Nos. 19-251, 19-255

In The

Supreme Court of the United States

AMERICANS FOR PROSPERITY FOUNDATION,

Petitioner,

v.

XAVIER BECERRA, Attorney General of California,

Respondent.

THOMAS MORE LAW CENTER,

Petitioner,

v.

XAVIER BECERRA, Attorney General of California,

Respondent.

On Writs Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

AMICUS CURIAE BRIEF OF RANDY ELF IN SUPPORT OF PETITIONERS AMERICANS FOR PROSPERITY FOUNDATION AND THOMAS MORE LAW CENTER

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February 26, 2021

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CASES

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[2] "Authorities upon which [this filing] chiefly rel[ies] are marked with asterisks." D.C.CIR.R. 28(a)(2), *available at* https://www.cadc.uscourts.gov/internet/home.nsf/Content/Court+Rules+and+Operating+Procedures; *accord* 11TH CIR.R. 28-1(e), *available at* http://www.ca11.uscourts.gov/rules-procedures.

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INTEREST OF AMICUS CURIAE[3]

Amicus has practiced political-speech law, presented many briefs and oral arguments on the constitutionality of such law, and written a law-review article addressing much of what Amicus addresses here. Randy Elf, *The Constitutionality of State Law Triggering Burdens on Political Speech and the Current Circuit Splits,* 29 REGENT U.L. REV. 35 (2016) ("*Triggering*"), *available at* https://works.bepress.com/elf/18.

Although *Triggering* particularly addresses state law, the same First Amendment principles apply to federal law. *Wallace v. Jaffree,* 472 U.S. 38, 48-49 (1985); *Triggering* at 55 & n.114, 63 n.154.

Since *Triggering* has analysis that applies here, Amicus summarizes and presents it in this brief. Where *Triggering* most efficiently makes points that apply here, this brief quotes *Triggering*. When this brief quotes *Triggering* text, some cites from corresponding *Triggering* footnotes are inserted into the text, and some cites remain in footnotes. *Triggering* cites are converted from law-review style

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[3] Counsel of record for all parties received timely notice of Amicus's intent to file this brief and consent to this filing. No party's counsel wholly or partly authored this brief. No such counsel, party, or other person—other than Amicus or Amicus's counsel—contributed monetarily to preparing or submitting this brief. Amicus has no members. *Cf.* S.CT.R. 37.2(a), 37.6.

to brief style, and many are condensed. Emphases are as they are in *Triggering*.

For all readers' convenience, a *Triggering* draft, with string cites not published in the law review, remains at https://works.bepress.com/elf/19.

SUMMARY OF ARGUMENT

Amicus emphasizes that he admires and appreciates the good and courageous work that Plaintiff-Petitioner Americans for Prosperity Foundation, Plaintiff-Petitioner Thomas More Law Center, and the Ninth Circuit rehearing-en-banc-denial dissent have undertaken in this action.

Although this action involves speech-disclosure law, it involves no *political*-speech-disclosure law.

However, in seeking to distinguish *political*-speech-disclosure law, Petitioners and the Ninth Circuit rehearing-en-banc-denial dissent *under*state how the First Amendment protects political speech and do so in ways that can undermine First Amendment rights to political speech.

Amicus neither asserts nor implies this is anyone's intent, yet this can be an effect of their assertions.

Political speech is at the "core" of what the First Amendment protects. *E.g., Buckley v. Valeo,* 424 U.S. 1, 44-45 (1976) (per curiam); *Triggering* at 35 & n.1; Randy Elf, *How Political Speech Law Benefits*

Politicians and the Rich (Aug. 20, 2020) (one-hour video), *available at* https://works.bepress.com/elf/21.

To fend off mistaken political-speech-law holdings or dicta, Amicus files this brief.

Petitioners are due to prevail. However, no one should undermine how the First Amendment protects political speech.

ARGUMENT

I. In seeking to distinguish political-speech-disclosure law, Petitioners and the Ninth Circuit rehearing-en-banc-denial dissent understate how the First Amendment protects political speech and do so in ways that can undermine First Amendment rights to political speech.

The law at issue here does not ban or otherwise limit speech. Instead, it regulates, i.e., requires disclosure of, speech. *E.g.,* AMS. FOR PROSPERITY FOUND. CERT. PET. at 1; THOMAS MORE LAW CTR. CERT. PET. at i; *Ams. for Prosperity Found. v. Becerra,* 919 F.3d 1177, 1178 (9th Cir. 2019) (Ikuta, J., dissenting) (rehearing-en-banc denial).

