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<tr><td colspan="2">IN THE UNITED STATES DISTRICT COURT</td></tr>
<tr><td colspan="2">FOR THE DISTRICT OF ALASKA</td></tr>
<tr><td>ROBERT GRIFFIN, STANLEY ALLEN VEZEY, TREVOR SHAW, FAMILIES OF THE LAST FRONTIER, AND THE ALASKA FREE MARKET COALITION,

Plaintiffs,

v.

RICHARD STILLIE JR., in his official capacity as chair of the Alaska Public Offices Commission; AND LANETTE BLODGETT, ERIC FEIGE, DAN LASOTA, AND WALTER CARLTON MONEGAN III, in their official capacities as members of the Alaska Public Offices Commission,

Defendants,
v.

ALASKANS FOR BETTER ELECTIONS, INC.,

Intervenor-Defendants.</td><td>Case No. 3:22-cv-00077

Memorandum in Opposition to Defendant-Intervenor's Motion for Summary Judgment</td></tr>
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Introduction

Defendant-Intervenor Alaskans for Better Elections asks this court to bless its sweeping censorship law Ballot Measure 2 (BM2). Defendant-Intervenor's combined motion for summary judgment & memorandum ignores several of the more egregious aspects of BM2 that Plaintiffs challenge, and Defendant-Intervenor states the wrong standard of scrutiny for evaluating the censorship law. Defendant-Intervenor mischaracterizes a speech ban as a disclosure requirement and misinterprets the holding of *Citizens United v. FEC*. Defendant-Intervenor wrongly claims BM2's out-of-state compelled speech requirement is a mere 'conditional disclaimer,' and mistakenly claims there is a 'find useful' loophole to justify compelled speech. And Defendant-Intervenor misstates precedent to defend its unconstitutional compounding speech restrictions.

Defendant-Intervenor's motion for summary judgment must be denied.

Standard of Review

"A party is entitled to summary judgment if the 'movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" *City of Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049 (9th Cir. 2014) (quoting Fed. R. Civ. P. 56(a)). "The moving party has the burden of establishing the absence of a genuine dispute of material fact" and "[t]he court must view the evidence in the light most favorable to the non-movant and draw all reasonable inferences in the non-movant's favor." *Pomona*, 750 F.3d at 1049. "When," as here, "the parties file cross-motions for summary judgment, [courts] review each separately, giving the non-movant for each motion the benefit of all reasonable inferences." *Flores v. City of San Gabriel*, 824 F.3d 890, 897 (9th Cir. 2016).

As BM2 is a government restriction on protected speech, Defendants and Defendant-Intervenor have the burden of proving its constitutionality. *NAACP, W. Region v. Richmond*, 743 F.2d 1346, 1354 (9th Cir. 1984).

ARGUMENT

"[T]he First Amendment 'has its fullest and most urgent application'" to "'[d]iscussion of public issues and debate on the qualifications of candidates,'" *Arizona Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011) (first quote from *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989)) (second quote from *Buckley v. Valeo*, 424 U.S. 1, 14 (1976)), as this "core political speech. . . lies at the heart of the First Amendment." *Butcher v. Knudsen*, 38 F.4th 1163, 1165 (9th Cir. 2022). Defendant-Intervenor is unable to provide adequate justification for why, without even a trial, this Court should rubber stamp BM2's litany of burdens on the fundamental right of free expression.

I. Defendant-Intervenor's Combined Motion & Memorandum Ignores Several of the More Egregious Aspects of Ballot Measure 2 that Plaintiffs Challenge

Defendant-Intervenor's combined motion and memorandum completely ignores several of BM2's most burdensome provisions, such as its liability standard, its penalties, and its expedited hearing requirement. These omissions are fatal to Defendant-Intervenor's contention that BM2 does not violate the First Amendment.

A. Defendant-Intervenor never mentions how Ballot Measure 2 unconstitutionally imposes strict liability for core political speech.

Defendant-Intervenor's combined motion and memorandum never mentions that BM2 imposes strict liability for political speech, meaning entirely inadvertent filing mistakes lead to massive penalties. Such an onerous speech restriction is unconstitutional.

"Strict liability is generally disfavored in criminal law, particularly with respect to cases that implicate the First Amendment," *United States v. Sheehan*, 512 F.3d 621, 629 (D.C. Cir. 2013), as "the excessive caution spawned by a regime of strict liability will not necessarily redound to the public's benefit." *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 441 (1978) ("limited circumstances in which Congress has created and this Court has recognized such offenses"); *see also Butcher*, 38 F.4th at 1165 (emphasizing the duty to prevent unnecessary burdens on the "core political speech that lies at the heart of the First Amendment"). The highest courts of Colorado and Ohio have already struck down strict liability regimes on federal constitutional grounds. *See In re Judicial Campaign Complaint Against Stormer*, 137 Ohio St. 3d 449, 453 (2013); *Dallman v. Ritter*, 225 P.3d 610, 629 (Colo. 2010). And the D.C. Circuit threw out a political speech conviction for being based on strict liability. *See Sheehan*, 512 F.3d at 624. Our own circuit has strongly implied strict liability cannot apply to speech-based offenses, throwing out a strict liability conviction for misstatements in a government interview because of "the general rule that criminal liability requires an 'evil-meaning mind.'" *United States v. Pasillas-Gaytan*, 192 F.3d 864, 868 (9th Cir. 1999).

BM2 "imposes strict liability," *see Smith*, 95 F.4th at 1231 (Forrest, J. dissenting), even for the most innocuous mistakes. *See* Dkt. 133, Ex. 64, p. 1 ("It does not appear that you corrected [staff's] understanding."). This flaw goes to the heart of the entire statute: the Supreme "Court has long recognized that the constitutionality of a vague statutory standard is closely related to whether that standard incorporates a requirement of *mens rea*." *Colautti v. Franklin*, 439 U.S. 379, 395 (1979).

