

PEOPLE UNITED *for* PRIVACY FOUNDATION

March 12, 2025

The Honorable Mike Thompson
Kansas State Capitol
Room 136-E
300 SW 10th Street
Topeka, KS 66612

The Honorable Tory Marie Blew
Kansas State Capitol
Room 224-E
300 SW 10th Street
Topeka, KS 66612

The Honorable Oletha Faust Goudeau
Kansas State Capitol
Room 135-E
300 SW 10th Street
Topeka, KS 66612

RE: Support for Privacy and Free Speech Reforms in H.B. 2206 and Suggested Amendment

Dear Chair Thompson, Vice Chair Blew, Ranking Minority Member Faust Goudeau, and Members of the Senate Committee on Federal and State Affairs:

On behalf of People United for Privacy Foundation (PUFPF),¹ I write in support of key portions of H.B. 2206, as amended by the House Committee on Elections, which is scheduled for a hearing before your Senate Committee on Federal and State Affairs on March 12, 2025. Certain provisions in H.B. 2206 make significant improvements to foundational elements of Kansas campaign finance statutes to better protect the privacy of Kansans who support nonprofits engaged in advocacy on issues of public importance.

I. H.B. 2206 builds on the Legislature’s past bipartisan support for citizen privacy protections and furthers the laudable goal of protecting Kansans who voluntarily support valuable nonprofit causes from having their sensitive information needlessly exposed to public scrutiny.

Our focus in these comments concern current requirements in Kansas law that compel certain nonprofit organizations to publicly disclose their donors. Nonprofit donors have a First Amendment-protected right to privacy in association, and campaign finance reporting requirements are a narrow exception to that right. Kansans must be free to support social causes without being subjected to the privacy invasions of campaign finance law. Likewise, nonprofits must be free to voice an opinion on government actions when they affect issues core to their mission.

Campaign finance rules and regulations consistently produce many of the most perilous threats to the privacy of nonprofit members and supporters.² These laws also threaten to silence the nonprofit community during important policy debates relevant to their missions. As PUFPF has documented, state lawmakers across the country have exploited campaign finance laws to target nonprofits and their supporters for their beliefs.³

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

² See Scott Blackburn, “2022 Free Speech Index: Grading the 50 States on the Freedom to Speak About Government,” Institute for Free Speech. Available at: <https://www.ifs.org/wp-content/uploads/2022/05/Free-Speech-Index-2022.pdf> (Aug. 8, 2022).

³ Matt Nese and Alex Baiocco, “2025 State Threats to Donor Privacy and Nonprofit Advocacy: Risks Increase After Heated Election Season,” People United for Privacy Foundation. Available at: <https://unitedforprivacy.com/wp-content/uploads/2025/02/Memo-2025-State-Threats-To-Donor-Privacy-And-Nonprofit-Advocacy.pdf> (Feb. 2025).

Fortunately, Kansas lawmakers have recently demonstrated a willingness to reform state laws to better protect privacy and free speech. In 2022, Kansas became one of 20 states⁴ to enshrine proactive privacy protections for Kansans who support nonprofits active in The Sunflower State. That legislation, H.B. 2109,⁵ passed with strong bipartisan margins in the Republican-controlled Senate (40-0) and House (92-20) before being signed into law by Governor Laura Kelly (D).⁶

H.B. 2206 builds on the bipartisan, privacy-conscious legacy of H.B. 2109 to protect Kansans who support nonprofit causes doing valuable work in their communities.

II. H.B. 2206 incorporates several of PUFPP’s prior recommendations to the Kansas Special Committee on Governmental Ethics Reform, Campaign Finance Law.

In the 2023 Regular Session, the Kansas Legislature passed S.B. 208, which enacted several reforms to the state’s campaign finance laws. However, the bill failed to address several important substantive issues, and the Legislative Coordinating Council was asked to convene a Special Committee to further evaluate those topics. In October 2023, our sister organization, People United for Privacy, urged the Special Committee to focus on three key aspects of Kansas law that insufficiently protect First Amendment freedoms in general and privacy in association in particular and suggested legislative language to that end.⁷

The revised “political committee” definition in Sec. 6(m) of H.B. 2206 and the revised independent expenditure reporting requirements for non-political committees in Sec. 8 of H.B. 2206 align with the intent and effect of the language endorsed by PUFPP in October 2023 as well as recent activity in Kansas courts. H.B. 2206 is especially praiseworthy for adopting our recommendations to ensure that only groups with *the* major purpose of influencing elections are classified as political committees and forced to expose their donors while simultaneously clarifying when nonprofit groups are required to report information on their occasional political expenditures.

