

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,

Respondent.

**On Petition for a Writ of Certiorari
to the Alaska Supreme Court**

**BRIEF OF AMICI CURIAE ADVANCING AMERICAN FREEDOM;
CENTER FOR FREEDOM AND PROSPERITY; CENTER FOR
URBAN RENEWAL AND EDUCATION (CURE); CONCERNED
WOMEN FOR AMERICA; FREEDOM FOUNDATION OF
MINNESOTA; FRONTLINE POLICY COUNCIL; INTERNATIONAL
CONFERENCE OF EVANGELICAL CHAPLAIN
ENDORSERS; JCCWATCH.ORG; LOUISIANA FAMILY FORUM;
MEN AND WOMEN FOR A REPRESENTATIVE DEMOCRACY IN
AMERICA, INC.; NEW YORK STATE CONSERVATIVE PARTY;
NORTH CAROLINA VALUES COALITION; ORTHODOX JEWISH
CHAMBER OF COMMERCE; ET AL.
IN SUPPORT OF PETITIONER
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WILLIAM WAGNER (RET), DISTINGUISHED PROFESSOR
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QUESTIONS PRESENTED

1. Whether the government has an informational interest in donor disclosure that defeats First Amendment associational interests, when a speaker engages in issue speech relevant to an election but does not discuss the election.
2. Whether Alaska's test for distinguishing issue speech from express advocacy is unconstitutionally vague.
3. Whether requiring that speakers disclose their donors on the face of their communications advances a compelling or sufficiently important interest.

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STATEMENT OF INTEREST OF AMICI CURIAE

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including freedom from arbitrary power.¹ AAF “will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,”² and believes American prosperity depends on ordered liberty and self-government.³ AAF believes that both individuals and organizations have the fundamental right to speak and associate freely, and that that freedom requires the ability to do so anonymously. AAF files this brief on behalf of its 164,819 members nationwide.

Amici Center for Freedom and Prosperity; Center for Urban Renewal and Education (CURE); Concerned Women for America; Freedom Foundation of Minnesota; Frontline Policy Council; International Conference of Evangelical Chaplain Endorsers; JCCWatch.org; Louisiana Family Forum; Men and Women for a Representative Democracy in America, Inc.; New York State Conservative Party;

¹ All parties received timely notice of the filing of this amicus brief. No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

² Edwin J. Feulner, Jr., *Conservatives Stalk the House: The Story of the Republican Study Committee* 212 (Green Hill Publishers, Inc. 1983).

³ Independence Index: Measuring Life, Liberty and the Pursuit of Happiness, Advancing American Freedom available at <https://theindependenceindex.org/>.

North Carolina Values Coalition; Orthodox Jewish Chamber Of Commerce; Rio Grande Foundation; Russell Kirk Center for Cultural Renewal; Salt & Light Global; Students for Life of America; Taxpayers Protection Alliance; The Family Foundation of Virginia; Women for Democracy in America, Inc.; Yankee Institute; Shawna Bolick, Arizona State Senator, District 2; Tim Jones, Former Speaker, Missouri House, Founder, Leadership for America Institute; Jenny Beth Martin, Honorary Chairman, Tea Party Patriots Action; and Hon. William Wagner (Ret), Distinguished Professor of Law Emeritus believe in protecting the speech and associational rights of organizations and their donors from compelled disclosure of donor information.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In 2024 in New York City, an executive at a health insurance company was murdered by a radical. While many condemned that act of barbaric violence, too many excused it; some even praised it as an elite's just desserts. In July of 2026, the office of Mayor Zohran Mamdani published a searchable database of New York City properties that might be subject to a state tax.⁴ That list included the names of the properties' owners.

Because merely doing your lawful job can make you the target of radical violence, many Americans are

⁴ Craig McCarthy, Chris Nesi, *Mamdani Publishes Names and Addresses of All NYC Property Owners Who Could be Hit with New Pied-à-terre Tax*, New York Post (July 27, 2026 3:42 PM) <https://nypost.com/2026/07/27/us-news/mamdani-names-all-nyc-property-owners-who-could-be-hit-with-new-pied-a-terre-tax/>.

wary of sharing their beliefs publicly under their own name. Yet, at a time when many Americans are seeking greater privacy for the sake of personal security, governments across the country are attempting to, and in some cases, are successfully exposing the private information of citizens to the public.

