

March 17, 2025

The Honorable Craig Hickman  
Senate Democratic Office  
3 State House Station  
Augusta, ME 04333-0003

The Honorable Laura D. Supica  
House Democratic Office  
2 State House Station  
Augusta, ME 04333-0002

**RE: Opposition to L.D. 951: An Unconstitutional and Intolerable Attack on Mainers' Privacy**

Dear Chair Hickman, Chair Supica, and Members of the Joint Veterans and Legal Affairs Committee:

On behalf of People United for Privacy Foundation (PUFPF),<sup>1</sup> I write in strong opposition to L.D. 951 (S.P. 406), "An Act to Require Disclosure of Campaign Funding Sources," which is scheduled for a hearing before your Joint Veterans and Legal Affairs Committee on March 17, 2025. The proposal – modeled after Arizona's Proposition 211 statute,<sup>2</sup> as one sponsor confirms<sup>3</sup> – poses substantial constitutional issues, faces several ongoing legal challenges in that state, and would significantly burden the free speech and privacy rights of Mainers and the vital nonprofit causes they support. It's especially risky for Maine to pursue this measure, given the certainty of costly and complex litigation that would follow.

L.D. 951 is an *expanded* version of failed legislation from the 2023-2024 biennium, L.D. 1590.<sup>4</sup> That measure was given an Ought Not to Pass recommendation by the Joint Veterans and Legal Affairs Committee in a 10-3 vote and was opposed by a diverse array of nonprofits, including both Maine Conservation Voters<sup>5</sup> and Planned Parenthood of Northern New England.<sup>6</sup> The latter warned lawmakers that "the disclosures in LD 1590 subject [donors] to potential harassment and targeting. Those risks to privacy and safety have the very real consequence of chilling their speech in possible violation of the First Amendment" and urged the Committee to reject the measure "to protect vulnerable donors."<sup>7</sup>

No less an authority than the Maine Attorney General's Office further warned members of this Committee that, if challenged in court: "[T]his measure is overbroad because it requires disclosure in

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<sup>1</sup> People United for Privacy Foundation'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 will not face retribution for supporting important causes, and all organizations have the ability to advance their missions because the privacy of their donors is protected.

<sup>2</sup> See "An Initiative Measure Amending Title 16, Arizona Revised Statutes by Adding Chapter 6.1; Relating to the Disclosure of the Original Source of Monies Used for Campaign Media Spending," Arizona Secretary of State. Available at: <https://apps.arizona.vote/electioninfo/assets/33/0/BallotMeasures/Certificate%20and%20Title.pdf> (Aug. 26, 2022). See also, PUFPF Staff, "Arizonans of All Beliefs Have Reason to Fear and Fight Prop 211," People United for Privacy. Available at: <https://unitedforprivacy.com/arizonans-of-all-beliefs-have-reason-to-fear-and-fight-prop-211/> (Oct. 27, 2022).

<sup>3</sup> Emma Davis, "Maine Legislature eyes campaign finance reforms as courts weigh voter-backed referenda," *Maine Morning Star*. Available at: <https://mainemorningstar.com/2025/01/13/maine-legislature-eyes-campaign-finance-reforms-as-court-weighs-voter-backed-referenda/> (Jan. 13, 2025).

<sup>4</sup> 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).

<sup>5</sup> Beth Ahearn, Esq., "Testimony of Maine Conservation Voters: 'An Act to Require Disclosure of Campaign Funding Sources,'" Maine Conservation Voters. Available at: <https://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=10025319> (May 5, 2023).

<sup>6</sup> Nicole Clegg, "OPPOSITION to LD 1590 'An Act to Require Disclosure of Campaign Funding Sources,'" Planned Parenthood of Northern New England. Available at: <https://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=10025189> (May 23, 2023).

<sup>7</sup> *Id.* at 2.

instances where it does not sufficiently serve the governmental interest at stake. We are concerned about our ability to successfully defend such a challenge. Also, if a challenge were successful, the challenger would likely be awarded attorneys' fees, which could be significant.”<sup>8</sup> The Attorney General's past opposition applies with even more force to L.D. 951, given its more expansive reach in comparison to its predecessor.

