

REGULAR CALENDAR

April 14, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on Judiciary to which
was referred SB 302-FN,**

**AN ACT establishing the personal privacy protection
act. Having considered the same, report the same with
the following amendment, and the recommendation
that the bill OUGHT TO PASS WITH AMENDMENT.**

Rep. Mark McLean

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	SB 302-FN
Title:	establishing the personal privacy protection act.
Date:	April 14, 2022
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2022-1443h

STATEMENT OF INTENT

This bill prohibits public agencies and bodies from releasing information that identifies donors and volunteers of any 501(c) entity. The committee expressed broad support for the preservation of donor privacy, and the committee amendment addresses transparency concerns by preserving the power of the Attorney General to identify board members and directors in the execution of its normal investigative and auditory functions.

Vote 11-10.

Rep. Mark McLean
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Judiciary

SB 302-FN, establishing the personal privacy protection act. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: REFER FOR INTERIM STUDY.**

Rep. Mark McLean for the **Majority** of Judiciary. This bill prohibits public agencies and bodies from releasing information that identifies donors and volunteers of any 501(c) entity. The committee expressed broad support for the preservation of donor privacy, and the committee amendment addresses transparency concerns by preserving the power of the Attorney General to identify board members and directors in the execution of its normal investigative and auditory functions. **Vote 11-10.**

REGULAR CALENDAR

April 14, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on Judiciary to which
was referred SB 302-FN,**

**AN ACT establishing the personal privacy protection
act. Having considered the same, and being unable to
agree with the Majority, report with the
recommendation that the bill be REFERRED FOR
INTERIM STUDY.**

Rep. Rebecca McBeath

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Judiciary
Bill Number:	SB 302-FN
Title:	establishing the personal privacy protection act.
Date:	April 14, 2022
Consent Calendar:	REGULAR
Recommendation:	REFER FOR INTERIM STUDY

STATEMENT OF INTENT

This bill eliminates the public's long standing right to obtain basic information on the donors and leadership of non-profit and charitable organizations. Adopting this bill breaches the contract for transparency entered into when tax-exempt status was initially granted to non-profit and charitable organizations. This bill was overwhelmingly opposed by those that testified at the public hearing, including the Office of the NH Attorney General, the NH Center for Nonprofits, and Open Democracy. Representatives from two state agencies expressed concerns that this bill may have unintended consequences on statutory responsibilities of auditing and federal certification requirements regarding funds awarded by the state to contractors.

Rep. Rebecca McBeath
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Judiciary

SB 302-FN, establishing the personal privacy protection act. **REFER FOR INTERIM STUDY.**

Rep. Rebecca McBeath for the **Minority** of Judiciary. This bill eliminates the public's long standing right to obtain basic information on the donors and leadership of non-profit and charitable organizations. Adopting this bill breaches the contract for transparency entered into when tax-exempt status was initially granted to non-profit and charitable organizations. This bill was overwhelmingly opposed by those that testified at the public hearing, including the Office of the NH Attorney General, the NH Center for Nonprofits, and Open Democracy. Representatives from two state agencies expressed concerns that this bill may have unintended consequences on statutory responsibilities of auditing and federal certification requirements regarding funds awarded by the state to contractors.

Original: House Clerk

Cc: Committee Bill File

Amendment to SB 302-FN

1 Amend the introductory paragraph of RSA 91-C:1, II as inserted by section 1 of the bill by replacing
2 it with the following:

3

4 II. Notwithstanding any law and subject to RSA 91-C:2, a public agency or public body shall
5 not:

6

7 Amend RSA 91-C:2 as inserted by section 1 of the bill by inserting after paragraph V the following
8 new paragraph:

9

10 VI. A public body or state agency with oversight function over public funds or a government
11 grant program from requesting documentation sufficient to ensure public funds are expended in
12 accordance with state or federal contract monitoring and audit requirements, given that the
13 information accessed is limited to information related to public funds or government grant program
14 funds.

15

16 Amend RSA 91-C:3, II as inserted by section 1 of the bill by inserting after subparagraph (c) the
17 following new subparagraph:

18

19 (d) A request by the attorney general for the identity of any director, officer,
20 incorporator, or registered agent of a nonprofit organization, provided that information that directly
21 identifies an individual as a donor of financial support to a nonprofit organization shall not be
22 disclosed.

23

24 Amend RSA 91-C:3 as inserted by section 1 of the bill by inserting after paragraph II the following
25 new paragraph:

26

27 III. Nothing in this chapter shall apply to a request from the lottery commission pursuant to
28 their authority under RSA 287-D or RSA 287-E for the purposes of licensing or regulation of
29 charitable gaming activities.

30

31 Amend RSA 91-C:4 as inserted by section 1 of the bill by replacing it with the following:

32

Amendment to SB 302-FN
- Page 2 -

1 91-C:4 Penalties.

2 I. A person alleging a violation of this chapter may bring a civil action for appropriate
3 injunctive relief, damages, or both. Damages awarded under this section may include one of the
4 following, as appropriate:

5 (a) A sum of money not less than \$2,500 to compensate for injury or loss caused by each
6 violation of this chapter; or

7 (b) For an intentional violation of this chapter, a sum of money not to exceed \$7,500.

8 II. A court, in rendering a judgment in the action brought under this chapter, may award all
9 or a portion of the costs of litigation, including reasonable attorneys and witness fees, to the
10 complainant in the action if the court determines that the award is appropriate.

OFFICE OF THE HOUSE CLERK



9/28/2021 10:41:09 AM
 Roll Call Committee Registers
 Report

2021 SESSION

Judiciary

Bill #: SB302 Motion: OTPA AM #: 14434 Exec Session Date: 4-14-2022

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Gordon, Edward M. Chairman	✓		
McLean, Mark Vice Chairman	✓		
Sylvia, Michael J.	✓		
Wuelper, Kurt F. Clerk	✓		
Alexander, Joe H.	✓		
Greene, Bob J. <i>Laseelles, Rich</i>	✓		
Notter, Jeanine M.	✓		
Merner, Troy E.	✓		
Kelley, Diane E.	✓		
Trottier, Douglas R.	✓		
Andrus, Louise	✓		
Smith, Marjorie K.		✓	
Berch, Paul S. <i>Woods, Gary</i>		✓	
Horrigan, Timothy O.		✓	
DiLorenzo, Charlotte I.		✓	
Chase, Wendy		✓	
Kenney, Cam E. <i>Meuse, Gary</i>		✓	
Langley, Diane M.		✓	
McBeath, Rebecca Susan		✓	
Paige, Mark		✓	
Simpson, Alexis		✓	
<i>Kurt Wuelper</i>	11	10	

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON SB 302-FN

BILL TITLE: establishing the personal privacy protection act.

DATE: 4/07/2022

LOB ROOM: 206-208

Time Public Hearing Called to Order: 1:00 PM

Time Adjourned: 2:00 PM

Committee Members: Reps. Gordon, McLean, Wuelper, Sylvia, ~~Alexander Jr.~~, Notter, ~~Merner, Greene, D. Kelley~~, Andrus, Trotter, M. Smith, ~~Bereh~~, Horrigan, DiLorenzo, Chase, ~~Kenney~~, Langley, McBeath, Paige and Simpson

Bill Sponsors: Sen. Birdsell, Dist 19; Sen. Gannon, Dist 23; Sen. Daniels, Dist 11; Sen. Ward, Dist 8; Sen. French, Dist 7; Sen. Giuda, Dist 2; Rep. Lynn, Rock. 7; Rep. DiLorenzo, Rock. 17; Rep. McLean, Hills. 440

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Sen Birdsell Sponsor Support** The objective of this bill is basically to ensure donors names are kept private. SCOTUS just ruled in an Americans for Prosperity case. The bill does not deal with political organizations. It is supported from organizations as far apart as Americans for Prosperity and the NH Coalition Against Domestic violence along with a longer list.

