Docket No. 24-2933

In the

United States Court of Appeals

For the

Ninth Circuit

AMERICANS FOR PROSPERITY and
AMERICANS FOR PROSPERITY FOUNDATION,

Plaintiffs-Appellants,

v.

DAMIEN R. MEYER, in his official capacity as Chairman of the Citizens Clean Elections Commission, et al.,

Defendants-Appellees,

VOTERS' RIGHT TO KNOW and
ATTORNEY GENERAL OF THE STATE OF ARIZONA,

Intervenors-Defendants-Appellees.

Appeal from a Decision of the United States District Court for the District of Arizona, No. 2:23-cv-00470-ROS · Honorable Roslyn O. Silver

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INTRODUCTION

Appellees acknowledge that Proposition 211 imposes "new" and "unique" disclosure requirements on core political speech. VRTK Br. 1, 13, 22, 29. Yet Appellees fail to square those unprecedented intrusions with venerable First Amendment principles.

As an initial matter, Appellees do not dispute that Proposition 211 compels serial layers of disclosure in pursuit of the supposed "original sources" of specified campaign spending, while indifferent throughout to whether the exposed "donors" even knew about—let alone supported—the ultimate political advocacy. State Br. 10. Appellees thus tacitly concede that Proposition 211 pursues an interest in donor exposure for its own sake, different from meaningfully "aid[ing] the voters in evaluating those who seek [political] office." *Buckley v. Valeo*, 424 U.S. 1, 66–67 (1976) (per curiam). Under decades of Supreme Court precedent, this claimed interest cannot suffice.

Even if Proposition 211 furthered a permissible interest to some degree, however, Appellees fail to refute the relative excessiveness of the law's burdens. The vague, sweeping triggers for disclosure—including the provision that applies whenever a communication could be construed

as advocating for the recall of an elected official, or the catchall provision capturing "partisan campaign activity"—ensnare a vast sweep of speech. A.R.S. § 16-971(2)(a)(v) & (vi). Seemingly recognizing the problem, Appellees scramble to limit the law's scope, but their made-up narrowing constructions are neither binding nor rooted in statutory text. While Appellees characterize the novel opt-out provision as limiting Proposition 211's burdens, it only deepens the law's chill, requiring covered entities to sit silent while pressuring donors to either opt out or face exposure. All of those burdens are further compounded by the looming specter of enforcement actions driven by private litigants, which Appellees do nothing to diminish.

Appellees also fail to justify the law's lack of tailoring under the "exacting scrutiny" applied by the Supreme Court in *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021)—a decision that Appellees continue to elide after the district court flatly ignored it. Tellingly, Appellees concede that the law "*could have* been more narrowly tailored," State Br. 60 (quotation omitted), only to argue as though the law's loose fit is close enough for horseshoes. As *Bonta* and other precedents teach, however, the requirement of exacting scrutiny is

designedly *exacting*. It cannot be satisfied by Proposition 211, which is strikingly overbroad in one respect after another—including the required disclosures and triggers, the presence and contours of the opt-out provision, and the private-enforcement mechanism.

Compounding their errors, Appellees follow the district court's lead in demanding inordinate detail to substantiate Appellants' as-applied challenge, even at the pleading stage. Further, Appellees fail to grapple with how Proposition 211 compels association in violation of another branch of First Amendment doctrine. At bottom, none of the federal cases that Appellees cite has ever upheld a law that even approximates, in kind or degree, Proposition 211's draconian disclosure regime. This Court should reverse the district court's blanket upholding of Arizona's unprecedented, outlier measure.

ARGUMENT

I. Proposition 211 Is Facially Invalid Under The First Amendment.

Appellees err serially in purporting to defend Proposition 211's facial constitutionality. At the threshold, Appellees wrongly assert that Appellants failed to allege that "there are a substantial number of unconstitutional applications" of Proposition 211. VRTK Br. 13; *see* State

Br. 28. In actuality, Appellants specifically alleged that a "substantial number of [Proposition 211's] applications are unconstitutional," ER-113 (quotation omitted), providing numerous examples across 28 pages of their complaint, ER-114–41. Far from being "speculative" or "hypothetical," these examples flow directly from Proposition 211's "facial requirements." VRTK Br. 15 (quotation omitted).

Ultimately, Appellees do not rebut Appellants' argument that Proposition 211 fails every part of the exacting scrutiny framework. Despite Appellees' attempt to manufacture a suitable justification, the law is not substantially related to any cognizable government interest. By no means would any valid interest (if one exists) correspond with the law's profound burdening of First Amendment rights. Finally, Proposition 211's sweeping application belies any claim of narrow tailoring.

A. Appellees' Position Mischaracterizes Both First Amendment Case Law And Appellants' Arguments.

To defend the district court's decision, Appellees distort the Supreme Court's free speech jurisprudence and whistle past crucial, established limitations on compelled disclosure laws. At the same time, Appellees rely on inapposite and erroneous lower court decisions and

misconstrue Appellants' arguments about the unique defects infecting Proposition 211.

1. Appellees Distort *Bonta*.

Most notably, Appellees subvert the Supreme Court's ruling in *Bonta*. In a case implicating the same issues as this one (and indeed, one of the same parties), the Supreme Court affirmed the commands of the First Amendment in minimizing compelled disclosures. The Court made clear that "government may regulate in the [First Amendment] area only with narrow specificity," "[b]road and sweeping state inquiries" into a person's "beliefs and associations" are disfavored, and "First Amendment freedoms need breathing space to survive." *Bonta*, 594 U.S. at 609–10 (quotations omitted). Applying exacting scrutiny, the Court carefully studied the State's purported interest, its relationship to the disclosure requirement, and the burdens imposed by compelled disclosure. *Id.* at 611–19. In holding that the disclosure requirement failed such scrutiny, the Court emphasized that the State was "not free to enforce *any* disclosure regime" and must have instead considered "less intrusive alternatives." *Id.* at 613. In sum, *Bonta* stands for the principle that

compelled disclosure is the exception, not the rule, and such disclosures must be carefully tailored to a sufficiently important interest.

