

No. 26-____

IN THE
Supreme Court of the United States

MOVING OXNARD FORWARD, INC.,
Petitioner,

v.

LOURDES LOPEZ, in her official capacity as
City Clerk for the City of Oxnard,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Randall v. Sorrell recognized that campaign-contribution limits have a constitutional “lower bound,” below which “the constitutional risks to the democratic electoral process become too great,” but did not locate it. 548 U.S. 230, 248–49 (2006) (plurality opinion). Twenty years later that bound remains undefined, and this Court has never upheld a limit below \$1,000.

The court of appeals upheld a \$500 per-election limit on contributions to Oxnard city council candidates. In conducting *Randall*’s independent review, it held that “[t]he final consideration, the presence of a special justification, is irrelevant” because the other considerations favored the City. Applying circuit precedent, it also held that the City need show only that a perceived threat of corruption is “not illusory.” Yet this Court requires “record evidence or legislative findings,” not the bare positing of “the existence of the disease sought to be cured.” *FEC v. Ted Cruz for Senate*, 596 U.S. 289, 307 (2022). The decision below rests on *Buckley v. Valeo*’s premise that a contribution limit restricts the contributor and so warrants lesser review. 424 U.S. 1, 20–21 (1976). This Court has never decided what standard governs restrictions on what political candidates may solicit.

The questions presented are:

1. Whether a court conducting the independent review *Randall* requires may hold that the fifth consideration — whether any special justification warrants a contribution limit so low — is “irrelevant” because the other four considerations favor the government.
2. Whether a government may justify a limit on campaign contributions on an initial showing only

that a perceived threat of *quid pro quo* corruption is “not illusory” and “more than mere conjecture,” when this Court has declined to define the minimum showing and has held that the required quantum of evidence must vary with the plausibility of the government’s justification.

3. Whether a limit on what a candidate may solicit or accept for the candidate’s campaign is a restriction on the candidate’s own speech subject to strict scrutiny, and whether *Buckley v. Valeo*’s “closely drawn” standard should be overruled to the extent that it governs such a limit.

PARTIES TO THE PROCEEDING

Petitioner Moving Oxnard Forward, Inc. was plaintiff-appellant below. Respondent Lourdes Lopez, in her official capacity as City Clerk for the City of Oxnard, was defendant-appellee below. The action was first filed against Michelle Ascension, then the City Clerk, in her official capacity. After Lopez was elected to the office, she was substituted in Ascension's place. See Fed. R. App. P. 43(c)(2).

CORPORATE DISCLOSURE STATEMENT

Under this Court's Rule 29.6, petitioner Moving Oxnard Forward, Inc., states that it is a California nonprofit public benefit corporation. It has no parent corporation, and no publicly held corporation owns any of its stock; it has issued no stock.

RELATED PROCEEDINGS**United States District Court for the Central District of California:**

Moving Oxnard Forward, Inc. v. Ascencion, No. 2:20-cv-04122-CBM-AFM. Judgment entered August 5, 2021.

United States Court of Appeals for the Ninth Circuit:

Moving Oxnard Forward, Inc. v. Ascension, No. 21-56295. Panel opinion filed December 20, 2024, 124 F.4th 605; rehearing en banc granted and panel opinion vacated sub nom. *Moving Oxnard Forward, Inc. v. Lopez*, 138 F.4th 1102 (June 4, 2025); en banc judgment entered April 22, 2026, 173 F.4th 1070.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Moving Oxnard Forward, Inc., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The en banc opinion of the court of appeals (App. 1a–80a) is reported at 173 F.4th 1070. The opinion of the three-judge panel (App. 81a–136a) is reported at 124 F.4th 605, and was vacated when rehearing en banc was granted, *Moving Oxnard Forward, Inc. v. Lopez*, 138 F.4th 1102 (9th Cir. 2025) (App. 188a). The order directing supplemental briefing (App. 189a–190a), the order of the district court granting summary judgment (App. 137a–161a), its judgment (App. 162a), its order on the parties’ evidentiary objections (App. 163a–174a), and its order denying a new trial (App. 175a–187a) are unreported.

JURISDICTION

The en banc court of appeals entered judgment on April 22, 2026. No petition for rehearing of that judgment was filed. On July 17, 2026, Justice Kagan extended the time to file this petition to and including September 19, 2026. See Application No. 26A76. Under this Court’s Rule 30.1, and because September 19, 2026 was a Saturday, this petition is timely filed on Monday, September 21, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND ORDINANCE PROVISIONS INVOLVED

The First Amendment provides in relevant part that “Congress shall make no law . . . abridging the freedom

of speech.” The Fourteenth Amendment provides in relevant part that no State shall “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Article VI of chapter 2 of the Oxnard City Code, added by Measure B, is reproduced at App. 191a–199a. Section 2-243(A) provides in relevant part:

No person shall make, and no candidate for elective office or campaign treasurer shall solicit or accept, any contribution which would cause the total amount contributed by that person to that candidate . . . to exceed five hundred dollars (\$500) for any election.

STATEMENT OF THE CASE

A. Oxnard’s Elections and Measure B

Oxnard, California, is a city of approximately 208,881 residents. App. 21a. Its city council is elected by district, with a mayor elected at large. Council members serve four-year terms. Oxnard City Code § 2-3; 2-ER-112. They are chosen in a single winner-take-all election; there is no primary and no runoff. 3-ER-390. The council shifted from at-large to district-based elections before the 2018 general election. App. 69a.

On March 3, 2020, the City’s voters approved Measure B, the Oxnard Government Accountability and Ethics Act. App. 5a, 10a. It packaged three subjects: a ban on gifts to City officials from persons contracting or seeking to contract with the City, term limits, and campaign-contribution limits. App. 10a; App. 49a n.6, 61a. It limits an individual’s contributions to a council candidate to \$500 per election and to a citywide candidate to \$750, with higher limits

for political action committees and none for political parties. App. 9a–10a, 28a. Because a council seat is contested once every four years in a single election, a donor’s \$500 covers an entire four-year cycle. Measure B created Article VI of the Code in its entirety; Oxnard imposed no limit on contributions to council candidates before 2020. App. 191a–199a.

Measure B states its own purpose: the City’s interests are to “deter corruption and the appearance of corruption caused by the coercive influence of large financial contributions on candidates’ positions.” App. 191a. It does not identify an exchange of contributions for official acts.

The court of appeals placed the average council district at “approximately one-third the population considered in *Shrink v. Adams*” — that is, roughly one-third of 100,000. App. 24a (citing *Shrink Mo. Gov’t PAC v. Adams*, 204 F.3d 838, 840 (8th Cir. 2000) (*Shrink II*)). The City’s expert calculated Measure B’s district-office limit at \$0.0144 per district resident. App. 22a.

Only the per-candidate contribution limits are at issue here. Petitioner did not appeal the district court’s gift-ban ruling. App. 11a n.3. The court of appeals separately held that Measure B does not limit contributions to committees supporting or opposing ballot measures, App. 40a–42a; petitioner does not seek review of that holding.

B. The Evidence the City Offered

The City rested on four items: a 2010 newspaper article, a 2012 report of the Ventura County District Attorney (the “Report”), a 2019 resident survey, and the 82% vote by which Measure B passed. App. 16a.

The Report is reproduced in relevant part at App. 200a–222a. Investigators executed more than 30 search warrants at more than 50 locations and gathered over 100,000 pages of documents. App. 208a. The Report concerned expense abuse, an improper personal loan of city funds, a grand-opening celebration, undeclared gifts of meals and golf and event tickets, and close relationships between officials and private parties transacting with the City. App. 208a–209a. As to the gift allegations it concluded that “[t]here is insufficient evidence to prove the most serious allegations involving gift vacations and the statute of limitations has expired as to many of the gifts.” App. 209a. It found “no evidence that the officials had any direct financial interests in the questioned transactions.” App. 209a–210a. Its conclusion states that “the most serious allegations of criminal conduct are unsupported by the evidence,” and that where policies “conflict with state laws, or expose the city to potential criminal abuse, those policies and practices are identified as requiring reform.” App. 221a–222a.

Campaign contributions were not among the District Attorney’s findings. The word “campaign” appears nowhere in the Report as reproduced — its cover, its complete table of contents, its executive summary, and its conclusion. App. 200a–222a. The word “contribution” appears once, at App. 209a, describing “private contributions” that helped fund a grand-opening celebration. No section of the Report is devoted to campaign finance, and no reform it recommends concerns campaign contributions.¹

¹ The Appendix reproduces an excerpt from the Report. App. 200a–222a. The full Report refers to campaign contributions once, in a footnote on whether the expectation of future gifts

The survey asked residents whether they “would support a Government Accountability measure.” App. 62a. The court of appeals acknowledged that the survey “addressed government accountability generally rather than corruption from campaign contribution limits alone.” App. 18a. The district court struck, as speculative, the City Manager’s assertion that the 82% vote demonstrated residents’ “agreement with the need for campaign contribution limits and a gift ban.” App. 169a.

C. The Record on Impact

The City’s expert examined the 2018 election, the last before Measure B, and found that “only 18 of the 287 donors (6.3% of the donors) to Oxnard city candidates in 2018 made contributions that would have exceeded the limits in Measure B.” App. 26a. The City acknowledged that “the sorts of large contributions that [Measure B] prohibits were quite rare even before its adoption.” App. 60a.

One candidate was affected differently. Aaron Starr, petitioner’s president, raised 57.6% of his funds in amounts exceeding the proposed limits; his opponent, the incumbent mayor, would have lost less than 10%. App. 69a. The City described Starr as a “stark” “outlier” and stated that Measure B “will force” him “to change” his fundraising practices. App. 69a–70a. The City’s presentation to neighborhood councils

created an indirect financial interest under Cal. Gov’t Code § 1090; the Report concluded it did not here. Report 74 n.68 [2-ER-222]. The authority it cited was *Hub City Solid Waste Servs., Inc. v. City of Compton*, 186 Cal. App. 4th 1114 (Cal. Ct. App. 2010), and “campaign contributions” appears in the discussion of that case. *Ibid.* The Report’s remaining references to “contributions” concern private funding of a city celebration. Report 2, 53, 56 [2-ER-150, 2-ER-201, 2-ER-204].

devoted its final two slides to one unnamed candidate's contributions, mapped by the city under a banner reading "\$70,000 RAISED OUTSIDE OF OXNARD," beside a pie chart headed "TOTAL CAMPAIGN DONATIONS: \$118,050." App. 67a–68a. The slides are reproduced at App. 79a–80a as part of the dissent from the en banc opinion. There is no dispute that the candidate is Starr. App. 67a.

Measure B was proposed in October 2019, seven years after the Report. App. 70a.

D. Proceedings Below

Petitioner sued under 42 U.S.C. § 1983 for itself and its members, including members who wish to contribute above the limits and members who wish to "run for the office of Oxnard City Council and solicit and receive contributions exceeding \$500." 1-ER-3. The district court had jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3). The parties cross-moved for summary judgment on a closed record.

The district court ruled for the City. App. 161a. In a companion order it admitted the Report's factual findings over petitioner's hearsay objection while excluding "the summary of any witness statements or legal conclusions," admitted the City's expert report in full, and struck both operative paragraphs of Starr's declaration — including his testimony that the City's materials treated his "activism to increase transparency and lower taxes and fees in the City" as "a source of corruption," and his testimony that comparable cities have "no limit whatsoever." App. 165a–167a, 173a–174a.

A divided panel reversed in relevant part. App. 82a. The court granted rehearing en banc and vacated the panel opinion. App. 188a. It then directed the parties

to file supplemental briefs addressing “[w]hether *Montana Right to Life Ass’n v. Eddleman*, 343 F.3d 1085 (9th Cir. 2003), and *Lair v. Motl*, 873 F.3d 1170 (9th Cir. 2017), should be overruled to the extent that they articulate the threshold showing that a governmental defendant must make to justify any level of limitation on campaign contributions.” App. 189a–190a. Both parties filed supplemental briefs.

The en banc court affirmed 9–2. It held, under circuit precedent, that the City “need only demonstrate that the risk of *quid pro quo* corruption or its appearance is more than ‘mere conjecture’ . . . and not ‘illusory,’” and that this is a “low [evidentiary] bar.” App. 15a. It found the first three *Randall* danger signs absent, assumed the fourth, and reviewed the record independently. App. 21a, 23a–25a; see also 548 U.S. at 248–49. Running four of the five considerations in the City’s favor, it held that “[t]he final consideration, the presence of a special justification, is irrelevant.” App. 31a.

The court acknowledged that “more extensive evidentiary documentation” might have been required had petitioner cast doubt on the implications of the City’s evidence, but found that petitioner had presented no evidence rebutting the City’s showing. App. 19a. It rejected as “logically unsound” petitioner’s argument that comparably sized cities without limits belonged in the comparison set. App. 23a. It disposed of the candidate’s claim in a sentence, holding that a limit requiring a candidate to “raise funds from a greater number of persons” does not “impugn” “the candidate’s freedom of speech.” App. 28a. And it declined to revisit *Lair* and *Eddleman*, seeing “no reason” to do so. App. 33a.

Judge Collins, joined by Judge VanDyke, dissented. He would overrule *Lair* and *Eddleman* as inconsistent with this Court's decisions, calling the circuit's standard "embarrassingly low." App. 63a. He also concluded that the undisputed facts raise "a sufficient danger of invidious discrimination" because Measure B "both in its formulation and in its operation, differentially targets Starr, who has repeatedly challenged the incumbent City government and its policies," and that "the legislative record indicates that Starr and his reliance on larger-size contributions were a target of the City Council when it proposed and promoted Measure B." App. 66a. He noted that Starr was the "proponent of four recall petitions that triggered a special election" in May 2018, and that "the four targets of the recall were still on the City Council when it unanimously decided to submit Measure B to the voters in October 2019." App. 70a.

REASONS FOR GRANTING THE PETITION

The three questions concern *Randall's* special-justification inquiry, the government's threshold evidentiary burden, and the standard governing a prohibition directed at the candidate. On each, the judgment cannot stand on its own terms.

I. The Court Below Declared *Randall*'s Special-Justification Inquiry "Irrelevant," Five Years After Striking a Comparable \$500 Limit on That Very Consideration.

A. Ignoring evidence that the City singled out one candidate, the court held that the justification for a \$500 limit "is irrelevant" so long as other considerations favor the City.

Randall looks for danger signs and, when they are present, requires courts to "review the record independently and carefully," guided by five sets of considerations. 548 U.S. at 249, 253–61. The court of appeals assumed that the fourth danger sign was present — the limit is lower than any this Court has upheld — and moved on to the record review, though not to the whole of it. App. 21a–23a.

Of *Randall*'s five sets of considerations, the fifth asks whether there is "any special justification that might warrant a contribution limit so low or so restrictive as to bring about the serious associational and expressive problems" the Court had described. 548 U.S. at 261. This Court once before vacated this circuit's contribution-limit judgment for failing to apply *Randall*, remanding "for that court to revisit whether Alaska's contribution limits are consistent with our First Amendment precedents." *Thompson v. Hebdon*, 589 U.S. 1, 6 (2019) (*per curiam*) (*Thompson I*).

The court below invoked that admonition: "the U.S. Supreme Court has previously admonished this Circuit to treat *Randall*, including its danger signs, as precedent." App. 36a. Then, in the same opinion, having found the first four considerations in the City's

favor, it deemed *Randall*'s final consideration "irrelevant" and refused to consider it. App. 31a.

By ignoring the fifth consideration, the court converted independent review into a checklist. Two considerations weigh on sufficiency: whether the limits leave challengers able to mount competitive campaigns, and whether any special justification supports a limit so low. The other three concern drafting choices within the government's control — party exemptions, volunteer expenses, and inflation adjustment. App. 28a–30a. The court resolved the first on circuit precedent² and declared the fifth irrelevant, reasoning that "based on the danger signs and first four factors, there are no 'serious associational and expressive problems'" and "thus a special justification is unnecessary." App. 31a. But that is what the fifth consideration asks, and making the other four decisive eliminates the inquiry into whether so low a limit is justified at all. 548 U.S. at 261. Neither the court nor the City justified the number the City chose.

That matters here because Oxnard's \$500 limit is unusually low. This Court has sustained \$1,000 in *Buckley*, 424 U.S. at 29, and \$1,075 in *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 384, 397

² The court held that a limit requiring a candidate to "raise funds from a greater number of persons" rather than seeking "fewer, larger contributions" does not "impugn" "the candidate's freedom of speech." App. 28a (quoting *Lair*, 873 F.3d at 1186). That proposition is the court of appeals' own, drawn from the same circuit precedent, *Eddleman*, 343 F.3d at 1091, the second question presented asks this Court to review, and it answers a different question than the one *Randall* poses. *Randall* asks what funding remains available — an empirical question — and the record showed the limits would have reached 57.6% of the funds petitioner's president raised in the last election before Measure B, against less than 10% of the incumbent mayor's. App. 69a.

(2000) (*Shrink*). It struck Vermont’s \$200 to \$400 limits in *Randall*, 548 U.S. at 238, 262–63; and it identified Alaska’s \$500 limit as bearing the marks of a limit set too low, *Thompson I*, 589 U.S. at 5.

These limits were set over fifty years, and a dollar today is not what it was. This Court has made the adjustment itself. *Thompson I*, 589 U.S. at 5 (normalizing the limit sustained in *Shrink*). Normalized to 2020, the year Measure B took effect, *Buckley*’s \$1,000 is \$4,550 and *Shrink*’s \$1,075 is \$1,710; *Randall*’s \$200 to \$400 Vermont limits range from \$325 to \$645.³ Petitioner does not treat any of these as a constitutional floor; the adjustment permits comparison across limits enacted decades apart.

On this normalized comparison, Oxnard’s \$500 is less than a tenth of *Buckley*’s, and adjusting for inflation underscores the point: it falls within the range of the Vermont limits invalidated in *Randall*. And it is, to the dollar, what Alaska’s \$500 limit was worth that year. Whether a court conducting independent review may decline to ask whether anything justifies a limit below any this Court has sustained is a pure question of law, and it recurs in every low-limit case.

³ U.S. Bureau of Labor Statistics, CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm (last visited Sept. 15, 2026).

B. Five years earlier, the same court struck down a closely comparable \$500 limit on that very consideration.

On remand from this Court, the Ninth Circuit held Alaska’s \$500 individual-to-candidate limit unconstitutional. *Thompson v. Hebdon*, 7 F.4th 811 (9th Cir. 2021) (*Thompson II*). It applied the same five considerations “with an emphasis on the ‘special justification’ factor,” *id.* at 823, and held that Alaska’s evidence — including a scandal in which six or seven legislators took criminal bribes — was “insufficient for us to conclude that there is a present special justification for Alaska’s low individual contribution limit.” *Id.* at 822, 829.

The inconsistency is doctrinal before it is factual. The Ninth Circuit has now articulated incompatible approaches to *Randall*’s fifth consideration: *Thompson II* treated special justification as part of the five-factor independent review, with particular emphasis on that inquiry, while the decision below treated it as unnecessary once the first four considerations favored the government. The opinion below does not acknowledge the conflict, and never cites the decision its own court issued on remand — although petitioner cited it in the supplemental briefing the en banc court had ordered. Pet. C.A. Supp. Br. 17 (No. 21-56295, Dkt. 56, July 7, 2025).

The facts show why it matters. Alaska’s House districts average roughly 18,300 residents.⁴ The court below placed Oxnard’s city council districts at roughly 33,000. App. 24a. Oxnard’s districts are nearly twice

⁴ Alaska Const. art. VI, § 4 (Alaska has forty House districts); U.S. Census Bureau, 2020 Census (Alaska resident population 733,391).

the size and its limit is half the dollars: measured as *Thompson I* measured it — the most one donor may give one candidate for a single election cycle — Alaska’s limit was \$1,000 and Oxnard’s is \$500. 589 U.S. at 5; Alaska Stat. § 15.13.070(b)(1); Alaska Const. art. II, § 3. So the same court has held that \$500 is too low where the government proved criminal bribery and the districts were half the size, *Thompson II*, 7 F.4th at 822–23, and high enough where the government proved no actual or apparent *quid pro quo* corruption arising from campaign contributions. *Randall* cautioned that “campaign costs do not automatically increase or decrease in precise proportion to the size of an electoral district.” 548 U.S. at 252.

C. The court called “logically unsound” the comparison this Court called a “strong sign” ten weeks later.

The court held Oxnard’s limits “are comparable to contribution limits imposed by other California cities of comparable size.” App. 21a. It reached that conclusion by excluding every comparably sized city imposing no limit, reasoning that such cities “may not have evidence of actual or apparent *quid pro quo* corruption necessary to implement a contribution limit,” so it “makes little sense” to compare Oxnard to them. App. 23a. It called the contrary argument “logically unsound.” *Ibid.* And it held that this Court “has implicitly rejected” the comparison because in *Randall* this Court “only compared Vermont’s contribution limits to other contribution limits imposed by states across the country and did not consider states without a contribution limit.” *Ibid.*

Ten weeks later this Court made that comparison expressly: “When States do not impose a particular

campaign-finance restriction, the absence of evidence of resulting *quid pro quo* corruption is a strong sign that the concern is too speculative to support such a restriction at the federal level.” *National Republican Senatorial Comm. v. FEC*, 609 U. S. ___, ___ (2026) (*NRSC*) (slip op., at 19). There the comparison was between the federal government and the States; here it is between one California city and others.

NRSC concerned a different restriction — federal limits on what a political party may spend in coordination with its own candidate — and asked whether those limits were a “proportionate, necessary, and narrowly tailored means for addressing circumvention” of the base contribution limits. *NRSC*, slip op., at 19. The Government predicted that without them, donors would route large contributions to candidates through the parties. This Court tested that prediction against state experience. A majority of States impose no comparable restriction — they “largely give parties free rein to make coordinated expenditures on behalf of their state-level nominees” — yet “no evidence of corruption” via circumvention “has materialized.” *Ibid.* That record “weakens any claim” that the federal limits were necessary. *Ibid.*

The method was not improvised. “In the campaign finance context, this Court has often looked to the experience of the States.” *Ibid.* (citing *McCutcheon v. FEC*, 572 U.S. 185, 209–210 & n.7 (2014) (plurality opinion); *Cruz*, 596 U.S. at 307). Jurisdictions that decline to regulate test whether regulation is necessary: if the predicted harm does not appear where no rule prevents it, the prediction is “too speculative.” The court below reasoned the opposite way. It treated the possibility that no-limit cities lack evidence of corruption as a reason to exclude them,

when *NRSC* identifies that absence as the signal. And it read *Randall* to foreclose the comparison ten weeks before this Court expressly drew the inference the court below rejected. Oxnard was itself such a jurisdiction until Measure B, and the City continued without any contribution limit at all for seven years after the Report. App. 191a–199a; see App. 70a.

Petitioner does not rely on *NRSC* to establish *Randall*'s fourth danger sign; the court below assumed that sign in petitioner's favor. App. 23a. *NRSC* undermines the premise the court employed in the independent review that followed — that jurisdictions imposing no limit are irrelevant to whether an unusually low limit is necessary or specially justified. The exclusion kept those cities out of the inquiry they bear on most — whether any “special justification” warrants a limit so low, 548 U.S. at 261 — the consideration the court then declared irrelevant. “In a case involving attempted restrictions on speech, the absence of evidence matters.” *NRSC*, slip op., at 19.

The comparison was in the City's own evidence. Its expert identified comparably sized California cities with no contribution limits — Daly City, Stockton, and Riverside among them. 3-ER-414, 3-ER-416. Petitioner's president said the same in a declaration; that paragraph was struck as irrelevant and lacking foundation, App. 174a, though whether another city limits contributions is a question of that city's law, not a matter calling for a witness.

Nor were the remaining cities compared on common terms. The court set Oxnard's \$500 limit next to figures upheld in three out-of-circuit decisions — \$275, \$350, and \$100 and \$300 — without regard to the

period each covers.⁵ *Thompson I* treated that period as material, measuring the Missouri limit upheld in *Shrink* as “\$1,075 per two-year election cycle” and Alaska’s annual limit as allowing “a maximum contribution of \$1,000 over a comparable two-year period.” 589 U.S. at 5. The narrower point is that the court drew a danger-sign conclusion from nominal figures alone, ignoring a variable this Court treated as material.

The City’s own expert confirmed the point. Because “during a two-year election cycle, candidates for city office in Oxnard only run in a single election,” he explained, “an election in Oxnard is thus effectively synonymous with an election cycle.” 3-ER-390. He offered that to show Oxnard’s limits could be compared to cities of either kind. Yet the court held the first *Randall* danger sign absent because Measure B’s limits are “per candidate per election, not per office per election cycle.” App. 21a. On the City’s own evidence — admitted in full over petitioner’s objections, App. 163a–174a — there is no difference between the two in Oxnard.

⁵ *Shrink II*, 204 F.3d at 840 (\$275); *Zimmerman v. City of Austin*, 881 F.3d 378, 387–88 (5th Cir. 2018) (\$350); *Frank v. City of Akron*, 290 F.3d 813, 818 (6th Cir. 2002) (\$100 and \$300). App. 24a–25a. The court also cited *McNeilly v. Land*, 684 F.3d 611, 612 (6th Cir. 2012), which affirmed the denial of a preliminary injunction as to a \$500 limit and so decided only that the challenger had not shown a likelihood of success. App. 25a.

II. This Court Has Never Defined the Minimum Evidentiary Showing Required to Justify a Contribution Limit, and the Rule Below Mistakes a Description of Sufficient Evidence for That Minimum.

A. *Shrink declined to define the minimum evidentiary showing; the rule below was inferred, not stated.*

Shrink held that “[t]he quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised.” 528 U.S. at 391. It declined to fix the bottom of that scale.

Buckley’s showing, the Court explained, “exemplifies a sufficient justification for contribution limits,” but “does not speak to what may be necessary as a minimum.” 528 U.S. at 392 n.5. And because Missouri’s case was not “a close call,” it required no “further definition of whatever the State’s evidentiary obligation may be.” *Id.* at 393.

Nothing since has supplied the definition. *Randall* assumed the interest and turned to tailoring. 548 U.S. at 248–49. In *Cruz* this Court invalidated a limit on repaying a candidate’s personal loans with post-election contributions, holding the Government’s showing inadequate: it had identified no case of *quid pro quo* corruption in that context and offered a scholarly article, a poll, and statements of Members of Congress in its place. 596 U.S. at 307–310. *Cruz* did not define the minimum for an ordinary contribution limit, but required “record evidence or legislative findings” rather than simply positing “the disease

sought to be cured.” *Id.* at 307. Twenty-six years after *Shrink*, the minimum remains undefined.

B. The rule below mistakes descriptions of sufficient evidence for the minimum this Court declined to define.

The phrases from which the Ninth Circuit built its threshold rule did not establish one. *Buckley* observed that although the scope of corrupt practices “can never be reliably ascertained,” the “deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one.” 424 U.S. at 27 & n.28. That described what *Buckley*’s record established. It did not hold that whatever makes corruption not illusory carries the government’s burden.

Shrink made the distinction explicit, and its own record shows why. Missouri’s evidence included a state treasurer’s placement of State banking business with a \$20,000 contributor, a \$420,000 contribution from a political action committee tied to an investment bank, and three scandals, one involving a legislator accused of sponsoring legislation in exchange for kickbacks. 528 U.S. at 393–94. On that record, the statute was “not void . . . for want of evidence,” *id.* at 391, and the case was not “a close call,” *id.* at 393. *Shrink* otherwise reiterated that “mere conjecture” cannot carry a First Amendment burden, *id.* at 392, but did not hold that whatever exceeds conjecture can. *Shrink*, the decision most often cited for a low evidentiary threshold, declined to define it precisely because the evidence before it was substantial enough that the minimum did not matter.

Eddleman turned those descriptions into the minimum. It read this Court to have “required only

that the perceived threat not be ‘illusory,’” 343 F.3d at 1092 (quoting 424 U.S. at 27), and added *Shrink*’s “mere conjecture” sentence as its other half, *id.* at 1093. *Lair* carried the construction forward. 873 F.3d at 1178–79. The decision below states its effect: the City “need only demonstrate” that the risk is more than “mere conjecture” and not “illusory” — a “low [evidentiary] bar.” App. 15a.

That construction fixes the government’s initial showing even though *Shrink* made the required quantum “vary up or down with the novelty and plausibility of the justification raised.” 528 U.S. at 391. That instruction keys the required quantum to the government’s own justification. The passage on which the court below relied describes one circumstance in which more may be needed; it does not make the challenger’s evidence the only thing that can require it. The court below acknowledged that “more extensive evidentiary documentation” might be required had petitioner cast doubt on the implications of the City’s evidence, App. 19a, but held that petitioner made no such showing. That holding presents the question rather than avoids it: as Part II.D explains, the City’s own record supplied the showing.

C. The threshold so defined does not test the amount, and the decision below removed the inquiry that does.

The threshold also asks a different question from whether the government has justified the limit it chose. *Lair* makes the separation express: the first step is “divorced from the actual amount of the limits” and asks only “whether any level of limitation is justified.” 873 F.3d at 1178. The second inquiry — whether the government has justified a particular

amount — belongs, “if ever appropriate,” to closely drawn review. *Ibid.*

The abstract possibility that a large contribution could produce a *quid pro quo* is neither novel nor implausible; *Shrink* says as much. 528 U.S. at 391. But that proposition says nothing about whether a particular government has shown a risk sufficient to justify restricting contributions in its jurisdiction, much less at the level it selected. Petitioner has identified no decision of any court of appeals since *Shrink* holding a government’s threshold showing insufficient in a challenge to an ordinary limit on the amount of contributions to a candidate.⁶

The division might be tolerable if the second stage asked what the first does not. Here the court did not. Having resolved *Randall*’s other considerations in the City’s favor, the court held that “[t]he final consideration, the presence of a special justification, is irrelevant.” App. 31a. The one consideration directed at whether a limit this low can be justified dropped out, and no stage of the inquiry required the City to justify the number it chose. But when the same court applied that consideration in a different case to a comparable limit, it reached the opposite result. *Thompson II*, 7 F.4th at 823, 829.

⁶ The decisions petitioner has located finding evidentiary support inadequate concern distinct restrictions rather than the threshold justification for an ordinary base limit. See, e.g., *Zimmerman*, 881 F.3d at 388 (temporal blackout); *Jones v. Jegley*, 947 F.3d 1100, 1105 (8th Cir. 2020) (same); *Lavin v. Husted*, 689 F.3d 543, 547 (6th Cir. 2012) (ban on contributions from a class of sources).

D. The City’s presentation to voters singled out one candidate’s fundraising — the showing Shrink said would call for more.

Shrink contemplated that more would be required in a particular circumstance — where the challenger “made any showing of [its] own to cast doubt on the apparent implications of *Buckley*’s evidence and the record here.” 528 U.S. at 394. The challengers there made no such showing, offering only academic studies “contradicted by other studies.” *Ibid.* The court below quoted that language and held the condition unmet: “MOF did not put forth its own evidence rebutting the City’s evidence.” App. 19a.

Petitioner needed none. *Shrink* asks whether the challenger has made a showing that casts doubt on “the apparent implications of *Buckley*’s evidence and the record here.” 528 U.S. at 394. Nothing in *Shrink* requires that showing to rest on evidence generated by the challenger, and “the Government bears the burden of proving the constitutionality of its actions.” *NRSC*, slip op., at 9 (quoting *McCutcheon*, 572 U.S. at 210). The doubt petitioner identifies may therefore be found in the City’s own record.

Here, the City’s own expert found that only 18 of 287 donors in the last election before Measure B had given above the proposed limits, App. 26a, while the City’s presentation to voters devoted its final two slides to the fundraising of the one candidate substantially affected — petitioner’s president. App. 67a–68a, 79a–80a. That is a presentation about one candidate’s fundraising, not about *quid pro quo* corruption. And the Report on which the City principally relied documented gifts and travel, not campaign contributions. App. 200a–222a. Moreover, of the eight

officials whose gifts it examined, six were non-elected employees who stand for no election and receive no contributions. App. 203a–204a.

Those facts bear on the justification the City asserted. *Randall*’s fifth consideration asks whether any “special justification” warrants a limit so low, 548 U.S. at 261, and what the City’s own materials addressed is evidence on that question — not an inquiry into the motives of those who enacted Measure B. *Cruz* requires evidence concerning “*quid pro quo* corruption in th[e] context” sought to be regulated. 596 U.S. at 307. Here that context is campaign contributions, which the Report never addresses. Whether the government’s initial burden may remain at that low threshold when its own record casts doubt on its asserted justification is the question this case presents.

E. The question is mature for this Court’s review.

Further percolation is unlikely to produce an answer. The construction is not peculiar to the Ninth Circuit; the First Circuit states the same rule. *Daggett v. Comm’n on Governmental Ethics & Election Pracs.*, 205 F.3d 445, 450 (1st Cir. 2000). The Ninth Circuit has confronted its threshold repeatedly without deciding whether it survives this Court’s later decisions. This Court noted the circuit’s own acknowledgment that *McCutcheon* and *Citizens United* had “created some doubt as to the continuing vitality” of the rule, and returned the question for reconsideration. *Thompson I*, 589 U.S. at 3, 6.

Five judges urged rehearing en banc on the same ground in 2018. *Lair v. Motl*, 889 F.3d 571 (9th Cir. 2018) (Ikuta, J., joined by four judges, dissenting from

denial of rehearing en banc). When the question arose again here, the en banc court directed the parties to brief whether *Eddleman* and *Lair* should be overruled “to the extent that they articulate the threshold showing” a government must make. App. 189a. Both sides briefed it. The majority saw “no reason to revisit” those holdings. App. 33a. Dissenting judges would have overruled the precedents, calling the standard “embarrassingly low.” App. 63a.

The minimum *Shrink* left undefined thus remains so, while the construction that filled the gap governs, unexamined, in the circuit that produced it. Only this Court can supply it.

III. *Buckley* Measured a Contributor’s Burden to Donate, Not a Candidate’s Right to Ask or Receive.

A. Petitioner asks this Court to decide the standard, and to overrule Buckley only so far as it is read to supply one.

Petitioner asks this Court to hold that a provision forbidding a candidate to ask for more than \$500 is reviewed as a restriction on that candidate’s own speech, and to overrule *Buckley* to the extent that it is read to supply a lesser standard for such a provision. The Court need not disturb *Buckley*’s distinction between contributions and expenditures or its disclosure holdings. A jurisdiction that can justify a limit on what a candidate may ask will keep it.

This Court’s modern campaign finance jurisprudence has touched *Buckley*’s edges but has not addressed it. In *Randall*, two Justices would have overruled it, concluding that *Buckley*’s “limited scrutiny of contribution limits is ‘insusceptible of principled application,’ and accordingly is not entitled

to *stare decisis* effect.” 548 U.S. at 267 (Thomas, J., concurring in the judgment, joined by Scalia, J.). The Court did not reach the question. Justice Kennedy observed that “[t]he parties neither ask the Court to overrule *Buckley* in full nor challenge the level of scrutiny that decision applies to campaign contributions,” *id.* at 264 (Kennedy, J., concurring in the judgment), and Justice Alito would not reexamine *Buckley* on “an incomplete presentation” in which respondents made “a naked plea” to “revisit *Buckley*” but failed to “discuss the doctrine of *stare decisis*,” *id.* at 263–64 (Alito, J., concurring in part and concurring in the judgment).

Most recently this Court declined the question for want of a vehicle: “we see no need in *this case* to revisit *Buckley*’s distinction between contributions and expenditures and the corollary distinction in the applicable standards of review.” *McCutcheon*, 572 U.S. at 197 (emphasis added). So the problem remains, and the courts of appeals have been left without an answer, *Riddle v. Hickenlooper*, 742 F.3d 922, 931–32 (10th Cir. 2014) (Gorsuch, J., concurring) (“we have no controlling guidance on the question from the Supreme Court[,] [a]nd in what guidance we do have lie some conflicting cues”).

Petitioner has pressed the point throughout. It asked the court of appeals to “distinguish Measure B and its focus on candidates from precedents that focus on donors and apply strict scrutiny,” Pet. C.A. Br. 50 (No. 21-56295, Dkt. 10, May 11, 2022), and argued that developments since 1976 “justify any court’s departure from [*Buckley*’s] outdated conclusion.” *Id.* at 48. In the district court it acknowledged that court was “not the forum to challenge *Buckley*” but stated that petitioner “intends to do so in this case.” 2-ER-41.

Petitioner supplies the presentation Justice Alito found missing in *Randall*: it makes the request and addresses the “circumstances in which it is appropriate to reconsider a prior constitutional decision.”

B. Buckley’s rationale for lesser scrutiny measures the contributor’s expressive interest, not the candidate’s.

A contribution limit, *Buckley* held, “entails only a marginal restriction upon the contributor’s ability to engage in free communication,” because a contribution “serves as a general expression of support” whose “quantity of communication . . . does not increase perceptibly with the size of his contribution,” and because the contributor remains “free to discuss candidates and issues.” 424 U.S. at 20–21. Each observation concerns the person writing the check.⁷

Buckley addressed candidates once: limits are permissible so long as they do not “prevent[] candidates and political committees from amassing the resources

⁷ *Buckley* found no record evidence of invidious discrimination against challengers as a class and declined on that basis to invalidate the federal limits. 424 U.S. at 30–31. Petitioner presses no discrimination claim, under the Equal Protection Clause or otherwise; this record concerns one candidate, not a class. The panel below nonetheless found a significant risk that the City “may be engaged in ‘invidious discrimination’ against Starr and challengers like him.” App. 85a. The en banc court answered that petitioner had not pleaded an equal protection claim and that discrimination against one person is not discrimination against a class. App. 37a–38a. Neither answer resolves the narrower First Amendment point petitioner advances: evidence that a limit was aimed at a particular challenger remains relevant — though not dispositive — to *Randall*’s independent review and to the plausibility of the asserted justification under *Shrink*, which determines the government’s evidentiary burden before tailoring is reached.

necessary for effective advocacy.” *Id.* at 21. That is a sufficiency floor, not a standard for reviewing a limit that clears it. Yet that clause, imported through *Eddleman* and *Lair*, is the whole of the analysis the candidate’s interest received below — a single sentence within one tailoring consideration. App. 28a.

Buckley did examine a restriction from the candidate’s own position — once. Reviewing the statute’s cap on a candidate’s expenditures from personal funds, the Court held that “the First Amendment simply cannot tolerate [the] restriction upon the freedom of a candidate to speak without legislative limit on behalf of his own candidacy.” 424 U.S. at 54. It asked what the restriction did to the candidate, not what it left him able to raise. The question here is why a provision forbidding a candidate to ask for more than \$500 should be measured by donor impact.

C. A candidate’s right to ask for something a donor cannot give is no right at all.

Section 2-243(A) expressly provides that “[n]o person shall make, and no candidate for elective office or campaign treasurer shall solicit or accept,” a contribution above the limit. App. 192a. A candidate who asks a supporter for \$600 violates the ordinance whether or not the supporter gives.

Petitioner’s complaint alleged members who wish to “run for the office of Oxnard City Council and solicit and receive contributions exceeding \$500,” pleaded facially and as applied. 1-ER-3–4. It pressed the argument at summary judgment, in its opening brief, and in reply. The court of appeals addressed it in a single sentence, while weighing one of five tailoring considerations. App. 28a.

The two halves cannot be pulled apart. If the candidate's half were reviewed as a restriction on his own speech while the contributor's half were reviewed under *Buckley*, a candidate could lawfully ask for \$600 that no one could lawfully give. A right to ask for what may not be given is no right at all.

A provision that directly commands the candidate cannot derive its standard of review solely from the lesser expressive interest *Buckley* attributed to the contributor. Either the standard follows the prohibition, or *Buckley*'s contributor-side standard must be defended as governing a prohibition that decision never considered.

D. Williams-Yulee and Cruz reviewed restrictions on a candidate's own campaign speech without settling the standard for a political candidate.

In *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 442–44 (2015), this Court reviewed a prohibition on a judicial candidate's personal solicitation of campaign funds under strict scrutiny. In *Cruz*, it invalidated a restriction burdening a Senate candidate's own campaign speech, demanding actual evidence that the restriction addressed *quid pro quo* corruption, but left unresolved the parties' dispute whether strict or "closely drawn" scrutiny applied. 596 U.S. at 305–07.

Williams-Yulee upheld the canon on interests peculiar to judicial elections, emphasizing that judges "are not politicians." 575 U.S. at 437, 446. It matters for one proposition: confronted with a prohibition on a candidate's personal solicitation, this Court treated the solicitation as speech and applied strict scrutiny, holding the "closely drawn" standard "a poor fit"

because that test was adopted to address a contributor’s associational claim, not a case “about solicitation.” *Id.* at 442–43. The canon survived, in “one of the rare cases in which a speech restriction withstands” it. *Id.* at 444. Petitioner therefore does not ask for a standard that condemns every limit.

Buckley’s lesser standard rests on the premise, quoted above, that the burden on the contributor is marginal. See 424 U.S. at 21. None of that describes the candidate. Its practical burden falls hardest on the candidate who cannot self-fund because *Buckley* leaves a wealthy candidate free to spend without limit from personal funds while this ordinance caps what any other candidate may ask of a supporter. 424 U.S. at 52–54. The asymmetry runs the other way as well: a supporter may spend without limit on independent advocacy about the candidate but may not give the candidate the resources to conduct the candidate’s own campaign. The First Amendment should not prefer advocacy about a candidate to advocacy by a candidate.

In both *Cruz* and *Williams-Yulee*, this Court identified the object of regulation as the candidate’s own campaign — the funds available to repay his loans in the first, his personal solicitation of contributions in the second — and measured the burden on that candidate’s own speech, rather than filtering it through the marginal burdens that *Buckley* identified as applied to individual contributors.

E. Stare decisis does not preserve the rule.

In reconsidering constitutional precedent this Court weighs workability, “the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned,” *Citizens United v.*

FEC, 558 U.S. 310, 362–63 (2010), and whether “experience has pointed up the precedent’s shortcomings,” *id.* at 363 (citing *Pearson v. Callahan*, 555 U.S. 223, 233 (2009)). *Stare decisis* is “at its weakest when we interpret the Constitution.” *Ramos v. Louisiana*, 590 U.S. 83, 105–106 (2020). Taken together, those considerations favor reconsideration here.

Begin with workability. *Randall* recognized a constitutional lower bound but did not locate it, and a Member of this Court observed that “our own experience gives us little basis to make these judgments, and certainly no traditional or well-established body of law exists to offer guidance.” 548 U.S. at 265 (Kennedy, J., concurring in the judgment).

