No. 24-2933

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.

On Appeal from the United States District Court for the District of Arizona, Phoenix Cause No. 2:23-cv-00470-ROS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES 6

INTRODUCTION 10

JURISDICTION.....11

ISSUES PRESENTED.....11

STATUTES.....12

STATEMENT OF THE CASE.....12

I. Overview of Prop. 211.....12

A. Prop. 211 requires disclosure of large spenders and their large donors. 12

B. Prop. 211 applies to campaign media spending. 14

C. Prop. 211 requires covered persons to file disclosure reports.....15

D. Prop. 211 includes opportunities to opt out and exceptions from disclosure. 16

E. Prop. 211 vests the Commission with enforcement authority. 17

II. This lawsuit.....18

III. Companion cases. 20

SUMMARY OF ARGUMENT 21

STANDARD OF REVIEW 22

ARGUMENT 22

I. The district court correctly dismissed AFP's facial challenge. 22

A. Prop. 211 is substantially related to compelling government interests.....23

1. The informational interest alone justifies Prop. 211.....23

(a) Prop. 211 is substantially related to the State's interest in an informed electorate. 23

(b) AFP's arguments misrepresent the law and misconstrue Prop. 211. 27

i. Contrary to AFP's contention, Prop. 211 directly serves the State's informational interest. 27

ii. Prop. 211 is like other disclosure laws routinely upheld. 31

iii. The informational interest is not limited to candidate-related speech. 35

iv. AFP relies on irrelevant cases. 35

2. Prop. 211 advances anti-corruption interests, too.....39

B. The State's interests are strong and impose minimal or no burdens on First Amendment rights. 41

C. Prop. 211 is narrowly tailored. 49

1. Prop. 211 applies only to large spenders and large donors. 50

2. Donors can opt out of disclosure. 51

3. AFP's arguments do not help AFP meet its burden. 52

(a) Prop. 211 is not overbroad. 52

i. Prop. 211's disclosure of donors' information imposes only modest burdens (if any). 53

ii. Nothing prevents donors from opting out. 53

iii. Prop. 211's definition of "election cycle" is not overinclusive. 54

iv. Prop. 211's definition of "campaign media spending" is not overbroad. 55

v. Prop. 211's definition of "public communication" is narrowly tailored. 59

vi. Earmarking is not constitutionally required. 60

vii. Prop. 211's thresholds are up to twenty times higher than other disclosure laws. 63

viii. Prop. 211 doesn't violate the major purpose doctrine. 64

(b) Prop. 211 is not underinclusive. 65

II. The district court properly dismissed AFP's as-applied claims. 66

A. AFP does not sufficiently allege a reasonable probability of harm from Prop. 211. 66

B. AFP's arguments to the contrary lack merit. 71

CONCLUSION 72

STATEMENT OF RELATED CASES 74

CERTIFICATE OF COMPLIANCE 75

STATUTORY ADDENDUM: PROPOSITION 211 77

TABLE OF AUTHORITIES

Page(s)

Cases

Ams. for Prosperity Found. v. Bonta,
594 U.S. 595 (2021).....*passim*

Bates v. City of Little Rock,
361 U.S. 516 (1960).....69

Brown v. Socialist Workers '74 Campaign Comm.,
459 U.S. 87 (1982).....69

Buckley v. Valeo,
424 U.S. 1 (1976).....*passim*

Cal. Med. Ass'n v. Fed. Election Comm'n,
453 U.S. 182 (1981).....38

Citizens United v. Fed. Election Comm'n,
558 U.S. 310 (2010).....*passim*

Ctr. for Ariz. Pol'y Inc. v. Ariz. Sec'y of State,
__P.3d __, 2024 WL 4719050 (Ariz. Ct. App. Nov. 8, 2024) .....*passim*

Ctr. for Individual Freedom, Inc. v. Tennant,
706 F.3d 270 (4th Cir. 2013) 61

Ctr. for Individual Freedom v. Madigan,
697 F.3d 464 (7th Cir. 2012) 59

Election Integrity Project Cal., Inc. v. Weber,
113 F.4th 1072 (9th Cir. 2024) 22

Fam. PAC v. McKenna,
685 F.3d 800 (9th Cir. 2012) 24, 36, 53, 63

First Nat'l Bank of Bos. v. Bellotti,
435 U.S. 765 (1978).....24, 40

Gale v. First Franklin Loan Servs.,
701 F.3d 1240 (9th Cir. 2012) 57

Gaspee Project v. Mederos,
13 F.4th 79 (1st Cir. 2021).....*passim*

Hum. Life of Wash. Inc. v. Brumsickle,
624 F.3d 990 (9th Cir. 2010) 24, 36, 64, 65

Hunter v. U.S. Dep't of Educ,
115 F.4th 955 (9th Cir. 2024) 22

Indep. Inst. v. Williams,
812 F.3d 787 (10th Cir. 2016) 61, 62

John Doe No. 1 v. Reed,
561 U.S. 186 (2010).....22, 35, 41

Justice v. Hosemann,
771 F.3d 285 (5th Cir. 2014) 25

Leisnoi, Inc. v. Stratman,
154 F.3d 1062 (9th Cir. 1998) 58

McConnell v. Fed. Election Comm'n,
540 U.S. 93 (2003).....24, 41, 61

McCutcheon v. Fed. Election Comm'n,
572 U.S. 185 (2014).....37, 38

McIntyre v. Ohio Elections Comm'n,
514 U.S. 334 (1995).....35, 36

Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.,
15 F.4th 885 (9th Cir. 2021) 44

NAACP v. Ala. ex. rel Patterson,
357 U.S. 449 (1958).....68, 69

Nat'l Ass'n for Gun Rts., Inc. v. Mangan,
933 F.3d 1102 (9th Cir. 2019) 50, 51

Nat'l Org. for Marriage, Inc. v. McKee,
649 F.3d 34 (1st Cir. 2011).....63, 64

Nat'l Org. for Marriage, Inc. v. McKee,
669 F.3d 34 (1st Cir. 2012).....47

No on E v. Chiu,
85 F.4th 493 (9th Cir. 2023) .....*passim*

Protectmarriage.com-Yes on 8 v. Bowen,
752 F.3d 827 (9th Cir. 2014) 39

Smith v. Helzer,
614 F. Supp. 3d 668 (D. Alaska 2022) 26, 33

Smith v. Helzer,
95 F.4th 1207 (9th Cir. 2024) 33, 43, 51, 63

Susan B. Anthony List v. Driehaus,
573 U.S. 149 (2014).....48

Toma v. Fontes,
553 P.3d 881 (Ariz. Ct. App. 2024).....20, 46

Van Hollen, Jr. v. FEC,
811 F.3d 486 (D.C. Cir. 2016).....62

Williams-Yulee v. Fla. Bar,
575 U.S. 433 (2015).....30

Worley v. Fla. Sec'y of State,
717 F.3d 1238 (11th Cir. 2013) 25

Wyo. Gun Owners v. Gray,
83 F.4th 1224 (10th Cir. 2023) 62

Yamada v. Snipes,
786 F.3d 1182 (9th Cir. 2015) .....*passim*

Statutes & Rules

A.R.S. § 16-926.....30

A.R.S. § 16-971.....*passim*

A.R.S. § 16-972.....*passim*

A.R.S. § 16-973 ..... *passim*

A.R.S. § 16-974 ..... 17, 44, 45

A.R.S. § 16-977 ..... 18, 19, 20, 48

A.R.S. § 16-1022 29

28 U.S.C. § 1291 11

28 U.S.C. § 1331 11

28 U.S.C. § 2107 11

52 U.S.C. § 30102 47

52 U.S.C. § 30104 ..... 30, 55, 59

52 U.S.C. § 30109 48

52 U.S.C. § 30122 29

Ariz. Admin. Code R2-20-803 ..... 18, 43

Ariz. Admin. Code R2-20-805 ..... 17, 44

Cal. Gov't Code § 82013 31

Cal. Gov't Code § 82047.5 32

Cal. Gov't Code § 83115 49

Cal. Gov't Code § 84503 31

Me. Stat. Title 21-A § 1003 49

INTRODUCTION

Proposition 211, the Voters' Right to Know Act, is a disclosure law that provides Arizona voters with vital information about the original sources of funding for campaign media spending. Prop. 211 requires organizations that spend substantial sums on campaign media to disclose their large donors, ensuring transparency in elections.

Plaintiffs, Americans for Prosperity and Americans for Prosperity Foundation (collectively, "AFP"), lodge facial and as-applied challenges against Prop. 211, arguing that it impermissibly burdens free speech and associational rights. But Prop. 211 satisfies exacting scrutiny. Prop. 211's original-source disclosure requirement directly serves the State's compelling informational and anti-corruption interests. By focusing on large spenders and their donors, and providing opportunities to opt out of disclosure, Prop. 211 minimally burdens speech and is narrowly tailored to achieve its purpose. Prop. 211's disclosure requirements are similar to other disclosure laws routinely upheld by the Supreme Court, this Court, and circuit courts across the country. Moreover, AFP did not demonstrate any reasonable probability that Prop. 211 will subject its donors to threats, harassment, or reprisals to support its as-applied challenge.

This Court should affirm.

JURISDICTION

This action is based on a federal question. ER-96, ¶ 19. The district court had jurisdiction under 28 U.S.C. § 1331. AFP appealed from a final judgment dismissing its facial and as-applied claims, entered April 10, 2024. ER-4. This Court has jurisdiction under 28 U.S.C. § 1291. AFP timely appealed on May 6, 2024 under 28 U.S.C. § 2107(a). ER-155.

ISSUES PRESENTED

1. For decades, the Supreme Court has applied exacting scrutiny to campaign finance disclosure regulations. *See Buckley v. Valeo*, 424 U.S. 1, 81 (1976). The district court, applying exacting scrutiny, found that Prop. 211's original-source disclosure requirement directly served the State's compelling interest in an informed electorate. The district court also found that Prop. 211's focus on large spenders and donors, coupled with opportunities to opt out of disclosure, sufficiently tailored Prop. 211 to the State's informational interest. Did the district court correctly dismiss AFP's facial free speech and associational challenges because Prop. 211 satisfies exacting scrutiny?

2. To state an as-applied challenge, AFP must allege facts that, if true, establish a "reasonable probability" that its donors would suffer threats, harassment, or reprisals from Prop. 211's disclosure requirements. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 367 (2010). AFP alleges that "[s]ome people

publicly associated with the Plaintiffs have faced boycotts, character attacks, personal threats, and worse as a result." The district court found AFP's "generic allegations" insufficient to show that its donors faced a reasonable probability of harm if disclosed. Did the district court correctly dismiss AFP's as-applied free speech and associational challenges because it failed to meet its pleading burden?

STATUTES

The text of Prop. 211 is in the Addendum.

STATEMENT OF THE CASE

I. Overview of Prop. 211.

In 2022, 72% of Arizona voters passed Prop. 211 to shine a light on "dark money," by regulating "the practice of laundering political contributions, often through multiple intermediaries, to hide the original source." 2022 Ariz. Legis. Serv. Prop. 211, § 2(A), (C). Prop. 211 aims to increase transparency in campaign financing by disclosing the original sources of funding for significant election-related spending while providing certain protections for donors.

A. Prop. 211 requires disclosure of large spenders and their large donors.

Prop. 211 requires disclosure from "covered persons," meaning "any person whose total campaign media spending" or "in-kind contributions" exceed $50,000

for statewide campaigns or $25,000 for other campaigns during an election cycle.[1] A.R.S. § 16-971(7). "Covered persons" does not include individuals using personal funds or organizations using business income for campaign media spending, candidate committees, and political action committees or political parties that receive less than $20,000 from any one person in an election cycle. A.R.S. § 16-971(7)(b).

Prop. 211 requires disclosure of original sources of funds and any intermediaries between the original donor and the covered person. Once an individual or entity qualifies as a covered person, it must disclose:

- "The identity of each donor of original monies who contributed, directly or indirectly, more than $5,000 of traceable monies[2] or in-kind contributions for campaign media spending during the election cycle," A.R.S. § 16-973(A)(6); and
- "The identity of each person that acted as an intermediary and that transferred … traceable monies of more than $5,000 from original sources to the covered person," A.R.S. § 16-973(A)(7).

[1] "Election cycle" means the "time beginning the day after general election day in even-numbered years and continuing through the end of general election day in the next even-numbered year." A.R.S.§ 16-971(8).

[2] "Traceable monies" means "[m]onies that have been given, loaned or promised to be given to a covered person and for which no donor has opted out of their use or transfer for campaign media spending." A.R.S. § 16-971(18).

B. Prop. 211 applies to campaign media spending.

Prop. 211 requires disclosure only if covered persons engage in "campaign media spending." It defines campaign media spending as paying money for a "public communication"[3] that:

- "expressly advocates for or against the nomination, or election of a candidate";
- "promotes, supports, attacks or opposes a candidate within six months preceding an election involving that candidate";
- "refers to a clearly identified candidate within ninety days before a primary election until the time of the general election and that is disseminated in the jurisdiction where the candidate's election is taking place";
- "promotes, supports, attacks or opposes the qualification or approval of any state or local initiative or referendum"; or
- "promotes, supports, attacks or opposes the recall of a public officer."

A.R.S. § 16-971(2)(a)(i)-(v). Campaign media spending also includes 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, including partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity," and "[r]esearch, design, production, polling, data

[3] "Public communication" means "a paid communication to the public by means of broadcast, cable, satellite, internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing or another mass distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium." A.R.S. § 16-971(17)(a).

analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with" any of the other listed activities." A.R.S. § 16-971(2)(a)(vi)-(vii).

