



March 10, 2025

The Honorable Jim Carlson
Chair, Senate Elections Committee
Minnesota State Legislature

RE: Statement in Support of Senate File 1996

Dear Chair Carlson and Honorable Members of the Elections Committee,

Campaign Legal Center (CLC) respectfully submits this statement supporting Senate File 1996, a campaign finance bill that would expand transparency requirements for independent expenditures and electioneering communications, update Minnesota's coordination statutes, and modernize on-ad disclaimer rules for digital ads.

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Since the organization's founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, as well as in numerous other federal and state court cases. Our work promotes every American's right to participate in the democratic process.

Voters have a right to know who is spending big money to influence their vote; however, secret spending by wealthy special interests—sometimes called “dark money”—impedes voters, and these wealthy special interests continually seek new ways to hide their election spending from the public eye. SF 1996 is a strong step forward in ensuring transparency for election spending in Minnesota elections, updating the state campaign finance system to address gaps that dark money spenders seek to exploit.

As explained below, there are three key ways SF 1996 addresses secret spending in elections and increases transparency in Minnesota: first, by

increasing transparency around election-related outside spending; second, by closing gaps in coordination statutes; and finally, by modernizing on-ad disclaimer rules for digital political advertising.

I. Expanding transparency around election-related outside spending.

Like many states, Minnesota currently requires transparency for election spending that constitutes “express advocacy” or its functional equivalent. But some big election spenders attempt to influence elections while avoiding transparency with ads that skirt around express advocacy but still promote or attack a person’s candidacy. SF 1996 helps to address this issue by expanding transparency requirements for independent expenditures to include paid communications that promote, attack, support, or oppose a candidate—sometimes called “PASO” communications.

The regulation of PASO communications as part of campaign finance law has a long, well supported history. In federal law, the Bipartisan Campaign Reform Act of 2002 (BCRA) covered PASO communications in the context of regulating “soft money” in federal elections—that is, money previously raised by political parties for supposedly “nonfederal” purposes and not subject to federal law’s restrictions on sources and amounts of contributions to political parties.¹ In *McConnell v. FEC*, the Supreme Court explicitly upheld BCRA’s inclusion of PASO communications in the soft money restrictions, explaining that “any public communication that promotes or attacks a clearly identified Federal candidate directly affects the election in which he is participating.”²

In addition to BCRA, other states—including Arizona, Hawaii, Maine, and West Virginia—have recognized the impact PASO communications have on their elections and have included spending on similar communications as

¹ *McConnell v. FEC*, 540 U.S. 93, 122-26, 133-34 (2003).

² *Id.* at 170. The Court also rejected a vagueness challenge to the terms “promote,” “support,” “attack,” and “oppose,” explaining those terms “provide explicit standards for those who apply them” and “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.” *Id.* at 170 n.64 (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972)).

part of the independent election spending that is subject to transparency requirements. These laws have been upheld by courts across the country.³

By including paid PASO communications as independent expenditures, Minnesota would join these other states in helping to ensure that voters have the information they need to make informed decisions when they cast their ballots.

II. Closing gaps in coordination statutes.

SF 1996 includes important updates for Minnesota’s coordination statutes, helping to prevent wealthy special interests from exploiting gaps in the law to finance their preferred candidates’ campaigns by secretly coordinating their electoral spending.⁴

Clear, strong, and effective regulation of coordinated spending between candidates and outside spenders is necessary to prevent wealthy special interests from sidestepping limits on direct contributions. With the explosion of outside election spending in the wake of *Citizens United*, weak or outdated coordination laws enable candidates to evade contribution limits by working with ostensibly “independent” groups, effectively permitting groups that can raise unlimited funds to bankroll candidates’ campaigns.⁵

³ See *Yamada v. Snipes*, 786 F.3d 1182, 1192-94 (9th Cir. 2015); *Vermont Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118, 128-29 (2d Cir. 2014); *Ctr. for Individual Freedom, Inc. v. Tennant*, 706 F.3d 270, 285-87 (4th Cir. 2013); *Nat’l Org. for Marriage v. McKee*, 649 F.3d 34, 62-64 (1st Cir. 2011)). Cf. *Ams. for Prosperity v. Meyer*, 724 F. Supp. 3d 858, 875 (D. Ariz. 2024) (upholding the Voters’ Right to Know Act, a broad disclosure law that included PASO communications, and specifically discussing the regulation of PASO communications in the context of ballot initiatives and recall campaigns against public officials); *Ctr. for Arizona Pol’y v. Ariz. Sec’y of State*, 560 P.3d 923 (Ariz. Ct. App. 2024) (upholding Arizona’s Voters’ Right to Know Act, a broad disclosure law including regulation of PASO communications).

