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**Appendix A**

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**UNITED STATES COURT OF APPEALS**
**FOR THE FIRST CIRCUIT**

No. 20-1944

GASPEE PROJECT and ILLINOIS OPPORTUNITY PROJECT,

Plaintiffs, Appellants,

v.

DIANE C. MEDEROS, in her official capacity as member of the Rhode Island State Board of Elections, ET AL.,

Defendants, Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

[Hon. Mary S. McElroy, U.S. District Judge]

Before

Barron and Seyla, Circuit Judges,
and Delgado-Hernandez, District Judge.

[List of counsel omitted from this Appendix]

September 14, 2021

**SELYA, Circuit Judge**. The Rhode Island General Assembly has enacted a comprehensive statutory scheme designed to increase transparency in regard to election-related spending. The law requires limited disclosure of funding sources responsible for certain independent expenditures and electioneering communications (as defined). The appellants — two organizations that fall within the statutory sweep — challenge particular disclosure and disclaimer provisions, positing that those provisions do not withstand the requisite degree of scrutiny and, in any event, that they infringe constitutionally protected privacy, associational, and free-speech rights. The district court, in a comprehensive rescript, rejected the appellants' multifaceted facial challenge. *See Gaspee Project v. Mederos*, 482 F. Supp. 3d 11, 13 (D.R.I. 2020). After careful consideration, we affirm.

## I

We briefly rehearse the relevant facts and travel of the case. The Rhode Island State Board of Elections is the state agency chiefly responsible for administering and enforcing the Independent Expenditures and Electioneering Communications Act (the Act). See R.I. Gen. Laws § 17-25.3-4(b). The plaintiffs (appellants here) are the Gaspee Project and the Illinois Opportunity Project. Both entities are not-for-profit organizations that engage in issue advocacy related to matters of public policy. They have sued the seven members of the Board of Elections in their official

capacities (and we henceforth refer to the defendants, collectively, as "the Board").

At a high level of generality, the appellants allege that various aspects of Rhode Island law compelling disclosure of the identities of certain donors and certain disclaimers transgress their rights under the First Amendment. *See* U.S. Const. amend. I. The regulatory scheme that they challenge came into effect in 2012, when the Rhode Island General Assembly passed the Act. See R.I. Gen. Laws § 17-25.3. This legislative initiative followed closely on the heels of a landmark Supreme Court decision that invalidated certain restrictions on corporations' independent expenditures while upholding various disclosure and disclaimer requirements imposed under federal law. See *Citizens United v. FEC*, 558 U.S. 310, 372 (2010).

The Act's disclosure and disclaimer requirements relate to persons or entities that spend $1,000 or more in any calendar year for either of two types of defined activities: "independent expenditures" or "electioneering communications." R.I. Gen. Laws § 17-25.3-1. Those disclosure requirements, though, are not absolute. They provide, for instance, that covered organizations need not disclose any donor who elects not to have his donation used in the funding of independent expenditures or electioneering communications. See *id.* § 17-25.3-1(i).

The Act defines an "independent expenditure" as an expenditure that, when taken in context, "expressly advocates the election or defeat of a clearly identified candidate, or the passage or defeat of a

referendum."[1] *Id.* § 17-25-3(17). It exempts from the definition of independent expenditures, however, "news stor[ies], commentar[ies], or editorial[s]," "candidate debate[s] or forum[s]," or "communications made by any business entity to its members, owners, stockholders, or employees" as well as most "internet communications." *Id.* § 17-25-3(17)(i)(A)-(D). An "electioneering communication" is a communication that "unambiguously identifies a candidate or referendum" and which is made within sixty days of a general election or referendum or within thirty days of a primary election. *Id.* § 17-25-3(16).

The appellants challenge three requirements that the Act imposes on organizations (including the appellants) that cross the $1,000 threshold. First, they challenge the requirement that the organization must file a report with the Board disclosing all donors who contributed $1,000 or more to the organization's general fund if the general fund was used to finance qualifying expenditures. See *id.* § 17-25.3-1(h). Second, they challenge the requirement that covered organizations must register with the Board and furnish their names and mailing addresses. See *id.* § 17-25.3-1(f). Third, they challenge the requirement that covered organizations must include their own names and list their five largest donors from the previous year on the electioneering communication itself (subject, however, to several exceptions). See *id.* § 17-25.3-3. In all cases — regardless of whether it appears in television, mail, radio, or internet advertising — the list of donors is limited to those who

[1] The Act incorporates definitions found in an earlier statute, namely, the Rhode Island Campaign Contributions and Expenditures Reporting Act, R.I. Gen. Laws § 17-25-3.

are required to be disclosed in such a report. See *id*. § 17-25.3-3(a), (c)(3), (d)(3)(A), (e). And with respect to printed communications, the requirement does not apply to news editorials, campaign paraphernalia (such as campaign buttons and bumper stickers), or signage measuring under thirty-two square feet. See *id*. § 17-25.3-3(b).

Invoking 42 U.S.C. § 1983, the appellants repaired to the United States District Court for the District of Rhode Island and filed suit against the Board. In their amended complaint, they sought a declaration that the challenged provisions violated their privacy, associational, and free-speech rights under the First Amendment. The amended complaint alleged — and we take as true — that the appellants come within the purview of the Act because they each intended to spend over $1,000 in connection with "paid issue-advocacy communications" regarding the impact of local referenda on property taxes. The appellants also alleged — and we take as true — that these communications would not include any "express ballot-advocacy."

The Board moved to dismiss the amended complaint for failure to state a cognizable claim. *See* Fed. R. Civ. P. 12(b)(6). At a hearing held on July 21, 2020, the appellants represented that they were mounting only a facial challenge to the constitutionality of the Act. The district court reserved decision and later granted the motion to dismiss. *See* Gaspee, 482 F. Supp. 3d at 13. Applying exacting scrutiny, the court determined that the challenged provisions of the Act passed constitutional muster. *See id*. at 16-20. Pertinently, the court held that the

Board's interest in an informed electorate with respect to the funding of political speech was sufficiently important to justify the challenged provisions of the Act. *See id.* at 17-18. It further held that those provisions were substantially related to that important governmental interest. *See id.* at 18-20. Finally, the court rejected the appellants' counter-arguments as to why, all else aside, the challenged provisions violated their privacy, associational, and/or free-speech rights. *See id.* at 20-22. This timely appeal followed.

**II**

A matter of jurisdictional dimension demands our immediate attention. The dispute between the parties first surfaced in the context of the 2020 election cycle, which now has run its course. Even though the parties have proceeded on the assumption that the dispute is still velivolant, we have an independent obligation to determine whether it is moot. *See Weaver's Cove Energy, LLC v. R.I. Coastal Res. Mgmt. Council*, 589 F.3d 458, 467 (1st Cir. 2009).

A dispute is moot only "when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Town of Portsmouth v. Lewis*, 813 F.3d 54, 58 (1st Cir. 2016) (internal citation omitted). Withal, there is a well-established exception to the mootness doctrine for cases presenting issues that are "capable of repetition, yet evading review." *Barr v. Galvin,* 626 F.3d 99, 105 (1st Cir. 2010) (quoting *S. Pac. Terminal Co. v. Interstate Com. Comm'n*, 219 U.S. 498, 515 (1911)). Cases in the election context are not moot simply

because the election is over, at least when the allegedly aggrieved parties are likely to be subject to the challenged regulation in the future. *See FEC v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 462 (2007); Barr, 626 F.3d at 106. That is the situation here: the Act is still on the books, and the appellants assert — without contradiction — that they plan to engage in similar advocacy during future election cycles. The dispute, therefore, is not moot. *See Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974) (holding challenge to election regulation not moot despite election being "long over" because regulation remained in effect and applied to "future elections").

**III**

With the specter of mootness laid to rest, we review the district court's grant of the Board's motion to dismiss de novo. *See Maloy v. Ballori-Lage*, 744 F.3d 250, 252 (1st Cir. 2014); *SEC v. Tambone*, 597 F.3d 436, 441 (1st Cir. 2010) (en banc). "In the process, we accept as true all well-pleaded facts set out in the complaint and indulge all reasonable inferences in favor of the pleader." *Tambone*, 597 F.3d at 441.

The appellants argue that the challenged provisions of the Act cannot withstand the requisite degree of constitutional scrutiny. And even if they do, the appellants say, three additional lines of argument operate to invalidate the challenged provisions. The first such line of argument posits that the challenged provisions violate the appellants' right to engage anonymously in political speech. Their second line of argument posits that the challenged provisions violate their right to associational privacy. Their third line of

argument posits that the Act's on-ad disclaimer requirement forces the appellants to engage in an unconstitutional species of compelled speech.

Our analysis proceeds in two main parts, each with subparts. First, we establish the appropriate level of constitutional scrutiny — here, exacting scrutiny — and then explain why the Act survives that level of scrutiny. We thereafter proceed to address the appellants' trio of counter-arguments.

**A**

Regulations that burden political speech must typically withstand strict scrutiny. *See Citizens United*, 558 U.S. at 340. This baseline rule applies to many aspects of election law. *See, e.g., id*. at 339; *Wis. Right to Life,* 551 U.S. at 465-66. Even so, disclosure and disclaimer regimes are cut from different cloth.

*See, e.g., Citizens United*, 558 U.S. at 366; *McConnell v. FEC*, 540 U.S. 93, 201 (2003); *Buckley v. Valeo*, 424 U.S. 1, 75-76 (1976); *Nat'l Org. for Marriage v. McKee (NOM),* 649 F.3d 34, 55 (1st Cir. 2012); *cf. Ams. for Prosp. Found. v. Bonta*, 141 S. Ct. 2373, 2382-83 (2021) (explaining unique context of laws compelling disclosure).

This distinction arises because — unlike limits on election-related spending — election-related disclosure and disclaimer requirements "impose no ceiling on campaign-related activities." *Citizens United*, 558 U.S. at 366 (quoting *Buckley* 424 U.S. at 64). Nor do they "prevent anyone from speaking." *Id*. (quoting *McConnell*, 540 U.S. at 201 (internal

quotation marks and brackets omitted)). Against this backdrop, the Supreme Court has described disclosure and disclaimer regimes, in the election-law context, as "less restrictive alternative[s] to more comprehensive regulations of speech." *Id*. at 369.

Given this taxonomy, it is unsurprising that such disclosure and disclaimer requirements are subject to a less intense standard of constitutional review. That standard bears the label of "exacting scrutiny." *Id*. at 366; *NOM*, 649 F.3d at 55; *cf. Ams. for Prosp*., 141 S. Ct. at 2883 (applying exacting scrutiny to disclosure laws outside the election context). Such a level of scrutiny has been infused in the Court's approach to disclosure and disclaimer regimes for decades. *See Buckley*, 424 U.S. at 64-65 (considering compelled disclosure of election-related spending).

To withstand exacting scrutiny, a law or regulation must be narrowly tailored to serve a sufficiently important governmental interest. *See Ams. for Prosp*., 141 S. Ct. at 2383. Prior to the Court's recent decision in Americans for Prosperity, exacting scrutiny was widely understood to require only a "substantial relation" between the challenged regulation and the governmental interest. *NOM*, 649 F.3d at 55. In refining its articulation of exacting scrutiny, the Americans for Prosperity Court heightened this requirement, emphasizing that "[i]n the First Amendment context, fit matters." 141 S. Ct. at 2384 (quoting *McCutcheon v. FEC*, 572 U.S. 185, 218 (2014)). The Court went on to say that exacting scrutiny "require[s] a fit that is not necessarily perfect, but reasonable." *Id*. (quoting *McCutcheon*, 572 U.S. at 218). A "[s]ubstantial relation is necessary but

not sufficient" for a challenged requirement to survive exacting scrutiny. *Id.* And in addition, "the challenged requirement must be narrowly tailored to the interest it promotes." *Id.*

**1**

Before applying this more muscular test for exacting scrutiny, we first must resolve a threshold matter. That matter concerns the import, if any, of the appellants' ipse dixit that express advocacy and issue advocacy trigger different degrees of scrutiny. Specifically, the appellants argue that cases such as *Buckley, McConnell*, and *Citizens United* are inapposite because those cases deal primarily with express advocacy (that is, candidates and political action committees (PACs)), not with issue advocacy (that is, the mere conveying of information and education), which is the appellants' avowed stock and trade.

For present purposes, the distinction that the appellants draw does not make a difference. In the election context, the Supreme Court has rejected the attempt to distinguish between express advocacy and issue advocacy when evaluating disclosure laws — even though the Court has deemed such a distinction relevant when evaluating limits on expenditures. *See Citizens United*, 558 U.S. at 368-69. This makes perfect sense. As we explained in *NOM*, the Court has cabined the application of limits on expenditures to express advocacy in part because it was concerned that such laws impermissibly regulated a substantial amount of constitutionally protected speech. *See* 649 F.3d at 54. Unlike limits on expenditures (which place

a brake on political speech), disclosure regimes do not limit political speech at all. A disclosure regime is, therefore, "a less restrictive alternative to more comprehensive regulations of speech." *Citizens United*, 558 U.S. at 369.

