

PEOPLE UNITED *for* PRIVACY

May 1, 2024

The Honorable Judy Amabile
Chair, House Business Affairs
& Labor Committee
200 E. Colfax
Room 307
Denver, CO 80203

The Honorable Naquetta Ricks
Vice Chair, House Business Affairs
& Labor Committee
200 E. Colfax
Room 307
Denver, CO 80203

RE: Support for S.B. 24-129, Nonprofit Member Data Privacy Protections

Chair Amabile, Vice Chair Ricks, and Members of the House Business Affairs & Labor Committee:

On behalf of People United for Privacy,¹ I thank you for convening today's hearing on Senate Bill 24-129 and urge the Committee's support for this vitally important bill. I also want to thank Speaker Pro Tempore deGruy Kennedy and Representative Frizell for sponsoring this bipartisan legislation. Throughout the legislative process, supporters of this measure have worked with state agencies that sought clarity on this bill's impact on their existing operations and statutory authority, and the language before you addresses every concern that has been raised. The measure before the Committee today has been thoroughly vetted and passed the Senate unanimously.

S.B. 24-129 upholds the First Amendment rights of all Coloradans by codifying longstanding practice and U.S. Supreme Court precedent protecting the privacy of nonprofit members and supporters. This bill preserves Coloradans' right to keep their giving to charities and nonprofit causes private, if they wish, and ensures that nonprofit organizations can continue to safeguard their members' privacy. S.B. 24-129 does so by generally prohibiting public agencies from collecting or releasing information about a nonprofit organization's members, volunteers, or donors, except as required by legal proceedings or enforcement of existing laws and regulations.

In effect, S.B. 24-129 enshrines necessary proactive protections into law and safeguards Coloradans' freedom to join together with their fellow citizens in support of a cause. It also protects nonprofits that voice an opinion on public policy from having their members targeted for retaliation by those that oppose their views. Importantly, S.B. 24-129 delivers this protection without undermining government transparency and while permitting state agencies to enforce Colorado's laws in a multitude of investigatory and statutorily required contexts. The measure makes clear exceptions for laws and regulations enforced by the Department of Labor and Employment, Department of Public Health and Environment, Department of Regulatory Agencies, Independent Ethics Commission, and Office of the State Auditor, among other agencies.

¹ People United for Privacy's vision is an America where all people can freely and privately support ideas and nonprofits they believe in, so that all sides of a debate will be heard, individuals won't face retribution for supporting important causes, and all organizations maintain the ability to advance their missions because the privacy of their supporters is protected.

Further, the bill does not impact the state’s campaign finance or lobbying disclosure laws. Indeed, nothing in the bill prevents the General Assembly from revising disclosure regulations in the future. S.B. 24-129 merely ensures that disclosure policies are adopted in a considered and lawful manner by preventing individual state agencies from demanding or releasing sensitive information about a nonprofit’s supporters on a whim.

By adopting this measure, Colorado would join 18 other states that have already acted to bring their privacy protections in line with constitutional protections recently reaffirmed by the U.S. Supreme Court.² These states include Alabama and Nebraska, where this policy passed the Legislature unanimously,³ and Colorado’s neighbors in Arizona, Kansas, Oklahoma, and Utah. In 2021, the Supreme Court ruled in *AFPF v. Bonta* that the California Attorney General’s sweeping demand for nonprofit donor lists violated the First Amendment.⁴ By striking down the California mandate, the Court reaffirmed that all Americans have a First Amendment right to privately support the causes of their choice. Nearly 300 organizations representing an array of causes – from Disabled American Veterans, Gun Owners of America, and the National Association of Manufacturers to the ACLU, Human Rights Campaign, and NAACP – wrote to the Supreme Court in support of strong protections for privacy in group association.⁵

While the Supreme Court’s 2021 decision is an important reaffirmation of associational privacy rights, the Court has on many occasions recognized that forcing a nonprofit organization to release its member and donor list to the government or the public threatens privacy and free speech. In some instances, it threatens the safety of the group’s members and the very ability of the organization to operate. In a landmark 1958 decision, the U.S. Supreme Court blocked the state of Alabama from demanding the supporter list of the NAACP, citing obvious concerns about retribution against the group’s members and financial backers.⁶

Even today, the risk of enabling targeted violence should not be overlooked. Recent events have demonstrated the all-too-real safety concerns for supporters of polarizing causes in the center of heated national debates.⁷ Even absent a risk of the most extreme consequences, 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

² Luke Wachob, “Nebraska Lawmakers Unanimously Protect Privacy and Free Speech,” People United for Privacy. Available at: <https://unitedforprivacy.com/nebraska-lawmakers-unanimously-protect-privacy-and-free-speech/> (March 28, 2024).

