No. 26-88

In the
Supreme Court of the United States

ALASKA POLICY FORUM,
Petitioner,

v.

ALASKA PUBLIC OFFICES COMMISSION, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALASKA

BRIEF OF THE HONEST ELECTIONS PROJECT AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae the Honest Elections Project ("HEP") is a nonpartisan organization devoted to supporting every lawful voter's right to participate in free and honest elections. Through public engagement, advocacy, and public-interest litigation, HEP defends fair and reasonable measures that legislatures put in place to protect the election integrity. HEP supports commonsense voting rules and opposes efforts to reshape elections for partisan gain. It has a significant interest in this case, which implicates key concerns regarding election-related spending, voters' ability to speak on issues of public concern, and election integrity.

SUMMARY OF ARGUMENT

Alaska has transmogrified issue advocacy into campaign speech, violating the First Amendment's "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open[.]" *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). Petitioner Alaska Policy Forum ("APF") is a nonprofit, nonpartisan organization with a mission to "empower and educate Alaskans and policymakers by promoting policies that grow freedom

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[1] Pursuant to this Court's Rule 37.6, counsel for *amicus curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amicus* and its counsel has made a monetary contribution to the preparation or submission of this brief. All parties received timely notice of this brief.

for all."[2] To further that mission, APF educates Alaskans about a wide variety of issues, including state budgets and taxes, healthcare, education, licensing reform, pensions, natural resource extraction, and—relevant here—ranked-choice voting ("RCV").[3]

APF's educational efforts on RCV started before Alaska qualified a state ballot measure proposing adoption of RCV for the November 2020 election. App. 7a. After the initiative qualified for the ballot, a group supporting the measure (Respondent Yes for 2) filed a complaint against APF with the Alaska Public Offices Commission ("APOC"), asserting that APF's communications opposing RCV violated the State's campaign finance laws. App. 10a. The APOC agreed, ordering APF to comply. App. 13a. APF sued, but the Alaska Supreme Court upheld the APOC's decision, rejecting APF's First Amendment challenge on grounds that Alaska had an important interest in "ensuring that voters receive useful information" and that the law was sufficiently tailored to further that interest. App. 2a, 60a.

Alaska's law threatens all issue-advocacy organizations' freedom of speech and association. Issue advocacy lies at the heart of the First Amendment, yet under Alaska's law, the placing an

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[2] Alaska Pol'y Forum, *Our Values: Mission*, https://alaskapolicyforum.org/aboutus/values/ (last visited Aug. 11, 2026).

[3] Alaska Pol'y Forum, *Issues*, https://alaskapolicyforum.org/issues/ (last visited Aug. 11, 2026).

issue on the ballot magically transforms issue-related communications into campaign activity, triggering registration, reporting, and disclosure obligations for the speaker. The issue-advocacy organization's message does not change, but its legal status does.

If that rule stands, every issue advocate speaks under a frightening government warning: If an issue becomes important enough to be placed on the ballot—at the very moment when voters most need to be educated about it—the organization's speech on that issue is no longer free but subject to onerous regulation. That is not consistent with this Court's First Amendment jurisprudence.

The Alaska Supreme Court justified regulating issue advocacy like campaign speech based on the State's interest in "promot[ing] an informed electorate." App. 2a, 62a. But this interest has little to no weight in the context of ballot measures. Unlike candidate elections, information about an entity supporting or opposing a ballot measure provides *de minimis* constitutional value because, as this Court has recognized, "[r]eferenda are held on issues, not candidates for public office." *First Nat. Bank of Bos. v. Bellotti*, 435 U.S. 765, 790 (1978). Regulating speech regarding issues is especially pernicious because "[d]iscussion of public issues . . . [is] integral to the operation of the system of government established by our Constitution" and receives the "broadest protection" to "assure . . . unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *McIntyre v. Ohio*

Elections Comm'n, 514 U.S. 334, 346 (1995) (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)).