A. H.B. 2206 revises Kansas’s “political committee” definition in accordance with past PUFPP recommendations to incorporate a defined “major purpose” standard that aligns with legal precedent and will better protect incidental advocacy by nonprofit causes.

Our primary recommendation to the Special Committee urged lawmakers to amend and clarify the existing definition for a “political committee” (informally known as a “PAC”) in Kansas Code. Like most states, Kansas requires PACs to broadly report their revenues and spending, including the names and addresses of all donors who give more than \$50 during an election period.⁸

⁴ PUFPP Staff, “20 States Pass Bipartisan Privacy Law to Protect Americans From Doxing and Harassment,” People United for Privacy. Available at: <https://unitedforprivacy.com/20-states-pass-bipartisan-privacy-law-to-protect-americans-from-doxing-and-harassment/> (May 29, 2024).

⁵ “Charitable Privacy Act,” H.B. 2109, Reg. Sess. 2021-2022 (Kan. 2022). Available at: https://www.kslegislature.gov/li_2022/hb2021_22/measures/hb2109/. The provision protecting the privacy of nonprofit members, supporters, and volunteers from state agency collection and disclosure is available in Sec. 1 of H.B. 2109.

⁶ PUFPP Staff, “Citizen Privacy – and Bipartisanship – Win the Day in Kansas,” People United for Privacy. Available at: <https://unitedforprivacy.com/citizen-privacy-and-bipartisanship-win-the-day-in-kansas/> (April 15, 2022).

⁷ Matt Nese and Eric Wang, “Suggested First Amendment and Privacy-Friendly Reforms to Kansas Campaign Finance Laws,” People United for Privacy. Available at: https://unitedforprivacy.com/wp-content/uploads/2023/10/2023-10-03_Comments_PUFP_KS_Recommended-Privacy-Reforms-To-CF-Statutes.pdf (Oct. 3, 2023). *See also*, Luke Wachob, “Fighting for Privacy Reform in Kansas,” People United for Privacy. Available at: <https://unitedforprivacy.com/fighting-for-privacy-reform-in-kansas/> (Oct. 18, 2023). For purposes of this comment, recommendations from our affiliate, People United for Privacy, are attributable to People United for Privacy Foundation.

⁸ Kan. Stat. § 25-4148.

Under Kan. Stat. § 25-4143(l)(1), an organization’s obligation to register and report as a PAC depends on whether it has “a major purpose” (emphasis added) of engaging in regulated campaign finance activity. However, the statute does not further define “major purpose.” This gap has led the Kansas Governmental Ethics Commission (KGEC), which Sec. 1 of H.B. 2206 sensibly rebrands as the Kansas Public Disclosure Commission, to promulgate a vague and open-ended rule for determining PAC status that provides no clear guidance to the public or consistent standards for enforcement. Indeed, that statute was challenged in court by a Kansas nonprofit focused on local issues, and a U.S. District Court judge struck down the application of Kansas’s PAC statute to the nonprofit organization in question earlier this year.⁹

Intuitively, the “major purpose” standard is logical and well understood. If an organization lacks the “major purpose” of supporting or opposing the nomination or election of a candidate, it should not be required to report as a PAC simply because it occasionally engages in express advocacy for or against candidates. Requiring such an organization to broadly report all its spending and sources of contributions would not serve the government’s interest in “provid[ing] the electorate with information as to where political campaign money comes from and how it is spent” and “exposing large [political] contributions and expenditures to the light of publicity.”¹⁰ At the same time, it would unnecessarily intrude on the privacy of the organization’s members and supporters.

