

5 Places to Look for Unconstitutional Efforts to Stifle

FREE SPEECH

Here are five places to look for unconstitutional requirements to force nonprofit organizations to report the names and addresses of their supporters to the government or otherwise restrict their free speech rights.

- 1 “Ethics” bills.** Several states have grappled with legislation aimed at giving lawmakers a new code of ethics that regulates how they interact with their campaign supporters. While ethics standards are important, tucked into these bills have been provisions requiring nonprofits to disclose their donors, even though current law already dictates that nonprofits can’t spend money on candidate campaigns. Violating donor privacy raises more ethical concerns than it solves.
- 2 Bills that appoint an “Ethics Commissioner.”** Like ethics bills, some states have passed legislation that gives broad and sweeping power to a new appointed government Ethics Commissioner, allowing this unelected person to subpoena the names and addresses of a nonprofit’s supporters. How this person would be held accountable if he or she used the office to punish political opponents is a looming concern.
- 3 Bills that redefine “coordination.”** Federal law prohibits nonprofit organizations from coordinating with candidate campaigns. The current legal definition is clear-cut which helps nonprofits remain compliant with the law. Several states have considered bills to more broadly define coordination to include two nonprofit groups with similar missions communicating with each other about policy issues. Muddying the definition will confuse and ensnare nonprofits, and create a much greater compliance burden.
- 4 “Anti-corruption” legislation.** Anti-corruption legislation sounds appealing, but can open the door to unconstitutional regulation of speech and association by requiring people who want to speak out on political issues to register with the government and share the names and addresses of their supporters before they testify before a legislative committee. Needless to say, this heavy-handed suppression of ordinary citizens’ opinions does little to address corruption.
- 5 Bills that redefine “electioneering communications” and “political committees.”** More than a dozen states have considered or passed legislation that changes the definition of electioneering communications to include the everyday activity of many nonprofit groups, like issuing a non-partisan voter guide or sending a message to their email list about a bill being considered by the Legislature. The definition of political committee has been similarly broadened and complicated to include any organization, business, group of people, and even individuals who speak out on political issues.

If you have questions about whether or not a bill you’re considering would have an impact on nonprofit groups, the Center for Competitive Politics or the Goldwater Institute can help.