

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 MOUNTAIN STATES LEGAL
FOUNDATION AS *AMICUS CURIAE* IN
SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

Mountain States Legal Foundation (MSLF) is a nonprofit, public-interest law firm organized under the laws of the State of Colorado. MSLF is dedicated to bringing before the courts issues vital to the defense and preservation of individual liberties, the right to own and use property, the free enterprise system, and limited and ethical government. Since its creation in 1977, MSLF attorneys have been active in litigation regarding the proper interpretation and application of statutory, regulatory, and constitutional provisions. *See, e.g., Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995) (MSLF serving as lead counsel).

MSLF is funded by the voluntary contributions of individuals and organizations who share its mission. Those supporters give with the expectation that their association with MSLF will remain private, and MSLF treats that expectation as an obligation. That commitment led MSLF to participate as *amicus curiae* in *First Choice Women's Resource Centers, Inc. v. Davenport*, 608 U.S. 174 (2026), in support of a nonprofit's right to resist a government demand for the identities of its donors.

The decision below subjects a nonprofit to registration, expenditure reporting, and the naming of its largest donors on the face of its communications based not on any decision by the nonprofit to enter an

¹ Pursuant to Supreme Court Rule 37.6, no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus*, made any monetary contribution toward the preparation or submission of this brief. Counsel provided the notice required by Rule 37.2.

electoral contest, but on a private proponent's later decision to place on the ballot a subject the nonprofit had already addressed. Under that rule, no donor-funded organization that speaks on matters of public concern can protect its supporters by staying out of campaigns. MSLF's donors, and the donors of the many organizations like it, are entitled to know whether the First Amendment permits that result.

SUMMARY OF ARGUMENT

Petitioner is a 501(c)(3) research organization that issued two press releases, embedded a coalition video, released a white paper, and posted a short article, all concerning ranked-choice voting. None of these items mentioned the ballot measure at issue. One did not even mention Alaska. For that speech, the State ordered petitioner to register as a campaign group, report its expenditures, and print the names of its three largest donors on its communications. The Alaska Supreme Court affirmed. Several features of that decision warrant this Court's review.

First, the court did not merely misapply the objective test this Court established in *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007) (*WRTL II*). It held that the test has little to say about ballot measures, because "express and issue advocacy are arguably one and the same when it comes to ballot initiatives." App. 39a (quotation marks omitted). On that view, once a subject appears on a ballot, every position on that subject is an appeal to vote. The court then supplied the missing electoral reference from context: the timing of the speech and what a "reasonable listener," presumed to be an Alaskan aware of the election, would infer. That is the intent-

and-effect inquiry *Buckley v. Valeo*, 424 U.S. 1 (1976) rejected fifty years ago, reinstated for an entire category of political speech.

Second, the court sustained the resulting burdens under an informational interest this Court has never held sufficient to justify compelled donor disclosure for ballot-measure speech. *Buckley's* informational interest concerns a candidate's likely responsiveness to financial supporters. It has no evident application to a proposition, and this Court's statements suggesting otherwise are dicta. The court below cited none of this Court's decisions for the proposition that the interest applies "with full force" to ballot issues, App. 62a, and it applied that interest to \$643.20 of staff time spent reviewing educational material. The decision thus places the burdens of the initiative process on speakers who never chose to enter it, and it does so in the States where initiatives are most common.

Third, the court upheld a requirement that petitioner name its top donors within its own message on the grounds that on-communication naming provides voters "an instantaneous heuristic" and is "more likely to effectuate" the State's purpose than a public database. App. 80a. The first rationale concedes that the requirement's function is to let listeners dismiss a message without engaging it. The second is an efficiency rationale this Court has repeatedly rejected.

Finally, this Court's decision last Term in *First Choice* confirms that the demand for donor identities is itself the injury. For every donor-funded organization within reach of a regime like Alaska's,

that injury is not hypothetical. The petition should be granted.