⁴ See, e.g., Maia Cook, *Super PACs raise millions as concerns about illegal campaign coordination raise questions*, OPENSECRETS (Aug. 18, 2023), <https://www.opensecrets.org/news/2023/08/superpacs-raise-millions-concerns-illegal-campaign-coordination-raise-questions/>. See also SAURAV GHOSH ET AL., CAMPAIGN LEGAL CTR., *THE ILLUSION OF INDEPENDENCE: HOW UNREGULATED COORDINATION IS UNDERMINING OUR DEMOCRACY, AND WHAT CAN BE DONE TO STOP IT* (2023), <https://perma.cc/4VC9-KZKG>.

⁵ See Saurav Ghosh, et al., *The Illusion of Independence: How Unregulated Coordination is Undermining Our Democracy and What Can Be Done to Stop It*, CAMPAIGN LEGAL CTR. (Nov. 30, 2023), <https://campaignlegal.org/document/illusion-independence-how-unregulated-coordination-undermining-our-democracy-and-what-can> [hereinafter “The Illusion of Independence”].

This bill helps to close these gaps through two key improvements. First, it updates Minnesota’s coordination statute to include coordinated electioneering communications as a covered form of coordinated spending that would count as an in-kind contribution. Second, it addresses “redboxing,” a growing tactic seen across the country at the federal level⁶ and other states⁷ where campaigns coordinate in plain sight with outside spenders by providing explicit spending guidance on the campaign’s public website using industry-specific terms and keywords.⁸

Decades of U.S. Supreme Court precedent has established that regulating coordinated spending between candidates and outside spenders is both constitutional and essential for reducing political corruption. Beginning with its seminal decision in *Buckley v. Valeo*, the U.S. Supreme Court has consistently maintained that outside expenditures “controlled by or coordinated with a candidate” may be constitutionally limited in the same manner as direct contributions to the candidate’s campaign.⁹ Because coordinated expenditures are essentially in-kind contributions to candidates, limiting expenditures made in coordination with candidates furthers the same anti-corruption interests served by limits on direct monetary contributions to candidates and, critically, “prevent[s] attempts to circumvent the [limits] through prearranged or coordinated expenditures amounting to disguised contributions.”¹⁰

In *McConnell v. FEC*, the Supreme Court upheld BCRA’s expansion of federal coordination rules to cover coordinated expenditures made in the absence of “an agreement or formal collaboration” with a candidate.¹¹ The Court in *McConnell* noted that the existence of a formal agreement did not establish “the dividing line” between coordinated and independent spending, and explained that “expenditures made after a ‘wink or nod’ often will be ‘as

⁶ See Saurav Ghosh, *Voters Need to Know that “Redboxing” Remains a Widespread Problem*, CAMPAIGN LEGAL CTR. (Mar. 21, 2024), <https://campaignlegal.org/update/voters-need-know-redboxing-remains-widespread-problem>; see also Gabriel Foy-Sutherland and Saurav Ghosh, *Coordination in Plain Sight: The Breadth and Uses of “Redboxing” in Congressional Elections*, 23 ELECTION L.J. 149 (2024).

⁷ See, e.g., Patrick Anderson, ‘Who’s worse?’ Pro-Gorbea TV attack ad comes under fire again, THE PROVIDENCE JOURNAL (Sept. 9, 2022), <https://www.providencejournal.com/story/news/politics/2022/09/09/ad-supporting-nellie-gorbea-ri-governor-comes-under-fire-again/8024992001/>.

⁸ Ghosh et. al., *supra* note 5.

⁹ 424 U.S. 1, 46-47 (1976).

¹⁰ *Id.* at 455.

¹¹ 540 U.S. 93, 220-23 (2003).

useful to the candidate as cash.”¹² Moreover, the Court reiterated that only “wholly independent” spending is constitutionally distinguishable.¹³

Since the Supreme Court struck down the ban on corporate independent expenditures in *Citizens United v. FEC*,¹⁴ coordination rules have become especially critical to enforcing statutory limits on contributions and prohibitions on contributions to candidates, such as Minnesota’s ban on contributions to candidates from corporations.¹⁵ Indeed, the majority opinion in *Citizens United* heavily relied on the assumption that *independent* expenditures, unlike direct campaign contributions, do not create a risk of “quid pro quo” corruption because they are made without “prearrangement and coordination” with candidates,¹⁶ making clear the importance of the distinction between coordinated and independent spending.

