

In the Supreme Court of the United States

AMERICANS FOR PROSPERITY FOUNDATION, ET AL.
Applicants,

v.

ANTHONY ALBENCE, ET AL.
Respondents.

**To the Honorable Samuel A. Alito, Jr., Associate Justice of the
United States Supreme Court and Circuit Justice for the Third
Circuit**

**APPENDIX FOR EMERGENCY APPLICATION FOR WRIT OF
INJUNCTION PENDING CERTIORARI**

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 26-2469

AMERICANS FOR PROSPERITY FOUNDATION; AMERICANS FOR PROSPERITY,
Appellants

v.

ANTHONY J. ALBENCE, in his official capacity as State Election Commissioner for the
State of Delaware; ATTORNEY GENERAL OF DELAWARE

On Appeal from the U.S. District Court, D. Del.
Judge Jennifer L. Hall, No. 1:26-cv-00445

Before: HARDIMAN, BIBAS, and RENDELL, *Circuit Judges*
Argued: Aug. 10, 2026

JUDGMENT

This cause came to be considered on the record from the U.S. District Court for the District of Delaware and was argued on August 10, 2026.

On consideration whereof, it is now **ORDERED** and **ADJUDGED** that the District Court's order entered on June 8, 2026, is hereby **AFFIRMED**. Costs will be taxed against Appellants. The mandate shall issue at once. All of the above in accordance with the Opinion of this Court.

ATTEST:

Dated: August 31, 2026

 s/ Patricia S. Dodszuweit
Clerk
Certified as a true copy and issued in lieu
of a formal mandate on 08/31/2026

Teste: 
Clerk, U.S. Court of Appeals for the Third Circuit

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 26-2469

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Judge Jennifer L. Hall, No. 1:26-cv-00445

Before: HARDIMAN, BIBAS, and RENDELL, *Circuit Judges*
Argued: Aug. 10, 2026; Filed: Aug. 31, 2026

OPINION OF THE COURT

BIBAS, *Circuit Judge*. A court considering a preliminary injunction should weigh not only the merits and risk of irreparable injury, but also the balance of equities and public interest. *See Winter v. NRDC*, 555 U.S. 7, 20 (2008). Ordinarily, the balance of equities strongly favors preserving the status quo, not disrupting it. And if the case would survive through final judgment without a preliminary injunction, issuing one may well be unnecessary.

The challengers here claim that Delaware’s campaign-finance disclosure law violates the First Amendment. But by asking for a preliminary injunction, they seek to disrupt the decade-long status quo, and they show no need for an injunction to keep the case alive. Plus, they have made almost no factual record to flesh out their likelihood of success and the injuries they fear in the meantime. So we will AFFIRM the District Court’s order denying the preliminary injunction.

I. ANOTHER CHALLENGE TO THE DELAWARE ELECTIONS DISCLOSURE ACT

In 2012, Delaware enacted the Elections Disclosure Act. The Act applies to groups that spend more than \$500 on “electioneering communication[s]” within 30 days of a primary election or 60 days of a general election. 15 Del. C. §§8002(10), 8031(a). Those groups must publicly disclose the names and addresses of anyone who gave them more than \$100 during that election cycle. §8031(a). Disclosure is not limited to donors who earmark their donations for political ads or for use in Delaware. Nor may donors avoid disclosure by giving money on the condition that it cannot be used for political ads. And because of how the Act defines election cycles, groups may have to disclose donors who gave up to four years before the election. *See* §8002(11)(a)(1); Appellant’s Br. 7.

More than a decade ago, this Court upheld the Act against a First Amendment challenge, applying “exacting scrutiny.” *Del. Strong Fams. v. Att’y Gen. of Del.*, 793 F.3d 304, 309–13 (3d Cir. 2015). Six years later, in a case that did not involve campaign finance, the Supreme Court clarified how to apply

“exacting scrutiny” to donor-disclosure laws. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 611–12 (2021).

Five years after *Bonta*, the challengers filed this suit, claiming that *Bonta* abrogated *Delaware Strong Families*. They raise both facial and as-applied First Amendment challenges. The challengers are nonprofit corporations that engage in issue advocacy across the nation. They have not and do not currently run electioneering communications in Delaware. But they plan to do so for the upcoming November 2026 election—if the District Court enjoins enforcement of the Act.

Seven weeks after the challengers sued, the District Court held a preliminary-injunction hearing. The challengers put on no live witnesses and offered no affidavits from donors who feared disclosure. For their evidence, they relied entirely on a single employee’s declarations that the challengers’ employees, supporters, and donors have faced threats before. The allegations were “generic” and not tied specifically to election donations. App. 11.

On this “very slim” evidentiary record, the District Court denied the preliminary injunction. App. 6. It found no likelihood of success on the facial challenge because *Delaware Strong Families* had upheld the Act and *Bonta* did not clearly abrogate that ruling. It also doubted that the challengers would succeed on their as-applied challenge because the “generic, undated” evidence of threats to the organization, “as opposed to specific donors,” did not show that disclosing donor information would likely expose donors to harm. App. 12. Plus, the court noted, the Act had been “on the books” and enforced for more than a decade. App. 13–14. Thus, it left in place the status

quo, “exercis[ing] [its] discretion to decline to enter the injunction.” App. 14.

We have jurisdiction to review the denial of a preliminary injunction under 28 U.S.C. § 1292(a)(1). We review the District Court’s legal rulings de novo, its findings of fact for clear error, and its ultimate decision for abuse of discretion. *Del. State Sportsmen’s Ass’n, Inc. v. Del. Dep’t of Safety & Homeland Sec.*, 108 F.4th 194, 198 (3d Cir. 2024). We review “deferentially,” because “the denial of a preliminary injunction is almost always based on an abbreviated set of facts, requiring a delicate balancing that is the responsibility of the district judge.” *Id.* (internal quotation marks omitted).

II. PRELIMINARY INJUNCTIONS EXIST TO KEEP CASES ALIVE

Equitable relief is exceptional, reserved for “*extraordinary cases*, which are *exceptions* to general rules.” *The Federalist No. 83*, at 505 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (footnote omitted). Because injunctions can inflict as much harm as they prevent, equity traditionally aims to “arrive at a nice adjustment and reconciliation between the competing claims” of harm. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (internal quotation marks omitted). Not only does the plaintiff fear harm from being denied an injunction; the defendant state, if it loses, suffers irreparable injury from having enforcement of its law enjoined. *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers); *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J.,

in chambers); *Labrador v. Poe*, 144 S. Ct. 921, 923 (2024) (Gorsuch, J., concurring in the grant of stay).

Balancing harms is especially fraught for preliminary injunctions, where courts must rule quickly based on limited information. Courts risk making mistakes. That risk is high because courts do not know for certain who will ultimately win on the merits, let alone whether a final injunction will follow. The court makes “only a prediction about the merits of the case.” *United States v. Loc. 560 (I.B.T.)*, 974 F.2d 315, 330 (3d Cir. 1992). And it makes that prediction on thin evidence. “Affidavits drafted by lawyers are poor substitutes for discovery, live testimony, and cross-examination.” *Del. State Sportsmen’s*, 108 F.4th at 200.

Given these unknowns, the preliminary injunction’s function “is not to take whatever steps are necessary to prevent irreparable harm.” *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 1012 (10th Cir. 2004) (McConnell, J., concurring). Instead, it is “merely to preserve the relative positions of the parties until a trial on the merits can be held.” *Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024) (internal quotation marks omitted). In other words, the court acts to maintain the status quo, “to preserve the court’s power to render a meaningful decision after a trial on the merits.” *Del. State Sportsmen’s*, 108 F.4th at 201 (internal quotation marks omitted).

Though some harm may be suffered either way, the status quo helps courts choose the lesser of two evils. First, the harm from temporarily changing the status quo is likely greater than the harm from temporarily leaving it alone. “Disruption is

expensive,” and altering the status quo only to change it back disrupts things twice, rather than once at the end. *O Centro*, 389 F.3d at 1017 (McConnell, J., concurring).

Second, the status quo gives courts a glimpse (albeit a hazy one) into how much each party would suffer in the meantime. A “party’s willingness to put up with a situation in the past can serve as an indication that the party’s injury is not as serious as alleged, or that the party has implicitly consented to the supposed injury.” *Id.*; see also *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985).

Finally, altering the status quo makes the court complicit in whatever harm its preliminary action might inflict. A court in equity should refuse to be “the abettor of iniquity.” *Monsanto Co. v. Rohm & Haas Co.*, 456 F.2d 592, 598 (3d Cir. 1972) (internal quotation marks omitted). So a “judicial version of Hippocrates’ ancient injunction to physicians—above all, to do no harm—counsels against forcing changes before there has been a determination of the parties’ legal rights.” *O Centro*, 389 F.3d at 1012 (McConnell, J., concurring).

For all these reasons, “[w]hen a statute has long been on the books and enforced, ... it is exceedingly unusual for a litigant who challenges its constitutionality to obtain (or even to seek) a preliminary injunction against its continued enforcement.” *Id.* at 1018; see also *Walters v. Nat’l Ass’n of Radiation Survivors*, 468 U.S. 1323, 1324 (1984) (Rehnquist, J., in chambers). Old statutes are not immune from preliminary relief, but their age heightens the challengers’ burden.

III. THE DISTRICT COURT PROPERLY PRESERVED THE STATUS QUO

In exercising its discretion to grant or deny a preliminary injunction, a district court looks to four guideposts: (1) the plaintiff’s likelihood of success on the merits; (2) the risk of irreparable injury absent preliminary relief; (3) the balance of equities; and (4) the public interest. *Winter*, 555 U.S. at 20. When the government is the defendant, factors three and four merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). In the district court, the party asking for the preliminary injunction must persuade the court “by a clear showing” that it deserves one. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam) (internal quotation marks omitted). And on appeal from the denial of a preliminary injunction, appellants “bear[] a heavy burden.” *Chesimard v. Mulcahy*, 570 F.2d 1184, 1187 (3d Cir. 1978). Here, they have not borne it.

A. The likelihood of success is hazy

The challengers argue forcefully that they are likely to succeed on the merits. True, *Delaware Strong Families* rejected a similar First Amendment challenge. But, the challengers urge, *Bonta* tightened up the narrow-tailoring requirement. *Compare* 594 U.S. at 608, *with* 793 F.3d at 311–12 (analyzing only whether the law bears a “substantial relation” to an important state interest). And, the challengers argue, *Delaware Strong Families* did not consider the Act’s nationwide scope or four-year lookback provision, provisions that they attack today. 793 F.3d at 310–12 & n.5.

On the other hand, *Bonta* was not an election case. Neither was the other recent case on which the challengers rely. *First*

Choice Women’s Res. Ctrs., Inc. v. Davenport, 608 U.S. ___, ___, 146 S. Ct. 1114, 1124 (2026) (holding that a charity subpoenaed for donor information has standing to challenge the subpoenas). That distinction matters, because election-law precedents recognize that “disclosure often represents a less restrictive alternative” to other options. *Nat’l Republican Senatorial Comm. v. FEC*, 609 U.S. ___, ___, 146 S. Ct. 2404, 2421 (2026) (internal quotation marks omitted); *see also Buckley v. Valeo*, 424 U.S. 1, 68 (1976) (“[D]isclosure requirements—certainly in most applications—appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption.”). Indeed, the government has an interest in informing voters where election-related spending is coming from. *See Citizens United v. FEC*, 558 U.S. 310, 367 (2010). A panel of this Court, and possibly our entire Court sitting en banc, may have to grapple with whether to revisit *Delaware Strong Families* based on *Bonta* and *First Choice*’s observations in other contexts.

If *Delaware Strong Families* is no longer good law, the record before us says little about whether Delaware demands more disclosure than its interests justify. Delaware plans to provide that evidence at trial, including testimony from voters and campaign officials who value donor disclosures, and statistics about how many people visit Delaware’s donor-disclosure database. On this underdeveloped record, it is hard to forecast whether Delaware will show that its tailoring is narrow enough to defeat the facial challenge.

The same is true for the as-applied challenge. For that, the challengers must show a “reasonable probability that disclosure of its contributors’ names will subject them to threats,

harassment, or reprisals.” *Citizens United*, 558 U.S. at 367 (internal quotation marks omitted). On a more thorough record, they might be able to make that showing. But the challengers have not yet offered anything from donors—just “generic, undated” examples of “threats to AFP as an organization as opposed to specific donors.” App. 12. These affidavits give us little confidence in the likelihood of success. This early on, it is hard to say.

B. A preliminary injunction is discretionary; there is no right to one

The challengers would have us stop there. They argue that if they show a likelihood of success on the merits, the District Court lacks discretion to deny an injunction. They reason that they will suffer irreparable injury in being forced to choose between silence and disclosure before final judgment. And because the challengers assert that the merits are in their favor, they say the equities entirely favor them. After all, they reason, Delaware has no “interest in enforcing an unconstitutional law.” Oral Arg. 7:55, <https://perma.cc/9X6T-C4JW>. They misunderstand equity.

“As a matter of equitable discretion, a preliminary injunction does not follow as a matter of course from a plaintiff’s showing of a likelihood of success on the merits.” *Benisek v. Lamone*, 585 U.S. 155, 158 (2018) (per curiam). “[A] federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law,” let alone every *likely* violation of law. *Weinberger*, 456 U.S. at 313.

It makes no difference that challengers invoke the First Amendment. We may not “do away with the traditional

prerequisites for injunctive relief simply because First Amendment freedoms [a]re implicated.” *Anderson v. Davila*, 125 F.3d 148, 164 (3d Cir. 1997). True, we presume First Amendment harms irreparable. *Del. State Sportsmen’s*, 108 F.4th at 204. But we also presume that enjoining enforcement of the law would irreparably harm Delaware. *Abbott*, 585 U.S. at 602 n.17. Irreparable injury is not a light switch, but a spectrum. Challengers must show us where they sit on that spectrum, so that we can evaluate their harms in light of the equities on both sides.

C. Though there may be *some* irreparable harm, its size and scope are unclear

The challengers spend little time showing irreparable harm. Rather, they rely on the presumption that First Amendment harm is irreparable. *Del. State Sportsmen’s*, 108 F.4th at 204. But we presume only the nature of the harm, not its probability or degree.

The challengers say that, without a preliminary injunction, they will stay silent during the sixty days before the general election rather than disclose their donors’ information. That may be some irreparable harm, but we do not know how much. The challengers were free to speak until sixty days before the election but did not. And we have only an affidavit from the organization, not testimony from their donors, that speaks in generalities about possible harms from disclosure. Plus, as Delaware notes, the challengers could create and fund a Delaware political-action committee or unincorporated association, limiting disclosure to donors who fund those Delaware-specific groups. Appellees’ Br. 9–10. It is possible that these extra hoops add an unconstitutional burden to the challengers’

speech. *See Citizens United*, 558 U.S. at 337–38; *see also Del. Strong Fams.*, 793 F.3d at 312 n.10. But we do not yet know.

D. The balance of equities favors Delaware and the status quo

We spot the challengers some likelihood of success and some irreparable injury. Even so, the District Court did not abuse its discretion by denying the injunction.

Preliminary injunctions exist mainly to keep cases alive so that the parties can contest the merits. But there is no risk of this case dying. As the District Court noted, the Act “has been on the books for more than a decade”; it stands to reason the challenges will survive if it stays there for another year or two. App. 13–14. That delay will not moot the case or render final judgment “useless.” *See Doran v. Salem Inn, Inc.*, 422 U.S. 922, 932 (1975).