Defendant-Intervenor is well aware of the harm posed by BM2's strict liability. Its *own witness*, Kimberly Hays of the Alaska AFL-CIO and its affiliate Putting Alaskans First Committee, testified that both she and one of BM2's top donors accidentally triggered over $10,000 in fines because he made a donation over the winter holidays when no one was at the office to realize it was received. Dkt. 133, Ex. 80, p. 34–36. Separately, Defendant-Intervenor was repudiated by the Alaska Public Offices Commission for suggesting its press releases did not need a disclaimer. Dkt. 133, Ex. 75, p. 25–28, 31–36. And this litigation's discovery has produced even more alarming examples of the harm of strict liability, such as one instance where a man asked for clarification on how to register his ballot initiative group, was told by the Commission he did not need to register, and was then told 114 days later his group was liable for violating BM2. *See* Dkt. 133, Ex. 63, p. 1–4. This led to an onerous investigation and, eventually, over $156,000 in fines. *See* Dkt. 133, Ex. 57, 65, 66.

Defendant-Intervenor wrongly omits BM2's strict liability, one of the most burdensome and unconstitutional elements of a burdensome and unconstitutional law.

B. Defendant-Intervenor never mentions Ballot Measure 2's unconstitutionally high penalties.

Defendant-Intervenor's motion and memorandum never mention how BM2 penalizes violators. The fines BM2 imposes are so staggeringly high and give such wide discretion to the Commission that they cannot be squared with the Constitution.

"When laws fail to 'provide explicit standards for those who apply them,'" they "impermissibly delegate basic policy matters for resolution on an ad hoc and subjective basis," *Butcher*, 38 F.4th at 1169 (quoting *Grayned v. Cty. of Rockford*, 408 U.S. 104, 108–09 (1972)), leaving Americans "at the mercy of *noblesse oblige*." *Stevens*, 559 U.S. at 480.

Defendant-Intervenor acknowledged to the Commission that even for "deliberate, and repeated, violations of the law," "imposition of completely un-mitigated penalties could be seen as leading to the imposition of disproportional [sic] civil penalties with respect to these violations." Dkt. 118-1, p. 3, 17. BM2's maximum penalties are "$500 a day" for recipients and "$1,000 a day" for donors, plus three times the cost of the donation or the daily fine if it was willful. Dkt. 133, p. 32.

Defendant-Intervenor's expert witness defended the statute by boasting that after her organization's inadvertent mistake with BM2's top donor, "we successfully got our fines mitigated and the contributor was not penalized." Dkt. 132-1, p. 3. This is not something to celebrate. It shows that brutal punishment for even inadvertent penalties functions as a sword of Damocles hovering over Alaskan speakers' heads, rarely used but ever-present. This is the quintessential example of a law "fail[ing] to 'provide explicit standards for those who apply them,'" *Butcher*, 38 F.4th at 1169 (quoting *Grayned*, 408 U.S. at 108–09), and leaving speakers "at the mercy of *noblesse oblige*." *Stevens*, 559 U.S. at 480.

The perpetual threat of barbarously high potential penalties that can be doled out at the whims of temporary political appointees is a profound threat to the First Amendment, even if the Defendant-Intervenor refuses to mention this provision's existence.

C. Defendant-Intervenor never mentions that Ballot Measure 2's expedited hearing requirement prohibits the Commission from blocking bad faith actors who seek to censor their political opponents.

Defendant-Intervenor's motion and memorandum are entirely silent regarding BM2's expedited hearing process. This provision is also unconstitutional, as it prevents the Commission from blocking bad faith actors who file frivolous complaints to waste an opponent's valuable time just before the election.

If a party filing a complaint regarding a BM2 violation wants the investigation process expedited, the Commission is legally obligated to hold a hearing on a complaint within twenty-four hours and must inform the person whom the complaint was filed against that it could adjudicate the facts of the dispute at that hearing. 2 AAC 50.888. This provision is already being abused: Plaintiff Families of the Last Frontier (FLF) was subjected to an expedited hearing notice with just a few *hours'* notice. *See* Dkt. 112-4, p. 19–20. As with all complaints, a hearing occurs even when the victim of the complaint *already got their speech precleared* with the Commission. *Compare* Ex. 76 (getting preclearance); Ex. 77, p. 1–3 (Defendant-Intervenor filed a complaint anyway).

The final days before an election are among the most critical for any independent expenditure (IE) group: it is the climax of years of work. *See* Ex. 81, ¶ 10. Mandating someone attend a hearing with less than a day's notice during that critical period based on a mere accusation imposes a profound burden on "core political speech." *Butcher*, 38 F.4th at 1165.

Defendant-Intervenor may counter that the expedited hearing process predates BM2. This is further evidence that BM2 was not "substantially related and narrowly tailored" to respect First Amendment speech. *Smith v. Helzer*, 95 F.4th 1207, 1214 (9th Cir. 2024). BM2 was shoehorned into existing law with no regard for how the existing legally-mandated processes would exacerbate its harms. *Compare* 2 AAC 50.888 (expedited hearing), *with* Dkt. 133, Ex. 35, p. 2 (explaining BM2 used "blunt instruments," but should nevertheless be passed as a "message" to "political parties and their dark money allies").

Defendant-Intervenor ignores how the expedited hearing process imposes severe and unconstitutional burdens on speakers' First Amendment rights.

