PEOPLE UNITED *for* PRIVACY FOUNDATION

Analysis of Alabama S.B. 220 (2026)

An Unconstitutional Ban on Nonprofits' Political Speech and Forced Use of Privacy-Invasive Separate Segregated Funds

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INTRODUCTION

Alabama S.B. 220 would prohibit Section 501(c)(3) and 501(c)(4) nonprofit organizations from making any contributions to, or expenditures "on behalf of," candidates' campaign committees (so-called "political spending") out of their general treasury funds. Instead, such organizations could only engage in "political spending" using a "separate segregated fund" (a.k.a. "political spending fund") that they must separately raise money into. Extremely burdensome and invasive reporting and recordkeeping requirements would apply to such funds, including reporting the names of *all* donors who give as little as $100.

As discussed in more detail below, S.B. 220 is unconstitutional for four distinct reasons:

1) The bill's definition of "political spending" is unconstitutionally vague, and it is impossible to determine what conduct is even regulated;

2) S.B. 220 unconstitutionally burdens nonprofits' independent speech by: (a) banning 501(c)(3) think tanks and 501(c)(4) advocacy nonprofits from making independent expenditures using their general treasury funds; and (b) imposing PAC-style registration and reporting requirements without any "major purpose" limitation;

3) The measure unconstitutionally discriminates against nonprofit corporations while leaving for-profit corporations free to spend on elections; and

4) The bill unconstitutionally bans nonprofits from making political contributions without taking a more narrowly tailored approach.

DISCUSSION

I. S.B. 220 uses unconstitutionally vague terminology, rendering compliance impossible for would-be speakers.

S.B. 220 would impose significant accounting and reporting obligations on Section 501(c)(3) and 501(c)(4) nonprofit organizations that engage in vaguely defined "political spending." While the bill's official Synopsis purports that it would only "prohibit a nonprofit organization from making any contributions to a principal campaign committee"[1] – unless it clears the associated accounting and reporting hurdles – the bill's actual text is far from clear on this point.

[1] S.B. 220, Synopsis (emphasis added).

Specifically, the bill defines the "political spending" that would trigger these requirements as "[a]ny contribution to, or expenditure on behalf of, a principal campaign committee."[2] In other words, contrary to what the Synopsis states, the bill appears to also restrict a nonprofit organization's independent spending in favor of candidates. This is because the phrase "on behalf of" can have two very different meanings, and it is unclear which of these meanings, if not both, is intended:

(1) "as a representative of someone" (*i.e.*, as an agent of a candidate's campaign committee, such as when an organization is coordinating with a campaign on an expenditure, and the coordinated expenditure is treated as an in-kind contribution); and

(2) "for the benefit of someone" (*e.g.*, when an organization is spending independently of a campaign to support the candidate's campaign – *i.e.*, for the campaign's benefit).[3]

This distinction is important because, as explained below, two different standards of judicial review apply depending on whether the regulated activity is considered a contribution or an independent expenditure. But regardless of which framework and judicial review standard is applied – and S.B. 220 is unconstitutional under either – the bill is unconstitutionally vague because this key terminology is ambiguous, and it is therefore impossible to determine what conduct is actually regulated.

II. S.B. 220 unconstitutionally burdens nonprofits' independent expenditures.

Assuming (as discussed above) S.B. 220 regulates nonprofits' independent speech, the bill would unconstitutionally burden such speech under binding U.S. Supreme Court and Alabama federal court precedent.

Specifically, the bill prohibits a nonprofit from engaging in independent "political spending" unless it:

- First registers with the Secretary of State as a "political donor organization";
- Establishes a "separate, segregated fund" ("SSF" or "political spending fund"), to which donors must separately contribute;
- "[P]rovide[s] written notice to [donors] that informs the person that the contribution or donation will be used solely for political spending" and obtains written approval from those donors for "the use of the contributed funds for political spending";
- Uses only monies from the SSF to pay for the "political spending";
- Keeps detailed records for at least five years of the identities of donors to the SSF, the dates of their donations, and their written approval to use their funds for "political spending"; and
- Files periodic reports of the SSF's financial activity, which must (among other things) identify every donor over $100 in total to the SSF in the prior 12 months.[4]

[2] S.B. 220, § 2 (to be codified at Ala. Code § 17-5-14.2(a)(6)) (emphasis added).
[3] *See* "on behalf of," Merriam-Webster. Available at: https://www.merriam-webster.com/dictionary/on%20behalf%20of.
[4] S.B. 220, § 2 (to be codified at Ala. Code § 17-5-14.2(a)(4), (a)(7), (b), (d)-(g)).

