May 6, 2026

The Honorable Stephanie T. Bolden
Chair, House Elections & Government Affairs Committee
411 Legislative Avenue
Dover, DE 19901

The Honorable Eric Morrison
Vice-Chair, House Elections & Government Affairs Committee
411 Legislative Avenue
Dover, DE 19901

**RE: Opposition to H.S. 1 for H.B. 216's Unconstitutional Doxing of Delawareans in Ad Disclaimers**

Dear Chair Bolden, Vice-Chair Morrison, and Members of the House Elections & Government Affairs Committee:

On behalf of People United for Privacy,[1] we write to express our strong concerns with House Substitute 1 for H.B. 216, which would subject Delawareans and the valuable nonprofit causes they support to serious and dangerous invasions of privacy. This sweeping bill, currently scheduled for a May 6 hearing before the House Elections & Government Affairs Committee, would require nonprofit organizations that sponsor political *and* issue advertisements that cost as little as $500 to identify their five largest sources of "aggregate transfers" on the face of political *and* issue ads and direct viewers or listeners to a website that identifies all sources of an organization's "contributions" of more than $100.

H.S. 1 for H.B. 216 risks escalating the politics of personal destruction embroiling the country by focusing the public's attention on an organization's individual donors rather than on the merits of an organization's message. From a legal perspective, the measure is unconstitutionally vague and is not narrowly tailored to the government's interest in preventing corruption and informing the electorate. For these reasons, H.S. 1 for H.B. 216 would be susceptible to a costly constitutional challenge, if enacted into law, and we encourage your reconsideration and opposition to this bill.

## I. H.S. 1 for H.B. 216 uses unconstitutionally vague terminology that makes compliance with its invasive disclaimer mandates difficult, if not impossible.

H.S. 1 for H.B. 216 would require sponsors of "independent expenditures"[2] (IEs) and "electioneering communications"[3] (ECs), both of which are encompassed within Delaware's pre-existing "third-party advertisement" definition,[4] to: (a) identify on the face of such ads the sources of

[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.
[2] "Independent expenditures" are advertisements "expressly advocating the election or defeat of" candidates that are not coordinated with any candidate. 15 Del. Code § 8002(13).
[3] "Electioneering communications" are advertisements that refer to a candidate within 30 days before a primary or special election or 60 days before a general election that are distributed to "members of the electorate for the office sought by such candidate." *Id.* § 8002(10). Despite the loaded terminology, many so-called "electioneering communications" are issue ads aimed at urging *constituents* to contact their elected officials about a policy issue.
[4] *Id.* § 8002(27).

the sponsor's five largest "aggregate transfers" within the preceding 12 months; and (b) provide a "link"[5] to a website that lists all sources of the sponsor's "contributions" over $100 within the preceding 12 months as well as the "underlying funding source[s]" of any non-individual donor over $100.[6]

Unfortunately, the bill fails to adequately define both of the key terms used in this disclaimer requirement, thus rendering it unconstitutionally vague.

*First*, the bill does not define the term "aggregate transfer" or even "transfer." Presumably, these terms differ from "contribution" – the term used on Line 164 of the substitute bill. More clarity is needed, as different phrases in the same statute are presumed to have different meanings.[7]

Indeed, when most people make a donation or a dues payment to an organization, neither they nor the recipient organization (nor any layperson) would say that they have made a "transfer" or an "aggregate transfer." Insofar as H.S. 1 for H.B. 216 would require "third-party advertisements" to identify the sources of the sponsor's five largest "aggregate transfers" on the face of the ad, it is unclear who or what would even need to be identified.

*Second*, with respect to the bill's requirement for ad sponsors to direct viewers and listeners to a website identifying the sponsor's sources of "contributions," pre-existing Delaware law defines the term "contribution" to mean anything of value "to or for the benefit of any candidate or <u>political committee</u> involved in an election."[8] Under pre-existing Delaware law, a "political committee" is any entity that "accepts contributions from or makes expenditures to any candidate, candidate committee or political party in an aggregate amount in excess of $500 during an election period."[9] H.S. 1 for H.B. 216 would not change how the term "political committee" is defined in this respect, while requiring ads sponsored by persons and entities <u>other than political committees</u> to identify the sources of their "contributions."[10]

If an ad sponsor is <u>not</u> a "political committee" and does not accept any funds "for the benefit of any candidate," it technically does not accept any "contributions." Again, it is unclear who or what information ad sponsors would have to identify on an associated website.

## II. H.S. 1 for H.B. 216 disregards U.S. Supreme Court precedent requiring narrow tailoring for donor exposure mandates.

