

No. 26-88

In The
Supreme Court of the United States

—◆—
ALASKA POLICY FORUM,

Petitioner,

v.

ALASKA PUBLIC OFFICES COMMISSION;
YES ON 2 FOR BETTER ELECTIONS; AND
PROTECT MY BALLOT,

Respondents.

—◆—
**On Petition For A
Writ Of Certiorari To The
Alaska Supreme Court**

—◆—
**AMICUS CURIAE BRIEF OF RANDY ELF
IN SUPPORT OF PETITIONER
ALASKA POLICY FORUM**

—◆—
RANDY ELF
Counsel of Record
Post Office Box 525
Lakewood, N. Y. 14750
Telephone (202) 423-2122
ForEFilingOnly@gmail.com

August 7, 2026

Counsel for Amicus

TABLE OF CONTENTS¹

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT	3
I. The Court has applied constitutional scrutiny and established the two-track system under which government may regulate—i.e., require disclosure of— political speech.....	3
II. The Court distinguishes Track 1 and Track 2. Only Track-1-burden-triggering analysis—not Track 2 analysis—applies to Track-1-burden-triggering law. Another Track-1-burden challenge addresses the constitutionality of particular Track 1 burdens.....	7

¹ This brief is based on the copyrighted-brief draft at <https://ssrn.com/abstract=3585160> and the copyrighted-filed brief at <https://ssrn.com/abstract=6556859> (8th Cir.). This brief is at <https://ssrn.com/abstract=6556879> (copyrighted) (all Internet sites, except the one for this brief, visited May 1, 2026).

III. Government may trigger Track 1, political-committee or political-committee-like burdens only for organizations that are under the control of candidates in their capacities as candidates, or for organizations having ‘the major purpose’ under <i>Buckley</i> and engaging in more than small-scale speech.....	16
IV. Constitutional law applies.	22
V. Circuit-splitting opinions err in watering down or jettisoning the <i>Buckley</i> -major-purpose test.....	23
VI. An organization has the <i>Buckley</i> major purpose if it says so in its organizational documents or public statements, or devotes the majority of its spending to contributions to, or independent expenditures properly understood for, candidates or ballot measures, or perhaps if the organization makes a massive amount—objectively and precisely defined—of contributions or independent expenditures properly understood. Alternatively, government may not trigger Track 1 burdens for organizations engaging in only small-scale speech properly understood.....	26
VII. The appeal-to-vote test—once known as ‘the functional equivalent of express advocacy’—no longer has any place in law.....	31
CONCLUSION	32

TABLE OF AUTHORITIES²

CASES

<i>*ACLU of Nev. v. Heller</i> , 378 F.3d 979 (9th Cir. 2004) 13, 14	
<i>Alaska Right to Life Comm. v. Miles</i> , 441 F.3d 773 (9th Cir. 2006).....	16
<i>Am. Tradition P'ship v. Bullock</i> , 567 U.S. 516 (2012) (per-curiam)	25
<i>Ams. for Prosperity Found. v. Bonta</i> , 141 S.Ct. 2373 (2021)	14
<i>*Buckley v. Valeo</i> , 424 U.S. 1 (1976) (per-curiam)2, 4, 5, 8, 10, 11, 16, 17, 19, 20, 25, 29, 30	
<i>Buckley v. Valeo</i> , 519 F.2d 821 (D.C. Cir. 1975) (en- banc).....	18
<i>*Cal. Pro-Life Council, Inc. v. Getman</i> , 328 F.3d 1088 (9th Cir. 2003).....	17
<i>Canyon Ferry Rd. Baptist Church of E. Helena, Inc. v. Unsworth</i> , 556 F.3d 1021 (9th Cir. 2009) ..	18, 24

² “Authorities upon which [this filing] chiefly rel[ies] are marked with asterisks.” D.C.CIR.R. 28(a)(2), *available at* <https://www.cadc.uscourts.gov/circuit-rules-procedures>; *accord* 11TH CIR.R. 28-1(e), *available at* <https://www.ca11.uscourts.gov/rules-procedures>.

This filing cites slip- or manuscript-opinion/order pages, rather than Westlaw star pages, where bound-volume pagination will later be available, because Westlaw removes star pagination when West issues bound-volume pagination.

<i>Citizens United v. FEC</i> , 558 U.S. 310 (2010)	4, 5, 6, 7, 8, 10, 19, 20, 22, 30
<i>Coal. for Secular Gov't v. Williams</i> , 815 F.3d 1267 (10th Cir. 2016)	11, 29
<i>Colo. Right to Life Comm., Inc. v. Coffman</i> , 498 F.3d 1137 (10th Cir. 2007)	23, 27
<i>Ctr. for Ariz. Pol'y, Inc. v. Ariz. Sec'y of State</i> , No. CV-24-0295-PR, ____ P.3d ____ (Ariz. June 29, 2026)	13, 15
* <i>Ctr. for Civic Action v. City of Albuquerque Bd. of Ethics & Campaign Practices</i> , No. 1:25-cv-01120-JB/JHR (D.N.M. Dec. 4, 2025)	13, 15
* <i>Ctr. for Civic Action v. City of Albuquerque Bd. of Ethics & Campaign Practices</i> , No. 1:25-cv-01120-JB/JHR (D.N.M. Nov. 19, 2025)	8
<i>Ctr. for Individual Freedom, Inc. v. Tennant</i> , 706 F.3d 270 (4th Cir. 2013)	18
<i>Davis v. FEC</i> , 554 U.S. 724 (2008)	2, 12
<i>Del. Strong Families v. Att'y Gen. of Del.</i> , 793 F.3d 304 (3d Cir. 2015)	9, 20
<i>Del. Strong Families v. Denn</i> , 136 S.Ct. 2376 (2016)	21
<i>Doe v. Reed</i> , 561 U.S. 186 (2010)	12
* <i>FEC v. GOPAC, Inc.</i> , 917 F.Supp. 851 (D.D.C. 1996)	26
<i>FEC v. Machinists Non-Partisan Political League</i> , 655 F.2d 380 (D.C. Cir. 1981)	22
* <i>FEC v. Mass. Citizens for Life, Inc.</i> , 479 U.S. 238 (1986)	4, 8, 10, 11, 16, 17, 20, 26, 27

