

# PEOPLE UNITED *for* PRIVACY

December 18, 2024

The Honorable Bryan Steil  
Chair, U.S. House Committee on House  
Administration  
1309 Longworth House Office Building  
Washington, DC 20515

The Honorable Joseph D. Morelle  
Ranking Member, U.S. House Committee on  
House Administration  
1216 Longworth House Office Building  
Washington, DC 20515

## **RE: Importance of Nonprofit Donor Privacy Protections in “Foreign Influence” Legislation**

Chairman Steil, Ranking Member Morelle, and Members of the House Committee on House Administration:

On behalf of People United for Privacy (PUFP),<sup>1</sup> I submit the following comments for the hearing record related to the December 18, 2024 hearing in the U.S. House Committee on House Administration on “American Confidence in Elections: Prohibiting Foreign Interference.” These comments build on a prior Statement for the Record from PUFP regarding a May 16, 2024 hearing on “American Confidence in Elections: Preventing Noncitizen Voting and Other Foreign Interference.”<sup>2</sup>

Americans are rightly opposed to foreign influence in elections because it undermines the integrity of the democratic process, threatens national sovereignty, and erodes public trust in the fairness and legitimacy of our electoral systems. U.S. elections and political campaigns must be run for and by the American people, not foreign interests or federal bureaucrats.

As legislation is considered to ensure that foreigners cannot influence U.S. elections through donations to American nonprofits, we must also ensure that these laws do not become weapons for a future administration or federal agencies, such as the IRS, to invade the privacy of American donors and chill constitutionally-protected speech.

### **I. In an era of weaponized government, Congress must balance legitimate concerns about foreign electoral inference with American constitutional guarantees for free speech and privacy in association.**

Donald Trump’s election victory was a repudiation of the rampant weaponization of government against opponents of the outgoing administration. Congress must now proactively ensure that think tanks, advocacy nonprofits, trade associations, nonprofit journalism, and grassroots advocates that exposed governmental abuses are free to continue to inform the public on pressing issues without fear of harassment from radical activists and entrenched interests. To that end, legislation that imposes donor reporting or prohibitions on the political and issue-based engagement of nonprofits that receive foreign donations must be carefully considered and narrowly tailored to avoid unintended consequences and the trampling of vital speech and privacy rights.

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<sup>1</sup> People United for Privacy’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.

<sup>2</sup> See Matt Nese, “Support for Robust Privacy Protections for Nonprofits and their Supporters and Caution About Harmful Policy Impacts of Foreign Donor Reporting Schemes,” People United for Privacy. Available at: <https://unitedforprivacy.com/wp-content/uploads/2024/05/Letter-US-House-Administration-Committee-Foreign-Interference-Hearing.pdf> (May 16, 2024).

Fears of foreign meddling in America’s political discourse are not new, especially in recent political history. Indeed, prominent Democrats have seized on anxiety about foreign influence as a pretense for pursuing broader and unrelated political goals. Then-President Barack Obama infamously protested in his 2010 State of the Union Address that the Supreme Court’s *Citizens United* decision would “open the floodgates” for unfettered foreign interference in American elections,<sup>3</sup> prompting Justice Samuel Alito to mouth the words “not true” in response to the sensational claim. More recently, Congressional Democrats sought to justify privacy invasions in the odious “For the People Act”<sup>4</sup> and “DISCLOSE Act”<sup>5</sup> to counter alleged Russian interference supporting Donald Trump in the 2016 presidential election.

What most separates America from our adversaries is the First Amendment and our cultural and legal respect for free speech and the privacy guarantees speech requires to thrive. Empowering government agencies with new authority to collect information about nonprofit donors creates new opportunities to abuse that power at acute risk to the speech and privacy rights of American donors to American nonprofits. Compliance with foreign donor reporting mandates necessarily authorizes government officials to demand information on nonprofit donor lists for verification purposes. These expanded nonprofit reporting requirements will increase the likelihood that overzealous or biased bureaucrats will find new justifications for fishing expeditions that expose the identities of Americans and the causes they support to public scrutiny.

## **II. Because of the privacy, speech, compliance, and enforcement concerns inherent in legislation responding to worries about foreign election interference in the nonprofit sector, such measures must abide by four bright-line rules to safeguard First Amendment freedoms.**

It is incumbent on Members of Congress to proceed cautiously before engaging in this deeply sensitive area, where pitfalls and unintended consequences lurk around every policy consideration. We believe the following guidelines will minimize the harms such legislation is likely to invite:

- **Bills targeting foreign donors to nonprofits must avoid generalized donor reporting.** While donors to candidates and political committees are publicly disclosed, Americans possess robust First Amendment rights to keep their beliefs and affiliations private if they so choose. A sweeping disclosure mandate would violate the privacy rights of American donors to American nonprofits in direct violation of established Supreme Court precedent,<sup>6</sup> which has repeatedly emphasized the importance of limiting laws that mandate donor disclosure because of the chilling effect this policy has on freedom of speech.
- **The existence of a foreign donor should not result in a nonprofit being prohibited from engaging in protected speech.** Banning American nonprofits from engaging in political or issue advocacy simply because an organization receives a single donation from a foreign

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<sup>3</sup> Bradley A. Smith, “Celebrate the *Citizens United* Decade,” *The Wall Street Journal*. Available at: <https://www.wsj.com/articles/celebrate-the-citizens-united-decade-11579553962> (Jan. 20, 2020).