Twenty years later the bound remains undefined, and the courts of appeals have filled the vacuum with the threshold standard at issue in the second question presented. That indeterminacy is not incidental. It follows from measuring a candidate-side burden through a standard built around the contributor’s marginal expressive interest: a rationale that never asked what a limit does to the candidate supplies no principle for deciding how low is too low.

As to *Buckley*’s workability, this Court has already seen the vacuum and left it open. *Thompson I* quoted the Ninth Circuit’s acknowledgment that *McCutcheon* and *Citizens United* had “created some doubt as to the continuing vitality” of that circuit’s threshold standard, but left the doubt unresolved, remanding “for that court to revisit whether Alaska’s contribution limits are consistent with our First Amendment precedents.” 589 U.S. at 3, 6.

In *Thompson II* the Ninth Circuit did just that and struck the limit. 7 F.4th at 829. The correction was short-lived. The en banc court applied the same framework to Oxnard’s \$500 limit and sustained it, on the ground that a limit “appropriate for a statewide election may not be comparable to” one appropriate for a city. App. 23a–24a.

The incompatible treatments of *Randall*’s fifth consideration described above are the experience this Court looks to when a precedent’s shortcomings are said to have been pointed up. *Pearson*, 555 U.S. at 233.

On this foundation, reliance carries limited weight. A standard of constitutional review is not a rule around which private parties have ordered property or contractual relationships, and a government’s interest in a standard that relieved it of justifying its own limit is not a “cognizable reliance interest[]” that “commands adherence.” *NRSC*, slip op., at 22–23, 25–26. Antiquity cuts the other way, but petitioner does not ask this Court to revisit *Buckley*’s core. Later decisions repeat its contributor-focused rationale without supplying a reason to measure a direct prohibition on a candidate’s solicitation by the contributor’s marginal expressive interest.

Petitioner does not ask this Court to disturb the continued availability of contribution limits. *Williams-Yulee* confirms that even a prohibition on a candidate’s personal solicitation can survive strict scrutiny where the government justifies it. 575 U.S. at 444. And ten weeks after the judgment below, this Court overruled a campaign-finance precedent of its own without disturbing the framework around it. *NRSC*, 609 U. S.

—.

This Term the Court applied those principles in this field. Rejecting the argument that *stare decisis* required adherence to *Colorado II*,⁸ it explained that the decision was “akin to a three-legged stool where all three legs have already been knocked out” by later cases, and that the Court “sometimes has simply described similarly hollowed-out precedents as ‘so undermined’ by subsequent developments that they are ‘no longer good law’ and ‘retai[n] no vitality.’” *NRSC*, slip op., at 21–22 (quoting *Agostini v. Felton*, 521 U.S. 203, 217–18 (1997), and *Herrera v. Wyoming*, 587 U.S. 329, 342 (2019)). Applying the ordinary factors, the Court overruled *Colorado II* because its reasoning “has been rejected by subsequent cases and is no longer good law in light of the Court’s more recent precedents.” *NRSC*, slip op., at 26.

Petitioner asks for less, as this case requires no decision on *Buckley*’s distinction between contributions and expenditures or its disclosure holdings. What later decisions have undermined is narrower: the use of a contributor-side rationale to set the standard for a provision that commands the candidate.

This question is antecedent to the first. If a restriction on what a candidate may solicit is reviewed as a direct restraint on that candidate’s speech, the analysis above cannot survive. If *Buckley*’s contributor-side rationale supplies the standard regardless of who is regulated, this Court should say so. Either answer would settle the issue.

In any event, even the lesser standard requires that a contribution limit employ means “closely drawn to avoid unnecessary abridgement of associational

⁸ *Federal Election Comm’n v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431 (2001).

freedoms.” *McCutcheon*, 572 U.S. at 197 (quoting *Buckley*, 424 U.S. at 25). This Court has since described its demands: review “must be ‘rigorous’”; a restriction “may not be ‘disproportionate’ and must be ‘necessary’ and ‘narrowly tailored’ to the asserted interest”; and the Court “no longer employs” the “watered-down scrutiny that allowed ‘unskillful tailoring’” in this field. *NRSC*, slip op., at 9, 23–24 (citing *McCutcheon*, 572 U.S. at 199, 218, 220, and *Cruz*, 596 U.S. at 306).

Measure B itself supplies the point. The same measure enacted the unchallenged gift ban described above — a prohibition directed at the conduct the Report actually found. App. 10a. The \$500 contribution limit reaches different conduct, requiring evidence of the distinct *quid pro quo* risk that campaign contributions present. The City offered none. California law meanwhile makes bribery of a city council member a felony, Cal. Penal Code § 165, and requires itemized public disclosure of every contributor who gives \$100 or more — one-fifth of the limit at issue, Cal. Gov’t Code § 84211(f).

That does not foreclose a contribution limit. Instead, it bears on whether this one, set below any limit this Court has sustained, is “necessary” and “narrowly tailored.” *NRSC*, slip op., at 23–24; see *McCutcheon*, 572 U.S. at 221 (courts must “be particularly diligent in scrutinizing the law’s fit”).

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the Court should summarily reverse. Or it should grant the petition, vacate the judgment, and remand for the court of appeals to apply all of *Randall*'s considerations, including the special justification it declared irrelevant. See *Thompson v. Hebdon*, 589 U.S. 1 (2019) (per curiam) (vacating and remanding for that court to revisit a \$500 contribution limit under *Randall*). Or it should grant the petition, vacate the judgment, and remand for reconsideration in light of *National Republican Senatorial Committee v. FEC*.

Respectfully submitted,

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APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21-56295

D.C. No. 2:20-cv-04122-CBM-AFM

MOVING OXNARD FORWARD, INC.,

Plaintiff-Appellant,

v.

LOURDES LOPEZ, in her official
capacity as City Clerk for the City of Oxnard,

Defendant-Appellee,

and

DOES, 1 through 25, inclusive,

Defendants.

Appeal from the United States District Court for the
Central District of California

Consuelo B. Marshall, District Judge, Presiding

Argued and Submitted En Banc September 9, 2025
San Francisco, California

Filed April 22, 2026

OPINION

Before: Mary H. Murguia, Chief Judge, and Kim
McLane Wardlaw, Consuelo M. Callahan, Jacqueline

H. Nguyen, John B. Owens, Ryan D. Nelson, Eric D. Miller, Daniel P. Collins, Lawrence VanDyke, Lucy H. Koh and Jennifer Sung, Circuit Judges.

Opinion by Judge Koh; Dissent by Judge Collins

SUMMARY*

First Amendment/Campaign Contribution Limits

The en banc court affirmed the district court's grant of summary judgment to the City of Oxnard (the "City"), in a case in which Moving Oxnard Forward ("MOF"), a political advocacy nonprofit organization, challenged the constitutionality of certain campaign finance limitations for municipal elections included in the Oxnard Government Accountability and Ethics Act ("Measure B").

MOF alleged that Measure B's per candidate contribution limits violate the First Amendment and that the aggregate contribution limits violate the First and Fourteenth Amendments.

As to the per candidate contribution limits, the en banc court first held that the City established a sufficiently important governmental interest in preventing quid pro quo corruption or its appearance. Recognizing the low evidentiary bar as explained in *Lair v. Motl*, 873 F.3d 1170 (9th Cir. 2017), the en banc court held the City offered more than enough evidence to demonstrate its interest because it offered: (1) a newspaper article alleging corruption by City officials; (2) an investigation by the District Attorney, resulting in a report detailing numerous

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

instances of behaviors that gave rise to the appearance of quid pro quo corruption; (3) a survey showing 77% of residents wanted a government accountability measure; and (4) the fact that 82% of the City's voters approved Measure B.

With the City having established a sufficiently important governmental interest in preventing quid pro quo corruption or its appearance, the en banc court next considered the four "danger signs" that contribution limits may be unconstitutionally low as set forth in *Randall v. Sorrell*, 548 U.S. 230 (2006). The en banc court held that the first three danger signs were not present because (1) Measure B's per candidate contribution limits are per candidate per election, not per office per election cycle; (2) higher limits apply to contributions from political action committees, and no contribution limits apply to political parties; and (3) the contribution limits are comparable to contribution limits imposed by other California cities of comparable size.

Because the U.S. Supreme Court has only addressed the constitutionality of state and federal contribution limits and not city contribution limits, the en banc court assumed without deciding that the fourth *Randall* danger sign—whether the City's contribution limit is below previously upheld city limits—was present. Thus, the en banc court reviewed the record independently and concluded that Measure B's per candidate contribution limits were closely drawn to the City's interest in preventing actual or apparent quid pro quo corruption. Looking to five sets of considerations identified by the Supreme Court to determine whether contribution limits are appropriately tailored and not unconstitutionally restrictive, the en banc court held that four of the considera-

tions—the ability of challengers to run competitive campaigns, the limits on political party contributions, treatment of volunteer services, and adjusting the contribution limits for inflation—favored Measure B. Because the first four factors weighed in the City’s favor, the final consideration, the presence of a special justification, was irrelevant.

As to the aggregate contribution limits, the en banc court held that Measure B’s aggregate limits are constitutional under the First Amendment, and do not improperly discriminate between candidates based on the candidate’s sponsorship of ballot measures because they only apply to the candidate, and not to contributions made to ballot measure campaigns.

Dissenting, Judge Collins, joined by Judge VanDyke, would hold that the City’s per candidate aggregate contribution limits on campaign contributions violate the First Amendment. In his view, the low standard applied by the majority to determine whether the City carried its initial burden to show that Measure B’s individual contribution limitations further the important state interest of preventing quid pro quo corruption or its appearance is inconsistent with Supreme Court authority. He would hold that under the proper standard the City’s evidence does not justify its adoption of the campaign contribution limits. However, even if the City met its threshold burden, Judge Collins would still reverse the district court’s grant of summary judgment to the City because Measure B presents sufficient “danger signs” to warrant examining the record independently and carefully to determine whether the contribution limits are narrowly tailored to match the City’s interest, and Measure B’s individual contribution limits do not survive that independent scrutiny.

COUNSEL

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OPINION

KOH, Circuit Judge:

On March 3, 2020, 82% of the voters in the City of Oxnard (the “City”) voted to approve a ballot measure known as the Oxnard Government Accountability and Ethics Act (“Measure B”). Measure B included, among other things, per candidate contribution limits and aggregate contribution limits for municipal elections. Plaintiff-Appellant Moving Oxnard Forward, Inc. (“MOF”), a political advocacy nonprofit organization, challenged the City’s campaign contribution limits.⁰¹ MOF argued that the per candidate contribution limits violate the First Amendment and that the aggregate contribution limits violate the First and

¹ MOF’s suit is against Defendant-Appellee Lourdes Lopez, the City Clerk, in her official capacity. For simplicity, we refer to the Defendant-Appellee as “the City.”

Fourteenth Amendments. The district court granted summary judgment in favor of the City and upheld both contribution limits. For the reasons stated below, we affirm.

FACTUAL BACKGROUND

Measure B responded to the City's voters' demand for government accountability following the City's history of political scandals. For example, in July 2003, City Councilmember Andres Herrera took a trip to Cabo San Lucas, Mexico, on Oxnard businessman Bernard Huberman's private jet. In December 2005, Herrera took another trip to Cabo San Lucas on Huberman's private jet. A comparable round-trip flight on a private jet to Cabo San Lucas was estimated to cost \$18,000. The day after Herrera returned from the latter trip on Huberman's private jet, Herrera voted to approve the City's multimillion-dollar purchase of a building from a Huberman-affiliated company.

In 2006, Councilmember Herrera and City Public Works Director Ken Ortega attended a Los Angeles Lakers game as the guests of Jeff Savard, Vice President of Kennedy/Jenks Consultants, a local engineering and consulting firm doing significant business with the City. Savard spent approximately \$2,300 on the tickets to the Lakers game, limousine transportation to and from the game, refreshments during the game, and dinner afterward. At the time, Ortega was in a position to approve, and did approve, contracts between the City and Kennedy/Jenks Consultants.

In June 2007, Mayor Tom Holden and his wife took a trip to Cabo San Lucas aboard Huberman's private jet and stayed at Huberman's Cabo San Lucas residence. Holden had previously taken two trips to Cabo

San Lucas aboard Huberman's private jet in December 1998 and December 2000 while serving as a City Councilmember. When Holden took his third trip in 2007, the City was actively negotiating with a Huberman-affiliated company on a \$13 million real estate transaction. Additionally, in January 2009, Holden and his wife took a trip to Napa, California aboard Huberman's private jet, and Huberman paid for their hotel room. Within three months of this Napa trip, a Huberman-affiliated company submitted a bid for a new contract with the City. Holden, the ranking member of the task force assessing the bid, recommended the Huberman-affiliated company for the bid. Taking the three trips to Cabo San Lucas and the one trip to Napa together, Huberman provided Holden with an estimated \$58,000 worth of private jet travel, not including the private jet travel provided to Holden's wife. Holden claimed that he provided fair value for these travel expenses by providing optometry services worth "over \$4,000" in value to Huberman's family.

In May 2010, a local newspaper, the Ventura County Star, reported on alleged corruption involving, among other things, City officials receiving gifts from companies doing business with the City without declaring the gifts as required by law.

The Ventura County District Attorney began an investigation into allegations of misappropriation of public funds, failure to disclose gifts as required by law, and possible conflicts of interest. Investigators executed more than 30 search warrants at more than 50 locations, including a public search of City Hall to recover documents, and interviewed dozens of individuals.

In 2012, the District Attorney published a lengthy report (the “Report”) on the alleged corruption. Relevant to this appeal, the Report detailed numerous instances where City officials regularly received gifts from companies doing business with the City without declaring them. The Report found that “accepting gifts from companies doing business with the [City] was fairly common among some [City] officials.” These gifts included, among other things: rounds of golf; meals; flights on private jets; and tickets to Los Angeles Lakers games, Los Angeles Dodgers games, and Broadway shows. The Report referred these issues to the California Fair Political Practices Commission for administrative enforcement.

Additionally, the Report noted that several individuals raised suspicions about Huberman’s close relationship with City officials. On this topic, the Report found that Mayor Holden and Huberman were close friends, and that Holden repeatedly lied to investigators about the extent of his relationship with Huberman and his travel expenses paid by Huberman.

Following the political scandal and fallout of the Report, the City in the fall of 2019 conducted a Resident Satisfaction and Communities Priority Survey (the “Survey”) on several issues, including government accountability measures. The City commissioned the Survey “to continue to earn the community’s trust and confidence” and worked “to overcome a decades-long record of mismanagement.” Approximately 77% of surveyed residents favored a government accountability measure. In response to the Survey, and in light of the Report, the City stated that it “developed Measure B to address the public’s stated desire to institutionalize good government practices.”

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Relevant to this appeal, Measure B established contribution limits for City Council elections:

Contributions. No person shall make, and no candidate for elective office or campaign treasurer shall solicit or accept, any contribution which would cause the total amount contributed by that person to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed five hundred dollars (\$500) for any election. No political action committee shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution which would cause the total amount contributed by that political action committee to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed one thousand dollars (\$1,000) for any election. For purposes of Section 2-243 a “political action committee” shall mean any “general purpose committee” or “city general purpose committee” as those terms are defined by Government Code Section 82027.5. The limits set forth in this subsection shall be adjusted every two (2) years by resolution of the City Council pursuant to Section 2-245.²

² Measure B also established a \$500 limit, adjusted for inflation every two years, for loans to candidates in all municipal elections.

Measure B also established higher contribution limits—\$750 for individuals and \$1,500 for political action committees—for citywide elections, such as for Mayor, City Clerk, and City Treasurer. Among the purposes provided by Measure B for the campaign contribution limits was “to deter corruption and the appearance of corruption caused by the coercive influence of large financial contributions on candidates’ positions.” Further, Measure B included a ban on elected City officials and members of the City’s Planning Commission accepting gifts.

On October 15, 2019, the City Council adopted Resolution No. 15,271 to place Measure B on the ballot for the March 3, 2020 election. On March 3, 2020, 82% of the voters in the City approved Measure B. Measure B took effect on May 1, 2020.

PROCEDURAL HISTORY

On May 5, 2020, MOF brought suit against Michelle Ascension in her official capacity as City Clerk and requested declaratory and injunctive relief. MOF brought three claims: (1) “[t]he per candidate contribution limits violate free speech and association”; (2) “[t]he aggregate contribution limits violates [sic] free speech, association, and equal protection”; and (3) “[t]he gift ban violates free speech and association.” The parties filed cross-motions for summary judgment, and the district court held a hearing on both motions.

On August 5, 2021, the district court granted summary judgment in favor of the City and denied MOF’s motion for summary judgment. The district court held that Measure B’s per candidate contribution limits did not violate the First Amendment because the City had demonstrated a sufficiently im-

portant governmental interest and the contribution limits were closely drawn to that interest. As to Measure B's aggregate contribution limits, the district court found Measure B did not limit contributions made to a committee formed to support or oppose a ballot measure. Thus, the district court concluded that Measure B did not treat candidates who support or oppose ballot measures differently from other candidates or otherwise restrict candidates' ability to both run for office and campaign for or against a ballot measure. As to Measure B's gift ban, the district court held that the gift ban did not violate the First Amendment because it was "closely drawn to further the City's anticorruption interest."³ MOF filed a timely appeal.

JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction under 28 U.S.C. § 1291. "We review the district court's decision on cross-motions for summary judgment *de novo*. Summary judgment is appropriate when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law." *U.S. Sec. & Exch. Comm'n v. Feng*, 935 F.3d 721, 728 (9th Cir. 2019) (citations omitted). Cross-motions are considered separately, with the non-moving party in each instance being given "the benefit of all reasonable inferences." *Id.* (internal quotation marks and citation omitted). Where the parties agree no material facts are disputed, "we ask only whether the district court correctly applied the relevant substantive law." *BNSF Ry. Co. v. Or. Dep't of Revenue*, 965 F.3d 681,

³ On appeal, MOF does not challenge the district court's gift ban ruling.

685 (9th Cir. 2020) (internal quotation marks and citation omitted).

ANALYSIS

This case concerns whether Measure B’s campaign contribution limits, adopted and approved by 82% of the City’s voters, are constitutional. MOF challenges both Measure B’s per candidate contribution limits and its aggregate contribution limits. We address each in turn and hold that both are constitutional.

I. Per Candidate Contribution Limits

MOF alleges that Measure B’s per candidate contribution limits are unconstitutional because the limits violate MOF’s freedom of speech and association rights. We begin with a brief overview of the legal framework under the First Amendment for determining the constitutionality of contribution limits.

In *Buckley v. Valeo*, 424 U.S. 1 (1976), the U.S. Supreme Court recognized that contribution limits restrict free speech and association. *Id.* at 23. However, contribution limits, as opposed to spending limits, are “only a marginal restriction” on free speech and association and are therefore subject to a less rigorous standard of review than strict scrutiny. *Id.* at 20, 23; *see also Fed. Election Comm’n v. Beaumont*, 539 U.S. 146, 161 (2003) (holding that contribution limits are “subject to [a] relatively complaisant review under the First Amendment” as compared to spending limits). That is because a campaign contribution limit still “permits the symbolic expression of support evidenced by a contribution” and “does not in any way infringe the contributor’s freedom to discuss candidates and issues.” *Buckley*, 424 U.S. at 21. Thus, contribution limits are constitutional “as long as the Government demonstrates that the limits are closely

drawn to match a sufficiently important interest.” *Randall v. Sorrell*, 548 U.S. 230, 247 (2006) (plurality opinion) (internal quotation marks and citation omitted).

Under the U.S. Supreme Court’s two-part test to determine whether campaign contribution limits pass First Amendment scrutiny, we first ask whether there is evidence of a sufficiently important governmental interest. *See Buckley*, 424 U.S. at 25. The Supreme Court has “identified only one legitimate governmental interest” in imposing a contribution limit: targeting “*quid pro quo* corruption or its appearance.” *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 192, 206 (2014) (internal quotation marks and citation omitted). This includes targeting “large contributions that are given to secure a political *quid pro quo* from current and potential office holders,” and “the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions to particular candidates.” *Id.* at 207 (quoting *Buckley*, 424 U.S. at 26-27) (internal quotation marks and alteration omitted).

If the government establishes a sufficiently important interest in limiting campaign contributions, we then ask whether the contribution limits are closely drawn to the government’s interest, because a contribution limit may still be “too low and too strict to survive First Amendment scrutiny.” *Randall*, 548 U.S. at 248 (plurality opinion). Courts ordinarily “defer[] to the legislature’s determination” of the contribution limit amount. *Id.* There is, however, a “lower bound” where “the constitutional risks to the democratic electoral process become too great” because the limits “harm the electoral process by preventing chal-

lengers from mounting effective campaigns against incumbent officeholders.” *Id.* at 248-49.

The U.S. Supreme Court has set forth four “danger signs” that the contribution limits may be unconstitutionally low. *Id.* at 249. If a danger sign is present, courts “must review the record independently and carefully” to determine whether the contribution limits are closely drawn to meet the government’s interest. *Id.* To guide this independent and careful review, the Supreme Court has identified “five sets of considerations” to determine whether the contribution limits are appropriately tailored and not unconstitutionally restrictive. *Id.* at 261. This review ensures that contribution limits remain high enough to allow “candidates to raise the funds necessary to run a competitive election”; “political parties to help their candidates get elected”; and “individual citizens to volunteer their time to campaigns.” *Id.* at 253; *see also Buckley*, 424 U.S. at 25 (requiring contribution limits to be “closely drawn to avoid unnecessary abridgment of associational freedoms”).

Below we assess Measure B under this two-part test and conclude that the City has established a sufficiently important governmental interest in imposing contribution limits at step one. We then assess whether any danger signs are present under *Randall*. We assume that one danger sign is present and hold that Measure B’s per candidate contribution limits are closely tailored to the City’s interest.

A. The City’s Interest

At step one, the City has established a sufficiently important governmental interest in preventing “*quid pro quo* corruption or its appearance.” *McCutcheon*, 572 U.S. at 192 (internal quotation marks and cita-

tion omitted); *see also Buckley*, 424 U.S. at 28 (upholding a contribution limit because “the actuality and potential for corruption have been identified”). The U.S. Supreme Court has recognized that “the dangers of large, corrupt contributions and the suspicion that large contributions are corrupt are neither novel nor implausible.” *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 391 (2000). Thus, the City need only demonstrate that the risk of quid pro quo corruption or its appearance is more than “mere conjecture,” *id.* at 392, and not “illusory,” *Buckley*, 424 U.S. at 27. The Supreme Court reiterated this standard in 2014 in *McCutcheon*. *See* 572 U.S. at 210 (“[W]e have never accepted mere conjecture as adequate to carry a First Amendment burden.” (internal quotation marks and citation omitted)). We have explained that this is a “low [evidentiary] bar.” *Lair v. Motl*, 873 F.3d 1170, 1172, 1178 (9th Cir. 2017).

The City’s evidence is sufficient under *Nixon*. In *Nixon*, the U.S. Supreme Court held that Missouri had met its evidentiary obligation for its contribution limits based on the following evidence: (1) reports of scandals, including a state representative being accused of kickbacks and a former attorney general having pled guilty to conspiracy to misuse state property; (2) the fact that 74% of voters voted yes on the statewide proposition establishing contribution limits; (3) an affidavit from a state senator stating that large contributions have the real potential to buy votes; and (4) newspaper reports of large contributions that supported inferences of impropriety, such as a state treasurer using a certain bank after that bank made a \$20,000 contribution to him. *See* 528 U.S. at 393-94.

The City has met its evidentiary burden through four pieces of evidence detailed *supra*: (1) a newspaper article alleging corruption by City officials; (2) an investigation by the District Attorney, resulting in the Report detailing numerous instances of behaviors that gave rise to the appearance of quid pro quo corruption; (3) the Survey showing 77% of residents wanted a government accountability measure; and (4) the fact that 82% of the City's voters approved Measure B.

The newspaper article, investigation, and Report establish the appearance of quid pro quo corruption. The Report details numerous instances where City officials, such as Councilmember Herrera, Public Works Director Ortega, and Mayor Holden, received valuable travel accommodations or gifts from those who did business with the City. The Report also establishes that those officials took official actions that benefited those who provided the travel and gifts after receiving those travel accommodations and gifts. For example, City Councilmember Herrera voted to approve the City's multimillion-dollar purchase of a building from a company that was affiliated with Bernard Huberman the day after Herrera returned from a trip on Huberman's private jet. City Public Works Director Ortega approved contracts between the City and Kennedy/Jenks Consultants during the period of time Ortega received tickets, transportation, and refreshments for a Lakers game from Kennedy/Jenks Consultants' Vice President. City Mayor Holden approved a bid that a Huberman-affiliated company made for a City contract three months after Mayor Holden and his wife took a trip to Napa on Huberman's private jet and Huberman paid for their hotel room.

The fact that these officials received valuable benefits and subsequently took official actions that benefited those who provided the benefits establishes the appearance of quid pro quo corruption. The U.S. Supreme Court has said that “*quid pro quo*” corruption involves “a specific intent to give or receive something of value in exchange for an official act.” *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 404-05 (1999) (emphasis omitted). Thus, there is quid pro quo corruption when “any payment or property [is] received” in return for “a promise of official action or inaction.” *McCormick v. United States*, 500 U.S. 257, 266 (1991). There is no doubt that the Report documents, at the very least, the *appearance* of exchanges of “property” in return for “official action or inaction.” *Id.*

It is no matter that the Report concluded that there was insufficient evidence to warrant criminal prosecution. *Buckley* makes clear that campaign contribution limits may be appropriate even if criminal penalties exist precisely because “laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts” at corruption. 424 U.S. at 27-28. Such laws, necessarily, are only a “partial measure” that do not address the *appearance* of corruption. *Id.* at 28.

Nor does it matter that the Report was published almost eight years before Measure B. We have previously considered evidence under a lengthier timeframe in *Montana Right to Life Ass’n v. Eddleman*, 343 F.3d 1085 (9th Cir. 2003). In *Eddleman*, we considered a 13-year-old letter and a 12-year-old statewide poll as evidence that Montana had proven a sufficiently important governmental interest in imposing contribution limits. *See id.* at 1093. And in

this case, the City provided additional evidence that the Report played a prominent role in the debates on Measure B in the lead up to the March 3, 2020 election, which establishes that the Report was part of the public information readily available to the voters who approved Measure B.

The Survey and subsequent 82% approval of Measure B by the City's voters establishes that the voters believed it was necessary to combat quid pro quo corruption or its appearance through contribution limits. In *Nixon*, the government relied on the fact that 74% of voters voted yes on a statewide proposition establishing contribution limits to "attest[] to the perception" that voters "determined that contribution limits are necessary to combat corruption and the appearance thereof." 528 U.S. at 394 (internal quotation marks and citation omitted). Similarly, here, Measure B's vote tally attests that voters believed that contribution limits were necessary to combat corruption or its appearance.

The City also provides Survey results, which were not available in *Nixon*, and these results similarly support the perception that contribution limits were necessary. That is so even though Measure B included additional issues beyond contribution limits and the Survey addressed government accountability generally rather than corruption from campaign contribution limits alone. The U.S. Supreme Court has never required that voters must specifically attest to their interest in campaign contribution limits *alone* to establish that there is an appearance of quid pro quo corruption and that voters believe contribution limits are necessary to address such corruption. Thus, the City establishes that there was a "perception" that voters believed a campaign contribution

limit was necessary, even though Measure B is not identical to the statewide proposition that contained a contribution limit in *Nixon*.⁴

MOF did not put forth its own evidence rebutting the City's evidence. If MOF had presented evidence to cast doubt on the implications of the City's evidence, then "[t]here might, of course, be need for a more extensive evidentiary documentation." *Id.* However, MOF designated two expert witnesses on this issue but ultimately withdrew their designations prior to the production of any expert reports.

Of course, the City's evidence in this case is not identical to the evidence the government provided in *Nixon*. No two cases are alike. The *Nixon* Court, however, concluded that it was not "a close call" that Missouri had met its evidentiary burden. *Id.* at 393. We conclude that, as in *Nixon*, the City offered more than enough evidence to demonstrate its interest in

⁴ There is no merit to MOF's suggestion that we may not rely upon evidence of public approval through the Survey and Measure B's vote tally to establish a legitimate government interest because doing so contravenes the First Amendment's protections for minority viewpoints. The U.S. Supreme Court has implicitly held that it is appropriate to consider such evidence because the Court relied upon similar evidence of public perception in *Nixon*. See 528 U.S. at 394. In *Nixon*, when considering the evidence presented by Missouri to prove its governmental interest, the Court stated that "although majority votes do not, as such, defeat First Amendment protections, the statewide vote on Proposition A certainly attested to the perception relied upon here: 'An overwhelming 74 percent of the voters of Missouri determined that contribution limits are necessary to combat corruption and the appearance thereof.'" *Id.* (citation and alteration omitted); see also *Eddleman*, 343 F.3d at 1093 (considering a statewide poll offered by Montana as evidence of Montana's sufficient governmental interest).

preventing actual or perceived quid pro quo corruption.

B. Closely Drawn

As the City has satisfied its burden at step one, the second step is to determine whether the chosen contribution limits are closely drawn to the City's interest in preventing quid pro quo corruption or its appearance. As discussed, we first inspect whether any of the four danger signs that the contribution limits are so low as to "harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders" are present. *Randall*, 548 U.S. at 249 (plurality opinion). If a danger sign is present, we then "review the record independently and carefully" through five sets of considerations to determine whether the contribution limits are appropriately tailored and not unconstitutionally restrictive. *Id.* In this case, we assume without deciding that one danger sign is present and conclude that Measure B's limits are nonetheless appropriately tailored to the City's interest.

1. Danger Signs

The U.S. Supreme Court has identified four "danger signs" to assess whether contribution limits pose threats to the electoral process, *id.*, addressing whether: "(1) [t]he limits are set per election cycle, rather than divided between primary and general elections; (2) the limits apply to contributions from political parties; (3) the limits are the lowest in the Nation; and (4) the limits are below those we have previously upheld," *id.* at 268 (Thomas, J., concurring in the judgment) (listing the plurality's "danger signs").

Here, the first three *Randall* danger signs are not present. First, Measure B's per candidate contribution limits are per candidate per election, not per office per election cycle. Second, higher limits apply to contributions from political action committees, and no contribution limits apply to political parties. Third, the contribution limits are comparable to contribution limits imposed by other California cities of comparable size. The City's expert report concluded that "[a]t both the citywide and district levels, the new campaign contribution limits in Oxnard very nearly match the median levels that are typical in other cities. This is true looking at the absolute dollar value of the limits as well as their levels *per voter* and *per resident*." MOF concedes that, under the City's expert's analysis, the City's contribution limits are in the middle of cities with comparable populations.

Specifically, the City's expert report compared Measure B's contribution limits to the contribution limits of California cities with comparable populations between 100,000 and 300,000 residents. The City's estimated population is 208,881. The City's contribution limit for citywide offices was near the median of comparable cities in all respects. The median limit per absolute dollar amount was \$720, and the City's was \$750. The median limit per resident was \$0.0048, and the City's was \$0.0036. The median limit per registered voter was \$0.0083, and the City's was \$0.0081.

For further comparison, the City's contribution limit for citywide offices is greater than the limits for similarly sized cities, such as Irvine, Huntington Beach, and Fremont, on an absolute dollar, per resident, and per registered voter basis.

The City's expert also compared Measure B's contribution limits to the limits of larger cities with populations above 300,000. The expert concluded that the City's citywide contribution limit is also greater than the limits for much larger cities such as San Francisco and Oakland, on an absolute dollar, per resident, and per registered voter basis. Further, on a per resident and per registered voter basis, the City's limit is over nine times greater than Los Angeles's limit, four times greater than San Diego's limit, and three times greater than San Jose's limit. Los Angeles, San Diego, and San Jose also have populations over 300,000.

Similarly, the City's contribution limit for district-wide offices was near the median of comparable cities in all respects. The median limit per absolute dollar amount was \$515, and the City's was \$500. The median limit per district resident was \$0.0225, and the City's was \$0.0144. The median limit per district registered voter was \$0.0416, and the City's was \$0.0325.

For further comparison, the City's contribution limit for district-wide offices is the same or greater than the limits for much larger cities with populations above 300,000, such as San Francisco and Oakland, on an absolute dollar, per resident, and per registered voter basis. Additionally, on a per resident and per registered voter basis, the City's limit is over four times greater than Los Angeles's limit, three times greater than San Diego's limit, and two times greater than San Jose's limit.

To rebut the City's expert, MOF argues that the City's expert's analysis is flawed because the dataset should have included comparably sized cities that have not imposed any contribution limits. MOF's ar-

gument is unavailing. MOF cites no authority for the proposition that cities without a contribution limit should be considered, and the U.S. Supreme Court has implicitly rejected MOF's approach. In *Randall*, the Court only compared Vermont's contribution limits to other contribution limits imposed by states across the country and did not consider states without a contribution limit. *See id.* at 250-51 (plurality opinion).

MOF's argument is also logically unsound. MOF claims that cities that have not imposed a contribution limit must be included. In doing so, MOF assumes that all of these cities could have imposed a contribution limit but have declined to do so. However, MOF does not account for the fact that these cities may not have evidence of actual or apparent quid pro quo corruption necessary to implement a contribution limit. In evaluating whether the City's chosen contribution limit is appropriate, it makes little sense to compare the City's limit to cities that constitutionally may not be allowed to enact a contribution limit. Thus, the third *Randall* danger sign is not present.

The final *Randall* danger sign is whether the contribution limit is below "the contribution limits upheld by the Court in the past." *Id.* at 249. We assume without deciding that this danger sign is present. MOF argues that this danger sign only permits us to assess the contribution limit in comparison with those that have been upheld by the U.S. Supreme Court. According to MOF, this danger sign is present because the Supreme Court held that a comparable \$500 contribution limit qualified as a danger sign in *Thompson v. Hebdon*, 589 U.S. 1, 5 (2019) (per curiam). However, limits appropriate for a statewide election may not be comparable to limits appropriate

for an election in a city with a population size of 208,881. *Cf. Nixon*, 528 U.S. at 382 (holding that *Buckley*, which evaluated contribution limits for federal elected positions, was “authority for comparable state regulation, which need not be pegged to *Buckley*’s dollars”). The Supreme Court has never addressed whether a city’s contribution limits are closely drawn.

The City thus asks us to consider comparable city-level contribution limits that have been upheld by lower courts. MOF’s challenge would likely fail were we to consider limits upheld by other courts, including our sister circuits. On remand from the U.S. Supreme Court in *Nixon*, the Eighth Circuit upheld a limit of “\$275 for candidates for state representative or for any office where the population of the electoral district is less than 100,000.” *Shrink Mo. Gov’t PAC v. Adams*, 204 F.3d 838, 840 (8th Cir. 2000). That limit is near the City’s limit in today’s dollars, and the City’s districts have on average approximately one-third the population considered in *Shrink v. Adams*. Other circuits have upheld similar limits. *See, e.g., Zimmerman v. City of Austin*, 881 F.3d 378, 387-88 (5th Cir. 2018) (upholding a \$350 base contribution limit); *Frank v. City of Akron*, 290 F.3d 813, 818 (6th Cir. 2002) (upholding a contribution limit of \$100 for ward council members and \$300 for at large city council members); *McNeilly v. Land*, 684 F.3d 611, 612 (6th Cir. 2012) (affirming the denial of a preliminary injunction as to a contribution limit of \$500 for candidates for state or local office in districts with a population of less than 85,000, and \$1,000 for candidates in districts with a population between 85,000 and 250,000). Accordingly, the City’s limit is comparable to limits previously upheld by other appellate courts.

However, we need not decide in this case whether we may consider limits upheld by lower courts to assess whether the final *Randall* danger sign is present. As explained below, even assuming this final *Randall* danger sign is met, such that we must review the record independently, we find Measure B's per candidate contribution limits are closely drawn to the City's legitimate interests in avoiding quid pro quo corruption or its appearance. *See Randall*, 548 U.S. at 253 (plurality opinion).

2. Independent Assessment

For our independent examination of the record, we look to “five sets of considerations’ to determine whether the statute was closely drawn.” *Lair*, 873 F.3d at 1186 (citation omitted). The five considerations are: “(1) [W]hether the ‘contribution limits will significantly restrict the amount of funding available for challengers to run competitive campaigns’; (2) whether ‘political parties [must] abide by *exactly* the same low contribution limits that apply to other contributors’; (3) whether ‘volunteer services’ are considered contributions that would count toward the limit; (4) whether the ‘contribution limits are . . . adjusted for inflation’; and (5) ‘any special justification that might warrant a contribution limit so low or so restrictive.’” *Id.* (alteration in original) (quoting *Randall*, 548 U.S. at 253-62 (plurality opinion)). We do so to ensure that the contribution limits do not impose “substantial restrictions on the ability of candidates to raise the funds necessary to run a competitive election, on the ability of political parties to help get their candidates elected, and on the ability of individual citizens to volunteer their time to campaigns.” *Randall*, 548 U.S. at 253 (plurality opinion). We examine each in turn.

First, the per candidate contribution limits will not significantly restrict the amount of funding available for challengers to run competitive campaigns. The City's expert concluded that Measure B's contribution limits would not have a significant effect on restricting campaign contributions. To do so, the City's expert analyzed the effect of Measure B's contribution limits on the City's 2018 election, when there were no limits on contributions. The City's expert found that "[f]or nearly all candidates, the proportions of their contributions that exceeded the limits were quite small." Specifically, the City's expert found that "only 18 of the 287 donors (6.3% of the donors) to Oxnard city candidates in 2018 made contributions that would have exceeded the limits in Measure B." Thus, 93.7% of donors made contributions below Measure B's limits in 2018.

Similarly, in *Nixon*, the U.S. Supreme Court found no indication that Missouri's contribution limits would prevent candidates from amassing the resources necessary for effective advocacy in part because of the "evidence that in the 1994 Missouri elections (before any relevant state limitations went into effect), 97.62 percent of all contributors to candidates for state auditor made contributions" below the limit. 528 U.S. at 396.

Moreover, only two of twelve candidates in 2018 raised the majority of their funds from contributions that would have exceeded Measure B's limits. Aaron Starr had three of his five donors give in amounts over the contribution limits, with \$4,750 of his \$8,250 raised above the limits. Additionally, Kari Cryder had two of her three donors give in amounts over the limits, with \$2,000 of her \$3,300 raised above the limits. In *Nixon*, the U.S. Supreme Court found that

“a showing of one affected individual does not point up a system of suppressed political advocacy that would be unconstitutional under *Buckley*.” *Id.* Thus, even if we assume that Measure B’s contribution limits would significantly restrict Starr’s and Cryder’s ability to run a competitive campaign, two affected individuals are likely insufficient to prove that Measure B’s contribution limits systematically stymie competitive challengers.⁵

Starr’s testimony “that the \$500 limit made it impossible to fund a competitive campaign” does not challenge this conclusion. His own testimony belies his claim. Starr declared that “it would have been impossible . . . to raise sufficient funds to wage a competitive campaign with Measure B’s \$500 limit” because his fundraising strategy prioritized large donations from a small number of donors. Starr testified that he did not “pursu[e] donors as much because it’s a lot of time to consume to get money at [\$]200, [\$]300, \$400 a crack,” and “you have to spend your time efficiently on a campaign.” Starr further declared that, in his opinion, “there was little point in expending the effort to raise money in such small increments.” As a result, Starr estimated that he had spent “not a whole lot more” than ten hours total fundraising in 2020. Starr declared that with Meas-

⁵ We take judicial notice that Starr was in fact elected to the City Council in 2024 while Measure B was in effect. *See* Ventura County Clerk-Recorder & Registrar of Voters, *November 5, 2024 Presidential General Election Results, Oxnard City Council District 3* (Mar. 4, 2025), <https://perma.cc/SA3W-HM84> (reporting Starr’s victory over Madrigal in the 2024 election); *United States v. Ritchie*, 342 F.3d 903, 909 (9th Cir. 2003) (“Courts may take judicial notice of some public records, including the records and reports of administrative bodies.” (internal quotation marks and citation omitted)).

ure B in place, he “would have to spend all [his] time fundraising rather than campaigning such that the funds would have been meaningless because [he] would not have had time to do anything with them.” Starr’s testimony thus primarily reflects his personal belief as to the value of raising small contributions and the effect of Measure B on his personal fundraising strategy, not that Measure B “harm[s] the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability.” *Randall*, 548 U.S. at 249 (plurality opinion). All contribution limits will necessarily have a disproportionate effect on candidates who rely on large donations. But a limit that requires a candidate to “raise funds from a greater number of persons” instead of seeking “fewer, larger contributions” as the candidate “prefer[s]” does not “impugn[]” “the candidate’s freedom of speech.” *Lair*, 873 F.3d at 1186 (citation omitted). Thus, we hold that this consideration weighs in favor of Measure B.

Second, Measure B does not limit political party contributions, as MOF concedes. Measure B only limits contributions made by a “person” or a “political action committee,” not a political party. Thus, we hold that this consideration weighs in favor of Measure B.

Third, Measure B’s “treatment of volunteer services” is distinguishable from *Randall*. See 548 U.S. at 259 (plurality opinion). In *Randall*, the Court found Vermont’s treatment of volunteer services troubling because Vermont’s contribution limits did “not exclude the expenses those volunteers incur, such as travel expenses, in the course of campaign

activities,” and therefore unduly burdened volunteers’ right to associate in a political party. *Id.*

MOF concedes that Measure B exempts a volunteer’s travel expenses from the contribution limits. Further, Measure B excludes volunteer expenses associated with the use of a volunteer’s home, so long as the volunteer is not a lobbyist. *See* Cal. Gov’t Code § 82015(b)(5), (c)(2). Measure B also excludes volunteer expenses up to \$500 related to meetings or fundraising events held at the volunteer’s home or office. *See id.* § 82015(c)(2). MOF is therefore incorrect that Measure B would require meticulous tracking of expenses involved with the use of a volunteer’s home along with providing snacks and beverages for neighbors to meet a candidate. Thus, we hold that this consideration weighs in favor of Measure B.

