



April 6, 2022

The Honorable Edward Gordon
Chairman
House Committee on Judiciary
General Court of New Hampshire

The Honorable Mark McLean
Vice Chairman
House Committee on Judiciary
General Court of New Hampshire

RE: Opposition to Senate Bill 302

Dear Chairman Gordon, Vice Chairman McLean, and Committee on Judiciary,

The Campaign Legal Center (CLC) respectfully urges you to oppose S.B. 302. If the bill becomes law, S.B. 302 will undermine governmental transparency and accountability in New Hampshire, an outcome directly contrary to the public's overwhelming support for more transparency and accountability in the political process.¹ Moreover, the bill is an unnecessary tool to protect donors because the United States Supreme Court has long recognized existing protections for donors that actually face threats, harassment, or reprisals from public disclosure. We respectfully urge you to oppose S.B. 302.

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Since the organization's

¹ For example, polling shows that more than 4 out of 5 voters, across partisan and demographic lines, support publicly disclosing contributions to organizations involved in elections. *New Bipartisan Polls: Voters Want Stronger Enforcement of Campaign Finance Laws, Support Increased Transparency in Elections*, CAMPAIGN LEGAL CTR. (Nov. 18, 2019) <https://campaignlegal.org/press-releases/new-bipartisan-polls-voters-want-stronger-enforcement-campaign-finance-laws-support>. Similarly, 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>.

founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, as well as in numerous other federal and state court cases. Our work promotes every citizen's right to participate in the democratic process.

Senate Bill 302 would undermine transparency and accountability in New Hampshire government. By broadly restricting the ability of state and local agencies to require section 501(c) nonprofit organizations to disclose information about their members, donors, and supporters 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, many of which engage in extensive amounts of political campaigning and lobbying activity. Transparency regarding the financing of these nonprofits' activities to influence our political process is crucial to a functioning democracy.

Even when the U.S. Supreme Court opened the door to unlimited corporate spending in 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 transparent, 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

In the years since *Citizens United* was decided, courts around the country have upheld federal and state disclosure laws in recognition that political transparency *advances* First Amendment principles by facilitating citizens' informed participation in the electoral process. As the U.S. Court of Appeals for the First Circuit recently explained in upholding Rhode Island's comprehensive campaign finance disclosure statute, "a well-informed electorate is as vital to the survival of a democracy as air is to the survival of human life."⁶ At the same time, the use of nonprofit

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 *Gaspee Project v. Mederos*, 13 F.4th 79, 95 (1st Cir. 2021).

organizations to conceal the true sources of election spending 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, S.B. 302 would codify those loopholes as enforceable law in New Hampshire.

According to one New Hampshire legislator, S.B. 302 is ostensibly intended to “allow people to donate anonymously.”⁸ However, pursuit of this objective through a far-reaching ban on nonprofit disclosure ignores that statutory privacy protection is unnecessary: 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.⁹ And while unnecessary to protect donor privacy, the bill impedes the “First Amendment interests of individual citizens seeking to make informed choice in the political marketplace.”¹⁰

Some supporters of S.B. 302 referenced *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373 (2021), in explaining their support for the bill.¹¹ But that case concerned a broadly applicable tax-reporting rule in California and is unrelated to S.B. 302’s far-reaching prohibitions. In that case, the U.S. Supreme Court struck down a California law that required tax-exempt charities operating in the state to confidentially report a list of each charity’s largest donors, known as a “Schedule B,” to the California Attorney General.¹² The Court noted that the law applied to more than 60,000 charities, but that the state Attorney General rarely used the Schedule B information.¹³ The Court determined that the law swept too broadly and was not sufficiently tailored to address the government’s anti-fraud interests, and thus concluded that it violated the charities’ right to free association under the First Amendment.¹⁴ The case clarified the legal standard by which courts

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/document/transparency-and-first-amendment-how-disclosure-laws-advance-constitutions-promise-self>.

⁸ Relative to Establishing a Personal Privacy Protection Act, S.B. 302 (N.H. 2022), S. Hearing Rep. at 1 (Remarks of Senator Gannon) (Jan. 11, 2022) https://www.gencourt.state.nh.us/bill_Status/pdf.aspx?id=6617&q=HearingRpt.

⁹ 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, or 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)).

¹⁰ *McConnell v. FEC*, 540 U.S. 93, 197 (2003).

¹¹ Relative to Establishing a Personal Privacy Protection Act, S.B. 302 (N.H. 2022) S. Hearing Rep. at 2-3 (Remarks of Greg Moore and Elizabeth McGuigan) (Jan. 11, 2022) https://www.gencourt.state.nh.us/bill_Status/pdf.aspx?id=6617&q=HearingRpt.

