

RE: Opposition to S. 2747, the so-called “Freedom to Vote Act”

October 19, 2021

Dear Senator:

On Monday, October 19, Senate Majority Leader Chuck Schumer filed cloture on S. 2747, the so-called “Freedom to Vote Act.” The National Right to Life Committee (NRLC), representing state right-to-life organizations nationwide, urges you to oppose S. 2747.

This legislation has been carefully crafted to maximize short-term political benefits for the dominant faction of one political party, while running roughshod over First Amendment protections for political speech that have been clearly and forcefully articulated by the U.S. Supreme Court in a series of landmark First Amendment rulings, culminating in *FEC v. Wisconsin Right to Life*, 551 U.S. 449 (2007) and *Citizens United v. Federal Election Com’n*, 558 U.S. 310 (2010).

Because this legislation would severely impede the exercise of our organization’s constitutional rights, and the rights and privacy of our donors and supporters, NRLC intends to include any roll call that occurs on H.R.2747 in our scorecard of key roll calls of the 117th Congress.

Enactment of S. 2747 would not be a curb on corruption, but is itself a type of corruption – an abuse of the lawmaking power by which incumbent lawmakers employ the threat of criminal sanctions, among other deterrents, to reduce the amount of private speech regarding the actions of the lawmakers themselves. Further, this legislation would add a commissioner to the Federal Election Commission (FEC), causing a partisan takeover by significantly increasing the likelihood that the agency could make decisions benefiting the political party in power.

The True Purposes of S. 2747

Our organization’s name and contact information always appear on our public communications, and we openly proclaim the public policies that we advocate. But there is very little in this bill, despite the pretenses, that is actually intended to provide useful or necessary information to the public. The overriding purpose is precisely the opposite: To discourage, as much as possible, disfavored groups (such as National Right to Life) from communicating about officeholders, by exposing citizens who support such efforts to harassment and intimidation, and by smothering organizations in layer on layer of record keeping and reporting requirements, all backed by the threat of civil and criminal sanctions.

Speech-Restrictive Provisions of S. 2747

The bill would codify, in Section 324, a vague and expansive definition of “the functional equivalent of express advocacy,” that applies to communications that “when taken as a whole, it can be interpreted by a reasonable person only as advocating the election or defeat of a candidate for election for Federal office.” There is little that an organization could say by way of commentary on the votes or positions taken by an incumbent member of Congress that would not fall within this expansive definition, in the eyes of some “reasonable person” – most often, an annoyed incumbent lawmaker or his operatives.

The time periods over which the government would have authority to regulate speech about those who hold or seek federal office – so-called “electioneering communications” – would be dramatically expanded under S. 2747.

S. 2747 also contains additional provisions that would place an unacceptable burden on the exercise of First Amendment rights. S. 2747 mandates burdensome disclaimers on television, radio, and online advertisements that are likely to bury the substantive message and make some advertising, especially online, functionally impossible.

Partisan Takeover of the FEC

In title VII, S. 2747 would destroy the FEC’s long-standing bipartisan structure. Proponents claim that the provision is aimed at ending “frequent deadlocks,” but this is a sham argument leading down a dangerous road.

In the excellent piece by the Institute for Free Speech (IFS), *titled Establishing a Campaign Speech Czar and Enabling Partisan Enforcement: An Altered FEC Structure Poses Risks to First Amendment Speech Rights* issued on January 31, 2019, Brad Smith comments,

But, in fact, tie votes have always been a small percentage of FEC votes. Historically, they have totaled approximately one percent to four percent of Commission votes on enforcement matters....Although critics claim that tie-votes sap the FEC’s ability to enforce campaign finance laws, in fact, it is assuredly the opposite. The only reason that the FEC has any legitimacy is its bipartisan makeup. Particularly in the current environment, it is inconceivable that an agency empowered to make prosecutorial decisions about the legality of campaign tactics, communications, funding, and activities on a straight party-line vote would have any legitimacy.

Disclosure of Donors

Our members and supporters have a right to support our public advocacy about important and controversial issues without having their identifying information posted online, exposing them to harassment or retribution by those who may disagree with their beliefs.

In an additional piece from the IFS, titled “*For the People Act*” *Replete with Provisions for the Politicians*, Eric Wang writes,

The right to associate oneself with a nonprofit group’s mission and to support the group financially in private is a bedrock principle of the First Amendment that the government may not abridge casually. This is particularly true when the cause is contentious, such as abortion, gun control, LGBTQ rights, or civil rights, and association with either side on

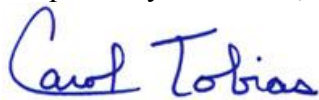
any of these issues may subject a member or donor to retaliation, harassment, threats, and even physical attack, as recent events have tragically reminded us. The potential divisiveness of these issues does not diminish their social importance and the need to hash out these debates in public while preserving donors' privacy.

It should be self-evident that the real purpose of such burdensome requirements is not to inform the public, but to deter potential donors from financially supporting the work of groups such as National Right to Life in the first place.

We strongly urge you to oppose this pernicious, unprincipled, and constitutionally defective legislation. In our scorecard and advocacy materials, the legislation will be accurately characterized as a blatant political attack on the First Amendment rights of National Right to Life, our state affiliates, and our members and donors.

Should you have any questions, please contact us via e-mail at jpopik@nrlc.org. Thank you for your consideration of NRLC's position on this important legislation.

Respectfully submitted,



Carol Tobias
President



David N. O'Steen, Ph.D.
Executive Director



Jennifer Popik, J.D.
Legislative Director