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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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| Robert Griffin, Allen Vezey, Trevor Shaw, Families of the Last Frontier, and Alaska Free Market Coalition,<br><br>Plaintiffs,<br><br>v.<br><br>Richard Stillie, Jr., in his official capacity as chair of the Alaska Public Offices Commission, *et al.*,<br><br>Defendants,<br><br>and<br><br>Alaskans for Better Elections, Inc.,<br><br>Intervenor-Defendant. | Case No.: 3:22-cv-00077-SLG<br><br>**STATE DEFENDANTS' REPLY ON THEIR MOTION FOR SUMMARY JUDGMENT** |

## I. Introduction

Like the plaintiffs' motion for summary judgment (Dkt. 157), their opposition to the State's motion contains basic errors that could have been avoided through careful reading. It is thus their opposition, not the State's motion, that "contains serious, inaccurate assertions of both fact and law that need to be addressed." [Dkt. 168 at 9] For example, they claim that Ballot Measure 2 (BM2) changed Alaska's preexisting on-ad disclaimer requirements in ways that it simply did not. [Dkt. 168 at 10-14] They inexplicably assert that the challenged civil laws impose "criminal liability." [Dkt. 168 at 42] And they willfully misread various documents to support their position.

The State's opposition to their motion (Dkt. 166) already refutes many of their arguments. The State tries not to repeat itself too much here.

The Court should grant the State summary judgment on all counts because the plaintiffs ultimately fail to support the facial challenge to the disclosure and disclaimer laws that they pled. [Dkt. 40] A facial challenge requires showing that "a substantial number of the applications" of the law "are unconstitutional in relation to the law's 'plainly legitimate sweep'"[1]—in other words, that the unconstitutional applications are "substantially disproportionate to the statute's lawful sweep."[2] Otherwise, courts must handle unconstitutional applications "as they usually do—case-by-case."[3]

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[1] *Smith v. Helzer*, 95 F.4th 1207, 1218 (9th Cir. 2024) (cleaned up).

[2] *United States v. Hansen*, 599 U.S. 762, 770 (2023).

[3] *Id*.

The plaintiffs have not rebutted the State's showing that the challenged laws further the long-recognized state interest in informing voters about the sources of campaign spending and that the laws' features are narrowly tailored to that important purpose. [Dkt. 131] They have not shown that the laws are burdensome to follow, much less that the laws are causing "catastrophic consequences" for anyone (let alone substantially disproportionate numbers of people). [Dkt. 168 at 34] Merely identifying sporadic or hypothetical problems in a law's application—even assuming, generously, that the plaintiffs' evidence accomplishes this—cannot sustain a facial challenge.

The Court should grant the State's motion for summary judgment.

## II. Argument

### A. The plaintiffs' asserted "contradictions" reflect only their willful misinterpretations.

The plaintiffs devote a section of their opposition to arguing that the State has "frequently changed [its] position on what BM2 requires," but their three asserted "contradictions" show no such thing. [Dkt. 168 at 18-24[4]]

First, the plaintiffs willfully misinterpret the State's point about donor "opt out." [Dkt. 168 at 18-21] The plaintiffs argued at the preliminary injunction stage that the disclosure laws would improperly sweep in *non-political* donors who do not intend their donations to be used for electioneering. [Dkt. 7 at 30] The State countered that non-

[4] The State cites the PDF pages of the plaintiffs' opposition rather than the different numbers in their footer because the Court's docket footers will likely match the PDF pages. (Because the document was filed under seal, the State lacks a docket-stamped version).

political donations are not reportable "contributions" under Alaska law and that recipients can (and should) keep non-political funds separate from money given for electioneering. [Dkt. 131 at 16] Because the State made this point in an argument section about the donor *disclosure* laws, it is obviously not the different point about the on-ad *disclaimer* laws that the plaintiffs twist it into by inserting absent words between quotations. [Dkt. 168 at 20] No, the disclaimer laws do not include a process for top *political* donors to opt out of having their names listed on ads, nor does the State's motion suggest that they do.