One common mistake, even by First Amendment *proponents,* is to *under*state how it protects political speech from regulation, i.e., disclosure. *See, e.g., Triggering* at 64 n.156 (addressing law triggering Track 1, political-

committee(-like) burdens); *see also id.* at 45-46 nn.71-72, 55 n.106, 63 n.154 (same).

In seeking to distinguish political-speech-disclosure law, Petitioner Americans for Prosperity Foundation, Petitioner Thomas More Law Center, and the Ninth Circuit rehearing-en-banc-denial dissent *under*state how the First Amendment protects political speech from regulation, i.e., disclosure, and do so in ways that, if they become holdings or even dicta, can undermine First Amendment rights to political speech. *Infra* at 4-17.

II. Regarding regulation, i.e., disclosure, of political speech, *Buckley* does way more than protect against threats, harassment, or reprisals.

Regarding regulation, i.e., disclosure, of political speech, Petitioner Thomas More Law Center asserts:

> All *Buckley* allows in the electoral context is an as-applied exemption once a party demonstrates the "reasonable probability that the compelled disclosure of [its] contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Id.* at 74.

THOMAS MORE LAW CTR. CERT. PET. at 24 (brackets in original); *accord* THOMAS MORE LAW CTR. BR. at 39, 44.

This is incorrect. *Buckley* does way more—way, way, way more—than this.

Beginning with First Principles, *Triggering* at 38-42, which include

> [r]ecognizing that political speech is at the "core" of what the First Amendment protects, *e.g., Buckley,* 424 U.S. at 44-45, the ... Court has applied constitutional scrutiny and established the two-track system under which government may regulate political speech.[4]

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[4] In other words, require disclosure of, which differs from "ban" or otherwise "limit." *See Yamada v. Kuramoto,* 744 F.Supp.2d 1075, 1082 & n.9 (D. Haw. 2010) (distinguishing restrictions, i.e., bans or other limits, from regulation, i.e., disclosure). The umbrella term "disclosure" can cover registration, recordkeeping, reporting, attributions, and disclaimers in all their forms. *Wis. Right to Life, Inc. v. Barland,* 751 F.3d 804, 812-16, 836 (7th Cir. 2014). *Barland* understands the difference between attributions and disclaimers. *Id.* at 815-16. By definition, an "attribution" attributes and says who *is* speaking, while a "disclaimer" disclaims and says who is *not* speaking. *Id.*

Triggering at 35 n.2. *Independence Institute v. Williams,* 812 F.3d 787, 795 & n.9 (10th Cir. 2016), frames this differently by applying the label "disclosure" only to Track 2 law, not Track 1 law. Either way, constitutional principles—not "mere labels"—are what matters. *NAACP v. Button,* 371 U.S. 415, 429 (1963); *Triggering* at 51 n.91, 52-53 n.103.

> Under "Track 1," government may under some circumstances—and subject to further inquiry, *see, e.g., id.* at 74 (addressing "threats, harassment, or reprisals")[5]—trigger political-committee or political-committee-like burdens, *see, e.g., id.* at 63, 79 (addressing "organizations" that are "under the control of a candidate" or candidates in their capacities as candidates or have "the major purpose" under *Buckley*), *followed in FEC v. Mass. Citizens for Life, Inc.,* 479 U.S. 238, 252 n.6, 262 (1986), *and quoted in McConnell v. FEC,* 540 U.S. 93, 170 n.64 (2003) (*overruled on other grounds by Citizens United v. FEC,* 558 U.S. 310, 365-66 (2010)); *Sampson v. Buescher,* 625 F.3d 1247, 1249, 1251, 1261 (10th Cir. 2010) (addressing organizations with the *Buckley* major purpose but only small-scale speech). ...

And either way, the Court should please dispense with the phrase "disclaimer and disclosure requirements." *E.g., Citizens United v. FEC,* 558 U.S. 310, 319, 321-22, 366-67, 371 (2010). It is like saying "apples and fruit," because the latter includes the former. The Court should also please dispense with using the label "disclaimer" for *both* attributions and disclaimers, *e.g., id.*, because they are different.

[5] *Compare Barland*, 751 F.3d at 816, 832 (striking down an attribution and disclaimer requirement), *with Gable v. Patton,* 142 F.3d 940, 944-45 (6th Cir. 1998) (upholding an attribution requirement for a political committee). *Triggering* at 35 n.3.