Throughout their briefing, however, Appellees flout both *Bonta* and the principles it articulated. First and foremost, Appellees attempt to narrow *Bonta*'s holding to "charitable organizations." State Br. 36–37; *see* VRTK Br. 51–52. But nothing in *Bonta* cabined its reasoning to charitable organizations. To the contrary, the Supreme Court *specifically rejected* this distinction. One petitioner argued that different scrutiny should apply to a law that intrudes on the "associational rights of charities" compared to one arising in the "electoral context." *Bonta*, 594 U.S. at 607. But the Court made clear that, as previously "explained in *NAACP* v. *Alabama*, 'it is immaterial' to the level of scrutiny 'whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters.'" *Id.* at 608 (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460–61 (1958)). "Regardless of the type of association," the Court concluded, "compelled disclosure requirements are reviewed under exacting scrutiny." *Id.* Appellees' cramped reading of the Court's decision is thus refuted by *Bonta* itself.

More broadly, Appellees' appeal to majority rule contravenes *Bonta* and other seminal First Amendment precedents. Appellees repeatedly rely on the fact that a majority of Arizona voters approved Proposition 211, emphasizing that 72% voted for it. VRTK Br. 14, 34, 49; State Br. 27, 29, 63; *see also* VRTK Br. 17–19 (asserting disclosure promotes democracy and self-government). But majority preference never trumps constitutional rights, short of a constitutional amendment. Indeed, *most* speech restrictions are backed by majorities, which is why such restrictions generate concrete cases and controversies justiciable by the courts. By Appellees' perverse theory, countless First Amendment precedents—from *Bonta* to *NAACP*—would have been decided the opposite way upon counting ballots. *See Bonta*, 594 U.S. 595; *NAACP v. Alabama*, 357 U.S. 449; *Shelton v. Tucker*, 364 U.S. 479 (1960); *see also W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943) ("The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities . . . .").

2. Appellees' Cited Cases Are Inapposite And Unpersuasive.

While discounting and distorting *Bonta*, Appellees elevate lower court decisions that upheld other disclosure laws. *See No on E v. Chiu*, 85 F.4th 493 (9th Cir. 2023); *Smith v. Helzer*, 95 F.4th 1207 (9th Cir. 2024); *Gaspee Project v. Mederos*, 13 F.4th 79 (1st Cir. 2021). That reliance is misplaced, as none involved laws or issues fairly approximating those presented here, and at least one of those decisions reflects the same flawed reasoning Appellees deploy.

As to *No on E*, Proposition 211 sweeps much more broadly than the San Francisco disclosure law upheld there. Because the look-through provision in *No on E* went only one layer deep, *see* 85 F.4th at 498–99 (citations omitted), this Court had no reason to consider whether the government's informational interest could justify a disclosure law with potentially endless reach, like Proposition 211. Nor did the law in *No on E* apply beyond political committees, *see id.*, whereas Proposition 211 applies to all groups and donors, no matter how far removed from electioneering, *see* A.R.S. § 16-971(2) & (7). Moreover, the plaintiffs in *No on E* challenged only the city's disclaimer requirements, not the disclosure requirements (which was critical on appeal). 85 F.4th at 510–

11. Finally, it bears noting that *No on E* merely affirmed the denial of a preliminary injunction based on the record before the Court. *Id.* at 511. By contrast, Appellants were dismissed without any opportunity to take discovery or develop a factual record. ER-36.

As for *Smith*, Appellees concede that the plaintiffs did not challenge the look-through provision on appeal, such that the panel had no occasion to speak to this key issue. State Br. 33; *see Smith*, 94 F.4th at 1212. As for *Gaspee*, the out-of-circuit decision is not binding and exemplifies the core errors made by Appellees. Most notably, the panel failed to account for how an opt-out provision burdens associational rights. *See infra* Section I.C.2.

Finally, Appellees cite *Center for Arizona Policy Inc. v. Arizona Secretary of State*, 560 P.3d 923 (Ariz. Ct. App. 2024), where an Arizona state court held that Proposition 211 does not violate the First Amendment. But the challengers in that case have sought review in the Arizona Supreme Court, which just granted review in a related state-law challenge to Proposition 211.[1] Even on the merits, the Arizona Court of Appeals' decision followed the errors of the district court and Appellees:

[1] *See Montenegro v. Fontes*, No. CV-24-166-PR (Ariz.).

ignoring *Bonta*'s teaching about compelled disclosure being the rare exception; improperly blessing a generalized informational interest in extracting information, not considering ways that Proposition 211's look-through provision threatens to confuse voters; and relying on cases like *No on E* that are far afield.

3. Invalidating Proposition 211 Would Not Undermine Traditional Disclosure Laws.

Throughout its briefing, VRTK repeatedly concedes that Proposition 211 is a "new" and "unique" law. VRTK Br. 1, 13, 22, 29. Nevertheless, VRTK analyzes the statute's constitutionality as if it were a run-of-the-mill disclosure law, asserting that Appellants' objections somehow undermine "almost all electoral disclosure laws." VRTK Br. 45–51 (cleaned up). That blinks reality. Rather, it is Appellees who seek to broaden campaign finance disclosures in unprecedented ways and degrees, far exceeding what the Supreme Court has endorsed.

To begin, Proposition 211's triggers combine to sweep more broadly than any disclosure law ever has. As elaborated below, these facially overbroad triggers threaten to chill speech far removed from electoral advocacy and facially cover *any* criticism of *any* official at *any* time. Still worse, Proposition 211's private-enforcement mechanism invites broad,

aggressive interpretations of the law's provisions without regard for Appellees' jury-rigged-for-litigation interpretations.

Compounding problems is the law's coverage of virtually *every* form of media, including "internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing or another distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium." A.R.S. § 16-971(17)(a).

Finally, Proposition 211's novel look-through provision imposes daunting, unique burdens on speakers even as it threatens to confuse and mislead voters. A typical disclosure law imposes discrete burdens on the donor (disclosing personal information) and the recipient (reporting of same). Under Proposition 211, by contrast, direct donors must also provide the information of all upstream "donors" as well. A.R.S. § 16-973(A). In requiring all of that, the look-through provision uniquely imperils donors' constitutional rights.