Such an opt-out is unwarranted: the point of disclaimers is to tell voters who is funding ads. A speaker's top political donors (those who gave money for the purpose of electioneering) *are in fact* funding the ads whether or not they approve the message. As the Ninth Circuit recognized in *No on E v. Chiu*, voters know the difference between "supporting a group that broadcasts a statement and supporting the statement itself."[5] Disclaimer laws "further the governmental interest in revealing the source of campaign funding, not ensuring that every donor agrees with every aspect of the message."[6]

Second, the plaintiffs willfully misinterpret an email from APOC as creating a "sweeping federal PAC loophole" that "let[s] IE groups count federal (but not state) PACs as a 'true source,'" such that a "sophisticated donor" could use a federal PAC as "a pass-through" to avoid having their name disclosed. [Dkt. 168 at 22-23] As the State has explained, the email does not say this. [Dkt. 166 at 23] Instead, it confirms that a ballot

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5 85 F.4th 493, 506 (9th Cir. 2023).

6 *Id.*

measure group that receives money from a federal PAC must identify the true sources of the received money, and that the donating PAC (like any other intermediary) must file a donor disclosure report identifying "the true sources of funds"—i.e., the names of its donors—"because it is serving as an intermediary." [Plaintiff's Ex. 87 at 3]

Third, the plaintiffs wrongly assert that APOC has "punished people for following" its "own recommendation," with their sole example being that one man's reliance on APOC staff's mistaken advice allegedly "led to an onerous investigation and, eventually, over $156,000 in fines." [Dkt. 168 at 23-24] As the State has explained, this is not true either. [Dkt. 166 at 4-5] Neither that man nor the various groups he controlled were assessed any fines whatsoever for failing to register and report during the few months before the mistaken staff advice was corrected.[7] [Plaintiff's Ex. 64, 57] The eventual large fines stemmed not from the mistaken advice but rather the violators' "egregious and widespread"[8] violations long after they knew their obligations.[9]

The plaintiffs have thus identified no "contradictions." [Dkt. 168 at 18-24]

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7 *See* Alaska Public Offices Commission, Final Order at 13, *Alaskans for Better Elections v. Alaskans for Honest Elections et al.*, Case No. 23-01-CD (Jan. 3, 2024), *available at* https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=25547 at 3-4 (explaining that the mistaken staff advice was given in November 2022 and corrected in February 2023) 11-18 (explaining that penalties against respondents were either not assessed due to first-time filer status or mitigated entirely for relevant failures during the period of mistaken advice), 31 (summarizing assessed penalties, which did not include registration or reporting penalties during the period of mistaken advice).

8 Alaska Public Offices Commission, Final Order at 9, *Alaskans for Better Elections v. Alaskans for Honest Elections et al.*, Case No. 24-03-CD (Jan. 27, 2025), *available at* https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=26553.

9 *Id*. at 8.

### B. Strict scrutiny does not apply here.

To repeat, the Ninth Circuit has already held that exacting scrutiny is the proper standard for these plaintiffs' claims.[10] The Court should apply that standard.

The State does not rely on "overruled precedent" by citing *McConnell v. FEC*[11] (among other cases) to support that standard. [Dkt. 168 at 14-16] Although *Citizens United v. FEC* overruled parts of *McConnell*, it did not overrule the parts relevant here—rather, it *reaffirmed* the holdings on disclosures and disclaimers.[12] It cited *Buckley v. Valeo*[13] and *McConnell* in noting that the standard for such laws is exacting scrutiny.[14] And it upheld such laws, noting that "disclosure is a less restrictive alternative to more comprehensive regulations of speech" and that "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."[15]

This Court should follow precedent rather than apply strict scrutiny based on the plaintiffs' meritless speech ban and invidious discrimination theories. The plaintiffs acknowledge that "*some* political disclaimer laws are not subject to strict scrutiny," but they cite no example of any political disclaimer law that any court has subjected to strict scrutiny. [Dkt. 168 at 30 (emphasis added)] This Court should not break new ground.

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10 *Smith v. Helzer*, 95 F.4th 1207, 1214-15 (9th Cir. 2024); *see also No on E v. Chiu*, 85 F.4th 493, 503 (9th Cir. 2023) (applying exacting scrutiny).

11 540 U.S. 93 (2003).

12 *See Citizens United v. FEC*, 558 U.S. 310, 366-72 (2010).

13 424 U.S. 1 (1976).

14 *Citizens United*, 558 U.S. at 366-67.

15 *Id*. at 370-72.