ARGUMENT

I. The Decision Below Abandons *WRTL II*'s Objective Test and, for Ballot Measures, Eliminates the Category of Issue Advocacy.

A. This Court requires an objective, content-based test.

“Discussion of public issues” is “integral to the operation of the system of government established by our Constitution.” *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (per curiam). Because “the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application,” *id.* at 42, this Court has insisted on a line that speakers can see in advance. A test that turns on the speaker’s intent or the speech’s effect “offers no security for free discussion,” because it “puts the speaker . . . wholly at the mercy of the varied understanding of his hearers.” *Id.* at 43 (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)).

WRTL II gave that principle operational content. The controlling opinion held that a communication 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 (opinion of Roberts, C.J.). The test “must be objective, focusing on the substance of the communication rather than amorphous considerations of intent and effect.” *Id.* at 469. Courts may take account of “basic background information,” but that “should not become an excuse

for discovery or a broader inquiry of the sort” that raises First Amendment concerns, and contextual factors “should seldom play a significant role in the inquiry.” *Id.* at 473-74. That an advertisement runs close to an election “is unremarkable,” *id.* at 472, and a speaker has the right “to run an issue ad to coincide with public interest,” *id.* at 473. Where the question is close, “the tie goes to the speaker, not the censor.” *Id.* at 474. *Citizens United v. FEC* later described *WRTL II* as adopting “an objective ‘appeal to vote’ test,” 558 U.S. 310, 335 (2010), and reiterated that First Amendment standards “must eschew the open-ended rough-and-tumble of factors,” *id.* at 336 (quotation marks omitted).

B. The court below substituted a reasonable-listener inquiry driven by timing and presumed audience knowledge.

The Alaska Supreme Court declined to treat *WRTL II* as controlling, reasoning that the decision was “not squarely on point” because Alaska’s statutes require “reporting and disclosure of certain speech” rather than prohibiting it. App. 37a. The court instead applied a standard drawn from *FEC v. Furgatch*, 807 F.2d 857 (9th Cir. 1987), under which the timing of speech relative to an election is a permissible consideration because “[a]n upcoming election is the kind of information that most reasonable listeners will be aware of, and that knowledge will shape their understanding of the message.” App. 29a-30a.

Applying that standard, the court found each communication regulable by reference to what an audience would infer. The embedded video “does not mention Alaska, nor does it mention the Initiative by

name,” but its reference to “wealthy interest groups” pushing ranked-choice voting was “an unambiguous reference to the upcoming ballot proposition, especially for Alaskans who are presumably the main audience for the message.” App. 42a-43a. The October article was an appeal to vote “[i]n light of the article’s release mere weeks before the election.” App. 46a. The October press release was regulable because, “[t]o an objective listener, likely aware of the upcoming election,” a statement that ranked-choice voting “has no place in Alaska” could “only be understood as a plea to vote against the ballot measure.” App. 45a.

This is the inquiry *WRTL II* forbids. A test keyed to what a presumed audience “will be aware of” is a test of effect; it “shifts the determination of what is ‘express advocacy’ away from the words ‘in and of themselves’ to ‘the unpredictability of audience interpretation.’” *Chamber of Com. of the U.S. v. Moore*, 288 F.3d 187, 194 (5th Cir. 2002) (quotation omitted). And the court’s premise that Alaska’s regime is exempt from *WRTL II* because it does not prohibit speech cannot be squared with *Buckley* itself, which applied the same narrowing construction to the Act’s disclosure provisions that it applied to its expenditure limits. 424 U.S. at 79-80. The petition and the brief of amici Republican Governors Association et al. document the resulting conflict among the courts of appeals. MSLF does not repeat that showing. It writes to identify a feature of the decision below that goes further than any of those cases.

