No. 26-88

In the Supreme Court of the United States

ALASKA POLICY FORUM,

Petitioner,

versus

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

Respondents.

On Petition for Writ of Certiorari to the Alaska Supreme Court

Brief of the Foundation for Individual Rights and Expression as *Amicus Curiae* in Support of Petitioner

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STATEMENT OF INTEREST[1]

The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan nonprofit that defends the rights of all Americans to free speech and free thought—the essential qualities of liberty. Since 1999, FIRE has successfully defended individual rights through public advocacy, strategic litigation, and participation as *amicus curiae* in cases that implicate expressive rights under the First Amendment without regard to the speakers' views. The Court recently cited FIRE's *amicus* submission in *First Choice Women's Resource Centers, Inc. v. Davenport* while explaining how governmental demands for donor information chill association and advocacy. *See* 608 U.S. ___, ___ (2026) (slip op., at 12–13).

Like many nonprofits, FIRE regularly speaks on public issues and relies on supporters who may reasonably wish to keep their associations private. A rule making disclosure turn on timing, speaker identity, platform, or assumed audience knowledge forces FIRE and advocacy organizations across the political spectrum to guess whether ordinary policy advocacy has crossed an invisible campaign-finance line. That un-

[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than FIRE or its counsel made such a monetary contribution. Counsel of record for all parties received timely notice of FIRE's intent to file this brief.

certainty is especially consequential when an organization's advocacy is unpopular or critical of public officials.

SUMMARY OF THE ARGUMENT

This case asks whether a State may impose donor-identification, registration, and reporting duties on advocacy organizations based on an open-ended inquiry into who is speaking, where their message appears, and what officials assume the audience may know. That question remains unresolved. *Citizens United* rejected limiting disclosure to express advocacy and its functional equivalent, but the regime there began with the objectively determinable definition of "electioneering communication" upheld in *McConnell*: a broadcast, cable, or satellite communication referring to a clearly identified candidate, within a fixed electoral window, and reaching a defined audience. *Citizens United v. FEC*, 558 U.S. 310, 369 (2010); *McConnell v. FEC*, 540 U.S. 93, 189–90, 194 (2003).

Alaska supplies no comparable objective gateway for determining coverage before context does its work. Although Alaska defines a period during which regulation may apply, whether speech intended as issue advocacy triggers disclosure obligations still turns on contextual judgments about the speaker, platform, geography, and presumed audience understanding. Alaska determined here that communications by petitioner Alaska Policy Forum (APF) triggered disclosure based on their timing, APF's Alaska-facing platform, and presumed audience knowledge—even while dismissing allegations concerning some of the same material on the website of Protect My Ballot (PMB), the national coalition to which APF belongs. Pet. App. 12a–14a, 29a–31a, 42a–44a. The publisher- and audience-dependent trigger that Alaska utilizes leaves organizations unable to determine before speaking whether campaign-finance duties will attach.

That uncertainty is consequential. This Court's recent *First Choice* decision confirms that government demands for donor information discourage association and advocacy even before compelled disclosure obligations can be enforced. 608 U.S. ___, ___ (2026) (slip op., at 21–22). For FIRE and similar nonprofits, Alaska's rule forces a speech-chilling choice: speak and risk exposing supporters, or self-censor. The Court should grant review to determine whether the First Amendment permits that result without an objective ex ante threshold.

The exercise of associational and expressive rights cannot hinge on imperceptible contingencies. FIRE urges the Court to grant the petition for writ of certiorari.

ARGUMENT

I. Review is warranted to decide whether, consistent with the First Amendment, a State may require disclosure of donor information based on an open-ended, speaker- and audience-dependent classification of issue advocacy.

Before Measure 2 asking Alaskans about ranked-choice voting qualified for the state's November 2020 ballot, APF—a nonprofit dedicated to educating Alaskans about public policy—had criticized the practice. In January 2020, APF joined Protect My Ballot (PMB), a national coalition formed to educate the public about ranked-choice voting. Pet. App. 7a. Later in 2020, APF distributed PMB's July press release,[2] embedded a ranked-choice-voting video, issued an October release concerning a study, and published an article linking to PMB's website. Pet. App. 7a–10a. None of these, however, referred to Measure 2 by name, although the July release mentioned Alaskans voting in November and the video ended "SAY NO TO RANKED CHOICE VOTING." Pet. App. 8a–9a.