### 1. The disclaimers do not "ban" speech.

The plaintiffs' theory that the disclaimers are an effective "ban" on 30-second radio ads misreads the statute they challenge, AS 15.13.090, as well as that statute's history. [Dkt. 168 at 11-14; Dkt. 40 at 19-20 (challenging "[t]he entirety of AS 15.13.090, as modified by Sections 11 and 12 of Ballot Measure 2")] For "a communication transmitted through radio or other audio media,"[16] the AS 15.13.090 disclaimer is shorter than for other media and does not require the "out-of-state" language added by BM2.[17] The plaintiffs' assertion about how long the disclaimer would take to recite in a radio ad thus rests on a misreading of the law. [Dkt. 168 at 14-15]

BM2 did not change the required disclaimer for radio ads *at all*, much less do so to purposely harm "mid-budget IE groups" as the plaintiffs suggest. [Dkt. 168 at 11-16] The State made no "verifiably false assertion" by pointing out that most of the disclaimers (including the entire radio one) were required long before BM2. [Dkt. 168 at 14] Indeed, the complaint acknowledges this basic fact (even as the plaintiffs now deny it). [Dkt. 40 at 19 ("AS 15.13.090, both before and after its amendment by Sections 11 and 12 of

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[16] *See* AS 15.13.090(d) (providing that a radio ad must include the following disclaimer: "This communication was paid for by (person's name). The top contributors of (person's name) are (the name of the largest contributors to the person under AS 15.13.090(a)(2)(C)).""). An additional disclaimer that applies to some communications in candidate elections and that also predates BM2 appears in AS 15.13.135(b)(2).

[17] *Id.* The out-of-state disclaimer found in AS 15.13.090(g) applies only to a communication that "includes a print or video component" and is only necessary "[t]o satisfy the requirements of (a)(1) of this section and, if applicable, (a)(2)(C) of this section." AS 15.13.090(d) substitutes its disclaimer requirement for that of .090(a). ("Notwithstanding the requirements of (a) of this section, in a communication transmitted through radio or other audio media…the following statements must be read…").

Ballot Measure 2, requires speakers to recite several government-imposed scripts: a stand-by-your-ad disclaimer, a top-3-donor disclaimer, and an out-of-state disclaimer.")] The plaintiffs misread a narrow exception in AS 15.13.090(b)(3)—which BM2 *did not change*—in arguing that BM2 somehow greatly expanded the disclaimers.[18] [Dkt. 168 at 12] BM2 made only two changes to the pre-existing disclaimers: it required that they remain "onscreen throughout the entirety of" any "broadcast, cable, satellite, internet or other digital communication,"[19] and that an ad by an entity receiving most of its funding from outside Alaska declare that fact if the communication is in print or video.[20] The text of the ballot measure speaks for itself, if the Court wishes to examine what it changed.[21] Again, BM2 did not change the disclaimer for radio ads at all.

As for text messages, 2 AAC 50.306(d) provides that a "political communication by electronic media" must "include *or be electronically linked to*" the required disclaimer information (emphasis added). APOC has not yet been asked for, nor has it issued, an advisory opinion requiring that the disclaimer information be included as part of the text that would comprise a text message's word count. Again, anyone uncertain about whether

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[18] *See* AS 15.13.090(b)(3) (providing an exception to disclaimers for a billboard, sign, or other printed material that is paid for by "an individual acting independently of any other person" to "influence the outcome of a ballot proposition").

[19] *See* AS 15.13.090(c); Alaska's Better Elections Initiative at § 11, *available at* https://www.elections.alaska.gov/petitions/19AKBE/19AKBE-TheBill.pdf.

[20] *See* AS 15.13.090(g); Alaska's Better Elections Initiative at § 12, *available at* https://www.elections.alaska.gov/petitions/19AKBE/19AKBE-TheBill.pdf.

[21] *See id*.

a certain kind of ad complies with the law can ask APOC for an advisory opinion[22] and—if they do not like the answer—bring an as-applied challenge.

Regardless of the details, any disclaimer law (including the one upheld in *Citizens United*) could be relabeled as "a functional ban" on ads lacking the required disclaimer (or ads shorter or smaller than it). This is no more successful than relabeling disclaimers as "compelled speech," which failed in *Citizens United*.[23]

The plaintiffs have had many years to challenge Alaska's longstanding disclaimers as applied to 30-second radio ads or to any actual group that cannot afford compliant radio ads.[24] But instead they brought this *facial* challenge to AS 15.13.090, which they cannot win by pointing at a small subset of possible problematic applications of the disclaimers—they must show that "a substantial number of the applications" "are unconstitutional in relation to the law's 'plainly legitimate sweep.'"[25]

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22 *See* AS 15.13.374 (providing that "[a]ny person" can request an advisory opinion).