C. For ballot measures, the court held that issue advocacy does not exist.

The court did not simply apply a contextual test. It

explained why context could do so much work: “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.” App. 38a-39a. “As recognized by the Ninth Circuit,” the court continued, “‘express and issue advocacy are arguably one and the same’ when it comes to ballot initiatives.” *Id.* The court then made the premise explicit: “Because of the nature of ranked-choice voting—a change to the electoral system, which can be effectuated only through change to the law—the only reasonable way to interpret APF’s speech opposing ranked-choice voting was as a reference to the upcoming ballot initiative proposing to enact ranked-choice voting.” App. 51a. The court distinguished the advertisements in *WRTL II* on the ground that they “could plausibly be interpreted as urging listeners to do something other than vote,” whereas “[a] ballot proposition cannot be persuaded to change its mind.” App. 38a.

That reasoning is a categorical exception to *WRTL II*. If the absence of a non-electoral call to action converts issue speech into advocacy, then every communication that takes a position on a subject appearing on the ballot is regulable, because a proposition never has a mind to change. The educational white paper becomes a campaign document; the explanatory video becomes an advertisement; the research organization becomes a ballot group. And because the same reasoning makes the timing of the speech dispositive, the exception swallows the protection *WRTL II* expressly preserved: the right to speak about an issue “to coincide with public interest.” 551 U.S. at 473. Every ballot-measure

communication will, by definition, be published while the measure is pending.

Respondents will answer that *Citizens United* rejected the contention “that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy,” 558 U.S. at 369, and that the Ninth Circuit relied on that holding in the ballot context, *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1016 (9th Cir. 2010). The answer does not reach this case. *Citizens United* held that a disclaimer identifying who paid for an advertisement may constitutionally reach issue advocacy; it did not hold that issue advocacy ceases to be issue advocacy. The court below did not merely subject petitioner’s speech to a funder-identification requirement. It reclassified that speech as electoral advocacy, and from that reclassification followed registration as a campaign group, expenditure reporting, and the naming of donors within petitioner’s own message. Whether a State may require a speaker to disclose who paid for an advertisement is a different question from whether a State may reclassify a research organization’s educational materials as campaign communications.

Buckley’s observation that the distinction between issue discussion and advocacy “may often dissolve in practical application,” 424 U.S. at 42, was the reason this Court insisted on a bright line, not a license to erase it. This Court has never suggested that the line disappears for ballot measures. Its ballot-measure decisions instead emphasize the heightened value of speech about propositions, where “[t]he risk of corruption perceived in cases involving candidate

elections . . . simply is not present.” *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 790 (1978); see *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995) (“No form of speech is entitled to greater constitutional protection than” speech on public issues).

The record shows that the line can be drawn when the regulator chooses to draw it. The Commission’s own advisory opinion concluded that advertisements urging Alaskans to “[p]rotect clean water and wild Alaska salmon,” published while two mining measures were pending, were not regulable because the ads could reasonably be read to urge action other than a vote. App. 50a. And the Commission dismissed the complaint against Protect My Ballot, the originator of the very video petitioner embedded, because that group “had partners in other states with no pending ballot initiatives” and its website opposed ranked-choice voting “as a general matter.” App. 162a. Identical content was thus protected for one speaker and regulated for another based on the speaker’s location and affiliations. That is the “bizarre result” *WRTL II* warned against—a test under which “identical ads aired at the same time could be protected speech for one speaker, while leading to criminal penalties for another.” 551 U.S. at 468 n.5. It is produced here by a speaker-based distinction of the kind that is “all too often simply a means to control content.” *Citizens United*, 558 U.S. at 340.

D. The court’s narrowing constructions confirm the problem rather than cure it.

Candor requires acknowledging that the court below did not adopt the Commission’s approach

wholesale. It held that a speaker's history of speech will "often" be an improper consideration, App. 48a; *see* App. 30a-31a, and it concluded that petitioner's vagueness argument "has merit," holding that "an indirect reference to a ballot proposition must be unambiguous" before speech becomes a regulated communication. App. 49a, 51a.