Q Chase: can you send us the list?

Ans: Yes

Diane Quinlan Dept of Justice Opposed We see on purpose of the bill is to encourage charitable giving. We think it will have the opposite effect. This bill would prohibit us from doing our oversight as required. It would prohibit us from asking for the names of board members which allows us to uncover conflicts of interest. In a recent case, we subpoenaed records from a charity and they refused to comply. We eventually filed a lawsuit against the charity, naming the board members in a public release which ended fundraising by that charity. Occasionally, we do need the names of donors. We believe SB 302 will undermine the public's confidence in non-profits and should be defeated.

Q Horrigan: how does the state supervise oversee the Education freedom Account board?

Ans: We don't.

***Elizabeth McGuigan Philanthropy Roundtable** We're a network of donors. Throughout history donors names have been kept secret. Today, donors may fear retaliation against them for supporting controversial issues making that confidentiality even more important. Beyond that fear, anonymous giving is encouraged by various religions, including Christianity, Islam, and Hinduism are examples. Anonymous donations are important to many non-profits. We don't know why these donors want anonymity, but we do know they are a significant source of support for these charities. NH must proactively protect donors and I encourage you to pass this bill.

Q Chase: You are focused on donors. If that word were removed, would you still support the bill?

Ans: Yes

Olivia Zink Open Democracy Action Opposed This is unnecessary legislation. We support transparency and this legislation would reduce transparency in our political system and let more money be given in the dark. On page 2 Line 5, the exemption refers to RSA 664, but the AG's ability to enforce in RSA 665. It is nearly impossible to follow the political money in NH. We think it is important that voters can know who is spending what for whom in our political process.

Q Smith: I thought the prime sponsor said this does not apply to politics. Can you explain?

Ans: It only exempts RSA 664 but the AG's authority is in another section.

Q Horrigan: Would this bill deal with people who come here and advocate without calling themselves lobbyists?

Ans: Not really.

Q Wuelper: RSA 664?

Ans: Yes

Nathan White/DHHS Info only Our dept has hundreds of contracts and many contain federal laws with many oversight requirements. It would be challenging for us to oversee those contracts if we had to ask the contractor to whom they subcontract which we would have to under this bill. The bill also requires we approve any subcontract which is another real problem.

Greg Moore Americans for Prosperity Support I serve on several non-profits in NH. Donor protections exist since the 1950s when SCOTUS protected the donors to the NAACP. When California demanded our donor records, SCOTUS again protected our donors. This bill would ensure no NH non-profit would ever go through what we did. RSA 664 if you are engaged in electioneering you have to file as a political committee and that doesn't change with this bill. Thinking about the smaller non-profits, they don't have the resources to defend themselves. So, they might just comply with a request and give away their constitutional rights.

Q McBeath: Are you sure the NAACP wanted to protect the lives of their donors?

Ans: That may or may not be, but there is no doubt that disclosing donors' names would have a chilling effect.

Q DiLorenzo: What is the list you passed around?

Ans: It is a list of organizations filing Amicus briefs in support of AFP in the SCOTUS case ended last year.

Q Simpson: Was the California case about donors or board members?

Ans: It was just for donors.

Q how do you balance the desire from donors to know how their money is being spent?

Ans: There are scam non-profits, but the risk to all the good non-profits outweighs the opportunity to catch the rare scammer.

Q Smith: If the state has no way to verify how the money is spent, wouldn't the state be responsible for scams as in FRM?

Ans: There are other organizations that review non-profit performance like GuideStar and others.

Elissa Margolin NH Center for Non-Profits Opposed We oppose this bill because of unintended consequences. This proposal is in search of a problem that doesn't exist in NH. She reads her written testimony. Our state does not ask for donor information and never has. What about the administrative burden created by this bill? It wasn't requested by NH non-profits.

Q Simpson: What do you think about the penalty sections?

Ans: I'm not prepared to answer, but any kind of administrative burden could pose a problem for small non-profits. We'd be tying the hands of a working system.

Q McBeath: Have you seen 'Donor fatigue' among your 700 members?

Ans: Last year was the biggest giving year so far.

Jonathan Forier NH Lottery There are some parts of this bill that conflict with NH law. We do ask who is involved in charitable gaming. We encourage you to include a [list of RSAs].

Q Wuelper: Can we have that list?

Ans: I'll send it to you.

Q Smith: Why are you not opposed to the bill?

Ans: we just want to educate on the impact to our agency.

Q Horrigan: Would this bill apply to a trust set up to handle Lottery winnings?

Ans: Probably not since they would not be non-profits.

Q Chase: Did you bring these ideas to the Senate?

Ans: No, we missed that opportunity.

Q Mc Beath: I want to know about the tax relief. Can you help me with that?

Ans Quinlan: non-profits serve a public purpose and that's why they get various forms of tax relief.



Rep Kurt Wuelper. Clerk

House Remote Testify

Judiciary Committee Testify List for Bill SB302 on 2022-04-07

Support: 7 Oppose: 12 Neutral: 0 Total to Testify: 0

[Export to Excel](#)

Name	City, State Email Address	Title	Representing	Position	Testifying	Non-Germans	Signed Up
Ward, Senator	Stoddard, NH ruth.ward@leg.state.nh.us	An Elected Official	Senate District 8	Support	No	No	3/30/2022 12:42 PM
Birdsell, Senator Regina	Hampstead, NH regina.birdsell@leg.state.nh.us	An Elected Official	Senate District 19	Support	No	No	3/30/2022 1:15 PM
French, Senator Harold	Canterbury, NH kathryn.cummings@leg.state.nh.us	An Elected Official	Senate District 7	Support	No	No	4/1/2022 1:41 PM
Daniels, Senator Gary	Senate District 11, NH debra.martone@leg.state.nh.us	An Elected Official	Myself	Support	No	No	4/1/2022 3:17 PM
Desmarais, Doreen	Northwood, NH doreend@netzero.net	A Member of the Public	Myself	Oppose	No	No	4/4/2022 4:09 PM
Lightfoot, Jean	Contoocook, NH JnLightfoot@comcast.net	A Member of the Public	Myself	Oppose	No	No	4/5/2022 12:40 PM
Thomson, Simon	Concord, NH sthomson@shechan.com	A Lobbyist	National Federation of Independent Businesses	Support	No	No	4/5/2022 1:07 PM
Emus, Joanne	Hollis, NH jremus0322@aol.com	A Member of the Public	Myself	Oppose	No	No	4/5/2022 2:18 PM
Bundy, Linda	Antrim, NH n_bundy@mcttelecom.com	A Member of the Public	Myself	Oppose	No	No	4/5/2022 2:49 PM
Huberman, Anne	Peterborough, NH Anne.Huberman@gmail.com	A Member of the Public	Myself	Oppose	No	No	4/5/2022 3:16 PM
Podlipny, Ann	Chester, ND apodlipny57@comcast.net	A Member of the Public	Myself	Oppose	No	No	4/5/2022 8:28 PM
McCormick, Kristen	Stoddard, NH kristenk2911@gmail.com	A Member of the Public	Myself	Oppose	No	No	4/6/2022 8:30 AM
Secord, William	Lebanon, NH wrsecord@live.com	A Member of the Public	Myself	Oppose	No	No	4/6/2022 8:34 AM
Lucas, Janet	Campton, NH janluca1953@gmail.com	A Member of the Public	Myself	Oppose	No	No	4/6/2022 10:22 AM
McKean, Aaron	Washington, DC amckean@campaignlegalcenter.org	A Lobbyist	Campaign Legal Center	Oppose	No	No	4/6/2022 7:46 PM
Giuda, Bob	Warren, NH daley.frenette@leg.state.nh.us	An Elected Official	Senate District 2	Support	No	No	4/7/2022 8:50 AM
Andrews, David	Chichester, NH davidandrewsnh@gmail.com	A Member of the Public	Myself	Oppose	No	No	4/7/2022 10:10 AM
Osborne, Jason	Auburn, NH houserepoffice@leg.state.nh.us	An Elected Official	House Majority Office	Support	No	No	4/7/2022 2:13 PM
Perry, Bob	Strafford, NH perry4nh@gmail.com	A Member of the Public	Myself	Oppose	No	No	4/7/2022 9:11 PM

