Appendix C — District Court Decision

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Moving Oxnard Forward Inc., Plaintiff, v. Michelle Ascencion, in her official capacity as City Clerk for the City of Oxnard, Defendant.	Case No.: CV 20-4122-CBM-(AFMx) **ORDER RE: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT, AND PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT / ADJUDICATION [21][22]**

The matters before the Court are (1) Defendant's Motion for Summary Judgment, or in the Alternative, Partial Summary Judgment (Dkt. No. 21); and (2) Plaintiff's Motion for Summary Judgment / Adjudication (Dkt. No. 22). The matters are fully briefed.

I. BACKGROUND

This is an action brought pursuant 42 U.S.C. § 1983 challenging the constitutionality of ballot Measure B, which was approved by voters in the City of Oxnard (the "City") on March 3, 2020, and went into effect on May 1, 2020. The Complaint asserts three causes of action: 1) violation of free speech and association based Measure B's per candidate contribution limits; 2) violation of free speech, association and equal protection based on Measure B's aggregate contribution limits; and 3) violation of free speech and association based on Measure B's gift ban. The parties filed cross-motions for summary judgment.

II. STATEMENT OF THE LAW

On a motion for summary judgment, the Court must determine whether, viewing the evidence in the light most favorable to the nonmoving party, there are any genuine issues of material fact. *Simo v. Union of Needletrades, Indus. & Textile Employees*, 322 F.3d 602, 609-10 (9th Cir. 2003); Fed. R. Civ. P. 56. Summary judgment against a party is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. A factual dispute is "material" only if it might affect the outcome of the suit under governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue is "genuine" only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. *Id*. at 249. The evidence presented by the parties must be admissible. Fed. R. Civ. P. 56(e). In judging evidence at the summary judgment stage, the Court does not make credibility determinations or weigh conflicting evidence. *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). Rather, "[t]he evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in [the nonmovant's] favor." *Anderson*, 477 U.S. at 255.

III. DISCUSSION

A. Constitutionality of Measure B's Per Candidate Contribution Limits (First Cause of Action)

Measure B provides the following regarding contribution limits for members of the City Council:

> A. Contributions. No person shall make, and no candidate for

> elective office or campaign treasurer shall solicit or accept, any contribution which would cause the total amount contributed by that person to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed five hundred dollars ($500) for any election. No political action committee shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution which would cause the total amount contributed by that political action committee to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed one thousand dollars ($1,000) for any election. . . .
>
> B. Loans. No person shall make, and no candidate for elective office or campaign treasurer shall solicit or accept, any loan which would cause the candidate, including loans to all political committees or broad-based political committees controlled by the candidate, to exceed five hundred dollars ($500) for any election. . . .
>
> C. Anonymous Contributions. No person shall make an anonymous contribution or contributions to a candidate, political committee or broad-based political committee or any other person totaling one hundred dollars ($100) or more for any election period. Any anonymous contribution of one hundred dollars ($100) or more received by a candidate or such a committee shall not be kept by the intended recipient, but instead shall be paid promptly to the California Secretary of State for deposit in the General Fund of the state. . . .

(Chaparra Decl. Ex. 7, Measure B, Section 2-243.)

Measure B also provides the following contribution limits for the Mayor, City Clerk, and City Treasurer:

> A. Contributions. No Person shall make, and no candidate for elective office or campaign treasurer shall solicit or accept, any contribution which would cause the total amount contributed by that person to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed seven hundred fifty dollars ($750) for any election. No political action committee shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution which would cause the total amount contributed by that political action committee to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed fifteen hundred [sic] ($1,500) for any election. . . .

(*Id.*, Measure B, Section 2-244(A).) Measure B also includes the same $500 limit for loans and $100 limit for anonymous contributions set forth in Section 2-243 for members of the City Council for the Mayor, City Clerk and City Treasurer. (*Id*., Measure B, Section 2-244(B)-(C).)

"[C]ampaign contribution limits will be upheld if (1) there is adequate evidence that the limitation furthers a sufficiently important state interest, and (2) if the limits are 'closely drawn'—i.e., if they (a) focus narrowly on the state's interest, (b) leave the contributor free to affiliate with a candidate, and (c) allow the candidate to amass sufficient resources to wage an effective campaign." *Montana Right to Life Ass'n v. Eddleman*, 343 F.3d 1085, 1092 (9th Cir. 2003).

