

Government Administration and Elections Committee

JOINT FAVORABLE REPORT

Bill No.: HB-5526

Title: AN ACT CONCERNING DARK MONEY AND DISCLOSURE.

Vote Date: 3/28/2018

Vote Action: Joint Favorable

PH Date: 3/19/2018

File No.:

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SPONSORS OF BILL:

Government Administration and Elections Committee

REASONS FOR BILL:

The bill seeks to make the money spent on political campaigns (political ads, independent expenditures (foreign or domestic) and those by political consultants more transparent so voters can better ascertain who is funding campaigns.

RESPONSE FROM ADMINISTRATION/AGENCY:

Michael J. Brandi, Executive Director and Legal Counsel, State Elections and Enforcement Commission (SEEC)

Mr. Brandi believes that the bill would help combat dark money in Connecticut by helping to reveal the sources of funding to those who make independent expenditures through more disclosures. He argues that prohibiting foreign entity funding of independent expenditures in Connecticut is necessary because federal law doesn't do so adequately. Businesses owned by foreigners can still make independent expenditures on social media and the bill would address this.

Furthermore, SEEC has seen more money being spent on online media for political advertising and the bill would help to require that online platforms disclose who is buying political ads. In 2016 alone, at least \$650,000 was spent on online ads in Connecticut. Many of the ads are difficult to trace and Connecticut voters should, "be given the tools to evaluate the messages so directly targeted at them using their personal data." SEEC knows there is still discussion to be had on several matters such as how big companies must be and how busy their websites are and how much revenue they bring in, so they leave that up to the legislature.

Additionally, SEEC believes they do not have the proper tools to hold consultants often that are using public money, accountable for noncompliance. They have seen treasurers that are put in a difficult position because consultants do not provide all the information to comply with the law. The bill seeks to remedy this as well.

Finally, the bill implements federal rulings regarding the creation of independent expenditure committees and increases disclosures of independent expenditures which will help SEEC monitor and enforce the law. And ensures adequate disclosure and that the 2005 pay-to-play reforms preventing state contractor and other special interest contributions in Connecticut remain effective.

NATURE AND SOURCES OF SUPPORT:

Ron Barnes, State Legislative Affairs, Google.

Supports protecting the integrity of elections but makes language suggestions around online advertising and compliance because of the inherent differences between traditional and online advertising.

Mr. Barnes states that because online platforms do not have previewing capability, like traditional advertising and that given the liability, the language surrounding who is responsible needs to be clearer. He argues that the onus should be on the advertiser to notify online platforms that the advertisement is a “qualified political advertisement.”

Furthermore, he adds that in regards to “requests to purchase” of qualified political advertisements in section 23 of the bill, that in online advertisements, there is no intermediate “request” stage like there is in traditional media. Therefore, online platforms do not know if a person is interested in or considering buying an ad. He suggests that this section be amended to clarify that the provisions apply to ads “purchased” on an online platform to remove any possible ambiguity.

Kevin Callahan, Director, State Government Affairs, Northeast Computing Technology Industry Association (CompTIA).

Supports the intent of the bill to provide transparency in online political advertising and protecting the integrity of the electoral process but believes some amendments to HB 5526 are necessary. CompTIA believes it is important to require that online advertisers make appropriate disclosures in political ads. He states that online advertisers should keep records of the content of these ads and also online platforms should communicate with state regulators in a timely fashion when illegal political ads are running.

However, they oppose provisions establishing a threshold that covers only services with large user bases and to ads that only reach a lot of voters. Instead, a uniform set of requirements should be established.

Furthermore, CompTIA believes that advertisers should have to notify the ad platform that the ad is political and the platform should be permitted to rely on the notification or lack thereof. This is necessary because what constitutes a political ad in some states or jurisdictions may be different than others. He asserts that campaigns and state election boards should make this determination, not the online ad platform.

Finally, they are also concerned about some of the information that the online platform is required to provide to the public about the political ads. They believe that some of the information should only be available to election authorities with a “valid legal process” and not automatically published for public access in order protect the privacy rights of individuals engaging in political speech.

Cheri Quickmire, Executive Director, Common Cause in Connecticut

Common Cause believes that it is important that is crucial that voters know who is trying to influence their votes by spending in our elections. Ms. Quickmire notes that the bill will allow voters to know who are making independent expenditures by requiring increased disclosure of the sources of funding. And they agree with the provisions of the bill that prohibit foreign entities trying to make independent expenditures in the state. While it is prohibited, they have seen that businesses owned by foreign entities may be allowed to make independent expenditures, including on social media sites.

Jim Redmen, Open Government Specialist, League of Women Voters

Supports HB 5266. The League believes that full disclosure and “shining the light” on dark money, independent expenditures and sources of funding is fundamental to a strong democracy. They are concerned about the alarming admission by U.S. Intelligence Agencies that Russia attacked and interfered with our elections by manipulating social media and other online platforms. They believe that the bill will help to address this urgent issue.

Tom Swan, Executive Director, Connecticut Citizen Action Group (CCAG)

CCAG is concerned about the role of foreign interests, secret money and the lack of disclosure of on-line spending and to consultants. They support 5526.