Karen Karwocki

From: Greg Moore <gmoore@afphq.org>
Sent: Tuesday, April 12, 2022 3:10 PM
To: ~House Judiciary Committee
Subject: AFP letter regarding SB 302



April 12, 2022

Honorable Ned Gordon
Chairman
House Judiciary Committee
Legislative Office Building, Room 205
33 North State Street
Concord, NH 03301

RE: SB 302, establishing the personal privacy protection act

Dear Chairman Gordon and Honorable Members of the House Judiciary Committee,

On behalf of thousands of our fellow Granite Staters, Americans for Prosperity-New Hampshire urges you to support SB 302, establishing the personal privacy protection act. The legislation would prevent potentially politically motivated actors at the state agency level from broadcasting nonprofit supporter information, which could result in the intimidation or harassment of individuals due to their support for causes they hold dear.

Across the country, nearly 200 bills have been introduced in state legislatures in the past decade that have tried to force the disclosure of Americans' personal giving history. These unconstitutional proposals violate citizens' rights to freedom of speech and association while putting at risk their privacy and safety. These dangerous policies could allow extremists on both sides of the aisle to obtain the names, home addresses and other personal information of individuals who give to any and all charitable causes.

SB 302 creates a careful balance between the duties and functions of the executive branch and the constitutional amendment overwhelmingly adopted by New Hampshire voters in 2018, which states that *"an individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent."* *It does not change campaign finance laws or reporting requirements or amend the state's statutes regulating lobbyists or lobbying activity while providing state agencies with the ability and flexibility necessary to effectively regulate and oversee nonprofit organizations.*

Granite Staters have a proud history of supporting causes in their communities and the organizations that represent their beliefs. As one of the region's consistently most charitable states, members of the New Hampshire

Legislature should act quickly and accordingly to codify protections at the state level now before federal donor disclosure legislation is signed into law in the future.

We ask for your support proactively to ensure strong protections for citizen privacy for those who choose to give to causes they support without fear that their personal beliefs will be made public or that they or their family will be harassed or intimidated. Please join us and a bipartisan coalition of legislators in supporting SB 302.

Sincerely,

Greg Moore
State Director
Americans for Prosperity-New Hampshire



April 6, 2022

Hon. Edward Gordon, Chair
House Judiciary Committee
Legislative Office Building 206-208
Concord, NH
Via electronic delivery only

Re: SB 302, establishing the personal privacy act

Dear Representative Gordon and Members of House Judiciary:

I am writing provide our concerns on SB 302, which would establish The Personal Privacy Act by creating a new chapter, RSA 91-C.

Testimony in the Senate Judiciary Committee indicated that the legislation was meant to protect the confidentiality of donors of charitable organizations vis-à-vis the state. However, the bill as written applies to all “public bodies” and “public agencies.” These terms are not defined in SB 302, but if the intent is to use the same definition of these terms as in RSA 91-A:1-a, then this legislation would apply to all cities and towns. As a result, we are opposed to the language in new section RSA 91-C:4 establishing criminal and civil penalties, including damages, attorneys’ fees, and imprisonment.

We are also concerned about the potential effect of this legislation on the nonprofit sector. New Hampshire cities and towns rely on the nonprofit sector to provide essential services and supplement governmental services in our communities. Our local governments could be negatively affected by legislation that places an undue burden on our nonprofits.

Finally, if RSA 91-C is enacted, we suggest a cross reference in RSA 91-A:5 so that it is clear these records are exempt from disclosure under the Right-to-Know Law.

Thank you for your consideration.

Sincerely,

Margaret M.L. Byrnes
Executive Director



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>.



SB302
ZINK

April 7, 2022

The Honorable Ned Gordon, Chair
House Judiciary
Legislative Office Building
Concord, NH 03301

TESTIMONY in Opposition of SB 302

Dear Rep. Gordon and Members of Judiciary Committee,

For the record my name is Olivia Zink, Executive Director, Open Democracy Action, a non-partisan, non-profit organization with over 35,000 members whose central mission is to reform our democracy. I live in Franklin NH.

Thank you for the opportunity to testify in opposition to this unnecessary legislation.

Granite Staters across partisan and demographic lines consistently support transparency in the democratic process, in recognition of the critical role that disclosure plays in shining light on the political influence of wealthy special interests and in holding elected officials accountable to the public at large.

This legislation would reduce accountability in the state's political system by making it easier for wealthy special interests who pass their funds through multiple groups before it is spent on election influence to hide their identities. Making Dark Money in NH politics darker.

This moves transparency in the wrong direction. Real transparency about who is spending big money on elections will mean more government accountability, less influence for wealthy special interests and less political corruption.

Page one, line 31 this bill talks about exemptions and page two line 5 discusses Campaign Finance Reform narrowly defined as RSA 664. But the AG responsibilities in enforcement are in 666:8, 7:c-c. Does that mean the AG is no longer exempt? Election Law spans from RSA 652 to RSA 671 plus RSA chapter 39 and 40. We have 368 pages of laws related to elections but we only exempt 30 pages with this law. What about municipal ordinances that cover campaign finance reform in town and city elections? Why are these not exempt?

Page two, line line 3 - the exemption to RSA 15 - Lobbying Laws are exempt from the required disclosures but in NH Lobbying is Nearly Impossible to Follow the Money you don't trust me read.
<https://www.nhpr.org/post/lobbying-nh-grows-more-complex-its-nearly-impossible-follow-money#stream/0>

Also, "We need to do better with respect to the lobbyist disclosure," said Former AG MacDonald, "There needs to be a standardized review of those disclosures."
https://www.unionleader.com/news/politics/state/nh-lobbyists-paid-record-fees-in-but-info-hard-to/article_fe47e76e-8b32-54c4-8f9d-e898cec62fac.html

I ask you if you pass this and then pass lobbying reform do you need to amend this?

We have campaign finance and lobbying loopholes in NH that we can drive a mack truck through. NH Voters deserve to know who is spending money to influence our government. Please vote ITL or Interim Study on this bill so that we can protect our state from more outside influences.