“The presumption of constitutionality which attaches to [legislation] is not merely a factor to be considered in evaluating success on the merits, but an equity to be considered in favor of [the government] in balancing hardships.” *Walters*, 468 U.S. at 1324 (Rehnquist, J., in chambers). Faced with the state’s weighty interest in enforcing its law, which counterbalances the challengers’ own feared injury, the challengers should have proven the risks that their donors would face under the Act’s longstanding requirements. Instead, they declined the District Court’s invitation to hold an evidentiary hearing. And they failed to explain why they chose not to bring this suit earlier. Equity aids the diligent, not the tardy. *Bowman v. Wathen*, 42 U.S. (1 How.) 189, 193 (1843). The challengers say they decided only recently to speak in Delaware. But when pressed,

counsel was unsure when they made that decision. Promptness is especially important for elections. The Supreme Court has repeatedly warned lower courts not to “alter the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 424 (2020) (per curiam). Two months out from an election, caution is a virtue.

The District Court properly recognized that its decision was an “exercise [of] discretion.” App. 13. And it properly exercised that discretion to preserve the status quo. The challengers have not shouldered their heavy burden to disturb it.

* * * * *

Preliminary injunctions are discretionary; they are designed primarily to keep cases alive and usually to preserve the status quo. Even if there is some likelihood of success and some irreparable injury, a district court may find that the balance of equities is enough to cut the other way. Because the District Court properly exercised its discretion to preserve the status quo and deny the preliminary injunction, we will AFFIRM.

Counsel for Appellants

Allen J. Dickerson [Argued]
Erika D. Prouty
Richard B. Raile
Robert J. Tucker
BAKER HOSTETLER

Counsel for Appellees

Emily V. Burton [Argued]

Jennifer-Kate Aaronson

DELAWARE ATTORNEY GENERAL'S OFFICE

Tara Malloy

CAMPAIGN LEGAL CENTER

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK



UNITED STATES COURT OF APPEALS

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August 31, 2026

Randall C. Lohan
United States District Court for the District of Delaware
J. Caleb Boggs Federal Building
844 N King Street
Wilmington, DE 19801

RE: Americans for Prosperity Foundation, et al v. Anthony Albence, et al

Case Number: 26-2469

District Court Case Number: 1:26-cv-00445

Dear District Clerk

Enclosed herewith is the certified judgment together with copy of the opinion in the above-captioned case(s). The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judgment shows costs taxed, if any.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/ James King
Case Manager
267-299-4958

cc: Jennifer-Kate Aaronson, Esq., Emily V. Burton, Esq., Allen J. Dickerson, Esq.
Tara Malloy, Esq., Erika D. Prouty, Esq., Richard B. Raile, Esq., Robert J. Tucker, Esq.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ECO-064

No. 26-2469

AMERICANS FOR PROSPERITY FOUNDATION;
AMERICANS FOR PROSPERITY,
Appellants

v.

ANTHONY J. ALBENCE, in his official capacity as State Election Commissioner
for the State of Delaware; ATTORNEY GENERAL DELAWARE

(D. Del. No. 1:26-cv-00445)

Present: HARDIMAN, BIBAS, and RENDELL, *Circuit Judges*

1. Unopposed Motion filed by Appellants Americans for Prosperity and Americans for Prosperity Foundation to Expedite Appeal, Request Oral Argument with the following proposed briefing schedule:
Appellants' Brief due on or before July 10, 2026
Appellees' brief due on or before July 24, 2026
Appellants' reply brief, if any, due on or before July 31, 2026

Respectfully,
Clerk/JK

ORDER

The foregoing motion is granted in part. The appeal shall be expedited and the following briefing schedule imposed:

Appellants' Brief and Appendix shall be filed and served on or before July 15, 2026;
Appellees' Brief shall be filed and served on or before July 29, 2026;
Appellant's Reply Brief, if any, shall be filed and served on or before August 4, 2026.

The appeal shall be calendared at the convenience of the Court.

By the Court,
s/ Thomas M. Hardiman
Circuit Judge

Dated: July 6, 2026
JK/cc: All Counsel of Record

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AMERICANS FOR PROSPERITY
FOUNDATION, et al.,

Plaintiffs,

v.

ANTHONY ALBENCE, in his official
capacity as State Election Commissioner for
the State of Delaware, et al.,

Defendants.

C.A. No. 26-445-JLH

ORDER

At Wilmington this 8th day of June, 2026, in accordance with the Court's ruling from the bench at the conclusion of today's hearing, IT IS HEREBY ORDERED that Plaintiffs' Motion for Preliminary Injunction (D.I. 4) is DENIED. The parties should consult the transcript for details.


The Honorable Jennifer L. Hall
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AMERICANS FOR PROSPERITY)	)	
FOUNDATION, et al.,	)	
	)	
Plaintiffs,	)	C.A. No. 26-445-JLH
	)	
v.	)	
	)	
ALBENCE, et al.,	)	
	)	
Defendants.	)	

Monday, June 8, 2026
4:00 p.m.
Teleconference

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JENNIFER L. HALL
United States District Court Judge

APPEARANCES:

BAKER & HOSTETLER, LLP
BY: JEREMY DOUGLAS ANDERSON, ESQ.
BY: ALLEN DICKERSON, ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

2
3 DELAWARE DEPARTMENT OF JUSTICE
4 BY: EMILY V. BURTON, ESQ.

5 -and-

6 CAMPAIGN LEGAL CENTER
7 BY: TARA MALLOY, ESQ.
8 BY: MEGAN McALLEN, ESQ.

9 Counsel for the Defendant

10 -----

16:03:35 11 THE COURT: Good afternoon, everyone. This is
16:03:36 12 Jen Hall. We're here to reconvene the hearing on the
16:03:42 13 preliminary injunction motion in Americans for Prosperity
16:03:44 14 Foundation v. Albence, civil action number 26-445.

16:03:48 15 Do we have someone from Plaintiffs' side here?

16:03:52 16 MR. ANDERSON: Yes, Your Honor. Jeremy Anderson
16:03:55 17 and Allen Dickerson are both on the line.

16:03:58 18 THE COURT: Very good.

16:03:59 19 And do we have someone from Defendants here?

16:04:03 20 MS. BURTON: Indeed, Your Honor. Emily Burton,
16:04:08 21 Tara Malloy, and Megan McAllen are all here.

16:04:11 22 THE COURT: Great.

16:04:12 23 Pending before the Court is Plaintiffs' motion
16:04:14 24 for a preliminary injunction. That's at docket number 4.
16:04:18 25 The motion has been fully briefed and the parties submitted

16:04:23 1 declarations and other evidence in support of their papers,
16:04:26 2 all of which has been considered. That's at D.I. 5, 21, and
16:04:32 3 25. The parties were given the opportunity to request an
16:04:35 4 evidentiary hearing, but they assured the Court that neither
16:04:40 5 side wanted an evidentiary hearing. That's at docket 26.
16:04:43 6 That said the parties submitted some declarations and
16:04:46 7 exhibits in connection with their papers as D.I. 5, 22, and
16:04:50 8 25, and both sides agreed during the hearing today that the
16:04:55 9 Court may consider and rely upon those materials. The
16:04:57 10 record of evidence before the Court, is, however, very slim.

16:05:02 11 We've heard oral argument from the parties
16:05:05 12 today. Given that the challenge implicates conduct in the
16:05:10 13 upcoming election, the Court's prepared to render a prompt
16:05:15 14 decision by ruling on the motion from the bench.

16:05:18 15 Plaintiffs' one-count complaint challenges the
16:05:23 16 constitutionality of certain provisions of the Delaware
16:05:26 17 Elections Disclosure Act. Specifically, Plaintiff argues
16:05:30 18 that "Delaware's disclosure requirements set forth in 15
16:05:34 19 Delaware Code §8031" violate the First Amendment because
16:05:40 20 they "are not substantially related to a sufficiently
16:05:43 21 important government interest, nor are they narrowly
16:05:47 22 tailored to any interest they allegedly promote."

16:05:50 23 As relevant here, §8031(a) provides that

16:05:57 24 Any person other than a candidate committee or a
16:06:02 25 political party who makes an expenditure for any third-party

16:06:06 1 advertisement that causes the aggregate amount of
16:06:09 2 expenditures for the third-party advertisements made by such
16:06:13 3 person to exceed \$500 during an election period shall file a
16:06:17 4 third-party advertisement report with the Commissioner.

16:06:21 5 15 Delaware Code §8002 paragraph 21 defines
16:06:27 6 "third-party advertisement" to mean "an independent
16:06:31 7 expenditure or an electioneering communication."

16:06:39 8 An "electioneering communication" is "a
16:06:42 9 communication by any individual or other person (other than
16:06:45 10 a candidate committee or political party) that:

16:06:49 11 (1)Refers to a clearly identified candidate; and
16:06:53 12 (2)Is publicly distributed within 30 days before a primary
16:06:57 13 election or special election, or 60 days before a general
16:07:01 14 election to an audience that includes members of the
16:07:05 15 electorate for the office sought by such candidate."

16:07:09 16 That's §8002 paragraph 10(a).

16:07:12 17 And the "third-party advertisement report" must
16:07:18 18 include the "full name and mailing address of each person
16:07:21 19 who has made contributions during the election period in an
16:07:27 20 aggregate amount or value in excess of \$100. And that's
16:07:34 21 §8031(a)(3). §8032 provides that the report shall be
16:07:43 22 publicly available.

16:07:45 23 The gist of all this--and the focus of the
16:07:48 24 parties--is that organizations that pay for ads that run
16:07:52 25 shortly before an election that refer to a clearly

16:07:55 1 identified candidate must file a report with the Delaware
16:07:58 2 Commission of elections that contains the names of those who
16:08:03 3 have donated \$100 or more during the election period.

16:08:06 4 Plaintiffs allege that they want to run ads in
16:08:10 5 the pre-election window that will mention candidates for
16:08:13 6 election, but that Plaintiffs have refrained from doing so
16:08:18 7 because essentially they don't want to disclose their donors
16:08:21 8 and they don't want to violate the Delaware Elections
16:08:24 9 Disclosure Act.

16:08:26 10 Plaintiffs contend that the Act is
16:08:29 11 unconstitutional because it violates the right to private
16:08:32 12 association and free speech, in violation of the First
16:08:35 13 Amendment. Plaintiffs ask the Court to grant a preliminary
16:08:42 14 injunction to prevent the enforcement of the Act.

16:08:44 15 "A preliminary injunction is an extraordinary
16:08:46 16 remedy that should be granted only in limited
16:08:50 17 circumstances." And that's a quote from the Third Circuit
16:08:52 18 in *Delaware State Sportsmen's Association v. Delaware Dep't*
16:08:57 19 *of Safety*. It's at 108 F.4th 194, page 200 in 2024. The
16:09:07 20 case also explains that district courts have discretion to
16:09:11 21 grant or deny preliminary injunctions, but "[f]our canonical
16:09:16 22 guideposts are (1)the likelihood of success on the merits;
16:09:21 23 (2)the risk of irreparable injury absent preliminary relief;
16:09:26 24 (3)the balance of the equities; and (4)the public interest."
16:09:29 25 And "the first two factors are the most critical."

16:09:32 1 The parties agree that the "exacting scrutiny"
16:09:36 2 standard applies here. According to the Supreme Court,
16:09:40 3 exacting scrutiny requires that there be a substantial
16:09:44 4 relation between the disclosure requirement and a
16:09:47 5 sufficiently important governmental interest, meaning that
16:09:52 6 the strength of the governmental interest must reflect the
16:09:55 7 seriousness of the actual burden on First Amendment rights.
16:10:00 8 And that's from a case called *Americans for Prosperity*
16:10:05 9 *Foundation v. Bonta*, 594 U.S. 595 at page 607 from 2021.
16:10:10 10 That case also explains that exacting scrutiny also requires
16:10:16 11 that the disclosure requirement be narrowly tailored to the
16:10:20 12 interest it promotes. And that's on pages 608 to 611.
16:10:26 13 However, "exacting scrutiny does not require that disclosure
16:10:34 14 regimes be the least restrictive means of achieving their
16:10:38 15 ends."

16:10:39 16 The Third Circuit has previously addressed the
16:10:41 17 constitutionality of the Delaware Elections Disclosure Act.
16:10:45 18 In 2015, the Third Circuit held in a case called *Delaware*
16:10:49 19 *Strong Families v. Attorney General of Delaware* that
16:10:53 20 application of the act to the Plaintiffs in that case
16:10:56 21 survived exacting scrutiny. And the case cite for that is
16:11:03 22 793 F.3d 304 at pages 309 to 312.

16:11:08 23 Plaintiffs are argue that this Court is not
16:11:11 24 bound by *Delaware Strong Families* because, subsequently, in
16:11:16 25 2021, the Supreme Court clarified in *Bonta* that exacting

scrutiny requires that the disclosure requirement be narrowly tailored to the interest it promotes. And Plaintiffs say that requirement was not there when *Delaware Strong Families* came out.

But this Court is bound by third circuit precedent unless it is obviously in conflict with subsequent precedent from the Supreme Court. I'm unpersuaded that *Delaware Strong Families* is obviously in conflict with the exacting scrutiny standard set forth in *Bonta*. Indeed, Delaware Strong Families expressly concluded that the Delaware Elections Disclosure Act was "narrowly tailored." That case rejected challenges that the Act's monetary thresholds, the types of media covered, the length of the statutory "election period," and the lack of so-called earmarking provisions. And the Third Circuit's observation that exacting scrutiny does not require use of the least restricted means of advancing the state's interest is entirely consistent with *Bonta*.

Accordingly, I find that Plaintiff has failed to demonstrate any likelihood of success in winning a facial challenge to the constitutionality of the Act.

Plaintiffs spend a lot less time on their as-applied challenge. That said, the parties agree that a plaintiff can succeed with an as-applied challenge in the context of an election communication donor disclosure

16:13:08 1 requirement if the plaintiff can demonstrate a "reasonable
16:13:13 2 probability that disclosure of its contributors names will
16:13:18 3 subject them to threats, harassment, or reprisals from
16:13:21 4 either government officials or private parties." And that's
16:13:24 5 from the *Citizens United* case, 558 U.S. at page 367.

16:13:33 6 Here, Plaintiffs as-applied challenge is based
16:13:38 7 on generic allegations and/or allegations regarding contexts
16:13:43 8 unrelated to disclosure of donors in the election
16:13:46 9 communications context.

16:13:48 10 Plaintiffs submitted evidence via a declaration
16:13:51 11 that they "understand that both current and potential future
16:13:56 12 donors to our organization are fearful of having their names
16:14:00 13 and addresses disclosed as donors to or supporters of AFP
16:14:07 14 and/or AFPF." That's document number five at paragraph 17.
16:14:14 15 And that "AFP, AFPF, their employees, supporters, and donors
16:14:22 16 have been subject to threats and harassment in the past."
16:14:25 17 And that's at paragraph 18.