Spending money on news stories, commentaries, or editorials by websites or other periodical publications is not campaign media spending. A.R.S. § 16-971(2)(b)(i).

C. Prop. 211 requires covered persons to file disclosure reports.

Within five days of reaching Prop. 211's disclosure thresholds, a covered person must file a report with the Arizona Secretary of State reflecting the identity of original donors and intermediaries who contributed more than $5,000 to campaign media spending. A.R.S. § 16-973(A). For an individual, "identity" means "the name, mailing address, occupation and employer of the individual." A.R.S. § 16-971(10). For an entity, it means "the name, mailing address, federal tax status and state of incorporation, registration or partnership, if any." *Id.* Covered persons must file additional reports each time they hit the disclosure thresholds. A.R.S. § 16-973(B).

Donors of more than $5,000 to covered persons must provide the covered person with the identity of each person that directly or indirectly contributed more than $2,500 if such funds are being transferred to the covered person. A.R.S. § 16-972(D). Covered persons also must maintain "transfer records" of contributors

giving over $2,500 in original monies for five years. A.R.S. §§ 16-971(19), 16-972(D).

D. Prop. 211 includes opportunities to opt out and exceptions from disclosure.

Before using a donor's contributions for campaign media spending, the covered person must notify the donor in writing that the donor's funds may be used for campaign media spending and must give the donor "an opportunity to opt out of having the donation used or transferred for campaign media spending." A.R.S. § 16-972(B). The covered person also must notify the donor that information about the donor may be disclosed to the public. A.R.S. § 16-972(B)(1). The covered person can notify the donor "before or after the covered person receives a donor's monies, but the donor's monies may not be used or transferred for campaign media spending until at least twenty-one days after the notice is provided or until the donor provides written consent." A.R.S. § 16-972(C). If the donor doesn't opt out, the donor's contributions are considered traceable monies subject to disclosure. A.R.S. § 16-971(18)(a).

A donor's identity, however, need not be disclosed under Prop. 211 if the donor "demonstrates to the satisfaction of the commission that there is a reasonable probability that public knowledge of the original source's identity would subject the source or the source's family to a serious risk of physical harm." A.R.S. § 16-973(F).

E. Prop. 211 vests the Commission with enforcement authority.

The Arizona Citizens Clean Elections Commission (the "Commission") is empowered to implement and enforce Prop. 211 by adopting rules, initiating enforcement actions, and seeking legal or equitable relief, among other things. A.R.S. § 16-974(A). The Commission also retains the power to "establish disclaimer requirements for public communications by covered persons." A.R.S. § 16-974(C). At bottom, Prop. 211 requires that public communications by covered persons list "the names of the top three donors who directly or indirectly made the three largest contributions of original monies during the election cycle to the covered person." *Id.* Consistent with this rulemaking authority, the Commission promulgated a rule that disclaimers need not include donors who opted out:

> Public communications by covered persons shall state the names of the top three donors who directly or indirectly made the three largest contributions of original monies in excess of $5,000 for the election cycle *and who have not opted out pursuant to A.R.S. § 16-972* or a rule of the Commission during the election cycle to the covered person as calculated by the covered person at the time the advertisement was distributed for publication, display, delivery, or broadcast. In the event a donor otherwise subject to disclosure pursuant to this section is protected under A.R.S. § 16-973(F) the disclaimer shall omit that donor's identity.

Ariz. Admin. Code ("A.A.C.") R2-20-805(B) (emphasis added).

The Commission also promulgated a rule providing additional opportunities to opt out after the 21 days:

> A donor may request to opt out at any time after the initial notice period and the covered person must confirm the opt out to the donor in writing no later than 5 days after the request and subsequently that donor shall be treated as having opted out by the covered person. Upon request of the donor, the person responsible for providing the opt-out information must provide a receipt to the donor confirming the donor's choice. If the covered person regularly provides receipts for donations the receipt shall confirm the donor's choice.

A.A.C. R2-20-803(E).

Although the Commission has exclusive enforcement power, qualified voters may file verified complaints with the Commission alleging non-compliance with Prop. 211. A.R.S. § 16-977(A). If the Commission determines that the allegations are true, it must provide the alleged violator with an opportunity to be heard. A.R.S. § 16-977(B). If the Commission takes no action or dismisses the complaint, the qualified voter "may bring a civil action against the commission to compel it to take enforcement action." A.R.S. § 16-977(C). The court reviews the Commission's dismissal or failure to act de novo. *Id.*

II. This lawsuit.

Following Prop. 211's enactment, AFP sued the Chairman, Commissioners, and Executive Director of the Commission and the Secretary of State, alleging facial and as-applied free speech and association claims and seeking a declaration that the entire act is unconstitutional. ER-84–85, ER-150. The Attorney General intervened as of right, ECF-28, and the district court granted Voters' Right to Know's motion to intervene, ER-14.

Defendants the Commission and the Secretary of State and intervenors the Attorney General and Voters' Right to Know (collectively, "Defendants") filed motions to dismiss. ECF-22-2; ECF-23; ECF-28-2. The district court granted Defendants' motions to dismiss, dismissing AFP's facial and as-applied free speech and association claims in their entirety, but granted AFP leave to amend its as-applied claims. ER-36.

Relying on Supreme Court and Circuit precedent, the district court found that "the Act has a substantial relation to a strong governmental interest of identifying funders of campaign media spending." ER-20. The court acknowledged that because the State's interest is strong, the burdens imposed would need to be significant for AFP to prevail on its facial challenges to Prop. 211. *Id.* The court found, however, that "the Act's administrative burdens are spread across multiple individuals and entities such that they are not unduly onerous for any individual person or entity." ER-20–21. It further determined that the non-administrative burdens, like the opt-out provision, are not "as onerous as Plaintiffs claim." ER-21–24. Finally, the court found that Prop. 211 is narrowly tailored to the State's informational interest, rejecting AFP's challenges to Prop. 211's definition of "campaign media spending," the original-source disclosure requirement, and the inclusion of in-kind contributions. ER-24–32. Because Prop. 211 satisfied exacting scrutiny, the court rejected AFP's facial challenges. ER-32.

Regarding AFP's as-applied challenges, the district court found that AFP failed to allege a reasonable probability of harm to its donors because its "free speech challenge is based on generic allegations regarding the treatment of their donors in unrelated matters." ER-32. The court also rejected AFP's association claim because the disclosure of AFP's donors based on AFP's choice to engage with other organizations in campaign media spending does not compel association. ER-35. Accordingly, the court dismissed AFP's as-applied claims. *Id.*

AFP declined to file an amended complaint, ER-6, and the district court entered final judgment on April 10, 2024, ER-3.

III. Companion cases.

Two other lawsuits have challenged Prop. 211's constitutionality.

In *Toma v. Fontes*, 553 P.3d 881 (Ariz. Ct. App. 2024), *pet. for review pending*, the state trial court denied the plaintiffs' preliminary injunction request. The Arizona Court of Appeals affirmed most of that ruling, reversing only on a minor issue not raised in or relevant to this case.

In *Ctr. for Ariz, Pol'y Inc. v. Ariz. Sec'y of State* ("*CAP*"), __P.3d __, 2024 WL 4719050, (Ariz. Ct. App. Nov. 8, 2024), the state trial court dismissed facial and as-applied free-speech challenges. AFP filed an amicus brief in *CAP* supporting reversal. The Arizona Court of Appeals affirmed.

SUMMARY OF ARGUMENT

The district court correctly dismissed AFP's facial challenges because Prop. 211 satisfies exacting scrutiny. Prop. 211's original-source disclosure requirement serves the State's compelling informational and anti-corruption interests. (§ I.A.1.a.-I.A.2.) Prop. 211's original-source disclosure requirement directly serves the State's interests by revealing the actual source of campaign media spending.

To the extent that Prop. 211 imposes any burdens on donors, those burdens are modest at most and are outweighed by the State's strong interests. (§ I.B.) Prop. 211 does not restrict speech or prevent donors from associating with organizations. It merely requires that covered persons disclose the identity of donors who contribute large sums to campaign media spending. Prop. 211's opt-out provision further minimizes any potential burden by allowing donors to avoid disclosure altogether.

Prop. 211 is also narrowly tailored to the State's interests. (§ I.C.) Its high monetary thresholds ensure it encompasses only large spenders and donors most likely to influence elections. Prop. 211 also gives these large-dollar donors control over how their contributions are used by providing opportunities to opt out of disclosure.

The district court properly dismissed AFP's as-applied challenges because AFP did not allege facts establishing a reasonable probability that its donors would face threats, harassment, or reprisals if disclosed. (§ II.A.) AFP's generic

allegations about past incidents fall far short of the specific allegations required to support an as-applied challenge.

This Court should affirm the district court's dismissal of AFP's facial and as-applied claims in their entirety.

STANDARD OF REVIEW

This Court reviews "de novo a district court's grant of a motion to dismiss," *Hunter v. U.S. Dep't of Educ*, 115 F.4th 955, 962 (9th Cir. 2024), and will affirm if "the plaintiff's well-pleaded allegations, taken as true, fail to plausibly show a legal violation," *Election Integrity Project Cal, Inc. v. Weber*, 113 F.4th 1072, 1081 (9th Cir. 2024).

ARGUMENT

I. The district court correctly dismissed AFP's facial challenge.

Exacting scrutiny applies to campaign finance disclosure regulations. *Citizens United*, 558 U.S. at 366-67. Exacting scrutiny requires (1) "a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest," *id.* (citations omitted); (2) that "the strength of the governmental interest ... reflect the seriousness of the actual burden on First Amendment rights," *John Doe No. 1 v. Reed*, 561 U.S. 186, 196 (2010) (citation omitted); and (3) narrow tailoring to the government's asserted interest, *No on E v. Chiu*, 85 F.4th 493, 509 (9th Cir. 2023), *cert. denied*, No. 23-926, 2024 WL 4426534

(U.S. Oct. 7, 2024). The district court correctly found that Prop. 211 satisfies all three prongs of exacting scrutiny.

In addition, to succeed on a facial challenge, AFP must show that a "substantial number of [the law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 615 (2021).

A. Prop. 211 is substantially related to compelling government interests.

1. The informational interest alone justifies Prop. 211.

To satisfy exacting scrutiny, there must be "a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Citizens United*, 558 U.S. at 366-67 (citations omitted). In the campaign-finance context, the Supreme Court has held that the "informational interest alone is sufficient to justify" disclosure requirements. *Id.* at 369. The Court can affirm on this basis alone.

(a) Prop. 211 is substantially related to the State's interest in an informed electorate.

Disclosure laws "provide the electorate with information and insure that the voters are fully informed about the person or group who is speaking." *Id.* at 368 (citations omitted). "This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Id.* at 371.

The Supreme Court has repeatedly held that the government's interest in "providing the electorate with information" justifies disclosure requirements. *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 196 (2003), *overruled on other grounds by Citizens United*, 558 U.S. 310; *accord Citizens United*, 558 U.S. at 369 ("[T]he public has an interest in knowing who is speaking about a candidate shortly before an election."); *Buckley*, 424 U.S. at 83 ("disclosure serves informational functions"); *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 790, n.29 (1978) ("[T]he direct participation of the people in a referendum, if anything, increases the need for 'the widest possible dissemination of information from diverse and antagonistic sources.'" (citation omitted)).

This Court has likewise found the informational interest sufficient to justify disclosure laws concerning both candidate elections and ballot initiatives. *Hum. Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1006 (9th Cir. 2010) (informational interest "appl[ies] just as forcefully, if not more so, for voter-decided ballot measures"); *Fam. PAC v. McKenna*, 685 F.3d 800, 806 (9th Cir. 2012) ("We have repeatedly recognized an important (and even compelling) informational interest in requiring ballot measure committees to disclose information about contributions."); *Yamada v. Snipes*, 786 F.3d 1182, 1196–97 (9th Cir. 2015) ("Hawaii's noncandidate committee requirements serve important government interests," including "provid[ing] information to the electorate about who is speaking."); *No on E*, 85

F.4th at 505 (the city has a "strong governmental interest in informing voters about who funds political advertisements").

Other circuit courts have applied the same principle. *Worley v. Fla. Sec'y of State*, 717 F.3d 1238, 1247 (11th Cir. 2013) ("[T]he Supreme Court has taught that disclosure rules do promote a legitimate government interest, whether in the ballot issue or candidate election context."); *Gaspee Project v. Mederos*, 13 F.4th 79, 87 (1st Cir. 2021) ("The government's interest in an informed electorate extends beyond the dissemination of information concerning candidates for office."); *Justice v. Hosemann*, 771 F.3d 285, 298 (5th Cir. 2014) ("[T]he informational interest that the Supreme Court described approvingly in *Buckley* seems to be at least as strong when it comes to ballot initiatives.").

The Supreme Court has also recognized that "[d]isclosure requirements, as a general matter, directly serve substantial governmental interests." *Buckley*, 424 U.S. at 68. Here, Prop. 211's original-source disclosure requirement directly serves the State's interest in an informed electorate. Indeed, every court to consider similar original-source disclosure requirements, including this Court, has held that the requirements are substantially related to the government's interest in an informed electorate.

In *No on E*, this Court held that the government's "interests in where political campaign money comes from, and in learning who supports and opposes ballot

measures, extend beyond just those organizations that support a measure or candidate directly." 85 F.4th at 505 (quotation marks and citations omitted). San Francisco voters passed an initiative requiring disclosure of major contributors to campaign advertisements. *Id.* at 498. The ordinance also required disclosure of secondary major contributors. *Id.* at 499. This Court held that "because the interest in learning the source of funding for a political advertisement extends past the entity that is directly responsible," the secondary-contributor requirement is substantially related to San Fransisco's interest in an informed electorate. *Id.* at 506.