Respectfully,

Olivia Zink
Executive Director, [Open Democracy](#)
4 Park St, Suite 301
Concord, NH 03301
603-715-8197 or cell: 603-661-8621

SB 302
Quinlan

**TESTIMONY OF THE
ATTORNEY GENERAL, CHARITABLE TRUSTS UNIT
REGARDING SB 302
April 7, 2022**

Background

Charitable, nonprofit organizations serve the public good and not private interests. For that reason, they receive certain benefits, including exemptions from federal income tax and local property taxes. Because they serve the public interest, charities must offer some financial transparency and be accountable to the public.

The Attorney General is responsible under common law as well as under statutory law for protecting the public's interest in charitable organizations and assets devoted to charitable purposes in our state. *See* RSA 7:19 (providing that "in addition to the common law and statutory rights, duties, and powers of the attorney general in connection with the supervision, administration, and enforcement of [charities], the attorney general shall have rights set forth in RSA 7:19-32-a"). In 1943, the New Hampshire Legislature determined that the role of the Attorney General involving charitable trusts and organizations was so important that New Hampshire became the first state in the nation to enact a law establishing an office within the Department of Justice that is wholly dedicated to the oversight of charitable trusts and organizations. *See* RSA 7:20 (establishing the Director of Charitable Trusts). The 1943 law confirmed the common law duty of the Attorney General to regulate charities and required, among other things, that charities register and file annual reports with the Attorney General. *See* RSA 7:19-32-l.

The Director of Charitable Trusts and his office, the Charitable Trusts Unit, oversees over 11,000 charitable trusts and organizations, including approximately 5,600 that are based in New Hampshire. Staff of the Charitable Trusts Unit assist charities to help them file their annual reports, review each report for compliance with the law, and ask questions when they identify anomalies. Staff of the Charitable Trusts Unit frequently meet with and offer training to boards of directors either individually or through other organizations, such as the New Hampshire Center for Nonprofits, to educate boards about New Hampshire law requirements and to share best practices. The Charitable Trusts Unit also posts educational materials on our website, including the often-cited *Guidebook for New Hampshire Charitable Organizations*. The Charitable Trusts Unit posts reports about its investigations into charitable organizations as a way to provide guidance to others about compliance with the law.

While the Charitable Trusts Unit prefers to educate, rather than regulate, enforcement of charitable fiduciary duties occasionally requires taking legal action

against charities, their board of directors, or their executive directors. The Charitable Trusts Unit can file a lawsuit or resolve matters through an assurance of discontinuance filed with the Superior Court, *see* RSA 7:28-f, II (g), or informally resolve matters through a memorandum of understanding or informal agreement. Both a lawsuit and an assurance of discontinuance allow the ultimate beneficiary of charitable organizations (the public) to become aware of the allegations that led to the enforcement action. Informal settlements generally are subject to disclosure under the Right to Know Law.

SB 302, as Amended

Among other things, SB 302 would prohibit public agencies from requiring that entities exempt from federal income tax under section 501(c) of the Internal Revenue Code, including charitable entities as well as other nonprofits, from providing the public agencies with information pertaining to members, supporters, volunteers, or donors. It is important to note that the vast majority of members of governing boards of charities are volunteers. The bill as amended in the Senate would allow the Attorney General to request in annual reports the names of members of the governing boards of charities and would not prohibit the Attorney General from requesting information in investigations initiated under RSA 7:24. However, the Attorney General would be unable to disclose the names of governing board members as part of a Right to Know request, in reports issued by the Attorney General, and in lawsuits or assurances of discontinuances filed with the court (except under seal). Thus, volunteer board members who breach their fiduciary duties to the organization, including misusing charitable assets, would not be publicly accountable unless the Attorney General files a lawsuit in court and the court issues a finding of “good cause.” Moreover, the public would be deprived of their current right under RSA 91-A to learn the names of those who have been chosen to govern charitable organizations.

SB 302 would also limit the ability of the Attorney General to obtain the names of donors in order to seek restitution on their behalf in situations involving charities that engaged in unfair and deceptive acts or practices. In addition, it would be necessary for the Attorney General to file under seal court petitions to enforce charitable gift restrictions and seek restitution for donors whose charitable gifts have been used for purposes other than those that were intended. This includes situations involving testamentary gifts (i.e., gifts by will) to charitable organizations and charitable gifts made in trust.

The proposed legislation appears to be a reaction to *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373 (2021), where the United States Supreme Court held that California’s requirement that charities routinely require disclosure in annual reports of the names of large *donors* to nonprofit organizations (as contained on confidential IRS Form 990 Schedule B) violated their First Amendment rights to free association. The Charitable Trusts Unit *has not and does not require charitable organizations to file a copy of Form 990 Schedule B* with their annual reports, and does not require the routine disclosure of donor information.

SB 302 addresses a problem that does not exist in New Hampshire and would be detrimental to the Legislature's stated goal of encouraging in charitable nonprofit corporations a "connection with the public" and "public confidence." *See* RSA 292:6-a. We take the position that the personal contact information for board members and donors currently is not subject to disclosure under the Right to Know law. And the public has an interest in knowing the identities of governing board members because the public is their ultimate beneficiary.

We recognize that other public agencies collect information pertaining to the board members, volunteers, and members of nonprofit organizations as part of their responsibilities, including the Department of Health and Human Services, the New Hampshire Secretary of State, and the Department of Labor. SB 302 as written also would impact their ability to obtain this information.

For the foregoing reasons, the Attorney General urges the committee to report SB 302 inexpedient to legislate or refer the bill to interim study.

SB302

To: Members of the New Hampshire House Judiciary Committee
From: Elizabeth McGuigan, Director of Policy, The Philanthropy Roundtable
Re: The Philanthropy Roundtable Supports S 302
Date: February 7, 2022

Chairman Gordon and members of the committee:

Thank you for allowing me to testify regarding S 302. My name is Elizabeth McGuigan. I am the Director of Policy for The Philanthropy Roundtable. The Roundtable is America's leading network of charitable donors working to foster excellence in philanthropy and protect philanthropic freedom. Our more than 600 members include individual philanthropists, family foundations, and community foundations located in New Hampshire and around the country. Senate Bill 302 would help to strengthen the vitality and breadth of civil society in New Hampshire. It would uphold a key pillar of philanthropic giving, the right of charitable donors to keep their giving private if they wish.

Throughout our nation's history, the norm has always been that people are allowed to choose for themselves whether to be public or private in their giving, and only in very narrow circumstances such as direct contributions to political parties and candidates may this longstanding norm be set aside.

Now, in a time of deep division and with the rise of so-called cancel culture, the choice to remain anonymous in charitable giving is crucial. Donors to charitable organizations may have concerns that their giving to causes that are controversial now, or that may become controversial in the future, might trigger retaliation.

It was because of this concern that in 1958 the U.S. Supreme Court ruled that the State of Alabama could not force the NAACP to reveal its members and donors because doing so would infringe on core First Amendment rights by exposing them to "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility..."¹ The right to give and associate privately has been upheld over and over by the Supreme Court, including in last summer's Americans for Prosperity Foundation case.

However, it is not just the fear of harassment or retaliation that leads some donors to remain anonymous. Anonymous giving to charity has important religious, cultural, and practical roots extend back at least two millennia. Nearly two thousand years ago the Roman senator and philosopher Seneca the Younger wrote in his treatise on gifts and favors "How sweet, how precious is a gift, when he who gives does not permit himself to be thanked,"² Faith traditions including Christianity, Judaism, Islam and Hinduism throughout history have also strongly encouraged anonymous giving.

