

PEOPLE UNITED *for* PRIVACY

May 4, 2022

The Honorable Sheldon Whitehouse
United States Senate
Washington, DC 20510

The Honorable John Thune
United States Senate
Washington, DC 20510

Re: Support for Citizen Privacy and Opposition to Harmful Anti-Privacy Legislative and Regulatory Proposals

Dear Chairman Whitehouse, Ranking Member Thune, and Members of the Senate Finance Committee's Subcommittee on Taxation and IRS Oversight:

On behalf of People United for Privacy (PUFP),¹ I submit the following comments for the May 4, 2022 hearing in the United States Senate Committee on Finance's Subcommittee on Taxation and IRS Oversight to examine "Laws and Enforcement Governing the Political Activities of Tax Exempt Entities." Associational privacy is an enduring First Amendment right that has been repeatedly affirmed by the United States Supreme Court and shares widespread support among Americans regardless of their political leanings. PUFP exists to safeguard the freedom of speech and association rights of nonprofit supporters in America – regardless of their beliefs or the level of an individual's financial support for the causes of their choice.

In last year's ruling in *Americans for Prosperity Foundation (AFPF) v. Bonta*, the Supreme Court reaffirmed that all Americans have the right to exercise their First Amendment freedoms privately. PUFP agrees strongly with the Court's decision. We believe it is essential for individuals to be free to express their views through the causes they support without being personally exposed to a political firestorm or governmental retaliation, especially in today's hyperpolarized and caustic political climate.

On multiple occasions, the Supreme Court has recognized that forcing an organization to release its member and donor lists to the government not only divulges the First Amendment activities of individual members and donors but may also deter such activities in the first place. Individuals may legitimately fear any number of damaging consequences from disclosure, including harassment, adverse governmental action, and reprisals by an employer, neighbor, or community member. Or they may simply prefer not to have their affiliations disclosed publicly or subjected to the possibility of disclosure for a variety of reasons rooted in religious practice, modesty, or a desire to avoid unwanted solicitations. For nonprofits, privacy is especially important for organizations that challenge the practices and policies of the very governments that seek the identities of the group's members and supporters.

¹ People United for Privacy (PUFP) defends the rights of all Americans – regardless of their beliefs – to come together in support of their shared values. Nonprofit organizations perform important work in communities across the United States, and we protect the ability of nonprofit donors to support causes and exercise their First Amendment rights through private giving.

Over 280 groups signed 43 amicus briefs in support of the petitioners in *AFPF v. Bonta*.² These signers represent a wide range of causes and political preferences, including progressive advocacy groups, conservative think tanks, religious organizations, trade associations, animal and human welfare advocates, educational institutions, community services, and arts and culture-focused organizations. As Chief Justice Roberts wrote in the Court’s majority opinion, “[t]he gravity of the privacy concerns in [the disclosure] context is further underscored by the filings of hundreds of organizations as *amici curiae* in support of the petitioners. Far from representing uniquely sensitive causes, these organizations span the ideological spectrum, and indeed the full range of human endeavors: from the American Civil Liberties Union to the Proposition 8 Legal Defense Fund; from the Council on American-Islamic Relations to the Zionist Organization of America; from Feeding America—Eastern Wisconsin to PBS Reno. The deterrent effect [of disclosure] feared by these organizations is real and pervasive...” One thing the nonprofit community can agree on is the importance of defending our right to engage in free speech and to debate issues that we may disagree on, as well as the need to protect citizen privacy and the rights of individuals to exercise their First Amendment rights privately.

Beyond widespread support for this First Amendment right in the nonprofit community, polling confirms strong support for citizen privacy – and fear of disclosure – among Americans as well. A Harvard CAPS-Harris poll released in March 2021 found that 64% of respondents believe a “growing cancel culture” threatens their freedom while 36% of those surveyed agreed that cancel culture is a “big problem.”³ Only 13% percent of participants replied that “cancel culture” is “not a problem.” Additionally, the poll found that 54% of respondents were “concerned” that voicing their opinions online could result in lost employment or the shuttering of their social media accounts. These worrying findings reinforce the conclusions of a summer 2020 poll from the Cato Institute, which verified that 62% of Americans across the political spectrum and various identity groups have political views that they are afraid to share in our current political climate.⁴ Further, 32% of respondents in that poll were worried about being passed by for job opportunities solely because of their political views. If Americans were forced to publicize the nonprofit causes they support, it is clear many would refrain from giving at all.