23 *See* Br. for Appellant 43-44, *Citizens United*, 558 U.S. 310 (No. 08-205), 2009 WL 61467 (arguing that "oral and written disclaimers" are "content-based restrictions on political speech" and "compelled speech" subject to strict scrutiny).

24 *Cf. Yes on Prop B v. City & Cty. of San Francisco*, 440 F. Supp. 3d 1049, 1056 (N.D. Cal.), *appeal dismissed as moot*, 826 F. App'x 648 (9th Cir. 2020) (considering an as-applied challenge to a disclaimer requirement, and noting that "[t]he burden imposed by a given disclaimer will vary depending on the type of disclaimer, relevant advertisement, and various other case-specific factors").

25 *Smith*, 95 F.4th at 1218 (cleaned up); *Hansen*, 599 U.S. at 770 ("To justify facial invalidation, a law's unconstitutional applications must be realistic, not fanciful, and their number must be substantially disproportionate to the statute's lawful sweep.").

### 2. The challenged laws are not "invidious discrimination."

As the State has noted, the Ninth Circuit panel opinion in *Moving Oxnard Forward* that undergirded the plaintiffs' new, unpled invidious discrimination theory was replaced by a controlling en banc opinion observing that "[i]f any motive was relevant" in the context of a voter-passed law (like the one here), "it would be the motive of the voters," not the law's drafters, and declining to attribute the drafters' allegedly discriminatory motives to the voters.[26] [Dkt. 166 at 6-7] The plaintiffs press on, pivoting to distinguishing *Moving Oxnard Forward* and emphasizing their baseless racial and religious discrimination ideas. [Dkt. 168 at 26-30] This leads nowhere.

The State agrees that this case differs from *Moving Oxnard Forward* in various ways, but not in the ways the plaintiffs assert. [Dkt. 168 at 29-30] There is no "ample evidence" here of "racial and discriminatory appeals to voters." [Dkt. 168 at 29] And the plaintiffs here—like the plaintiffs in *Moving Oxnard Forward*—did not raise any equal protection or improper motive claim in their complaint.[27] [Dkt. 40] The belated, unpled claim of discriminatory motives fails here just as it did there.

The plaintiffs' evidence does not remotely show that Alaska voters enacted campaign finance disclosure and disclaimer laws to further "racialist objectives" about "indigenous 'power.'" [Dkt. 168 at 27] "Non-Alaskan" is not a racial group, and the plaintiffs offer no theory on how campaign finance transparency laws could

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[26] *See Moving Oxnard Forward, Inc. v. Lopez*, --- F.4th ---, 2026 WL 1088792 (9th Cir. Apr. 22, 2026).

[27] *Id*. at *15.

disproportionately benefit Alaska Natives. Their exhibit citations ignore the crucial fact that BM2 encompassed two other major election reforms besides the transparency laws challenged here: open, nonpartisan primaries and ranked-choice general election voting. Thus, for example, the cited opinion piece about the voting power of Alaska Natives is obviously referring to those *voting process* reforms, not disclosure laws. [Plaintiffs' Ex. 37; *see also* Ex. 34, 40, 42, 45, 46, 47] BM2's proponents thought those voting process reforms would lead to more representative elections for everyone, not that they would disproportionately favor Alaska Natives.

As for purported religious discrimination, one BM2 supporter's opinion piece invoking Christian values in a lament about extreme partisanship does not even suggest, let alone support a finding, that Alaskan voters enacted campaign finance transparency laws to disfavor certain religions. [Dkt. 168 at 28; Plaintiff's Ex. B] And as the State has explained, the plaintiffs' only other cited evidence is irrelevant to motives because it post-dates BM2 (plus, seeking political disclosures does not become religious discrimination just because political activity involves a church). [Dkt. 166 at 8 n.19]

The plaintiffs likewise have not produced evidence that could support a finding that Alaska voters enacted the challenged transparency laws out of a desire to protect incumbent politicians (or even that the laws have such an effect).[28] [Dkt. 168 at 26] The

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[28] *Cf. Buckley*, 424 U.S. at 33-34 (rejecting arguments about invidious discrimination against non-incumbents, observing that the challenged laws "may have a significant effect on particular challengers or incumbents, but the record provides no basis for predicting that such adventitious factors will invariably and invidiously benefit incumbents as a class").