Fourth, Measure B’s limits are adjusted for inflation. MOF concedes this point. Measure B provides that the contribution limits for district-wide and citywide offices “*shall* be adjusted every two (2) years by resolution of the City Council pursuant to Section 2-245.” Section 2-245 further provides that “[t]he campaign contribution limits and loan limits . . . *shall* be adjusted by the City in February at two year intervals beginning in 2023 to reflect annual changes in the Consumer Price Index (CPI) over the previous two-year period.” Here, the City Clerk automatically calculates adjustments every two years and the City has conceded that Measure B imposes a “ministerial” duty upon the City to adjust the limits for inflation. The City would be subject to a writ of mandamus that requires the City to adjust the limits if it attempted to avoid doing so. *See Moving Oxnard Forward, Inc. v. Ascension*, 124 F.4th 605, 629 n.14 (9th Cir. 2024) (Bennett, J., dissenting) (“A traditional

writ of mandate under [California] Code of Civil Procedure section 1085 is a method for compelling a City to perform a legal, usually ministerial duty.” (quoting *Indep. Living Ctr. of S. Cal., Inc. v. Kent*, 909 F.3d 272, 280 n.1 (9th Cir. 2018))), *reh’g en banc granted, vacated sub nom., Moving Oxnard Forward, Inc. v. Lopez*, 138 F.4th 1102 (9th Cir. 2025). Thus, this consideration weighs in favor of Measure B.⁶

As the first four factors weigh in the City’s favor, the City does not need a special justification for Measure B’s individual contribution limit. In *Randall*, the U.S. Supreme Court only considered Vermont’s lack of a special justification after the Court evaluated the first four considerations and concluded that Vermont’s contribution limits unduly “burden[] First Amendment interests.” 548 U.S. at 261 (plurality opinion). Given that the first four considerations already cut against Vermont’s contribution limits, the

⁶ Although MOF concedes this point, the dissent would still hold that Measure B’s limits are not adjusted for inflation. The dissent believes there is “insufficient assurance that the limits will be raised” with inflation because the adjustments require the City Council to “review and adopt these changes.” Dissent at 75-76. The dissent’s approach is not supported by law. Both the *Randall* plurality and courts applying *Randall* have treated this fourth factor as presenting a danger sign where the disputed measure failed to make any reference to inflation. *See Randall*, 548 U.S. at 238 (plurality opinion); *Thompson*, 589 U.S. at 6. *Randall* was specifically concerned that the burden of updating contribution limits would be placed on “incumbent legislators who may not diligently police the need for changes in limit levels to ensure the adequate financing of electoral challenges.” 548 U.S. at 261 (plurality opinion). However, as explained above, Measure B explicitly requires the City Clerk to adjust the contribution limits for inflation every two years, and the City is mandated to adopt the adjusted contribution limits under state law.

Court found it problematic that there was “nowhere in the record any special justification that might warrant a contribution limit so low or so restrictive as to bring about the serious associational and expressive problems” that it had described. *Id.* Here, based on the danger signs and first four factors, there are no “serious associational and expressive problems” arising from Measure B’s individual contribution limits, and thus a special justification is unnecessary. *Id.*

Taken together, four considerations—the ability of challengers to run competitive campaigns, the limits on political party contributions, treatment of volunteer services, and adjusting the contribution limits for inflation—favor Measure B. The final consideration, the presence of a special justification, is irrelevant. Thus, we conclude that Measure B’s per candidate contribution limits are closely drawn to the City’s interest in preventing actual or apparent quid pro quo corruption.

C. Dissent

The dissent would take an entirely different approach at each step of the above analysis than the approach authorized by the U.S. Supreme Court. At step one, the dissent radically departs from Supreme Court precedent and would require evidence of actual quid pro quo corruption. At step two, the dissent invents a new danger sign completely unmoored from *Randall* and Supreme Court precedent and engages in a wholly unprecedented tailoring analysis. We address each of the dissent’s errors in turn.

1. The City’s Interest

At the first step, the dissent contends that the U.S. Supreme Court overruled *Lair* and *Eddleman* in *Citizens United* and *McCutcheon* and suggests that we

must now require the government to produce evidence of actual instances of quid pro quo corruption to establish an interest in preventing such corruption or its appearance. See Dissent at 53-56; *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 357 (2010).⁷ That is not the case. Instead, *Citizens United* and *McCutcheon* merely clarified that the government “may not seek to limit the appearance of mere influence or access” in imposing contribution limits because quid pro quo corruption does not encompass mere influence or access. *McCutcheon*, 572 U.S. at 208 (citing *Citizens United*, 558 U.S. at 360).

Indeed, it would be inconsistent with U.S. Supreme Court precedent to require the government to produce evidence of actual instances of quid pro quo corruption to demonstrate an interest in preventing such corruption or its appearance. The Court has recognized that “few if any contributions to candidates will involve *quid pro quo* arrangements,” *Citizens United*, 558 U.S. at 357, and “the scope of such pernicious practices can never be reliably ascertained,” *Buckley*, 424 U.S. at 27. That is why “restrictions on direct contributions are preventative.” *Citizens United*, 558 U.S. at 357. Additionally, *McCutcheon* reaffirmed the requirement that the government must demonstrate that its interest in preventing quid pro quo corruption or its appearance is more than conjectural. See 572 U.S. at 210 (stating that “we have never accepted mere conjecture as adequate” (internal quotation marks and citation omitted)). The Supreme

⁷ The dissent’s author authored the vacated panel majority opinion, which assumed without deciding that Measure B’s individual contribution limits “further the important state interest of preventing quid pro quo corruption or its appearance.” *Moving Oxnard Forward*, 124 F.4th at 614.

Court also acknowledged and declined to overrule our circuit's articulation of the state's evidentiary burden in *Thompson*. 589 U.S. at 3. Therefore, we see no reason to revisit our holdings in *Lair* and *Eddleman*.

2. Closely Drawn

At the second step in the analysis, the dissent invents a new *Randall* danger sign out of whole cloth: the City Council's alleged improper motive to adopt Measure B to punish MOF President Aaron Starr, a frequent challenger of the City Council and one of the candidates most affected by Measure B's contribution limits. *See* Dissent at 64-67, 71. Concluding that this new danger sign is present, the dissent then holds that Measure B is not closely tailored to the City's interest in preventing quid pro quo corruption or its appearance by taking a novel comparative approach unmoored from precedent.

i. Danger Signs

The dissent errs in three ways in its danger sign analysis. The dissent conducts an inappropriate inquiry into legislative motive to determine whether facially neutral contribution limits are lawful; invents a new danger sign that contravenes *Randall* to do so; and inappropriately imports law from the Equal Protection and First Amendment viewpoint discrimination contexts to allow parties to succeed on a claim challenging contribution limits.

To begin, even assuming that invidious discrimination is a danger sign under *Randall*, the dissent's inquiry into the City Council's legislative motive is wholly inappropriate in this case because the contribution limits were not adopted by the City Council, but instead by the City's voters. If any motive was relevant here, it would be the motive of the voters,

not the City Council. The dissent points to nothing to suggest that the City’s voters had any alleged improper motives in enacting facially neutral contribution limits, and we decline to attribute the City Council’s alleged discriminatory motives to the voters. *See Boardman v. Inslee*, 978 F.3d 1092, 1119 (9th Cir. 2020) (declining to attribute the intent of a union that supported a ballot measure to “the more than 2.2 million Washington voters who voted in favor of [the initiative]” (emphasis omitted)). MOF concedes that Measure B is facially neutral.

Furthermore, “[i]t is a familiar principle of constitutional law that this Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive.” *United States v. O’Brien*, 391 U.S. 367, 383 (1968). The U.S. Supreme Court “has long disfavored arguments based on alleged legislative motives,” out of recognition that “inquiries into legislative motives ‘are a hazardous matter.’” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 253 (2022) (quoting *O’Brien*, 391 U.S. at 383) (collecting cases). We therefore resort to such examinations only when absolutely necessary—in the “very limited and well-defined class of cases where the very nature of the constitutional question *requires* an inquiry into legislative purpose.” *O’Brien*, 391 U.S. at 383 & n.30 (emphasis added). That class includes cases involving bills of attainder, *id.* at 383 n.30, and race-based motives, *City of Columbia v. Omni Outdoor Advert., Inc.*, 499 U.S. 365, 377 n.6 (1991), neither of which is at issue here. Beyond those two contexts, the “stakes are sufficiently high for [courts] to eschew guesswork” when possible. *O’Brien*, 391 U.S. at 384.

Moreover, “[e]ven when an argument about legislative motive is backed by statements made by legislators who voted for a law,” we should be “reluctant to attribute those motives to the legislative body as a whole,” since “[w]hat motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it.” *Dobbs*, 597 U.S. at 253-54 (quoting *O’Brien*, 391 U.S. at 384). That is exactly the case here. The dissent primarily points to two pieces of evidence to show alleged discriminatory motive. First, the City’s unelected City Manager created a PowerPoint presentation that does not name Starr. However, two slides of the PowerPoint presentation highlight contributions that one candidate raised. The PowerPoint presentation included other illustrative evidence supporting Measure B, such as California state legislative findings that “massive contributions” to “candidates for local office from donors with business before that local government . . . create a serious risk of actual or perceived corruption.” Second, the City did “not directly deny” that Starr’s fundraising practices were a “factor” in the City Council’s proposal of Measure B. Dissent at 67-69. However, the dissent points to nothing to indicate that any members of the City Council or any voters were motivated to target Starr.

Second, the dissent’s newly invented danger sign contravenes *Randall*. We note that the dissent points to no other circuit court decision that has invented a new danger sign.

Although it is true that *Randall* does not require lower courts to consider only the four danger signs it lists, and it is possible that there may be other signs of “constitutional risk[] to the democratic electoral process,” the dissent’s approach is inconsistent with

Randall. 548 U.S. at 248 (plurality opinion). *Randall* was specifically concerned about the risk that low contribution limits may “harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders.” *Id.* at 249. The dissent concedes that “Starr was the person who would most be affected by Measure B’s passage and that few others would be significantly impacted” and does not explain how Measure B prevents challengers in general from running effective campaigns. Dissent at 67. And as discussed above, the evidence does not establish that Measure B’s campaign contribution limits even affected Starr’s ability to run a competitive campaign.

The dissent’s concern about alleged discriminatory motives from the City Council bears no connection to *Randall*’s goal of ensuring that contribution limits do not prevent incumbents from facing adequate electoral challenges. Because the U.S. Supreme Court has previously admonished this Circuit to treat *Randall*, including its danger signs, as precedent, and because the dissent’s newly invented danger sign is inconsistent with *Randall*, we decline to adopt it. See *Thompson*, 589 U.S. at 4 n.*, 5-6.

Finally, the dissent improperly imports inapposite case law from the Equal Protection Clause of the Fourteenth Amendment and viewpoint discrimination claims under the First Amendment to justify an expansion of *Randall*.

Importantly, MOF, as “the master of the complaint,” did not challenge the per candidate contribution limit by raising an equal protection claim under the Fourteenth Amendment or a viewpoint discrimination or retaliation claim under the First Amendment, or by raising any other claim based on alleged

discrimination from the City Council. *Royal Canin U. S. A., Inc. v. Wullschleger*, 604 U.S. 22, 35 (2025) (citation omitted). Instead, MOF alleged only that the per candidate contribution limits violated the First Amendment because they were not closely drawn to a sufficiently important state interest. Therefore, although the City Council’s allegedly improper motives might be relevant in other contexts, we should not address claims that the parties did not raise or brief. See *Ker v. California*, 374 U.S. 23, 43 (1963) (“Ordinarily we do not reach for constitutional questions not raised by the parties.” (internal quotation marks and citation omitted)).

Even if MOF had asked us to do so, it is inappropriate to apply law that governs the Equal Protection Clause to the danger sign analysis under *Randall*. The dissent cites *Buckley* for the proposition that it is appropriate to consider the legislature’s motives to assess whether a campaign contribution limit presents a “danger sign” under *Randall*. Dissent at 63-64. However, *Buckley* explicitly noted that campaign contributions could potentially “work invidious discrimination” in violation of the Equal Protection Clause, “[a]part from . . . First Amendment concerns.” See 424 U.S. at 30, 97 (emphasis added). As discussed, MOF never challenged the constitutionality of the per candidate contribution limits under the Equal Protection Clause.

Additionally, *Buckley* was also concerned about “invidious discrimination against challengers *as a class*.” 424 U.S. at 31 (emphasis added). For the court to determine that a contribution limit poses such a risk of invidious discrimination, we must conclude that the limit “w[ould] have a serious effect on the initiation and scope of minor-party and independent

candidacies,” *id.* at 34, and not merely that the limit “prevent[s]” a minor-party challenger “from receiving and spending as much money as the major parties,” *Nat’l Comm. of the Reform Party of the U.S. v. Democratic Nat’l Comm.*, 168 F.3d 360, 366 (9th Cir. 1999). The dissent instead focuses on evidence about Measure B’s impacts on Starr alone. It cites unnamed references to Starr in materials advocating for Measure B. *See* Dissent at 65-67. It focuses on the relative impact of Measure B on Starr. *See* Dissent at 67-68. Finally, it notes the “considerable history of antipathy” between Starr and the City. Dissent at 68. The dissent also concedes that “Starr was the person who would be most affected by Measure B’s passage and that few others would be significantly impacted” and that Measure B would have “minimal, if any, effect” on other politicians. Dissent at 67, 75. Thus, the dissent’s proposed analysis would allow judges to strike down statutes on the basis of supposed invidious discrimination against one person in violation of the Equal Protection Clause without demonstrating that there is any discrimination against a class. There is no indication in *Randall* or any other U.S. Supreme Court case suggesting that is the law.

The dissent also cites *Metro Display* for the proposition that “it is well settled that ‘invidious’ discrimination includes ‘an effort to suppress the speaker’s activity due to disagreement with the speaker’s view.’” Dissent at 69 (quoting *Metro Display Advert., Inc. v. City of Victorville*, 143 F.3d 1191, 1194 (9th Cir. 1998)). But *Metro Display* did not involve campaign contribution limits or associational rights under the First Amendment at all, and instead concerned “‘invidious’ restraints” on speech. 143 F.3d at 1194. As discussed, the Supreme Court has held that contribution limits, unlike expenditure limits, largely

do not implicate restraints on speech. *See Buckley*, 424 U.S. at 21 (“A [contribution] limitation . . . involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor’s freedom to discuss candidates and issues.”). Given that MOF could have raised a challenge based on alleged viewpoint discrimination but declined to do so, we also see no reason to invent a novel way to decide such a claim under *Randall*.

ii. Independent Assessment

Finally, after concluding that its newly invented danger sign triggers an independent review of the record to assess whether Measure B is properly tailored, the dissent would again depart from *Randall*. Instead of assessing whether Measure B is properly tailored to addressing the City’s interest in preventing quid pro quo corruption or its appearance, the dissent would take a *comparative* approach that has no basis in *Randall*. It would assess whether Measure B is “more ‘closely drawn’ to fit (1) the City’s asserted legitimate interest in avoiding actual or apparent quid pro quo corruption or (2) an alleged prohibited objective of squelching the political activities of Starr and others like him.” Dissent at 71.

The dissent provides no Supreme Court case or any other authority to support its novel comparative approach. This approach is inconsistent with *Randall*, which requires this court to assess whether contribution limits are sufficiently “closely drawn” to meet the permissible objective of combating the existence or appearance of quid pro quo corruption. 548 U.S. at 247 (plurality opinion) (quoting *Buckley*, 424 U.S. at 25). *Randall* did not provide us with license to con-

sider whether contribution limits were more closely aligned with any other possible government interest. Rather, *Randall* sought to ensure that contribution limits were closely drawn to combat quid pro quo corruption or its appearance by confirming that the limits are not so low as to fail to allow “candidates to raise the funds necessary to run a competitive election”; “political parties to help their candidates get elected”; and “individual citizens to volunteer their time to campaigns.” *Id.* at 253; *see also Buckley*, 424 U.S. at 25 (requiring contribution limits to be “closely drawn to avoid unnecessary abridgment of associational freedoms”). The dissent departs from *Randall* in an unprecedented way without any supporting authority.

Additionally, as explained above, we decline to consider the alleged invidious intent of the City Council in the first place because there is no evidence that it is relevant to the voters who approved Measure B.

II. Aggregate Contribution Limits

MOF also alleges that Measure B creates unconstitutional aggregate limits on contributions made to a candidate and to ballot measure campaigns that a candidate controls. Specifically, MOF claims that under Measure B, a City Council candidate who also sponsors a committee for a ballot measure could raise only \$500 from a donor that may want to contribute to both the candidate’s campaign and the candidate’s ballot measure’s campaign, whereas a non-candidate who sponsors a ballot measure would not face any such contribution limits. In this way, MOF argues that Measure B improperly discriminates against candidates who are also ballot measure proponents, in violation of the Fourteenth Amendment, and that the aggregate limits do not further a sufficient state

interest and are not closely drawn, in violation of the First Amendment.

Contrary to MOF's understanding, the plain text of Measure B's contribution limits does not apply to ballot measure committees. Measure B provides, in relevant part: "No person shall make, and no candidate for elective office or campaign treasurer shall solicit or accept, any contribution which would cause the total amount contributed by that person to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed five hundred dollars (\$500) for any election."

MOF's challenge is based on the portion of Measure B that applies the contribution limits "to all political committees or broad-based political committees controlled by the candidate." In context, Measure B makes clear that its contribution limits apply to contributions made "*to that candidate*." Thus, "political committees controlled by the candidate" is an explanatory phrase that cannot expand Measure B's limits to apply to contributions that are not made "to that candidate," such as contributions made for a ballot measure campaign. Measure B's language is akin to a "base limit." *McCutcheon*, 572 U.S. at 192. Base limits "restrict how much money a donor may contribute to any particular candidate," including "contributions that are in any way earmarked or otherwise directed through an intermediary or conduit to a candidate." *Id.* at 194 (internal quotation marks omitted). Base limits have been "previously upheld as serving the permissible objective of combatting corruption." *Id.* at 192-93.

Our understanding of Measure B is confirmed by the City Attorney. Prior to Measure B's enactment,

the City Attorney provided an impartial analysis of Measure B. Relevant to this appeal, the City Attorney found that “[c]onsistent with existing case law, Measure B does not place a limit on the amount of contributions that can be made to independent expenditure committees or *to committees that raise money to support or oppose a City ballot measure.*” Thus, we conclude that Measure B’s aggregate contribution limits apply only to contributions made, directly or indirectly, to that candidate, and not to contributions made to ballot measure committees. As Measure B’s aggregate limits only apply to the candidate, they are constitutional under the First Amendment for the same reasons held above, and do not improperly discriminate between candidates based on the candidate’s sponsorship of ballot measures.

CONCLUSION

For the foregoing reasons, we affirm the district court’s order granting summary judgment in favor of the City and denying MOF’s motion for summary judgment.

AFFIRMED.

COLLINS, Circuit Judge, with whom VANDYKE, Circuit Judge, joins, dissenting:

I was the author of the panel opinion in this case, see *Moving Oxnard Forward, Inc. v. Ascension*, 124 F.4th 605 (9th Cir. 2024), and I adhere to that opinion’s conclusion that the limits on campaign contributions adopted by Defendant City of Oxnard, California (“the City”) violate the First Amendment. Because the en banc court’s majority opinion now concludes otherwise, I respectfully dissent.¹

In this case, the City adopted campaign finance limitations that, as explained in the City’s supporting materials, would have little practical impact on any recent candidates for municipal elections except for one—Aaron Starr, the President of Plaintiff Moving Oxnard Forward, Inc. (“MOF”). Starr has been very active in Oxnard politics, and in doing so he has consistently relied on larger-dollar contributions that, as the City notes, made him a “stark” “outlier” among local candidates. The new campaign contribution limitations, which the City admits “will force [Starr] to change this practice,” were proposed by the City the year after Starr engineered an ultimately unsuccessful recall effort against a majority of the City Council and came in second in the race for Mayor. And prior to that, Starr and MOF had successfully supported a ballot initiative that overturned the City Counsel’s increase in certain fees and that then became the subject of litigation between Starr and the City. Act-

¹ Given my prior authorship of the panel opinion, in this dissent “I will borrow liberally (and often verbatim) from that panel decision, and I will do so without the cumbersome use of quotation marks and without providing citations to my prior panel opinion.” *Estate of Hernandez v. City of Los Angeles*, 139 F.4th 790, 816 n.1 (9th Cir. 2025) (en banc) (Collins, J., dissenting).

ing on behalf of itself and its members (including Starr), MOF challenged these new campaign finance limitations as a violation of the First Amendment, but the district court granted summary judgment to the City. MOF has appealed.

In reviewing MOF’s First Amendment challenge to the City’s new campaign-contribution limits, I would hold that the City has failed to carry its threshold burden to show that these limits “further the important state interest of preventing *quid pro quo* corruption or its appearance.” *Lair v. Motl*, 873 F.3d 1170, 1180 (9th Cir. 2017). Although the City’s meager evidence may be enough to satisfy *Lair*’s low standard—which states that the City “must show *only* that the perceived threat *is not illusory*,” *id.* at 1178 (simplified) (emphasis added)—that standard is inconsistent with current Supreme Court authority and we should take this opportunity to overrule it en banc. And under the correct standard, the City’s evidence is patently inadequate. On that basis alone, the City’s limitations violate the First Amendment.

I would also further conclude that, even if the City met its threshold burden, the challenged limitations do not survive the appropriate level of scrutiny that then applies. On this record, the City’s contribution limits present sufficient “danger signs” of “constitutional risks to the democratic electoral process” to require us to “examine the record independently and carefully to determine whether [the City’s] contribution limits are ‘closely drawn’ to match” the asserted interest in avoiding the appearance of *quid pro quo* corruption. *Randall v. Sorrell*, 548 U.S. 230, 248–49, 253 (2006) (plurality). Specifically, the record reflects a significant risk that the City may be engaged in “invidious discrimination” against Starr and chal-

lengers like him. *Buckley v. Valeo*, 424 U.S. 1, 31 (1976). And, upon conducting that independent and careful review, I would conclude that the City’s contribution limits are not “narrowly tailored.” *Randall*, 548 U.S. at 261.

For all of these reasons, I would hold that the City’s contribution limits violate the First Amendment, and I dissent from the majority’s contrary holding.

I

A

Aaron Starr is a resident of Oxnard and the President of MOF. MOF is a nonprofit corporation whose purpose, according to Starr, “is to make local government more efficient and make sure that residents receive value for the taxes and fees they pay.” Toward that end, “MOF engages in advocacy for and against proposed legislation and ballot measures in the City.” In addition, several of MOF’s members have run for local office or have supported the campaigns of local candidates.

The electoral efforts of MOF and its members have had mixed success. Starr unsuccessfully ran for a spot on the City Council in 2014, 2016, and 2020, and he came in second in the 2018 mayoral race. MOF, however, has had greater success in sponsoring ballot initiatives. In 2016, Oxnard voters passed MOF-sponsored “Measure M,” which repealed an increase in the City’s wastewater fees.² In 2020, four MOF-

² Measure M, however, was subsequently invalidated in state court on state-law grounds. See *City of Oxnard v. Starr*, 2020 WL 6042024 (Cal. Ct. App. 2020).

supported initiatives were on the local ballot, and three of them were approved by the voters.³

In supporting these various campaigns, MOF's and Starr's preference has been, as the City puts it, "to raise large sums of money from a small number of donors." For example, in 2018, Starr raised \$8,250 from just five contributors, and more than half of the money he raised involved contributions in excess of \$500. However, in October 2019, the Oxnard City Council placed "Measure B" on the ballot to coincide with the March 2020 presidential primary election. Among other things, Measure B would limit an individual's contributions to City Council candidates to \$500 per election and to citywide candidates (such as for Mayor) to \$750. The voters approved Measure B, and it took effect on May 1, 2020.

B

Four days after Measure B took effect, MOF filed this § 1983 action against the Oxnard City Clerk in her official capacity.⁴ The complaint seeks declaratory and injunctive relief against Measure B on behalf of MOF and its members. As relevant here, the complaint asserts two federal claims.

MOF's first cause of action alleges that the various per-candidate contribution limits imposed by Measure B violate the Free Speech Clause of the First

³ The City challenged two of the three successful initiatives in state court and prevailed as to one on state-law grounds and lost as to the other. *City of Oxnard v. Starr*, 303 Cal. Rptr. 3d 819, 823–24 (Ct. App. 2023).

⁴ Because the action against the Clerk in her official capacity is functionally against the City, *see Lewis v. Clarke*, 581 U.S. 155, 162 (2017), I will follow the majority in referring to the Defendant as "the City." *See* Opin. at 6 n.1.

Amendment, as made applicable to the States by the Fourteenth Amendment. Specifically, MOF challenges the following limits on contributions that may be made by a “person” to a “candidate for elective office” under the provisions that Measure B added to a new Article VI of Chapter 2 of the Oxnard City Code:

- An aggregate limitation of \$500 per election for any given individual’s contributions to any one candidate for City Council. *See* OXNARD CITY CODE § 2-243(A).
- An aggregate limitation of \$1,000 per election for contributions by any given “political action committee” to any one candidate for City Council. *Id.*
- Comparable aggregate contribution limits for candidates for Mayor, City Clerk, and City Treasurer, except that the contribution limitation for individuals to such candidates is \$750 and the limit for political action committees is \$1,500. *Id.* § 2-244(A).
- An aggregate limitation of \$500 per election for any loan to any candidate for any elected City office. *Id.* §§ 2-243(B), 2-244(B).

These City Code provisions further specify that these numerical contribution limits “shall be adjusted every two (2) years by resolution of the City Council” in accordance with a specified formula. *Id.* §§ 2-243(A), 2-244(A); *see also id.* § 2-245.⁵

⁵ In challenging these provisions, MOF claims that these limits on contributions by any “person” to a “candidate” also apply to contributions made by the *candidate* to his or her own campaign. The district court rejected this reading of Measure B, and I agree. By using the distinct terms “person” and “candidate,” the measure’s language is more naturally read as denoting that those individuals are not the same. And if I had any residual

MOF's second cause of action challenges an additional feature of the contribution limits enacted by Measure B. Specifically, in calculating the aggregate contributions made by an individual or by a political action committee for purposes of the measure's contribution limitations, these provisions include, not just contributions to the candidate, but also "contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions." OXNARD CITY CODE §§ 2-243(A), 2-244(A). MOF alleges that, as applied to a candidate for City office who simultaneously controls a political committee supporting or opposing a City ballot initiative—as Starr has done—these provisions would force that candidate "to choose between receiving a maximum contribution to either his or her campaign or to the ballot measure committee or . . . to divide the maximum contribution in some way between the two." MOF alleges that, because an individual who is running a ballot-initiative campaign and who is *not* a candidate for City office is not subject to any limits on how much he or she may receive as a contribution to that campaign, the resulting asserted disparate treatment violates both the Free Speech Clause of the First Amendment as well as the

doubt on this score, the canon of constitutional avoidance would require reaching that same conclusion, because, as the City concedes, a contrary reading would render Measure B patently unconstitutional. *See Buckley*, 424 U.S. at 53 (holding that a limitation on a candidate's expenditures on his or her own campaign would violate the First Amendment). Accordingly, I proceed on the understanding that Measure B does not apply to a candidate's contributions to his or her own campaign.

Equal Protection Clause of the Fourteenth Amendment.⁶

In late April 2021, the parties filed cross-motions for summary judgment. The district court granted the City's motion, denied MOF's motion, and entered judgment for the City on all claims. MOF timely moved to alter or amend the judgment, and the district court denied that motion. MOF timely appealed the next day. This court has jurisdiction under 28 U.S.C. § 1291, and we must review the district court's grant of summary judgment de novo. *See Sandoval v. County of Sonoma*, 912 F.3d 509, 515 (9th Cir. 2018).

II

I begin by addressing MOF's first cause of action, which asserts that Measure B's various contribution limits violate the First Amendment.

⁶ Measure B also enacted additional provisions that limited gifts to certain City officials, *see* OXNARD CITY CODE §§ 2-250, 2-251, as well as provisions instituting term limits for City elected officials, *see id.* §§ 2-3, 2-4. Although MOF initially challenged the gift limitations in a third cause of action in its complaint, MOF has expressly abandoned any such challenge in this court. Measure B's term limits became the subject of separate litigation between Starr and the City after the City declined to submit to the voters Starr's competing initiative concerning term limits. *See Starr v. Chaparro*, 288 Cal. Rptr. 3d 885, 887 (Ct. App. 2022). Instead, the City adopted Starr's initiative proposal as an ordinance *before* Measure B's passage, with the result that Measure B overrode Starr's proposal. *Id.* The California Court of Appeal held that the City's failure to submit Starr's initiative to the voters violated state law, and it ordered Starr's initiative to be placed on the November 2022 ballot. *Id.* at 899. Starr's initiative then passed, and it controlled over Measure B's relevant term limit provision. *See* OXNARD CITY CODE § 2-4 (as amended by the electorate on November 8, 2022).

Under *Thompson v. Hebdon*, 589 U.S. 1 (2019), the controlling standards for assessing whether a campaign contribution limit violates the First Amendment are set forth in Justice Breyer’s plurality opinion in *Randall v. Sorrell*, 548 U.S. 230 (2006).⁷ Under *Randall*, “contribution limitations are permissible as long as the Government demonstrates that the limits are ‘closely drawn’ to match a ‘sufficiently important

⁷ In *Thompson*, this court had declined to apply the *Randall* plurality opinion because no opinion in that case had “commanded a majority of the Court.” *Thompson*, 589 U.S. at 4 n.* (quoting *Thompson v. Hebdon*, 909 F.3d 1027, 1037 n.5 (9th Cir. 2018)). The Supreme Court unanimously reversed our decision, noting that 10 other circuits had “correctly looked to *Randall* in reviewing campaign finance restrictions.” *Id.* Indeed, the settled rule is that “[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.” *Marks v. United States*, 430 U.S. 188, 193 (1977) (citations and internal quotation marks omitted). In *Randall*, Justice Breyer’s plurality opinion for three Justices applied a form of lesser scrutiny rooted in *Buckley v. Valeo*, 424 U.S. 1 (1976), in striking down the contribution limitations at issue there, see *Randall*, 548 U.S. at 246–62 (Breyer, J., joined by Roberts, C.J., and Alito, J.), and two other Justices applied strict scrutiny in reaching the same result, see *id.* at 267–73 (Thomas, J., joined by Scalia, J., concurring in the judgment). The “lowest common denominator” between those two opinions, see *Nichols v. United States*, 511 U.S. 738, 745 (1994), is the plurality’s narrower holding that the contribution limits were invalid even under a lesser form of scrutiny than strict scrutiny. See *Randall*, 548 U.S. at 272 (Thomas, J., concurring in the judgment) (noting that the plurality did not “err[] in concluding that these limits are too low to satisfy even *Buckley*’s lenient standard”). Accordingly, under both *Marks* and *Thompson*, the *Randall* plurality opinion is controlling.

interest.” *Id.* at 247 (plurality) (quoting *Buckley v. Valeo*, 424 U.S. 1, 25 (1976)).

The Supreme Court has “identified only one legitimate governmental interest for restricting campaign finances: preventing corruption or the appearance of corruption.” *McCutcheon v. FEC*, 572 U.S. 185, 206–07 (2014) (plurality).⁸ “Moreover, while preventing corruption or its appearance is a legitimate objective, [a legislative body] may target only a specific type of corruption—‘*quid pro quo*’ corruption,” a phrase that refers only to “a direct exchange of an official act for money.” *Id.* at 192, 207; *see also id.* at 192 (reaffirming that “[i]ngratiation and access are not corruption” (simplified)); *Citizens United v. FEC*, 558 U.S. 310, 359 (2010) (“When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption.”). “And because the Government’s interest in preventing the *appearance* of corruption is equally confined to the appearance of *quid pro quo* corruption, the Government may not seek to limit the appearance of mere influence or access.” *McCutcheon*, 572 U.S. at 208 (emphasis added).

In order to justify *any* limit on campaign contributions based on this asserted interest, a legislative

⁸ As in *Randall*, Justice Thomas concurred only in the judgment in *McCutcheon*, adhering to his view that campaign contribution limitations should be subject to strict scrutiny. *See McCutcheon*, 572 U.S. at 228 (Thomas, J., concurring in the judgment). Because the *McCutcheon* plurality’s reasons for invalidating the limits at issue in that case reflect the “narrowest grounds” for sustaining that judgment, the *McCutcheon* plurality’s opinion, like the *Randall* plurality’s opinion, is binding on this court. *See Marks*, 430 U.S. at 193; *see also supra* note 7.

body cannot rely on “mere conjecture” and must instead point to some threshold evidentiary basis for concluding that voters in that jurisdiction “would tend to identify a big donation with a corrupt purpose.” *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 391–92 (2000); *see also McCutcheon*, 572 U.S. at 218 (plurality) (holding that “speculation . . . cannot justify the substantial intrusion on First Amendment rights” involved in a limitation on campaign contributions); *Lair v. Motl*, 873 F.3d 1170, 1178 (9th Cir. 2017) (holding that the government must carry this “threshold” burden to show “whether *any* level of limitation is justified”).

If the government carries this threshold burden to “offer[] adequate evidence that its [contribution] limits further the important state interest of preventing *quid pro quo* corruption or its appearance,” the court must next consider whether the particular contribution limit at issue is “closely drawn” to this sole legitimate interest. *Lair*, 873 F.3d at 1180. With respect to this inquiry, the Supreme Court has cautioned that the courts are poorly positioned to “determine with any degree of exactitude the precise restriction necessary to carry out” this “legitimate objective[.]” *Randall*, 548 U.S. at 248. Because legislative bodies are generally “better equipped to make such empirical judgments,” *Randall* explained, the courts “ordinarily” should “defer[] to the legislature’s determination of such matters.” *Id.*

Randall also noted, however, that there will be circumstances in which a restrictive contribution threshold will present “constitutional risks to the democratic electoral process” that are “too great.” 548 U.S. at 248. In such cases, deference is inappropriate, and the courts must exercise “independent judicial

judgment.” *Id.* at 249. Thus, “where there is strong indication in a particular case, *i.e.*, danger signs, that such risks exist (both present in kind and likely serious in degree), courts, including appellate courts, must review the record independently and carefully with an eye toward assessing the statute’s ‘tailoring,’ that is, toward assessing the proportionality of the restrictions.” *Id.* In assessing a statute’s tailoring when such danger signs are present, the courts must consider “the serious associational and expressive problems” presented by the statute and determine whether there is “any special justification” that would warrant upholding the statute’s restrictions in light of those concerns. *Id.* at 261.

B

As noted, the threshold question in applying these standards is whether the City has carried its initial burden to show that Measure B’s individual contribution limitations “further the important state interest of preventing *quid pro quo* corruption or its appearance.” *Lair*, 873 F.3d at 1180. Our precedent has described this threshold burden as a low one that requires a showing “only that the perceived threat” of corruption “is more than mere conjecture” and “is not illusory.” *Id.* at 1178 (simplified) (quoting *Montana Right to Life Ass’n v. Eddleman*, 343 F.3d 1085, 1092 (9th Cir. 2003)). The majority expressly reaffirms that very low *Lair/Eddleman* standard and finds that the City has met it. *See* Opin. at 15–20, 32–33. In my view, that low standard is inconsistent with Supreme Court authority, and we should have taken this opportunity to overrule it. And under the proper standard, the City has not carried its threshold burden.

Even under the lesser scrutiny that applies to campaign contributions under *Randall*, “the [g]overnment must prove at the outset that it is *in fact* pursuing a legitimate objective.” *FEC v. Cruz*, 596 U.S. 289, 305 (2022) (emphasis added). As noted, the only such “legitimate objective” the Court has recognized for restricting campaign finances is “the prevention of ‘*quid pro quo*’ corruption or its appearance.” *Id.*; see also *McCutcheon*, 572 U.S. at 206–07 (plurality). The government cannot rely on “mere conjecture” that this interest is being furthered, nor can it “simply posit the existence of the disease sought to be cured.” *Cruz*, 596 U.S. at 307 (citations omitted). “It must instead point to ‘record evidence or legislative findings’ demonstrating the need to address a special problem” through the proposed restrictions. *Id.* (citation omitted). To carry its threshold burden, the government must point to evidence “substantiat[ing]” a genuine “concern,” *Nixon*, 528 U.S. at 393, about “*quid pro quo* corruption in th[e] context” of the conduct sought to be regulated, *Cruz*, 596 U.S. at 307.⁹

Thus, although *Nixon* noted in 2000 that the Court had not yet adopted a requirement that “governments enacting contribution limits must demonstrate that the recited harms are real, not merely conjectural,” *Nixon*, 528 U.S. at 392–93 (simplified) (reject-

⁹ The majority mischaracterizes this standard, relying on the strawman argument that it would require “evidence of *actual* instances of *quid pro quo* corruption.” See Opin. at 31 (emphasis added). What is required is evidence substantiating a concern about real or apparent *quid pro quo* corruption relating to campaign contributions, and not merely non-illusory grounds for a generalized concern about undue influence or access.

ing the view that *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 518 U.S. 604 (1996), had imposed this requirement but then declining to “further defin[e] . . . whatever the State’s evidentiary obligation may be”), the Court’s subsequent caselaw makes clear that it has now done so. As Judge Ikuta cogently explained:

In light of the Supreme Court’s clarification [of its law in this area], a state can justify imposing regulations limiting individuals’ political speech (via limiting political contributions) only by producing evidence that *it has a real problem in combating actual or apparent quid pro quo corruption . . .* To meet this test here, a state must show that it has a realistic need to prevent acts that “would be covered by bribery laws,” *Citizens United*, 558 U.S. at 356, by (for instance) presenting evidence that large monetary contributions were made “to control the exercise of an officeholder’s official duties,” *McCutcheon*, [572 U.S. at 208], or “point[ing] to record evidence or legislative findings suggesting any special corruption problem,” *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 618 (1996)

(principal opinion). One thing is certain: the state cannot carry its burden with evidence showing only that large contributions increase donors’ influence or access. *McCutcheon*, [572 U.S. at 192, 208]. Even if the “line between *quid pro quo* corruption and general influence may seem vague at times . . . ‘the First Amendment requires us to err on the side of protecting political speech rather

than suppressing it.” *Id.* at [209] (quoting *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 457 (2007) (opinion of Roberts, C.J.)).

Lair v. Motl, 889 F.3d 571, 574 (9th Cir. 2018) (Ikuta, J., dissenting from denial of rehearing en banc) (emphasis added).

We thus should have taken this opportunity to overrule *Lair* and *Eddleman*. A mere showing that concerns about *quid pro quo* corruption are not “conjecture” or “illusory” is not enough to carry the government’s threshold burden. For the reasons that Judge Ikuta has explained, *see id.*, such a standard is inconsistent with current Supreme Court authority because, in practice, that standard allows the government to enact contribution limits based merely on broad and amorphously defined concerns about “the appearance of mere influence or access.” *McCutcheon*, 572 U.S. at 208. Indeed, the Supreme Court in *Thompson* approvingly noted that, in the opinion under review in that case, this court had “acknowledged that ‘*McCutcheon* and *Citizens United* created some doubt as to the continuing vitality of [the *Lair/Eddleman*] standard.’” *Thompson*, 589 U.S. at 349 (quoting *Thompson v. Hebdon*, 909 F.3d 1027, 1034 n.2 (9th Cir. 2018)).

2

Under the correct threshold standard, the City’s evidence is plainly inadequate to justify its adoption of campaign contribution limits.

The City relies primarily on the Ventura County District Attorney’s (“DA”) 2012 “Report on the Public Integrity Investigation of Oxnard City Officials” (the “Report”). The Report detailed the results of the DA’s investigation into five allegations of wrongdoing by

City officials, three of which involved alleged “misappropriation” of taxpayer funds by City officials and another of which involved City officials’ alleged violations of “conflict of interest laws by approving multi-million dollar city contracts from which they stood to profit.” The final allegation of misconduct was that City officials had assertedly “received gifts of vacations, meals, rounds of golf, and event tickets from companies doing significant business with the city, without publicly declaring the gifts as required by law.” As to that latter allegation, the DA reached the following conclusion:

Several city officials failed to declare gifts they received. The failures to declare gifts of meals, golf and event tickets have been referred to the Fair Political Practices Commission for administrative enforcement action. There is insufficient evidence to prove the most serious allegations involving gift vacations and the statute of limitations has expired as to many of the gifts.

In its briefs in the district court and in this court, the City did not contend that the DA’s Report had revealed any actual examples of *quid pro quo* corruption. Instead, it relied on generalized claims that the Report had revealed that “City elected officials have engaged in misconduct and unethical behavior in the last decade.” But the City claimed at oral argument before the en banc court that the Report does present examples of actual or perceived *quid pro quo* corruption in the City. The majority endorses that view and has made these alleged examples a centerpiece of its opinion, both in its statement of the facts and in its analysis of this threshold-burden issue. *See* Opin. at 6–9, 16–17. For several reasons, however, the majori-

ty's reliance on various examples drawn from the Report is unavailing.

First, in examining the information presented in the Report, the majority completely loses sight of the relevant standard of review. Because this case involves a district court's grant of summary judgment to the City, this court must "view[] the evidence in the light most favorable to the non-moving party," namely, MOF. *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001). The majority instead tentatively reads the record in favor of the City, even to the point of ignoring the Report's own conclusions about the examples that the majority discusses.

For instance, the majority relies heavily on two examples that it contends show that City officials took actions that were favorable to an Oxnard businessman who had recently given expensive gifts of travel to the relevant officials. *See* Opin. at 16–17. Specifically, the majority says that the Report shows that (1) the day after taking a trip to Cabo San Lucas aboard the "private jet" of "Oxnard businessman Bernard Huberman," City Councilmember Herrera "voted to approve the City's multi-million dollar purchase of a building from a Huberman-affiliated company"; and (2) three months after accompanying Huberman on his private jet on a trip to Napa, Mayor Holden "approved a bid that a Huberman-affiliated company made for a City contract." *See* Opin. at 6–8, 16–17. Conspicuously absent from the majority's recitation are the Report's conclusions that (1) the "available evidence shows that . . . Holden exchanged sufficiently fair value for [his] travels" and (2) "there is insufficient evidence to prove whether [Herrera's] travel was a gift or fair value was exchanged." In other words, the Report affirmatively concluded that

the travel provided to Holden was *not* a gift, and it further concluded that there was *insufficient evidence* to show that Herrera's travel *was* a gift. Moreover, in addressing the "appearance of impropriety" created by Herrera's vote on the building sale a day after flying with Huberman from Cabo San Lucas, the Report noted that both Herrera and Holden had "long-term personal relationships with Huberman," that Herrera's close relationship with Huberman preceded his time on the City Council, and that Herrera's occasional flights with Huberman over the years did "not constitute a financial interest within the meaning of the conflict of interest laws." Viewing the Report in the light most favorable to MOF, these two examples show, at best, "the appearance of mere influence or access," and not the appearance of *quid pro quo* corruption. *McCutcheon*, 572 U.S. at 208.

Similarly unavailing is the majority's reliance on the Report's statement that the City's Public Works Director admitted that he had accepted tickets and transportation to a Lakers game from a company that, at the time, had "significant business" with the Department, including contracts that the Director had approved. *See* Opin. at 7. The Report concluded that, although the receipt of these gifts "plainly violate[d] the city's policy against accepting gifts of more than \$50 from entities with whom the city is doing business," the evidence was "insufficient to prove that the officials had a criminal conflict of interest regarding the contracts" they approved.