II. Defendant-Intervenor States the Wrong Standard of Scrutiny for Evaluating Ballot Measure 2's Constitutionality

Defendant-Intervenor repeatedly and wrongly states that the standard of scrutiny for evaluating its censorship law is "exacting scrutiny." Dkt. 132, p. 6, 10–11. BM2 is invidious discrimination, and should thus be subject to strict scrutiny: scrutiny it inevitably fails, because it lacks any compelling interest besides silencing Defendant-Intervenor's political opponents.

Campaign finance restrictions may never be designed to "disfavor certain subjects or viewpoints," *Citizens United*, 558 U.S. at 340 and courts must apply "strict scrutiny" to "laws that, though facially content neutral, [are] considered content-based regulations of speech" because "they were adopted by the government 'because of disagreement with the message the speech conveys.'" *Reed v. Town of Gilbert*, 576 U.S. 155, 164 (2015) (tidied) (quoting *Ward v. Rock Against Racism*, 491 U. S. 781, 791 (1989)); *see also NAACP v. Button*, 371 U.S. 415, 439 (1963) ("'Regulatory measures . . . no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights.'"). In evaluating whether a seemingly "content-neutral" regulation is in fact "content-skewed," "[t]he government bears the burden of proof. . . as it does in all First Amendment cases." *NAACP, W. Region v. Richmond*, 743 F.2d 1346, 1354 (9th Cir. 1984).

While a court will not nullify a law merely "on the basis of an alleged illicit legislative motive," *Renton v. Playtime Theatres*, 475 U.S. 41, 48 (1986) (quoting *United States v. O'Brien*, 391 U.S. 367, 383 (1968)), when there is "record evidence of invidious discrimination," *Buckley*, 424 U.S. at 31, a campaign finance regulation can only be sustained if the government shows a "compelling interest" and demonstrates there is no "less restrictive means" available. *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 469 (2025) (articulating the strict scrutiny standard).

While protecting political incumbents is hardly a "compelling interest," *Free Speech Coal.*, 606 U.S. at 469, one of the least compelling interests is that motivated by race, as "such considerations are deemed to reflect prejudice and antipathy—a view that those in the burdened class are not as worthy or deserving as others." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985); *see also Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) ("racial discrimination is not just another competing consideration."). Similarly "impermissible" is the targeting of "religious beliefs." *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 524, 533 (1993).

In its extremely recent en banc decision in *Moving Oxnard Forward, Inc. v. Lopez*, which was decided after Intervenor-Defendant filed its motion, the Ninth Circuit analyzed an "invidious discrimination" claim over a ballot measure that imposed contribution caps on political campaigns. 2026 U.S. App. LEXIS 11429, at *24, *41 (en banc) (*cert. pending*). The Circuit chose to employ a two-part, nine-factor test taken from the plurality opinion of *Randall v. Sorrell*, 548 U.S. 230, 248–49 (plurality opinion) that was unique to campaign contribution cases and asked questions entirely inapplicable to IE groups (such as whether contribution—not spending—"limits apply to contributions from political parties"). *Moving Oxnard*, 2026 U.S. App. LEXIS 11429, at *23–31. The Ninth Circuit does not have as clear guidelines for how to analyze such claims in the IE context, but *Moving Oxnard* did explicitly hold that while invidious political discrimination claims may be better suited for Fourteenth Amendment equal protection claims, in the campaign finance context, allegations of "race-based motives" *necessitated* "invidious discrimination" analysis. *Id.* at *42, *45.

Moving Oxnard also emphasized that when analyzing "invidious discrimination" of all kinds, "'invidious restraints on speech,'" such as limits on advertising, are held to a higher standard than "campaign contribution limits." *Id.* at *47–48.

Here, Plaintiffs produce mountains of evidence showing (1) the purpose of BM2 was to disfavor certain political factions, and (2) this focus was inextricably intertwined with racialist objectives. *See* Dkt. 133. Defendant-Intervenor was explicit that the goal of BM2 was to increase the political power of native Alaskans, and rejecting the "breed[s]" of "nosy Outsiders" it did not want to have participate. *Id.* at 2. Defendant-Intervenor frequently justified its campaign by attacking IE groups in racial terms, and complained extensively about "big-money outsiders," Dkt. 133, Ex. 29, p. 1, from "New York or California," Dkt. 133, Ex. 15—"the likes of George Soros," Dkt. 133, Ex. 35, p. 1—who "get breath-sucking smog, traffic-choked freeways, and housing developments as far as the eye can see," Dkt. 133, Ex. 15, and were "more interested in the resources of the state than its people." Dkt. 133, Ex. 36. Defendant-Intervenor bragged that passing BM2 would mean an increase in indigenous "power" and that more "representatives" would be of indigenous ethnicity. Dkt. 133, Ex. 37, p. 1–3. Its ad campaign frequently invoked explicit racial appeals to urge indigenous Alaskans not to "let these outsiders get away with just a slap on the wrist." Dkt. 133, Ex. 38, p. 2; *see, e.g.*, Dkt. 133, Ex. 15, p. 1–2, Ex. 34, Ex. 37, p. 1–3, Ex. 39, p. 2, Ex. 40, Ex. 41, Ex. 42, Ex. 43, Ex. 44, Ex. 45, Ex. 46, Ex. 47, Ex. 48.

Plaintiffs also produce evidence that Defendant-Intervenor employs BM2 to attack those of religious faiths it dislikes. Defendant-Intervenor also attacked the religion of the "radical voters" it wanted to silence, Dkt. 168, Ex. A, p. 4, arguing they did not follow the true "teachings of Jesus Christ." Dkt. 168, Ex. B, p. 1. Within months of BM2 going into effect, Defendant-Intervenor filed a complaint to have the Commission audit a church, disclosing the name of its tithers. *See* Ex. 70 (the audit); Ex. 71 (more auditing); Ex. 72 (response to the audit); Ex. 73 (the Defendant-Intervenor complaint); Ex. 74 (confirming that the rental was at market rate).