Despite all this, Appellees and their amici accuse Appellants of assailing settled law. First, VRTK accuses Appellants of suggesting that "a potential drop in donations could suffice to declare a disclosure statute facially unconstitutional," thereby threatening "virtually all campaign

finance disclosure laws." VRTK Br. 46. But Appellants never suggested that a potential drop in donations can, by itself, invalidate a law. Rather, Appellants alleged that Proposition 211 is facially invalid under exacting scrutiny as articulated in *Bonta*. The adverse effect that public disclosure has on contributions is simply one factor in evaluating the law's validity, as VRTK's own citation to *Buckley* makes clear. *See* VRTK Br. 45 (quoting *Buckley*, 424 U.S. at 68 ("It is undoubtedly true that public disclosure of contributions . . . will deter some individuals who otherwise might contribute. . . . These are not insignificant burdens on individual rights . . . .")).

Next, VRTK asserts that "[m]uch" of Appellants' argument "applies to direct contributors, not just indirect original sources," thereby threatening traditional disclosure laws. VRTK Br. 46. But traditional disclosure laws have a closer nexus to electioneering. Proposition 211—a "unique" law by VRTK's own admission, VRTK Br. 1, 13, 22—rests on the spurious assumption that a direct donor's speech can be lumped together with an "original donor's" contribution anywhere upstream as though both share the identical electioneering intent. Saying that assumption is flawed does not erode the mine run of disclosure laws.

Traditional laws exhibit *some* fit, however imprecise, between the donor's intent in making a gift and the recipient's campaign spending. Proposition 211 breaks new ground by dispensing with *any* requirement of knowledge or intent, so that there is *no* such fit.

Amicus Citizens for Responsibility and Ethics in Washington ("CREW") insists that Appellants "[u]nderstate" the scope of federal law, under which a political committee must disclose contributors even if they do not agree with each candidate the committee supports. CREW Br. 7–10. But even CREW acknowledges that Proposition 211's look-through provision "go[es] further," *id.* at 24, requiring the disclosure of unwitting donors who would have nothing to fear from federal law.

Finally, VRTK attributes to Appellants the suggestion that "even direct donor information is of little value," which would threaten "virtually all campaign finance disclosure laws." VRTK Br. 49. But Appellants did not argue that direct donor information should never be disclosed. Exacting scrutiny requires a contextual analysis of interests, burdens, and tailoring, all considered in relation to each other. Under this framework, Appellants discussed the relevance of individual donor information to challenge the district court's assumption that the problem

with "creative[ly]" named donors is so vexing (and thus the State's asserted information interest is so strong) as to justify the uniquely overbroad and burdensome reach of Proposition 211. Br. 40 (quoting ER-20).

B. Proposition 211 Is Not Substantially Related To A Sufficiently Important Government Interest.

Appellees contend that Proposition 211 is justified by two sufficiently important government interests: (1) informing voters and (2) combating corruption. VRTK Br. 16–22; State Br. 23–40. But Appellees' arguments on both fronts depart from First Amendment precedent, eschew any limiting principle, and enable the government to compel the intrusive, burdensome disclosure of limitless information.

1. Appellees Stretch The State's Informational Interest Past Its Breaking Point.

Relying on linguistic sleight of hand, Appellees assert that the "informational interest alone justifies" Proposition 211. State Br. 23; *see* VRTK Br. 21. According to Appellees' tautology, disclosure laws would always be constitutional so long as they disclose information for voters' consumption. But Appellees' formulation of the informational interest is as dangerous as it is indefensible.

As articulated by the Supreme Court, the State's accepted interest in informing voters is carefully circumscribed. The State has no generalized interest in providing any potentially "relevant information." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 348 (1995). Rather, the information must "aid the voters in evaluating those who seek [political] office" and monitoring their performance while in office. *Buckley*, 424 U.S. at 66–67. Otherwise, any disclosure or disclaimer would be justified regardless of its nexus to electioneering—a position that even Appellees disown. *See* State Br. 35 n.5 (conceding that the disclosure of "medical history, tax returns, and Social Security numbers" is unjustified).

Enforcing meaningful boundaries on the government's informational interest is imperative given the competing values implicated by disclosure laws. As the D.C. Circuit observed, "[b]oth an individual's right to speak anonymously and the public's interest in contribution disclosures" are "firmly entrenched in the Supreme Court's First Amendment jurisprudence" yet "fiercely antagonistic." *Van Hollen, Jr. v. FEC*, 811 F.3d 486, 500 (D.C. Cir. 2016). Accordingly, the Supreme

Court has upheld only those laws that are carefully drawn so as to achieve a close fit relative to campaign spending. *See* Br. 32–36.

Here, in contrast, Proposition 211's disclosures are untethered from electioneering. Its broad triggers sweep in advocacy far removed from any election. And the law ties "original donors" with downstream positions, organizations, and candidates, regardless of whether the "original donor" actually supports them or, for that matter, has even the foggiest awareness of them. Far from helping voters intelligently evaluate political candidates, *see Buckley*, 424 U.S. at 66–67, such attenuated information stands to confuse or distort. Appellees betray this fundamental fallacy in arguing that Proposition 211 serves a legitimate informational interest by reporting the "true source of contributions." VRTK Br. 20. Upstream donors cannot fairly be deemed the "true source" of electioneering absent intent or even knowledge of how their funds are later used. Br. 37–38. Nor does reporting of an unwitting upstream donor's employer provide meaningful informational cues. *Contra* State Br. 53.

Appellees respond that Proposition 211 "isn't about whether the upstream donors have knowledge" but rather "about the voters wanting

to know the original source of monies." State Br. 28. But they cannot explain how the identities of unwitting "original source" donors could possibly help voters "accurately evaluate campaign advertisements for potential biases or hidden political agendas," VRTK Br. 21—especially given the law's unbounded reach.

The State asserts that "[t]he voters enacted" Proposition 211 simply because they "want to know where the money came from." State Br. 27. But knowing "where money c[o]me[s] from," without more, is insufficient, and it would open the door to troubling results. By this theory, Arizona could just as easily require speakers to supply information ranging from bank statements to inheritance receipts, 1099-MISCs to winning lottery tickets, as showing "where the money c[o]me[s] from" on the basis that *those* constitute the "original sources." Nor is there any ostensible reason why Proposition 211 would stop short of business customers and commercial counterparties, whose payments could be dubbed "where the money c[o]me[s] from."