Plaintiff's first cause of action asserts that Measure B's per candidate contribution limits violate free speech and association rights under the First Amendment "facially" and as "applied." (Compl. ¶ 2.) Here, Defendant moves for summary judgment on Plaintiff's first cause of action on the grounds it is constitutional because 1) the City "has an important government interest in preventing and addressing the perception of corruption"; and 2) "Measure B's per-candidate contribution limits are narrowly tailored to address the City's important government interest." Plaintiff moves for summary judgment on its first cause of action on the ground Measure B's per-candidate contribution limits violate the First Amendment because they "are not closely drawn to a sufficiently important governmental interest."

(1) Important Government Interest

Measure B provides its purpose "is to advance compelling City interests" by limiting large contributions from single sources to candidates for Mayor, members of City Council, City Clerk and City Treasurer, and by imposing reporting and accounting procedures for local campaigns." (Measure B, Section 2-240.) Measure B further provides the "City's interests are to provide a representative government which is accessible to all citizens, to deter corruption and the appearance of corruption caused by the coercive influence of large financial contributions on candidates on candidates' positions, and to inform the electorate as to the sources and uses of political contributions." (*Id.*)

Defendant submits evidence demonstrating:

1. In 2010, the City was investigated by the Ventura County District Attorneys' offices in connection with allegations of conflict of interest, misappropriation, and violation of gift-reporting laws (Whatley Decl. ¶ 2, Ex. 8, "A Report on the Public Integrity Investigation of Oxnard City Officials" by the Ventura County District Attorneys' Office dated April 18, 2012, and revised June 15, 2012 (hereinafter, the "D.A.'s Report") at 1);

2. The City Manager hired a firm to conduct a survey of City residents to determine what residents thought the City's legislative priorities should be, and the survey results indicated that more than three-quarters of City voters would support a government accountability measure if it was placed on the March 3, 2020 ballot (Nguyen Decl. ¶ 3; Chaparra Decl. Ex. 4); and

3. The City decided to place Measure B on the ballot, rather than having the City Council adopt the campaign contribution limits and gift ban directly, and that 82% of the City's voters voted yes on Measure B, demonstrating their agreement with the need for contribution limits (Nguyen Decl. ¶ 8).

Thus, Defendant has satisfied her "evidentiary obligation" to demonstrate a sufficiently important governmental interest in contribution limits. *See Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 393-94 (2000).

(2) Whether the Contribution Limits Are "Closely Drawn"

Plaintiff argues Defendant's evidence fails to demonstrate the contribution limits are "closely drawn" to a governmental interest because Measure B limits candidates to only $500 or $750 of their personal funds which is "plainly unconstitutional" because it is illogical to suggest candidates can have corrupting influences on themselves and this corruption is the sole justification for the City's contribution limit. However, the contribution limits set forth in Sections 2-243 and 2-244 of Measure B do not limit a candidate's contributions to their own campaign—instead it limits contributions made by other persons to the candidate. (*See* Measure B, Section 2-243 ("No ***person*** shall make, and no ***candidate*** for elective office or campaign treasurer shall solicit or accept, any contribution which would cause the total amount ***contributed by that person to that candidate*** … to exceed five hundred dollars ($500) for any election.") (emphasis added); Measure B, Section 2-244 ("No ***person*** shall make, and no ***candidate*** for elective office or campaign treasurer shall solicit or accept, any contribution which would cause the total amount ***contributed by that person to that candidate***, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed seven hundred fifty dollars ($750) for any election.") (emphasis added).) If Measure B was intended to limit a candidate's own contributions to his/her own campaign, the term "candidate" in addition to the term "person" would have been used. Moreover, Defendant submits evidence the City has not taken any enforcement action against a candidate who contributed more than $500 to their own campaign. (*See* Starr Depo. 14:6-22.)

Plaintiff also argues Measure B's $500 limit on contributions to city council candidates and $750 limit on contributions to citywide office candidates are lower than the limits adopted in other jurisdictions, and although there are other jurisdictions with "comparatively low limits," the validity of those low limits have not been adjudicated and would not pass scrutiny if challenged.

