No. 23-926

In the Supreme Court of the United States

NO ON E, SAN FRANCISCANS OPPOSING THE AFFORDABLE CARE HOUSING PRODUCTION ACT, ET AL.,
Petitioners,

v.

DAVID CHIU, IN HIS OFFICIAL CAPACITY AS SAN FRANCISCO CITY ATTORNEY, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether requiring political advertisers to name their donors' donors within political ads, taking up to over half of the space and time of some advertisements, triggers strict scrutiny.

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established in 1989 to promote the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, produces the annual *Cato Supreme Court Review*, and files *amicus* briefs.

This case interests Cato because the right to freedom of speech and freedom of association in the political and electoral context is essential to liberty and must be protected against governmental intrusion. The holding of the Ninth Circuit permits municipalities, in this case, San Francisco, to impose burdensome restrictions on core political speech under the pretext of disclaimers and disclosures. Such heavy-handed interference with speech and freedom of association by the government is inconsistent with the First Amendment.

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[1] Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

When Americans want to engage in political speech, to what extent can the government compel them to include its own desired speech as well? According to the Ninth Circuit Court of Appeals, the answer seems to be that there is *no* limit—localities can even make the government-mandated speech the primary message in someone else's political ad. Such a result flies in the face of the First Amendment.

San Francisco campaign finance law is stricter than state law and requires that most campaign ads name the speaker's top three donors of at least $5,000. Pet. Br. at 6. Critically, local rules also require naming the top two donors to each of the speaker's three top donors, if any of those donors are also a committee. *Id.* at 5-6. These disclaimers are required on video, audio, and print ads. *Id.* This means that political ads in San Francisco are required to name up to *nine* donors and donors' donors, those parties' contribution amounts (for print ads), and a statement that financial disclosures are available online. *Id.* at 6–7. Violations of these local laws are punishable by civil, criminal, and administrative penalties. S.F., CAL., CAMPAIGN & GOVERNMENTAL CONDUCT CODE § 1.170.

Not surprisingly, these mandated disclosures take up a lot of time and space in a typical advertisement. Todd David, founder of the "No on E" political campaign, found that San Francisco's requirements consumed over 30 seconds of video time. Pet. Br. at 1. In all, San Francisco's compelled speech would consume over half of the screen for up to a third of the time of over half of No on E's video ads, as well as huge

portions of their 5x10 inch print ads and 8.5x11 inch mailers. *Id*. at i.

In addition to the direct burden on speech caused by San Francisco's commandeering of No on E's political advocacy, these regulations can dissolve common, voluntary associations. A mandate to publicize donors' donors can also mislead and confuse voters because of the sometimes-tenuous connection between a specific campaign and its donors' donors. Here, for instance, one of No on E's top donors—the Ed Lee Dems PAC—withdrew its support from the No on E campaign because San Francisco's mandated disclaimers would give voters the false impression that the PAC's donors supported the campaign even if they were completely unaware of it. *Id*. at 2.

The Ninth Circuit determined that exacting scrutiny applies to San Francisco's regulations of political speech and found that the law was constitutional under this standard.

This Court should grant certiorari to make clear that *strict* scrutiny—not exacting scrutiny—is the correct standard for evaluating compelled speech laws like San Francisco's. While this Court has applied exacting scrutiny in the narrow context of campaign finance disclosures and disclaimers, San Francisco's regulations are fundamentally different. The combination of disclosures and disclaimers—extended to secondary donors—directly burdens core political speech and associations. In the words of the petitioners, "First Amendment doctrine should keep pace with campaign speech regulators." *Id*. at 21. In

this instance, strict scrutiny is the only test which adequately safeguards First Amendment rights.