Mamdani's list makes private information easily accessible to the public. In this case, petitioners challenge a law imposing different type of disclosure that is even more constitutionally significant than a list of names and addresses of property owners.

This case concerns Alaska's statutory requirement that organizations engaging in election-related speech must include as part of those communications the name and principal place of business or state of residence of the organization's top three donors in the preceding twelve months. Pet. at 4. Petitioner Alaska Policy Forum ("APF") sought to provide Alaskans with information relating to ranked-choice voting, an issue that became the subject of a state ballot measure after APF began speaking out about it. *Id.* at 5. APF continued educating the public about ranked-choice voting after the issue became a ballot measure, but the communications at issue in this case did not mention the measure; they only informed Alaskans about the issue itself. *Id.*

Yet the state of Alaska found, after prompting from proponents of the ballot measure on ranked-choice voting, that APF's communications were subject to the state's reporting and disclosure laws. *Id.* at 6-7. Both Alaska courts to review that decision upheld it over APF's constitutional objections. *Id.* at 7-8.

The freedom to speak about ideas and to associate with others to spread those ideas has always been an integral part of American liberty and self-government. The American Revolution itself was a marriage of freedom of speech and freedom of association in which colonists banded together because of their shared ideas about liberty and government. Thus, it is no surprise that these fundamental rights are cemented in the American conscience as both an end in themselves and a means to preserve liberty.⁵

This Court has recognized that “First Amendment freedoms need breathing space to survive,” *NAACP v. Button*, 371 U.S. 415, 433 (1963) (citing *Cantwell v. Connecticut*, 310 U.S. 296, 311 (1940)). Government action that chills free association thus oversteps the constitutional line unless it can survive at least “heightened First Amendment scrutiny.”⁶ *First Choice Women’s Resource Centers, Inc. v. Davenport*, 146 S. Ct. 1114, 1124 (2026). Alaska’s donor disclosure law chills both free speech and free association. It cannot survive heightened scrutiny.

In recent years, the increasing illiberalization of political culture has created an environment in which bad actors seek to punish those who express ideas or

⁵ The Founders themselves “saw the freedom of speech ‘both as an end and as a means.’” *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 22310 (2023) (quoting *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring)).

⁶ See also, Brief of Amici Curiae Advancing American Freedom, et al., *First Choice Women’s Resource Centers, Inc.*, 146 S. Ct. 1114 (2026) available at <https://advancingamericanfreedom.com/legal-filings/aaf-fights-for-free-speech-free-association-and-life>.

engage in association with which they disagree. In response, people and organizations naturally self-censor. If people must disclose that they are engaged in communication that might elicit personal reprisals, no matter how mainstream the views they express, they are less likely to express their beliefs publicly. Their speech will be chilled.

Anonymous political communication is an American tradition. The Federalist Papers, among the most well-known and most often cited discussions of the Constitution, were written pseudonymously. *McIntyre v. Ohio Elec. Comm’n*, 514 U.S. 334, 343 n. 6 (1995). So were many of the Antifederalists’ writings opposing the adoption of the Constitution. *Id.* As this Court has recognized, “[a]nonymity is a shield from the tyranny of the majority.” *Id.* at 357 (citation omitted). Anonymity thus “exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation – and their ideas from suppression – at the hand of an intolerant society.” *Id.*

The freedom of association is also a core tenet of the American tradition. As Alexis de Tocqueville noted, early Americans made a habit of forming associations. Unlike aristocratic societies where aristocrats hold the power and those beneath them carry out their will, in America, “all citizens are independent and weak; they can hardly do anything by themselves, and no one among them can compel his fellows to lend him their help. So they all fall into impotence if they do not learn to help each other

freely.”⁷ Moreover, “[w]hen you allow [citizens] to associate freely in everything, they end up seeing in association the universal and, so to speak, unique means that men can use to attain the various ends that they propose.”⁸ In America, “[t]he art of association then becomes . . . the mother science; everyone studies it and applies it.”⁹

Today, these fundamental rights, so widely employed at the founding and after, are under attack at both the state and federal level. Through its donor disclosure requirement, Alaska undermines the right of organizations like Alaska Policy Foundation and its members to freely associate and thus to partake in America’s long heritage of free and anonymous political association.