<i>FEC v. Survival Educ. Fund</i> , 65 F.3d 285 (2d Cir. 1995).....	15
<i>FEC v. Wis. Right to Life, Inc.</i> , 551 U.S. 449 (2007) 8, 21	
<i>Free Speech v. FEC</i> , 720 F.3d 788 (10th Cir. 2013)	30
<i>Gable v. Patton</i> , 142 F.3d 940 (6th Cir. 1998).....	4
<i>Gaspee Project v. Mederos</i> , 13 F.4th 79 (1st Cir. 2021).....	12, 14, 15
<i>Human Life of Wash., Inc. v. Brumsickle</i> , 624 F.3d 990 (9th Cir. 2010).....	9, 17, 23, 24, 25
<i>Indep. Inst. v. Williams</i> , 812 F.3d 787 (10th Cir. 2016).....	3, 18, 20
<i>*Iowa Right to Life Comm., Inc. v. Tooker</i> , 717 F.3d 576 (8th Cir. 2013).....	9, 23, 27
<i>Justice v. Hosemann</i> , 771 F.3d 285 (5th Cir. 2014) ..	9
<i>Knox v. Serv. Emps. Int’l Union, Local 1000</i> , 567 U.S. 298 (2012)	16
<i>Marbury v. Madison</i> , 5 U.S. (1 Cranch) 137 (1803)	23
<i>McConnell v. FEC</i> , 540 U.S. 93 (2003)	4, 5, 6, 19
<i>McCutcheon v. FEC</i> , 572 U.S. 185 (2014) ...	18, 19, 21
<i>McDonald v. City of Chicago</i> , 561 U.S. 742 (2010) .	25
<i>McIntyre v. Ohio Elections Comm’n</i> , 514 U.S. 334 (1995)	5
<i>*Minn. Citizens Concerned for Life, Inc. v. Swanson</i> , 692 F.3d 864 (8th Cir. 2012) (en-banc)	9, 20, 22

<i>N.C. Right to Life, Inc. v. Leake</i> , 525 F.3d 274 (4th Cir. 2008)	27
* <i>N.M. Youth Organized v. Herrera</i> , 611 F.3d 669 (10th Cir. 2010).....	9, 27
<i>NAACP v. Button</i> , 371 U.S. 415 (1963)	3
<i>Nat’l Ass’n for Gun Rights, Inc. v. Mangan</i> , 933 F.3d 1102 (9th Cir. 2019).....	24, 25
<i>Nat’l Republican Senatorial Comm. v. FEC</i> , No. 24-621, 146 S.Ct. ____ (U.S. June 30, 2026)	15
<i>No on E v. Chiu</i> , 85 F.4th 493 (9th Cir. 2023)12, 13, 14	
<i>No on EE—A Bad Deal for Colo., Issue Comm. v. Beall</i> , 558 P.3d 671 (Colo. App. 2024).....	14
<i>Real Truth About Abortion v. FEC</i> , 681 F.3d 544 (4th Cir. 2012)	30
* <i>Sampson v. Buescher</i> , 625 F.3d 1247 (10th Cir. 2010).....	2, 4, 17
<i>Smith v. Helzer</i> , 95 F.4th 1207 (9th Cir. 2024). 12, 14	
<i>Unity08 v. FEC</i> , 596 F.3d 861 (D.C. Cir. 2010)	22
<i>Wallace v. Jaffree</i> , 472 U.S. 38 (1985).....	25
* <i>Wis. Right to Life, Inc. v. Barland</i> , 751 F.3d 804 (7th Cir. 2014)..3, 4, 9, 10, 11, 14, 16, 17, 18, 20, 22	
<i>Wyo. Gun Owners v. Gray</i> , 83 F.4th 1224 (10th Cir. 2023).....	15
<i>Yamada v. Kuramoto</i> , 744 F.Supp.2d 1075 (D. Haw. 2010).....	3

Yamada v. Snipes, 786 F.3d 1182 (9th Cir. 2015) . 23,
24, 26

CONSTITUTIONAL PROVISIONS

U.S. CONST. art. I..... 28

STATUTES

52 U.S.C. 30104, formerly 2 U.S.C. 434 10

RULES

11TH CIR.R. 28-1 iii

D.C.CIR.R. 28 iii

S.CT.R. 37 1

LAW REVIEWS

Randy Elf, *The Constitutionality of State Law
Triggering Burdens on Political Speech and the
Current Circuit Splits*, 29 REGENT U.L. REV. 35
(2016) (“*Triggering*”)1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,
27, 28, 30

PRESS

John Viehe, *Chautauqua People* (Aug. 12, 2024)..... 4

OTHER AUTHORITIES

Clarence Thomas, *Be Not Afraid* (Feb. 13, 2001) ... 21

JOHN GRISHAM, *THE APPEAL* (2008) 27

Randy Elf, <i>How Political Speech Law Benefits Politicians and the Rich</i> (Aug. 20, 2020) (one-hour video)	4
Randy Elf, <i>Track 2 Law</i> (May 25, 2017)	6

INTEREST OF AMICUS CURIAE³

Amicus has presented many briefs and oral arguments on political-speech law's constitutionality, and written a law-review article addressing much of what is at issue here. Randy Elf, *The Constitutionality of State Law Triggering Burdens on Political Speech and the Current Circuit Splits*, 29 REGENT U.L. REV. 35 (2016) ("*Triggering*"), available at <https://ssrn.com/abstract=5283417>.

Where this brief quotes *Triggering* text, some cites from corresponding footnotes are inserted into the text, and some cites remain in footnotes. Cites are converted from law-review style to brief style; many are condensed. Emphases are as in *Triggering*.

For readers' convenience, a *Triggering* draft, with string cites not in the law review, remains at <https://ssrn.com/abstract=2713496>.



³ Counsel of record for all parties received timely notice of Amicus's intent to file this brief. No party's counsel wholly or partly authored this brief. No such counsel, party, or other person—other than Amicus or Amicus's counsel—contributed monetarily to preparing or submitting this brief. Amicus has no members. *Cf.* S.C.T.R. 37.2, 37.3, 37.6.

SUMMARY OF ARGUMENT

The Court has applied constitutional scrutiny and established the two-track system under which government may regulate—i.e., require disclosure of—political speech. *Buckley v. Valeo*, 424 U.S. 1, 63-64, 79-82 (1976) (per-curiam); *Triggering* at 35-37 & nn.1-12.

This action addresses not Track 2, non-political-committee-disclosure requirements but Track 1, political-committee(-like) burdens.

One Track-1-burden challenge addresses **(a)** the constitutionality of triggering *any* such burdens for challengers: Government may trigger such burdens only for “organizations” that are “under the control of” candidates in their capacities as candidates, or for “organizations” having “the major purpose” under *Buckley*, 424 U.S. at 79; *Triggering* at 48 & n.84, and engaging in more than small-scale speech, *Sampson v. Buescher*, 625 F.3d 1247, 1249, 1251, 1261 (10th Cir. 2010); *Triggering* at 62-65 & nn.153-58.

