

PEOPLE UNITED *for* PRIVACY FOUNDATION

March 31, 2025

The Honorable Laura Kelly
Office of the Governor
Kansas Statehouse
300 SW 10th Avenue
Suite 241S
Topeka, KS 66612-1590

RE: H.B. 2206 Signature Request – Bipartisan Privacy and Free Speech Reforms

Dear Governor Kelly:

On behalf of People United for Privacy Foundation (PUFPF),¹ I write to request your signature on H.B. 2206. Multiple provisions in H.B. 2206 make significant improvements to foundational elements of Kansas' campaign finance statutes that will better protect the privacy of Kansans who support nonprofits – like the many organizations on both sides of the abortion, civil rights, education, energy, and tax debates – that advocate on behalf of Kansans in communities across the state.

In recognition of this goal, the legislation earned strong bipartisan support in the Kansas Legislature. Just as crucially, this bill remedies constitutional infirmities in Kansas law that have been questioned and struck down by Kansas courts in several recent legal challenges.² Whether Kansas law is within the bounds of the First Amendment should not be open to interpretation, and the privacy of nonprofit members and supporters should not be left to the whims of government officials. H.B. 2206 fixes these issues, protecting all Kansans' First Amendment rights and saving state taxpayers from funding costly litigation that successfully challenges these unconstitutional laws.

I. H.B. 2206 builds on Kansas' past bipartisan support for citizen privacy protections and furthers the laudable goal of protecting Kansans who voluntarily support valuable nonprofit causes from having their sensitive information needlessly exposed to public scrutiny.

Our focus in this letter concerns current requirements in Kansas law – resolved by H.B. 2206 – that compel certain nonprofit organizations to publicly disclose their donors. Nonprofit donors have a First Amendment-protected right to privacy in association, and campaign finance reporting requirements are a narrow exception to that right. Kansans must be free to support social causes without being subjected to the privacy invasions of campaign finance law. Likewise, nonprofits must be free to voice an opinion on government actions when they affect issues core to their mission.

¹ 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.

² See, e.g., Tim Carpenter, "Kansas House committee advances election-reform bill that's more than a name change," *Kansas Reflector*. Available at: <https://kansasreflector.com/2025/02/13/kansas-house-committee-advances-election-reform-bill-thats-more-than-a-name-change/> (Feb. 13, 2025); Tim Carpenter, "Overland Park lawsuit leads judge to narrow Kansas' definition of political action committee," *Kansas Reflector*. Available at: <https://kansasreflector.com/2025/01/07/overland-park-lawsuit-leads-judge-to-narrow-kansas-definition-of-political-action-committee/> (Jan. 7, 2025); Jonathan Shorman, "Inside the Kansas court case that could cripple a sweeping campaign finance investigation," *The Kansas City Star*. Available at: <https://www.kansascity.com/news/politics-government/article291989080.html> (Sept. 6, 2024).

Campaign finance rules and regulations consistently produce many of the most perilous threats to the privacy of nonprofit members and supporters.³ These laws also threaten to silence the nonprofit community during important policy debates relevant to their missions. As PUFPP has documented, state lawmakers and officials across the country – including in Kansas – have exploited campaign finance laws to target nonprofits and their supporters for their beliefs.⁴

Fortunately, Kansas officials have recently demonstrated a willingness to reform state laws to better protect privacy and free speech. In 2022, Kansas became one of now 20 states⁵ to enshrine proactive privacy protections for Kansans who support nonprofits active in The Sunflower State. That legislation, H.B. 2109,⁶ passed with strong bipartisan margins in the House (92-20) and Senate (40-0) and ultimately earned your signature.⁷ H.B. 2206 builds on the bipartisan, privacy-conscious legacy of H.B. 2109 to protect Kansans who support nonprofits doing vital work in their communities.

II. H.B. 2206 incorporates several of PUFPP's prior recommendations to the Kansas Special Committee on Governmental Ethics Reform, Campaign Finance Law.

In the 2023 Regular Session, the Kansas Legislature passed and you signed S.B. 208, which enacted several reforms to the state's campaign finance laws. However, the bill failed to address several important substantive issues, and the Legislative Coordinating Council was asked to convene a Special Committee to further evaluate those topics. In October 2023, our sister organization, People United for Privacy, urged the Special Committee to focus on three key aspects of Kansas law that insufficiently protect First Amendment freedoms in general and privacy in association in particular and suggested legislative language to that end.⁸

The revised “political committee” definition in Sec. 7(m) of H.B. 2206 and the revised independent expenditure reporting requirements for non-political committees in Sec. 9 of H.B. 2206 align with the intent and effect of the language endorsed by PUFPP in October 2023 as well as recent decisions in Kansas courts. H.B. 2206 is especially praiseworthy for adopting our recommendations to ensure that only groups with *the* major purpose of influencing elections are classified as political committees and forced to expose their donors while simultaneously clarifying when nonprofit groups are required to report information on their occasional political expenditures.

