No. 21-890

In The Supreme Court of the United States

GASPEE PROJECT AND
ILLINOIS OPPORTUNITY PROJECT,

Petitioners,

v.

DIANE C. MEDEROS, STEPHEN P. ERICKSON, JENNIFER L. JOHNSON, RICHARD H. PIERCE, ISADORE S. RAMOS, DAVID H. SHOLES, AND WILLIAM E. WEST, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE RHODE ISLAND STATE BOARD OF ELECTIONS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF IN OPPOSITION

PAUL M. SMITH
MEGAN P. MCALLEN
TARA MALLOY
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Suite 400
Washington, DC 20005
(202) 736-2200

PETER F. NERONHA
Attorney General
MICHAEL W. FIELD
Counsel of Record
KATHERINE CONNOLLY SADECK
RHODE ISLAND OFFICE OF THE ATTORNEY GENERAL
150 S. Main St.
Providence, RI 02903
(401) 274-4400
mfield@riag.ri.gov

QUESTION PRESENTED

In its precedents upholding federal campaign-finance disclosure and disclaimer provisions, this Court has instructed that the exacting scrutiny standard applies to the review of campaign-finance disclosure laws. Did the court of appeals properly apply exacting scrutiny in upholding Rhode Island's law requiring an on-advertisement disclaimer of the sponsor and the five largest contributors funding certain electioneering communications?

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INTRODUCTION

1. The conflict asserted in the Petition is illusory. In upholding the constitutionality of Rhode Island's electioneering disclosure laws under the framework dictated by this Court since *Buckley* v. *Valeo*, 424 U.S. 1 (1976) (per curiam), the court of appeals did not "depart" from the Court's precedents, Pet. 10, but carefully followed them. Review is not warranted.

Petitioners contend that the decision below conflicts with precedents involving compelled speech where this Court has mandated strict scrutiny, but the cases upon which Petitioners rely are unrelated to the electoral sphere or campaign-finance disclosure. It was Petitioners, not the Rhode Island State Board of Elections Respondents, who invited the First Circuit to depart from this Court's precedents. It appropriately declined the invitation.

The Rhode Island disclosure requirement at issue here is comparable to federal campaign-finance provisions that this Court has repeatedly upheld against First Amendment challenges, beginning nearly fifty years ago in *Buckley*, 424 U.S. at 61, and thereafter in both *McConnell* v. *FEC*, 540 U.S. 93, 194-202, 230-31 (2003), and *Citizens United* v. *FEC*, 558 U.S. 310, 367 (2010). Like its federal counterpart, the Rhode Island Independent Expenditures and Electioneering Communications Act (Act), R.I. Gen. Laws § 17-25.3-1, *et seq.*, is intended to promote transparency in elections so that voters can "make informed decisions and give

proper weight to different speakers and messages." *Citizens United*, 558 U.S. at 371.

Petitioners challenged numerous aspects of the Act in the courts below, including the reporting it requires from certain groups spending $1,000 or more on electioneering communications and the corresponding requirement that such communications disclose the sponsoring group's name and, in narrower circumstances, top five largest contributors. The First Circuit carefully assessed each challenged aspect of the statute under the "exacting scrutiny" standard, as directed by this Court's precedents—including the recent admonition in *Americans for Prosperity Foundation* v. *Bonta*, 141 S. Ct. 2373 (2021), to review disclosure laws for narrow tailoring—and correctly concluded that the Act passes constitutional muster.

Before this Court, Petitioners trim their sails. They now exclusively target the top-donor disclaimer requirement, on the theory that "on-advertisement" disclaimers "for issue advocacy" impermissibly compel speech and therefore trigger strict scrutiny. Pet. i, 10 (citing *National Inst. of Family & Life Advocs.* v. *Becerra (NIFLA)*, 138 S. Ct. 2361 (2018)). But when confronted with identical arguments about the federal on-ad disclaimer provisions challenged in *Citizens United*, this Court applied exacting scrutiny and upheld them in full. 558 U.S. at 371. Beyond having already garnered this Court's approval, on-ad disclosures that inform voters about the sources of election-related spending are in no way "similar to" the

disclaimers in *NIFLA* that "forc[ed] pro-life groups to share information about abortion[s]." Pet. 16.