<sup>4</sup> Eric Wang, “Analysis of H.R. 1 (Part One): ‘For the People Act’ Is Replete with Provisions for the Politicians,” Institute for Free Speech. Available at: [https://www.ifs.org/wp-content/uploads/2021/02/2021-02-22\\_IFS-Analysis\\_HR-1\\_DISCLOSE-Honest-Ads-And-Stand-By-Every-Ad.pdf](https://www.ifs.org/wp-content/uploads/2021/02/2021-02-22_IFS-Analysis_HR-1_DISCLOSE-Honest-Ads-And-Stand-By-Every-Ad.pdf) (Feb. 22, 2021).

<sup>5</sup> Matt Nese, “Opposition to the DISCLOSE Act and its Destructive Impact on Nonprofit Advocacy and Citizen Privacy,” People United for Privacy. Available at: [https://unitedforprivacy.com/wp-content/uploads/2022/07/2022-07-25\\_PUFP-Letter\\_US\\_Senate-Rules-Committee\\_DISCLOSE-Act-Hearing.pdf](https://unitedforprivacy.com/wp-content/uploads/2022/07/2022-07-25_PUFP-Letter_US_Senate-Rules-Committee_DISCLOSE-Act-Hearing.pdf) (July 25, 2022).

<sup>6</sup> See, e.g., *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021). For additional precedent, see FN 7 in Bradley A. Smith, “*Americans for Prosperity Foundation v. Bonta*: Questions and Answers,” Institute for Free Speech. Available at: [https://www.ifs.org/wp-content/uploads/2021/08/2021-08-30\\_Explainer\\_Smith\\_Americans-For-Prosperity-Foundation-v.-Bonta-OA.pdf](https://www.ifs.org/wp-content/uploads/2021/08/2021-08-30_Explainer_Smith_Americans-For-Prosperity-Foundation-v.-Bonta-OA.pdf) (Aug. 30, 2021).

individual or entity would do far more to prevent Americans from exercising their core First Amendment rights than to prevent foreign interference. Doing so also advances the extreme theory that any engagement in the political process should force a nonprofit to face the same level of regulation and disclosure as a political committee. This same theory underlies many of the most significant threats to donor privacy proposed in Congress of late, including the notorious “DISCLOSE Act.”<sup>7</sup> Nonprofits cannot be forced to sacrifice their right to engage in First Amendment-protected activity as a condition of accepting an otherwise legal donation.

- **Compliance with foreign donor regulations cannot be so extensive or inflexible as to be impossible.** Nonprofits routinely receive donations without the ability or resources to verify the citizenship status of the donor. In many cases, attaining confirmation of citizenship status may be impossible, especially for grassroots organizations, and requiring Americans to provide such documentation may discourage their giving. Additionally, such restrictions cannot effectively criminalize the receipt of anonymous donations. Anonymous giving is not only a time-honored tradition in American philanthropy but a protected constitutional right.
- **Bills must include safeguards that lessen the likelihood of a weaponized enforcement process.** This necessarily involves special protections that allow nonprofits accused of violations to defend themselves from frivolous complaints lodged by their ideological opponents. The burden of proof must be on the actor lodging the complaint, not the accused, and cost-shifting penalties for frivolous complaints should be included in any such legislation.

Faithfulness to these guidelines will limit potential damage to the nonprofit sector and the privacy rights of Americans who support worthy causes.

### **III. H.R. 8399, the “Preventing Foreign Interference in American Elections Act,” generally embodies the aforementioned guidelines, limiting the risk to nonprofit privacy and advocacy rights and minimizing the associated weaponization and enforcement concerns.**

No measure that imposes additional disclosure mandates on the nonprofit sector can entirely avoid problematic provisions for donor privacy rights and nonprofit advocacy freedoms. However, H.R. 8399 generally follows the aforementioned guidelines and represents a more narrowly tailored alternative to competing legislative proposals that have advanced in the 118<sup>th</sup> Congress.<sup>8</sup> To its credit, H.R. 8399 demonstrates a serious concern for both protecting Americans’ hard-earned donor privacy rights and preventing potential nonprofit speakers from falling victim to either weaponized enforcement or frivolous and costly allegations from unscrupulous ideological opponents.