16:14:26 18 Plaintiffs then provide evidence of generic
16:14:29 19 examples such as that "in Vermont we have experienced
16:14:34 20 consistent harassment and threats from groups that disagreed
16:14:36 21 with us on economic policy initiatives to the point where we
16:14:40 22 had to hire security for our events." That's paragraph 19.
16:14:43 23 An AFP office in North Dakota was vandalized. That's
16:14:49 24 paragraph 20. Legislators in other states have made public
16:14:53 25 comments critical of AFP. That's paragraph 21. And in

other litigations AFP has provided other courts with firsthand evidence of threats. That's at paragraph 22.

The evidence and argument presented by Plaintiffs for their as-applied challenge is scant. The Court cannot say on this record that Plaintiffs have demonstrated a likelihood of success in showing a reasonable probability that disclosure of Plaintiffs' donors names pursuant to the Delaware law will subject them to threats, harassments, or reprisals from Government officials and private parties. There are no allegations or evidence of threats from Delaware government officials historically nor is there any suggestion that Delaware will target Plaintiffs in the future. Plaintiffs' evidence with respect to threats from private parties is generic, undated, focuses entirely on threats to AFP as an organization as opposed to specific donors, and is not specific to disclosure of donor information, nor is it tied to electioneering communications, Delaware, or electioneering communications in Delaware.

And while I'll accept for the purposes of the argument that the proposition that some potential donors would not contribute and current donors would stop contributing if Plaintiffs decided to make electioneering communications and are required to disclose donor information pursuant to the Delaware law, that is not

16:16:21 1 sufficient to show a likelihood of success that this
16:16:26 2 campaign finance law is unconstitutional as applied to
16:16:29 3 Plaintiffs. Disclosure in this context is constitutionally
16:16:33 4 permissible even when it places some burden on first
16:16:37 5 amendment rights because the state has a substantial
16:16:40 6 interest in disclosing to the public the identities of the
16:16:44 7 persons funding electioneering communications.

16:16:47 8 The record before the Court is insufficient to
16:16:49 9 demonstrate a likelihood of success that Plaintiffs' donors
16:16:53 10 will be subjected to threats, harassments, or reprisals due
16:16:56 11 to the Delaware statute.

16:16:57 12 And I footnote this: While certain remarks in
16:17:02 13 Plaintiffs' briefing and by Plaintiffs' counsel during the
16:17:07 14 oral argument today suggests that Plaintiffs may think it is
16:17:12 15 relevant to their challenge that some or all of the ads they
16:17:15 16 intend to run might not be the functional equivalent of
16:17:19 17 express advocacy, the legal implications of that were not
16:17:22 18 fairly presented to the Court in this motion, so the Court
16:17:24 19 has not considered that issue.

16:17:26 20 For all the reasons stated, I conclude that the
16:17:30 21 record does not demonstrate a likelihood of success on
16:17:34 22 Plaintiffs facial or as-applied challenge.

16:17:40 23 I will exercise my discretion to decline to
16:17:42 24 enter the injunction. The Delaware Act under consideration
16:17:47 25 is not a new law. It has been on the books for more than a

16:17:50 1 decade. The status quo is that the law is enforceable.
16:17:54 2 Plaintiffs have not shown a likelihood of success. Even if
16:17:57 3 all of the other factors favored Plaintiffs, the Court is
16:18:02 4 exercised its discretion to deny the injunction.

16:18:04 5 And that completes the Court's ruling on the
16:18:06 6 motion.

16:18:07 7 I'm not sure how the parties intend to proceed
16:18:14 8 given the Court's ruling today. If Plaintiff does file an
16:18:19 9 appeal in denial of the PI to the Third Circuit, it seems to
16:18:26 10 me it would be a good idea to have the parties meet and
16:18:29 11 confer and let us know their positions as to whether the
16:18:33 12 matter should continue forward in the District Court while
16:18:38 13 that appeal is pending.

16:18:41 14 So that's my thinking. Can I hear anybody's
16:18:45 15 comments on that?

16:18:47 16 MR. DICKERSON: Your Honor, this is Allen
16:18:53 17 Dickerson for the Plaintiffs. That seems reasonable to us.
16:18:57 18 We'll plan to meet and confer with opposing counsel in the
16:19:03 19 event that an appeal is taken.

16:19:03 20 THE COURT: All right. Thank you.

16:19:03 21 Can I hear from Defendants?

16:19:06 22 MS. BURTON: From Defendants, Your Honor, we'll
16:19:09 23 meet and confer with Plaintiffs once they have determined
16:19:12 24 whether or not to appeal.

16:19:14 25 THE COURT: All right. Thank you very much.

16:19:17 1 Thanks, everyone. Have a good night. We'll be adjourned.

16:19:22 2 MS. BURTON: Thank you, Your Honor.

16:19:24 3 MR. DICKERSON: Thank you.

16:19:26 4 (Court adjourned at 4:19 p.m.)

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I hereby certify the foregoing is a true and
accurate transcript from my stenographic notes in the
proceedings.

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/s/ Stacy M. Ingram, RPR
Official Court Reporter
U.S. District Court

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AMERICANS FOR PROSPERITY
FOUNDATION; AMERICANS FOR
PROSPERITY

Plaintiffs,

v.

ANTHONY ALBENCE, in his official
capacity as State Election Commissioner
for the State of Delaware,

KATHY JENNINGS, in her official
capacity as Attorney General of
the State of Delaware,

Defendants.

Case No.

COMPLAINT

NATURE OF THE CASE

1. The First Amendment prohibits the government from “abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. CONST. amend. I.

2. Included in the First Amendment’s protection is the right of individuals to freely associate with others. The Supreme Court of the United States has long held that compelled disclosure of an advocacy organization’s members violates that right. *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449 (1958).

3. In 2021, the Supreme Court confirmed that state laws requiring the disclosure of an organization’s donors are subject to “exacting scrutiny” under the First Amendment. *See Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021).

4. Plaintiff Americans for Prosperity Foundation (“AFPF”) is a nonprofit organization with donors across the country, including in Delaware. AFPF regularly engages in advocacy and education concerning issues of public policy, including communications in various forms that may refer to incumbent officials who may also be candidates for office.

5. Plaintiff Americans for Prosperity (“AFP”) is a nonprofit organization with donors across the country, including in Delaware. Although AFP sometimes engages in express advocacy, it most regularly engages in issue advocacy, including communications in various forms that may refer to incumbent officials who may also be candidates for office.

6. Plaintiffs intend to publish non-express advocacy, issue-based communications that will refer to specific officeholders who are also candidates for election in Delaware in advance of the 2026 and subsequent primary and general elections. Upon information and belief, however, if Plaintiffs published such communications, the Delaware Elections Disclosure Act, codified at 15 Del. C. § 8001, et seq., and specifically, 15 Del. C. § 8031(a)(3) (“Delaware’s disclosure requirements”), would require them to file reports disclosing the names and addresses of their donors who have donated more than \$100 dating back several years.

7. Plaintiffs reasonably fear that if they fail to file these reports disclosing the names and addresses of their donors, they will be subject to enforcement actions, investigations, and penalties initiated or imposed by Defendants and their agents.

8. Delaware’s disclosure requirements violate the right to private association, chill free speech and association, and overstep the government’s legitimate disclosure interests, all in violation of the First Amendment.

9. Plaintiffs therefore bring this action to obtain a declaration that Delaware’s disclosure requirements are unlawful on their face and as applied to Plaintiffs, and to enjoin enforcement of those requirements.

PARTIES

10. Plaintiff Americans for Prosperity Foundation is a Delaware nonprofit corporation headquartered in Virginia. It is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. AFPF funds its activities by raising charitable contributions from donors across the country, including in Delaware.

11. Plaintiff Americans for Prosperity is a Washington, D.C. nonprofit corporation headquartered in Virginia. It is exempt from taxation pursuant to Section 501(c)(4) of the Internal Revenue Code. AFP funds its activities by raising contributions from donors across the country, including in Delaware.

12. Defendant Anthony Albence is the State Election Commissioner (“Commissioner”) for the State of Delaware and is empowered to issue regulations with the force of law regarding Delaware election laws pursuant to 15 Del. C. § 302. As Commissioner, Defendant Albence also has the power to levy fines when “a report [] is not filed, not filed on time, or is filed on time but incomplete.” 15 Del. C. § 8044(a).

13. Defendant Kathy Jennings is the Attorney General of Delaware and is empowered to “investigate matters involving the public peace, safety and justice” in the State of Delaware. 29 Del. C. § 2504(4). Under 15 Del. C. § 8044(g), “the [Reports Appeals Subcommittee of the State Board of Elections] shall notify the Office of the Attorney General” of parties which fail to file required reports. Failure to file such reports constitutes a class A misdemeanor. 15 Del. C. § 8043(c).

JURISDICTION AND VENUE

14. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343.
15. Venue in this Court is proper under 28 U.S.C. § 1391(b)(1) and (b)(2).

FACTS

Delaware’s Regulation of Electioneering Communications and Third-Party Advertisements

16. The Delaware Elections Disclosure Act states that “[a]ny person . . . who makes an expenditure for any third-party advertisement that causes the aggregate amount of expenditures for third-party advertisements made by such person to exceed \$500 during an election period shall file a third-party advertisement report with the Commissioner.” 15 Del. C. § 8031(a). A “person” includes “any individual, corporation, company, incorporated or unincorporated association, general or limited partnership, society, joint stock company, and any other organization or institution of any nature.” 15 Del. C. § 8002(17).

17. A “third-party advertisement” includes “an electioneering communication,” 15 Del. C. § 8002(27), which is defined as any communication “by any individual or other person (other than a candidate committee or a political party) that: 1. [r]efers to a clearly identified candidate; and 2. [i]s publicly distributed within 30 days before a primary election or special election, or 60 days before a general election to an audience that includes members of the electorate for the office sought by such candidate.” 15 Del. C. § 8002(10)(a).

18. The “third-party advertisement report” must be “filed under penalty of perjury” and include “[t]he full name and mailing address of each person who has made contributions to such person during the election period in an aggregate amount or value in excess of \$100; the total of all contributions from such person during the election period, and the amount and date of all contributions from such person during the reporting period.” 15 Del. C. § 8031(a)(3). If the

contributor is not an individual, the report must include “the full name and mailing address of . . . [a]ny person who, directly or otherwise, owns a legal or equitable interest of 50 percent or greater in such entity; and . . . [o]ne responsible party, if the aggregate amount of contributions made by such entity during the election period exceeds \$1,200.” 15 Del. C. § 803l(a)(4).

19. “Election period” has various definitions under Delaware law. 15 Del. C. § 8002(11).

20. “For a person who makes an expenditure for a third-party advertisement, the election period shall begin and end at the same time as that of the candidate identified in such advertisement.” 15 Del. C. § 8002(11)(d). For candidates running for reelection for the office to which they were elected in the most recent election, the election period is “the period beginning on January 1 immediately after the most recent such election, and ending on the December 31 immediately after the general election at which the candidate seeks reelection to the office.” 15 Del. C. § 8002(11)(a)(1). And for candidates running for an office which they do not hold, the election period is “the period beginning on the day on which the candidate first receives any contribution from any person (other than from the candidate or from the candidate’s spouse) in support of that candidate’s candidacy for the office, and ending on the December 31 immediately after the general election at which the candidate seeks election to the office.” 15 Del. C. § 8002(11)(a)(3).

21. Delaware’s state senators and statewide executive officeholders are elected every four years. *See* DEL. CONST. art. II, § 2; *id.* art. III, §§ 5, 19(a), 21. Therefore, under Delaware law, the applicable “election period” for incumbent candidates for these offices may be up to four years.

22. Delaware regulations require third-party advertisement reports to be filed within “48 hours” after a qualifying expenditure is made if the expenditure is made “more than 30 days

before a primary or special election or 60 days before a general election,” and within “24 hours” after the expenditure is made if the expenditure is made “30 days or less before a primary or special election or 60 days or less before an election.” 15 Del. Admin. Code 100-9.1.5.

23. Failure to file the required reports results in assessment of “a fine by the Commissioner of \$50 for each day that such report is tardy.” 15 Del. Admin. Code 100-10.1. If a tardy report is not filed or corrected within 30 days following either a determination by the Commissioner that the tardiness is not due to reasonable cause or the expiration of the appeal period, “then the Commissioner shall notify the Office of the Attorney General that the reporting party has failed to file such report.” 15 Del. Admin. Code 100-10.3.

Plaintiffs’ Past and Future Activities

24. AFPF is a 501(c)(3) nonprofit organization committed to educating and training Americans to be advocates for the ideas, principles, and policies of a free and open society.

25. AFPF engages in educational and advocacy work in many states across the country in pursuit of this mission. This education and advocacy includes communications through mechanisms that Delaware defines as “communications media.” For example, a true and correct audio copy of a recent radio advertisement from Arizona is available on AFPF’s website.¹ The production and distribution of this communication cost AFPF more than \$500.

26. AFPF intends to engage in similar work in Delaware on an ongoing basis, including within 30 days before the upcoming 2026 primary election and within 60 days of the upcoming 2026 general election. Specifically, AFPF intends to produce and distribute communications through mechanisms that Delaware defines as “communications media.” Upon information and

¹ *AZ Proposition 211 Radio Advertisement*, AMS. FOR PROSPERITY FOUND. (Feb. 2026), https://americansforprosperityfoundation.org/wp-content/uploads/2026/02/AZProp211_60_Radio.mp3.

belief, the production and distribution of these communications will cost AFPF more than \$500. Consistent with its federal tax status, AFPF's communications will discuss specific officeholders, including officeholders who are themselves candidates for election or reelection, in the context of governmental action and issues of public policy but will not advocate their election or defeat.

27. AFP is a 501(c)(4) is a nonprofit organization that engages in broad-based grassroots outreach to advocate for long-term solutions to the country's biggest problems that prevent people from realizing their incredible potential. Its areas of focus include unsustainable government spending and debt, reforms to immigration and economic policy, and a host of other issues.

28. AFP engages in issue advocacy work in many states across the country in pursuit of this mission. This advocacy includes communications through mechanisms that Delaware defines as "communications media." A true and correct copy of a recent example from Maine is attached hereto as Exhibit A. The production and distribution of this communication cost AFP more than \$500.

29. AFP intends to engage in similar work in Delaware on an ongoing basis, including within 30 days before the upcoming 2026 primary election and within 60 days of the upcoming 2026 general election, and subsequent elections. Specifically, AFP intends to produce and distribute communications through mechanisms that Delaware defines as "communications media." Upon information and belief, the production and distribution of these communications will cost AFP more than \$500. Consistent with its federal tax status, these communications will discuss specific officeholders, including officeholders who are themselves candidates for election or reelection, in the context of governmental action and issues of public policy.

30. Plaintiffs' communications are protected speech under the First and Fourteenth Amendments.

31. However, upon information and belief, Plaintiffs' communications would fall within Delaware's definition of "electioneering communications," and therefore would be "third-party advertisements" subject to Delaware's disclosure requirements.

32. Therefore, Plaintiffs would be required to file third-party advertisement reports, under penalty of perjury, that disclose the names and addresses of their donors who have contributed more than \$100 in the aggregate during the applicable "election period."

33. Between 2022 and 2025, thousands of donors contributed more than \$100 to AFP and/or AFPF. The vast majority of these donors reside outside of Delaware, and none gave for the purpose of regulated communications in Delaware or in response to solicitations concerning AFP and AFPF's anticipated activity in Delaware. Yet, under Delaware law, Plaintiffs would be required to disclose the names and addresses of these donors in a third-party advertisement report.

