

No. 26-88

In the Supreme Court of the United States

ALASKA POLICY FORUM, *Petitioner*,

v.

ALASKA PUBLIC OFFICES COMMISSION, ET AL.

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

**BRIEF OF *AMICI CURIAE*
PROTECT THE FIRST FOUNDATION AND
THE JOHN LOCKE FOUNDATION
SUPPORTING PETITIONER**

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SEPTEMBER 30, 2026

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INTRODUCTION, SUMMARY, AND INTEREST OF *AMICI CURIAE*¹

The petition should be granted to make clear that a State may not unmask a nonprofit's donors merely because the organization spoke about a public-policy issue that appeared on a ballot. Petitioner Alaska Policy Forum published research, press releases, and a video criticizing ranked-choice voting months before Alaskans voted on a ranked-choice-voting measure, and without naming the measure. The Alaska Supreme Court still treated that issue advocacy as regulated speech subject to registration and disclosure requirements. And it held that a generalized informational interest in who funds speech about public policy satisfies exacting scrutiny.

That flouts this Court's decisions. For roughly seventy years the Court has held that compelled disclosure of an advocacy organization's supporters is subject to exacting scrutiny. The Court has also held that privacy of association is the constitutional baseline and that a free-floating interest in knowing who is speaking about public issues is not enough to overcome that privacy interest. Yet the decision below is the latest in a long line of lower-court decisions that distinguish this Court's donor-privacy cases rather than apply them. That is unacceptable.

¹ This brief was not authored in whole or in part by counsel for any party and no person or entity other than *amici curiae* or their counsel or members has made a monetary contribution toward the brief's preparation or submission. Counsel of record for all parties received timely notice of *amici*'s intent to file.

This recurring error is especially troubling to *Amici* Protect the First Foundation (“PT1”) and John Locke Foundation. PT1 is a nonprofit, nonpartisan organization that defends First Amendment rights in all areas of law. And the John Locke Foundation is a nonprofit think tank that advocates for donor privacy protection. Both regularly speak on public-policy issues. Under the decision below, that speech would trigger registration, reporting, and donor disclosure the moment one of those issues landed on a ballot.

Amici agree with Petitioner that the decision below cannot survive this Court’s donor-privacy decisions. But two other points bear emphasis. First, this Court has already said what the protections for donor privacy are: Privacy of association is the baseline. The injury is the chill itself. And a general informational interest is a narrow exception for *candidate*-related speech—not for issue advocacy about a ballot measure.

Second, the decision below is not an outlier. Alaska, like the Sixth, Ninth, and Tenth Circuits, has treated that exception as the rule.

This Court should grant review or summarily reverse.

STATEMENT

Alaska requires an organization that tries to influence a ballot measure to register with the Alaska Public Offices Commission before it spends. It also requires the organization to disclose its donors' names, addresses, occupations, and employers—and, for organizational donors, their officers and directors. App.206a-212a, 217a-219a, 228a. Speech about a ballot measure must also carry a “paid for by” disclaimer identifying the speaker and its top contributors. App.219a, 230a.

Alaska placed an initiative proposing ranked-choice voting, among other election changes, on the November 2020 ballot. App.6a-7a. Alaska Policy Forum (“APF”) emailed a coalition press release, embedded a coalition video into a blog post, and published its own press release, white paper, and article criticizing ranked-choice voting without naming the initiative. App.7a-10a, 241a-247a, 248a-299a, 300a-303a.

An advocacy group complained, alleging that APF failed to register, report, and disclose its advocacy as required. App.10a-11a; App.154a. The Commission agreed. App.165a-175a; App.154a-164a. APF appealed the Commission’s order up to the Alaska Supreme Court, which affirmed. App.1a-91a. It treated APF’s speech as regulated advocacy against the initiative and held that a mere informational interest satisfies exacting scrutiny. App.39a-40a, 44a-46a, 63a-72a, 76a-82a.

ADDITIONAL REASONS FOR GRANTING THE PETITION

I. This Court Has Repeatedly Held that the First Amendment Protects Donor Privacy.

Since at least 1958, this Court has repeatedly affirmed “the vital relationship between freedom to associate and privacy in one’s associations.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958).