Seen in this light, there is no principled basis for us to distinguish between express advocacy and issue advocacy with respect to election-law disclosure regimes. The distinction is viable solely in the context of limits on independent expenditures, see *NOM*, 649 F.3d at 54, and it is irrelevant in the disclosure/disclaimer context.[2] Our sister circuits have, with conspicuous consistency, rejected the appellants' proposed distinction, *see, e.g., Del. Strong Fams. v. Denn*, 793 F.3d 304, 308 (3d Cir. 2015); *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1016 (9th Cir. 2010), and so do we.

**2**

Having set the appellants' proposed distinction to one side, we turn to the question of whether the Board's proffered justification is sufficiently important to support the Act's disclosure and

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[2] We take no view on the appellants' attempt to categorize their mailings as nothing more than informational materials. Although the appellants' proposed mailings do not expressly advocate how voters should vote on the referenda to which they refer, they identify the particular referenda and forecast the negative consequences that will supposedly flow from certain outcomes. Communications such as these, which subtly advocate for a position even though not including explicit directives on how to vote, illustrate why federal courts regularly have spurned rigid distinctions between express advocacy and issue advocacy in the election-law disclosure context.

disclaimer regime. *See Ams. for Prosp.*, 141 S. Ct. at 2383. To this end, the Board submits that its interest in promoting an informed electorate is adequate to support the Act's disclosure and disclaimer requirements. The amici, whose insights we appreciate, echo this refrain. The appellants rejoin that the Board's informational interest is weak and, thus, insufficient to justify the compelled disclosure and disclaimer regime.

The case law makes pellucid that the Board's interest in an informed electorate vis-à-vis the source of election-related spending is sufficiently important to support reasonable disclosure and disclaimer regulations. *See Buckley*, 424 U.S. at 14-15 ("In a republic where the people are sovereign, the ability of the citizenry to make informed choices . . . is essential."). The *Buckley* Court, for example, upheld disclosure requirements for independent expenditures. *See id.* at 75-76. It explained that "provid[ing] the electorate with information as to where political campaign money comes from," *id.* at 66 (internal quotations omitted), is sufficient to outweigh the possibility of infringement on First Amendment freedoms because it concerns "the free functioning of our national institutions," *id.* (quoting *Communist Party v. Subversive Activities Control Bd.*, 367 U.S. 1, 97 (1961)).

The Supreme Court built on this foundation when addressing challenges to the Bipartisan Campaign Reform Act (BCRA). See Pub. L. No. 107-155 (2002). The *McConnell* Court accepted the informational interest articulated in *Buckley* as sufficiently important to justify a new set of disclosure

requirements encompassed within Title II of the BCRA. *See* 540 U.S. at 196. It concluded that *Buckley* "foreclose[d] a facial attack" on the BCRA's requirement that entities meeting a spending threshold on electioneering communications must disclose a certain subset of donors.[3] *Id*. at 197.

In *Citizens United*, the Supreme Court reaffirmed its view that the government's interest in an informed electorate is sufficient to justify reasonable disclosure and disclaimer provisions. *See* 558 U.S. at 368-69. There, the Court considered (among other things) challenges to the BCRA's disclosure and disclaimer requirements as applied both to a film attacking a presidential candidate and to advertisements for that film. *See id*. Citing *Buckley* and *McConnell*, the Court reiterated the value of an electorate with knowledge about those responsible for speech during the period shortly before an election. *See id*. at 369.

The law in this circuit is of a piece with the Supreme Court's approach. In *NOM*, we held that Maine's interest in an informed electorate was sufficiently important to justify reasonable disclosure

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[3] The *McConnell* Court's conclusion was reached with respect to section 201 of the BCRA, which amended the law considered in *Buckley*. Section 201 requires a corporation or labor union that spends $10,000 or more on qualifying communications to file a disclosure identifying any donors of $1,000 or more. *See* Pub. L. No. 107-155, § 201. There is a marked similarity between section 201 of the BCRA and the Rhode Island regulations that are challenged here: the Act requires a comparable disclosure if the covered organization spends $1,000 or more on qualifying communications. *See* R.I. Gen. Laws § 17-25.3-1(h).

and disclaimer requirements.[4] See 649 F.3d at 56-58. We added that the government's interest in an informed electorate extends beyond the dissemination of information concerning candidates for office. *See id*. at 57. Rather, "there is an equally compelling interest in identifying the speakers behind politically oriented messages." *Id*. This is especially true in the age of new media, given the proliferation of speakers in the marketplace of ideas. *See id*. Consequently, reasonable disclosure regimes "enable[] the electorate to make informed decisions and give proper weight to different speakers and messages." *Citizens United*, 558 U.S. at 371.

Justice Brandeis famously observed that "public discussion is a political duty." *Whitney v. California,* 274 U.S. 357, 375-76 (Brandeis, J., concurring). Through the "discovery and spread of political truth," public discussion allows us to apply our "power of reason." *Id*. The failure to uphold that duty in the sphere of elections would be most devasting to our democracy. And yet, in this setting, the public faces an uphill battle of identifying whether and how money is talking. Given these concerns, we hold that Rhode Island's interest in an informed electorate is sufficiently important to satisfy the first imperative of exacting scrutiny. And with this holding in place, we turn to the Act's specific requirements.

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[4] On the same day, we upheld the constitutionality of Rhode Island's previous campaign finance scheme. *See Nat'l Org. for Marriage v. Daluz*, 654 F.3d 115, 116 (1st Cir. 2011). We found that Rhode Island's interest in an informed electorate was sufficient to justify a disclosure and disclaimer regime. *See id*. at 118.

The next question is whether the Act's disclosure and disclaimer requirements are narrowly tailored to the Board's informational interest. *See Ams. for Prosp.,* 141 S. Ct. at 2383. Those requirements need not reflect the least restrictive means available to achieve the Board's goals, but they need to achieve a reasonable fit. *See id.* at 2384. Here, the appellants train their fire on three provisions of the Act: the requirement that covered organizations disclose donors of over $1,000; the requirement that covered organizations disclose their own identity to the Board; and the requirement that covered organizations identify themselves and their five largest donors on certain electioneering communications. As we explain below, we think that both the disclosure and disclaimer requirements are narrowly tailored to further the Board's interest in an informed electorate.

We start with the first two challenged provisions, which require certain organizations to disclose particular information to the Board. The provisions of the Act (including the disclosure and disclaimer requirements) apply only to organizations that satisfy a series of criteria. The first criterion is a spending threshold: the Act applies if an organization spends $1,000 or more on independent expenditures or electioneering communications within one calendar year. *See* R.I. Gen. Laws § 17-25.3-1(b). The Supreme Court upheld similar disclosure requirements in *Citizens United*, focusing on the close relationship between the requirements and the public's interest in knowing who is speaking as an election approached. *See* 558 U.S. at 369. Consistent with this focus, the

spending threshold tailors the Act to reach only larger spenders in the election arena and at the same time shapes the Act's coverage to capture organizations involved in election-related spending as opposed to those engaged in more general political speech. With respect to covered organizations, this spending threshold helps to ensure that the electorate can understand who is speaking and, thus, to "give proper weight to different speakers and messages" when deciding how to vote. *Id.* at 371.

In addition to the spending threshold, the Act contains temporal limitations that tether the Act's disclosure requirements to the Board's informational interest. The fact that the Act only applies when an organization crosses the spending threshold and spends that money in a particular time frame — within one year of an election for independent expenditures and, for electioneering communications, within either thirty or sixty days of an election (depending on the type) — links the challenged requirements neatly to the Board's objective of securing an informed electorate. *See Nat'l Ass'n for Gun Rights, Inc. v. Mangan,* 933 F.3d 1102, 1118 (9th Cir. 2019); *Del. Strong Fams.*, 793 F.3d at 311; Vt. *Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118, 134 (2d Cir. 2014). The Act's time frames for disclosure are no longer than either those in the Maine statute discussed in *NOM*, *see* 649 F.3d at 42- 43, or those in the BCRA, *see Citizens United,* 558 U.S. at 366-67 (describing BCRA § 201, currently codified at 52 U.S.C. § 30104).

The Act is narrowed further by another aspect of the way in which it defines "electioneering

communication." Such a communication must be "targeted to the relevant electorate." R.I. Gen. Laws § 17-25-3(16). An electioneering communication satisfies this targeting requirement only if it "can be received by two thousand . . . or more persons in the district the candidate seeks to represent or the constituency voting on the referendum." *See id*. This limitation further ties the Act's coverage (in the case of electioneering communications) to the Board's informational interest by requiring disclosure only when the relevant electorate receives the communication. Notwithstanding the Act's other requirements, covered organizations are free to speak without disclosure when addressing audiences disconnected from the upcoming election.

The appellants make much of the fact that the Act's disclosure and disclaimer provisions apply to general funds, even though other regimes (such as the BCRA) require that organizations subject to disclosure requirements establish segregated bank accounts to avoid disclosure of individual names. *See* 52 U.S.C. § 30104(f)(2)(E)-(F). The application of the Act to general funds is problematic, the appellants suggest, because many general-fund donors may not endorse all of an organization's election-related expenditures. This suggestion, though, fails to take into account the fact that — unlike the BCRA — the Act provides ample opportunity for donors to opt out from having their donations used for independent expenditures or electioneering communications, even if the entity to which they contribute has not created a segregated fund.

Importantly, the Act provides off-ramps for individuals who wish to engage in some form of political speech but prefer to avoid attribution. To begin, such an individual may choose to contribute less than $1,000; covered organizations need only disclose donors who contribute $1,000 or more during the relevant time frame. *See* R.I. Gen. Laws § 17-25.3-1(h). This readily available means of avoiding disclosure punches a sizable hole in the appellants' insistence that the Act's disclosure requirements are tantamount to the compelled disclosure of membership lists. Nor does the Act require disclosure of individuals who meet the $1,000 threshold but opt out of having their monies used for independent expenditures or electioneering communications. *See id*. § 17-25.3-1(i).

Taken together, these limitations on the Act's reach only require disclosure of relatively large donors who choose to engage in election-related speech. The Act simply does not apply to others, including those who engage in political speech outside the election context. Given this circumscription and given the continuing force of the Court's rulings in *Citizens United* and our rulings in NOM, the challenged provisions are narrowly tailored to enable "the citizenry to make informed choices" at the polls about issues of public import. *Buckley*, 424 U.S. at 14-15. Indeed, Rhode Island's $1,000 trigger point for disclosure of donors is higher than the trigger point upheld in *NOM* for reporting PAC contributors. *See NOM*, 649 F.3d at 42 ("A major-purpose PAC must report any contribution to the PAC of more than $50 (including the name, address, occupation, and place of business of the contributor)."). It is also no lower than

the contributor trigger point upheld in *Citizens United*. *See Citizens United*, 558 U.S. at 366-67; 52 U.S.C. § 30104(f)(2) (providing that a disclosure statement identify contributors who "contributed an aggregate amount of $1,000 or more").

In view of the number of criteria that an organization must satisfy before being required to file, the appellants' claim that the Act's disclosure requirements are "expansive" is an exercise in hyperbole. Both the circumscribed scope of the Act's requirements and the rather modest quantity of information demanded by the Board argue to the contrary. In combination, these facts bolster our conclusion that the Act's disclosure requirements are narrowly tailored enough to avoid any First Amendment infirmity. We uphold those requirements against the appellants' facial challenge.

**4**

This brings us to the appellants' remonstrance concerning the Act's on-ad disclaimer requirement. *See* R.I. Gen. Laws § 17-25.3-3. The Act's spending and temporal thresholds coalesce to render the disclaimer requirement applicable in only a limited set of circumstances. That set of circumstances shrinks even further in view of the fact that donors need not be listed if they have opted out of election-related spending. *See, e.g., id*. § 17-25.3-3(a).

Disclaimer requirements are reviewed under exacting scrutiny (not strict scrutiny, as the appellants assert). *See Citizens United*, 558 U.S. at 368. In *NOM*, we upheld aspects of Maine's campaign

finance law, including an on-ad disclaimer requirement that bore a family resemblance to the requirement challenged here. *See NOM,* 649 F.3d at 58-61. The Maine law demanded that a communication identify the "person who made or financed the expenditure for the communication." *See* Me. Rev. Stat. Ann. tit. 21-A, § 1014(1)-(2). The Act goes a step further; it demands not only identification of the funding organization itself but also identification of its five largest donors. *See* R.I. Gen. Laws § 17-25.3-3. Put another way, the Act requires that the on-ad disclaimer both disclose the relevant speaker and some donors to that speaker.

Although the *NOM* Court was not obliged to apply a narrow-tailoring test to requirements like the ones before us, we nonetheless find that court's reasoning instructive. Here, as in Maine, the Act's disclaimer requirement has "a close relation to [the Board's] interest in dissemination of information regarding the financing of political messages." *NOM*, 649 F.3d at 58-61.

To be sure, the appellants labor to distinguish *NOM* and consign it to the scrap heap. The distinctions upon which the appellants rely, however, cannot carry the weight that the appellants pile upon them. We explain briefly and then turn directly to the top-five-donor mandate.

At the outset, the appellants point out that the plaintiffs in *NOM* advanced only vagueness and overbreadth challenges. That is true as far as it goes — but it does not take the appellants very far. Because the *NOM* court applied exacting scrutiny to analogous

election-law requirements, some of its reasoning can usefully be transplanted to the case at hand.