challenged laws apply to entities engaged in independent expenditure and their donors, not to candidates, and they apply equally to those supporting either incumbent or non-incumbent candidates. The plaintiffs do not identify the "mountains of evidence" that they say shows that Alaska voters wanted to "disfavor certain political factions," nor do they identify the allegedly targeted political factions. [Dtk. 168 at 27]

In any event, neither non-incumbent candidates, unidentified political factions, nor non-Alaskans constitute suspect classes akin to race that trigger strict scrutiny (if the plaintiffs had even pled an equal protection claim, which they did not).[29] [Dkt. 40]

The Court should reject the plaintiffs' baseless bid for strict scrutiny.

### C. The challenged laws facially satisfy exacting scrutiny.

"Exacting scrutiny" requires (1) a "sufficiently important governmental interest" and (2) that the "requirement be narrowly tailored to the interest it promotes."[30] In *Citizens United*, the Court described this as calling for "a 'substantial relation' between the disclosure requirement and [the government] interest."[31] Alaska's disclosure and disclaimer requirements comfortably pass exacting scrutiny.

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29 *See United States v. Skrmetti*, 605 U.S. 495, 548-50 (2025) (Barrett, J., concurring) (summarizing the Supreme Court's process for identifying suspect classifications akin to race or sex, which considers factors such as whether a group "exhibit[s] obvious, immutable or distinguishing characteristics that define them as a discrete group," has "[a]s a historical matter, ... been subjected to discrimination," and is "a minority or politically powerless") (quoting *Lyng v. Castillo*, 477 U.S. 635, 638 (1986)).

30 *Americans for Prosperity v. Bonta*, 594 U.S. 595, 611 (2021).; *No on E*, 85 F.4th at 503 (applying exacting scrutiny to disclosures and disclaimers).

31 558 U.S. at 366-67.

### 1. The laws further an important state interest.

The State's motion "cruises through the first step of exacting scrutiny analysis" because controlling Ninth Circuit precedent establishes that the State's interest in an informed electorate satisfies the first element.[32] [Dkt. 168 at 32]

The plaintiffs are wrong to assert that the challenged laws do not inform the electorate. [Dkt. 168 at 33] As explained in the State's motion, the laws give voters accurate, timely information about the sources of campaign spending. [Dkt. 131 at 18-21] The Supreme Court in *Citizens United*,[33] the Ninth Circuit in *No on E*,[34] the First Circuit in *Gaspee Project v. Mederos*,[35] and other courts upholding such laws have not demanded political science research measuring how voters use the information before recognizing that disclosure and disclaimer laws further this informational interest. Courts have also rejected the suggestion that on-ad disclaimers are "redundant" because the same information can be looked up on government websites.[36] The plaintiffs' arguments that the State's informational interest is adequately furthered by other laws go to tailoring, not whether the challenged laws further a sufficiently important state interest.

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32 *Smith*, 95 F.4th at 1215; *see also Buckley*, 424 U.S. at 14-15 ("In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential."). *See also* Dkt. 131 at 12.

33 558 U.S. at 366-71.

34 85 F.4th at 504.

35 13 F.4th 79, 85-88 (1st Cir. 2021).

36 *No on E*, 85 F.4th at 509; *Gaspee Project*, 13 F.4th at 91.

In invoking a second *additional* state interest in preventing corruption, the State does not "defend BM2 with a justification that has been explicitly and unambiguously forbidden by Supreme Court precedent." [Dkt. 168 at 17-18] While the Supreme Court has said that anti-corruption interests do not justify *limiting* independent expenditures,[37] it has not said that they do not support *disclosures* about funding. The Court considers independent expenditures non-corrupting because they are, by definition, entirely independent and separate from candidates. But if the machinations of independent expenditure groups are opaque, the public cannot be assured that they are truly independent and not engaging in corruption—or even that money spent on elections does not originate from prohibited foreign sources. [Dkt. 131 at 14 n.64] Regardless, the State's informational interest alone is sufficient to support the laws.