Alaska voters likewise passed a ballot measure requiring independent expenditure entities to disclose the "true source" of "contributions and all intermediaries" over $2,000. *Smith v. Helzer* ("*Smith I*"), 614 F.Supp.3d 668, 674-75 (D. Alaska 2022), *aff'd*, 95 F.4th 1207 (9th Cir. 2024). In that case, the district court held that the true-source requirement is "substantially related … to fulfill the State's informational interest in informing voters about the actual identity of those trying to influence the outcome of elections." *Id.* at 690.

Prop. 211 similarly requires disclosure of each "donor of original monies who contributed, directly or indirectly, more than $5,000 … for campaign media spending during the election cycle to the covered person." A.R.S. § 16-973(A)(6). Covered persons also must disclose the identity of "each person that acted as an intermediary and that transferred … traceable monies of more than $5,000 from

original sources to the covered person." A.R.S. §16-973(A)(7). Arizona voters passed Prop. 211 to "establish[] that the People of Arizona have the right to know the original source of all major contributions used to pay … for campaign media spending." 2022 Ariz. Legis. Serv. Prop. 211, § 2(A). By going beyond entities with "creative but misleading names," *No on E*, 85 F.4th at 505 (citation omitted), Prop. 211 directly serves the State's informational interest. Relying on these authorities, the Arizona Court of Appeals held that the informational interests "are sufficiently important" to justify Prop. 211. *CAP*, __ P.3d __, 2024 WL 4719050, at *6, ¶ 28. This Court should do the same.

(b) AFP's arguments misrepresent the law and misconstrue Prop. 211.

AFP cannot refute that the State's interest in an informed electorate, alone, is sufficient to justify Prop. 211.

i. Contrary to AFP's contention, Prop. 211 directly serves the State's informational interest.

AFP first argues (at 38-39) that Prop. 211's original-source disclosure requirement fails to serve the State's informational interest because an upstream donor lacks intent or knowledge that his donation will be later used for downstream electioneering. Even if true, that doesn't undermine the government's informational interest. The voters enacted Prop. 211 because they want to know where the money came from, and Prop. 211 serves that interest. The informational interest that

supports Prop. 211 isn't about whether the upstream donors have knowledge, it's about the voters wanting to know the original source of monies.

This argument also implausibly assumes that intermediaries won't inform major donors that their identities will be disclosed or give original donors the opportunity to opt out when it benefits them to do so. Intermediaries want to continue receiving contributions from major donors. An open line of communication on how donors' funds will be spent guarantees this. AFP further assumes that covered persons won't contact original donors before spending their funds. But nothing in Prop. 211 prevents original donors, intermediaries, and covered persons from communicating about Prop. 211's requirements or restricting the use of original monies.

Moreover, AFP's argument on this point is a facial challenge, which means that AFP must show that a "substantial number of [the law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Bonta*, 594 U.S. at 615. AFP has not alleged or argued that a "substantial number" of major donors won't know how their money is being spent. Which again would be implausible because intermediaries who want to continue receiving donations won't spend their donors' money on electioneering and disclose their donors' identities against their will.

AFP contends (at 42-43) that Prop. 211 is not related to the State's informational interest because it doesn't include an intent or knowledge requirement. As AFP notes (at 42-43), A.R.S. § 16-1022(B) and 52 U.S.C. § 30122 already prevent knowing contributions in the names of others. But these laws regulate straw donors. The State's interest in informing the electorate about the original source of funds goes beyond intentional deception to include large spenders and donors most likely to influence elections. These statutes don't cover that.

AFP also contends (at 40) that Prop. 211's original-source disclosure requirement does not serve the State's informational interest because "even if 'creative' names do not provide much information standing alone, neither do the names of original donors." AFP maintains (at 40) that "[i]n either case, interested individuals must investigate further." In essence, AFP attacks all disclosure laws because, without more information, voters may not know the individual leanings of organizations and donors. But Prop. 211 requires disclosure of the same information as other disclosure laws upheld by courts across the country. (*See* Argument § I.A.1.b.iv.)

Arizona voters already decided that this information was important. AFP's argument (at 44) that the original-source disclosure requirement doesn't provide "meaningful information" and will only "sow confusion and misperception among the electorate" undermines the voters' interest in this information and their judgment

in deciding what information should be disclosed. Moreover, Prop. 211 doesn't have to provide all the information the electorate could ever need to make an informed decision (such as the donor's political affiliation) to serve an important interest. *See Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 449 (2015) ("A State need not address all aspects of a problem in one fell swoop."). By providing more information to the electorate, like the names, addresses, occupations, and employers of donors who actually funded election-related communications, Prop. 211 directly serves the State's informational interest.

AFP next argues (at 41-43) that Prop. 211's original-source disclosure requirement "will affirmatively mislead voters by directly tying named donors to candidates and issues" that donors do not support. AFP insists (at 41) that the use of downstream donations does not reflect the speech of upstream donors. But, as this Court has recognized, disclosure laws "further the governmental interest in revealing the source of campaign funding, not ensuring that every donor agrees with every aspect of the message." *No on E*, 85 F.4th at 506.

This sort of reasoning would undermine all disclosure laws. Both Arizona and federal law require disclosure of contributions directly to political action committees. *See* A.R.S. § 16-926(B)(2)(a)(i) (committees must disclose "contributor's occupation and employer"); 52 U.S.C. § 30104(b)(3)(A) (requiring disclosure of donors' identities who contribute over $200 in a calendar year). Those

committees might run an advertisement on topics that donors disagree with. Maybe a donor contributed to the committee for its stance on taxes, but the committee later runs an advertisement on foreign tariffs that the donor doesn't support. No one questions the constitutionality of these provisions.

Prop. 211 requires disclosure of the original source of funding. But donors can disagree with the message communicated regardless of where they fall in the line of donors. The fact that some donors may disagree with the message doesn't make it unconstitutional, and AFP doesn't cite any cases suggesting otherwise.

ii. Prop. 211 is like other disclosure laws routinely upheld.

AFP tries to sidestep cases upholding similar disclosure laws. For example, AFP attempts (at 49-50) to distinguish the disclosure law at issue in *No on E* from Prop. 211 because the disclosure law there required disclosure of committees and donors only after they made an affirmative choice to engage in election-related activity. But the San Francisco ordinance at issue in *No on E* does not differ from Prop. 211 in this regard.

California law requires the top contributors to any committee that engages in election-related advertising to be disclosed, regardless of whether the committee was formed for political purposes. *No on E*, 85 F.4th at 497-98 (citing Cal. Gov't Code §§ 82013, 84503(a)). San Francisco's ordinance added a secondary-contributor requirement to California's disclosure law, requiring disclosure of "the top donors

to a committee that is, in turn, a top donor to a primarily formed committee." *Id.* at 510. Under California law, a primary committee is formed to support candidates or ballot initiatives. *Id.* (citing Cal. Gov't Code § 82047.5). Like Prop. 211, San Francisco's ordinance requires disclosure of top donors to a non-political committee that later uses its donors' contributions to engage in political spending.[4] It does not require that donors make an affirmative choice to engage in such spending and lacks any sort of earmarking requirement. *See id.* But this Court still found that the secondary-contributor requirement substantially served the City's interest in an informed electorate and was narrowly tailored to that interest. *Id.* at 506-11. So too here.

AFP further attempts to distinguish (at 50) the secondary-contributor requirement in *No on E* because it reached no further than two contributors. But this Court upheld the secondary-contributor requirement as substantially related to the City's informational interest because "the interest in learning the source of funding for a political advertisement extends past the entity that is directly responsible." *Id.*

[4] AFP incorrectly claims (at 50-51) that the *No on E* plaintiffs challenged only the disclaimer requirements, not the disclosure requirements. But the disclaimer provisions required disclosure of the top contributors to a primary committee. 85 F.4th at 510. AFP also argues (at 50-51) that because the donors to the committee would be disclosed under California law if the committee ran the advertisement directly instead of funneling its donations through a primary committee, the rest of the opinion is dicta. But the Court found San Francisco's ordinance to be sufficiently tailored exactly for this reason, so it's not dicta. *Id.* at 511.

at 506. Nothing in the Court's decision suggests that the constitutional bound is two levels deep. Indeed, the Court's reasoning there applies with equal force here: by requiring disclosure of the original source of election spending, Prop. 211 "expose[s] the *actual* contributors to such groups." *Id.* at 505 (emphasis added) (citation omitted).

AFP also argues (51-52) that *Smith II* is distinguishable because the plaintiffs there did not challenge the true-source requirement on appeal or dispute that the disclosure regulation served important government interests. But this Court and the Supreme Court have "long made clear" that "an interest in an informed electorate is 'sufficiently important.'" *Smith v. Helzer* ("*Smith II*"), 95 F.4th 1207, 1215 (9th Cir. 2024), *cert. denied*, 2024 WL 4805897 (2024). The *Smith II* plaintiffs chose not to appeal the district court's decision that the true-source requirement is "substantially related … to fulfill the State's informational interest in informing voters about the actual identity of those trying to influence the outcome of elections." *Smith I*, 614 F. Supp. 3d at 690. Regardless, this Court held that Alaska's contribution reporting requirements, which are lower than Prop. 211's requirements (*see* Argument § I.C.1), satisfied exacting scrutiny. *Smith II*, 95 F.4th at 1218. So does Prop. 211.

Finally, AFP contends (at 52, 59) that the First Circuit's decision in *Gaspee Project v. Mederos*, 13 F.4th 79, 87 (1st Cir. 2021), is "neither instructive nor persuasive" because it overlooked how opt-out provisions subvert associational

freedom. The plaintiffs there challenged a Rhode Island law requiring disclosure of top contributors to electioneering communications. *Id.* at 83. Like Prop. 211, Rhode Island's disclosure law allowed donors to opt out of having their contributions used for electioneering communications. *Id.* at 89. The First Circuit held that by requiring disclosure of only "relatively large donors who choose to engage in election-related speech," the act is "narrowly tailored enough to avoid any First Amendment infirmity." *Id.* at 89-90. The court recognized that opt-out provisions provide an "off-ramp[] for individuals who wish to engage in some form of political speech but prefer to avoid attribution." *Id.* at 89. Donors can still associate with organizations through contributions. The opt-out provision simply allows donors to avoid disclosure by allocating donors' contributions to other uses.

AFP argues (at 59) that opt-out provisions do not solve the problem that "many general-fund donors may not endorse all of an organization's election-related expenditures." But the opt-out provision allows donors to avoid endorsing an organization's campaign media. As the Arizona Court of Appeals held, "[t]he opt-out provision narrows the breadth of the Act, tailoring it to its informational and anti-corruption interests." *CAP*, __ P.3d __, 2024 WL 4719050, at *9, ¶ 42. AFP doesn't explain why the opt-out provision is insufficient here.

iii. The informational interest is not limited to candidate-related speech.

Relying on *Citizens United* and *Buckley*, AFP attempts (at 32-36) to limit the informational interest to speech that concerns candidates. But AFP cites nothing to support its suggestion that this is the constitutional boundary. Indeed, courts have found that the informational interest extends to ballot measures and candidate elections alike. (*See* Argument § I.A.1.a.) The Arizona Court of Appeals recently rejected the same argument, explaining that "[v]oters should also be allowed to discern the source of funds used to influence the adoption or rejection of ballot and referendum measures." *CAP*, __ P.3d __, 2024 WL 4719050, at *6, ¶ 32.

iv. AFP relies on irrelevant cases.

AFP relies (at 33-34) on *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995), to "refute the notion that government can compel any information it chooses." *McIntyre* involved an outright ban on anonymous campaign literature. *Id.* at 336. By contrast, Prop. 211 does not ban any speech. Instead, it requires disclosure of information that both the Supreme Court and this Court have repeatedly found important, including the names, addresses, employers, and occupations of contributors over a certain threshold.[5] *See, e.g.*, *Reed*, 561 U.S. at 200-01

[5] For the same reason, AFP's argument (at 33-34) that the informational interest doesn't permit disclosure of any information misses the mark. Prop. 211 doesn't require disclosure of irrelevant information (like medical history, tax returns, and Social Security numbers), as AFP suggests.

(disclosure of names and addresses of referendum petition signatories); *Fam. PAC*, 685 F.3d at 803, 806-07 (disclosure of names, addresses, employers, and occupations of contributors to ballot measures); *Brumsickle*, 624 F.3d at 997, 1007-08 (disclosure of names and addresses of contributors to ballot measures); *No on E*, 85 F.4th at 498, 505 (disclosure of names, address, occupation, employer, dates, and contributions to ballot measures). Indeed, *McIntyre* expressly distinguished disclosure laws from what was actually at issue in that case: self-identification on all election-related writings. 514 U.S. at 355.

AFP faults (at 5) the district court for failing to consider the "Supreme Court's latest teaching" on compelled disclosure in *Bonta*. But *Bonta* is different. As the Arizona Court of Appeals properly recognized, "political campaign expenditures were not at issue in [*Bonta*]." *CAP*, __ P.3d __, 2024 WL 4719050, at *6, ¶ 29. Instead, the disclosure law in *Bonta* required charitable organizations to disclose their major donors to the California Attorney General in order to renew their registrations. 594 U.S. at 601-02. That law swept broadly, requiring disclosure of donors from 60,000 charities. *Id.* California's articulated interest in disclosure was "preventing charitable fraud," but the attorney general admitted that it had never used the disclosed information to investigate fraud. *Id.* at 612-13. The Supreme Court therefore found that California's interest was "less in investigating fraud and

more in ease of administration," which did not justify disclosure of major donors from nearly 60,000 charities. *Id.* at 614-15.