In *Randall v. Sorrell*, the Supreme Court examined "both the limits we have previously upheld and comparable limits in other States," and found Vermont's contribution limits were "substantially lower than both" limits that have been previously upheld and limits in other states, which the Court found were "danger signs that [Vermont's] contribution limits may fall outside tolerable First Amendment limits" and thus required the Court to "examine the record independently and carefully to determine whether [Vermont's] contribution limits are 'closely drawn' to match the State's interests." 548 U.S. 230, 253 (2006); *see also Thompson v. Hebdon*, 140 S. Ct. 348, 351 (2019) (applying *Randall*'s test to

Alaska's contribution limit statute, finding "danger signs" based in part on the fact that Alaska's individual-to-candidate contribution limit was "substantially lower than ... comparable limits in other States" "warranted closer review," and remanding to the district court to "revisit whether Alaska's limits are consistent with our First Amendment precedent").

Unlike in *Randall* where Vermont's contribution limits were "the lowest in the Nation," and *Thompson* where Alaska's contribution limits were "substantially lower" than comparable limits in other states, here Defendant's evidence demonstrates Measure B's contribution limits are not the lowest in California and are near the median level of other California cities. (*See* Whatley Decl. Ex. 12 (hereinafter, the "Kousser Report"), at 238, 243-45.) Moreover, Defendant cites to a district court decision upholding a San Diego city ordinance limiting contributions in city elections to $500 per candidate per election. *See Thalheimer v. City of San Diego*, 2012 WL 177414, at *8-*9 (S.D. Cal., Jan. 20, 2012). Accordingly, the "danger signs" that existed in *Randall* based on the fact that the dollar amount for contribution limits in the statute at issue was substantially lower than the amounts in other jurisdictions, do not exist here and a "closer review" of Measure B's contribution limits is therefore not warranted. *See Thalheimer*, 2012 WL 177414, at *9 ("[T]he Court does not believe there are sufficient 'danger signs' present in this case requiring the Court to conduct an independent review of the record."); *cf. Randall*, 548 U.S. at 253; *Thompson*, 140 S. Ct. at 351.[1]

Plaintiff further argues Measure B's contribution limits "infringe on candidates' right to solicit funds for their campaigns." Plaintiff's President Aaron Starr testified during his deposition that Measure B "made me pretty much forego most all of the fundraising I would have done because there is just no point in

[1] Therefore, application of the five factors in the second part of the "closely drawn" test set forth in *Randall* to determine whether the ordinance is closely drawn to an important government interest is not warranted here.

asking people for small amounts of money." (Starr Depo. 36:18-22.) Starr also declares he has solicited and received contributions in excess of $500 in his prior campaigns, but his fundraising in 2020 was limited "because there was little point in expending the effort to raise money in such small increments." (Starr Decl. ¶ 10.) Plaintiff, however, cites to no authority wherein a court has found a candidate has a First Amendment right to solicit campaign contributions or that such limits prevent a candidate from effectively soliciting funds for his/her campaign. Moreover, Plaintiff fails to offer evidence demonstrating the contribution limits restrict candidates from running competitive campaigns. Defendant, on the other hand, offers evidence demonstrating only 6.3% of donors' contributions would have exceeded Measure B's limits in connection with the City's November 2018 election (*see* Whatley Decl. Ex. 12 at 146). Accordingly, nothing in the record demonstrates Measure B's contribution limits "come[s] close to curtailing the average contributor's participation in campaigns." *Lair v. Motl,* 873 F.3d 1170, 1183 (9th Cir. 2017).

Plaintiff also contends the City's interests for the contribution limits "are served equally well if not better by disclosure requirements and criminal penalties" which do not restrict speech. Plaintiff thus argues disclosure limits would be a less restrictive alternative to Measure B's contribution limits. However, in *Buckley v. Valeo*, the Supreme Court rejected the appellants contention that "narrowly drawn disclosure requirements constitute a less restrictive means of dealing with 'proven and suspected quid pro quo arrangements,'" reasoning "while disclosure requirements serve . . . many salutary purposes . . ., Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed." 424

