PEOPLE UNITED *for* PRIVACY

May 7, 2025

The Honorable Gerald "Beau" Beaullieu, IV
Chair, House and Governmental Affairs Committee
Louisiana House of Representatives
900 North 3rd Street
Box 94062
Baton Rouge, LA 70804

The Honorable Rodney Lyons
Vice Chair, House and Governmental Affairs Committee
Louisiana House of Representatives
900 North 3rd Street
Box 94062
Baton Rouge, LA 70804

RE: Support for Privacy and Free Speech Reforms in H.B. 596 and Suggested Amendment to Clarify Reporting Requirements for Non-PAC Entities

Dear Chair Beaullieu, Vice Chair Lyons, and Members of the House and Governmental Affairs Committee:

On behalf of People United for Privacy[1] (PUFP), we write to express our general support for H.B. 596, which would make a number of sorely needed improvements to Louisiana's outdated Campaign Finance Disclosure Act (CFDA). H.B. 596 is scheduled for a hearing before your House and Governmental Affairs Committee on May 7, 2025. The updates in H.B. 596 are desperately needed to provide clarity to would-be speakers in The Pelican State and to better protect the privacy of Louisianians who support nonprofit causes active in their communities across the state.

However, to better effectuate the bill's intent, we strongly recommend amending H.B. 596 to clarify the distinction between the reporting requirements for political "committees" (commonly known as "PACs") versus the reporting requirements for organizations that are not PACs. As we explain in greater detail below, this could be achieved with a simple amendment to the changes the bill would enact to La. Rev. Stat. § 18:1501.1.

I. H.B. 596 greatly improves ambiguities and dated regulations in the CFDA.

H.B. 596 would enact a number of updates to Louisiana's badly antiquated CFDA. The bill tackles various practices that are commonplace in modern-day politics that are addressed under federal law for federal-level activity – such as leadership PACs and joint fundraising – but that lack clarity under existing Louisiana law. The bill would also enact additional safeguards for respondents in enforcement matters before the Supervisory Committee on Campaign Finance Disclosure.

Of particular importance to PUFP, H.B. 596 would clarify the definition of a political "committee" (PAC). Triggering PAC status obligates a speaker to comply with burdensome and intrusive state registration and reporting requirements. Such requirements must be reserved only

[1] 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 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.

for organizations that have the "primary" or "major" purpose of engaging in political campaign activities. Indeed, because such requirements burden and deter core constitutionally protected First Amendment rights (as explained below), the U.S. Supreme Court has held that PAC reporting requirements may not be imposed merely because an organization receives or makes political "contributions" or "expenditures." Rather, for an organization to qualify as a PAC, such activities must constitute the organization's "major purpose."[2]

The existing CFDA appropriately defines a PAC based on an organization's "primary purpose."[3] However, Louisiana law fails to further define exactly what "primary purpose" means or how it is determined. Because this is such a critical concept with profound regulatory consequences for organizations that engage in core First Amendment activity, the term must be clearly defined rather than left to guesswork, whether by a regulatory agency or by the regulated community forced into compliance with the law. H.B. 596 substitutes the term "primary purpose" for "major purpose" and appropriately defines "major purpose" based on whether making political "contributions" or "expenditures" constitutes the preponderance of an organization's spending and smartly excludes consideration of expenditures made from an organization's general revenues. PUFP strongly supports the bill's approach on this issue.

II. H.B. 596 would benefit from additional clarification via amendment on the reporting requirements for non-PAC organizations.

Under existing Louisiana law, organizations that are not PACs (*i.e.*, that lack the "primary" or "major purpose" of a PAC) are still subject to strict reporting requirements whenever they make political "expenditures" or accept political "contributions" exceeding $500 during a CFDA reporting period.[4] The CFDA specifies vaguely that "[s]uch reports shall be filed at the same time, shall contain the same information, and shall be certified correct in the same manner as reports required of political committees."[5]

If non-PAC entities are required to file campaign finance reports "contain[ing] the same information" as PACs – per the literal language of the CFDA – then this begs the question: Why even bother regulating and defining PACs and having a separate provision in the statute for non-PAC entities that merely subjects them to the same reporting requirements as PACs? Either the PAC definition or the reporting requirements for non-PAC entities would be superfluous, and this violates a basic rule of statutory construction.[6]

H.B. 596 would continue the CFDA's existing and confusing approach to this issue, with the only change being that non-PAC entities would now have to file reports containing the same information as "principal campaign committees." However, this is an immaterial change from our standpoint for donor privacy purposes, since "principal campaign committees" must broadly report their donors just as PACs are required to do.