³ See Scott Blackburn, “2022 Free Speech Index: Grading the 50 States on the Freedom to Speak About Government,” Institute for Free Speech. Available at: <https://www.ifs.org/wp-content/uploads/2022/05/Free-Speech-Index-2022.pdf> (Aug. 8, 2022).

⁴ Matt Nese and Alex Baiocco, “2025 State Threats to Donor Privacy and Nonprofit Advocacy: Risks Increase After Heated Election Season,” People United for Privacy Foundation. Available at: <https://unitedforprivacy.com/wp-content/uploads/2025/02/Memo-2025-State-Threats-To-Donor-Privacy-And-Nonprofit-Advocacy.pdf> (Feb. 2025).

⁵ PUFPP 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).

⁶ “Charitable Privacy Act,” H.B. 2109, Reg. Sess. 2021-2022 (Kan. 2022). Available at: https://www.kslegislature.gov/li_2022/b2021_22/measures/hb2109/. The provision protecting the privacy of nonprofit members, supporters, and volunteers from state agency collection and disclosure is located in Sec. 1 of H.B. 2109 of 2022.

⁷ PUFPP Staff, “Citizen Privacy – and Bipartisanship – Win the Day in Kansas,” People United for Privacy. Available at: <https://unitedforprivacy.com/citizen-privacy-and-bipartisanship-win-the-day-in-kansas/> (April 15, 2022).

⁸ Matt Nese and Eric Wang, “Suggested First Amendment and Privacy-Friendly Reforms to Kansas Campaign Finance Laws,” People United for Privacy. Available at: <https://unitedforprivacy.com/wp-content/uploads/2023/10/2023-10-03-Comments-PUFPP-KS-Recommended-Privacy-Reforms-To-CF-Statutes.pdf> (Oct. 3, 2023). See also, Luke Wachob, “Fighting for Privacy Reform in Kansas,” People United for Privacy. Available at: <https://unitedforprivacy.com/fighting-for-privacy-reform-in-kansas/> (Oct. 18, 2023). For purposes of this letter, recommendations from our affiliate, People United for Privacy, are attributable to People United for Privacy Foundation.

A. H.B. 2206 revises Kansas’s “political committee” definition to incorporate a defined “major purpose” standard that aligns with legal precedent and that will better protect incidental advocacy by nonprofit causes.

Our primary recommendation to the Special Committee urged lawmakers to amend and clarify the existing definition for a “political committee” (informally known as a “PAC”) in Kansas Code. Like most states, Kansas requires PACs to broadly report their revenues and spending, including the names and addresses of all donors who give more than \$50 during an election period.⁹

Under Kan. Stat. § 25-4143(l)(1), an organization’s obligation to register and report as a PAC depends on whether it has “a major purpose” (emphasis added) of engaging in regulated campaign finance activity. However, the statute does not further define “major purpose.” This gap has led the Kansas Governmental Ethics Commission (KGECE), which Sec. 2 of H.B. 2206 sensibly rebrands as the Kansas Public Disclosure Commission, to promulgate a vague and open-ended rule for determining PAC status that provides no clear guidance to the public or consistent standards for enforcement. Indeed, that statute was challenged in court by a Kansas nonprofit focused on local issues, and a U.S. District Court judge struck down the Commission’s application of Kansas’s PAC statute to the nonprofit organization in question earlier this year.¹⁰

Intuitively, the “major purpose” standard is logical and well understood. If an organization lacks the “major purpose” of supporting or opposing the nomination or election of a candidate, it should not be required to report as a PAC simply because it occasionally engages in express advocacy for or against candidates. Requiring such an organization to broadly report all its spending and sources of contributions would not serve the government’s interest in “provid[ing] the electorate with information as to where political campaign money comes from and how it is spent” and “exposing large [political] contributions and expenditures to the light of publicity.”¹¹ At the same time, it would unnecessarily intrude on the privacy of the organization’s members and supporters.

While Kansas uses the phrase “major purpose” in its statutory PAC definition, it is unconstitutionally deficient because it is preceded by the indefinite article “a,” rather than the definite article “the”; the latter is how the U.S. Supreme Court and Tenth Circuit have articulated the standard.¹² The use of the indefinite article in the Kansas statute suggests that an organization may have multiple “major purposes,” one of which is express advocacy for or against candidates.¹³ However, that is not the proper standard for regulating a PAC. As the Tenth Circuit has explained, the proper standard for determining whether an organization is a PAC is a “comparison of the

⁹ Kan. Stat. § 25-4148.

