



## **Testimony in Support of HB 93**

### **Before the House Ways and Means Committee**

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Common Cause Maryland is a nonpartisan, non-profit, citizen lobby that works to improve the way Maryland's government operates. Common Cause has more than 400,000 members around the country and 36 state chapters. We have approximately 4,000 members in Maryland.

#### **The Need for Disclosure**

The landmark Supreme Court decision *Citizens United* made it possible for corporations and unions to fund independent expenditures that directly advocate for the election or defeat of a candidate in any election held in the United States as long as they do not coordinate their activity with the candidate. Prior to *Citizens United*, nearly half of the states and the federal campaign finance system prohibited these expenditures. Although Maryland's law allowed corporations and unions to make independent expenditures prior to the Court's decision, the impact of the decision is so significant nationally that it will likely increase the influence the effect that independent expenditures have on elections even in jurisdictions that allowed them prior to *Citizens United*. The landscape allows national organizations to implement a 50 state strategy using independent expenditures.

By not requiring independent expenditure and the underlying donors to be disclosed Maryland creates a two-tiered system. Registered PACs are required to disclose their donors, whereas, non-profits and associations set up under section 501(c) can act as a legal conduit that hides the original donor's identity. This type of regulatory arbitrage undermines the very premise of the

campaign finance system - that the voters should be fully informed about the source of political speech. HB 93 eliminates this disparity and puts all entities on an equal footing for disclosure.

To prevent the campaign finance system from being undermined, it is important that independent expenditures are disclosed in a timely manner and that the original source of the funds be identified. Currently, Maryland is one of only 6 states that do not require non-registered entities to disclose independent expenditures that advocate for the election or defeat of a candidate.

**Timely Disclosure**

Common Cause applauds requiring the reporting of independent expenditures, however, we believe the bill can be strengthened by requiring more immediate electronic disclosure of IE’s as the election approaches. This would prevent a “dark period” prior to the election where citizens can’t find out who is spending money to influence their vote. Real time reporting enhances the voters the ability to determine what weight to give the speech they are being presented with.

The Maryland board of elections has begun the process of procuring a new electronic reporting system. Therefore, now is the ideal time for Maryland to join with the majority of the states to require timelier 24 or 48 hour electronic reporting. By enacting this reporting now the state board can make this a requirement of the new system they are acquiring and avoid programing costs in the future.

Timing of State Independent Expenditure Reporting Requirements

Time between expenditure and disclosure	Number of states
24 - 48 hours between the IE and reporting (varies as when this reporting starts at this interval, for some it is a constant requirement, for others it is triggered by the IEs proximity to the election)	27
5-7 days between the IE and reporting	4
IE’s have same reporting schedule as PACs	12

In addition, HB 93 provisions that require posting a link to the reports on the entities web site placing the expenditure in annual reports will help the public and shareholders become fully informed. While most citizen are familiar with using the internet most are not familiar with the

detailed navigation so often required when looking for campaign finance information. These provisions will enhance our democracy by making the information more accessible to everyday citizens.

### **Amount of Spending that Triggers Reporting**

In order for IE reporting to be meaningful, it must be required for a dollar amount that is significant to the particular election that it is being reported for. Some states accomplish this by setting the requirement on what would be meaningful based most local election and applying the figure to all elections. However, other states set different reporting triggers for IE's that are targeted at elections for statewide office and those that target legislative and those that are targeted at ballot initiatives. HB 93 reporting is set at a level that is significantly higher than what other states require for IE's that are targeted at state legislative races. With targeted spending it is possible to have an impact in on a legislative race without reaching the \$10,000 threshold. Currently the highest threshold for IE in state legislative races is set at \$2,500. We would like to work with the subcommittee to develop a number that is appropriate for reporting in Maryland's legislative races. Below is a chart that shows what level of spending on IE's triggers reporting in the states.

<b>Amount that triggers reporting for IE spent on state legislative candidates*</b>	<b>Number of States</b>
No reporting required	6
\$1-\$100	16
\$200-\$250	5
\$500	7
\$750	2
\$1000	11
\$1001-\$ 2,500	3

\*ranges that are not reflected in the chart are not present because no state reporting is triggered by expenditures that start within that range.

### **Attribution**

Common Cause believes that voters have a right to know who is paying for the speech that is attempting to influence their vote at the time they hear the speech. Therefore, we would urge to the committee to include provisions that would strengthen the authority line for non-registered entities. Because we see shell groups that form to collect donations for independent expenditures we believe that non-registered entities that accept donations should be required to place the names of their top donors in their authority line. This would prevent groups from evading disclosures by utilizing “Astroturf” entities which allow them to hide the real financial interest behind the expenditure.

Several state have enacted these types of provisions. Washington state requires that the top 5 donors to an organization be listed. Whereas, Connecticut requires the top 3 donors’ names appear on the authority line. North Carolina takes the approach that the state website must be listed so that information about the donors can be easily located. We would urge the committee to amend the bill to alter the authority line requirements to so that Marylander’s will be better informed about who is trying to influence them.

### **Record Retention, Enforcement and Penalties**

Finally, Common Cause believes the bill would be stronger if it contained provisions that allowed for meaningful enforcement of the reporting requirement. First, it should be required that those who engage in IE’s to be required to retain their records for two years beyond the end to the last cycle. Second, the state board of elections should be given the authority to audit those records when a violation is suspected. Finally, if there is a failure to report Common Cause would recommend have penalties that are up to a proportion of the amount spent rather than a set fee.

Please vote favorably on HB 93.