Petitioners also claim that this Court's support for electoral disclosure is "limited" to "narrow express advocacy disclosures," Pet. 4, 28, and indeed, their lawsuit hinges on that contention, Pet. App. 71-72 (seeking relief only with regard to alleged "issue advocacy"). But this charge is irreconcilable with the Court's repeated holdings that electioneering communication disclosure requirements can extend beyond "express advocacy" or its functional equivalent. *See Citizens United*, 558 U.S. at 368-69; *McConnell*, 540 U.S. at 190-94. The First Circuit cannot have created a conflict by rejecting an argument that was foreclosed by precedent.

2. Nor did the First Circuit commit any error in finding that Rhode Island's "substantial interest in transparent elections" and the law's narrow tailoring to that interest sufficed to overcome Petitioners' broad facial challenge. Pet. App. 29, 32.

The lower court properly rejected the claim that Rhode Island's asserted interest in an informed electorate is categorically "not important," Pet. 19, in the context of disclaimers. Like federal electioneering communication disclaimer requirements, the Act applies only to ads that meet a narrowly confined set of criteria evincing their election-relatedness. When spenders target "thousands of Rhode Island voters" with election-related materials in close proximity to Election Day, Pet. App. 65, voters have a substantial interest in being "fully informed about the person or group who is

speaking" so they are "able to evaluate the arguments to which they are being subjected." *Citizens United*, 558 U.S. at 368 (citations and internal quotation marks omitted).

The First Circuit's conclusions on tailoring are also consistent with the decisions of this Court. The court rigorously assessed whether the Act's "disclaimer requirements are narrowly tailored to the Board's informational interest" and correctly answered that question in the affirmative. Pet. App. 15, 25. As the lower court emphasized, the Act's numerous narrowing features—including a donor opt-out provision that limits its disclosure to donors who choose to give for election-related advertising—confirm proper tailoring and readily account for Petitioners' associational privacy concerns. Pet. App. 18.

3. The Petition does not even attempt to identify a circuit split, and for good reason: because there is none. Insofar as Petitioners suggest using this case as a vehicle to "begin to address tensions in the lower courts' application of First Amendment principles," Pet. 29, they fail to demonstrate how any relevant decisions are in tension with each other or with this Court's precedents. Indeed, they do the opposite, arguing that uniformity among the lower courts in applying exacting scrutiny weighs in *favor* of review. *See* Pet. 30.

Even if Petitioners were correct that some lower courts have applied an unduly lenient standard of review that "is 'exacting' in name only," Pet. 30, the

decisions they cite predate *Americans for Prosperity*. There, the Court clarified that the exacting scrutiny applied to disclosure laws includes a narrow tailoring test, 141 S. Ct. at 2385, and the decision below was among the first to apply it. Given the conceded absence of any conflict, there is no reason to doubt the capability of the lower courts to faithfully apply *Americans for Prosperity*'s narrow tailoring standard going forward.

4. Finally, this case is an exceptionally poor vehicle for addressing the issues raised in the Petition.

The heart of Petitioners' exacting scrutiny argument before this Court is that the top-donor disclaimer requirement is insufficiently tailored because it is supposedly duplicative of the Act's reporting requirements. Apart from being wrong, that argument was not addressed in any depth in Petitioners' briefing below, where they argued that the Act's sponsorship disclaimer and reporting requirements were also unconstitutional.

Jurisdictional questions and other impediments to review likewise weigh against using this case as a vehicle for the broad facial ruling Petitioners seek. Petitioners' Article III standing is far from assured. Most troublingly, the Petition focuses on distinct disclaimer requirements related to video and audio ads that Petitioners—who intend to fund only mass mailers—lack the requisite personal stake to challenge.

At a minimum, wading in to resolve any background questions posed here would be premature. Given that the case was decided on a motion to dismiss,

a ruling in Petitioners' favor would be unlikely to fully resolve the issues they raise. And certainly, Petitioners' preemptive concerns about the laws of other states are no basis to question Rhode Island's law—which "does not require any organization to convey a message antithetic to its own principles," affords ample protections for associational rights, and serves the "government's substantial interest in transparent elections—the bedrock of our democracy." Pet. App. 29, 32.

STATEMENT

I. Rhode Island's Independent Expenditures and Electioneering Communications Act

A. Federal developments informing the Act

The Act "followed closely on the heels of" *Citizens United*, this Court's "landmark . . . decision that invalidated certain restrictions on corporations' independent expenditures, while upholding various disclosure and disclaimer requirements imposed under federal law." Pet. App. 3. Therefore, the Act begins by affirming that it is "lawful for any person, business entity, or political action committee" to spend money in state elections. R.I. Gen. Laws § 17-25.3-1(a).