The appellants next note that the Maine statute has an "escape hatch" for avoiding the state's disclosure and disclaimer requirements, whereas the Act contains none. Placing reliance on this distinction, though, is too much of a stretch. The "escape hatch" to which the appellants allude — which, at any rate, was not deemed essential by the *NOM* court — is a provision in the Maine statute that allows for a hearing to rebut a presumption of applicability. *See id.* at 49. Rhode Island law offers a functionally equivalent mechanism: it allows a party to seek an advisory opinion from the Board regarding the Act's applicability to a communication. *See* R.I. Gen. Laws § 17-25-5(c)(1). Though not identical, any discrepancy between these approaches does not throw shade on the persuasive reasoning of *NOM*.

The appellants also note that Maine's law — unlike the Act — applies only to communications concerning candidates' elections rather than referenda and suggest that the government's interest in regulating the latter is weaker. But there is nothing in *NOM* that indicates that we predicated our decision on the Maine statute's exclusive focus on candidates. The well-established interest articulated in *NOM* pertains to the ability of "the electorate to make informed decisions and give proper weight to different speakers and messages." 649 F.3d at 57 (quoting *Citizens United*, 558 U.S. at 371). This interest applies to the passage of referenda in the same way in which it applies to the election of candidates. And in the last analysis, disclaimer requirements — like the

requirement challenged here — help to ensure a well-informed electorate by preventing those who advocate for either candidates or issues from hiding their identities from the gaze of the public. *See McConnell*, 540 U.S. at 198.

This brings us to the appellants' contention that the requirement to identify in a disclaimer the top five donors to the entity that places the advertisement cannot withstand exacting scrutiny. Such a requirement, the appellants assert, serves no informational interest and is essentially redundant of the disclosure requirement. We are not persuaded.

There is plainly an informational interest served by an on-ad disclaimer that identifies some of the speaker's donors, as both Citizens United and NOM recognized in upholding disclosure requirements for equivalent funders. The on-ad donor disclaimer, moreover, is not entirely redundant to the donor information revealed by public disclosures. The appellants cannot plausibly dispute that on-ad donor information is a more efficient tool for a member of the public who wishes to know the identity of the donors backing the speaker. As we have explained, "[c]itizens rely ever more on a message's source as a proxy for reliability and a barometer of political spin." *NOM,* 649 F.3d at 57. And even though citizens have become reliant on such cues, they may be too easily overlooked or obscured. The public is "flooded with a profusion of information and political messages," *id.,* and the on-ad donor disclaimer provides an instantaneous heuristic by which to evaluate generic or uninformative speaker names.

And even beyond increased efficiency, the form of disclosure — an on-ad disclaimer — may be more effective in generating discourse that facilitates the ability of the public to make informed choices in the specialized electoral context. The donor disclosure alerts viewers that the speaker has donors and, thus, may elicit debate as to both the extent of donor influence on the message and the extent to which the top five donors are representative of the speaker's donor base — questions that the appellants seem to think the citizenry too dull to ask. *Citizens United* gives us reason to believe that the appellants' view is myopic. There, the Court recognized that the disclaimers at issue were intended to "insure that the voters are fully informed," 558 U.S. at 368 (quoting *Buckley*, 424 U.S. at 76), and it nowhere indicated that the state interest in "provid[ing] the electorate with information" has force only when such disclaimers can be said to facilitate disclosure requirements, *id.* (quoting *McConnell*, 540 U.S. at 196).

The appellants also contend that the on-ad donor disclaimer furnishes potentially irrelevant information while unduly burdening their speech. But even though the degree of relevancy may vary, the identification of top donors is relevant in all cases. To illustrate this point, we take one of the appellants' proffered hypotheticals. A top-five-donor disclaimer may be less helpful than a top-six-donor disclaimer, if an entity's sixth-largest donor is somehow directly connected to the advertisement. But this line-drawing exercise — which asks, at bottom, whether to mandate a list of five top donors or some greater or lesser number — is a task best left to the legislature. *Cf. Buckley*, 424 U.S. at 83 (observing that the level at

which to set monetary thresholds for reporting and disclosure is "necessarily a judgmental decision, best left . . . to congressional discretion"). What matters is that the disclaimer includes a limited set of data points, readily available to the speaker, that is directly tied to educating voters on the message's source.

Additionally, the appellants say that they worry that the top-five-donor list might mislead a viewer either as to the makeup of a speaker's contributor base or as to a donor's endorsement of the message. They also worry that the donor list could elicit threats or harassment. But the on-ad donor disclaimer is subject to the same off-ramps that apply to the disclosure requirement. *See, e.g.*, R.I. Gen. Laws § 17-25.3-3(a) ("[N]o donor shall be listed who is not required to be disclosed in a report to the board of elections by the person, business entity, or political action committee."). These off-ramps serve to mitigate the appellants' stated concerns, which do not necessarily arise in all cases, and ensure the disclaimer provision is narrowly tailored. An organization could, of course, raise any concerns particular to its circumstances by means of an as-applied challenge.

We cut to the chase. In the election-related context, it is clear beyond hope of contradiction that the state can require speakers to self-identify through disclosures and disclaimers. Beyond self-identification, though, the state does not have limitless power to require more from a speaker, such as identification of its donors. Our task today, however, does not involve setting the outer constitutional bounds of what a state might demand

in terms of election-related disclaimers. It suffices to say that Rhode Island's disclaimer requirement, including its top-five-donor provision, survives exacting scrutiny when faced with a facial challenge.

**5**

In a Rumpelstiltskin-like effort to turn dross into gold, the appellants beseech us to consider the potential effects that the Act — and particularly, its disclaimer requirement — will have on their own organizations and memberships. We are aware that the Supreme Court has left open the possibility of as-applied challenges to disclosure and disclaimer requirements if a threat of retaliation looms. *See Citizens United*, 558 U.S. at 370; *McConnell,* 540 U.S. at 98. To mount this type of challenge, though, a party must show "a reasonable probability that the compelled disclosure . . . will subject [donors] to threats, harassment, or reprisals." *Buckley*, 424 U.S. at 74.

The appellants' amended complaint is bereft of any such factual allegations. And to cinch the matter, the appellants concede that they have mounted only a facial challenge to the Act. Generally speaking, facial challenges leave no room for particularized considerations and must fail as long as the challenged regulation has any legitimate application. *See Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008); *Hightower v. City of Bos.*, 693 F.3d 61, 77-78 (1st Cir. 2012). That is the case here: the appellants have wholly failed to demonstrate that the alleged lack of tailoring is "categorical" and present in every application of the challenged

requirements. *Ams. for Prosp.*, 141 S. Ct. at 2387. There is no "dramatic mismatch . . . between the interest that [Rhode Island] seeks to promote and the [disclosure and disclaimer] regime that [it] has implemented in service of that end." *Id.* at 2386. It bears emphasis that the disclaimer requirement, for example, applies to a small number of donors, based on a reasonable assessment of their likely roles in financing the particular electioneering communication. And it does so predicated on a sensible concern that — without this information being readily accessible — "independent groups [could run] election-related advertisements 'while hiding behind dubious and misleading names.'" *Citizens United*, 558 U.S. at 367 (quoting *McConnell*, 540 U.S. at 197).

Nor is it evident on this record that "a substantial number of [the Act's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Ams. for Prosp.*, 141 S. Ct. at 2387 (quoting *United States v. Stevens*, 559 U.S. 460, 473 (2010)). Indeed, the parties have made it evident, both before the district court and in their briefs on appeal, that they do not contend that the Act is overbroad. *See Gaspee*, 482 F. Supp. 3d at 19. Needless to say, any individual challenges, including those alleging that the requirements impose an unusual burden in particular circumstances (such as a chilling effect on speech resulting from harassment), may be brought in the form of as-applied challenges.

**B**

The appellants attempt to move the goalposts. They say that even if the challenged provisions of the Act withstand exacting scrutiny, we should still strike down those provisions on other grounds. To this end, they offer three counter-arguments as to why the challenged provisions infringe their First Amendment rights. We turn next to these counter-arguments.

**1**

The appellants argue that the Act's disclosure and disclaimer requirements transgress the First Amendment's protection of anonymous political speech. Their argument relies primarily on the Supreme Court's decision in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995). In that case, the Court invalidated a blanket ban on anonymous campaign literature under which an individual pamphleteer had been charged, convicted, and fined. *See id*. at 357.

The threshold question is whether the Court's later decision in *Citizens United* pretermits this argument. Although the *Citizens United* Court did not directly address *McIntyre*, the appellants in *Citizens United* made a *McIntyre*-based argument in their brief. See *Citizens United*, Appellants' Br. at 44. The fact that the Court did not adopt the *McIntyre* framework in the election-law context speaks eloquently to its inapplicability.

The Ohio statute at issue in *McIntyre* constituted an outright ban on anonymous literature. *See* 514 U.S.

at 336. That is at a considerable remove from a disclosure requirement in the election-law context. We deem this to be a dispositive difference because — in contrast to the broad sweep of the Ohio statute — the Act's disclosure regime applies only to a small subset of campaign finance spending. *See Worley v. Fla. Sec. of State*, 717 F.3d 1238, 1247 (11th Cir. 2013) (finding *McIntyre* inapplicable for similar reasons).

Indeed, the *McIntyre* Court itself distinguished between election-related disclosures and political pamphlets, emphasizing the more robust interest in protecting the latter. *See* 514 U.S. at 355. In the Court's words, mandatory campaign finance disclosures are "a far cry from compelled self-identification on all election related writings." *Id*. Money, the Court wrote, is "less specific, less personal, and less provocative than a handbill." *Id*. Given these salient differences, we conclude that the appellants' McIntyre-based "speaker privacy" argument lacks force.

**2**

The appellants next strive to draw an analogy between the Act's disclosure requirements and the compelled disclosure of membership lists invalidated by the Court in *NAACP v. Alabama, ex rel. Patterson*, 357 U.S. 449 (1958). This analogy does not hold water.

In NAACP, the Court was confronted with a challenge to a state court order requiring disclosure of the NAACP's membership rolls to the Alabama state attorney general. *See id.* at 451. The state's asserted interest in the membership information was to

address business registration fraud, *see id.* at 464, but the proof revealed that the state was motivated by a desire to drive out the organization and its racial integration efforts during the Jim Crow era. The Court rejected the state's bid. See id.

In contrast, the challenge mounted by the appellants is a purely facial challenge to a disclosure regime designed to increase transparency with respect to election-related spending. As *Citizens United* and *NOM* evince, the election-law context is a breed apart, implicating the government's substantial interest in transparent elections — the bedrock of our democracy.

If more is needed — and we do not think that it is — we note that *NAACP* involved what amounted to an as-applied challenge based on a developed record. There, the plaintiffs had made 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 physical hostility." *Id.* at 462. This stands in sharp contradistinction to the case at hand — a case in which the appellants have made no faintly comparable showing.

That ends this aspect of the matter. Equating the production order invalidated in *NAACP* with the disclosure requirements of the Act is like equating aardvarks with alligators. Consequently, we reject the appellants' attempt to place this case under the carapace of *NAACP*.

By a similar token, there is no parallel between the Act's narrowly tailored disclosure regime, focused on election- related spending, and the general donor-disclosure requirements struck down in *Americans for Prosperity* (a decision that traced its reasoning back to *NAACP*). *See Ams. for Prosp.*, 141 S. Ct. at 2382. In Americans for Prosperity, the government's asserted interest was to prevent the mismanagement of charitable contributions. *See id.* at 2385-86. The Court focused on "the dramatic mismatch" between this asserted interest and an overbroad disclosure regime, striking down the challenged provisions because the information collected played little to no part in assisting the government's anti-fraud efforts. See *id.* at 2386. That reasoning does not assist the appellants, given that the fit between the Act and the state's informational interest is reasonable.

**3**

The appellants' third counter-argument attempts to characterize the Act's on-ad disclaimer requirement as a form of unconstitutionally compelled speech. They say that forcing an organization to identify itself and its five largest donors in a disclaimer on certain types of electioneering communications violates their First Amendment right to refrain from expressing particular viewpoints. *See Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (holding that First Amendment protects "both the right to speak freely and the right to refrain from speaking at all").

In support, the appellants rely on the Supreme Court's decision in *National Institute of Family and Life Advocates v. Becerra (NIFLA),* 138 S. Ct. 2361

(2018). There, a group of pro-life pregnancy centers challenged a state statute requiring such facilities both to advise women that California provides free or low-cost abortions and to furnish a telephone number that could be called. *See id.* at 2368. The Court determined that the California statute was content-based because it commanded the centers to "speak a particular message." *Id.* at 2371. In that regard, the Court emphasized that the statute required pregnancy centers to communicate information about abortion accessibility, which is "the very practice that [the centers] are devoted to opposing." *Id.* In those circumstances, the Court found that the statute likely abridged the centers' First Amendment rights. *See id.* at 2378.

The appellants assert that the Act's on-ad disclaimer requirement is equally vulnerable because it compels a covered organization to recite a "government-drafted script," *id.*, when announcing itself and its five largest donors. The appellants submit that because they are organizations that value privacy, such a compelled disclosure is fairly analogous to the mandatory abortion announcement considered in *NIFLA*.