Another Track-1-burden challenge addresses **(b)** the constitutionality of *particular* Track 1 burdens on challengers, *Davis v. FEC*, 554 U.S. 724, 744 (2008), forgoing/losing **(a)**.



ARGUMENT

I. The Court has applied constitutional scrutiny and established the two-track system under which government may regulate—i.e., require disclosure of—political speech.

Beginning with First Principles, *Triggering* at 38-42, the Court has recognized that “political speech is at the ‘core’ of what the First Amendment protects,” “applied constitutional scrutiny[,] and established the two-track system under which government may regulate⁴ political speech,” *id.* at 35 &

4

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

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

nn.1-2 (quoting *Buckley*, 424 U.S. at 44-45); John Viehe, *Chautauqua People* at 0:03.25-0:08.45 (Aug. 12, 2024) (interview of Amicus), *available at* <https://accesschautauquacountytv.org/episode/GVbIPKfKKmw>.

Under Track 1, government may **(a)** under some circumstances—and **(b)** subject to further inquiry, *see, e.g., Buckley*, 424 U.S. at 74 (addressing “threats, harassment, or reprisals”)⁵—trigger political-committee or political-committee-like burdens. *Id.* at 63, 79, *followed in FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 252 n.6, 262 (1986), and *quoted in McConnell v. FEC*, 540 U.S. 93, 170 n.64 (2003);⁶ *Sampson*, 625 F.3d at 1249, 1251, 1261; *Triggering* at 35-36 & nn.3-6; Randy Elf, *How Political Speech Law Benefits Politicians and the Rich* (Aug. 20, 2020) (one-hour video), *available at* <https://www.youtube.com/watch?v=h3ebymA7xOo>.

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

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

⁶ *Citizens United*, 558 U.S. at 365-66, overrules *McConnell* on other grounds.

Under Track 2,⁷ government may apart from Track 1—and subject to further inquiry, *see, e.g., Citizens United v. FEC*, 558 U.S. 310, 370 (2010) (addressing “threats, harassment, or reprisals” (quoting *McConnell*, 540 U.S. at 198))—require attributions, disclaimers, and *non*-political-committee reporting for independent expenditures properly understood (“IEs”), *Buckley*, 424 U.S. at 63-64, 79-82;⁸ *cf. McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 354-56 (1995) (rejecting a Track 2, non-political-committee-disclosure requirement for small-scale⁹ speech), and Federal Election Campaign Act electioneering com-

7

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

Triggering at 36 n.7.

8

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

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

⁹ *McIntyre*, 514 U.S. at 358 (Ginsburg, J., concurring).

munications (“FECA-ECs”)¹⁰ regardless of whether they satisfy the appeal-to-vote test (“ATV”), *Citizens United*, 558 U.S. at 366-71. *Triggering* at 36 & nn.7-10; *see id.* at 62 n.151 (distinguishing Track 1’s focus on the speaker from Track 2’s focus on the speech).

<i>Buckley</i> Express Advocacy	Issue Advocacy	
IEs	FECA-ECs ATV	FECA-ECs Non-ATV
	Other Speech	

See Randy Elf, *Track 2 Law* at 1-2 (May 25, 2017) (illustrating these (citations omitted)), *available at* <https://ssrn.com/abstract=2925328>.

¹⁰ *Defined in McConnell*, 540 U.S. at 189-94.

II. The Court distinguishes Track 1 and Track 2. Only Track-1-burden-triggering analysis—not Track 2 analysis—applies to Track-1-burden-triggering law. Another Track-1-burden challenge addresses the constitutionality of particular Track 1 burdens.

Neither Respondent Alaska Public Offices Commission (“Alaska”) nor Respondent Yes on 2 for Better Elections asserts Petitioner Alaska Policy Forum (“APF”) must *form/have* a separate political committee and let only the separate political committee speak and bear Track 1 burdens. Rather, Alaska and Yes on 2 assert *APF itself* must bear Track 1 burdens (ALASKA-S.CT.-OP. at 3-5, 9-10, CERT.-PET. at APP.3-6, 12-13, 583 P.3d 701 (Alaska 2026) (“OP.”) (registration, extensive reporting, ongoing reporting, and Track 1 attributions)), and thereby in effect *be* a political-committee-like organization. *Cf. Triggering* at 43 & nn.56-59 (describing the difference).¹¹

The Court distinguishes Track 1 and Track 2.

Track 1, political-committee(-like) burdens can include registration (including, in turn, treasurer

¹¹

An organization does not speak through a political committee it *forms/has*. *Citizens United*, 558 U.S. at 337.

Triggering at 43 n.59 (explaining why).

designation, bank-account designation, and termination, i.e., deregistration), recordkeeping, extensive reporting, ongoing reporting, *Citizens United*, 558 U.S. at 338; *Mass. Citizens*, 479 U.S. at 253-56 & nn.7-9 (opinion of Brennan, J.); *Buckley*, 424 U.S. at 63; *Triggering* at 43-44 & nn.60-65, 56 & nn.117-24, and Track 1 attributions/disclaimers, *supra* at 4 n.5. These are “onerous” burdens, *Citizens United*, 558 U.S. at 339; *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 477 n.9 (2007) (opinion of Roberts, C.J.) (citing *Mass. Citizens*, 479 U.S. at 253-55 (opinion of Brennan, J.)), particularly—yet not only—when law chills speech, i.e., when speech is “simply not worth it,” *Mass. Citizens*, 479 U.S. at 255 (opinion of Brennan, J.). *Triggering* at 44-45 & nn.66-70, 52 n.102, 57-58 & nn.129-37.

Among Track 1 attributions/disclaimers are attributions including donors.¹² See *Ctr. for Civic Action v. City of Albuquerque Bd. of Ethics & Campaign Practices*, No. 1:25-cv-01120-JB-JHR, manuscript-order at 37, 40, 46-47, 2025-WL-3229103 (D.N.M. Nov. 19, 2025) (applying the *Buckley*-major-purpose test), *available at* https://www.govinfo.gov/content/pkg/USCOURTS-nmd-1_25-cv-01120/pdf/USCOURTS-nmd-1_25-cv-01120-0.pdf.

To require Track-1-burden-triggering analysis, law need *not*

¹² Which proliferated post-*Triggering*. See *infra* at 12-13 (collecting authorities).

- trigger all such burdens, *e.g.*, *Triggering* at 45-46 & nn.71-72 (collecting authorities¹³), or
- apply to all of challengers' income/spending, *e.g.*, *Triggering* at 43-44 & nn.59-60, 50-51 & nn.90-92, 65 n.157 (addressing funds/accounts and other law applying only to *particular* income/spending (collecting authorities¹⁴)).