The Alaska Public Offices Commission (APOC) nevertheless found those communications triggered registration, reporting, and "paid for by" requirements. The Alaska Supreme Court affirmed. Pet. App. 12a–14a, 39a–46a. In doing so, it extended the state's compelled disclosure requirements through a cover-

[2] An earlier op-ed by APF in February 2020 is not among the communications at issue. Pet. App. 32a n.88.

age rule materially less objective than the electioneering-communication trigger upheld in *McConnell* and applied in *Citizens United*.

To be sure, *Citizens United* forecloses a categorical rule limiting disclosure to express advocacy or its functional equivalent. 558 U.S. at 369. But that decision did not decide whether disclosure may be triggered through an open-ended governmental inquiry into timing, geography, publisher identity, and presumed audience knowledge. The disclosure obligation upheld in *Citizens United* attached to a category defined ex ante by objective facts. The provisions applied to "electioneering communications" with objective components: broadcast, cable, or satellite communication; clearly identified candidate; fixed pre-election window; and defined audience thresholds. Indeed, *McConnell* rejected a vagueness challenge to that definition because the components were "easily understood and objectively determinable." 540 U.S. at 189–90, 194. Yet Alaska leaves speakers without a comparable objective coverage gateway for determining, before they speak, whether disclosure obligations will attach.

A. Alaska's requirements chill freedom of speech.

In *Buckley v. Valeo*, 424 U.S. 1 (1976), this Court recognized there is a perhaps unclear line between issue advocacy and express advocacy, but the line matters because the governmental interests supporting regulation of campaign advocacy do not necessarily extend to issue advocacy. *Id.* at 41–44 & n.52. Rather than respect that line, the Alaska Supreme Court's decision blurs it further, weakening the First Amendment's protection of issue advocacy. That decision essentially forces nonprofit organizations like APF to predict—without objective criteria—when their efforts to educate the public on policy issues will qualify as regulated campaign speech and subject them to stringent disclosure requirements.

A regime like Alaska's leaves public interest organizations to chart an unclear course and necessarily causes First Amendment harm. *See Citizens United*, 558 U.S. at 324 (explaining that uncertain campaign-finance coverage may effectively require speakers to "retain a campaign finance attorney" or "seek declaratory rulings" before speaking). Faced with an indeterminate trigger, a nonprofit must either trim its speech, risk disclosing its supporters, or retain campaign-finance counsel before addressing matters of public concern. Such uncertainty is neither required nor endorsed by this Court's precedents, and merits plenary review.

B. Alaska's regime also burdens freedom of association.

Alaska's regime also threatens harm to the freedom to associate with others "implicit in the right to engage in activities protected by the First Amendment." *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984). Nearly seventy years ago, this Court recognized that "[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958).

In *NAACP*, the Alabama Attorney General sought the organization's membership lists in an effort to drive it from the state. *Id.* at 452–53. NAACP members thus risked economic retaliation, job loss, threatened physical coercion, and public hostility. *Id.* at 462–63. This Court rebuffed Alabama's effort. *Id.* at 466. And it soon thereafter reaffirmed that freedom of association is "protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference." *Bates v. Little Rock*, 361 U.S. 516, 523 (1960).

Alaska's regime likewise implicates the associational freedom the First Amendment protects. Campaign-finance disclosure requirements are subject to exacting scrutiny, including narrow tailoring. *Citizens United*, 558 U.S. at 366–67; *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 611 (2021) (majority opinion). By upholding disclosure without a coverage gateway defined by clear objective criteria, the Alaska Supreme Court approved a regime materially different from the framework this Court considered in *McConnell* and *Citizens United*.

As petitioner explains, Alaska's campaign-finance requirements fail to survive exacting scrutiny for many reasons. Pet. 19–37 (challenging Alaska's asserted informational interest and the tailoring of its requirements). The constitutional problem is that Alaska has failed to supply an objective coverage gateway comparable to the Bipartisan Campaign Reform Act of 2002's (BCRA) bright-line threshold defining the communications subject to the disclosure regime. Instead, the Alaska Supreme Court has empowered governmental actors to decide post facto whether an organization may be punished based on contextual factors it could not know with certainty at the time it spoke.