On-ad disclaimer regimes concerning funding sources in election-related contexts are simply not comparable to requiring pro-life clinics to explain to patients that they may seek free abortion services from the government. Disclaimers — in the unique election-related context — serve the salutary purpose of helping the public to understand where "money comes from." *Buckley*, 424 U.S. at 66. The election-

related context implicated here is alone sufficient to distinguish *NIFLA*.

Other facets of the attempted comparison underscore the infirmity of the appellants' position. The on-ad disclaimer requirement burdens speech modestly and does not require any organization to convey a message antithetic to its own principles. The speaker can for the most part control the content of any particular communication and must disclose only some of the funding sources undergirding that communication. This arrangement imposes no obligation to annunciate something inimical either to the message of the communication itself or to the fundamental beliefs of the speaker. So viewed, the appellants' attempt to analogize this challenge to other compelled speech cases poses no obstacle here, and we hold that the challenged provision of the Act does not unconstitutionally require compelled speech.

## IV

Mindful that a well-informed electorate is as vital to the survival of a democracy as air is to the survival of human life, we hold that the challenged provisions of the Act bear a substantial relation to a sufficiently important governmental interest and are narrowly tailored enough to withstand exacting scrutiny. We also hold that those provisions overcome the appellants' facial challenge and their array of counter-arguments.

We need go no further. For the reasons elucidated above, we uphold the challenged aspects of Rhode Island's disclosure and disclaimer regime.

Accordingly, the district court's entry of judgment in favor of the Board must be

**Affirmed**.

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## Appendix B

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**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF RHODE ISLAND**

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|---|---|
| THE GASPEE PROJECT and ILLINOIS OPPORTUNITY PROJECT, | ) |
| Plaintiffs, | ) |
| v. | ) C.A. No. 1:19-CV-00609-MSM-LDA |
| DIANE C. MEDEROS, STEPHEN P. ERICKSON, JENNIFER L. JOHNSON, RICHARD H. PIERCE, ISADORE S. RAMOS, DAVID H. SHOLES, and WILLIAM WEST, in their official capacities as members of the Rhode Island State Board of Elections, | ) |
| Defendants. | ) |

## MEMORANDUM AND ORDER

Mary S. McElroy, United States District Judge.

The plaintiffs, the Gaspee Project and Illinois Opportunity Project, have filed this action under 42 U.S.C. § 1983 asserting that the disclosure and disclaimer provisions of Rhode Island's Independent Expenditures and Electioneering Communications for Elections Act, R.I.G.L. § 17-25.3-1 et seq. ("the Act"), are facially violative of the First and Fourteenth Amendments to the United States Constitution. The defendants, the members of the Rhode Island Board of Elections (collectively, "the Board"), have filed a Motion to Dismiss the plaintiffs' Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6), asserting that the Act's requirements contested here—the disclosure of donations in excess of a certain threshold, the disclaimer of sponsorship of electioneering, and the disclosure of top donors—are constitutionally permissible.

The avowed governmental purpose for these requirements is for an electorate that is informed and aware of who or what is spending money in its elections. It is for the Court to determine whether this state interest is sufficiently important to impose the Act's burdens on political speech and whether those burdens are substantially related to achieving that end.

The Court determines that the Act meets the applicable standard of constitutional review and, for the following reasons, GRANTS the Board's Motion to Dismiss (ECF No. 22).

# I. BACKGROUND

## A. The Rhode Island Independent Expenditures and Electioneering Communications Act

Passed in 2012, the Act makes clear that it is lawful for a person, business entity, or political action committee to spend money in elections. R.I.G.L. § 17-25.3- 1(a). But any "independent expenditure" or "electioneering communication" where the money spent exceeds $1,000 within a calendar year, must be reported to the Board, along with certain specified information about the entities and the donors. R.I.G.L. § 17-25.3-1(b), (h). The Act defines these two key phrases as follows:[1]

- "Independent expenditure" is as any spending that "when taken as a whole, expressly advocates the election or defeat of a clearly identified candidate, or the passage or defeat of a referendum…." R.I.G.L. § 17-25-3(17).

- "Electioneering communication" is print, broadcast, cable, satellite, or electronic media communication that "unambiguously identifies a candidate or referendum" and is made "sixty (60) days before a general or special election or town meeting" or "thirty (30) days before a primary

[1] These definitions are found in a companion statute, the Rhode Island Campaign Contributions and Expenditures Reporting Act, R.I.G.L. § 17-25-3, but are expressly incorporated into the Act at issue here. See R.I.G.L. § 17-25.3-1(a) ("All terms used in this chapter shall have the same meaning as defined in § 17-25-3.").

> election" and "is targeted to the relevant electorate." R.I.G.L. § 17-25-3(16). A communication is "targeted to the relevant electorate" if it "can be received by two thousand (2,000) or more persons in the district the candidate seeks to represent or the constituency voting on the referendum." R.I.G.L. § 17-25-3(16)(i).

The required report to the Board for independent expenditures and electioneering communications where spending exceeds $1,000 in a calendar year must include the name, street address, city, state, zip code, occupation, and employer of the person responsible for the expenditure, the date and amount of each expenditure, and the year to date total. R.I.G.L. § 17-25.3-1(f). The report must also include a statement identifying the candidate or referendum that the expenditure is intended to promote along with an affirmative statement that the expenditure is not coordinated with the campaign in question. R.I.G.L. § 17-25.3-1(g). Additionally, the report must disclose the identity of all donors of an aggregate of $1,000 or more. R.I.G.L. § 17-25.3-1(h). This report must be filed after each time the person, business entity, or political action committee makes an independent expenditure or electioneering communication of, in the aggregate, an additional $1,000. R.I.G.L. § 17-25.3-1(d).

The Act also requires independent expenditures and electioneering communications to include disclaimers stating who paid for the communication. R.I.G.L. § 17-25.3-3(a). This includes a message stating "I am ___ (name of entity's chief executive

officer or equivalent), and ___ (title) of ____ (entity), and I approved its content." R.I.G.L. § 17-25.3-3(c). Additionally, tax-exempt organizations under § 501(c) of the Internal Revenue Code and other exempt nonprofits[2] that "make or incur or fund an electioneering communication for any written, typed, or printed communication" must include on the communication a list of their top five donors during the one-year period prior to the date of the communication. R.I.G.L. § 17-25.3- 3(a).

Only money contributed for the purposes of independent expenditures or electioneering communications must be reported as such.[3] Should a donor prefer; donations can be expressly conditioned on non-use for independent expenditures or electioneering communications. R.I.G.L. § 17-25.3-1(i). The receiving entity must then certify that the donation will not be used as such and the donor "will not be required to appear in the list of donors." R.I.G.L. § 17-25.3-1(i)(2); see also R.I.G.L. § 17-25.3-3(a) (exempting opt-out donors from being listed as a top five donor).

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[2] These other exempt nonprofits are "any organization described in § 501(c)(4) of the Internal Revenue Code that spends an aggregate annual amount of no more than ten percent (10%) of its annual expenses or no more than fifteen thousand dollars ($15,000), whichever is less, on independent expenditures, electioneering communications, and covered transfers as defined herein and certifies the same to the board of elections seven (7) days before and after a primary election and seven (7) days before and after a general or special election." R.I.G.L. § 17-25-3(21).

[3] The Act also applies to "covered transfers" but the plaintiffs only are concerned with independent expenditures and electioneering communications. See ECF No. 20 ¶¶ 18-24.

### B. The Plaintiffs' Amended Complaint

The plaintiffs are 501(c)(4) organizations that plan to spend thousands of dollars on Rhode Island elections. (ECF No. 20 ¶¶ 7, 8, 28, 29.) The plaintiffs wish to do so anonymously, without the required disclosures, because they "are concerned that compelled disclosure of their members and supporters could lead to substantial personal and economic repercussions" such as "harassment, career damage, and even death threats for engaging and expressing their views in the public square." *Id.* ¶ 35.

The plaintiffs therefore have filed suit against the Board under 42 U.S.C. § 1983, asserting the following:

Count I: That R.I.G.L. § 17-25.3-1(h), requiring the plaintiffs to disclose to the Board their members and supporters contributing $1,000 or more, is a violation of their First Amendment right to organizational privacy;

Count II: That R.I.G.L. §§ 17-25.3-1, 3, requiring the plaintiffs to disclose their sponsorship, is a violation of their First Amendment right to anonymity in their free speech; and

Count III: That R.I.G.L. § 17-25.3-3, requiring the plaintiffs to disclose their top five donors, violates their First Amendment right against compelled speech.

The plaintiffs confirmed at oral argument that their claims are a facial challenge to the constitutionality of the Act. *See also* ECF No. 20 at 14

(plaintiffs' Amended Complaint seeking to enjoin the Board from enforcing the Act "against *Plaintiffs and other organizations* that engage solely in issue advocacy") (emphasis added). A facial challenge is not limited to a plaintiff's particular case and can only succeed where the plaintiff establishes "that no set of circumstances exists under which the Act would be valid." *John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010); *United States v. Salerno*, 481 US. 739, 745 (1987); *see also Naser Jewelers, Inc. v. City Of Concord*, N.H., 513 F.3d 27, 33 (1st Cir. 2008) ("In a facial attack case, it is plaintiff's burden to show that the law has no constitutional application."). A facial challenge requires from a court a cautious approach because it "threaten[s] to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320, 329 (2006).

## II. MOTION TO DISMISS STANDARD

To survive a motion to dismiss, a complaint must state a claim that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The Court assesses the sufficiency of the plaintiff's factual allegations in a two-step process. *See Ocasio-Herandez v. Fortuno-Burset,* 640 F.3d 1, 7, 11-13 (1st Cir. 2011). "Step one: isolate and ignore statements in the complaint that simply offer legal labels and conclusions or merely rehash cause-of-action elements." *Schatz v. Republican State Leadership Comm.*, 699 F.3d 50, 55 (1st Cir. 2012). "Step two: take the complaint's well-pled (i.e., non-conclusory, non-speculative) facts as true, drawing all reasonable

inferences in the pleader's favor, and see if they plausibly narrate a claim for relief." *Id*. "The relevant question … in assessing plausibility is not whether the complaint makes any particular factual allegations but, rather, whether 'the complaint warrant[s] dismissal because it failed in toto to render plaintiffs' entitlement to relief plausible." *Rodriguez-Reyes v. Molina-Rodriguez,* 711 F.3d 49, 55 (1st Cir. 2013) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 569 n.14 (2007)).

## III. DISCUSSION

There are two preliminary issues the Court must decide to guide its constitutional analysis of the Act. First, woven into their Amended Complaint and their arguments on this motion, the plaintiffs seek to make a constitutional distinction between "express advocacy" and "issue advocacy." (The plaintiffs consider themselves "issue advocacy" organizations.) Express advocacy "encompasses 'communications that expressly advocate the election or defeat of a clearly identified candidate,' *Buckley*, 424 U.S. at 80, while [issue advocacy communications] are communications that seek to impact voter choice by focusing on specific issues." *Del. Strong Families v. Attorney Gen. of Del*., 793 F.3d 304, 308 (3d Cir. 2015). "[T]he core premise is that regulation of speech expressly advocating a candidate's election or defeat may more easily survive constitutional scrutiny than regulation of speech discussing political issues more generally." *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 52 (1st Cir. 2011) (hereinafter, "*NOM*").

But, "in light of *Citizens United* [*v. Federal Election Com'n*, 558 U.S. 310 (2010)] … the distinction between issue discussion and express advocacy has no place in First Amendment review of these sorts of disclosure-oriented laws." *Id.* at 54-55. *See also Del. Strong Families*, 793 F.3d at 308 ("Any possibility that the Constitution limits the reach of disclosure to express advocacy or its functional equivalent is surely repudiated by *Citizens United*."); *Vt. Right to Life Comm., Inc.*, 758 F.3d at 132 ("The Supreme Court has consistently held that disclosure requirements are not limited to 'express advocacy' and that there is a not a 'rigid barrier between express advocacy and so-called issue advocacy."); *Indep. Inst. v. FEC*, 216 F. Supp. 3d 176, 178 (D.D.C. 2016) (holding that "the Supreme Court and every court of appeals to consider the question" had "largely, if not completely, closed the door to the … argument that the constitutionality of a disclosure provision turns on the content of the advocacy accompanying an explicit reference to an electoral candidate"), *summarily aff'd*, 137 S. Ct. 1204 (2017).

The second preliminary issue is the question of which framework the Court should employ to guide its analysis—or more specifically, what line of precedents this Court ought to follow. The Board argues that cases that considered disclosure and disclaimer laws similar to the Act at issue here, such as *Buckley v. Valeo*, 424 U.S. 1 (1976), *Citizens United*, 558 U.S. at 310, and their progeny in the lower courts, provide the most recent, useful, and directly controlling analysis. The plaintiffs take a different tack. They instead challenge the Act under three different theories of First Amendment jurisprudence: the right to speaker

privacy, the right to organizational privacy, and the right against compelled speech.

As explained below, the Court is persuaded that the Board's analysis is directly applicable and therefore will first analyze the Act under that framework before discussing the plaintiffs' distinguishable theories.