¹ *NAACP v. Alabama*, 357 U.S. 462 (1958), majority opinion of Justice John Harlan

² Lucius Annaeus Seneca (translation by Aubrey Stewart), *De Beneficiis* (On Benefits), p. 33, publisher unknown, circa 1900.

Many philanthropists prefer to give anonymously in order to avoid being inundated with unwanted solicitations, such as George Eastman, founder of Eastman-Kodak. After being revealed in 1920 as the source of an earlier \$10 million anonymous gift to MIT, *The New York Times* noted that Eastman “had abundant occasion to regret that his identity is no longer a secret... he has become quite aware of the perils beset the paths of those pursued by the advocates of endless ‘worthy causes.’”³

Others prefer that attention be focused on the good work done by the charities they support rather than themselves, such as the late pop singer George Michael. His generous support for causes including aid to cancer patients and helping abused children was kept anonymous in large part for this reason.⁴

New Hampshire’s citizens and residents are no stranger to anonymous charitable giving. For example, in December, an anonymous private foundation matched donations up to \$100,000 to the New Hampshire Food Bank, in what has become an annual gift for the organization.⁵ In 2017, the Food Bank also received an anonymous \$1 million donation which included funds for the organization’s Culinary Job Training program, Mobile Food Pantries and to reduce costs for the group’s 430 partner agencies.⁶ Elsewhere, in 2019, New England College in Henniker was the recipient of a \$5 million anonymous donation to pay for a new athletic center on the college’s campus.⁷ We don’t know why these givers chose to remain private, but we do know that communities throughout the state benefited from their unheralded generosity.

Most if not all charitable organizations in New Hampshire also pledge to honor donor privacy, knowing that the value of charitable giving is important for the communities they serve. Senate Bill 302 would protect the longstanding and vital norm of allowing donors to charitable organizations to remain private if they wish. Without the protections of this measure, charitable organizations would be at risk of having to violate the privacy of their donors. In the event of forced disclosure for even one organization, many who prefer to remain out of the public eye for a variety of reasons would simply stop giving to a wide range of groups, limiting the important work that New Hampshire’s charities do.

As the needs of New Hampshire’s communities continue to rise with the COVID-19 pandemic and economic uncertainty, New Hampshire must proactively protect those that wish to give to charitable organizations and must not allow forced disclosures to chill giving in the state.

SB 302 would protect this norm, and I applaud you for considering it.

³ William Cheney; “Philanthropy Under a Bushel: George Eastman, Kodak Manufacturer and Music Lover, Long Kept Big Gifts Secret” *New York Times*, March 21, 1920

⁴ Keely Lockhard, “George Michael’s incredible acts of kindness revealed following his untimely death,” *The Telegraph*, December 26, 2016

⁵ Manchester Ink Link, “Anonymous Private Foundation Commits \$100,000 Matching Grant to NH Food Bank,” December 20, 2021. <https://manchesterinklink.com/anonymous-private-foundation-commits-100000-matching-grant-to-nh-food-bank/>

⁶ Carol Robidoux, “New Hampshire Food Bank Receives \$1 Million Anonymous Donation,” February 3, 2017. <https://manchesterinklink.com/new-hampshire-food-bank-receives-1-million-anonymous-donation/>

⁷ Tony Schinella, “\$5M Anonymous Donation To Pay For NEC Athletic Complex,” September 16, 2019. <https://patch.com/new-hampshire/concord-nh/5m-anonymous-donation-pay-nec-athletic-complex>

SB302

PEOPLE UNITED *for* PRIVACY

April 7, 2022

The Honorable Edward Gordon
New Hampshire House of Representatives
107 North Main Street
Concord, NH 03301

The Honorable Mark McLean
New Hampshire House of Representatives
107 North Main Street
Concord, NH 03301

Re: Support for Citizen Privacy and S.B. 302

Dear Chairman Gordon, Vice Chairman McLean, and members of the House Judiciary Committee:

On behalf of People United for Privacy,¹ I write in support of S.B. 302, the “Personal Privacy Protection Act.” This very simple, commonsense measure prohibits state agencies from collecting or releasing sensitive information about the members, volunteers, and financial and non-financial supporters of nonprofit organizations, except as required by existing law.

In last year’s ruling in *Americans for Prosperity Foundation (AFPF) v. Bonta*, the U.S. Supreme Court reaffirmed that all Americans have the right to exercise their First Amendment freedoms privately. People United for Privacy agrees strongly with the Court. We believe it is essential for individuals to be able to express their views through the causes they support without being personally exposed to a political firestorm or governmental retaliation, especially in today’s hyperpolarized political climate. In accordance with the Court’s ruling in *AFPF v. Bonta*, the Personal Privacy Protection Act protects the privacy and First Amendment rights of individuals who support nonprofit organizations that conduct business in New Hampshire.

On multiple occasions, the Supreme Court has recognized that forcing an organization to release its member and donor lists to the government not only divulges the First Amendment activities of individual members and donors but may also deter such activities in the first place. Individuals may legitimately fear any number of negative consequences from disclosure, including harassment, adverse government action, and reprisals by an employer, neighbor, or community member. Or they may simply prefer not to have their affiliations disclosed publicly or subjected to the possibility of disclosure for a variety of reasons rooted in religious practice, modesty, or a desire to avoid unwanted solicitations. For nonprofits, privacy is especially important for organizations that challenge the practices and policies of the very governments that seek the identities of the group’s members and supporters.

¹ People United for Privacy (PUFP) believes every American has the right to support causes they believe in without fear of harassment or intimidation. We are a nonprofit, nonpartisan organization that works to protect the rights of individuals to come together in support of their shared values, and we also protect the resources organizations need to make their voices heard. PUFP provides information and resources to policymakers, media, and the public about the need to protect freedom of speech and freedom of association through preserving citizen privacy.

Over 280 groups signed 43 amicus briefs in support of the petitioners in *AFPF v. Bonta*.² These signers represent a wide range of causes and political preferences, including conservative think tanks, progressive advocacy groups, religious organizations, trade associations, animal and human welfare advocates, educational institutions, community services, and arts and culture-focused organizations. As Chief Justice Roberts wrote in the Court’s majority opinion, “[t]he gravity of the privacy concerns in this context is further underscored by the filings of hundreds of organizations as *amici curiae* in support of the petitioners. Far from representing uniquely sensitive causes, these organizations span the ideological spectrum, and indeed the full range of human endeavors: from the American Civil Liberties Union to the Proposition 8 Legal Defense Fund... from Feeding America—Eastern Wisconsin to PBS Reno. The deterrent effect feared by these organizations is real and pervasive...” One thing Americans can agree on is the importance of defending our right to engage in free speech and to debate issues that we may disagree on, as well as the need to protect citizen privacy and the right to exercise First Amendment rights privately.

This sentiment is shared by Granite Staters. In 2018, New Hampshire voters overwhelmingly approved a constitutional amendment to incorporate a right to privacy in the state constitution. New Hampshire now recognizes that “an individual’s right to live free from governmental intrusion in private or personal information is natural, essential, and inherent.” The Personal Privacy Protection Act embodies this vital right and protects New Hampshire residents from government or private action to expose their support for causes they believe in.

