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 a Writ of Certiorari to the Supreme Court of Alaska

BRIEF OF AMICI CURIAE PEOPLE UNITED FOR PRIVACY FOUNDATION, THE PHILANTHROPY ROUNDTABLE, THE MANHATTAN INSTITUTE, AND STATE POLICY NETWORK IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the "informational interest" recognized in *Buckley v. Valeo*, 424 U.S. 1 (1976), permits a State to compel the public disclosure of any and all donors to organizations engaged in political speech.

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INTEREST OF AMICI CURIAE[1]

People United for Privacy Foundation (PUFPF) is a nonprofit, nonpartisan § 501(c)(3) organization that advocates for the right of individual Americans to come together in support of their shared values. Pursuant to that interest, PUFPF submits comments on proposed legislation and briefs in cases concerning government action that threatens to chill nonprofit advocacy by unlawfully unmasking organizations' members and financial supporters.

The Philanthropy Roundtable is an independent nonprofit organization and leading network of charitable donors. Its mission is to promote excellence in philanthropy, protect philanthropic freedom, and help donors achieve their philanthropic intent and advance liberty, opportunity, and personal responsibility in the United States and abroad.

The Manhattan Institute (MI) is a nonprofit policy research foundation that works to keep America and its great cities prosperous, safe, and free. MI develops and disseminates ideas that foster individual freedom and economic choice across multiple dimensions. To that end, it produces scholarship and files briefs opposing regulations that violate constitutionally

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[1] Counsel of record for all parties received notice of Amici's intention to file this brief at least 10 days prior to its due date. Pursuant to Rule 37.6, counsel for Amici Curiae certifies that no party's counsel authored this brief in whole or in part, and no party, party's counsel, or person other than Amici Curiae contributed money to fund the brief's preparation or submission.

protected liberties, including the freedom of speech and political participation.

State Policy Network (SPN) is an independent 501(c)(3) association made up of state-focused, market-oriented policy research organizations that advocate and educate on matters of public policy throughout all fifty states. SPN is committed to helping its affiliates achieve enduring policy wins that defend liberty in their state and amplify the growth and influence of state-based organizations, with a commitment to advancing and protecting federalism, civil society, and free enterprise. SPN stands for the interests of countless nonprofits and the people associated with them who, through their time and generosity, contribute to America's robust civil society and work to address society's most pressing problems.

As organizations dedicated to public advocacy, private association, and the important role of an independent civil society in our national life, Amici believe this Court must act to secure effective judicial review of governmental demands for nonprofit donor information.

SUMMARY OF THE ARGUMENT

For nearly seventy years, this Court has held that government demands for the identities of an organization's members and financial supporters are constitutionally suspect. The chill that follows compelled disclosure is not mere conjecture; it "arises as an inevitable result of the government's conduct in requiring disclosure." *Ams. for Prosperity Found. v.*

Bonta, 594 U.S. 595, 607 (2021) (*AFPF*) (quoting *Buckley v. Valeo*, 424 U.S. 1, 65 (1976) (per curiam)). From *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958), through *AFPF*, this Court has treated donor privacy as the constitutional baseline and required governments to justify each intrusion under exacting scrutiny.

Yet the Court has tolerated an exception for expression at the core of the First Amendment's protections: speech about policy issues, candidates, elections, and ballot measures. Confronting statutes hostile to political speech itself, the Court has accepted disclosure as the lesser evil, "the least restrictive means of curbing the evils of campaign ignorance and corruption." *Buckley v. Valeo*, 424 U.S. 1, 68 (1976). And to sustain that concession, it has invoked a governmental "informational interest" in telling voters where political money comes from. *Id.* at 80–81.

That interest is not, and never has been, unbounded. As articulated in *Buckley* and further refined in a line of campaign finance cases stretching to the present day, it is an interest in material financial support: information a reasonable voter can use to evaluate a candidate or a measure. And it must remain bounded because exacting scrutiny requires that a disclosure regime be "narrowly tailored to the interest it promotes," *AFPF*, 594 U.S. at 611 (quotation marks and citations omitted). In other words, constitutional tailoring presupposes an interest that has outer limits. An interest defined as the value of whatever information the government demands is circular: every demand satisfies it, and the demand becomes its own justification.

Here, for example, the Alaska Supreme Court applied this circular rationale—if the government demands information, it's clearly important—to target an organization that did not engage in electoral advocacy and to sustain a regime with no monetary threshold whatsoever. While courts use a scalpel to protect political speech from laws like "no political pamphleteering in the public park," they routinely let governments address donor disclosure with a sledgehammer. Meanwhile, technological advances have transformed disclosure from paper filings consulted by professionals into permanent, searchable electronic databases of citizens' political contributions.