Moreover, this Court has repeatedly recognized a strong constitutional value in anonymity[4] for issue advocacy that does not exist for candidate-related speech. *See id.* at 341–43 (discussing cases). For those who wish to speak on public issues, "the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry." *Id.* at 342. Anonymous issue advocacy allows the public to evaluate the merits of the argument and avoid "bias associated with the author's identity[.]" *Id.* at 342 n.5. An issue advocate's "decision to remain anonymous . . . is an aspect of the freedom of speech protected by the First Amendment." *Id.* at 342.

The State's interest in disclosure of APF's identity (or those associated therewith, such as donors) is thus *de minimis*. The First Amendment does not allow the State to treat issue advocacy as campaign speech, and the petition should be granted.[5]

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[4] Here, APF's speech was not anonymous because APF published its RCV-related communications using its name. But because this Court has recognized the strong constitutional value of anonymous speech, Alaska's law—requiring issue advocates to register, report, and disclose information about themselves as a condition of engaging in public debate on issues—conflicts with the constitutional value of anonymity, both for the speaker and any individuals (e.g., donors) associated therewith.

[5] The First Amendment issues presented here are materially distinct from those arising out of restrictions on foreign spending related to ballot measure campaigns. Because there is "a

ARGUMENT

I. Informational Interests Cannot Justify Alaska's Law

If there is a bedrock principle underlying the First Amendment, it is that the government may not restrict speech "because of its message, its ideas, its subject matter, or its content." *Police Dep't of Chicago* v. *Mosley*, 408 U.S. 92, 95 (1972). Consequently, "[c]ontent-based laws—those that target speech based on its communicative content—are presumptively unconstitutional" and ordinarily "may be justified only if" they satisfy strict scrutiny. *Reed* v. *Town of Gilbert*, 576 U.S. 155, 163 (2015). This Court has, nonetheless, applied a lower tier of scrutiny for content-based disclaimer and disclosure requirements because they "impose no ceiling on campaign-related activities," *Buckley* v. *Valeo*, 424 U.S. 1, 64 (1976), and "do not prevent anyone from speaking," *Citizens United* v. *Fed. Election Comm'n*, 558 U.S. 310, 366 (2010) (quoting *McConnell* v. *Fed. Election Comm'n*, 540 U.S. 93, 201 (2003)). Although these laws impose a lighter

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compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process," *Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (Kavanaugh, J.), states have broad authority to "protect[] their democratic processes from the influence of non-citizens," *OPAWL – Bldg. AAPI Feminist Leadership v. Yost*, 118 F.4th 770, 777 (6th Cir. 2024). Accordingly, nothing in this brief should be read to suggest that States could not impose disclaimer or disclosure requirements on foreign citizens who make expenditures related to ballot measure campaigns.

burden, they have a significant "deterrent effect on the exercise of First Amendment rights," *Buckley*, 424 U.S. at 65, and are therefore reviewed under "exacting scrutiny," requiring "a substantial relation between the disclosure requirement and a sufficiently important governmental interest." *Doe* v. *Reed*, 561 U.S. 186, 196 (2010) (internal quotation marks omitted). The disclosure regime must also "be narrowly tailored to the interest it promotes" to survive exacting scrutiny. *Ams. for Prosperity Found.* v. *Bonta*, 594 U.S. 595, 610 (2021).

Exacting scrutiny "has real teeth." *Id.* at 622 (Alito, J., concurring in part and concurring in the judgment). It protects against government encroachment on our most precious freedom by requiring "that disclosure laws not only advance an important [governmental] interest, but are also 'proportionate to the interest served.'" *Rio Grande Found.* v. *Oliver*, 154 F.4th 1213, 1233 (10th Cir. 2025) (Eid, J., dissenting) (quoting *Bonta*, 594 U.S. at 609). This stringent requirement ensures that content-based restrictions are reserved for truly weighty objectives and do not become a common tool for the government to achieve its goals. *Cf. Crum* v. *Alabama*, 198 F.3d 1305, 1323 (11th Cir. 1999) (noting that "it is a rare day, indeed, that courts find government actors to have adequately demonstrated a compelling interest").

Accordingly, this Court has only recognized three sufficiently important interests that can justify mandatory reporting and compelled donor disclosure laws in the election context: (1) informing the electorate about election-related spending, (2) preventing *quid pro quo* corruption; and (3) detecting contribution-limit and expenditure violations. *See Buckley*, 424 U.S. at 66–68.