This Court should review any government action that impairs the freedoms of speech and association under strict scrutiny. Regulations that chill speech and association are only consistent with the First Amendment, if at all, if they employ the least restrictive means to achieve a compelling government interest. However, because Alaska’s donor disclosure law does not even satisfy the lower standard of exacting scrutiny, and because the interests at stake in this case are so significant, the Court should grant certiorari in this case and rule for Petitioners.

⁷ 3 Alexis de Tocqueville, *Democracy in America*, 898 (Eduardo Nolla ed., James T. Schleifer trans., Liberty Fund, Inc. 2010) (1840).

⁸ *Id.* at 914.

⁹ *Id.*

ARGUMENT

I. Throughout Recent History, Americans Have Faced Retaliation for Their Speech and Association, Underscoring the Importance of the First Amendment-Protected Right to do So Anonymously.

Throughout recent American history, engaging in one's right to free speech or association has entailed certain risks. Americans today have reason to believe that, if they engage in speech or association others might interpret as politically controversial, they will suffer social, professional, and potentially physical consequences. There are numerous examples of this sort of backlash.

In 2008, California's Proposition 8 was a ballot measure that amended the state constitution with the language, "Only marriage between a man and a woman is valid or recognized in California."¹⁰ Many people who supported the proposition faced backlash for their political activity. One, Richard Raddon, resigned from his position as director of the Los Angeles Film Festival in the face of threatening calls and emails in response to his \$1,500 donation in support of Proposition 8's passage.¹¹

¹⁰ Bob Egelko, *Prop. 8 backers drop challenge on wording*, SFGate (Aug. 12, 2008) <https://www.sfgate.com/bayarea/article/Prop-8-backers-drop-challenge-on-wording-3199955.php>.

¹¹ Rachel Abramowitz, *Film fest director resigns*, Los Angeles Times, (Nov. 26, 2008) <https://www.latimes.com/archives/la-xpm-2008-nov-26-et-raddonresigns26-story.html>.

Similarly, Scott Eckern resigned from his position as artistic director of the California Music Theater and Sacramento Music Circus after backlash, including a call for a boycott of the theater, in response to his donation of \$1,000 in support of Proposition 8.¹² Actress Susan Egan, who supported the boycott, resolved, “I think at this point I shall do my best to ‘out’ him and any others like him.”¹³

One supporter of Proposition 8 who had a sign in her yard had her home vandalized with spray paint.¹⁴ Other buildings were similarly targeted.¹⁵ A report on the retaliation against Proposition 8 supporters outlined dozens of incidents of vandalism, harassment, threats, and efforts to professionally harm the measure’s supporters.¹⁶

Years later, in 2014, Brendan Eich resigned his position at Mozilla, of which he was a co-founder, after

¹² Jesse McKinley, *Theater Director Resigns Amid Gay-Rights Ire*, The New York Times (Nov. 12, 2008) <https://www.nytimes.com/2008/11/13/theater/13thea.html>

¹³ Lisa Derrick, *Boycott Called: Musical Theatre’s Artistic Director Supported Prop 8*, Huffpost (Dec. 11, 2008) https://www.huffpost.com/entry/boycott-called-musical-th_b_142882.

¹⁴ *Anti-prop 8 vandals hit Alta Loma home*, KABC Television, LLC. (Oct. 26, 2008) <https://abc7.com/archive/6470557/>.

¹⁵ Barbara Giasone, *Vandals spray paint signs in downtown Fullerton*, The Orange County Register (Oct. 20, 2008) <https://www.ocregister.com/2008/10/20/vandals-spray-paint-signs-in-downtown-fullerton/>.