Defendant-Intervenor resisted discussing the disclaimer regime in its corporate deposition. When asked "what is the purpose of having that out-of-state disclaimer," Defendant-Intervenor responded: "I'm not familiar with the disclaimer." Lucky Deposition, Dkt. 133, Ex. 83, p. 108, ¶ 12–14. This implausible ignorance is further indication of impermissible racial and religious motives. When not in deposition, Defendant-Intervenor is vocal and explicit that the goal, not the side effect, of BM2 is to discourage IE groups from participating in Alaska elections. In multiple pieces drafted by Defendant-Intervenor, its treasurer stated that when faced with the "price of admission to participate in Alaska," many IE groups would "take their ball and play on someone else's field." Dkt 133, Ex. 9, p. 2, Ex. 10, Ex. 11. This, she insisted, would be a "win." Dkt. 133, Ex. 9, p. 2, Ex. 10, Ex. 11.

When enacting BM2, Defendant-Intervenor boasted that its law would protect incumbent politicians. One press release stated:

> We have seen an avalanche of Outside money bury the voices of regular Alaskans in recent elections. Outside influence – regardless of source or issue – has turned our long tradition of civic discourse into a mirror image of the debilitating partisanship that has gridlocked our national political system. We now fight over control of state government instead of debating solutions to move us toward a brighter, more prosperous future for all Alaskans.
>
> Money, not issues, drives our politics today. It doesn't have to be this way.

Dkt. 133, Ex. 18.

Defendant-Intervenor championed a politician's complaint about "spend[ing] a lot of that time running for office versus adopting policies" and another's boast that BM2 would "allo[w] people to focus on governing instead of raising enough money." Dkt. 133, Ex. 17. Defendant-Intervenor's co-chair and counsel stated publicly while promoting BM2 that he designed it to prevent a repeat of the 2018 midterm elections, where several incumbents from his political faction lost reelection. *See* Dkt. 133, Ex. 8, 6:12, 14:53.

Even if invidious discrimination targeting specific races could *ever* be a permissible objective, BM2 is obviously not the "least restrictive means" of advancing permissible public policy. *See Free Speech Coal.*, 606 U.S. at 469. In fact, Defendant-Intervenor promos featured a quote explaining that "[e]ven ranked choice voting by itself would undercut the influence of money in politics," Dkt. 133, Ex. 17, thereby acknowledging "less restrictive means," *Free Speech Coal.*, 606 U.S. at 469, of accomplishing its goal of stopping "breed[s]" of "nosy Outsiders." Dkt. 133, Ex. 15, p. 1–2.

Defendant-Intervenor may point to language in *Moving Oxnard* saying "[i]f any motive was relevant here, it would be the motive of the voters, not the" politicians who wrote the offending ballot measure. *Moving Oxnard*, 2026 U.S. App. LEXIS 11429, at *41. Here, context is key. In *Moving Oxnard*, the councilors accused of improper discrimination kept their intentions secret, whereas here, there is ample evidence that the Defendant-Intervenor explicitly made racial and discriminatory appeals to voters to ratify its law. *Id.* at *45. Secondly, after its *Randall* analysis, the Court in *Moving Oxnard* found that "the parties did not raise or brief" the invidious discrimination issue properly, and the arguments mostly centered around points raised by the initial appellate panel. *Id.* Thirdly, the *Oxnard* court took special notice of how the targeting in that case focused on stopping a single individual rather than protecting political incumbents more broadly, which it stated would be a more serious Constitutional concern. *Id.* at *44. Lastly, the alleged invidious discrimination in *Oxnard* did not involve race, and the *Oxnard* court was emphatic that racial discrimination in the campaign finance context was a more serious concern. *Id.* at *42.

Defendant-Intervenor is wrong to claim that its censorship law should be evaluated under exacting scrutiny. BM2 is invidious discrimination subject to strict scrutiny, which it fails because it has no compelling interest and it is not the least restrictive means of accomplishing its objective.

III. Defendant-Intervenor Mischaracterizes a Speech Ban as a Disclosure Requirement and Misinterprets the Holding of *Citizens United.*

Defendant-Intervenor mischaracterizes BM2's spoken and text messaging disclaimer as a disclosure requirement rather than a speech ban. It then misinterprets the holding of *Citizens United v. FEC* to defend this constitutionally impermissible speech restriction.

"The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether." *Citizens United*, 558 U.S. at 319. This is because "[t]he First Amendment. . . reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs," and "[o]ur Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it." *United States v. Stevens*, 559 U.S. 460, 470 (2010).

Defendant-Intervenor writes that BM2's "on-ad disclaimer requirements are constitutional" because "the *Citizens United* Court explained [that] 'with the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.'" Dkt. 132, p. 24–25 (tidied) (quoting *Citizens United*, 558 U.S. at 370). Defendant-Intervenor notes that in *Citizens United*, "the Court held that even a four-second audio disclaimer in a ten-second ad did not violate the First Amendment," and concludes that this means "Alaska's disclaimer requirements" are not subject to strict scrutiny. *Id.* at 25.

But the spoken and text message forms of the disclaimers are not "disclosure" requirements at all: They are speech bans. Instead of taking four seconds of a ten-second ad, they take up the de facto entirety of a *thirty*-second ad. Expert witness Art Hackney recorded the disclaimer with FLF's donor information (Mr. Hackney never worked for FLF). Dkt. 133, Ex. 2. Doing so took twenty-six seconds. *See id*. This means that anyone who paid for a thirty-second ad spot, as FLF had done, would effectively be wasting their money, because the disclaimer required by BM2 consumes all but 4 seconds of this popular form of political speech. As Hackney, a professional political operative, explained:

> I ceased running less expensive :30 second issue messages because of the requirements that now make the disclosure information far longer than the message itself. . . . It forces groups to more than double their expenditures to accommodate these disclaimer requirements.