U.S. 1, 27-28 (1976). Moreover, Defendant's Expert Dr. Kousser opined that contribution limits are necessary in addition to disclosures because "when a candidate discloses a very large contribution from a single source, this could leave voters reasonably concerned that the donor may exert undue influence on that candidate," and "[t]he content of what is disclosed matters." (Whatley Decl. Ex. 13 (hereinafter, "Kousser Rebuttal Report") at 255.) Dr. Kousser also discusses two studies which he opines demonstrates "public concern grows" when "disclosures reveal large contributions" (*id*. at 255-58), and concludes "disclosure alone does not alleviate concerns about corruption" and "[w]hen members of the American public learn that a few donors have made large contributions to a campaign supporting a candidate, their trust in that campaign and support for that candidate can decline" (*id*. at 258).

Moreover, Plaintiff's contention that criminal penalties for corrupt activities are a less intrusive way of preventing fraud than contribution limits which Plaintiff argues intrudes on First Amendment rights has been rejected by the Supreme Court. *See Buckley*, 424 U.S. at 27–28 (rejecting the appellants' contention that "contribution limits must be invalidated because bribery laws . . . constitute a less restrictive means of dealing with 'proven and suspected quid pro quo arrangements,'" reasoning "laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action" and "contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions").

Accordingly, the Court finds Measure B's per candidate contribution limits do not violate the First Amendment because they are closely drawn to a sufficiently important governmental interest.

4. Constitutionality of Measure B's Aggregate Contribution Limits (Second Cause of Action)

Measure B provides the following with respect to aggregate contribution limits for members of the City Council:

> No political action committee shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution which would cause the total amount contributed by that political action committee ***to that candidate***, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed one thousand dollars ($1,000) for any election. . . .

(Measure B, Section 2-243(A) (emphasis added).) Measure B also provides the following aggregate contribution limits for the Mayor, City Clerk and City Treasurer:

> No political action committee shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution which would cause the total amount contributed by that political action committee ***to that candidate***, including contributions or loans to all political committees or broad-based political committees controlled by the candidate and in-kind contributions, to exceed fifteen hundred [sic] ($1,500) for any election. . . .

(Measure B, Section 2-244(A) (emphasis added).)

Plaintiff's second cause of action challenges the portion of Measure B's aggregate contribution limits which applies the limit to "all political committees or broad-based political committees controlled by the candidate" on the basis it violates First and Fourteenth Amendment rights to free speech, association and equal protection. Plaintiff moves for summary judgment on its second cause of action on the ground Measure B's aggregate contribution limits are unconstitutional because Measure B "treats candidates who support or oppose ballot measures differently from other candidates and otherwise restricts their ability to both run for office and campaign for or against a ballot measure." Defendant moves for summary judgment on the second cause of action on the grounds: 1) "Measure B's contribution limits do not apply to contributions made to committees formed to support or oppose a ballot measure;" 2) "Measure B's contribution limits are facially neutral and apply equally to all candidates;" and 3) "Measure B's provision applying the contribution limits to all contributions made to a candidate and any committee controlled by that candidate is expressly permitted by *McCutcheon v. Federal Election Com'n*, 572 U.S. 185 (2014)."

Measure B does not place any limits on the contributions that can be made to a committee formed to support or oppose a ballot measure. The plain language of Measure B's aggregate contribution limits provision applies to contributions "to that candidate," and do not reference a ballot measure. (*See* Measure B, Section 2-243(A); *id.* Section 2-244(A).) Moreover, Defendant submits evidence of "Impartial Analysis for Measure B" written by the Oxnard City Attorney Stephen Fisher, which states "Measure B does not place a limit on the amount of contributions that can be made to independent expenditure committees or to committees that raise money to support or oppose a City ballot measure." (Chaparra Decl. Ex. 5.)[2] Furthermore, Measure B's aggregate contribution limits apply to all candidates equally.

