

## Illinois HB 3233

[Requiring Option to Round-Up  
Transaction to Nearest Dollar to  
Support DREAM](#)

April 24, 2023

### 1. HB 3233 violates the First Amendment by compelling companies to act as a “billboard for the State’s ideological message.”

- The First Amendment’s compelled speech doctrine prohibits the government from forcing individuals and companies to speak. As Chief Justice Roberts wrote, “freedom of speech prohibits the government from telling people what they must say.”<sup>1</sup> “This [doctrine] applies . . . when the government literally puts words in citizens’ mouths” and “when the government forces someone to speak when they would prefer not to speak.”<sup>2</sup> Yet by requiring business owners to effectively encourage their customers to donate to the government’s chosen charity – a cause they may strongly disagree with – HB 3233 does exactly that.
- In *Wooley v. Maynard*, the Supreme Court held that New Hampshire could not require citizens to display the State’s motto, “Live Free or Die,” on their license plates because (1) the motto conveyed an ideological message; and (2) the First Amendment prohibits the government from requiring an individual to act as a “billboard for the State’s ideological message.”<sup>3</sup>
- Like the “Live Free or Die” license plate, forcing licensees to advertise “the option to donate to the Illinois DREAM Fund,” a politically-controversial charity, “before the completion of [each] transaction,” HB 3233 unconstitutionally compels them to host the state’s ideological message.

### 2. HB 3233 violates the First Amendment right to expressive association.

- The First Amendment protects the right to associate – or not associate – with individuals or organizations for expressive and political purposes.<sup>4</sup> HB 3233 violates this right by forcing licensees to associate with organizations and individuals (those supported by the DREAM Act) they would otherwise not associate with.

<sup>1</sup> *Rumsfeld v. F. for Acad. & Inst. Rts., Inc.*, 547 U.S. 47, 58 (2006); see also *Nat’l Inst. of Family & Life Advoc. v. Becerra*, 138 S. Ct. 2361, 2379 (2018); *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 796–97 (1988)

<sup>2</sup> Eric Goldman, *The Constitutionality of Mandating Editorial Transparency*, 73 *Hastings L.J.* 1203 (2022).

<sup>3</sup> *Id.* at 715.

<sup>4</sup> See generally, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

- Immigration policy is a hotly contested political issue which invites sharp disagreement among reasonable people. The DREAM Act, a political project “designed to make scholarships, college savings, and prepaid tuition programs available” to undocumented immigrants, is foreseeably controversial.
- Licensees who disagree with DREAM’s stance on undocumented immigration may wish to *not* associate with the project and people involved. However, by not giving them the option to disassociate with the groups and people involved in DREAM, HB 3233 “invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control,” violating their freedom of association.<sup>5</sup>

### **3. HB 3233 exceeds Constitutional limits on states’ power over interstate and foreign commerce.**

- The Commerce Clause grants Congress the power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]” The Supreme Court has interpreted the Commerce Clause both as a positive grant of power to Congress and as an implied restriction on states’ authority to interfere with interstate and foreign commerce.<sup>6</sup>
- Under these limitations, states may not regulate, discriminate against, or impose excessive burdens on interstate or foreign commerce unless Congress authorizes them to do so.
- Congress did not authorize HB 3233. Thus, by regulating all licensees’ transactions to *foreign governments*, specifically, HB 3233 regulates extraterritorially in violation of the Commerce Clause.

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<sup>5</sup> *Id.* (quoting *Barnette*, 319 U.S. at 642) (internal quotation marks omitted).

<sup>6</sup> See generally, *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 139 S. Ct. 2449 (2019).