Those constructions do not save the decision. The court's own conclusion that the statute required judicial narrowing to survive, App. 48a, confirms that the statute as written "fail[s] to clearly mark the boundary between permissible and impermissible speech." *Buckley*, 424 U.S. at 41. And the gloss the court supplied still resolves the question by reference to timing and presumed audience knowledge. The video was "unambiguous" not because of anything it said about Alaska or the election, for it said nothing, but because of where it was posted and who was "presumably" watching. App. 42a-43a. A construction that requires an "unambiguous" reference and then finds one in the audience's assumed awareness of an election gives speakers no more guidance than the statute did. Whether the court's rule is characterized as an unconstitutional test or a constitutional test unconstitutionally applied, the result is the same: a nonprofit that published research about an electoral system, without naming a measure or urging a vote, was told after the fact that it had been running a

campaign.

II. This Court Has Never Held That an Informational Interest Justifies Compelled Donor Disclosure for Ballot-Measure Speech.

Even where speech is properly classified as advocacy, disclosure requirements must survive exacting scrutiny: “a substantial relation between the disclosure requirement and a sufficiently important governmental interest,” together with narrow tailoring “to the interest it promotes.” *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 608, 611 (2021) (*AFPF*) (quotation marks omitted). The court below found that standard satisfied because “[t]he Supreme Court has held that the government’s interest in an informed electorate satisfies exacting scrutiny,” and because Alaska precedent holds that rationale “applies with full force to ballot issues.” App. 62a. The first proposition describes candidate elections. The second has never been endorsed by this Court.

A. *Buckley*’s interests are tethered to candidates.

Buckley identified three interests that could justify compelled disclosure. The first was informational: disclosure “allows voters to place each candidate in the political spectrum more precisely” and “alert[s] the voter to the interests to which a candidate is most likely to be responsive and thus facilitate[s] predictions of future performance in office.” 424 U.S. at 67. The second was deterring “actual corruption” and “the appearance of corruption” by “exposing large

contributions and expenditures to the light of publicity.” *Id.* The third was gathering “the data necessary to detect violations of the contribution limitations.” *Id.* at 67-68.

None of the three applies straightforwardly to a ballot measure. A proposition has no future performance in office to predict and no constituency to which it will be “responsive.” The corruption interest “simply is not present in a popular vote on a public issue.” *Bellotti*, 435 U.S. at 790; *accord McIntyre*, 514 U.S. at 352 n.15. And the third interest has nothing to protect: because limits on contributions to ballot-measure committees are unconstitutional, *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 299-300 (1981), there are no contribution limits whose violations disclosure could help detect. The Tenth Circuit has recognized as much: the informational interest in the ballot context, whatever its content, is “significantly attenuated,” and disclosure may as readily degrade public debate by inviting “ad hominem arguments” as improve it. *Sampson v. Buescher*, 625 F.3d 1247, 1257 (10th Cir. 2010). The court acknowledged that this Court has “spoken favorably” of ballot-issue disclosure, *id.* at 1257, but identified each such statement as dictum, *id.* at 1258.

B. The contrary rule rests on dicta.

Lower courts, including the court below, treat the applicability of the informational interest to ballot measures as settled. It is not. *Bellotti* struck down a prohibition on corporate ballot-measure spending; its observation that “[i]dentification of the source of advertising may be required” appeared in a footnote addressing an argument the Court did not need to

decide. 435 U.S. at 792 n.32. *Citizens Against Rent Control* struck down contribution limits and noted, in passing, that Berkeley's existing disclosure requirements remained in place. 454 U.S. at 298-300. And *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999), invalidated in part the disclosure provisions actually before the Court, striking the requirement that proponents' reports identify each paid circulator by name and disclose the sum paid to each, because the State's asserted interest in informing the public about the resources behind a measure was not significantly advanced by that disclosure. *Id.* at 203-04. As the Tenth Circuit concluded after canvassing these cases, "in all three cases the statements by the Supreme Court supporting disclosures in ballot-issue campaigns were dicta," and this Court "has never upheld a disclosure provision for ballot-issue campaigns that has been presented to it for review." *Sampson*, 625 F.3d at 1258.