### A. The Act Is Subject To An Exacting Scrutiny.

"Generally, '[l]aws that burden political speech are 'subject to strict scrutiny'"—that is, they must be narrowly tailored to further a compelling government interest." *Nat'l Assoc. for Gun Rights, Inc. v. Mangan*, 933 F.3d 1102, 1112 (9th Cir. 2019) (quoting *Citizens United*, 558 U.S. at 340). But while "[d]isclaimer and disclosure requirements may burden the ability to speak, … they 'impose no ceiling on campaign-related activities … and 'do not prevent anyone from speaking.'" *Citizens United*, 558 U.S. at 366 (quoting *Buckley*, 424 U.S. at 64; *McConnell v. Federal Election Com'n*, 540 U.S. 93, 201 (2003)). Because disclosure and disclaimer laws are a "less restrictive alternative to more comprehensive regulations of speech," they are subject to "exacting scrutiny," a test that requires the Court to consider whether the law bears a "substantial relation" to a "sufficiently important" governmental interest. *Id*. at 366-67. *See also Nat'l Org. for Marriage v. Daluz*, 654 F.3d 115, 118 (1st Cir. 2011) (reviewing a First Amendment challenge to Rhode Island's campaign finance disclosure laws under the "exacting scrutiny" test). Compared to strict scrutiny, exacting scrutiny is a lower standard for the

government to meet. It does not require the government to select the least restrictive means of achieving its goal. *Del. Strong Families v. Attorney Gen. of Del.*, 793 F.3d 304, 309 n.4 (3d Cir. 2015).

### B. Is the Act Supported By A Sufficiently Important Governmental Interest?

The Board argues that the governmental interest at issue, an informed electorate, is achieved by the disclosure of who is financing political speech. This is an interest the Supreme Court has determined is sufficiently important with respect to disclosure and disclaimer laws. *See Citizens United*, 558 U.S. at 371 (holding that "disclosure permits citizens to react to the speech of corporate entities in a proper way … [and] to make informed decisions and give proper weight to different speakers and messages"); *Buckley*, 424 U.S. at 66-67 ("[D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office."). Indeed, "[i]n a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential." *NOM*, 649 F.3d at 57 (quoting *Buckley*, 424 U.S. at 14-15). This informational interest, however, "is not limited to informing the choice between candidates for political office." *Id.* "As *Citizens United* recognized, there is an equally compelling interest in identifying the speakers behind politically oriented messages." *Id.* The First Circuit has held that the informational interest is particularly important today:

> "In an age characterized by the rapid multiplication of media outlets and the rise of internet reporting, the 'marketplace of ideas' has become flooded with a profusion of information and political messages. Citizens rely ever more on a message's source as a proxy for reliability and a barometer of political spin. Disclosing the identity and constituency of a speaker engaged in political speech thus 'enables the electorate to make informed decisions and give proper weight to different speakers and messages.'"

*Id*. (quoting *Citizens United*, 558 U.S. at 371).

The Board argues that the Act furthers the state's informational interest by requiring the disclosure of independent expenditures in excess of $1,000 within a calendar year and electioneering communications in excess of $1,000 in the sixty days before a general election and thirty days before a primary election. The required reports detail who and what is spending the money, including who donated $1,000 or more, providing the public with an understanding "as to where the political campaign money comes from." *See Buckley*, 424 U.S. at 66-67.

The Act also furthers the state's "equally compelling interest in identifying the speakers behind politically oriented messages" by requiring those who spend more than $1,000 during that window to disclose their sponsorship on all electioneering communications, including—for 501(c)(3) and exempt nonprofits only—their top five donors. *See NOM*, 649 F.3d at 57; R.I.G.L. § 17-25.3-3. The state's informational interests are also advanced by the

Board's publication of these disclosures on its website. See *NOM*, 649 F.3d at 58 (noting that the state interest in disclosure is evidenced by internet publication).

The plaintiffs, on the other hand, argue that the state only has a "single, weak interest justifying their invasion of Plaintiffs' privacy." But nothing in the binding Supreme Court or First Circuit precedents indicate that the informational interest is weak; in fact, they express the opposite. *NOM*, 649 F.3d at 57 (describing the interest in "identifying the speakers behind politically oriented messages" as "compelling"); see also *Citizens United*, 558 U.S. at 371 (holding that "disclosure permits citizens … to make informed decisions and give proper weight to different speakers and messages"). Moreover, the plaintiffs' position depends upon there being a distinction between issue advocacy and express advocacy.[4] As noted, however, the First Circuit has held that "the distinction between issue discussion and express advocacy has no place in First Amendment review of these sorts of disclosure-oriented laws." *NOM*, 649 F.3d at 54-55.

The Court finds that the State's interest in an informed electorate is sufficiently important to justify the Act's disclosure and disclaimer requirements under the exacting scrutiny standard. *See Citizens United*, 558 U.S. at 368-69. "This transparency

[4] Specifically, the plaintiffs argue that the State cannot successfully assert an informational interest in who may fund issue advocacy; such an interest must be tightly tied to electioneering (that is, promoting or attacking a specific candidate) to be constitutional.

enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Id*. at 371.

### C. Is the Act Substantially Related to the State's Sufficiently Important Governmental Interest?

The Court finds that the Act's disclosure and disclaimer requirements are substantially related to the State's interest, serving as a balanced means of informing Rhode Island voters about who is spending large sums of money in elections. First, the Act is only triggered when certain expenditure thresholds are met, ensuring that "the government does not burden minimal political advocacy." *Nat'l Ass'n for Gun Rights, Inc.,* 933 F.3d at 1118. For independent expenditures, the Act applies when expenditures exceed $1,000 in a calendar year; for electioneering communications, the Act applies when expenditures exceed $1,000 in the sixty days before a general or special election or thirty days before a primary election.[5] R.I.G.L. §§ 17-25.3-1(b); 17-25-3(16). The $1,000 threshold also applies to individuals whose donations meet or exceed that limit during an election cycle. R.I.G.L. § 17-25.3-1(h).

The timing limitations also narrow the Act's reach. "It is well known that the public begins to concentrate

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[5] The actual dollar amount of a monetary threshold is afforded "'judicial deference to plausible legislative judgments' as to the appropriate location of a reporting threshold" and such "legislative determinations" are upheld "unless they are 'wholly without rationality.'" *NOM*, 649 F.3d at 60 (quoting *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 32-33 (1st Cir. 1993)).

on elections only in the weeks immediately before they are held. There are short timeframes in which speech can have influence. The need or relevance of the speech will often first be apparent at this stage in the campaign." *Citizens United*, 558 U.S. at 334. As noted, for independent expenditures, only those that exceed $1,000 within a calendar year trigger the reporting requirement. R.I.G.L. § 17-25.3-1(b). For electioneering communications, the Act only covers communications made sixty or thirty days before an election, depending on the election type. R.I.G.L. § 17-25-3(16) The Court therefore agrees with the Board that Rhode Island's disclosure and disclaimer obligations for electioneering communications are "tied with precision to specific election periods," and are "therefore carefully tailored to pertinent circumstances." *Nat'l Ass'n for Gun Rights*, 933 F.3d at 1117.

Similarly, the Act is tailored only to those electioneering communications likely to influence Rhode Island elections. That is, those that "can be received by two thousand (2,000) or more persons in the district the candidate seeks to represent or the constituency voting on the referendum." R.I.G.L. § 17-25-3(16)(i).

Moreover, the Act only applies to speech used in Rhode Island elections. By definition, for instance, "electioneering communication" is any "print, broadcast, cable, satellite, or electronic media communication … that unambiguously identifies a candidate or referendum." R.I.G.L. § 17-25-3(16). Both "independent expenditure" and "electioneering communication" are carefully limited to exclude news

stories, commentaries, editorials, candidate debates or forums, and communications made by a business entity to its members or employees. R.I.G.L. §§ 17-25-3(16)(ii); 17-25-3(i).

Importantly, the Act provides an opt-out for donors who wish to support an organization but want to remain anonymous. Donors can designate that their contributions are not to be used for independent expenditures or electioneering communications and, after the person or entity certifies as such, "the donor will not be required to appear in the list of donors." R.I.G.L. §§ 17-25.3-1(i)(1),(2). Thus, the Act narrowly targets only those donations specifically intended to be used for election communications.

It is noteworthy that the Act here is similar to Maine's independent expenditure and disclaimer statute, which the First Circuit held to be constitutional under the exacting scrutiny test. See *NOM*, 649 F.3d at 61. The Maine statute, similarly to the Act's requirements for independent expenditures, required reporting to the state election commission for any entity that "receives contributions or makes expenditures of more than $5000 annually" for the purpose of "promoting, defeating or influencing" a candidate's election. *Id*. at 58. Additionally, the Maine statute required reporting for "anyone spending more than an aggregate of $100 for communications expressly advocating the election or defeat of a candidate." *Id*. at 59. These provisions, the First Circuit held, "pose[] no First Amendment concerns." *Id*. Indeed, the First Circuit noted that "the information that must be reported under this subsection is … 'modest,' and it bears a substantial

relation to the public's 'interest in knowing who is speaking about a candidate shortly before an election.'" *Id*. at 60 (quoting *Citizens United*, 558 U.S. at 369). Maine's disclaimer requirements, like the Act here, were "minimal" and "unquestionably constitutional," calling only for a statement of whether the message was authorized by a candidate and disclosure of the name and address of the person who made or financed the communication. *Id.* at 61.

The plaintiffs attempt to distinguish *NOM* on four grounds: that the Maine statute was challenged under different legal theories (vagueness and overbreadth); that the Maine statute provided an administrative hearing to rebut the presumption that an ad was an electioneering communication; that the Act covers general fund donors; and that the Maine statute applied only to candidates and not ballot referenda.

None of these grounds is persuasive as the holding in *NOM* did not depend upon the legal theory advanced. The *NOM* court applied an exacting scrutiny analysis to the law at issue, holding that "each of the challenged statutes pass muster under the First Amendment." *Id*. at 61. This Court does the same. In any event, the plaintiffs' alternate legal theories, as discussed below, are not applicable to the instant dispute.

Further, the factual differences that the plaintiffs highlight are not fatal to the Act's constitutionality. The *NOM* holding did not depend on the possibility of an administrative hearing or that the statute did not mention ballot referenda. The Act here provides clear definition on what is, and is not, an independent

expenditure or electioneering communication, properly tailoring the Act to the state's informational interest. *See* §§ 17-25-3(16), (17). Moreover, while the Act may cover general fund donors, it provides a method by which a donor can contribute anonymously. R.I.G.L. §§ 17-25.3-1(i)(1),(2).

The plaintiffs also attempt to distinguish Citizens United, but this falls flat because it depends again on a constitutional distinction in the express/issue advocacy dichotomy, which the Court holds is irrelevant to this analysis. *See NOM*, 649 F.3d at 54-55.

In all, the Court finds that the Act is substantially related to the state's interest of an informed electorate. The disclosure and disclaimer obligations are carefully limited to apply only to those who spend a significant sum to use traditional methods of political communication that are likely to reach a wide swath of the electorate during specific time periods.

### D. The Plaintiffs' Constitutional Theories

#### 1. The Right to Speaker Privacy

The plaintiffs assert that the Act's disclosure and disclaimer requirements are an unconstitutional violation of speaker privacy, relying primarily on *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995). In that case, the plaintiff, acting alone, violated an Ohio campaign-finance statute when at a public meeting she handed out fliers in opposition to an upcoming referendum without her name and address on the literature. *Id.* at 337. The Ohio statute

at issue, which the Supreme Court held was an unconstitutional restriction on political speech, was in fact a blanket prohibition on all anonymous campaign literature. *Id.* at 338.

*McIntyre* is distinguishable, however, because it included an absolute fiat against the distribution of *any* campaign literature that did not contain the name and address of the person issuing the literature, which in effect "indiscriminately outlaw[ed]" anonymous political speech. *See id.* at 357. Here, the Act does not prohibit individual anonymous literature; it instead requires certain disclosures from organizations that meet specific contribution thresholds.[6]

Moreover, *McIntyre* does not provide the most recent framework under which to analyze the Act's disclosure and disclaimer requirements. It is noteworthy that *Citizens United* "upheld the federal disclaimer provision without so much as mentioning *McIntyre*, noting that while disclaimer provisions 'burden the ability to speak,' they do not limit speech." *Vt. Right to Life Comm., Inc. v. Sorrell*, 875 F. Supp. 2d 376, 399 (D. Vt. 2012), aff'd, 758 F.d 118 (2d Cir. 2014).

**2. The Right to Organizational Privacy**

The plaintiffs assert that the Act, because it would require them to disclose donors of $1,000 or more, unconstitutionally infringes on their right to

[6] The plaintiffs also point to *Blakeslee v. St. Sauveur*, 51 F. Supp. 3d 210 (D.R.I. 2014), another case, like *McIntyre*, that involved an absolute regulation of "pure speech," prohibiting all anonymous political pamphleteering.

organizational privacy. The plaintiffs rely upon *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), where the Supreme Court struck down an Alabama state court order that required the NAACP to reveal the names and addresses of its members. In that case, the NAACP "made 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." 357 U.S. at 462. The Court therefore held that "disclosure of petitioner's Alabama membership is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it…." *Id.* at 462-63.