¹⁶ Thomas Messner, *The Price of Prop 8*, The Heritage Foundation (Oct. 22, 2009) <https://www.heritage.org/marriage-and-family/report/the-price-prop-8>.

a vengeful campaign for his 2008 donation in support of Proposition 8.¹⁷

More recently, perpetrators have targeted both pro-life facilities and abortion clinics in response to controversy about abortion law and policy. In 2022, a man in Pennsylvania was charged with a Freedom of Access to Clinic Entrances (FACE) Act violation for assaulting an abortion clinic escort, and a California man was charged under the same statute for causing damage to an abortion clinic.¹⁸ Pro-life pregnancy centers have been attacked, including in Longmont, Colorado, where activists set the Life Choices Pregnancy Center on fire causing extensive damage.¹⁹ Another pregnancy center in Winter Haven, Florida was vandalized with spray painted messages that read, “If abortions aren’t safe then neither are you,” “YOUR TIME IS UP!!,” “WE’RE COMING for U,” and “We are everywhere.”²⁰ Similarly, in May of 2022 in

¹⁷ *Mozilla CEO resignation raises free-speech issues*, USA Today (April 4, 2014)

<https://www.usatoday.com/story/news/nation/2014/04/04/mozilla-ceo-resignation-free-speech/7328759/>.

¹⁸ *Recent Cases on Violence Against Reproductive Health Care Providers*, Department of Justice,

<https://www.justice.gov/crt/recent-cases-violence-against-reproductive-health-care-providers> (Updated May 30, 2023).

¹⁹ Kieran Nicholson, *Longmont Christian pregnancy crisis center vandalized, catches fire overnight*, Denver Post (June 6, 2022)

<https://www.denverpost.com/2022/06/25/life-choices-longmont-vandalized/>.

²⁰ *Two Defendants Indicted for Civil Rights Conspiracy and FACE Act Offenses Targeting Pregnancy Resource Centers*, Department of Justice (Jan. 24, 2023)

Madison, Wisconsin, a vandal attacked the office of Wisconsin Family Action with Molotov cocktails.²¹ The vandal wrote on an exterior wall, “If abortions aren’t safe then you aren’t either.”²² Further, the Department of Justice has tracked dozens of other attacks on pregnancy centers and abortion clinics.²³

Members of the federal government have likewise faced threats to their safety. On June 14, 2017, a man opened fire on members of the Republican

<https://www.justice.gov/opa/pr/two-defendants-indicted-civil-rights-conspiracy-and-face-act-offenses-targeting-pregnancy-0>.

²¹ Todd Richmond, *Man charged with 2022 firebombing of Wisconsin anti-abortion office*, Wisconsin Public Radio (Mar. 28, 2023) <https://www.wpr.org/history/conflicts-disasters/wisconsin-family-action-firebomb-arrest-hridindu-sankar-roychowdhury>.

²² *Id.*

²³ *Recent Cases on Violence Against Reproductive Health Care Providers*, Department of Justice, <https://www.justice.gov/crt/recent-cases-violence-against-reproductive-health-care-providers> (Updated May 30, 2023). AAF is now engaged in litigation in the Federal District Court for the District of DC challenging the DOJ’s failure to respond to a Freedom of Information Act request regarding violence against pro-life pregnancy centers. *Advancing American Freedom v. U.S. Dept. of Justice*, No. 23-cv-743. AAF’s follow up FOIA request regarding attacks against pregnancy centers, joined by Americans United for Life, CatholicVote, Center for Urban Renewal and Education, Concerned Women for America, The Ethics and Public Policy Center, Faith Wins, Heritage Action for America, Heritage Oversight Project, Human Coalition, Keystone Policy, Students for Life Action, and Susan B. Anthony Pro-Life America, available at <https://advancingamericanfreedom.com/wp-content/uploads/2022/09/FOIA-Request-to-DOJ-on-Violence-Against-Pro-Life-Orgs.pdf>.

congressional baseball team while they were practicing for the annual congressional baseball game. Republican House Majority Whip Steve Scalise was critically injured, and several others were hurt.²⁴ Similarly, members of the judiciary have been threatened and harassed for their work.²⁵

Activists have also sought to use the court system as a tool of harassment. In one case, activists and the DOJ subpoenaed records from Eagle Forum, a nonparty to the litigation. Both of those subpoenas were quashed.²⁶

Nor have Americans failed to notice the threat that comes along with expressing their political views. For example, a study by professors within the University of North Carolina system found that 70% of conservative students and 22% of liberal students are

²⁴ Michael D. Shear, Adam Goldman, and Emily Cochrane, *Congressman Steve Scalise Gravely Wounded in Alexandria Baseball Field Ambush*, The New York Times (June 14, 2017) <https://www.nytimes.com/2017/06/14/us/steve-scalise-congress-shot-alexandria-virginia.html>.