ARGUMENT

I. THE SAN FRANCISCO DISCLAIMER AND DISCLOSURE LAWS ARE CONTENT-BASED AND SHOULD BE SUBJECT TO STRICT SCRUTINY.

The First Amendment prohibits laws "abridging the freedom of speech." U.S. CONST. amend. I. As government-compelled speech, San Francisco's secondary donor disclosure requirement is subject to First Amendment scrutiny, even though it is not a ban or a prohibition on speech. This Court has long recognized that the "freedom of speech" protected by the First Amendment is not limited to protection from government-imposed silence, but also protects Americans from being compelled to speak by their government. Although "[t]here is certainly some difference between compelled speech and compelled silence . . . the difference is without constitutional significance[.]" *Riley v. Nat'l Fed'n of the Blind of N.C.*, 487 U.S. 781, 796 (1988).

Judicial suspicion of compelled speech is not limited to compelled statements of opinion on political, philosophical, or religious matters, but also extends to compelled *factual* statements. "[C]ompelled statements of fact . . . like compelled statements of opinion, are subject to First Amendment scrutiny." *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 62 (2006).

On its face, the San Francisco law is a content-based restriction on speech—it applies solely to campaign advertisements. S.F., CAL., CAMPAIGN &

GOVERNMENTAL CONDUCT CODE § 1.161(a) (mandated disclaimers for ads that "support or oppose any candidate for City elective office or any City measure"). "Campaign advertisements" are a type of content that this Court recognizes. According to the Court:

> Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed . . . . Some facial distinctions based on a message are obvious, defining regulated speech by particular subject matter, and others are more subtle, defining regulated speech by its function or purpose. Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny.

Reed v. Town of Gilbert, 135 S. Ct. 2218, 2227 (2015).

In *Town of Gilbert*, the Court found that even a local ordinance specifying rules for signs conveying "the time and location of a specific event" is content-based on its face. *Id.* at 2231. Notably, the Court also said the town's characterization of "Political Signs" as those "designed to influence the outcome of an election," was a clear example of a content-based category. *Id.* at 2227. By singling out and imposing rules for campaign ads—and exempting, say, ads by nonprofit service providers, churches, and trade associations—San Francisco's law resembles the local regulations the Court deemed facially content-based in *Town of Gilbert*.

"Government's content-based burdens must satisfy the same rigorous scrutiny as its content-based bans." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 565–66 (2011)

(quoting *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 812 (2000)). In other words, "[c]ontent-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Rumsfeld*, 547 U.S. at 62 (citing *R. A. V.* v. *St. Paul*, 505 U.S. 377, 395 (1992); *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U.S. 105, 115, 118 (1991)). "A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech." *Town of Gilbert*, 135 S. Ct.at 2228 (quoting *Cincinnati v. Discovery Network*, *Inc.,* 507 U.S. 410, 429 (1993)). This means that "an innocuous justification cannot transform a facially content-based law into one that is content neutral." *Id*. Thus, if San Francisco's law is a content-based restriction on speech, it is subject to strict scrutiny regardless of San Francisco's motive for imposing it.

II. EXACTING SCRUTINY IS INSUFFICIENT WHEN EVALUATING COMBINED DISCLOSURE-DISCLAIMER MANDATES, BECAUSE THE BURDEN ON CORE POLITICAL SPEECH IS SUBSTANTIALLY GREATER THAN WITH EITHER DISCLOSURES OR DISCLAIMERS ALONE.

On occasion, this Court has evaluated certain forms of compelled speech under "exacting scrutiny." Specifically, the Court has applied exacting scrutiny to

compelled disclaimers and compelled disclosures in the context of campaign finance.

The Court most recently addressed the degree of First Amendment scrutiny applicable to compelled disclosure laws in *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373 (2021). According to the Court:

> *NAACP v. Alabama* did not phrase in precise terms the standard of review that applies to First Amendment challenges to compelled disclosure. We have since settled on a standard referred to as "exacting scrutiny." *Buckley v. Valeo*, 424 U.S. 1, 64, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (*per curiam*). Under that standard, there must be "a substantial relation between the disclosure requirement and a sufficiently important governmental interest." *Doe v. Reed*, 561 U.S. 186, 196, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010) (internal quotation marks omitted).