Moreover, Measure B's aggregate contribution limits apply to the total amount that may be contributed by a donor for a particular candidate, whether they are contributed directly to the candidate or to "political committees or broad-based political committees controlled by the candidate" for the candidate. (*See* Measure B, Section 2-243(A); *id*. Section 2-244(A).) Thus, Measure B's aggregate contribution limits are akin to "base limits" that "restrict how much money a donor may contribute to a particular candidate or committee," which the

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[2] The City Clerk declares she is the Elections Official for the City of Oxnard, and "[i]n that capacity the City Clerk is responsible for maintaining election materials for City ballot measures," including the "impartial Analysis for Measure B written by the City Attorney." (Chaparra Decl. ¶ 7.). *See Gutierrez v. Mun. Ct. of Se. Jud. Dist., Los Angeles Cty.*, 838 F.2d 1031, 1044 (9th Cir. 1988) ("Where a measure is enacted by the voters rather than the legislature, the ballot materials are recognized as important guides for determining legislative intent."), *cert. granted, judgment vacated sub nom. Mun. Ct. of Se. Jud. Dist., Cty. of Los Angeles v. Gutierrez*, 490 U.S. 1016, 109 S. Ct. 1736, 104 L. Ed. 2d 174 (1989) (citing *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 245–46 (1978) (voter materials helpful in determining the probable meaning of uncertain language)*, overruled on other grounds sub nom. Los Angeles Cty. Transport. Comm'n v. Richmond*, 31 Cal. 3d 197 (1982)).

Supreme Court has recognized have been "upheld as serving the permissible objective of combatting corruption." *McCutcheon v. Federal Election Com'n*, 572 U.S. 185, 192-93 (2014).

Accordingly, the Court finds Measure B's aggregate candidate contribution limits do not violate the First and Fourteenth Amendments.

5. Constitutionality of Measure B's Gift Ban (Third Cause of Action)

Measure B provides:

> A. No elected City official or member of the Planning Commission may receive any gift from any person or entity that contacts or is seeking to contract with the City, or with any person who during the prior 12 months knowingly attempted to influence an elected City official or member of the Planning Commission in any legislative or administrative action.
>
> B. No person may make, and no elected City official or member of the Planning Commission accept [sic], any gift with the intent to influence an elected City official or member of the Planning Commission in the performance of any official act.
>
> C. No elected City official or member of the Planning Commission may accept or receive any gift from anyone other than the City for the performance of a specific service or act that the elected City official or member of the Planning Commission is expected to render in the regular course of his or her City duties, or for advice about City processes.

(Chaparra Decl. Ex. 7 (hereinafter, "Measure B's Gift Ban").) Measure B further provides "[a]n elected City official or member of the Planning Commission has received or accepted a gift when he or she has actual possession of the gift or when he or she takes any action exercising direction or control over the gift, including discarding the gift or turning it over to another person," and "includes gifts that are accepted by someone else on the official's behalf and gifts made to others at the direction of the official." (*Id.*)

Plaintiff's third cause of action for violation of free speech and association challenges two portions of Measure B's Gift Ban: (1) the ban on "any gift from any person … who during the prior 12 months knowingly attempted to influence an elected City official . . . in any legislative or administrative action" (*Id.* § 2-250(A)), and (2) the ban on the making by any person of "any gift with the intent to influence an elected official in the performance of any official act" (*id.* § 2-250(B)).

The parties agree Measure B's Gift Ban is subject to "closely drawn scrutiny."[3] Therefore, to be constitutional, Defendant must show "a sufficiently important interest" which is "closely drawn to avoid unnecessary abridgement of associational freedoms." *McCutcheon*, 572 U.S. at 197.

(1) Important Government Interest

In determining the constitutionality of Measure B's Gift Ban, the Court must first analyze whether "there is adequate evidence that the limitation furthers a sufficiently important [government] interest." *Montana Right to Life Ass'n v. Eddleman*, 343 F.3d 1085, 1092 (9th Cir. 2003).

Defendant argues the City has an important interest in diminishing the risk of quid pro quo corruption or the appearance of such corruption which justifies the gift ban. Defendant submits a declaration from the City Manager Alexander Nguyen who declares he hired a firm "to conduct a survey of City residents to determine what residents thought the City's legislative priorities should be," "[t]he results of this survey were presented to the City Council on October 15, 2019," "[t]he survey indicated that more than threequarters of City voters would support a government accountability measure if it was placed on the March 3, 2020 ballot," "[b]ased on the results of the survey, the City developed Measure B to address the public's stated desire to institutionalize good government practices, including prohibiting elected officials and planning commissioners from accepting gifts