Moreover, addressing redboxing is a critical component of modern campaign finance rules. “Redboxing” is named for the tell-tale, red-outlined box on a candidate’s website that contains specific information detailing the campaign’s preferred messaging and strategy, which is then used by outside spenders—such as super PACs, i.e., federal political committees that are permitted to raise and spend unlimited amounts to pay for independent expenditures provided such expenditures are not coordinated with any candidate or campaign committee—to make political ads in support of the candidate.¹⁷

Redboxing belies any commonsense understanding of “independent” spending and undermines limits on campaign contributions that are key to maintaining accountability and preventing corruption in our democratic process. Instead, when an ostensibly “independent” outside spender pays to

¹² *Id.* at 221 (quoting *FEC v. Colo. Republican Federal Campaign Committee*, 533 U.S. 421, 446 (2001)); see also *id.* at 222 (“A supporter could easily comply with a candidate’s request or suggestion without first agreeing to do so, and the resulting expenditure would be virtually indistinguishable from a simple contribution.” (internal quotation marks and brackets omitted)).

¹³ *Id.* at 221.

¹⁴ 558 U.S. 310 (2010).

¹⁵ Minn. Stats. § 211B.15, subd. 2(a).

¹⁶ *Id.* at 357.

¹⁷ While the classic example of redboxing uses a literal red box, many variations for this behavior exist. For examples of redboxing, see *The Illusion of Independence*, *supra* note 5 at 26-30.

run advertisements following the explicit request and instructions from a candidate, those ads will plainly be “as useful to the candidate as cash.”¹⁸

In short, SF 1996’s expansion of Minnesota’s coordination laws is supported by decades of Supreme Court precedent and would close gaps in Minnesota’s current law that may be exploited by wealthy special interests.

III. Modernizing on-ad disclaimer rules for digital advertising.

Online political spending has increased exponentially over the last twenty years, and, with advances in technology, the digital political ad landscape has also radically shifted over that time.¹⁹ No longer are ads limited to small banners along the sides or edges of a computer screen; today, ads find us everywhere and on a range of devices, from the games we play on our phones²⁰ to our social media²¹ to the ad breaks in streaming videos on our

¹⁸ *McConnell*, 540 U.S. at 221 (quoting *FEC vs. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 442, 446 (2001)).

¹⁹ See Brennan Ctr., *Online Political Spending in 2024* (Oct. 16, 2024), <https://www.brennancenter.org/our-work/analysis-opinion/online-political-spending-2024>.

²⁰ Reaching potential voters through video games, including images, video, or “playable” ads in mobile apps, is not a new tactic for campaign spenders. In 2020, the Biden campaign developed a playable mobile ad called “Ridin’ with Biden” in the eight weeks prior to the election. See *The Biden/Harris 2020 Presidential Campaign: How the Biden Campaign Gamified Democracy and Achieved a Record-Breaking CTR*, MOBILE MARKETING ASSOCIATION (MMA) https://www.mmaglobal.com/case-study-hub/case_studies/view/70842. Barack Obama’s 2012 campaign made headlines for its efforts to reach voters via ads in popular video games. See Sami Yengun, *Presidential Campaigns Rock The Gamer Vote*, NPR (Oct. 1, 2012), <https://www.npr.org/2012/10/01/162103528/presidential-campaigns-rock-the-gamer-vote>.

²¹ Many popular social media companies allow advertisers to run ads about political campaigns and social issues, including Meta (Facebook, Instagram, Reels, Messenger, and WhatsApp), X (formerly known as Twitter), and YouTube. See, e.g., *Facebook ads guide: Update to Meta Ads Manager objectives*, META (last visited Oct. 25, 2024), <https://www.facebook.com/business/ads-guide/update> and *Create an ad in Meta Ads Manager*, META (last visited Nov. 1, 2024), <https://www.facebook.com/business/help/2829711350595695?id=649869995454285>; *Political Content*, X BUSINESS (last visited March 7, 2025), <https://business.x.com/en/help/ads-policies/ads-content-policies/political-content>; *Political content*, GOOGLE HELP: ADVERTISING POLICIES HELP (last visited Oct. 25, 2024), <https://support.google.com/adspolicy/answer/6014595?hl=en#zippy=%2Cunited-states-us-election-ads>.

phones or smart TVs,²² and more.²³ To meet this new landscape, SF 1996 modernizes Minnesota’s on-ad disclaimer rules various types of political ads; this includes language clarifying that digital political ads must have full on-ad disclaimers unless it is technologically infeasible to do so, as well as a new section outlining the disclaimer format required for electioneering communications.