Second, the meager evidence that the majority selectively cites bears no relationship at all to the First Amendment activity that the City seeks to regulate here—namely, campaign contributions. The three incidents the majority cherry-picks from the Report

had nothing to do with campaign contributions, and they are temporally far removed from the City's effort to regulate such contributions: these incidents all occurred between *10 and 13 years* before the City proposed Measure B, and the Report itself was issued more than seven years before Measure B was proposed. Moreover, the Report identifies a number of areas that are in need of reform, but campaign contributions are not among them. And, importantly, the City's own evidence in this case shows that large campaign contributions have never been a problem in the City, either in the time period covered by the Report or in the years since. As the City itself notes, "the sorts of large contributions that [Measure B] prohibits were quite rare even before its adoption." Indeed, in the most recent election preceding Measure B's proposal, nearly 94% of all contributions were within the limits being proposed, and only two candidates for office raised a majority of their funds from contributions that would exceed Measure B's limits.

According to the majority, it does not matter that the City was unable to point to any evidence related specifically to campaign contributions. *See* Opin. at 15–20. But the majority cites no Supreme Court case that endorses that view, and I am aware of none. Indeed, the Supreme Court cases that have upheld campaign contribution limits have relied on evidence in the relevant jurisdiction that large *campaign contributions* had created an appearance of *quid pro quo* corruption. *See Nixon*, 528 U.S. at 393–94 (citing numerous examples of troubling five- or six-figure contributions from corporations or corporate-related PACs in Missouri); *Buckley*, 424 U.S. at 27 (noting that the court of appeals' opinion in that case detailed a number of "deeply disturbing examples" of troub-

ling campaign contributions that “surfac[ed] after the 1972 election”).

The majority argues that contribution-specific evidence should not be required, because a showing of corruption with respect to *gifts* should be enough to justify the prophylactic measure of limiting *campaign contributions*. See Opin. at 15–17. The problem with this faulty syllogism is that the giving of personal gifts to government officials is generally not an expressive activity protected by the First Amendment, but the giving of campaign contributions is. See *United States v. Ring*, 706 F.3d 460, 466 (D.C. Cir. 2013) (“[T]he First Amendment interest in giving [gifts] to public officials is, at least compared to the interest in contributing to political campaigns, *de minimis*.”). And because the government’s burden in justifying any particular regulation of campaign contributions is to present evidence concerning actual or perceived “*quid pro quo* corruption *in this context*,” *Cruz*, 596 U.S. at 307 (emphasis added), the City cannot rely on problems relating *only* to a separate category of unprotected activity as its basis for regulating protected activity. At a minimum, the City cannot do so without first demonstrating why regulation directed to the problematic unprotected activity (*viz.*, the giving of personal gifts to City officials) will not suffice to address the problems presented by that activity. Indeed, Measure B contains a *separate* provision that broadly bans all personal gifts to any elected City official from “any person or entity that contracts or is seeking to contract with the City,” OXNARD CITY CODE §§ 2-250(A), and that provision is not challenged here. Allowing the City—without any additional evidence—to go beyond the regulation of gifts and to also regulate a distinct class of First-Amendment-protected conduct would create a mis-

match that raises the specter that the City’s “stated interests are not the actual interests served by the restriction.” *Edenfield v. Fane*, 507 U.S. 761, 768 (1993).¹⁰

Accordingly, the City’s reliance on the Report’s discussion of allegedly improper gifts is insufficient to carry its threshold burden. The remaining items relied upon by the City are even more clearly insufficient. Specifically, the City points to (1) a citizen survey that, among other things, asked City voters whether they “would support a Government Accountability measure”; and (2) the fact that Measure B passed with 82% of voters voting in favor. But “Government Accountability” can mean almost anything intended to make government operations more efficient, effective, responsive, and ethical, and nothing in the record suggests that regulation of *campaign contributions* formed any part of the question posed to survey participants about “Government Accountability.” Likewise, given that Measure B packaged together gift restrictions, term limits, *and* campaign-contribution limits, the approving voters may have placed differing weights on these distinct components in casting their ballots—thereby making it difficult, if not impossible, to say that the City’s voters “determined that *contribution limits* are *necessary* to combat corruption and the appearance thereof.” *Nixon*, 528 U.S. at 908 (emphasis added) (simplified); *see also* 1994 Missouri Session Laws 1249–51 (containing the text of the proposition at issue in *Nixon*, which narrowly focused on campaign contributions).

¹⁰ As I shall explain, that specter is no mere phantasm here. *See* section II(C) *infra*.

Although the City’s evidence might be sufficient to satisfy the embarrassingly low *Lair/Eddleman* standard—which states that the City “must show only that the perceived threat is not illusory” or “mere conjecture,” *Lair*, 873 F.3d at 1178 (simplified)—it does not meet the correct, more demanding standard required under current Supreme Court authority.

C

But even if the City had made the threshold showing that its limits on campaign contributions “further the important state interest of preventing *quid pro quo* corruption or its appearance,” *Lair*, 873 F.3d at 1180, I would still reverse the district court’s grant of summary judgment to the City. In my view, (1) Measure B presents sufficient “danger signs” to warrant our “examin[ing] the record independently and carefully to determine whether [Measure B’s] contribution limits are ‘closely drawn’ to match” the asserted interest in avoiding the appearance of *quid pro quo* corruption, *Randall*, 548 U.S. at 253; and (2) Measure B’s individual contribution limits do not survive that independent scrutiny.

1

The City contends—and the majority agrees—that, under *Randall*, the “danger signs” that would trigger independent scrutiny are limited to the following four specific danger signs that the Court identified in that case: (1) the contribution limits at issue apply “per election cycle, which includes *both* a primary and a general election”; (2) the “limits apply both to contributions from individuals and to contributions from political parties”; (3) the “limits are well below the limits th[e] Court upheld in *Buckley*” and “below the lowest limit th[e] Court has previously upheld”; and

(4) the limits are “substantially lower than . . . comparable limits in other States” and are not “indexed for inflation.” *Randall*, 548 U.S. at 249–53, 261 (emphasis added); *see also* Opin. at 20–21. However, nothing in *Randall* suggests that this list of “danger signs” is exhaustive. On the contrary, *Randall* frames a general standard that asks whether a given set of limitations presents “*constitutional risks to the democratic electoral process*” that are “too great.” 548 U.S. at 248 (emphasis added). An example would be, as in *Randall*, when the extremely restrictive nature of the contribution limit threatens to “harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability.” *Id.* at 249. But nothing in *Randall* supports the majority’s suggestion, *see* Opin. at 35–36, that that is the *only* manner in which a contribution limitation may be said to present “constitutional risks to the democratic electoral process,” *Randall*, 548 U.S. at 248.

Moreover, *Buckley* itself underscored that its more lenient standard of review only applies “[a]bsent record evidence of invidious discrimination against challengers as a class” or against candidates with particular “present occupations [e.g., non-incumbents], ideological views, or party affiliations.” *Buckley*, 424 U.S. at 31 (emphasis added). Given that *Buckley* confirms that such invidious discrimination would preclude application of *Buckley*’s deferential scrutiny, it follows that, under *Randall*, such discrimination is also the sort of “constitutional risk[] to the democratic electoral process” that would require courts to assess the “tailoring” of the contribution limits “inde-

pendently and carefully.” *Randall*, 548 U.S. at 248–49, 253.¹¹

We have explained that, in this context, “invidious discrimination” includes discrimination on constitutionally suspect grounds, such as race or sex, as well as “discrimination that tends to harm or repress minority parties” or “independent candidacies.” *National Comm. of the Reform Party of the U.S. v. Democratic Nat’l Comm.*, 168 F.3d 360, 366 (9th Cir. 1999) (quoting *Buckley*, 424 U.S. at 34). Moreover, it is well settled that “invidious” discrimination includes “an effort to suppress the speaker’s activity due to disagreement with the speaker’s view,” *Metro Display Advert., Inc. v. City of Victorville*, 143 F.3d 1191, 1194 (9th Cir. 1998) (citation omitted), and that such discrimination may be present even with respect to ostensibly facially neutral laws, *see NAACP v. City of Richmond*, 743 F.2d 1346, 1356 (9th Cir. 1984).

Under these standards, I believe that the undisputed facts concerning Measure B raise a sufficient danger of invidious discrimination to warrant application of “independent[] and careful[]” scrutiny under *Randall*. 548 U.S. at 249, 253. In particular, there are “danger signs” in the record that Measure B, both in its formulation and in its operation, differentially

¹¹ The majority is therefore wrong in suggesting that such invidious discrimination cannot be considered *within* the *Randall* framework and can only be addressed in the context of “an equal protection claim under the Fourteenth Amendment or a viewpoint discrimination or retaliation claim under the First Amendment,” or some other “claim based on alleged discrimination from the City Council.” *See* Opin. at 36.

targets Starr, who has repeatedly challenged the incumbent City government and its policies.¹²

First, the legislative record indicates that Starr and his reliance on larger-size contributions were a target of the City Council when it proposed and promoted Measure B. In his declaration in the district court, City Manager Alexander Nguyen stated that, “to educate the voters about Measure B in advance of the March 3, 2020 election,” his office “maintained a page on the City’s website titled ‘About Measure B—The Oxnard Government Accountability and Ethics Act.’” Among the materials uploaded onto that webpage was a PowerPoint slide deck that Nguyen used to give a presentation in February 2020 to the “Inter-Neighborhood Council Organization,” a group “made up of the chairpersons of each active neighborhood council.” The PowerPoint, entitled “Measure B: The Oxnard Government Accountability and Ethics Act,” provides an overview for voters of what Measure B would and would not do. The PowerPoint’s 15 slides describe the measure’s various provisions concerning gifts, term limits, and campaign

¹² The majority contends that, in reaching this conclusion, I am raising issues that “the parties did not raise or brief.” *See* Opin. at 37. That is wrong. MOF has consistently argued, both in its summary judgment papers below and in its opening brief in this court, that Measure B was specifically crafted “to reduce the amount of money Starr spent on campaigns in the City” and that Measure B is focused more on that improper interest than on *quid pro quo* corruption. And it is a familiar principle of appellate decisionmaking that “when an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law.” *Does v. Wasden*, 982 F.3d 784, 793 (9th Cir. 2020) (quoting *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991)).

contributions in largely general terms, with one notable exception. The last two slides consist of graphics devoted to showing a particular “[e]xample of the size and volume of campaign contributions for one candidate over [the] past several years.” Although these two slides do not name who that “one candidate” is, there is no dispute that it is, in fact, Aaron Starr.

The first of these two slides consists of a map of the United States and a separate close-up map of California, with visual pins identifying each city from which Starr received a contribution, together with the amount of that contribution.¹³ Many of the contributions listed are modest, but several are quite large, including a \$12,000 contribution from someone in Woodland, California, and one for \$8,000 from a resident of Austin, Texas. The slide contains, in the upper right, a large green banner stating “\$70,000 RAISED OUTSIDE OF OXNARD.” The second slide provides a pie chart and accompanying numbers summarizing the extent to which Starr relied on large contributions. The pie chart shows that, in terms of the number of contributions Starr had received, 68% of them were in an amount that was less than or equal to \$750, and 32% were in amounts larger than \$750. The slide also showed that, despite the smaller percentage of large contributions, the total *amount* raised from such contributions was much larger: the total raised from contributions that were over \$750 each was \$102,400, whereas the total of the smaller-sized contributions was only \$15,650. Next to the pie chart, there is a depiction of a large cartoon of green dollar bills adjacent to the following statement written in bold-face, all-capitals type: “TOTAL

¹³ The slides are attached as an Appendix to this dissent.

CAMPAIGN DONATIONS: \$118,050.” The number “\$118,050” appears in oversized green font to match the dollar-bill color scheme. These slides’ obvious focus on Starr as the very example for why these limits should be adopted raises an objective danger sign that invidious discrimination may be afoot. And, contrary to what the majority suggests, *see* Opin. at 35, that objective danger is not mitigated by the fact that the slide deck also includes, in an earlier summary of Measure B, more generalized statements concerning justifications for campaign contribution limits that were drawn from a 2019 California law imposing (much higher) default contribution limits for municipal elections. *See* 2019 Cal. Stat. ch. 556.

In his declaration in connection with the summary judgment proceedings below, Starr expressly asserted that the record concerning Measure B’s enactment demonstrated that it was proposed by the City Council “as a way to reduce the amount of money [Starr] spend[s] in the City, both on [his] personal campaigns and in support of ballot measures [he] ha[s] proposed.” In response, the City did not directly deny that Starr’s fundraising practices had been a factor in the City Council’s proposing of Measure B. Instead, it simply stated that (1) its purpose was “to minimize the perception that the City’s elected officials are indebted to those who can provide . . . large campaign contributions”; and (2) “[n]either Measure B, nor the associated ballot materials mention[ed] Aaron Starr” by name.

Second, the record makes clear that, in terms of its practical effect on then-existing fundraising practices within the City of Oxnard, Starr was the person who would most be affected by Measure B’s passage and that few others would be significantly impacted.

Cf. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 535 (1993) (“[T]he effect of a law in its real operation is strong evidence of its object.”). The City submitted an expert report that tallied the donations made in the 2018 election, which was the last election conducted before Measure B took effect and the first that was held after the City’s shift from an at-large to a district-based City Council. The report concluded that “the sorts of large contributions that [Measure B] prohibits were quite rare even before its adoption.” As the report explained, “[o]nly 18 of the 287 donors (6.3% of the donors) giving in Oxnard elections that year contributed sums that would have exceeded the limits” of Measure B, and the total amount of the raised funds by all candidates that exceeded those limits (*i.e.*, \$25,200) represented 25.4% of the total raised (*i.e.*, \$99,168). “For nearly all candidates,” the report stated, “the proportions of their contributions that exceeded the limits were quite small.” But there were a few exceptions. In particular, the report noted that “[o]nly two candidates raised the majority of their funds in contributions that . . . exceeded the limits,” and “[o]ne was mayoral candidate Aaron Starr.” With respect to Starr’s campaign, 57.6% of his total funds raised came from contributions exceeding Measure B’s limits. By contrast, as the City notes in its appellate brief, Starr’s opponent—then-incumbent Mayor Tim Flynn—“would have lost less than 10% of the funds he raised if Measure B had been in effect,” because “[o]nly one of Mr. Flynn’s 76 donors made a contribution that would have exceeded Measure B’s limits.” As the City aptly summarizes, “Starr is an outlier among candidates,” and “Starr’s outlier status is even more stark when compared to other candidates’ fundraising in the 2018 election.”

Third, the record reveals a considerable history of antipathy between Starr and the City's elected officials over the years immediately preceding Measure B's adoption. Starr has been a sharp critic of the City's elected officials, and he was the "proponent of four recall petitions that triggered a special election" in May 2018 to decide whether to remove the Mayor and three other City Council members. These recall efforts all failed, however, and the four targets of the recall were still on the City Council when it unanimously decided to submit Measure B to the voters in October 2019. Starr and MOF also successfully proposed Measure M in 2016, which then became the subject of litigation between Starr and the City, with the City prevailing in its efforts to invalidate that measure in state court. *See supra* at 45 & note 2. Starr also unsuccessfully ran for City office himself on multiple occasions, coming in second against incumbent Mayor Flynn in the 2018 election. *See supra* at 45. As noted, all but one of Flynn's campaign contributions complied with the limits later proposed in Measure B, while most of Starr's did not. Less than a year after defeating Starr, Flynn voted in favor of Measure B, which the City notes "will force" Starr "to change" his fundraising practices and to "reach out to a broader base for smaller donations."

Taken together, these circumstances raise a sufficient constitutional risk of invidious discrimination against Starr and other outsiders like him. Given the substantial history of political disagreement between Starr and the City's elected officials; the singular and disproportionate burden that the campaign finance restrictions placed on Starr; and the City's stark use of Starr as the poster child for why these limits should be adopted, there are ample danger signs here that the City's action in proposing Measure B may

reflect “an effort to suppress the speaker’s activity due to disagreement with the speaker’s view,” *Metro Display Advert., Inc.*, 143 F.3d at 1194 (citation omitted), or to “harm or repress . . . independent candidates,” *National Comm. of the Reform Party*, 168 F.3d at 366 (quoting *Buckley*, 424 U.S. at 34). Accordingly, under *Randall*, we should not apply deferential review in examining Measure B’s contribution limits.

2

In my view, we therefore should proceed to “examine the record independently and carefully to determine whether [Measure B’s] contribution limits are ‘closely drawn’ to match” the interest in avoiding the reality or appearance of *quid pro quo* corruption. *Randall*, 548 U.S. at 253.

The majority, for different reasons, assumes *arguendo* that we should apply such “independent” scrutiny in addressing the issue of tailoring here.¹⁴ But the majority then limits its review to considering *only* the particular “five sets of considerations” that the *Randall* Court evaluated. 548 U.S. at 261. However, nothing in *Randall* suggests that the Court there was prescribing a mandatory checklist that must be mechanically applied in assessing narrow tailoring. Moreover, as I have explained, the “danger signs” that properly trigger independent scrutiny here are distinct from the specific concerns that were

¹⁴ The majority relies on one of the “danger signs” mentioned in *Randall*, which is that the challenged contribution limits are “below the lowest limit th[e] Court has previously upheld.” *Randall*, 548 U.S. at 251 (plurality). See Opin. at 23–25. The majority assumes *arguendo* that this danger sign is triggered if the dollar amount of the limit is below any that the *Supreme Court* has upheld, as opposed to any contribution limit that has been “upheld by lower courts.” See Opin. at 24.

presented in *Randall*. Indeed, in addressing the issue of tailoring in *Randall*, the Court simply identified four case-specific features that presented particular concerns before asking, more generally, whether there was “any special justification that might warrant a contribution limit so low or so restrictive as to bring about the serious associational and expressive problems that [the Court] ha[s] described.” *Id.* In addition, the Supreme Court has made clear that, with respect to tailoring, the overall issue remains whether there is “a substantial mismatch between the [City’s] stated objective” of combating corruption “and the means selected to achieve it.” *McCutcheon*, 572 U.S. at 199 (plurality). Accordingly, we are not limited to the specific considerations identified in *Randall* and must instead broadly consider whether, given the danger signs presented here, there is an unwarranted mismatch between the City’s chosen means and professed objective.

In addressing that issue, I begin by assessing whether Measure B’s contribution limits are more “closely drawn” to fit (1) the City’s asserted legitimate interest in avoiding actual or apparent *quid pro quo* corruption or (2) an alleged prohibited objective of squelching the political activities of Starr and others like him.¹⁵

¹⁵ The majority is wrong in suggesting that this analysis, which takes account of the distinct danger sign presented in this case, entails an impermissible subjective inquiry into the legislative motivation of the City Council or the voters. *See* Opin. at 34–35. Rather, the tailoring question is an objective one that asks whether the challenged measure is sufficiently closely drawn to the *legitimate* goal of avoiding the appearance or reality of *quid pro quo* corruption so as to dispel the particular “constitutional risk[]” that triggers the application of independent scrutiny, *Randall*, 548 U.S. at 248 (emphasis added)—which

In asserting that Measure B's particular contribution limits are needed to combat the appearance of corruption in Oxnard specifically, the City relies heavily on the above-described corruption scandal that occurred in Oxnard in 2010 and that led to the DA's Report. Although the DA ultimately concluded that "the most serious allegations of criminal conduct

here is the risk of invidious discrimination aimed at "suppress[ing] the speaker's activity due to disagreement with the speaker's view," *Metro Display Advert., Inc.*, 143 F.3d at 1194 (citation omitted). Insisting on sufficient tailoring to dispel the *risk* of invidious suppression of political opponents is not the same as finding the *reality* of such suppression. Indeed, settled First Amendment doctrine regularly employs different levels of scrutiny and associated tailoring requirements to address the ultimate risk that "the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *see also Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994) ("[R]egulations that are unrelated to the content of speech are subject to an intermediate level of scrutiny, because in most cases they pose a less substantial *risk* of excising certain ideas or viewpoints from the public dialogue." (emphasis added) (citation omitted)); *Leathers v. Medlock*, 499 U.S. 439, 447 (1991) (noting that "differential taxation of First Amendment speakers is constitutionally suspect when it *threatens* to suppress the expression of particular ideas or viewpoints," but that there was no indication that the tax challenged in that case was objectively "structured so as to raise *suspicion* that it was intended" to "interfere with [cable television's] First Amendment activities" (emphasis added)). And it is certainly not a point in the City's favor that the record evidence of the risk of invidious discrimination here may also suggest the reality of such discrimination. *Cf. R.A.V. v. City of St. Paul*, 505 U.S. 377, 394 (1992) (noting that the "*possibility*" that the challenged ordinance's content-based selectivity creates for "seeking to handicap the expression of particular ideas" is "alone . . . enough to render the ordinance presumptively invalid," even while noting that the record evidence "elevate[d] the possibility to a certainty" (emphasis added)).

[we]re unsupported by the evidence,” his Report in April 2012 identified at least the following five specific areas of concern: (1) a “clear pattern of fiscal waste by a small number of city officials” that allowed City officials to “spend excessively while traveling on city business”; (2) “an improper \$10,000 personal loan of city funds” taken out by the then-City Manager, who also “implemented an improper retirement benefit for himself and other city management employees”; (3) improper use of funds regarding “a grand opening celebration at a city water facility”; (4) the fact that “several Oxnard officials received gifts of expensive meals, rounds of golf, and a small number of event tickets,” and “did not publicly disclose the gifts as required by law”; and (5) the fact that “[c]lose relationships existed between several city officials and private individuals conducting multi-million dollar transactions with the city.” The DA ultimately deferred to the judgment of others as to what changes in policies and practices should be made, but his Report did indicate that some of these issues may be ones “requiring reform.”

For several reasons, this 2010 corruption scandal and resulting investigation bear, at best, a weak and tenuous relationship to Measure B’s contribution limits. First, as I explained earlier, the problems canvassed in the Report had nothing to do with campaign contributions, or indeed with campaign financing at all. Campaign contributions were not identified as a source of corruption in the Report, and the Report does not recommend campaign contribution limits as a solution to any of the five problems it does identify. While Measure B’s separate *gift* restrictions may well be closely drawn to the problems identified in the Report, those restrictions are not at issue here. Second, the City waited until late 2019 before propos-

ing Measure B's gift restrictions and campaign finance restrictions. That timing is a full seven years after the Report, but only one year after (1) Starr had forced a recall election against the Mayor and three other members of the City Council; and (2) Starr himself had run against the Mayor, both at the recall election and in the 2018 general election. Third, the 2010 scandal and the 2012 Report are not even mentioned as justifications for Measure B's campaign finance limitations in the City's explanatory PowerPoint; rather, that document focuses on Starr's receipt of campaign contributions in large dollar amounts and from out-of-State contributors. On this record, Measure B's campaign finance limits are much more "closely drawn" to the prohibited objective of stopping Starr than they are to remedying the problems identified in the DA's 2012 Report.

The City again relies on the facts that, prior to proposing Measure B, the City commissioned a survey showing that 77% of voters "would support a Government Accountability measure" and that Measure B passed with 82% voting in favor. But given that "Government Accountability" covers a number of different concerns and Measure B likewise contained a varied mix of provisions governing term limits, gift restrictions, and campaign finance limits, these points provide little, if any, basis for concluding that Measure B's *campaign finance restrictions*—as opposed to its other provisions—were specifically tailored to the public's concerns about local corruption.¹⁶

¹⁶ Relying on a declaration from a City official, the majority again violates the standard of review applicable on summary judgment by uncritically parroting the City's view that "Measure B responded to the City's voters' demand for government accountability following the City's history of political scandals."

The practical effect of Measure B’s campaign finance limitations also underscores the comparatively closer fit between these restrictions and the objective of squelching Starr. As the City’s own expert and briefing repeatedly stress, Measure B’s financing limitations would have little practical effect on anyone other than Starr, whom the City describes as a “stark” outlier. Although the City emphasizes that its campaign finance restrictions are in line with those of other comparably sized jurisdictions, that does not mean that *Oxnard’s* restrictions are closely drawn to the legitimate interests invoked by those other jurisdictions. As the City’s PowerPoint makes clear, Measure B’s contribution limits were knowingly set at a level that, in their practical operation, would seriously and differentially affect Starr, while having minimal, if any, effect on every other politician identified in the City’s briefing.¹⁷

Moreover, these concerns about the practical effect of Measure B are exacerbated by the fact that its campaign finance limits lack an adequate mechanism to ensure that they will be “adjusted for inflation.” *Randall*, 548 U.S. at 261. The City points to the fact

See Opin. at 6; *see also* Opin. at 5–6 (accepting as fact the City’s claim that it “developed Measure B to address the public’s stated desire to institutionalize good government practices”). The notion that the City was merely acting out of the desire to satisfy “voters’ demand[s]” in adopting its campaign finance restrictions draws debatable inferences in the City’s favor.

¹⁷ The fact that, while this appeal was pending, Starr was nonetheless successful in getting elected to the City Council in the 2024 election, *see* Opin. at 26 n.5, does not detract from the fact that Measure B’s finance limitations are substantially more closely tailored to the constitutional *risk* of invidious discrimination than they are to the legitimate interest in avoiding the appearance or reality of *quid pro quo* corruption.

that Measure B added § 2–245 to the City Code, which states that the City Clerk shall adjust the contribution limits every two years to account for “changes in the Consumer Price Index.” OXNARD CITY CODE § 2-245(A). But rather than make such changes automatically effective according to the specified formula, the City Council expressly *reserved to itself* the authority to review and adopt these changes “by resolution.” *Id.* Given that a resolution of the City Council is required to make any change to the limits—just as would be required to formally amend them—Measure B, as a practical matter, provides insufficient assurance that the limits will be raised as warranted by inflation.

Finally, there is no “special justification” in the record that might show that these contribution limits are warranted despite the significant concerns that I have described. *Randall*, 548 U.S. at 261. Accordingly, an “independent[] and careful[]” “review [of] the record” confirms that Measure B’s contribution limits are not “‘closely drawn’ to match the [City’s] interests” in avoiding the reality or appearance of *quid pro quo* corruption. *Id.* at 249, 253. The challenged per-candidate aggregate contribution limitations in Oxnard City Code §§ 2-243(A)–(B), 2-244(A)–(B) therefore violate the First Amendment.

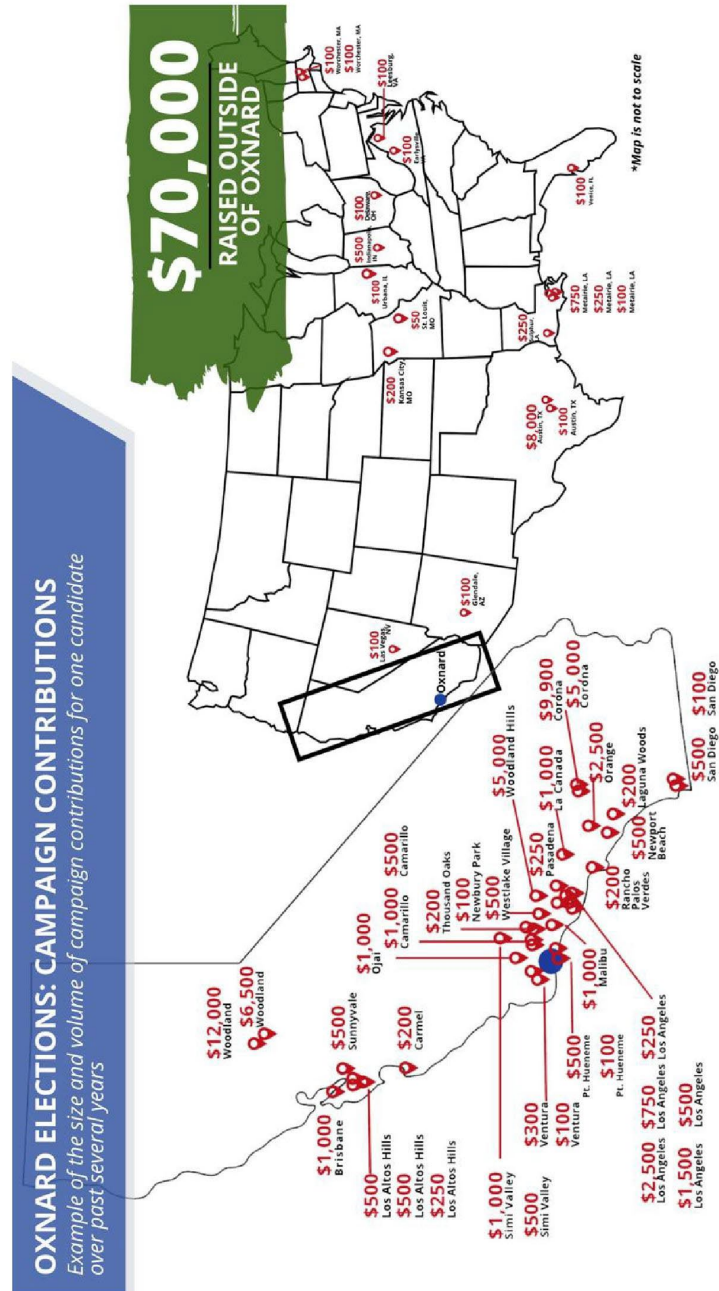
III

MOF’s second cause of action challenges one specific feature of these same contribution limits, namely, that they assertedly include, as counting toward the amount of funds that may be contributed to a candidate, any contributions made to political committees supporting or opposing *ballot initiatives* if those committees are controlled by someone who is simultaneously a candidate for office. The City contends

that this claim is based on a misreading of Measure B and that such contributions to ballot initiative committees do *not* count towards the per-candidate aggregate contribution limits. Given my view of this case, I need not resolve this issue. Because I would conclude that, even apart from this alleged feature, the challenged contribution limits are invalid, any dispute concerning this additional issue is (in my view of the case) moot.

IV

For the foregoing reasons, I would reverse the district court's grant of summary judgment to the City Clerk and remand with instructions to grant summary judgment to MOF holding invalid the per-candidate aggregate contribution limitations in Oxnard City Code §§ 2-243(A)–(B), 2-244(A)–(B). I therefore respectfully dissent.

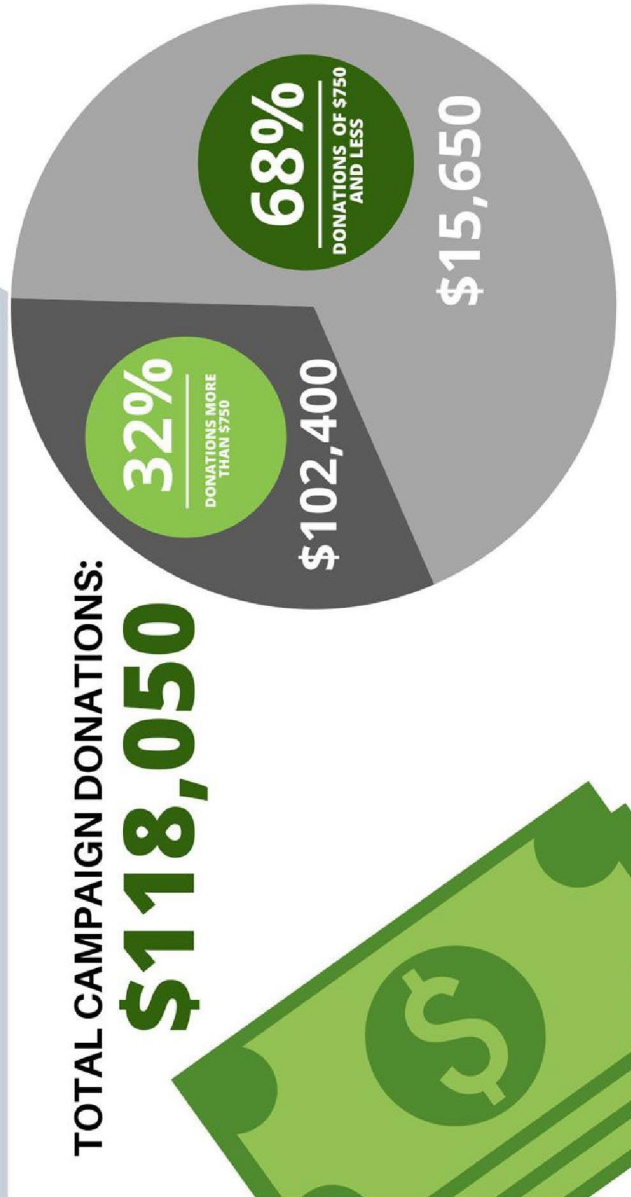


OXNARD ELECTIONS: CAMPAIGN CONTRIBUTIONS

Example of the size and volume of campaign contributions for one candidate over past several years

TOTAL CAMPAIGN DONATIONS:

\$118,050



81a

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21-56295
D.C. No. 2:20-cv-04122-CBM-AFM

MOVING OXNARD FORWARD, INC.,
Plaintiff-Appellant,

v.

MICHELLE ASCENSION, in her official capacity as
City Clerk for the City of Oxnard,
Defendant-Appellee.

Appeal from the United States District Court
for the Central District of California
Consuelo B. Marshall, District Judge, Presiding
Argued and Submitted March 9, 2023
Pasadena, California
Filed December 20, 2024

OPINION

Before: Mark J. Bennett* and Daniel P. Collins, Circuit Judges, and Stephen Joseph Murphy III,** District Judge.

* Judge Paul J. Watford was a member of the panel at the time the case was argued and submitted. Following Judge Watford's resignation, Judge Bennett was randomly drawn as a re-

Opinion by Judge Collins; Dissent by Judge Bennett

SUMMARY***

First Amendment/Campaign Contribution Limits

The panel reversed the district court’s grant of summary judgment to the City of Oxnard, California, and remanded with instructions to grant summary judgment to plaintiff, Moving Oxnard Forward (“MOF”), in a case in which MOF challenged certain campaign finance limitations in the Oxford City Code as a violation of the First Amendment.

The City adopted campaign finance limitations that would have little practical impact on any recent candidates for municipal elections except for one—Aaron Starr, the President of MOF, a nonprofit corporation whose purpose, according to Starr, is to ensure local government efficiency. Starr had, among other things, engineered recall efforts against a majority of the City Council and came in second in the Mayor’s race, consistently relying on larger-dollar contributions. In 2019, the City Council placed Measure B on the ballot, limiting an individual’s contributions to candidates for City Council and various other City offices. After voters approved Measure B, MOF challenged the campaign finance limitations as a violation of the First Amendment.

placement judge pursuant to General Order § 3.2.h. Judge Bennett has reviewed the briefs, the record, and the video of the oral argument.

** The Honorable Stephen Joseph Murphy III, United States District Judge for the Eastern District of Michigan, sitting by designation.

*** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Although courts ordinarily should defer to the legislature in determining whether contribution limits are closely drawn to the legitimate governmental interest of avoiding quid pro quo corruption or its appearance, the panel held that the City's contribution limits presented sufficient danger signs of constitutional risks to the democratic electoral process to require the panel to examine the record independently and carefully. Specifically, the record showed a significant risk that the City may be engaged in invidious discrimination against Starr, who has repeatedly challenged the incumbent City government and its policies. The legislative record indicated that (1) Starr and his contributions were a target of the City Council when it proposed and promoted Measure B; (2) Starr was the person who would most be affected by Measure B's passage; and (3) there was a considerable history of antipathy between Starr and the City's elected officials over the years immediately preceding Measure B's adoption.

Reviewing the record independently and carefully, the panel concluded that Measure B's contribution limits were not narrowly tailored to match the City's interest in avoiding the reality or appearance of quid pro quo corruption. The City's asserted reliance on remedying problems identified in a 2010 City corruption scandal bore, at best, a weak and tenuous relationship to Measure B's contribution limits. On this record, Measure B's campaign finance limits were much more closely drawn to the prohibited objective of stopping Starr rather than remedying corruption concerns. The panel, therefore, concluded that the challenged per-candidate aggregate contribution limitations violate the First Amendment.

Dissenting, Judge Bennett would hold that the City's contribution limits passed First Amendment scrutiny. The City's asserted interest in preventing actual or perceived quid pro quo corruption was fairly supported by the record and Measure B's limits were closely drawn to that interest. The majority's conclusion that the City may be engaged in invidious discrimination against Starr, even if it could be considered outside of the equal protection framework, lacked support in the record. Moreover, in assessing whether the contribution limits were closely drawn to match the City's interest, the majority contravened precedent by applying a motive test instead of a tailoring test.

COUNSEL

Chad D. Morgan (argued), Law Office of Chad Morgan, Anaheim, California, for Plaintiff-Appellant.

Holly O. Whatley (argued) and Liliane M. Wyckoff, Colantuono Highsmith & Whatley PC, Pasadena, California, for Defendant-Appellee.

OPINION

COLLINS, Circuit Judge:

In this case, Defendant City of Oxnard, California ("the City") adopted campaign finance limitations that, as explained in the City's supporting materials, would have little practical impact on any recent candidates for municipal elections except for one—Aaron Starr, the President of Plaintiff Moving Oxnard Forward, Inc. ("MOF"). Starr has been very active in Oxnard politics, and in doing so he has consistently relied on larger-dollar contributions that, as the City

notes, made him a “stark” “outlier” among local candidates. The new campaign contribution limitations, which the City admits “will force [Starr] to change this practice,” were proposed by the City the year after Starr engineered an ultimately unsuccessful recall effort against a majority of the City Council and came in second in the race for Mayor. And prior to that, Starr and MOF had successfully supported a ballot initiative that overturned an increase in certain fees that was passed by the City Council and that then became the subject of litigation between Starr and the City. MOF challenged these new campaign finance limitations as a violation of the First Amendment, but the district court granted summary judgment to the City. MOF now appeals.

We conclude that, on this record, the City’s contribution limits present sufficient “danger signs” of “constitutional risks to the democratic electoral process” to require us to “examine the record independently and carefully to determine whether [the City’s] contribution limits are ‘closely drawn’ to match” the asserted interest in avoiding the appearance of *quid pro quo* corruption. *Randall v. Sorrell*, 548 U.S. 230, 248–49, 253 (2006) (plurality). Specifically, the record reflects a significant risk that the City may be engaged in “invidious discrimination” against Starr and challengers like him. *Buckley v. Valeo*, 424 U.S. 1, 31 (1976). And, upon conducting that independent and careful review, we conclude that the City’s contribution limits are not “narrowly tailored.” *Randall*, 548 U.S. at 261. Accordingly, we hold that the City’s contribution limits violate the First Amendment.

Aaron Starr is a resident of Oxnard and the President of MOF. MOF is a nonprofit corporation whose purpose, according to Starr, “is to make local government more efficient and make sure that residents receive value for the taxes and fees they pay.” Toward that end, “MOF engages in advocacy for and against proposed legislation and ballot measures in the City.” In addition, several of MOF’s members have run for local office or have supported the campaigns of local candidates.

The electoral efforts of MOF and its members have had mixed success. Starr unsuccessfully ran for a spot on the City Council in 2014, 2016, and 2020, and he came in second in the 2018 mayoral race. MOF, however, had greater success in sponsoring ballot initiatives. In 2016, Oxnard voters passed MOF-sponsored “Measure M,” which repealed an increase in the City’s wastewater fees.¹ In 2020, four MOF-supported initiatives were on the local ballot, and three of them were approved by the voters.²

In supporting these various campaigns, MOF’s and Starr’s preference has been, as the City puts it, “to raise large sums of money from a small number of donors.” For example, in 2018, Starr raised \$8,250 from just five contributors, and more than half of the

¹ Measure M, however, was subsequently invalidated in state court on state-law grounds. See *City of Oxnard v. Starr*, 2020 WL 6042024 (Cal. Ct. App. 2020).

² The City challenged two of the three successful initiatives in state court and prevailed as to one on state-law grounds and lost as to the other. *City of Oxnard v. Starr*, 303 Cal. Rptr. 3d 819, 823–24 (Ct. App. 2023).

money he raised involved contributions in excess of \$500. However, in October 2019, the Oxnard City Council placed Measure B on the ballot to coincide with the March 2020 presidential primary election. Among other things, Measure B would limit an individual's contributions to City Council candidates to \$500 per election and to citywide candidates (such as for Mayor) to \$750. The voters approved Measure B, and it took effect on May 1, 2020.

B

Four days after Measure B took effect, MOF filed this § 1983 action against the Oxnard City Clerk in her official capacity.³ The complaint seeks declaratory and injunctive relief against Measure B on behalf of MOF and its members. As relevant here, the complaint asserts two federal claims.

MOF's first cause of action alleges that the various per-candidate contribution limits imposed by Measure B violate the Free Speech Clause of the First Amendment, as made applicable to the States by the Fourteenth Amendment. Specifically, MOF challenges the following limits on contributions that may be made by a "person" to a "candidate for elective office" under the provisions that Measure B added to a new Article VI of Chapter 2 of the Oxnard City Code:

- An aggregate limitation of \$500 per election for any given individual's contributions to any one candidate for City Council. *See* OXNARD CITY CODE § 2 243(A).

³ Because the action against the Clerk in her official capacity is functionally against the City, *see Lewis v. Clarke*, 581 U.S. 155, 162 (2017), we will refer to the Defendant as "the City."

- An aggregate limitation of \$1,000 per election for contributions by any given “political action committee” to any one candidate for City Council. *Id.*
- Comparable aggregate contribution limits for candidates for Mayor, City Clerk, and City Treasurer, except that the contribution limitation for individuals to such candidates is \$750 and the limit for political action committees is \$1,500. *Id.* § 2-244(A).
- An aggregate limitation of \$500 per election for any loan to any candidate for any elected City office. *Id.* §§ 2-243(B), 2-244(B).

These City Code provisions further specify that these numerical contribution limits “shall be adjusted every two (2) years by resolution of the City Council” in accordance with a specified formula. *Id.* §§ 2-243(A), 2-244(A); *see also id.* § 2-245.⁴

MOF’s second cause of action challenges an additional feature of the contribution limits enacted by

⁴ In challenging these provisions, MOF claims that these limits on contributions by any “person” to a “candidate” also apply to contributions made by the *candidate* to his or her own campaign. The district court rejected this reading of Measure B, and we agree. By using the distinct terms “person” and “candidate,” the measure’s language is more naturally read as denoting that those individuals are not the same. And if we had any residual doubt on this score, the canon of constitutional avoidance would require us to reach that same conclusion, because, as the City concedes, a contrary reading would render Measure B patently unconstitutional. *See Buckley*, 424 U.S. at 53 (holding that a limitation on a candidate’s expenditures on his or her own campaign would violate the First Amendment). Accordingly, we proceed on the understanding that Measure B does not apply to a candidate’s contributions to his or her own campaign.