*First*, H.R. 8399 includes the Speech Privacy Act, which codifies the U.S. Supreme Court’s *Americans for Prosperity Foundation v. Bonta* decision<sup>9</sup> – reaffirming legal protections for nonprofit donor privacy – by prohibiting federal agencies from arbitrarily collecting or releasing Americans’ nonprofit membership or donation records. The Speech Privacy Act excuses agencies that are

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<sup>7</sup> See note 5, *supra*. See also, Alex Baiocco, “House Republicans Vote to Grant IRS New Power to Police Political Speech,” People United for Privacy. Available at: <https://unitedforprivacy.com/house-republicans-vote-to-grant-irs-new-power-to-police-political-speech/> (Oct. 2, 2024).

<sup>8</sup> See Matt Nese, “Support for Nonprofit Donor Privacy Protections and Concerns with Harmful Privacy, Speech, Compliance, and Enforcement Impacts of Proposed Bills Targeting Alleged Foreign Electoral Interference,” People United for Privacy. Available at: <https://unitedforprivacy.com/wp-content/uploads/2024/05/Letter-US-House-Ways-And-Means-Committee-Foreign-Influence-Legislation-Mark-Up.pdf> (May 15, 2024).

<sup>9</sup> Luke Wachob, “Surveying the Landscape on Donor Privacy Two Years After *AFPF v. Bonta*,” People United for Privacy. Available at: <https://unitedforprivacy.com/surveying-the-landscape-on-donor-privacy-two-years-after-afpf-v-bonta/> (June 28, 2023).

required by law to collect this information in certain circumstances, like the Federal Election Commission, and stipulates penalties for government officials that illegally expose this sensitive data.

For nonprofits, privacy is especially important for organizations that challenge the practices and policies of the very government officials that seek the identities of their members and supporters. The Speech Privacy Act is a proven policy that responds to and resolves these concerns. Indeed, state equivalents of the Speech Privacy Act have become law in 20 states to date, frequently with bipartisan – and sometimes unanimous – support.<sup>10</sup>

Despite more than six decades of rulings from the Supreme Court upholding the privacy rights of donors to nonprofit causes, efforts to violate personal privacy rights continue unabated in Congress, at regulatory agencies, and in states across the country.<sup>11</sup> The lesson is clear: Precedent alone is not enough to safeguard Americans' personal privacy. Proactive protections are needed.

*Second*, H.R. 8399 avoids further empowering the IRS with any new authorities or imposing new donor disclosure requirements. Instead, its provisions are enforced by the Federal Election Commission, an agency that requires bipartisan consensus amongst its members before approving any investigation or initiating any agency action.

Unlike the FEC, the IRS has neither the expertise nor the appropriate structure to regulate political activity while balancing such decisions with the fundamental First Amendment and donor privacy concerns at stake. The agency's shortcomings in this area have been on full display – and the subject of widespread condemnation – over the last decade, from the still unresolved Tea Party targeting scandal in the early 2010s,<sup>12</sup> to the agency's ham-fisted response in issuing an ill-considered and ill-fated proposed rulemaking on political activity,<sup>13</sup> to leaks by the agency of conservative organizations' private donor information.<sup>14</sup>

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<sup>10</sup> PUPF Staff, "20 States Pass Bipartisan Privacy Law to Protect Americans From Doxing and Harassment," People United for Privacy. Available at: <https://unitedforprivacy.com/20-states-pass-bipartisan-privacy-law-to-protect-americans-from-doxing-and-harassment/> (May 29, 2024).

<sup>11</sup> In Congress, *see, e.g.*, Alex Baiocco, "Congress Seeks 'Common Ground' in Attacking Nonprofits. Let's Hope They Don't Find It." People United for Privacy. Available at: <https://unitedforprivacy.com/congress-seeks-common-ground-in-attacking-nonprofits-lets-hope-they-dont-find-it/> (Dec. 19, 2023) and Luke Wachob, "Senator Whitehouse Promotes Anti-Privacy AMICUS Act in Subcommittee Hearing," People United for Privacy. Available at: <https://unitedforprivacy.com/senator-whitehouse-promotes-anti-privacy-amicus-act-in-subcommittee-hearing/> (June 13, 2023). In federal agencies, *see, e.g.*, Brian Hawkins, "A Quiet Battle Over Amicus Briefs Could Chill Nonprofit Advocacy," People United for Privacy. Available at: <https://unitedforprivacy.com/a-quiet-battle-over-amicus-briefs-could-chill-nonprofit-advocacy/> (Dec. 12, 2024) and Luke Wachob, "FCC's Dangerous AI Proposal Reflects 'Imperial Bureaucracy Mindset,'" People United for Privacy. Available at: <https://unitedforprivacy.com/fccs-dangerous-ai-proposal-reflects-imperial-bureaucracy-mindset/> (Sept. 18, 2024). At the state level, *see, e.g.*, Alex Baiocco, "Unlikely Allies Thwart Privacy Threat in Oregon," People United for Privacy. Available at: <https://unitedforprivacy.com/unlikely-allies-thwart-privacy-threat-in-oregon/> (April 24, 2024); Alex Baiocco, "Bipartisan Opposition Sinks Multi-Year Crusade to Violate Mainers' Privacy," People United for Privacy. Available at: <https://unitedforprivacy.com/bipartisan-opposition-sinks-multi-year-crusade-to-violate-mainers-privacy/> (March 4, 2024); and Alex Baiocco, "Oklahoma Lawmaker Asks Ethics Commission to Dox Nonprofit Donors," People United for Privacy. Available at: <https://unitedforprivacy.com/oklahoma-lawmaker-asks-ethics-commission-to-dox-nonprofit-donors/> (Feb. 14, 2024).