In addition to H.S. 1 for H.B. 216's vague terminology, and assuming the bill generally would require nonprofits to identify donors in some fashion on ad disclaimers, its disclosure requirements must satisfy the "exacting scrutiny" standard of judicial review, meaning it must be "narrowly tailored to the government's asserted interest" in disclosure.[11] As the U.S. Supreme Court has explained, requiring organizations to identify their donors – especially in such a public and prominent manner – "can seriously infringe on privacy of association and belief guaranteed by the

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[5] For advertising formats that are incapable of literally providing a hyperlink, the bill presumably purports to require advertisers to provide a website address.
[6] H.S. 1 for H.B. 216 § 4 (to be codified at 15 Del. Code § 8021(c)(4), (5)).
[7] *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)) ("where Congress includes particular language in one section of a statute but omits it in another . . ., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion").
[8] 15 Del. Code § 8002(8) (emphasis added).
[9] *Id.* § 8002(19).
[10] H.S. 1 for H.B. 216 § 4 (to be codified at 15 Del. Code § 8021(c)(5)).
[11] *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2383 (2021).

First Amendment" and "will deter some individuals who otherwise might contribute. In some instances, disclosure may even expose contributors to harassment or retaliation. These are not insignificant burdens on individual rights. . . ."[12]

While H.S. 1 for H.B. 216 does not assert what public interest it seeks to vindicate by requiring political (and issue) ads to identify a sponsor's donors, the Supreme Court has recognized two relevant interests that are served by such requirements:

(1) "provid[ing] the electorate with information as to where political campaign money comes from," thus "alert[ing] the voter to the interests to which a candidate is most likely to be responsive"; and

(2) "deter[ring] actual corruption and avoid[ing] the appearance of corruption by exposing large contributions and expenditures to the light of publicity."[13]

H.S. 1 for H.B. 216 is not narrowly tailored to either of these interests.

### A. The bill would require state-mandated and indiscriminate exposure of the personal information of non-political nonprofit donors while positioning Delaware as an outlier among outliers in comparison to other states.

*First*, H.S. 1 for H.B. 216 is not solely focused on exposing the sources of "political campaign money." The bill appears to require organizations to very publicly associate their donors with political advertising, regardless of whether those donors gave for any political purpose. This association is even more attenuated when sponsors have to identify the "underlying funding sources" of their own donors – in other words, donors who did not give to the sponsoring organization, but rather to some other organization that then contributed to the sponsoring organization. This is in striking contrast to how almost all other states with similar disclaimer requirements address this issue, as illustrated by the chart below.

Only seven other states require political advertising disclaimers to identify any donors, making Delaware an outlier among states if H.S. 1 for H.B. 216 is enacted into law. (See chart below.) Moreover, all but one of those states either limit the requirements to ads sponsored by political committees (PACs) and/or allow for the exclusion of donors who give for non-political purposes. Since PACs are typically defined by law as entities that focus on political activity, these other states' disclaimer laws attempt to more closely align the donor identification requirements to the permissible interest in exposing the sources of "political campaign money."

Concerningly, H.S. 1 for H.B 216 would apply indiscriminately to *all* organizations – regardless of whether they are focused on political activity – and would require the blanket outing of *all* donors (and even a donor's donors) – regardless of whether they gave for a political purpose and even if they expressly prohibit their funds from being used for a political purpose. Both of these aspects would make the Delaware law not only unconstitutionally overbroad, but also an outlier among outliers.

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[12] *Buckley v. Valeo*, 424 U.S. 1, 64, 68 (1976).
[13] *Id.* at 66-67 (cleaned up).

| State Laws Requiring Identification of Donors in Political Advertising[14] | | | |
|---|---|---|---|
| **State** | **Donor Identification on Disclaimers** | **$ Threshold for Donor Identification** | **Exempt Donors** |
| California | Only PAC-sponsored ads must identify top 3 donors to sponsoring entity.[15] | Donors who gave $50,000 or more during preceding 12 months.[16] | Donors who earmark their funds for other purposes are not required to be identified.[17] |
| Hawaii | Only PAC-sponsored ads must identify top 3 donors to sponsoring entity.[18] | Donors who gave $10,000 or more during preceding 12 months.[19] | Donors who did not give "for the purpose of funding the advertisement" are not required to be identified.[20] |
| Vermont | Only PAC-sponsored and political party-sponsored ads must identify donors.[21] | Donors who gave > 25% of sponsor's total donation revenues *and* > $2,000 during the 2-year election cycle.[22] | |
| Alaska | Regulated "communications" must identify top 3 contributors to sponsoring entity during preceding 12 months.[23] | | Donors who do not give specifically "for the purpose of influencing the outcome of an election" are not required to be identified.[24] |
| Rhode Island | IEs and ECs must identify top 5 contributors to sponsoring entity during preceding 12 months.[25] | Donors who gave $1,000 or more during the election cycle.[26] | Donors who earmark their funds for other purposes are not required to be included.<br><br>Sponsors that use a segregated account for IEs and ECs are not required to identify donors who give to main/other account.[27] |
| Washington State | PAC-sponsored ads must identify top 5 contributors.<br><br>IEs and ECs must identify top 5 contributors to sponsoring entity.[28] | Donors who gave $1,000 or more during preceding 12 months.[29] | Donors who earmark their funds for other purposes are not required to be included.[30] |
| South Dakota | IEs must identify top 5 contributors to sponsoring entity during preceding 12 months.[31] | | |
| Delaware<br><br>*as Proposed by H.S. 1 for H.B. 216* | IEs and ECs must identify top 5 sources of "aggregate transfers" to sponsoring entity during preceding 12 months and provide link to website identifying all sources of "contributions" (and their "underlying funding sources") during preceding 12 months. | None for top 5 "aggregate transfers."<br><br>> $100 for donors to be listed on website and > $100 for their "underlying funding sources." | No exemptions for donors. |

