No. 15-1234

IN THE

Supreme Court of the United States

DELAWARE STRONG FAMILIES,
Petitioner,

v.

MATTHEW DENN,
ATTORNEY GENERAL OF DELAWARE, et al.,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF OF *AMICI CURIAE* THE BUCKEYE INSTITUTE FOR PUBLIC POLICY SOLUTIONS, GOLDWATER INSTITUTE, MONTANA POLICY INSTITUTE, AND THE MACKINAC CENTER FOR PUBLIC POLICY IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The Buckeye Institute for Public Policy Solutions is an Ohio-based nonprofit research and educational organization dedicated to supporting public policies that advance liberty, individual rights, limited government, and a strong economy. Buckeye regularly publishes communications that compare Ohio's performance to other states (including Delaware). Buckeye also is launching an Economic Research Center that will provide research and analysis to citizens in all 50 states on a spectrum of policy issues, including taxation, budget, energy, labor, and health care.

Buckeye has a substantial interest in the important question presented in this case. Because the materials that Buckeye publishes discuss existing and pending legislation, they often mention the names of elected officials. The Third Circuit's decision presents a significant barrier to Buckeye's educational efforts. Under that holding, Buckeye faces the unattractive choice of either refraining from discussing policies and legislation promoted by elected officials, or disclosing the names and addresses of its donors, chilling future support from those who seek associational privacy.

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[1] All parties consented in writing to the filing of this brief more than 10 days prior to its due date. No counsel for a party authored this brief in whole or in part, and no person other than *amici*, their members, or their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

The Goldwater Institute was established in 1988 as a nonpartisan public policy and research foundation dedicated to advancing the principles of limited government, economic freedom, and individual responsibility through litigation, research papers, editorials, policy briefings, and forums. Through its Scharf-Norton Center for Constitutional Litigation, the Institute litigates and occasionally files *amicus* briefs when its or its clients' objectives are directly implicated.

The Goldwater Institute seeks to enforce the features of our state and federal constitutions that protect individual rights, including the rights to free speech and free association. To this end, the Institute is engaged in policy research and analysis pertaining to donor disclosure mandates that implicate the free speech and association rights of § 501(c)(3) organizations. Additionally, the Institute has prepared and disseminated legislative voter guides as well as supported legislatively referred ballot measures that could be implicated by campaign finance restrictions such as those at issue.

Montana Policy Institute (MPI) is a nonpartisan, nonprofit, § 501(c)(3) educational and research organization that advocates for individual and economic liberty. MPI repeatedly has opposed efforts to force charitable organizations to disclose their donors as a condition of speaking in the public sphere. Such efforts jeopardize the free speech and associative rights of charitable donors. MPI has a substantial interest in Delaware's statute since, if upheld, it serves as a model for other states who would seek to pass similar language.

The Mackinac Center for Public Policy is a Michigan-based, § 501(c)(3) nonprofit, nonpartisan research and educational institute advancing policies fostering free markets, limited government, personal responsibility, and respect for private property. In 2014, the Mackinac Center launched VoteSpotter, a smartphone application. After the user provides his or her address, the app identifies the elected officials for that district and provides the user timely notices of how those lawmakers voted on particular bills or amendments. The user then has the opportunity to approve (clicking thumb up) or disapprove (clicking thumb down). A user can then share his opinion over social media and/or send the official an email or phone call (the app provides the email and phone number of the official's office). Currently, VoteSpotter is used by more than 67,000 citizens in 13 states.[2] VoteSpotter currently tracks the votes of all federal House members, and the Center is in the initial stages of expanding the app to include state politicians in all 50 states.

SUMMARY OF THE ARGUMENT

Virtually every one of our nation's 1.5 million charities seeks to carry out its charitable mission by communicating with the public on issues of public concern. Today, however, charities wishing to communicate these messages in Delaware risk

[2] These states are Colorado, Florida, Massachusetts, Michigan, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and Wisconsin.

government-forced disclosure of the names and addresses of their donors.