1. In *NAACP*, this Court explained that compelling the disclosure of a person’s affiliation with—or donations to—advocacy groups “may constitute as effective a restraint on freedom of association as [more direct] forms of governmental action.” *Ibid.* “Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.” *Ibid.*

Just last Term this Court noted that, for decades, in “one case after another,” it has “emphasized the critical role privacy in association plays in preserving political and cultural diversity and in shielding dissident expression from suppression.” *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 608 U.S. 174, 186 (2026) (cleaned up). And the Court recognized that official demands for private donor information “inevitably” carry a “deterrent effect on the exercise of First Amendment rights.” *Ibid.* (cleaned up) (discussing consistency in the Court’s decisions in the seven decades since *NAACP*, 357 U.S. 449).

In that case, Attorney General Platkin’s subpoena had not even been enforced. *Id.* at 181. But that did

not matter. “An official demand for private donor information is enough to discourage reasonable individuals from associating with a group” and “to discourage groups from expressing dissident views.” *Id.* at 198-199. So long as the demand remains outstanding, “the pressure” to avoid ties and speech that “might displease” officials “can be constant and heavy.” *Ibid.* (cleaned up).

That is why donor lists are protected. Groups are injured by the request for disclosure itself, even before any information is turned over.

2. Because compelled disclosure inflicts that harm, this Court applies exacting scrutiny. *Buckley v. Valeo*, 424 U.S. 1, 64-65 (1976) (per curiam), *superseded by statute on other grounds*, The Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81. Exacting scrutiny requires “a substantial relation between the disclosure requirement and a sufficiently important governmental interest.” *Doe v. Reed*, 561 U.S. 186, 196 (2010) (cleaned up). And not just any interest will do—“the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.” *Ibid.* (quoting *Davis v. FEC*, 554 U.S. 724, 744 (2008)). Later, the Court clarified that any disclosure regime must “be narrowly tailored to the government’s asserted interest.” *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 608 (2021).

A quick review of this Court’s precedents shows that the interest here—information about who is speaking about an issue on a ballot measure—is *not* important enough to justify burdening the freedom of

speech and association. Under exacting scrutiny this Court has only rarely upheld disclosure laws. *Doe v. Reed* sustained the compelled disclosure of the names of petition-signers to protect electoral integrity, 561 U.S. at 197-198. But this was not a demand for a think tank’s entire donor file because it discussed an issue that later reached the ballot.²

This Court has almost never treated that interest as enough to satisfy exacting scrutiny. In *Americans for Prosperity Foundation*, for example, this Court saw through the government’s asserted interest in fraud prevention, recognizing that the interest was “less in investigating fraud and more in ease of administration.” 594 U.S. at 614. That informational interest—even recast as “[m]ere administrative convenience”—fails exacting scrutiny. *Id.* at 614-615. “[T]he prime objective of the First Amendment is not efficiency.” *Ibid.* (quoting *McCullen v. Coakley*, 573 U.S. 464, 495 (2014)). That is the general rule.

3. *Buckley* recognized a narrow exception for an interest in “provid[ing] the electorate with information as to where political campaign money comes from and how it is spent by the candidate[.]” *Buckley*, 424 U.S. at 66 (cleaned up). But *Buckley* limited this interest to situations when organizations spend money on speech that directly advocates for or against a “clearly identified candidate.” *Id.* at 80.

Citizens United v. FEC, 558 U.S. 310, 340, 369 (2010), thus allowed regulation based on an interest in

² The Court expressly declined to decide whether the informational interest itself would have been enough. See *Doe v. Reed*, 561 U.S. 186, 197 (2010).

“knowing who is speaking about a candidate shortly before an election.” And years earlier, *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley* made the same point from the other direction. The “single narrow exception” for “the perception of undue influence of large contributors to a *candidate*” does not carry over to ballot measures. 454 U.S. 290, 296-297 (1981) (citing *Buckley*, 424 U.S. at 26-27). Neither decision approved unmasking donors to a group that never named a candidate or a measure.

Ballot measures are necessarily different from candidate elections. In *First National Bank of Boston v. Bellotti*, the Court emphasized that the risks “in cases involving candidate elections *** simply [are] not present in a popular vote on a public issue.” 435 U.S. 765, 790 (1978) (citations omitted). The Court repeated this in *McIntyre v. Ohio Elections Commission*, explaining that “ballot issues *** present neither a substantial risk of libel nor any potential appearance of corrupt advantage.” 514 U.S. 334, 352 & n.15 (1995).