It appears that, notwithstanding the CFDA's literal language, there may be an informal understanding in Louisiana that non-PAC entities – unlike PACs – are not required to report their donors on their campaign expenditure reports. However, like the "major purpose" concept in the PAC

[2] *Buckley v. Valeo*, 424 U.S. 1, 79 (1976).
[3] La. Rev. Stat. § 18:1483(17).
[4] *Id.* § 18:1501.1(A)(1).
[5] *Id.* § 18:1501.1(B).
[6] *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . ").

definition, this is far too important of an issue to leave to guesswork or the vagaries of informal practice and implicit understanding. Donor privacy is a cornerstone of the First Amendment right to speak and to associate, and therefore it must be codified clearly and explicitly in the statute. As the U.S. Supreme Court has explained:

> [W]e have repeatedly found that **compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment**.
>
> We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since *NAACP v. Alabama* we have required that the subordinating interests of the State must survive exacting scrutiny. We also have insisted that there be a "relevant correlation" or "substantial relation" between the governmental interest and the information required to be disclosed. This type of scrutiny is necessary even if any **deterrent effect on the exercise of First Amendment rights arises**, not through direct government action, but indirectly **as an unintended but inevitable result of the government's conduct in requiring disclosure**.[7]

The U.S. Supreme Court specifically held that these concerns apply to compelled disclosure of an organization's donors.[8]

Therefore, as the U.S. Court of Appeals for the Ninth Circuit has explained, the different reporting requirements for PACs and non-PAC entities is constitutionally mandated under the Supreme Court's "exacting scrutiny" standard:

> Organizations that frequently engage in political speech [*i.e.*, PACs] can be required to disclose more information than organizations that do so only occasionally. When measuring an organization's level of political advocacy, these statutes often use purpose as a proxy. For example, the Washington disclosure laws upheld in [*Human Life of Washington v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010)] require **organizations with "a primary purpose of political advocacy" to disclose the source and amount of both contributions and expenditures; organizations without such a purpose must disclose only the source and amount of expenditures**. Similarly, the Hawaii laws upheld in [*Yamada v. Snipes*, 786 F.3d 1182 (9th Cir. 2015)] require **organizations with "the purpose of . . . engaging in express advocacy or its functional equivalent" to disclose information about both contributions and expenditures; organizations having no such purpose but engaging in occasional political advertising are required to include only a disclaimer within the advertisement itself**, concerning whether a candidate endorsed the particular advertisement. **Variance in substantive reporting requirements for different levels of political advocacy activity "ensures that the electorate has information about groups that make political advocacy a priority, without sweeping into its purview groups that only incidentally engage in such advocacy**."[9]

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[7] *Buckley*, 424 U.S. at 64-65 (internal citations and footnotes omitted) (emphasis added).
[8] *Id*. at 66.
[9] *National Association for Gun Rights v. Mangan*, 933 F.3d 1102, 1116 (9th Cir. 2019) (cleaned up) (emphasis added).

Other federal courts have similarly held that non-PAC entities may not be subject to the same broad donor reporting requirements as PACs when engaging in political activities. Rather, non-PAC entities may be required only to report donors who have specifically earmarked their funds for the political activities triggering the reporting requirements.[10]

Because donor exposure is one of the key distinctions between PAC and non-PAC entities, a failure to clarify the donor reporting requirements (or lack thereof) for non-PAC entities would negate the important improvements that H.B. 596 otherwise makes to Louisiana's PAC definition by adding a "major purpose" definition. PUFP strongly urges the Committee to amend H.B. 596 to add the following **orange boldfaced** language to the revisions to La. Rev. Stat. § 18:1501.1(B):

> B. Such reports shall be filed at the same time, shall contain the same information, and shall be certified correct in the same manner as reports required of ~~political~~ principal campaign committees by this Chapter. **Provided, however, that such reports filed by persons that are not candidates or committees shall not be required to include information about donations or identify donors unless any donors have earmarked their donations for the purpose of making reportable expenditures under this Chapter.**