Delaware law requires any organization that publishes any statement mentioning the name of a candidate for public office within the weeks preceding an election to disclose the names and addresses of everyone who has contributed $100 or more over the past four years. Rejecting a First Amendment challenge to the law and reversing the district court decision's finding the law to violate associational privacy rights, the Third Circuit upheld the law as applied to a nonpartisan voter education guide distributed by Delaware Strong Families ("DSF"), an educational nonprofit organized under 26 U.S.C. § 501(c)(3). DSF's voter guide did not support or oppose any particular candidate; indeed, § 501(c)(3) prohibits DSF from engaging in any such campaigning. Nevertheless, the Third Circuit concluded that Delaware's interest in informing its electorate about the origins and use of political campaign funds outweighed DFS's First Amendment associational privacy rights and justified Delaware's demand for a list of the names and addresses of DSF's donors.

The Third Circuit's holding deepens a split of authority regarding the standard for evaluating associational privacy claims. Government actions compelling disclosure of members or donors must satisfy "exacting scrutiny," but this Court has described that standard in conflicting terms, equating it with strict scrutiny in some instances, and with intermediate scrutiny in others. Not surprisingly, then, the circuits also are of different minds in applying this "exacting scrutiny" standard.

Adding to that confusion, courts have reached different conclusions about the constitutionality of materially identical disclosure provisions. This Court should grant the writ to clarify the circumstances in which a party's First Amendment freedom to associate is impermissibly abridged by state action.

Review is also warranted because the Third Circuit's decision disregards this Court's decisions regarding the right to associational privacy. In upholding Delaware's expansive law, the Third Circuit effectively discarded any requirement that Delaware's interest bear a meaningful relationship to the compelled disclosure. Indeed, Delaware's law sweeps far beyond information that would inform its electorate about the origins and uses of campaign funds. It requires disclosure of all donors who contribute to any organization that dares to mention a candidate's name in the weeks preceding an election, even where the organization does not endorse the candidate, or critique her opponent. And by attributing these communications to an organization's entire database—without regard to whether a donor earmarked funds for the relevant publication—Delaware's law threatens to misinform voters about the constituencies behind certain causes.

Finally, this Court should grant the writ because Third Circuit's decision will have an immediate and significant chilling effect on charities and the donors who support them. That chilling effect is of particular concern to *amici*. Indeed, retaliation against public interest groups like DSF, *amici*, and the donors that support them is an increasingly

common occurrence. Today's technology, moreover, exacerbates the speed and impact of such harassment. The Third Circuit's holding that Delaware can compel disclosure of all donors who contribute to charities speaking on issues of public concern undeniably makes donating to these organizations less attractive, chilling the organizations' and their donors' First Amendment freedom to associate. The chilling effects of the decision below, if left to stand, cannot be undone later. This Court should intervene now.

ARGUMENT

I. THE THIRD CIRCUIT'S DECISION EXACERBATES A CIRCUIT CONFLICT REGARDING THE MEANING OF EXACTING SCRUTINY

The Third Circuit held that Delaware's disclosure requirements do not offend the First Amendment because they bear a substantial relation to Delaware's interest in an informed electorate. That holding exacerbates a significant conflict among the courts of appeals regarding the meaning of the "exacting scrutiny" standard in associational privacy cases.

Although it sometimes has described the test as equivalent to strict scrutiny, this Court also has stated that the test applicable to associational privacy claims requires merely intermediate scrutiny. *Compare, e.g.*, *McCutcheon v. FEC*, 134 S. Ct. 1434, 1444 (2014) ("[u]nder exacting scrutiny," the government action is permissible only if it "promotes a compelling interest and is the least restrictive means to further the articulated

interest"), *with Citizens United v. FEC*, 558 U.S. 310, 366-67 (2010) ("'exacting scrutiny' … requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest"). These disparate statements have generated significant confusion among the courts of appeals. *Compare, e.g.*, *Bernbeck v. Moore*, 126 F.3d 1114, 1116 (8th Cir. 1997) ("The strict or exacting scrutiny standard requires that a state must show the regulation in question is substantially related to a compelling government interest and is narrowly tailored to achieve that end."), *with Center for Individual Freedom, Inc. v. Tennant*, 706 F.3d 270, 282 (4th Cir. 2013) (under "exacting scrutiny," the government must "show that the statute bears a 'substantial relation' to a 'sufficiently important' governmental interest").