Nonprofit organizations are forces for good and have long played a role in educating Americans and policymakers about complex issues. Nonprofits also serve as a shield for people who are uncomfortable speaking publicly about an issue on their own, an important societal function. Some donors may like having their name listed publicly as a supporter to a cause. But many donors dislike or fear such attention because they value their privacy. If anything, today’s highly charged political climate gives Americans even more reasons to keep their beliefs and giving private. Nonprofit organizations play a crucial role in protecting the voices of many citizens who would otherwise remain silent.

If you have any further questions regarding S.B. 302 or citizen privacy generally, please contact Matt Nese, PUPF’s Vice President, at matt@unitedforprivacy.com. **Privately supporting causes, and the organizations advancing those causes, is a fundamental freedom that is robustly protected by the First Amendment and supported by Granite Staters. We urge the New Hampshire General Court to pass S.B. 302.**

Sincerely,



Heather Lauer
Executive Director
People United for Privacy

² See “Free speech case attracts support from nearly 300 diverse groups,” Americans for Prosperity. Available at: <https://americansforprosperity.org/wp-content/uploads/2021/04/AFPF-v-Becerra-Amici.pdf> (April 2021).

SB 302

Free speech case attracts support from nearly 300 diverse groups

More than 40 amici briefs [make the case](#) for continued protection of First Amendment privacy rights for all Americans

Organizations

AHC Inc.
Alaska Policy Forum
America's Promise Alliance
American Civil Liberties Union Foundation, Inc.
American Leadership Forum – Great Valley Chapter
American Target Advertising, Inc.
Americans United for Life
Amyloidosis Foundation
Animal Legal Defense Fund
Animal Welfare League of Arlington
Association of Fundraising Professionals
Association of Fundraising Professionals – Hampton, VA
Association of Fundraising Professionals – Northwest Ohio
Association of Fundraising Professionals – NYC
Association of Fundraising Professionals – Westchester, NY
Association of the Miraculous Medal
Aura Home Women Vets
Avenidas
Bashor Children's Home
Best Friends Animal Society
Bethesda Lutheran Communities Inc.
Brothers of the Christian Schools – District of Eastern North America
Busted Halo
California Constitutional Rights Foundation
Catholic Charities of La Crosse
Catholic Medical Mission Board
Central Florida Council, BSA
Central West Ballet
Charity Navigator
Chesapeake Bay Foundation
Children to Love International
Children's Museum of Evansville
China Aid Association
Christian Appalachian Project
Chronic Disease Fund
Citizen Action Defense Fund
Citizen Power Initiatives for China
Citizens United
Citizens United Foundation
Clare Boothe Luce Center for Conservative Women
Community Foundation of South Lake County Inc.
Concerned Women for America
Concordia University – Nebraska
Concordia University – St. Paul
Congregation of the Mission – Western Province
Congregation of the Sacred Hearts – US Province
Congressman John Sarbanes
Connecticut Humane Society
Conservative Legal Defense & Education Fund
Council for Advancement and Support of Education
Defenders of Wildlife
Defending Rights & Dissent
Democracy 21
Disabled American Veterans
Divine Word College
Doctors Without Borders/Medecins Sans Frontieres
Downsize DC Foundation
DownsizeDC.org
Early Learning Focus
Edmundite Missions
Empower Hope
Farm Sanctuary
Feeding America – Eastern Wisconsin
Food for the Poor
Foundation for Government Accountability
Franciscan Sisters OLPH
Free Speech Coalition
Free Speech Defense & Education Fund
Freedom Foundation of Minnesota
Fuller Center for Housing of Greater New York City
Global Outreach International
Global Wildlife Conservation
Good Days
Gun Owners Foundation
Gun Owners of America
Heritage University
Historic Districts Council
Humane Society of Charlotte
Humane Society of Utah
Immaculate Heart Retreat Center
Independence Institute
Inprint
Institute for Community Living
Institute of the Blessed Virgin Mary – US Province
International Rescue Committee
International Society for Animal Rights
James Madison Center for Free Speech
Judicial Watch, Inc.
Kansas Justice Institute
Kappa Alpha Educational Foundation
KUAC Friends Group – NPR
Landmark Legal Foundation

Leadership Institute
Legionaries of Christ
Libertas Institute
Loaves & Fishes, Inc.
Lowville Food Pantry, Inc.
Marketing EDGE
Mercy For Animals
Messianic Vision, Inc.
Miracle Flights
Missionary Sisters of the Most Sacred Heart of Jesus
Montgomery County Family YMCA
NARAL Pro-Choice North Carolina
National Association for Gun Rights
National Cancer Assistance Foundation
National Foundation for Gun Rights
National Right to Work Committee
National Right to Work Legal Defense Foundation
National Tuberos Sclerosis Association, Inc.
National Wildlife Federation
Nonprofit Connect
Nonprofit Financial Sustainability Foundation
Nonprofit Leadership Alliance
One Nation Under God Foundation
Operation Food Search
Oregon Business & Industry
Ourganda
Pacific Crest Trail Association
Pacific Legal Foundation
Pacific Research Institute
Palmetto Promise Institute
Paralyzed Veterans of America
Pathfinder International
PBS Reno
PEN American Center, Inc.
People for the Ethical Treatment of Animals
PETA Foundation
Philanthropy Roundtable
Pi Kappa Alpha Foundation
Pioneers – USA
Potomac Conservancy
Proposition 8 Legal Defense Fund
Protect the 1st
Public Advocate
Restoring Liberty Action Committee
Rising Ground, Inc.
Salesian Missions
Sigma Nu Educational Foundation
Society of the Divine Word – Chicago Province
Society of the Little Flower
Southeastern Legal Foundation
Southern Poverty Law Center
Southfield School
Southwest Chicago Christian School Association
St. Benedict's Prep
St. Labre Indian School
Students for Life of America
Support Our Aging Religious
Switch 4 Good

Syria Shriners
The Allied Educational Foundation
The American Center for Law and Justice
The American Civil Liberties Union, Inc.
The American Legislative Exchange Council
The ANA Nonprofit Federation
The Animal Defense Partnership
The Association of National Advertisers
The Atlantic Legal Foundation
The Becket Fund for Religious Liberty
The Buckeye Institute
The Cato Institute
The Center for Constitutional Jurisprudence, Claremont Institute
The Center for Equal Opportunity
The Chamber of Commerce of the United States of America
The Commonwealth Foundation
The Congressional Prayer Caucus Foundation
The Council on American-Islamic Relations
The DKT Liberty Project
The Electronic Frontier Foundation
The Empire Center for Public Policy, Inc.
The Family Foundation
The Firearms Policy Coalition
The First Amendment Lawyers Association
The Forging Industry Association
The Foundation for Individual Rights in Education
The Foundation for Michigan Freedom
The Freedom Foundation
The Freedom to Read Foundation
The Georgia Center for Opportunity
The Goldwater Institute
The Good Food Institute, Inc.
The Hamilton Lincoln Law Institute
The Haven of Transylvania County
The Hispanic Leadership Fund
The Human Rights Campaign
The Illinois Family Institute
The Illinois Policy Institute
The Independent Women's Law Center
The Individual Rights Foundation
The Institute for Free Speech
The Institute for Justice
The International Conference of Evangelical Chaplain Endorsers
The James Madison Institute
The John K. MacIver Institute for Public Policy
The John Locke Foundation
The Josiah Bartlett Center for Public Policy
The Kansas Chamber of Commerce
The Kirkwood Institute, Inc.
The Knight First Amendment Institute at Columbia University
The Legacy Foundation
The Liberty Justice Center
The Mackinac Center for Public Policy
The Maine Policy Institute
The Marist Brothers