**2. Count I: The donor disclosure law facially satisfies exacting scrutiny.**

Turning to tailoring, the State's motion identifies several uncontested features of the donor disclosure law that keep it from being overbroad. [Dkt. 131 at 14-19]

The plaintiffs complain mainly that the law is duplicative, but requiring disclosure by both donor and recipient helps ensure that disclosures are accurate regardless of whether "fraud" would occur otherwise. [Dkt. 168 at 34] People may fail to report accurate campaign finance information without engaging in any "fraud" or "crime." Requiring donors to report, and certify the truth of, the "true sources" of their funds not

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37 *See Citizens United*, 558 U.S. at 360-61.

only helps assure the State and the public that the correct information is being timely disclosed, but it also helps recipients of donations accurately discharge their recipient-side reporting duties. Without any donor-side reporting duty, recipients might struggle to correctly report the true sources of the funds they spend on independent expenditures. As expert witness Kimberly Hays—who works on recipient-side reporting for her organization—explains, "it can be helpful and more efficient that a contributor first reports" a large donation because "the contributor knows information about the source of funds" better than the recipient, so the recipient can use the donor's APOC disclosure form "to accurately report their contribution without having "to go searching for their information or reach out to them for clarification." [Dkt. 131-2 at 30]

The plaintiffs seemingly abandon their complaint's assertions that the law "could have been more narrowly tailored" by excusing either "individual donors" or "intermediate organizations that already report their donations" under other unspecified laws. [Dkt. 40 at 17-18] They do not respond to the State's refutation. [Dkt. 131 at 21]

The plaintiffs likewise abandon their complaint's theory about "cancel culture" because that term appears nowhere in their opposition. [Dkt. 40 at 7, 10, 11; Dkt. 168] They do not respond to the State's point that they neither raise, nor produce evidence to support, a claim for exemption from disclosure based on threats of retaliation. [Dkt. 131 at 38-39] They acknowledge that any "cancel culture" concerns are irrelevant given the unchallenged recipient disclosure law. [Dkt. 168 at 19 n.1] They object not to their names being made public, just to the need to fill out a simple online form.

As the State's and the intervenors' evidence establishes, that form is easy to complete. [Dkt. 131 at 19-20; Dkt. 131-2 at 29-30, 35-45, 54-55] The plaintiffs do not explain why one must "retain a campaign finance attorney" to accomplish this relatively straightforward disclosure task. [Dkt. 168 at 35]

And as the State explained in its opposition, the plaintiffs have not shown "catastrophic consequences for ordinary citizens" from the requirement. [Dkt. 168 at 34; Dkt. 166 at 12-15] Cheryl Frasca does not identify any negative consequences; instead, she describes how she has successfully helped people complete their forms. [Plaintiffs' Ex. 84 at 2-3] Bob Griffin does not explain why he can't just make his political donations when he has internet access as opposed to when he is flying in remote areas with spotty internet service (when it seems extremely unlikely that he would be making political donations). [Dkt. 166 at 13-14] Trevor Shaw's claim that he put the AFMC "on ice" because of risks to donors likewise makes no sense because the AFMC's only donors were himself and his own company, and shutting down rather than just reminding potential donors to fill out an easy online form is an unnecessarily extreme reaction. [Dkt. 166 at 14; Plaintiffs' Ex. 79 at 4, 7, 9 (Tr. 10-11, 20, 25, 26)] Nor does testimony from the intervenors' witness reveal any real problems. [Dkt. 166 at 15]

The minimal inconveniences the plaintiffs have identified do not establish that donor disclosure is not narrowly tailored to advance the State's important interest in providing voters with relevant, timely, and accurate campaign finance information.

Finally, the State did not cite *Shelton v. Tucker*[38] in its motion's discussion of the donor disclosure law to argue that *Shelton* "set out the guidelines for how broad a speech restriction could be." [Dkt. 168 at 43] The State cited *Shelton* because the Supreme Court discussed *Shelton* at length in *Americans for Prosperity v. Bonta*,[39] a case the plaintiffs heavily relied on at the preliminary injunction stage. [Dkt. 131 at 18; Dkt. 18-1 at 7, 8, 10, 11, 12, 20, 22, 28, 30] As the State's motion observed, the disclosure law challenged here is unlike the disclosure laws struck down in both *Shelton* and *Americans for Prosperity.* [Dkt. 131 at 18] So if the plaintiffs' point about *Shelton* is that it is distinguishable from this case, the State agrees. [Dkt. 168 at 43-44]

The Court should grant the State summary judgment on Count I. [Dkt. 40 at 17]

### 3. Count II: The disclaimer laws facially satisfy exacting scrutiny.

Moving to the on-ad disclaimer laws, the plaintiffs continue to ignore that they brought a facial challenge. They do not respond to the State's evidence showing a "plainly legitimate sweep" of unproblematic applications in which the disclaimers are unobtrusive and do not overwhelm the ad messages. [Dkt. 131 at 29] They have failed to produce the necessary evidence of a "lopsided ratio"[40] of unconstitutional applications.