Here, the Alaska Supreme Court acknowledged that Alaska's law rests solely on the first interest—"promot[ing] an informed electorate." App. 2a. As this Court has recognized, the last two interests are inapposite to the ballot-initiative context. Contribution limits for ballot-measure committees "plainly impair[] freedom of expression." *Citizens Against Rent Control/Coal. for Fair Hous. v. City of Berkeley*, 454 U.S. 290, 299 (1981); *see also Sampson* v. *Buescher*, 625 F.3d 1247, 1256 (10th Cir. 2010) (the States' interest in "facilitating the detection of violations of contribution [or expenditure] limitations" is "mooted by the prohibition on contribution limitations in the ballot-issue context"). And the risk of *quid pro quo* corruption "simply is not present in a popular vote on a public issue." *Bellotti*, 435 U.S. at 790*; see also Buckley* v. *Am. Const. Law Found.*, 525 U.S. 182, 203−04 (1999) (*ACLF*). As *Bellotti* recognized, a State's interest with "respect to referenda" is diminished because "the direct participation of the people in a referendum, if anything, increases the need for 'the widest possible dissemination of information from diverse and antagonistic sources.'" *Bellotti*, 435 U.S. at 790 n.29 (cleaned up) (quoting *Associated Press v. United States*, 326 U.S. 1, 20 (1945)).

A. The Informational Interest is Far Weaker for Ballot Measures Than for Candidate Elections

The Alaska Supreme Court failed to appreciate that the ballot measure context alters the strength of the *Buckley* interests, concluding that the interest in an informed electorate "applies with full force to ballot issues." App. 62a. But *Buckley*'s rationale shows that the informational interest is inapplicable to ballot measures. As *Buckley* explained:

> [D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

424 U.S. at 66–67; *see also Citizens United*, 558 U.S. at 367.

These benefits are wholly absent or, at the very least, much weaker, in the ballot context, because "[r]eferenda are held on issues, not candidates for public office." *Bellotti*, 435 U.S. at 790. When a ballot issue is before the voter, the choice is whether to approve or disapprove of a particular law at a discrete moment of time—not to evaluate a human being who will face various "influences" and "must decide on the advisability of future governmental action." *Sampson*, 625 F.3d at 1257.

Unlike a candidate, a ballot measure will not be making future decisions, so the identity of its supporters is not needed to predict future governmental action. Voters can evaluate the merits of the measure themselves. When it comes to issue advocacy, the First Amendment relies upon "counterargument and education," not regulation of speech. *Wood v. Georgia*, 370 U.S. 375, 389 (1962). For this reason, "any public interest in requiring disclosure as a condition of entry" to the marketplace of ideas is "unquestionably outweigh[ed]" by the interest in allowing such speech to be anonymous. *McIntyre*, 514 U.S. at 342.

B. The Alaska Supreme Court Misapplied This Court's Precedents

The Alaska Supreme Court considered none of these First Amendment principles in its one-paragraph discussion about the informational interest it held was sufficient to uphold Alaska's law. App. 62a. It found only that "[b]ecause ballot propositions are 'often complex and difficult to understand,' a 'voter may wish to cast his ballot in accordance with his approval, or disapproval, of the sources of financial support,'" *id.* (quoting *Messerli* v. *Alaska*, 626 P.2d 81, 87 (Alaska 1980)), and that "disclosure laws help ensure that voters have the facts they need to evaluate the various messages competing for their attention." *Id.* (quoting *Hum. Life of Wash. Inc.* v. *Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010)).

That analysis is wholly inconsistent with *Bellotti*, which rejected the argument that a State may ban corporate expenditures "for the purpose of influencing the vote on referendum proposals," purportedly justified by its interest in "sustaining the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government." *Bellotti*, 435 U.S. at 768, 788–89 (cleaned up) (quoting *United States* v. *Int'l Union United Auto., Aircraft & Agric. Implement Workers of Am.*, 352 U.S. 567, 575 (1957)). *Bellotti* held that "the people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments." *Id.* at 791. Laws "destructive of the right of public discussion," *Bellotti* explained, are therefore inconsistent with the First Amendment absent "great[] or . . . imminent danger to the public interest[.]" *Id.* at 792.