Adding to this confusion, the courts of appeals have reached conflicting conclusions as to whether substantively similar disclosure requirements pass First Amendment muster. In *Buckley v. Valeo*, for example, the D.C. Circuit struck down as unconstitutional a law requiring "[a]ny person" who spent money "setting forth [a] candidate's position on any public issue, his voting record, or other official acts" to report "the source of the funds used in carrying out" that activity. 519 F.2d 821, 869-70 (D.C. Cir. 1975) (quoting 2 U.S.C. § 437a). The disclosure requirement was not "plainly and closely related to" the substantial government interest in the integrity of elections because it could require "disclosure by groups that do no more than discuss issues of public interest on a wholly nonpartisan

basis." *Id.* at 869, 872. The law accordingly violated the First Amendment. *See id.* at 878.

As DSF explains, Delaware's disclosure requirement is identical in all critical respects to the law struck down in *Buckley*, *see* Pet. 29-33, and thus would not withstand constitutional scrutiny under the D.C. Circuit's "exacting scrutiny" standard. *See Buckley*, 519 F.2d at 878. Yet the Third Circuit upheld Delaware's law, concluding that it comports with the First Amendment. Pet. App. 22. The Court should grant the writ to resolve this intractable conflict.

II. THE THIRD CIRCUIT'S HOLDING DISREGARDS THIS COURT'S DECISIONS REGARDING THE RIGHT TO ASSOCIATIONAL PRIVACY

This Court's review is also warranted because the decision below contravenes the well-established right to privacy in belief and association.

A. "It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute an effective restraint on freedom of association." *Bates v. Little Rock*, 361 U.S. 516, 523 (1960) (alterations and citation omitted); *see also NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958). Indeed, there is a "vital relationship between freedom to associate and privacy in one's associations." *NAACP*, 357 U.S. at 462. Our American political system has thus long celebrated the role of anonymous speech as "a shield from the tyranny of the majority." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995). Although this "respected tradition of anonymity" is

"most famously embodied in the Federalist Papers," which were published under the pseudonym "Publius," it extends across the speech spectrum. *Id.* at 343 & n.6. "[I]t is immaterial whether the beliefs sought to be advanced … pertain to political, economic, religious or cultural matters." *NAACP*, 357 U.S. at 460.

For these reasons, this Court repeatedly has recognized that "[t]he Constitution protects against the compelled disclosure of political associations and beliefs." *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87, 91 (1982); *see, e.g.*, *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 544 (1963); *Shelton v. Tucker*, 364 U.S. 479, 485-86 (1960) ("to compel a teacher to disclose his every associational tie is to impair that teacher's right of free association"); *Buckley v. Valeo*, 424 U.S. 1, 64 (1976) (per curiam) (noting that "compelled disclosure imposes" "significant encroachments on First Amendment rights"); *NAACP*, 357 U.S. at 466 ("disclosure of membership lists is likely to have" a "deterrent effect on the free enjoyment of the right to associate"). Indeed, laws requiring organizations to disclose their members or donors are "of the same order" as a requirement that "adherents of particular religious faiths or political parties wear identifying arm-bands." *NAACP*, 357 U.S. at 462; *see also Buckley*, 424 U.S. at 66 ("Our past decisions have not drawn fine lines between contributors and members but have treated them interchangeably."). Both types of actions "ma[k]e group membership less attractive" and interfere with "the group's ability to express its message." *Rumsfeld v. Forum for Acad. & Inst'l Rights, Inc.*, 547 U.S. 47, 69 (2006).

Accordingly, "significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest." *Buckley*, 424 U.S. at 64. Rather, the governmental interest must be "sufficiently important to outweigh the possibility of infringement." *Id.* at 66. This Court has recognized that an informed electorate—i.e., an electorate that is able to evaluate candidates for public office based on "where political campaign money comes from and how it is spent by the candidate"—is one such interest. *Id.* (internal quotation marks omitted).