[3] *See also Schickel v. Dilger*, 925 F.3d 858, 869 (6th Cir. 2019) ("closely drawn scrutiny" standard applies to gift bans), *cert. denied sub nom. Schickel v. Troutman*, 140 S. Ct. 649, 205 L. Ed. 2d 388 (2019); *Preston v. Leake*, 660 F.3d 726, 729-30 (4th Cir. 2011) (upholding lobbyist contribution ban, which defined contributions to include gifts, under closely drawn scrutiny standard).

from lobbyists or city contractors," and "[o]n October 15, 2019, the City Council voted to place Measure B on the March 3, 2020 ballot." (Nguyen Decl. ¶¶ 3, 4.) Nguyen further declares 1) "[t]he major driving factors in the City's decision to . . . impose a strict ban on gifts to elected officials are to discourage and prevent undue influence over policy or development decisions, and to minimize the perception that the City's elected officials are indebted to those who can provide expensive gifts" (*id.* ¶ 7); and 2) the City was investigated by the Ventura County District Attorney's Office in 2010, "[t]his investigation uncovered several instances of unethical behavior, inappropriate acceptance of gifts, and misconduct," and "[t]he City has made great strides to recover from that era, and Measure B is an important next step in that progress" (*id.*).

Defendant also submits a copy of a report from the Ventura County District Attorney dated April 18, 2012, entitled "A Report on the Public Integrity Investigation of Oxnard City Officials." (Whatley Decl. Ex. 8 (hereinafter, the "D.A.'s Report").) The D.A.'s Report states "[i]n May 2010, the *Ventura County Star* reported that city officials had received gifts from companies doing business with the city without declaring the gifts as required by law," and the Ventura County District Attorney's Office conducted an investigation regarding an allegation "City officials received gifts of vacations, meals, rounds of golf, and event tickets from companies doing significant business with the city, without publicly declaring the gifts as required by law." (*Id.* at 1, 3.) The D.A.'s Report further states district attorney investigators "examined public records and interviewed witnesses," and the "interviews and records confirmed that several city officials received gifts from companies doing business with the City of Oxnard and failed to publicly declare the gifts as required by California law." (*Id.* at 3.)[4]

[4] *See also* D.A.'s Report at 2 ("The investigation found evidence establishing . . . [s]everal city officials failed to declare gifts they received. The failures to declare gifts of meals, golf and event tickets have been referred to the Fair Political

Plaintiff argues the D.A.'s Report "provides insufficient justification to warrant Measure B's intrusion into protected political speech" because "[e]ven though the Report considered illegal gifts, given to both staff and elected officials, a careful reading of the Report demonstrates that it does not support additional gift restrictions." However, the Court finds Nguyen's declaration and the D.A.'s Report demonstrate a risk of quid pro quo corruption or its appearance based on gifts to City officials. Therefore, Defendant "has presented sufficient evidence of a valid interest" in preventing quid pro quo corruption or the appearance of such corruption. *See Montana Right to Life Ass'n*, 343 F.3d at 1092; *see also Schickel*, 925 F.3d at 870 (upholding Kentucky's gift ban, finding "preventing corruption or its appearance would also justify Kentucky's gift ban" and the government "must show only 'a cognizable risk of corruption'—a 'risk of quid pro quo corruption or its appearance'").

(2) Whether the Gift Ban Is "Closely Drawn"

Plaintiff also argues Measure B's Gift Ban is unconstitutional because it is not "closely drawn to a sufficiently important interest." In applying the "closely drawn" scrutiny standard, the Court must examine whether Measure B's Gift Ban is "closely drawn to avoid unnecessary abridgment of associational freedoms." *Montana Right to Life Ass'n*, 343 F.3d at 1093.

a. Gift Ban as to Any Person Who Has Knowingly Attempted to Influence an Elected City Official

Plaintiff contends the portion of Measure B's Gift Ban set forth in § 2-

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Practices Commission for administrative enforcement action. There is insufficient evidence to prove the most serious allegations involving gift vacations and the statute of limitations has expired as to many of the gifts."); *id.* at 7 ("Reports were also made that officials received gifts of meals, rounds of golf, Broadway show tickets, and tickets to sporting events. These reports have proven true as to several officials, though in lesser amounts than alleged. While there is evidence to prove the gifts were not disclosed, there is insufficient evidence to prove the nondisclosure constituted felony perjury. Enforcement of these reporting violations has been referred to the Fair Political Practices Commission in accordance with the Political Reform Act.").