Here, the plaintiffs argue that they are "in the same stead as the NAACP." (ECF No. 23-1 at 14.) "They are private associations of members and supporters who pool their resources to talk about issues … [and] speak on issues important in their communities, just like the NAACP." *Id.* They allege that they are concerned about disclosing their sponsors because "[a]cross the country, individual and corporate donors and staff of political candidates and issue causes are being subject to harassment, career damage, and even death threats." (ECF No. 20 ¶ 35.) Further, they believe disclosure "will lead to declines in their membership and fundraising, impacting their organizations' bottom lines and ability to carry out their missions." *Id.* ¶ 36.

While the plaintiffs do make these conclusory allegations about a concern of reprisals, they are "a far cry from the clear and present danger that white supremacist vigilantes and their abettors in the Alabama state government presented to members of the NAACP in the 1950s." *Citizens United v. Schneiderman,* 882 F.3d 374, 385 (2d Cir. 2018). But more importantly, it is undisputed that the plaintiffs levy a facial challenge to the Act. A Court considering a facial challenge must determine if the statute at issue is unconstitutional in any application, not because of a party's particular circumstance. *See Hightower v. City of Boston*, 693 F.3d 61, 77-78 (1st Cir. 2012) (holding that for the plaintiff's "facial attack to succeed" he "would have to establish … that the statute lacks any 'plainly legitimate sweep'"). Only when a plaintiff makes an "as applied" constitutional challenge—that is, "to demonstrate that the statute, as applied to *his or her particular situation*, violates" constitutional principles—would the Court consider a plaintiff's individual burden. *Hall v. INS*, 253 F. Supp. 2d 244, 248 (D.R.I. 2003) (emphasis added). Having found that the Act meets the standard of exacting scrutiny, the plaintiffs' facial challenge cannot "establish that no set of circumstances exist under which the Act would be valid." See *Salerno*, 481 U.S. at 745.

The result may be different had this been an as-applied challenge. Indeed, the Supreme Court, in rejecting a facial challenge to a disclosure requirement of the Bipartisan Campaign Reform Act of 2002, did not "foreclose possible future challenges to particular applications of that requirement" if a

plaintiff could show a "reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threat, harassment, or reprisals from either Government officials or private parties." McConnell v. Federal Election Com'n, 540 U.S. 93, 197-98 (2003), overruled on other grounds by Citizens United, 558 U.S. at 310.

### 3. The Right Against Compelled Speech

The plaintiffs also argue that the Act's on-ad, top-five donor disclaimer requirement is a form of compelled speech in violation of the First Amendment. *See Wooley v. Maynard*, 430 U.S. 705, 714 (1977) (holding that the First Amendment protects "both the right to speak freely and the right to refrain from speaking at all"). The plaintiffs principally rely upon *Nat'l Inst. of Family & Life Advocates v. Bece*rra, 138 S. Ct. 2361 (2018) (hereinafter, "*NIFLA*"). There, the Supreme Court struck down a California statute that required medical clinics licensed to serve pregnant women to post a notice about their abortion rights. The Court concluded that the required notices were compelled speech: "licensed clinics must provide a government-drafted script about the availability of state-sponsored services, as well as contact information for how to obtain them. One of those services is abortion—the very practice that petitioners are devoted to opposing." *Id*. at 2371.

The plaintiffs likewise call Rhode Island's requirement to list their top donors a "government drafted script." Thus, they claim, the Act compels them to alter their speech to incorporate the government's message just like the pregnancy centers

were forced to alter their speech to incorporate the government's notice.

*NIFLA* (and the strict scrutiny analysis it requires) is distinguishable, however, because the speech compelled in that case was content based. Here, the disclosure requirements are content neutral. *See Schneiderman*, 882 F.3d at 382 ("Disclosure requirements are not inherently content-based nor do they inherently discriminate among speakers."); *see also Mass. Fiscal Alliance v. Sullivan,* 2018 WL 5816344 at *3 (D. Mass. Nov. 6, 2018) (holding that a disclosure law passed constitutional muster and that "[*NIFLA*] does not command a different result, given the content-neutral nature of the [disclaimer] requirement in this case and the minimal burden placed on plaintiff's speech"). The plaintiffs do not need to alter the meaning of their political messaging or support a position contrary to their views. They, and all similarly situated organizations, must disclose their top five donors in order to meet the state's sufficiently important interest in informing the electorate of who "money comes from." *Buckley*, 424 U.S. at 66-67. Under the exacting scrutiny standard by which the Act is properly analyzed, the minimally burdening disclosure and disclaimer requirements are substantially related to the state's informational interest.

## IV. CONCLUSION

The Act's disclosure and disclaimer requirements are justified by the sufficiently important state interest of an informed electorate and any burdens on political speech that they may cause are substantially

related to that state interest. The plaintiffs, therefore, cannot state a plausible claim that the Act is facially violative of First and Fourteenth Amendment rights. The Board's Motion to Dismiss the plaintiffs' Amended Complaint (ECF No. 22) therefore is GRANTED.

IT IS SO ORDERED.

Mary S. McElroy
United States District Judge
August 28, 2020

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**Appendix C**

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**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF RHODE ISLAND**

THE GASPEE PROJECT, et al.
Plaintiff

v. 1:19-cv-00609-MSM-LDA

DIANE C. MEDEROS, et al.
Defendant

**JUDGMENT**

This action came to be heard before the Court and a decision has been rendered. Upon consideration whereof, it is now hereby ordered, adjudged and decreed as follows:

Pursuant to this Court's order entered on August 28, 2020, this civil action is hereby dismissed in accordance with Fed. R. Civ. P. 58.

It is so ordered.

August 28, 2020

By the Court:
/s/ Hanorah Tyer-Witek.
Clerk of Court

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## Appendix D

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**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF RHODE ISLAND**

The Gaspee Project and
Illinois Opportunity Project,

Plaintiffs,

v. No. 1:19-cv-00609-MSM-LDA

Diane C. Mederos, et al.,

Defendants

Pursuant to Fed. Rule of Civ. Pro. 15(a)(1)(B), Plaintiffs file this first amended complaint as of right within the window of time provided by the Rule.

### INTRODUCTION

1. Stretching back to the founding era and *The Federalist Papers*, freedom of speech has included the right to engage in anonymous issue advocacy concerning important public issues. *Talley v. California*, 362 U.S. 60 (1960); *McIntyre v. Ohio Election Comm.*, 514 U.S. 334 (1995). See *The*

*Federalist Papers* (Charles R. Kesler and Clinton Rossiter, eds., 2003).

2. Similarly, the freedom of association includes the right of private individuals to band together for common purposes without government prying into those associations' membership or donor lists. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539 (1963).

3. During certain time periods proximate to elections, Rhode Island statutes require organizations engaged in issue advocacy to disclose the identity of their members and supporters to the Defendant members of the State Board of Elections and the general public. Collectively, Defendants are referred to as the "Board."

4. The statutes also require that organizations engaged in issue advocacy identify themselves to the Board and disclose certain information on the face of an issue ad.

5. Plaintiffs, the Gaspee Project and Illinois Opportunity Project, intend to engage in issue advocacy in Rhode Island concerning referenda and legislators up for votes in fall 2020. If Plaintiffs were to engage in their planned issue advocacy, they would be required to report their sponsorship and disclose their donors to the Board.

6. To protect their privacy and that of their donors, Plaintiffs bring this suit under 42 U.S.C. § 1983, seeking declaratory and injunctive relief to

protect their core First Amendment rights to free speech and association.

**PARTIES**

7. Plaintiff the Gaspee Project is a 501(c)(4) social-welfare organization based in Cranston, Rhode Island.

8. Plaintiff Illinois Opportunity Project is a 501(c)(4) social-welfare organization based in Chicago, Illinois.

9. Defendant Diane C. Mederos is sued in her official capacity as the Chairwoman of the Rhode Island State Board of Elections, which has its offices in Providence, Rhode Island.

10. Defendant Stephen P. Erickson is sued in his official capacity as the Vice-Chairman of the Rhode Island State Board of Elections, which has its offices in Providence, Rhode Island.

11. Defendant Jennifer L. Johnson is sued in her official capacity as a member of the Rhode Island State Board of Elections, which has its offices in Providence, Rhode Island.

12. Defendant Richard H. Pierce is sued in his official capacity as a member of the Rhode Island State Board of Elections, which has its offices in Providence, Rhode Island.

13. Defendant Dr. Isadore S. Ramos is sued in her official capacity as a member of the Rhode Island

State Board of Elections, which has its offices in Providence, Rhode Island.

14. Defendant David H. Sholes is sued in his official capacity as a member of the Rhode Island State Board of Elections, which has its offices in Providence, Rhode Island.

15. Defendant William E. West is sued in his official capacity as a member of the Rhode Island State Board of Elections, which has its offices in Providence, Rhode Island.

## JURISDICTION AND VENUE

16. This case raises claims under the First and Fourteenth Amendments of the United States Constitution and under 42 U.S.C. § 1983. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

17. Venue is appropriate under 28 U.S.C. § 1391(b) because the Defendants reside in and the events giving rise to the claim took place in the District of Rhode Island.

## FACTUAL ALLEGATIONS

18. Persons, business entities, or political action committees which engage in "independent expenditures" and "electioneering communications" are subject to a number of regulations under Rhode Island law. See 17 R.I.G.L. 25.3-1.

19. Independent expenditure entities "shall report all such campaign finance expenditures and expenses

to the board of elections, provided the total of the money so expended exceeds one thousand dollars ($ 1000) within a calendar year, to the board of elections within seven (7) days of making the expenditure." Id. at (b). Such reports "shall contain the name, street address, city, state, zip code, occupation, employer (if self-employed, the name and place of business), of the person responsible for the expenditure. . . ." Id. at (f).

20. "The report shall also include a statement identifying the candidate or referendum that the independent expenditure or electioneering communication is intended to promote the success or defeat, and affirm under penalty of false statement that the expenditure is not coordinated with the campaign in question. . ." Id. at (g).

21. The report must also "disclose the identity of all donors of an aggregate of one thousand dollars ($ 1000) or more to such person, business entity or committee within the current election cycle. . . ." Id. at (h).

22. When an independent expenditure entity publishes an electioneering communication, it must include in the communication its name, the name and title of its chief executive, and a list of its "'Top Five Donors' followed by a list of the five (5) persons or entities making the largest aggregate donations to such person, business entity or political action committee during the twelve (12) month period . . . ." 17 R.I.G.L. 25.3-3(a) (printed materials), (c) (television advertisements), (d) (radio advertisements), and (e) (robocalls).

23. Failure to comply with any section of the independent expenditure statute is punishable by a civil penalty levied by the Board. 17 R.I.G.L. 25.3-4 (b). Knowing and willful violations are a criminal misdemeanor. Id. at (a).

24. An independent expenditure entity is subject to these rules when it publishes an "electioneering communication," which is defined as "any print, broadcast, cable, satellite, or electronic media communication . . . that unambiguously identifies a candidate or referendum and is made either within sixty (60) days before a general or special election or town meeting for the office sought by the candidate or referendum; or thirty (30) days before a primary election, for the office sought by the candidate; and is targeted to the relevant electorate." 17 R.I.G.L. 25-3(16).

25. The effect of this definition is to classify issue advocacy communications that mention a candidate or referendum as an independent expenditure if they are made within the windows of time proximate to an election.

26. The Gaspee Project is a state-focused 501(c)(4) organization that engages in issue advocacy communications around its mission to return government to the people. It supports market-based solutions that can transform lives through economic competitiveness, educational opportunity, and individual freedom.

27. The Illinois Opportunity Project (IOP) engages in issue advocacy in states across the country on issues that relate to its mission, which is to promote

the social welfare and common good by supporting policies founded on the principles of liberty and free enterprise. It feels strongly that issue advocacy is a protected right under the First Amendment, and it has sought to vindicate that right with legal action. *See IOP v. Bullock*, 6:19-cv-00056-CCL (D.Mont.), and *IOP v. Holden*, 3:19-cv-17912-BRM-LHG (D.N.J.).

28. Plaintiff the Gaspee Project wishes to communicate its views on upcoming referenda to Rhode Island voters. In particular, it plans to spend over $1,000 on paid issue-advocacy communications by mail to thousands of Rhode Island voters in advance of the fall 2020 elections. These mailings will include information about pending local referenda that will affect property taxes. The mailings will inform voters of the impact of the referenda on taxes. The communications will not include any express ballot-advocacy as to the referenda.

29. Plaintiff Illinois Opportunity Project plans to spend over $1,000 on paid issue-advocacy communications by mail to thousands of Rhode Island voters in advance of the fall 2020 legislative elections. These mailings will provide information to voters about how their legislators voted on a bill expanding the power of government unions (2019 Senate Bill 712).

30. Plaintiffs intend to engage in substantially similar speech in Rhode Island in the future.

31. Plaintiffs both have received donations over $1,000 in the past and intend to solicit and accept donations over $1,000 in the future.

32. If Plaintiffs engage in their planned issue advocacy in Rhode Island, then any individual or organization that supports either with $1,000 or more in donations will have to be disclosed to the Board.

33. If Plaintiffs engage in their planned issue advocacy, they will be required to file reports with the Board and to include state-mandated information and disclaimers on all their materials.

34. If Plaintiffs engage in their planned issue advocacy in Rhode Island, they will be required to list their top five donors on their materials.

