

PEOPLE UNITED *for* PRIVACY FOUNDATION

April 2, 2025

The Honorable Jim Guthrie
Idaho State Senate
P.O. Box 83720
Boise, ID 83720-0081

The Honorable Treg A. Bernt
Idaho State Senate
P.O. Box 83720
Boise, ID 83720-0081

RE: S. 1212's First Amendment-Friendly Reforms to Idaho's Outdated, Unconstitutional, and Privacy-Invasive Campaign Finance Laws

Dear Chair Guthrie, Vice Chair Bernt, and Members of the Senate State Affairs Committee:

On behalf of People United for Privacy Foundation (PUFPF),¹ I appreciate the opportunity to provide written testimony on S. 1212. Since the U.S. Supreme Court's 2021 decision in *Americans for Prosperity Foundation (AFPF) v. Bonta* reaffirmed donor privacy rights for nonprofit organizations and their supporters,² PUFPF has worked to improve state laws that burden the free speech, associational, and privacy rights of citizens across the country.³ As the Legislature takes an important step toward modernizing Idaho's archaic and convoluted campaign finance statutes, several changes in S. 1212 are critical for ensuring that the First Amendment rights of individuals and nonprofits are protected.

Our comments focus on current requirements in Idaho law that compel nonprofit organizations to publicly expose their members and supporters. Nonprofit donors have a First Amendment-protected right to privacy in association, and campaign finance reporting requirements are a narrow exception to that right. Idahoans 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.

Campaign finance rules and regulations consistently produce many of the most perilous threats to the privacy of nonprofit members and supporters.⁴ These laws also threaten to silence the nonprofit community during important policy debates relevant to their missions. As PUFPF has documented, state lawmakers across the country have exploited campaign finance laws to target nonprofits and their supporters for their beliefs.⁵

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.

² 141 S. Ct. 2373 (2021). See also 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-QA.pdf (Aug. 30, 2021).

³ See, e.g., Alex Baiocco, "Kansas Legislature Poised to Bolster Nonprofit Privacy Protections," People United for Privacy. Available at: <https://unitedforprivacy.com/kansas-legislature-poised-to-bolster-nonprofit-privacy-protections/> (March 17, 2025) and Luke Wachob, "West Virginia Cleans Up Campaign Laws, Provides Roadmap for Other States," People United for Privacy. Available at: <https://unitedforprivacy.com/west-virginia-cleans-up-campaign-laws-provides-roadmap-for-other-states/> (April 5, 2023).

⁴ 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).

⁵ 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).

Though the provisions in S. 1212 are wide-ranging, PUFPP wishes to express our strong support for the following components of the legislation, which work in concert to protect the First Amendment rights of nonprofits that voice opinions on important Idaho policy debates and the vital privacy rights of Idahoans that support those causes.

I. S. 1212 clarifies independent expenditure and electioneering communication reporting by nonprofits in a First Amendment-friendly manner.

PUFPP supports S. 1212's efforts to update and clarify the definitions and treatment of independent expenditures (IEs) and electioneering communications (ECs) in current law. Idaho's current reporting requirements for IEs, ECs, and so-called "nonbusiness entities" are scattered confusingly and haphazardly across three different sections of statute. In particular, current regulations governing nonbusiness entity reports are unconstitutionally vague and overlap with other required reports for the same general activity.

S. 1212 rectifies that inconsistency by providing clearer language that distinguishes IEs from ECs and removes the nonbusiness entity reporting regime in recognition of its redundancy. This clarification will assist nonprofit organizations in complying with the law more easily – without needing to hire a costly attorney – and will align Idaho law with federal standards and court rulings limiting the scope of regulations that govern core First Amendment-protected activity.

II. S. 1212 wisely refines the "independent expenditure" definition in existing law to avoid confusion and eliminate unintended consequences.

We commend the inclusion of language in S. 1212 that remedies the confusion in current law's definition of "independent expenditure" and the "expressly advocating" definition housed within. Read literally, the statute seems to treat the mere reference to "the name of [a] candidate or measure" as expressly advocating for or against the candidate or measure. This would contradict the separate definition of an "electioneering communication," which applies to certain communications that refer to a candidate and which are expressly not "independent expenditures" under the statute.⁶

This crucial clarification ensures that advocacy groups, charities, and other nonprofit organizations are not inadvertently swept into the campaign finance regulatory regime merely for engaging in public discourse.

III. S. 1212 appropriately targets disclosure in a manner that respects privacy rights and the First Amendment.

S. 1212's refinement of disclosure requirements for both IEs and ECs is one of the measure's most critical components. PUFPP supports language ensuring that only donations specifically earmarked for the purpose of furthering a covered communication are subject to disclosure within the 30-day window before a primary election and the 60-day window before a general election. This approach reflects sound constitutional principles and is sensitive to First Amendment rights.

The revisions to current law in S. 1212 protect the privacy of individuals who support an organization's issue advocacy generally but not necessarily any specific election-related message. Courts have repeatedly affirmed that compelled donor disclosure must be narrowly tailored to serve

⁶ See Idaho Code § 67-6602(7)(a)(i), (b)(v).

a compelling government interest.⁷ S. 1212 meets this test by appropriately focusing disclosure on only those funds directly linked to election-related speech, thereby reducing the risk of chilling protected First Amendment activity.

IV. S. 1212 smartly raises the threshold for donor reporting to better protect Idahoans' privacy, but lawmakers should go further.

As the U.S. Supreme Court has held, the purpose of campaign finance reporting requirements is to “deter actual corruption and avoid the appearance of corruption by exposing *large* contributions and expenditures to the light of publicity” and to provide the public “with information about a candidate’s most generous supporters.”⁸ The current \$50 threshold for identifying donors on candidate and political committee reports is far too low to properly advance the law’s interest in deterring corruption. Unless someone desires to snoop on their neighbors and colleagues or stalk unsuspecting citizens, no one is legitimately interested in a donor who gives merely \$50.01 as a source of political funding, nor does such a donor qualify as the source of a large contribution capable of causing “actual corruption” or “the appearance of corruption.”

While we appreciate that S. 1212 raises those thresholds to \$100, the amount is still unjustifiably low, and we strongly encourage lawmakers to consider further raising this trigger amount to at least \$500, if not \$1,000. It simply cannot be said with a straight face that spending or giving \$50 or even \$100 is somehow going to corrupt an Idaho candidate or elected official.

V. S. 1212 strengthens the existing ban on contributions from foreign nationals to protect Idaho elections without harming American donors to Idaho nonprofits.

Finally, PUFPP supports language in S. 1212 clarifying the prohibition on foreign national contributions by defining the term “indirectly.” We believe this minor but impactful change will assist both regulators and organizations in preventing foreign influence in Idaho elections while ensuring that the privacy of Americans donors to Idaho nonprofits is protected and compliance is clear and actionable.

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Together, the aforementioned and long overdue revisions in S. 1212 will provide a clear, consistent, and constitutional framework for regulating nonprofit advocacy in Idaho – supplying Idahoans and the causes they support protections for their First Amendment speech and privacy rights and precise guidance for understanding which laws apply to their activity. We commend the measure’s sponsors and the Committee for their leadership on this important issue. **People United for Privacy Foundation urges the Committee to vote in support of these provisions in S. 1212.**

Respectfully submitted,



Heather Lauer
Chief Executive Officer
People United for Privacy Foundation

⁷ *AFPP*, 141 S. Ct. 2373, 2383 (2021).

⁸ *Buckley v. Valeo*, 424 U.S. 1 at 67 (emphasis added).