A. S.B. 220 effectively bans nonprofits from making independent expenditures in violation of on-point U.S. Supreme Court precedent.

S.B. 220's requirement for nonprofits to form an SSF in order to engage in independent political speech exactly parallels the requirement for corporations to form an SSF in order to engage in independent political speech that was at issue in the *Citizens United* case.[5] There, the U.S. Supreme Court held that these "onerous restrictions" for corporations to engage in independent political speech – instead of being permitted to use their general treasury funds – functioned as "a ban on speech."[6] As such, these types of requirements are subject to "strict scrutiny," meaning that they must "further[] a compelling [governmental] interest and [be] narrowly tailored to achieve that interest"[7] by using the "least restrictive means."[8]

S.B. 220 fails the Court's strict scrutiny test. According to its official Synopsis, the bill is intended to expose "[t]he original source of funds to a political campaign" that are routed "through nonprofit [] corporations that are set up to mask the identity of campaign contribution sources."[9] However, Alabama law already prohibits the practice that S.B. 220 purports to address. Specifically, Ala. Code § 17-5-15(a) provides that:

> It shall be unlawful for any person, acting for himself or herself or on behalf of any entity, to make a contribution in the name of another person or entity, or knowingly permit his or her name, or the entity's name, to be used to effect such a contribution made by one person or entity in the name of another person or entity, or for any candidate, principal campaign committee, or political action committee to knowingly accept a contribution made by one person or entity in the name of another person or entity.

This pre-existing ban on "mak[ing] a contribution in the name of another" prohibits donors from routing political contributions through intermediaries in order to mask their identities (*i.e.*, because the original donor would be making a contribution in the name of the intermediary person or entity). Insofar as S.B. 220 is "layered on top" of Alabama's existing ban on using intermediaries to shield a political donor's identity, this type of "prophylaxis-upon-prophylaxis approach" is even more frowned upon by the courts.[10]

S.B. 220 cannot pass the exceedingly stringent "strict scrutiny" standard requiring the least restrictive means of regulation because Alabama law already provides for a less restrictive approach. To address the alleged problem of donors masking their identities by routing their political contributions through intermediaries, Alabama should enforce its existing ban on this practice instead of enacting a new law that would severely burden nonprofits' political speech rights.

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[5] *See Citizens United v. FEC*, 558 U.S. 310, 337-339 (2010). This section of the opinion refers to SSFs using the popular term "PACs." Elsewhere, the opinion refers to these vehicles using the term used in the federal statute: "separate segregated funds." *See id*. at 320.
[6] *Id*. at 339.
[7] *Id*. at 340 (internal quotation marks and citation omitted).
[8] *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021).
[9] S.B. 220, Synopsis (emphasis added).
[10] *McCutcheon v. FEC*, 572 U.S. 185, 221 (2014).

B. S.B. 220 attempts to end-run the "major purpose" standard necessary for imposing PAC registration/reporting requirements.

Ironically, while S.B. 220 purports to prevent campaign donors from circumventing the law, it is actually the bill itself that attempts to circumvent the law. Specifically, as discussed previously, S.B. 220 would force nonprofits that wish to engage in political speech to form a separate SSF subject to the same types of requirements that Alabama law imposes on PACs.[11]

However, a federal court has already held that Alabama may not constitutionally require nonprofits wishing to engage in political activity to register and report as PACs for "organizations whose major purpose is not to engage in election activity."[12] This is because "the burdens of registration, organizational changes and recordkeeping requirements [of operating a PAC] itself burden[] speech."[13]

While the court in that case did not elaborate on the "major purpose" test, the concept is widely understood to mean that an organization may not be regulated as a PAC unless it demonstrates "sufficiently extensive spending" on election activity or its public statements demonstrate a major purpose of engaging in election activity.[14]

S.B. 220 ignores the constitutionally mandated "major purpose" limitation that prohibits Alabama from requiring all nonprofits engaging in any level of political activity whatsoever to register and report as PACs. The bill simply would force such organizations to form separate SSFs that are subject to the same general requirements as PACs. Regardless of the terminology used, insofar as S.B. 220's requirements are not limited to those organizations whose "major purpose" is election activity, the bill runs afoul of binding federal court rulings.