The Alaska Supreme Court's careless acceptance of a restriction on issue advocacy based on the rationale that "ballot propositions are often complex and difficult to understand" is no more convincing than Massachusetts' argument in *Bellotti* that it had a compelling interest in "sustaining the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government." *Id.* at 788–89 (cleaned up) (quoting *Auto Workers*, 352 U.S. at 575). Issues of public concern are often "complex and difficult to understand," but that cannot justify a restriction on issue advocacy because "if there be any danger that the people cannot evaluate the information and arguments advanced," that is a "danger contemplated by the Framers of the First Amendment." *Id*. at 791–92. As in *Bellotti*, there must be a "greater or more imminent danger to the public interest than existed in this case" to justify restriction of core First Amendment freedoms. *Id*. at 792.

Disclosure laws in the issue-advocacy context may help a viewer "evaluat[e] the quality and significance of the writing," but that benefit is far outweighed by the harm caused, both by reducing the free circulation of ideas and shifting voters' attention from the issue itself to *who* is speaking about it. *McIntyre*, 514 U.S. at 342 n.5; *accord Sampson*, 625 F.3d at 1257. Disclosure in the issue-advocacy context thus encourages readers to "prejudge [the] message simply because they do not like its proponent" and can reduce or prevent consideration on the merits. *McIntyre*, 514 U.S. at 342. If States choose to conduct their lawmaking through direct democracy, they are, in the words of *Bellotti*, entrusting voters "with the responsibility for judging and evaluating the relative merits of conflicting arguments." *Bellotti*, 435 U.S. at 791.

Bellotti also intimated, in dicta, that in the referenda context, voters "may consider . . . the source and credibility of the advocate." *Id*. at 791–92. In a footnote, *Bellotti* further explained that "[i]dentification of the source of [corporate] advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected." *Id*. at

792 n.32. This dicta was based on *Buckley*—a case involving campaign speech, not issue advocacy. And as this Court later acknowledged in *McIntyre*, *Bellotti*'s disclosure dicta "concerned contributions to the *candidate* or expenditure authorized by the candidate" but had "no reference to the kind of *independent activity*" pursued there." *McIntyre*, 514 U.S. at 354 (emphasis added). Emphasizing this distinction even further, *McIntyre* held that "[r]equired disclosures about the level of financial support a *candidate* has received from various sources are supported by an interest in avoiding the appearance of corruption that has *no application to this [issue advocacy] case*." *Id.* (emphasis added).

Moreover, *Bellotti*'s dicta does not suggest that the "source" of issue advocacy means *third parties who donate* to the advocate. Indeed, as *Buckley* observed, disclosing such third-party donors implicates their right to free association, because the "right to join together 'for the advancement of beliefs and ideas' is diluted if it does not include the right to pool money through contributions, for funds are often essential if 'advocacy' is to be truly or optimally 'effective.'" *Buckley*, 424 U.S. at 65–66 (internal citation omitted) (quoting *NAACP v. Alabama*, 357 U.S. 449, 460 (1958)). Donor disclosure creates an "invasion of privacy of belief" which "may be as great when the information sought concerns the giving and spending of money as when it comes to the joining of organizations, for '[f]inancial transactions can reveal much about a person's activities, associations, and beliefs.'" *Id.* at 66 (quoting *Calif. Bankers Ass'n v. Shultz*, 416 U.S. 21, 78–79 (1974) (Powell, J., concurring)). This Court has "not drawn fine lines between contributors and members but ha[s] treated them interchangeably." *Id*.

Indeed, this Court has never endorsed using the informational interest that justifies restrictions on campaign speech to restrict issue advocacy. While this Court has, in dicta, alluded to the utility of disclosure outside of candidate elections, such dicta appears only in cases *striking down* laws burdening issue-based speech. *See City of Berkeley*, 454 U.S. at 298–300 (state law capping contributions to ballot measure committees violates First Amendment because it was not narrowly tailored); *ACLF*, 525 U.S. at 202–04 (noting in dicta that disclosure laws about the source of petition circulars helped inform the public even though those laws were not challenged there); *Bellotti*, 435 U.S. at 791–92 & n.32 (invalidating state law restricting corporate spending on referenda and noting in dicta that disclosure of corporate identity "may be required" for the corporation's referendum-related advertisements).