In adapting Rhode Island's campaign-finance laws to accommodate these spenders, the General Assembly looked to federal law and this Court's guidance on disclosure to ensure the Act's provisions met

their transparency objectives and were within constitutional bounds.

Congress laid the foundations for the current federal disclosure regime, including on-ad disclosure provisions, in the Federal Election Campaign Act of 1971 (FECA), Pub. L. No. 92-225, 86 Stat. 1. *See*, *e.g.*, *id.* § 302(e), 86 Stat. at 13. But federal laws requiring disclosure of the sources behind election-related spending date back more than a century. *See Buckley*, 424 U.S. at 61-62.

This Court has repeatedly upheld these legislative efforts to secure transparency. *See id.* at 84; *see also Citizens United*, 558 U.S. at 367; *McConnell*, 540 U.S. at 194-202; *United States* v. *Harriss*, 347 U.S. 612, 625 (1954); *Burroughs* v. *United States*, 290 U.S. 534, 548 (1934). As the Court explained in *Buckley*, disclosure requirements "directly serve substantial governmental interests," 424 U.S. at 68—but, unlike contribution and expenditure caps, they "impose no ceiling on campaign-related activities," *id.* at 64. Thus, the Court has praised disclosure requirements as "in most applications . . . the least restrictive means of curbing the evils of campaign ignorance and corruption." *Id.* at 68.

But even after *Buckley* upheld FECA's disclosure regime, those spending money on election-related advertising could readily evade disclosure by eschewing express advocacy in their ads. Corporations, labor unions, and others spent hundreds of millions of dollars over this period to fund "issue" ads that referenced federal candidates and were run in close proximity to

elections—all "without disclosing the identity of, or any other information about, their sponsors." *McConnell*, 540 U.S. at 126. Although these communications contained no express advocacy, the Court found it apparent that they "were specifically intended to affect election results" given that "almost all of them aired in the 60 days immediately preceding a federal election." *Id.* at 127.

The groups, moreover, often assumed anodyne names to further disguise their sources of support. *Id.* at 128. "'Citizens for Better Medicare,' for instance, was not a grassroots organization of citizens, as its name might suggest, but was instead a platform for an association of drug manufacturers." *Id.*

Congress enacted the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, to rectify these and other problems. Congress coined a new term, "electioneering communication," and defined it by reference to clear, objective criteria comparable to those used in the Rhode Island Act. Congress also extended FECA's existing disclaimer provisions to cover electioneering communications, recognizing that immediate "[i]dentification of the source of advertising" is an important way to inform voters about the sources and sponsorship of the electioneering ads they see, so they can "evaluate the arguments to which they are being subjected." *First Nat'l Bank of Bos.* v. *Bellotti*, 435 U.S. 765, 792 n.32 (1978).

This history belies Petitioners' characterization of the Court's disclosure cases as "limited precedents upholding narrow express advocacy disclosures." Pet. 4. In particular, Petitioners' argument that there is a constitutionally mandated distinction between express and "issue" advocacy in the disclosure context has been firmly repudiated by this Court on multiple occasions. *See Citizens United*, 558 U.S. at 369 ("[W]e reject Citizens United's contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy."); *McConnell*, 540 U.S. at 190, 194-96 ("[*Buckley*'s] express advocacy restriction was an endpoint of statutory interpretation, not a first principle of constitutional law.").

B. The Act's disclosure and disclaimer requirements

The Rhode Island General Assembly adopted the Act in 2012 to address the same transparency concerns as those recounted in *McConnell*, and modeled the Act's disclosure provisions on BCRA, following the guideposts laid out in this Court's precedents on disclosure.

The General Assembly determined that "[t]he source of political spending is vital information for voters, allowing them to make knowledgeable decisions at election time" and to evaluate "whether the speaker stands to personally benefit from their advocated positions." 2012 R.I. Pub. Laws Ch. 446 § 1(3)(i) (12-H 7859B). The legislature also found that the

sources of election-related spending had become "extremely difficult or impossible to trace" because such spending was increasingly "being funneled through 'shadow groups'" to avoid disclosure. *Id.* § 1(2).

Like BCRA, the Act's disclosure obligations are confined to a narrow category of election-related communications, and are triggered only when the threshold requirements specified in the statute are met. As relevant here,[1] the "electioneering communications" subject to disclosure under the Act are defined by reference to essentially the same "easily understood and objectively determinable" criteria that this Court has approved with respect to BCRA's disclosure provisions. *McConnell*, 540 U.S. at 194.