Allowing a regime like Alaska's to police organizational speech has real-world consequences. The freedoms to associate and speak are critical to nonprofit organizations—particularly if they are advocating for an unpopular position. This Court held in *NAACP* that the First Amendment forbade such compelled disclosure. 357 U.S. at 466. And as it just reaffirmed, "government actions tending to 'curtai[l] the freedom to associate' warrant 'the closest scrutiny' under the First Amendment." *First Choice*, 608 U.S. at ___ (slip op., at 7) (quoting *NAACP*, 357 U.S. *at* 460–61). Alaska's regime cries out for this Court's review.

II. This case cleanly presents the question and demonstrates the First Amendment cost of classification uncertainty.

This case is a good vehicle for review because the Alaska Supreme Court addressed and resolved the constitutional issues in this case, and they are outcome-determinative.

The core question is whether APF's advocacy was express or issue advocacy. This Court has acknowledged "that the distinction between campaign advocacy and issue advocacy may often dissolve in practical application" but "the law in this area requires . . . such a line, because . . . the interests held to justify the regulation of campaign speech and its functional equivalent might not apply to the regulation of issue advocacy." *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 456–57 (2007) (opinion of Roberts, C.J.) (*WRTL*). *Buckley* and *WRTL* reflect the principle that objective, administrable classification standards are necessary where uncertainty threatens to chill protected speech.

Although *FEC v. Furgatch*, 807 F.2d 857, 863 (9th Cir. 1987), permitted limited reference to external events, it cautioned that context must remain "ancillary" and "peripheral to the words themselves." Alaska's application made context do substantially more: classification depended on timing, APF's identity and Alaska-facing platform, geography, and the presumed knowledge of an Alaskan audience. Pet. App. 29a–31a, 42a–44a.

WRTL also explained the problem with a test based on "the actual effect speech will have on an election or on a particular segment of the target audience." 551 U.S. at 469. Such a test puts speakers "wholly at the mercy of the varied understanding of [their] hearers" and ordinarily requires a burdensome, expert-driven inquiry with an indeterminate result. *Id.* (citation omitted). And the resulting uncertainty "will unquestionably chill a substantial amount of political speech." *Id.*

Under *WRTL*'s controlling opinion, "a court should find that an ad is the functional equivalent of express advocacy only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." 551 U.S. at 469–70. Critically, that functional-equivalent inquiry was "only triggered if the speech meets the brightline requirements of [BCRA] § 203 in the first place." *Id.* at 474 n.7.

This case does not require the Court to extend *WRTL*'s functional-equivalent rule wholesale to disclosure; *Citizens United* forecloses a categorical limit of that kind. 558 U.S. at 369. The narrower question is whether, before context may determine coverage, the law must provide an objective threshold speakers can identify ex ante. The BCRA did. Alaska did not. *WRTL*'s insight that an objective gateway precedes an interpretive inquiry remains relevant here. Alaska's provisions contain no comparable objective threshold, and the Alaska Supreme Court did not require one.

This case thus presents the Court with the question whether the First Amendment allows the imposition of registration, reporting, and disclosure requirements based on open-ended contextual criteria—such as publisher identity, geography, timing, and presumed audience understanding—rather than an objective coverage rule a speaker may confidently assess in advance.

A. Alaska's classification allowed publisher and audience context to determine whether issue advocacy became regulated speech.

The Alaska Supreme Court's own analysis shows the constitutional problem in its holding that "[c]onsidering the timing of speech relative to an upcoming election is permissible." Pet. App. 29a. Under that rubric, a video that "does not mention Alaska" qualified as an unambiguous reference to Measure 2 partly because of what it concluded "Alaskans who are presumably the main audience" would understand. Pet. App. 42a–43a. The point is not that context is never relevant. It is that no objective coverage gateway told APF when those contextual considerations could transform policy advocacy into regulated campaign speech.