But even where the governmental interest is compelling, disclosure requirements that go "far beyond" the asserted governmental interest are improper. *See Shelton*, 364 U.S. at 489; *Talley v. California*, 362 U.S. 60, 64 (1960); *McIntyre*, 514 U.S. at 357. In *Shelton*, for example, this Court invalidated a statute requiring public school teachers to disclose "without limitation every organization to which [they] ha[d] belonged or regularly contributed within the preceding five years." 364 U.S. at 480. Some of those associations may have been relevant to a state's "vital" interest in the fitness and competence of its teachers, but that did not justify a "completely unlimited" inquiry into "every conceivable kind of associational tie." *Id.* at 485, 487-88; *see also Talley*, 362 U.S. at 64 (ordinance that prohibited distribution of anonymous handbills could not be justified by concern with "fraud, false advertising and libel" because the ordinance was not "so limited"); *McIntyre*, 514 U.S. at 357 (state's interest in "preventing the misuse of anonymous

election-related speech" does not justify "a prohibition of all uses of that speech").

B. The Third Circuit's decision irreconcilably conflicts with this established framework. The disclosures required by Delaware law are not limited to information about "where political campaign money comes from and how it is spent by the candidate." *Buckley*, 424 U.S. at 66 (internal quotation marks omitted). Rather, Delaware demands the names and addresses of all donors who have contributed to any charity that dares to mention the name of a candidate in the weeks preceding an election—even in a non-political, nonpartisan context. The First Amendment forbids this sort of "completely unlimited" inquiry. *Shelton*, 364 U.S. at 488.

Delaware's disclosure provisions are not substantially related to its purported interest in an informed electorate because they apply to expenditures for "issue discussions unwedded to the cause of a particular candidate." *Buckley*, 519 F.2d at 873. Indeed, they apply to any communication that mentions a candidate's name and is published on the Internet or delivered through the mail within 30 or 60 days before an election. 15 Del. C. § 8002(10)(a). And they reach the educational efforts engaged in by the more than 1.5 million tax-exempt charities organized under § 501(c)(3)—entities that cannot "publish[] or distribut[e] … statements" regarding "any political campaign on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. § 501(c)(3); *see* http://foundationcenter.org/getstarted/faqs/html/howmany.html. These organizations span nearly every industry, including

education, health care, culture, religion, sports, foreign affairs, and the humanities. Many of them advocate for causes that implicate matters of public concern, such as support for wounded war veterans or research for a cure for cancer. Contributions that fund these communications—even ones that happen to mention the name of a candidate within the relevant time frame—"hardly threaten the purity of elections." *Buckley*, 519 F.2d at 873. Indeed, these communications are not related to elections at all. Delaware thus has no substantial interest in requiring these organizations to disclose their donors. *See id.*

Even if Delaware did have an interest in requiring disclosure of the contributors to such communications, its disclosure requirements fail to accomplish that interest. Delaware law requires disclosure of anyone who has donated at least $100 over the past four years. 15 Del. C. § 8031(a)(3). Information about donors who contribute only $25 per year sheds little light on "where political campaign money comes from." *Buckley*, 424 U.S. at 66 (internal quotation marks omitted). And it hardly will "alert … voter[s] to the interests to which a candidate is most likely to be responsive." *Id.* at 67.

In fact, the breadth of Delaware's disclosure requirements will, if anything, result in *misinforming* the electorate. Nothing in Delaware's law limits disclosure to donors who earmark their contributions to support the communications that trigger disclosure. *See* Pet. App. 19-20. *Every* published communication that so much as mentions a candidate's name within the relevant time period cannot reasonably be attributed to *all* of an

organization's donors. Many donors may not even be aware of a particular communication. Others may disagree with it but nevertheless donate because of their desire to advance the organization's broader mission. *See Van Hollen v. FEC*, 811 F.3d 486, 497 (D.C. Cir. 2016). At a minimum, where the triggering publication is nonpartisan educational material discussing all candidates, reporting that every donor to an organization supports all of those candidates affirmatively would mislead the electorate as to each candidate's "constituenc[y]." *Buckley*, 424 U.S. at 81.

In sum, the Third Circuit's conclusion that Delaware's disclosure requirements are substantially related to its interest in an informed electorate fails at every turn.

III. COMPELLED DISCLOSURE WILL HAVE AN IMMEDIATE, SIGNIFICANT CHILLING EFFECT ON CHARITIES

By requiring think tanks and other organizations that engage in nonpartisan education efforts to disclose the names and addresses of their donors, the Third Circuit's holding will have an immediate chilling effect on the First Amendment rights of those groups and their donors.