As VRTK recognizes, the ultimate justification for disclosures and disclaimers is that they help "hold corporations and elected officials accountable for their positions and supporters." VRTK Br. 17–18

(quoting *Citizens United v. FEC*, 558 U.S. 310, 370 (2010)). But identifying upstream sources will not aid "accountab[ility]" unless earmarking or some indicia of knowledge or intent ties the sources to electioneering. To suppose otherwise requires an assumption "divorced from reality." *McCutcheon v. FEC*, 572 U.S. 185, 216 (2014) (plurality).[2]

In short, the bare fact of "where the money came from" falls outside of any informational interest endorsed by precedent. If adopted, the State's position would permit the government to collect any and all information, no matter how marginally "relevant." *McIntyre*, 514 U.S. at 348. The result would be the compelled-disclosure exception swallowing the *Bonta* rule. Absent earmarking or any indicia of intent, Proposition 211's disclosures are impermissibly untethered from campaign spending.

Appellees argue at length that Appellants' cited cases do not hold earmarking to be strictly required. VRTK Br. 40–45; State Br. 60–62. As VRTK correctly observes, however, Appellants never "assert[ed]" that

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[2] Appellees attempt to distinguish *McCutcheon* as applying to contribution limits, not disclosures. VRTK Br. 48 n.17; State Br. 38. But *McCutcheon* rejected the notion that upstream donors would use intermediaries to circumvent campaign finance laws. 572 U.S. at 212–16 (plurality). It thus undermined any informational interest in parsing chains of donations to discover the "true source" of electioneering—at least absent some indicia of knowledge or intent.

earmarking is a "constitutional *requirement*" in every situation. VRTK Br. 42. Rather, "an earmarking restriction" is "*relevant* to a statute's tailoring," as VRTK admits. *Id.* Here, the lack of earmarking or a similar restriction is telltale and leaves Proposition 211 to sweep categorically beyond electioneering.

As Appellants noted, *see* Br. 36, earmarking requirements or similar tethering to electoral activity have been consistent hallmarks of the campaign finance regulations upheld by the Supreme Court. Although those decisions do not expressly discuss these requirements, *see* VRTK Br. 41; State Br. 61, the Court's opinions should be understood in the context of the laws they upheld. For example, in *McConnell* and *Citizens United*, the Court upheld provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA"). *McConnell v. FEC*, 540 U.S. 93, 194–95 (2003); *Citizens United*, 558 U.S. at 366–71. And BCRA requires disclosure of either segregated accounts consisting "solely" of funds given "directly to th[e] account for electioneering communications," 52 U.S.C. § 30104(f)(2)(E), or contributions "made for the purpose of furthering electioneering communications" per FEC regulation, Electioneering

Communications, 72 Fed. Reg. 72899, 72910–11 (Dec. 26, 2007) (interpreting 52 U.S.C. § 30104(f)(2)(F)).[3]

Appellees also argue that the State's informational interest extends to ballot measures. VRTK Br. 18–19; State Br. 24–25. While that may be true generally, it cannot save Proposition 211. Because the law's disclosures are not tethered to any knowledge or intent by upstream donors to influence an election, Proposition 211 does not aid voters in "knowing the sources of election messaging" surrounding ballot measures. VRTK Br. 19.

2. Appellees Distend The State's Anticorruption Interest.

Appellees also push the State's anticorruption interest past its constitutional breaking point. Indeed, the State directly contradicts binding Supreme Court precedent on this interest's relevance to popular initiatives. The State insists that the anticorruption interest is "not . . .

[3] To be sure, the FEC promulgated this regulation in 2007, four years after *McConnell*. As the D.C. Circuit noted, however, the FEC's regulation "is more than just a permissible construction of BCRA; it's a persuasive one." *Van Hollen*, 811 F.3d at 493. As the court explained, "the FEC's purpose requirement is consistent with the purpose-laden definition of 'contribution' set forth in FECA's very own definitional section." *Id.*

limited" to candidate elections but extends to "ballot measures." State Br. 40. But in *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), which struck down a law restricting corporate contributions to certain ballot initiatives, the Court made clear that "[t]he risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue." *Id.* at 790 (citation omitted).

The State wrongly relies on *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827 (9th Cir. 2014), to argue the opposite. State Br. 39. But no decision by a circuit court can overrule Supreme Court precedent. Nor does *Bowen* conflict with *Bellotti*. In *Bowen*, which involved disclosures for ballot committees, this Court briefly referred to "deterring corruption" as part of the state's interest in the "integrity of the electoral process," citing *John Doe No. 1 v. Reed*, 561 U.S. 186, 197–98 (2010). *See Bowen*, 752 F.3d at 832. Similarly, in *Reed*, the Supreme Court explained that "the integrity of the electoral process" was furthered by disclosing referendum-petition signatories—not donors—to help "combat[] fraud," "ferret out invalid signatures," and "promot[e] transparency and accountability." 561 U.S. at 198.

This interest is far removed from what the State asserts here. Nowhere does the State suggest that Proposition 211 prevents "fraud" or mistakes in the "initiative process." *Id.* at 197 (quotation omitted). Instead, the State claims that Proposition 211 "shows who stands to benefit from election-related issues" by "shining a light on large contributors and original donors." State Br. 40. This gloss on the anticorruption "interest" finds no support in caselaw and defies both *Bellotti* and *Reed*.

Appellees also distort the anticorruption interest's application to candidate elections. For Appellees, it is inconsequential that Proposition 211 does not concern "money given directly to candidates." State Br. 40 (quotation omitted); VRTK Br. 50. Citing the Arizona Court of Appeals' decision in *Center for Arizona Policy*, Appellees assert that "donors may support a candidate by contributing to an independent entity that supports the candidate's policy positions." State Br. 40 (quoting 560 P.3d at 935). But this contradicts *Citizens United*, where the Supreme Court noted that "independent expenditures do not lead to, or create the appearance of, *quid pro quo* corruption." 558 U.S. at 360; *see also id.* (noting that "there is only scant evidence that independent expenditures

even ingratiate," and "[i]ngratiation and access, in any event, are not corruption").