Doe v. Reed, 561 U.S. 186 (2010), does not fill the gap. There the Court upheld, against a facial challenge, the public availability of referendum-petition signatures on the strength of the State's interest in "preserving the integrity of the electoral process by combating fraud, detecting invalid signatures, and fostering government transparency and accountability." *Id.* at 197. The Court did not rest on the informational interest, and the disclosure at issue concerned persons whose signatures were themselves acts of electoral participation. Nothing in *Doe v. Reed* suggests that a research organization's donors may be named because the organization

published a white paper.

Whether and how far the informational interest extends to ballot measures is therefore an open question in this Court. It is the first question presented, and it is antecedent to the third. The court below answered it by citing a 1980 decision of the Alaska Supreme Court and an opinion of the Ninth Circuit. App. 62a & nn.166-68. Only this Court can supply the answer that governs.

C. The interest as applied here is conjecture.

Even if some informational interest applies to ballot measures, the decision below did not identify one with a “substantial relation” to the burdens imposed. In this area of “sensitive First Amendment freedoms,” a State “must do more than simply posit the existence of the disease sought to be cured,” and this Court has “never accepted mere conjecture as adequate to carry a First Amendment burden.” *FEC v. Cruz*, 596 U.S. 289, 307 (2022) (quotation marks omitted).

The record contains no evidence that any Alaskan was misled about who was speaking; petitioner’s name and logo appeared on every communication. App. 42a, 73a-74a. The only expenditure in the record is the \$643.20 the petitioner reported “in the form of staff time to review educational content, send out press releases, etc.” App. 10a-11a; *see* App. 161a. The court nonetheless reasoned that because assembling a coalition “required significant time, and someone paid for that time,” “Alaskans have a genuine interest in knowing who.” App. 70a. It added that “[o]ne can readily imagine an election-related advertisement,

costing an amount similar to what APF spent, going viral on social media at the height of election season.” App. 71a.

That is conjecture in place of evidence. The court excused the evidentiary gap by faulting petitioner for not proving its own spending *de minimis*, App. 69a & n.186, but exacting scrutiny places the burden of demonstrating fit on the State, not the speaker. *AFPF*, 594 U.S. at 613; *Cruz*, 596 U.S. at 305. And its logic has no stopping point. If paying employees to review educational content is an “expenditure” that Alaskans have a “genuine interest” in tracing to its funders, then every staffed nonprofit that studies a subject appearing on the ballot has made a reportable expenditure from the first dollar, triggering registration, reporting, and donor naming. *See* App. 63a-64a (no *de minimis* exception for groups). The court itself acknowledged that the first-dollar threshold “gives us pause.” App. 69a n.188. A regime under which the informational interest is satisfied by the identity of whoever pays a researcher’s salary bears the “dramatic mismatch” between means and ends that *AFPF* condemns. 594 U.S. at 612. And an interest in learning “who financially supports” an organization that publishes on an issue, App. 74a, is an interest in “mere sympathy,” which tells voters “little about the financial backing of the ballot proposition.” *Canyon Ferry Rd. Baptist Church of E. Helena, Inc. v. Unsworth*, 556 F.3d 1021, 1033 (9th Cir. 2009) (emphasis omitted).

D. The decision makes the initiative process itself the trigger for compelled disclosure.

The practical consequences of the decision below

are most severe in the States where the initiative process is most active, and they fall on speakers who never chose to enter an election.