More recently, in *McIntyre*, this Court struck down an Ohio statute prohibiting the distribution of anonymous literature as applied to "an imminent referendum on a proposed school tax levy." *McIntyre*, 514 U.S. at 337, 357. The Court framed the question as "whether and to what extent the First Amendment's protection of anonymity encompasses documents intended to influence the electoral process." *Id*. at 344. *McIntyre* held that the ordinance was content-based because, like Alaska's law here, it covered only documents "containing speech designed to influence the voters in an election," necessitating "exacting scrutiny." *Id*. at 345–46.

McIntyre began its constitutional analysis by recognizing the immense importance of issue advocacy to our republic. "[C]ore political speech need not center on a candidate for office," the Court reasoned, and it encompasses "issue-based elections" such as the school tax levy in question. *Id*. at 347. Handing out pamphlets opposing a referendum "is the essence of First Amendment expression," and indeed, when such "advocacy occur[s] in the heat of a controversial referendum vote," it "only strengthens the protection afforded" by the First Amendment. *Id*.

Ohio's law failed exacting scrutiny for the same reasons Alaska's law should fail here. "Insofar as the interest in informing the electorate," the Court reasoned, "the identity of the speaker is no different from other components of the document's content that the author is free to include or exclude." *Id*. at 348. "The simple interest in providing voters with additional relevant information" does not "justify a state requirement that a writer make statements or disclosures she would otherwise omit" and "add[s] little, if anything to the reader's ability to evaluate the document's message." *Id*. at 348–49. Accordingly, Ohio's "informational interest [was] plainly insufficient to support the constitutionality of its disclosure requirement." *Id*. at 349.

As the Tenth Circuit aptly summarized, this Court's precedents hold that, in the ballot issue context, "disclosure has some value, but not that much." *Sampson*, 625 F.3d at 1257. Disclosure in the issue advocacy context diminishes the availability of anonymous speech. But "the inherent worth of [ ] speech in terms of its *capacity for informing the public* does not depend upon the *identity of its source*[.]" *Bellotti*, 435 U.S. at 777 (emphasis added); *McIntyre*, 514 U.S. at 353. What voters gain in information, they lose in their ability to focus on the merits of the issue, unclouded by "any bias associated with the author's identity[.]" *McIntyre*, 514 U.S. at 342 n.5; *accord Sampson*, 625 F.3d at 1257. Those countervailing interests must be considered when evaluating the government's informational interest. That the Alaska Supreme Court failed to consider these countervailing interests—or even acknowledge their existence—warrants this Court's review.

II. Anonymous or Pseudonymous Issue Advocacy is a Founding-Era Tradition

Original meaning confirms the doctrinal distinction between restrictions on campaign speech versus issue advocacy. The First Amendment was ratified against a public culture in which political issue advocacy was commonly anonymous or pseudonymous, and the Fourteenth Amendment's Due Process Clause, which incorporates the First Amendment against the States, was ratified by a generation that inherited and continued that same tradition.

This tradition included debates over proposed constitutional arrangements, statutes, public policy, taxation, war and peace, and the structure of government itself. Such debates provide the closest founding-era analogue to modern ballot-measure advocacy because they involved citizens debating whether to adopt legal proposals. And as elaborated below, participants in these issue debates often did so without revealing their names, much less the identities of those who supplied paper, printing, meeting space, or other support.

