publicly distributed within 60 days before a primary or general election.

In the NH elections, we saw groups that clearly named a candidate, with the window of 60 days and spent $2,500 but they didn't register or report. This change makes sure that ALL groups engaging in these electioneering activities will register and report.

Groups spending big money on large independent political campaigns avoid registering with the secretary of state as "political advocacy organizations" as the law intended. These have been national groups conducting independent campaigns – estimated to spend millions on our NH primary and general elections. Because of this loophole, NH voters are being denied the right to know who these groups really are and how much they spend to defeat or elect their targeted candidates.

For the electoral process to be open and fair, it must also be transparent. It is an unfortunate reality that, in our society, waves of money can carry power and influence. The public must be able to dip their fingers into the flow of money to know where political contributions come from and the purpose these contributions serve.

The Supreme Court's decision written for 2010's Citizens United stresses that for their decision to be implemented fairly, disclosure must be open to the public. Written in the formal decision is the following statement;

> "The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." [end quote] 558 US _ (2010)

Last minute mail bombardment and other dark money political strategies are in strict contradiction of the Supreme Court's intentions. The public is unable to make an informed decision if they do not know who they are arguing with. Political debate cannot be held in good faith if influencers are able to hide behind tidal waves of money. Though the NH Legislature seems to agree with that on face value, we have allowed an unfortunate loophole which must be closed. Closing this loophole involves altering the definition of election communication to include mailers which do specifically name candidates but do not specifically instruct the reader which direction to vote.

Making this simple change would strengthen the integrity of political debate within New Hampshire and ensure accountability within the election process.

Some history:

Ten years ago, Senator Bradley passed important legislation that would require groups spending money to register and report. You can, if you are interested in the history, listen to the NHPR exchange program here https://www.nhpr.org/the-exchange/2013-04-09/the-return-of-campaign-finance-reform

In 2019, a very similar bill, SB 106, was passed in the Senate 24-0 and the Election law committee passed it 20-0. But it didn't make it over the finish line. I hope you can give this an OTP again.

Please vote OTP on HB 195.

Thank you,

Olivia Zink
Executive Director, Open Democracy Action
4 Park St., Suite 301 Concord, NH 03301
603-715-8197 or cell: 603-661-8621

OPEN
DEMOCRACY
ACTION

January 24, 2023

The Honorable Steven Smith, Chairman
Election Law
Legislative Office Building, Room 308
Concord, NH 03301

TESTIMONY in SUPPORT of HB 195

Dear Chairman Smith and members of the Election Law Committee,

Transparency is critical to a democracy that's open and accountable, HB 195 is a simple disclosure bill which would shine a light on secret money in NH politics. Currently, the law has a definition that says functionally equivalent to express advocacy. This bill strikes functionally equivalent to express advocacy and ADDS clearly identified candidate or candidates.

This bill closes a loophole. It creates more transparency when it comes to independent expenditures and electioneering communications. An independent expenditure is a political campaign communication which expressly advocates the election or defeat of a clearly identified candidate. This is a simple change to New Hampshire's disclosure laws and HB 195 will close an important loophole.

HB 195, clarifies the Definitions of Political Advocacy Organization.

This also ADDS a limit only to publicly distributed within 60 days before a primary or general election.

In the NH elections, we saw groups that clearly named a candidate, with the window of 60 days and spent $2,500 but they didn't register or report. This change makes sure that ALL groups engaging in these electioneering activities will register and report.

Groups spending big money on large independent political campaigns avoid registering with the secretary of state as "political advocacy organizations" as the law intended. These have been national groups conducting independent campaigns – estimated to spend millions on our NH primary and general elections. Because of this loophole, NH voters are being denied the right to know who these groups really are and how much they spend to defeat or elect their targeted candidates.

For the electoral process to be open and fair, it must also be transparent. It is an unfortunate reality that, in our society, waves of money can carry power and influence. The public must be able to dip their fingers into the flow of money to know where political contributions come from and the purpose these contributions serve.

The Supreme Court's decision written for 2010's Citizens United stresses that for their decision to be implemented fairly, disclosure must be open to the public. Written in the formal decision is the following statement;

"The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." [end quote] 558 US _ (2010)

Last minute mail bombardment and other dark money political strategies are in strict contradiction of the Supreme Court's intentions. The public is unable to make an informed decision if they do not know who they are arguing with. Political debate cannot be held in good faith if influencers are able to hide behind tidal waves of money. Though the NH Legislature seems to agree with that on face value, we have allowed an unfortunate loophole which must be closed. Closing this loophole involves altering the definition of election communication to include mailers which do specifically name candidates but do not specifically instruct the reader which direction to vote.