The Maryland Public Policy Institute
The Mountain States Legal Foundation
The NAACP Legal Defense and Educational Fund, Inc.
The National Association of Homebuilders
The National Association of Manufacturers
The National Children's Cancer Society
The National Coalition Against Censorship
The National Federation of Independent Business
The National Legal Foundation
The National Taxpayers Union Foundation
The Nature Conservancy
The Nevada Policy Research Institute
The New Civil Liberties Alliance
The Nonprofit Alliance
The Nonprofit Alliance Foundation
The Pacific Justice Institute
The Pelican Institute for Public Policy
The Pennsylvania Manufacturers' Association
The People United for Privacy Foundation
The Plastics Industry Association
The Public Interest Legal Foundation
The Public Policy Legal Institute
The Public Trust Institute
The Reason Foundation
The Rhode Island Center for Freedom and Prosperity
The Rio Grande Foundation
The Roughrider Policy Center
The Senior Citizens League
The Show-Me Institute
The Texas Public Policy Foundation
The Thomas Jefferson Institute for Public Policy
The Treated Wood Council
The U.S. Chamber of Commerce Foundation
The Virginia Institute for Public Policy
The Woodhull Freedom Foundation
The Workers Circle
Thomas More Society
Tri Delta Foundation
Trinity Missions
U.S. Constitutional Rights Legal Defense Fund
United States Catholic Mission Association
University of Illinois
Upper Midwest Law Center
UrbanPromise Wilmington
Virginia Museum of Natural History Foundation
Washington Policy Center
Western Journalism Center
Western Tidewater Free Clinic, Inc.
Winona Community Foundation
Wisconsin Institute for Law & Liberty
Wisconsin Manufacturers & Commerce
Wisconsin Right to Life
Women's Sports Foundation
YMCA of Rock River Valley
Young America's Foundation
Young Americans for Liberty
Zeta Psi Educational Foundation
Zionist Organization of America

Governments & Elected Officials

Alabama
Alaska
Arizona
Arkansas
Florida
Georgia
Idaho
Indiana
Kansas
Kentucky
Louisiana
Mississippi
Missouri
Montana
Nebraska
Oklahoma
South Carolina
South Dakota
Tennessee
Texas
Utah
West Virginia
Senator Mitch McConnell



Testimony of Elissa Margolin
Public Policy Consultant, NH Center for Nonprofits
in OPPOSITION to
SB 302
before the House Judiciary Committee
April 6, 2022, 1:00 pm

Mr. Chairman and Members of the Committee. My name is Elissa Margolin and I serve as a public policy consultant for the NH Center for Nonprofits. The Center is a nonprofit organization with over 700 members dedicated to strengthening and giving voice to the state's nonprofit sector through leadership, collaboration, and learning opportunities. Thank you for the opportunity to testify on Senate Bill 302. The NH Center for Nonprofits opposes this legislation due to some of the likely unintended consequences from these proposals.

Preserving the Public Trust

Over the last two years of pandemic related challenges, it is clear that nonprofits in our state play a critical role throughout our community eco-system. The New Hampshire public relies on nonprofits to not only provide many essential services, but also to effectively manage finances, engage in governance, avoid self-dealing, and remain politically nonpartisan.

The new layer of proposed restraints on public agencies and "right to know" public bodies regarding any records of nonprofits would erode the public trust. Although we do value our rights as private organizations, we also recognize that reasonable regulation and appropriate transparency ultimately help nonprofits to be more successful at executing on our missions.

Nonprofit Nonpartisanship

Another likely adverse consequence to additional confidentiality is the politicization of the nonprofit sector. In these highly divisive times, there are very few societal spaces that are nonpartisan. While the Center encourages advocacy, we honor that 501C3 organizations may not endorse candidates nor donate to candidates for political office.

Our heightened political divide has also put more pressure on nonprofits to engage in partisan politics and engage in political fundraising. The current balance of transparency helps the nonprofit sector navigate these pressures and stay on mission. We are concerned that hampering our public agencies as proposed in SB 302 would be the tipping point that leads to the politicization of our valued 501C3 organizations.

Effective Community Fundraising

The Charitable Trusts Unit at the NH DOJ does not require submission of Schedule B of the Federal 990 form, so New Hampshire nonprofits already benefit from donor list privacy. In addition, the issue around donor privacy has already been settled in the recent US Supreme Court decision, *Americans for Prosperity vs. Bonta* (State of California).

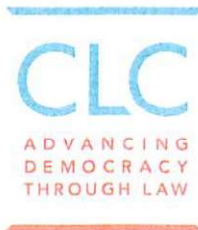
SB 302 Unnecessary

In closing, the NH Center for Nonprofits views the proposals in SB 302 as unnecessary and potentially harmful to our nonprofit sector. We appreciate the efforts to amend the legislation to carve out enough exceptions so that nonprofits can continue to operate with effective transparency. However, this bill as is still a “head scratcher” for many of our members. Can we publicly thank volunteers? Can we publicly thank donors? What about the administrative burdens of compulsory confidentiality? What are the adverse impacts if errors are made?

Overall, this is not a concern raised by the New Hampshire based nonprofits and seems to go further than needed to address issues around donor privacy.

Thank you again for the opportunity to testify. As one of our workgroup members said when we were reviewing this legislation said, “This is New Hampshire. We need to be accountable to one another.”

We urge the Committee to recommend SB 302 *inexpedient to legislate*.



SB302

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\(vvybvzsl35tcqf0nvozbp4h2\)\)/documents/2017-2018/Journal/Senate/pdf/2018-SJ-12-31-085.pdf](http://www.legislature.mi.gov/(S(vvybvzsl35tcqf0nvozbp4h2))/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>.

SB 302-FN - AS AMENDED BY THE SENATE

02/24/2022 0792s

2022 SESSION

22-3010

07/10

SENATE BILL **302-FN**

AN ACT establishing the personal privacy protection act.

SPONSORS: Sen. Birdsell, Dist 19; Sen. Gannon, Dist 23; Sen. Daniels, Dist 11; Sen. Ward, Dist 8; Sen. French, Dist 7; Sen. Giuda, Dist 2; Rep. Lynn, Rock. 7; Rep. DiLorenzo, Rock. 17; Rep. McLean, Hills. 44

COMMITTEE: Judiciary

ANALYSIS

This bill prohibits public agencies and public bodies from releasing any list, record, register, registry, roll, roster or other compilation of data of any kind that directly or indirectly identifies a person as a member, supporter, volunteer, or donor of any entity exempt from federal income tax under section 501(c) of the Internal Revenue Code except in specific circumstances, as well as penalties for the unlawful release of such information.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT establishing the personal privacy protection act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Personal Privacy Protection Act. Amend RSA by inserting after chapter 91-B
2 the following new chapter:

3 CHAPTER 91-C

4 PERSONAL PRIVACY PROTECTION ACT

5 91-C:1 Public Bodies Prohibited Disclosures.

6 I. Public agencies and public bodies shall not disclose or release any list, record, register,
7 registry, roll, roster or other compilation of data of any kind that directly or indirectly identifies a
8 person as a member, supporter, volunteer, or donor of financial or nonfinancial support, to any entity
9 exempt from federal income tax under section 501(c) of the Internal Revenue Code.