A. Pseudonymous Issue Advocacy Was Common at the Founding

Anonymous and pseudonymous issue advocacy rests on "an honorable tradition of advocacy and dissent." *McIntyre*, 514 U.S. at 357. Colonial debate over independence from Great Britain was conducted almost exclusively under pseudonyms due to the risk of being accused of sedition. *See McIntyre*, 514 U.S. at 368 (Thomas, J., concurring). For example, *Common Sense*, the most influential pamphlet of the Revolutionary era, was initially published anonymously, and the public did not learn that Thomas Paine was its author until after the pamphlet had reshaped colonial opinion in favor of independence. U.S. House of Representatives, History, Art & Archives, *Whereas: Stories from the People's House, Common Sense & the Continental Congress* (Jan. 8, 2026), at https://perma.cc/WT45-BHUK. Likewise, John Dickinson's Letters from a Farmer in Pennsylvania, one of the most consequential colonial responses to British taxation, appeared under the persona "A Farmer." *See* Founders Online, *The English Editor to the Reader [of John Dickinson's Lettes from a Farmer], 8 May 1768*, https://perma.cc/TU2J-2YZ3. And John Trenchard and Thomas Gordon's *Cato's Letters*, among the most widely read sources of political ideas in colonial America, were likewise written under a pseudonym. *See* BERNARD BAILYN, THE IDEOLOGICAL ORIGINS OF THE AM. REVOLUTION 35–36, 43–44 (1967).

Post-independence, issue advocacy continued in the pseudonymous tradition. Constitutional ratification debates relied extensively on pseudonymous writers. James Madison, Alexander Hamilton, and John Jay penned the *Federalist* papers under the pseudonym "Publius" and Anti-Federalists likewise used pseudonyms such as "Brutus," "Cato," "Centinel," "Federal Farmer," "An Old Whig," and dozens of other classical and occupational pseudonyms. *McIntyre*, 514 U.S. at 342; *id*. at 360, 368 (Thomas, J., concurring).

In the early Republic, Hamilton and Madison debated the Neutrality Proclamation under the pseudonyms "Pacificus" and "Helvidius," with Madison arranging for his drafts to be copied by another hand to preserve his anonymity before publication. *See* Founders Online, *Madison's "Helvidius" Essays, 24 Aug.–18 Sept. 1793 [Editorial Note]*, https://perma.cc/BFW9-NW5Q.

Like APF's communications on RCV, these founding-era writings did not concern candidates but important issues being debated for adoption as binding law. The long tradition of anonymous issue advocacy served two related ends: it encouraged readers to evaluate arguments on their merits rather than the writer's identity, and it protected writers from retaliation by officials, factions, employers, neighbors, or mobs angered by unpopular political claims. *See McIntyre*, 514 U.S. at 341−42, 357. This tradition underscores the need for a clear and robust doctrinal distinction in the First Amendment between restrictions on campaign speech versus independent issue advocacy. Alaska's asserted "informational" interest in regulating independent issue advocacy is clearly inconsistent with this historical tradition.

B. The Framers Viewed Compelled Identification of Issue Advocates as Suppression of Speech and Press

Hostility to compelled identification has deep colonial roots. In 1735, decades before ratification, printer John Peter Zenger was prosecuted for seditious libel after publishing anonymous pieces criticizing New York's royal governor and refusing to name their authors. *McIntyre*, 514 U.S. at 361 (Thomas, J., concurring). Although *Zenger's Case* set no binding precedent, it became an enduring symbol linking anonymity, criticism of public officials, and freedom of the press in the political culture that shaped the framing generation's understanding of these freedoms. *Id.*; *see also* RODNEY A. SMOLLA, SMOLLA & NIMMER ON FREEDOM OF SPEECH § 1:4 (Apr. 2026 update).