Measure B. Specifically, in calculating the aggregate contributions made by an individual or by a political action committee for purposes of the measure’s contribution limitations, these provisions include, not just contributions to the candidate, but also “contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions.” OXNARD CITY CODE §§ 2-243(A), 2-244(A). MOF alleges that, as applied to a candidate for City office who simultaneously controlled a political committee supporting or opposing a City ballot initiative—as Starr had done—these provisions would force that candidate “to choose between receiving a maximum contribution to either his or her campaign or to the ballot measure committee or . . . to divide the maximum contribution in some way between the two.” MOF alleges that, because an individual who is *not* a candidate for City office is not subject to any limits on how much he or she may contribute to a ballot initiative campaign, the resulting asserted disparate treatment violates both the Free Speech Clause of the First Amendment as well as the Equal Protection Clause of the Fourteenth Amendment.⁵

In late April 2021, the parties filed cross-motions for summary judgment. The district court granted the City’s motion, denied MOF’s motion, and entered judgment for the City on all claims. MOF timely

⁵ Measure B also enacted additional provisions that limited gifts to certain City officials, *see* OXNARD CITY CODE §§ 2-250, 2-251, as well as provisions instituting term limits for City elected officials, *see id.* §§ 2-3, 2-4. Although MOF initially challenged the gift limitations in a third cause of action in its complaint, MOF has expressly abandoned any such challenge in this court.

moved to alter or amend the judgment, and the district court denied that motion. MOF timely appealed the next day. We have jurisdiction under 28 U.S.C. § 1291, and we review the district court’s grant of summary judgment de novo. *See Sandoval v. County of Sonoma*, 912 F.3d 509, 515 (9th Cir. 2018).

II

We begin by addressing MOF’s first cause of action, which asserts that Measure B’s various contribution limits violate the First Amendment.

A

Under *Thompson v. Hebdon*, 589 U.S. 1 (2019), the controlling standards for assessing whether a campaign contribution limit violates the First Amendment are set forth in Justice Breyer’s plurality opinion in *Randall v. Sorrell*, 548 U.S. 230 (2006).⁶

⁶ In *Thompson*, this court had declined to apply the *Randall* plurality opinion because no opinion in that case had “commanded a majority of the Court.” *Thompson*, 589 U.S. at 4 n.* (quoting *Thompson v. Hebdon*, 909 F.3d 1027, 1037 n.5 (9th Cir. 2018)). The Supreme Court unanimously reversed our decision, noting that 10 other circuits had “correctly looked to *Randall* in reviewing campaign finance restrictions.” *Id.* Indeed, the settled rule is that “[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.” *Marks v. United States*, 430 U.S. 188, 193 (1977) (citations and internal quotation marks omitted). In *Randall*, Justice Breyer’s plurality opinion for three Justices applied a form of lesser scrutiny rooted in *Buckley v. Valeo*, 424 U.S. 1 (1976), in striking down the contribution limitations at issue there, *see Randall*, 548 U.S. at 246– 62 (Breyer, J., joined by Roberts, C.J., and Alito, J.), and two other Justices applied strict scrutiny in reaching the same result, *see id.* at 267– 73 (Thomas, J., joined by Scalia, J., concurring in the

Under *Randall*, “contribution limitations are permissible as long as the Government demonstrates that the limits are ‘closely drawn’ to match a ‘sufficiently important interest.’” 548 U.S. at 247 (plurality) (quoting *Buckley*, 424 U.S. at 25).

The Supreme Court has “identified only one legitimate governmental interest for restricting campaign finances: preventing corruption or the appearance of corruption.” *McCutcheon v. FEC*, 572 U.S. 185, 206–07 (2014) (plurality).⁷ “Moreover, while preventing corruption or its appearance is a legitimate objective, [a legislative body] may target only a specific type of corruption—‘*quid pro quo*’ corruption,” a phrase that refers only to “a direct exchange of an official act for money.” *Id.* at 192, 207 (reaffirming that “[i]ngratiation and access are not corruption” (simplified)); see also *Citizens United v. FEC*, 558 U.S. 310, 359 (2010) (“When *Buckley* identified a sufficiently important governmental interest in preventing cor-

judgment). The “lowest common denominator” between those two opinions, see *Nichols v. United States*, 511 U.S. 738, 745 (1994), is the plurality’s narrower holding that the contribution limits were invalid even under a lesser form of scrutiny than strict scrutiny. See *Randall*, 548 U.S. at 272 (Thomas, J., concurring in the judgment) (noting that the plurality did not “err[] in concluding that these limits are too low to satisfy even *Buckley*’s lenient standard”). Accordingly, under both *Marks* and *Thompson*, the *Randall* plurality opinion is controlling.

⁷ As in *Randall*, Justice Thomas concurred only in the judgment in *McCutcheon*, adhering to his view that campaign contribution limitations should be subject to strict scrutiny. See *McCutcheon*, 572 U.S. at 228 (Thomas, J., concurring in the judgment). Because the *McCutcheon* plurality’s reasons for invalidating the limits at issue in that case reflect the “narrowest grounds” for sustaining that judgment, the *McCutcheon* plurality’s opinion, like the *Randall* plurality’s opinion, is binding on us. See *Marks*, 430 U.S. at 193; see also *supra* note 6.

ruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption.”). “And because the Government’s interest in preventing the *appearance* of corruption is equally confined to the appearance of *quid pro quo* corruption, the Government may not seek to limit the appearance of mere influence or access.” *McCutcheon*, 572 U.S. at 208 (emphasis added).

In order to justify *any* limit on campaign contributions based on this asserted interest, a legislative body cannot rely on “mere conjecture” and must instead point to some threshold evidentiary basis for concluding that voters in that jurisdiction “would tend to identify a big donation with a corrupt purpose.” *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 391–92 (2000); *see also* *McCutcheon*, 572 U.S. at 218 (plurality) (holding that “speculation . . . cannot justify the substantial intrusion on First Amendment rights” involved in a limitation on campaign contributions); *Lair v. Motl*, 873 F.3d 1170, 1178 (9th Cir. 2017) (holding that the government must carry this “threshold” burden to show “whether *any* level of limitation is justified”). Our precedent has described this threshold burden as a low one that merely requires a showing that “the perceived threat” of corruption “is not illusory.” *Lair*, 873 F.3d at 1178 (simplified); *but cf.* *Thompson*, 589 U.S. at 3 (noting that this court has also “acknowledged that ‘*McCutcheon* and *Citizens United* created some doubt as to the continuing vitality of [this] standard’” (citation omitted)).

If the government carries this threshold burden to “offer[] adequate evidence that its [contribution] limits further the important state interest of preventing quid pro quo corruption or its appearance,” we must next consider whether the particular contribution

limit at issue is “closely drawn” to this sole legitimate interest. *Lair*, 873 F.3d at 1180. With respect to this inquiry, the Supreme Court has cautioned that the courts are poorly positioned to “determine with any degree of exactitude the precise restriction necessary to carry out” this “legitimate objective[].” *Randall*, 548 U.S. at 248. Because legislative bodies are generally “better equipped to make such empirical judgments,” *Randall* explained, the courts “ordinarily” should “defer[] to the legislature’s determination of such matters.” *Id.*

Randall also noted, however, that there will be circumstances in which a restrictive contribution threshold will present “constitutional risks to the democratic electoral process” that are “too great.” 548 U.S. at 248. In such cases, deference is inappropriate, and the courts must exercise “independent judicial judgment.” *Id.* at 249. Thus, “where there is strong indication in a particular case, *i.e.*, danger signs, that such risks exist (both present in kind and likely serious in degree), courts, including appellate courts, must review the record independently and carefully with an eye toward assessing the statute’s ‘tailoring,’ that is, toward assessing the proportionality of the restrictions.” *Id.* In assessing a statute’s tailoring when such danger signs are present, the courts must consider “the serious associational and expressive problems” presented by the statute and determine whether there is “any special justification” that would warrant upholding the statute’s restrictions in light of those concerns. *Id.* at 261.

B

The parties here vigorously disagree as to whether the City carried its threshold burden to show that Measure B’s individual contribution limitations “fur-

ther the important state interest of preventing quid pro quo corruption or its appearance.” *Lair*, 873 F.3d at 1180. We need not resolve this question. Even assuming that the City cleared that threshold, we conclude that (1) Measure B presents sufficient “danger signs” to warrant our “examin[ing] the record independently and carefully to determine whether [Measure B’s] contribution limits are ‘closely drawn’ to match” the asserted interest in avoiding the appearance of *quid pro quo* corruption, *Randall*, 548 U.S. at 253; and (2) Measure B’s individual contribution limits do not survive that independent scrutiny.

1

The City contends that, under *Randall*, the “danger signs” that would trigger independent scrutiny are limited to the following four specific danger signs that the Court identified in that case: (1) the contribution limits at issue apply “per election cycle, which includes *both* a primary and a general election”; (2) the “limits apply both to contributions from individuals and to contributions from political parties”; (3) the “limits are well below the limits th[e] Court upheld in *Buckley*” and “below the lowest limit

th[e] Court has previously upheld”; and (4) the limits are “substantially lower than . . . comparable limits in other States” and are not “indexed for inflation.” *Randall*, 548 U.S. at 249–53, 261 (emphasis added). However, nothing in *Randall* suggests that this list of “danger signs” is exhaustive. On the contrary, *Randall* frames a general standard that asks whether a given set of limitations presents “*constitutional risks to the democratic electoral process*” that are “too great.” *Id.* at 248 (emphasis added). An example would be, as in *Randall*, when the extremely restrictive nature of the contribution limit threatens to

“harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability.” *Id.* at 249. But nothing in *Randall* suggests that that is the *only* manner in which a contribution limitation may be said to present “constitutional risks to the democratic electoral process.” *Id.* at 248.

Moreover, *Buckley* itself underscored that its more lenient standard of review only applies “[a]bsent record evidence of invidious discrimination against challengers as a class” or against candidates with particular “present occupations [e.g., non-incumbents], ideological views, or party affiliations.” *Buckley*, 424 U.S. at 31 (emphasis added). Given that *Buckley* confirms that such invidious discrimination would preclude application of *Buckley*’s deferential scrutiny, it follows that, under *Randall*, such discrimination is also the sort of “constitutional risk[] to the democratic electoral process” that would require courts to assess the “tailoring” of the contribution limits “independently and carefully.” *Randall*, 548 U.S. at 248–49, 253.

We have explained that, in this context, “invidious discrimination” includes discrimination on constitutionally suspect grounds, such as race or sex, as well as “discrimination that tends to harm or repress minority parties” or “independent candidacies.” *National Comm. of the Reform Party of the U.S. v. Democratic Nat’l Comm.*, 168 F.3d 360, 366 (9th Cir. 1999) (quoting *Buckley*, 424 U.S. at 34). Moreover, it is well settled that “invidious” discrimination includes “an effort to suppress the speaker’s activity due to disagreement with the speaker’s view,” *Metro Display Advert., Inc. v. City of Victorville*, 143 F.3d 1191, 1194

(9th Cir. 1998) (citation omitted), and that such discrimination may be present even with respect to ostensibly facially neutral laws, *see NAACP v. City of Richmond*, 743 F.2d 1346, 1356 (9th Cir. 1984).

Under these standards, we conclude that the undisputed facts concerning Measure B raise a sufficient danger of invidious discrimination to warrant application of “independent[] and careful[]” scrutiny under *Randall*. 548 U.S. at 249, 253. In particular, there are “danger signs” in the record that Measure B, both in its formulation and in its operation, differentially targets Starr, who has repeatedly challenged the incumbent City government and its policies.

First, the legislative record indicates that Starr and his reliance on larger-size contributions were a target of the City Council when it proposed and promoted Measure B. In his declaration in the district court, City Manager Alexander Nguyen stated that, “to educate the voters about Measure B in advance of the March 3, 2020 election,” his office “maintained a page on the City’s website titled ‘About Measure B—The Oxnard Government Accountability and Ethics Act.’” Among the materials uploaded onto that webpage was a PowerPoint slide deck that Nguyen used to give a presentation in February 2020 to the “Inter-Neighborhood Council Organization,” a group “made up of the chairpersons of each active neighborhood council.” The PowerPoint, entitled “Measure B: The Oxnard Government Accountability and Ethics Act,” provides an overview for voters of what Measure B would and would not do. The PowerPoint’s 15 slides describe the measure’s various provisions concerning gifts, term limits, and campaign contributions in largely general terms, with one notable exception. The last two slides consist of

graphics devoted to showing a particular “[e]xample of the size and volume of campaign contributions for one candidate over [the] past several years.” Although these two slides do not name who that “one candidate” is, there is no dispute that it is, in fact, Aaron Starr.

The first of these two slides consists of a map of the United States and a separate close-up map of California, with visual pins identifying each city from which Starr received a contribution, together with the amount of that contribution.⁸ Many of the contributions listed are modest, but several are quite large, including a \$12,000 contribution from someone in Woodland, California, and one for \$8,000 from a resident of Austin, Texas. The slide contains, in the upper right, a large green banner stating “\$70,000 RAISED OUTSIDE OF OXNARD.” The second slide provides a pie chart and accompanying numbers summarizing the extent to which Starr relied on large contributions. The pie chart shows that, in terms of the number of contributions Starr had received, 68% of them were in an amount that was less than or equal to \$750, and 32% were in amounts larger than \$750. The slide also showed that, despite the smaller percentage of large contributions, the total *amount* raised from such contributions was much larger: the total raised from contributions that were over \$750 each was \$102,400, whereas the total of the smaller-sized contributions was only \$15,650. Next to the pie chart, there is a depiction of a large cartoon of green dollar bills adjacent to the following statement written in bold-face, all-capitals type: “TOTAL CAMPAIGN DONATIONS: \$118,050.” The number

⁸ The slides are attached as an Appendix to this opinion.

“\$118,050” appears in oversized green font to match the dollar-bill color scheme.

In his declaration in connection with the summary judgment proceedings below, Starr expressly asserted that the record concerning Measure B’s enactment demonstrated that it was proposed by the City Council “as a way to reduce the amount of money [Starr] spend[s] in the City, both on [his] personal campaigns and in support of ballot measures [he] ha[s] proposed.” In response, the City did not directly deny that Starr’s fundraising practices had been a factor in the City Council’s proposing of Measure B. Instead, it simply stated that (1) its purpose was “to minimize the perception that the City’s elected officials are indebted to those who can provide . . . large campaign contributions”; and (2) “[n]either Measure B, nor the associated ballot materials mention[ed] Aaron Starr” by name.

Second, the record makes clear that, in terms of its practical effect on then-existing fundraising practices within the City of Oxnard, Starr was the person who would most be affected by Measure B’s passage and that few others would be significantly impacted. *Cf. Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 535 (1993) (“[T]he effect of a law in its real operation is strong evidence of its object.”). The City submitted an expert report that tallied the donations made in the 2018 election, which was the last election conducted before Measure B took effect and the first that was held after the City’s shift from an at-large to a district-based City Council. The report concluded that “the sorts of large contributions that [Measure B] prohibits were quite rare even before its adoption.” As the report explained, “[o]nly 18 of the 287 donors (6.3% of the donors) giving in

Oxnard elections that year contributed sums that would have exceeded the limits” of Measure B, and the total amount of the raised funds by all candidates that exceeded those limits (*i.e.*, \$25,200) represented 25.4% of the total raised (*i.e.*, \$99,168). “For nearly all candidates,” the report stated, “the proportions of their contributions that exceeded the limits were quite small.” But there were a few exceptions. In particular, the report noted that “[o]nly two candidates raised the majority of their funds in contributions that . . . exceeded the limits,” and “[o]ne was mayoral candidate Aaron Starr.” With respect to Starr’s campaign, 57.6% of his total funds raised came from contributions exceeding Measure B’s limits. By contrast, as the City notes in its appellate brief, Starr’s opponent—then-incumbent Mayor Tim Flynn—“would have lost less than 10% of the funds he raised if Measure B had been in effect,” because “[o]nly one of Mr. Flynn’s 76 donors made a contribution that would have exceeded Measure B’s limits.” As the City aptly summarizes, “Starr is an outlier among candidates,” and “Starr’s outlier status is even more stark when compared to other candidates’ fundraising in the 2018 election.”

Third, the record reveals a considerable history of antipathy between Starr and the City’s elected officials over the years immediately preceding Measure B’s adoption. Starr has been a sharp critic of the City’s elected officials, and he was the “proponent of four recall petitions that triggered a special election” in May 2018 to decide whether to remove the Mayor and three other City Council members.

These recall efforts all failed, however, and the four targets of the recall were still on the City Council when it unanimously decided to submit Measure B to

the voters in October 2019. Starr and MOF also successfully proposed Measure M in 2016, which then became the subject of litigation between Starr and the City, with the City prevailing in its efforts to invalidate that measure in state court. *See supra* at 6 & note 1. Starr also unsuccessfully ran for City office himself on multiple occasions, coming in second against incumbent Mayor Flynn in the 2018 election. *See supra* at 6. As noted, all but one of Flynn’s campaign contributions complied with the limits later proposed in Measure B, while most of Starr’s did not. Less than a year after defeating Starr, Flynn voted in favor of Measure B, which the City notes “will force” Starr “to change” his fundraising practices and to “reach out to a broader base for smaller donations.”

Taken together, these circumstances raise a sufficient constitutional risk of invidious discrimination against Starr and other outsiders like him. Given the substantial history of political disagreement between Starr and the City’s elected officials; the singular and disproportionate burden that the campaign finance restrictions placed on Starr; and the City’s stark use of Starr as the poster child for why these limits should be adopted, there are ample danger signs here that the City’s action in proposing Measure B may reflect “an effort to suppress the speaker’s activity due to disagreement with the speaker’s view,” *Metro Display Advert., Inc.*, 143 F.3d at 1194 (citation omitted), or to “harm or repress . . . independent candidacies,” *National Comm. of the Reform Party*, 168 F.3d at 366 (quoting *Buckley*, 424 U.S. at 34). Accordingly, under *Randall*, we do not apply deferential review in examining Measure B’s contribution limits.

We therefore proceed to “examine the record independently and carefully to determine whether [Measure B’s] contribution limits are ‘closely drawn’ to match” the interest in avoiding the reality or appearance of *quid pro quo* corruption. *Randall*, 548 U.S. at 253.

As an initial matter, we reject the City’s and the dissent’s threshold contention that we are limited to considering *only* the particular “five sets of considerations” that the *Randall* Court evaluated. 548 U.S. at 261. Nothing in *Randall* suggests that the Court there was prescribing a mandatory checklist that must be mechanically applied in assessing narrow tailoring. Moreover, the “danger signs” that trigger independent scrutiny here are distinct from the specific concerns that were presented in *Randall*. Indeed, in addressing the issue of tailoring in *Randall*, the Court simply identified four case-specific features that presented particular concerns before asking, more generally, whether there was “any special justification that might warrant a contribution limit so low or so restrictive as to bring about the serious associational and expressive problems that [the Court] ha[s] described.” *Id.* Moreover, the Supreme Court has made clear that, with respect to tailoring, the overall issue remains whether there is “a substantial mismatch between the [City’s] stated objective” of combating corruption “and the means selected to achieve it.” *McCutcheon*, 572 U.S. at 199 (plurality). Accordingly, we are not limited to the specific considerations identified in *Randall* and must instead broadly consider whether, given the danger signs presented here, there is an unwarranted mismatch

between the City's chosen means and professed objective.

In addressing that issue, we begin by assessing whether Measure B's contribution limits are more "closely drawn" to fit (1) the City's asserted legitimate interest in avoiding actual or apparent *quid pro quo* corruption or (2) an alleged prohibited objective of squelching the political activities of Starr and others like him.⁹

⁹ The dissent errs in suggesting that this amounts to nothing more than a subjective inquiry into legislative motivation. *See* Dissent at 50–54. Rather, the tailoring question is an objective one that asks whether the challenged measure is sufficiently closely drawn to the *legitimate* goal of avoiding the appearance or reality of *quid pro quo* corruption so as to dispel the particular "constitutional risk[]" that triggered the application of independent scrutiny, *Randall*, 548 U.S. at 248 (emphasis added)—which here is the risk of invidious discrimination aimed at "suppress[ing] the speaker's activity due to disagreement with the speaker's view," *Metro Display Advert., Inc.*, 143 F.3d at 1194 (citation omitted). Insisting on sufficient tailoring to dispel the *risk* of invidious suppression of political opponents is not the same as finding the *reality* of such suppression. Indeed, settled First Amendment doctrine regularly employs different levels of scrutiny and associated tailoring requirements to address the ultimate risk that "the government has adopted a regulation of speech because of disagreement with the message it conveys." *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *see also Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994) ("[R]egulations that are unrelated to the content of speech are subject to an intermediate level of scrutiny, because in most cases they pose a less substantial *risk* of excising certain ideas or viewpoints from the public dialogue." (emphasis added) (citation omitted)); *Leathers v. Medlock*, 499 U.S. 439, 447 (1991) (noting that "differential taxation of First Amendment speakers is constitutionally suspect when it *threatens* to suppress the expression of particular ideas or viewpoints," but that there was no indication that the tax challenged in that case was objectively "structured so as to raise *suspicion* that it was intended" to

In asserting that Measure B’s particular contribution limits are needed to combat the appearance of corruption in Oxnard specifically, the City relies heavily on a corruption scandal that occurred in Oxnard in 2010. After a May 2010 article in the *Ventura County Star* asserted that various City officials had improperly received significant gifts and failed to report them, the Ventura County District Attorney undertook an extensive investigation that included the execution of search warrants at City Hall and at the homes of several City officials. Although the District Attorney ultimately concluded that “the most serious allegations of criminal conduct [we]re unsupported by the evidence,” his nearly 100-page report in April 2012 revealed at least the following five specific areas of concern: (1) a “clear pattern of fiscal waste by a small number of city officials” that allowed City officials to “spend excessively while traveling on city business”; (2) “an improper \$10,000 personal loan of city funds” taken out by the then-City Manager, who also “implemented an improper retirement benefit for himself and other city management employees”; (3) improper use of funds regarding “a grand opening celebration at a city water facility”; (4) the fact that “several Oxnard officials received gifts of expensive

“interfere with [cable television’s] First Amendment activities” (emphasis added)). Moreover, contrary to what the dissent suggests, *see* Dissent at 47 n.16, it is certainly not a point in the City’s favor that the record evidence of the risk of invidious discrimination here may also suggest the reality of such discrimination. *Cf. R.A.V. v. City of St. Paul*, 505 U.S. 377, 394 (1992) (noting that the “possibility” that the challenged ordinance’s content-based selectivity creates for “seeking to handicap the expression of particular ideas” is “alone . . . enough to render the ordinance presumptively invalid,” even while noting that the record evidence “elevate[d] the possibility to a certainty” (emphasis added))

meals, rounds of golf, and a small number of event tickets,” and “did not publicly disclose the gifts as required by law”; and (5) the fact that “[c]lose relationships existed between several city officials and private individuals conducting multi-million dollar transactions with the city.” The District Attorney ultimately deferred to the judgment of others as to what changes in policies and practices should be made, but his report did indicate that some of these issues may be ones “requiring reform.”

For several reasons, this 2010 corruption scandal and resulting investigation bear, at best, a weak and tenuous relationship to Measure B’s contribution limits. First, as counsel for the City conceded at oral argument, the problems canvassed in the District Attorney’s 2012 report had nothing to do with campaign contributions, or indeed with campaign financing at all. Campaign contributions were not identified as a source of corruption in the report, and the report does not recommend campaign contribution limits as a solution to any of the five problems it does identify. While Measure B’s separate *gift* restrictions may well be closely drawn to the problems identified in the District Attorney’s report, those restrictions are not at issue here. Second, the City waited until late 2019 before proposing Measure B’s gift restrictions and campaign finance restrictions. That timing is a full seven years after the District Attorney’s report, but only one year after (1) Starr had forced a recall election against the Mayor and three other members of the City Council; and (2) Starr himself had run against the Mayor, both at the recall election and in the 2018 general election. Third, the 2010 scandal and the 2012 report are not even mentioned as justifications for Measure B’s campaign finance limitations in the City’s explanatory PowerPoint; rather,

that document focuses on Starr's receipt of campaign contributions in large dollar amounts and from out-of-State contributors. On this record, Measure B's campaign finance limits are much more "closely drawn" to the prohibited objective of stopping Starr than they are to remedying the problems identified in the District Attorney's 2012 report.

The City also notes that, prior to proposing Measure B, the City commissioned a general "Issues Survey" and that survey showed that 77% of voters "would support a Government Accountability measure." The City further observes that, when presented to the voters, Measure B passed with 82% of votes cast in favor. But given that "Government Accountability" covers a number of different concerns and Measure B likewise contained a varied mix of provisions governing term limits, gift restrictions, and campaign finance limits, these points provide little, if any, basis for concluding that Measure B's *campaign finance restrictions*—as opposed to its other provisions—were specifically tailored to the public's concerns about local corruption.

The practical effect of Measure B's campaign finance limitations also underscores the comparatively closer fit between these restrictions and the objective of squelching Starr. As the City's own expert and briefing repeatedly stress, Measure B's financing limitations would have little practical effect on anyone other than Starr, whom the City describes as a "stark" outlier. Although the City emphasizes that its campaign finance restrictions are in line with those of other comparably sized jurisdictions, that does not mean that *Oxnard's* restriction is closely drawn to the legitimate interests invoked by those other jurisdictions. As the City's PowerPoint makes clear,

Measure B's contribution limits were knowingly set at a level that, in their practical operation, would seriously and differentially affect Starr, while having minimal, if any, effect on every other politician identified in the City's briefing.

We also note that these concerns about the practical effect of Measure B are exacerbated by the fact that its campaign finance limits lack an adequate mechanism to ensure that they will be "adjusted for inflation." *Randall*, 548 U.S. at 261. The City points to the fact that Measure B added § 2-245 to the City Code, which states that the City Clerk shall adjust the contribution limits every two years to account for "changes in the Consumer Price Index." OXNARD CITY CODE § 2-245(A). But rather than make such changes automatically effective according to the specified formula, the City Council expressly *reserved to itself* the authority to review and adopt these changes "by resolution."¹⁰ *Id.* Given that a resolution of the City Council is required to make any change to the limits—just as would be required to formally amend them—Measure B, as a practical matter, provides insufficient assurance that the limits will be raised as warranted by inflation.

Finally, we discern no "special justification" in the record that might show that these contribution limits are warranted despite the significant concerns that we have described. *Randall*, 548 U.S. at 261. Accordingly, our "independent[] and careful[] review" of the record confirms that Measure B's contribution limits

¹⁰ The dissent accepts the City's argument that Measure B supposedly creates a "ministerial" duty that binds *future* City Councils to pass legislation approving the City Clerk's handiwork, see Dissent at 45 n.14, but nothing in the text of the measure says that.

are not “closely drawn’ to match the [City’s] interests” in avoiding the reality or appearance of *quid pro quo* corruption. *Id.* at 253. The challenged per-candidate aggregate contribution limitations in Oxnard City Code §§ 2-243(A)–(B), 2-244(A)–(B) therefore violate the First Amendment.

III

MOF’s second cause of action challenges one specific feature of these same contribution limits, namely, that they assertedly include, as counting toward the amount of funds that may be contributed to a candidate, any contributions made to political committees supporting or opposing *ballot initiatives* if those committees are controlled by someone who is simultaneously a candidate for office. The City contends that this claim is based on a misreading of Measure B and that such contributions to ballot initiative committees do *not* count towards the per-candidate aggregate contribution limits. We need not resolve this issue. Given that we have concluded that, even apart from this alleged feature, the challenged contribution limits are invalid, any dispute concerning this additional issue is moot.

IV

For the foregoing reasons, we reverse the district court’s grant of summary judgment to the City Clerk and remand with instructions to grant summary judgment to MOF holding invalid the per-candidate aggregate contribution limitations in Oxnard City Code §§ 2-243(A)–(B), 2-244(A)–(B).

REVERSED AND REMANDED.

BENNETT, Circuit Judge, dissenting:

In 2020, 82% of Oxnard residents who voted on the City of Oxnard’s Ballot Measure B approved per-candidate contribution limits for municipal elections by passing the measure. Under the limits, an individual may contribute up to \$500 to a candidate for City Council and up to \$750 to a candidate for Mayor, City Clerk, or City Treasurer in each election. Moving Oxnard Forward (MOF) challenges the constitutionality of these limits under the First Amendment.¹ Campaign contribution limits pass First Amendment scrutiny if the government (1) “demonstrates a sufficiently important interest” and (2) “employs means closely drawn to avoid unnecessary abridgment of as-

¹ MOF also challenges Measure B’s “aggregate contribution limits,” which impose a \$1,000 limit on total contributions from political action committees to a candidate for City Council—“including contributions or loans to all political committees or broad-based political committees controlled by the candidate”—and a \$1,500 limit on such contributions to candidates for Mayor, City Clerk, and City Treasurer. Interpreting candidate-controlled committees to encompass committees formed to support or oppose ballot measures, MOF argues that aggregate limits are unconstitutional because they “treat[] candidates who support or oppose ballot measures differently from other candidates and otherwise restrict[] their ability to both run for office and campaign for or against a ballot measure.” But as confirmed by the City Attorney’s “Impartial Analysis for Measure B,” the aggregate limit provisions do not apply to committees formed to support or oppose ballot measures. Oxnard, Cal., Ordinance 2976, §§ 2-243(A), 2-244(A) (May 1, 2020). The majority does not reach MOF’s challenge to the aggregate limits since it finds that “even apart from this alleged feature, the challenged contribution limits are invalid.” Maj. at 27. I would affirm the district court’s grant of summary judgment to the City on this claim.

MOF initially challenged Measure B’s ban on gifts to elected city officials, but it abandons this challenge on appeal.

sociational freedoms.” *Buckley v. Valeo*, 424 U.S. 1, 25 (1976) (per curiam); *accord Randall v. Sorrell*, 548 U.S. 230, 247 (2006) (plurality opinion). Because I would find that the City’s contribution limits satisfy this test, I respectfully dissent.²

I

In determining the constitutionality of contribution limits, we first ask “whether ‘there is adequate evidence that [the government’s] limitation[s] further[] . . . [the] important state interest’ of preventing actual or perceived quid pro quo corruption.” *Lair v. Motl*, 873 F.3d 1170, 1178 (9th Cir. 2017) (alterations besides first in original) (quoting *Mont. Right to Life Ass’n v. Eddleman*, 343 F.3d 1085, 1092 (9th Cir. 2003)). The majority assumes without deciding that the City has demonstrated this important interest. Maj. at 14. I believe that the record shows that the City has so demonstrated.

A

As the majority correctly notes, “preventing corruption or the appearance of corruption” is the “only . . . legitimate governmental interest for restricting campaign finances” that has been recognized by the Supreme Court. *McCutcheon v. FEC*, 572 U.S. 185, 206 (2014) (plurality opinion); *accord Citizens United v. FEC*, 558 U.S. 310, 359 (2010). The Court has narrowed this interest to the prevention of quid pro quo

² On cross-motions for summary judgment, the district court granted summary judgment to the City. Neither party argued below that disputed issues of material fact precluded the district court from ruling on the summary judgment motions. Neither party argues on appeal that there are disputed issues of material fact precluding summary judgment. And my review of the record does not reveal any disputed issues of material fact.

corruption, including “actual *quid pro quo* arrangements” and “the appearance of [quid pro quo] corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions’ to particular candidates.”³ *McCutcheon*, 572 U.S. at 207 (quoting *Buckley*, 424 U.S. at 27).

Below and on appeal, the City has contended that Measure B furthers its interest in preventing “[t]he risk of actual or perceived quid pro quo corruption.” At summary judgment, the district court did not expressly identify quid pro quo corruption as one of the City’s interests before finding that the City had satisfied its “evidentiary obligation’ to demonstrate a sufficiently important governmental interest in contribution limits.” The district court instead referred to the purposes listed in the ordinance enacted by Measure B,⁴ which directly quotes one purpose from

³ The Supreme Court has defined quid pro quo corruption as “dollars for political favors.” *McCutcheon*, 572 U.S. at 192 (quoting *FEC v. Nat’l Conservative Pol. Action Comm.*, 470 U.S. 480, 497 (1985)). The Court has also provided examples of what is *not* quid pro quo corruption: “[s]pending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder’s official duties,” or “the possibility that an individual who spends large sums may garner ‘influence over or access to’ elected officials or political parties.” *Id.* at 208 (quoting *Citizens United*, 558 U.S. at 359).

⁴ The full provision reads:

The purpose of this Article is to advance compelling City interests by limiting large contributions from single sources to candidates for Mayor, members of City Council, City Clerk and City Treasurer, and by imposing reporting and accounting procedures for local campaigns. The City’s interests are to provide a representative government which is accessible to all citizens, to deter corruption and the appearance of

the Supreme Court’s decision in *Buckley v. Valeo*: deterring corruption and the appearance of corruption caused by the “coercive influence of large financial contributions on candidates’ positions.” 424 U.S. at 25. *Buckley* predates the Supreme Court’s decisions in *Citizens United* and *McCutcheon*, in which the Court “limited the important state interest . . . to preventing ‘quid pro quo corruption, or its appearance,’” *Lair*, 873 F.3d at 1177 (quoting *Lair v. Bullock*, 798 F.3d 736, 746 (9th Cir. 2015)). But even if the “coercive influence of large financial contributions on candidates’ positions” does not equal quid pro quo corruption, we may affirm “on any ground raised below and fairly supported by the record.” *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1076 (2015) (quoting *Columbia Pictures Indus., Inc. v. Fung*, 710 F.3d 1020, 1030 (9th Cir. 2013)). The City asserted an interest in preventing actual or perceived quid pro quo corruption below and on appeal. Since, as explained in the next section, this interest is fairly supported by the record, I would affirm the district court’s holding that the City has demonstrated a constitutionally permissible interest in contribution limits.

B

To demonstrate its interest, the government “must show the risk of actual or perceived quid pro quo corruption is more than ‘mere conjecture.’” *Lair*, 873 F.3d at 1178 (quoting *Eddleman*, 343 F.3d at 1092). The government “need not show any completed quid

corruption caused by the coercive influence of large financial contributions on candidates’ positions, and to inform the electorate as to the sources and uses of political contributions.

Oxnard, Cal., Ordinance 2976, § 2-240 (May 1, 2020).

pro quo transactions to satisfy its burden.” *Id.* at 1180. It “must show only that the perceived threat is not illusory.” *Id.* at 1178 (cleaned up) (quoting *Eddleman*, 343 F.3d at 1092). Though “[t]he quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised,” the Supreme Court has recognized that “the dangers of large, corrupt contributions and the suspicion that large contributions are corrupt are neither novel nor implausible.” *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 391 (2000) (citing *Buckley*, 424 U.S. at 27). If the government asserts an interest in preventing quid pro quo corruption, there is a “low [evidentiary] bar.” *Lair*, 873 F.3d at 1172.

To substantiate its asserted interest in preventing quid pro quo corruption, the City relies on: (1) coverage of a corruption scandal that came to light in 2010, including a 2012 report by the Ventura County District Attorney; (2) support of a “government accountability measure” by more than 75% of voters surveyed by the City in 2019; and (3) approval of Measure B by 82% of those who voted on it in 2020. In reviewing a challenge to Missouri’s contribution limits in *Nixon v. Shrink Missouri Government PAC*, the Supreme Court found comparable evidence to be sufficient: “newspaper accounts of large contributions supporting inferences of impropriety,” an affidavit from a state senator stating that “large contributions have ‘the real potential to buy votes,’” and approval of the measure by “[a]n overwhelming 74 percent of the voters of Missouri [who] determined that contribution limits are necessary to combat corruption and the appearance thereof.” 528 U.S. at 393–94. That evidence “d[id] not present a close call” as to whether

the state had met its “evidentiary obligation.” *Id.* at 393.

I believe the evidence here is comparable, though our record may present a slightly closer call. As both MOF and the majority contend, the past instances of alleged corruption involved gifts to already elected officials, rather than campaign contributions to candidates,⁵ and became public nine years before Measure B was proposed. Maj. at 24. But the City need not provide proof of completed quid pro quo transactions through campaign contributions to satisfy its evidentiary burden. *Lair*, 873 F.3d at 1180. And evidence of the “gifts of vacations, meals, rounds of golf, and event tickets from companies doing significant business with the city” to elected officials⁶ suffices to

⁵ The District Attorney’s 2012 report cited alleged gifts in 1998, 2000, 2005, 2006, 2007, 2008, and 2009 to Tom Holden, who served on City Council from 1993 to 2002 and served consecutive two-year terms as Mayor from 2004 to 2012. The report also cited alleged gifts in 2005, 2006, 2007, 2008, and 2010 to Andres Herrera, who served on City Council from 2002 to 2010. Though the 2010 scandal did not expose alleged instances of quid pro quo corruption through campaign contributions, it did feature alleged gifts made to elected officials during years in which they ran for reelection.

⁶ One example discussed in the District Attorney’s report concerns a trip to Napa by then-Mayor Holden. Holden traveled to Napa on the private jet of businessman Bernard Huberman and charged his hotel stay to Huberman’s credit card. Within three months of the trip, BLT Enterprises, a company affiliated with Huberman, submitted a bid for a contract with the City alongside six other applicants. The City’s Utilities Task Force, on which Holden served as the ranking member, selected BLT Enterprises to negotiate the new multimillion-dollar contract. The District Attorney’s investigation found “no evidence of criminal activity,” but the report notes that “suspicions of city leaders’ relationships with Bernard Huberman ran high among some city officials and employees.”

show that the “perceived threat” of quid pro quo corruption is “not illusory.” *Id.* at 1178 (cleaned up) (quoting *Eddleman*, 343 F.3d at 1092). An expert for the City also attested that the 2010 “scandal, as well as new allegations of corruption, . . . featured prominently [in] the debate” over Measure B. This testimony confirms that coverage of the scandal, along with the survey and vote results, evinces at least the *perception* of quid pro quo corruption. The City’s evidence—uncontroverted by MOF—clears the “low bar” of showing that the risk of actual or perceived quid pro quo corruption exceeds “mere conjecture.” *Id.* at 1172. Thus, the City has demonstrated its sufficiently important interest.

II

Having determined that the City has demonstrated a sufficiently important interest in enacting campaign contribution limits, we next ask whether the challenged limits are “closely drawn” to match the government’s asserted interest. *Shrink Mo.*, 528 at 387–88 (quoting *Buckley*, 424 U.S. at 25). But as part of that inquiry we must preliminarily determine whether the limits are “so low as to exhibit [the] ‘danger signs’” that were first identified in *Randall v. Sorrell. Thompson v. Hebdon*, 7 F.4th 811, 822 (9th Cir. 2021); *see also id.* at 818. The presence of any of these four “danger signs” warrants a court’s closer review of both the record and “five sets of considerations” (also listed in *Randall*) to determine whether the limit is closely drawn to the government’s interest. *Id.* at 818. Absent these danger signs, the court’s “closely drawn” analysis need only confirm that the limits “(a) focus narrowly on the state’s interest, (b) leave the contributor free to affiliate with a candidate, and (c) allow the candidate to amass sufficient

resources to wage an effective campaign.” *Eddleman*, 343 F.3d at 1092.

The majority’s analysis at this second step suffers from two flaws: First, the majority’s conclusion that “the record reflects a significant risk that the City may be engaged in ‘invidious discrimination,’” Maj. at 6 (quoting *Buckley*, 424 U.S. at 31)—which the majority takes to be a new danger sign warranting heightened review under *Randall*, Maj. at 16—lacks support in the record. Second, the majority’s “more ‘closely drawn’” analysis, Maj. at 22 (emphasis added), contravenes precedent by applying a motive test instead of a tailoring test. I would find that no *Randall* danger signs are present and that, even under *Randall*’s more searching five-factor tailoring test, Measure B’s limits are closely drawn to the City’s asserted interest.

A

The *Randall* plurality identified four “danger signs” indicating that contribution limits are low enough to “harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability.” 548 U.S. at 249. As the majority notes, in *Thompson v. Hebdon*, 909 F.3d 1027 (9th Cir. 2018), we declined to consider *Randall* “because no opinion [had] commanded a majority of the Court.” *Id.* at 1037 n.5; Maj. at 10 n.6. The Supreme Court unanimously vacated our decision and remanded the case with the instruction to treat *Randall*—including its “danger signs”—as “precedent.” *Thompson v. Hebdon*, 589 U.S. 1, 4 & n.*, 5–6 (2019) (per curiam).

Those four danger signs are: (1) the limits are below “limits upheld by the Court in the past”; (2) the limits are below limits “in force in other States”; (3) the limits apply “per election cycle” (including both primary and general elections), rather than applying per election; and (4) the limits apply to contributions not only from individuals but also political parties, “whether made in cash or in expenditures coordinated (or presumed to be coordinated) with the candidate.” *Randall*, 548 U.S. at 249; *see id.* at 268 (Thomas, J., concurring in the judgment) (enumerating the four danger signs analyzed by the plurality). None of the four are present here.

First, the City’s limits of \$500 for candidates for City Council and \$750 for candidates for Mayor, City Clerk, and City Treasurer are not below those upheld by the Supreme Court and other courts. Courts in this circuit have found comparable limits for two other Californian cities to be constitutional: a \$500 limit in West Covina, *Sotoodeh v. City of West Covina*, No. CV 22-07756, 2024 WL 4113280, at *1, *4 (C.D. Cal. Aug. 13, 2024), and a \$500 limit in San Diego, *Thalheimer v. City of San Diego*, No. 09-CV-2862, 2012 WL 177414, at *8–9 (S.D. Cal. Jan. 20, 2012). The Supreme Court and this court have even upheld comparable *statewide* contribution limits. *Shrink Mo.*, 528 U.S. at 383 (\$275 to \$1,075 for statewide office); *Eddleman*, 343 F.3d at 1088 (\$100, \$200, and \$400 for statewide office).⁷ Second, the City’s expert presented evidence that Measure B’s limits are around the median for limits enacted by California cities of

⁷ Even adjusting for inflation per the Consumer Price Index, *Shrink Missouri*’s \$275 to \$1,075 1998 limits equate to about \$435 to \$1,700 in 2020, and *Eddleman*’s \$100, \$200, and \$400 1994 limits equate to about \$175, \$350, and \$700 in 2020.

comparable size. Third, Measure B's limits apply per election, not per election *cycle*. Fourth, Measure B's limits do not apply to political parties. Thus, none of the danger signs identified by the *Randall* plurality are present here.