Under "Track 2,"[6] apart from whether government may trigger Track 1, political-committee(-like) burdens, government may—subject to further inquiry, *see, e.g., Citizens United,* 558 U.S. at 370 (addressing "threats, harassment, or reprisals" (quoting *McConnell,* 540 U.S. at 198))—require attributions, disclaimers, and *non*-political-committee reporting for:

- independent expenditures properly understood, *Buckley,* 424 U.S. at 63-64, 79-82;[7] *cf. McIntyre v. Ohio Elections*

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[6]

> The *terms* "Track 1" and "Track 2" are [Amicus's], yet the *concepts* have been in the case law since the ... Court first distinguished what [Amicus] calls Track 1 law and Track 2 law in *Buckley,* 424 U.S. at 63-64.

Triggering at 36 n.7. Although "campaign-finance law" is another term for political-speech law, such law reaches beyond candidate or ballot-measure campaigns. *Id.* at 38 n.17.

[7]

> Under the Constitution, "independent expenditure" means *Buckley* express advocacy, *Buckley,* 424 U.S. at 44 & n.52, 80, that is not coordinated with a candidate, *id.* at 46-47, 78. Thus, *non*-coordinated spending for political speech that is not *Buckley* express advocacy is independent *spending* but not an independent *expenditure. See id.* at 44 & n.52, 80 (addressing express advocacy and thereby independent expenditures).

Triggering at 36 n.9. The Court should please dispense with using the word "expenditure," *e.g., Citizens United,* 558 U.S. at 366, 368, where only "spending" is correct.

> *Comm'n,* 514 U.S. 334, 354-56 (1995) (rejecting a Track 2, non-political-committee disclosure requirement for other[8] speech), and
>
> - Federal Election Campaign Act electioneering communications, *Citizens United,* 558 U.S. at 366-71.[9]

Triggering at 35-36 & nn.1-4, 6-10.[10]

> Furthermore,
>
> "the appeal-to-vote test"—once known as the "functional equivalent of express advocacy," *id.* at 335 (quoting *FEC v. Wis. Right to Life, Inc.,* 551 U.S. 449, 470 (2007) (opinion of Roberts, C.J.))—*cannot* be a form of express advocacy.

Triggering at 68 (explaining why). Indeed, the test

> no longer affects whether government may ban, otherwise limit, or regulate speech, and the appeal-to-vote test is vague. It has no place in law. *Id.* at 68 & nn.180-81, 72 & nn.190-92 [(explaining why)].

Id. at 77.

[8] I.e., small-scale. 514 U.S. at 358 (Ginsburg, J., concurring).

[9] *Defined in McConnell,* 540 U.S. at 189-94.

[10] *See also* Randy Elf, *Speech law benefits politicians, rich,* OBSERVER, July 3, 2016, at A7 (previewing *Triggering*), *cited in Triggering* at 85 n.278 (with now-outdated hyperlink), *available at* https://www.observertoday.com/opinion/commentary/2016/07/speech-law-benefits-politicians-rich, *and reprinted in, e.g., Citizens for Responsibility & Ethics in Wash. v. FEC,* No. 19-5161, AMICUS CURIAE BR. OF RANDY ELF IN SUPPORT OF AFFIRMANCE OF THE J. & IN SUPPORT OF

III. The Court distinguishes Track 1 burdens from Track 2 requirements.

Unlike Petitioner Americans for Prosperity Foundation, Petitioner Thomas More Law Center, and the Ninth Circuit rehearing-en-banc-denial dissent, the Court distinguishes Tracks 1 and 2. Track 1, political-committee(-like) burdens include registration (including, in turn, treasurer designation, bank-account designation, and termination, i.e., deregistration), recordkeeping, extensive reporting, and ongoing reporting. *See, e.g.*, *Citizens United*, 558 U.S. at 338 (describing such law); *Mass. Citizens*, 479 U.S. at 253-56 & nn.7-9 (opinion of Brennan, J.) (same); *Buckley*, 424 U.S. at 63 (same); *Triggering* at 44 & nn.63-65. By contrast, Track 2, non-political-committee reporting

> occurs only for reporting periods when the particular speech occurs,[11] and the reports are less burdensome than extensive or ongoing reporting. *See, e.g., Mass. Citizens,* 479 U.S. at 262 ("less than the full panoply of" Track 1 burdens); *Buckley*, 424 U.S. at 63-64 (describing Track 2, *non*-political-committee reporting).

Triggering at 57 & nn.126-28 (ellipses omitted).

APPELLEE FEC at Addendum.1 (D.C. Cir. Dec. 2, 2019) (*available* at https://works.bepress.com/elf/28).