3. VRTK Fails To Show How Proposition 211 Helps Detect Violations Of The Law.

In two throwaway sentences, VRTK (unlike the State and district court) asserts that Proposition 211's disclosures relate to the State's interest in "gathering the data necessary to detect violations of the law." VRTK Br. 20–21. But VRTK does not specify any violations that Proposition 211's disclosures would help detect, let alone explain how Proposition 211 is narrowly tailored towards the same. *Cf. Dep't of Com. v. New York*, 588 U.S. 752, 783–84 (2019) (rejecting a similar justification for collecting information where the agency did not appear to truly need or want the information to detect statutory violations). Absent meaningful explication, such cursory justification cannot suffice.

C. Any Faint Interest Cannot Justify The Profound Burdens On First Amendment Rights.

Proposition 211 applies to nearly every form of communication and requires onerous disclosures, including donors' occupations and employers (subjecting those employers to doxing based on the unintended actions of their employees). Nevertheless, Appellees discount its import,

claiming that it imposes "minimal or no burdens on First Amendment rights." State Br. 41; *see* VRTK Br. 13, 23. To the contrary, the law seriously burdens the freedom of speech, particularly given its overbroad triggers, unusual opt-out provision, and private-enforcement mechanism. These daunting burdens vastly exceed any qualifying state interest that may arguably be in play.

1. Proposition 211's Overbroad Triggers Impose Significant Burdens.

A strikingly broad definition of "campaign media spending" triggers Proposition 211's formidable burdens.

A.R.S. § 16-971(2)(a)(iii) sweeps in references to political candidates from April or May to November of every even year, including during the legislative session. Without denying this wide temporal sweep, Appellees cite cases involving narrower and disjointed periods. State Br. 55–56 (referencing a similar provision from *Gaspee* that triggered 30 days before a primary and 60 days before a general election). Such cases cannot justify the much broader sweep of Proposition 211.

A.R.S. § 16-971(2)(a)(iv) triggers disclosure if a communication "promotes, supports, attacks or opposes" an initiative or referendum at any time. Appellees echo the district court in asserting that the

communication must expressly name the initiative to trigger coverage. State Br. 56 (citing ER-26); VRTK Br. 38. But this narrowing construction finds no basis in the law's text. In fact, the text confirms its expansive reach because the *preceding* paragraph applies *only* where a subject is "clearly identified." *See* A.R.S. § 16-971(2)(a)(iii) (covering communications that mention a "clearly identified candidate"). By omitting any such restriction, Section 16-971(2)(a)(iv) contradicts Appellees' sanitized reading.

A.R.S. § 16-971(2)(a)(ii) triggers disclosure when a communication "promotes, supports, attacks, or opposes" a candidate within "six months preceding an election involving that candidate," which could be nearly the *entire calendar year* in even-numbered years.

And ***A.R.S. § 16-971(2)(a)(v)*** triggers coverage *whenever* a communication advocates for or against a recall. Appellees argue that the definite article "the" before "recall" narrows this trigger to only recalls that are already in progress. State Br. 57. But that is not what the statute says. Even if the article "the" is "particularize[d]," *id.* at 57 (quotation omitted), that would not rule out coverage of a "particular" recall for a "particular" candidate just because "the" recall has not yet

been formally filed. Here again, the risk of private suits to enforce broader, more chilling interpretations looms large.

A.R.S. § 16-971(2)(a)(vi) serves as a catchall trigger for "other partisan campaign activity," the vagueness of which can easily be weaponized by political rivals. Like the district court, *see* ER-27, Appellees invoke other examples in this provision ("voter registration" and "partisan get-out-the-vote activity") as though they narrow its scope, State Br. 57–58; VRTK Br. 37. But Appellees ignore the provision's telltale definition, which is designedly broad—"An activity or public communication that supports the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party . . ." A.R.S. § 16-971(2)(a)(vi). Against the backdrop of this broad definition, the sweep of "other partisan campaign activity" extends further than Appellees acknowledge. And, again, the law's private-enforcement mechanism only compounds chill to the extent there is room for differing interpretations.

A.R.S. § 16-971(2)(a)(vii) extends the law's reach to preparatory activity outside of Arizona. Appellees argue that this would not apply to certain online stories and that it does not matter where the preparatory

activity occurs. State Br. 58; VRTK Br. 39. But Appellees do not deny that national organizations conduct multi-state issue advocacy backed by preparatory activity, and it remains unclear how Proposition 211 requires that activity to be disclosed—*e.g.*, how can one isolate spending for Arizona? Moreover, Appellees, like the district court, *see* ER-28–29, misread the website exemption, which does not exclude communications posted to websites unless the group itself is a web-based news publisher, *see* A.R.S. § 16-971(2)(b)(i).

In defending these overbroad triggers, Appellees invoke the law's severability clause. VRTK Br. 40 n.12. Yet, the severability clause is only "an aid" that cannot "insulate" Proposition 211's constitutionality from facial review, *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 625 (2016) (quotation omitted), especially given the many ways in which it violates the First Amendment, *cf. Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 330 (2006) ("It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside to announce to whom the statute may be applied.") (cleaned up). Here, the Court should decline to sever specific provisions of Proposition 211—especially given the

absence of any granular indications as to how voters viewed one aspect of this ballot measure as compared to another when voting "yes" on the whole.

2. Proposition 211's Opt-Out Provision Is Substantially Burdensome.

As Appellants explained, the opt-out provision imposes heavy First Amendment burdens. Br. 46–49. Absent express consent, covered entities may be forced to sit silent for 21 days while donors decide whether to "opt out." Appellees assert that donors could always "consent immediately." State Br. 42; *see* VRTK Br. 25. But this overlooks how many individuals give to organizations they trust precisely to outsource such on-the-ground decision-making—and there may be no incentive for donors to respond quickly, if at all.

Appellees' response also ignores the opt-out's central burden: By requiring up to 21 days' notice, Proposition 211 puts the right to speak—including on time-sensitive issues—at the mercy of third parties. Even if donors give "immediate[]" consent, First Amendment rights are still subject to a burden that would not otherwise exist. And sometimes donors will fail to respond, requiring covered entities to "sit silent and muzzled for up to 21 days." ER-91.

