



March 20, 2019

The Honorable Phil Bryant
Governor of Mississippi
P.O. Box 139
Jackson, MS 39205

Re: Opposition to HB 1205

Dear Governor Bryant,

The Campaign Legal Center (“CLC”) respectfully urges you to veto HB 1205. If it becomes law, HB 1205 will severely undermine governmental transparency and integrity in Mississippi, an outcome directly contrary to the public’s overarching desire for more disclosure and accountability in the political process.¹

CLC is a nonpartisan, nonprofit organization that works to implement and defend effective campaign finance, lobbying, and ethics laws. Since the organization’s founding in 2002, CLC has participated in every major U.S. Supreme Court campaign finance case and in numerous other federal and state court campaign finance cases. In addition, CLC has provided guidance on campaign finance legislation and ballot initiatives in states and localities around the country. Our work promotes every voter’s right to participate in the democratic process and to know the true sources of money spent to influence elections, as well as the public’s right to transparent and ethical government.

HB 1205 is certain to undermine transparency and accountability in Mississippi government. By broadly restricting the ability of state and local

¹ For example, a recent poll found that over 85% of Americans believe political advertising on TV and online should identify who paid for the ad. *Americans report a bipartisan desire for transparent political financing laws*, IPSOS (Feb. 18, 2019), <https://www.ipsos.com/en-us/news-polls/americans-report-a-bipartisan-desire-for-transparent-political-financing-laws>.

agencies to require section 501(c) nonprofit organizations to disclose information about their members, donors, and supporters—including when the disclosure filings would not be made available to the public at large—the bill mandates secrecy for 29 different types of nonprofit organizations.² This mandatory concealment of nonprofits’ information is not limited to charities and religious organizations established under section 501(c)(3) of the Internal Revenue Code, but extends to section 501(c)(4) “social welfare” organizations, section 501(c)(5) labor unions, and section 501(c)(6) trade associations, all of which engage in extensive amounts of political campaigning and lobbying activity. Transparency regarding the financing of these nonprofits’ activities is crucial to a functioning democracy.

Indeed, even when the United States Supreme Court opened the door to unlimited corporate spending on federal elections in its 2010 *Citizens United* decision, a key aspect of that decision was the Justices’ nearly unanimous agreement that such spending should be publicly disclosed, because “providing the electorate with information” about the sources of election-related spending helps citizens “make informed choices in the political marketplace.”³ Justice Kennedy thus declared that the *Citizens United* decision would establish a new federal regime “that pairs corporate campaign spending with effective disclosure.”⁴ In affirming the First Amendment values underlying public disclosure of electoral spending, the Supreme Court recognized the public’s right to receive information regarding “those who for hire attempt to influence legislation or who collect or spend funds for that purpose.”⁵ Even when information regarding nonprofit activities is not made available to the public at large, disclosure requirements allow law enforcement authorities to identify and prevent fraud and self-dealing among tax-exempt organizations, as courts have recognized.⁶

In the years since *Citizens United* was decided, courts around the country have upheld federal and state disclosure laws in recognition that political

² I.R.S. Publication 557 (revised Jan. 2018), <https://www.irs.gov/pub/irs-pdf/p557.pdf>.

³ *Citizens United v. FEC*, 558 U.S. 310, 367 (2010).

⁴ *Id.* at 370.

⁵ *Id.* at 369 (quoting *United States v. Harriss*, 347 U.S. 612, 625 (1954)).

⁶ See, e.g., *Citizens United v. Schneiderman*, 882 F.3d 374, 382 (2d Cir. 2018) (upholding New York nonprofit disclosure law, which advanced the state’s important interest in “ensuring organizations that receive special tax treatment do not abuse that privilege” and in preventing such organizations “from using donations for purposes other than those they represent to their donors and the public”); *Americans for Prosperity v. Becerra*, 903 F.3d 1000, 1009 (9th Cir. 2018) (upholding California disclosure law, which enabled the state to “determine whether a charity is actually engaged in a charitable purpose, or is instead violating California law by engaging in self-dealing, improper loans, or other unfair business practices”).

transparency *advances* First Amendment principles by facilitating citizens' informed participation in the electoral process. At the same time, undisclosed election spending, largely through the use of section 501(c) organizations, has been on the rise.⁷ While some states have been working to close loopholes that have allowed for the increasing role of dark money in election campaigns, HB 1205 would codify those loopholes as enforceable law in Mississippi.

According to one Mississippi legislator, HB 1205 ostensibly is intended to “prevent corruption and intimidation.”⁸ But the pursuit of these objectives through a far-reaching ban on nonprofit disclosure infringes the “First Amendment interests of individual citizens seeking to make informed choice in the political marketplace.”⁹ It also ignores that statutory privacy protection is unnecessary, because U.S. courts have long recognized that exemptions from disclosure rules are available where there is an *actual*, demonstrated probability that an organization's members will face threats, harassment, or reprisals as a result of their public identification.¹⁰

CLC recognizes that section 5 of HB 1205 provides that the bill's mandates “shall not affect” Mississippi's campaign finance laws. It may be that section 5 was meant to exempt existing campaign finance reporting requirements from the transparency ban otherwise mandated in HB 1205.¹¹ But section 5's vague language conflicts with the explicit secrecy mandated in section 2(1) of the bill, which applies “[n]otwithstanding any law to the contrary” and does not exclude or otherwise reference the campaign finance exception in section 5. At most, section 5 introduces ambiguity and confusion about the scope of

⁷ See AUSTIN GRAHAM, CAMPAIGN LEGAL CENTER, TRANSPARENCY AND THE FIRST AMENDMENT: HOW DISCLOSURE LAWS ADVANCE THE CONSTITUTION'S PROMISE OF SELF-GOVERNMENT 8 (2018), https://campaignlegal.org/sites/default/files/2018-11/Transparency%20and%20the%20First%20Amendment_0.pdf.