34. This compelled disclosure violates the First Amendment freedom of association and belief enjoyed by Plaintiffs and their supporters.

35. Furthermore, Delaware's disclosure requirements will chill, or at the very least, create an unnecessary risk of chilling, the First Amendment activity of Plaintiffs and their donors.

36. Plaintiffs and their donors have a reasonable fear that they will be the target of threats, harassment, or other retaliation if Plaintiffs are forced to disclose the names and addresses of their donors.

37. Plaintiffs and their supporters have been subject to threats and harassment in the past, as the Supreme Court has recognized. *Bonta*, 594 U.S. at 617 (explaining that AFPF had

shown “that they and their supporters have been subjected to bomb threats, protests, stalking, and physical violence.”); *see also id.* at 604.

38. For example, at AFP’s 2011 summit in Washington, D.C., hundreds of protesters gathered outside the event space and attempted to storm the building. The protest became violent, with some attendees physically accosted and injured. *See* Clare O’Connor, *Occupy the Koch Brothers: Violence, Injuries, and Arrests at DC Protest*, FORBES (Dec. 10, 2011 at 6:25 EST), <http://www.forbes.com/sites/clareoconnor/2011/11/05/occupy-the-kochs-violent-clashes-injuries-and-arrests-at-protest-against-corporate-greed/>. Additionally, in 2019, an AFP office in Fargo, North Dakota was vandalized because of AFP’s support for free speech. *See* Rob Port, *This conservative group’s Fargo office has been vandalized repeatedly since it was opened*, INFORUM (Nov. 29, 2019 at 3:15 CT), <https://www.inforum.com/opinion/columns/port-this-conservative-groups-fargo-office-has-been-vandalized-repeatedly-since-it-was-opened>.

39. Two of Plaintiffs’ founders are brothers Charles Koch and the late David Koch. Charles has faced extensive threats and attacks for his advocacy work, including his work and ties to AFPF. *See Ams. for Prosperity Found. v. Harris*, 182 F. Supp. 3d 1049, 1056 (C.D. Cal. 2016) (recounting threats to Charles and David) (post-decision procedural history omitted).

40. Donors whose associations with Plaintiffs are known to the public have received threats of physical harm and/or public harassment. For example, reporters have published a list of potential donors to Plaintiffs, resulting in individuals on the list being immediately harassed and their businesses boycotted.

41. Other donors, supporters, and employees of AFP and AFPF have repeatedly faced public threats, harassment, and intimidation based on their support and affiliation for the organizations. *See Ams. for Prosperity Found.*, 182 F. Supp. 3d at 1055-56 (cataloging threats);

see also Ams. for Prosperity v. Grewal, 2019 WL 4855853, at *6 (D.N.J. Oct. 2, 2019) (describing Plaintiffs' evidence where "AFP itself and its donors have been subjected to harassment ranging from death threats to cyberattacks to violent protests at AFP events.").

42. These threats and harassment have continued in recent years. For example, Plaintiffs and their employees have experienced consistent harassment and threats in Vermont from groups that disagree with Plaintiffs on economic policy initiatives, requiring Plaintiffs to hire security for their events. Legislators and their supporters have attempted many ways to stop Plaintiffs' operations in Northeastern states by introducing legislation targeting AFP. Both Vermont and Maine legislators singled out AFP as the reason they attempted to stop non-profits from advocating in their states.

43. Plaintiffs therefore believe that both current and potential donors are fearful of having their names and addresses disclosed as supporters or donors to Plaintiffs.

44. Accordingly, Plaintiffs vigorously protect the confidentiality of their donors. For example, Plaintiffs maintain donor information in a highly secure database, and access is restricted to individuals who have a need to know that information. The vast majority of donors require confidentiality as a condition of their giving to Plaintiffs.

45. If, however, Plaintiffs are required to disclose the names and addresses of their donors, it is likely that potential donors will refuse to contribute, and current donors will cease to contribute, because they are too fearful of the reprisal they will face if their names and addresses are disclosed.

46. Consequently, Delaware's disclosure requirements will chill, or at the very least create an unnecessary risk of chilling, Plaintiffs' and their donors' associational activity by discouraging individuals from associating with Plaintiffs, who are themselves engaged in protected

First Amendment activity. The disclosure requirements will also chill, or at the very least create an unnecessary risk of chilling, the protected speech of donors who forgo making contributions out of fear of reprisal.

47. If, however, Plaintiffs do not file the required reports disclosing their donors, they will be subject to daily fines. Additionally, the Election Commissioner is required to notify the Attorney General of any failure to file required reports, which is a class A misdemeanor. *See* 15 Del. C. § 8043(c).

48. Upon information and belief, Plaintiffs and other organizations face a credible threat that Delaware will enforce the disclosure requirements against them. For example, the state Election Commissioner has previously concluded that a political action committee was required to file a third-party advertisement report for an advertisement that referred to a candidate for State Treasurer aired during the 2018 election, but had failed to do so by the applicable deadline. *See* Exhibit B, “*Re: Request for Ruling on Simpler and Lavelle Campaign Finance Issues*,” STATE OF DEL. DEP’T OF ELECTIONS, (Oct. 26, 2018), https://elections.delaware.gov/public/com_opinions/pdfs/AO2018-01%20LavelleSimpler.pdf.

While the State Election Commissioner agreed “on a one-time basis . . . to waive the fines associated with the Foundation’s tardy third-party reports” so long as they were accurate and complete, the Commissioner also warned that she would “not waive any fines for the Foundation for third-party advertisement reports that must be filed in the future.” *Id.* at 4.

49. Upon information and belief, Delaware has never disavowed enforcement of Delaware’s disclosure requirements for Plaintiffs’ planned conduct. To the contrary, Delaware has previously enforced the requirements, *see* Exhibit B, and rigorously defended the constitutionality of the statute, *see generally Del. Strong Fams. v. Att’y Gen. of Del.*, 793 F.3d 304 (3d Cir. 2015).

50. Absent a court order enjoining enforcement of the law and declaring it unconstitutional, Plaintiffs will not publish communications in Delaware in the regulated periods predating the 2026 or subsequent elections for fear that Delaware will enforce its unconstitutional disclosure requirements.

51. Consequently, Plaintiffs' speech is chilled because they fear a future enforcement action and punishment by Defendants for publishing covered communications without filing the required reports that disclose the names and addresses of their donors.

COUNT I – FIRST AMENDMENT

52. Plaintiffs re-allege and incorporate by reference the allegations in paragraphs 1 to 51 as if set forth fully herein.

53. The First Amendment to the United States Constitution applies to Delaware by virtue of the Fourteenth Amendment. *See Gitlow v. New York*, 268 U.S. 652 (1925).

54. The First Amendment prohibits the government from “abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” *Bonta*, 594 U.S. at 605-606. The Supreme Court has recognized that “the right to engage in activities protected by the First Amendment” includes “a corresponding right to associate with others.” *Id.* at 606 (citation omitted).

55. The Supreme Court has “held laws unconstitutional that require disclosure of membership lists for groups seeking anonymity” because “they ma[k]e group membership less attractive, raising the same First Amendment concerns about affecting the group’s ability to express its message.” *Rumsfeld v. FAIR*, 547 U.S. 47, 69 (2006). This protection applies with equal force to an organization’s financial supporters. *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976).

56. “[C]ompelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of government action.” *Patterson*, 357 U.S. at 462.

57. The Supreme Court has thus held that compelled disclosure requirements are subject to “exacting scrutiny.” *Buckley*, 424 U.S. at 93-94; *Bonta*, 594 U.S. at 608.

58. That standard requires “that there be ‘a substantial relation between the disclosure requirement and a sufficiently important governmental interest,’” *Bonta*, 594 U.S. at 611 (quoting *Doe v. Reed*, 561 U.S. 186, 196 (2010)), “and that the disclosure requirement be narrowly tailored to the interest it promotes,” *id.* (citing *Shelton v. Tucker*, 364 U.S. 479, 488 (1960)). The narrow tailoring inquiry requires analysis of “the extent to which the burdens are unnecessary.” *Id.*

59. “Narrow tailoring is crucial where First Amendment activity is chilled—even if indirectly—‘[b]ecause First Amendment freedoms need breathing space to survive.’” *Id.* at 609 (alternation in original) (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)).

60. “A critical feature of [the narrow tailoring] inquiry turns on whether the [government] ‘seriously undertook to address’ the problems it faces ‘with less intrusive tools readily available to it.’” *Sisters for Life, Inc. v. Louisville-Jefferson Cnty.*, 56 F.4th 400, 404 (6th Cir. 2022) (Sutton, C.J.) (quoting *McCullen v. Coakley*, 573 U.S. 464, 494 (2014)). “This means that, beyond proving a balanced relationship between the disclosure scheme’s burdens and the government’s interests, the government must ‘demonstrate its need’ for the disclosure regime ‘in light of any less intrusive alternatives.’” *Wyo. Gun Owners v. Gray*, 83 F.4th 1224, 1247 (10th Cir. 2023) (quoting *Bonta*, 594 U.S. at 613).

61. Delaware’s disclosure requirements require Plaintiffs to disclose the names and addresses of their donors who have contributed more than \$100 in the aggregate during the

applicable “election period.” The compelled disclosure of Plaintiffs’ donors, as required by Delaware’s disclosure requirements, burdens Plaintiffs’ First Amendment right to association, triggering exacting scrutiny.

62. Delaware’s disclosure requirements set forth in 15 Del. C. § 8031 are not substantially related to a sufficiently important government interest, nor are they narrowly tailored to any interest they allegedly promote.

63. The Supreme Court has identified the governmental interests that could survive exacting scrutiny as: “provid[ing] the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek . . . office,” “deter[ring] actual corruption and avoid[ing] the appearance of corruption by exposing large contributions and expenditures to the light of publicity,” and “detect[ing] violations of the contribution limitations.” *Buckley*, 424 U.S. at 66-68 (citations omitted).

64. Delaware’s disclosure requirements lack a substantial relation to any of these interests, and are not narrowly tailored to any of these interests.

65. The only interest that could even potentially justify the disclosure requirements here is the informational interest, but that “simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures she would otherwise omit.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 348 (1995).

66. Delaware cannot demonstrate that disclosing the names and addresses of Plaintiffs’ donors across the country for an extended period of time actually provides voters with information that is relevant to their evaluation of candidates or “help[s] citizens make informed choices in the

political marketplace,” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 367 (2010) (citations omitted), or that it is narrowly tailored to that interest.²

67. Under Delaware’s disclosure requirements, Plaintiffs must disclose the names and addresses of all of their donors who have contributed more than \$100 within the applicable “election period,” regardless of whether these donors earmarked their donations for a specific candidate or purpose. Circuit courts around the country have identified a state’s institution of “earmarking systems” and “opt out” provisions as methods of tailoring disclosure requirements to a state’s informational interest. *See Wyo. Gun Owners*, 83 F.4th at 1248-49; *Gaspee Project v. Mederos*, 13 F.4th 79, 89 (1st Cir. 2021). Delaware lacks either option and cannot “demonstrate its need” for the burden of disclosing all of Plaintiffs’ donors above \$100 in light of these other “less intrusive alternatives.” *Bonta*, 594 U.S. at 613.

68. Delaware also cannot demonstrate that the applicable “election period[s]” are narrowly tailored to any informational interest. Those periods are defined by the election periods for “the candidate identified in such [third-party] advertisement[s],” 15 Del. C. § 8002(11)(d), which equates to a four-year election period for incumbent statewide executive officeholders and state senators, *see* 15 Del. C. § 8002(11)(a)(1). Compelling the disclosure of Plaintiffs’ donors as far back as four years prior to an election provides little information of value to voters, as those donors may no longer support Plaintiffs or their mission, and are unlikely to have given for the

² The bill synopsis for the legislation enacting Delaware’s disclosure requirements claimed that it was intended to “close a major loophole under existing law” “by requiring reports for electioneering communications—i.e., third party advertisements that refer to a clearly identified candidate and are publicly distributed within 30 days before a primary or special election, or 60 days before a general election,” and that “[t]his requirement will provide crucial information to voters in the days before an election and ‘help citizens make informed choices in the political marketplace.’ *Citizens United v. FEC*, 130 S. Ct. 876 (2010).” H.B. 300, 146th Gen. Assemb. (Del. 2012), available at <https://legis.delaware.gov/BillDetail/21575> (last visited Apr. 7, 2026).

purpose of any specific public communication or advocacy concerning any specific candidate, in Delaware or elsewhere.

69. Delaware’s interest here, whatever it may be, is weak, and it is apparent “[t]here is a dramatic mismatch” between those interests “and the disclosure regime . . . implemented in service of that end.” *Id.* at 612. Delaware’s disclosure requirement is therefore not narrowly tailored to any government interest.

70. The government’s interests also do not “reflect the seriousness of the actual burden” that Delaware’s disclosure requirements impose on the First Amendment rights of Plaintiffs and their supporters. *Bonta*, 594 U.S. at 615 (quoting *Reed*, 561 U.S. at 196). Plaintiffs and their supporters have suffered from threats and harassment in the past, and donors will likely face similar retaliation in the future if their affiliation with Plaintiffs is disclosed. Delaware’s disclosure requirements therefore will also chill, or at the very least create an unnecessary risk of chilling, the protected associational and speech activity of Plaintiffs’ and their supporters.

71. Delaware’s disclosure requirements are overbroad and facially unconstitutional because they “fail[] exacting scrutiny in ‘a substantial number of [their] applications . . . judged in relation to [their] plainly legitimate sweep.’” *Id.* at 618 (quoting *United States v. Stevens*, 559 U.S. 460, 473 (2010)).

72. The “lack of tailoring to” Delaware’s goals is “categorical—present in every case—as is the weakness of the State’s interest . . .” *Id.* at 615. It is true in “every case” that Delaware’s interests in the disclosure requirement is weak, that Delaware has not imposed “less intrusive alternatives,” and that the disclosure requirements are not narrowly tailored to the state’s interests. *See id.* at 613, 615.

73. Delaware’s disclosure requirements are triggered by relatively low expenditures on third-party advertisements (\$500), and require the disclosure of donors who gave even less (more than \$100 in the aggregate) as far back as four years and regardless of whether they were earmarked or specified for a specific candidate, communication, or any other purpose. Delaware’s disclosure requirements do not create a mechanism for donors to “opt-out” of having their donations used for third-party advertisements and thereby avoid disclosure.

74. Delaware’s disclosure requirements create an “unnecessary risk of chilling” by “indiscriminately sweeping up the information of *every* major donor with reason to remain anonymous.” *Bonta*, 594 U.S. at 616-17. This risk of chilling is even more serious here where the requirement does not just apply to “major” donors but “sweep[s] up” donors who have given more than \$100 in the aggregate over a four-year period, and when ever-evolving technology permits “‘anyone with access to a computer’” to “‘compile a wealth of information about’ anyone else” using their name and home address. *Id.*

75. Moreover, Delaware’s disclosure requirements are not narrowly tailored as applied to Plaintiffs, and therefore violate the First Amendment rights of Plaintiffs and their supporters.

76. Plaintiffs intend to publish and distribute communications that will be considered “electioneering communications” in the regulated periods predating the 2026 and subsequent elections, communication that would require Plaintiffs to file “third-party advertisement reports” disclosing the names and addresses of their donors.