A. Public interest organizations often face retaliation and harassment because of the views they espouse. On August 15, 2012, Floyd Corkins shot a security guard at the Family Research Council (FRC), a conservative think tank based in Washington, D.C. Corkins intended "to kill as many people as possible" at the FRC because he disagreed with policies it promoted. Carol Cratty & Michael

Pearson, *DC Shooter Wanted to Kill As Many As Possible, Prosecutors Say* (Feb. 7, 2013), *available at* http://www.cnn.com/2013/02/06/justice/dc-family-research-council-shooting/. According to police investigators, Corkins planned to kill employees of other conservative organizations as well. Jeremy Kinser, *FRC Suspect May Have Had Plans for Second Conservative Shooting* (Aug. 18, 2012), *available at* http://www.advocate.com/crime/2012/08/18/frc-shooting-suspect-may-have-had-plans-second-conservative-shooting.

Regrettably, this sort of violence is not uncommon. In November 2011, protesters attacked and harassed attendees of a forum hosted by Americans for Prosperity Foundation, a think tank that advocates for economic freedom. Clare O'Connor, *Occupy The Koch Brothers: Violence, Injuries, And Arrests At DC Protest* (Nov. 5, 2011), *available at* http://www.forbes.com/sites/clareoconnor/2011/11/05/occupy-the-kochs-violent-clashes-injuries-and-arrests-at-protest-against-corporate-greed/. Several people were hurt, including two elderly attendees who were shoved down a set of stairs as they attempted to escape the escalating chaos. *Id.*

And retaliation knows no political boundaries, right or left. Since 1977, there have been hundreds of violent attacks against pro-choice organizations, including murders, bombings, and chemical attacks. *See* http://prochoice.org/education-and-advocacy/violence/violence-statistics-and-history/. Moreover, individuals associated with the New York Civil Liberties Union routinely face violent threats and harassment due to the controversial issues with

which the organization is involved. Letter from Arthur Eisenberg, Legal Director, NYCLU, to Rob Cohen, NY State Joint Commission on Public Ethics at 6-7 (Apr. 24, 2014), *available at* http://www.jcope.ny.gov/source_funding/forms/2014-04-24-NYCLU%20appeal.pdf. So, too, with members of the Socialist Workers Party. *See* FEC Advisory Op. 2012-38 at 9 (Apr. 25, 2013) (renewing longstanding partial exemption from disclosure due to evidence of firings, workplace intimidation, and verbal threats and harassment), *available at* http://saos.fec.gov/aodocs/AO%202012-38.pdf.

"The success of such intimidation tactics has apparently spawned a cottage industry that uses forcibly disclosed donor information to pre-empt citizens' exercise of their First Amendment rights." *Citizens United*, 558 U.S. at 482 (Thomas, J., dissenting) (emphasis deleted). For instance, before the 2008 Presidential election, Accountable America, a "'newly formed nonprofit group,'" "'planned to confront donors to conservative groups, hoping to create a chilling effect that will dry up contributions.'" *Id.* (quoting Luo, *Group Plans Campaign Against G.O.P. Donors*, N.Y. TIMES, Aug. 8, 2008, at A15). The group's leader, "who described his effort as 'going for the jugular,' detailed the group's plan to send a warning letter alerting donors who might be considering giving to right-wing groups to a variety of potential dangers, including legal trouble, public exposure and watchdog groups digging through their lives." *Id.* at 482-83 (some internal quotation marks omitted).

Wisconsin's "John Doe" investigations provide yet another troubling example of the harassment

individuals have faced based on the views espoused by organizations they support. "Initially a probe into the activities of Governor Walker and his staff, the ['John Doe'] investigation expanded to reach nonprofits nationwide that made independent political expenditures in Wisconsin." Jon Riches, *The Victims of "Dark Money" Disclosure: How Government Reporting Requirements Suppress Speech and Limit Charitable Giving*, at 3 (Aug. 5, 2015), *available at* https://goldwater-media.s3.amazonaws.com/cms_page_media/2015/8/12/Dark%20Money%20Flipbook.pdf. The raids targeted individuals associated with those organizations, some of whom were awakened in the middle of the night by "loud pounding at the door," floodlights illuminating their homes, and police with guns drawn. David French, NATIONAL REVIEW, *Wisconsin's Shame: "I Thought It Was a Home Invasion*" (May 4, 2015). These individuals were then forced to watch in silence as investigators rifled through their homes, seeking an astonishingly broad range of documents and information, all because they supported certain organizations. *Id.* The Wisconsin Supreme Court recently put an end to these unconstitutional investigations, concluding that they were based on a legal theory "unsupported in either reason or law" and that the citizens investigated "were wholly innocent of any wrongdoing." *State ex rel. Two Unnamed Petitioners v. Peterson*, 866 N.W.2d 165, 211-12 (Wis. 2015).