By contrast, Track 2, non-political-committee disclosure, *supra* at 5-6, includes *no* Track 1 burdens: For example,

Track 2 reporting occurs only for reporting periods when the particular speech oc-

¹³ See *Justice v. Hosemann*, 771 F.3d 285, 288-89 (5th Cir. 2014) (addressing law with extensive and ongoing reporting yet not recordkeeping as Track-1-burden-triggering law); *Iowa Right to Life Comm., Inc. v. Tooker*, 717 F.3d 576, 589 (8th Cir. 2013) (same); *N.M. Youth Organized v. Herrera*, 611 F.3d 669, 672-73 (10th Cir. 2010) (same); *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1013 (9th Cir. 2010) (addressing law with extensive but not ongoing reporting as Track-1-burden-triggering 1 law). *But cf. Del. Strong Families v. Att'y Gen. of Del.*, 793 F.3d 304, 312-13 n.10 (3d Cir. 2015) (addressing law with extensive but not ongoing reporting as Track 2 law when the parties did so).

¹⁴ See, *e.g.*, *Barland*, 751 F.3d at 825, 839-40, 844-46 (describing such an account); *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 868-72 (8th Cir. 2012) (en-banc) (describing such a fund/account).

curs,¹⁵ and the reports are less burdensome than extensive or ongoing reporting. *See, e.g., Mass. Citizens*, 479 U.S. at 262 (“less than the full panoply of” Track 1 burdens); *Buckley*, 424 U.S. at 63-64 (describing Track 2, *non*-political-committee reporting); 52 U.S.C. 30104(c), (f)-(g) (same).

Triggering at 56-57 & nn.125-28 (ellipses omitted).

Three points follow,¹⁶ yet even if any did not, *only* **(a)** Track-1-burden-triggering analysis—not **(c)**

¹⁵

This is what “one-time” and “event-driven” mean. *E.g., Barland*, 751 F.3d at 824, 836, 841. It is time to abandon these confusing labels and simply say what one means.

Triggering at 57 n.127 (explaining why).

¹⁶ First, believing Track 1 burdens are not much greater than Track 2 disclosure contradicts *Buckley*, *Massachusetts Citizens*, *Wisconsin Right*, and *Citizens United*. *Triggering* at 58 n.131 (collecting competing authorities).

Second, believing Track 1 burdens may not be onerous contradicts *Wisconsin Right* and *Citizens United*. *Triggering* at 44 n.66, 84 & nn.269-71 (collecting competing authorities).

Third, some *Citizens-United*-pages-337-40-Track-1-burdens-discussion elements, *supra* at 7-8, apply not only to

- Track 1 burdens on a separate political committee that an organization *forms/has*, *supra* at 7; *Citizens United*, 558 U.S. at 337-40; *Mass. Citizens*, 479 U.S. at 253-56 & nn.7-9 (opinion of Brennan, J.),

but also to

Track 2 analysis—applies to Track-1-burden-triggering law.¹⁷ Another Track-1-burden challenge addresses **(b)** the constitutionality of *particular* Track 1 burdens on challengers forgoing/losing **(a)**.

After all: Challenges to

(a) Track-1-burden-triggering law can address the constitutionality of triggering any such burdens, *Triggering* at 53, for the challengers,

and are distinguishable from constitutional challenges to

- Track 1 burdens on an organization itself that speaks and thus itself must *be*, or is asserted to *be*, *supra* at 7; *Mass. Citizens*, 479 U.S. at 262; *Buckley*, 424 U.S. at 63, either

- a political committee,
- a political-committee-like organization, or
- an organization with a political-committee-like fund/account.

Triggering at 53 n.103 (collecting competing authorities).

¹⁷

See Barland, 751 F.3d at 841-42 (declining to apply Track 2 analysis to Track 1 law); *accord Coal. for Secular Gov't v. Williams*, 815 F.3d 1267, 1280 n.6 (10th Cir. 2016) (considering Track 1 law and distinguishing *Independence Institute v. Williams*, 812 F.3d 787 (10th Cir. 2016), as considering “a different disclosure framework,” *i.e.*, Track 2 law).

Triggering at 37 n.16.

(b) *particular* Track 1 burdens on challengers, *Davis*, 554 U.S. at 744, for which it *is* constitutional to trigger Track 1 burdens in the first place,

(c) Track 2 law, *supra* at 5-6, and

(d) ballot-access law, *Doe v. Reed*, 561 U.S. 186, 196 (2010).

Triggering at 45 n.71, 77-78 & nn.236-38, 79 n.247.

Given Alaska's registration, extensive-reporting, ongoing-reporting, or Track-1-attribution burdens, *supra* at 7, only

- **(a)**, *supra* at 4; (*see, e.g.*, OP. at 47-54, 58, CERT.-PET. at APP.63-72, 78 (addressing—without distinguishing **(a)/(c)**—small-scale speech, which pertains to both **(a)**, *infra* at 28-30, and **(c)**, *supra* at 5)), and
- **(b)** (*see, e.g.*, OP. at 54-57, 58-61, CERT.-PET. at APP.72-78, 78-82 (misapplying **(b)/(c)** analysis))

apply.

Both **(a)** and the **(a)/(b)/(c)/(d)** distinction have gone overlooked in challenges to attributions with donors. *E.g.*, (OP. at 45-61, CERT.-PET. at APP.60-82); *Smith v. Helzer*, 95 F.4th 1207, 1216-19 (9th Cir.), *cert. denied sub nom. Smith v. Stillie*, 145 S.Ct. 567 (2024); *No on E v. Chiu*, 85 F.4th 493, 504-10 (9th Cir. 2023), *cert. denied*, 145 S.Ct. 136 (2024); *Gaspee Project v. Mederos*, 13 F.4th 79, 90-92 (1st Cir.

2021);¹⁸ *ACLU of Nev. v. Heller*, 378 F.3d 979, 991-1000 (9th Cir. 2004); *Ctr. for Ariz. Pol’y, Inc. v. Ariz. Sec’y of State*, No. CV-24-0295-PR, ____P.3d____, ¶¶2-4, 9, 97, 103-04, 116-23, 2026-WL-1911955 (Ariz. June 29, 2026) (addressing Arizona Constitution), *available at* <https://www.azcourts.gov/Portals/0/OpinionFiles/Supreme/2026/CV240295PR.pdf>.

Let’s consider **(b)**, or alternatively **(c)**, *infra* at 13-16, before **(a)**.