250(A) regarding ban of gifts from any person who has knowingly attempted to influence an elected City official is not closely drawn to a government interest because it is overbroad since it "encompasses much more speech than is necessary to prevent corruption." Plaintiff argues while the title of Measure B's Gift Ban section is entitled "Prohibition on Acceptance of Gifts from City Contractors and Lobbyists," the actual language of the ordinance applies the gift ban to "any person" and is not limited to lobbyists. Therefore, Plaintiff argues the Gift Ban is overbroad because it "includes everyone who voices an opinion about city business, whether in person at a city council meeting, in a letter, in a personal conversation with an elected official, or by any other means." Plaintiff also contends the definition of "gift" used in Measure B's Gift Ban is overbroad because it has no "limitation whatsoever" and thus "necessarily includes not only gifts reasonably believed to have a corrupting influence (*e.g.*, cash, real estate, expensive dinners, travel, exclusive tickets to concerts or sporting events, and the like) but also more nominal gifts like flowers, coffee, candy, cupcakes or muffins, medication, or even a tissue."[5] Plaintiff argues the overbroad use of the terms "any person" and "gift" in Measure B's Gift Ban would prohibit nominal gifts between friends and neighbors if one is an elected official and the other might occasionally express an opinion about City business," and prohibit gifts between family or romantic partners, and is therefore unconstitutionally overbroad because it reaches a "substantial number of impermissible applications."[6]

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[5] Gift" is defined under Measure B as "any payment or other benefit that confers a personal benefit for which an elected City official or member of the Planning Commission does not provide payment or services of equal or greater value," and "includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public," but does not include "items that are returned (unused) to the donor, for which the official reimburses the donor within 30 days of receipt, or that are donated unused to a non-profit, tax-exempt (501(c)(3)) organization in which the official or immediate family member does not hold a position, or to a government agency within 30 days of receipt within claiming a deduction for tax purposes." (Measure B's Gift Ban, § 2-251(A).)

[6] Plaintiff cites to gift bans in state statutes which limit gift bans to lobbyists and

While Measure B's Gift Ban does not include a specific dollar amount value in defining what constitutes a gift, this does not render the Gift Ban unconstitutionally overbroad. In *Schickel v. Dilger*, the Sixth Circuit examined the constitutionality of a Kentucky state statute prohibiting a legislator or his spouse from soliciting, accepting, or agreeing to accept "anything of value" from a lobbyist or his employer. 925 F.3d 858 (6th Cir. 2019). The Sixth Circuit found "no constitutional problem" with Kentucky's gift ban, reasoning "[t]he gift ban does not prevent lobbyists and legislators from meeting to discuss pressing issues facing Kentuckians" and "does not forbid *any* interaction or the utterance of *any* word between the two," permits them to "associate as often as they wish over a cup of coffee or dinner or baseball game" and only requires that "if they do, legislators pay their own way." *Id.* at 875. The Sixth Circuit rejected the plaintiffs' contention that Kentucky's gift ban of "[a]ny other thing of value that is pecuniary or compensatory in value to a person, or the primary significance of which is economic gain" was unconstitutionally overbroad, reasoning the gift ban statute was a "fair, reasonable way of preventing quid pro quo corruption and its appearance," "[t]he gift ban ... prevent[s] lobbyists from paying for one-on-one or small group interactions with legislators, to avoid the reality or appearance that important state legislation is being bought and sold in private" and concluding the statute encompassed a "legitimate sweep" prohibiting the gifting of "sports tickets, cars, wine, vacations, and art." *Id*. at 880-81.