Prop. 211, on the other hand, requires disclosure of the original source of funds and applies only to large spenders and their large donors. The State's compelling interest in an informed electorate justifies Prop. 211's original-source disclosure requirement because it reveals where the money actually came from. Unlike the law at issue in *Bonta*, Prop. 211 does not "cast a dragnet" affecting tens of thousands of organizations with only marginal use. *See Bonta*, 594 U.S. at 614.

AFP further relies (at 37-38) on cases involving contribution limits. But unlike contribution limits, disclosure requirements "impose no ceiling on campaign-related activities." *Citizens United*, 558 U.S. at 366 (citation omitted); *accord Buckley*, 424 U.S. at 19 ("A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached."). "For that reason, disclosure often represents a less restrictive alternative to flat bans on certain types or quantities of speech." *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 223 (2014). Contribution limits also serve different governmental interests than disclosure laws. Contribution limits "prevent[] *quid pro quo* corruption." *Id.* at 210. Disclosure laws, on the other hand, "provid[e] the electorate with information" and

"insure that the voters are fully informed." *Citizens United*, 558 U.S. at 368 (citations omitted). Disclosure laws also "deter actual corruption and the appearance of corruption," not by preventing *quid pro quo* corruption but by "exposing large contributions and expenditures to the light of publicity." *Buckley*, 424 U.S. at 67. This is precisely why exacting scrutiny applies to disclosure laws.

Moreover, none of the cases AFP cites stand for the proposition that original-source requirements cannot further the government's important interest in an informed electorate. AFP contends (at 37) that in *McCutcheon*, the Supreme Court rejected original-source requirements as "divorced from reality." But that's not true. In *McCutcheon*, the Court rejected the district court's assumption that donors would violate the federal earmarking requirement by using multiple entities to serve as conduits to funnel money to their preferred candidates in excess of base contribution limits. 572 U.S. at 215. The Court called the district court's assumption *that donors would violate the law* "divorced from reality." *Id.* at 215-17. *McCutcheon* doesn't address disclosure at all, let alone prevent original-source requirements.

AFP also relies (at 37-38) on *Buckley* and *Cal. Med. Ass'n v. Fed. Election Comm'n*, 453 U.S. 182 (1981), for the proposition that an entity's speech cannot be attributed to its donors simply because they have aligned interests. But as this Court has recognized, disclosure laws are concerned with revealing the actual source of political spending, "not ensuring that every donor agrees with every aspect of the

message." *No on E*, 85 F.4th at 506. Nothing suggests that voters can't "distinguish between supporting a group that broadcasts a statement and supporting the statement itself." *Id.* These cases don't prevent disclosure of the original source of funds.

* * *

In sum, Prop. 211 is substantially related to the State's interest in an informed electorate. Its provisions are consistent with disclosure laws that have been repeatedly upheld, and they serve the critical purpose of providing voters with valuable information about the sources of political advertising.

2. Prop. 211 advances anti-corruption interests, too.

Although the informational interest alone is sufficient to affirm, Prop. 211 is also substantially related to the State's anti-corruption interest, which is an independent basis for the Court to affirm. *See Citizens United*, 558 U.S. at 369 (declining to consider other asserted interests "[b]ecause the informational interest alone is sufficient to justify" disclosure requirements).

This Court has held that disclosure requirements "help preserve the integrity of the electoral process by deterring corruption and the appearance of corruption" for candidate elections and ballot measures. *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 832 (9th Cir. 2014). Indeed, a majority of Arizona voters passed Prop. 211 expressly "to prevent corruption and to assist Arizona voters in making informed election decisions by securing their right to know the source of

monies used to influence Arizona elections." 2022 Ariz. Legis. Serv. Prop. 211 § 2(B).

AFP argues (at 52-53) that Prop. 211 doesn't advance the State's anti-corruption interest because it has "no application whatsoever to money given directly to candidates." But as the Arizona Court of Appeals correctly recognized, this "narrow view of corruption glosses over the reality that donors may support a candidate by contributing to an independent entity that supports the candidate's policy positions." *CAP*, __ P.3d __, 2024 WL 4719050, at *6, ¶ 32. Nothing prevents donors from exchanging "their indirect monetary support for political favors once the candidate is elected." *Id.* That is, the same corruption concerns exist regardless of whether the donor contributed to the candidate directly. *Id.*

Citing *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765 (1978), AFP maintains (at 53) that Prop. 211 does not meaningfully advance the State's anti-corruption interest because the risk of corruption present in candidate elections does not exist for ballot measures. But the State's anti-corruption interest is not so limited. By shining a light on large contributors and original donors, Prop. 211 shows who stands to benefit from election-related issues. The State's interest in deterring corruption is directly served by Prop. 211's focus on large donors and the original source of funds.

B. The State's interests are strong and impose minimal or no burdens on First Amendment rights.

To satisfy exacting scrutiny, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Reed*, 561 U.S. at 196 (citation omitted). Because the State's informational and anti-corruption interests are strong, AFP must show that Prop. 211 imposes significant burdens on speech and associational rights to prevail. AFP cannot meet this burden.

Although disclosure requirements may "deter some individuals who otherwise might contribute[,] … disclosure requirements certainly in most applications appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption." *Buckley*, 424 U.S. at 68. Prop. 211 imposes little or no burden on speech or associational rights because disclosure requirements "impose no ceiling on campaign-related activities," *id.* at 64, and "do not prevent anyone from speaking," *McConnell*, 540 U.S. at 201.

Indeed, Prop. 211 does not limit the amount of money that can be spent on campaign media, nor does it restrict the content of that media. Prop. 211 also doesn't prevent individuals from associating with organizations. It only requires disclosure of the original source of funds for significant political spending. A.R.S. § 16-973(A). Prop. 211 also minimizes any potential burden imposed by allowing donors to opt out of having their contributions used for campaign media spending to avoid disclosure. A.R.S. § 16-972(B). This burden (if it's a burden at all) is modest at

most. *See No on E*, 85 F.4th at 509 (modest burden imposed by secondary-contributor requirement did not outweigh informational interest); *Gaspee*, 13 F.4th at 95 (disclosure of some of the funding sources of a communication is a modest burden because it "does not require any organization to convey a message antithetic to its own principles"). For this reason, the Arizona Court of Appeals held that "[t]he government has strong informational and anti-corruption interests, which are sufficiently important to justify the modest burden [Prop. 211] places on donors' association rights." *CAP*, __ P.3d __, 2024 WL 4719050, at *6, ¶ 28. This Court should do the same.

AFP's arguments to the contrary fail.

1. AFP first argues (at 46-49) that the burden imposed by Prop. 211's opt-out provision is substantial because it forces speakers to sit silent for 21 days. Not so. Covered persons and their donors control when to consent or opt out. If a donor wants her money to be used on campaign media sooner, she can consent immediately and the money can be spent right away. *See* A.R.S. § 16-972(C) (allowing use of donor's funds after 21 days or the donor consents, "whichever is earlier"). As the district court properly acknowledged, donors' ability to avoid this waiting period diminishes any potential burden. ER-23. Moreover, the opt-out provision serves to reduce potential burdens by giving donors *more* control over how their contributions are used. This feature was not present in other disclosure laws upheld by this Court.

See, e.g., *No on E*, 85 F.4th at 510 ("[E]ven though San Francisco's ordinance goes beyond donations that are earmarked for electioneering, it does not have an unconstrained reach."); *Smith II*, 95 F.4th at 1211-12, 1219 (disclosure law satisfied exacting scrutiny without earmarking and opt-out provisions). Prop. 211's opt-out requirement makes it less burdensome than other disclosure laws.

AFP (at 48) also criticizes (but does not seek to invalidate)[6] the Commission's rule allowing donors to "request to opt out at any time after the initial notice period." A.A.C. R2-20-803(E). AFP asserts (at 48) that "[t]he Commission has yet to even say 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." But the rule addresses this. The covered person must confirm the donor's opt-out request in writing within five days, and "subsequently that donor shall be treated as having opted out by the covered person." A.A.C. R2-20-803(E). That is, the covered entity won't use the donor's funds on future public communications and no further disclosure will be required. This doesn't "compound uncertainty and chill" as AFP suggests (at 48). It gives donors even more control over how their funds are spent.

2. AFP (at 44-45) likewise objects to (but again does not seek to invalidate) the Commission's rule that the top-three donor requirement applies only

[6] The complaint did not seek any relief as to the Commission's rules, advisory opinions, or enforcement actions.

to donors who haven't opted out. Prop. 211 allows the Commission to "establish disclaimer requirements for public communications by covered persons." A.R.S. § 16-974(C). At bottom, public communications must state "the names of the top three donors who directly or indirectly made the three largest contributions of original monies during the election cycle to the covered person." *Id.* The Commission promulgated a rule clarifying that § 16-974(C) requires disclosure of the top three donors who haven't opted out of campaign media spending under § 16-972(B). A.A.C. R2-20-805(B). In light of this rule, the Arizona Court of Appeals held that "Plaintiffs' fears are unfounded." *CAP*, __ P.3d __, 2024 WL 4719050, at *7, ¶ 37.

AFP asserts (at 44-45) that the Commission's rule contravenes Prop. 211's plain text. But the rule is consistent with the top-three donor requirement. This Court "will ordinarily accept the decision of an intermediate appellate court as the controlling interpretation of state law unless [it] find[s] convincing evidence that the state's supreme court likely would not follow it." *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 15 F.4th 885, 889 (9th Cir. 2021) (internal citations omitted). The Arizona Court of Appeals already expressly rejected this exact argument, explaining, "we agree with the Commission's regulation and *independently conclude* that donors who opt out under § 16-972(B) shall not have their identities included in the

disclaimers of top-three donors under § 16-974(C)." *Id.* at *8, ¶ 39 (emphasis added). This Court should do the same.

Moreover, the Arizona Court of Appeals' interpretation makes sense. The purpose of Prop. 211 is to disclose individuals and entities actually funding campaign media. 2022 Ariz. Legis. Serv. Prop. 211 § 2(A). Read in context with the rest of Prop. 211, the top-three donor requirement only applies to donors who haven't opted out under § 16-972(B), *i.e.* the donors actually funding campaign media. As the Arizona Court of Appeals correctly acknowledged, any other interpretation "would negate the purpose of the Act by informing the electorate of the identities of donors whose contributions were *not* used for campaign media spending" and "would lead to illogical results." *CAP*, __ P.3d __, 2024 WL 4719050, at *8, ¶ 39.

Even if AFP's interpretation were correct, AFP's facial challenge still cannot succeed. This is a facial challenge, not a case brought by a top-three donor who opted out. AFP must show that a "substantial number of [the law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Bonta*, 594 U.S. at 615. Disclosing the top three donors who haven't opted out is a "plainly legitimate sweep." AFP focuses on situations in which an organization's top three donors—those who by definition support the organization the *most*, and who most strongly believe in the organization's mission—have nevertheless opted out of the

organization using their donations for campaign media spending. But AFP hasn't alleged or even argued that that situation constitutes a "substantial number" of Prop. 211's applications. The Court should not invalidate this requirement when it can be constitutionally applied, at minimum, to the top three donors haven't opted out.

Moreover, even if the top-three donor requirement is facially unconstitutional, that sentence of the statute is severable. *See* 2022 Ariz. Legis. Serv. Prop. 211 § 4 ("The provisions of this act are severable. If any provision of this act … is held to be unconstitutional, the remainder of this act … shall not be affected by the holding."); *see also Toma*, 553 P.3d at 898, ¶¶ 81-85 (applying Prop. 211's severability clause).

3. Contrary to AFP's contention (at 44-46), opting out of campaign media spending does not burden donors' associational rights. Individuals can still donate to organizations to support the causes they want; the opt-out provision merely prevents their funds from being used specifically for campaign media to avoid disclosure. AFP attempts to paint Prop. 211 as either compelling disclosure or forcing donors to opt out and forego their associational rights, but Prop. 211 does neither of those things. Instead, Prop. 211 minimizes any potential burden by allowing donors to opt out of disclosure and use of their contributions for campaign media.

4. Prop. 211's requirement that covered persons maintain records of donations over $2,500 for five years, A.R.S. § 16-972(D), is also not unduly burdensome, as AFP suggests (at 54-55). Courts have consistently upheld similar record-keeping requirements as imposing minimal burdens on states' interests. *See, e.g.*, *Yamada*, 786 F.3d at 1195, 1197 (five-year record-keeping); *Nat'l Org. for Marriage, Inc. v. McKee* ("*McKee II*"), 669 F.3d 34, 38, 38-40 (1st Cir. 2012) (four-year record-keeping).

5. AFP next asserts (at 70) that Prop. 211 imposes more burdensome record-keeping requirements than federal law. Federal law requires donation records to be kept for three years for single donations larger than $50 or aggregate donations exceeding $200. 52 U.S.C. § 30102(b)-(d). Like Prop. 211, this record-keeping requirement imposes modest burdens. As the district court properly recognized, "[r]equiring covered persons retain transfer records for significantly larger donations for slightly longer than federal law is not unduly burdensome." ER-21. AFP cites nothing to suggest that the federal provision represents the constitutional ceiling.