III. S.B. 220 unconstitutionally discriminates against nonprofit corporations in favor of for-profit corporations.

S.B. 220 bans nonprofit corporations from engaging in any "political spending" using their general treasury funds while leaving for-profit corporations free to make political contributions and expenditures without having to set up an SSF.[15] This type of discrimination against "certain disfavored speakers" is presumptively unconstitutional.[16]

The bill's discrimination against nonprofits is especially incongruous. Historically, nonprofit corporations' political activity has raised lesser concerns about corruption than for-profit corporations' political activity, due to "the prospect that resources amassed in the economic marketplace may be used to provide an unfair advantage in the political marketplace" for for-profit corporations.[17] Nonprofit organizations, by contrast, "do not pose that danger of corruption."[18] Still,

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[11] *See* Ala. Code §§ 17-5-3, 17-5-5, 17-5-6, 17-5-8.
[12] *Richey v. Tyson*, 120 F. Supp. 2d 1298, 1318 (S.D. Ala. 2000).
[13] *Id*. at 1317.
[14] *See*, *e.g.*, Federal Election Commission, Supplemental Explanation and Justification on Political Committee Status, 72 Fed. Reg. 5595, 5601 (Feb. 7, 2007) (citing *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 262 (1986); *FEC v. Malenick*, 310 F. Supp. 2d 230, 234-36 (D.D.C. 2004)). Available at: https://www.govinfo.gov/content/pkg/FR-2007-02-07/pdf/E7-1936.pdf.
[15] *See* Ala. Code § 17-5-14(a) ("A corporation incorporated or organized under the laws of this state, or doing business in this state, may make a contribution or expenditure to or on behalf of any candidate or political action committee in the same manner that an individual is permitted to make under the laws of this state. . . .").
[16] *Citizens United*, 558 U.S. at 341 ("We find no basis for the proposition that, in the context of political speech, the Government may impose restrictions on certain disfavored speakers.").
[17] *Mass. Citizens for Life*, 479 U.S. at 257.
[18] *Id*. at 259.

this differentiation between for-profit and nonprofit corporations was ultimately insufficient to justify banning political speech by either type of entity.[19]

The onerous burdens that S.B. 220 would impose on nonprofits' political speech would be unconstitutional under any circumstance, but they are especially so by disfavoring nonprofits relative to for-profit corporations. This treatment flips on its head the traditional concern about political corruption by for-profit corporations, and there is no justification sufficient for S.B. 220 to relegate nonprofits to second-class citizens in the political arena.

IV. S.B. 220's effective ban on nonprofit contributions is unconstitutional.

Setting aside the bill's apparent attempt to restrict nonprofits' independent expenditures, S.B. 220's restrictions on nonprofits making contributions to candidates are also unconstitutional.

Laws restricting contributions to candidates are subject to the lower "closely drawn scrutiny" standard of judicial review.[20] This means that the government must have "a sufficiently important interest" in imposing the contribution restriction and "employ[] means closely drawn to avoid unnecessary abridgment of associational freedoms."[21]

Even under this more lenient standard, courts still require "a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served, that employs not necessarily the least restrictive means but a means narrowly tailored to achieve the desired objective."[22]

Here, the more "narrowly tailored" means of addressing donors routing their political contributions through intermediaries is to enforce the pre-existing Alabama law prohibiting making "contributions in the name of another person or entity." Forcing all nonprofits to separately set up and raise money for a highly burdensome "political spending fund" in order to exercise their First Amendment political speech rights is not narrowly tailored to S.B. 220's purported interest in "[un]mask[ing] the identity of campaign contribution sources."[23]

CONCLUSION

S.B. 220 purports to be aimed at preventing campaign donors from masking their identities by routing their contributions through intermediaries. However, Alabama law already prohibits this practice. The state should enforce the pre-existing law instead of enacting sweeping new restrictions that would unconstitutionally hinder nonprofit organizations' ability to engage in protected political speech – while sacrificing their supporters' privacy – in The Yellowhammer State.

People United for Privacy Foundation's vision is an America where all people can freely and privately support ideas and nonprofits they believe in, so that all sides of a debate will be heard, individuals won't face retribution for supporting important causes, and all organizations maintain the ability to advance their missions because the privacy of their supporters is protected.

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[19] *See Citizens United*, 558 U.S. at 348-366.
[20] *Buckley v. Valeo*, 424 U.S. 1, 25 (1976).
[21] *Id.*
[22] *McCutcheon*, 572 U.S. at 218 (cleaned up).
[23] S.B. 220, Synopsis.