The best historical evidence from the ratification period itself is not a founding-era campaign-finance code—there was none. Instead, it is the reaction to efforts to force disclosure of issue advocates' identities in public debates over proposed laws. In October 1787, for example, Benjamin Russell of the *Massachusetts Centinel* announced that he would no longer publish Anti-Federalist essays unless the author left his name "with the Printer, to be made known if required." JOHN P. KAMINSKI, ET AL., 13 THE DOCUMENTARY HIST. OF THE RATIFICATION OF THE CONST. 315–16 (1981) (caps in original); *see also McIntyre*, 514 U.S. at 363–64 (Thomas, J., concurring). Similar episodes appeared elsewhere. In the *Gazette of the State of Georgia*, "A Farmer" proposed in that printers require authors to provide their names and post them in their office for public inspection. *Gazette of the State of Georgia*, Nov. 29, 1787, https://perma.cc/UDR7-V8RU. In Philadelphia, "Tar and Feathers" argued in the *Independent Gazetteer* that Anti-Federalists who criticized the proposed Constitution anonymously "should reflect, that his name may yet be known, and himself branded with infamy as an enemy to the happiness of the United States" and suggested that the people should "honor him with a coat of TAR AND FEATHERS." JOHN P. KAMINSKI, ET AL., 2 THE DOCUMENTARY HIST. OF THE RATIFICATION OF THE CONST. DIGIT. ED. 148 (2009) (caps in original). These efforts were widely denounced, however, as efforts to suppress debate, expose Anti-Federalists to retaliation, and violate the liberty of the press and inquiry. *See* Robert G. Natelson, *Does "The Freedom of the Press" Include a Right to Anonymity?: The Original Meaning*, 9 N.Y.U. J.L. & LIBERTY 160, 191–95 (2015); *McIntyre*, 514 U.S. at 365–67 (Thomas, J., concurring).

These episodes are not perfect analogues to modern donor-disclosure regulation. But they do show that the founding generation deeply valued anonymous issue advocacy, considering it essential to free speech, press, and association. *McIntyre*, 514 U.S. at 367. Indeed, there is no known founding-era analogue for Alaska's regime. The available historical materials disclose no early federal or state practice or precedent requiring that those wishing to speak on public issues—much less their donors—be disclosed as a condition of engaging in such debate. The closest historical analogues run in the opposite direction: anonymous and pseudonymous speech on public issues were ubiquitous, and efforts by private actors to force disclosure were met with swift and decisive condemnation.

C. This Court's Associational Privacy Cases Confirm that Disclosure Laws for Issue Advocacy Violate the First Amendment

This Court's anonymity cases acknowledge and extend this traditional understanding of the First Amendment's freedoms. In *Talley v. California*, 362 U.S. 60 (1960), the Court held that anonymous issue speech has "played an important role in the progress of mankind" and is a foundation of the Framers' conception of freedom because it enabled "critici[sm] [of] oppressive practices and laws" of England and colonial governments. *Id.* at 64–65. And in cases such as *Bates v. City of Little Rock*, 361 U.S. 516, 523 (1960), and *NAACP*, 357 U.S. at 460, the Court held that "States may not compel members of groups engaged in the dissemination of ideas to be publicly identified."

Talley, 362 U.S. at 65. "The reason for these holdings," explained *Talley*, was "that identification and fear of reprisal might deter perfectly peaceful discussion of public matters of importance." *Id.*

Alaska may argue that compelled donor disclosure is not identical to compelled author identification. True enough. But that distinction cuts against Alaska, not for it. If the founding tradition protected a speaker's ability to withhold her name when debating a proposed law, it is hard to infer greater government power to force a speaker to identify those who made the speech financially possible. Anonymity and associational privacy for issue advocates are worth little if the government may require a speaker to register and report, and to disclose the printer, patron, donor, or other supporter who provided something of value to enable the message's dissemination. It is well established that compelled disclosure of a person's connection to disfavored or controversial advocacy can deter protected activity. *NAACP*, 357 U.S. at 462–63; *Bonta*, 594 U.S. at 606. Donors to issue-advocacy organizations are entitled to this protection.

III. The Decision Below Deepens Ballot-Disclosure Splits

A. The Circuit Spilt on the Strength of the Informational Interest

This Court should grant the petition to clarify whether Alaska's disclosure regime advances a governmental interest significant enough to justify infringing the First Amendment rights of those speaking about ballot-measure issues. The Alaska Supreme Court held that "[t]he interest underlying Alaska's reporting and disclosure laws is strong enough to pass exacting scrutiny" because it believed the State's interest in informing the electorate "'applies with full force to ballot issues,'" App. 62a (quoting *Messerli*, 626 P.2d at 86–87), and rejected APF's argument that Alaska's laws, triggered at zero dollars, provide insufficient value to voters to be considered sufficiently important. App. 63a–72a.