Bonta, 141 S. Ct at 2382–83.

This comparatively lower level of scrutiny is appropriate because "[d]isclaimer and disclosure requirements may burden the ability to speak, but they 'impose no ceiling on campaign-related activities,' . . . and 'do not prevent anyone from speaking[.]'" *Citizens United v. FEC*, 558 U.S. 310, 366 (2010) (quoting *Buckley*, 424 U.S. at 64; *McConnell v. FEC*, 540 U.S. 93, 201 (2003)).[2]

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[2] Nevertheless, the Court has "repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley*, 424 U.S. at 64.

While both disclaimers and disclosures are forms of compelled speech, they are distinct from each other in important ways. A disclaimer law of the kind this Court has approved of in the campaign finance context requires a political advertisement to state who is responsible for the content of the advertising—that is, "the person or group that funded the advertisement." *Id*. Note that standard applies directly to "the person or group that funded the advertisement" and the Court has never applied exacting scrutiny to disclaimer rules for secondary parties who donate to the person or group responsible for the advertisement, let alone their donors' donors. Moreover, the disclaimers this Court has approved in the context of political advertising have been very limited—in *Citizens United*, this Court upheld a disclaimer requirement of four seconds. *Id*. at 368. This is far shorter than the 30-plus second disclaimer that San Francisco imposed on the petitioners. Pet. Br. at 1.

In contrast to disclaimers, which must be included in the communication itself, disclosure requirements entail reporting information to the government. Typically, this means information about the political advertiser's expenditures and contributions, as well as the names of its donors. *Buckley*, 424 U.S. at 63. This information can be extensive, may be subject to change, and may entail filing periodic reports with the government. *Id*. In other words, disclosures tend to include considerably more information than disclaimers.

The San Francisco secondary donor requirement for campaign advertisers is neither a disclaimer nor a disclosure. Instead, it is a combination of both. While a disclaimer in a political advertisement is short and

quite limited in the information it contains (the name of the person or group who funded the advertisement), San Francisco mandates that political ads contain information about multiple donors, their contribution amounts, plus *donors to the donors* and, for print ads, their contribution amounts. Because political ad space and time is always limited, requiring secondary donor disclosures to be included in campaign ads *directly* burdens—and limits—core political speech.

The Court's fundamental assumption justifying the use of exacting scrutiny (as distinguished from strict scrutiny) in assessing the constitutionality of disclaimers and disclosures is that such regulations "'impose no ceiling on campaign-related activities,' . . . and 'do not prevent anyone from speaking[.]'" *Citizens United*, 558 U.S. at 366 (quoting *Buckley*, 424 U.S. at 64; *McConnell*, 540 U.S. at 201). But this logic manifestly does not apply to the San Francisco law. "In San Francisco, many ads are impracticable or impossible. Longer ads come with more government speech mandates. Donors balk at dragging their own donors into election campaigns." Pet. Br. at 21. This is because the law:

> [P]lac[es] what is essentially a longform disclosure fit for a government office in the advertising context of a traditional disclaimer—[and] creates new burdens not anticipated by the existing understanding of "disclaimers." Even if secondary donor information could properly be the subject of a disclosure mandate, not everything that the government can order disclosed belongs in an ad.

Pet Br. at 20.

Applying exacting scrutiny to the secondary donor disclaimer-disclosures in addition to the primary donor disclaimer-disclosures compounds the constitutional injury and opens the door to onerous new restrictions on campaign speech from states and municipalities nationwide. In the words of Judge VanDyke, dissenting from the Ninth Circuit's opinion:

> [T]he government could require the disclosure of as many donation connections as it takes to show a given political speaker's degrees of separation from Kevin Bacon. . . . So what's next? Disclosure of tertiary (and quaternary, quinary, senary) contributors? Why not contributors even further removed from the political speaker?