²⁵ Joanna Slater, *This Federal Judge Ruled Against Trump. Then the Threats Began*, Washington Post (Aug. 5, 2026) <https://www.washingtonpost.com/nation/2026/08/05/federal-judge-opens-up-about-threats-he-has-experienced-under-trump/>.

²⁶ *Forum of Alabama fights Trans Activists Subpoena* (Mar. 19, 2024) <https://eagleforum.org/publications/press-releases/eagle-forum-of-alabama-fights-trans-activists-subpoena.html>. Further, the DOJ failed to respond to AAF's Freedom of Information Act request relating to DOJ coordination with outside of organization to intimidate Eagle Forum, a pro-family grass roots group. AAF's FOIA is available at <https://alabamaeagle.org/wp-content/uploads/2022/09/FOIA-Request-to-DOJ-on-EFA-Advancing-American-Freedom.pdf>.

afraid to express their opinions.²⁷ Similarly, a Cato Institute study found that 62% of Americans say they have political views they are afraid to share. Of “strong liberals” who answered the survey, 50% thought that being a Trump donor should be a fireable offense.²⁸ Among “strong conservatives,” 36% believe Biden donors should be fired.²⁹

This Court has noted the pervasiveness of the threat donor disclosure laws pose to liberty. In *Americans for Prosperity Foundation*, the Court recognized “[t]he gravity of the privacy concerns in this context” as “underscored by the filings of hundreds of organizations as *amici curiae* in support of the petitioners” in that case. 141 S. Ct. at 2388. Those amici’s concerns related to the “real and pervasive” “deterrent effect” of the disclosure laws challenged in that case. *Id.*

The instances of backlash are by no means exhaustive. They merely demonstrate the pervasiveness of efforts to retaliate against those who speak or associate in favor of political or social causes. Thus, there is a cultural pressure that chills Americans’ exercise of their speech and associational rights. It is no surprise, then, that Americans would

²⁷ *Nearly 70% of Conservative Students Fear Social Repercussions for Opinions, Study Finds*, Young Americans Foundation (July 19, 2023) <https://yaf.org/news/nearly-70-of-conservative-students-fear-social-repercussions-for-opinions-study-finds/>.

²⁸ Emily E. Ekins, *Poll: 62% of Americans Say They Have Political Views They’re Afraid to Share* (July 22, 2020) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3659953.

²⁹ *Id.*

desire opportunities to advance their political and social goals by anonymous means.

Here, Alaska Policy Forum merely seeks to inform the public regarding ranked-choice voting. While social pressure is not unconstitutional, when the government facilitates that pressure by compelling disclosure of speakers' identities it crosses the constitutional line. The Alaska law at issue in this case undermines Alaskans' ability to speak and associate anonymously and thus should face strict scrutiny.

II. Only Strict Scrutiny Provides Sufficient Protection for Anonymous Association and Speech.

A. The freedom of association protected in the First Amendment is just as central to the scheme of American liberty as is the freedom of speech and of the press.

There is no question that “The First Amendment protects political association as well as political expression.” *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 295 (1981) (internal quotation marks omitted) (quoting *Buckley v. Valeo*, 424 U.S. 1, 15 (1976)). This Court’s recognition of that right “stemmed from [its] recognition that [e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.” *Buckley*, 454 U.S. at 15 (alteration in original) (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958)). As the Court said in the Civil Rights-era case *NAACP v. Alabama*, “It is beyond debate that freedom to engage

in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” 357 U.S. at 460 (citing *Gitlow v. New York*, 268 U.S. 652, 666 (1925); *Palko v. Connecticut*, 302 U.S. 319, 324 (1937); *Cantwell*, 310 U.S. at 303; *Staub v. City of Baxley*, 355 U.S. 313, 321 (1958)).