B. In the face of these and similar threats, compelled disclosure makes donating to DSF and other public interest organizations "less attractive,"

interfering with each "group's ability to express its message." *Rumsfeld*, 547 U.S. at 69.

In fact, *amici* have experienced this chilling effect firsthand. In 2013, shortly after the Ohio General Assembly relied on Buckeye's arguments in rejecting Medicaid expansion, Buckeye learned that it would be audited by the Cincinnati office of the IRS. The audit notification came on the heels of widespread allegations of wrongdoing by that IRS office. *See, e.g.*, Gregory Korte, *Cincinnati IRS agents first raised Tea Party issues*, USA TODAY (June 11, 2013), *available at* http://www.usatoday.com/story/news/politics/2013/06/11/how-irs-tea-party-targeting-started/2411515/. These reports of IRS misconduct caused Buckeye's donors to fear that the Buckeye audit was politically motivated retaliation. Several donors inquired about the threshold of giving that would cause them to appear on Schedule B, and expressed concern that such forced disclosure would subject them to retaliatory audits themselves. Numerous donors thus opted to make small, anonymous, cash donations—foregoing a donation receipt—to avoid any potential retribution based on their contributions. Regardless whether these concerns were ultimately founded, the potential for disclosure hampered Buckeye's and its donors' freedom to associate.

Modern technology has only increased the force of disclosure-driven chilling effects. After all, once donors' names and addresses become public, "anyone with access to a computer could compile a wealth of information about [them], including":

> the names of their spouses and neighbors, their telephone numbers, directions to their homes, pictures of their homes, information about their homes …, information about any motor vehicles that they own, any court case in which they were parties, any information posted on a social networking site, and newspaper articles in which their names appeared (including such things as wedding announcements, obituaries, and articles in local papers about their children's school and athletic activities).

Doe v. Reed, 561 U.S. 186, 208 (2010) (Alito, J., concurring).

What is more, because modern technology "allows mass movements to arise instantaneously and virally," "[a]ny individual or donor supporting virtually any cause is only a few clicks away from being discovered and targeted" for harassment. Nick Dranias, *In Defense of Private Civic Engagement: Why the Assault on "Dark Money" Threatens Free Speech – and How to Stop the Assault* at 16 (Apr. 2015), *available at* https://www.heartland.org/sites/default/files/03-13-15_dranias_-_civic_engagement.pdf. In fact, such harassment has already occurred. After California published the names and addresses of individuals who had supported Proposition 8, a ballot initiative that amended California's constitution to define marriage as between a man and a woman, opponents of the measure "compiled this information and created Web sites with maps showing the locations of homes or businesses of Proposition 8 supporters." *Citizens United*, 558 U.S. at 481 (Thomas, J., dissenting); *see also Doe*, 561 U.S. at

208 (Alito, J., concurring) (describing similar efforts in Washington). Some individuals lost their jobs; others faced death threats—all because they supported Proposition 8. *See Citizens United*, 558 U.S. at 481-82 (Thomas, J., dissenting).

In short, the "deterrent effect" that disclosure of membership and donor lists will have on "the free enjoyment of the right to associate" is even more significant in today's internet age than it was when this Court decided cases like *NAACP*, *Shelton*, and *Talley*. *See NAACP*, 357 U.S. at 466.

* * *

If DSF and other organizations are required to disclose their donors now or stop their educational efforts in certain states, intervention by this Court later will not provide any "effective relief." *Cf. Doe v. Reed*, 697 F.3d 1235, 1240 (9th Cir. 2012) ("[O]nce a fact is widely available to the public, a court cannot grant any 'effective relief' to a person seeking to keep that fact a secret."). This Court should intervene now, before it is too late.

CONCLUSION

For the reasons stated above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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