[11] The labels "one-time" and "event-driven" for Track 2 requirements, *e.g.*, *Barland,* 751 F.3d at 824, 836, 841, are confusing. *Triggering* at 57 n.127 (explaining why).

IV. Petitioners and the Ninth Circuit rehearing-en-banc-denial dissent understate tailoring for political-speech-disclosure law.

In addressing constitutional scrutiny for political-speech-disclosure law, Petitioner Americans for Prosperity Foundation, Petitioner Thomas More Law Center, and the Ninth Circuit rehearing-en-banc-denial dissent understate tailoring. *See* AMS. FOR PROSPERITY FOUND. CERT. PET. at 23 ("tailoring ... is satisfied ... when a government invokes its ... interest in ... disclosure ... of donors who give money"); AMS. FOR PROSPERITY FOUND. BR. at 28 ("the Court 'already held' in *Buckley* that campaign-related public disclosure requirements categorically satisfy narrow tailoring" (quoting Ninth Circuit rehearing-en-banc-denial dissent)); THOMAS MORE LAW CTR. CERT. PET. at 24 ("No separate tailoring analysis applies"); THOMAS MORE LAW CTR. BR. at 32 ("Because *Buckley* held that the disclosures in that case were per se the least restrictive means of addressing the government's concern, the Court had no need to evaluate the narrow-tailoring requirement in later cases involving election-related disclosures"); *Ams. for Prosperity Found.,* 919 F.3d at 1180 (Ikuta, J., dissenting) (watering down tailoring for political-speech-disclosure law to almost nothing).

They treat *Buckley*'s statement that disclosure is the "least restrictive means of curbing the evils of campaign ignorance and corruption" almost as vitiating tailoring for political-speech-disclosure law. 424 U.S. at 68, *quoted in* AMS. FOR PROSPERITY

FOUND. CERT. PET. at 23, AMS. FOR PROSPERITY FOUND. BR. at 28, THOMAS MORE LAW CTR. CERT. PET. at 24, THOMAS MORE LAW CTR. BR. at 32, *and Ams. for Prosperity Found.,* 919 F.3d at 1180 (Ikuta, J., dissenting).

This is incorrect. *Buckley*'s "least restrictive means" statement, *supra* at 10, "generally" addresses political-speech disclosure, 424 U.S. at 68, as opposed to bans or other limits, *cf. supra* at 3, 5 n.4 (making this distinction). Elsewhere, including in *Buckley,* the Court distinguishes *types of* political-speech disclosure. *E.g., supra* at 9.

Buckley, rather than holding "the disclosure requirements at issue" survive tailoring, THOMAS MORE LAW CTR. BR. at 32; *accord* AMS. FOR PROSPERITY FOUND. BR. at 28 ("*Buckley* found that strict test satisfied by the close relationship between requiring disclosure of who contributes to an election and the electorate's overriding interests in electoral transparency and informed voting."), establishes, e.g., Tracks 1 and 2, *supra* at 6-8, by applying tailoring.[12]

Just as what government may regulate with Track 2 law, *supra* at 7-8, goes to the tailoring part of constitutional scrutiny, not the government-interest part, *see, e.g., Indep. Inst. v. Williams,* 812

[12] Notwithstanding AMS. FOR PROSPERITY FOUND. BR. at 28, *Buckley* creates no "unambiguously-campaign-related" test. *Triggering* at 49 n.84 (addressing Track 1), 69 n.181 (addressing Track 2).

F.3d 787, 791 (10th Cir. 2016) (addressing overbreadth);[13] *Ctr. for Individual Freedom, Inc. v. Tennant,* 706 F.3d 270, 282-85 (4th Cir. 2013) (addressing underinclusiveness); *Triggering* at 50 n.87 (collecting competing authorities), the tests for the constitutionality of law triggering Track 1 burdens, *supra* at 6, go to tailoring, not the government interest, *e.g., Wis. Right to Life, Inc. v. Barland,* 751 F.3d 804, 841-12 (7th Cir. 2014); *Canyon Ferry Rd. Baptist Church of E. Helena, Inc. v. Unsworth,* 556 F.3d 1021, 1032-34 (9th Cir. 2009); *Buckley v. Valeo,* 519 F.2d 821, 869 (D.C. Cir. 1975) (en banc), *aff'd in part and rev'd on other grounds*, 424 U.S. 1 (1976) (per curiam); *Triggering* at 49-50 & nn.87-89, 64 & nn.155-56 (collecting competing authorities). A court does "not [look to a government interest and] truncate this tailoring test at the outset." *McCutcheon v. FEC,* 572 U.S. 185, 206 (2014) (opinion of Roberts, C.J.) (addressing another tailoring test). "Thus, pounding the table about the *government interest* in regulating political speech is no answer to the *tailoring* part of constitutional scrutiny." *Triggering* at 50 & n.89, 64.