An "electioneering communication" is any print, broadcast, cable, satellite, or paid electronic media communication that unambiguously identifies a candidate or referendum; is disseminated within 60 days before a general election or 30 days before a primary election; and is targeted to 2,000 or more voters within the relevant electorate. R.I. Gen. Laws § 17-25-3(16). The definition is further narrowed by specific exclusions comparable to those in federal law, *e.g.*, for communications in the news media, candidate forums, messages to shareholders or members, or unpaid social media posts. *See id.* § 17-25-3(16)(ii); 52 U.S.C. § 30104(f)(3)(B).

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[1] The Act also covers "independent expenditures" and certain "covered transfers," but Petitioners do not challenge those provisions. *See* R.I. Gen. Laws § 17-25-3(17), (18).

Any "person, business entity or political action committee" that spends more than $1,000 in a calendar year on electioneering communications generally must file a report disclosing information about those expenditures, including each expenditure's recipient, date, amount, and purpose. R.I. Gen. Laws §§ 17-25-3; 17-25.3-1(c), (g). Disclosure reports must also identify any contributors of at least $1,000 within the relevant election cycle, excluding any contributors that opted out of such disclosure by providing that their contributions not be used for electioneering communications. *See id.* § 17-25.3-1(h), (i). Donors who wish to remain anonymous therefore may do so.

Petitioners repeatedly misidentify this as a registration requirement. *See* Pet. i, 2, 5, 7, 9. But the Act does not require any type of general registration or disclosure of membership; it provides for event-driven reporting from entities when they expend over $1,000 on electioneering communications and disclosure of only those donors who contribute at least $1,000 and who do not opt out of having their contributions used for election-related advocacy.[2]

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[2] Nor does the Act cause any spenders to become "independent-expenditure entit[ies]." Pet. 4. Event-driven disclosure reports are generally due within seven days after a covered expenditure, and additional reports are required only if and when a group expends another $1,000 on electioneering communications. R.I. Gen. Laws § 17-25.3-1(d). Independent expenditures are defined separately but subject to the same disclosure requirements. *Id.* § 17-25-3(17).

Electioneering communications generally must identify the group making the communication (a "paid for by" disclaimer), and, if made for television, radio, or paid Internet video or audio advertising, must include a sponsorship disclaimer as well. R.I. Gen. Laws. § 17-25.3-3(a), (c)(2), (d)(2).

Certain entities that fund electioneering communications must also include on the communication a list of their top five largest donors within the preceding year, provided the donors would be required to appear in the group's disclosure reports. *See id.* § 17-25.3-3. Top-donor disclaimers, like contributor reports, therefore need not include any donors whose contributions aggregate under $1,000 or who opted out of having their donations used for electioneering communications. *Id.*

Like federal law, the Act tailors these disclaimers to the media used, and contains exclusions or provides for alternatives in circumstances where a disclaimer would be impractical or burdensome—for instance, for audio ads that are thirty seconds in duration or shorter; small printed items like buttons and bumper stickers; or banners smaller than 32 square feet. *Id.* § 17-25.3-3(b), (d)(3)(B); *cf.* 52 U.S.C. § 30120; 11 C.F.R. § 110.11(d)(1)(ii), (f).

These disclaimer obligations specifically exclude organizations described in Section 501(c)(3) of the Internal Revenue Code. R.I. Gen. Laws § 17-25.3-3.

II. Petitioners' Pre-Enforcement Challenge

Petitioners Gaspee Project and Illinois Opportunity Project, both 501(c)(4) organizations, sought to distribute paid electioneering mailers about Rhode Island state candidates and ballot referenda "to thousands of Rhode Island voters" shortly before the fall 2020 elections—and to do so anonymously. Pet. App. 65. Neither Petitioner alleged any desire to disseminate electioneering communications through any other form of media covered by the disclaimer provisions. Gaspee Project is based in Rhode Island, whereas Illinois Opportunity Project is a Chicago-based organization that claims to engage in issue advocacy "across the country." Pet. App. 61, 64.

Both Petitioners averred that their pre-election mailings would be primarily informational and lack words of express advocacy: In the case of Illinois Opportunity Project, the mailing would focus on candidates in the targeted legislative district and how they "voted on a bill expanding the power of government unions." Pet. App. 65. Gaspee Project's mailers would identify "particular referenda and forecast the negative consequences that will supposedly flow from certain outcomes." Pet. App. 11 n.2.