¹⁰ See Tim Carpenter, “Overland Park lawsuit leads judge to narrow Kansas’ definition of political action committee,” *Kansas Reflector*. Available at: <https://kansasreflector.com/2025/01/07/overland-park-lawsuit-leads-judge-to-narrow-kansas-definition-of-political-action-committee/> (Jan. 7, 2025).

¹¹ *Buckley v. Valeo*, 424 U.S. 1 at 66-67 (1976) (internal quotation marks and citations omitted).

¹² Compare Kan. Stat. § 25-4143(l)(1) with *Buckley*, 424 U.S. at 79 and *N.M. Youth Organized (NMYO) v. Herrera*, 611 F.3d 669 at 677 (10th Cir. 2010).

¹³ See, e.g., *Human Life of Wash. Inc., v. Brumsickle*, 624 F.3d 990, 1009-1010 (9th Cir. 2010) (discussing how the “regulation of groups with ‘a’ primary purpose of political advocacy” is distinct from “defining groups with ‘the major purpose’ of political advocacy as political committees”) (emphasis added). The Ninth Circuit concluded that the Supreme Court’s “the major purpose” standard under *Buckley* merely “defined the outer limits of permissible political committee regulation.” *Id.* at 1010 (emphasis added). However, this is directly at odds with how the Tenth Circuit reads the “major purpose” standard from *Buckley* to “set[] the lower bounds for when regulation as a political committee is constitutionally permissible.” *NMYO*, 611 F.3d at 677 (emphasis added). The U.S. Supreme Court has not resolved the circuit split on this issue. See *Corsi v. Ohio Elections Comm’n*, Petition for a Writ of Certiorari, 2013 WL 2726801 and 571 U.S. 826 (2013) (denying cert.). Kansas falls within the Tenth Circuit’s jurisdiction. Therefore, the Tenth Circuit’s holding on this issue is controlling, and the Ninth Circuit’s holding is not.

organization's electioneering spending with overall spending to determine whether *the preponderance* of expenditures is for express advocacy or contributions to candidates."¹⁴

"Preponderance" means "majority."¹⁵ Insofar as an organization can only become a PAC if the majority of its spending is on express advocacy or candidate contributions, then that is "*the major purpose*" of the organization. If the proper regulatory standard was "*a major purpose*," as the Kansas statute currently contends, then an organization could become a PAC if merely a plurality of its spending were on such activities. However, that is not the standard that the Tenth Circuit has held is within "the lower bounds for when regulation as a political committee is constitutionally permissible."¹⁶ The revised "political committee" definition in H.B. 2206 rectifies this flaw.

B. H.B. 2206 wisely clarifies the scope of independent expenditure reporting for non-PAC entities in a manner that provides guidance to impacted speakers without requiring more reporting than is legally permissible.

A second recommendation we made to the Special Committee encouraged lawmakers to clarify the scope of donor exposure for organizations that are not PACs if they make independent expenditures expressly advocating for the election or defeat of candidates. On its face, Kan. Stat. § 25-4150 purports to require such organizations to file the same reports as PACs under Kan. Stat. § 25-4148. However, such a broad reporting requirement would be unconstitutional and nonsensical. It would conflate PAC and non-PAC entities and render the PAC definition and the "major purpose" standard encompassed therein moot. Under current law, it is unclear exactly what non-PAC entities, like nonprofits, are required to report when they make independent expenditures, especially with respect to donor information.

The revised independent expenditure reporting requirements for non-PAC entities in Sec. 9 of H.B. 2206 clarifies the intent of the existing statute and sets forth reporting requirements that capture the spending at issue without unnecessarily – and potentially unconstitutionally – invading donor privacy rights for nonprofit speakers that only occasionally engage in political advocacy.

* * *

H.B. 2206 rectifies two significant shortcomings in Kansas law that impose undue burdens on the fundamental First Amendment rights of all Kansans to freely associate with the organizations and causes they believe in. As such, it represents a significant step forward in protecting Kansans' First Amendment rights to freedom of speech and privacy in association. **For these reasons, People United for Privacy Foundation respectfully requests your signature on H.B. 2206.**

Sincerely,



Heather Lauer
Chief Executive Officer
People United for Privacy Foundation

¹⁴ *NMYO*, 611 F.3d at 678 (emphasis added).

¹⁵ See "Preponderance," Merriam-Webster. Available at: <https://www.merriam-webster.com/dictionary/preponderance>.

¹⁶ *NMYO*, 611 F.3d at 677-678.