Attributions—or recordkeeping/reports—including *donors to* one’s donors are unconstitutional under **(b)/(c)**. See *No on E*, 85 F.4th at 522-30 (VanDyke, J., dissenting from rehearing-en-banc denial) (addressing such attributions). They invite others “to infer an association that ... will often be wrong.” *Civic Action*, manuscript-order at 28, 2025-WL-3485749 (D.N.M. Dec. 4, 2025) (same) (citing *No on E*, 85 F.4th [at 518] (VanDyke, J., dissenting from rehearing-en-banc denial)), *available at* https://www.govinfo.gov/content/pkg/USCOURTS-nmd-1_25-cv-01120/pdf/USCOURTS-nmd-1_25-cv-01120-1.pdf.

Yet for either of two reasons under **(b)/(c)**, attributions including donors—even without *donors to*

¹⁸ The First, Second, and Ninth circuits are the least receptive to political-speech-disclosure-law challenges: They, *inter alia*, keep watering down constitutional tailoring. *E.g.*, *Triggering* at 51-52 & nn.97-103, 54 & nn.108-09, 84 & nn.269-71 (collecting authorities).

one’s donors—lack narrow tailoring. *Compare Ams. for Prosperity Found. v. Bonta*, 141 S.Ct. 2373, 2391-92 (2021) (Alito, J., concurring) *with id.* at 2383-85 (majority-op.):

- Government can instead achieve donor disclosure via *constitutional* reports. *Supra* at 4-6; (CERT.-PET. at 36). They “serve considerably more effectively the goal of informing the electorate,” *Heller*, 378 F.3d at 994; *contra* (OP. at 59-61, CERT.-PET. at APP.79-82); *Smith*, 95 F.4th at 1220; *No on E*, 85 F.4th at 509-10; *Gaspee Project*, 13 F.4th at 91-92, or
- Such attributions are lengthy. *No on E*, 85 F.4th at 512-17 (Collins, J., dissenting from rehearing-en-banc denial). Lengthy attributions/disclaimers are unconstitutional even without donors. *See Wis. Right to Life, Inc. v. Barland*, 751 F.3d 804, 832 (7th Cir. 2014) (invalidating such law); *contra Smith*, 95 F.4th at 1220; *No on E*, 85 F.4th at 507-08.

Furthermore, the challenged attribution law’s including a principal officer (OP. at 5, CERT.-PET. at APP.6) is onerous Track 1 law and unconstitutional apart from including donors: It is unconstitutionally lengthy, *see supra* at 8, 14 (addressing attributions including donors), or otherwise not narrowly tailored, *see No on EE—A Bad Deal for Colo., Issue Comm. v. Beall*, 558 P.3d 671, ¶¶27-34 (Colo. App. 2024) (rejecting—under tailoring—attributions including an agent), *cert. granted*, No. 2024SC540 (Colo.).

Thus, the attributions-including-donors-and-a-principal-officer law is unconstitutional under (b)/(c). Meanwhile:

- As for earmarking (CERT.-PET. at 26-32) and what Alaska (mis)labels as earmarking (OP. at 58-59, CERT.-PET. at APP.78-79): Government may regulate donations with **(c)** *Track 2* law only if they are earmarked for speech regulable under *Track 2*. See *Triggering* at 61 n.149 (citing *FEC v. Survival Educ. Fund*, 65 F.3d 285, 295 (2d Cir. 1995)). Neither earmarking nor its flipside can salvage **(a)/(b)** *Track 1* law, see *id.* (“*all*”), quoted *infra* at 30, such as attributions including donors, *contra Civic Action*, Dec. 4, 2025, manuscript-order at 31-32. *National Republican Senatorial Committee v. FEC*, No. 24-621, slip-op. at 16, 146 S.Ct.____, 2026-WL-1868932 (U.S. June 30, 2026), is distinguishable for not deciding disclosure’s *constitutionality* and because earmarking vis-à-vis *limits* rather than disclosure presents separate questions, and
- Earmarking’s flipside—permitting one to opt *out* of disclosure by directing one’s donations *not* be used for such speech—is like having to *uncheck* Internet-site boxes. It should not salvage even *Track 2* law, *contra Wyo. Gun Owners v. Gray*, 83 F.4th 1224, 1248-50 & n.8 (10th Cir. 2023), much less *Track 1* law, *contra Gaspee Project*, 13 F.4th at 92. See *Ariz. Pol’y*, ____P.3d at

¶188 (King, J., dissenting) (rejecting opt-outs (quoting *Knox v. Serv. Emps. Int’l Union, Local 1000*, 567 U.S. 298, 312, 321 (2012))).

To *Track 1* law, tailoring *other than* earmarking/opting-out applies. *Supra* at 13-16; *infra* at 16-21.

Which brings us to **(a)** *Track-1-burden-triggering-law* analysis.

III. Government may trigger Track 1, political-committee or political-committee-like burdens only for organizations that are under the control of candidates in their capacities as candidates, or for organizations having ‘the major purpose’ under *Buckley* and engaging in more than small-scale speech.

- Case law guarding against overbreadth, *Barland*, 751 F.3d at 839; *Triggering* at 48 & n.81; see *Mass. Citizens*, 479 U.S. at 252 n.6, 262 (addressing as-applied and facial¹⁹ overbreadth),²⁰ permits

¹⁹ The label “overbreadth” applies to both. *Triggering* at 41-42 n.53 (citing *Alaska Right to Life Comm. v. Miles*, 441 F.3d 773, 785 (9th Cir. 2006)).

²⁰ Not vagueness. *Buckley*, 424 U.S. at 63, 79 & n.105, does not hold that the challenged political-committee definition *itself* is vague. Instead, it holds that the included terms “contributions” and

government to trigger Track 1, political-committee(-like) burdens, *supra* at 7-8, only **(a)** for “organizations” that are “under the control of a candidate” or candidates in their capacities as candidates, or **(b)** for “organizations” **(b)(i)** having “the major purpose” of “nominat[ing] or elect[ing]”²¹ a candidate or candidates or passing or defeating²¹ a ballot measure or ballot measures, *Buckley*, 424 U.S. at 79; *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1101 n.16 (9th Cir. 2003) (applying the test pre-*Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1005-13 (9th Cir. 2010), to an organization engaging in ballot-measure speech (quoting *Mass. Citizens*, 479 U.S. at 252-53)); *Triggering* at 48 & nn.83-84, and **(b)(ii)** engaging in more than small-scale speech, *Sampson*, 625 F.3d at 1249, 1251, 1261; *Triggering* at 62-65 & nn.153-58 (collecting competing author-

“expenditures” are vague and limits these two federal-law terms accordingly.

Triggering at 48 n.81.

Alternatively, even if such case law guarded against vagueness, it would also guard against overbreadth, *Barland*, 751 F.3d at 811, and thus apply regardless of whether Track-1-burden-triggering law is vague, *see Triggering* at 40-42 (distinguishing vagueness and overbreadth).