The Court should grant the Petition and confirm that the informational interest has limits against which narrow tailoring can be measured. Better yet, it should begin harmonizing its political-disclosure precedents with the robust protection for private association the First Amendment commands in every other context.

ARGUMENT

I. This Court Protects Privacy of Association Because the Chill Imposed by Compelled Disclosure Is "Inevitable."

The "freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect" of liberty, and "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association." *NAACP*, 357 U.S. at 460. From that premise, this Court drew a conclusion that has anchored its associational jurisprudence ever since: "compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association" as a direct prohibition. *Id.* at 462. Alabama could not demand the NAACP's membership lists, not because any particular member first proved he would be harmed, but because the demand itself endangered all the members' ability "to pursue their collective effort to foster beliefs which they admittedly have the right to advocate." *Id.* at 462–63.

The cases that followed dealt with subtler intrusions. First Amendment freedoms are protected "not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference." *Bates v. City of Little Rock*, 361 U.S. 516, 523 (1960). Even a "legitimate and substantial" governmental purpose "cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Shelton v. Tucker*, 364 U.S. 479, 488 (1960). And the interest in keeping one's associations confidential is itself constitutionally weighty: a "strong associational interest in maintaining the privacy of membership lists." *Gibson v. Fla. Legis. Investigation Comm.*, 372 U.S. 539, 555–56 (1963).

Buckley v. Valeo gathered these cases into "general principles," explaining that this Court has "repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." 424 U.S. at 64. Critically, the Court did not treat the resulting chill as conjecture a plaintiff must prove. The "deterrent effect on the exercise of First Amendment rights" arises "as an unintended but inevitable result of the government's conduct in requiring disclosure." *Id.* at 65.

Five years ago, the Court reaffirmed this line of reasoning. Reviewing California's "dragnet for sensitive donor information," *AFPF* confirmed that exacting scrutiny is "triggered by 'state action which *may* have the effect of curtailing the freedom to associate,' and by the '*possible* deterrent effect' of disclosure." 594 U.S. at 614, 616 (quoting *NAACP*, 357 U.S. at 460–61).[2] No showing of actual reprisal is required: "[t]he risk of a chilling effect on association is enough, because First Amendment freedoms need breathing space to survive." *Id.* at 618–19 (citation and quotation marks omitted).

The rule that emerges is straightforward: privacy of association is the default. When the government demands to know who belongs to, or financially supports, an advocacy organization, the demand is suspect from the start, and the government bears the burden of justifying it every time.

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[2] Justice Thomas would have gone further and applied strict scrutiny. 594 U.S. at 619 (Thomas, J., concurring in the judgment).

II. The Court Has Nevertheless Made an Exception for Speech at the Core of the First Amendment.

If any category of expression should receive the full measure of protection, it is speech about elections and public policy. "[T]here is practically universal agreement that a major purpose of th[e] [First] Amendment was to protect the free discussion of governmental affairs," including "discussions of candidates" and "all such matters relating to political processes." *Mills v. Alabama*, 384 U.S. 214, 218–19 (1966). The constitutional guarantee "has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971). And when the people legislate directly, speech about the measure before them "is at the heart of the First Amendment's protection." *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 776 (1978).

Yet it is exactly here that the Court has permitted what it forbids elsewhere. *Buckley* upheld a statute requiring public reports identifying—by name, address, occupation, and principal place of business—those who contributed as little as $100.01 in a calendar year. 424 U.S. at 81–83. The Court conceded the thresholds were "indeed low," that small contributors "are likely to be especially sensitive to recording or disclosure of their political preferences," and that Congress had given the line little thought, having "merely . . . adopted the thresholds existing in similar disclosure laws since 1910." *Id.* at 83. It deferred anyway. The line, it reasoned, "is necessarily a judgmental decision, best left in the context of this complex legislation to congressional discretion." *Id.*

That deference inaugurated the strange situation that exists to this day: courts declare in strong and even poetic language that donor and contributor privacy is of paramount importance to our most cherished First Amendment rights, but they then consistently and almost without fail defer to whatever the legislature says is necessary. That is the opposite of scrutiny. Exacting scrutiny has become a hortatory constitutional affirmation rather than an applicable test with any teeth whatsoever.