Making this simple change would strengthen the integrity of political debate within New Hampshire and ensure accountability within the election process.

Some history:

Ten years ago, Senator Bradley passed important legislation that would require groups spending money to register and report. You can, if you are interested in the history, listen to the NHPR exchange program here https://www.nhpr.org/the-exchange/2013-04-09/the-return-of-campaign-finance-reform

In 2019, a very similar bill, SB 106, was passed in the Senate 24-0 and the Election law committee passed it 20-0. But it didn't make it over the finish line. I hope you can give this an OTP again.

Please vote OTP on HB 195.

Thank you,

Olivia Zink
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603-715-8197 or cell: 603-661-8621



Testimony on House Bill 195, an act relative to the definition of political advocacy organization

Dear members of the House Election Law Committee:

Thank you for the opportunity to testify on this bill.

The Josiah Bartlett Center for Public Policy is a 501 (c)(3) educational organization under the U.S. tax code. Our mission is to develop and advance practical, free-market policies that promote prosperity and opportunity for all Granite Staters. We analyze public policies and policy proposals, and we publish these analysis and commentaries on our website, in our newsletter, in briefing papers, and on social media.

We are not — and do not want to be — a political advocacy organization. Our goal is to do research and analysis, and we're happy doing just that.

Though we do not engage in political advocacy, House Bill 195, as drafted, could put us at risk of being incorrectly classified as a political advocacy organization simply for providing our regular analyses of public policy issues in the 60 days before an election.

Writing about public policy inevitably involves referencing public officials. When we write about the state budget or tax policy or regulations, we often identify bill sponsors or individuals and groups that argued for or against a certain policy. By necessity, this involves referring to elected officials or candidates for office.

Though we strictly avoid advocating for or against the election of any candidate for office, we do find ourselves mentioning elected officials and candidates in the course of providing readers with complete information about issues. When we write about a particular bill, for instance, readers find it useful to know who sponsored the bill and who made arguments for or against it.

HB 195 as drafted would prohibit us from spending quite a small sum ($2,500) communicating any of our work that references a candidate for office within the 60 days prior to an election.

Under HB 195, any organization that spends at least $2,500 on “communications that refer to” a candidate within 60 days before an election would have to register as a political advocacy organization. This would trigger financial reporting requirements intended for political organizations.

To give you an example of the chilling effect this bill would have, we send letters to our supporters several times a year. These letters merely update supporters on our work. These mailings can easily exceed the $2,500 threshold in HB 195. In those letters, we sometimes mention elected officials in passing. We might mention a bill sponsor or an elected official who spoke at one of our events. Were HB 195 to become law, these letters would qualify us as a political advocacy organization if we happened to mail them in the two months before an election, which would cover late summer, a time when we often give supporters a post-legislative session update on our work. This bill would classify innocent informational letters as political advocacy.

Another example: We use social media to promote our work. Were we to spend at least $2,500 promoting our work on social media within 60 days of an election, and that promotion contained a link to an analysis that referenced a candidate in the election, that conceivably could transform us into a political advocacy organization though we did no political advocacy.

HB 195 would count mere references to a candidate for office as political advocacy, which is obviously absurd. In short, it would create in law a preposterously broad definition of political advocacy organization that would chill free speech and suppress civic engagement on issues of public interest.

Andrew Cline
President
Josiah Bartlett Center for Public Policy

HB 195 restores the voter's, public's, and candidate's right to know who is running those last-minute negative ads and how much they are spending

Gordon Allen Testimony, House Election Law Committee, January 24, 2023

HB 195 is a technical correction to the definition of a "political advocacy organization" in RSA 664:2 XXII. It closes the loophole in the definition of "a non-express political communication" created by a drafting error in SB 120 passed in 2014. This has allowed groups conducting expensive independent political campaigns to avoid registering with the secretary of state as a "political advocacy organization" as SB 120 intended. These are out-of-state special interest groups with national agendas conducting independent campaigns. It is estimated that in every election cycle, they spend millions on our primary and general elections. Because of this loophole, NH voters are denied the right to know who these groups really are, what they are up to, and how much they spend to defeat or elect the candidates they target.

The Problem

➔ These independent groups have avoided registering and reporting their spending by producing political communications that do not expressly say vote "for" or "against" their named candidate – but which take the approach of making all kinds of negative allegations and misrepresentations against the candidates they aim to defeat. These stealth political attack ads use "issue-advocacy" language to get around having to report to the secretary of state . . . or to the candidates they are working to defeat . . . or to NH voters.

➔ The 2014 definition of "political advocacy organization" in RSA 664:2 XXII. intended to cover these types of non-express electioneering communications by requiring that groups report their expenditures on them if they were "functionally equivalent" to those expressly advocating a vote "for" or "against".