In other words, the *government interest*—e.g., in particular information, *Buckley,* 424 U.S. at 66-67 (addressing Interest 1); *Triggering* at 50 n.88—is *not*

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[13] "Overbreadth" applies to both as-applied and facial claims. *E.g., Alaska Right to Life Comm. v. Miles,* 441 F.3d 773, 785 (9th Cir. 2006).

Triggering at 41-42 n.53.

the point here. *Tailoring* is. While *Citizens United* considers "the informational interest alone," 558 U.S. at 369, this—rather than demoting tailoring—considers only Interest 1, not 2 or 3, from *Buckley,* 424 U.S. at 66-68.[14]

As for, e.g., "promoting transparency and accountability," *Ams. for Prosperity Found.,* 919 F.3d at 1180 (Ikuta, J., dissenting) (quoting *Doe v. Reed,* 561 U.S. 186, 197-98 (2010)),[15] it goes to the government interest, not tailoring. *Id.; see Buckley,* 424 U.S. at 66-67 (addressing Interest 1).

> "First Amendment rights are all too often sacrificed for the sake of transparency in federal and state elections." *Del. Strong Families v. Denn,* 136 S.Ct. 2376, 2376

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[14] Besides, Interest 2—government's interest in preventing quid-pro-quo corruption or the appearance of quid-pro-quo corruption, *compare Buckley,* 424 U.S. at 67 (addressing Interest 2), *with McCutcheon,* 572 U.S. at 192, 207-08 (opinion of Roberts, C.J.) (defining these terms)—cannot apply to independent spending for political speech, *e.g., Citizens United,* 558 U.S. at 357-61, or contributions *not* directed to candidates/officeholders, *McCutcheon,* 572 U.S. at 211 (opinion of Roberts, C.J.) (quoting *McConnell,* 540 U.S. at 310 (Kennedy, J., concurring/dissenting)).

Interest 3 applies only to facilitating enforcement of constitutional "restrictions," *McConnell,* 540 U.S. at 196 (discussing *Buckley*), i.e., constitutional bans or other constitutional limits on contributions received, *Buckley,* 424 U.S. at 67-68 (addressing Interest 3).

[15] *Reed* addresses ballot-access law, not political-speech law. *Infra* at 17.

> (2016) (Thomas, J., dissenting) (denial of certiorari). Government's "interest in transparency does not always trump First Amendment rights." *Id.*

Triggering at 52 n.102, 64 n.154. *Yet these can happen when parties or courts understate tailoring. E.g., supra* at 4, 10, 11, 13.

V. *Citizens United* pages 366-71 address/support only Track 2 law, not Track 1 law.

Petitioner Americans for Prosperity Foundation, Petitioner Thomas More Law Center, and the Ninth Circuit rehearing-en-banc-denial dissent cite *Citizens United* pages 366-71, 558 U.S. at 366-71, as supporting political-speech-disclosure law. AMS. FOR PROSPERITY FOUND. CERT. PET. at 22; THOMAS MORE LAW CTR. CERT. PET. at 25; THOMAS MORE LAW CTR. BR. at 31, 39; *Ams. for Prosperity Found.,* 919 F.3d at 1180 (Ikuta, J., dissenting).

This is partly incorrect. Notwithstanding erroneous appellate-court discussions of disclosure/transparency/information under *Citizens United* pages 366-71, *e.g., Triggering* at 51-52 & nn.97-102 (collecting competing authorities), *Citizens*

United pages 366-71 address/support only Track 2 law, not Track 1 law.[16]

VI. Strict scrutiny, not substantial-relation exacting scrutiny, applies to some political-speech-disclosure law.

Petitioner Americans for Prosperity Foundation, Petitioner Thomas More Law Center, and the Ninth Circuit rehearing-en-banc-denial