Pet. App. at 73a, 77a–78a. Indeed, there is no limiting principle to the amount of information that could be required on these combination disclaimer-disclosures—especially if secondary donors can be included.

The San Francisco secondary donor requirement is neither a disclaimer nor a disclosure as this Court has traditionally defined those terms. It is a new kind of regulation that imposes a substantially greater (and potentially unlimited) burden on core political speech. Consequently, it merits the level of First Amendment scrutiny the Court applies to most other content-based burdens on speech: strict scrutiny.

III. THE COURT SHOULD CLARIFY THAT STRICT SCRUTINY APPLIES TO COMPELLED DISCLOSURES, LIKE SAN FRANCISCO'S, THAT BURDEN ASSOCIATIONAL RIGHTS.

In addition to San Francisco's infringement on No on E's free speech rights, the secondary donor disclaimer infringes on San Franciscans' associational rights. The San Fransisco law clearly has the power to dissolve common, voluntary associations. Here, for instance, one of No on E's top donors—the Ed Lee Dems PAC—withdrew its support from the No on E campaign because San Francisco's mandated disclaimers would give voters the false impression that the PAC's named donors supported the campaign, when those donors might not even be aware of the No on E campaign. Pet. Br. at 2. The dissolution of political groups may even be intended, as one of the City's purposes for its campaign finance laws include starving committees of financial resources. S.F., CAL., CAMPAIGN & GOVERNMENTAL CONDUCT CODE § 1.100(a)(7) ("[l]imit[ing] contributions to candidates and committees" is an express purpose of the law). The Court should review this case to clarify that strict scrutiny applies to regulations that impose burdens on First Amendment-protected freedom to engage in association.

In addition to freedom of speech, the First Amendment protects freedom of association. In the words of this Court, "[i]t is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech."

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460 (1958). Furthermore, "it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to *the closest scrutiny*." *Id*. at 460–61 (emphasis added). The Court's choice of the words "the closest scrutiny" strongly implies that laws burdening freedom of association are subject to the highest possible degree of judicial scrutiny.

However, the Court's language in the context of freedom of association has been somewhat ambiguous. The Court first noted that "the presumption of constitutionality" may not apply in some circumstances, such as when laws infringe upon enumerated constitutional rights, in *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938). The Court called for such laws to be subject to "more exacting judicial scrutiny." *Id*. The Court first used the term "strict scrutiny" four years later in 1942. *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942). But the Court did not yet settle on a consistent use of this phrase, instead using the term "the most rigid scrutiny" two years later in *Korematsu v. United States*. 323 U.S. 214, 216 (1944).

The understanding that freedom of association can be burdened by government mandated disclosure only in the face of a "compelling" government interest was first articulated by Justice Frankfurter in *Sweezy v. New Hampshire*, 354 U.S. 234 (1957). In the words of the Justice, "For a citizen to be made to forego even a part of so basic a liberty as his political autonomy, the subordinating interest of the State must be compelling." *Id*. at 265 (Frankfurter, J., concurring).

Frankfurter's reasoning was shared by the Court. One year later, the Court again faced the question of compelled government disclosure in *NAACP v. Alabama* and embraced Frankfurter's terminology. In the words of the Court:

> We turn to the final question whether Alabama has demonstrated an interest in obtaining the disclosures it seeks from petitioner which is sufficient to justify the deterrent effect which we have concluded these disclosures may well have on the free exercise by petitioner's members of their constitutionally protected right of association. . . . Such a " . . . subordinating interest of the State must be compelling," *Sweezy v. New Hampshire*, 354 U.S. 234, 265 (concurring opinion).

NAACP v. Alabama, 357 U.S. at 463 (first citation omitted).