NATURE AND SOURCES OF OPPOSITION:

Jim Halpert, Counsel, State Privacy and Security Coalition

The State Privacy and Security Coalition, a group of 23 communications, technology, retail and media companies and six trade associations oppose HB 5526.

While they recognize that there are some foreign actors trying to interfere with the elections, there are some aspects of the bill that they take issue with.

Their social networking members do support updating political disclosure laws in the following ways:

- (1) Require online advertisers to make appropriate disclosures in and about political ads;
- (2) Require online platforms to maintain records of political ads designated as political ads with other relevant information about the ad; and
- (3) Require online platforms to maintain private databases of the persons purchasing the advertisements and the relevant targeting information attendant to that advertisement.

They believe that Section 23 of the bill regarding online reporting should not be public, but rather be information that the Secretary of the State’s office (or other appropriate state agency) has access to.

Additionally, they believe that it should be the online advertisers, not the online platform that should notify what is considered a political ad because of the differences in state laws. They argue that, “public statistics suggest 400 hours of video are uploaded *every minute* – that it is unrealistic for an online platform to identify a “qualified political ad” at the state level, absent an advertiser’s disclosure to that platform. Requiring online platforms to proactively identify and distinguish political ads may also create preemption issues under 47 U.S.C. §230. Moreover, the legislation as drafted could inadvertently drive bad actors to steer away from well-known platforms to nefarious ad networks that circumvent the law.”

Finally, they caution the Committee on infringements of free speech, personal security and data security of individuals listed in any of the required public disclosures.

Joe Horvath, Director of Legislative Outreach, The Yankee Institute for Public Policy

The Committee should reject the bill because it is an infringement on the right to free speech. The Yankee Institute argues that the bill would force individuals to provide their home addresses, not just their mailing address. People should be able to have privacy rights and not be forced to share their ideological beliefs with the public as it may bring about harassment. Mr. Horvath states that, “the crux of the issue is this: the names of individuals who gave to advocacy nonprofits (and, to be clear, Yankee Institute is not one such organization), should not have their names and home addresses forcibly disclosed. Such organizations are created to advance issues, not candidates or political parties. These type of organizations, and the individuals who choose to support them, should not be subjected to undue invasions of privacy, simply for working to improve the lives of their fellow citizens.”

Kaley Lentini, Legislative Counsel, American Civil Liberties Union of Connecticut (ACLU-CT) The ACLU of CT opposes HB 5526 because they are concerned that a citizen’s right to free speech and association will be compromised by the provisions of the bill.

Nancy McLernon, President and CEO, Organization for International Investment (OFII)

The OFII does not support the bill unless it is amended to strike the definition of “foreign influences entity” and related language. Ms. McLernon asserts that without the change, the bill would infringe upon more than 103,000 Connecticut workers first amendment rights.

She argues that federal laws already prohibits foreign nationals from contributing, donating or spending money on any U.S. election (on any level) and from making any independent expenditures to any election. She argues that the definition of “foreign-influenced entity” affects companies with no foreign influence and would prevent many U.S. based companies and U.S. subsidiaries of internationally-headquartered companies from engaging in political activities. She believes that U.S. subsidiaries are legally recognized as U.S. corporate entities and therefore not considered “foreign nationals.” And that , “Congress has long reaffirmed the right of these entities and their U.S. citizen employees to participate freely in the political system on equal footing with other U.S. corporations and individuals.”

Additionally, that state of Connecticut ranks 7th in the nation in the share of its workforce from international investment. Nationwide, U.S. subsidiaries produce 23% of U.S. exports, account for 20% of the U.S. manufacturing workforce and fund 16% of U.S. research and development efforts. Therefore, she argues they have earned the right to be fully engaged in the political process along domestic companies.

Matt Mincieli, Northeast Region Executive Director, TechNet

While TechNet supports the goals of the bill to provide appropriate disclosures about political ads so state regulators can quickly notify online ad platforms when illegal ads run, they do not support the bill as drafted. First, what constitutes a political ad varies from state to state and race to race. He believes that it is not the responsibility of the online ad platform to make this decision but rather, advertisers should notify the platform and the ad platform should be permitted to rely on the notification or lack thereof without penalty.

TechNet also opposes the threshold that covers only services with large user bases and only applying to ads that reach many voters. They argue that all online platforms should be treated equally and “without arbitrary thresholds on the industry.”

Finally, they believe the public database piece should not be automatically published and accessed by anyone, but rather be maintained by ad platforms and accessible by election authorities with a valid legal process.

John Olsen, Director, Northeast States, Internet Association (IA).

The IA requests that HB 5526 be held for further study so that changes could be made that allow internet companies to operate in Connecticut while providing appropriate disclosure of election advertising activity. They support the idea that people should have the right to know who is paying for political ads that they see online, but as HB 5526 is written they cannot support it.

They specifically have concerns about Section 23 of the bill. They argue that requiring disclosure only when a certain threshold is met creates an impractical standard for ad platforms. IA believes that it is advertisers that most notify the ad platform that an ad is political and that the elements of the public file should be appropriate for publication and only certain information be available to election authorities.

Reported by: Susan Tufts

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