²¹ Influencing elections is broader and vague. *Buckley*, 424 U.S. at 77.

ities); *cf. id.* at 50 n.90, 80 n.255 (addressing Fifth/Eleventh Circuit findings).²²

- Just as what government may regulate with Track 2 law, *supra* at 5-6, goes to the tailoring part of constitutional scrutiny, not the government-interest part, *see, e.g., Indep. Inst. v. Williams*, 812 F.3d 787, 791 (10th Cir. 2016) (addressing overbreadth); *Ctr. for Individual Freedom, Inc. v. Tennant*, 706 F.3d 270, 282-85 (4th Cir. 2013) (addressing underinclusiveness); *Triggering* at 50 n.87 (collecting competing authorities), the tests for the constitutionality of Track-1-burden-triggering law, *supra* at 4, go to tailoring, not the government interest, *e.g., Barland*, 751 F.3d at 841-42; *Canyon Ferry Rd. Baptist Church of E. Helena, Inc. v. Unsworth*, 556 F.3d 1021, 1032-34 (9th Cir. 2009); *Buckley v. Valeo*, 519 F.2d 821, 869 (D.C. Cir. 1975) (en-banc), *aff'd in part and rev'd on other grounds*, 424 U.S. 1 (1976) (per-curiam); *Triggering* at 49-50 & nn.87-89, 64 & nn.155-56 (collecting competing authorities). Courts “do not [look to a government interest and] truncate this tailoring test at the outset.” *McCutcheon v. FEC*, 572 U.S. 185, 206 (2014) (opinion of Rob-

²² This assumes government may trigger Track 1 burdens based on ballot-measure speech. *Triggering* at 61 n.150 (collecting competing authorities).

Overlooking *Sampson* favors big players over little players. *See Triggering* at 63 n.154 (explaining why); *cf. infra* at 28 n.30 (addressing other such favoring). *Sampson*, however, is unnecessary to consider when Track-1-burden-triggering law is unconstitutional under *Buckley*. *See Triggering* at 49 n.86, 53 n.106, 62-65 & nn.153-58 (explaining why).

erts, C.J.) (addressing another tailoring test). “Thus, pounding the table about the *government interest* in regulating political speech is no answer to the *tailoring* part of constitutional scrutiny.” *Triggering* at 50 & n.89, 64.

In other words, the *government interest*—e.g., in particular information, *Buckley*, 424 U.S. at 66-67 (addressing Interest 1); *Triggering* at 50 n.88—is *not* the point here. *Tailoring* is. While *Citizens United* considers “the informational interest alone,” 558 U.S. at 369, this—rather than demoting tailoring—considers only Interest 1, not 2 or 3, from *Buckley*, 424 U.S. at 66-68.²³

Besides, notwithstanding erroneous appellate-court discussions of disclosure/transparency/information under *Citizens United* pages 366-71, e.g., *Triggering* at 51-52 & nn.97-102 (collecting competing

²³ Interest 2—government’s interest in preventing quid-pro-quo corruption or the appearance of quid-pro-quo corruption, compare *Buckley*, 424 U.S. at 67 (addressing Interest 2), with *McCutcheon*, 572 U.S. at 192, 207-08 (opinion of Roberts, C.J.) (defining these terms)—*cannot* apply to *independent* spending for political speech, *Citizens United*, 558 U.S. at 357-61, or contributions *not* directed to candidates/officeholders, *McCutcheon*, 572 U.S. at 211 (opinion of Roberts, C.J.) (quoting *McConnell*, 540 U.S. at 310 (Kennedy, J., concurring/dissenting)).

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

authorities); (OP. at 45 & n.162, CERT.-PET. at APP.61 & n.162), *Citizens United* pages 366-71 do not apply here, because they address/support only Track 2 law, not Track 1 law.²⁴

Anyway, such discussions go to the government interest, *Buckley*, 424 U.S. at 66-67 (addressing Interest 1), not tailoring.

“First Amendment rights are all too often sacrificed for the sake of transparency ...”

24

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

Triggering at 52 n.103 (brackets in original) (ellipses omitted). *Citizens United*’s less-restrictive-alternative statement, *id.*; (OP. at 28, 49, 57; CERT.-PET. at APP.37, 66, 77), distinguishes Track 1 and 2 “regulations,” i.e., disclosure. Meanwhile, *Buckley*’s least-restrictive-means statement “general[ly]” addresses “disclosure,” 424 U.S. at 68, as opposed to bans/other limits, *supra* at 3 n.4; elsewhere *Buckley* distinguishes the two disclosure tracks, *supra* at 4-6.

Del. Strong Families v. Denn, 136 S.Ct. 2376, 2376 (2016) (Thomas, J., dissenting) (denial of certiorari). Government’s “interest in transparency does not always trump First Amendment rights.” *Id.*

Triggering at 52 n.102, 64 n.154. Yet these can happen when parties or courts truncate, *supra* at 18, or otherwise understate, tailoring.

- Furthermore, “the First Amendment requires us to err on the side of protecting political speech rather than suppressing it.” *McCutcheon*, 572 U.S. at 209 (opinion of Roberts, C.J.) (addressing a limit (quoting *Wis. Right*, 551 U.S. at 457 (opinion of Roberts, C.J.) (addressing a ban))).

The tests, *infra* at 26-28, must not be vague, and they must be simple and concise, so that one can easily determine whether speech regulation applies, *see Triggering* at 40-41 & nn.38-51 (addressing these). This requires “clear, bright-line rules that ... you can explain to the gas[-]station attendant as easily as to a law professor.” *Id.* at 41 n.44 (ellipsis in original) (quoting Clarence Thomas, *Be Not Afraid* (Feb. 13, 2001), *available at* <https://www.aei.org/research-products/speech/be-not-afraid>).

Wisconsin accomplished this post-*Barland*. *See id.* at 72 n.192 (citing the state-legislature-committee hearing and the revised statute). For example, the legislature—solely at Amicus’s urging—cut the functional-equivalent-of-express-advocacy-like, i.e., appeal-to-vote-test-like, references from

Wisconsin law, even though *Barland* had mistakenly allowed using the appeal-to-vote test. *Id.* at 70-73 & nn.182-92.

Wisconsin's accomplishment²⁵ is replicable.

IV. Constitutional law applies.

Even if the *Buckley*-major-purpose test involved federal-*statutory* interpretation/construction, the test would still be a *constitutional* boundary around Track-1-burden-triggering law. *E.g.*, *Barland*, 751 F.3d at 811, 842; *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 872 (8th Cir. 2012) (en-banc) (collecting authorities); *Triggering* at 51 & nn.93-96 (collecting competing authorities); see *Unity08 v. FEC*, 596 F.3d 861, 867 (D.C. Cir. 2010) (discussing *Buckley* (quoting *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 392, 395-96 (D.C. Cir. 1981))).