77. However, unless and until a court enjoins the enforcement of the Delaware disclosure requirements, or they are otherwise repealed, Plaintiffs will not publish such communications in Delaware. Plaintiffs’ speech will be chilled, as well as the activity of their donors, who fear they will face harassment and reprisals if their names and addresses are disclosed.

78. Delaware's disclosure requirements infringe the First and Fourteenth Amendment rights to freedom of speech and freedom of association of Plaintiffs and their supporters, and are unconstitutional on their face and as applied to Plaintiffs.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully requests that judgment be entered in their favor and against the Defendants as follows:

A. An order preliminarily enjoining the enforcement of the disclosure requirements for third-party advertisements at 15 Del. C. § 8031;

B. An order permanently enjoining the enforcement of the disclosure requirements for third-party advertisements at 15 Del. C. § 8031;

C. A declaration that the disclosure requirements for third-party advertisements at 15 Del. C. § 8031 violate the First and Fourteenth Amendments both on their face and as applied to Plaintiffs, and are therefore null and void in their entirety;

D. An award to Plaintiffs of their reasonable attorneys' fees and costs;

E. A grant to Plaintiffs of such additional or different relief as the Court deems just and proper.

DATED: April 17, 2026

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**Pro hac vice motions forthcoming*

EXHIBIT A



FREE SPEECH IS UNDER ATTACK IN MAINE

THANKS TO SENATOR RICK BENNETT

1st Amendment

SENATOR RICK BENNETT IS **ATTACKING FREE SPEECH** IN MAINE

Protect Privacy Rights.

Stop them from **taking your rights.**

Censorship is **never the answer.**



Tell your legislator to

Protect the First Amendment



Address
City, State, Zip

Non-Profit Org.
US Postage
PAID
AMERICANS FOR
PROSPERITY

EXHIBIT B



State of Delaware
Department of Elections

October 26, 2018

Re: Request for Ruling on Simpler and Lavelle Campaign Finance Issues

Dear

By letter dated October 15, 2018, the Delaware Democratic Party requests a ruling on certain conduct in connection with the campaigns of Ken Simpler (for State Treasurer) and Greg Lavelle (for State Senator, 4th District). Specifically, your letter alleges and complains that each of these campaigns has violated campaign finance laws under Chapter 80 of Title 15 of the Delaware Code.

My jurisdiction under 15 *Del. C.* Ch. 80 does not extend to rulings on individual complaints; my jurisdiction to act upon the Democratic Party's complaint is limited to the issuance of rulings based on a specified set of facts pursuant to 15 *Del. C.* § 8041(2). Accordingly, I respond to the Democratic Party's request for a ruling using the allegations in its letter as a specified set of facts. Those allegations are set out below.

The Foundation for Delaware's Future, LLC

As of the date of the Democratic Party complaint, the Foundation for Delaware's Future, LLC (the "Foundation"), which is a duly registered political action committee, had not filed any third-party advertising reports the Democratic Party alleges are required by 15 *Del. C.* § 8031. The Democratic Party requests an opinion from me on whether the Foundation must file such report(s) to disclose the costs of its digital advertisement currently running on digital and cable platforms. The Democratic Party provided a copy of a screenshot of that advertisement (see Exhibit 1). Thus, the first issue on which the Democratic Party seeks a ruling is whether the advertisement constitutes a third-party advertisement.

"Third-party advertisement" is defined as an independent expenditure or an electioneering communication. 15 *Del. C.* § 8002(27). If the advertisement constitutes either an

<https://ivote.de.gov>

State Election Commissioner
905 S Governors Ave Ste 170
Dover DE 19904
Phone: (302) 739-4277

New Castle County Office
Carvel State Office Bldg
820 N French St STE 400
Wilmington DE 19801
Phone: (302) 577-3464

Kent County Office
100 Enterprise Pl Ste 5
Dover DE 19904
Phone: (302) 739-4498

Sussex County Office
119 N Race St
PO Box 457
Georgetown DE 19947
Phone: (302) 856-5367

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independent expenditure or an electioneering communication, both of which are defined terms under Chapter 80, the person who makes the expenditure for the advertisement must file a “special” report of a third-party advertisement under 15 *Del. C.* § 8031.

Analysis of whether the advertisement is an independent expenditure is straightforward. An independent expenditure is defined as “any expenditure made by any individual or other person (other than a candidate committee or a political party) *expressly advocating the election or defeat of a clearly identified candidate*, which is made without cooperation or consultation with any candidate, or any committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate or any committee or agent of such candidate.” 15 *Del. C.* § 8002(13) (emphasis added).¹

I conclude that the advertisement at issue does not constitute an independent expenditure because nowhere does it advocate for the election of Ken Simpler. It simply asks the reader to call Ken Simpler. Thus, I need not address the coordination issue and advise that the Foundation is not required to file a report of a third-party advertisement on the ground that the advertisement the Democratic Party describes is an independent expenditure. That finding, however, does not end the analysis.

The next issue is whether the advertisement constitutes an electioneering communication. An electioneering communication is defined in relevant part as a communication that refers to a clearly identified candidate that is publicly distributed within 60 days of a general election. 15 *Del. C.* § 8002(10)a. Unlike an independent expenditure, an electioneering communication need not expressly advocate for the election or defeat of a candidate to be reportable, and coordination is not part of the analysis; the timing of the communication is the central inquiry. The Democratic Party alleges that the Foundation is publicly airing the advertisement within 60 days of the general election and I accept this as a fact for the purposes of this ruling. Thus, the sole issue raised under the facts that the Democratic Party alleges is whether the advertisement refers to Ken Simpler as a clearly identified candidate.

“Clearly identified candidate” is defined to mean “that the name, a photograph or a drawing of the candidate appears or the identity of the candidate is otherwise apparent by unambiguous reference.” 15 *Del. C.* § 8002(5). The advertisement indeed contains the name and photograph of Ken Simpler and the identity of Ken Simpler is also apparent by unambiguous

¹ The United States Supreme Court has ruled that the First Amendment would allow the regulation of express advocacy defined to include not only the *Buckley v. Valeo* “magic words” but also their functional equivalent. *McConnell v. FEC*, 540 U.S. 193, 206 (2003); *FEC v. Wisconsin Right to Life*, 551 U.S. 449, 474 n.7 (2007). See 11 C.F.R. § 100.22(b). Delaware’s statute and regulations are not written to reach the functional equivalent of express advocacy. 15 *Del. C.* § 8002 (13); 15 DE Admin Code 100 Campaign Finance Regulations, Section 2.

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reference.² Moreover, settled case law from the United States Supreme Court establishes that states may regulate **disclosure** of speech that is not express advocacy without violation of the First Amendment of the United States Constitution.³

Under the facts the Democratic Party alleges, the Foundation's advertisement was publicly aired within 60 days of the November 6, 2018 general election and so it constitutes an electioneering communication under 15 *Del. C.* § 8002(10)a. Additionally, under the facts the Democratic Party alleges, the cost of the advertisement exceeded \$500.00 and therefore the Foundation was required to file a special report within 24 hours after the expenditure was made.⁴ 15 *Del. C.* § 8031.

The Delaware Campaign Finance Reporting System reflects that the Foundation filed two third-party advertisement reports on October 19, 2018 and one third-party advertisement report on October 22, 2018. The remaining issues, therefore, are whether the Foundation reports were timely and accurate.

The Foundation has responded to both of these allegations.⁵ As to timeliness, while denying that the Foundation was legally required to file third-party advertisement reports at all, the Foundation concedes that it did file the reports well after the 24-hour filing deadline imposed by 15 *Del. C.* § 8031(d). The Foundation contends, however, that it supplied the information required by Section 8031 when it filed its 30-day report under 15 *Del. C.* § 8030 on October 8 and that, therefore, the October 8 report is the functional equivalent of a 30-day report. Moreover, the Foundation requests that I waive the fines imposed under 15 *Del. C.* § 8044. I respond to the Foundation's request and contention separately.

² Case law from other jurisdictions applying language that is identical to the language of Section 8002(5) have concluded that an advertisement clearly identifies a candidate if the subject of the advertisement is publicly identified as a candidate by the target audience for the advertisement. *Comm. for Justice & Fairness v. Arizona Sec'y of State's Office*, 332 P.3d 94 (Ct. App. 2014); *Hispanic Leadership Fund, Inc. v. Fed. Election Comm'n*, 897 F. Supp. 2d 407 (E.D. Va. 2012)

³ *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007); *Citizens United v. FEC*, 558 U.S. 310 (2010); *See also Delaware Strong Families v. Attorney General of Delaware*, 793 F.3d 304, 308 (3rd Cir. 2015)(*cert. denied* 136 S. Ct. 2376 (2016)) ("Any possibility that the Constitution limits the reach of disclosure to express advocacy or its functional equivalent is surely repudiated by *Citizens United v. FEC*...")

⁴ 15 *Del. C.* § 8031(d) and 15 *Del. Admin. Code* § 100.9.1.5 read in pertinent part: "For purposes of this section, an expenditure shall be deemed to be made on the date it is paid or obligated, whichever is earlier." 16 *DE Reg.* 771 (01/01/13).

⁵ The Foundation and First State First requested, and I granted, permission to respond to the Democratic Party's complaint. These entities responded on October 23, 2018.

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By not legislating a “grace” period that excuses the filing of special reports under Section 8031 within a certain timeframe (e.g. five days) of the filing deadlines for the 8 and 30 day reports under Section 8030, the General Assembly has clearly spoken with respect to the 24-hour filing deadline for special reports. Therefore, I do not agree that a 30-day report serves as the functional equivalent of a third-party advertisement report. I do agree, however, on a one-time basis, to waive the fines associated with the Foundation’s tardy third-party reports, provided that the filed reports are accurate and complete. Please be advised that I will not waive any fines for the Foundation for third-party advertisement reports that must be filed in the future.

Since the Foundation did not file the reports until after the Democratic Party made its October 15, 2018 complaint, I have no set of facts on which to opine whether the reports were accurate. The Foundation alleges in response to the complaint by the Democratic Party that its 30-day report accurately reported the costs of its advertisement incurred to date. I am authorized to issue a ruling only upon a specified set of facts; I cannot resolve factual differences in this procedural posture. I direct the attention of the Democratic Party to 15 *Del. C.* § 8031(d) (“For purposes of this section, an expenditure shall be deemed to be made on the date it is paid or obligated, whichever is earlier.”) to confirm that the three filed reports are filed in response to the Simpler ads at issue.

Ken Simpler

The Democratic Party’s complaint against Ken Simpler is twofold. First, the Democratic Party alleges that Ken Simpler acted improperly when he linked the Foundation advertisement to his social media account on Facebook because that linkage necessarily required state employees of the Treasurer’s Office to engage in electioneering on state time. A copy of the Facebook entry with a screenshot of the Foundation advertisement is attached as Exhibit 2. Second, the Democratic Party alleges that Ken Simpler’s use of the advertisement changed the nature of the advertisement to something other than issue advocacy. I do not agree with either contention.

The concern about pressing state employees into the service of the Simpler campaign is speculative, especially given the Foundation’s representation that no one has called the State Treasurer’s office in response to the advertisement. The propriety of the practice of instructing voters to call government employees during their work hours is beyond the scope of this ruling.

The charge that linkage of the Foundation advertisement to the Simpler campaign converts the advertisement into something other than unregulated issue advocacy mischaracterizes the advertisement. The Foundation advertisement is an electioneering communication and must be reported as such. Thereafter, if the candidate clearly identified in

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the electioneering communication, which has been properly reported, or anyone else for that matter, uses the advertisement, the advertisement remains a disclosed electioneering communication and the purpose of the campaign finance laws – public disclosure – has been furthered.

First State First and Senator Greg Lavelle

The Democratic Party alleges, and I accept as true for the purposes of this ruling, that Greg Lavelle coordinated with First State First, a political action committee of which Senator Lavelle is the treasurer, to produce and publicly distribute mailings about Senator Lavelle. Copies of the mailings are attached as Exhibit 3. The mailings each tout Senator Lavelle's accomplishments as state senator and invite the reader to contact the Senator via his Senate-assigned phone number at his office in Legislative Hall to thank him. The Democratic Party contends that these mailings constitute third-party expenditures subject to 15 *Del. C.* § 8031. I disagree.

The discussion above regarding State Treasurer Ken Simpler is fully applicable here. An expenditure qualifies as an “independent expenditure,” and is reportable, if it “expressly advocate[s] the election or defeat of a clearly identified candidate. . .” 15 *Del. C.* § 8002(13). Like the Foundation advertisement, the First State First mailings do not expressly advocate for the election or defeat of any candidate. The Delaware statute does not require disclosure of the speech contained in the First State First mailings on the ground that the speech is an independent expenditure. The remaining analysis regarding the Foundation's advertisement, however, is directly applicable to the First State First mailings as well.

Just as the Foundation's advertisement constitutes an electioneering communication as defined by 15 *Del. C.* § 8002(10)a, so too do the First State First mailings. The mailings refer to a clearly identified candidate because they contain the name, photograph and the identity of a candidate made apparent by unambiguous reference. *Id.* Accordingly, if the mailings otherwise qualify as third-party advertisements, including the cost provisions contained in 15 *Del. C.* § 8031,⁶ the cost of the mailings is an expenditure for a third-party advertisement, and must be reported as such.

⁶ Section 8031 provides that expenditures that cause the aggregate amount of expenditures for third-party advertisements made by the advertiser to exceed \$500 must be reported as third-party advertisement. The Democratic Party makes no factual allegation as to the cost of the mailings.

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The records of the State Election Commissioner reflect that First State First filed third-party advertisement reports on September 19, 2018, September 25, 2018, and October 4, 2018. The Democratic Party's complaint does not allege that First State First did not timely file accurate third-party advertisement reports. I conclude, therefore, that on the facts that the Democratic Party alleges, First State First did not violate Delaware law.

The Response of the Foundation for Delaware's Future and First State First

Many of the points that the Foundation and First State First raised in their response are addressed above. There are, however, several additional points in the response that warrant comment.

First, the Foundation and First State First rely on a Delaware Attorney General's Opinion from 2000 to support their contention that the advertisement and mailings at issue cannot be regulated because they constitute issue advocacy. While the Attorney General's Opinion they cite largely remains good law, it must be read in conjunction with changes to the Delaware statutes and regulations. As the Foundation and First State First acknowledge, the General Assembly rewrote Delaware's campaign finance laws in 2012. The changes include defining electioneering communications and required that such communications be disclosed in special reports. 15 *Del. C.* §§ 8002(10)a and 8031. The Attorney General's Opinion simply did not opine upon the constitutionality of regulating the disclosure of electioneering communications.⁷

Second, the Foundation and First State First rely upon *FEC v. Wisconsin Right to Life, Inc.*, 127 S. Ct. 2652 (2007) ("*WRTL*"), to support their view that the advertisement and mailings at issue cannot be regulated because they constitute issue advocacy. (Response at Page 1, note 1). That reliance is misplaced. *WRTL* addressed the constitutionality of criminalizing **payment** for electioneering communications and therefore does not apply to the **disclosure** provisions at issue here. The United States Supreme Court has uniformly drawn a clear distinction between **banning** electioneering communications and **requiring disclosure** of communications beginning with *Buckley v. Valeo*, 424 U.S. 1, 64 (1976) and most recently in *Citizens United v. FEC*, 558 U.S. 310, 366-371 (2010). Very recently, the Third Circuit recognized this distinction in *Delaware Strong Families v. Attorney General of Delaware*, 793 F.3d 304, 308 (3rd Cir. 2015)(*cert. denied* 136 S. Ct. 2376 (2016)), writing, "Any possibility that the Constitution limits the reach of disclosure to express advocacy or its functional equivalent is surely repudiated by *Citizens United v. FEC*..."