The understanding that the "closest scrutiny" called for in government compelled disclosure included the requirement that the government's interest be "compelling" was present at the inception of the Court's freedom of association doctrine. Nor was this a one-off decision. The very next year in *Bates v. City of Little Rock*, the Court reiterated the "compelling government interest" standard, citing *NAACP v. Alabama*:

> Decision in this case must finally turn, therefore, on whether the cities as instrumentalities of the State have demonstrated so cogent an interest in obtaining and making public the membership lists of these organizations as to justify the substantial

> abridgment of associational freedom which such disclosures will effect. Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating *interest which is compelling*. *N.A.A.C.P. v. Alabama*, 357 U.S. 449.

Bates v. City of Little Rock, 361 U.S. 516, 524 (1960) (emphasis added). In the same decision, the Court also used the phrase "a legitimate and substantial governmental purpose." *Id*. at 525. In context, there is no reason to suppose that the Court considered this to be anything other than a synonym for "compelling interest."

This interpretation is supported by another freedom of association case that the Court decided the same year. In *Shelton v. Tucker* the Court, without signaling any change to the law, held:

> In a series of decisions this Court has held that, even though the governmental purpose be *legitimate and substantial*, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose.

364 U.S. 479, 488 (1960) (emphasis added). Here, the Court appears to have been shifting its focus to the degree of narrow tailoring that is required (in addition to the government's interest) for a law to pass First Amendment scrutiny.

This process continued in *Louisiana ex rel. Gremillion v. NAACP*. There, the Court, citing

Shelton, emphasized the high level of narrow tailoring required for disclosure laws to pass constitutional muster:

> We are in an area where, as *Shelton v. Tucker* . . . emphasized, any regulation must be highly selective in order to survive challenge under the First Amendment. As we there stated: ". . . even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end *can be more narrowly achieved*." *Id.*, 488.

Louisiana ex rel. Gremillion v. NAACP, 366 U.S. 293, 296 (1961) (emphasis added). Here, the strict scrutiny prong of "least restrictive means" was coming into focus.

The two prongs of what the Court now calls strict scrutiny—a compelling government interest and the least restrictive means—would come together explicitly in the freedom of association context in *NAACP v. Button*. As to the first prong, the Court reiterated:

> The decisions of this Court have consistently held that only a *compelling state interest* in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms . . . . In *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 461, we said, "In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from

> varied forms of governmental action." Later, in *Bates v. Little Rock*, 361 U.S. 516, 524, we said, "where there is a significant encroachment upon personal liberty, the State may prevail only upon showing *a subordinating interest which is compelling*." Most recently, in *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293, 297, we reaffirmed this principle: ". . . regulatory measures . . . no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights."

NAACP v. Button, 371 U.S. 415, 438–39 (1963) (first and second emphases added). Here, the Court stated clearly that a compelling government interest is required in freedom of association cases. But the Court also pointed to a strict narrow tailoring requirement:

> If the line drawn by the decree between the permitted and prohibited activities of the NAACP, its members and lawyers is an ambiguous one, we will not presume that the statute curtails constitutionally protected activity *as little as possible*. For standards of permissible statutory vagueness are strict in the area of free expression.

Id. at 432 (emphasis added). The Court's words "as little as possible" resembles a "least restrictive means" requirement, as does the Court's statement that "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *Id*. at 433.

The Court first approved government compelled disclosure laws in the campaign finance context in

Buckley v. Valeo, and the Court's majority opinion in *Americans for Prosperity Foundation v. Bonta* pointed to *Buckley* in support of the interpretation that exacting scrutiny should be construed as less rigorous than strict scrutiny. Yet *Buckley* and its progeny contain several signs suggesting that exacting scrutiny is equivalent to strict scrutiny.

First, the Court in *Buckley* applied "the same strict standard of scrutiny, for the right of associational privacy developed in *NAACP vs. Alabama*[.]" *Buckley*, 424 U.S. at 75. The Court then cited *NAACP v. Button* and *Sweezy v. New Hampshire*, strongly suggesting the Court was using a compelling interest standard. *Id*. This is further supported by the Court's remarks that the Court of Appeals had found that the government had a "clear and compelling interest" in preserving the integrity of the electoral process. *Id*. at 10. Indeed, the Court would later refer to the government interest asserted in *Buckley* as "legitimate and compelling[.]" *Fed. Election Comm'n v. Nat'l Conservative Pol. Action Comm*., 470 U.S, 480, 496–97 (1985).