### **I. Ongoing litigation in Arizona challenging L.D. 951's prototype casts doubt on the constitutionality of this bill and portends a lengthy and costly legal battle in Maine.**

The passage of Arizona Proposition 211 triggered a flurry of litigation that remains pending in appeals before the Arizona Supreme Court and U.S. Court of Appeals for the Ninth Circuit.<sup>9</sup> While Arizona won initial battles defending the law's constitutionality, its prospects remain far from settled.

Specifically, the U.S. Supreme Court has held that donor exposure laws like Arizona Proposition 211 and L.D. 951 must meet “exacting scrutiny”: They must “be narrowly tailored to the government's asserted interest” in disclosure.<sup>10</sup> This is because “compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action.”<sup>11</sup> The “exacting scrutiny”/“narrowly tailored” standard imposes an exceptionally high bar for measures like L.D. 951 that require groups to expose their donors: The government must go “beyond proving a balanced relationship between the disclosure scheme's burdens and the government's interests[; rather], the government must ‘demonstrate its need’ for the disclosure regime ‘in light of any less intrusive alternatives.’”<sup>12</sup>

The lower courts in both of the lawsuits challenging Arizona Proposition 211 upheld the law under the “exacting scrutiny” standard on the premise that donors to organizations could avoid having their information publicly reported if they “opted out” of having their funds used for regulated political campaign communications.<sup>13</sup> Therefore, the courts reasoned, Arizona's law was “narrowly tailored” to advance the state's interest in public exposure of the sources of funding for political campaign spending in order to inform the electorate and avoid corruption.

Though L.D. 951 follows Arizona Proposition 211 in allowing donors to opt out, that provision does not save the Maine proposal from legal scrutiny. What both courts in the Arizona litigation missed is that the Arizona law – like L.D. 951 – only provides donors the opportunity to opt out of being publicly reported for an organization's direct donors. But both the Arizona law and L.D. 951 require organizations to report not only their direct donors, but also their donors' donors, *ad infinitum*.<sup>14</sup> That is, after all, the intended outcome of these measures. However, both the Arizona law and L.D. 951 fail to give those second-level, third-level, etc. donors (what L.D. 951 calls “3rd parties”<sup>15</sup>) a similar opportunity to opt out of having their names, addresses, and employer information being publicly reported and associated with political campaign communications – even when those third parties very likely did not donate for any political purpose at all. At least L.D. 951 is honest in labeling

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<sup>8</sup> Christopher C. Taub, “LD 1590,” Office of the Maine Attorney General. Available at: <https://www.mainelegislature.org/legis/bills/getTestimonyDoc.asp?id=10025775> (May 25, 2023).

<sup>9</sup> See *Center for Arizona Policy, et al. v. Ariz. Secretary of State, et al.*, CV-24-0295-PR (Ariz. Sup. Ct.); *Americans for Prosperity, et al. v. Meyer, et al.*, No. 24-2933 (9th Cir.).

<sup>10</sup> *Americans for Prosperity Found. v. Bonta (AFPF)*, 141 S. Ct. 2373, 2383 (2021).

<sup>11</sup> *Id.* at 2382 (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958)).

<sup>12</sup> *Wyoming Gun Owners v. Gray*, 83 F.4th 1224, 1247 (10th Cir. 2023) (quoting *AFPF*, 141 S. Ct. at 2386).

<sup>13</sup> *Center for Arizona Policy, et al. v. Ariz. Secretary of State, et al.*, No. 1 CA-CV 24-0272 A (Ariz. Ct. App.), Op. dated Nov. 8, 2024, at 10; *Americans for Prosperity, et al. v. Meyer, et al.*, No. CV-23-00470 (D. Ariz.), Order dated Mar. 20, 2024, at 24.

<sup>14</sup> See L.D. 951, text to be codified at 21-A MRSA § 1065(4), (7)(C).

<sup>15</sup> See *id.*

such donors as “3rd parties”; they really are third-parties who have nothing to do with the political communications triggering the reporting requirement.

Further underscoring this absurdity, L.D. 951 provides that a first-order donor that has to provide information about “3rd parties” to be reported by the organization sponsoring the political campaign communications simply “may choose which original sources to disclose as long as the covered contributor discloses a total amount of original funds at least equal to the amount of the covered contribution.”<sup>16</sup> In other words, the bill really doesn’t care if the “3rd parties” identified on campaign finance reports as being associated with political activity actually donated for a political purpose, and they could very well be reported even if they expressly gave for a non-political purpose. It would all depend merely on whether an organization’s direct donors “choose” to provide the “3rd party’s” information to the organization for public exposure.