Petitioner joined a national coalition to educate the public about ranked-choice voting in January 2020 and reposted an opinion piece on the subject on February 11, 2020. App. 7a. Alaska's lieutenant governor did not accept the petition placing Measure 2 on the ballot until the following month. *Id.* Nothing petitioner did changed. What changed was that a private proponent's petition qualified, and from that moment the same educational program became, in the State's view, a campaign. The proponent then filed the complaint that initiated these proceedings. App. 10a.

The court below compounded the problem in two ways. First, it rejected petitioner's argument that speech about one component of an omnibus measure is not advocacy against the measure as a whole. Measure 2 proposed "several changes to the state's election and campaign finance system," of which ranked-choice voting was one. Pet. 2; *see* App. 287a. The court held that criticism of that one component was an exhortation "to vote against the Initiative as a whole." App. 40a-41a. A speaker thus cannot know whether, when, or in what package its subject will reach the ballot, or which other subjects it will be deemed to have addressed once it does. Second, the on-communication naming requirement reaches an organization's three largest contributors during the preceding twelve months, Alaska Stat. § 15.13.090(a)(2), App. 219a, that is, persons who may have given before the measure existed, for reasons unrelated to it, and who never chose to fund the

communication that bears their names. As the D.C. Circuit observed in sustaining the FEC’s narrower rule, such donors “lose that privilege the minute their nonprofit of choice decides to run an issue ad.” *Van Hollen v. FEC*, 811 F.3d 486, 501 (D.C. Cir. 2016). Under the decision below, they lose it the minute someone else places the subject on a ballot.

The reach of this rule is not theoretical. Twenty-four States provide for statewide citizen initiatives, and nearly half of them are in the West.² The very subject at issue here illustrates the point. In 2024, voters in Colorado, Idaho, and Nevada rejected citizen initiatives to adopt ranked-choice voting, and Alaska voters rejected an initiative to repeal it by 743 votes after a recount.³ Under the rule below, any policy organization in those States that published research on ranked-choice voting in 2024, in terms an “objective listener” might connect to the pending measure, was engaged in regulated campaign activity and obligated to name its donors. The organization would learn of that obligation the way petitioner did: when its adversaries filed a complaint. This is the problem *Buckley* identified when it warned that vague standards compel a speaker “to hedge and trim,” 424 U.S. at 43 (quotation marks omitted), with an

² Nat’l Conf. of State Legislatures, Initiative and Referendum Processes, <https://www.ncsl.org/elections-and-campaigns/initiative-and-referendum-processes> (last visited Sept. 28, 2026).

³ Ballotpedia, Results for Ranked-Choice Voting (RCV) and Electoral System Ballot Measures, 2024, [https://ballotpedia.org/Results_for_ranked-choice_voting_\(RCV\)_and_electoral_system_ballot_measures_2024](https://ballotpedia.org/Results_for_ranked-choice_voting_(RCV)_and_electoral_system_ballot_measures_2024) (last visited Sept. 28, 2026).

additional feature. In the candidate context, the regulatory trigger is at least fixed in advance by the election calendar. In the initiative context, it is set by the speaker's political opponents, who decide what to place on the ballot, when, and in what combination, and who then serve as complainants. The courts of appeals have recognized the burden that ballot-measure regimes place on small-scale issue speakers. *See Coal. for Secular Gov't v. Williams*, 815 F.3d 1267, 1277-78 (10th Cir. 2016) (Colorado's issue-committee requirements unconstitutional as applied to a group that spent roughly \$3,500 to publish a policy paper opposing a ballot measure); *Sampson*, 625 F.3d at 1261. The decision below goes further than any of those cases, because it reaches speech that does not mention the measure at all.

III. Compelled Naming of Donors Within the Speaker's Own Message Is Content-Based Compelled Speech, and Efficiency Cannot Sustain It.

Alaska requires that a group's communications "clearly" identify "the name and city and state of residence or principal place of business" of "each of the person's three largest contributors . . . during the 12-month period before the date of the communication." Alaska Stat. § 15.13.090(a)(2)(C), App. 219a. Those contributors must be "listed in order of the amount of their contributions." *Id.* § 15.13.090(e).