Dkt. 133, Ex. 1, p. 6.

Similarly, in its own sworn declaration, FLF says:

> Families of the Last Frontier has ceased running 30-second radio ads because the entirety of the ad's runtime must be taken up with the so-called disclaimer mandated by Ballot Measure 2. This has caused Families an extraordinary financial burden, because 30-second ads are one of the most cost-effective ways to engage in persuasive political speech.

Dkt. 133, Ex. 81 ¶ 6.

Plaintiffs included the recording of Art Hackney reading FLF's disclaimer at an extremely rapid, rather than "glacial", Dkt. 132, p. 31, speed with their Motion for Summary Judgment. *See* Dkt. 133, Ex. 2. Defendant-Intervenor was given this recording prior to deposing Mr. Hackney in October of 2025, and at no point have either it or its expert witnesses produced any testimony where someone could say the disclaimer faster than him—presumably because it would be impossible to do so. *See* Dkt. 122, p. 3. And though Defendant-Intervenor's memorandum contains a cryptic reference to "as-applied facts," it never suggests that FLF's disclaimer is unusually long or atypical for a mandated disclaimer (because it is not). *See id.* at 31.

Citizens United prohibited expenditure caps on political advertising, holding that the "rule that political speech cannot be limited based on a speaker's wealth is a necessary consequence of the premise that the First Amendment generally prohibits the suppression of political speech based on the speaker's identity." *Citizens United*, 558 U.S. at 341–42. Defendant-Intervenor's own witness testimony shows that BM2 presents the inverse regulation: an expenditure *floor*. To comply with BM2, an IE group must either pay for the more expensive sixty-second spot or remain silent.

This expenditure floor uniquely burdens mid-budget IE groups like FLF and Hackney's clients. *See* Dkt. 133, Ex. 1, p. 6; Ex. 81, ¶ 6. In contrast, Defendant-Intervenor's own expert witness, Hays acknowledged her employers were minimally affected by the spoken disclaimer issue, saying: "We do not run 30-second ads. . .we've always run 60-second [ads]." *Id.* at p. 47, ¶ 19–22. Hays even confessed that her groups were so financially comfortable that they had not even "asked for. . . the price differential" between the two ad-lengths. *Id.* at 49, ¶ 3–6.

Courts have heartily condemned the "'beggar thy neighbor' approach to free speech—'restrict[ing] the speech of some elements of our society in order to enhance the relative voice of others.'" *Freedom Club PAC v. Bennett*, 564 U.S. at 741 (quoting *Buckley*, 424 U.S. at 48–49). BM2 advances an even more constitutionally offensive notion: A 'No Speech for Paupers' doctrine where only the wealthy are permitted to speak.

Defendant-Intervenor misinterprets the holding of *Citizens United*, and it mischaracterizes a speech ban as a disclosure requirement. Banning core political speech is not constitutionally permissible.

IV. Defendant-Intervenor Wrongly Claims the Out-of-State Compelled Speech Requirement is a Mere '*Conditional Disclaimer*,' and Wrongly Claims There is a 'Find Useful' Loophole to Justify Compelled Speech.

BM2 requires certain (but not all) IE groups to engage in compelled speech, mandating they associate themselves with a group Defendant-Intervenor knows there is rampant hostility against. This compelled speech is not, as the Defendant-Intervenor describes it, a "*conditional disclaimer*." Dkt. 132, p. 30 (emphasis in original). Instead, it is a burden on core political speech that far exceeds any traditional disclaimer requirement, and is unconstitutional even if some bigoted people find it "useful." *Id.*

It "offends the First Amendment" to "compel a person to speak its message when he would prefer to remain silent or to force an individual to include other ideas with his own speech that he would prefer not to include." *303 Creative LLC v. Elenis*, 600 U.S. 570, 586–87 (2023). Therefore, campaign finance regulation may not "contraven[e] 'the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message.'" *Freedom Club PAC*, 564 U.S. at 739 (quoting *Hurley v. Irish-American Gay, Lesbian and Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995)). "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions" as First Amendment rights. *Schneider v. State*, 308 U.S. 147, 161 (1939).

When it was asked at its corporate deposition "what is the purpose of having that out-of-state disclaimer," Defendant-Intervenor refused to name any purpose. Dkt. 133, Ex. 83, p. 108 ¶ 12–14 ("I'm not familiar with the disclaimer."). Elsewhere, Defendant-Intervenor was more blunt, writing extensively of how "[w]e Alaskans are a special breed" who dislike "all the nosy Outsiders trying to tell us what to do." Dkt. 133, Ex. 15, p. 2. Its promotional and internal documents frequently refer to the capital-O "Outside" and "Lower 48 political groups" with contempt. *See, e.g.,* Dkt. 133, Ex. 15, p. 2 ("nosy Outsiders"); Ex. 19 ("the large sums of Outside political dollars"), Ex. 29, p. 1 ("big-money outsiders"); Ex. 35, p. 1 ("the likes of George Soros"), Ex. 38, p. 2 ("Don't let these outsiders get away with just a slap on the wrist."), Ex. 51 ("Alaskans might be resistant to doing anything similar to how things are done Outside"), Ex. 52, 12:32–35 ("shell companies from the Lower 48"), Ex. 53 ("someone from the lower 48"), Ex. 54 ("'Alaska is the crown jewel of America,' said Shea Siegert, Campaign Manager of Yes on 2, 'so we can understand why people from Outside might have opinions about our state's future.'"), Ex. 55, p. 1, 2 ("over a quarter of a million dollars from Lower 48 political groups"; "hundreds of thousands of dollars from Outside sources"; "over $250,000 from Outside special interests"), Ex. 56 ("someone from the lower 48"), Ex. 60, p. 1 (the formal preamble of BM2 laments "the undermining of self-governance in Alaska by the undue influence of wealth, including from outside the state").