⁷ In footnote 2 of the Foundation and First State First's response, they write that the Democratic Party's complaint's use of the term "electioneering materials" appeared to mean the Democratic Party was alleging that the advertisement and mailings constituted "express advocacy." I understand the Democratic Party to be complaining that the advertisement and mailings constitute electioneering communications.

October 26, 2018

Page 7 of 7

Conclusion

I trust that the analysis above addresses all issues raised in the complaint of the Democratic Party and the response by the Foundation and First State First, to the extent possible in a ruling pursuant to 15 Del. C. 8041(2). That said, I wish to add a comment on the practices at issue.

Senator Lavelle attempts, through the action of a PAC he controls, to finely parse the legal difference between “issue” advocacy” and “express advocacy”. By carefully never saying “vote for” but substituting his picture, name and title, most voters would never understand the difference.

While I believe that his use of the mailings at issue steps right up to the legal line and the distinction in the statute, I reluctantly conclude his use of electioneering communications to support his own campaign does not step over the line and is technically permitted 15 *Del. C.* Ch. 80. In my view, however, though legal, the practice is not consistent with the spirit of the law intended to promote transparency, fairness and clarity for voters and the election process.

Very truly yours,

A handwritten signature in cursive script that reads "Elaine Manlove".

Elaine Manlove
State Election Commissioner

Cc Pursuant to 15 *Del. C.* § 8041(2):

Governor John C. Carney

Attorney General Matt Denn

Erik Raser-Schramm, Chairman, Delaware Democratic Party

Michael Harrington, Sr., Chairman, Delaware Republicans Party

David McCorquodale, Green Party

Sean Goward, Libertarian Party

EXHIBIT 1 - 2

**Ken Simpler for Delaware**

Sponsored · Paid for by The Simpler Campaign, LLC ·

To learn more about Ken's accomplishments, finance background and vision for his home state visit [KenSimpler.com](https://kensimpler.com)

Support State Treasurer Ken Simpler on November 6th!

#LetsMakeItSimpler



EXHIBIT 3

PAID FOR BY FIRST STATE FIRST PAC
500 WHITBY DRIVE | WILMINGTON, DE 19803
18-LAV-003

T18 B25 P1 S 5102*****ECRLOT**C 019

PRECISE
STANDARD
OF POSTAGE
PAID
ASSOCIATES
INTERNATIONAL
INC.



State Senator

GREG LAVELLE

**IS LEADING THE FIGHT TO PROTECT
TAXPAYERS & REFORM DOVER.**

**STOPPING AN INCOME TAX INCREASE | STANDING UP TO THE CAREER POLITICIANS
OPPOSING LEGISLATIVE PAY RAISES**

State Senator **GREG LAVELLE** STANDS UP FOR TAXPAYERS

GREG LAVELLE is a businessman with real-world skills he uses every day to make sure taxpayers can keep more of what they earn.

He's also Delaware's leading voice for government reform – to help stop Dover from wasting our money.



Helped stop an income tax increase on working families.



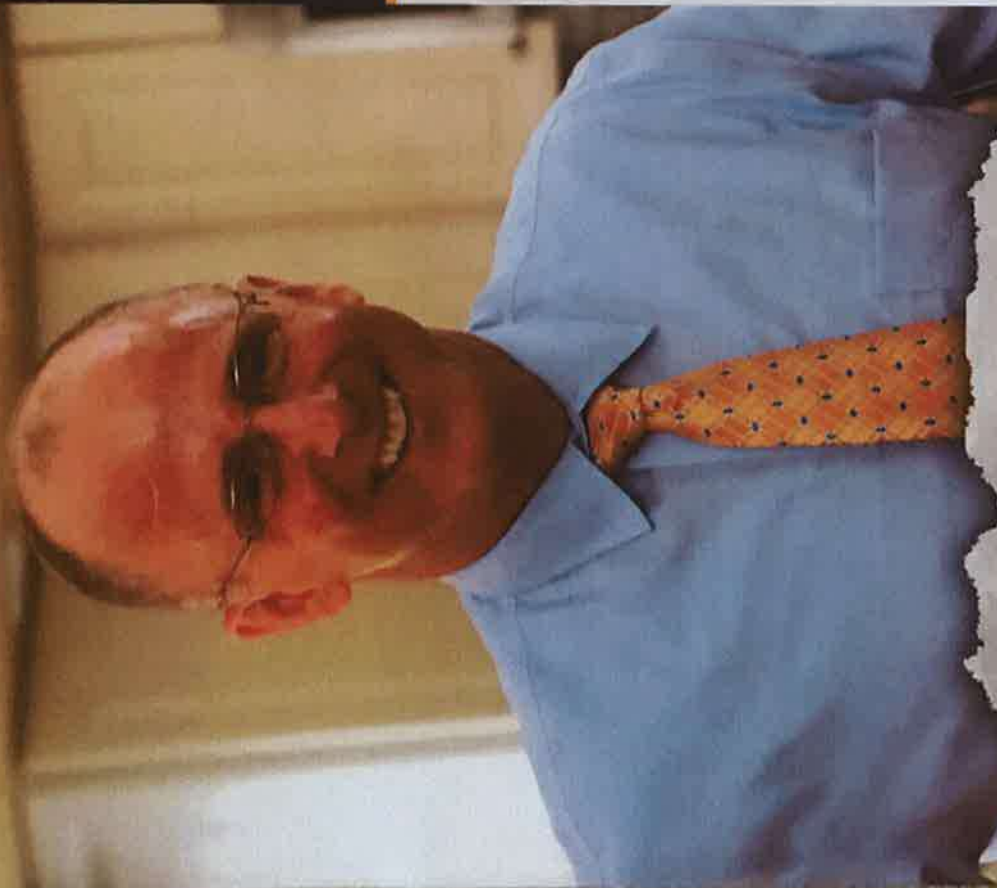
Protected homeowners by preserving tax deductions for mortgage interest.



Led the fight against unethical pay raises for legislators and has returned over \$43,000 in raises to local charities.



Passed a Constitutional Amendment to stop politicians from raiding the Transportation Trust Fund and ensure money is spent on infrastructure, as promised.



HOCKESSIN
CommunityNews

August 2013

DELAWARE SENATOR GREG LAVELLE AGAIN
DONATES PAY RAISE TO CHARITY; CALLS FOR
REFORM OF LAWMAKERS' SALARY HIKES

Call Greg Lavelle at 302-744-4135 and thank him for protecting your money!

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

AMERICANS FOR PROSPERITY FOUNDATION and AMERICANS FOR PROSPERITY

(b) County of Residence of First Listed Plaintiff _____

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jeremy D. Anderson, Esq., Baker & Hostetler, LLP, 1201 N. Market Street, Suite 1407, Wilmington, DE 19801; 302-407-4224

DEFENDANTS

ANTHONY ALBENCE, in his official capacity as State Election Commissioner for the State of Delaware, and KATHY JENNINGS, in her official capacity as Attorney General for the State of Delaware

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury - Medical Malpractice	PERSONAL INJURY ☐ 365 Personal Injury - Product Liability ☐ 367 Health Care/Pharmaceutical Personal Injury Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 835 Patent - Abbreviated New Drug Application ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g))	☐ 375 False Claims Act ☐ 376 Qui Tam (31 USC 3729(a)) ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit (15 USC 1681 or 1692) ☐ 485 Telephone Consumer Protection Act ☐ 490 Cable/Sat TV ☐ 850 Securities/Commodities/Exchange ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 893 Environmental Matters ☐ 895 Freedom of Information Act ☐ 896 Arbitration ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☒ 440 Other Civil Rights ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 448 Education	PRISONER PETITIONS Habeas Corpus: ☐ 463 Alien Detainee ☐ 510 Motions to Vacate Sentence ☐ 530 General ☐ 535 Death Penalty Other: ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition ☐ 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 28 U.S.C. § 1391(b)(1) and (b)(2)

Brief description of cause:

Pltfs seek an order preliminarily enjoining the enforcement of the disclosure requirements for 3d-pty advertisement.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

04/17/2026

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jeremy D. Anderson

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AMERICANS FOR PROSPERITY
FOUNDATION; AMERICANS FOR
PROSPERITY

Plaintiffs,

v.

ANTHONY ALBENCE, in his official
capacity as State Election Commissioner
for the State of Delaware,

KATHY JENNINGS, in her official
capacity as Attorney General of
the State of Delaware,

Defendants.

Case No.

DECLARATION OF ROSS CONNOLLY

I, Ross Connolly, declare as follows:

1. I am over the age of 18 and competent to make this declaration.
2. I am the Northeast Regional Director for Americans for Prosperity (“AFP”) and for Americans for Prosperity Foundation (“AFPF”). I have been in these roles for three years and with the organizations in other roles for 13 years.
3. I am authorized to speak for AFP and AFPF regarding the information set forth in this declaration.
4. The statements in this declaration are based upon knowledge I have acquired in the performance of my official duties, through information provided to me in my official capacity by AFP and AFPF personnel, and by reviewing records maintained by AFP and AFPF during the ordinary course of business.

5. AFP is a 501(c)(4) nonprofit organization that engages in broad-based grassroots outreach to advocate for long-term solutions to the country's biggest problems that prevent people from realizing their incredible potential, including in the areas of unsustainable government spending and debt, reforms to immigration and economic policy, and a host of other issues.

6. AFPF is a 501(c)(3) nonprofit organization that is committed to educating and training Americans to be advocates for the ideas, principles, and policies of a free and open society.

7. AFP and AFPF fund their activities through donations from donors across the country.

8. Consistent with their federal tax-exempt statuses, AFP engages in issue advocacy work, and AFPF engages in educational and advocacy work, in many states across the country in pursuit of their missions. This activity includes communications through various media forms, including but not limited to television, radio, mail, and the internet.

9. A true and correct copy of a recent example of AFP's advocacy work in Maine is attached hereto as Exhibit A. The production and distribution of this communication cost AFP more than \$500.

10. A recent example of an AFPF radio communication that aired in Arizona can be found on AFPF's website. *See AZ Proposition 211 Radio Advertisement*, AMS. FOR PROSPERITY FOUND. (Feb. 2026), https://americansforprosperityfoundation.org/wp-content/uploads/2026/02/AZProp211_60_Radio.mp3. AFPF wishes to, and intends to, engage in similar discussions of issues of public policy in Delaware, including non-electoral reference to incumbent officeholders. The production and distribution of this communication cost AFPF more than \$500.

11. As Northeast Regional Director, I am familiar with AFP and AFPF's past, present, and planned future advocacy efforts in Delaware, Maine, New Hampshire, and other states in the Northeast, as well as states in other regions of the country.

12. AFP and AFPF intend to engage in issue advocacy and educational work in Delaware. Because this work will be ongoing, it will necessarily occur in advance of the 2026 and subsequent primary and general elections, including within 30 days before the upcoming 2026 primary election and within 60 days of the upcoming 2026 general election. Specifically, AFP and AFPF intend to produce and distribute communications through various media forms, including but not limited to television, radio, mail, and the internet.

13. Based on my professional experience in these roles with AFP and AFPF, the production and distribution of these communications will cost AFP and AFPF more than \$500.

14. These communications will discuss specific officeholders, including officeholders who are themselves candidates for election or reelection, in the context of governmental action and issues of public policy.

15. It is my understanding, however, that if AFP and AFPF were to produce and distribute these communications in Delaware, they would be required to file third-party advertisement reports that disclose the names and addresses of all their donors across the country who have contributed more than \$100 in the aggregate during the applicable "election period," which could be several years long.

16. I have reviewed AFP and AFPF's donor records from 2022 to the present and confirmed that there are donors who have contributed more than \$100 to AFP and AFPF whose names and addresses would be required to be disclosed in a third-party advertisement report. For example, there were 590 donors who contributed between \$100.01 and \$199.99 from 2022 to 2025.

There were over 1,000 more who gave between \$200.00 and \$999.99 during the same time periods. At least four of the donors who gave to AFP and/or AFPF from 2022 to 2025 reside in the state of Delaware, and at least two of them gave over \$100. But, to my knowledge, none of them gave for the purpose of regulated communications in Delaware or in response to solicitations concerning AFP and AFPF's anticipated activity in Delaware.

17. It is my understanding that both current and potential future donors to our organizations are fearful of having their names and addresses disclosed as donors to or supporters of AFP and/or AFPF.

18. AFP, AFPF, their employees, supporters, and donors have been subject to threats and harassment in the past.

19. For example, in Vermont we have experienced consistent harassment and threats from groups that disagreed with us on economic policy initiatives to the point where we had to hire security for our events.

20. In Fargo, North Dakota, an AFP office was vandalized and spray painted because of AFP's support for free speech. *See* Rob Port, *This conservative group's Fargo office has been vandalized repeatedly since it was opened*, InForum.com (Nov. 29, 2019), <https://www.inforum.com/opinion/columns/port-this-conservative-groups-fargo-office-has-been-vandalized-repeatedly-since-it-was-opened>.

21. Legislators and their supporters have attempted many ways to impede our operations in Northeastern states by introducing legislation targeting AFP. Both Vermont and Maine legislators singled out AFP as the reason they attempted to impede non-profits from advocating in their states. *See* Rep. Laura Sibilila, *Updated: Addressing the Inconsistencies in AFP and VTGOP's Stance on Climate and Energy Policies*, VT. STATE REPRESENTATIVE LAURA

SIBILIA (Mar. 5, 2025), <https://laurasibiliavt.com/2025/03/05/sibilia-addressing-the-inconsistencies-in-afp-and-vtgops-stance-on-energy-policies/>; Calvin Cutler, *Vermont lawmakers seek transparency for outside political spending*, WCAZ3 (Dec. 4, 2025, at 04:43 EST) <https://www.wcax.com/2025/12/04/vermont-lawmakers-seek-transparency-outside-political-spending/>.

22. AFP and AFPF staff have repeatedly provided federal courts with firsthand evidence of threats to their business locations, business operations, staff, grassroots activists, and donors. *See, e.g., Americans for Prosperity v. Grewal*, 2019 WL 4855853, at *6 (D.N.J. Oct. 2, 2019) (recognizing “AFP itself and its donors have been subjected to harassment ranging from death threats to cyberattacks to violent protests at AFP events”) (citing Decl. of Erica Jedynak (ECF No. 3-5)); Decl. of Emily Seidel at ¶¶ 9-20 (ECF No. 3-4), *Americans for Prosperity v. Grewal*, No. 19-14228 (D.N.J. filed June 25, 2019) (outlining threats and confidentiality measures taken in response); *Ams. for Prosperity Found. v. Harris*, 182 F. Supp. 3d 1049, 1055–56 (C.D. Cal. 2016) (cataloging threats, including to “death threats,” “slit his throat,” “taking pictures of employees’ license pla[t]es,” “multiple slurs and spit in Mr. Hilgemann’s face,” “several hundred protestors surrounded the tent and used knives and box-cutters to cut at the ropes of tent, eventually causing the large tent to collapse with AFP supporters still inside.”).