While Kansas uses the phrase “major purpose” in its statutory PAC definition, it is unconstitutionally deficient because it is preceded by the indefinite article “a,” rather than the definite article “the”; the latter is how the Supreme Court and Tenth Circuit have articulated the standard.¹¹ The use of the indefinite article in the Kansas statute suggests that an organization may have multiple “major purposes,” one of which is express advocacy for or against candidates.¹² However, that is not the proper standard for regulating a PAC. As the Tenth Circuit has explained, the proper standard for determining whether an organization is a PAC is a “comparison of the organization’s electioneering spending with overall spending to determine whether *the preponderance* of expenditures is for express advocacy or contributions to candidates.”¹³

“Preponderance” means “majority.”¹⁴ Insofar as an organization can only become a PAC if the majority of its spending is on express advocacy or candidate contributions, then that is “*the major purpose*” of the organization. If the proper regulatory standard was “a major purpose,” as the Kansas statute contends, then an organization could become a PAC if a plurality of its spending were on such activities. However, that is not the regulatory standard that the Tenth Circuit has held is within “the lower bounds for when regulation as a political committee is constitutionally permissible.”¹⁵

⁹ See Tim Carpenter, “Overland Park lawsuit leads judge to narrow Kansas’ definition of political action committee,” *Kansas Reflector*. Available at: <https://kansasreflector.com/2025/01/07/overland-park-lawsuit-leads-judge-to-narrow-kansas-definition-of-political-action-committee/> (Jan. 7, 2025).

¹⁰ *Buckley v. Valeo*, 424 U.S. 1 at 66-67 (1976) (internal quotation marks and citations omitted).

¹¹ Compare Kan. Stat. § 25-4143(l)(1) with *Buckley*, 424 U.S. at 79 and *N.M. Youth Organized (NMYO) v. Herrera*, 611 F.3d 669 at 677 (10th Cir. 2010).

¹² See, e.g., *Human Life of Wash. Inc., v. Brumsickle*, 624 F.3d 990, 1009-1010 (9th Cir. 2010) (discussing how the “regulation of groups with ‘a’ primary purpose of political advocacy” is distinct from “defining groups with ‘the major purpose’ of political advocacy as political committees”) (emphasis added). The Ninth Circuit concluded that the Supreme Court’s “the major purpose” standard under *Buckley* merely “defined the outer limits of permissible political committee regulation.” *Id.* at 1010 (emphasis added). However, this is directly at odds with how the Tenth Circuit reads the “major purpose” standard from *Buckley* to “set[] the lower bounds for when regulation as a political committee is constitutionally permissible.” *NMYO*, 611 F.3d at 677 (emphasis added). The U.S. Supreme Court has not resolved the circuit split on this issue. See *Corsi v. Ohio Elections Comm’n*, Petition for a Writ of Certiorari, 2013 WL 2726801 and 571 U.S. 826 (2013) (denying cert.). Kansas falls within the Tenth Circuit’s jurisdiction. Therefore, the Tenth Circuit’s holding on this issue is controlling, and the Ninth Circuit’s holding is not.

¹³ *NMYO*, 611 F.3d at 678 (emphasis added).

¹⁴ See “Preponderance,” Merriam-Webster. Available at: <https://www.merriam-webster.com/dictionary/preponderance>.

¹⁵ *NMYO*, 611 F.3d at 677-678.

The revised “political committee” definition in H.B. 2206 aligns with our recommendation and rectifies this deficiency.

B. H.B. 2206 wisely clarifies the scope of independent expenditure reporting for non-PAC entities, as PUFPP previously recommended, in a manner that provides guidance to impacted speakers without requiring more reporting than is constitutionally permissible.

A second recommendation we made to the Special Committee encouraged lawmakers to clarify the scope of donor exposure for organizations that are not PACs if they make independent expenditures expressly advocating for the election or defeat of candidates. On its face, Kan. Stat. § 25-4150 purports to require such organizations to file the same reports as PACs under Kan. Stat. § 25-4148. However, such a broad reporting requirement would be unconstitutional and nonsensical. It would conflate PAC and non-PAC entities and render the PAC definition and the “major purpose” standard encompassed therein moot. Under current law, it is unclear exactly what non-PAC entities, like nonprofits, are required to report when they make independent expenditures, especially with respect to donor information.