Arizona (on appeal) and Maine (if it enacts L.D. 951) will have an extremely difficult time in court justifying how the requirement for organizations to indiscriminately report their own donors’ donors, or indirect “3rd parties,” is “narrowly tailored” to the government’s purported interest in publicly exposing the sources of political spending when those third-party donors very likely did not give for any political purpose.

Moreover, L.D. 951 is novel in one respect that makes it additionally susceptible to a constitutional challenge. Unlike Arizona Proposition 211, which gave organizations a 21-day waiting period before they could use donors’ funds for political activity if they did not receive responses to the organizations’ notifications of donors’ right to opt out, L.D. 951 presumes that donors have opted out if they do not respond within the 21-day waiting period.<sup>17</sup> And if donors are presumed to have opted out, then an organization may not use that portion of its funds for regulated political activity.

Oddly, in this sense, the bill does purport to partially protect donors’ privacy by ensuring that they are not unwittingly reported if they overlook an opt-out notification or neglect to respond within the deadline (all while allowing for the indiscriminate reporting of “3rd parties” who have no opt-out mechanism, as discussed above). However, this aspect of L.D. 951 introduces a separate constitutional problem: It effectively prohibits organizations from using a portion of their otherwise lawfully acquired general treasury funds for political speech if they do not hear back from donors within the 21-day waiting period. In *Citizens United v. FEC*,<sup>18</sup> the Supreme Court held that it was unconstitutional to prohibit corporations (including, specifically, the plaintiff in that case, a donor-funded nonprofit corporation) from using their otherwise lawfully acquired general treasury funds for political speech. Therefore, L.D. 951 could very well be struck down for imposing an unconstitutional restraint on speech, even if this provision is intended to protect donor privacy.

At a minimum, the Committee would be wise to wait for the outcome of the Arizona litigation before pursuing a substantively similar proposal almost certain to invite lawsuits from affected nonprofits and their supporters in Maine.

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<sup>16</sup> *Id.*, text to be codified at 21-A MRSA § 1065(4).

<sup>17</sup> *Id.*, text to be codified at 21-A MRSA § 1065(3).

<sup>18</sup> 558 U.S. 310 (2010).

## **II. L.D. 951 would wreak havoc on the Maine nonprofit community, violating the long-held privacy rights of Maine residents and chilling the speech of valuable nonprofit causes across the spectrum.**

Serious constitutional issues aside, L.D. 951's most pernicious feature is its so-called "original source" donor exposure regime. Under this mechanism, nonprofits engaged in advocacy on policy and political issues central to their mission would be forced to not only disclose their own members and supporters, but also their supporters' supporters. In essence, this convoluted mandate will compel nonprofits that have always protected the privacy of their supporters to expose the names, home addresses, and employer information of their donors to a group they contribute to in order for the recipient to include that information in its own reports. In addition to the multilayered privacy and safety concerns, the dizzying recordkeeping requirements and administrative burdens alone are enough to prevent many nonprofits from engaging in activity at the heart of the First Amendment's protections.

Not to be outdone, L.D. 951 also imposes a top 3 funder disclaimer requirement on affected nonprofits, forcing organizations to name-and-shame their top contributors within any communications they produce.<sup>19</sup> This is an aggressively public and direct method of tying individual supporters to specific communications they may not be aware of or even support. Even worse, the top-funder disclaimer mandate in L.D. 951 (and Arizona Proposition 211) requires the inclusion of original source donors. As a result, an individual could find herself being very publicly named in a message by a group she has never actually supported.

For nonprofits, the choice between self-censoring or exposing their supporters to potential harm isn't the end of the ordeal. Complying with the inordinately complex measure is not just a question of if, but how. Most notably, in demanding that groups report the "original sources" of funds, L.D. 951 saddles nonprofits with a potentially massive and insurmountable administrative burden.