As the State has explained, the Ninth Circuit in *No on E* (like the First Circuit in *Gaspee Project*) has rejected the arguments that on-ad disclaimers are impermissibly

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[38] 364 U.S. 479 (1960).

[39] 594 U.S. 595, 608-11 (2021).

[40] *See Hansen*, 599 U.S. at 770 ("In the absence of a lopsided ratio, courts must handle unconstitutional applications as they usually do—case-by-case.").

"redundant" because donor information is available on state websites or that disclaimers could cause confusion because the top donors might not support the ad messages.[41] [Dkt. 131 at 26-27] And using a top-three donor disclaimer rather than a longer top-four or five version shows that the law is narrowly tailored, not the contrary. [Dkt. 166 at 19]

Nor do the disclaimers fail narrow tailoring by including superfluous information. [Dkt. 168 at 33] Including a city *and state* is not superfluous because many U.S. towns have the same name. [*Id*.] And the plaintiffs do not explain when the disclaimers would ever have to repeat a donor's location twice. [*Id*.] As for repeating the speaker's name, this is essential to communicating both the speaker's identity and the top contributors *to the speaker.* Narrow tailoring does not require revising the disclaimer to say something more convoluted just to avoid repeating a name, like "paid for by (person's name and city and state of principal place of business), the top contributors of which are…."

The State has also explained that the plaintiffs are incorrect to complain that the top-donor disclaimers "need to be updated based on the day-to-day ratio" of donors, and they offer no evidence that updating a reprint of a mailer "would impose substantial monetary costs." [Dkt. 166 at 16; Dkt. 168 at 37-38]

The plaintiffs cannot conjure a fact issue by producing a political scientist who disagrees with precedent that disclosures and disclaimers help inform voters. [Dkt. 168 at 36] The mixed findings of political scientists trying to measure difficult-to-quantify effects using unavoidably imperfect experimental designs do not provide a sufficient

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[41] *See No on E*, 85 F.4th at 506-11; *Gaspee Project*, 13 F.4th at 90-92.

basis to reject decades of legal precedent holding that these kinds of regulations promote an important informational interest. [Dkt. 131 at 12-13, 25-28; Dkt. 166 at 18-19]

And as the State has explained, the plaintiffs' evidence of the alleged chilling effect that the top-donor disclaimer has had on them makes no sense given the law's actual timeline. [Dkt. 166 at 19-20] Again, BM2 made only small changes to the disclaimer laws—the top-donor disclaimer has existed for years.

As for the out-of-state disclaimer, the State has explained that Alaska is not the only state whose citizens may be concerned about the role of outside money in their elections, nor is it somehow suspect for citizens of a body politic to look with skepticism on electioneering by outsiders who will neither be voting in the elections at issue nor living under the government policies at issue. [Dkt. 166 at 20-21] After all, the United States *bans* campaign contributions by foreigners.[42] BM2's out-of-state disclaimer requirement imposes a much lesser burden which is amply justified by the interest in informing voters about the sources of funding behind political messaging. Disclosures and disclaimers are the approved less restrictive alternative to limits and bans because, as the Supreme Court explained in *Citizens United*, they "'impose no ceiling on campaign-related activities,' and 'do not prevent anyone from speaking.'"[43]

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42 *See Bluman v. FEC*, 565 U.S. 1104 (2012) (summarily affirming decision of D.C. Circuit upholding ban on foreign contributions).

43 558 U.S. at 366 (quoting *Buckley*, 424 U.S. at 64, and *McConnell*, 540 U.S. at 201 (internal punctuation omitted)); *see also McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 223 (2014) ("[D]isclosure often represents a less restrictive alternative to flat bans on certain types or quantities of speech.").

The plaintiffs argue that the out-of-state disclaimer is not narrowly tailored because it "applies only based on where the majority of contributions come from, not where the group's roots are." [Dkt. 168 at 22] On the contrary, requiring disclosures about the *sources* of funds (rather than just about who is *using* the funds) shows that the measure is narrowly tailored to the government's interest, because that interest is informing voters about the money behind electioneering, not just the mouthpiece.