6. AFP also contends (at 55-56) that Prop. 211 imposes significant burdens by deputizing voters and vesting private parties with enforcement power. But as the district court acknowledged, AFP's arguments misconstrue Prop. 211. ER-12. Individuals cannot pursue actions against purported violators. Although

qualified voters may file a verified complaint with the Commission for alleged violations of Prop. 211, the Commission is responsible for enforcing it. A.R.S. § 16-977(A). If the Commission, exercising its prosecutorial discretion, declines to take action against the alleged violator, the voter may bring a civil action *against the Commission* to compel it to pursue the action. A.R.S. § 16-977(C). A court reviews de novo whether the Commission properly exercised its prosecutorial discretion. *Id.*

Moreover, contrary to AFP's suggestion (at 56), the law doesn't bless a private party's "aggressive[]" or "expansive[]" interpretation of the law. By analogy, even a direct action for breach of contract, for example, does not bless a private party's interpretation of contract law. A court still decides the scope of the law, just like under Prop. 211.

This enforcement mechanism does not impose any additional burden on covered persons or donors. It merely provides a means for ensuring that the Commission fulfills its duties under Prop. 211. Although AFP cites (at 56) *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014), for the proposition that filing charges alone can be damaging before an election, that case concerns Article III standing to challenge a statute. *See id.* at 158-59. It does not suggest that these provisions necessarily violate the First Amendment. In fact, such provisions are common in campaign finance disclosure laws. *See, e.g.*, 52 U.S.C. § 30109(a)(1) ("Any person who believes a violation of this Act … may file a complaint with the Commission.");

Cal. Gov't Code § 83115 ("Upon the sworn complaint of any person or on its own initiative, the commission shall investigate possible violations of this title relating to any agency, official, election, lobbyist or legislative or administrative action."); Me. Stat. Title 21-A § 1003(2) ("A person may apply in writing to the commission requesting an investigation.").[7]

* * *

Given the State's strong informational and anti-corruption interests, and the minimal burdens Prop. 211 imposes, Prop. 211 satisfies the second prong of exacting scrutiny. Prop. 211 strikes a careful balance by providing voters with important information about the original sources of campaign media spending while minimizing any potential burdens on First Amendment rights by focusing on large donors and providing opportunities to opt out.

C. Prop. 211 is narrowly tailored.

The last step of exacting scrutiny requires that Prop. 211 be "narrowly tailored to the interests it promotes." *No on E*, 85 F.4th at 509 (citation omitted). Narrow tailoring, however, does not require that Prop. 211 be the "the least restrictive means of achieving that end." *Id.* (citation omitted). Prop. 211 "must have a scope 'in

[7] For the same reasons, Prop. 211's enforcement provision is narrowly tailored to the State's informational interest. It sweeps no broader than necessary to ensure that the Commission enforces alleged violations of Prop. 211 to achieve the State's informational and anti-corruption interests.

proportion to the interest served,' but it need not represent the 'single best disposition.'" *Id.* (citation omitted). Prop. 211 is narrowly tailored to the State's interests because it applies only to large donors and provides exceptions and opportunities to opt out. Prop. 211 therefore satisfies exacting scrutiny, as the Arizona Court of Appeals held. *CAP*, __ P.3d __, 2024 WL 4719050, at **7-10, ¶¶ 34-48.

1. Prop. 211 applies only to large spenders and large donors.

Prop. 211 is narrowly tailored to encompass only large spenders and large donors. It requires disclosure of covered persons, direct contributors, and their donors only when an entity spends $50,000 or more on campaign media for statewide campaigns or $25,000 or more for other campaigns. A.R.S. § 16-973(A). Prop. 211 is further tailored by requiring only disclosure of donors who contribute more than $5,000. A.R.S. § 16-973(A)(6).

This Court has recognized that "[t]he acceptable threshold for triggering reporting requirements need not be high." *Nat'l Ass'n for Gun Rts., Inc. v. Mangan*, 933 F.3d 1102, 1118 (9th Cir. 2019). But Prop. 211's thresholds are high. In fact, Prop. 211's individual disclosure thresholds are up to twenty times higher than those upheld by the Supreme Court, this Court, and other circuit courts:

Threshold	Case
$250	*Mangan*, 933 F.3d at 1118
$1,000	*Citizens United*, 558 U.S. at 366-67
$1,000	*Yamada*, 786 F.3d at 1199-1200
$1,000	*Gaspee*, 13 F.4th at 89
$2,000	*Smith II*, 95 F.4th at 1218
$5,000	*No on E*, 85 F.4th at 498

As the Arizona Court of Appeals properly held, Prop. 211's "larger dollar amounts more narrowly tailor the Act by removing the disclosure burden on ordinary citizens who make modest campaign contributions and decreasing the reporting obligations on the covered persons." *CAP*, __ P.3d __, 2024 WL 4719050, at *9, ¶ 44. The thresholds "'aim[] squarely at the conduct most likely to undermine' the government's interests—fair and transparent elections." *Id.* (citation omitted); *see also Yamada*, 786 F.3d at 1200 (high donor threshold "adequately ensures that political committee burdens are not imposed on 'groups that only incidentally engage' in political advocacy").

2. Donors can opt out of disclosure.

Prop. 211 provides additional tailoring by allowing direct contributors to covered persons to opt out of the use of their contributions for campaign media. A.R.S. § 16-972(B). Covered persons can notify direct contributors of the opportunity to opt out before or after the covered person receives the direct contributor's monies. A.R.S. § 16-972(C). In addition, donors who fear that

disclosure would subject them or their family to a serious risk of physical harm have additional ways to avoid disclosure. A.R.S. § 16-973(F).

Opt-out provisions help to ensure that disclosure laws are tailored to include "donors who choose to engage in election-related speech." *Gaspee*, 13 F.4th at 89. By providing opportunities to opt out of disclosure, Prop. 211 "provides off-ramps for individuals who wish to engage in some form of political speech but prefer to avoid attribution." *Id.* As the Arizona Court of Appeals properly recognized, "[t]he opt-out provision narrows the breadth of the Act, tailoring it to its informational and anti-corruption interests." *CAP*, __ P.3d __, 2024 WL 4719050, at *9, ¶ 42. This Court should find the same.

3. AFP's arguments do not help AFP meet its burden.

(a) Prop. 211 is not overbroad.

To succeed on a facial overbreadth challenge, AFP must show that a "substantial number of [the law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Bonta*, 594 U.S. at 615. It must show either that Prop. 211's "lack of tailoring … is categorical," or, if Prop. 211 is narrowly tailored, that "donors to a substantial number of organizations will be subjected to harassment and reprisals." *Id.* at 615, 617. AFP meets neither burden.

i. Prop. 211's disclosure of donors' information imposes only modest burdens (if any).

AFP first contends (at 58) that Prop. 211's disclosure requirements are not narrowly tailored because they require disclosure of donors' occupations and employers. *See* A.R.S. §§ 16-971(10)(a) (defining "identity" to include "the name, mailing address, occupation and employer of the individual"). But as explained above (Argument § I.A.1.b.iv), similar provisions not only are common but have been routinely upheld as "impos[ing] only a modest burden on First Amendment rights." *Fam. PAC*, 685 F.3d at 803, 806-07; *accord No on E*, 85 F.4th at 498, 505 (same).

This makes sense because disclosure of donors' occupations and employers directly serves the State's informational interest. Disclosure of donors' employers allows the electorate to detect corporate influence, even if the company itself isn't directly contributing. Consider an initiative to regulate artificial intelligence. Voters want to know whether employees of AI companies are the original source of the monies, even if the AI companies themselves do not contribute.

ii. Nothing prevents donors from opting out.

AFP argues (at 44-45) that Prop. 211's opt-out provision is not narrowly tailored because it doesn't apply to all secondary donors or disclaimers. But the Constitution doesn't require perfect tailoring. *See No on E*, 85 F.4th at 509 (disclosure requirement "must have a scope 'in proportion to the interest served,' but

it need not represent the 'single best disposition.'" (citation omitted)). And nothing prevents covered persons or direct contributors from communicating with original donors about opting out. (*See* Argument § I.A.1.b.i.)

AFP also contends (at 47-48) that a donor who opts out after funds are deposited in the general treasury could prohibit use of any funds in the group's general treasury. As the district court correctly recognized, AFP does "not identify the sections of the Act they are interpreting in this manner" because "there are no such sections." ER-23–24. Prop. 211 requires covered persons to *track* and *report* money received and spent and *maintain* transfer records. A.R.S. §§ 16-971(19); 16-972(A); 16-973(A). It doesn't require funds to be segregated. Prop. 211 also doesn't prohibit using the remaining funds in the treasury when a donor opts out. For example, if an organization has $10 million in its general treasury from its business income or donors who have not opted out, and a donor who contributed $10,000 chooses to opt out under § 16-972(B), the organization may still spend $9,990,000 on campaign media. If the organization does spend any of the remaining $9,990,000 on campaign media, it won't disclose the donor who opted out. No disentanglement necessary.

iii. Prop. 211's definition of "election cycle" is not overinclusive.

Prop. 211 requires disclosure from covered persons during an "election cycle." A.R.S. § 16-973(A). An election cycle is the two-year period "beginning

the day after general election day in even-numbered years and continuing through the end of general election day in the next even-numbered year." A.R.S.§ 16-971(8).

AFP challenges (at 58, 69) this definition as overbroad because donors "may face disclosure years later" and the disclosure thresholds represent a fraction of spending over a two-year period. But this Court has found similar requirements constitutional. *See Yamada*, 786 F.3d at 1199 (holding Hawaii's $1,000 disclosure threshold in a "two-year election period" was constitutional as applied). AFP cites no authority compelling a different conclusion here.

iv. Prop. 211's definition of "campaign media spending" is not overbroad.

Prop. 211's definition of campaign media spending (A.R.S. § 16-971(2)) is tailored to include spending on election-related communications. AFP lodges several challenges to this definition.

It first contends (at 60) that the definition is overbroad because it includes a "public communication that refers to a clearly identified candidate" 90 days before the primary through the general election. A.R.S. § 16-971(2)(a)(iii). AFP maintains (at 60-61) that this definition encompasses issue advocacy far removed from elections, including that related to the legislative session. But this definition is nearly identical to the definition upheld in *Citizens United*, which included communications that "refer[] to a clearly identified candidate for Federal office." 558 U.S. at 323-24 (quoting 52 U.S.C. § 30104(f)(3)(A)(i)). Prop. 211's temporal

limits are also similar to those found sufficiently tailored by other courts. *See Gaspee*, 13 F.4th at 83, 88 ("within sixty days of a general election or referendum or within thirty days of a primary election"). This definition is not overbroad.

AFP next argues (at 61-62) that the definition of campaign media spending is overinclusive because it applies to any communication that "promotes, supports, attacks or opposes the qualification or approval of any state or local initiative or referendum." A.R.S. § 16-971(2)(a)(iv). AFP asserts (at 61) that this definition could reach advocacy (like that for the humane treatment of animals) far removed from "electioneering." But, as the district court acknowledged, AFP doesn't explain why communications that do not mention any initiative would be covered by this definition. ER-26. If the communications refer to an initiative, then donors would be subject to disclosure if they meet the large spending thresholds. Although AFP dismissively refers to the 2016 "Save the Puppies and Kittens" initiative, that initiative was important enough to voters to make it to the ballot. Voters should have the right to know whether a group like "Friends of Furry Paws" is actually funded by animal advocates or by puppy-mill owners.

AFP contends (at 62-63) that the definition of campaign media spending is overbroad because it includes any communication that "promotes, supports, attacks or opposes a candidate within six months preceding an election involving that candidate," A.R.S. § 16-971(2)(a)(ii), or that "promotes, supports, attacks or opposes

the recall of a public officer" at any time, A.R.S. § 16-971(2)(a)(v). AFP argues (at 62-63) that under this definition, communications criticizing or praising elected officials could be considered communications supporting or opposing a recall. But as the district court correctly identified, Prop. 211's definition refers to *the* recall of a public officer, not *a* recall of a public officer. ER-26–27. Once a recall exists, communications referencing that recall are subject to Prop. 211's disclosure requirements.

The district court's interpretation makes sense. "In construing [a] statute, [the] definite article 'the' particularizes the subject which it precedes and is [a] word of limitation as opposed to [the] indefinite or generalizing force [of] 'a' or 'an.'" *Gale v. First Franklin Loan Servs.*, 701 F.3d 1240, 1246 (9th Cir. 2012) (citation omitted). Accordingly, the definite article in § 16-971(2)(a)(v) confirms that speech about a *particular* recall is necessary.

AFP lodges a similar challenge (at 63-64) to including "other partisan campaign activity" in the definition of campaign media spending, arguing that it invites standardless discretion and weaponization by political adversaries. But partisan campaign activity counts as campaign media spending only if it "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). Prop. 211 lists examples of activities or public communications that meet this definition, "including

partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity." *Id.* The Court does not "view[] individual words in isolation" but instead reads the relevant provision as a whole. *Leisnoi, Inc. v. Stratman*, 154 F.3d 1062, 1066 (9th Cir. 1998). The remaining text of the statute appropriately narrows the phrase "partisan activity."

Finally, AFP challenges (at 64-65) including preparatory activities in the definition of campaign media spending. Campaign media spending includes "[r]esearch, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with" any of the other listed activities. A.R.S. § 16-971(2)(a)(vii). AFP claims (at 64) that this provision would apply to an out-of-state organization that spent over $50,000 preparing a "public communication" that merely referenced an Arizona candidate or issue in a national newsletter or online post. It argues (at 64) that this is "particularly problematic" for online posts that can be distributed anywhere. But as the district court correctly recognized, Prop. 211 excludes a "news story, commentary or editorial" posted to a "website or other periodical publication." A.R.S. § 16-971(2)(b)(i). ER-28.