23. Due to these threats and harassment, AFP and AFPF take donor privacy very seriously and have instituted a number of measures to protect the confidentiality of their donors. For example, AFP and AFPF maintain donor information in a highly-secure database, and access is restricted to individuals who have a need to know that information. It is my understanding that the vast majority of donors require confidentiality as part of their giving.

24. I believe that if AFP and AFPP are required to disclose the names and addresses of our donors, it is likely that potential donors will refuse to contribute, and current donors will cease to contribute, to Plaintiffs because they are too fearful of the reprisal they will face if their names and addresses are disclosed.

25. If AFP and AFPP do not file the required reports disclosing their donors, it is my understanding that they will be subject to fines and other enforcement actions by Delaware state officials.

26. Therefore, because of the onerous nature of these laws, AFP and AFPP will not publish communications in Delaware while the disclosure requirements are in effect.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on: April 17, 2026

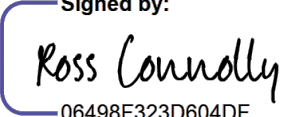
Signed by:

06498F323D604DE
Ross Connolly

EXHIBIT A



FREE SPEECH IS UNDER ATTACK IN MAINE

THANKS TO SENATOR RICK BENNETT

1st Amendment

SENATOR RICK BENNETT IS ATTACKING FREE SPEECH IN MAINE

Protect Privacy Rights.

Stop them from **taking your rights.**

Censorship is **never the answer.**

Tell your legislator to

Protect the First Amendment



Address
City, State, Zip

Non-Profit Org.
US Postage
PAID
AMERICANS FOR
PROSPERITY

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AMERICANS FOR PROSPERITY
FOUNDATION; AMERICANS FOR
PROSPERITY

Plaintiffs,

v.

ANTHONY ALBENCE, in his official
capacity as State Election Commissioner
for the State of Delaware,

KATHY JENNINGS, in her official
capacity as Attorney General of
the State of Delaware,

Defendants.

Case No. 1:26-cv-00445-JLH

SECOND DECLARATION OF ROSS CONNOLLY

I, Ross Connolly, declare as follows:

1. I am over the age of 18 and competent to make this declaration.
2. I am the Northeast Regional Director for Americans for Prosperity (“AFP”) and for Americans for Prosperity Foundation (“AFPF”). I have been in these roles for three years and with the organizations in other roles for 13 years.
3. I am authorized to speak for AFP and AFPF regarding the information set forth in this declaration.
4. The statements in this declaration are based upon knowledge I have acquired in the performance of my official duties, through information provided to me in my official capacity by AFP and AFPF personnel, and by reviewing records maintained by AFP and AFPF during the ordinary course of business.

5. As Northeast Regional Director, I am familiar with AFP and AFPP's planned future advocacy efforts in Delaware.

6. AFP and AFPP intend to engage in issue advocacy and educational work in Delaware. Because this work will be ongoing, it will necessarily occur in advance of the 2026 and subsequent primary and general elections, including within 30 days before the upcoming 2026 primary election and within 60 days of the upcoming 2026 general election. Specifically, AFP and AFPP intend to produce and distribute communications through various media forms, including but not limited to television, radio, mail, and the internet.

7. AFP and AFPP have been actively planning for and preparing communications to distribute in Delaware, including communications that AFP and AFPP believe would be subject to the electioneering communication donor disclosures in Delaware.

8. A true and correct copy of an advertisement developed by AFP that it wishes to disseminate in Delaware is attached hereto as Exhibit 1. The production and distribution of this communication would cost AFP more than \$500.

9. A true and correct copy of an advertisement developed by AFPP that it wishes to disseminate in Delaware is attached hereto as Exhibit 2. The production and distribution of this communication would cost AFPP more than \$500.

10. AFP and AFPP wish to disseminate these communications in Delaware now and continue doing so within 30 days before the upcoming 2026 primary election and within 60 days of the upcoming 2026 general election.

11. It is my understanding, however, that if AFP and AFPP were to distribute the communications in Exhibits 1 and 2 in Delaware, they would be required to file third-party advertisement reports that disclose the names and addresses of all their donors across the country

who have contributed more than \$100 in the aggregate during the applicable “election period,” which could be several years long.

12. It is my understanding that both current and potential future donors to our organizations are fearful of having their names and addresses disclosed as donors to or supporters of AFP and/or AFPPF due to a pervasive history of threats, violence, and hostility against AFP and AFPPF supporters.

13. I believe that if AFP and AFPPF are required to disclose the names and addresses of our donors as a result of distributing the communications in Exhibits 1 and 2, and other similar communications, it is likely that potential donors will refuse to contribute, and current donors will cease to contribute, to Plaintiffs because they are too fearful of the reprisal they will face if their names and addresses are disclosed.

14. If AFP and AFPPF do not file the required reports disclosing their donors after disseminating Exhibits 1 and 2, and other similar communications, it is my understanding that they will be subject to fines and other enforcement actions by Delaware state officials.

15. Therefore, because of how important donor privacy and confidentiality are to AFP and AFPPF, and because of the onerous nature of these laws, AFP and AFPPF will not publish the communications in Exhibits 1 and 2 or any similar communications in Delaware while the disclosure requirements are in effect.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on: June 1, 2026

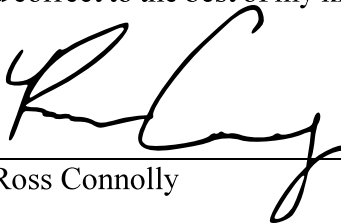

Ross Connolly

EXHIBIT 1

Case 1:26-cv-01445-JH Document 25-1 Filed 06/01/26 Page 6 of 8 PageID #: 648

SPEAKER MELISSA MINOR- BROWN

WANTS TO TAX YOUR WALLET

**HIGHER INCOME TAX ON HARDWORKING
DELAWAREANS**

6.60% → 6.95%

HOUSE BILL 13

**"I AM 100% IN SUPPORT OF
INCREASING BRACKETS
-MELISSA MINOR-BROWN**

TELL HER: NO NEW TAX



EXHIBIT 2



● EDUCATION FREEDOM ALERT

DELAWARE'S CLOSED DOOR ON SCHOOL CHOICE



23

CHARTER SCHOOLS IN ALL OF
DELAWARE — NO NEW ONES IN NEW
CASTLE COUNTY

75%

OF DE 4TH GRADERS CANNOT READ
PROFICIENTLY

27yr

LOW: DE 8TH GRADE READING SCORES,
2024

Did you know Delaware has some of the lowest-performing schools? States across the nation are expanding education options, and it is working. Speaker **Melissa Minor Brown** has not expanded education freedom; we know more freedom produces better results



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Unconstitutional or Preempted Prior Version's Validity Called into Doubt by [Delaware Strong Families v. Biden](#), D.Del., Mar. 31, 2014



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Proposed Legislation

[West's Delaware Code Annotated](#)

[Title 15. Elections](#)

[Part VI. Election Campaigns](#)

[Chapter 80. Campaign Contributions and Expenditures](#)

[Subchapter I. General Provisions](#)

15 Del.C. § 8002

§ 8002. Definitions

Effective: August 2, 2017

[Currentness](#)

As used in this chapter:

- (1) “Candidate” means a person who seeks nomination for or election to public office, or who has taken action necessary under the law to qualify for nomination or election under the laws of the State, or has authorized the solicitation of any contribution or the making of any expenditure in that person's behalf.
- (2) “Candidate committee” means each political committee formed on behalf of a candidate for public office.
- (3) “Cash” includes currency, money orders, travelers checks and other negotiable instruments that do not disclose on their face the true name of the contributor.
- (4) “Chapter” includes, in addition to the provisions of this chapter, the rules and regulations made by the Commissioner.
- (5) “Clearly identified candidate” means that the name, a photograph or a drawing of the candidate appears or the identity of the candidate is otherwise apparent by unambiguous reference.
- (6) “Commissioner” means the State Election Commissioner, or the designee of the Commissioner.
- (7) “Communications media” means television, radio, newspaper or other periodical, sign, Internet, mail or telephone.
- (8) “Contribution” means any advance, deposit, gift, expenditure or transfer, of money or any other thing of value, to or for the benefit of any candidate or political committee involved in an election, including without limitation any:

- a. Gift, subscription, advance, deposit, expenditure or transfer of any thing of value;
 - b. Discount or rebate not available to the general public (except a party's abatement or refund of a filing fee otherwise required under § 3103 of this title);
 - c. Loan (except a loan of money by a national or state bank, building and loan association or licensed lender made in the ordinary course of business);
 - d. Purchase of tickets, goods or services sold to raise funds for a campaign, whether or not the tickets, goods or services are used by the buyer;
 - e. Forgiveness of indebtedness or payment of indebtedness by another person;
 - f. Service or use of property without full payment therefor (except the contribution of services by an individual, the use of an individual's residence, the contribution of such items as invitations, food and beverages by an individual volunteering personal services or the individual's residence, or the use of the telephone equipment of any person); or
 - g. Any other thing of value (except an independent expenditure).
- (9) "Election" means the action by qualified voters of the State either to nominate by vote a candidate for public office or to select a candidate to fill a public office, whether in a primary, general or special election.
- (10)a. "Electioneering communication" means a communication by any individual or other person (other than a candidate committee or a political party) that:
- 1. Refers to a clearly identified candidate; and
 - 2. Is publicly distributed within 30 days before a primary election or special election, or 60 days before a general election to an audience that includes members of the electorate for the office sought by such candidate. For purposes of this section, the term "general election" shall include any annual election for 1 or more members of a school board pursuant to § 1072(c) of Title 14.
- b. "Electioneering communication" does not include:
- 1. A communication distributed by a means other than by any communications media;
 - 2. Any membership communication;

3. A communication appearing in a news article, editorial, opinion, or commentary, provided that such communication is not distributed via any communications media owned or controlled by any candidate, political committee or the person purchasing such communication;
4. A communication made in any candidate debate or forum, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

(11) “Election period” means:

a. For a candidate committee:

1. For a candidate for reelection to an office to which the candidate was elected in the most recent election held therefor, the period beginning on January 1 immediately after the most recent such election, and ending on the December 31 immediately after the general election at which the candidate seeks reelection to the office.
2. For a candidate for reelection to an office which the candidate attained since the last election held therefor (whether the candidate attained the office by succession, appointment or otherwise), the period beginning on the day the candidate succeeded to or was appointed to the office, and ending on the December 31 immediately after the general election at which the candidate seeks reelection to the office.
3. For a candidate for election to an office which the candidate does not hold, the period beginning on the day on which the candidate first receives any contribution from any person (other than from the candidate or from the candidate's spouse) in support of that candidate's candidacy for the office, and ending on the December 31 immediately after the general election at which the candidate seeks election to the office.
4. Notwithstanding the foregoing, for purposes of the limitations under [§ 8010](#) of this title on contributions for a candidate in a general election who was nominated for such office in a primary election, the election period shall end on the day of the primary and the next election period shall begin on the day after the primary.

b. For a political party and for a political action committee, the period beginning on the January 1 immediately after a general election, and ending on the December 31 immediately after the next general election.

c. For a candidate committee for a person who does not hold public office and who has not taken action necessary under the law to qualify for nomination or election under the laws of the State, the period beginning on the date the first contribution is received or expenditure is made by the committee and ending on the fourth December 31 following such date; provided, however, that if such person takes action necessary under the law to qualify for nomination or election under the laws of the State, the period shall be determined under paragraph (11)a. of this section.

d. For a person who makes an expenditure for a third-party advertisement, the election period shall begin and end at the same time as that of the candidate identified in such advertisement, without regard to paragraph (11)a.4. of this section.

(12) “Expenditure” means any payment made or debt incurred, by or on behalf of a candidate or political committee, or to assist in the election of any candidate or in connection with any election campaign.

(13) “Independent expenditure” means any expenditure made by any individual or other person (other than a candidate committee or a political party) expressly advocating the election or defeat of a clearly identified candidate, which is made without cooperation or consultation with any candidate, or any committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate or any committee or agent of such candidate. An expenditure shall constitute an expenditure in coordination, consultation or concert with a candidate and shall not constitute an independent expenditure where:

- a. There is any arrangement, coordination or direction with respect to the expenditure between the candidate or the candidate's agent and the person (including any officer, director, employee or agent of such person) making the expenditure;
- b. The person making the expenditure (including any officer, director, employee or agent of such person) has advised or counseled the candidate or the candidate's agents on the candidate's plans, projects or needs relating to the candidate's pursuit of nomination or election, in the same election period, including any advice relating to the candidate's decision to seek office; or
- c. The expenditure is based on information provided to the person making the expenditure directly or indirectly by the candidate or the candidate's agents about the candidate's plans, projects or needs; provided, that the candidate or the candidate's agent is aware that the other person has made or is planning to make expenditures advocating the candidate's election.

(14) “Mailing address” means a physical mailing address, and shall not include a post office box.

(15) “Membership communication” means a newsletter or periodical, telephone call, or any other communication distributed solely to the members, shareholders, or employees of an organization or institution.

(16) “Officer” means:

- a. If used with respect to a corporation, a natural person appointed or designated as an officer of such corporation by or pursuant to applicable law or the certificate of incorporation or bylaws of such corporation, or a person who performs with respect to such corporation functions usually performed by an officer of a corporation. Without limitation of the foregoing, the term “officer” shall include the president, vice president, treasurer, secretary, chief executive officer, chief operating officer or chief financial officer of such corporation, or their respective equivalents; and
- b. If used with respect to an entity other than a natural person or a corporation, a natural person who performs functions usually performed by an officer of a corporation with respect to such entity.

(17) “Person” includes any individual, corporation, company, incorporated or unincorporated association, general or limited partnership, society, joint stock company, and any other organization or institution of any nature.

(18) “Political action committee” means a political committee which is neither a political party nor a candidate committee.

(19) “Political committee” means:

a. Any organization or association, whether permanent or created for the purposes of a specific political campaign, which accepts contributions from or makes expenditures to any candidate, candidate committee or political party in an aggregate amount in excess of \$500 during an election period, not including independent expenditures; and

b. All political parties and candidate committees.

(20) “Political party” means an organization eligible to be listed on any general election ballot under § 3001 of this title, or any other organization which desires to be listed on any ballot on any election, and any constituent part of such party which receives contributions and makes expenditures. For purposes of the contribution limits of subchapter II of this chapter, a “political party” includes all constituent parts of such party, including the statewide, county, regional, municipal and district committees, all finance committees and all other committees, subdivisions and organizations related to the political party.

(21) “Publicly distributed” means aired, broadcast, delivered or otherwise disseminated to members of the public.

(22) “Public office” means an office of this State or any political subdivision thereof which is required by law to be determined by an election.

(23) “Responsible party” means any natural person who shares or exercises discretion or control over the activities of any entity required to file reports in accordance with this chapter, and shall include any officer, director, partner, proprietor or other natural person who exercises discretion or control over the activities of such entity.

(24) “School board” means the board of education of a reorganized school district consisting of members duly elected or appointed in accordance with Title 14.

(25) “Sign” means any outdoor billboard, panel or similar display having an area of at least 3 square feet.

(26) “Special election” means:

a. For a school board, any election for 1 or more school board members other than the annual election of members pursuant to § 1072(c) of Title 14.

b. For any other public office, an election other than a primary or general election to fill a vacancy for public office, created by reason of failure to elect, ineligibility, death, resignation or otherwise, for which there is more than 1 candidate.