Rather than checking for the four danger signs the Supreme Court specifically listed, the majority recognizes a fifth.⁸ Maj. at 14–16. It finds “a sufficient danger of invidious discrimination” against “minority parties” or “independent candidacies,” and it holds that this type of discrimination constitutes a new *Randall* danger sign. Maj. at 16 (quoting *Nat’l Comm. of the Reform Party of the U.S. v. Democratic Nat’l Comm.*, 168 F.3d 360, 366 (9th Cir. 1999)). The majority justifies its action because this type of supposed discrimination presents “constitutional risks to the democratic electoral process.” Maj. at 15 (quoting *Randall*, 548 U.S. at 248). The majority also notes that “*Buckley* itself underscored that its more lenient standard of review only applies [*absent record evidence of invidious discrimination* against challengers as a class.” Maj. at 15 (quoting *Buckley*, 424 U.S. at 31). And on the majority’s read, “the record reflects a significant risk that the City may be engaged in ‘invidious discrimination’ against Starr and challengers like him.” Maj. at 6 (quoting *Buckley*, 424 U.S. at 31). Even assuming that invidious discrimination could be a danger sign warranting heightened review under *Randall*, the record here does not support the majority’s “conclu[sion] that the undisputed facts . . .

⁸ The majority appears to be the first and only court to identify a danger sign other than the four listed in *Randall*. Such action is not barred by *Randall* or other Supreme Court cases, but the majority is the first court in the more than eighteen years since *Randall* to do so.

raise a sufficient danger of [such] discrimination.” Maj. at 16.

Courts have analyzed whether contribution limits “work . . . invidious discrimination” when plaintiffs have alleged discrimination in violation of equal protection. *Buckley*, 424 U.S. at 30; see, e.g., *Nat’l Comm. of the Reform Party*, 168 F.3d at 366. Addressing equal protection challenges, the Supreme Court and this court have circumscribed what it means for limits to *discriminate* against nonincumbent challengers and have required a factual showing from plaintiffs when such discrimination is alleged. “Absent record evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes evenhanded restrictions.” *Buckley*, 424 U.S. at 31. While the Supreme Court has acknowledged, as a reality of our political process, that “[t]hird parties have been completely incapable of matching the major parties’ ability to raise money and win elections,” *id.* at 98, the Court has never recognized this difference in “funding position relative to their major-party opponents” to constitute invidious discrimination against minority parties, *id.* at 34; see *Nat’l Comm. of the Reform Party*, 168 F.3d at 366. Rather, to determine whether a contribution limit poses a risk of invidious discrimination, the Supreme Court and this court have looked for evidence that the limit “w[ould] have a serious effect on the initiation and scope of minor-party and independent candidacies.” *Buckley*, 424 U.S. at 34; *Nat’l Comm. of the Reform Party*, 168 F.3d at 366 (“[T]he *Buckley* Court was reserving the possibility that in the future, plaintiffs *might* be able to demonstrate that the fundraising constraints actually harmed or injured the voting strength of minority parties or their ability to field candidates.” (emphasis

added)). But a minority-party challenger’s argument that a contribution limit “has prevented it from receiving and spending as much money as the major parties” is “not the kind of claim that the Supreme Court reserved for future consideration as invidious discrimination.” *Nat’l Comm. of the Reform Party*, 168 F.3d at 366.

To start, MOF has not advanced equal protection, due process, or any other claims based on discrimination by the per-candidate contribution limits.⁹ MOF does not allege that Measure B’s facially neutral per-candidate limits have an unconstitutionally disparate impact, whether on MOF, MOF president Aaron Starr, or all nonincumbent challengers like Starr. At issue is only the constitutionality of the limits themselves—i.e., whether they are “‘closely drawn’ to match a ‘sufficiently important interest.’” *Shrink Mo.*, 528 U.S. at 387–88 (quoting *Buckley*, 424 U.S. at 25).

Even assuming that the majority can consider invidious discrimination outside of the equal protection framework by treating it as a *Randall* danger sign, MOF’s own allegations do not raise the specter of such discrimination. At most, MOF argues that Measure B’s per-candidate limits are so low as to trigger *Randall*’s concern of “insulat[ing] legislators from effective electoral challenge.”¹⁰ 548 U.S. at 248 (quoting *Shrink Mo.*, 528 U.S. at 404 (Breyer, J., concurring)). This concern stems from “the typically

⁹ MOF does challenge Measure B’s aggregate limits on equal protection grounds, but this challenge fails for the reasons explained above. *See supra* note 1.

¹⁰ As discussed below, MOF’s contention that Measure B’s limits will prevent nonincumbents from mounting effective campaigns also lacks support in the record.

higher costs that a challenger must bear to overcome the name-recognition advantage enjoyed by an incumbent,” *id.* at 256, and therefore amounts to an argument that the limits “prevent[] [MOF] from receiving and spending as much money as the major [or incumbent] parties,” *Nat’l Comm. of the Reform Party*, 168 F.3d at 366. Absent any alleged harm to MOF’s “voting strength” or “ability to field candidates,” this is not the kind of claim that the Supreme Court reserved for future consideration as invidious discrimination. *Id.*

And there is no allegation, let alone evidence, of “invidious discrimination against challengers *as a class*.” *Buckley*, 424 U.S. at 31 (emphasis added); see *Nat’l Comm. of the Reform Party*, 168 F.3d at 366 (“The term ‘invidious discrimination’ generally refers to treating a class differently in order to harm or repress it. . . . The Court used ‘invidious’ in *Buckley* in the same sense, i.e., to describe discrimination that tends to harm or repress minority parties.”). Even the majority’s independent review of the record fails to identify evidence of discrimination against any class. Looking to references to “Starr and his reliance on larger-size contributions” in materials advocating for Measure B, Maj. at 16, the fact that “Starr was the person who would most be affected by Measure B’s passage,” Maj. at 18, and the “considerable history of antipathy between Starr and the City’s elected officials,” Maj. at 19, the majority leaps to the conclusion that “[t]aken together, these circumstances raise a sufficient constitutional risk of invidious discrimination against Starr *and other outsiders like him*,” Maj. at 20 (emphasis added). But each circum-

stance cited by the majority is unique to Starr.¹¹ No other challengers are identified. The inference that candidates “like” Starr would face the same circumstances is not supported by the record nor even advanced by MOF.¹²

Attempting to individualize the definition of “invidious discrimination,” the majority cites *Metro Display Advertising, Inc. v. City of Victorville*, 143 F.3d 1191 (9th Cir. 1998), for the proposition that “it is well settled that ‘invidious’ discrimination includes ‘an effort to suppress the speaker’s activity due to disagreement with the speaker’s view.’” Maj. at 16 (quoting *Metro Display*, 143 F.3d at 1194); *see also* Maj. at 22 n.9 (quoting *Metro Display*, 143 F.3d at 1194). The case is not on point. *Metro Display* concerned not “invidious discrimination” inhibiting association but “‘invidious’ restraints” on speech. 143 F.3d at 1194. Contribution limits, unlike expenditure limits, largely do not implicate restraints on speech. *Buckley*, 424 U.S. at 21 (“[A contribution] limitation . . . involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor’s freedom to discuss candidates and issues.”); *Jacobus v. Alaska*, 338 F.3d 1095, 1108 (9th Cir. 2003) (“Limitations on *contributions* affect

¹¹ And as discussed above, MOF does not allege that Measure B’s per-candidate limits discriminate against a class of one—i.e., Starr.

¹² Indeed, at oral argument, when asked about the presence of other “danger signs” beyond those enumerated in *Randall*, MOF’s counsel responded: “If we were to look for other danger signs, I think one would be the inference that Measure B was specifically targeted at reducing the influence of *a singular person* in the city.” Oral Argument at 14:31–42 (emphasis added).

the right of association, but unlike expenditure limits, do not primarily implicate the contributor's speech rights.”), *overruled in part on other grounds by Bd. of Trs. of the Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195 (9th Cir. 2019) (en banc). Thus, *Metro Display* does not support the majority's definition of “invidious discrimination” or its conclusion that there is a sufficient risk of such discrimination so as to present a new danger sign.

B

Here, there are no danger signs present. But even if danger signs are present, that does not end the inquiry in a plaintiff's favor. “[C]ourts, including appellate courts, must review the record independently and carefully with an eye toward assessing the [contribution limits] ‘tailoring,’ that is, toward assessing the proportionality of the restrictions.” *Randall*, 548 U.S. at 249 (citing *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 499 (1984)). In particular, *Randall* outlines “five sets of considerations” that may mean that contribution limits are not “closely drawn to meet [their] objectives”: (1) the “contribution limits will significantly restrict the amount of funding available for challengers to run competitive campaigns”; (2) “political parties [must] abide by *exactly* the same low contribution limits that apply to other contributors”; (3) volunteer services or expenses are considered contributions that would count toward the limit; (4) the limits are “not adjusted for inflation”; or (5) “nowhere in the record [is there] any special justification that might warrant a contribution limit so low or so restrictive as to bring about . . . serious associational and expressive problems,” such as whether “corruption (or its appearance) in [the government] is significantly more serious a matter than

elsewhere.” *Id.* at 253–61; *see also Thompson*, 7 F.4th at 819–23. Even assuming that heightened review under *Randall* is warranted, these five factors support that Measure B’s limits *are* closely drawn to the City’s asserted interest.

First, the record does not support that Measure B’s contribution limits will “significantly restrict” challengers’ ability to run competitive campaigns. *Randall*, 548 U.S. at 253. In *Shrink Missouri*, the Supreme Court found that the district court’s finding of candidates’ continued ability “to raise funds sufficient to run effective campaigns” was “buttressed” by the state’s evidence that in the last election before the challenged limits took effect, 97.62% of contributors to candidates for one statewide office (to be subject to a \$1,075 limit in the next election) had made contributions not exceeding \$2,000. 528 U.S. at 396. The City presents a similar and even clearer picture here: in the last election before Measure B took effect, 93.7% of contributors to candidates for all citywide offices made contributions not exceeding Measure B’s actual limits.

The only contrary evidence MOF offers on this point is testimony from its president, Starr:

In each of my prior campaigns, I have solicited and received contributions in excess of \$500, the limit applicable to my 2020 city council campaign. In 2020, my fundraising was limited because there was little point in expending the effort to raise money in such small increments. If I was not able to fund my own campaign, it would have been impossible for me to raise sufficient funds to wage a competitive campaign with Measure B’s \$500 limit. Even if it would have been

possible, I would have had to spend all my time fundraising rather than campaigning such that the funds would have been meaningless because I would not have had time to do anything with them.

At his deposition, Starr confirmed that he “wasn’t pursuing donors as much because it’s a lot of time to consume to get money at 200, 300, \$400 a crack.” Starr testified that he “pretty much fore[went] most all of the fundraising [he] would have done because there [wa]s just no point in asking people for small amounts of money.” He estimated that he had spent “not a whole lot more” than ten hours on fundraising for his 2020 race. Even viewed in the light most favorable to MOF, Starr’s testimony about his resulting reluctance to fundraise does not create a triable issue of fact as to whether Measure B’s limits “*prevent*[] challengers [like Starr] from mounting effective campaigns against incumbent officeholders.” *Randall*, 548 U.S. at 249 (emphasis added). And as the *Shrink Missouri* Court recognized, even assuming “that the contribution limits affected [one candidate’s] ability to wage a competitive campaign . . . , a showing of one affected individual does not point up a system of suppressed political advocacy that would be unconstitutional.”¹³ *Shrink Mo.*, 528 U.S. at 396.

Second, Measure B does not require “political parties [to] abide by *exactly* the same low contribution limits that apply to other contributors.” *Randall*, 548 U.S. at 256. In fact, Measure B’s limits do not apply

¹³ Indeed, Starr’s testimony makes many of the City’s points for it. Why would it be some sort of constitutional negative that contribution limits require candidates to try to raise funds from the many, rather than the very rich few?

to political parties. This factor favors the City. *See Thompson*, 7 F.4th at 821.

Third, volunteer services and expenses are not considered contributions that would count toward Measure B's limits. *See Randall*, 548 U.S. at 259. The ordinance provides that "unless the contrary is stated or clearly appears from the context, the definitions set forth in Chapter 2 of Title 9 of the Government Code of the State of California (commencing at Section 82000) shall govern the construction, meaning, and application of words and phrases used in this Article." Oxnard, Cal., Ordinance 2976, § 2-241 (May 1, 2020). And the California Government Code excludes from the definition of "[c]ontribution" "[v]olunteer personal services or payments made by any individual for the individual's own travel expenses." Cal. Gov't Code § 82015(c)(3). This factor favors the City. *See Thompson*, 7 F.4th at 821.

Fourth, the limits are "adjusted for inflation." *Randall*, 548 U.S. at 261. The ordinance provides that the City Clerk will adjust the contribution limits every two years for "changes in the Consumer Price Index," round the amount to the nearest multiple of 100, and present the new limits to the City Council for "approval by resolution." Oxnard, Cal., Ordinance 2976, § 2-245 (May 1, 2020). According to the majority, because the adjustments are not "automatically effective according to the specified formula" but require the City Council to "review and adopt these changes," there is "insufficient assurance that the limits will be raised" with inflation. Maj. at 26. The majority cites no fact or law to support its finding of insufficiency, let alone its treating the "insufficiency" as presenting a danger sign. Both the *Randall* plurality and courts applying *Randall* have treated this

factor as presenting a danger sign only if the measure outright “fail[s] to index for inflation.” *Id.* at 252 (emphasis added); *Thompson*, 7 F.4th at 821. As explained by the *Randall* plurality, the motivating concern behind this factor is that the burden of updating the limits over time will be placed on “incumbent legislators who may not diligently police the need for changes in limit levels to ensure the adequate financing of electoral challenges.” *Randall*, 548 U.S. at 261. The City’s mechanism for indexing addresses this concern by *mandating* the City Clerk to calculate adjustments every two years.¹⁴ So this factor weighs in the City’s favor.

Fifth, the City does not offer any “special justification” for the level of Measure B’s limits, so the last factor is not relevant. *Randall*, 548 U.S. at 261. With this factor neutral and the other four favoring the City, the tailoring of Measure B’s limits passes muster under even *Randall*’s five-factor test. Absent any factors weighing against the City, *Randall* counsels that we should recognize that “the legislature is better equipped to make such empirical judgments,”

¹⁴ The majority suggests the City Council could decline to adopt the inflation-adjusted limits presented by the City Clerk, but this risk is speculative. *See* Maj. at 26. At oral argument, when asked if this were possible, the City’s counsel responded that the council “would be then subject to a state writ of mandate claim forcing them to comply with their own code” because the ordinance imposes a “ministerial” duty, which the City has “no choice to ignore.” Oral Argument at 29:53–30:02, 31:27–37. “A traditional writ of mandate under [California] Code of Civil Procedure section 1085 is a method for compelling a City to perform a legal, usually ministerial duty.” *Indep. Living Ctr. of S. Cal., Inc. v. Kent*, 909 F.3d 272, 280 n.1 (9th Cir. 2018) (quoting *Kreeft v. City of Oakland*, 80 Cal. Rptr. 2d 137, 141 (Ct. App. 1998)).

acknowledge legislators’ “particular expertise’ in matters related to the costs and nature of running for office,” and “defer[] to the legislature’s determination of such matters.” *Id.* at 248 (quoting *McConnell v. FEC*, 540 U.S. 93, 137 (2003), *overruled on other grounds by Citizens United*, 558 U.S. 310).

Once again, rather than applying *Randall*, the majority decides “we are not limited to the specific considerations identified in *Randall* and must instead broadly consider whether, given the danger signs presented here, there is an unwarranted mismatch between the City’s chosen means and professed objective.” Maj. at 21–22. As explained above, no danger signs are presented here. But the majority also misstates the inquiry at the second step. The majority frames the inquiry as “whether Measure B’s contribution limits are more ‘closely drawn’ to fit (1) the City’s asserted legitimate interest in avoiding actual or apparent *quid pro quo* corruption or (2) an alleged prohibited objective of squelching the political activities of Starr and others like him.” Maj. at 22. Rather than analyze the fit of the contribution limit to the government’s asserted interest, the majority requires a “*comparatively closer fit*”¹⁵ with the asserted interest *over the alleged interest* for the limit to pass constitutional muster. Maj. at 25 (emphasis added). This comparative framing is incorrect. It requires scrutiny into legislative motive,¹⁶ which this court has rejected at step two

¹⁵ The majority does not define “more ‘closely drawn,’” Maj. at 22, or “comparatively closer fit,” Maj. at 25.

¹⁶ The majority purports to apply not “a subjective inquiry into legislative motivation” but “an objective [test] that asks whether the challenged measure is sufficiently closely drawn to the *legitimate* goal of avoiding the appearance or reality of *quid*

pro quo corruption so as to dispel the particular ‘constitutional risk[]’ that triggered the application of independent scrutiny—which here is the risk of invidious discrimination.” Maj. at 22 n.9 (alteration in original) (citation omitted) (quoting *Randall*, 548 U.S. at 248). There are two problems with the majority’s characterization of its tailoring test.

First, it is not the test dictated by controlling precedent. Indeed, the majority reaches for cases involving restraints on speech to support its contention that “settled First Amendment doctrine regularly employs different levels of scrutiny and associated tailoring requirements to address the ultimate risk that ‘the government has adopted a *regulation of speech* because of disagreement with the message it conveys.’” Maj. at 22 n.9 (emphasis added) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989), and citing *Metro Display*, 143 F.3d at 1194; *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994); *Leathers v. Medlock*, 499 U.S. 439, 447 (1991); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 394 (1992)). In so doing, the majority ignores settled First Amendment doctrine specific to campaign contribution limits, which prescribes the levels of scrutiny and associated tailoring requirements to apply to these regulations that “involve[] little direct restraint” on speech. *Buckley*, 424 U.S. at 21; *see id.* at 18 (distinguishing caselaw on time, place, and manner restrictions on speech). *Randall*’s tailoring test for contribution limits is concerned with one particular “constitutional risk[]”—that the limits are not “too low” to “prevent[] challengers from mounting effective campaigns.” 548 U.S. at 248–49.

Second, the majority’s characterization of its tailoring test is not the test that it ultimately applies. As discussed above, the majority’s conclusion that “the record reflects a significant risk that the City may be engaged in ‘invidious discrimination,’” Maj. at 6 (quoting *Buckley*, 424 U.S. at 31), relies on evidence unique to Starr: references to Starr in materials advocating for Measure B, Maj. at 16–18, the relative impact of Measure B on Starr, Maj. at 18–19, and the “considerable history of antipathy” between Starr and the City, Maj. at 19. Whether framed as a search for tailoring sufficient “to dispel . . . th[at] risk,” Maj. at 22 n.9, or as a search for a “comparatively closer fit” with the City’s asserted interest over its interest as alleged by MOF, Maj.

in evaluating the constitutionality of contribution limits and which the Supreme Court has rejected in the broader context of constitutional adjudication.

In *Lair v. Motl*, we reviewed a First Amendment challenge to Montana’s limits on contributions to candidates for statewide office, passed by ballot initiative. 873 F.3d at 1172. Citing justifications advanced by the initiative’s sponsors in a “Voter Information Pamphlet” that went beyond quid pro quo corruption,¹⁷ the district court determined that the Montana voters who approved the initiative “acted with an impermissible motive, meaning the limits ‘could never be said to focus narrowly on a constitutionally-permissible anti-corruption interest.’” *Id.* at 1183–84. We reversed, holding:

The district court incorrectly cast the narrow focus test as a motive inquiry that looks at the voters’ underlying intent when they enacted the limits. The narrow focus test, however, is a tailoring test, not a motive test. It measures how effectively the limits target corruption compared to how much they inhibit associational freedoms

Id. at 1184 (citing *Buckley*, 424 U.S. at 28; *Eddleman*, 343 F.3d at 1094). Finding “no case looking to underlying legislative or voter intent in making this evalu-

at 25, the majority’s test is preoccupied not with objective risks to challengers generally but with the City’s subjective motive as it concerns Starr.

¹⁷ The pamphlet “argued ‘[t]here is just way too much money in Montana politics’ and urged voters . . . to prevent ‘[m]oney from special interests and the wealth’ from ‘drowning out the voice of regular people,’ reasons that are inadequate to justify contribution limits under *McCutcheon*.” *Lair*, 873 F.3d at 1183–84 (alterations in original).

ation,” we noted that the touchstone at step two was not legislative motive but “the actual content and effect of the limits”—that is, whether the limits “target the contributions most likely to generate corruption or its appearance.” *Id.*

The “narrow focus” language in *Lair* comes from our formulation of the standard for the constitutionality of contribution limits, first articulated in *Montana Right to Life Association v. Eddleman*:

After *Buckley* and *Shrink Missouri*, state campaign contribution limits will be upheld if (1) there is adequate evidence that the limitation furthers a sufficiently important state interest, and (2) if the limits are “closely drawn”—i.e., if they (a) focus narrowly on the state’s interest, (b) leave the contributor free to affiliate with a candidate, and (c) allow the candidate to amass sufficient resources to wage an effective campaign.

343 F.3d at 1092; *Lair*, 873 F.3d at 1175–76. In *Thompson*, we applied the *Eddleman* standard and declined to consider the plurality opinion in *Randall*, as discussed above. *Thompson*, 909 F.3d at 1037 n.5. The Supreme Court vacated our decision, noting that our failure to apply *Randall* in favor of “relying on [our] own precedent predating *Randall* by three years” (referring to *Eddleman*) represented a divergence from ten of our sister circuits. *Thompson*, 589 U.S. at 4 & n.*. On remand, we considered *Randall*’s five “danger signs” in analyzing whether the challenged limits were “closely drawn” to meet the state’s asserted interest in combating “actual quid pro quo corruption or its appearance.” *Thompson*, 7 F.4th at 817, 819–27. Like *Eddleman*, *Randall* understood the “closely drawn” analysis as a question of “narrow[]

tailor[ing].” *Randall*, 548 U.S. at 261. Nothing in *Randall* undercuts our characterization in *Eddleman* of the “closely drawn” analysis as a narrow focus test, 343 F.3d at 1092, or our characterization in *Lair* of that test as a “tailoring test, not a motive test,” 873 F.3d at 1184. The *Randall* plurality did not look to legislative motive in its analysis of any of the five factors it identified to evaluate the tailoring of contribution limits:

- (1) whether the limits would significantly restrict the amount of funding available for challengers to run competitive campaigns;
- (2) whether political parties must abide by the same low limits that apply to individual contributors;
- (3) whether volunteer services or expenses are considered contributions that would count toward the limit;
- (4) whether the limits are indexed for inflation;
- and (5) whether there is any “special justification” that might warrant such low limits.

Thompson, 7 F.4th at 818 (citing *Randall*, 548 U.S. at 244–62). Even in analyzing the last factor, the *Randall* plurality considered “justifications *the State ha[d] advanced* in support of such limits.” *Randall*, 548 U.S. at 261 (emphasis added).

The majority points to “no case looking to underlying legislative or voter intent” in assessing the constitutionality of contribution limits. *Lair*, 873 F.3d at 1184. And I believe precedent counsels our not doing so. The Supreme Court has specifically instructed courts to not “second-guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared.” *FEC v. Nat’l Right to Work Comm.*, 459 U.S. 197, 210 (1982); accord *FEC v. Beaumont*, 539 U.S. 146, 157 (2003). And we have fol-

lowed the Supreme Court’s instruction in evaluating First Amendment challenges to contribution limits. *Jacobus*, 338 F.3d at 1098, 1115 (contributions to political parties); *Lair*, 873 F.3d at 1179–80 (contributions to candidates); *see also Lair v. Motl*, 889 F.3d 571, 581 (9th Cir. 2018) (Fisher & Murguia, JJ., responding to the dissent from the denial of rehearing en banc) (quoting *Nat’l Right to Work Comm.*, 459 U.S. at 210, to explain that the *Lair* majority followed longstanding precedent of deferring to legislative determinations of the need for prophylactic contribution limits).

To defend its searching scrutiny into the City’s “true” motive, the majority cites only to *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993)—a free exercise case—for the proposition that “the effect of a law in its real operation is strong evidence of its object.” *Id.* at 535 (plurality opinion). The *Lukumi* plurality attempted to “determine the city council’s object from both direct and circumstantial evidence,” such as “the historical background of the decision under challenge, the specific series of events leading to the enactment or official policy in question, and the legislative or administrative history, including contemporaneous statements made by members of the decisionmaking body.” *Id.* at 540. Declining to join this portion of the opinion, Justice Scalia objected to the plurality’s motive inquiry:

[Such an inquiry] departs from the opinion’s general focus on the object of the *laws* at issue to consider the subjective motivation of the *lawmakers*, *i.e.*, whether the Hialeah City Council actually *intended* to disfavor the religion of Santeria. . . . [I]t is virtually impossible to determine the singular “mo-

tive” of a collective legislative body, and this Court has a long tradition of refraining from such inquiries.

Perhaps there are contexts in which determination of legislative motive *must* be undertaken. But I do not think that is true of analysis under the First Amendment (or the Fourteenth, to the extent it incorporates the First).

Id. at 558 (Scalia, J., concurring in part and concurring in the judgment) (citations omitted).

It is a “fundamental principle of constitutional adjudication” that courts “will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive.” *United States v. O’Brien*, 391 U.S. 367, 383 (1968) (declining to invalidate a statute with an allegedly suspect motive when the legislature “had the undoubted power to enact” it, *id.* at 384); *accord Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 652 (1994); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 47–48 (1986). The Supreme Court “has long disfavored arguments based on alleged legislative motives,” out of recognition that “inquiries into legislative motives ‘are a hazardous matter.’” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 253 (2022) (quoting *O’Brien*, 391 U.S. at 383) (collecting cases). “Even when an argument about legislative motive is backed by statements made by legislators who voted for a law, [the Court] ha[s] been reluctant to attribute those motives to the legislative body as a whole.” *Id.* at 253–54. After all, “[w]hat motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it.” *Id.* at 254 (quoting *O’Brien*, 391 U.S. at 384). A motive inquiry becomes

even more unworkable when the law was placed on the ballot and passed by voters. And we have “refuse[d] to impute upon . . . voters the allegedly invidious motivations” of a ballot measure’s sponsors. *Boardman v. Inslee*, 978 F.3d 1092, 1119 (9th Cir. 2020) (rejecting an equal protection challenge to a ballot initiative because “there [was] no evidence in the record . . . indicating that *the more than 2.2 million Washington voters* who voted in favor of Initiative 1501 were motivated” in the same way as its union sponsors allegedly were).

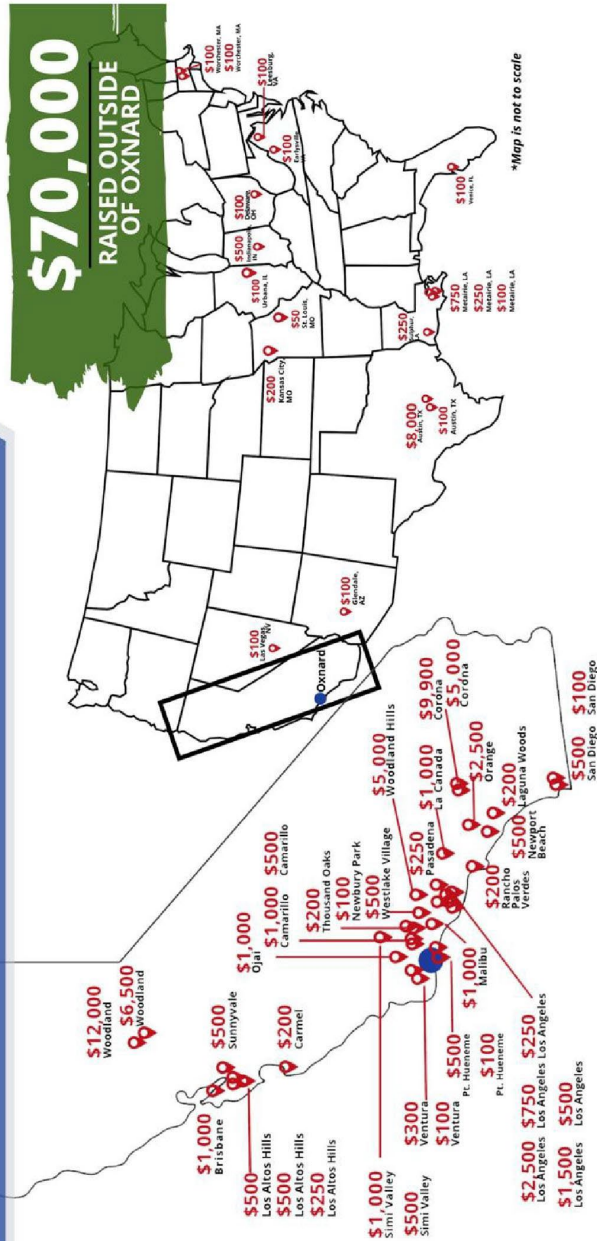
The majority nonetheless dives headfirst into a legislative motive inquiry. Its case for the City’s alleged illicit “objective of squelching Starr” rests in large part on two slides of a PowerPoint presentation created by the City’s unelected City Manager. Maj. at 25; see Maj. at 16–18; App. The majority fails to consider that what motivated a city employee to make a PowerPoint presentation about a law is not necessarily what motivated thousands of others to enact it. No evidence shows that the 25,393 Oxnard voters (again, 82% of those who voted on the measure) who cast a ballot in favor of Measure B were motivated by whatever had motivated the City Manager or sponsors of Measure B. And any “alleged illicit legislative motive” is irrelevant because the City—and its voters—“had the undoubted power to enact” these campaign contribution limits for their candidates for elected office. *O’Brien*, 391 U.S. at 383–84.

* * *

Because the City’s contribution limits are closely drawn to its interest in preventing quid pro quo corruption, I would affirm the district court’s grant of summary judgment to the City. I therefore respectfully dissent.

OXNARD ELECTIONS: CAMPAIGN CONTRIBUTIONS

Example of the size and volume of campaign contributions for one candidate over past several years



OXNARD ELECTIONS: CAMPAIGN CONTRIBUTIONS

Example of the size and volume of campaign contributions for one candidate over past several years

TOTAL CAMPAIGN DONATIONS:

\$118,050



APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No.: CV 20-4122-CBM-(AFMx)

MOVING OXNARD FORWARD INC.,

Plaintiff,

v.

MICHELLE ASCENCION, in her official capacity
as City Clerk for the City of Oxnard,

Defendant.

ORDER RE: DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT, OR IN THE AL-
TERNATIVE, PARTIAL SUMMARY JUDGMENT,
AND PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT / ADJUDICATION [21][22]

The matters before the Court are (1) Defendant's Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment (Dkt. No. 21); and (2) Plaintiff's Motion for Summary Judgment / Adjudication (Dkt. No. 22). The matters are fully briefed.

I. BACKGROUND

This is an action brought pursuant 42 U.S.C. § 1983 challenging the constitutionality of ballot Measure B, which was approved by voters in the City of Oxnard (the "City") on March 3, 2020, and went into effect on May 1, 2020. The Complaint asserts

three causes of action: 1) violation of free speech and association based Measure B's per candidate contribution limits; 2) violation of free speech, association and equal protection based on Measure B's aggregate contribution limits; and 3) violation of free speech and association based on Measure B's gift ban. The parties filed cross-motions for summary judgment.

II. STATEMENT OF THE LAW

On a motion for summary judgment, the Court must determine whether, viewing the evidence in the light most favorable to the nonmoving party, there are any genuine issues of material fact. *Simo v. Union of Needletrades, Indus. & Textile Employees*, 322 F.3d 602, 609-10 (9th Cir. 2003); Fed. R. Civ. P. 56. Summary judgment against a party is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. A factual dispute is "material" only if it might affect the outcome of the suit under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue is "genuine" only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. *Id.* at 249. The evidence presented by the parties must be admissible. Fed. R. Civ. P. 56(e). In judging evidence at the summary judgment stage, the Court does not make credibility determinations or weigh conflicting evidence. *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). Rather, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in [the nonmovant's] favor." *Anderson*, 477 U.S. at 255.

III. DISCUSSION

A. Constitutionality of Measure B's Per Candidate Contribution Limits (First Cause of Action)

Measure B provides the following regarding contribution limits for members of the City Council:

- A. Contributions. No person shall make, and no candidate for elective office or campaign treasurer shall solicit or accept, any contribution which would cause the total amount contributed by that person to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed five hundred dollars (\$500) for any election. No political action committee shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution which would cause the total amount contributed by that political action committee to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed one thousand dollars (\$1,000) for any election. . . .
- B. Loans. No person shall make, and no candidate for elective office or campaign treasurer shall solicit or accept, any loan which would cause the candidate, including loans to all political committees or broad-based political committees controlled by the candidate, to exceed five hundred dollars (\$500) for any election. . . .
- C. Anonymous Contributions. No person shall make an anonymous contribution or contribu-

tions to a candidate, political committee or broad-based political committee or any other person totaling one hundred dollars (\$100) or more for any election period. Any anonymous contribution of one hundred dollars (\$100) or more received by a candidate or such a committee shall not be kept by the intended recipient, but instead shall be paid promptly to the California Secretary of State for deposit in the General Fund of the state. . . .

(Chaparra Decl. Ex. 7, Measure B, Section 2-243.)

Measure B also provides the following contribution limits for the Mayor, City Clerk, and City Treasurer:

- A. Contributions. No Person shall make, and no candidate for elective office or campaign treasurer shall solicit or accept, any contribution which would cause the total amount contributed by that person to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed seven hundred fifty dollars (\$750) for any election. No political action committee shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution which would cause the total amount contributed by that political action committee to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed fifteen hundred [sic] (\$1,500) for any election. . . .

(*Id.*, Measure B, Section 2-244(A).) Measure B also includes the same \$500 limit for loans and \$100 limit for anonymous contributions set forth in Section 2-243 for members of the City Council for the Mayor, City Clerk and City Treasurer. (*Id.*, Measure B, Section 2-244(B)-(C).)

“[C]ampaign contribution limits will be upheld if (1) there is adequate evidence that the limitation furthers a sufficiently important state interest, and (2) if the limits are ‘closely drawn’—i.e., if they (a) focus narrowly on the state’s interest, (b) leave the contributor free to affiliate with a candidate, and (c) allow the candidate to amass sufficient resources to wage an effective campaign.” *Montana Right to Life Ass’n v. Eddleman*, 343 F.3d 1085, 1092 (9th Cir. 2003).

Plaintiff’s first cause of action asserts that Measure B’s per candidate contribution limits violate free speech and association rights under the First Amendment “facially” and as “applied.” (Compl. ¶ 2.) Here, Defendant moves for summary judgment on Plaintiff’s first cause of action on the grounds it is constitutional because 1) the City “has an important government interest in preventing and addressing the perception of corruption”; and 2) “Measure B’s per-candidate contribution limits are narrowly tailored to address the City’s important government interest.” Plaintiff moves for summary judgment on its first cause of action on the ground Measure B’s per-candidate contribution limits violate the First Amendment because they “are not closely drawn to a sufficiently important governmental interest.”

(1) Important Government Interest

Measure B provides its purpose “is to advance compelling City interests” by limiting large contrib-

utions from single sources to candidates for Mayor, members of City Council, City Clerk and City Treasurer, and by imposing reporting and accounting procedures for local campaigns.” (Measure B, Section 2-240.) Measure B further provides the “City’s interests are to provide a representative government which is accessible to all citizens, to deter corruption and the appearance of corruption caused by the coercive influence of large financial contributions on candidates on candidates’ positions, and to inform the electorate as to the sources and uses of political contributions.” (*Id.*) Defendant submits evidence demonstrating:

1. In 2010, the City was investigated by the Ventura County District Attorneys’ offices in connection with allegations of conflict of interest, misappropriation, and violation of gift-reporting laws (Whatley Decl. ¶ 2, Ex. 8, “A Report on the Public Integrity Investigation of Oxnard City Officials” by the Ventura County District Attorneys’ Office dated April 18, 2012, and revised June 15, 2012 (hereinafter, the “D.A.’s Report”) at 1);
2. The City Manager hired a firm to conduct a survey of City residents to determine what residents thought the City’s legislative priorities should be, and the survey results indicated that more than three-quarters of City voters would support a government accountability measure if it was placed on the March 3, 2020 ballot (Nguyen Decl. ¶ 3; Chaparra Decl. Ex. 4); and
3. The City decided to place Measure B on the ballot, rather than having the City Council adopt the campaign contribution limits and gift ban directly, and that 82% of the City’s voters voted yes on Measure B, demonstrating their agree-

ment with the need for contribution limits (Nguyen Decl. ¶ 8).

Thus, Defendant has satisfied her “evidentiary obligation” to demonstrate a sufficiently important governmental interest in contribution limits. *See Nixon v. Shrink Missouri Gov’t PAC*, 528 U.S. 377, 393-94 (2000).

(2) Whether the Contribution Limits Are
“Closely Drawn”

Plaintiff argues Defendant’s evidence fails to demonstrate the contribution limits are “closely drawn” to a governmental interest because Measure B limits candidates to only \$500 or \$750 of their personal funds which is “plainly unconstitutional” because it is illogical to suggest candidates can have corrupting influences on themselves and this corruption is the sole justification for the City’s contribution limit. However, the contribution limits set forth in Sections 2-243 and 2-244 of Measure B do not limit a candidate’s contributions to their own campaign—instead it limits contributions made by other persons to the candidate. (*See* Measure B, Section 2-243 (“No *person* shall make, and no *candidate* for elective office or campaign treasurer shall solicit or accept, any contribution which would cause the total amount *contributed by that person to that candidate . . .* to exceed five hundred dollars (\$500) for any election.”) (emphasis added); Measure B, Section 2-244 (“No *person* shall make, and no *candidate* for elective office or campaign treasurer shall solicit or accept, any contribution which would cause the total amount *contributed by that person to that candidate*, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to

exceed seven hundred fifty dollars (\$750) for any election.”) (emphasis added.) If Measure B was intended to limit a candidate’s own contributions to his/her own campaign, the term “candidate” in addition to the term “person” would have been used. Moreover, Defendant submits evidence the City has not taken any enforcement action against a candidate who contributed more than \$500 to their own campaign. (See Starr Depo. 14:6-22.)

Plaintiff also argues Measure B’s \$500 limit on contributions to city council candidates and \$750 limit on contributions to citywide office candidates are lower than the limits adopted in other jurisdictions, and although there are other jurisdictions with “comparatively low limits,” the validity of those low limits have not been adjudicated and would not pass scrutiny if challenged.

In *Randall v. Sorrell*, the Supreme Court examined “both the limits we have previously upheld and comparable limits in other States,” and found Vermont’s contribution limits were “substantially lower than both” limits that have been previously upheld and limits in other states, which the Court found were “danger signs that [Vermont’s] contribution limits may fall outside tolerable First Amendment limits” and thus required the Court to “examine the record independently and carefully to determine whether [Vermont’s] contribution limits are ‘closely drawn’ to match the State’s interests.” 548 U.S. 230, 253 (2006); see also *Thompson v. Hebdon*, 140 S. Ct. 348, 351 (2019) (applying *Randall*’s test to Alaska’s contribution limit statute, finding “danger signs” based in part on the fact that Alaska’s individual-to-candidate contribution limit was “substantially lower than . . . comparable limits in other States” “warrant-

ed closer review,” and remanding to the district court to “revisit whether Alaska’s limits are consistent with our First Amendment precedent”).

Unlike in *Randall* where Vermont’s contribution limits were “the lowest in the Nation,” and *Thompson* where Alaska’s contribution limits were “substantially lower” than comparable limits in other states, here Defendant’s evidence demonstrates Measure B’s contribution limits are not the lowest in California and are near the median level of other California cities. (See Whatley Decl. Ex. 12 (hereinafter, the “Kousser Report”), at 238, 243-45.) Moreover, Defendant cites to a district court decision upholding a San Diego city ordinance limiting contributions in city elections to \$500 per candidate per election. See *Thalheimer v. City of San Diego*, 2012 WL 177414, at *8-*9 (S.D. Cal., Jan. 20, 2012). Accordingly, the “danger signs” that existed in *Randall* based on the fact that the dollar amount for contribution limits in the statute at issue was substantially lower than the amounts in other jurisdictions, do not exist here and a “closer review” of Measure B’s contribution limits is therefore not warranted. See *Thalheimer*, 2012 WL 177414, at *9 (“[T]he Court does not believe there are sufficient ‘danger signs’ present in this case requiring the Court to conduct an independent review of the record.”); cf. *Randall*, 548 U.S. at 253; *Thompson*, 140 S. Ct. at 351.¹

Plaintiff further argues Measure B’s contribution limits “infringe on candidates’ right to solicit funds for their campaigns.” Plaintiff’s President Aaron

¹ Therefore, application of the five factors in the second part of the “closely drawn” test set forth in *Randall* to determine whether the ordinance is closely drawn to an important government interest is not warranted here.

Starr testified during his deposition that Measure B “made me pretty much forego most all of the fundraising I would have done because there is just no point in asking people for small amounts of money.” (Starr Depo. 36:18-22.) Starr also declares he has solicited and received contributions in excess of \$500 in his prior campaigns, but his fundraising in 2020 was limited “because there was little point in expending the effort to raise money in such small increments.” (Starr Decl. ¶ 10.) Plaintiff, however, cites to no authority wherein a court has found a candidate has a First Amendment right to solicit campaign contributions or that such limits prevent a candidate from effectively soliciting funds for his/her campaign. Moreover, Plaintiff fails to offer evidence demonstrating the contribution limits restrict candidates from running competitive campaigns. Defendant, on the other hand, offers evidence demonstrating only 6.3% of donors’ contributions would have exceeded Measure B’s limits in connection with the City’s November 2018 election (*see* Whatley Decl. Ex. 12 at 146). Accordingly, nothing in the record demonstrates Measure B’s contribution limits “come[s] close to curtailing the average contributor’s participation in campaigns.” *Lair v. Motl*, 873 F.3d 1170, 1183 (9th Cir. 2017).

Plaintiff also contends the City’s interests for the contribution limits “are served equally well if not better by disclosure requirements and criminal penalties” which do not restrict speech. Plaintiff thus argues disclosure limits would be a less restrictive alternative to Measure B’s contribution limits. However, in *Buckley v. Valeo*, the Supreme Court rejected the appellants contention that “narrowly drawn disclosure requirements constitute a less restrictive means of dealing with ‘proven and suspected quid pro quo arrangements,’” reasoning “while disclosure re-

quirements serve . . . many salutary purposes . . . , Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed.” 424 U.S. 1, 27-28 (1976). Moreover, Defendant’s Expert Dr. Kousser opined that contribution limits are necessary in addition to disclosures because “when a candidate discloses a very large contribution from a single source, this could leave voters reasonably concerned that the donor may exert undue influence on that candidate,” and “[t]he content of what is disclosed matters.” (Whatley Decl. Ex. 13 (hereinafter, “Kousser Rebuttal Report”) at 255.) Dr. Kousser also discusses two studies which he opines demonstrates “public concern grows” when “disclosures reveal large contributions” (*id.* at 255-58), and concludes “disclosure alone does not alleviate concerns about corruption” and “[w]hen members of the American public learn that a few donors have made large contributions to a campaign supporting a candidate, their trust in that campaign and support for that candidate can decline” (*id.* at 258).