In recent weeks, I have heard dangerous comments from both Republican and Democratic Members of Congress critical of groups that advocate for the beliefs of American citizens. Such rhetoric typically invokes the hollow term “dark money,” which has no legal definition and is used inconsistently and pejoratively to describe a wide range of groups and activities that the person speaking dislikes. Many groups criticized for their advocacy on behalf of their supporters are, in fact, longstanding nonprofits supported by large and diverse memberships throughout the country – the kind of groups that set aside other policy disagreements last year to join together in *AFPF v. Bonta* to defend the privacy of their supporters. Some of those groups have existed for over a century and perform important work to offer valuable perspectives on government and public policy. Whether criticism of these groups comes from the left or the right, “dark money” is often just a cheap smear against nonprofit organizations that value their

² See “Free speech case attracts support from nearly 300 diverse groups,” Americans for Prosperity. Available at: <https://americansforprosperity.org/wp-content/uploads/2021/04/AFPF-v-Becerra-Amici.pdf> (April 2021).

³ Brittany Bernstein, “POLL: Majority of Americans See Cancel Culture as Threat to Freedom,” Aol. Available at: <https://www.aol.com/news/poll-majority-americans-see-cancel-213920486.html> (March 29, 2021).

⁴ Emily Ekins, “Poll: 62% of Americans Say They Have Political Views They’re Afraid to Share,” Cato Institute. Available at: <https://www.cato.org/survey-reports/poll-62-americans-say-they-have-political-views-theyre-afraid-share> (July 22, 2020).

members' privacy and that are working to ensure those in power hear the voices of American citizens.

Nonprofit organizations are forces for good and have long played a role in educating Americans and policymakers about complex issues. Nonprofits also serve as a shield for people who are uncomfortable speaking publicly about an issue on their own, a vital societal function. While some donors may like having their name listed publicly as a supporter of a cause, many donors dislike or fear such attention because they value their privacy. If anything, today's highly charged political climate gives Americans even more reason to keep their beliefs and giving private. Nonprofit organizations play a crucial role in protecting the voices of many citizens who would otherwise remain silent.

Unfortunately, there are numerous examples of Americans who have been targeted because their private support for a cause was exposed. Earlier this year, tens of thousands of Americans donated to the Freedom Convoy of truckers protesting COVID-19 vaccine mandates. That donor database was hacked, exposing the personal information of donors to the cause. *The Washington Post* and other media outlets wasted no time launching a harassment campaign, demanding those donors explain their support – regardless of the amount of their donation. Both \$50 and \$90,000 donors were identified in an article published by *The Post*. Reporting on the illegal database hack led to outrage on social media from both sides of the aisle, with Senator Ted Cruz (R-TX) and Congresswoman Ilhan Omar (D-MN) finding common ground by pointing out that the only reason to expose small donors is to encourage people to harass them for their beliefs.⁵

In another illustrative story, a homeless shelter in Atlanta, Georgia that houses an average of 500-700 men, women, and children each night was targeted by city officials who sought to claim the land it sits on for other development projects. When the shelter fell behind on its water bill, threatening to give those politicians the land they sought, several anonymous donors contributed enough to enable the shelter to pay its bill. When local media inquired about the donors' identities, the shelter's director explained their desire to remain anonymous: "Anytime a donor appears and is public with us, that donor gets attacked."⁶

It is not difficult to imagine a nonstop wave of targeting and harassment campaigns across the country if donor information is routinely published in a searchable government database. The First Amendment would effectively be a dead letter as Americans would sacrifice their free speech rights to preserve their privacy and save themselves from lost employment, physical harm, and other forms of harassment and intimidation. Frequently, this silencing of debate appears to be exactly what nonprofit donor disclosure proponents hope to accomplish.