On-ad disclaimers (and disclosure laws generally) are an important tool for voters, helping them to know who is funding a campaign or trying to influence government decision-making.²⁴ Research shows that that knowing the source of election messaging is a “particularly credible” informational cue for voters seeking to make decisions about decisions consistent with their policy preferences, “particularly when they have knowledge about the source at the time of the communication as opposed to subsequent acquisition.”²⁵ Disclaimers and disclosure directly serve the government’s

²² *Need to Know: What’s the difference between OTT, CTV, and streaming?*, NIELSEN (Feb. 2024), [https://www.nielsen.com/insights/2024/whats-the-difference-ott-vs-ctv/#:~:text=The%20difference%20has%20to%20do,than%20what%20the%20content%20is.&text=Connected%20TV%20\(CTV\)%20%E2%80%94%20The,internet%20on%20a%20television%20screen.](https://www.nielsen.com/insights/2024/whats-the-difference-ott-vs-ctv/#:~:text=The%20difference%20has%20to%20do,than%20what%20the%20content%20is.&text=Connected%20TV%20(CTV)%20%E2%80%94%20The,internet%20on%20a%20television%20screen.)

²³ For example, Spotify, a popular audio streaming platform, recently changed its advertising policy to allow political ads after suspending political ads in 2020 over concerns over the rapid online spread of misinformation. Evan Minsker, *Spotify Brings Back Political Ads After Suspending Them in 2020*, PITCHFORK (May 25, 2024), <https://pitchfork.com/news/spotify-brings-back-political-ads-after-suspending-them-in-2020/> <https://blog.podbean.com/the-new-frontier-for-political-campaigns-harnessing-the-power-of-podcasts/>. Spotify is available on speakers, smart watches, smart TVs, gaming consoles, automobiles, digital voice assistant devices like Alexa, and more. *Devices & troubleshooting*, SPOTIFY (last visited Oct. 25, 2024), <https://support.spotify.com/us/category/device-help/>.

²⁴ *See No on E v. Chiu*, 85 F.4th 493, 505 (9th Cir. 2023), *cert. denied*, 2024 WL 4426534 (No. 23-926) (Oct. 7, 2024) (“Understanding what entity is funding a communication allows citizens to make informed choices in the political marketplace.”); *Gaspee Project v. Mederos*, 13 F.4th 79, 91 (1st Cir. 2021) (“The donor disclosure alerts viewers that the speaker has donors and, thus, may elicit debate as to both the extent of donor influence on the message and the extent to which the top five donors are representative of the speaker’s donor base . . . [in *Citizens United*] the Court recognized that the disclaimers at issue were intended to insure that the voters are fully informed . . .” (internal quotation marks and citation omitted)).

²⁵ Michael Kang, *Campaign Disclosure in Direct Democracy*, 97 Minn. L. Rev. 1700, 1718 (2013); Elizabeth Garrett & Daniel A. Smith, *Veiled Political Actors and Campaign Finance Disclosure Laws in Direct Democracy*, 4 Election L.J. 295, 296 (2015); *see also* Abby K. Wood, *Learning from Campaign Finance Information*, 70 Emory L. J. 1091 (2021) (“Voters use heuristics, or informational shortcuts, to help them make the vote choice most aligned with their priorities without requiring encyclopedic knowledge . . . on every issue.”); Keith E. Schnakenberg, Collin Schumock, and Ian R. Turner, *Dark Money and Voter Learning*, SSRN (May 28, 2023), *available at* <https://ssrn.com/abstract=4461514> or <http://dx.doi.org/10.2139/ssrn.4461514>.

critical informational interest in “ensur[ing] that voters have the facts they need to evaluate the various messages competing for their attention.”²⁶

By modernizing the on-ad disclaimer statutes with clear requirements that flexibly apply to the range of digital political ads that exist, SF 1996 helps to meet that informational interest, ensuring that Minnesota voters have immediate and easy access to information regarding the spenders behind the election ads they see, wherever those ads find them.

Conclusion

As wealthy special interests seek ways to circumvent disclosure and secretly influence our votes and our government, SF 1996 provides important updates to clarify the campaign finance system and ensure transparency in political spending for campaigns, spenders, and the public.

Thank you for your time and consideration. Please do not hesitate to reach out if we can provide any additional information to assist the committee in its deliberations.

Respectfully submitted,

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²⁶ *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010).