35. Plaintiffs are concerned that compelled disclosure of their members and supporters could lead to substantial personal and economic repercussions. Across the country, individual and corporate donors and staff of political candidates and issue causes are being subject to harassment, career damage, and even death threats for engaging and expressing their views in the public square. Plaintiffs reasonably fear that their members, supporters, and leaders may also encounter similar reprisals from certain activists if their association with Plaintiffs are made public. This fear is especially pronounced for those donors whose names will be directly printed on the issue-advocacy materials.

36. Plaintiffs also believe that disclosure of their donors will lead to declines in their membership and fundraising, impacting their organizations' bottom lines and ability to carry out their missions.

37. Plaintiffs, therefore, bring this pre-enforcement challenge on behalf of themselves and their donors to

vindicate their First Amendment rights. See Susan B. Anthony List v. Driehaus, 573 U.S. 149 (2014) (setting the standard for pre-enforcement challenges). Plaintiffs intend to engage in a course of conduct affected with constitutional interest (namely, issue advocacy). If they were to move forward with their course of conduct, their sponsorship of issue advocacy and their members' and supporters' contributions to their work would be subject to reporting and disclosure.

38. Because of these potential harms, these sections of the Rhode Island statutes will chill Plaintiffs' own speech and cause them not to engage in their desired communications, so long as these statutes remain enforceable law.

39. Plaintiffs have no remedy at law.

## COUNT I

### By requiring Plaintiffs to disclose their members and supporters, the Board violates the First and Fourteenth Amendments.

40. The allegations contained in all preceding paragraphs are incorporated herein by reference.

41. Plaintiffs and their donors enjoy a right to privacy in their association for free speech about issues. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958); *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539 (1963). This right to privacy in association for free speech is protected by the First Amendment as incorporated against the states. *Id.* The statute violates that right by requiring disclosure

of donations, ending the privacy of the speech-oriented association.

42. The statute cannot survive the most exacting standards of strict scrutiny. The U.S. Supreme Court has found a compelling interest in membership-disclosure regulations only when the association was engaged in or advocating for illegal activity. *Familias Unidas v. Briscoe,* 619 F.2d 391, 401 (5th Cir. 1980). Plaintiffs have no track record of illicit conduct nor have they ever embraced plainly unlawful means and ends; they are legitimate, social-welfare organizations engaged in issue advocacy. The government lacks a compelling interest in forcing them to disclose their members and supporters.

43. Plaintiffs and their members and supporters are entitled to an injunction under 42 U.S.C. § 1983 enjoining the continued enforcement of 17 R.I.G.L. 35.3-1(h) as applied to themselves and to other organizations engaged in issue advocacy.

## COUNT II

**By requiring Plaintiffs to disclose their sponsorship of issue advocacy, the Board violates the First and Fourteenth Amendments.**

44. The allegations contained in all preceding paragraphs are incorporated herein by reference.

45. Plaintiffs enjoy a right to anonymity in their free speech about public- interest issues, a right protected by the First Amendment as incorporated against the states. *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150 (2002);

*McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995); *Blakeslee v. St. Sauveur*, 51 F. Supp. 3d 210 (D.R.I. 2014). The statutes in question violate that right by requiring Plaintiffs to report to the Board when engaging in issue speech and to put a detailed disclaimer announcing their sponsorship on all of their issue-advocacy materials.

46. As applied to Plaintiffs' planned activities, this statute affects genuine issue speech, not express advocacy concerning candidates or ballot measures. *See Wis. Right to Life, Inc. v. Barland*, 751 F.3d 804, 836-37 (7th Cir. 2014) (government does not have "a green light to impose political-committee status on every person or group that makes a communication about a political issue that also refers to a candidate.").

47. Plaintiffs are entitled to an injunction under 42 U.S.C. § 1983 enjoining the continued enforcement of 17 R.I.G.L. 25.3-3 as applied to them and to other persons or organizations engaged solely in issue advocacy.

48. Plaintiffs are entitled to an injunction under 42 U.S.C. 1983 enjoining the continued enforcement of 17 R.I.G.L. 25.3-1 as applied to them and to other persons or organizations engaged solely in issue advocacy.

## COUNT III

**By requiring Plaintiffs to disclose their top donors on their materials, the Board violates the First and Fourteenth Amendments.**

49. The allegations contained in all preceding paragraphs are incorporated herein by reference.

50. Forcing Plaintiffs to list their top donors on their advertisements (17 R.I.G.L. 25.3-3(a) (printed materials), (c) (television advertisements), (d) (radio advertisements), and (e) (robocalls)) is compelled speech. *Nat'l Inst. of Family & Life Advocates (NIFLA) v. Becerra*, 138 S. Ct. 2361, 2371 (2018) ("By compelling individuals to speak a particular message, such notices alter the content of their speech."). Because compelled speech is content-altering, such regulations are "presumptively unconstitutional" and subject to strict scrutiny. *Id*. The government cannot prove a compelling interest or narrow tailoring here.

51. Even if the compelled in-ad disclosure is analyzed under exacting scrutiny and the campaign-finance precedents rather than NIFLA, the government lacks a sufficient interest or a substantial nexus to justify this particular requirement. This type of disclosure substantially heightens the chilling effect on Plaintiffs and their members and contributors, while making a poor fit to any supposed government interest. *Cal. Republican Party v. Fair Political Practices Comm'n*, No. CIV-S-04-2144 FCD PAN, 2004 U.S. Dist. LEXIS 22160, at *16-20 (E.D. Cal. Oct. 27, 2004) (granting injunctive relief against a similar statute in California).

52. Plaintiffs are entitled to an injunction under 42 U.S.C. 1983 enjoining the continued enforcement of 17 R.I.G.L. 25.3-3 as applied to them and to other persons or organizations when the advertisement is genuine issue advocacy.

## PRAYER FOR RELIEF

Plaintiffs, the Gaspee Project and Illinois Opportunity Project, respectfully request that this Court:

a. Declare that 17 R.I.G.L. 25.3, to the extent that it compels member and supporter disclosure for organizations engaged in issue advocacy, violates the Plaintiffs' right to freedom of speech and association under the First and Fourteenth Amendments;

b. Declare that 17 R.I.G.L. 25.3-1, in so far as it compels sponsor reporting for issue advocacy, violates the Plaintiffs' right to engage in anonymous speech under the First and Fourteenth Amendments;

c. Declare that 17 R.I.G.L. 25.3-3, to the extent that it compels sponsor disclosure for issue advocacy, violates the Plaintiffs' right to engage in anonymous speech under the First and Fourteenth Amendments;

d. Declare that 17 R.I.G.L. 25.3-3, to the extent that it compels in-ad donor disclosure for issue advocacy, violates the Plaintiffs' right against government compelled speech and government compelled disclosure of association;

e. Enjoin the Board from enforcing 17 R.I.G.L. 25.3-1 against Plaintiffs and other organizations that engage solely in issue advocacy;

f. Enjoin the Board from enforcing 17 R.I.G.L. 25.3-3 against Plaintiffs and other organizations when they sponsor issue advocacy;

g. Award Plaintiffs their costs and attorneys' fees under 42 U.S.C. § 1988; and

h. Award any further relief to which Plaintiffs may be entitled.

Dated: March 6, 2020
/s/ Daniel R. Suhr
Daniel R. Suhr (WI No. 1056658)*
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## Appendix E

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**R.I. Gen. Laws § 17-25-3**

**Definitions**

As used in this chapter, unless a different meaning clearly appears from the context:

(1) "Business entity" means any corporation, whether for profit or not for profit, domestic corporation or foreign corporation, as defined in § 7-1.2-106, financial institution, cooperative, association, receivership, trust, holding company, firm, joint stock company, public utility, sole proprietorship, partnership, limited partnership, or any other entity recognized by the laws of the United States and/or the state of Rhode Island for the purpose of doing business. The term "business entity" shall not include a political action committee organized pursuant to this chapter or a political party committee or an authorized campaign committee of a candidate or office holder. The term "business entity" shall not include any exempt nonprofit as defined herein or any organization described in § 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, for the purposes of chapter 25.3 of title 17.

(2) "Candidate" means any individual who undertakes any action, whether preliminary or final, which is

necessary under the law to qualify for nomination for election or election to public office, and/or any individual who receives a contribution or makes an expenditure, or gives his or her consent for any other person to receive a contribution or make an expenditure, with a view to bringing about his or her nomination or election to any public office, whether or not the specific public office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at that time.

(3) "Conduit" or "intermediary" means any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee, except as otherwise limited in this chapter.

(4) "Contributions" and "expenditures" include all transfers of money, credit or debit card transactions, on-line or electronic payment systems such as "pay pal," paid personal services, or other thing of value to or by any candidate, committee of a political party, or political action committee or ballot question advocate. A loan shall be considered a contribution of money until it is repaid.

(5) "Earmarked" means a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, that results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

(6) "Election" means any primary, general, or special election or town meeting for any public office of the state, municipality, or district, or for the determination of any question submitted to the voters of the state, municipality, or district.

(7) "Election cycle" means the twenty-four month (24) period commencing on January 1 of odd number years and ending on December 31 of even number years; provided, with respect to the public financing of election campaigns of general officers under §§ 17-25-19, 17-25-20, and 17-25-25, "election cycle" means the forty-eight month (48) period commencing on January 1 of odd numbered years and ending December 31 of even numbered years.

(8) "In-kind contributions" means the monetary value of other things of value or paid personal services donated to, or benefiting, any person required to file reports with the board of elections.

(9) "Other thing of value" means any item of tangible real or personal property of a fair-market value in excess of one hundred dollars ($100).

(10) "Paid personal services" means personal services of every kind and nature, the cost or consideration for which is paid or provided by someone other than the committee or candidate for whom the services are rendered, but shall not include personal services provided without compensation by persons volunteering their time.

(11) "Person" means an individual, partnership, committee, association, corporation, union, charity,

and/or any other organization. The term "person" shall not include any exempt nonprofit as defined herein or any organization described in § 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, for the purposes of chapter 25.3 of title 17 only.

(12) "Political action committee" means any group of two (2) or more persons that accepts any contributions to be used for advocating the election or defeat of any candidate or candidates. Only political action committees that have accepted contributions from fifteen (15) or more persons in amounts of ten dollars ($10.00) or more within an election cycle shall be permitted to make contributions, and those committees must make contributions to at least five (5) candidates for state or local office within an election cycle.

(13) "Public office" means any state, municipal, school, or district office or other position that is filled by popular election, except political party offices. "Political party offices" means any state, city, town, ward, or representative or senatorial district committee office of a political party or delegate to a political party convention, or any similar office.

(14) "State" means state of Rhode Island.

(15) "Testimonial affair" means an affair of any kind or nature including, but not limited to, cocktail parties, breakfasts, luncheons, dinners, dances, picnics, or similar affairs expressly and directly intended to raise campaign funds in behalf of a

candidate to be used for nomination or election to a public office in this state, or expressly and directly intended to raise funds in behalf of any state or municipal committee of a political party, or expressly and directly intended to raise funds in behalf of any political action committee.

(16) "Electioneering communication" means any print, broadcast, cable, satellite, or electronic media communication not coordinated, as set forth in § 17-25-23, with any candidate, authorized candidate campaign committee, or political party committee and that unambiguously identifies a candidate or referendum and is made either within sixty (60) days before a general or special election or town meeting for the office sought by the candidate or referendum; or thirty (30) days before a primary election, for the office sought by the candidate; and is targeted to the relevant electorate.

(i) A communication that refers to a clearly identified candidate or referendum is "targeted to the relevant electorate" if the communication can be received by two thousand (2,000) or more persons in the district the candidate seeks to represent or the constituency voting on the referendum.

(ii) Exceptions: The term "electioneering communication" does not include:

(A) A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or

controlled by any political party, political committee, or candidate;

(B) A communication that constitutes a candidate debate or forum conducted pursuant to regulations adopted by the board of elections or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

(C) A communication made by any business entity to its members, owners, stockholders, or employees;

(D) A communication over the internet, except for (I) Communications placed for a fee on the website of another person, business entity, or political action committee; and (II) Websites formed primarily for the purpose, or whose primary purpose is, to expressly advocate the election or defeat of a clearly identified candidate or the passage or defeat of a referendum; or

(E) Any other communication exempted under such regulations as the board of elections may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph.

(17) "Independent expenditure" means an expenditure that, when taken as a whole, expressly advocates the election or defeat of a clearly identified candidate, or the passage or defeat of a referendum, or amounts to the functional equivalent of such express advocacy,

and is in no way coordinated, as set forth in § 17-25-23, with any candidate's campaign, authorized candidate committee, or political party committee. An expenditure amounts to the functional equivalent of express advocacy if it can only be interpreted by a reasonable person as advocating the election, passage, or defeat of a candidate or referendum, taking into account whether the communication mentions a candidate or referendum and takes a position on a candidate's character, qualifications, or fitness for office. An independent expenditure is not a contribution to that candidate or committee.