These decisions establish that donor privacy is the baseline. An informational interest can justify disclosure of who is funding speech about a clearly identified candidate. But it has never been enough to justify unmasking an issue-advocacy group’s donors because the group discussed a public issue that later appeared on a ballot.

II. The Decision Below and Others Like It Improperly Treat the Exception as the Rule.

Still, the Alaska Supreme Court held that a mere informational interest was substantial enough to satisfy exacting scrutiny. App.62a. Quoting *Messerli v. Alaska*, 626 P.2d 81, 86-87 (Alaska 1980), the court said that interest “applies with full force” to ballot measures. App.62a & n.166. But that flouts *Americans for Prosperity Foundation*, which rejected the State’s interest in collecting even a confidential attorney-general file for “ease of administration.” 594 U.S. at 614-615. Here, far from requiring confidentiality, Alaska requires public reports and names on the regulated speech, triggered at the first dollar spent. App.63a-72a, 76a-82a.

Nor is Alaska an outlier. It joined several other lower courts—including the Sixth, Ninth, and Tenth Circuits—that continue to sidestep this Court’s precedents and put naked informational interests ahead of donor privacy.

Most recently, the Tenth Circuit allowed an informational interest to justify New Mexico’s donor disclosure requirement. See *Rio Grande Found. v. Oliver*, 154 F.4th 1213, 1225-1226 (10th Cir.), *reh’g en banc denied*, 162 F.4th 1251 (10th Cir. 2025) (mem.), *petition for cert. docketed*, No. 25-1248 (U.S. May 4, 2026). There, the court essentially equated spending on ballot questions to spending on candidates, holding that the state’s interest in “provid[ing] the public with information about who is advocating for or against a candidate *or* ballot question” was strong enough to

override First Amendment protections. *Id.* at 1225-1227 (emphasis added).

The Tenth Circuit added that it had already interpreted this Court’s precedent to justify “disclosure requirements *** to advertisements that did not take a position on a candidacy” such as ballot measures. *Id.* at 1226 (internal alterations omitted) (quoting *Independence Inst. v. Williams*, 812 F.3d 787, 796 (10th Cir. 2016)). The Tenth Circuit thus echoed the Alaska Supreme Court’s erroneous conclusion that informational interests apply “with full force” to ballot measures. App.62a & n.166 (quoting *Messerli*, 626 P.2d at 86-87).

The Sixth Circuit fell into the same trap in *Boone County Republican Party Executive Committee v. Wallace*, 132 F.4th 406 (6th Cir.), *reh’g en banc denied mem.*, 140 F.4th 797 (6th Cir. 2025). After acknowledging this Court’s holdings that an informational interest could survive exacting scrutiny for *candidate* advocacy, the Sixth Circuit held that “[s]imilar considerations apply forcefully in the context of ballot initiatives.” *Id.* at 428.

The Ninth Circuit did the same in *No on E v. Chiu*, 85 F.4th 493 (9th Cir. 2023), *cert. denied mem.*, 145 S. Ct. 136 (2024). There, the court said it had “repeatedly recognized an important (and even compelling) informational interest in requiring ballot measure committees to disclose information about contributions.” *Id.* at 505 (citation omitted). And the court went further: It held that an informational interest alone could justify requiring organizations

that had donated to the ballot committee to disclose their own donors. *Ibid.*

As Judge VanDyke explained, this turned this Court's decisions on their head because "man is not known by the company of the company he keeps." *Id.* at 527 (VanDyke, J., dissenting from denial of rehearing en banc). Whatever the interest in voters' knowing a speaker's primary contributors, "a voter cannot reasonably infer any relevant information about a political speaker or an advertisement by knowing the speaker's secondary contributors." *Ibid.*

CONCLUSION

Lower courts keep refusing to treat ballot-measure speech differently from candidate speech, in violation of this Court's decisions. Although that is ample reason to grant full review, it is also a good reason to summarily reverse. By reiterating that donor privacy must trump a bare informational interest outside the context of candidate-related speech, this Court can stop the trend in its tracks.

Respectfully submitted,

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September 30, 2026