That cannot be right as a matter of constitutional law. Small contributions or expenditures tell voters "little about the *financial* backing of the ballot proposition," which is the interest Alaska asserted here, and must therefore be insufficient at some threshold to justify the associated burden on issue advocacy. *Canyon Ferry Rd. Baptist Church of E. Helena, Inc.* v. *Unsworth*, 556 F.3d 1021, 1033 (9th Cir. 2009) (emphasis in original). And as explained above, the informational interests are minimal at best in the ballot context when weighed against the lost value of anonymous speech.

The Alaska Supreme Court, however, is not alone in its mistake. Several federal courts of appeals have extended the informational interest in full force to the ballot context, assuming that it offers the same value as it does in candidate elections. *See, e.g.*, *Worley* v. *Cruz-Bustillo*, 717 F.3d 1238, 1245 (11th Cir. 2013); *Brumsickle*, 624 F.3d at 1005; *Ctr. for Individual Freedom* v. *Madigan*, 697 F.3d 464, 480 (7th Cir. 2012); *Nat'l Org. for Marriage* v. *McKee*, 649 F.3d 34, 57 (1st Cir. 2011) (*McKee I*); *Justice* v. *Hosemann*, 771

F.3d 285, 298 (5th Cir. 2014). The Fifth Circuit, for instance, has concluded that "the informational interest that the Supreme Court described approvingly in *Buckley* seems to be at least as strong when it comes to ballot initiatives," erroneously assuming that voters are unable to evaluate the merits of policy proposals without a proxy for partisan affiliation. *Hosemann*, 771 F.3d at 298. The Seventh Circuit likewise reasoned that "[b]ecause the issues can be complex and the public debate confusing, voters' interest in knowing the source of messages promoting or opposing ballot measures is especially salient in such campaigns." *Madigan*, 697 F.3d at 480. The First and Ninth Circuits have even described the informational interest as "compelling" in the ballot-issue context. *See Brumsickle*, 624 F.3d at 1005; *Nat'l Org. for Marriage, Inc.* v. *McKee*, 669 F.3d 34, 40 (1st Cir. 2012) (*McKee II*).

These decisions stand in stark contrast to the Tenth Circuit's decision in *Sampson*, which concluded that the "legitimate reasons for regulating candidate campaigns apply only partially (or perhaps not at all) to ballot-issue campaigns" and cast doubt on whether the "interest in knowing who is spending and receiving money to support or oppose a ballot issue" can qualify as a valid government interest. *Sampson*, 625 F.3d at 1255.

B. The Circuit Split on Zero-Dollar Thresholds

Additionally, the Alaska Supreme Court's decision deepens the split over whether the informational interest is sufficiently important when applied to small donations or expenditures. At least three circuits have held that states fulfill their "informational interest through a first-dollar disclosure threshold." *See Worley*, 717 F.3d at 1251; *Hosemann*, 771 F.3d at 298; *McKee II,* 669 F.3d at 41.

The Ninth and Tenth Circuits disagree. The Ninth Circuit has recognized that "[a]s a matter of common sense, the value of . . . financial information to the voters declines drastically as the value of the expenditure or contribution sinks to a negligible level" and that "[a]s the monetary value of an expenditure in support of a ballot issue approaches zero, financial sponsorship fades into support and then into mere sympathy." *Canyon Ferry*, 556 F.3d at 1033. The Tenth Circuit likewise has adopted a sliding scale approach, explaining that "the strength of the informational interest in financial disclosure varies depending on whether an issue committee has raised and spent \$10 million, for example, or instead \$3,500." *Coal. For Secular Gov't v. Williams*, 815 F.3d 1267, 1278 (10th Cir. 2016); *see also Sampson*, 625 F.3d at 1261.

This case provides an ideal vehicle to resolve these splits, particularly because the facts are undisputed and the petition presents clean legal issues for review. The Court should accordingly grant the petition for certiorari to resolve the confusion and clarify whether the informational interest justifying campaign expenditure disclosures "applies with full force to ballot issues" at a zero-dollar threshold.

CONCLUSION

For the reasons above, this Court should grant certiorari.

Respectfully submitted,
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