Defendant-Intervenor insists that compelling certain independent groups to say "A MAJORITY OF CONTRIBUTIONS TO (OUTSIDE-FUNDED ENTITY'S NAME) CAME FROM OUTSIDE THE STATE OF ALASKA," AS 15.13.090(g), is a mere "*conditional disclaimer*," Dkt. 132, p. 30 (emphasis in original), and equates it to the four-second 'paid for by' disclaimer at issue in *Citizens United*. Dkt. 132, p. 24–25. Even if this Court were to deny that Defendant-Intervenor *intended* BM2 to silence non-Alaskans from speaking (i.e. invidious discrimination), its venomous language regarding "outsiders," Dkt. 133, Ex. 15, p. 2, is proof that there is a strong hostility to outsiders in Alaska. Furthermore, *supra* Section II, there is substantial evidence in the Defendant-Intervenor's own words and rhetoric indicating that hostility to so-called outsiders is inherently intertwined with racial animus. Forcing a disclaimer that associates specific (but not all) IE groups with outsiders would be bound to undermine that IE group's message. *See 303 Creative*, 600 U.S. at 586.

Defendant-Intervenor defends compelling speakers to say "A MAJORITY OF CONTRIBUTIONS TO (OUTSIDE-FUNDED ENTITY'S NAME) CAME FROM OUTSIDE THE STATE OF ALASKA," AS 15.13.090, arguing this mandate is constitutionally permissible because it "is a fact Alaskans find useful in assessing messages influencing their vote, and is far less restrictive than a limit or prohibition on out-of-state contributions." Dkt. 132, p. 30–32. Such logic would not stop at out-of-state contributions. Some Alaskans doubtless would find it useful to know that a majority of contributors came from teachers unions. Or from registered Democrats. Or from Jewish people. *See* Dkt. 133, Ex. 35, p. 1 (Defendant-Intervenor complaining how "the likes of George Soros" influence Alaskan elections). No court in America has ever held that there is a "find useful" loophole, Dkt. 133, Ex. 35, p. 31, "to force an individual to include other ideas with his own speech that he would prefer not to include." *303 Creative*, 600 U.S. at 586. And similarly, no court in America has ever upheld compelled speech simply because its proponents suggested an even more restrictive alternative.

BM2's mandate that some (but not all) IE groups engage in speech associating themselves with a disfavored group may be convenient for someone desiring to vote based on a person's "breed," Dkt. 133, Ex. 15, p. 1–2, but it is wholly unacceptable under the First Amendment.

V. Defendant-Intervenor Misstates Precedent to Defend its Unconstitutional Compounding Speech Restrictions

BM2 compounds censorship upon censorship to chill speech across the Last Frontier. Defendant-Intervenor misstates precedent to suggest its "prophylaxis-upon-prophylaxis" approach to speech restrictions is constitutional.

Defendant-Intervenor insists that the Supreme Court's admonishment of compounding speech restrictions, or the "prophylaxis-upon-prophylaxis" approach, applies only to contribution restrictions. This is factually wrong: the use of the term originated in the Court's IE case *FEC v. Wis. Right to Life*, *Inc.*, 551 U.S. 449, 479 (2007), and was later adopted as a catch-all term for the constitutionally impermissible "regulating of campaign finance." *FEC v. Ted Cruz for Senate*, 596 U.S. 289, 306 (2022). This applies even when the Court is judging a law under exacting scrutiny, which "demands that the government show that it has (1) a sufficiently important interest (2) to which the challenged regulations are substantially related and narrowly tailored." *Smith*, 95 F.4th at 1214.

Several of the speech restrictions are discussed in more detail below. Any of them would be unconstitutional on their own, but compounded, they create a true nightmare for anyone attempting to engage in core political speech without a campaign finance attorney on staff.

A. Continuous double-reporting with a 24-hour rule is entirely redundant while imposing an extreme burden on the political speech of ordinary citizens.

Even the Defendant-Intervenor's own witness acknowledged the substantial burden that double-reporting with a 24-hour rule imposes on ordinary citizens. This mandate is also entirely redundant and foreclosed by Supreme Court precedent.

Defendant-Intervenor states that "[t]here is no constitutional prohibition against 'double reporting' in the election context." Dkt. 132, p. 23. This claim may or may not be true in the abstract, but it is definitively untrue for the specific double reporting law in BM2. The Supreme Court held that it will "never accep[t] mere conjecture as adequate to carry a First Amendment burden," and instead requires "'record evidence or legislative findings' demonstrating the need to address a special problem" before approving of a campaign finance restriction. *Cruz for Senate*, 596 U.S. at 307 (first quoting *McCutcheon v. FEC*, 572 U.S. 185, 210 (2014)) (then quoting *Colorado Republican Federal Campaign Comm. v. FEC*, 518 U.S. 604, 618 (1996)). After years of discovery, neither Defendants nor Defendant-Intervenor have produced one shred of evidence showing a single crime that was stopped or would have been stopped by double reporting. Plaintiffs, however, have identified mountains of evidence that demonstrates the chilling effect that BM2's double reporting has on protected speech.