APOC's treatment of PMB-derived material turned not only on the words used, but also on publisher and audience context. APOC dismissed the allegations against PMB, reasoning that PMB's "website was susceptible to interpretation as a national clearinghouse of information for those opposed to ranked-choice voting in various locales, rather than communications about the Alaska Initiative." Pet. App. 12a–13a. But when APF distributed some PMB-originated material through its own Alaska-facing communications, APOC and the Alaska courts concluded the communications triggered regulatory duties. Pet. App. 39a (July press release); 41a–44a (video); 44a–46a (October communications). The constitutional concern is not that the circumstances between PMB's and APF's use of the communications were identical; it is that no objective coverage rule told APF beforehand when publisher and presumed-audience context would make a regulatory difference.

That speaker-dependent result echoes Chief Justice Roberts's observation that "identical ads aired at the same time could be protected speech for one speaker, while leading to . . . penalties for another."

WRTL, 551 U.S. at 468. Alaska's context-dependent classification presents an analogous problem.

WRTL distinguished genuine issue advocacy urging citizens to contact public officials from an appeal to vote for or against a candidate. 551 U.S. at 470–72. None of the four APF communications that APOC found triggered regulatory obligations used the initiative's formal name.

To be sure, the July release referred to Alaskans voting in November, and the embedded video concluded "SAY NO TO RANKED CHOICE VOTING." Pet. App. 8a–9a. Those facts are not electorally irrelevant. But Alaska supplied no objective coverage gateway comparable to BCRA's bright-line threshold—one that objectively identified the communications entering the regulatory regime before any further interpretive inquiry—and instead made coverage depend on publisher, geography, timing, and presumed audience knowledge.

That runs counter to *WRTL*'s caution that "when it comes to defining what speech qualifies as the functional equivalent of express advocacy subject to such a ban . . . we give the benefit of the doubt to speech, not censorship." 551 U.S. at 482. And while that principle concerned a speech ban, the narrower point here is that even disclosure should not turn on factors speakers cannot identify beforehand.

The uncertainty this regime creates has real consequences for speakers. Public interest organizations that regularly inform the electorate about policy issues must now predict whether their educational materials might later be classified as regulated campaign speech based on timing, geography, or audience assumptions. But they lack objective criteria for making those assessments.

APF's experience illustrates the predictive problem and the chill that will result if the Alaska Supreme Court's decision is permitted to stand. APOC dismissed the allegations against PMB but imposed duties on APF when it distributed some PMB-originated material through APF's own channels. Pet. App. 12a–14a, 161a–62a. The circumstances were not identical; the concern is that coverage depended on publisher and presumed audience context that no objective coverage gateway comparable to BCRA's bright-line threshold identified in advance.

B. *First Choice* confirms that demands to disclose donor identities inflict present associational harm.

This Court's decision earlier this Term in *First Choice* identifies the First Amendment harm caused by demands for donor identities, even before enforcement compels disclosure. The Court explained that such an official demand can discourage reasonable individuals from associating and discourage groups from expressing dissident views—even absent public disclosure. 608 U.S. ___, ___ (2026) (slip op., at 21–22). Alaska's regime makes that harm predictive: organizations must decide before speaking whether the prospect of registration, reporting, and donor identification is worth the risk.

That principle has particular force where, as here, the classification itself is uncertain. Speakers cannot predict in advance whether their issue advocacy will be deemed "express advocacy" based on timing, geography, publisher identity, or presumed audience knowledge. The chilling effect begins before anyone is investigated or penalized—it begins when organizations modify their speech to avoid uncertain regulatory consequences.

Classification uncertainty compounds the associational burden: potential donors and supporters cannot know whether the government may later compel disclosure of their identities and support for an issue-advocacy organization. As the Court recognized in *First Choice*: "Strip away the ability of individuals to work together free from governmental oversight and intrusion, and the freedom to associate may become no freedom at all—individuals deterred, groups diminished, and their protected advocacy suppressed." 608 U.S. at ___ (slip op., at 8).

The decision below exposes an unresolved gap in this Court's First Amendment jurisprudence. It forces nonprofit and public interest organizations to predict when public education becomes regulated campaign speech. The consequences here, requiring compliance with a demanding disclosure regime, are unusually severe.

CONCLUSION

For the foregoing reasons, *amicus curiae* respectfully urges this Court to grant the petition for writ of certiorari to address the constitutional parameters that apply when the government classifies issue advocacy as express advocacy through context-dependent—rather than objective—criteria.

Respectfully submitted,

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