¹² *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2385 (2021).

¹³ *Id.* at 2386.

¹⁴ *Id.* at 2385.

evaluate donor disclosure laws generally, but it did not question the important public interest served by requiring transparency for certain nonprofit groups' groups' political spending, an interest that would be undermined by the sweeping scope of S.B. 302.

Although S.B. 302 includes a carve-out for campaign finance reports and disclosures required by N.H. Rev. Stat. § 664:4, this narrow exception does not prevent the bill from further entrenching dark money practices that already affect state and local elections.¹⁵ Those seeking to influence our elections in secret often use shell games to hide the true sources of election spending, passing money from one organization to the next before it gets to the ultimate spender, and 501(c) groups are the “primary source” of this dark money spending.¹⁶ Existing disclosure requirements do not extend to sources that are multiple transactions removed from the entity that directly pays for an election ad. In other words, existing law makes it easy to influence New Hampshire elections in secret by funneling money intended to influence an election through one or more intermediary entities. Senate Bill 302 precludes any action to address these loopholes by prohibiting further disclosure of donor information from groups that hide the true sources of their political spending. That is to say, S.B. 302 will make dark money darker.

In addition to codifying a dark money loophole for nonprofit spending in elections, S.B. 302 will make it easier for New Hampshire officials to hide conflicts of interest. Despite an exemption from the bill's secrecy mandates for lobbying disclosures, S.B. 302 would make it more difficult to determine when lawmakers solicit money to affiliated nonprofits from a person or entities seeking government action. Senate Bill 302 includes broad prohibitions on disclosing nonprofit donors, including against government employees who may see donor information as part of their job, with potential criminal penalties for violations. These provisions would not only hinder the ability to identify possible wrongdoing involving nonprofits but would also have a chilling effect on whistleblowers.

In late December 2018, former Michigan Governor Rick Snyder, a two-term Republican, vetoed a similar bill, S.B. 1176,¹⁷ after it was hastily passed by

¹⁵ See CHISUN LEE, KATHERINE VALDE, BENJAMIN T. BRICKNER, & DOUGLAS KEITH, BRENNAN CTR. FOR JUSTICE, *SECRET SPENDING IN THE STATES* (2016), available at <https://www.brennancenter.org/publication/secret-spending-states>. See also JT STEPLETON, *Darkness on the Edge of Town: National Dark Money Targets States*, NAT'L INST. ON MONEY AND POL. (Nov. 2, 2018), <https://www.followthemoney.org/research/blog/darkness-on-the-edgeof-town-national-dark-money-targets-states>.

¹⁶ CTR. FOR RESPONSIVE POLITICS, *Follow the Shadow of Dark Money*, <https://www.opensecrets.org/dark-money/shadow-infographic> (last visited Apr. 5, 2022).

¹⁷ 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>.

Michigan’s legislature.¹⁸ In his veto statement, Governor Snyder characterized S.B. 1176 as “a solution in search of a problem,” explaining the bill could, in practice, actually “impair the executive branch’s ability to effectively protect the donors of organizations.”¹⁹ Moreover, Governor Snyder noted longstanding U.S. Supreme Court precedent already provides protection to any nonprofit group facing a genuine prospect of harm stemming from disclosure.²⁰ In vetoing S.B. 1176, Governor Snyder recognized that codifying a sweeping anti-transparency mandate into law was both unnecessary and potentially harmful to the interests the bill purported to protect.

More recently, North Carolina Governor Roy Cooper vetoed another similar bill, S.B. 636,²¹ recognizing the bill’s broad prohibitions were “unnecessary” and could potentially “limit transparency with political contributions.”²²

The people of New Hampshire deserve more transparency and accountability in state government. Senate Bill 302 will undermine both interests and is contrary to core principles of our democracy. We respectfully urge you to oppose S.B. 302.

Respectfully submitted,

/s/
Aaron McKean
Legal Counsel

/s/
Patrick Llewellyn
Director, State Campaign Finance

Campaign Legal Center
1101 14th St. NW, Suite 400
Washington, DC 20005

¹⁸ Jim Malewitz, Opinion, *Snyder vetoes bill 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.

¹⁹ 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).

²⁰ *Id.*

²¹ An Act to Protect the Privacy of Charitable Donors, S.B. 636, Reg. Sess. (N.C. 2021), <https://ncleg.gov/Sessions/2021/Bills/Senate/PDF/S636v5.pdf>.

²² Press release, North Carolina Office of the Governor, Governor Vetoes Senate Bill 636 (Sept. 3, 2021) <https://governor.nc.gov/news/press-releases/2021/09/03/governor-vetoes-senate-bill-636>.