A. The requirement alters the speaker's message.

"Mandating speech that a speaker would not otherwise make necessarily alters the content of the

speech.” *Riley v. Nat’l Fed’n of the Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988). A law that compels a speaker to include particular statements in its own communication is therefore “a content-based regulation of speech,” *id.*, and this Court has rejected the argument that a compelled statement of fact is exempt from that rule, *id.* at 797-98; see *Nat’l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 766 (2018) (*NIFLA*). Nor can a State avoid heightened scrutiny by labeling the requirement a “disclosure.” *Riley*, 487 U.S. at 796; see *Chiles v. Salazar*, 607 U.S. 627, 645 (2026) (First Amendment protections cannot be “renamed away” or “nullified by ‘mere labels’”; what matters is whether a law in fact regulates speech in the case at hand).

The disclosure cases on which the court below relied involved something different. *Buckley* upheld reporting to the government. 424 U.S. at 60-84. *Citizens United* upheld a requirement that an advertisement identify the person or group that funded it and state that it was not authorized by a candidate. 558 U.S. at 366. Neither required a speaker to print the names of its financial supporters in the body of its message.⁴

B. The court’s stated rationales are disqualifying.

The court below offered two justifications for requiring donors’ names on the communication itself rather than in a public database. Both undermine the

⁴ Petitioner and several *amici* develop this point, and MSLF need not repeat it.

requirement rather than support it.

The first was that on-communication naming “provide[s] an instantaneous heuristic by which to evaluate generic or uninformative speaker names.” App. 80a. That is an admission that the requirement’s function is to enable listeners to accept or reject a message by reference to who funds it, without engaging the message itself. This Court has already explained why that interest cannot justify compelled speech: the identity of a speaker’s supporters “add[s] little, if anything, to the reader’s ability to evaluate the document’s message,” *McIntyre*, 514 U.S. at 348-49, and compelling a speaker to include information that leads listeners to dismiss the message “would clearly and substantially burden the protected speech,” *Riley*, 487 U.S. at 798. A “heuristic” for prejudging a message is precisely the *ad hominem* shortcut whose value the Tenth Circuit questioned, observing that “[n]ondisclosure could require the debate to actually be about the merits of the proposition on the ballot.” *Sampson*, 625 F.3d at 1257.

The second rationale was that on-communication naming is “more likely to effectuate the purpose of an informed electorate than a government repository of the same information.” App. 80a. That is an argument from efficiency. The court did not find that a public database would fail to inform; it found only that printing names on the message would inform more effectively. But “the First Amendment does not permit the State to sacrifice speech for efficiency.” *Riley*, 487 U.S. at 795. “[T]he prime objective of the First Amendment is not efficiency,” *AFPP*, 594 U.S. at 614-15 (quoting *McCullen v. Coakley*, 573 U.S. 464, 495

(2014)), and a government’s preference for a more effective means of delivering information does not establish that a less intrusive alternative is inadequate, *see NIFLA*, 585 U.S. at 775. Narrow tailoring requires the State to “demonstrate its need” for the more intrusive requirement “in light of any less intrusive alternatives.” *AFPP*, 594 U.S. at 613. The court below inverted that inquiry, treating the existence of a less intrusive alternative as irrelevant so long as the more intrusive one worked better.

The lower courts have thus far sustained on-communication donor requirements. *See Gaspee Project v. Mederos*, 13 F.4th 79, 90-92 (1st Cir. 2021); *No on E v. Chiu*, 85 F.4th 493, 509–11 (9th Cir. 2023). But nine judges of the Ninth Circuit have explained that naming donors with no chosen connection to a message “will actually encourage voters to draw inaccurate conclusions.” *No on E*, 85 F.4th at 527 (VanDyke, J., dissenting from denial of reh’g en banc).

