

No. 23-926

IN THE
Supreme Court of the United States

NO ON E, SAN FRANCISCANS OPPOSING THE
AFFORDABLE HOUSING PRODUCTION ACT, *et al.*,

Petitioners,

v.

DAVID CHIU, IN HIS OFFICIAL CAPACITY
AS SAN FRANCISCO CITY ATTORNEY, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENTS' SUPPLEMENTAL BRIEF

DAVID CHIU
San Francisco City Attorney
WAYNE K. SNODGRASS
TARA M. STEELEY*
Deputy City Attorneys
City Hall, Room 234
One Dr. Carlton B. Goodlett Place
San Francisco, California 94102
(415) 554-4655
tara.steeley@sfcityatty.org
**Counsel of Record*
Counsel for Respondents

117127



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

Petitioners seek a Writ Of Certiorari, in part, based on their assertion that compliance with the challenged disclaimer requirements take up too much space on their advertisements. Specifically, Petitioners assert in the Question Presented:

The secondary donor speech mandate also barred petitioners' 15- and 30-second ads, because the required spoken "disclaimers" ran 32 to 33 seconds. Likewise, the required written "disclaimers" entirely wiped out petitioners' smaller 2x4 inch newspaper ads. Although San Francisco has since exempted ads of up to 30 seconds from the requirement to speak about secondary donors, and no longer requires that print ads of 25 or fewer square inches name secondary donors, the disclaimer would still consume and displace 51% of the screen for up to 33% of petitioners' video ads' duration, 35% of petitioners' 5x10 inch print ads, 23% of petitioners' 8.5x11 inch mailers, and, when spoken, the first 53-55% of petitioners' 60-second video ads. *See* Pet. at i.

On August 9, 2024, the City and County of San Francisco Ethics Commission approved Regulation 1.161-4, which eliminates the possibility that secondary disclaimer requirements could cause disclaimers to take more than one-third of advertising space. (*See* Exhibit A; *see also* Meeting Summary—Summary of Matters Discussed and Actions Taken at Ethics Commission's August 9, 2024 Regular Meeting, available at <https://sfethics.org/ethics/2024/08/meeting-summary-summary-of-matters-discussed-and-actions-taken-at-ethics-commissions-august-9-2024-regular-meeting.html>.)

Pursuant to Regulation 1.161-4, a committee whose disclaimer would consume more than one-third of the total advertisement may take the following actions to reduce the size of the disclaimer:

- For print advertisements, Regulation 1.161-4(a)(1) allows the committee to first disregard the larger font requirements in local law and instead rely on the State's font requirements. If after adjusting the font requirements, the disclaimer still takes up more than one-third of the total advertisement, the committee would be able to omit information regarding secondary major contributors.
- For audio, radio, telephone, video, television, or electronic advertisements, Regulation 1.161-4(a)(2) allows the committee to omit any information regarding secondary major contributors from the spoken or visual components of the disclaimer.

By eliminating the possibility that secondary disclaimer requirements could cause a disclaimer to take more than one-third of advertising space, the regulation seeks to balance committee interests in maximizing space for their political messages with the public's interest in robust and practicable disclaimer rules that aid transparency.

The Petition in this case has been distributed for the September 30, 2024, Conference. About a week later, on October 8, 2024, Regulation 1.161-4 is set to become final and operative, barring unexpected action from the

San Francisco Board of Supervisors to disapprove the regulation before it goes into effect.

Between the passage of the regulation on August 9, 2024 and when the regulation is set to become operative on October 8, 2024, the City will not take any enforcement action against a committee whose advertisements comply with Regulation 1.161-4.

Respectfully submitted,

DAVID CHIU
San Francisco City Attorney
WAYNE K. SNODGRASS
TARA M. STEELEY*
Deputy City Attorneys
City Hall, Room 234
One Dr. Carlton B. Goodlett Place
San Francisco, California 94102
(415) 554-4655
tara.steeley@sfcityatty.org
**Counsel of Record*
Counsel for Respondents

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — DRAFT REGULATION AMENDMENTS TO SAN FRANCISCO CAMPAIGN AND GOVERNMENTAL CONDUCT CODE SECTION 1.161.....	1a

1a

**APPENDIX A — DRAFT REGULATION
AMENDMENTS TO SAN FRANCISCO
CAMPAIGN AND GOVERNMENTAL
CONDUCT CODE SECTION 1.161**

San Francisco Ethics Commission
25 Van Ness Avenue, STE 220
San Francisco, CA 94102-6053
ethics.commission@sfgov.org
415-252-3100 | sfethics.org

ETHICS COMMISSION

**NOTICE OF PROPOSED REGULATIONS
CONCERNING CAMPAIGN FINANCE**

7/29/24

**Draft Regulation Amendments to San Francisco
Campaign and Governmental Conduct
Code Section 1.161**

...

Regulation 1.161-4: Exceptions to Disclaimer Requirements

(a) If complying with the minimum disclaimer requirements of Section 1.161 and Ethics Commission Regulation 1.161-3 results in the advertisement's disclaimer taking up more than one-third of the total advertisement, the committee may do the following:

(1) For print advertisements, including mass mailings and smaller written advertisements:

Appendix A

A. The committee may disregard the font requirements of Section 1.161 and Ethics Commission Regulation 1.161-3 and instead rely solely on the font requirements specified in the California Political Reform Act and its enabling regulations.

B. If after adjusting the font requirements as specified in subsection A, the disclaimer still takes up more than one-third of the total advertisement, the committee may omit information regarding any secondary major contributors, that would otherwise be required by Section 1.161 and Ethics Commission Regulation 1.161-3.

(2) For any audio, radio, telephone, video, television, or electronic advertisements for which a disclaimer must be spoken or visually displayed:

A. The committee may omit information regarding any secondary major contributors from the spoken or visual components of the disclaimer, that would otherwise be required by Section 1.161 and Ethics Commission Regulation 1.161-3.

(b) For print advertisements and the visual components of television, video, or electronic advertisements, a disclaimer takes up more than one-third of the total advertisement if the total area of the disclaimer exceeds one-third of the total area of the advertisement.

Appendix A

(c) For the spoken component of any audio, radio, telephone, video, television, or electronic advertisements for which a disclaimer must be spoken, a disclaimer takes up more than one-third of the total advertisement if the total number of seconds required to speak the disclaimer exceeds one-third of the total length of the advertisement. When determining the amount of time it takes to speak a disclaimer, the disclaimer must be read in a tone and pitch similar to the rest of the advertisement, at a pace no slower than the rest of the advertisement, and at a pace that can be clearly understood.

...