Without the freedom to associate, “no two men could safely share the same soapbox, no two women the same church. The government could reduce any assembly to a party of one, and the right to petition would amount to nothing more than the power to sign one's own name alone.” *First Choice Women’s Resource Centers, Inc.*, 146 S. Ct. at 1122. Because effective expression so often depends on effective association, in the constitutional scheme, association, like speech, is of “transcendent value.” *Speiser v. Randall*, 357 U.S. 513, 526 (1958) (“Where the transcendent value of speech is involved, due process certainly requires in the circumstances of this case that the State bear the burden of persuasion to show that the appellants engaged in criminal speech.”). As Luke Sheahan writes, associations “are not a means to self-government; they are self-government. They are not one option for the ordering of human life; they are the order of human life.”³⁰ The rights of free speech and free association strike at the heart of human liberty.

The freedom to associate, protected by the Assembly Clause of the First Amendment, includes

³⁰ Luke C. Sheahan, *Why Associations Matter: The Case for First Amendment Pluralism* 17 (2020).

not only the right to associate, but the right to do so anonymously. *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2390 (2021) (Thomas, J., concurring in part and concurring in the judgement) (“The text and history of the Assembly Clause suggest that the right to assemble includes the right to associate anonymously.”).

B. Laws impairing the rights of anonymous expression and association should face strict scrutiny review.

As discussed in Section I, those who exercise their rights of association and expression face the risk of retaliation in various forms. For this reason, the Court has recognized that the rights of speech and association include the right to speak or associate anonymously.

As Justice Thomas has explained, “This Court has long recognized the ‘vital relationship between’ political association ‘and privacy in one’s associations,’ and held that ‘[t]he Constitution protects against the compelled disclosure of political associations and beliefs.’” *Doe v. Reed*, 561 U.S. 186, 232 (2010) (Thomas, J., dissenting) (quoting *NAACP v. Alabama*, 357 U.S. at 462; *Brown v. Socialist Workers ’74 Campaign Comm. (Ohio)*, 459 U.S. 87, 91 (1982)).

This protection of anonymity is in keeping with the Court’s approach to anonymous speech. In *Buckley v. American Constitutional Law Foundation*, the Court explained that it had previously applied “‘exacting scrutiny’ to Ohio’s fraud prevention justifications,” and thus “held that the ban on anonymous speech violated the First Amendment.” 525 U.S. 182, 199

(1999) (citing *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347-357 (1995)).

Because “disclosure requirements can chill association ‘[e]ven if there [is] no disclosure to the general public,’” *Ams. for Prosperity Found.*, 141 S. Ct. at 2388 (alterations in original) (quoting *Shelton v. Tucker*, 364 U.S. 479, 486 (1960)), disclosure laws threaten not only anonymous speech, but also anonymous association. Yet the Court’s precedent does not reflect the fundamentality of the interests protected in the First Amendment.

In cases of content-based regulations of speech, the Court rightly gives the rights enshrined in the First Amendment its most protective form of review; strict scrutiny. *Reed v. Town of Gilbert*, 576 U.S. 155, 163-64 (2015). On the other hand, as noted above, when reviewing government regulations that undermine anonymous expression, the Court has applied exacting scrutiny. *American Constitutional Law Found.*, 525 U.S. at 199 (citing *McIntyre*, 514 U.S. at 347-357)).

Similarly, the Court has explained that “it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the *closest scrutiny*.” *NAACP v. Alabama*, 357 U.S. at 460-61 (emphasis added). Yet, when reviewing laws that undermine associational anonymity, the Court has applied merely exacting scrutiny. *Ams for Prosperity Found.*, 141 S. Ct. at 2382-83.

The interests at stake here are too important to be reviewed under even exacting scrutiny. The ability to advocate for one's political views should never be subject to the goodwill or peaceable nature of those with whom one disagrees. The First Amendment protects all, not just popular, speech. Yet, when the government demands that speakers and those exercising their right to associate reveal themselves, it exposes them to retaliation. As the Court explained in *NAACP v. Alabama*, because the NAACP had “made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members ha[d] exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility,” it was “apparent that compelled disclosure of petitioner’s Alabama membership [was] likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate.” 357 U.S. at 462. When government demands the disclosure of speakers and associates to the public, it facilitates harassment of those groups and their members.