Appellees respond that covered entities could provide notice "before" receiving a donation. VRTK Br. 25. According to VRTK, a covered entity should "simply provid[e] the required notice in *all of its solicitations*" in case it "suddenly" needs to speak later. *Id.* at 26 (emphasis added; quotation omitted). This proposed "solution" lays bare the gravity of Proposition 211's burden. Because no group can predict whether it will need to speak later, *all* organizations will need to change "*all* of [their] solicitations" or risk Proposition 211's muzzle. *Id.* (emphasis added). Not only does this shackle First Amendment rights, but it also threatens to reshape charitable solicitations nationwide.

The Commission's rule makes these problems worse by requiring that covered entities honor opt-out requests *after* the 21-day period expires. A.A.C. R2-20-803(E). As Appellants noted, this rule does not explain "what a covered entity should do if it spends a donor's money after the initial notice period and the donor thereafter decides to opt out." Br. 48.

Tellingly, Appellees give conflicting answers. The State asserts that, if an opt-out request is received after 21 days, "the covered entity won't use the donor's funds on future public communications and no

further disclosure will be required." State Br. 43. But VRTK insists "Commission staff have clarified that, although the rule permits a donor to request to opt out after twenty-one days, a covered person is not obligated to honor that request." VRTK Br. 9 n.3 (citing Ariz. Admin. Register, Vol. 29, Issue 45 at 3526 (Nov. 10, 2023)). Far from "clarif[ying]" the issue, however, the cited commentary simply states that Commission staff are "not certain why" such requests "would have to be honored or could be honored retroactively." Ariz. Admin. Register, Vol. 29, Issue 45 at 3526. Nor does the Commission speak for private enforcers, who can champion their own more expansive interpretations and make them binding through the Arizona courts.

It speaks volumes that Proposition 211's defenders and staff cannot align on what the law requires. For regulated entities that cannot afford the exposure resulting from any arguable noncompliance, "Proposition 211 compounds uncertainty and chill." Br. 48.

Appellees also deny that the law "prohibits using the remaining funds in [a group's general] treasury when a donor opts out." State Br. 54. According to them, "if an organization has $10 million in its general treasury," and "a donor who contributed $10,000 chooses to opt out," then

the group "may still spend $9,990,000." *Id.* But Appellees fail to cite provisions that so provide. Absent a binding judicial construction from an Arizona state court, Appellees' mere say-so cannot dispel Proposition 211's chilling implications.

More broadly, the opt-out subverts the very purpose of free association by "*actively pressur[ing]* donors to opt out" or else "suffer damaging disclosure." Br. 46. VRTK disagrees, insisting that Proposition 211's "notice and opt-out features give donors a *choice*." VRTK Br. 24. But affording donors a "choice" between opting out or facing disclosure is no less burdensome and no more constitutional than telling NAACP members that they could either disassociate or else disclose their identities to Alabama.

3. Proposition 211's Private Enforcement Mechanism Chills Free Speech.

As explained above, *supra* Section I.C.1, Appellees try to cabin Proposition 211 through narrowing constructions divorced from text. Not only do these constructions impermissibly rewrite the law, but they also do nothing to constrain private enforcers—who will be free to insist that Proposition 211 be enforced according to its literal breadth.

Appellees respond by stressing trivialities that make no substantive difference. VRTK Br. 58; State Br. 47–49. For example, individuals cannot directly sue alleged violators—but they can sue to compel enforcement by the Commission. A.R.S. § 16-977(C). In reviewing such complaints de novo, courts afford *no* deference to the Commission's decision or its advisory opinions, which Appellees repeatedly trumpet. *Id.*; *see also* A.R.S. § 12-910(F) (requiring Arizona courts to review agency action without legal deference). And where an alleged penalty exceeds $50,000—a threshold easily surpassed in light of the available trebling of penalties, *see id.* § 16-976(A)—the Commission may not even invoke its prosecutorial discretion, *id.* § 16-977(C).

Nor is it sufficient to note, as Appellees do, that a court will decide the scope of Proposition 211. State Br. 48. Appellants never suggested that private enforcers will replace judges in resolving individual complaints. Rather, the mechanism allows hundreds or thousands of enforcers to bring complaints based on legal theories broader than any embraced by the Commission, thereby sowing chill—particularly while litigation looms, litigation holds are maintained, and uncertainty persists about what courts may ultimately decide. Even assuming a private

complainant loses, the proceeding itself can be disruptive, costly, and damaging, especially when filed near an election. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 152–53, 164–65 (2014).

Combined with the other burdens, the private-enforcement mechanism increases the degree to which Proposition 211 "hinders," "represses," "enervates," and even "extinguishes" speech. 4 Alexis de Tocqueville, *Democracy in America* 140 (Eduardo Nolla ed., James T. Schleifer trans., Liberty Fund 2010) (1840). Under Proposition 211, the only way that ordinary citizens can stay below the radar amidst the hyper-polarized political fray is by staying silent and distancing themselves from any organization that might support any other organization . . . that might one day speak to an issue in Arizona.

4. Proposition 211's Burdens Outweigh Any Qualifying State Interests.

For Proposition 211 to satisfy the requirements of exacting scrutiny, the State's asserted interests must "reflect the seriousness of the actual burden on First Amendment rights." *Bonta*, 594 U.S. at 607 (quotation omitted). Given that Proposition 211 is unrelated to an important government interest, *supra* Section I.B, while imposing

serious burdens on free speech, *supra* Section I.C, it cannot withstand scrutiny.

D. Proposition 211 Is Not Narrowly Tailored.

Appellees contend at length that Proposition 211 is narrowly tailored to the State's asserted interests. State Br. 49–65; VRTK Br. 22–45. But their responses reveal how the law indiscriminately cues off of spurious links in donor chains. Nor do Appellees rebut tailoring defects regarding the opt-out, the lack of any major purpose requirement, the monetary thresholds, and underinclusivity.

1. Proposition 211's Disclosures And Disclaimers Are Overbroad.

As explained in Section I.B.1, Proposition 211's unique look-through provision lacks any requirement for earmarking or intent. As a result, the law's overbroad disclosures and disclaimers operate to tie "original donors" with downstream positions, organizations, and candidates, regardless of whether the "original donor" actually supports them or not. Proposition 211 thereby ensnares unwitting donors who may have no connection to Arizona and no knowledge of Proposition 211's requirements.