The revised independent expenditure reporting requirements for non-PAC entities in Sec. 8 of H.B. 2206 incorporate many of our suggested revisions by clarifying the intent of the existing statute and setting forth reporting requirements that capture the spending at issue without unnecessarily – and potentially unconstitutionally – invading donor privacy rights for nonprofit speakers that only occasionally engage in political advocacy.

III. Consistent with our prior recommendations, H.B. 2206 should be amended to increase Kansas’s outdated and impermissible \$50 donor reporting threshold and require the revised threshold to be regularly adjusted for inflation.

While the aforementioned provisions of H.B. 2206 are vitally important and worthy of support, we encourage the Committee to amend the bill to incorporate an additional reform. The threshold at which donors to a candidate, political party committee, or PAC are required to be publicly reported should be substantially increased and indexed to inflation. Under Kan. Stat. § 25-4148(b)(2), anyone who gives more than \$50 during an election period to a candidate, political party committee, or PAC must be publicly reported.

The \$50 threshold is far too low and fails to properly advance the law’s interest in “deter[ring] actual corruption and avoid[ing] the appearance of corruption by exposing *large* contributions and expenditures to the light of publicity” and providing the public “with information about a candidate’s most generous supporters.”¹⁶ Unless someone desires to snoop on their neighbors and colleagues or stalk unsuspecting citizens, no one is legitimately interested in a donor who gives merely \$50.01 as a source of political funding, nor does such a donor qualify as the source of a large contribution capable of causing “actual corruption” or “the appearance of corruption.”

In 1976, the Supreme Court reluctantly upheld a \$100 threshold¹⁷ for publicly reporting donors under the Federal Election Campaign Act, despite characterizing it as “indeed low.”¹⁸ The Court recognized that “[c]ontributors of relatively small amounts are likely to be especially sensitive

¹⁶ *Buckley*, 424 U.S. at 67 (emphasis added).

¹⁷ This threshold was subsequently increased to \$200.

¹⁸ *Buckley*, 424 U.S. at 83.

to recording or disclosure of their political preferences” and acknowledged that the “strict” requirement to publicly report donors “may well discourage participation by some citizens in the political process.”¹⁹ Adjusted for inflation, the low \$100 contribution threshold that the Supreme Court reluctantly upheld would be over \$570 today.²⁰ It is highly likely that a court would find Kansas’s \$50 threshold for publicly reporting donors to be unconstitutionally low.

The Committee should consider amending H.B. 2206 to substantially increase Kansas’s threshold for reporting donors from \$50 to \$500 and index the new threshold for inflation to prevent the real value of any revised threshold from eroding with the passage of time. We suggest that the donor reporting threshold at Kan. Stat. § 25-4148(b)(2) be amended as follows:

(b) Each report required by this section shall state:

...

(2) the name and address of each person who has made one or more contributions in an aggregate amount or value in excess of \$500 during the election period together with the amount and date of such contributions, including the name and address of every lender, guarantor and endorser when a contribution is in the form of an advance or loan. This \$500 threshold shall be adjusted for inflation at the beginning of each calendar year based upon changes in the U.S. Bureau of Labor Statistics’ Consumer Price Index for the Midwest Region, as soon as updated data is available;

* * *

H.B. 2206 rectifies two significant shortcomings in Kansas law that threaten to impose undue burdens on the fundamental First Amendment rights of all Kansans to freely associate with the organizations and causes they believe in. While lawmakers should consider amending H.B. 2206 to rectify the state’s outdated and legally dubious donor reporting threshold, this legislation is a significant step forward in protecting Kansans’ First Amendment rights to freedom of speech and privacy in association. **For these reasons, People United for Privacy Foundation urges the Committee to amend and recommend passage of H.B. 2206.**

We thank the Committee for considering our comments and suggestions, and we welcome any questions regarding the issues raised in this letter.

Sincerely,



Matt Nese
Vice President
People United for Privacy Foundation

¹⁹ *Id.*

²⁰ This figure is accurate as of January 2025, the latest month for which data was available, and was derived using the U.S. Bureau of Labor Statistics’ CPI Inflation Calculator. Available at: https://www.bls.gov/data/inflation_calculator.htm.