III. H.B. 596 wisely clarifies the triggers for reporting by non-PAC organizations.

Related to the above suggestion for clarifying the reporting requirements of non-PAC entities, we also wish to underscore our support for the bill's clarification of the types of communications that trigger those reporting requirements in the first instance. Specifically, H.B. 596 specifies that non-PAC entities are required to file reports whenever they make expenditures or accept contributions for certain communications that include: (a) "express advocacy";[11] or (b) what the U.S. Supreme Court has called the "functional equivalent" of express advocacy,[12] which the bill articulates as a message for which "the only reasonable conclusion to be drawn from the presentation and content of the communication is that it is intended to appeal to vote for or against a specific candidate or for or against the recall of a specific elected official."

Vagueness has long plagued the CFDA when it comes to the trigger for these reporting requirements, which are purportedly based on organizations making political "expenditures." The CFDA currently defines an "expenditure," in relevant part, as a payment:

> made for the purpose of supporting, opposing, or otherwise influencing the nomination or election of a person to public office, for the purpose of supporting or opposing a proposition or question submitted to the voters, or for the purpose of supporting or opposing the recall of a public officer, whether made before or after the election.[13]

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[10] *Wyoming Gun Owners v. Gray*, 83 F.4th 1224, 1248 (10th Cir. 2023); *Lakewood Citizens Watchdog Group v. City of Lakewood*, 2021 WL 4060630 at *12 (D. Colo. 2021).

[11] H.B. 596 appropriately defines "express advocacy" as "communications containing express words of advocacy of election, recall, or defeat, including but not limited to 'vote for', 'elect', 'support', 'cast your ballot for', 'Smith for Governor', 'vote against', 'recall', 'defeat', or 'reject.'"

[12] *FEC v. Wisconsin Right to Life*, 551 U.S. 449, 469-70 (2007).

[13] La. Rev. Stat. § 18:1483(9)(a).

In 2006, the U.S. Court of Appeals for the Fifth Circuit, where Louisiana resides, held that this definition – which tracks the Federal Election Campaign Act's "expenditure" definition – was unconstitutionally vague unless it was subject to a limiting judicial construction to reach only "express advocacy."[14] That ruling should be codified into the statute, as H.B. 596 does. As noted above, the U.S. Supreme Court subsequently upheld reporting requirements based on the "functional equivalent" of express advocacy, and therefore the incorporation of that regulatory standard in H.B. 596 is also constitutionally sound.

By the same token, the Committee must reject any proposals to amend the language of H.B. 596 when it comes to the express advocacy/functional equivalent content standard triggering the reporting requirements under La. Rev. Stat. § 18:1501.1. Importantly, the express advocacy/functional equivalent content standard must apply to **each and every** type of regulated media and communication under this section and not only to certain types of media or communications. Specifically, non-PAC entities may be required to file reports under this section only if the content of their communications made through any of the following forms of media include express advocacy or its functional equivalent:

- "paid advertising disseminated through any federally regulated broadcast media";
- "any mass mailing of more than five hundred pieces of identical or substantially similar materials within any thirty day period";
- "paid digital advertising";
- "phone bank of more than five hundred telephone calls of an identical or substantially similar nature within any thirty day period"; or
- "publication of paid print advertising."

In other words, the express advocacy/functional equivalent content standard must apply to or modify **each and every** one of the regulated forms of media enumerated in the bill. Any amendment to the bill's language – including changes in punctuation – must be scrutinized because such changes could render the bill text unconstitutionally vague if the express advocacy/functional equivalent content standard becomes untethered from **each and every** one of these forms of media.

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People United for Privacy strongly recommends that the House and Governmental Affairs Committee favorably report H.B. 596 with an amendment to the reporting requirements for non-PAC entities offered above. However, it is imperative that the Committee scrutinize any other amendment or substitute bill text that substantively alters the express advocacy/functional equivalent standard triggering those reporting requirements. We thank the Committee for considering our comments and suggestions, and we welcome any questions regarding the issues raised in this letter.

Sincerely,

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[14] *Center for Individual Freedom v. Carmouche*, 449 F.3d 655, 663-64 (5th Cir. 2006).