Moreover, Plaintiff’s contention that criminal penalties for corrupt activities are a less intrusive way of preventing fraud than contribution limits which Plaintiff argues intrudes on First Amendment rights has been rejected by the Supreme Court. *See Buckley*, 424 U.S. at 27–28 (rejecting the appellants’ contention that “contribution limits must be invalidated because bribery laws . . . constitute a less restrictive means of dealing with ‘proven and suspected quid pro quo arrangements,’” reasoning “laws making criminal

the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action” and “contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions”).

Accordingly, the Court finds Measure B’s per candidate contribution limits do not violate the First Amendment because they are closely drawn to a sufficiently important governmental interest.

4. Constitutionality of Measure B’s Aggregate Contribution Limits (Second Cause of Action)

Measure B provides the following with respect to aggregate contribution limits for members of the City Council:

No political action committee shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution which would cause the total amount contributed by that political action committee *to that candidate*, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed one thousand dollars (\$1,000) for any election. . . .

(Measure B, Section 2-243(A) (emphasis added).) Measure B also provides the following aggregate contribution limits for the Mayor, City Clerk and City Treasurer:

No political action committee shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution which would cause the total amount contributed by that political action committee *to that candidate*, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed fifteen hundred [sic] (\$1,500) for any election. . . .

(Measure B, Section 2-244(A) (emphasis added).)

Plaintiff's second cause of action challenges the portion of Measure B's aggregate contribution limits which applies the limit to "all political committees or broad-based political committees controlled by the candidate" on the basis it violates First and Fourteenth Amendment rights to free speech, association and equal protection. Plaintiff moves for summary judgment on its second cause of action on the ground Measure B's aggregate contribution limits are unconstitutional because Measure B "treats candidates who support or oppose ballot measures differently from other candidates and otherwise restricts their ability to both run for office and campaign for or against a ballot measure." Defendant moves for summary judgment on the second cause of action on the grounds: 1) "Measure B's contribution limits do not apply to contributions made to committees formed to support or oppose a ballot measure;" 2) "Measure B's contribution limits are facially neutral and apply equally to all candidates;" and 3) "Measure B's provision applying the contribution limits to all contributions made to a candidate and any committee controlled by that

candidate is expressly permitted by *McCutcheon v. Federal Election Com’n*, 572 U.S. 185 (2014).”

Measure B does not place any limits on the contributions that can be made to a committee formed to support or oppose a ballot measure. The plain language of Measure B’s aggregate contribution limits provision applies to contributions “to that candidate,” and do not reference a ballot measure. (See Measure B, Section 2-243(A); *id.* Section 2-244(A).) Moreover, Defendant submits evidence of “Impartial Analysis for Measure B” written by the Oxnard City Attorney Stephen Fisher, which states “Measure B does not place a limit on the amount of contributions that can be made to independent expenditure committees or to committees that raise money to support or oppose a City ballot measure.” (Chaparra Decl. Ex. 5.)² Furthermore, Measure B’s aggregate contribution limits apply to all candidates equally.

² The City Clerk declares she is the Elections Official for the City of Oxnard, and “[i]n that capacity the City Clerk is responsible for maintaining election materials for City ballot measures,” including the “impartial Analysis for Measure B written by the City Attorney.” (Chaparra Decl. ¶ 7.). See *Gutierrez v. Mun. Ct. of Se. Jud. Dist., Los Angeles Cty.*, 838 F.2d 1031, 1044 (9th Cir. 1988) (“Where a measure is enacted by the voters rather than the legislature, the ballot materials are recognized as important guides for determining legislative intent.”), *cert. granted, judgment vacated sub nom. Mun. Ct. of Se. Jud. Dist., Cty. of Los Angeles v. Gutierrez*, 490 U.S. 1016, 109 S. Ct. 1736, 104 L. Ed. 2d 174 (1989) (citing *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 245-46 (1978) (voter materials helpful in determining the probable meaning of uncertain language), *overruled on other grounds sub nom. Los Angeles Cty. Transport. Comm’n v. Richmond*, 31 Cal. 3d 197 (1982)).

Moreover, Measure B's aggregate contribution limits apply to the total amount that may be contributed by a donor for a particular candidate, whether they are contributed directly to the candidate or to "political committees or broad-based political committees controlled by the candidate" for the candidate. (See Measure B, Section 2-243(A); *id.* Section 2-244(A).) Thus, Measure B's aggregate contribution limits are akin to "base limits" that "restrict how much money a donor may contribute to a particular candidate or committee," which the Supreme Court has recognized have been "upheld as serving the permissible objective of combatting corruption." *McCutcheon v. Federal Election Com'n*, 572 U.S. 185, 192-93 (2014).

Accordingly, the Court finds Measure B's aggregate candidate contribution limits do not violate the First and Fourteenth Amendments.

5. Constitutionality of Measure B's Gift Ban
(Third Cause of Action)

Measure B provides:

- A. No elected City official or member of the Planning Commission may receive any gift from any person or entity that contacts or is seeking to contract with the City, or with any person who during the prior 12 months knowingly attempted to influence an elected City official or member of the Planning Commission in any legislative or administrative action.
- B. No person may make, and no elected City official or member of the Planning Commission accept [sic], any gift with the intent to influence an elected City official or member of the Planning Commission in the performance of any official act.

- C. No elected City official or member of the Planning Commission may accept or receive any gift from anyone other than the City for the performance of a specific service or act that the elected City official or member of the Planning Commission is expected to render in the regular course of his or her City duties, or for advice about City processes.

(Chaparra Decl. Ex. 7 (hereinafter, “Measure B’s Gift Ban”).) Measure B further provides “[a]n elected City official or member of the Planning Commission has received or accepted a gift when he or she has actual possession of the gift or when he or she takes any action exercising direction or control over the gift, including discarding the gift or turning it over to another person,” and “includes gifts that are accepted by someone else on the official’s behalf and gifts made to others at the direction of the official.” (*Id.*)

Plaintiff’s third cause of action for violation of free speech and association challenges two portions of Measure B’s Gift Ban: (1) the ban on “any gift from any person . . . who during the prior 12 months knowingly attempted to influence an elected City official . . . in any legislative or administrative action” (*Id.* § 2-250(A)), and (2) the ban on the making by any person of “any gift with the intent to influence an elected official in the performance of any official act” (*id.* § 2-250(B)).

The parties agree Measure B’s Gift Ban is subject to “closely drawn scrutiny.”³ Therefore, to be constitu-

³ See also *Schickel v. Dilger*, 925 F.3d 858, 869 (6th Cir. 2019) (“closely drawn scrutiny” standard applies to gift bans), *cert. denied sub nom. Schickel v. Troutman*, 140 S. Ct. 649, 205 L. Ed. 2d 388 (2019); *Preston v. Leake*, 660 F.3d 726, 729-30 (4th Cir. 2011) (upholding lobbyist contribution ban, which defined

tional, Defendant must show “a sufficiently important interest” which is “closely drawn to avoid unnecessary abridgement of associational freedoms.” *McCutcheon*, 572 U.S. at 197.

(1) Important Government Interest

In determining the constitutionality of Measure B’s Gift Ban, the Court must first analyze whether “there is adequate evidence that the limitation furthers a sufficiently important [government] interest.” *Montana Right to Life Ass’n v. Eddleman*, 343 F.3d 1085, 1092 (9th Cir. 2003).

Defendant argues the City has an important interest in diminishing the risk of quid pro quo corruption or the appearance of such corruption which justifies the gift ban. Defendant submits a declaration from the City Manager Alexander Nguyen who declares he hired a firm “to conduct a survey of City residents to determine what residents thought the City’s legislative priorities should be,” “[t]he results of this survey were presented to the City Council on October 15, 2019,” “[t]he survey indicated that more than threequarters of City voters would support a government accountability measure if it was placed on the March 3, 2020 ballot,” “[b]ased on the results of the survey, the City developed Measure B to address the public’s stated desire to institutionalize good government practices, including prohibiting elected officials and planning commissioners from accepting gifts from lobbyists or city contractors,” and “[o]n October 15, 2019, the City Council voted to place Measure B on the March 3, 2020 ballot.” (Nguyen Decl. ¶¶ 3, 4.) Nguyen further declares 1) “[t]he major driving

contributions to include gifts, under closely drawn scrutiny standard).

factors in the City's decision to . . . impose a strict ban on gifts to elected officials are to discourage and prevent undue influence over policy or development decisions, and to minimize the perception that the City's elected officials are indebted to those who can provide expensive gifts" (*id.* ¶ 7); and 2) the City was investigated by the Ventura County District Attorney's Office in 2010, "[t]his investigation uncovered several instances of unethical behavior, inappropriate acceptance of gifts, and misconduct," and "[t]he City has made great strides to recover from that era, and Measure B is an important next step in that progress" (*id.*).

Defendant also submits a copy of a report from the Ventura County District Attorney dated April 18, 2012, entitled "A Report on the Public Integrity Investigation of Oxnard City Officials." (Whatley Decl. Ex. 8 (hereinafter, the "D.A.'s Report").) The D.A.'s Report states "[i]n May 2010, the *Ventura County Star* reported that city officials had received gifts from companies doing business with the city without declaring the gifts as required by law," and the Ventura County District Attorney's Office conducted an investigation regarding an allegation "City officials received gifts of vacations, meals, rounds of golf, and event tickets from companies doing significant business with the city, without publicly declaring the gifts as required by law." (*Id.* at 1, 3.) The D.A.'s Report further states district attorney investigators "examined public records and interviewed witnesses," and the "interviews and records confirmed that several city officials received gifts from companies doing business with the City of Oxnard and failed to public-

ly declare the gifts as required by California law.” (*Id.* at 3.)⁴

Plaintiff argues the D.A.’s Report “provides insufficient justification to warrant Measure B’s intrusion into protected political speech” because “[e]ven though the Report considered illegal gifts, given to both staff and elected officials, a careful reading of the Report demonstrates that it does not support additional gift restrictions.” However, the Court finds Nguyen’s declaration and the D.A.’s Report demonstrate a risk of quid pro quo corruption or its appearance based on gifts to City officials. Therefore, Defendant “has presented sufficient evidence of a valid interest” in preventing quid pro quo corruption or the appearance of such corruption. *See Montana Right to Life Ass’n*, 343 F.3d at 1092; *see also Schickel*, 925 F.3d at 870 (upholding Kentucky’s gift ban, finding “preventing corruption or its appearance would also justify Kentucky’s gift ban” and the government “must show only ‘a cognizable risk of corruption’—a ‘risk of quid pro quo corruption or its appearance’”).

⁴ *See also* D.A.’s Report at 2 (“The investigation found evidence establishing . . . [s]everal city officials failed to declare gifts they received. The failures to declare gifts of meals, golf and event tickets have been referred to the Fair Political Practices Commission for administrative enforcement action. There is insufficient evidence to prove the most serious allegations involving gift vacations and the statute of limitations has expired as to many of the gifts.”); *id.* at 7 (“Reports were also made that officials received gifts of meals, rounds of golf, Broadway show tickets, and tickets to sporting events. These reports have proven true as to several officials, though in lesser amounts than alleged. While there is evidence to prove the gifts were not disclosed, there is insufficient evidence to prove the nondisclosure constituted felony perjury. Enforcement of these reporting violations has been referred to the Fair Political Practices Commission in accordance with the Political Reform Act.”).

(2) Whether the Gift Ban Is “Closely Drawn”

Plaintiff also argues Measure B’s Gift Ban is unconstitutional because it is not “closely drawn to a sufficiently important interest.” In applying the “closely drawn” scrutiny standard, the Court must examine whether Measure B’s Gift Ban is “closely drawn to avoid unnecessary abridgment of associational freedoms.” *Montana Right to Life Ass’n*, 343 F.3d at 1093.

a. Gift Ban as to Any Person Who Has Knowingly Attempted to Influence an Elected City Official

Plaintiff contends the portion of Measure B’s Gift Ban set forth in § 2-250(A) regarding ban of gifts from any person who has knowingly attempted to influence an elected City official is not closely drawn to a government interest because it is overbroad since it “encompasses much more speech than is necessary to prevent corruption.” Plaintiff argues while the title of Measure B’s Gift Ban section is entitled “Prohibition on Acceptance of Gifts from City Contractors and Lobbyists,” the actual language of the ordinance applies the gift ban to “any person” and is not limited to lobbyists. Therefore, Plaintiff argues the Gift Ban is overbroad because it “includes everyone who voices an opinion about city business, whether in person at a city council meeting, in a letter, in a personal conversation with an elected official, or by any other means.” Plaintiff also contends the definition of “gift” used in Measure B’s Gift Ban is overbroad because it has no “limitation whatsoever” and thus “necessarily includes not only gifts reasonably believed to have a corrupting influence (*e.g.*, cash, real estate, expensive dinners, travel, exclusive tickets to concerts or sport-

ing events, and the like) but also more nominal gifts like flowers, coffee, candy, cupcakes or muffins, medication, or even a tissue.”⁵ Plaintiff argues the overbroad use of the terms “any person” and “gift” in Measure B’s Gift Ban would prohibit nominal gifts between friends and neighbors if one is an elected official and the other might occasionally express an opinion about City business,” and prohibit gifts between family or romantic partners, and is therefore unconstitutionally overbroad because it reaches a “substantial number of impermissible applications.”⁶

⁵ Gift” is defined under Measure B as “any payment or other benefit that confers a personal benefit for which an elected City official or member of the Planning Commission does not provide payment or services of equal or greater value and ”includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public,” but does not include “items that are returned (unused) to the donor, for which the official reimburses the donor within 30 days of receipt, or that are donated unused to a non-profit, tax-exempt (501(c)(3)) organization in which the official or immediate family member does not hold a position, or to a government agency within 30 days of receipt within claiming a deduction for tax purposes.” (Measure B’s Gift Ban, § 2-251(A).)

⁶ Plaintiff cites to gift bans in state statutes which limit gift bans to lobbyists and define lobbyists as those who are employed as lobbyists or who are compensated a certain minimum dollar amount for their lobbying activity. *See* Ky. Rev. Stat. § 11A.010(11); Cal. Gov’t Code § 82039(a); Nev. Rev. Stat. § 218H.080; Ariz. Rev. Stat. § 41-1231(12); Haw. Rev. Stat. § 97-1. Plaintiff also cites county/city ordinances which it contends limits gift bans to lobbyists and limits the definition of lobbyists to persons who receive compensation and excludes personal opinions. *See* Plaintiff’s Motion at 29 (citing Santa Clara County, Cal. Code §§ A3-62 & A3-64; Richmond, Cal. Code § 2.54.010; Orange County, Cal. Code § 2.26.010; Long Beach,

While Measure B’s Gift Ban does not include a specific dollar amount value in defining what constitutes a gift, this does not render the Gift Ban unconstitutionally overbroad. In *Schickel v. Dilger*, the Sixth Circuit examined the constitutionality of a Kentucky state statute prohibiting a legislator or his spouse from soliciting, accepting, or agreeing to accept “anything of value” from a lobbyist or his employer. 925 F.3d 858 (6th Cir. 2019). The Sixth Circuit found “no constitutional problem” with Kentucky’s gift ban, reasoning “[t]he gift ban does not prevent lobbyists and legislators from meeting to discuss pressing issues facing Kentuckians” and “does not forbid *any* interaction or the utterance of *any* word between the two,” permits them to “associate as often as they wish over a cup of coffee or dinner or baseball game” and only requires that “if they do, legislators pay their own way.” *Id.* at 875. The Sixth Circuit rejected the plaintiffs’ contention that Kentucky’s gift ban of “[a]ny other thing of value that is pecuniary or compensatory in value to a person, or the primary significance of which is economic gain” was unconstitutionally overbroad, reasoning the gift ban statute was a “fair, reasonable way of preventing quid pro quo corruption and its appearance,” “[t]he gift ban . . . prevent[s] lobbyists from paying for one-on-one or small group interactions with legislators, to avoid the reality or appearance that important state legislation is being bought and sold in private” and concluding the statute encompassed a “legitimate sweep” prohibiting the gifting of “sports tickets, cars, wine, vacations, and art.” *Id.* at 880-81.

Cal. Code § 2.08.020; Orange City, Cal. Code § 2.15.020; L.A. County, Code § 2.160.010; Santa Ana, Cal. Code § 2-852).)

Therefore, here, the lack of a monetary amount in Measure B's definition of the term "gift" and the fact that Measure B's Gift Ban is not limited to "lobbyists" does not render Measure B's Gift Ban unconstitutionally overbroad. As in *Schickel*, here, Measure B's Gift Ban does not prohibit City officials from meeting with or interacting with others; rather, it requires City officials to "pay their own way" when they associate with others. *Id.* Accordingly, the Court finds Measure B's Gift Ban as to any person who has knowingly attempted to influence an elected City official is not unconstitutionally overbroad.

b. Gift Ban as to Any Gift with the Intent to Influence an Elected Official

Plaintiff argues the portion of Measure B's Gift Ban of "any gift with the intent to influence an elected official in the performance of any official act" set forth in § 2-250(B) is overbroad because "not all such gifts have a corrupting influence." Plaintiff contends the wife of Plaintiff's President gifted City Council members with homemade cupcakes in April 2017 which Plaintiff argues "was intended to foster goodwill and future cooperation in a relationship marred by hostility" and "an act of political theater, intended to show both the council and community that Starr (Plaintiff's President) would not be intimidated by the City's aggression." Plaintiff argues Measure B's Gift Ban is thus overbroad because it would have made both the giving and acceptance of the cupcakes a crime, and thus prohibits gifts that are "not an act of corruption" which demonstrates it "burdens more speech than is necessary to satisfy an objective to deter corruption."

The Sixth Circuit rejected a similar argument in *Schickel v. Dilger*. In *Schickel*, the plaintiffs argued Kentucky's gift ban statute was unconstitutionally overbroad because it would prohibit receiving a bottle of water, walking into a heated building, or using the restroom in a factory. 925 F.3d at 879-80. The Sixth Circuit noted "almost all statutes are susceptible to clever hypotheticals testing its reach," and found the plaintiffs' hypotheticals failed to demonstrate Kentucky's gift ban statute was overbroad under the First Amendment or had a chilling effect, reasoning the plaintiffs "provide no evidence of any person who has ever been charged with violating [Kentucky's gift ban statute] for (i) receiving a bottle of water; (ii) walking into a heated or cooled room; or even (iii) using the restroom in a lobbyist's office," and "[i]n the unlikely event that [the government] ever charges anyone for (or threatens enforcement of) such conduct, an as-applied challenge would be appropriate." *Id.* The Sixth Circuit concluded Kentucky's gift ban statute was not unconstitutionally under the First Amendment because it "prevent[s] lobbyists from paying for one-on-one or small group interactions with legislators, to avoid the reality or appearance that important state legislation is being bought and sold in private," and "the plainly legitimate sweep of these provisions to sports tickets, cars, wine, vacations, and art, the gift ban is not overbroad." *Id.* at 881. Similarly, here, Measure B's Gift Ban provision prohibiting any gift with the intent to influence an elected official is not unconstitutionally overbroad.

* * *

As demonstrated above, Measure B's Gift Ban is closely drawn to further the City's anticorruption interest, and therefore passes constitutional muster.

See Schickel, 925 F.3d at 881 (affirming the district court’s judgment upholding the constitutionality of Kentucky’s gift ban statute upon finding the statute “pass[ed] constitutional muster” because it was “closely drawn to further Kentucky’s anticorruption interest”).

IV. CONCLUSION

Accordingly, the Court:

1. **GRANTS** Defendant’s Motion for Summary Judgment on Plaintiff’s first cause of action (violation of First Amendment based on Measure B’s per candidate contribution limits), second cause of action (violation of First and Fourteenth Amendment based on Measure B’s aggregate contribution limits), and third cause of action (violation of the First Amendment based on Measure B’s Gift Ban); and
2. **DENIES** Plaintiff’s Motion for Summary Judgment as to each of Plaintiff’s causes of action.

IT IS SO ORDERED.

DATED: August 5, 2021.

/s/ Consuelo B. Marshall
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

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APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No.: CV 20-4122-CBM-(AFMx)

MOVING OXNARD FORWARD INC.,

Plaintiff,

v.

MICHELLE ASCENCION, in her official capacity
as City Clerk for the City of Oxnard,

Defendant.

JUDGMENT [JS-6]

Consistent with the Order re: Defendant's Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment, and Plaintiff's Motion for Summary Judgment / Adjudication, judgment is entered in favor of Defendant Michelle Ascencion, in her official capacity as City Clerk for the City of Oxnard, and against Plaintiff Moving Oxnard Forward Inc.

DATED: August 5, 2021.

/s/ Consuelo B. Marshall
HON. CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

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APPENDIX E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No.: CV 20-4122-CBM-(AFMx)

MOVING OXNARD FORWARD, INC.,

Plaintiff,

v.

MICHELLE ASCENCION, in her official capacity
as City Clerk for the City of Oxnard,

Defendant.

ORDER RE: EVIDENTIARY
OBJECTIONS
RE: SUMMARY JUDGMENT MOTIONS

The matters before the Court are the parties' objections to the evidence submitted in connection with Defendant's Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment and Plaintiff's Motion for Summary Judgment / Adjudication. The Court rules on the parties' evidentiary objections as follows.

A. Plaintiff's Evidentiary Objections

- (1) Investigative report by Ventura County District Attorneys' Office

Defendant submits a certified copy of a "A Report on the Public Integrity Investigation of Oxnard City Officials" by the Ventura County District Attorneys'

Office dated April 18, 2012, and revised June 15, 2012. (Whatley Decl. ¶ 2, Ex. 8.) Plaintiff objects to the entirety of the report as inadmissible hearsay.

Federal Rule of Evidence 808(8) provides “[a] record or statement of a public office” is not excluded by the rule against hearsay, “if:

(A) it sets out:

- (i) the office’s activities;
- (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or
- (iii) in a civil case or against the government in a criminal case, *factual findings* from a legally authorized investigation; and

(B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness.

Fed. R. Evid. 803(8) (emphasis added).

Here, the report states the District Attorney’s Office is a county law enforcement agency with the primary responsibility for investigating allegations of criminal misconduct by government officials, and the report was made in connection with an investigation by the District Attorneys’ Office after it received reports of corruption among City of Oxnard officials in June 2010. (Whatley Decl. Ex. 8 at p.28.) Therefore, the report was from a legally authorized investigation and constitutes a public record under Fed. R. Evid. 803(8).

As to trustworthiness of the report, “[p]ublic records and reports falling under Rule 803(8)(C) are pre-

sumed trustworthy, placing ‘the burden of establishing untrustworthiness on the opponent of the evidence.’” *Montiel v. Los Angeles*, 2 F.3d 335, 341 (9th Cir. 1993) (quoting *Keith v. Volpe*, 858 F.2d 467, 481 (9th Cir.1988), *cert. denied*, 493 U.S. 813 (1989)). Thus, the D.A.’s report is presumed trustworthy and Plaintiff has the burden to establish the report’s untrustworthiness. In considering the trustworthiness of an investigative report, courts consider: (1) the timeliness of the investigation; (2) the investigator’s skill or experience; (3) whether a hearing was held; and (4) possible bias when the report was prepared with a view to possible litigation. *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153, 167 n.11 (1988). Here, Plaintiff does not challenge the timeliness of the D.A.’s investigation or the D.A.’s skill or experience nor demonstrate that the report is biased and thus fails to carry its burden of showing the report is untrustworthy. *See United States v. Sepulveda*, 392 F. App’x 529, 531 (9th Cir. 2010). Therefore, the Court finds the factual findings in the report are admissible under Fed. R. Evid. 803(8)’s public records exception, but the summary of any witness statements or legal conclusions in the report are not admissible. *See Endsley v. Luna*, 750 F. Supp. 2d 1074, 1092 (C.D. Cal. 2010), *aff’d*, 473 F. App’x 745 (9th Cir. 2012); *Bordegaray v. Cty. of Santa Barbara*, 2016 WL 7223254, at *3 n.3 (C.D. Cal. Dec. 12, 2016); *Bates v. Kender*, 537 F. Supp.2d 281 (D. Mass. 2008).

Accordingly, the Court **OVERRULES** Plaintiff’s objections as to the factual findings in the report, and **SUSTAINS** Plaintiff’s objections to the summary of any witness statements or legal conclusions in the report.

(2) Expert Report of Thad Kousser, Ph.D.

Defendant offers an expert report from Thad Kousser, Ph.D., in connection with the Motions. Plaintiff objects to Kousser's report on the ground that Kousser's report is a rebuttal expert report, but because Plaintiff withdrew its expert reports, there is nothing to rebut. Defense counsel declares she received Plaintiff's expert witness disclosure on February 15, 2021, wherein Plaintiff designated two non-retained experts who would testify that "[t]here have not been any allegations of corruption in the city of Oxnard." (Whatley Decl. ¶ 2, Ex. 14.) Defense counsel declares: 1) Dr. Kousser prepared a rebuttal report to Plaintiff's expert designations that addressed the topic of allegations of corruption in the City, and that Dr. Kousser's rebuttal report was timely disclosed to Plaintiff on March 15, 2021. (*Id.* ¶ 3); and 2) on March 12, 2021, her office served subpoenas for Plaintiff's designated expert witnesses and noticed their depositions, but on March 24, 2021 Plaintiff withdrew its designation of the two expert witnesses and submitted an amended expert disclosure which stated "Plaintiff will not be presenting any testimony under Federal Rules of Evidence, Rules 702, 703, or 705" (*id.* ¶ 4, Ex. 15).¹

Because Defendant's rebuttal report was timely disclosed and Plaintiff continues to argue there is no evidence of corruption in the City, Defendant may offer Dr. Kousser's rebuttal report as evidence regarding an evidentiary issue raised by Plaintiff in its summary judgment motion. *See, e.g., Shay v. Cty. of*

¹ Neither party cites to any authority regarding the admissibility of Dr. Kousser's rebuttal report in light of Plaintiff's withdrawal of its expert designations.

Los Angeles, 2019 WL 5420262, at *5–6 (C.D. Cal. Oct. 21, 2019). Accordingly, the Court **OVERRULES** Plaintiff’s objections to the Expert Report of Thad Kousser, Ph.D.

(3) Nguyen Declaration

Defendant offers a declaration from the City Manager Alexander Nguyen in connection with the Motions.

In paragraph 3 of his declaration, Nguyen declares: “The survey indicated that more than threequarters of City voters would support a government accountability measure if it was placed on the March 3, 2020 ballot.” Plaintiff objects to paragraph 3 of Nguyen’s declaration for lack of personal knowledge and lack of foundation on the ground Nguyen’s statements regarding the survey contains multiple levels of hearsay within hearsay and based on the best evidence rule. Nguyen hired Fairbank, Maslin, Maullin, Metz & Associates to conduct the survey, and attended the City Council meeting where the results of the survey were discussed and presented to the public, and therefore has personal knowledge of the survey results presented on October 15, 2019. Moreover, Nguyen’s summary of the survey is not hearsay because it is not offered for the truth of the matter asserted and the best evidence rule does not apply because it was offered to explain the City’s motivations in developing Measure B. Accordingly, the Court **OVERRULES** Plaintiff’s objections to paragraph 3 of Nguyen’s declaration.

In paragraph 6 of Nguyen’s declaration, Nguyen declares: “The Inter-Neighborhood Council Organization (“INCO”) is made up of the chairpersons of each active neighborhood council, and serves as an

advocacy group between those councils and the Oxnard City Council.” Plaintiff objects to paragraph 6 of Nguyen’s declaration on the ground it lacks foundation as to what constitutes “each active neighborhood council.” However, Nguyen’s statement plainly refers to the councils of neighborhoods in Oxnard, and Nguyen is the City Manager who has personal knowledge of INCO and the neighborhood councils. Accordingly, the Court **OVERRULES** Plaintiff’s objections to paragraph 6 of Nguyen’s declaration.

Nguyen attached his February 5, 2020 presentation at an INCO meeting regarding Measure B as Exhibit 1 to his declaration. Plaintiff objects to Exhibit 1 on the ground Nguyen lacks personal knowledge, it is hearsay, and under the best evidence rule. However, Nguyen created the presentation and therefore has personal knowledge as to the contents of to Exhibit 1. Moreover, Exhibit 1 is the presentation which Nguyen created and presented so the best evidence rule does not apply. Furthermore, the presentation is not hearsay because it is not offered for the truth of the contents of the presentation, but instead offered by Defendant to demonstrate the information provided to voters prior to the election in March 3, 2020 regarding the risk of corruption in city elections and the way Measure B would address that risk. Accordingly, the Court **OVERRULES** Plaintiff’s objections to Exhibit 1 of Nguyen’s declaration.

In paragraph 7, Nguyen declares: “[The District Attorney’s] investigation uncovered several instances of unethical behavior, inappropriate acceptance of gifts, and misconduct.” Plaintiff objects to paragraph 7 of Nguyen’s declaration as hearsay and under the best evidence rule. Paragraph 7 of Nguyen’s declaration is based on Nguyen’s personal knowledge, is not hear-

say because it is not offered for the truth but instead offered to show the reason Measure B was adopted. Moreover, the best evidence rule does not apply because Nguyen's statement in paragraph 7 of his declaration is not offered to prove the contents of the investigation. *See, e.g., Franklin v. Sacramento Area Flood Control Agency*, 2009 WL 2399569, at *3 n.5 (E.D. Cal. Apr. 29, 2009). Accordingly, the Court **OVERRULES** Plaintiff's objections to paragraph 7 of Nguyen's declaration.

In paragraph 8, Nguyen declares: "82% of the City's voters proceeded to vote yes, demonstrating their agreement with the need for campaign contribution limits and a gift ban." Plaintiff objects to paragraph 8 of Nguyen's declaration on the ground it is speculative. The Court **SUSTAINS** Plaintiff's objection as to the statement "demonstrating their agreement with the need for campaign contribution limits and a gift ban," and **OVERRULES** Plaintiff's objection as to the statement "82% of the City's voters proceeded to vote yes."

(4) Declaration of Rose Chaparro

Defendant submits a declaration from Rose Chaparro, the City Clerk, in connection with the Motions. Chaparro attached a presentation titled "City of Oxnard Issues Survey" presented to the City Council during an October 15, 2019 City Council meeting as exhibit 3 to her declaration. Plaintiff objects to Exhibit 3 to Chaparro's declaration on the ground Chaparro lacks personal knowledge, it is hearsay, and under the best evidence rule. However, Chaparro declares one of her duties as City Clerk is maintaining copies of documents distributed to or presented to the members of the City Council during public meetings and making those documents available for public inspec-

tion as required by Cal. Gov't Code § 54957.5, and Ex. 3 was presented to the City Council during the October 15, 2019 meeting and made available to the public as part of the Agenda Packet posted by the City Clerk's office on the City's website in advance of the October 15, 2019 City Council meeting. (Chaparro Decl. ¶¶ 3, 5.) As to Plaintiff's hearsay objection, Defendant argues that the presentation falls under the business record exception to hearsay pursuant to Fed. R. Evid. 803(6), citing to Nguyen's declaration wherein he declares Exhibit 3 was presented during the October 15, 2019 City Council meeting by Fairbank, Maslin, Maullin, Metz & Associates, the firm hired by Nguyen to conduct a survey of City residents to determine what the residents thought the City's legislative priorities should be (Nguyen Decl. ¶ 3). However, neither Nguyen nor Chaparro declare or certify that Exhibit 3 was "kept in the course of a regularly conducted activity" or that "making the record was a regular practice of that activity" as required for Rule 803(6)'s business records exception. *See* Fed. R. Evid. 803(6). Therefore, Defendant fails to demonstrate the business record exception applies. Accordingly, the Court **OVERRULES** Plaintiff's objection to Exhibit 3 of Chaparro's declaration for lack of personal knowledge and based on the best evidence rule, but **SUSTAINS** Plaintiff's hearsay objection to Exhibit 3.

B. Defendant's Evidentiary Objections

(1) Alicia Percell Declaration

Defendant objects to paragraphs 4, 6, 7, and 8 of the declaration of Alicia Percell (the Secretary of Plaintiff Moving Oxnard Forward) filed by Plaintiff. (Dkt. No. 23-4).

Paragraph 4 of Percell's declaration states: "During a 16-day period from April 30, 2015 to May 16, 2016, I along with other Moving Oxnard Forward (MOF) members and my husband, Aaron Starr (MOF's President) obtained sufficient petition signatures to qualify a ballot measure to repeal the City's wastewater fee increase. Before we started collecting signatures, the City sued Aaron to prevent us from collecting signatures. When that failed, they tried to keep it off the ballot. That failed, and in November 2016, Oxnard voters overwhelmingly adopted the measure. The City's lawsuit persisted as a postelection challenge to determine Measure M's validity." Defendant objects to paragraph 4 of Percell's declaration on the grounds it is irrelevant, lacks foundation, and is prejudicial, and Measure M is not at issue in this lawsuit. The Court **SUSTAINS** Defendant's objections to paragraph 4 of Percell's declaration.

Paragraph 6 of Percell's declaration states: "I wanted to use the occasion to bring attention to problems in the City, one of which was its illegal infrastructure use fee, which we believed violated California's Proposition 218 by diverting utility fees paid for water, sewer, and the like and using them for general fund purposes. The City was served with our lawsuit contesting its IUF the same evening I provided cupcakes. In newspaper coverage relating to the meeting, the Ventura County Star mentioned both our lawsuit and my cupcakes." Defendant objects to paragraph 6 of Percell's declaration on the ground it is irrelevant, lacks foundation, is prejudicial, and the IUF lawsuit is not related to or at issue in this lawsuit. The Court **SUSTAINS** Defendant's objection to paragraph 6 of Percell's declaration as irrelevant.

Paragraph 7 of Percell's declaration states: "Earlier this year, the Ventura County Superior Court decided the IUF lawsuit in our favor and ordered the City to refund \$36.5 million back to the utilities from its general fund. We hope this will result in lower utility fees paid by Oxnard residents now that the utilities will no longer be used as an additional source of tax revenue to prop-up the City's general fund." Defendant objects to paragraph 7 of Percell's declaration on the grounds it is irrelevant, lacks foundation, and is prejudicial, and the IUF lawsuit is not related to or at issue in this lawsuit. The Court **SUSTAINS** Defendant's objection to paragraph 7 of Percell's declaration as irrelevant.

Paragraph 8 of Percell's declaration states: "Going back to the City's Measure M lawsuit, we prevailed at trial [sic]. Then the Court of Appeal reversed the judgment. I am informed and believe that the case is now pending back at the trial court for further consideration." Defendant objects to paragraph 8 of Percell's declaration on the grounds it is irrelevant, lacks foundation, is prejudicial, and Measure M is not at issue in this lawsuit. The Court **SUSTAINS** Defendant's objection to paragraph 8 of Percell's declaration as irrelevant.

(2) Aaron Starr Declaration

Defendant objects to paragraphs 4 and 5 of the declaration of Aaron Starr (the President of Plaintiff Moving Oxnard Forward) filed by Plaintiff. (Dkt. No. 23-3.)

Paragraph 4 of Starr's Declaration states in part: "More specifically, it was presented as a way to reduce the amount of money I spend in the City, both on my personal campaigns and in support of the bal-

lot measures I have proposed.” Defendant objects to this portion of paragraph 4 of Starr’s declaration on the ground it is irrelevant, argumentative, speculative, lacks foundation, hearsay, and does not appear to be within the witness’s personal knowledge, and on the basis courts “will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive” (quoting *United States v. O’Brien*, 391 U.S. 367, 383–385 (1968)). The Court **SUSTAINS** Defendant’s objections to this portion of paragraph 4 of Starr’s declaration as argumentative, speculative, lacking foundation, and lack of personal knowledge.

Paragraph 4 of Starr’s Declaration states in part: “This was apparent in examples provided, which were based on my campaign finance filings as if my activism to increase transparency and lower taxes and fees in the City was a source of corruption.” Defendant objects to this portion of paragraph 4 of Starr’s declaration on the grounds it is irrelevant, argumentative, speculative, hearsay, and lacks foundation, and on the basis courts “will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive” (quoting *United States v. O’Brien*, 391 U.S. 367, 383–85 (1968)). The Court **SUSTAINS** Defendant’s objections to this portion of paragraph 4 of Starr’s declaration as argumentative, speculative, and lacking foundation.

Defendant also objects to paragraph 5 of Starr’s declaration which states: “This established contribution limits in Oxnard that are lower than many other surrounding and comparable cities, many of which are like Oxnard prior to Measure B and have no limit whatsoever.” Defendant objects to paragraph 5 of Starr’s declaration on the grounds it is irrelevant, ar-

gumentative, speculative, lacks foundation, does not appear to be within the witness's personal knowledge, is improper opinion testimony, Starr was never disclosed by Plaintiff as an expert in this case and Starr does not appear to have the necessary expertise to provide such expert testimony as required under *Daubert*. The Court **SUSTAINS** Defendant's objections to paragraph 5 of Starr's declaration as irrelevant and lacking foundation.

IT IS SO ORDERED.

DATED: August 5, 2021.

/s/Consuelo B. Marshall
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

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APPENDIX F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No.: CV 20-4122-CBM-(AFMx)

MOVING OXNARD FORWARD INC.,

Plaintiff,

v.

MICHELLE ASCENCION, in her official capacity
as City Clerk for the City of Oxnard,

Defendant.

ORDER RE: PLAINTIFF'S

MOTION FOR NEW TRIAL AND
MOTION FOR RECONSIDERATION [42]

The matter before is Plaintiff's Motion for New Trial pursuant to Federal Rule of Civil Procedure 59 and Motion for Reconsideration. (Dkt. No. 42 (the "Motion").)

I. BACKGROUND

This is an action brought under 42 U.S.C. § 1983 challenging the constitutionality of a ballot measure, Measure B, which was approved by voters in the City of Oxnard (the "City") on March 3, 2020, and which went into effect on May 1, 2020. The Complaint asserts the following three causes of action: 1) violation of free speech and association based on Measure B's per candidate contribution limits; 2) violation of free speech, association and equal protection based on

Measure B's aggregate contribution limits; and 3) violation of free speech and association based on Measure B's gift ban. The parties filed cross-motions for summary judgment. On August 5, 2021, the Court granted Defendant's Motion for Summary Judgment upon finding Measure B's contribution limits and gift ban were not unconstitutional. (Dkt. No. 36 (the "Summary Judgment Order").) Consistent with the Court's Summary Judgment Order, judgment was entered in favor of Defendant on August 5, 2021. (Dkt. No. 38.)

II. STATEMENT OF THE LAW

Federal Rule of Civil Procedure 59(a) governs motions for a new trial. Rule 59(a) provides:

(1) *Grounds for New Trial.* The court may, on motion, grant a new trial on all or some of the issues--and to any party--as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or

(B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) *Further Action After a Nonjury Trial.* After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

Fed. R. Civ. P. 59(a).

Federal Rule of Civil Procedure 59(e) provides: "A motion to alter or amend a judgment must be filed no

later than 28 days after the entry of the judgment.” “While Rule 59(e) permits a district court to reconsider and amend a previous order, the rule offers an ‘extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.’” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (citation omitted). “[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.” *Id.* (citation omitted). “A Rule 59(e) motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.” *Id.*

III. DISCUSSION

A. Motion for New Trial

Plaintiff contends a new trial is warranted based on “newly discovered evidence and changes to or clarifications of the law” which “would have resulted in a different ruling on the parties’ cross-motions for summary judgment because Defendant’s evidence was insufficient to support summary judgment in its favor.” However, the Court granted Defendant’s motion for summary judgment and entered judgment in favor of Defendant consistent therewith. No trial took place in this action. Therefore, the Court denies Plaintiff’s Motion for New Trial. *See Merrill v. Cty. Of Madera*, 389 F. App’x 613, 615 (9th Cir. 2010) (affirming the district court’s denial of the plaintiffs’ motion for a new trial, reasoning “a Rule 59(a) motion for new trial is not available on claims or causes of actions for which Plaintiffs never received a trial”); *Berndt v. City of Los Angeles*, 2013 WL 12075979, at *3 (C.D. Cal. June 6, 2013) (“It is . . . nonsensical to

move for a new trial where a case has been decided at the summary judgment stage. Instead, where summary judgment has been granted, a party is relegated to an appeal or a motion for reconsideration. Accordingly, Plaintiffs' Motion for a New Trial is DENIED.") (citing L.R. 7-18).

B. Motion for Reconsideration

At the October 5, 2021 hearing on the Motion, the Court inquired whether Plaintiff's Motion should be construed as a motion for reconsideration of the Court's Summary Judgment Order because there was no trial in this action. Following the hearing, the parties filed supplemental briefs on the issue of whether the Motion should be treated as a motion for reconsideration.¹

"District courts should treat motions seeking reconsideration of dismissal or summary judgment as Rule 59(e) motions, whether or not they cite the rule." *Hoffman v. Gen. Motors Acceptance Corp.*, 814 F.2d 1385, 1387 (9th Cir. 1987); *see also Otto v. Emp. Ret. Income Plan-Hourly W.*, 2015 WL 13333509, at *4 (C.D. Cal. June 5, 2015) (construing the motion for new trial "as one to reconsider the earlier order that granted summary judgment for Defendant pursuant to Fed. R. Civ. P. 59(e)"). Therefore, the Court construes the Motion as a motion for reconsideration of the Summary Judgment Order.

The motion for reconsideration is denied for the reasons set forth below.

¹ In Plaintiff's supplemental brief, Plaintiff argues the "effect" of the standard for a motion for reconsideration and motion for a new motion is the "same" based on the circumstances of this case, and therefore states it "submits on its prior filings."