[14] The chart is organized and color-coded in decreasing order of intrusiveness on donor privacy.
[15] Cal. Gov't Code §§ 84503(a), 84501(c)(1).
[16] *Id.*; *id.* § 84501(b).
[17] *Id.* § 84501(c)(4).
[18] Haw. Rev. Stat. § 11-393(a).
[19] *Id.* § 11-393(e).
[20] *Id.* § 11-393(a).
[21] 17 Vt. Stat. § 2972(c).
[22] *Id.*
[23] Alaska Stat. § 15.13.090(a)(2)(C).
[24] *Id.* § 15.13.040(e)(5); Alaska Pub. Offices Comm'n, Adv. Op. No. 10-36-CD (Oct. 21, 2010).
[25] R.I. Stat. § 17-25.3-3(a).
[26] *Id.* § 17-25.3-1(h).
[27] *Id.* § 17-25.3-1(i).
[28] Wash. Stat. § 29B.30.050.
[29] *Id.* §§ 29B.30.100, 29B.10.310(1)(d).
[30] *Id.* § 29B.30.100(3).
[31] S.D. Code § 12-27-16(1)(c).

### B. The bill's sweeping disclosure mandate captures grassroots activity and small-dollar donors, harming nonprofits and membership organizations.

*Second*, H.S. 1 for H.B. 216 improperly captures low-dollar grassroots activity and small-dollar donors. The disclaimer requirement applies to ads that cost as little as $500 and sets no minimum threshold at which donors must be identified on the face of an ad. An ad-hoc group of five neighbors, each of whom kicks in $100 to purchase a Facebook ad to share their views on a local school board race, would have to identify all five of those donors on the ad's disclaimer. These are not the types of "large contributions and expenditures" that pose a threat of corruption to the political system and that the Supreme Court stated was a permissible basis for regulation.

The $100 threshold at which donors must be identified on a website that is linked to or referenced in the ad disclaimer suffers from the same defect. For example, a labor union that sponsors a $1,000 newspaper ad touting their endorsement in a state legislative race would have to direct readers to a website that identifies all of their members who have paid more than $100 in dues over the last 12 months. Again, this outcome has no relation to the "large [political] contributions and expenditures" that the Supreme Court upheld as a legitimate basis for disclosure requirements.

Once more, H.S. 1 for H.B. 216's outlier status is illustrated in the chart above. Almost all other states with these types of disclaimer requirements set a much higher threshold for the identification of donors, beginning at $1,000 and going all the way up to $50,000.[32]

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At a time when political polarization and hostility remain elevated across the political spectrum, H.S. 1 for H.B. 216 risks exacerbating those dynamics rather than mitigating them. The bill would encourage *ad hominem* attacks by requiring political messages to be associated with an organization's donors, rather than focusing attention on the merits of the message itself. Moreover, such associations would – more often than not – be false, since H.S. 1 for H.B. 216 is indiscriminate in its sweep and does not ensure that only donors who give for political purposes are identified. The bill applies to grassroots activity that costs as little as $500, sets no threshold at which donors must be named on an ad disclaimer, and requires the forced public identification of every donor who gives over $100 to an organization. None of these mandates justify the severe intrusion on donor privacy that the Supreme Court has said is permissible only for exposing the sources of political funding, specifically large contributions and expenditures.

**For these reasons, People United for Privacy respectfully urges the House Elections & Government Affairs Committee to table or take no action on House Substitute 1 for H.B. 216.**

Sincerely,

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People United for Privacy

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[32] While Alaska does not have a dollar threshold, it exempts donors who do not give for a political purpose – unlike H.S. 1 for H.B. 216's broad and indiscriminate sweep.