(27) “Third-party advertisement” means an independent expenditure or an electioneering communication.

(28) “Treasurer” means the individual appointed by a candidate to assist the candidate with the duties imposed by this chapter.

Credits

59 Laws 1974, ch. 580, § 1. Amended by 67 Laws 1990 (1st Sp. Sess.), ch. 449, § 1; 70 Laws 1995, ch. 186, § 1, eff. July 10, 1995; 78 Laws 2012, ch. 400, § 1, eff. Jan. 1, 2013; 81 Laws 2017, ch. 115, § 1, eff. Aug. 2, 2017.

[Notes of Decisions \(5\)](#)

15 Del.C. § 8002, DE ST TI 15 § 8002

Current through ch. 443 of the 153rd General Assembly (2025-2026). Some statute sections may be more current, see credits for details. Revisions to 2026 Acts by the Delaware Code Revisors were unavailable at the time of publication.

End of Document

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Proposed Legislation

West's Delaware Code Annotated
Title 15. Elections
Part VI. Election Campaigns
Chapter 80. Campaign Contributions and Expenditures
Subchapter IV. Public Disclosure

15 Del.C. § 8031

§ 8031. Special reports--Third-party advertisements

Effective: January 1, 2013

[Currentness](#)

(a) Any person other than a candidate committee or political party who makes an expenditure for any third-party advertisement that causes the aggregate amount of expenditures for third-party advertisements made by such person to exceed \$500 during an election period shall file a third-party advertisement report with the Commissioner. The report shall be filed under penalty of perjury and shall include the following:

- (1) The information required under [§ 8005\(1\)](#) of this title with respect to the person making such expenditure;
- (2) The full name and mailing address of each person to whom any expenditure has been made by such person during the reporting period in an aggregate amount in excess of \$100; the amount, date and purpose of each such expenditure; and the name of, and office sought by, each candidate on whose behalf such expenditure was made;
- (3) The full name and mailing address of each person who has made contributions to such person during the election period in an aggregate amount or value in excess of \$100; the total of all contributions from such person during the election period, and the amount and date of all contributions from such person during the reporting period;
- (4) If a person who made a contribution under paragraph (a)(3) of this section is not an individual, the full name and mailing address of:
 - a. Any person who, directly or otherwise, owns a legal or equitable interest of 50 percent or greater in such entity; and
 - b. One responsible party, if the aggregate amount of contributions made by such entity during the election period exceeds \$1,200; and
- (5) The aggregate amount of all contributions made to the person who made the expenditure.

(b) For purposes of this section, a reporting period shall begin on the day after the previous reporting period under § 8030 of this title or this section, whichever is later. However, if the person making the expenditure hereunder was not previously required to file any reports during the election period under § 8030 of this title or this section, then the reporting period shall begin on the date the first contribution is received or expenditure made by or on behalf of such person in the current election period. A reporting period shall end on the date of the expenditure set forth in subsection (a) of this section.

(c) Any person other than an individual that makes a contribution for which disclosure is required under paragraph (a)(3) of this section shall provide written notification in accordance with § 8012(e) of this title to the person filing the report hereunder. The person filing the report may rely on such notification, and should the notification provided by the representative of the entity be inaccurate or misleading, the person or persons responsible for the notification, and not the person filing the report, shall be liable therefor.

(d) If the expenditure is made more than 30 days before a primary or special election or 60 days before a general election, the report required under this section shall be filed within 48 hours after such expenditure is made. If the expenditure is made 30 days or less before a primary or special election or 60 days or less before an election, such report shall be filed with the Commissioner within 24 hours after such expenditure is made. For purposes of this section, an expenditure shall be deemed to be made on the date it is paid or obligated, whichever is earlier.

(e) The Commissioner shall adopt regulations exempting, to the extent possible, persons from reporting duplicative information under this chapter.

(f) Persons required to file reports under this section shall retain complete records of all expenditures made and contributions received in connection herewith for 3 years following the election for which such report was filed.

Credits

67 Laws 1990 (1st Sp. Sess.), ch. 449, § 1. Amended by 78 Laws 2012, ch. 400, § 8, eff. Jan. 1, 2013.

Notes of Decisions (3)

15 Del.C. § 8031, DE ST TI 15 § 8031

Current through ch. 443 of the 153rd General Assembly (2025-2026). Some statute sections may be more current, see credits for details. Revisions to 2026 Acts by the Delaware Code Revisors were unavailable at the time of publication.



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Proposed Legislation

West's Delaware Code Annotated
Title 15. Elections
Part VI. Election Campaigns
Chapter 80. Campaign Contributions and Expenditures
Subchapter V. Enforcement

15 Del.C. § 8043

§ 8043. Violations; penalties; jurisdiction in Superior Court

Effective: October 23, 2024

[Currentness](#)

- (a) Except as set forth in [§ 8044](#) of this title, any person who knowingly violates any provision of [§ 8003](#), [§ 8004](#) or [§ 8005](#) of this title shall be guilty of a class B misdemeanor.
- (b) Any person who knowingly accepts or knowingly makes an unlawful contribution or expenditure in violation of any provision of subchapter II or III of this chapter shall be guilty of a class A misdemeanor.
- (c) Any reporting party who knowingly files any report required under this chapter that is false in any material respect, or fails to file any such report, shall be guilty of a class A misdemeanor. For purposes of this subchapter, “reporting party” means any candidate, treasurer or other person required to file reports under this chapter.
- (d) Any person who knowingly violates any provision of [§ 8006](#) of this title shall be guilty of a class G felony.
- (e) A reporting party who reasonably relies upon information provided by another person which is inaccurate, false or misleading and who has no reason to know that such information was inaccurate, false or misleading, shall not be liable for any report filed by such reporting party which is inaccurate, false or misleading as a result of such information, if such reporting party, within 30 days after learning that such information was inaccurate, false or misleading, files an amended report with the Commissioner that corrects the inaccurate, false or misleading aspects of the report. Where a reporting party files an amended report later than 30 days after learning that such information was inaccurate, false or misleading, the reporting party shall not be liable if the reporting party shows good cause for filing the amended report beyond the 30-day period.
- (f) The Superior Court shall have jurisdiction over all offenses under this chapter.
- (g) A reporting party shall report immediately to the Commissioner and the Attorney General any attempt to make a prohibited contribution, or to demand a prohibited expenditure, where such attempt is made with intent to violate this chapter.

(h) A reporting party who receives a prohibited contribution or makes a prohibited expenditure without intent to violate this chapter will not be held liable for a violation of this chapter if the reporting party does either of the following within 30 days after being informed by the Department that the contribution or expenditure was prohibited:

(1) Returns the contribution or reimburses the political committee or other person making the expenditure.

(2) Pays the contribution to the State Treasurer for deposit in the General Fund.

(i) Any person who accepts an unlawful contribution from a person or entity with knowledge that it is a prohibited contribution under this title must return the full amount of the unlawful contribution to the donor.

(j) A reporting party who violates § 8021 of this title shall be assessed a fine by the Commissioner of \$500 or 25% of the cost of the campaign advertisement subject thereto, whichever is greater.

Credits

59 Laws 1974, ch. 580, § 1. Amended by 67 Laws 1990 (1st Sp. Sess.), ch. 449, § 1; 78 Laws 2012, ch. 399, § 1, eff. Aug. 15, 2012; 79 Laws 2014, ch. 347, § 1, eff. July 22, 2014; 84 Laws 2024, ch. 496, § 1, eff. Oct. 23, 2024.

15 Del.C. § 8043, DE ST TI 15 § 8043

Current through ch. 443 of the 153rd General Assembly (2025-2026). Some statute sections may be more current, see credits for details. Revisions to 2026 Acts by the Delaware Code Revisors were unavailable at the time of publication.

West's Delaware Administrative Code

Title 15. Elections

Office of the Commissioner of Elections for the State of Delaware

Chapter 100. Campaign Finance Regulations

15 Del. Admin. Code 100-9.0

100-9.0. Special reports of third party advertisements

Currentness

9.1 The initial report filed by a person pursuant to [15 Del.C. § 8031](#) during an election period shall contain all of the information required by [Section 8031](#). Each subsequent report filed within the same election period shall contain the following information:

9.1.1 Any information required by Section 8005, if such information has changed since the last report filed with the Election Commissioner pursuant to [Section 8031](#).

9.1.2 The full name and mailing address of each person to whom any expenditure has been made by the reporting person since the date of the last period under [Section 8030](#) or [Section 8031](#) in an aggregate amount in excess of \$100; the total aggregate amount of expenditures during the election period; the amount, date and purpose of each such expenditure; and the name of, and office sought by, each candidate on whose behalf such expenditure was made;

9.1.3 The full name and mailing address of each person who has made a contribution to the reporting person since the date of the last report filed pursuant to [Section 8030](#) or [Section 8031](#) in an aggregate amount or value in excess of \$100; the total of all contributions from such person since the date of the last report filed pursuant to [Section 8030](#) or [Section 8031](#); and the amount and date of all contributions from such person since the date of the last report filed pursuant to [Section 8030](#) or [Section 8031](#).

9.1.4 If a person listed under section (3) above is not an individual, the full name and mailing address of:

9.1.4.1 Any person who, directly or otherwise, owns a legal or equitable interest of 50 percent or greater in such entity; and

9.1.4.2 One responsible party, if the aggregate amount of contributions made by such entity during the election period exceeds \$1,200.

9.1.5 If an expenditure subject to [Section 8031](#) is made more than 30 days before a primary or special election or 60 days before a general election, the report required under [Section 8031](#) shall be filed within 48 hours after such expenditure is made. If the expenditure subject to [Section 8031](#) is made 30 days or less before a primary or special election or 60 days or less before an election, such report shall be filed with the Commissioner within 24 hours after such expenditure is made. For purposes of this section, an expenditure shall be deemed to be made on the date it is paid or obligated, whichever is earlier.

Credits

Amended Jan. 10, 2013.

Current with amendments included in the Delaware Register of Regulations, Volume 30, Issue 2, dated August 1, 2026. Some sections may be more current, see credits for details.

15 Del. Admin. Code 100-9.0, 15 DE ADC 100-9.0

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West's Delaware Administrative Code

Title 15. Elections

Office of the Commissioner of Elections for the State of Delaware

Chapter 100. Campaign Finance Regulations

15 Del. Admin. Code 100-10.0

100-10.0. Late Reports

Currentness

10.1 Any reporting party who fails to file or deliver to the Commissioner any report required under this chapter shall be assessed a fine by the Commissioner of \$50 for each day that such report is tardy. In the event any report required under this chapter shall be incomplete, such report shall be deemed tardy for purposes of this section. Notwithstanding the foregoing, a reporting party shall be entitled to an automatic, 1-time 24-hour extension hereunder, provided such party notifies the Commissioner in writing thereof no later than the filing deadline for such report.

10.2 In the event a report is incomplete or otherwise tardy, the Commissioner shall immediately notify the reporting party thereof in writing. Such notice shall state that a fine is being assessed for each late day, and to the extent applicable, shall also specify why such report is incomplete. Upon receipt of such notice, the reporting party shall have 30 days to appeal such fine in writing to the Commissioner. In the event of an appeal, the reporting party shall have the opportunity to show the Commissioner that such tardiness is due to reasonable cause and not willful neglect. If the Commissioner determines that such tardiness is not due to reasonable cause, or the reporting party fails to timely file an appeal, such fine shall constitute a debt due and owing the State, assessable by the Commissioner and recoverable against the reporting party.

10.3 If a tardy report is not filed or corrected within 30 days following: (a) a determination by the Commissioner that such tardiness is not due to reasonable cause; or (b) the expiration of the appeal period set forth in 10.2, then the Commissioner shall notify the Office of the Attorney General that the reporting party has failed to file such report.

Credits

Amended Jan. 10, 2013.

Current with amendments included in the Delaware Register of Regulations, Volume 30, Issue 2, dated August 1, 2026. Some sections may be more current, see credits for details.

15 Del. Admin. Code 100-10.0, 15 DE ADC 100-10.0

United States Code Annotated
Constitution of the United States
Annotated
Amendment I. Religion; Speech and the Press; Assembly; Petition

U.S.C.A. Const. Amend. I

Amendment I. Establishment of Religion; Free Exercise of Religion; Freedom
of Speech and the Press; Peaceful Assembly; Petition for Redress of Grievances

[Currentness](#)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const Amend. I--Establishment clause; Free Exercise clause>

<USCA Const Amend. I--Free Speech clause; Free Press clause>

<USCA Const Amend. I--Assembly clause; Petition clause>

U.S. SUPREME COURT OCTOBER TERM 2025

<U.S. Supreme Court, Oct. Term 2025, Oral Argument - Question Presented>

<Whether a law that censors certain conversations between counselors and their clients based on the viewpoints expressed regulates conduct or violates the Free Speech Clause. [Chiles v. Salazar](#), 116 F.4th 1178 (10th Cir. 2024), cert. granted, 145 S. Ct. 1328, 221 L. Ed. 2d 416 (2025); 2025 WL 2856141 (U.S.) (U.S.Oral.Arg.,2025).>

<U.S. Supreme Court, Oct. Term 2025, Oral Argument - Question Presented:>

<Where the subject of a state investigatory demand has established a reasonably objective chill of its First Amendment rights, is a federal court in a first-filed action deprived of jurisdiction because those rights must be adjudicated in state court? [First Choice Women's Res. Centers, Inc. v. Att'y Gen. of New Jersey](#), No. 24-3124, 2024 WL 5088105 (3d Cir. Dec. 12, 2024), cert. granted sub nom. [First Choice Women's Res. Centers, Inc. v. Platkin](#), 145 S. Ct. 2793 (2025); 2025 WL 3463690 (U.S.) (U.S.Oral.Arg.,2025).>

<U.S. Supreme Court, Oct. Term 2025, Oral Argument - Questions Presented:>

<1. Whether, as the Fifth Circuit holds in conflict with the Ninth and Tenth Circuits, this Court's decision in *Heck v. Humphrey* bars § 1983 claims seeking purely prospective relief where the plaintiff has been punished before under the law challenged as unconstitutional. >

<2. Whether, as the Fifth Circuit and at least four others hold in conflict with five other circuits, *Heck v. Humphrey* bars § 1983 claims by plaintiffs even where they never had access to federal habeas relief. >

<*Olivier v. City of Brandon, Mississippi*, No. 22-60566, 2023 WL 5500223 (5th Cir. Aug. 25, 2023), cert. granted, 145 S. Ct. 2871 (2025); 2025 WL 3480633 (U.S.) (U.S.Oral.Arg.,2025). >

<U.S. Supreme Court, Oct. Term 2025, Oral Argument - Question Presented: >

<Whether the limits on coordinated party expenditures in 52 U.S.C. § 30116 violate the First Amendment, either on their face or as applied to party spending in connection with "party coordinated communications" as defined in 11 C.F.R. § 109.37. *Nat'l Republican Senatorial Comm. v. Fed. Election Comm'n*, 117 F.4th 389 (6th Cir. 2024), cert. granted, 145 S. Ct. 2843 (2025). >

U.S.C.A. Const. Amend. I, USCA CONST Amend. I

Current through P.L. 119-102. Some statute sections may be more current, see credits for details.

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