III. Proceedings Below

Petitioners filed suit in 2019 against Respondents, members of the Rhode Island State Board of Elections, seeking a declaration that the Act's disclosure and

disclaimer provisions are unconstitutional insofar as they apply to "issue advocacy." Pet. App. 71-72.

They originally challenged three components of the Act, arguing that:

- the contributor reporting required under R.I. Gen. Laws § 17-25.3-1(h) violates the constitutional right to associational privacy "for organizations engaged in issue advocacy";
- requiring groups making electioneering communications to identify themselves in either disclosure reports or on-ad disclaimers, *see id.* §§ 17-25.3-1, -3, violates the First Amendment right to anonymous speech "to the extent that it compels sponsor disclosure" or "sponsor reporting" for "issue advocacy"; and
- the top-donor disclaimer requirement, *id.* § 17-25.3-3, violates constitutional rights against compelled speech and disclosure of association "to the extent that it compels in-ad donor disclosure for issue advocacy."

Pet. App. 71. Petitioners challenged only the facial validity of these requirements, and disavowed any arguments based on potential First Amendment overbreadth or vagueness. *See* Pet. App. 20, 25.

Both lower courts ruled in the Board's favor on all counts, but the Petition sought review only with respect to the top-donor disclaimer requirement.

Accordingly, only the third and final of these contentions remains at issue.

In the district court, Respondents moved to dismiss, arguing that plaintiffs' claims of facial invalidity had been thoroughly considered and rejected in controlling First Circuit and Supreme Court precedent. Following a virtual hearing, the district court found in August 2020 that the challenged provisions are "substantially related to the state's interest of an informed electorate" and "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." Pet. App. 51. The court denied Petitioners' alternative constitutional theories, granted the Board's motion, and entered judgment dismissing the case. Pet. App. 57-58.

The First Circuit affirmed, in a thorough opinion authored by Judge Selya for the unanimous panel. The court rejected Petitioners' "ipse dixit that express advocacy and issue advocacy trigger different degrees of scrutiny" in the election-related disclosure context, Pet. App. 10, and found the Act substantially related to a sufficiently important informational interest, Pet. App. 10-15. Then, applying the "more muscular test for exacting scrutiny" articulated by this Court in *Americans for Prosperity*, it found the challenged disclosure and disclaimer requirements narrowly tailored to advance the state's "vital" interest. Pet. App. 10, 15-25, 32.

With respect to the top-donor disclaimers, the court concluded that they "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." Pet. App. 21-22. Rejecting Petitioners' argument that on-ad donor disclaimers lack informational value sufficient to justify the alleged burdens they impose, the court observed that the Act's "spending and temporal thresholds" and other "off-ramps" ensure its provisions are "directly tied to educating voters" about the sources of election-related spending. Pet. App. 18-19, 24. Requiring such information to appear on-ad, the court continued, "provides an instantaneous heuristic by which to evaluate generic or uninformative speaker names." Pet. App. 22. The court also declined to second-guess legislative line-drawing regarding the number of contributors disclosed in disclaimers or to credit Petitioners' generalized concern that disclaimers might "elicit threats" for donors to certain groups, noting that such groups could still "raise any concerns particular to [their] circumstances by means of an as-applied challenge." Pet. App. 23-24.

REASONS FOR DENYING THE PETITION

I. The Decision Below Follows this Court's Precedents.

Petitioners assert that the First Circuit's reliance on decisions in which this Court evaluated similar constitutional challenges to similar election-related disclosure laws—including *Buckley*, *McConnell*, and *Citizens United*—"contravenes this Court's precedents, especially *NIFLA*." Pet. 2.

On the contrary, it is Petitioners' disregard for the disclosure holdings of *Citizens United* and *McConnell* that contravenes precedent: in both cases, the Court repudiated the argument that disclosure and disclaimer requirements are unconstitutional or must be subjected to strict scrutiny insofar as they require on-ad disclosure or apply to "issue advocacy." Accepting Petitioners' arguments would create conflict in the Court's campaign-finance precedents where currently there is none. Review is not warranted.