10 II. Notwithstanding any law and subject to paragraph III, a public agency or public body
11 shall not:

12 (a) Require any individual or entity exempt from federal income tax under section 501(c)
13 of the Internal Revenue Code to provide the public agency with, or otherwise compel the release of,
14 any list, record, register, registry, roll, roster, or other compilation of data of any kind that directly
15 or indirectly identifies a person as a member, supporter, volunteer, or donor of financial or
16 nonfinancial support, to any entity exempt from federal income tax under section 501(c) of the
17 Internal Revenue Code;

18 (b) Release, publicize, or otherwise publicly disclose any list, record, register, registry,
19 roll, roster, or other compilation of data of any kind that directly or indirectly identifies a person as a
20 member, supporter, volunteer, or donor of financial or nonfinancial support, to any entity exempt
21 from federal income tax under section 501(c) of the Internal Revenue Code already in possession of
22 the public agency or public body; or

23 (c) Request or require a current or prospective contractor or grantee to provide the
24 public agency or public body with a list of entities exempt from federal income tax under section
25 501(c) of the Internal Revenue Code to which it has provided financial or nonfinancial support.

26 (d) Release, publicize, or otherwise publicly disclose any list, record, register, registry,
27 roll, roster, or other compilation of data of any kind that directly or indirectly identifies a person as a
28 member, supporter, volunteer, or donor of financial or nonfinancial support to any entity exempt
29 from federal income tax under section 501(c) of the Internal Revenue Code for the purposes of
30 responding to a request under New Hampshire's freedom of information act as outlined in RSA 91-A.

31 91-C:2 Exemptions. This section shall not preclude:

SB 302-FN - AS AMENDED BY THE SENATE

- Page 2 -

1 I. Any report or disclosure required by the following laws or successor provisions thereto:

2 (a) RSA 14-C relative to gifts for legislators and legislative employees;

3 (b) RSA 15 relative to lobbyists;

4 (c) RSA 15-A relative to financial disclosures; and

5 (d) RSA 664 relative to political expenditures and contributions.

6 II. A public body or agency from releasing a person's status as a member, volunteer, or donor
7 of any entity exempt from federal income tax under section 501(c) of the Internal Revenue Code that
8 was voluntarily released by the person during meetings open to the public.

9 III. Any lawful warrant for any list, record, register, registry, roll, roster or other
10 compilation of data of any kind that directly or indirectly identifies a person as a member, supporter,
11 volunteer, or donor of financial or nonfinancial support, to any entity exempt from federal income tax
12 under section 501(c) of the Internal Revenue Code issued by a court of competent jurisdiction;

13 IV. A lawful request for discovery of any list, record, register, registry, roll, roster or other
14 compilation of data of any kind that directly or indirectly identifies a person as a member, supporter,
15 volunteer, or donor of financial or nonfinancial support, to any entity exempt from federal income tax
16 under section 501(c) of the Internal Revenue Code in litigation if both of the following conditions are
17 met:

18 (a) The requestor demonstrates a compelling need for any list, record, register, registry,
19 roll, roster, or other compilation of data of any kind that directly or indirectly identifies a person as a
20 member, supporter, volunteer, or donor of financial or nonfinancial support, to any entity exempt
21 from federal income tax under section 501(c) of the Internal Revenue Code by clear and convincing
22 evidence; and

23 (b) The requestor obtains a protective order barring disclosure of any list, record,
24 register, registry, roll, roster, or other compilation of data of any kind that directly or indirectly
25 identifies a person as a member, supporter, volunteer, or donor of financial or nonfinancial support,
26 to any entity exempt from federal income tax under section 501(c) of the Internal Revenue Code to
27 any person not named in the litigation.

28 V. Admission of any list, record, register, registry, roll, roster, or other compilation of data of
29 any kind that directly or indirectly identifies a person as a member, supporter, volunteer, or donor of
30 any entity exempt from federal income tax under section 501(c) of the Internal Revenue Code as
31 relevant evidence before a court of competent jurisdiction. Any filing in court that is subject to this
32 section shall be filed under seal by the offering party. Any party who intends to display or produce
33 any record that is subject to this section in a courtroom during a hearing or trial shall notify the
34 court to allow for the courtroom to be cleared prior to discussion or display of the record. No court
35 shall publicly reveal such information that has been filed in accordance with this paragraph absent a
36 specific finding of good cause.

37 91-C:3 Limited Applicability.

1 I. Nothing in this chapter shall apply to a national securities association, as defined in
2 section 15A of the Securities Exchange Act of 1934, 15 U.S.C. Section 78o-3, as amended, or
3 regulations adopted thereunder, and any information such national securities association provides to
4 the relevant public agency or body of this state pursuant to the rules and regulations provided by
5 such agency or body.

6 II. The following activities by the attorney general pursuant to RSA 7:19 through RSA 7:32-
7 a shall be specifically allowed:

8 (a) A request by the attorney general of a list of the members of the governing board of a
9 charitable trust in reports required under RSA 7:28, II;

10 (b) A request by the attorney general for information required for an audit, examination,
11 or investigation pursuant to RSA 7:24, provided that such information shall only be used in
12 connection with the specific audit, examination, or investigation to which the request relates and for
13 any related proceedings, provided further that any information so collected shall otherwise remain
14 subject to the provisions of this chapter; and

15 (c) The voluntary release of information related to volunteers or donors by a charitable
16 trust to the attorney general or to the public.

17 91-C:4 Penalties.

18 I. A person alleging a violation of this chapter may bring a civil action for appropriate
19 injunctive relief, damages, or both. Damages awarded under this section may include one of the
20 following, as appropriate:

21 (a) A sum of money not less than \$2,500 to compensate for injury or loss caused by each
22 violation of this chapter; or

23 (b) For an intentional violation of this chapter, a sum of money not to exceed \$7,500.

24 II. A court, in rendering a judgment in the action brought under this chapter, may award all
25 or a portion of the costs of litigation, including reasonable attorneys and witness fees, to the
26 complainant in the action if the court determines that the award is appropriate.

27 III. A person who knowingly violates this chapter shall be guilty of a misdemeanor
28 punishable by imprisonment for not more than 90 days, a fine of not more than \$1,000, or both.

29 2 Effective Date. This act shall take effect January 1, 2023.

SB 302-FN- FISCAL NOTE
 AS AMENDED BY THE SENATE (AMENDMENT #2022-0792s)

AN ACT establishing the personal privacy protection act.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill prohibits public agencies and public bodies from releasing any list, record, register, registry, roll, roster or other compilation of data of any kind that directly or indirectly identifies a person as a member, supporter, volunteer, or donor of any entity exempt from federal income tax under section 501(c) of the Internal Revenue Code except in specific circumstances, as well as penalties for the unlawful release of such information. The Judicial Branch assumes any proceedings that require discussion of records covered by this bill would have to be held as confidential hearings, which requires coordination of scheduling to ensure the courtrooms are not full with attorneys, parties or witnesses for other hearings and can be closed to the public. Filings with the court that contain records covered by the bill would have to be filed separately as confidential records and maintained by the Court separately from the public record. The Branch assumes there would be an increase in motions specific to the confidentiality of such records. There could also be new civil or criminal cases filed as provided by the bill. The Branch’s case management system would also have to be updated to add the new civil and criminal causes of action created by this bill. All of these elements could have a fiscal impact on the Judicial Branch, but the Branch is unable to quantify the fiscal impact resulting from this bill.

AGENCIES CONTACTED:

Judicial Branch