To the Chair and Committee Members,
House Elections Finance and Policy

Thank you for the opportunity to testify against HF 3.

Like most Americans, we at Minnesota Citizens Concerned for Life (MCCL) treasure two pillars of the U.S. Constitution's First Amendment: our freedom of speech and the freedom to associate with others—in our case, as non-profit corporation. Courts have consistently ruled that those two rights in conjunction require that a state may not limit the fundamental right of a non-profit advocacy organization to comment on the votes, statements, or actions of public officials. The changed express advocacy definition in Section 2 of HF 3 would violate those rights.

Everyone knows of the First Amendment's right to free speech. Notorious attempts to limit Americans' right to express themselves, like the Alien and Sedition Acts and free speech limitations passed during and after World War I, are rightly seen as unconstitutionally depriving us of our individual rights to comment on the votes and actions of public officials. They would never be tolerated today.

But fewer of us focus on another of the five rights guaranteed by the First Amendment: our right to associate with others to express a common purpose. England tried to limit this right in many ways in the colonies, and the Founders were especially sensitive about defending it. Court case after court case today recognizes that a group of citizens who freely associate as a non-profit corporation, like MCCL and many others, have an almost unlimited right to comment on the votes, statements, and actions of public officials. To severely limit that right, which Section 2 would do, would gut that constitutional protection, and so would quickly be found unconstitutional.

Since the *Buckley v. Valeo* case set the parameters for what political action committees could and couldn't do, a long line of Supreme Court cases have, almost without exception, determined that the right of non-profit corporations to speak freely is a fundamental right deserving of the strictest scrutiny. In 1986, our sister Right to Life organization, in *Federal Election Commission v. Massachusetts Citizens for Life*, won a key case that clarified that non-profit organizations like ours have the right to comment publicly and freely about elected officials. Section 2 of HF 3 would violate the spirit of that decision by requiring commentary by non-profits to fit vaguely defined limits on *when* we can speak—it would be limited during "proximity to an election," whatever that is—and *who* has power to determine if something we state or write is legal or not. The state does not have this plenary power or right.

Supporters of the provision in Section 2 will state that it doesn't limit our right to free speech—that all an organization has to do is to form a political action committee, which the state would



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"allow" to say or write the same content. But forming such a parallel organization has its own limits, burdening a group of citizens who want to express themselves through *all* the organizations they belong to, and the courts have ruled that that is their fundamental right. Beginning with *Buckley v. Valeo* and going through to *Citizens United*, courts have ruled that *true* express advocacy, defined by the courts very explicitly as expressly advocating for the election or defeat of a candidate or party with clearly defined directive words such as "vote for," "vote against," "elect," or "defeat," etc., in the communication, must be done through political action committees. All other such communication, if not meeting the courts' clearly elucidated examples of what constitutes true express advocacy, may not be barred to a group of citizens who associate as a non-profit corporation.

I will not go into depth on each case in the long list of failed attempts by legislatures who would limit our free speech rights, but I will list just a few that show our resolve to defend our rights to free speech and association. What the cases in the following list have in common is that they show that our sister pro-life organizations, all affiliated as we are with the National Right to Life Committee, have always and will always defend these fundamental free speech and association rights. The cases show that if a state won't defend the fundamental right to free speech, at least it should recognize that any attempt to re-define what express advocacy is, as repeatedly ruled in court cases, would be doomed to defeat in court and an irresponsible expenditure of public funds fully foreseeable as having no chance of ultimately being upheld in court.

Cases where we and our affiliates have defended our free speech rights (winning virtually every case) include:

*Alaska Right to Life Committee v. Miles*
*Human Life of Washington, Inc. v. Brumsickle*
*IRTL v. Tooker*
*MCCL v. Swanson*
*North Carolina Right to Life PAC v. Leake*
*Vermont Right to Life Committee, Inc. v. Sorrell*
*West Virginians for Life, Inc. v. Tennant*
*Wisconsin Right to Life State Political Action Committee v. Barland*

Many other cases have come to the same conclusion and result for those attempting to restrict corporate speech. MCCL respectfully asks the committee to reject such unconstitutional and irresponsible action to limit the free speech of Minnesota citizens.

Thank you,

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