Moreover, Prop. 211 defines "public communication" as a "paid communication to the public." A.R.S. § 16-971(17)(a). The organization would have to meet the large spending thresholds by preparing a public communication to

even trigger the disclosure requirements. That is, Prop. 211 doesn't apply to a comment about an Arizona candidate posted on Facebook.

v. Prop. 211's definition of "public communication" is narrowly tailored.

AFP claims (at 66) that Prop. 211 is not narrowly tailored because it covers more communications than its federal counterpart. Under federal law, "electioneering communication" includes "any broadcast, cable, or satellite communication." 52 U.S.C. § 30104(f)(3)(A)(i). Prop. 211 defines "public communication" as "a paid communication to the public by means of broadcast, cable, satellite, internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing or another mass distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium." A.R.S. § 16-971(17)(a). But the federal provision does not delineate a constitutional boundary, and AFP offers no reason (let alone authority) for why this specific piece of legislation would have been written at the maximum constitutional limit.

To the contrary, disclosure laws with broader definitions than federal law have withstood constitutional scrutiny. *See Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 491 (7th Cir. 2012) (defining "electioneering communication" as "any broadcast, cable, or satellite communication, including radio, television, or Internet

communication"); *Yamada*, 786 F.3d at 1191 (rejecting challenge that Hawaii's inclusion of print speech in its disclosure law was unconstitutional).

Moreover, these differences are immaterial. Both acts regulate communications that have the potential to influence voters. Prop. 211's definition of public communication is proportional to the State's interest in an informed electorate, ensuring that organizations cannot circumvent disclosure by using a different form of public media.

Prop. 211's definition of public communication is narrowly tailored.

vi. Earmarking is not constitutionally required.

AFP also argues (at 36-37, 58) that courts have "emphasized the importance of limiting disclosure to contributions specifically earmarked to support campaign-related advocacy," and "[w]ithout earmarking or similar limitations, Proposition 211 is menacingly overinclusive." First, as the Arizona Court of Appeals properly recognized, "the fact that the Act *could have* been more narrowly tailored by requiring donations to be earmarked explicitly for campaign media spending does not mean it *must* contain such an earmarking requirement." *CAP*, __ P.3d __, 2024 WL 4719050, at *8, ¶ 41. Exacting scrutiny only requires a "reasonable fit" between the disclosure requirements and the interests served. *Gaspee*, 13 F.4th at 88. The opt-out provision alone achieves that fit. A.R.S. § 16-972(B).

Moreover, AFP cites no authority holding that earmarking is constitutionally required. To the contrary, the Supreme Court has upheld disclosure laws without an earmarking provision. *See McConnell*, 540 U.S. at 196-97 (upholding disclosure under federal law without earmarking provision); *Citizens United*, 558 U.S. at 369 (same).

Circuit courts, including this Court, have also repeatedly held that earmarking isn't required. As this Court acknowledged in *No on E*, nothing suggests that "a law fails narrow tailoring *unless* it is limited to the disclosure of earmarked contributions." 62 F.4th at 510 ("[E]ven though San Francisco's ordinance goes beyond donations that are earmarked for electioneering, it does not have an unconstrained reach."); *Gaspee*, 13 F.4th at 89 (finding disclosure regulation narrowly tailored without an earmarking provision because it allowed "ample opportunity for donors to opt out from having their donations used for … electioneering communications"); *cf. Ctr. for Individual Freedom, Inc. v. Tennant*, 706 F.3d 270, 292 (4th Cir. 2013) (reversing district court's conclusion that act could not survive exacting scrutiny without an earmarking provision).

The cases AFP cites (at 36-37) do not suggest otherwise. First, *Indep. Inst. v. Williams*, 812 F.3d 787 (10th Cir. 2016), does not stand for the proposition that a disclosure requires earmarking to be narrowly tailored. There, the Tenth Circuit *upheld* a disclosure law as narrowly tailored, in part because of an earmarking

provision, but did not hold that earmarking is constitutionally required or that the law would have failed narrow tailoring without earmarking. *Id.* at 789.

AFP also relies (at 36) on *Van Hollen, Jr. v. FEC*, 811 F.3d 486 (D.C. Cir. 2016), but the court there considered a challenge to the Federal Election Commission's rule requiring disclosure of donations "made for the purpose of furthering electioneering communications" under the *Chevron* doctrine. *Id.* at 488. The court did not address whether the purpose requirement was necessary for the federal provision to pass constitutional muster.

Meanwhile, in *Wyo. Gun Owners v. Gray*, 83 F.4th 1224 (10th Cir. 2023), the Tenth Circuit suggested that to be narrowly tailored the disclosure law at issue "*could* have outlined an earmarking system." *Id.* at 1248 (emphasis added). The court did not hold that such a system was constitutionally required. Indeed, it expressly declined to find that "legislatures must include an earmarking provision to survive narrow tailoring." *Id.* at 1249 n.8. Instead, the Tenth Circuit found the law insufficiently tailored as applied to an organization because it would require the organization with an unsophisticated bookkeeping system to disclose all donations. *Id.* at 1247. Even there, the court distinguished *Gaspee*, which upheld a disclosure law as narrowly tailored because it included an opt-out provision. *Wyo. Gun Owners*, 83 F.4th at 1249 (citing *Gaspee*, 13 F.4th at 89).

vii. Prop. 211's thresholds are up to twenty times higher than other disclosure laws.

AFP challenges (at 69-70) Prop. 211's "low" monetary thresholds. First, as discussed above (Argument § I.C.1), Prop. 211's individual monetary thresholds are higher than other disclosure laws upheld by courts across the country. And covered persons aren't required to disclose $5000+ donors unless the covered person spends $50,000 on campaign media in a statewide election or $25,000 on other elections during an election cycle. A.R.S. § 16-973(A). These thresholds aren't low. *See CAP*, __ P.3d __, 2024 WL 4719050, at *9, ¶¶ 43-44.

Moreover, the "threshold at which contributions are disclosed … is necessarily a judgmental decision, best left to the discretion of the legislature, here the people of" Arizona. *Smith II*, 95 F.4th at 1218 (quotation marks and citation omitted); *accord Buckley*, 424 U.S. at 83 (monetary thresholds are a "judgmental decision, best left ... to congressional discretion"); *Family PAC*, 685 F.3d at 811 ("[D]isclosure thresholds ... are inherently inexact; courts therefore owe substantial deference to legislative judgments fixing these amounts."); *Nat'l Org. for Marriage v. McKee* ("*McKee I*"), 649 F.3d 34, 60 (1st Cir. 2011) (upholding monetary thresholds unless they are "wholly without rationality." (citation omitted)). The voters' judgment in determining these thresholds should not be disregarded here.

viii. Prop. 211 doesn't violate the major purpose doctrine.

AFP argues (at 66-67) that Prop. 211 is not narrowly tailored because it applies even if electioneering is not a "major purpose" of the organization. In *Buckley*, the Supreme Court held that only organizations whose "major purpose" is the nomination or election of a candidate can be regulated as political committees under federal campaign finance laws. 424 U.S. at 79. But as AFP acknowledges (at 67), this Court held that *Buckley* did not set the constitutional boundary, and groups need not have a "major purpose" of affecting elections to be subject to disclosure. *Brumsickle*, 624 F.3d at 1009–10. Instead, whether a disclosure law permissibly encompasses certain organizations "depends on whether the burdens imposed by the disclosure requirements are substantially related to the government's important informational interest." *Id.* at 1010.

The Ninth Circuit isn't an outlier here. Indeed, in *Citizens United*, the Supreme Court upheld disclosure for an entity where election of a candidate was not a major purpose of the group. *See* 558 U.S. at 367. Other circuit courts have likewise held that disclosure regulations constitutionally apply to organizations whose major purpose is not related to electioneering. *McKee I*, 649 F.3d at 59. This makes sense. As this Court recognized, if disclosure laws apply only to entities whose major purpose is electioneering, disclosure laws could encompass organizations that spend $1,500 per election cycle because their major purpose is electioneering, while

excluding organizations that spend $50,000 per election cycle because their major purpose is unrelated to electioneering. *See Brumsickle*, 624 F.3d at 1011.

AFP argues (at 67) that even if the Court in *Brumsickle* correctly held that electioneering need not be the major purpose of an organization, it still requires that campaign media spending be a "significant purpose" of the organization. But by requiring disclosure only from groups and donors who spend substantial amounts on election-related advertising, Prop. 211 avoids this pitfall. Its high spending thresholds ensure that it does not apply to groups "incidentally engaged in [political] advocacy" like *Brumsickle* directs. 624 F.3d at 1011. Any burden imposed by disclosure under Prop. 211 is therefore tailored to the State's interest in informing the voters about who is financing elections. AFP's argument is squarely foreclosed by Circuit precedent.

(b) Prop. 211 is not underinclusive.

AFP argues (at 68) that Prop. 211 is underinclusive because organizations that spend their own income on campaign media are not considered covered persons. "Membership or union dues that do not exceed $5,000 from any one person in a calendar year" are considered business income. A.R.S. § 16-971(1)(b). AFP contends (at 68) that Prop. 211 "unduly preferences labor unions over other advocacy associations," but the $5,000 threshold is the same for all donors. It doesn't treat unions differently.

* * *

In sum, by requiring disclosure of the original source of campaign media spending, Prop. 211 directly serves the State's compelling informational and anti-corruption interests. Prop. 211's opt-out provision and emphasis on large spenders and their large donors ensure that it is narrowly tailored to the State's interests. AFP doesn't even attempt to argue that "donors to a substantial number of organizations will be subjected to harassment and reprisals," to support their facial challenge. *Bonta*, 594 U.S. at 617. It also doesn't show that Prop. 211's "lack of tailoring … is categorical." *Id.* at 615.

Prop. 211 satisfies exacting scrutiny, and this Court should affirm the district court's dismissal of AFP's facial free-speech and associational claims.

II. The district court properly dismissed AFP's as-applied claims.

A. AFP does not sufficiently allege a reasonable probability of harm from Prop. 211.

To state an as-applied challenge, AFP must allege facts establishing a "reasonable probability that the group's members would face threats, harassment, or reprisals if their names were disclosed." *Citizens United*, 558 U.S. at 370. Although there is some "flexibility in the proof of injury," a plaintiff must still allege specific facts demonstrating "past or present harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern

of threats or specific manifestations of public hostility may be sufficient." *Buckley*, 424 U.S. at 74. AFP has not met this burden.

The district court correctly found that AFP's as-applied claims rely on "generic allegations" insufficient to show that that its donors (who aren't parties to this case) face a reasonable probability of harm if disclosed. ER-32. For example, AFP alleges that "[p]ublic disclosure and broadcasting will make individuals less likely to donate to advocacy and other non-profit organizations *such as* Plaintiffs by compelling associating and chilling the exercise of their First Amendment rights." ER-92–93, ¶ 12 (emphasis added). AFP doesn't even allege harm to itself, but rather to other organizations like it. This type of allegation cannot support an as-applied challenge.

Moreover, the Supreme Court has long recognized that disclosure laws may permissibly chill some donors:

> 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, and they must be weighed carefully against the interests which Congress has sought to promote by this legislation. In this process, we note … 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.

Buckley, 424 U.S. at 68 (emphasis added; footnotes omitted). In other words, yes, disclosure may deter donors from contributing, but that doesn't necessarily make a disclosure law unconstitutional.

AFP also maintains that "[t]he prospect of compelled disclosure and disclaimer is especially harmful for Plaintiffs and their donors, *who may reasonably fear that reprisals may result from any disclosure* of their donations and identities." ER-93, ¶ 13 (emphasis added). AFP doesn't allege that specific donors have stopped contributing because of Prop. 211. This allegation, too, is insufficient.

AFP additionally asserts that "[s]ome people publicly associated with the Plaintiffs have faced boycotts, character attacks, personal threats, and worse as a result," while "[o]thers simply have no desire for their giving to be made public." *Id.* But AFP provides no details about specific incidents when its donors have faced such harm. Nor does it tie any of these incidents to Arizona, AFP's election advocacy, or AFP's donors who support its election advocacy. Donors' preference for anonymity isn't sufficient either. *See Buckley*, 424 U.S. at 71-72 ("substantial public interest in disclosure" outweighed evidence that "one or two persons refused to make contributions because of the possibility of disclosure").

Successful as-applied challenges involve much more than AFP's conclusory allegations. In *NAACP v. Ala. ex. rel Patterson*, 357 U.S. 449 (1958), the Supreme Court allowed an as-applied challenge when the state government attempted to obtain membership lists under Jim Crow laws. *See id.* at 451-53. The Court sustained the challenge there based on "an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these

members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." *Id.* at 462. That is, the NAACP provided specific evidence of reprisals against members whose affiliation was disclosed. AFP does not.

Similarly, in *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87 (1982), the Supreme Court permitted an as-applied challenge based on "substantial evidence of both governmental and private hostility toward and harassment of SWP members and supporters." *Id.* at 98-99. This included FBI surveillance, harassment of candidates, firing of party members from jobs, and destruction of party property. *Id.* at 99. The plaintiffs there provided specific examples with dates and details of incidents affecting individual members. *Id.*

In *Bates v. City of Little Rock*, 361 U.S. 516 (1960), the Supreme Court again allowed the NAACP to bring an as-applied challenge when it established that disclosure of its members resulted in "threats of bodily harm." *Id.* at 521-22. There, the NAACP presented specific evidence that members received incessant phone calls "day and night," had stones thrown at their homes, and received letters threating their lives. *Id.* at 522 n.7.