Witness Frasca described the struggle of assisting a donor in her nineties who lacked internet access yet needed to submit her form to the Commission. Dkt. 133, Ex. 84, p. 1 ¶ 6. Frasca also attested to how a large portion of the state's conservative donors have to rely on her or else they would fail to get their forms in on time. *Id.* at ¶¶ 3–5. Plaintiff Trevor Shaw said he put the AFMC on ice because the risk of a donor forgetting to file his or her form on time was too great. Dkt. 133, Ex. 87, p. 1–2. Plaintiff Bob Griffin has sworn that he gave up much of his political giving because of his concerns of running afoul of the 24-hour rule, especially given his work as a pilot where internet service can be spotty. Dkt. 133, Ex. 85, p. 2 ¶ 14.

This chilling effect was also corroborated by the testimony of Defendant-Intervenor's witnesses. Both Hays and John Henry Heckendorn admitted that they have to teach donors how to create a myAlaska account (something they are under no legal obligation to do). Dkt. 133, Ex. 82, p. 94–97. Hays admitted that, because of the continuous reporting, both her employer and an out-of-state donor accidentally triggered over $10,000 in fines because of a donation made over the winter holidays when no one was at the office to realize it was received. Dkt. 133, Ex. 80, p. 35–36. Ironically, this donor was also one of the top donors to BM2—meaning even the people who funded the law cannot understand how to comply with it. *Compare* Dkt. 133, Ex. 80, p. 36 ¶ 10–11; and Dkt. 133, Ex. 49, Ex. 50. It would be hard to find a better example of a law that "force[s] speakers to retain a campaign finance attorney. . . . before discussing the most salient political issues of our day" than BM2. *Citizens United*, 558 U.S. at 324.

And even if double reporting had a purpose other than silencing the wrong "bree[d]" of people, *see* Dkt. 133, Ex. 15, p. 2, it is unclear why that purpose would be served by having such a short time frame and making it continuous year-round. When it was using the more deferential preliminary injunction standard, the Ninth Circuit took "pause" at how "Ballot Measure 2's contribution-reporting requirement applies at all times, rather than only close to an election." *Smith*, 95 F.4th at 1218.

BM2's double reporting requirement with a 24-hour rule imposes a staggering burden on ordinary citizens, and is flagrantly unconstitutional.

B. Ballot Measure 2's disclaimer would also be pointlessly redundant if its actual purpose was to inform.

Even if the goal of BM2's disclaimer is to educate voters (rather than a pretext for invidious discrimination), it is redundant, arbitrary and unhelpful to voters. It also imposes a colossal burden on political speech.

Courts have upheld some redundant disclaimers before, *see, e.g.*, *Citizens United*, 558 at 366 (upholding a disclaimer "displayed on the screen in a 'clearly readable manner' for at least four seconds"), but never of the scale of redundancy in BM2. Not only is nothing in BM2's disclaimers new information (all of it is included in the mandatory reports available on the Commission's website), but the disclaimer requires some pieces of information (such as the name of the speaker and, in some cases, specific donor's location) to be repeated twice. *See* AS 15.13.090. It also contains pointless superfluous information: even the dimmest of Alaskans told a donor is from "Fairbanks" or "Anchorage" do not need to be told which state Fairbanks and Anchorage are in.

The expert report by Professor David Primo further emphasizes the disclaimer's ineffectiveness at informing voters. His research showed that "survey respondents with access to disclosure information did no better than respondents without such information in identifying the positions of interest groups on a ballot measure." Dkt. 133, Ex. 6, p. 6. Evaluating the specific disclaimer requirement of BM2, Primo elaborated:

> At best, the information will have little impact once all the other information available to voters in a campaign is considered. At worst, the disclosures may distort the speech of groups making independent

> expenditures, confuse voters, or lead voters to make decisions at odds with their preferences.

Dkt. 133, Ex. 6, p. 4.

In addition to its ineffectiveness at educating voters and profound redundancy, BM2's disclaimer is also arbitrarily underinclusive if its goal is to educate voters. For starters, despite the great emphasis BM2 puts on requiring "true source" disclosures to the Commission, the disclaimer requires only the top three contributors, not the top three true sources. *Compare* AS 15.13.074 (prohibiting certain "contributions"), *and* AS 15.13.090 (requiring communications to identify "top contributors"), with AS 15.13.040 (requiring the "true source" of contributions to be reported to the Commission); *see also* AS 15.13.400(19) (defining "true source"). Furthermore, there is little reason to believe knowing the third highest contributor would be of any more value to the voter than knowing the fourth highest or the fifth highest. This arbitrary top-three cut-off, paired with a lack of a true source requirement, enables more sophisticated donors to simply avoid having their names listed by using intermediary groups.

Contrasting with the disclaimer's ineffectiveness in educating voters is its profound effectiveness in silencing political speech. As discussed in Section III, *supra*, when applied to spoken and text-based ads, the disclaimer is a de facto expenditure floor that bans thirty-second and 250-character text ads. To comply, poorer groups must forgo spoken and text-based advertising, whereas wealthier speakers like Hays's clients can purchase higher-cost 60-second ads. *See* Dkt. 133, Ex. 80, p. 47 ¶ 19–22, 49 ¶ 3–6.

Professor Primo's report also documented that the disclaimer, even in printed form, would likely have a chilling effect on speech and instead serve to "'facillitat[e] social pressure.'" Dkt. 133, Ex. 6, p. 12 (quoting Perez-Truglia, Ricardo, and Guillermo Cruces. 2017. "Partisan Interactions: Evidence from a Field Experiment in the United States." Journal of Political Economy 125(4):1208-1243). Shaw has confirmed this concern, saying that he had Plaintiff AFMC shut down because of his alarm that donors would be harassed due to having their names highlighted. Dkt. 133, Ex. 87, p. 1.