When specifically discussing the compelled disclosure requirements at issue in *Buckley*, the Court again referred to "the strict test established by *NAACP v. Alabama*," saying it was "necessary because compelled disclosure has the potential for substantially infringing the exercise of First Amendment rights." *Buckley*, 424 U.S. at 66. It was in this context that the *Buckley* Court introduced the term "exacting scrutiny." *Id*. at 44, 64. Notably, in finding the disclosure requirements constitutional, the Court remarked that disclosure requirements "certainly in most applications—appear to be the *least*

restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist." *Id*. at 68 (emphasis added). In other words, in using both a compelling interest test and a least restrictive means test, the "exacting scrutiny" of *Buckley v. Valeo* is fully consistent with strict scrutiny as it has since been defined by the Court.

This interpretation of *Buckley v. Valeo* as equivalent to strict scrutiny is supported by another freedom of association case decided by the Court the same year. In *Elrod v. Burns*, the Court was emphatic about the high degree of constitutional protection afford to freedom of association—and its explanation of "exacting scrutiny" is revealing. According to the Court:

> It is firmly established that a significant impairment of First Amendment rights must survive *exacting scrutiny*. *Buckley v. Valeo*, 424 U.S., at 64–65; *NAACP v. Alabama*, 357 U.S., 449, 460–461 (1958). "This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct . . . ." *Buckley v. Valeo*, *supra*, at 65. Thus encroachment "cannot be justified upon a mere showing of a legitimate state interest." *Kusper v. Pontikes*, 414 U.S., at 58. *The interest advanced must be paramount, one of vital importance, and the burden is on the government to show the existence of such an interest*.

Elrod v. Burns, 427 U.S. 347, 362 (1976) (first and second emphases added). An interest that is

"paramount" and "of vital importance" would appear to be equivalent to—or even higher than—a "compelling" interest).

The Court did not stop there. It also addressed the prong of narrow tailoring in unequivocal terms:

> "[A] State may not choose means that unnecessarily restrict constitutionally protected liberty. 'Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.' *If the State has open to it a less drastic way of satisfying its legitimate interests*, it may not choose a legislative scheme that broadly stifles the exercise of fundamental personal liberties." . . . In short . . . *it must further some vital government end by a means that is least restrictive of freedom of belief and association* in achieving that end, and the benefit gained must outweigh the loss of constitutionally protected rights.

Id. at 362–63 (citations omitted) (first and second emphases added). Requiring a law to have "a vital government end" and to be the "least restrictive of freedom of belief and association" to pass constitutional muster is as excellent a description of strict scrutiny as any other description provided by this Court.

When examining the foundational freedom of association cases decided by this Court, it is not difficult to understand why at least one justice believes that "the bulk of 'our precedents . . . require application of strict scrutiny to laws that compel disclosure of protected First Amendment association." *Bonta*, 141 S. Ct. at 2390 (Thomas, J., concurring). At the very least,

"nothing in those cases can be understood as rejecting strict scrutiny. If anything, their language and reasoning—requiring a compelling interest and a minimally intrusive means of advancing that interest—anticipated and is fully in accordance with contemporary strict scrutiny doctrine." *Id.* at 2391 (Alito, J., concurring).

Given the risks of a chilling effect on core political speech and association, and mindful of the Court's wisdom that "First Amendment freedoms need breathing space to survive," *Button*, 371 U.S. at 433, the Court should grant certiorari to further examine the original meaning of "exacting scrutiny" and its applicability to government burdens on First Amendment associational rights.

CONCLUSION

For the foregoing reasons, and those described by the Petitioners, this Court should grant the petition.

Respectfully submitted,

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