The *Buckley* Court and its successors accepted this arrangement because the proposed alternative was worse. Disclosure, it reasoned, is "the least restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist"—a lesser evil than expenditure ceilings and outright bans. *Id.* at 68. That logic has carried the doctrine for half a century. *See Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 369 (2010) ("disclosure is a less restrictive alternative to more comprehensive regulations of speech"); *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 223 (2014) (plurality op.) ("disclosure often represents a less restrictive alternative to flat bans on certain types or quantities of speech").

Chief Justice Burger saw the problem with this approach at the outset: "secrecy and privacy as to political preferences and convictions are fundamental in a free society," he wrote, objecting to the "illdefined 'public interest'" invoked "to breach the historic safeguards guaranteed by the First Amendment." *Buckley*, 424 U.S. at 237–38 (Burger, C.J., concurring in part and dissenting in part). Governmental power, he reminded the Court, "cannot be used to force a citizen to disclose his private affiliations," even absent "any systematic harassment or retaliation." *Id.* (cleaned up).

The result is a body of law at odds with itself. Outside the context of policy discussions and electoral advocacy, compelled disclosure is presumptively suspect and the government must carry its burden in every case. Within it, contributors receive the least privacy precisely where the First Amendment promises the most protection. *Cf. Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989). Whether that inversion should survive at all is a question for another day. What matters now is the interest the Court has used to sustain it because that interest, properly understood, has limits courts below have abandoned.

III. The Informational Interest Sustaining Disclosure Regulations Was Never Unbounded, and Exacting Scrutiny Cannot Survive if it Becomes So.

A. The Court's Articulations of the Informational Interest Are Concrete and Limited.

Buckley identified three interests served by federal disclosure requirements: informing the electorate, deterring corruption "by exposing large contributions and expenditures to the light of publicity," and gathering the data needed to police the statute's substantive rules. 424 U.S. at 66–68. The first—the informational interest—has become the workhorse. Standing alone, it is said to be "sufficient to justify" disclosure laws. *Citizens United*, 558 U.S. at 369. Its meaning therefore matters enormously.

As *Buckley* described it, the interest is specific. Disclosure "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." 424 U.S. at 66–67 (footnote omitted). "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." *Id.* at 67.

Each articulation since has been similarly concrete. Sponsor identification may be required "so that the people will be able to evaluate the arguments to which they are being subjected." *Bellotti*, 435 U.S. at 792 n.32. Electioneering-communication reporting lets the public "identify the source of the funding behind broadcast advertisements influencing certain elections." *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 196 (2003) (citation omitted). "[T]he public has an interest in knowing who is speaking about a candidate shortly before an election," *Citizens United*, 558 U.S. at 369, so that voters can "make informed decisions and give proper weight to different speakers and messages," *id.* at 371.

Two features run through these formulations. First, the interest is evaluative: it applies to information a reasonable voter could use in judging a message, a candidate, or a measure. And second, the interest is material: it has always been linked to financial support of a magnitude capable of telling the voter something—the "large contributions" whose exposure *Buckley* emphasized, the funders "behind" an advertising campaign. 424 U.S. at 67; *McConnell*, 540 U.S. at 196.

Alaska's actions here flunk both prongs. First, even if a reasonable voter had an interest in the donors to an organization supporting or opposing a ballot measure, no reasonable voter will take a position based on a nonprofit blog post that does not even mention the measure. Pet. 2. Second, as *Buckley* itself recognized, the government's interest attenuates as amounts shrink. It sustained a $100 line not because the amount is constitutionally irrelevant, but because Congress was entitled to some room in drawing it. 424 U.S. at 83. Failing to draw a line at all, as Alaska has done here, cannot be justified under even the most permissive of this Court's precedents.

B. Validating an Interest in Whatever Information the Government Demands is Circular Reasoning and Nullifies Exacting Scrutiny.

Exacting scrutiny demands "a substantial relation between the disclosure requirement and a sufficiently important governmental interest," and requires that "the disclosure requirement be narrowly tailored to the interest it promotes." *AFPF*, 594 U.S. at 611 (quotation marks and citations omitted). Tailoring to this standard involves evaluating both the demand for information and the interest that exists independently of that demand.

If one redefines the informational interest as an interest in the disclosure itself—an interest in whatever information the government elects to demand at a given point in time—the comparison disappears. Every disclosure statute then supplies its own justification: the statute demands information, and the interest is defined as the value of receiving the information demanded. This is both tautological and unsustainable. Exacting scrutiny is designed to make the government justify each intrusion, and it cannot coexist with an interest that is satisfied by the intrusion itself.