➔ In practice, however, determining what was "functionally equivalent" didn't work. Specifically, in a 2015 complaint against an independent group (spending big money on negative ads) that failed to register as a "political advocacy organization", the Attorney General ruled the group technically was not required to register because they (the AG) were not 100% certain that the group's mailers (**See mailer against Sen. Boutin)** were "functionally equivalent" to "express advocacy" because they did not say vote "for" or "against" the candidate. This was although these mailers: **(1)** Clearly identified the candidate they were targeting, **(2)** Were mailed a few days before the primary, and **(3)** Were mailed only to voters in the candidate's district. **This is clearly an electioneering mailing — but unless HB 195 passes, it's not**.

➔ As a result, New Hampshire voters – and the candidates who were attacked – were denied the right to know details about these groups and how much they spent using this "dark money" from out of state.

The Solution: The HB 195 Fix Restores Transparency

HB 195 closes this loophole by replacing the existing flawed definition of an electioneering "communication" in RSA 664:2 XXII. with one that uses three common-sense and clear standards. These have been used successfully in other states and have been upheld by the courts when challenged. HB 195 defines a "communication" that needs to be disclosed as one that: (**1)** "refers to a clearly identified candidate;" **(2)** "regardless of whether the communication expressly advocates a vote for or against a candidate;" and **(3)** is "publicly distributed within 60 days before a primary or general election to an audience that includes members of the electorate for the office sought by the candidate."

Applying this HB 195 standard to the mailers from these groups (and many others) that did not register clearly identifies them as electioneering "communications". This means that under HB 195, these groups would have to register with the secretary of state as "political advocacy organizations" and provide information as to who they are. They would then have to file reports on their expenditures – just like political committees and candidates do now. This restores the **New Hampshire voter's, public's, and candidate's right to know** while imposing no restrictions on these communications.

Barbara Reed

yes

HOUSE COMMITTEE ON ELECTION LAW

EXECUTIVE SESSION on HB 195

BILL TITLE: relative to the definition of political advocacy organization.

DATE: March 15, 2023

LOB ROOM: 206-208

MOTIONS: **OUGHT TO PASS WITH AMENDMENT**

Moved by Rep. Lane	Seconded by Rep. Hamblet	AM Vote: 19-0

Amendment # 2023-0986h

Moved by Rep. Lane	Seconded by Rep. Muirhead	Vote: 19-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Jessica Grill, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/5/2023 1:43:00 PM
Roll Call Committee Registers Report

2023 SESSION

Election Law

Bill #: HB 195 Motion: Adopt. Amendment AM #: 2023-0986h Exec Session Date: MARCH 15, 2023

Members	YEAS	Nays	NV
Smith, Steven D. Chairman ABSENT			ABS
Berry, Ross Vice Chairman	X		
Prudhomme-O'Brien, Katherine J.	X		
Boehm, Ralph G.	X		
~~Qualey, James R.~~ HARVEY-BOLIA	X		
~~Ankarberg, Aidan~~ HARRINGTON	X		
Burnham, Claudine R	X		
Kennedy, Stephen J.	X		
Wherry, Robert J	X		
Wood, Clayton D	X		
Lane, Connie Boyles	X		
Ward, Gerald W.R.	X		
Hamer, Heidi M.	X		
Hamblet, Joan L.	X		
Muirhead, Russell	X		
~~Bay, Luz~~ KNAB	X		
Brennan, Angela	X		
Grill, Jessica	X		
Howard, Heath	X		
TOTAL VOTE:	19		NV

PALMER X

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/5/2023 1:43:00 PM
Roll Call Committee Registers Report

2023 SESSION

Election Law

Bill #: HB 195 Motion: OTP/A AM #: 2023-0986h Exec Session Date: MARCH 15, 2023

Members	YEAS	Nays	NV
Smith, Steven D. Chairman ABSENT			
Berry, Ross Vice Chairman	X		
Prudhomme-O'Brien, Katherine J.	X		
Boehm, Ralph G.	X		
~~Qualey, James R.~~ HARVEY - BOLIA	X		
~~Ankarberg, Aidan~~ HARRINGTON	X		
Burnham, Claudine R	X		
Kennedy, Stephen J.	X		
Wherry, Robert J	X		
Wood, Clayton D	X		
Lane, Connie Boyles	X		
Ward, Gerald W.R.	X		
Hamer, Heidi M.	X		
Hamblet, Joan L.	X		
Muirhead, Russell	X		
~~Bay, Luz~~ KNAB	X		
Brennan, Angela	X		
Grill, Jessica	X		
Howard, Heath	X		
TOTAL VOTE:	19		
PALMER	X		