⁵ See Timothy H.J. Nerozzi, "Ted Cruz asks if civil liberties groups will support Canadian freedom truckers as they clash with police," Fox News. Available at: <https://www.foxnews.com/politics/ted-cruz-civil-liberties-groups-canadian-truckers-clash-police> (February 19, 2022) and Darragh Roche, "Ilhan Omar Defends 'Freedom Convoy' Donors After GiveSendGo Leak," *Newsweek*. Available at: <https://www.newsweek.com/ilhan-omar-defends-freedom-convoy-donors-givesendgo-leak-1680116> (February 17, 2022).

⁶ "Anonymous donors help pay water bill for homeless shelter," WSBTV. Available at: <https://www.wsbtv.com/news/local/anonymous-donors-help-pay-water-bill-homeless-shel/138014681/> (September 26, 2014).

To the extent some members of this Subcommittee wish to propose legislative or regulatory prescriptions that would impose onerous disclosure mandates on nonprofits, we encourage Members to do the following:

- 1) Oppose “For the People Act” and “Freedom to Vote Act”-Style Donor Disclosure Policies.** Buried among a litany of unrelated provisions,⁷ the misleading and Orwellian sounding “For the People Act” (S. 1) and “Freedom to Vote Act” (S. 2747) contain multiple policies that would force public exposure of the names and home addresses of Americans that give to nonprofit groups. This outcome would chill the speech of issue advocacy groups and nonprofits across the political spectrum.

In particular, standalone legislation contained in S. 1, like the so-called “DISCLOSE Act,” “Stand By Every Ad Act,” and “Secret Money Transparency Act,” would, in different ways, expose sensitive information about Americans’ support for nonprofit causes for no reason other than an organization’s decision to voice an opinion in legislative and policy debates. As Senator Chuck Schumer (D-NY) boasted when first introducing the “DISCLOSE Act” in 2010, “[t]he deterrent effect” of the bill’s nonprofit donor disclosure provisions “should not be underestimated.”⁸ Rather than a disturbing symptom, the chilling impact of the “DISCLOSE Act’s” (S. 443, S. 2671) exposure mandate is the intent. This draconian measure would force organizations to report many of their donors to the Federal Election Commission for engaging in common types of nonprofit communications, including on the internet, and, in some cases, when one nonprofit gives a grant to another nonprofit. The aggressive mandates in this bill would violate Americans’ privacy, facilitate harassment, and decrease civic engagement.

The “Stand By Every Ad Act” (H.R. 1171), which has been included in some versions of the “DISCLOSE Act,” would go a step further by requiring nonprofits to list the names of their top donors in lengthy disclaimers on communications about public policy. This senseless invasion of privacy will make it more burdensome for groups to fulfill their mission and dangerously expose citizens to uninvited public scrutiny. In many cases, the named donor may not be aware of or even support the message that bears their name. In effect, the disclaimer will shift the public’s focus onto a nonprofit’s supporters rather than the substance of a group’s message, accelerating the erosion of quality public discourse about the issues of the day.

The “Secret Money Transparency Act” in S. 1 and its nefarious cousin, the “Spotlight Act” (S. 215), would eliminate safeguards placed on the Internal Revenue Service that prevent the agency from abusing its power. After the IRS was caught systematically harassing right-of-center nonprofits, restrictions were placed on the agency to prevent it from regulating nonprofit organizations’ speech and Americans’ privacy.

The “Secret Money Transparency Act” repeals policies repeatedly passed by Congress that prohibit the agency from using funding to issue a rulemaking that would crack down

⁷ PUFPP takes no position on the other provisions in this expansive package that have no impact on citizen privacy protections and nonprofit advocacy.