Because exacting scrutiny does not sufficiently protect the First Amendment rights to anonymous association and speech, and because the harms that result from disclosure of the identity of those engaged in expression and association will continue to pose a serious danger until those interests are sufficiently protected, the Court should grant certiorari and rule for Petitioner under strict scrutiny.

III. Even Under Exacting Scrutiny, Alaska’s Donor Disclosure Law Violates the First Amendment-Protected Right of Free Association.

“It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” *NAACP v. Alabama*, 357 U.S. at 460. The fundamental right to free association includes the fundamental right to do so anonymously. *Ams. for Prosperity Found.*, 141 S. Ct. at 2390 (Thomas, J., concurring in part and concurring in the judgement) (“The text and history of the Assembly Clause suggest that the right to assemble includes the right to associate anonymously.”). Today, however, local, state, and federal laws curtail that freedom by requiring disclosure of private associations.

Because Alaska’s disclosure law violates Alaska Policy Forum’s and its donors’ right to freely associate, that law must survive at least exacting scrutiny. *See Ams. for Prosperity Found.*, 141 S. Ct. at 2383. “Exacting scrutiny is just what its name says—exacting. It is just short of strict scrutiny.” *Dakotans for Health v. Noem*, 52 F.4th 381, 389 (8th Cir. 2021). Exacting scrutiny requires “a substantial relation between the disclosure requirement and a sufficiently important governmental interest.” *Ams. for Prosperity Found.*, 141 S. Ct. at 2383 (quoting *Doe v. Reed*, 561 U.S. 186, 196 (2010) (internal quotation marks omitted)). Further, the policy must “be narrowly tailored to the government’s asserted interest.” *Id.* If

the policy fails on any of these three counts, it must be set aside as an unconstitutional invasion of the First Amendment-recognized right to free association.

A. Public disclosure of an organization's donor names does not provide useful information to the electorate.

To survive exacting scrutiny, the law in question must serve some “sufficiently important governmental interest.” *Ams. for Prosperity Found.*, 141 S. Ct. at 2383 (quoting *Reed*, 561 U.S. at 196) (internal quotation marks omitted). Further, “the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.” *Id.* (internal quotation marks omitted). “[E]ven a ‘legitimate and substantial’ government interest ‘cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.’” *Id.* at 2384 (quoting *Shelton*, 364 U.S. at 488).

The Supreme Court has recognized an informational interest in disclosure to the voting public relating to electioneering communications. *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 223-224 (2014) (plurality opinion). However, the informational interest here is not compelling because whatever information Alaska’s donor disclosure law provides to the public is not helpful enough to overcome its significant harm to First Amendment interests.

That compulsory public disclosure of donor information provides useful information to the electorate is dubious. First, the claimed government

interest in providing information to the public about those funding communication is merely a weaponization of the ad hominem fallacy. That an argument is made by an organization supported by another entity that has some reputation is not a legitimate shortcut to the truth. That some people may take that shortcut is their own business. But the government cannot legitimately facilitate a birds-of-a-feather assertion at the expense of the rights of its citizens.

Second, even if using a donor's identity were a legitimate means of assessing the validity of an organization's communication, most members of the public will be unfamiliar with most donors, meaning that disclosure will not provide additional meaningful information about the communication. Further, it is probable that the people who do know the names of disclosed donors are also the people most informed and thus least in need of additional information about political communications. Less informed members of the public who lack context for the communications they are receiving are the least likely to know the names of top donors meaning they will be least able to benefit from the additional disclosure. Thus, the supposed information that is being communicated to the public by Alaska's disclosure law is of little value to few and of no value to most.

On the contrary, disclosure of donors makes it more likely that certain individuals will be the victims of organized public opprobrium. Rather than finding refuge in the relative anonymity of a large data dump, some individuals will be the victims of Saul Alinsky's

tactical rule 13: “Pick the target, freeze it, personalize it, polarize it.”³¹

As noted above, “the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.” *Ams. for Prosperity Found.*, 141 S. Ct. at 2383 (quoting *Reed*, 561 U.S. at 196) (internal quotation marks omitted) Because the disclosure law here potentially exposes donors to significant retaliation for their First Amendment-protected association while providing at most minimal useful information to the electorate, Alaska’s informational interest is insufficient to satisfy exacting scrutiny.