The disclaimer requirement has a profound chilling effect in the print and digital spheres, as well. Defendant-Intervenor filed a complaint with the Commission against a private citizen because he posted an IE group's video on the social media platform X without writing out the disclaimer in his post. Dkt. 133, Ex. 69, p. 5. Defendant-Intervenor was also itself repudiated by the Commission for suggesting its press releases did not need a disclaimer. Dkt. 133, Ex. 75, p. 25–28, 31–36. Given that the disclaimer seemingly applies to everything from press releases to unpromoted social media posts, and even BM2's own author failed to grasp its scope, the disclaimer requirement is another example of an unconstitutional law "forc[ing] speakers to retain a campaign finance attorney. . . before discussing the most salient political issues of our day." *Citizens United*, 558 U.S. at 324.

Compliance complexity is not the only burden of the disclaimer rule. Even an ordinary print mailer by a sophisticated firm fully versed in the disclaimer's requirements would impose substantial monetary costs, as each reprint would need to be updated based on the day-to-day ratio of who is the top fourth versus the top third donor. *See* Dkt. 133, Ex. 62 (demonstrating the requirement's confusing timeframe).

While "exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends," the record shows that neither the law's authors nor its enforcers made any effort to tailor the law to a "substantial" interest, let alone in a "narrow" fashion. *Smith*, 95 F.4th at 1214–15. Defendant-Intervenor boasted that "Alaskans are a special breed," Dkt. 133, Ex. 15, p. 1–2; remarked that with the disclaimer, "I think a lot of [donors] will decide to spend their money trying to buy someone else's election," Dkt. 133, Ex. 29, p. 1; and boasted that this would be a "win." Dkt. 133, Ex. 9, p. 2; Ex. 10; Ex. 11. The Commission, meanwhile, insisted in its corporate deposition that "it's not our job to analyze constitutional arguments." Dkt. 112-4, p. 23; *see also* Dkt. 133, Ex. 62, p. 3 ("constitutional questions such as this are likely better addressed to the lawmakers within the Alaska Legislature").

BM2's disclaimer is redundant, arbitrary and unhelpful to voters. It is also unconstitutional.

C. Ballot Measure 2's 24-hour true source reporting requirement is vague, ambiguous, and ineffective at anything other than chilling speech.

Even if it were not motivated by invidious discrimination, the 24-hour true source requirement—which is useless at anything other than silencing political speech—fails exacting scrutiny because it is far too vague and ambiguous to pass constitutional muster.

"A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *Butcher v. Knudsen*, 38 F.4th 1163, 1168 (9th Cir. 2022) (quoting *FCC v. Fox Television Stations*, 567 U.S. 239, 253 (2012)). "[V]agueness concerns are more acute when a law implicates First Amendment rights," because "[u]ncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked." *Butcher*, 38 F.4th at 1169 (quoting *Grayned*, 408 U.S. at 109). In campaign finance cases, "vagueness scrutiny is more stringent." *Butcher*, 38 F.4th at 1169 (quoting *California Teachers Ass'n v. Bd. of Educ.*, 271 F.3d 1141, 1150 (9th Cir. 2001)).

BM2 defines "true source" as "the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services." AS 15.13.400 While wordy, this definition is chock full of ambiguity. As a result, the Commission itself issued an advisory letting some groups count federal (but not state) PACs as a "true source," thereby creating a giant loophole for sophisticated donors to avoid the requirement altogether. Dkt. 133, Ex. 78, p. 1–2.

Whether the Commission sticks to this interpretation, or courts uphold it, remains to be seen. What matters is that years after the implementation of BM2, the scope of its true source requirement is still being hotly debated by the most talented legal minds in Alaska. Yet at the same time, BM2 requires both IE groups *and individual donors* to be able to understand its meaning within 24 hours. AS 15.13.040(b).

Hays and Heckendorn both testified that they feel it is their job as paid employees of political firms to educate donors on how to actively comply with the reporting requirement—indicating that a firm that does not want its donors subjected to massive fines should be hiring someone to tell people how to do 24-hour reports. Dkt. 133, p. 34; Ex. 82, p. 96–97. There is no reason for the law to be "tailored" this way. *Smith*, 95 F.4th at 1214. The true source requirement is already exempted from the disclaimer, so there would be little harm in allowing donors extra time to understand this provision's requirements (twenty-five hours, perhaps?). *Compare* 15.13.074, with AS 15.13.040(r). This is especially true for donations made months or even years before the scheduled election, as it is of little relevance when the voter receives this information so long as it is before he casts his vote. *See Smith*, 95 F.4th at 1233 (Forrest, J. dissenting) ("Even assuming that prompt disclosure is helpful to voters *during an election cycle*, why a 24-hour filing deadline is needed in the lulls between active elections is a mystery."). The only thing this requirement appears to be effective at is what Defendant-Intervenor said its goal was: putting a "price of admission," Dkt. 133, Ex. 9, p. 2; Ex. 10; Ex. 11, on the "privilege of influencing Alaska's elections." Dkt. 133, Ex. 28, p. 1.

The vague, ambiguous 24-hour true source requirement serves no valid purpose, imposes a crushing burden on political speech, and fails exacting scrutiny.

CONCLUSION

For these reasons, Defendant-Intervenor's motion for summary judgment should be denied.

Dated: May 29, 2026

Respectfully submitted,
Liberty Justice Center

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the word limit of Cir. R. 32-1 because this brief contains **7,519** words, excluding the items exempted by Local Rule 7.4. The brief's type size and typeface comply with Local Rule 7.5.

Dated: May 29, 2026 LIBERTY JUSTICE CENTER

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CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2026, I electronically filed the foregoing Motion for Summary Judgment with the Clerk of the Court for the United States District Court of Alaska by using the CM/ECF System. Prior to filing this, I served the memorandum and exhibits by email to the counsel for Defendants and Defendant-Intervenor.

Dated: May 29, 2026 LIBERTY JUSTICE CENTER

By: /s/ Tim Kilcullen

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