Unlike successful as-applied challenges, AFP does not allege a "pattern of threats" or "specific manifestations of public hostility" linked to disclosure of its donors. *Brown*, 459 U.S. at 93. Its vague references to past incidents do not establish

a reasonable probability of future harm resulting from Prop. 211's disclosure requirements. *Cf. CAP*, __ P.3d __, 2024 WL 4719050, at **10-12, ¶¶ 49-61 (rejecting as-applied challenge to Prop. 211 based on conclusory and speculative allegations).

Moreover, Prop. 211 includes safeguards to protect donors at risk of harm. It allows donors to avoid disclosure if they can demonstrate to the Commission "a reasonable probability that public knowledge of the original source's identity would subject the source or the source's family to a serious risk of physical harm." A.R.S. § 16-973(F). AFP has not alleged facts showing it would be unable to utilize this exemption if faced with credible threats, like physical violence or bomb threats.

At the pleading stage, AFP was required to allege specific facts that, if proven, would establish a plausible claim for relief. Its generic assertions of past harassment untethered to Prop. 211's disclosure requirements, combined with sheer speculation that harm may occur, fall short. The district court properly dismissed AFP's as-applied challenges.

To top it off, the district court expressly granted AFP leave to amend its as-applied claims "to allege additional facts establishing 'there is a reasonable probability that' their members 'would face threats, harassment, or reprisals if their names were disclosed.'" ER-35. It declined to do so, confirming that it has no such facts. ER-6.

B. AFP's arguments to the contrary lack merit.

AFP argues (at 71-72) that it need only allege "a specific set of circumstances in which the application of the law resulted in a violation of the plaintiff's rights." But this is precisely why AFP's vague allegations that its "supporters have been subjected to bomb threats, protests, stalking and physical violence" are insufficient. AFP does not allege when these instances occurred, how often they occurred, and whom they involved. AFP does not allege that these instances are because of or are even tied to disclosure of its donors or members.

Instead, AFP maintains (at 7-8) that these allegations, alone, are sufficient because they have been "catalogued by the Supreme Court as emblematic of First Amendment chill" in *Bonta*. But in *Bonta*, the Supreme Court recognized that AFP "introduced evidence" supporting these allegations. 594 U.S. at 617. Here, AFP doesn't even *allege* facts supporting these allegations. AFP cannot meet its pleading burden by pointing to a line in an unrelated Supreme Court case.

AFP also contends (at 75-77) that disclosure will cause the public to believe that associational ties exist between AFP's donors and other organizations when its donors did not foresee how their funds would be spent, and this may cause harm. But AFP chooses how to spend its donors' funds. It cannot argue that this choice compels association between its donors and the entities it funds. If its donors don't opt out, and AFP uses its donors' funds to support other organizations, then, as the

district court acknowledged, "[t]he Act will require Plaintiffs' donors be disclosed as funding campaign media spending that the donors did, in fact, fund." ER-35. 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." *Id.*

Prop. 211 does not compel association.

CONCLUSION

For the reasons above, this Court should affirm the dismissal of AFP's complaint.

RESPECTFULLY SUBMITTED this 27th day of November, 2024.

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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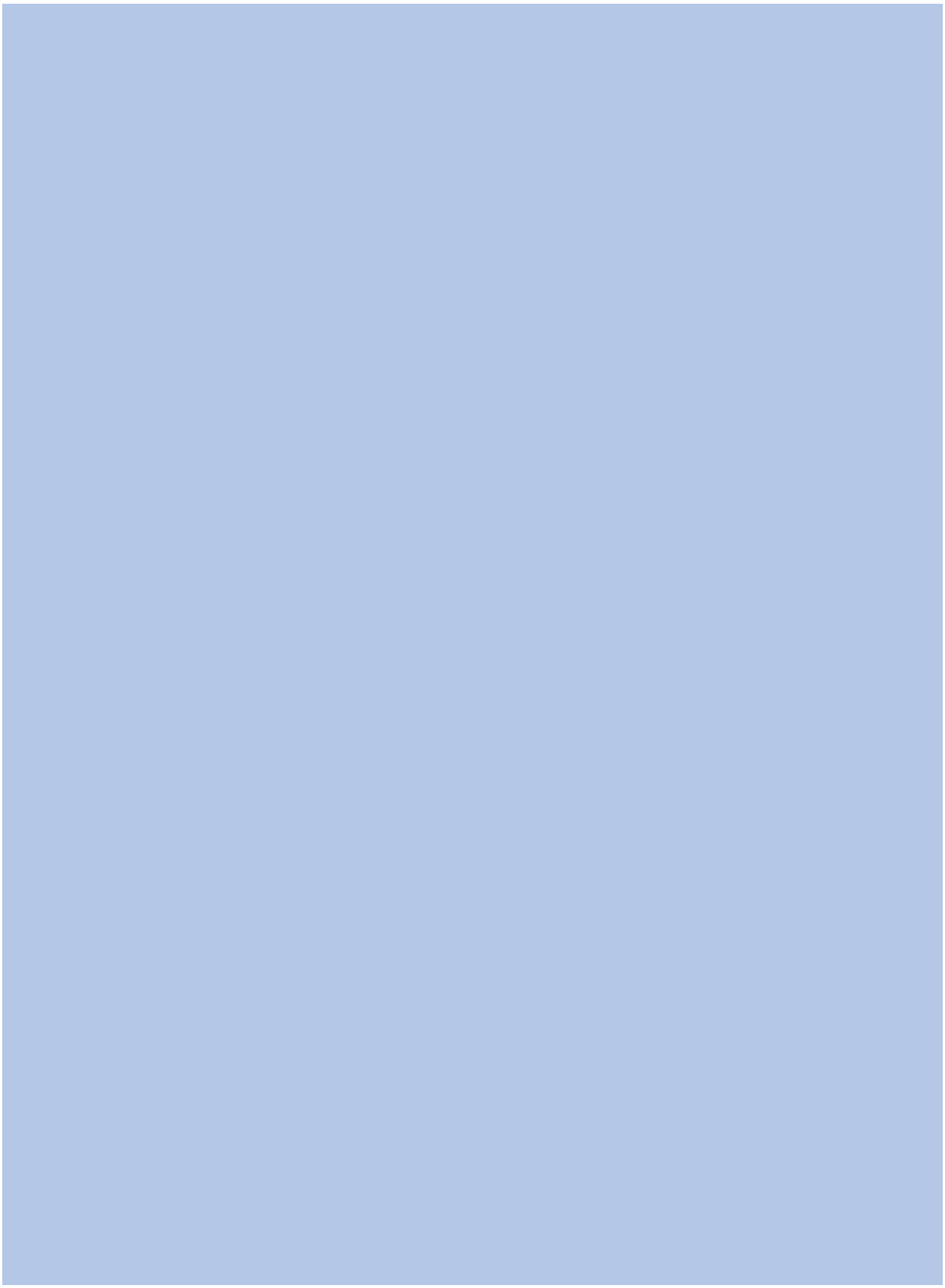
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STATUTORY ADDENDUM: PROPOSITION 211

OFFICIAL TITLE

AN INITIATIVE MEASURE

AMENDING TITLE 16, ARIZONA REVISED STATUTES BY ADDING CHAPTER 6.1; RELATING TO THE DISCLOSURE OF THE ORIGINAL SOURCE OF MONIES USED FOR CAMPAIGN MEDIA SPENDING.

Be it enacted by the People of the State of Arizona:

Section 1. Short title

This act may be cited as the "Voters' Right to Know Act".

Section 2. Purpose and Intent

A. This act establishes that the People of Arizona have the right to know the original source of all major contributions used to pay, in whole or part, for campaign media spending. This right requires the prompt, accessible, comprehensible and public disclosure of the identity of all donors who give more than $5,000 to fund campaign media spending in an election cycle and the source of those monies, regardless of whether the monies passed through one or more intermediaries.

B. This act is intended to protect and promote rights and interests guaranteed by the First Amendment of the United States Constitution and also protected by the Arizona Constitution, to promote self-government and ensure responsive officeholders, to prevent corruption and to assist Arizona voters in making informed election decisions by securing their right to know the source of monies used to influence Arizona elections.

C. By adopting this act, the People of Arizona affirm their desire to stop "dark money," the practice of laundering political contributions, often through multiple intermediaries, to hide the original source.

D. This act empowers the Citizens Clean Elections Commission and individual voters to enforce its disclosure requirements. Violators will be subject to significant civil penalties.

Section 3. Title 16, Arizona Revised Statutes, is amended by adding chapter 6.1, to read:

CHAPTER 6.1. CAMPAIGN MEDIA SPENDING ARTICLE 1. DISCLOSURE OF ORIGINAL SOURCE OF MONIES

§ 16-971. Definitions

In this chapter, unless the context otherwise requires:

1. "Business income" means:

   (a) Monies received by a person in commercial transactions in the ordinary course of the person's regular trade, business or investments.

   (b) Membership or union dues that do not exceed $5,000 from any one person in a calendar year.

2. "Campaign media spending":

   (a) Means spending monies or accepting in-kind contributions to pay for any of the following:

      (i) A public communication that expressly advocates for or against the nomination, or election of a candidate.

      (ii) A public communication that promotes, supports, attacks or opposes a candidate within six months preceding an election involving that candidate.

      (iii) A public communication that refers to a clearly identified candidate within ninety days before a primary election until the time of the general election and that is disseminated in the jurisdiction where the candidate's election is taking place.

(iv) A public communication that promotes, supports, attacks or opposes the qualification or approval of any state or local initiative or referendum.

(v) A public communication that promotes, supports, attacks or opposes the recall of a public officer.

(vi) 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, including partisan voter registration, partisan get-out-the-vote activity or other partisan campaign activity.

(vii) Research, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described in items (i) through (vi) of this subdivision.

(b) Does not include spending monies or accepting in-kind contributions for any of the following:

(i) A news story, commentary or editorial by any broadcasting station, cable television operator, video service provider, programmer or producer, newspaper, magazine, website or other periodical publication that is not owned or operated by a candidate, a candidate's spouse or a candidate committee, political party or political action committee.

(ii) A nonpartisan activity intended to encourage voter registration and turnout.

(iii) Publishing a book or producing a documentary, if the publication or production is for distribution to the general public through traditional distribution mechanisms or if a fee is required to purchase the book or view the documentary.

(iv) Primary or nonpartisan debates between candidates or between proponents and opponents of a state or local

initiative or referendum and announcements of those debates.

3. "Candidate" has the same meaning as in § 16-901.

4. "Candidate committee" has the same meaning as in § 16-901.

5. "Commission" means the citizens clean elections commission.

6. "Contribution" means money, donation, gift, loan or advance or other thing of value, including goods and services.

7. "Covered person"

   (a) Means any person whose total campaign media spending or acceptance of in-kind contributions to enable campaign media spending, or a combination of both, in an election cycle is more than $50,000 in statewide campaigns or more than $25,000 in any other type of campaigns. For the purposes of this chapter, the amount of a person's campaign media spending includes campaign media spending made by entities established, financed, maintained or controlled by that person.

   (b) Does not include:

      (i) Individuals who spend only their own personal monies for campaign media spending.

      (ii) Organizations that spend only their own business income for campaign media spending.

      (iii) A candidate committee.

      (iv) A political action committee or political party that receives not more than $20,000 in contributions, including in-kind contributions, from any one person in an election cycle.

8. "Election cycle" means the time beginning the day after general election day in even-numbered years and continuing through the end of general election day in the next even-numbered year.

9. "Expressly advocates" has the same meaning as in § 16-901.01.

10. "Identity" means:

    (a) In the case of an individual, the name, mailing address, occupation and employer of the individual

    (b) In the case of any other person, the name, mailing address, federal tax status and state of incorporation, registration or partnership, if any.

11. "In-kind contribution" means a contribution of goods, services or anything of value that is provided without charge or at less than the usual and normal charge.

12. "Original monies" means business income or an individual's personal monies.

13. "Person" includes both a natural person and an entity such as a corporation, limited liability company, labor organization, partnership or association, regardless of legal form.

14. "Personal monies"

    (a) Means any of the following:

        (i) Any asset of an individual that, at the time the individual engaged in campaign media spending or transferred monies to another person for such spending, the individual had legal control over and rightful title to.

        (ii) Income received by an individual or the individual's spouse, including salary and other earned income from bona fide employment, dividends and proceeds from the individual's personal investments or bequests to the individual, including income from trusts established by bequests.

        (iii) A portion of assets that are jointly owned by the individual and the individual's spouse equal to the individual's share of the asset under the instrument of conveyance or ownership. If no specific share is indicated by an instrument of conveyance or ownership, the value is one-half the value of the property or asset.

(b) Does not mean any asset or income received from any person for the purpose of influencing any election.

15. "Political action committee" has the same meaning as in § 16-901.

16. "Political party" has the same meaning as in § 16-901.

17. "Public communication"

(a) Means a paid communication to the public by means of broadcast, cable, satellite, internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing or another mass distribution, telephone bank or any other form of general public political advertising or marketing, regardless of medium.

(b) Does not include communications between an organization and its employees, stockholders or bona fide members.

18. "Traceable monies" means:

(a) Monies that have been given, loaned or promised to be given to a covered person and for which no donor has opted out of their use or transfer for campaign media spending pursuant to § 16-972.

(b) Monies used to pay for in-kind contributions to a covered person to enable campaign media spending.