The Court should grant the State summary judgment on Count II. [Dkt. 40 at 18]

#### 4. Count III: The true source law facially satisfies exacting scrutiny.

The plaintiffs complain that the definition of "true source" is "chock full of ambiguity" that is "still being hotly debated," but they do not identify a single example of this alleged ambiguity. [Dkt. 168 at 38] As the State has explained, their claim that the law is unconstitutionally vague is untimely and meritless. [Dkt. 166 at 22-24]

The alleged (albeit unspecified) complexity of the true source requirement does not demand a longer reporting window ("twenty-five hours, perhaps?") because intermediary donors can just figure out their true source reporting obligations *before making donations*. [Dkt. 168 at 39] The 24-hour deadline makes sense in the election context, so that voters can learn about last-minute influxes of cash before they vote. A law with shifting deadlines would be *more complicated* to follow, not less. "Narrow tailoring does not mean perfect tailoring, a goal that is often impossible."[44]

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[44] *Delgado v. Swearingen*, 375 F.Supp.3d 1251, 1258 (N.D. Fla 2018) (citing *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 435 (2015)).

The plaintiffs offer nothing else to rebut the State's showing that the true source laws are facially constitutional. [Dkt. 133 at 32-38; Dkt. 168 at 38-39] The Court should grant the State summary judgment on Count III. [Dkt. 40 at 20]

**D. The plaintiffs' unpled claims are untimely and meritless.**

Finally, like their motion for summary judgment, the plaintiffs' opposition contains various allegations that were not pled in the complaint. [Dkt. 168 at 39-43] The Court should disregard those unpled allegations for the same reasons here. [Dkt. 166 at 21-30] "After having focused on [one theory] in their complaint and during discovery, [plaintiffs] cannot turn around and surprise the [defendant] at the summary judgment stage' with a completely different theory."[45]

The complaint says nothing at all about APOC's expedited hearing process, nor does it cite the applicable statute and regulation (AS 15.13.380 and 2 AAC 50.888), nor were these laws enacted by BM2 as the plaintiffs imply. [Dkt. 40; Dkt. 168 at 39-40] Having an expedited option is necessary given the time-sensitive nature of elections, and the mere existence of this option is not a First Amendment violation. The plaintiffs produce no evidence that APOC denies litigants adequate process. [Dkt. 168 at 39-40]

Similarly, the complaint says nothing about the penalty provisions, nor does it cite the applicable statute and regulations (AS 15.13.390 and 2 AAC 50.855-.865), most of which BM2 did not change, and which contain extensive rules about how penalties will

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45 *Hartzell*, 130 F.4th at 745 (quoting *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1292-93 (9th Cir. 2000), alterations by *Hartzell* court).

be reduced or waived based on factors like filer inexperience or technical problems.[46] [Dkt. 40; Dkt. 168 at 40-41] The plaintiffs provide no evidence that APOC's commissioners—who must include people of different political parties[47]—"sometimes succumb to political pressure" when applying penalties. [Dkt. 168 at 40] As the State has explained, APOC never "knowingly fined someone for a donation they *knew* he did not make." [Dkt. 168 at 40-41 (emphasis in original); Dkt. 166 at 27-28] And this is a facial challenge, not an as-applied challenge by that donor who is not a party.

Likewise, the complaint contains no whiff of the plaintiffs' meritless argument about "strict liability." [Dkt. 40; Dkt. 168 at 41-43; Dkt. 166 at 28-29] These are all civil laws, not criminal laws (for which strict liability is disfavored) as the plaintiffs erroneously imply. [Dkt. 168 at 41-43] The plaintiffs do not argue (or apply the high standard for asserting) that these laws are actually criminal.[48] [*Id.*]

## IV. Conclusion

The Court should grant the State summary judgment on all claims.

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46 *See* 2 AAC 50.855-.865.

47 AS 15.13.020(b)–(c).

48 *See Hudson v. United States*, 522 U.S. 93, 100 (1997) ('[O]nly the clearest proof' will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty.") (quoting *United States v. Ward*, 448 U.S. 242, 249 (1980)).

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**<u>Certificate of Service</u>**
I certify that on June 26, 2026, the foregoing **State's Reply on Motion for Summary Judgment** was served electronically on:

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