⁸ T.W. Farnam, “The Influence Industry: Disclose Act could deter involvement in elections,” *The Washington Post*. Available at: <https://www.washingtonpost.com/wp-dyn/content/article/2010/05/12/AR2010051205094.html> (May 13, 2010).

on issue advocacy by nonprofits and jeopardize the privacy of nonprofit supporters. The “Spotlight Act” goes a step further by reversing recent reforms that eliminated the requirement for certain nonprofits to report their supporters’ confidential information to the agency and requiring disclosure to the IRS of the names and addresses of *all* Americans that give more than \$5,000 annually to many types of nonprofits. This would render nonprofit supporters vulnerable to doxxing and harassment by government officials for information the IRS has said it does not need to enforce the tax code.⁹

Each of these measures, and those like them, should be rejected for the devastating impact they would have on the privacy rights of Americans of all stripes and the diverse causes they support.

- 2) Resist Congressional Pressure for Rulemaking Efforts at the IRS that Would Trample Nonprofit Advocacy and Citizen Privacy.** During the Obama administration, the Internal Revenue Service admitted that it targeted conservative nonprofits for more than two years leading up to the 2012 presidential election.¹⁰ After being forced to acknowledge this reprehensible practice, the IRS proposed a rulemaking that would have codified many of these improper targeting practices and severely chilled issue speech by nonprofits. As a result of the proposal’s harmful impact on nonprofit advocacy, it received widespread bipartisan opposition from groups typically on opposite sides of policy issues, such as the AFL-CIO and National Right to Work Committee and the American Civil Liberties Union and American Conservative Union.¹¹ Thanks to such overwhelming disapproval, the rulemaking stalled until Congress stepped in and halted the effort.

In response, Congress adopted a budget rider that restricts the agency’s ability to adopt regulations that police and chill speech and violate citizen privacy. This policy enjoys bipartisan support and has been included in successive federal spending agreements since 2013, including in the most recent budget bill that was signed by President Biden in mid-March. The IRS is a tax collection agency, not the speech police, and it has no business surveilling the activity of nonprofit organizations or their supporters. This budget rider prevents the IRS from writing new regulations to limit political speech by nonprofit groups. Any pressure by Members of Congress to undertake a similar rulemaking is prohibited by law for the next fiscal year, would receive widespread bipartisan opposition from the nonprofit community, and should be summarily rejected.

- 3) Support the Privacy of Nonprofit Donor Lists by Passing the “Don’t Weaponize the IRS Act” (S. 1777) and the “Simplify, Don’t Amplify the IRS Act” (S. 4046).** Taken together, these measures ensure that the IRS does not collect and store nonprofit donors’ private information – material the IRS does not need to enforce the tax code – and will

⁹ See Allen Dickerson, “Comments on REG-102508-16: Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations,” Institute for Free Speech. Available at: https://www.ifs.org/wp-content/uploads/2019/11/2019-11-04_IFS-Comments_IRS_REG-102508-16_Exempt-Org-Reporting-Requirements.pdf (November 4, 2019).

¹⁰ Abby D. Phillip, “IRS admits targeting conservative groups,” ABC News. Available at: <https://abcnews.go.com/Politics/irs-admits-targeting-conservative-groups/story?id=19151646> (May 10, 2013).

¹¹ “Analysis: 97% of Comments from 955 Organizations, Experts, and Public Officials Oppose IRS’s Proposed 501(c)(4) Rulemaking in its Current Form,” Institute for Free Speech. Available at: https://www.ifs.org/wp-content/uploads/2014/07/2014-07-08_IFS-One-Pager_Drapkin_IRS-Rulemaking-Organizational-Expert-And-Public-Official-Comment-Analysis.pdf (July 8, 2014).

protect groups regardless of their political ideology or beliefs. PUPP is proud to endorse both bills. Rather than regulate further in this sensitive area, Congress should be proactive in preventing the IRS from demanding nonprofit donor information that the agency does not want or need.

* * *

Privately supporting causes – and the organizations advancing those causes – is a fundamental freedom that is robustly protected by the First Amendment. As Members of Congress, you have taken an oath to support and defend the Constitution of the United States. **On behalf of the millions of American citizens represented by organizations that speak on their behalf, we strongly urge you to protect nonprofit donor privacy and reject harmful donor disclosure mandates.**

Sincerely,

A handwritten signature in cursive script that reads "Heather Lauer".

Heather Lauer
Executive Director
People United for Privacy