IV. The Demand for Donor Identities Is the Injury, and This Court’s Review Is the Only Federal Check for Speakers in Petitioner’s Position.

Last Term, this Court unanimously reaffirmed that a government demand for a nonprofit’s donor information is itself a present injury to First Amendment rights. *First Choice*, 608 U.S. at 188. Drawing on *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), the Court explained that if one were to “[s]trip away the ability of individuals to work together free from governmental oversight and intrusion,” then “the freedom to associate may become no freedom at all—individuals deterred, groups

diminished, and their protected advocacy suppressed.” *Id.* at 185–86. An official demand for private donor information, the Court explained, “is enough to discourage reasonable individuals from associating with a group” and “enough to discourage groups from expressing dissident views.” *Id.* at 198–99. Since the 1950s this Court has confronted “one official demand after another,” and “[o]ver and again,” it has “held those demands burden the exercise of First Amendment rights.” *Id.* at 199.

The lower courts have already begun to cabin *First Choice*, and in a way that leaves speakers in petitioner’s position without recourse. The Third Circuit declined to disturb Delaware’s disclosure regime, distinguishing both *AFPF* and *First Choice* on the ground that neither was “an election case,” while acknowledging that its own court “may have to grapple with whether to revisit” circuit precedent in light of them. *Ams. for Prosperity Found. v. Albence*, — F.4th —, No. 26-2469, 2026 WL 2563151, at *3 (3d Cir. Aug. 31, 2026). Whatever *First Choice* settled, at least one appellate court applying it has said it did not settle this. That reading mistakes the holding for the reasoning. *First Choice* resolved a question of standing, but it located the injury in the demand’s effect on donors rather than in the procedural vehicle that carried it — an effect that arises “not just when a demand is enforced, but when it is made and for as long as it remains outstanding.” 608 U.S. at 189. A statute that conditions every communication on naming one’s three largest donors makes that demand permanent rather than episodic.

Alaska’s regime authorizes any private

complainant to trigger that demand in the middle of a campaign. The complaint here was filed in September 2020, before the election. App. 10a. The Commission then declined to consider petitioner’s constitutional defenses, stating that it lacked “jurisdiction to decide issues of constitutional law,” App. 157a n.8, and ordered petitioner to register, report, and name its donors. Six years and three tribunals later, the compliance order stands. The Commission waived the monetary penalty because it “exceed[ed] the value of the transactions that were not reported.” App. 161a. What remains is the disclosure, which was the point.

For donor-funded organizations that speak on public issues, the chill this Court described in *First Choice* does not await enforcement. An organization that abstains from ballot-measure advocacy, as MSLF does, cannot assure its supporters that abstention protects them, because under the decision below the trigger is not the organization’s conduct but a proponent’s petition and a complainant’s theory about what a “reasonable listener” would infer. The only way to eliminate the risk is to stop speaking about any subject that might reach a ballot. That is the hedging and trimming the First Amendment forbids.

Nor is further percolation likely to help. Petitioner’s constitutional claims arose as defenses in a state enforcement proceeding begun by a private complainant, and *First Choice* marks why that posture matters. The Court emphasized there that Congress enacted § 1983 “with the express goal of ensuring a federal forum” and that forcing a litigant into state court first would spring a “preclusion trap” in which the statute’s promise would “di[e] aborning.” 608 U.S.

at 191, 196. But it also acknowledged that “certain ‘abstention’ doctrines supply narrow exceptions to that rule when state proceedings are ongoing,” citing *Younger v. Harris*, 401 U.S. 37 (1971), and observed that no party had invoked one. *Id.* at 192. Petitioner is in the case *First Choice* reserved. A speaker who first learns of its obligations when an adversary files a complaint is already in a state proceeding before it can choose a forum, and when that proceeding ends the door closes behind it. Its path runs through the state agency and the state courts to this Court under 28 U.S.C. § 1257.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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