March 27th, 2025

Chair Carlson and Members of the Elections Committee,

At Americans for Prosperity, we believe in a robust civic society where state laws encourage, not discourage, all voices to engage in the political process. Senate File 905 does the opposite. It uses the veneer of campaign finance disclosure to chill political and issue advocacy, particularly by smaller groups. It will misinform, not inform voters about the interests advocating in Minnesota elections, and in chilling this speech for no compelling government interest, it likely violates the First Amendment.

To demonstrate these points, consider a relatively normal hypothetical regarding contributors to causes and ballot measures:

> Two companies, a Minnesota healthcare company and a Minnesota manufacturer, both give $10,000 in dues in the two years, before an election, 2024 and 2025, to the Minnesota Chamber of Commerce to advocate for pro-business interests. The Minnesota Chamber wants to support local chambers of commerce as well, so agrees to match any donations local chambers raised. The local chamber raises $75,000 and receives a $75,000 donation from the state chamber.
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> Now suppose that a 2026 constitutional amendment comes up that will significantly negatively impact Minnesota manufacturers, but will produce a benefit for Minnesota healthcare providers. The state chamber decides to support the measure and donates $100,000 to a 501(c)4 organization, HealthyMinnesota, to educate on the issue. The local chamber, whose interests more align with manufacturers, decides to oppose the amendment and donates $50,000 to a different 501(c)4, MinnesotaMakes, also to help educate.
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> As the election nears MinnesotaMakes decides it needs to advocate directly against the amendment, it donates $50,000 to an amendment committee, NoOnAmendent, advocating against the measure. It also runs $50,000 in express advocacy against the measure itself. HealthyMinnesota decides to do the opposite, it donates $50,000 to YesOnAmendment and spends another $50,000 directly opposing the measure.

We'd like you to observe three important points about this hypothetical.

The reporting burden on groups is immense and will chill First Amendment protected advocacy.
First, it is not at all clear from the bill who in that chain is a "covered entity," which contributions are "covered campaign spending," and therefore which groups have to report, what they have to report, what additional information they need to notify other donors, when they have to inform other donors, which funds are "traceable" and who is required to trace said funds.

This will be a compliance nightmare. It will require anyone looking to engage on issues to hire expensive attorneys before speaking about issues. This in turn will tilt the electoral playing field in

the opposite direction of the legislature's stated interest. Smaller groups and nonprofits will not have the wherewithal to engage with this convoluted process, while larger and well-heeled interests will have the money and connections to navigate it.

Laws regulating political speech should be simple and clear for exactly this reason. Even supporters of this measure would have to admit that the reporting and paperwork burden here is not simple.

True source disclosure will misinform, not inform, voters.
Putting aside the enormous difficulty of compliance, imagine that all groups in that chain successfully traced their donations back to something that constitutes "original funds" – presumably the donations from the healthcare company and the manufacturer.

Minnesota voters are now told via these new disclosure rules that both companies supported *and* opposed the ballot measure.

Minnesota voters are also potentially told that each group donated $20,000 to each 501(c)4 and $20,000 to each amendment committee, despite giving two $10,000 donations two years prior to the existence of the ballot measure. That is, they are listed as supporting the measure and opposing the measure for twice the amount they actually donated, and they donated before the measure even existed.

Alternatively, these groups, in attempting to engage in the herculean notification requirements in 10A.125, the disclosure record could produce absurd results. For instance, suppose the state chamber refuses the use of funds for campaign spending purposes, but the local chamber approves the use. Now, the state chamber will be listed as one of the donors to the measure they more strongly oppose. Keep in mind this hypothetical is far simpler than the real world – where hundreds of groups over many years donate and transact for many purposes.

That is not disclosure informing the public. It is disclosure deliberately intended to deter advocacy by tying groups and individuals to causes for the purpose of smearing by association. If an amendment proposal is unpopular, this disclosure regime will be used as a tool for shaming individuals tied to it. If it is popular, this system will be used by its opponents to seek out some unpopular contributor and, ignoring the merits of the policy and whether the contributor actually supports the measure, attempt to tar the ballot measure.

If disclosure is to inform the public, it must not force disclosure beyond the individual or group that controls the message being advocated. That is who is speaking. By attempting to circuitously trace advocacy, this bill loses its informational value and will be nothing but a tool to wield disconnected disclosures as political weapons.

Every step in the chain is constitutionally protected speech that should be encouraged.
It is important to note, that every individual decision maker in this chain acted rationally to support groups and causes they believed in. The companies gave to the state chamber because, while they may not agree with everything it does, it is valuable to pool resources to advocate and speak with one voice. The state chamber gave to the local chamber because, while they don't control what they do or do not support, they believe more local business voices is a good thing. These groups gave to (c)4

organizations because they needed someone with expertise to educate the public on this policy issue and the c(4) organizations gave to the amendment committees because part of educating on policy includes directly advocating for or against the measure.

This is important to understand this issue for two reasons. First, those pushing more and more disclosure in the name of transparency paint a false narrative of secret cabals of "dark money" flooding campaigns. It is not true. It is normal, rational, and unconcerning that individuals and groups give different donations and contributions at different times to different causes. It is also not surprising that some supporters of groups would want to associate privately – to precisely avoid the misinformation that mandated disclosure can create.

Second, because political advocacy about issues and freedom of association sit at the core of our free speech rights, burdening those with unnecessary disclosure laws likely violate the First Amendment. In *Americans for Prosperity Foundation v. Bonta*, a case striking down a California disclosure rule, the Supreme Court said that "California is not free to enforce any disclosure regime that furthers its interests. It must instead demonstrate its need for universal production in light of any less intrusive alternatives." True source disclosure is likely to fail that test. If SF 905 passes, it will be challenged in court and cost the state hundreds of thousands of dollars first to defend, and then in attorney's fees paid to those whose rights were violated. Only recently, a Minnesota statute was found unconstitutional because it went too far in chilling advocacy for ballot measures by corporations. This law will end up facing the same fate.

Finally, I'd like to highlight the impact specifically on charities. Anonymous giving to charities is a bedrock principle of both the First Amendment and America's unmatched charitable culture. But SF 905 threatens that. In our hypothetical, a donation could just as easily be made to a 501(c)3 organization supporting Minnesota's amendment efforts – and this bill would require that charity to expose its donors. You should want both that charity to exist and that charity to get involved if there is an amendment that threatens their cause. But SF 905 forces an unconstitutional choice – advocate for the cause you believe and give up your supporter's anonymity or stay silent.

At Americans for Prosperity, we do not believe Americans should be forced to make that choice. We strongly oppose SF 905 and ask that you reject this dangerous and unconstitutional bill.

Sincerely,

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