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[16] *E.g.*, *Citizens United*, 558 U.S. at 369 (recalling that such Track 2 "disclosure is a less restrictive alternative to more comprehensive [Track 1] regulations of speech" (citing *Mass. Citizens,* 479 U.S. at 262 (holding that the "state interest in disclosure can be met in a manner less restrictive than imposing the full panoply of [Track 1] regulations that accompany status as a political committee" and that if an organization's "independent spending bec[a]me so extensive that the organization[] [had the *Buckley*] major purpose, the [organization] would be classified as a political committee" (citing *Buckley,* 424 U.S. at 79)))); *Indep. Inst.,* 812 F.3d at 795 & n.9; *Barland,* 751 F.3d at 824, 836-37, 839, 841, *followed in Del. Strong Families v. Att'y Gen. of Del.,* 793 F.3d 304, 312-13 n.10 (3d Cir. 2015); *Minn. Citizens Concerned for Life, Inc. v. Swanson,* 692 F.3d 864, 875 n.9 (8th Cir. 2012) (en banc).

Triggering at 52 n.103 (brackets in original) (ellipses omitted). *Citizens United*'s "less restrictive alternative" statement, rather than shunning any "tailoring requirement," *Ams. for Prosperity Found.,* 919 F.3d at 1180 (Ikuta, J., dissenting), distinguishes Track 1 and 2 "regulations," i.e., disclosure, *supra* at 15 n.16.

dissent assert substantial-relation exacting scrutiny applies to political-speech-disclosure law. AMS. FOR PROSPERITY FOUND. CERT. PET. at 15, 22-23; AMS. FOR PROSPERITY FOUND. BR. at 28-29; THOMAS MORE LAW CTR. CERT. PET. at i, 4, 14-16, 21, 23-25, 32-33, 36; THOMAS MORE LAW CTR. BR. at i, 18, 29-32; *Ams. for Prosperity Found.,* 919 F.3d at 1180 (Ikuta, J., dissenting).

This is partly incorrect. They lump into one "disclosure" discussion, claims by organizations that **(a)** challenge law triggering Track 1 burdens for an organization itself in the first place, *e.g., supra* at 6, **(b)** accept *being* political committees and then challenge particular Track 1 burdens one-by-one, *e.g., Davis v. FEC,* 554 U.S. 724, 744 (2008); *cf. Triggering* at 43 & nn.56-59 (distinguishing "being" from "forming/having"), and **(c)** challenge Track 2 law, *e.g., supra* at 7-8. *Triggering* at 45 n.71, 77-78 & nn.236-38, 79 n.247.

Although substantial-relation exacting scrutiny applies to **(b)**, *Davis,* 554 U.S. at 744 (quoting *Buckley*, 424 U.S. at 64), and **(c)**, *Citizens United*, 558 U.S. at 366-67 (quoting *Buckley*, 424 U.S. at 64, 66), strict scrutiny applies to **(a)**, *e.g., Colo. Right to Life Comm., Inc. v. Coffman,* 498 F.3d 1137, 1146 (10th Cir. 2007); *Triggering* at 77-80 & nn.236-56 (collecting competing authorities). Even if substantial-relation exacting scrutiny applied to **(a)**, the tailoring analysis, *supra* at 6, 12, and the result would be the same. *Minn. Citizens Concerned for Life, Inc. v. Swanson,* 692 F.3d 864, 872, 875 (8th Cir. 2012) (en banc).

Citing *Buckley* and *Reed* for a political-speech-disclosure-law scrutiny level, AMS. FOR PROSPERITY FOUND. CERT. PET. at 15, 22-23; AMS. FOR PROSPERITY FOUND. BR. at 28-29; THOMAS MORE LAW CTR. CERT. PET. at 4, 14-16, 23-25; THOMAS MORE LAW CTR. BR. at 18, 29-32; *Ams. for Prosperity Found.,* 919 F.3d at 1180, 1184 (Ikuta, J., dissenting), overlooks that

> since *Buckley*, the ... Court has separated strict scrutiny from exacting scrutiny. *See Iowa Right to Life Comm., Inc. v. Tooker,* 717 F.3d 576, 590-91 (8th Cir. 2013) (understanding this point). Meanwhile, *Reed*[, 561 U.S. at 196,] addresses ballot-access law, not political-speech law, much less political-speech law triggering Track 1, political-committee(-like) burdens.

Triggering at 79 n.247.

CONCLUSION

In seeking to distinguish *political*-speech-disclosure law, Petitioners and the Ninth Circuit rehearing-en-banc-denial dissent *under*state how the First Amendment protects political speech and do so in ways that can undermine First Amendment rights to political speech.

Amicus neither asserts nor implies this is anyone's intent, yet this can be an effect of their assertions.

Petitioners are due to prevail. However, no one should undermine how the First Amendment protects political speech.

Respectfully submitted,

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