³ Luke Wachob, “Alabama Legislature Unanimously Passes Personal Privacy Protections,” People United for Privacy. Available at: <https://unitedforprivacy.com/alabama-legislature-unanimously-passes-personal-privacy-protections/> (May 16, 2023).

⁴ *Americans for Prosperity Foundation v. Bonta*, 594 U.S. ___ (2021); *see also*, Luke Wachob, “Surveying the Landscape on Donor Privacy Two Years After *AFPF v. Bonta*,” People United for Privacy. Available at: <https://unitedforprivacy.com/surveying-the-landscape-on-donor-privacy-two-years-after-afpf-v-bonta/> (June 28, 2023).

⁵ *See* “Free speech case attracts support from nearly 300 diverse groups,” Americans for Prosperity Foundation. Available at: <https://americansforprosperity.org/wp-content/uploads/2021/04/AFPF-v-Becerra-Amici.pdf> (Apr. 2021).

⁶ *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).


⁷ *See, e.g.*, Heather Lauer, “Private Giving Protects Americans on Both Sides of the Abortion Debate,” People United for Privacy. Available at: <https://unitedforprivacy.com/private-giving-protects-americans-on-both-sides-of-the-abortion-debate/> (June 6, 2023).

affiliations revealed 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.

The California case also demonstrates an important lesson that underscores the need for S.B. 24-129: Precedent alone is not enough to safeguard Americans' privacy and freedom of association. Proactive legislation is needed. Despite more than six decades of rulings from the Supreme Court upholding the privacy rights of donors to nonprofit causes, the California Attorney General began demanding in 2014 that every nonprofit organization asking for support in that state turn over its donor list to government officials. In seven years of litigation over this demand, the state inadvertently publicly exposed nearly 2,000 confidential forms listing the names and home addresses of supporters of various nonprofits on a government website. Worse, California was not the only state making such demands and leaking such information. Instead of putting the privacy of their supporters at risk, many organizations ceased operations in the offending states, waiting seven years to have their rights restored.

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, especially those citizens who support organizations that challenge the status quo. Some Coloradans may wish to have their names listed publicly as supporters of a cause. But many others dislike or fear such attention and value their privacy. If anything, today's polarized political climate gives Coloradans more reason to keep their beliefs and giving private. Nonprofits play a crucial role in protecting and amplifying the voices of many citizens who would otherwise remain silent. S.B. 24-129 ensures that nonprofits can continue to perform this valuable societal function.

I respectfully urge the Committee to favorably report S.B. 24-129. *All* Coloradans, regardless of their beliefs, will benefit from this legislation's protections for free speech and privacy and its strengthening of the nonprofit sector throughout the Centennial State.

Sincerely,

Matt Nese
Vice President
People United for Privacy



April 30, 2024

The Honorable Judy Amabile, Chair
House Committee on Business Affairs & Labor
Colorado General Assembly
200 E. Colfax Avenue
Denver, CO 80203

Re: SB 24-129, The Nonprofit Member Data Privacy and Public Agencies Act

Dear Chair Amabile and Members of the House Committee on Business Affairs & Labor:

On behalf of Philanthropy Roundtable, I write to you regarding Senate Bill 24-129. The Roundtable is a community of donors who are committed to advancing liberty, opportunity, and personal responsibility through effective charitable giving. Our donors consist of private, community, and family foundations nationwide, including Colorado.

Senate Bill 24-129 upholds the First Amendment right for donors to give privately to causes they believe in. In the 2021 *Americans for Prosperity Foundation v. Bonta* decision, the U.S. Supreme Court upheld donor privacy and concluded that California's bulk collection of nonprofit donor information was unconstitutional. There are a myriad of reasons donors in the Centennial State may choose to keep their donations private including, but not limited to privacy concerns, religious convictions, and fear of harassment or retaliation. Whatever their motivation for privacy, this bill is aligned with the U.S. Supreme Court decision and protects nonprofit donors' right to give freely.

This legislation accomplishes the following:

- Protects nonprofits from being forced to release personal information to state and local officials.
- Prohibits government officials from releasing any personal information that is already in their possession.
- Protects individuals and current or prospective government contractors or grantees from being forced to reveal nonprofit organization(s) they may have provided support to – financial or otherwise.
- A civil penalty may apply should this law be violated.

Without the protections of Senate Bill 24-129, organizations will be at risk of violating the privacy of their donors. Colorado charities do a lot of good work and in the event of forced disclosure, that good work is put at risk. When donors are free to give when, where and how they choose without

fear of their information being unfairly released, charitable organizations are better suited to help those who need their support.

Thank you for your consideration of Senate Bill 24-129. If the committee has any questions, please contact me at mschmidt@philanthropyroundtable.org.

Sincerely,

Megan Schmidt

Megan Schmidt
Senior Director of Government Affairs