<sup>12</sup> Matt Nese, "It's Been 10 Years Since the IRS's Tea Party Scandal. Will Congress Finally Act?" *Reason*. Available at: <https://reason.com/2023/05/10/its-been-10-years-since-the-irss-tea-party-scandal-will-congress-finally-act/> (May 10, 2023).

<sup>13</sup> IRS, Notice of Proposed Rulemaking on Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78 Fed. Reg. 71535 (Nov. 29, 2013). Available at: <https://www.govinfo.gov/content/pkg/FR-2013-11-29/pdf/2013-28492.pdf>. *See also*, Matt Nese and Kelsey Drapkin, "Overwhelmingly Opposed: An Analysis of Public and 955 Organization, Expert, and Public Official Comments on the IRS's 501(c)(4) Rulemaking," Institute for Free Speech. Available at: [https://www.ifs.org/wp-content/uploads/2014/07/2014-07-08\\_Issue-Review\\_Nese-And-Drapkin\\_Overwhelmingly-Opposed.pdf](https://www.ifs.org/wp-content/uploads/2014/07/2014-07-08_Issue-Review_Nese-And-Drapkin_Overwhelmingly-Opposed.pdf) (July 21, 2014).

<sup>14</sup> *See, e.g.*, "IRS agrees to \$50,000 settlement in leaking of conservative group's donor records," *Fox News*. Available at: <https://www.foxnews.com/politics/irs-agrees-to-50000-settlement-in-leaking-of-conservative-groups-donor-records> (June 24, 2014) and Paul Abowd, "IRS 'outs' handful of donors to Republican group," *The Center for Public Integrity*. Available at: <https://publicintegrity.org/politics/irs-outs-handful-of-donors-to-republican-group/> (April 4, 2013).

*Third*, the legislation includes two provisions that enable defendants in the investigation stage of a complaint to safeguard the privacy of their donors and repel frivolous investigations. As partisan animosities frequently underly disclosure campaigns, is it a stretch to envision enforcement of such laws occurring on an uneven basis, heavily dependent on the whims of the party in power? To take just one example, are pro-life advocates likely to be treated fairly by a liberal administration empowered to assess the veracity of nonprofit filings about an organization's sources of foreign support? To ask the question is to answer it.

Abuse by government regulators is hardly the only concern in the enforcement context. Proposals requiring reporting about foreign donors to nonprofits risk empowering an organization's ideological opponents with a powerful weapon if a third-party complaint process is authorized. Regardless of whether a complaint has merit, it will paralyze the targeted nonprofit, drowning the organization in legal costs, diverting resources from its mission, and sully the group's reputation while the complaint process unfolds. In this scenario, the process is the punishment. H.R. 8399 includes thoughtful provisions that minimize these concerns.

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In today's divisive political climate, Americans are concerned about their private giving choices being publicized and weaponized by those who disagree with their views. Accordingly, individuals may legitimately fear any number of negative consequences from disclosure, including harassment, adverse government action from rogue officials or federal bureaucrats, and reprisals by an employer, neighbor, or community member. Or they may simply prefer not to have their affiliations revealed publicly for reasons rooted in religious practice, modesty, or a desire to avoid unwanted solicitations. Americans deserve to trust that when they choose to support valuable nonprofit causes, they will not lose their jobs or have protestors demonstrate at their homes or businesses.

Legislation that polices serious allegations of foreign influence must respect important bright lines to avoid the worst consequences of such policies, especially in the privacy, speech, compliance, and enforcement contexts. We encourage all Members of Congress to proceed cautiously with respect to any proposed foreign influence legislation, closely following the aforementioned guidelines and always remaining vigilant and protective of constitutional protections for associational privacy and nonprofit advocacy.

Sincerely,



Matt Nese  
Vice President  
People United for Privacy