2. Proposition 211's Opt-Out Provision Does Not Tailor The Law.

Appellees claim that the opt-out "help[s] to ensure" that Proposition 211 is "tailored to include donors who choose to engage in election-related speech." State Br. 52 (quotation omitted). As Appellees concede, however, the opt-out applies *only* to *direct* donors. State Br. 51; VRTK Br. 26. It provides no relief whatsoever for indirect "donors," who are likeliest to be unaware of downstream campaign spending.

Appellees respond that "nothing in the Act prevents" covered entities and intermediaries from making private arrangements to allow upstream donors to restrict downstream donations. VRTK Br. 26; *see also* City of Phoenix Amicus Br. 14–15 (blaming intermediaries for unwanted disclosures of upstream donors' information). But the government cannot farm out its tailoring obligations, nor can the remedial actions of private individuals narrow a law's breadth. At best, Proposition 211 puts the constitutional rights of upstream donors at the mercy of a chain of private parties—with one weak link potentially compromising and chilling everyone.

Appellees also insist that "[n]othing in the Act prevents a source of original monies from instructing a recipient of such funds not to pass on

the funds, directly or indirectly, to a covered person without opting out." VRTK Br. 28. VRTK even provides a paragraph-long "example" of a "written promise" donors could require based on Proposition 211's opt-out. *Id.* at 29–30. But that defender-doctored legal patch is proof positive of the basic problem. To compensate for the tailoring defect, *all* donors will be forced to include VRTK's promise (or one like it) on *all* donations. And once other States follow Arizona's lead, the written promise will necessarily balloon (or vary) to address a dizzying array of disclosure regimes. Charitable giving across the country would be chilled, or, at best, transformed, in response to Arizona's overreach.

VRTK likens this sea change to the "common practice of restricting the use of donations" in other contexts—particularly Section 501(c)(3) groups who had "to adapt to choices in the tax code to further their missions." VRTK Br. 28, 30. As VRTK acknowledges, however, those changes involved "tax deductions"—a "form of government subsidy" that does not implicate "the First Amendment." *Id.* at 31. By contrast, anonymous association via donation is cherished under the First Amendment, *see Bonta*, 594 U.S. 605–07, yet imperiled by Proposition 211.

Finally, VRTK asserts that "there is no basis for speculating that original source donors, intermediaries (if any), and spenders will not adapt" to the law. VRTK Br. 29; *see also id.* at 32 ("[I]t is implausible to imagine that such a group would risk alienating its major donors in this fashion."); State Br. 28. But, at the motion to dismiss stage, this Court "accept[s] the factual allegations of the complaint as true and construe[s] them in the light most favorable to the plaintiff." *Ryan S. v. UnitedHealth Grp., Inc.*, 98 F.4th 965, 970 (9th Cir. 2024) (quotation omitted). Nor is there any plausible path around the First Amendment problem posed by Proposition 211's novelty and complexity: Regardless of whether covered entities operating in multiple states overlook Arizona's dragnet, overhaul their entire operations to avoid its dragnet, or rush headlong into its dragnet, freedom of expression suffers undue collateral damage.

3. Proposition 211 Applies Even If Electioneering Is Not A Major Purpose Of The Group.

Proposition 211 applies to organizations even when electioneering is not one of their major purposes, *see Buckley*, 424 U.S. at 79, and even when they engage in political advocacy only incidentally, *see Hum. Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1009–11 (9th Cir. 2010). The

State argues that Proposition 211 does not apply to groups incidentally engaged in political advocacy, stressing the "high spending thresholds" and the application to spending on "election-related advertising." State Br. 65. As noted both above and below, however, the spending thresholds are not that high and the law's expansive provisions ensnare activity vastly removed from elections.

For its part, VRTK argues that *Buckley*'s major purpose test is "irrelevant," because Proposition 211 does not impose "regular and comprehensive reporting" requirements. VRTK Br. 55–56. But nothing in *Buckley* ties the major purpose test to the scope of reporting requirements. *See* 424 U.S. at 77–79. Further, by requiring additional disclosures within three days of a covered entity spending or accepting as little as $15,000, A.R.S. § 16-973(B)—a small amount given total Arizona election spending[4]—Proposition 211 effectively requires regular reporting.

[4] *See, e.g.*, Stacey Barchenger, *Campaign spending in governor race breaks Arizona record*, The Arizona Republic (Jan. 20, 2023), https://tinyurl.com/bdhf7reu (reporting over $60 million in election spending for the 2022 Arizona governor's race).

4. Proposition 211's Monetary Thresholds Are Low.

Many large entities (across the political spectrum and involving all kinds of issues) engage in issue advocacy in Arizona; still more may donate funds that somehow wind their way downstream to those organizations, thereby falling within Proposition 211's scope.[5] An "original donor" to those entities is regulable upon giving $50 a week during a two-year disclosure period, with a "transfer donor" regulable under half of that amount. A.R.S. § 16-972(D). Appellees cite other, lower numbers (*e.g.*, $200 under federal law), *see* VRTK Br. 56, but their comparisons are apples to oranges. Because federal law does not require disclosure of "original" or "transfer" donors at all, there can be no valid comparison. And the record-keeping requirements of Proposition 211 are more burdensome. Br. 54.

Appellees also argue that the monetary thresholds reflect a judgment by Arizona voters, deserving deference. State Br. 63. But such deference is "not absolute." *Fam. PAC v. McKenna*, 685 F.3d 800, 811

[5] *See* Arizona Secretary of State, *Voters Right to Know Act (VRKA) Reporting*, https://tinyurl.com/snc8dy (last visited on Feb. 17, 2025) (listing disclosure reports from Mi Familia Vota, MoveOn.Org, and Back the Blue, among others).

(9th Cir. 2012). Nor can the monetary thresholds be considered in isolation from Proposition 211's triggers and burdens, *supra* Section I.C, which receive no deference, *cf. Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 501 (2010) (evaluating a statute's constitutionality by considering the combination of multiple parts that were independently constitutional).