(i) Exceptions: The term "independent expenditure" does not include:

(A) A communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(B) A communication that constitutes a candidate debate or forum conducted pursuant to regulations adopted by the board of elections or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum;

(C) A communication made by any business entity to its members, owners, stockholders, or employees;

(D) A communication over the internet, except for (I) Communications placed for a fee on the website of another person, business entity, or political action committee; and (II) Websites formed primarily for the purpose, or whose primary purpose is, to expressly advocate the election or defeat of a clearly identified candidate or the passage or defeat of a referendum; or

(E) Any other communication exempted under such regulations as the board of elections may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph.

(18) "Covered transfer" means any transfer or payment of funds by any person, business entity, or political action committee to another person, business entity, or political action committee if the person, business entity, or political action committee making the transfer: (i) Designates, requests, or suggests that the amounts be used for independent expenditures or electioneering communications or making a transfer to another person for the purpose of making or paying for such independent expenditures or electioneering communications; (ii) Made such transfer or payment in response to a solicitation or other request for a transfer or payment for the making of or paying for independent expenditures or electioneering communications or making a transfer to another person for the purpose of making or paying for such independent expenditures or electioneering communications; (iii) Engaged in discussions with the recipient of the transfer or payment regarding

independent expenditures or electioneering communications or making a transfer to another person for the purpose of making or paying for such independent expenditures or electioneering communications; or (iv) Made independent expenditures or electioneering communications in an aggregate amount of five thousand dollars ($5,000) or more during the two-year (2) period ending on the date of the transfer or payment, or knew or had reason to know that the person receiving the transfer or payment made such independent expenditures or electioneering communications in such an aggregate amount during that two-year (2) period.

(A) Exceptions: The term "covered transfer" does not include:

(I) A transfer or payment made by a person, business entity, or political action committee in the ordinary course of any trade or business conducted by the person, business entity, or political action committee or in the form of investments made by the person, business entity, or political action committee; or

(II) A transfer or payment made by a person, business entity, or political action committee if the person, business entity, or political action committee making the transfer prohibited, in writing, the use of such transfer or payment for independent expenditures, electioneering communications, or covered transfers and the recipient of the transfer or payment agreed to follow the prohibition and deposited the transfer or payment in an account that is

segregated from any account used to make independent expenditures, electioneering communications, or covered transfers.

(19) For the purposes of chapter 25.3 of title 17, "donation" means all transfers of money, credit or debit card transactions, on-line or electronic payment systems such as "pay pal," paid personal services, or other thing of value to or by any person, business entity, or political action committee. A loan shall be considered a donation of money until it is repaid.

(20) For the purposes of chapter 25.3 of title 17, "donor" means a person, business entity, or political action committee that makes a donation.

(21) "Exempt nonprofit" means any organization described in § 501(c)(4) of the Internal Revenue Code that spends an aggregate annual amount of no more than ten percent (10%) of its annual expenses or no more than fifteen thousand dollars ($15,000), whichever is less, on independent expenditures, electioneering communications, and covered transfers as defined herein and certifies the same to the board of elections seven (7) days before and after a primary election and seven (7) days before and after a general or special election.

(22) For purposes of chapter 25.3 of title 17, "referendum" means the same as the definition set forth in § 17-5-1.

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## Appendix F

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**R.I. Gen. Laws § 17-25.3-1**

**Independent expenditures and electioneering communications for elections.**

(a) It shall be lawful for any person, business entity or political action committee, not otherwise prohibited by law and not acting in coordination with a candidate, authorized candidate campaign committee, political action committee, or political party committee, to expend personally from that person's own funds a sum which is not to be repaid to him or her for any purpose not prohibited by law to support or defeat a candidate or referendum. Whether a person, business entity or political action committee is "acting in coordination with a candidate, authorized candidate campaign committee, political action committee or political party committee" for the purposes of this subsection shall be determined by application of the standards set forth in § 17-25-23. All terms used in this chapter shall have the same meaning as defined in § 17-25-3.

(b) Any person, business entity or political action committee making independent expenditures, electioneering communications, or covered transfers shall report all such campaign finance expenditures and expenses to the board of elections, provided the total of the money so expended exceeds one thousand dollars ($1,000) within a calendar year, to the board of

elections within seven (7) days of making the expenditure.

(c) A person, business entity or political action committee who makes or contracts to make independent expenditures, electioneering communications, or covered transfers with an aggregate value of one thousand dollars ($1,000) or more shall electronically file a campaign finance report to the board of elections describing the expenditures.

(d) After a person, business entity or political action committee files a report under subsection (b), the person, business entity or political action committee shall file an additional report after each time the person, business entity or political action committee makes or contracts to make independent expenditures, electioneering communications, or covered transfers aggregating an additional one thousand dollars ($1,000) with respect to the same election as that to which the initial report relates.

(e) When a report is required by subsection (c) or (d) of this section within thirty (30) days prior to the election to which the expenditure was directed, it shall be filed within twenty-four (24) hours of the expenditure. When such a report is required at any other time, it shall be filed within seven (7) days after the expenditure.

(f) Reports of independent expenditures, electioneering communications, or covered transfers by a person shall contain the name, street address, city, state, zip code, occupation, employer (if self-

employed, the name and place of business), of the person responsible for the expenditure, the name, street address, city, state, and zip code of the person receiving the expenditure the date and amount of each expenditure, and the year to date total.

(g) The report shall also include a statement identifying the candidate or referendum that the independent expenditure or electioneering communication is intended to promote the success or defeat, and affirm under penalty of false statement that the expenditure is not coordinated with the campaign in question, and provide any information that the board of elections requires to facilitate compliance with the provisions of this chapter.

(h) Reports of independent expenditures, electioneering communications, or covered transfers by a person, business entity or political action committee shall also disclose the identity of all donors of an aggregate of one thousand dollars ($1,000) or more to such person, business entity or committee within the current election cycle, if applicable, unless the person, business entity or political action committee has established a separate campaign-related account for independent expenditures, electioneering communications, and covered transfers as detailed in § 17-25.3-2 in which case this paragraph applies only to donors to the person's, business entity's or political action committee's separate campaign-related account; provided that no person, business entity, or political action committee shall be required to disclose in a report to the board of elections the identity, which includes name, address, place of employment, and donation amount, of any donor who

makes no donation to such person, business entity, or political action committee after the date of enactment of this section.

(i) If a person, business entity or political action committee and a donor mutually agree, at the time a donation, payment, or transfer to the person, business entity or political action committee which is required to disclose the identification under subsection (f) that the person, business entity or political action committee will not use the donation, payment, or transfer for independent expenditures, electioneering communications, or covered transfers, then not later than thirty (30) days after the person, business entity or political action committee receives the donation, payment, or transfer the person, business entity or political action committee shall transmit to the donor a written certification by the chief financial officer of the person, business entity or political action committee (or, if the organization does not have a chief financial officer, the highest ranking financial official of the organization) that:

(1) The person, business entity or political action committee will not use the donation, payment, or transfer for independent expenditures, electioneering communications, or covered transfers; and

(2) The person, business entity or political action committee will not include any information on the donor in any report filed by the person, business entity or political action committee under this section with respect to independent expenditures, electioneering communications, or covered

transfers, so that the donor will not be required to appear in the list of donors.

(3) Exception for payments made pursuant to commercial activities. Subsections (e) and (f) do not apply with respect to any payment or transfer made pursuant to commercial activities in the regular course of a person's, business entity's or political action committee's business.

(j) For the purposes of this chapter, two (2) or more entities (other than an exempt nonprofit as defined in § 17-25-3 or an organization described in § 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time) are treated as a single entity if the entities:

(1) Share the majority of members on their boards of directors;

(2) Share two (2) or more officers;

(3) A candidate committee and a political committee other than a candidate committee are for the purposes of this section treated as a single committee if the committees both have the candidate or a member of the candidate's immediate family as an officer;

(4) Are owned or controlled by the same majority shareholder or shareholders or persons;

(5) Are in a parent-subsidiary relationship; or

(6) Have bylaws so stating.

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## Appendix G

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**R.I. Gen. Laws § 17-25.3-3**

**Disclaimers**

(a) No person, business entity or political action committee shall make or incur an independent expenditure or fund an electioneering communication for any written, typed, or other printed communication, unless such communication bears upon its face the words "Paid for by" and the name of the entity, the name of its chief executive officer or equivalent, and its principal business address. In the case of a person, business entity or political action committee making or incurring such an independent expenditure or electioneering communication, which entity is a tax-exempt organization under § 501(c) of the Internal Revenue Code of 1986 (other than an organization described in § 501(c)(3) of such Code) or an exempt nonprofit as defined in § 17-25-3, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, or an organization organized under Section 527 of said code, such communication shall also bear upon its face the words "Top Five Donors" followed by a list of the five (5) persons or entities making the largest aggregate donations to such person, business entity or political action committee during the twelve (12) month period before the date of such communication, provided that no donor shall be listed who is not required to be disclosed in a report to the board of

elections by the person, business entity, or political action committee.

(b) The provisions of subsections (a) of this section shall not apply to:

(1) Any editorial, news story, or commentary published in any newspaper, magazine or journal on its own behalf and upon its own responsibility and for which it does not charge or receive any compensation whatsoever;

(2) Political paraphernalia including pins, buttons, badges, emblems, hats, bumper stickers or other similar materials; or

(3) Signs or banners with a surface area of not more than thirty-two (32) square feet.

(c) No person, business entity or political action committee shall make or incur an independent expenditure or fund an electioneering communication for paid television advertising or paid Internet video advertising, unless at the end of such advertising there appears simultaneously, for a period of not less than four (4) seconds:

(1) A clearly identifiable video, photographic or similar image of the entity's chief executive officer or equivalent; and

(2) A personal audio message, in the following form: "I am (name of entity's chief executive officer or equivalent), (title) of (entity), and I approved its content."

(3) In the case of a person, business entity or political action committee making or incurring such an independent expenditure or electioneering communication, which person, business entity or political action committee is a tax-exempt organization under § 501(c) of the Internal Revenue Code of 1986 (other than an organization described in § 501(c)(3) of such Code) or an exempt nonprofit as defined in § 17-25-3, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, or an organization organized under Section 527 of said code, such advertising shall also include a written message in the following form: "The top five (5) donors to the organization responsible for this advertisement are" followed by a list of the five (5) persons or entities making the largest aggregate donations during the twelve (12) month period before the date of such advertisement, provided that no donor shall be listed who is not required to be disclosed in a report to the board of elections by the person, business entity, or political action committee.

(d) No person, business entity or political action committee shall make or incur an independent expenditure or fund an electioneering communication for paid radio advertising or paid Internet audio advertising, unless the advertising ends with a personal audio statement by the entity's chief executive officer or equivalent;

(1) Identifying the entity paying for the expenditure; and

(2) A personal audio message, in the following form: "I am (name of entity's chief executive officer or equivalent), (title), of (entity), and I approved its content."

(3) In the case of a person, business entity or political action committee making or incurring such an independent expenditure or electioneering communication, which entity is a tax-exempt organization under § 501(c) of the Internal Revenue Code of 1986 (other than an organization described in § 501(c)(3) of such Code) or an exempt nonprofit as defined in § 17-25-3, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, or an organization organized under Section 527 of said code, such advertising shall also include:

(A) An audio message in the following form: "The top five (5) donors to the organization responsible for this advertisement are" followed by a list of the five (5) persons or entities making the largest aggregate donations during the twelve (12) month period before the date of such advertisement, provided that no donor shall be listed who is not required to be disclosed in a report to the board of elections by the person, business entity, or political action committee; or

(B) In the case of such an advertisement that is thirty (30) seconds in duration or shorter, an audio message providing a website address that lists such five (5) persons or entities, provided that no contributor shall be listed who is not

required to be disclosed in a report to the board of elections by the person, business entity, or political action committee. In such case, the person, business entity or political action committee shall establish and maintain such a website with such listing for the entire period during which such person, business entity or political action committee makes such advertisement.

(e) No person, business entity or political action committee shall make or incur an independent expenditure or fund an electioneering communication for automated telephone calls, unless the narrative of the telephone call identifies the person, business entity or political action committee making the expenditure and its chief executive officer or equivalent. In the case of a person, business entity or political action committee making or incurring such an independent expenditure, which entity is a tax-exempt organization under § 501(c) of the Internal Revenue Code of 1986 (other than an organization described in § 501(c)(3) of such Code) or an exempt nonprofit as defined in § 17-25-3, or any subsequent corresponding internal revenue code of the United States, as amended from time to time, or an organization organized under Section 527 of said code, such narrative shall also include an audio message in the following form: "The top five (5) donors to the organization responsible for this telephone call are" followed by a list of the five (5) persons or entities making the largest aggregate donations during the twelve (12) month period before the date of such telephone call, provided that no donor shall be listed who is not required to be disclosed in a report to the

board of elections by the person, business entity, or political action committee.

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## Appendix H

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**R.I. Gen Laws § 17-25.3-4**

**Penalties**

(a) Any person who willfully and knowingly violates the provisions of this chapter shall, upon conviction, be guilty of a misdemeanor and shall be fined not more than one thousand dollars ($1,000) per violation.

(b) The state board of elections may impose a civil penalty upon any person, business entity, or political action committee who violates the provisions of this chapter in the amount of one thousand dollars ($1,000), or up to one hundred fifty percent (150%) of the aggregate amount of the independent expenditures, electioneering communications, or covered transfers per violation, whichever is greater.