This Court has never accepted that circular rationale. When an informational rationale has floated free of any legitimate regulatory anchor, the Court has rejected it. In *Davis*, the government defended a disclosure requirement on informational grounds after the substantive scheme it served was held unconstitutional; the Court struck the disclosure requirement too. *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 744 (2008). In *AFPF*, California insisted that up-front collection of donor information was important and efficient; the Court found "a dramatic mismatch" between the State's actual interest and its demand and invalidated the regime. 594 U.S. at 612, 614–15. In each case, the analysis succeeded only because the asserted interest had content against which the demand could be tested. If the informational interest is stripped of that content, no disclosure law would ever fail.

IV. Lower Courts Now Treat the Informational Interest as Boundless, and the Consequences of that Treatment Appear in this Case.

Courts routinely sustain sweeping disclosure regimes on a bare invocation of the informational interest, which is recited rather than examined.

Consider the position the State of Delaware is pressing in the Third Circuit at this moment. Delaware's Elections Disclosure Act requires organizations sponsoring "electioneering communications" to publicly report their donors. Defending the statute, the State argues that the informational interest is "alone . . . sufficient to justify" disclosure laws; that "there is no alternative means of achieving the Act's informational interest without its donor disclosure requirements"; and that "the very point of an electoral disclosure law is to bring important election information *to the public*." Brief for Appellees 30–32, *Ams. for Prosperity Found. v. Albence*, No. 26-2469 (3d Cir. July 29, 2026). Each proposition assumes its conclusion. If "the very point" of a disclosure law is disclosure, the law's fit with its purpose is guaranteed before the analysis begins—and no "alternative means" could ever exist, because the interest simply is the mandated production of donor names.

Appellate courts have blessed comparable reasoning. *See, e.g.*, *Gaspee Project v. Mederos*, 13 F.4th 79, 92–94 (1st Cir. 2021) (sustaining donor disclosure and on-ad disclaimers for issue advocacy as serving "the government's substantial interest in transparent elections—the bedrock of our democracy"), *cert. denied*, 142 S. Ct. 2647 (2022); *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010) (sustaining disclosure obligations for advertisements that never mentioned the ballot measure at issue); *Worley v. Florida Sec'y of State*, 717 F.3d 1238, 1251 (11th Cir. 2013) (upholding a "first-dollar disclosure threshold" under the informational interest), *cert. denied sub nom. Worley v. Detzner*, 571 U.S. 991 (2013).

The decisions holding the line, by contrast, stand out because those courts asked what the disclosed information is worth to voters and whether the informational interest is limited. "As a matter of common sense, the value of this *financial* information to the voters declines drastically as the value of the expenditure or contribution sinks to a negligible level." *Canyon Ferry Rd. Baptist Church of E. Helena, Inc. v. Unsworth*, 556 F.3d 1021, 1033 (9th Cir. 2009) (holding Montana's then-existing first-dollar disclosure law unconstitutional as applied to de minimis, in-kind church expenditures). *Accord Sampson v. Buescher*, 625 F.3d 1247, 1261 (10th Cir. 2010) (public interest in disclosure of a small-scale ballot-issue committee's contributors was "minimal"); *Coal. for Secular Gov't v. Williams*, 815 F.3d 1267

(10th Cir. 2016) (similar, for a group spending roughly $3,500).

A. Alaska's Zero-Dollar Regime Lacks Any Limiting Principle.

The decision below carries this boundless version of the government's interest to its logical end. Alaska requires every person making an expenditure to influence a ballot proposition to register with the State and to file reports identifying, among other things, the contributions the speaker has received. Alaska Stat. §§ 15.13.040(d), 15.13.050(a), 15.13.140(b). As this case shows, even a 501(c)(3) nonprofit reposting general commentary concerning an issue of public policy is enough to trigger the law. Covered communications must carry a "paid for by" disclosure, and organizational speakers must name their three largest contributors over the preceding twelve months on the face of the communication. *Id.* § 15.13.090(a). The statutes exempt modest activity by individuals, *see id.* § 15.13.040(h) (up to $500 for certain printed materials) but contain no monetary threshold for organizations. For a nonprofit, the obligations begin at the first dollar spent.

Petitioner's case illustrates what a zero-dollar threshold means in practice. Alaska Policy Forum published a report, two press releases, a blog post, and a video criticizing ranked-choice voting. The Alaska Public Offices Commission, with unlikely precision, found that the organization spent $643.20 in staff time on the effort, and on that basis found that it was required to register as a political speaker, file expenditure reports, and stamp its publications with the names of its three largest contributors. *See Alaska Pol'y Forum v. Alaska Pub. Offs. Comm'n*, 583 P.3d 701, 713 (Alaska 2026). The Alaska Supreme Court affirmed, holding the interest in an "informed electorate" strong enough to satisfy exacting scrutiny and rejecting Petitioner's argument that the public has little interest in the funders of speech that costs almost nothing to produce, and which did not even discuss a specific ballot measure. *Id.* at 730.