5. Proposition 211 Is Underinclusive.

Proposition 211 is underinclusive because it excludes labor unions and certain other membership organizations. A.R.S. § 16-971(1)(b). In response, Appellees compare Proposition 211's treatment of unions to other "organizations with dues paying members." VRTK Br. 54–55. But that does not address the key point that Proposition 211 narrows its coverage for certain groups. That constitutes underinclusivity under governing precedent. *See IMDb.com Inc. v. Becerra*, 962 F.3d 1111, 1126–27 (9th Cir. 2020).

II. Proposition 211 Is Unconstitutional As Applied To Appellants.

In addition to their facial challenge, Appellants have demonstrated that Proposition 211 is unconstitutional as applied to them. Appellants have plausibly alleged a reasonable probability that Proposition 211 will

result in threats, harassment, or reprisals. *See Citizens United*, 558 U.S. at 367; *Buckley*, 424 U.S. at 74. According to their complaint, Appellants' donors have "faced boycotts, personal threats, and even violence," ER-110, and their supporters "have been subjected to bomb threats, protests, stalking, and physical violence," ER-143 (quoting *Bonta*, 594 U.S. at 617).

Nevertheless, Appellees echo the district court in demanding inordinate detail at the pleading stage—*e.g.*, which specific donors, VRTK Br. 60; State Br. 68, and the details of specific incidents that occurred, State Br. 68. Under Federal Rule of Civil Procedure 8, however, the complaint need only "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted). Contrary to Appellees' suggestion, Appellants were not required to plead "the circumstances" of threats and harassment with "particularity," as if they had alleged "fraud or mistake." *Cf.* Fed. R. Civ. P. 9(b). Appellants' allegations clear Rule 8's modest bar, especially given the Supreme Court's recent ruling in *Bonta* detailing the threats and harassment targeted at AFPF. *See* 594 U.S. at 604, 617.

By the State's account, State Br. 68–69, Appellants' allegations are more vague and generalized than those in other Supreme Court cases like *NAACP v. Alabama*, *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87 (1982), and *Bates v. City of Little Rock*, 361 U.S. 516 (1960). But none of those was decided on a motion to dismiss. The appeal in *NAACP v. Alabama* was from a motion to set aside a contempt judgment after a pretrial order was granted, to which affidavits were attached evidencing harassment and reprisals. 357 U.S. at 452–54; Brief for Petitioner at 11, *NAACP v. Alabama*, 357 U.S. 449 (1958) (No. 91). And the appeals in *Bates* and *Brown* both followed full trials, during which evidence was presented about harassment and threats. *Bates*, 361 U.S. at 521–22; *Brown*, 459 U.S. at 91. Remand would properly enable Appellants to adduce specific evidence of threats, harassment, and reprisals of the sort detailed in *NAACP*, *Bates*, and *Brown*.

Beyond demanding excessive factual detail, Appellees unavailingly challenge the straightforward legal premises underlying Appellants' as-applied assertion of their First Amendment rights. To begin with, VRTK implies that Appellants don't merit as much constitutional protection

because they are powerful and/or well-funded entities (and not a "politically and socially marginalized group"). VRTK Br. 59, 61. But the First Amendment does not apply a sliding scale for wealth or influence when it comes to threats, harassment, or otherwise. *See, e.g.*, *Bonta*, 594 U.S. at 602.

VRTK next suggests that disclosure exemptions require showing that harassment or violence emanate from the government. VRTK Br. 59. But the Supreme Court disagrees, holding that threats or harassment from "either Government officials *or private parties*" suffice. *Citizens United*, 558 U.S. at 367 (emphasis added; quotation omitted).

Further, VRTK argues that Appellants allege only that their donors are being harassed, not themselves. VRTK Br. 59–60. But that is irrelevant under *Bonta*, where the Supreme Court specifically referenced the harassment and associational rights of Appellants' supporters even though they were not parties to the litigation. 594 U.S. at 617; *see id.* at 642 & n.11 (Sotomayor, J., dissenting).

Appellees also argue that Appellants do not specifically tie their history of threats or harassment to the disclosure required by Proposition 211. VRTK Br. 60–61; State Br. 68. But that argument is irreconcilable

with Supreme Court precedent. *See Brown*, 459 U.S. at 101 n.20. Indeed, such a requirement would make pre-enforcement as-applied challenges impossible, as past threats or harassment can never be traced specifically to a new law that has yet to be enforced.

Finally, the State follows the district court in emphasizing Proposition 211's exemption for donors facing a "serious risk of physical harm." State Br. 70 (quotation omitted). But Supreme Court precedent does not require challengers to show a "serious" risk of "physical" harm, so the exemption cannot possibly defeat Appellants' as-applied challenge. Br. 74.

III. Proposition 211 Unconstitutionally Compels Association Facially and As Applied.

Proposition 211 forcibly associates unwitting upstream donors with positions, organizations, and candidates with which they do not agree. As Appellants explained, Br. 74–77, donors who choose to contribute to one entity will later discover that Arizona has publicly associated their donations (and thus their support) with entirely different entities championing potentially conflicting causes. In compelling individuals to thus confess "matters of opinion they do not share," Proposition 211

unconstitutionally compels association. *Crowe v. Oregon State Bar*, 989 F.3d 714, 729 (9th Cir. 2021) (quotation omitted).

Appellees respond by shifting blame to regulated entities. VRTK blames upstream donors who lack foresight to restrict how their donations may be used, VRTK Br. 30, while the State blames intermediaries for associating with other entities, State Br. 72 ("As the district court correctly recognized, '[i]f Plaintiffs' donors have disagreements about the use of the funds they donated to Plaintiffs, the donors should complain to Plaintiffs.'") (quoting ER-35). But it is anathema to the freedom of association for government to compel linkage between individual donors and downstream entities they have never endorsed, and it is no solution to force unwitting "original source" donors to go to undue, costly lengths to *dis*associate altogether. *Cf. Forsyth Cnty. v. Nationalist Movement*, 505 U.S. 123, 134–36 (1992). The blame here lies squarely with the unconstitutional law under challenge.

CONCLUSION

This Court should reverse.

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Respectfully submitted,

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FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 24-2933

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I hereby certify that, on February 18, 2025, I electronically filed the foregoing with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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