1) Newly Discovered Evidence

Plaintiff's counsel declares that on July 22, 2021, the City of Oxnard published on its YouTube channel a video recording of a live interview of the City Manager with Citizens for a Better Oxnard and Oxnard LIVE, during which the City Manager stated on several occasions that there is no corruption in the City of Oxnard. (Morgan Decl. ¶¶ 4, 6.) Plaintiff argues the City Manager's statements during the interview constitute party admissions and a prior inconsistent statement that could be used to impeach future testimony about the City Manager's concern regarding corruption in the City.²

The parties' cross-motions for summary judgment were fully briefed on May 11, 2021, and the hearing on the summary judgment motions took place on May 25, 2021. (*See* Dkt. Nos. 26, 27, 29.) Plaintiff's counsel declares he first learned about the City Manager's interview on July 28, 2021, and that the interview was made after the parties' summary judgment motions were fully briefed. (Morgan Decl. ¶¶ 4, 6.) The Court issued its Order granting Defendant's motion for summary judgment and denying Plaintiff's cross-motion for summary judgment on August 5, 2021. (Dkt. No. 36.) Therefore, Plaintiff's counsel was

² Plaintiff provided a website link to a YouTube Video titled "Citizens for a Better Oxnard and Oxnard LIVE / Interview with Oxnard's City Manager (July 21, 2021)." Plaintiff does not identify the specific statements made by the City Manager in the video supporting the Motion. The Court, however, has reviewed the approximately 1 hour 30 minutes long video interview. The City Manager states during the video interview: "Of the seven people that we have [elected officials in the City of Oxnard], . . . I am incredibly grateful for and excited about the fact that I don't have to worry about corruption. And that is petty to serious. As I sit here today, I am not worried about that."

aware of the City Manager's interview prior to the Court's ruling on the summary judgment motions. Accordingly, such evidence cannot be considered "newly discovered evidence" warranting reconsideration of the Court's Order granting summary judgment in favor of Defendant. See *Frederick S. Wyle Pro. Corp. v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir. 1985) ("Counsel for the trustee admitted that the evidence he was offering was available before disposition of the motion for summary judgment. Therefore, as a matter of law . . . , the trustee was not entitled to reconsideration based on that evidence.").³

Even if the City Manager's statements in the interview constitutes newly discovered evidence despite the fact that it was known to Plaintiff's counsel prior to the Court's issuance of the Summary Judgment Order, Plaintiff fails to demonstrate such evidence could not have been discovered earlier through due diligence. Plaintiff could have deposed the City Manager prior to the filing of the summary judgment motions to obtain testimony regarding the City Manager's beliefs regarding corruption in the City. Howev-

³ See also *Deanda v. Sav. Inv., Inc.*, 2006 WL 8443521, at *2 (S.D. Cal. Jan. 24, 2006) (rejecting defendants contention that certain testimony constituted "new" evidence because the evidence was not available until after defendants' motion for summary judgment was fully briefed, reasoning defendants could have discovered such evidence approximately three months before the Court issued its summary judgment ruling and therefore such evidence did not warrant reconsideration of the court's summary judgment ruling); *Wordtech Sys., Inc. v. Integrated Network Sols., Inc.*, 2010 WL 2569057, at *1 (E.D. Cal. June 22, 2010) ("Because Ghodsian has not shown that there is any newly discovered evidence that could not have been provided to the court prior to that ruling, . . . Ghodsian's motion for reconsideration of the March 25, 2010 order will be denied.").

er, Plaintiff's counsel declares he chose not to depose the City Manager prior to the summary judgment motions because Plaintiff's counsel "did not anticipate anything other than self-serving testimony." (Morgan Decl. ¶ 7.) Therefore, Plaintiff fails to show that testimony from the City Manager regarding corruption could not have been discovered by Plaintiff prior the Court's ruling on the summary judgment motions had Plaintiff exercised due diligence. *See Dixon v. Wallowa Cty.*, 336 F.3d 1013, 1022 (9th Cir. 2003) ("To justify an amendment [under Rule 59(e)], Dixon must also show that the evidence was discovered after the judgment, that the evidence could not be discovered earlier through due diligence, and that the newly discovered evidence is of such a magnitude that had the court known of it earlier, the outcome would likely have been different. Dixon fails to demonstrate that this "newly discovered evidence" could not have been discovered earlier through due diligence.") (internal citations omitted); *Martinez v. Wawona Frozen Foods*, 247 F. App'x 883, 885 (9th Cir. 2007) (affirming district court's denial of motion for reconsideration based on purported newly discovered evidence where appellant had the opportunity to depose the witnesses and "was given ample time to pursue the necessary discovery").⁴

⁴ *See also Frost-Tsuji Architects v. Highway Inn, Inc.*, 2015 WL 328239, at *4 (D. Haw. Jan. 23, 2015) ("Frost-Tsuji's failure to seek discovery with reasonable diligence precludes it from now obtaining reconsideration of the court's orders based on newly discovered evidence."), *aff'd*, 700 F. App'x 674 (9th Cir. 2017); *Tagupa v. Vipdesk, Inc.*, 2016 WL 236210, at *3 (D. Haw. Jan. 19, 2016) (finding the plaintiff "failed to demonstrate reasonable diligence" warranting reconsideration of an order based on newly discovered evidence, reasoning plaintiff "certainly could have deposed Ornellas—a key witness . . .—well before her

Furthermore, Plaintiff fails to demonstrate the City Manager's statements in the video interview is "evidence" of "such magnitude that had the court known of it earlier, the outcome would likely have been different." *Dixon*, 336 F.3d at 1022. In the Summary Judgment Order, the Court found Defendant satisfied her "evidentiary obligation" to demonstrate a sufficiently important governmental interest in contribution limits based on the following evidence submitted by Defendant:

1. In 2010, the City was investigated by the Ventura County District Attorneys' offices in connection with allegations of conflict of interest, misappropriation, and violation of gift reporting laws (Whatley Decl. ¶ 2, Ex. 8, "A Report on the Public Integrity Investigation of Oxnard City Officials" by the Ventura County District Attorneys' Office dated April 18, 2012, and revised June 15, 2012 (hereinafter, the "D.A.'s Report") at 1);
2. The City Manager hired a firm to conduct a survey of City residents to determine what residents thought the City's legislative priorities should be, and the survey results indicated that more than three-quarters of City voters would support a government accountability measure if it was placed on the March 3, 2020 ballot (Nguyen Decl. ¶ 3; Chaparra Decl. Ex. 4); and
3. The City decided to place Measure B on the ballot, rather than having the City Council adopt the campaign contribution limits and

opposition to [defendant's]summary judgment motion was due.").

gift ban directly, and 82% of the City's voters voted yes on Measure B, demonstrating their agreement with the need for contribution limits (Nguyen Decl. ¶ 8).

(Order at 5 (citing *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 393-94 (2000)).) Even if Plaintiff had submitted evidence regarding the City Manager's statement in the video interview that he is not worried about corruption among the City's elected officials, the evidence offered by Defendant was and still is now sufficient to satisfy her evidentiary burden of demonstrating a sufficiently important government interest in contribution limits. *See Nixon*, 528 U.S. at 393-94 (finding the state satisfied its "evidentiary obligation" to demonstrate a sufficiently important state interest in contribution limits through evidence which included an affidavit from a senator at the time the Missouri enacted the contribution limits who attested that large contributions have "the real potential to buy votes," newspaper accounts of large contributions supporting inferences of impropriety, and the statewide vote on Proposition A where 74% of the voters of Missouri determined "contribution limits are necessary to combat corruption and the appearance thereof"). Accordingly, Plaintiff fails to demonstrate there is newly discovered evidence warranting reconsideration of the Court's Summary Judgment Order.

2) Change in Law

Plaintiff also contends there was a change in law based on *Thompson v. Hebdon*, 7 F.4th 811 (9th Cir. 2021), and *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021).

In *Thompson v. Hebdon*, 7 F.4th 811 (9th Cir. 2021), the Ninth Circuit revised its prior opinion with respect to Alaskan law regulating campaign contributions after the Supreme Court issued a per curiam opinion in *Thompson v. Hebdon*, 140 S. Ct. 348, 351 (2019), granting plaintiffs’ petition for certiorari, vacating the Ninth Circuit’s judgment, and remanding the case for the Ninth Circuit to “revisit’ whether the individual-to-candidate and individual-to-group limits ‘are constitute with [the Supreme Court’s] First Amendment precedents,’ in particular *Randall v. Sorrell*, 548 U.S. 230, 126 S.Ct. 2479, 165 L.Ed.2 482 (2006).” 7 F.4th at 816. On remand, the Ninth Circuit applied the five *Randall* factors⁵ in light of the Supreme Court’s finding that there were “danger signs” pursuant to *Randall* regarding Alaska’s \$500 individual-to-candidate contribution limits because the limit is 1) “substantially lower than . . . the limits [the Supreme Court has] previously upheld”; 2) “substantially lower than . . . comparable limits in other States”; and 3) “is not adjusted for inflation.” *Thompson v. Hebdon*, 140 S. Ct. at 351.⁶ Upon applying the *Randall* factors, the Ninth Circuit affirmed the dis-

⁵ *Randall* considered five factors to determine whether Vermont’s limits were constitutional: (1) whether the limits would significantly restrict the amount of funding available for challengers to run competitive campaigns; (2) whether political parties must abide by the same low limits that apply to individual contributors; (3) whether volunteer services or expenses are considered contributions that would count toward the limit; (4) whether the limits are indexed for inflation; and (5) whether there is any “special justification” that might warrant such low limits. *Randall*, 548 U.S. at 244–62.

⁶ In its original decision which was vacated by the Supreme Court, the Ninth Circuit noted *Randall* was “not binding authority because no opinion commanded a majority of the Court.” *Thompson*, 909 F.3d at 1037 n.5.

trict court's decision upholding Alaska's political-party-to-candidate and nonresident contribution limits, but reversed the district court's decision upholding the individual-to-candidate and individual-to-group limits. *Thompson v. Hebdon*, 7 F.4th at 816.

In this Court's Summary Judgment Order, the Court applied the Supreme Court's decisions in *Randall v. Sorrell*, 548 U.S. 230 (2006), and *Thompson v. Hebdon*, 140 S. Ct. 348 (2019), in finding that there were no "danger signs" that existed in *Randall* or *Thompson* with respect to Measure B's contribution limits. The Court found "[u]nlike in *Randall* where Vermont's contribution limits were 'the lowest in the Nation,' and *Thompson* where Alaska's contribution limits were 'substantially lower' than comparable limits in other states," the evidence before the Court demonstrated Measure B's contribution limits are not the lowest in California and are near the median level of other California cities, and a district court in *Thalheimer v. City of San Diego*, 2012 WL 177414 (S.D. Cal. Jan. 20, 2012), had upheld a San Diego city ordinance limiting contributions in city elections to \$500 per candidate per election. (Summary Judgment Order at 6-7.) Accordingly, this Court found an analysis of the five factors set forth in *Randall* to determine whether Measure B was closely drawn to an important government interest was not warranted. (*Id.* at 7 n.1.) Therefore, the Ninth Circuit's decision in *Thompson v. Hebdon*, 7 F.4th 811 (9th Cir. 2021), is not a change in law that warrants reconsideration of this Court's Summary Judgment Order.

Plaintiff also argues this Court should have applied "exacting scrutiny" rather than intermediate scrutiny on summary judgment when examining the constitutionality of Measure B, citing to *Americans for Pros-*

perity Found. v. Bonta, 141 S. Ct. 2373 (2021). However, *Americans for Prosperity Found. v. Bonta* did not involve whether campaign contributions were constitutional, and therefore does not warrant reconsideration of this Court’s Summary Judgment Order. Plaintiff further contends in its reply that “there were three votes for intermediate scrutiny, three votes for strict scrutiny, and three votes for a lesser standard” in *Randall* and “[w]ithout a clear *Randall* majority, and additional guidance from *Americans for Prosperity* expanding the universe campaign finances cases subject to strict scrutiny, this Court can revisit its decision and apply strict scrutiny in Measure B’s contribution limits.” However, nothing in *Americans for Prosperity Foundation* requires application of strict scrutiny to campaign contribution limits.⁷

Therefore, Plaintiff fails to identify a change in law warranting reconsideration of the Court’s Summary Judgment Order.

3) Insufficient Evidence

Plaintiff also argues “[b]ecause the City has based Measure B’s limits on general concerns, applicable everywhere, its evidence supporting the City’s interest in limiting campaign contributions was insufficient to support judgment in Defendant’s favor,” and “[t]his is an alternative basis for Plaintiff’s motion, which generally overlaps with its legal error argument.” However, as discussed above, in applying

⁷ In the concurrence in *Thompson v. Hebdon* written by Justice Thomas, in which Justice Scalia joined, Justice Thomas opined “the contribution and expenditure restrictions of [Vermont’s] Act 64 should be subjected to strict scrutiny, which they would fail.” 140 S. Ct. at 351. However, the majority in *Thompson v. Hebdon* did not hold strict scrutiny must be applied to campaign contribution limits.

Randall, this Court found Defendant's evidence was sufficient to satisfy her evidentiary burden of demonstrating a sufficiently important government interest in contribution limits, and concluded Measure B's contribution limits did not violate the First Amendment because they are closely drawn to a sufficiently important government interest. (Summary Judgment Order at 4-8.)

IV. CONCLUSION

Accordingly, the Court **DENIES** Plaintiff's Motion for New Trial. Moreover, construing Plaintiff's Motion for a New Trial as a motion for reconsideration of the Court's Summary Judgment Order, the Court **DENIES** Plaintiff's motion for reconsideration.

IT IS SO ORDERED.

DATED: November 29, 2021.

/s/Consuelo B. Marshall
CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

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APPENDIX G

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21-56295

D.C. No. 2:20-cv-04122-CBM-AFM
Central District of California,
Los Angeles

MOVING OXNARD FORWARD, INC.,
Plaintiff-Appellant,

v.

LOURDES LOPEZ, in her official capacity
as City Clerk for the City of Oxnard,
Defendant-Appellee,
and

DOES, 1 through 25, inclusive,
Defendant.

ORDER

MURGUIA, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Federal Rule of Appellate Procedure 40(c) and Circuit Rule 40-3. The three-judge panel opinion is vacated.

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APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21-56295

D.C. No. 2:20-cv-04122-CBM-AFM
Central District of California,
Los Angeles

MOVING OXNARD FORWARD, INC.,
Plaintiff-Appellant,

v.

LOURDES LOPEZ, in her official capacity
as City Clerk for the City of Oxnard,
Defendant-Appellee,

and

DOES, 1 through 25, inclusive,
Defendant.

ORDER

One or more judges on the en banc court have requested briefing on the following issue:

1. Whether *Montana Right to Life Ass’n v. Eddleman*, 343 F.3d 1085 (9th Cir. 2003), and *Lair v. Motl*, 873 F.3d 1170 (9th Cir. 2017), should be overruled to the extent that they articulate the threshold showing that a governmental defendant must make to justify

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any level of limitation on campaign contributions.

The parties are ordered to file supplemental briefs, not to exceed 15 pages or 4,200 words, no later than July 7, 2025.

FOR THE COURT:
MOLLY C. DWYER
CLERK OF COURT

APPENDIX I**ARTICLE VI. CAMPAIGN FINANCE REFORMS****SEC. 2-240. PURPOSE.**

The purpose of this article is to advance compelling city interests by limiting large contributions from single sources to candidates for mayor, members of city council, city clerk and city treasurer, and by imposing reporting and accounting procedures for local campaigns. The city's interests are to provide a representative government which is accessible to all citizens, to deter corruption and the appearance of corruption caused by the coercive influence of large financial contributions on candidates' positions, and to inform the electorate as to the sources and uses of political contributions.

(Ord. No. 2976)

SEC. 2-241. DEFINITIONS.

For the purposes of this article, unless the contrary is stated or clearly appears from the context, the definitions set forth in Chapter 2 of Title 9 of the Cal. Gov't Code (commencing at Section 82000) shall govern the construction, meaning, and application of words and phrases used in this article.

(Ord. No. 2976)

**SEC. 2-242. APPLICATION TO ELECTIONS
FOR MAYOR, MEMBERS OF THE CITY COUN-
CIL, CITY CLERK, AND CITY TREASURER.**

This article shall apply to all elected offices within the city. (Ord. No. 2976)

**SEC. 2-243. CONTRIBUTION LIMITATIONS
FOR MEMBERS OF THE CITY COUNCIL.**

(A) Contributions. No person shall make, and no candidate for elective office or campaign treasurer shall solicit or accept, any contribution which would cause the total amount contributed by that person to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed \$500 for any election. No political action committee shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution which would cause the total amount contributed by that political action committee to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed \$1,000 for any election. For purposes of section 2-243 a “political action committee” shall mean any “general purpose committee” or “city general purpose committee” as those terms are defined by Cal. Gov’t Code, Section 82027.5. The limits set forth in this subsection shall be adjusted every two years by resolution of the city council pursuant to section 2-245.

(B) Loans. No person shall make, and no candidate for elective office or campaign treasurer shall solicit or accept, any loan which would cause the candidate, including loans to all political committees or broad-based political committees controlled by the candidate, to exceed \$500 for any election. The limit set forth in this subsection shall be adjusted every two years by resolution of the city council pursuant to section 2-245.

(C) Anonymous contributions. No person shall make an anonymous contribution or contributions to a candidate, political committee or broad-based political committee or any other person totaling \$100 or more for any election period. An anonymous contribution of \$100 or more received by a candidate or such a committee shall not be kept by the intended recipient, but instead shall be paid promptly to the California Secretary of State for deposit in the general fund of the State. This limit on single source anonymous contributions shall not be adjusted except for relevant changes in State law.

(D) Extension of credit. No person shall extend credit, and no candidate for elective office, or campaign treasurer, or political committee or broad-based political committee controlled by the candidate shall solicit or accept, any extension of credit which will extend beyond 90 days from the date upon which the debt is incurred by the candidate, or political committee controlled by the candidate.

(Ord. No. 2976)

**SEC. 2-244. CONTRIBUTION LIMITATIONS
FOR MAYOR, CITY CLERK AND
CITY TREASURER.**

(A) Contributions. No person shall make, and no candidate for elective office or campaign treasurer shall solicit or accept, any contribution which would cause the total amount contributed by that person to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed \$750 for any election. No political action committee shall make, and no candidate for elective office, or campaign treasurer, shall solicit or ac-

cept any contribution which would cause the total amount contributed by that political action committee to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed \$1,500 for any election. For purposes of section 2-244 a "political action committee" shall mean any "general purpose committee" or "city general purpose committee" as those terms are defined by Cal. Gov't Code, Section 82027.5. The limit set forth in this subsection shall be adjusted every two years by resolution of the city council pursuant to section 2-245.

(B) Loans. No person shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any loan which would cause the candidate, including loans to all political committees or broad-based political committees controlled by the candidate, to exceed \$500 for any election. The limit set forth in this subsection shall be adjusted every two years by resolution of the city council pursuant to section 2-245.

(C) Anonymous contributions. No person shall make an anonymous contribution or contributions to a candidate, political committee or broad-based political committee or any other person totaling \$100 or more for any election period. An anonymous contribution of \$100 or more received by a candidate or such a committee shall not be kept by the intended recipient, but instead shall be paid promptly to the California Secretary of State for deposit in the general fund of the State. This limit on single source anonymous contributions shall not be adjusted except for relevant changes in State law.

(D) Extension of credit. No person shall extend credit, and no candidate for elective office, or campaign treasurer, or political committee or broad-based political committee controlled by the candidate shall solicit or accept, any extension of credit which will extend beyond 90 days from the date upon which the debt is incurred by the candidate, or political committee controlled by the candidate.

(Ord. No. 2976)

**SEC. 2-245. ADJUSTING FOR
COST OF LIVING CHANGES.**

(A) Adjustment. The campaign contribution limits and loan limits set forth in sections 2-243 and 2-244, shall be adjusted by the city in February at two year intervals beginning in 2023 to reflect annual changes in the consumer price index (CPI) over the previous two-year period. The city clerk shall use the annual percent change in the consumer price index for all urban consumers (CPI-U) for the selected area that includes Ventura County to determine the appropriate rate of increase. The city clerk shall compute the adjustment for each year separately, adding the adjustment for each year to the prior year's limit. The city clerk shall then adjust the total amount for the two-year period as specified in subsection (B). The new limit representing the rounded total adjustments for the previous two-year period shall be presented to the city council for approval by resolution.

(B) If the last two digits of the total adjusted limit under subsection (A) for the two-year period is a number between one and 49, then the limit shall be rounded down to the next lowest multiple of 100. If the last two digits of the total adjusted limit for the two-year period is a number between 50 and 99, then

the limit shall be rounded up to the next highest multiple of 100.

(Ord. No. 2976)

SEC. 2-246. COMMERCIAL LOANS.

The provisions of this article regarding loans shall not apply to loans made by a commercial lending institution in the lender's regular course of business on terms available to members of the general public and for which the loan recipient is personally liable.

(Ord. No. 2976)

SEC. 2-247. CAMPAIGN DISCLOSURE.

(A) Campaign bank account. The notice and filing requirements of Cal. Gov't Code, Sections 81000 *et seq.* regarding the campaign bank account shall also be made to the city clerk at the same time and in the same manner as reporting is made to the fair political practices commission for the State of California.

(B) Committee registration. Every political committee and broad-based political committee involved in a municipal election which files campaign reports shall file also with the city clerk in the same form, content, and procedure as set forth in Cal. Gov't Code, Sections 81000 *et seq.*

(C) Electronic filing of campaign disclosure statements. Pursuant to Cal. Gov't Code, Section 84615, the City of Oxnard hereby finds that online or electronic filing will facilitate the efficient and secure filing of required campaign reports, and that such system will operate securely and effectively and will not unduly burden filers.

(1) Whenever any elected officer, candidate, or committee is required to file a campaign statement

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under the Political Reform Act or the Regulations with the city clerk, the elected officer, candidate, or committee shall file the statement in an electronic format prescribed by the city clerk.

(2) Any statement, report, or other document filed electronically or online pursuant to this section will be accepted as an original statement and need not be filed in paper format. To ensure reporting continuity, once a statement, report, form, or other document is filed electronically on behalf of any elected officer, candidate, or committee, all future statements, reports, forms, and other documents filed on behalf of that officer, candidate or committee must be filed electronically. An elected officer, candidate, committee or other person may choose not to use the electronic filing system by filing all original statements, reports, forms, or other documents in paper format with the city clerk, until such time as the city council determines that electronic filing is mandatory for all filers.

(3) The date of filing for a statement, report, or other document that is filed online or electronically shall be the day that it is received by the local filing officer, and the electronic system will provide confirmation with a timestamp ensuring that the statement, report, or other document was received.

(4) If access to online filings has not been prescribed in a timely manner, the elected city officer, candidate, or committee may file an original statement by paper, at the discretion of the filing officer.

(5) The provisions of this subsection shall apply only to persons or combinations of persons who qualify as a committee under Section 82013 of the Political Reform Act.

(6) The city clerk is authorized to adopt such administrative policies and procedures as deemed necessary to implement this chapter.

(Ord. No. 2976, 2978)

SEC. 2-248. DUTIES OF CITY CLERK.

The city clerk shall administer the provisions of this article. In addition to other duties required of the city clerk under the terms of this chapter, the city clerk shall:

(A) Supply appropriate forms and manuals prescribed by the fair political practices commission. These forms and manuals shall be furnished to all candidates and committees, and to other persons required to file reports.

(B) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this article and State law.

(C) Notify promptly all persons and known committees who have failed to file a document in the form and at the time required by State law, and promptly notify a person, candidate, campaign treasurer, political committee or broad-based political committee of any violations of this article. The city clerk shall inform the person, candidate, campaign treasurer, political committee or broad-based political committee that they shall have two weeks to correct the violation, after which the violation shall be made known to the city council, other candidates, and be made available as a public record.

(D) Compile and maintain a current list of all statements or parts of statements filed with the city

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clerk's office pertaining to each candidate and each measure.

(E) Review reports and statements filed by candidates and committees supporting or opposing candidates for city council as required by State law and this article.

(F) Initiate the adjustment of the campaign contribution limits as specified in section 2-245 to reflect the CPI change for the prior 24-month period.

(Ord. No. 2976)

SEC. 2-249. VIOLATION; PENALTY.

Any person violating any of the provisions of this article relating to campaign contributions and disclosure is guilty of a misdemeanor and subject to punishment in accordance with section 1-10 of this code. Individuals violating this article by failing to timely file the documents required by this article and State law shall also be subject to the fines specified in Cal. Gov't Code, Section 91013, as that section may be amended or renumbered from time to time.

(Ord. No. 2976)

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APPENDIX J

**REPORT ON THE PUBLIC INTEGRITY
INVESTIGATION OF OXNARD CITY OFFICIALS**

GREGORY D. TOTTON
District Attorney County of Ventura
State of California

April 18, 2012
(Rev. 06/15/2012)

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EXECUTIVE SUMMARY

During the summer of 2010, the Ventura County District Attorney's Office learned of serious allegations of corruption involving elected and non-elected officials at the City of Oxnard.¹ The allegations involved potential criminal violations of conflict of interest, misappropriation, and gift-reporting laws. In response, the District Attorney conducted a thorough investigation to determine the truth of the allegations and whether the law had been violated. The investigation focused specifically on the following allegations:

- Several city officials misappropriated taxpayer dollars to pay for excessive travel, meal expenses, and personal purchases.
- City Manager Ed Sotelo violated misappropriation and conflict of interest laws by taking an improper \$10,000 personal loan of city funds and establishing an improper retirement benefit for himself and others.
- Public Works Director Ken Ortega² misappropriated taxpayer dollars to fund a formal grand opening celebration of a city facility.
- City officials received gifts of vacations, meals, rounds of golf, and event tickets from companies

¹ As used in this report, the term "officials" refers to elected City of Oxnard city council members and non-elected City of Oxnard employees in supervisory positions.

² In June 2010, Ken Ortega resigned from city employment. For ease of reading, Ortega's position will be referred to as Public Works Director throughout this report, as that was the position he held during the relevant times discussed in the report. The same convention will be applied to other officials who have changed position or employment since June 2010.

doing significant business with the city, without publicly declaring the gifts as required by law.

- City officials violated conflict of interest laws by approving multi-million dollar city contracts from which they stood to profit.

To determine the truth of these allegations, district attorney investigators interviewed dozens of witnesses and executed more than 30 search warrants at more than 50 locations, gathering over 100,000 pages of documentary evidence. The investigation found evidence establishing the following:

- A clear pattern of fiscal waste by a small number of city officials. Oxnard's lax policies and recordkeeping enabled officials to spend excessively while traveling on city business. These same deficient policies and recordkeeping leave insufficient evidence to prove criminal misappropriation under the law.
- City Manager Sotelo took an impermissible personal loan of city funds in 1998. Because the statute of limitations for this conduct has expired, the loan having occurred more than 13 years ago, the law does not permit prosecution.
- In 2003, City Manager Sotelo implemented a retirement benefit for himself and others that was improper because under state law only the city council has the legal authority to set employee salaries and benefits. Because the statute of limitations has expired and there is insufficient evidence to prove a criminal violation of misappropriation or conflict of interest laws, this conduct cannot be prosecuted.

- A formal grand opening celebration that cost an estimated \$95,000 appears to have been funded with a combination of private contributions and diverted city funds. The available evidence does not reliably establish the extent of city funds expended on the celebration or who authorized the expenditures. City of Oxnard contracting practices did not accurately reflect the scope or cost of work to be performed under city contracts. Inaccurate contracting practices resulted in the improper diversion of city funds through an artificially inflated contract amendment. The diverted funds were used to finance a mural and a scale model featured at the grand opening celebration. Due to incomplete recordkeeping of both contracting practices and city expenditures, the evidence is insufficient to establish criminal misappropriation.
- Several city officials failed to declare gifts they received. The failures to declare gifts of meals, golf and event tickets have been referred to the Fair Political Practices Commission for administrative enforcement action. There is insufficient evidence to prove the most serious allegations involving gift vacations and the statute of limitations has expired as to many of the gifts.
- Close relationships existed between several city officials and private individuals conducting multi-million dollar transactions with the city. There were several instances of international travel by officials aboard one company's private aircraft. Companies affiliated with the private individuals made significant profits from transactions with the city. However, there is no evidence that the officials had any direct financial

interests in the questioned transactions. The evidence does not establish criminal conflicts of interest related to the multi-million dollar transactions examined.

The Investigation

In May 2010, the *Ventura County Star* reported that city officials had received gifts from companies doing business with the city without declaring the gifts as required by law.³ In response to the initial allegations, district attorney investigators examined public records and interviewed witnesses. The interviews and records confirmed that several city officials received gifts from companies doing business with the City of Oxnard and failed to publicly declare the gifts as required by California law.⁴ Investigators subsequently received reports of additional violations by city officials and encountered a lack of cooperation and repeated delay attempts from some city officials. The Mayor of Oxnard told the District Attorney that he suspected the city manager and assistant city manager were engaged in a “cover-up.”

In response, the District Attorney sought and was granted court authorization to search Oxnard City Hall on August 13, 2010. Subsequent search warrants were served at various city facilities, the homes

³ Hadly, “Gifts Get Scrutiny as Oxnard Official Admits Not Reporting Some Freebies, *Ventura County Star*, May 29, 2010, <http://www.vcstar.com/news/2010/may/29/gifts-get-scrutiny-as-oxnard-official-admits-not/> accessed on April 13, 2012.

⁴ As discussed in Section Six of this report, there is no criminal prohibition against companies providing gifts to officials. The reporting requirement is an obligation imposed on the official, not the company. However, officials are required to declare certain gifts they receive and are limited in the value of the gifts they may accept.

and offices of several city officials, the offices of several companies doing business with the city, and numerous financial and escrow companies. In addition, several businesses provided documents voluntarily and the city provided additional documentation in response to Public Records Act requests.

The investigation was hampered by serious impediments to obtaining evidence, including city policies and practices that did not reliably document expenses or payments, the unavailability of critical witnesses, and the inevitable loss of evidence with the passage of time. Also, when interviewed by district attorney investigators, several City of Oxnard officials made statements that were demonstrably false, including Mayor Tom Holden, City Councilmember Andres Herrera, and City Manager Ed Sotelo. Mayor Holden repeatedly denied having taken international trips aboard a local businessman's private jet, when in truth he had done so. Councilmember Herrera and City Manager Sotelo each said they had stayed in New York City on a city-expensed trip for only two or three nights, when in truth they had stayed five nights.

Criminal Filing Standards

In determining whether to file criminal charges, the Ventura County District Attorney's Office is guided by the same standards used by prosecutors throughout the state. In summary, a prosecutor may only file criminal charges if he or she believes, based on the evidence available after a thorough investigation, that the accused is in fact guilty of a crime and that guilt can be proven beyond a reasonable doubt at trial.

Misappropriation of Public Funds
(Penal Code section 424)

Under California law, the crime of misappropriation of public funds refers generally to the unlawful use, taking, or expenditure of public money by a public official. In August 2011, the California Supreme Court issued a ruling in an unrelated case that dramatically increased the proof required under misappropriation law.⁵ The court added a new requirement that to prove misappropriation, prosecutors must prove the official knew, or was criminally negligent in not knowing, the use of public funds was unlawful.

Expensive Meals

City officials regularly traveled on city business, when most of the misappropriation of public funds was reported to have taken place. When traveling, officials often ate expensive dinners at taxpayer expense in cities such as Washington, D.C., New Orleans, Las Vegas, and New York. The dinner bills, paid with city credit cards, often ran into the hundreds of dollars, with group meals most often paid for with a single credit card by an employee. Witnesses suspected the expensive meals were an unlawful expenditure of public funds.

Meal expenditures by Oxnard's *non-elected employees* are governed by the city's travel and reimbursement policy. The city's published meal reimbursement policy contained no effective limitations, permitting restaurant bills of virtually unlimited amounts to be paid with taxpayer funds, as long as receipts were submitted. Because the Oxnard officials

⁵ *Stark v. Superior Court* (2011) 52 Cal.4th 368.

followed the city's written policy authorizing virtually unlimited expenses, the non-elected city officials' expensive meal expenditures did not violate the law.

In contrast, California law and a 2005 Oxnard resolution limit Oxnard's *elected officials* to Internal Revenue Service (IRS) reimbursement rates.⁶ The city's policies and recordkeeping practices did not consistently identify the officials present at particular meals or who was legally responsible for any portion of the bill. Due to the city's inadequate recordkeeping systems and practices, it cannot be determined whether any elected official's portion of a group meal exceeded IRS rates. Moreover, the evidence does not establish the officials knew or were criminally negligent in not knowing their expenditures were illegal. As a result, there is insufficient evidence to prove misappropriation under the law.

Personal Purchases

Officials reportedly misappropriated city funds by using city funds for personal purchases while traveling. Significant allegations were made that three officials unnecessarily extended a city-funded trip to New York City, essentially taking a vacation at taxpayer expense. However, the investigation revealed that one official paid a portion of his hotel bill. In addition, there is evidence corroborating claims the trip was extended to meet hotel minimum-stay requirements during a busy travel season and to meet with representatives of a company doing business with the city.

The investigation also revealed that while officials traveled on city business, they occasionally used city

⁶ Government Code sections 53232.2 and 53232.3.

credit cards for personal purchases such as spa charges, in-room expenses, alcohol, or, in a few instances, spouses' travel or meal expenses. State law and city policy prohibit such use.⁷ Nonetheless, city practice allowed officials to charge personal expenses and reimburse the city at the end of the trip. Because the city's recordkeeping system does not itemize personal expenses nor reliably record who reimbursed the city, it is impossible to determine whether personal purchases were actually paid for by the city or by the official. Moreover, the evidence is insufficient to prove the officials were aware that the city's practice was contrary to law, as required by the California Supreme Court decision in *Stark v. Superior Court*. As a result, the evidence is insufficient to prove criminal misappropriation.

Personal Loan

City Manager Sotelo reportedly misappropriated city funds by loaning himself \$10,000 of city funds without lawful authorization. In 1998, City Manager Sotelo requested and received a \$10,000 personal loan of city funds. There is no evidence that the loan was approved by city council. Consequently, the loan was unauthorized and therefore improper. However, the statute of limitations bars prosecution because the conduct occurred 13 years ago.

Retirement Benefit

In 2003, City Manager Sotelo created a \$300 monthly retirement benefit for city management, including himself.⁸ Although this was done without

⁷ Penal Code section 424; Government Code section 8314.

⁸ As of July 1, 2007, Oxnard's "Top Management" classification included the assistant city manager, chief financial officer, city clerk, city treasurer, community development director,

formal city council approval as required by state law,⁹ there is evidence that councilmembers informally authorized Sotelo to create the benefit. Thus, there is insufficient evidence to prove that Sotelo's creation of the benefit was criminal. In addition, the statute of limitations has expired, barring prosecution.

Grand Opening Celebration and Contractual Impropriety

Public Works Director Ortega reportedly misappropriated city funds in three ways – to pay for a formal grand opening celebration at a city facility, to commission a mural and a scale model of another project displayed at the facility, and to pay favored consultants for unnecessary services to the city.

The grand opening celebration was funded primarily by payments from private companies involved in the facility's construction or having other business with the city. Although city funds were diverted to pay for a portion of the celebration, the evidence does not reliably establish the nature of the city's expenditures or who authorized the expenditures.

The mural and scale model on display at the city facility were purchased by a company doing business with the city, using city funds received from the city. The city diverted public funds by overpaying the company under an artificially inflated city contract pertaining to another Oxnard city facility. The company used the excess funds to pay for the mural and

deputy city manager, development services director, fire chief, housing director, human resources director, library director, police chief, and public works director. The city manager and city attorney were entitled to the same benefits given to Top Management by the terms of their city employment contracts.

⁹ Government Code section 36506.

scale model. The evidence does not establish who inflated the city contract. Instead, several city officials were identified who may have been responsible. The investigation revealed that similar contracting practices were used at other times by officials with the Public Works Department.

Several direct city contracts with the allegedly favored consultants were lawfully authorized and do not amount to misappropriation. The evidence does not reliably establish that the use of the consultants as subcontractors was without authority of law or which city officials were responsible for the subcontracting expenditures. Moreover, the statute of limitations has expired as to these allegations.

Based on the available evidence, the various misappropriation allegations involving Ortega cannot be proven beyond a reasonable doubt.

Failure to Declare Gifts (Penal Code section
118 / Government Code sections 87203 & 87207)

Several City of Oxnard officials reportedly received gifts from various companies involved in multi-million dollar transactions with the city, without publicly declaring the gifts as required by law. Three officials allegedly received separate gifts of travel to Cabo San Lucas, Mexico, courtesy of one local businessman. These trips cannot be substantiated as gifts. One official clearly purchased his trips. Another provided evidence that he exchanged fair value in services for his trips. It cannot be determined whether the third official's trips were gifts.

Reports were also made that officials received gifts of meals, rounds of golf, Broadway show tickets, and tickets to sporting events. These reports have proven true as to several officials, though in lesser amounts

than alleged. While there is evidence to prove the gifts were not disclosed, there is insufficient evidence to prove the nondisclosure constituted felony perjury. Enforcement of these reporting violations has been referred to the Fair Political Practices Commission in accordance with the Political Reform Act.¹⁰

Conflict of Interest (Government
Code sections 1090 / 87100)

City officials reportedly violated conflict of interest laws by having financial interests in multi-million dollar contracts they approved. The questioned transactions included the RiverPark development, fees for underwriting a number of municipal bond issuances, the city's purchase of a sports park property at Oxnard Boulevard and Gonzales Road, the city's purchase of a police annex building on Sturgis Road, the city's sale of vacant lots in Oxnard Shores, and the selection of the operator of the city's Materials Recovery Facility.

Conflict of interest concerns arose as to the RiverPark development and the municipal bond issuances as a result of gifts given to city officials by the companies involved. Conflict of interest allegations were raised about the sports park purchase because a company bought the property and sold it to the city on the same day, allegedly profiting by more than \$8 million. Conflicts of interest were also reported as to the Sturgis Road, Oxnard Shores and Materials Recovery Facility transactions due to the close personal relationships between several city officials and one local businessman who was involved in all three transactions. The businessman was alleged to have

¹⁰ Government Code sections 81000, *et seq.*

given the officials gifts of travel to Cabo San Lucas, Mexico, on a private jet.

There is clear evidence of close relationships between city officials and some of the individuals involved in the transactions. There is also evidence that officials received gifts from some of the businesses involved, though the travel to Cabo San Lucas cannot be substantiated as gifts. However, there is no evidence that any of the officials had a direct financial interest in any of the transactions they approved and insufficient evidence that any official had an indirect financial interest in any transaction. Accordingly, there is insufficient evidence to prove any criminal conflicts of interest.

Deficiencies in City Policies and Practices

The investigation revealed several city policies and practices that do not comply with state law. Other city policies leave the city vulnerable to waste and abuse. These policies are identified below.

Responsibility for Employee Benefits

Although state law requires city council to set employee benefits,¹¹ the council impermissibly delegated its responsibility to the city manager. This allowed a supplemental retirement benefit for city management to go undisclosed to city council and the public for several years. Oxnard city councilmembers have since become aware of their legal responsibility to set employee salary and benefits and have committed to doing so in the future. The city council is reportedly examining its legal ability to modify or cancel the retirement benefit.

¹¹ Government Code section 36506. Violation of this code section does not carry a criminal penalty.

City Credit Card Usage

Though state law and city policy prohibit the use of city credit cards for personal purchases,¹² city practice allowed such use under certain circumstances. The city's recordkeeping systems failed to accurately identify the personal purchases and failed to ensure reimbursements were made to the city. While the city has modified its credit card practices, city reimbursement policies still permit some personal expenses to be charged to a city credit card, as long as reimbursement to the city is made.

Excessive Spending on Travel Expenses

City policy and practices permitted virtually unlimited spending of public funds on meals and other travel expenses. In one example, taxpayers paid more than \$14,000 for five city officials to travel to New York City to attend an industry award dinner.¹³ In February 2011, the city modified its travel reimbursement policies, limiting all employees and elected officials to the federal government's published reimbursement rates.

Failure to Report City-Expensed Travel by Elected Council

Under California law and city resolution, when a city councilmember travels at public expense, the member must provide a brief report about the travel

¹² Government Code sections 8314 and 36514.5; Penal Code section 424.

¹³ In June 2009, the City of Oxnard cut budget allocations to several city departments in response to tightening fiscal limitations.

at the next city council meeting.¹⁴ In Oxnard, city officials did not consistently comply with this legal requirement. Failure to make the required report thwarts transparency in government.

Failure to Use Competitive Bidding

The City of Oxnard used the same investment banking company as a bond underwriter for several years. While the city has no legal obligation to solicit competitive bids for each bond issuance, the failure to regularly seek competitive bids reduced transparency and risked undermining public confidence in the use of taxpayer funds. Within the past 18 months, the city used a competitive process to establish a pool of qualified underwriters and began to diversify its use of bond underwriters.

Failure to Comply with City Ethics Standards

Oxnard city policy appropriately demands adherence to the highest ethical standards:

The policy of the City is that City officials and employees shall observe the highest standards of ethics.... City officials and employees shall conduct themselves so as not to give a reasonable basis for the impression that any such official or employee can be improperly influenced in the performance of his or her City duties.... They shall avoid even the appearance of conflict between their City duties and their personal interests.

The investigation revealed that several officials in the city did not follow the city's published ethics standards. City policy prohibits officials from accept-

¹⁴ Government Code section 53232.3. Violation of this reporting requirement does not carry a criminal penalty.

ing gifts valued at more than \$50 from anyone doing business with the city. Many officials routinely violated this policy.

Conclusion

This report is not intended as an indictment of the City of Oxnard, its residents, or the vast majority of employees. The allegations and misconduct described in this report are limited to a very small group of individuals serving the city in leadership positions.

A thorough investigation by the District Attorney's Office revealed that the most serious allegations of criminal conduct are unsupported by the evidence. Several multi-million dollar transactions were scrutinized and no evidence of criminal activity was found. However, the investigation raised legitimate questions regarding the use of taxpayer funds and the lack of accountability among several city officials. The investigation established that city officials took advantage of the city's policies and practices to enjoy expensive meals with city funds. These same policies and practices insulate the officials from liability for the expenditures.

Some of these same city officials violated city ethics standards and state law while accepting gifts of meals, golf, and event tickets from companies doing business with the city, then failing to report the gifts as required by state law. The investigation also revealed that city contracting practices did not accurately reflect the scope or cost of work to be performed under city contracts. The lax contracting practices allowed city officials to conceal the true nature of city expenditures on a grand opening celebration for a city water facility and to divert city funds to finance a mural and scale model at the water facility.

In addition, the investigation determined that City Manager Ed Sotelo used his position to obtain an improper \$10,000 loan of city funds and to create an improper supplemental retirement benefit for himself and others.

It is not the District Attorney's role to evaluate the wisdom of the city's transactions and no such evaluation is included in this report. Such judgments are best left to the community the officials serve. Nonetheless, where city policies and practices conflict with state laws, or expose the city to potential criminal abuse, those policies and practices are identified as requiring reform.