B. Alaska’s disclosure law infringes the First Amendment-recognized right to free association because it is not narrowly tailored to achieve a sufficiently important interest.

To survive exacting scrutiny, a law must be narrowly tailored to achieve a sufficiently important interest. *Ams. for Prosperity Found.*, 141 S. Ct. at 2384 (“[A] substantial relation to an important interest is not enough to save a disclosure regime that is insufficiently tailored.”). Even if Alaska’s informational interest in this case were sufficiently important to justify its invasion of the right to anonymous association, the law is not narrowly tailored to achieve its goal.³² According to the Court,

³¹ Saul Alinsky, *Rules for Radicals* 130 (Random House 1971).

³² This Court held that disclosure laws must be both substantially related to a sufficiently important interest and narrowly tailored but then went on to suggest that substantial relation is subsumed by narrow tailoring. *See Ams. for Prosperity Found.*, 141 S. Ct. at

“[n]arrow tailoring is crucial where First Amendment activity is chilled—even if indirectly—‘[b]ecause First Amendment freedoms need breathing space to survive.’” *Ams. for Prosperity Found.*, 141 S. Ct. at 2384 (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)) (second alteration in original). Here, Alaska is stifling the First Amendment rights of organizations to freely and anonymously associate with their donors.

The test for narrow tailoring is not merely the severity of the harm caused by the law in question, but the breadth of its infringement on fundamental rights. *Ams. for Prosperity Found.*, 141 S. Ct. at 2384-85 (quoting *Shelton*, 364 U.S. at 488). “[A] reasonable assessment of the burdens imposed by disclosure should begin with an understanding of the extent to which the burdens are unnecessary, and that requires narrow tailoring.” *Id.* at 2385. A law is not narrowly tailored if it is either “hopelessly underinclusive,” *See Reed v. Gilbert*, 576 U.S. 155, 171 (2015), or if it proscribes “more speech than necessary.” *See Turner Broadcasting System, Inc. v. FCC.*, 520 U.S. 180, 189 (1997). The donor disclosure law at issue in this case is not narrowly tailored to achieve this interest because it is both over- and underinclusive.

2383-84 (“The United States and the Attorney General respond that exacting scrutiny demands no additional tailoring beyond the ‘substantial relation’ requirement noted above. We think that the answer lies between [substantial relation and the least restrictive means]. While exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends, it does require that they be narrowly tailored to the government’s asserted interest.”).

Alaska's donor disclosure law is underinclusive. If the interest the state intends to advance by the law is providing useful information to voters, there is much theoretically useful information that is not provided. There may be undisclosed donors who would either be more recognizable to members of the public or were more influential in the creation of the communication and yet are not disclosed because they were not among an organization's top three donors in the preceding twelve months.

Further, Alaska found that APF's sharing of material from an out-of-state organization called Protect My Ballot was subject to the state's reporting and disclosure requirements while Protect My Ballot's original speech was not. A law that does require reporting and disclosure for one group's communication but does require reporting and disclosure when another group shares that communication is underinclusive because it deprives Alaskans of information they supposedly need to assess the reliability of the communication.

A donor disclosure law is not narrowly tailored "when the end can be more narrowly achieved." *Ams. for Prosperity Found.*, 141 S. Ct. at 2384 (quoting *Shelton*, 364 U.S. at 488) (internal quotation marks omitted). Here, assuming that the informational interest is legitimate, the information most useful to the public is likely to be the identity of the organization sponsoring the communication. Such sponsors are likely to have a website or social media account that explains their views and policy priorities. Thus, a voter who sees an advertisement and wants to know more about the issue and the source of the

communication can research that organization directly. The additional benefit of being able to research donors is limited, if it exists at all, and may well lead to more confusion rather than greater clarity.

Because the Alaska law at issue in this case fails exacting scrutiny, the Court should grant Alaska Policy Foundation's petition for certiorari to protect essential First Amendment interests. Because exacting scrutiny is insufficiently protective of the rights enshrined in the First Amendment, should the Court find that Alaska's donor disclosure law satisfies that standard, the Court should review Alaska's donor disclosure law under strict scrutiny.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for certiorari.

Respectfully submitted,

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