Therefore, here, the lack of a monetary amount in Measure B's definition of

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define lobbyists as those who are employed as lobbyists or who are compensated a certain minimum dollar amount for their lobbying activity. *See* Ky. Rev. Stat. § 11A.010(11); Cal. Gov't Code § 82039(a); Nev. Rev. Stat. § 218H.080; Ariz. Rev. Stat. § 41-1231(12); Haw. Rev. Stat. § 97-1. Plaintiff also cites county/city ordinances which it contends limits gift bans to lobbyists and limits the definition of lobbyists to persons who receive compensation and excludes personal opinions. *See* Plaintiff's Motion at 29 (citing Santa Clara County, Cal. Code §§ A3-62 & A3-64; Richmond, Cal. Code § 2.54.010; Orange County, Cal. Code § 2.26.010; Long Beach, Cal. Code § 2.08.020; Orange City, Cal. Code § 2.15.020; L.A. County, Code § 2.160.010; Santa Ana, Cal. Code § 2-852).)

the term "gift" and the fact that Measure B's Gift Ban is not limited to "lobbyists" does not render Measure B's Gift Ban unconstitutionally overbroad. As in *Schickel*, here, Measure B's Gift Ban does not prohibit City officials from meeting with or interacting with others; rather, it requires City officials to "pay their own way" when they associate with others. *Id.* Accordingly, the Court finds Measure B's Gift Ban as to any person who has knowingly attempted to influence an elected City official is not unconstitutionally overbroad.

b. Gift Ban as to Any Gift with the Intent to Influence an Elected Official

Plaintiff argues the portion of Measure B's Gift Ban of "any gift with the intent to influence an elected official in the performance of any official act" set forth in § 2-250(B) is overbroad because "not all such gifts have a corrupting influence." Plaintiff contends the wife of Plaintiff's President gifted City Council members with homemade cupcakes in April 2017 which Plaintiff argues "was intended to foster goodwill and future cooperation in a relationship marred by hostility" and "an act of political theater, intended to show both the council and community that Starr (Plaintiff's President) would not be intimidated by the City's aggression." Plaintiff argues Measure B's Gift Ban is thus overbroad because it would have made both the giving and acceptance of the cupcakes a crime, and thus prohibits gifts that are "not an act of corruption" which demonstrates it "burdens more speech than is necessary to satisfy an objective to deter corruption."

The Sixth Circuit rejected a similar argument in *Schickel v. Dilger*. In *Schickel*, the plaintiffs argued Kentucky's gift ban statute was unconstitutionally overbroad because it would prohibit receiving a bottle of water, walking into a heated building, or using the restroom in a factory. 925 F.3d at 879-80. The Sixth Circuit noted "almost all statutes are susceptible to clever hypotheticals testing its reach," and found the plaintiffs' hypotheticals failed to demonstrate Kentucky's gift ban statute was overbroad under the First Amendment or had a chilling effect, reasoning the plaintiffs "provide no evidence of any person who has ever been charged with violating [Kentucky's gift ban statute] for (i) receiving a bottle of water; (ii) walking into a heated or cooled room; or even (iii) using the restroom in a lobbyist's office," and "[i]n the unlikely event that [the government] ever charges anyone for (or threatens enforcement of) such conduct, an as-applied challenge would be appropriate." *Id*. The Sixth Circuit concluded Kentucky's gift ban statute was not unconstitutionally under the First Amendment because it "prevent[s] lobbyists from paying for one-on-one or small group interactions with legislators, to avoid the reality or appearance that important state legislation is being bought and sold in private," and "the plainly legitimate sweep of these provisions to sports tickets, cars, wine, vacations, and art, the gift ban is not overbroad." *Id*. at 881. Similarly, here, Measure B's Gift Ban provision prohibiting any gift with the intent to influence an elected official is not unconstitutionally overbroad.

* * *

As demonstrated above, Measure B's Gift Ban is closely drawn to further the City's anticorruption interest, and therefore passes constitutional muster. *See Schickel*, 925 F.3d at 881 (affirming the district court's judgment upholding the constitutionality of Kentucky's gift ban statute upon finding the statute "pass[ed] constitutional muster" because it was "closely drawn to further Kentucky's anticorruption interest").

IV. CONCLUSION

Accordingly, the Court:

1. **GRANTS** Defendant's Motion for Summary Judgment on Plaintiff's first cause of action (violation of First Amendment based on Measure B's per candidate contribution limits), second cause of action (violation of First and Fourteenth Amendment based on Measure B's aggregate contribution

limits), and third cause of action (violation of the First Amendment based on Measure B's Gift Ban); and

2. **DENIES** Plaintiff's Motion for Summary Judgment as to each of Plaintiff's causes of action.

IT IS SO ORDERED.

DATED: August 5, 2021.

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE