

No. 26-88

IN THE
Supreme Court of the United States

ALASKA POLICY FORUM,
Petitioner,

v.

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

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

**BRIEF OF THE NONPROFIT ALLIANCE FOUNDATION
AS *AMICUS CURIAE* SUPPORTING PETITIONER**

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INTERESTS OF *AMICUS CURIAE*¹

The Nonprofit Alliance Foundation (TNPA) promotes, protects, and strengthens the philanthropic sector through education and advocacy. Representing hundreds of organizations nationwide, TNPA helps nonprofits and the public navigate an increasingly complex fundraising and regulatory landscape. When necessary, TNPA’s advocacy extends to litigation, including filing amicus briefs in this court. *See* Brief for The Nonprofit Alliance Foundation et al. as Amici Curiae Supporting Petitioners, *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021) (Nos. 19-251, 19-255).

Contextual donor disclosure requirements like Alaska’s impedes the work of America’s nonprofits. Donors value privacy. Many donors will not give without it. If nonprofits cannot predict when public messages trigger donor disclosure requirements, nonprofits will be forced to choose between obtaining funding or making their voices heard. Granting certiorari to confirm that Alaska’s unpredictable donor disclosure requirements violate the First Amendment will protect nonprofits and their donors’ associational rights and ensure nonprofits’ continue to contribute to the country’s character and culture.

¹Counsel of record for all parties were provided timely advance notice of intent to file this brief. Sup. Ct. R. 37(2)(a). No party or counsel for a party wrote any part of this brief. No person other than *amicus* and its counsel made any financial contribution to the preparation of this brief.

SUMMARY OF THE ARGUMENT

Nonprofits across the country educate Americans on topics of national and local concern. Nonprofits often cooperate and collaborate to leverage existing resources, promote common messages, and efficiently use their limited funds.

Cooperation between national and local nonprofits is a common form of interorganizational collaboration. National nonprofits create educational materials on topics of national concern. Rather than create research and materials from scratch, local nonprofits link up with national ones for various purposes, including disseminating information created by the national group.

Educational materials created by national nonprofits often address issues of national concern, any one of which might—or might not—be the subject of ballot measures in various jurisdictions around the country.

Nonprofits cater to the legitimate—and constitutionally protected—desire of donors to remain confidential. Compelled donor disclosure curtails nonprofits' speech. Nonprofits are risk averse. Given a choice between engaging in speech that may require disclosure and remaining silent, many nonprofits will remain silent.

Donors are also risk averse. Given a choice between a donation that might require disclosure and withholding, many donors will withhold donations, or at least hesitate.

Alaska-style disclosure requirements are unclear and unpredictable. Disclosure is triggered by an after-the-fact assessment of the speaker's intent or what a reasonable listener would have perceived. Indeed, as here, sometimes precisely the same speech may require disclosure by one speaker (the local nonprofit) but not another (the national nonprofit). Under this regime, nonprofits—and their donors—easily may discover that disclosure is required only after they speak or donate.

The chilling effect of this regime is real and pervasive.

The First Amendment allows the government to require some disclosures for election-related speech. But only if the disclosure is properly tailored to an important governmental interest.

The government's interest is weak for speech related to ballot measures. In elections for public office, disclosure can provide insight into how a candidate will use his discretion to shape public policy once elected. But ballot measures address a single policy issue that voters can investigate beforehand. And the corruption concerns that exist for candidate elections are not present for ballot measures.

The Court should grant certiorari to clarify that Alaska's compelled-disclosure regime for ballot-measure-related speech violates the First Amendment.

ARGUMENT

I. National and local nonprofits inform the public on topics of national and local concern.

Nonprofits are vital to American civic life. In 2023, the nearly 1.7 million 501(c)(3) and (c)(4) nonprofit organizations spent over \$2 trillion housing, feeding, healing, and educating Americans. National Center for Nonprofit Statistics, *The Nonprofit Sector in Brief 2026*, URBAN INSTITUTE (June 8, 2026).²

Core to many nonprofits' mission is research and advocacy regarding problems (and solutions) of national interest. Nonprofits dedicated to every issue imaginable engage in research, develop policy proposals, debate, and disseminate information regarding these topics into the marketplace of ideas.

Nonprofits don't work alone. Cooperation and collaboration between nonprofits allows pooling of resources, creates economies of scale, and increases the quantity and quality of educational information.

Many nonprofits organize themselves into loosely defined cooperative networks. National nonprofits can use larger, more stable funding streams to conduct research and prepare advocacy materials. Local nonprofits can provide local input and, rather than create research and materials anew, use research and materials from national groups to inform their particular communities.

² Available at <https://urban-main.shinyapps.io/sector-in-brief/>.

This national/local ecosystem produces research, policy proposals, and information that transcends jurisdictions and election cycles. New ideas propagate faster than legislatures move or referenda pass. On any particular topic of interest, at any particular time, active ballot measures related in varying degrees to topics of interest may be on the ballot in various states or local governments throughout the country.

II. Alaska-style disclosure requirements chill non-profit speech and charitable giving.

A. Donors value—and often require—confidentiality.

Nonprofits of all sizes are supported by the generosity of millions of Americans who donate their time and money to the nonprofits' chosen mission. In 2026, 64% of charitable giving—nearly \$400 billion—came from individuals rather than corporations, foundations, or bequests. GIVING USA, *2026 Infographic*³.

Particularly in today's environment, those donors value confidentiality. Many donors require confidentiality before donating.

Some donors desire confidentiality for moral or religious reasons. Others are motivated by “fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible.” *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341–42 (1995).

³ Available at <https://givingusa.org/product/2026-infographic/>.

For nonprofits, maintaining donor confidentiality is critical to building strong nonprofit/donor relationships—the lifeblood of every nonprofit. Once that trust is built, it must be maintained. An action that results in donor disclosure can eviscerate trust that took years to build.

Without the ability to reliably offer donors confidentiality, nonprofits struggle to find and keep major donors. The nonprofits hit hardest are those advocating socially or politically unpopular positions. The freedom of association is most vital to those who stand to lose the most from associating.

Nonprofits must therefore pay close attention to donor disclosure requirements. Unpredictable disclosure requirements risk exposing donors to unwanted public attention, interfering with the donor/nonprofit relationship, and impeding fundraising efforts.

B. Speaker- and audience-dependent disclosure requirements curtail speech, deter contributions, and disrupt donor relationships.

As Petitioner and other briefs have established, confidential or anonymous public discourse represents “a respected tradition in the advocacy of political causes.” *Id.* at 343.

The Court recently addressed compelled disclosure requirements in *Americans for Prosperity Foundation v. Bonta*. In *Bonta*, the California Attorney General sought to force nonprofits to disclose the names and addresses of donors who had contributed more than \$5,000 in the preceding tax year. 594 U.S.

at 602. The Court found that the Attorney General’s disclosure requirement unconstitutionally chilled speech. *Id.* at 616–18.

In doing so, the Court recognized that donor lists were sensitive, constitutionally protected information. *Id.* at 613. The Court also recognized that disclosure is an especially hazardous imposition in the 21st century, where technological developments make it ever easier to harass those whose personal information becomes public. *Id.* at 616–17.

This case involves a distinct but potent disclosure regime that curtails speech, deters contributions, and disrupts relationships between nonprofits and their donors.

Alaska law requires “express communications” to be accompanied by, among other things, a list of the organization’s top three donors and their states of residence or principal place of business. Pet. App. 5a–6a. An “express communication” is any communication which, “when read as a whole and with limited reference to outside events, is susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific ballot initiative.” Pet. App. 25a (citation modified).

To determine whether APF’s communications were “express communications,” the Alaska Supreme Court considered several factors: APF’s communications were made in the lead up to the election, addressed themselves to voters, discussed the same subject as an upcoming ballot measure, and were critical regarding the measure’s wisdom. Pet. App. 35a

Regarding a video APF reproduced but did not create, the Alaska Supreme Court found the fact the video was critical of rank choice voting, plus the fact it appeared with APF's logo and vision statement, made the video an "express communication." Pet. App. 42a. And the Alaskan Supreme Court made repeated references to the hypothetical knowledge of the messages' listeners. Pet. App. 43a ("In the context of an upcoming election . . ."), 45a ("To an objective listener, likely aware of the upcoming election . . .").

Alaska's disclosure regime leaves nonprofits' ability to predict their disclosure obligations greatly diminished. Some factors have no clear boundaries. How close to an election can a nonprofit speak without putting itself at risk of disclosure obligations?

Other factors depend on dubious distinctions in tone. Is the statement, "no Alaskan should have to worry that their ballot won't be counted in the final tally" simply a criticism, or is it a call to vote against a ballot measure? The Alaskan Supreme Court picked the latter.

Alaska's multifactored test is particularly problematic in the context of national/local relationships. National group creates the topical content without regard for any particular ballot measure. Local groups share it. Whether sharing that content requires disclosure is dependent upon factors unknown at the content's creation.

The July 31 video highlights this problem. The video was produced by national nonprofit Protect My Ballot, and included language like "SAY NO TO

RANKED CHOICE VOTING.” APF reposted the video to its blog, which included its logo and a vision statement that identified it as an Alaska-focused organization.

The Alaskan Supreme Court found that the combination of the video’s language and APF’s logo and vision statement exposed APF to disclosure obligations. Going forward, national nonprofits like Protect My Ballot will have to consider whether their language might expose local partners to disclosure liability, and local nonprofits will have to carefully pick materials which communicate their chosen message without “exhorting” voters to vote accordingly. The resulting friction chills speech.

For nonprofits, the problem with these factors is not the possibility the Alaska Supreme Court assesses them incorrectly. The problem is they were assessed—and could only be authoritatively weighed—after the fact. If a message four weeks before an election plus a mention of a state with an on-topic ballot measure equals a disclosure obligation, does the same message trigger disclosure obligations eight weeks out? The only way to know is to have the Alaska Supreme Court tell you.

By applying a multifactor, contextual approach to determining disclosure liability, Alaska has created confusion which will chill nonprofit speech. When regulated entities cannot predict the legal effect of their actions, the entities must decide how much risk they are willing to stomach. *See* Louis Kaplow, *Rule Versus Standards: An Economic Analysis*, 42 DUKE L.J. 557, 605 (1992) (when legal rules are fleshed out *ex*

post, as when courts apply broad standards, entities bear more risk). Risk-averse entities will cease the regulated activity.

Nonprofits are risk averse. Because nonprofits carry out a mission, and operating costs detract from their ability to do so, nonprofits typically seek to avoid liability. If nonprofits must pay exorbitant legal fees just to determine whether a given act *might* expose them to liability, they are just as likely to cease the activity altogether.

This uncertainty hampers a nonprofit's relationship with its mission and its donors. Nonprofits will be forced to divert mission dollars to legal advice on how to mitigate the risk of incurring disclosure obligations. If the nonprofit's mission becomes the subject of a ballot measure, the nonprofit may have to choose between donor anonymity and speaking when it matters most.

If a nonprofit decides to pursue its mission, many donors may stop giving. Even those donors who do donate may do so less regularly or in smaller amounts. Since Alaska's donor disclosure requirement applies to an organization's three largest donors in the 12 months preceding the date of the communication, donors will be discouraged from organizations which *might* target ballot related issues in the next twelve months, and from making large contributions generally.

III. The government has a weak interest in compelling disclosure for ballot-measure-related speech.

The Court has identified three governmental interests that support disclosure for election-related speech. *Buckley v. Valeo*, 424 U.S. 1, 66–68 (1976). Disclosure requirements can give voters a fuller picture of a candidate’s positions and sympathies; they can deter actual *quid pro quo* corruption; and they can catch campaign finance violations. *Id.* This Court has already held that neither *quid pro quo* corruption nor campaign finance limits obtain in the ballot measure context. *Citizens Against Rent Control/Coal. for Fair Hous. v. City of Berkeley*, 454 U.S. 290, 297, 299 (1981). That leaves the state’s asserted informational interest.

Once it has identified an appropriate interest, the government must show that disclosure is narrowly tailored to that interest. *Bonta*, 594 U.S. at 608.

When *Buckley* recognized the state’s informational interest, it did so in the context of the voters’ questions about a candidate. *Buckley*, 424 U.S. at 66–67. In elections for public office, voters are asked to decide who should be entrusted with often discretionary authority over public policy. The answer to that question depends on how the candidate will use his or her powers once elected—a question which cannot be known with certainty ahead of time.

Donor disclosures can give voters useful (and otherwise unavailable) information to predict elected officials’ future behavior. Since public officials often use

their discretion in favor of their supporters, donor disclosures allow voters to estimate how a candidate will behave in the future—and to evaluate how authentically the candidate represents him or herself. *Buckley*, 424 U.S. at 66–67. *Buckley* itself justified the voter’s informational interest in those terms: disclosure requirements could be valid where voters need to “place each candidate in the political spectrum” and determine the “interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.” *Id.* at 67.

That justification does not apply to ballot propositions because the probable effects of a ballot proposition can be thoroughly investigated before the fact. In evaluating a ballot proposition, voters do not confront any unknowns analogous to a candidate’s future behavior.

Alaska could argue, as it did below, that donor disclosures allow voters to cast their vote consistently with how they feel about the measure’s supporters. Pet. App. 62a. Even if that were true—and, as other amici have argued, the Court should be skeptical that it is—voters would be just as likely to be misled due to the nature of donor support and interorganizational cooperation.

The size of a donor’s support for an organization tells voters little of the donor’s support for a particular message. Many donors donate because they support the general aims of an organization without necessarily supporting every issue or message the organization publicizes. Nonprofits are generally happy to solicit funds from such individuals. Most strive to

build a big tent. And the size of donor contributions can have more to do with the net worth of the donor than with the strength of the donor's support.

Forcing organizations to disclose donors on the face of messaging materials based solely on the size of the donation—which may have been made up to a year ago—risks leaving voters with an outsized impression of the donor's support for the message. Even if states had a legitimate interest in exposing ballot measures to the unpopularity of their supporters—and they do not—regulations like Alaska's would still be poorly tailored to achieving that end. Inflaming the prejudices of voters regarding donors is a bug, not a feature.

In the context of interorganizational cooperation, voters suffer an even greater risk of being misled. The fact that an organization reposts a video may mean it endorses the full contents of the video—but it might mean the organization supports the video's general thrust. If a voter were to mistakenly assume that a donor, who was disclosed on the message because he or she donated to the local organization, also supported the national organization's message in every respect, the voter could be misled.

Ultimately, the Alaska Supreme Court recognized that it was regulating speech regarding a discrete issue which could not be disentangled from the ballot measure which embodied it. Pet. App. 38a–39a (“APF fails to acknowledge that, in the context of ballot initiatives, referencing an upcoming election and attempting to persuade the public to oppose a discrete

issue on the ballot at that election amounts to advocating an electoral result. . . . '[E]xpress and issue advocacy are arguably one and the same' when it comes to ballot initiatives."). But rather than level ballot measure speech up to the protections of issue speech, it leveled ballot measure speech down to candidacy speech. Doing so places an unjustifiable burden on donors' associational rights and threatens the work of countless nonprofits working in states with Alaska-style disclosure regimes.

CONCLUSION

For these reasons, the Court should grant certiorari.

Respectfully submitted,

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