19. "Transfer records" means a written record of the identity of each person that directly or indirectly contributed or transferred more than $2,500 of original monies used for campaign media spending, the amount of each contribution or transfer and the person to whom those monies were transferred.

§ 16-972. Campaign media spending; transfer records; written notice; donor opt-out; disclosure of previous records

A. A covered person must maintain transfer records. The covered person must maintain these records for at least five years and provide the records on request to the commission.

B. Before the covered person may use or transfer a donor's monies for campaign media spending, the donor must be notified in writing that the monies may be so used and must be given an opportunity to opt out of having the donation used or transferred for campaign media spending. The notice under this subsection must:

1. Inform donors that their monies may be used for campaign media spending and that information about donors may have to be reported to the appropriate government authority in this state for disclosure to the public.

2. Inform donors that they can opt out of having their monies used or transferred for campaign media spending by notifying the covered person in writing within twenty-one days after receiving the notice.

3. Comply with rules adopted by the commission pursuant to this chapter to ensure that the notice is clearly visible and that it accomplishes the purposes of this section.

C. The notice required by this section may be provided to the donor before or after the covered person receives a donor's monies, but the donor's monies may not be used or transferred for campaign media spending until at least twenty-one days after the notice is provided or until the donor provides written consent pursuant to this section, whichever is earlier.

D. Any person that donates to a covered person more than $5,000 in traceable monies in an election cycle must inform that covered person in writing, within ten days after receiving a written request from the covered person, of the identity of each other person that directly or indirectly contributed more than $2,500 in original monies being transferred and the amount of each other person's original monies being transferred. If the original monies were previously transferred, the donor must disclose all such previous transfers of more than $2,500 and identify the intermediaries. The donor must maintain these records for at least five years and provide the records on request to the commission.

E. Any person that makes an in-kind contribution to a covered person of more than $5,000 in an election cycle to enable campaign media spending must inform that covered person in writing, at the time the in-

kind contribution is made or promised to be made, of the identity of each other person that directly or indirectly contributed or provided more than $2,500 in original monies used to pay for the in-kind contribution and the amount of each other person's original monies so used. If the original monies were previously transferred, the in-kind donor must disclose all such previous transfers of more than $2,500 and identify the intermediaries. The in-kind donor must maintain these records for at least five years and provide the records on request to the commission.

§ 16-973. Disclosure reports; exceptions

A. Within five days after first spending monies or accepting in-kind contributions totaling $50,000 or more during an election cycle on campaign media spending in statewide campaigns or $25,000 or more during the election cycle in any other type of campaigns, a covered person shall file with the secretary of state an initial report that discloses all of the following:

1. The identity of the person that owns or controls the traceable monies.

2. The identity of any entity established, financed, maintained or controlled by the person that owns or controls the traceable monies and that maintains its own transfer records and that entity's relationship to the covered person.

3. The name, mailing address and position of the individual who is the custodian of the transfer records.

4. The name, mailing address and position of at least one individual who controls, directly or indirectly, how the traceable monies are spent.

5. The total amount of traceable monies owned or controlled by the covered person on the date the report is made.

6. The identity of each donor of original monies who contributed, directly or indirectly, more than $5,000 of traceable monies or in-kind contributions for campaign media spending during the election cycle to the covered person and the date and amount of each of the donor's contributions.

7. The identity of each person that acted as an intermediary and that transferred, in whole or in part, traceable monies of more than $5,000 from original sources to the covered person and the date, amount and source, both original and intermediate, of the transferred monies.

8. The identity of each person that received from the covered person disbursements totaling $10,000 or more of traceable monies during the election cycle and the date and purpose of each disbursement, including the full name and office sought of any candidate or a description of any ballot proposition that was supported, opposed or referenced in a public communication that was paid for, in whole or in part, with the disbursed monies.

9. The identity of any person whose total contributions of traceable monies to the covered person constituted more than half of the traceable monies of the covered person at the start of the election cycle.

B. After a covered person makes an initial report, each time the covered person spends monies or accepts in-kind contributions totaling an additional $25,000 or more during an election cycle on campaign media spending in statewide campaigns or an additional $15,000 or more on campaign media spending during an election cycle in any other type of campaigns, that covered person shall file with the secretary of state within three days after spending monies or accepting the in-kind contribution a report that discloses any information that has changed since the most recent report was made pursuant to this section.

C. When the information required pursuant to subsection A, paragraphs 1 through 4 of this section has changed since it was previously reported, the changed information shall be reported to the secretary of state within twenty days, except that there is no obligation to report changes that occur more than one year after the most recent report should have been filed pursuant to this section.

D. To determine the sources, intermediaries and amounts of indirect contributions received, a covered person may rely on the information it received pursuant to § 16-972, unless the covered person knows or has reason to know that the information relied on is false or unreliable.

E. When a covered person transfers more than $5,000 in traceable monies to another covered person, or after receiving the required notice under § 16-972, subsection B, fails to opt out of having previously transferred monies used for campaign media spending, a transfer record must be provided to the recipient covered person that identifies each person that directly or indirectly contributed more than $2,500 of the original monies being transferred, the amount of each person's original monies being transferred, and any other person that previously transferred the original monies.

F. Notwithstanding any other provision of this section, the identity of an original source that is otherwise protected from disclosure by law or a court order or that demonstrates to the satisfaction of the commission that there is a reasonable probability that public knowledge of the original source's identity would subject the source or the source's family to a serious risk of physical harm shall not be disclosed or included in a disclaimer.

G. This section does not require public disclosure of or a disclaimer regarding the identity of an original source that contributes, directly or through intermediaries, $5,000 or less in monies or in--kind contributions during an election cycle to a covered person for campaign media spending.

H. All disclosure reports made pursuant to this section shall be made electronically to the secretary of state and to any other body as directed by law. Officials shall promptly make the information public and provide it to the commission electronically. All disclosure reports are subject to penalty of perjury.

I. Except as provided in subsection J of this section, a political action committee or political party that is a covered person may satisfy the timing requirements for reporting in this section by filing the periodic campaign finance reports as required by law for political action committees and political parties, provided that the disclosures required by this section are included in those periodic reports, including the requirement to identify the original sources of traceable monies who gave, directly or indirectly, and any intermediaries who transferred, directly or indirectly, more than $5,000 in traceable monies to the covered person during the election cycle.

J. If a political action committee or political party that is a covered person spends monies or accepts in-kind contributions within 20 days of an election that would require a report under this section, it shall file a report pursuant to this section within 3 days of that spending or in-kind contribution.

§ 16-974. Citizens clean elections commission; powers and duties; rules

A. The commission is the primary agency authorized to implement and enforce this chapter. The commission may do any of the following:

1. Adopt and enforce rules.

2. Issue and enforce civil subpoenas, including third-party subpoenas.

3. Initiate enforcement actions.

4. Conduct fact-finding hearings and investigations.

5. Impose civil penalties for noncompliance, including penalties for late or incomplete disclosures and for any other violations of this chapter.

6. Seek legal and equitable relief in court as necessary.

7. Establish the records persons must maintain to support their disclosures.

8. Perform any other act that may assist in implementing this chapter.

B. If the commission imposes a civil penalty on a person and that person does not timely seek judicial review, the commission may file a certified copy of its order requiring payment of the civil penalty with the clerk of the superior court in any county of this state. The clerk shall treat the commission order in the same manner as a judgment of the superior court. A commission order filed pursuant to this subsection has the same effect as a judgment of the superior court and may be recorded, enforced or satisfied in the same manner. A filing fee is not required for an action filed under this subsection.

C. The commission shall establish disclaimer requirements for public communications by covered persons. A political action committee that complies with these requirements need not separately comply with the requirements prescribed in § 16-925, subsection B. Public communications by covered persons shall state, at a minimum, the names of the top three donors who directly or indirectly made the three largest contributions of original monies during the election cycle to the covered person. If it is not technologically possible for a public communication disseminated on the internet or by social media message, text message or short message service to provide all the information required by this subsection, the public communication must provide a means for viewers to obtain, immediately and easily, the required information without having to receive extraneous information.

D. The commission's rules and any commission enforcement actions pursuant to this chapter are not subject to the approval of or any prohibition or limit imposed by any other executive or legislative governmental body or official. Notwithstanding any law to the contrary, rules adopted pursuant to this chapter are exempt from title 41, chapters 6 and 6.1.

E. The commission shall establish a process to reimburse the secretary of state and any other agency that incurs costs to implement or enforce this chapter.

F. The commission may adjust the contribution and expenditure thresholds in this chapter to reflect inflation.

§ 16-975. Structured transactions prohibited

A person may not structure or assist in structuring, or attempt or assist in an attempt to structure any solicitation, contribution, donation, expenditure, disbursement or other transaction to evade the reporting requirements of this chapter or any rule adopted pursuant to this chapter.

§ 16-976. Penalties; separate account; use of monies; surcharge

A. The civil penalty for any violation of this chapter shall be at least the amount of the undisclosed or improperly disclosed contribution and not more than three times that amount. For violations of § 16-975, the relevant amount for the purposes of calculating the civil penalty is the

amount determined by the commission to constitute a structured transaction.

B. Civil penalties collected for violations of this chapter shall be deposited in a separate account in the citizens clean elections fund established pursuant to chapter 6, article 2 of this title1 and used to defray the costs of implementing and enforcing this chapter. Any monies in this account that are not used to implement and enforce this chapter may be used for other commission-approved purposes.

C. An additional surcharge of one percent shall be imposed on civil and criminal penalties and the proceeds deposited in the account in the citizens clean elections fund established pursuant to subsection B of this section. The surcharge shall be suspended for one to three years at a time if the commission determines that, during that period, it can perform the actions required by this chapter without the monies from the surcharge.

§ 16-977. Complaints; investigations; civil action

A. Any qualified voter in this state may file a verified complaint with the commission against a person that fails to comply with the requirements of this chapter or rules adopted pursuant to this chapter. The complaint must state the factual basis for believing that there has been a violation of this chapter or rules adopted pursuant to this chapter.

B. If the commission determines that the complaint, if true, states the factual basis for a violation of this chapter or rules adopted pursuant to this chapter, the commission shall investigate the allegations and provide the alleged violator with an opportunity to be heard.

C. If the commission dismisses at any time the complaint or takes no substantive enforcement action within ninety days after receiving the complaint, the complainant may bring a civil action against the commission to compel it to take enforcement action, and the court shall review de novo whether the commission's dismissal or failure to act was reasonable. In any matter in which the civil penalty for the alleged violation could be greater than $50,000, any claim or defense by the commission of prosecutorial discretion is not a basis for dismissing or failing to act on the complaint. A court may award the prevailing party in a civil action under this subsection its reasonable attorneys' fees.

§ 16-978. Legislative, county and municipal provisions

A. Nothing in this act prevents the legislature, a county board of supervisors or a municipal government from enacting or enforcing additional or more stringent disclosure provisions for campaign media spending than those contained in this chapter. Additional or more stringent disclosure requirements for campaign media spending further the purposes of this chapter.

B. To the extent the provisions of this chapter conflict with any state law, this chapter governs.

§ 16-979. Legal defense; standing; legal counsel

A. A political action committee formed to support the voters' right to know act or any of that committee's officers may intervene as of right in any legal action brought to challenge the validity of this chapter or any of its provisions.

B. The commission has standing to defend this chapter on behalf of this state in any legal action brought to challenge the validity of this chapter or any of its provisions.

C. Notwithstanding any law, the commission has exclusive and independent authority to select legal counsel to represent the commission regarding its duties under this chapter and to defend this chapter if its validity is challenged.

Section 4. <u>Severability</u>

The provisions of this act are severable. If any provision of this act or application of a provision to any person or circumstance is held to be unconstitutional, the remainder of this act, and the application of the provisions to any person or circumstance, shall not be affected by the holding. The invalidated provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of this act.

Section 5. <u>Applicability; Implementation</u>

A. If approved by the voters, this act applies to all elections and contributions that occur after the effective date of this act.

B. If approved by the voters, the Commission shall publicize the requirements of these provisions.

C. The rights established by this Act shall be construed broadly.

ANALYSIS BY LEGISLATIVE COUNCIL

Proposition 211 would amend the campaign finance laws to require a "covered person" (a person or entity that spends $50,000 or more on campaign media for a statewide candidate during a two-year election cycle or that spends $25,000 or more on campaign media for any other type of candidate during a two-year election cycle) to disclose the identity of anyone who is the original source of donations of more than $5,000 to the covered person for campaign media. Proposition 211 also requires any donor that contributes more than $5,000 to a covered person during an election cycle for campaign media spending to identify to the covered person the identity of any person who contributed more than $2,500 in original money that is being transferred to that donor, as well as any intermediaries that previously transferred the funds being given to the covered person.

Proposition 211 also provides for the following:

1. Requires that the covered person's disclosure report to the Secretary of State include the following:

    a. The identity of the person who owns or controls the money being contributed.

    b. The identity of any entity established, financed, maintained or controlled by the person who owns or controls the money being contributed and that maintains its own transfer records.

    c. The name, address and position of the person who is the custodian of the transfer records.

    d. The name, address and position of the person who controls how the money is spent.

    e. The total amount of money donated or promised to be donated to the covered person for use or transfer for campaign media spending on the date the covered person makes the report.

    f. The identity of each donor of original monies who contributed, directly or indirectly, more than $5,000 of money or in-kind

contributions for campaign media spending during the election cycle to the covered person, and the date and amount of each donor's contribution.

2. Requires each covered person to file a supplemental report within three days each time the covered person spends money or accepts in-kind contributions totaling an additional $25,000 for campaign media spending during an election cycle.