Because of the measure's complexity, many nonprofits will be coerced into silence, unable to afford an attorney to sort through and comply with the requisite reporting mandates. In Arizona, the vague language of L.D. 951's equivalent has predictably caused confusion and forced nonprofits to muzzle their voices in important debates.<sup>20</sup> Worse, much like the nonprofit community's experience in Arizona,<sup>21</sup> L.D. 951 confers significant authority to the Maine Commission on Governmental Ethics and Election Practices, an unelected body, to sort through thorny issues and inquiries, the answers to which have the potential to chill advocacy from many vital causes.<sup>22</sup>

If enacted, many nonprofits will decide that the hassle of compliance, the potential for errors and costly penalties, and the risk to their supporters and other aligned organizations is simply too much to bear. Most groups will feel forced to sit on the sidelines, unable to offer a voice for their

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<sup>19</sup> L.D. 951, text to be codified at 21-A MRS § 1065(8).

<sup>20</sup> See Brian Hawkins, "Arizona 'Transparency' Law Leaves Nonprofits in the Dark," People United for Privacy. Available at: <https://unitedforprivacy.com/arizona-transparency-law-leaves-nonprofits-in-the-dark/> (April 16, 2024). See also, Luke Wachob, "Arizona Nonprofits Face Chaos Under 'Dark Money' Law as 2024 Elections Near," People United for Privacy. Available at: <https://unitedforprivacy.com/arizona-nonprofits-face-chaos-2024-nears/> (Jan. 4, 2024).

<sup>21</sup> See, e.g., Max Tani, "Top Democratic lawyer backs mysterious news site," *Semafor*. Available at: <https://www.semafor.com/article/07/07/2024/top-democratic-lawyer-backs-mysterious-news-site> (July 7, 2024); Brian Hawkins, "Commenters Express Concern and Confusion Over Arizona's Prop 211," People United for Privacy. Available at: <https://unitedforprivacy.com/commenters-express-concern-and-confusion-over-arizonas-prop-211/> (Nov. 26, 2023); and "Elections commission adds new disclosure requirements for political ads on air and in print," KJZZ. Available at: <https://www.kjzz.org/2023-09-22/content-1858254-elections-commission-adds-new-disclosure-requirements-political-ads-air-and-print> (Sept. 22, 2023).

<sup>22</sup> L.D. 951, text to be codified at 21-A MRS § 1065(11).

supporters and denying the public and elected officials the ability to benefit from their views and expertise on important issues. Worst of all, L.D. 951's complexity will be most harmful to small and volunteer-run organizations as well as those groups advocating for causes disfavored by those in power. But make no mistake: No organization or cause is safe from the reach of L.D. 951 – and neither are the citizens of Maine who support their missions.

Protecting the privacy of Americans who join and contribute to nonprofit causes is a value with bipartisan support. That's why nearly 300 groups representing Americans of all beliefs asked the Supreme Court to protect citizen privacy in the 2021 case, *AFPF v. Bonta*.<sup>23</sup> As the U.S. Supreme Court noted in its decision: "The gravity of the privacy concerns in this 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..."<sup>24</sup>

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There are significant constitutional problems with L.D. 951's sweeping provisions and its unjustified encroachments on nonprofit donor privacy. Much like its equivalent in Arizona, the target of this legislation is not candidates and political committees, but nonprofits – like the many organizations on both sides of the abortion, environmental, and Second Amendment debates – that advocate on behalf of Maine residents, voice opinions on elected officials' policy views, discuss the issues of the day, and speak truth to power.

The bill's tortuous provisions would leave nonprofits unable to avoid triggering donor exposure requirements with any degree of certainty, making silence the safest option for many organizations that have historically protected the privacy of their supporters. With litigation a near certainty if L.D. 951 becomes law, lawmakers should reject this scheme out of respect for their constituents' First Amendment-protected speech and association rights. **For these reasons, People United for Privacy Foundation urges the Committee to vote "Ought Not to Pass" on L.D. 951.**

Sincerely,



Matt Nese  
Vice President  
People United for Privacy Foundation

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<sup>23</sup> See "Free speech case attracts support from nearly 300 diverse groups," Americans for Prosperity Foundation. Available at: <https://americansforprosperity.org/wp-content/uploads/2021/04/AFPF-v-Becerra-Amici.pdf> (Apr. 2021).

<sup>24</sup> *AFPF*, 141 S. Ct. at 2388 (2021).