



DANNEL P. MALLOY
GOVERNOR
STATE OF CONNECTICUT

June 15, 2012

The Honorable Denise Merrill
Secretary of the State
30 Trinity Street
Hartford, CT 06106

Dear Madam Secretary:

I hereby return, without my signature, emergency certified House Bill 5556, *An Act Concerning Changes to Campaign Finance Laws and Other Election Laws*. This bill is an attempt to strengthen our state's campaign finance laws, particularly in light of the United States Supreme Court's decision in *Citizens' United v. Federal Election Commission*. Upon close examination, however, I find that some portions of this bill likely violate the United States Constitution, while other provisions represent poor public policy choices. While I have advocated for transparency in the elections and campaign finance process for a long time, and could certainly support sensible reform in this area again, I cannot support the bill before me given its many legal and practical problems.

First, let me take this opportunity to state in a formal way that which I have articulated many times in informal settings: I do not agree with the decision handed down by the U.S. Supreme Court in the *Citizens' United* decision. Rather, I agree with the statements made by President Obama in his 2010 State of the Union speech criticizing *Citizens' United* for its potential to "open the floodgates for special interests -- including foreign corporations -- to spend without limit in our elections." My opposition to House Bill 5556, therefore, should not be interpreted as an endorsement of the *Citizens' United* decision or the notion that corporations enjoy the same free speech rights as individuals. Nevertheless, this bill contains a number of fundamental flaws -- far divorced from the free speech issues decided by the court in *Citizens' United* -- that cause me to oppose it.

House Bill 5556 would have a chilling effect on issue advocacy and neutral debates about matters of public concern that should be the hallmark of our democracy. Section 4 defines an "independent expenditure" so broadly that it would encompass virtually any communication, with reference to a public official who is also a candidate for office, made within 90 days of a general election or primary for the purpose of influencing any legislative or administrative action. In other words, issue advocacy -- not just communication expressly advocating for the nomination, election or defeat of a clearly identified candidate, or the passage or defeat of a ballot issue -- is considered an "independent expenditure" subject to the disclosure provisions of the bill. This definition would include such activity as advertisements, printed materials or other communication expressing views on matters pending before the General Assembly and would even include interviews with candidates or debates

among them using the resources of media outlets. This type of communication is clearly distinct from campaign-related advertisements urging voters to vote for or against a particular candidate. Section 9 then requires any entity making an independent expenditure – as that term is broadly defined – to identify its top five donors in the communication and to list on the entity’s web site the names of all donors subject to disclosure. The net effect of this system would be to require non-profit advocacy groups or even news organizations to identify the names of individual donors if they engage in issue advocacy or any other communication “for the purpose of influencing any legislative or administrative action” within 90 days of a general election or primary.

The provisions of this bill fail to distinguish wholly innocuous and encouraged civic activity from the activity this bill should have focused on, producing an effect that extends well beyond promoting campaign finance transparency. At its core, our democratic form of government hinges on the free flow of information, advocacy and argument on matters of public concern, regardless of what view an individual or business entity takes on a particular matter. Citizens have the right to associate themselves with groups that advocate causes in which they believe and to hear the views of candidates in neutral and open forums. Requiring such groups to identify individual donors will dissuade people from supporting those groups or organizations from providing this public service and will reduce the free flow of information and debate on which our democracy thrives.

Further, as articulated to me by the ACLU of Connecticut, this framework is likely unconstitutional under the United States Supreme Court decision in *NAACP v. Alabama* (1958). That case struck down a requirement that the NAACP identify its individual donors. The court held that such a requirement constituted “a substantial restraint upon the exercise by (the NAACP’s) members of their right to freedom of association.” Therefore, I agree with the ACLU that the *NAACP v. Alabama* decision strongly suggests that “[f]reedom of association is . . . at stake” if this framework becomes law. Whether an individual wishes to associate with an organization – whether it is the ACLU or the NRA – the First Amendment protects the right to do so anonymously. That has been the law for more than 50 years, but this bill would seriously undermine, if not obviate, that right.

I also object to Section 10 of this bill, which would require the governing board of “any entity incorporated, organized or operating in this state” to authorize any campaign-related disbursement of over \$4,000. It would also mandate the public disclosure of the individual votes of the board’s members on the entity’s website and with a filing with the State Elections Enforcement Commission. As the corporate law section of the Connecticut Bar Association has pointed out, this provision almost certainly violates the commerce clause of the United States Constitution and imposes an unnecessary burden on businesses operating within this state. The scope of this section is alarmingly broad. As written, it would even apply to a business incorporated outside of Connecticut making a campaign-related disbursement involving an election in another state. The CBA points out that, “[t]he Supreme Court’s recent Commerce Clause cases have held that the internal affairs of a corporation . . . may only be regulated by the state in which the corporation is incorporated, because a corporation could otherwise be faced with a multiplicity of conflicting requirements and procedures.” I agree with the CBA’s interpretation. The commerce clause is a fundamental dividing line, limiting a state’s power to create legislation burdening or interfering with commerce between and among the states. Moreover, after extensive research, my administration has not been able to locate any federal securities law or other state law that would compel the public disclosure of the votes cast by individual members of corporate or non-profit boards of directors, regardless of whether it is a public or private corporation. I cannot support a law that would attempt to extend the reach of Connecticut’s authority into other states, just as I would not tolerate any other state’s attempts to interfere with the authority of Connecticut.

HB 5556 also contains a provision allowing deployed service members to return an absentee ballot by email or fax if the service member waives his or her constitutional right to a secret ballot. I agree with Secretary of the State Denise Merrill that this provision raises a number of serious concerns. First, as a matter of policy, I do not support any mechanism of voting that would require an individual to waive his or her constitutional rights in order to cast a timely, secret ballot, even if such waiver is voluntary. Second, as the Secretary of the State has pointed out, allowing an individual to email or fax an absentee ballot has not been proven to be secure. In 2011, the United States Department of Commerce, National Institute of Standards and Technology, issued a report on remote electronic voting. The report concluded that remote electronic voting is fraught with problems associated with software bugs and potential attacks through malicious software, difficulties with voter authentication, and lack of protocol for ballot accountability. None of these issues are addressed in this bill. To be clear, I am not opposed to the use of technology to make the voting process easier and more accessible to our citizens. However, I believe that these legitimate problems have to be carefully studied and considered before enacting such a provision.

Finally, it has been suggested that a plausible course of action would be to allow this bill to become law and let the courts opine on the constitutional issues cited above, and possibly others. I reject that notion. Whenever the constitutionality of a state statute is questioned, it is incumbent on our Attorney General to defend its validity. Because I am convinced that several of the provisions of this bill are most likely unconstitutional, I will not oblige the Attorney General to engage in this fruitless exercise and I will not subject the people of Connecticut to a tremendous waste of government resources. Moreover, I have a constitutional duty to "support the constitution of the United States, and the constitution of the state of Connecticut..." When I think, as I do, that the General Assembly has presented me with a bill that will not pass the rigors of constitutional scrutiny, I believe that I am obligated to veto it. Regrettably, these constitutional issues – in addition to the policy and other technical and structural problems with this bill – militate against signing it into law.

For these reasons, I disapprove of emergency certified House Bill 5556, *Act Concerning Changes to Campaign Finance Laws and Other Election Laws*. Pursuant to Section 15 of Article Fourth of the Constitution of the State of Connecticut, I am returning emergency certified House Bill 5556 without my signature.

Sincerely,



Dannel P. Malloy
Governor