⁸ Steve Wilson, *Donor Privacy Legislation Passes Senate*, MISS. CENTER FOR PUBLIC POLICY (Mar. 13, 2019), <https://www.msppolicy.org/donor-privacy-legislation-passes-senate/>.

⁹ *McConnell v. FEC*, 540 U.S. 93, 197 (2003).

¹⁰ See, e.g., *Citizens United v. FEC*, 558 U.S. at 367 (recognizing that as-applied challenges to disclosure rules are available where a group can show a “reasonable probability” that disclosure of its contributors' names “will subject them to threats, harassment, ore reprisals from either Government officials or private parties”) (quoting *McConnell*, 540 U.S. at 231; *Buckley v. Valeo*, 424 U.S. 1, 74 (1976) (per curiam)).

¹¹ For example, under the Mississippi Code, a 501(c) organization that makes an “independent expenditure” in excess of \$200 must file a public report of the expenditure that includes, among other information, the identification of each person who made a contribution of over \$200 “for the purpose of furthering an independent expenditure.” Miss. Code Ann. § 23-15-809.

the nonprofit disclosure ban, underscoring the danger of enacting such a broad piece of legislation.

In addition to codifying a dark money loophole for nonprofit spending in elections, HB 1205 will make it easier for Mississippi officials to hide conflicts of interest, including when lawmakers solicit money to affiliated nonprofits from persons or entities seeking government action. Mississippi has been recognized as lagging behind much of the country in terms of governmental integrity, and one academic study found that Mississippi was the most corrupt state in the U.S., as measured by the number of state officials convicted of federal corruption charges between 1976 and 2008.¹² Similarly, in 2015, the Center for Public Integrity gave failing grades to Mississippi's laws governing "Political Financing" and "Public Access to Information."¹³ The lack of disclosure under current law already makes it easy for conflicts of interests to go undetected in Mississippi, and HB 1205 will make it easier, still. Additionally, the bill bans disclosure of donations made by current or prospective government contractors, which could facilitate an increase in pay-to-play politics within state government by shielding improper arrangements from public scrutiny.¹⁴

In late December 2018, former Michigan Governor Rick Snyder, a two-term Republican presiding over his final legislative session as state executive, vetoed a virtually identical bill, SB 1176,¹⁵ after it was hastily passed by Michigan's legislature.¹⁶ In his veto statement, Governor Snyder characterized SB 176 as "a solution in search of a problem," explaining the bill could, in practice, actually "impair the executive branch's ability to

¹² Chris Matthews, *The 10 Most Corrupt States in the U.S.*, FORTUNE (June 10, 2014), <http://fortune.com/2014/06/10/most-corrupt-states-in-america/>.

¹³ *Mississippi Gets D- Grade in State Integrity Investigation*, CENTER FOR PUBLIC INTEGRITY (Nov. 12, 2015), <https://publicintegrity.org/accountability/mississippi-gets-d-grade-in-2015-state-integrity-investigation/>.

¹⁴ Mississippi is no stranger to pay-to-play scandals. In 2015, the former commissioner of the Mississippi Department of Corrections, Christopher Epps, pled guilty to federal corruption charges after receiving over \$1 million in bribes and kickbacks in exchange for steering \$800 million in state contracts to various private prison companies. Jimmie E. Gates, *Chris Epps sentenced to almost 20 years*, CLARION-LEDGER (May 24, 2017), <https://www.clarionledger.com/story/news/2017/05/24/chris-epps-sentencing/341916001/>.

¹⁵ Personal Privacy Protection Act, S. 1176, 99th Leg., Reg. Sess. (Mich. 2018), <http://www.legislature.mi.gov/documents/2017-2018/billenrolled/Senate/pdf/2018-SNB-1176.pdf>.

¹⁶ Jim Malewitz, Opinion, *Snyder vetoes bills criticized as 'power grabs'*, RECORD EAGLE (Jan. 4, 2019), https://www.record-eagle.com/opinion/opinion-snyder-vetoes-bills-criticized-as-power-grabs/article_f6335061-4889-5c5f-ae09-fd8edae6ceb6.html.

effectively protect the donors of organizations.”¹⁷ Moreover, Governor Snyder noted longstanding U.S. Supreme Court precedent, *NAACP v. Alabama*, already provides protection to any group facing a genuine prospect of harm stemming from disclosure.¹⁸ In vetoing SB 1176, Governor Snyder correctly recognized that codifying a sweeping anti-transparency mandate into law was both unnecessary and potentially harmful to the interests the bill purported to protect.

The people of Mississippi deserve more transparency and accountability in state government. HB 1205 will undermine both interests and is contrary to core principles of our democracy. We respectfully urge you to veto the bill.

Respectfully submitted,

/s/

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/s/

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¹⁷ Veto Statement for SB 1176, Gov. Rick Snyder (Dec. 28, 2018), S. Journal, 99th Leg., Reg. Sess., at 2637 (Mich. 2018), [http://www.legislature.mi.gov/\(S\(yvybvzsl35tcqf0nvozbp4h2\)\)/documents/2017-2018/Journal/Senate/pdf/2018-SJ-12-31-085.pdf](http://www.legislature.mi.gov/(S(yvybvzsl35tcqf0nvozbp4h2))/documents/2017-2018/Journal/Senate/pdf/2018-SJ-12-31-085.pdf).

¹⁸ *Id.*