That result should be measured against the informational interest articulated by this Court. What voter evaluating the ballot measure needs to know who financed a few hundred dollars of a think tank's staff time? There is no candidate whose "future performance in office" the disclosure helps predict, *Buckley*, 424 U.S. at 67, and no sum capable of purchasing anyone's responsiveness. There is no advertising campaign whose funders the public might wish to see "behind," *McConnell*, 540 U.S. at 196—there is only a blog post. There is no indication the organization's funders even supported the post in question. Such disclosure serves no interest this Court has ever described. It survives below only because the informational interest has been recast as an interest in disclosure itself: an interest no statute can fail.

Nor is Alaska an outlier. Federal law now exhibits the same pathology. Congress requires political committees to itemize a contributor only after his or her donations aggregate above $200 in a year, 52 U.S.C. § 30104(b)(3)(A), indicating that, below that line, publication of donor information tells the electorate nothing worth the privacy intrusion. Yet under the federal conduit rule, intermediaries that forward earmarked contributions must report the "original source" of each one, with no monetary floor at all. *Id.* § 30116(a)(8). The practical result is that millions of Americans who give five or ten dollars through online fundraising platforms are cataloged in a permanent, public database, even though Congress itself concluded that identical contributions made directly to a committee carry no informational value. That regime, too, is being defended on the strength of the freestanding informational interest. *See McDonald v. Fed. Election Comm'n*, No. 25-10830 (5th Cir. Mar. 2, 2026).

Moreover, the internet has raised the stakes. Disclosure does not mean the same thing it did in 1976, when reports were filed on paper and made available for review in a public depository. The Court has celebrated that change: "disclosure now offers a particularly effective means of arming the voting public with information," thanks to modern technology. *McCutcheon*, 572 U.S. at 224; *accord Nat'l Republican Senatorial Comm. v. Fed. Election Comm'n*, 609 U.S. ___, No. 24-621 (June 30, 2026.)

But effectiveness cuts both ways, and the Court has acknowledged that the risks of disclosure "are heightened in the 21st century and seem to grow with each passing year, as 'anyone with access to a computer can compile a wealth of information about' anyone else, including such sensitive details as a person's home address or the school attended by his children." *AFPF*, 594 U.S. at 617 (citation and quotation marks omitted). These "effective" disclosure regimes have become permanent, granular, instantly searchable public records of citizens' political commitments, which never expire and can be cross-referenced with everything else on the internet.

The dangers are of two kinds. The first is retaliation, much of it informal and unrecorded. Such harms rarely generate the affidavits courts demand or justify the expenditures required for litigation, which is one reason this Court has not required proof of them before applying exacting scrutiny. *See AFPF*, 594 U.S. at 618–19. The second is temporal. A donor cannot know how today's mainstream cause will be viewed in ten years, and a permanent record converts every modest contribution into a lifelong wager on the direction of public opinion. Rational citizens respond by declining the wager and not giving at all.

An informational interest with no floor, applied through technology with no friction to records with no expiration, is a standing license to inventory the civic commitments of ordinary citizens. Nothing in *Buckley* or its successors blesses that result.

V. Until the Court Pares Back the Stand-alone Informational Interest, Efforts to Burden Political Giving Will Continue.

This pattern will not correct itself. Disclosure mandates appeal to legislatures for reasons that have nothing to do with informing anyone. They burden critics while using the vocabulary of transparency.

Lower courts, reading this Court's political-disclosure precedents at their broadest, will keep sustaining such results. And each denial of review teaches that the informational interest is simply a phrase to be recited rather than a standard that must be met.

In a ballot measure election, there is no candidate and thus no anticorruption rationale: "The risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue." *Bellotti*, 435 U.S. at 790. The decision below rests on the informational interest alone, at the lowest possible threshold, as applied to core political speech by a nonprofit policy organization. If that application is constitutional, the government's interest has no content and "exacting scrutiny" has no function.

The Court should confirm, at a minimum, that the informational interest is what its precedents describe: a bounded interest in material financial support for electoral advocacy, with content against which narrow tailoring can be measured. Better still, it should begin harmonizing its political-disclosure cases with the "privacy of association and belief guaranteed by the First Amendment" that governs everywhere else. *Buckley*, 424 U.S. at 64. Until it does, efforts to burden political giving, and the citizens who sustain civic advocacy, will continue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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