Constitutional scrutiny applies. *Supra* at 3, 18-21.

Constitutional law determines whether an organization has the *Buckley* major purpose. Compare *infra* at 26-30 with *Iowa Right to Life Comm., Inc. v. Tooker*, 717 F.3d 576, 583-84 (8th Cir. 2013), and

²⁵ Which has shrunk Wisconsin political-speech-law-compliance practice. *Cf. Triggering* at 41 (“The First Amendment does not permit laws that force speakers to retain a campaign[-]finance attorney” (quoting *Citizens United*, 558 U.S. at 324)).

Colo. Right to Life Comm., Inc. v. Coffman, 498 F.3d 1137, 1153-55 (10th Cir. 2007).

The Court, not a designated hitter, decides constitutional law. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

V. Circuit-splitting opinions err in watering down or jettisoning the *Buckley*-major-purpose test.

Circuit-splitting opinions—all addressing state law, *e.g.*, *Triggering* at 54 & nn.108-11, 80 & n.256, 84-85 & nn.269-80 (collecting authorities)—err in watering down or jettisoning the *Buckley*-major-purpose test.

If anyone urges following the Ninth Circuit (*e.g.*, OP. at 15 & n.48, 19-23 & n.85, 25-26, 29-30, 32, 36-37, 46, 48-49, 60, CERT.-PET. at APP.19-20 & n.48, 26-30 & n.85, 33-35, 39-40, 43, 49, 62, 65-66, 80), this will be worth recalling: Under Track 1, the Ninth Circuit—while retaining a *Sampson*-like-small-scale-speech test, *Triggering* at 64 n.156—waters down the *Buckley*-major-purpose test for state law, *id.* at 54 & n.109, by permitting state governments to trigger Track 1, political-committee(-like) burdens for organizations that

- either “make political advocacy a priority,” as opposed to only “incidentally engag[ing] in such advocacy,” *Human Life*, 624 F.3d at 1011, *followed in Yamada v. Snipes*, 786 F.3d 1182, 1198-1200 (9th Cir.

2015), and *Nat'l Ass'n for Gun Rights, Inc. v. Mangan*, 933 F.3d 1102, 1115-17 (9th Cir. 2019), or are “a significant participant in [the] electoral process,” *Yamada*, 786 F.3d at 1200 (reaching organizations that “may not make political advocacy a priority”), and

- engage in more than small-scale speech, *Canyon Ferry*, 556 F.3d at 1033-34.²⁶

Ninth Circuit law errs. *E.g.*, *Triggering* at 44 n.66, 49-50 nn.86-87, 50 n.90, 51-52 & n.98, 52 & nn.100-01, 52-53 & n.103, 53 & n.105, 54 & nn.108-09, 55 & n.115, 56 n.120, 58 n.131, 60 n.148, 66 n.161, 71 n.189, 72 n.190, 73 nn.193-94, 75 & nn.210-16, 75-76 nn.218-20, 78 n.243, 79 nn.246-47, 79-80 n.250, 80 n.255, 80-81 n.257, 82 n.268, 84 & n.269, 84 n.271. Among the errors are these four.

First, the Ninth Circuit believes the *Buckley*-major-purpose test is mere federal-*statutory* interpretation/construction, not a *constitutional* boundary. *Compare Human Life*, 624 F.3d at 1009-10 *with supra* at 22.

Second, the Ninth Circuit cites *Citizens United* pages 366-71 to address/support Track-1-burden-triggering law. *Compare Human Life*, 624 F.3d at 994, 1005-13 (discussing disclosure/transparency), *Yamada*, 786 F.3d at 1197-98, 1200-01 (discussing

²⁶ This *Canyon Ferry* holding was unnecessary; then-Ninth Circuit law went overlooked. *Triggering* at 64 n.156.

disclosure/transparency/information), and *Gun Rights*, 933 F.3d at 1116 (discussing transparency/information) *with supra* at 19-20 & n.24.

Third, watering down or jettisoning the *Buckley*-major-purpose test for state law cannot be right. Each gives state governments

more power than the federal government to trigger Track 1 burdens. But political speech needs protection from both federal and state governments, *see Am. Tradition P'ship v. Bullock*, 567 U.S. 516, 516-17 (2012) (per-curiam) (addressing state law), and *McDonald v. City of Chicago* rejects “watered-down” standards for state governments under the Bill of Rights. 561 U.S. 742, 765, 785-86 (2010) (opinion of Alito, J.). “States have no greater power” than the federal government to “restrain First Amendment freedoms.” *Wallace v. Jaffree*, 472 U.S. 38, 48-49 (1985).

Triggering at 54-55 & nn.112-14 (brackets and ellipsis omitted).

Fourth, even if watering down the First Amendment were proper, *Human Life's*

“a priority”-“incidentally” test is unconstitutionally vague for two reasons: It is based on “political advocacy,” 624 F.3d at 1011, so it is vague under *Buckley*, 424 U.S. at 42-43, and the boundary between “a priority” and “incidentally” is unclear. ...

Yamada's “a significant participant in [the] electoral process” test ... is also vague. 786 F.3d at 1200.

Triggering at 54 n.109 (brackets in original).

VI. An organization has the *Buckley* major purpose if it says so in its organizational documents or public statements, or devotes the majority of its spending to contributions to, or independent expenditures properly understood for, candidates or ballot measures, or perhaps if the organization makes a massive amount—objectively and precisely defined—of contributions or independent expenditures properly understood. Alternatively, government may not trigger Track 1 burdens for organizations engaging in only small-scale speech properly understood.

- Notwithstanding the Federal Election Commission’s (“FEC’s”) unconstitutional case-by-case, we’ll-know-it-when-we-see-it approach, *Triggering* at 59 n.144 (collecting authorities): The *Buckley*-major-purpose test asks whether an organization **(1)** says in its organizational documents, *Mass. Citizens*, 479 U.S. at 252 n.6, 262, or “public statements,” *FEC v. GOPAC, Inc.*, 917 F.Supp. 851, 859 (D.D.C. 1996), that it has the *Buckley* major purpose, *Triggering* at 59-60 & n.146, or **(2)**

devot[es] the majority of its spending to contributions to, or independent expendi-

tures properly understood for,²⁷ candidates, *Iowa Right*, 717 F.3d at 584 (quoting *Colo. Right*, 498 F.3d at 1152); *N.M. Youth Organized v. Herrera*, 611 F.3d 669, 678 (10th Cir. 2010) (same); see *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 289 & n.6 (4th Cir. 2008) (equating primary with major, which is incorrect, because what is primary can be the plurality rather than the majority),²⁸ or ballot measures,

Triggering at 60-61 & nn.147-50,²⁹ or perhaps, with sufficient notice *not* present here, whether the organization **(3)** “mak[es] a massive amount—objectively and precisely defined—of contributions or independent expenditures properly understood,” with courts not “setting the ‘massive’ threshold so low that it in effect even begins to encroach on the just results to which the *Buckley*-major-purpose test leads,” *id.* at 65-66 & nn.159-62 (explaining this proposal); cf. JOHN GRISHAM, *THE APPEAL* 163-302 (2008) (giving a fictional example in Part II). See *generally*

²⁷ *Supra* at 5 n.8.

²⁸ *Massachusetts Citizens’* campaign-activity statement, 479 U.S. at 262, does not affect this. *Triggering* at 60 n.149 (explaining why).

²⁹ “Campaign-related”/“unambiguously-campaign-related” (CERT.-PET. at 27) are not constitutional tests. *Triggering* at 49 n.84, 69 n.181 (collecting competing authorities).

Triggering at 81-83 n.268 (addressing disclosure thresholds).³⁰

- If a record lacks proof that an organization is candidate controlled under *Buckley*, *supra* at 17, or has the *Buckley* major purpose under Method 1 or 2, *supra* at 26-28; (see CERT.-PET. at 24 (“their major purpose”)), then *government may not trigger Track 1 burdens for the organization*.³¹ Absent proof that the organization has the *Buckley* major purpose, *Sampson* is unnecessary to consider. *Supra* at 17; see *Triggering* at 49 n.86, 53 n.106, 62-65 & nn.153-58 (explaining why). Meanwhile, organizations *having* the *Buckley* major purpose, *e.g.*, *Triggering* at 62 n.154, 80 n.253 (collecting authorities), are distinguishable.

Alternatively, government may not trigger Track 1 burdens for organizations engaging in only small-scale speech, *supra* at 17-18; (see CERT.-PET. at 22-26 (addressing small-scale speech)), properly understood, *infra* at 29-30.

³⁰ Without Method 3 or something similar, the *Buckley*-major-purpose test favors big players over little players. See *Triggering* at 65 & nn.159-60 (explaining why); *cf. supra* at 18 n.22 (addressing other such favoring). The First Amendment should not do this. See *Triggering* at 47 & n.73 (explaining why).

³¹ Were it necessary to decide the time frame under Method 2 for determining the *Buckley* major purpose of an organization, the two-year election cycle, U.S. CONST. art. I, §§ 2-3, would be preferable.

Approving Alaska’s too-low small-scale threshold (OP. at 47-53, CERT.-PET. at APP.63-71) splits with, e.g., *Coalition for Secular Government v. Williams*, 815 F.3d 1267, 1269, 1276-81 (10th Cir. 2016) (addressing Track-1-*burden-triggering* law).

APF’s speech would be small-scale, *compare*, e.g., *id.* (\$3500 in 2016) *and Buckley*, 424 U.S. at 79 n.105 (\$1000 in 1976) *with* (OP. at 51-52, CERT.-PET. at APP.68-70 (\$643.20 in 2026)); (CERT.-PET. at 25), even *if* all of it counted toward permitting government to trigger Track 1 burdens for APF.

But the only contributions or independent spending that, under *Buckley/Sampson*, *count toward* permitting government to trigger Track 1 burdens for an organization are its contributions to candidates or ballot measures, and its independent expenditures properly understood. *Supra* at 26-28. By including

- contributions *received*,
- other independent spending (e.g., OP. at 9 & n.27, CERT.-PET. at APP.11 & n.27 (resembling parts of the appeal-to-vote test—once known as “the functional equivalent of express advocacy”—*infra* at 31-32)), or
- *any* Track-1-burden-triggering-dollar threshold without the *majority* threshold

(OP. at 3-5, 9-10, CERT.-PET. at APP.3-6, 12-13), Alaska seeks splits with the Fourth, Eighth, and Tenth circuits, *supra* at 26-28.³²

Does this mean government may *never* regulate, with Track-1-burden-triggering law, contributions other than contributions to candidates or ballot measures, or independent spending other than independent expenditures properly understood? No, because, *unlike under Track 2, supra* at 5-6,

[o]nce it *is* constitutional to trigger Track 1 burdens for an organization, government may—subject to further inquiry, *supra* at 4, 13-16 **((b))**—require disclosure of *all* income and spending by the organization, *see Citizens United*, 558 U.S. at 338 (describing Track 1 burdens); *Buckley*, 424 U.S. at 63 (same),

Triggering at 61 n.149, including contributions and independent spending. Whether government may trigger such burdens for an organization in the first place is a separate question. *Supra* at 4.

³² As *Triggering* at 49 n.86, 59 n.144, 73 & n.196, details, *Real Truth About Abortion v. FEC*, 681 F.3d 544, 556-58 (4th Cir. 2012), and *Free Speech v. FEC*, 720 F.3d 788, 797-98 (10th Cir. 2013), are not controlling Fourth/Tenth Circuit opinions. Besides, each incorrectly, *supra* at 23, 26, upholds the FEC's case-by-case, we'll-know-it-when-we-see-it approach and lets a designated hitter decide constitutional law.

VII. The appeal-to-vote test—once known as ‘the functional equivalent of express advocacy’—no longer has any place in law.

Alaska uses language resembling the appeal-to-vote test, once known as “the functional equivalent of express advocacy,” *supra* at 29, the Alaska Supreme Court mentions the test (OP. at 27, CERT.-PET. at APP.35-36), and APF urges using it (CERT.-PET. at 18-19), so it is important to understand that it

- never was a form of express advocacy,
- never was part of the major-purpose test, and
- no longer has any place in law, because

after *Citizens United*, the appeal-to-vote test no longer even affects whether government may ban, otherwise limit, or regulate speech[, and] what remains ... regarding the test is the conclusion that the test is unconstitutionally vague

How was anyone to know whether [anyone else] would conclude (after the fact, mind you) that speech has no reasonable interpretation other than

as an appeal to vote for or against a
clearly identified candidate?

Triggering at 67-73 & nn.168-92, 77.³³



CONCLUSION

The Court should grant certiorari.

Respectfully submitted,

RANDY ELF

Counsel of Record

Post Office Box 525

Lakewood, N. Y. 14750

Telephone (202) 423-2122

ForEFilingOnly@gmail.com

August 7, 2026

Counsel for Amicus

³³ Some wanting more political-speech regulation call unregulated political speech “dark money.” (*E.g.*, ALASKA-SUPER.-CT.-ORDER at 2, CERT.-PET. at APP.94 (citation omitted).) Whatever else they mean by “dark,” please imagine the uproar if their opponents called what they oppose “dark.”