A. The First Circuit applied the appropriate framework to Rhode Island's electoral disclosure requirements.

Rhode Island modeled its disclosure requirements for electioneering communications on federal provisions that this Court upheld facially in *McConnell*, 540 U.S. at 196, as applied in *Citizens United*, 558 U.S. at 367, and again as applied, summarily, in *Independence Institute* v. *FEC*, 216 F. Supp. 3d 176 (D.D.C. 2016) (three-judge court), *summarily aff'd*, 137 S. Ct. 1204

(2017). The First Circuit properly followed these precedents.

In *McConnell*, the Court upheld BCRA's disclosure requirements as to "the entire range of 'electioneering communications.'" 540 U.S. at 196. It likewise considered BCRA's requirement that an electioneering communication include a statement identifying the ad's sponsor and, if not authorized by a candidate or committee, a disclaimer to that effect. *Id.* at 231 (Rehnquist, C.J.). The Court found these disclaimers sufficiently justified by "the important governmental interest of 'shed[ding] the light of publicity' on campaign financing." *Id.* (quoting *Buckley*, 424 U.S. at 81).

Citizens United again upheld the provisions as applied. "The First Amendment protects political speech," the Court concluded, "and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." 558 U.S. at 371.

These decisions confirm that electoral disclosure requirements are properly subject to "exacting scrutiny," which "requires that there be 'a substantial relation between the disclosure requirement and a sufficiently important governmental interest,' and that the disclosure requirement be narrowly tailored to the interest it promotes." *Americans for Prosperity*, 141 S. Ct. at 2385 (citations omitted). The exacting scrutiny framework reflects the Court's longstanding

recognition that electoral disclosure laws—whether they take the form of reporting requirements or on-ad disclaimers—"do not prevent anyone from speaking," *Citizens United*, 558 U.S. at 366 (citation omitted), making them in most circumstances "the least restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist," *Buckley*, 424 U.S. at 68.

Rhode Island's top-donor disclaimer provision is functionally indistinguishable from the federal "paid for by" and non-authorization disclaimers this Court has reviewed under exacting scrutiny. To be sure, identifying a group's largest contributors goes a step beyond revealing its own name and address. But, like the federal disclaimers this Court has upheld, Rhode Island's law prescribes only disclosure and is carefully tailored to inform voters about the sources and funding of the election-related ads they receive. Petitioners do not explain why these two closely analogous forms of electioneering disclaimer should be subject to different constitutional standards, particularly in light of the heightened exacting scrutiny and narrow tailoring requirements they still must meet. As the court below and others have recognized, "neither standard is deferential." *Washington Post* v. *McManus*, 944 F.3d 506, 520 (4th Cir. 2019).

B. Petitioners misread this Court's precedents.

The conflict Petitioners allege originates not from the decision below but from their own misreading of this Court's precedents. First, Petitioners focus on compelled speech cases, disregarding the Court's campaign-finance cases almost entirely; at most, they offer a perfunctory footnote attempting to distinguish *Citizens United* by mischaracterizing its holding and reasoning. *See* Pet. 18 n.2. Second, Petitioners' core premise that election-related disclosure laws cannot extend beyond "express advocacy" communications is in direct conflict with *Citizens United* and *McConnell*. The First Circuit properly followed these precedents, as have its sister circuits "with conspicuous consistency." Pet. App. 11.

1. The constitutional framework applicable here has been "infused in [this] Court's approach to disclosure and disclaimer regimes for decades." Pet. App. 9 (citing *Buckley*, 424 U.S. at 64-65). Petitioners, however, disregard these well-settled standards in favor of applying a compelled speech rubric that the Court has already rejected in this context.

Rather than address *Buckley* and its progeny, Petitioners posit that "[t]he relevant precedents that apply here" are *NIFLA*, 138 S. Ct. 2361, *Reed* v. *Town of Gilbert*, 576 U.S. 155 (2015), and *McIntyre* v. *Ohio Elections Commission*, 514 U.S. 334 (1995). Pet. 28. But nothing in those decisions suggests that they should be read to disturb, much less fundamentally alter, the

well-developed framework of heightened scrutiny this Court has devised for the review of electoral disclosure laws. Indeed, only last year, in *Americans for Prosperity*, the Court declined to apply strict scrutiny to a *non*-electoral disclosure requirement—and noted that although "exacting scrutiny is not *unique* to electoral disclosure regimes," the Court "first enunciated the exacting scrutiny standard in a campaign finance case" and "ha[s] since invoked it in other election-related settings." 141 S. Ct. at 2383 (emphasis added) (citing *Buckley*, 424 U.S. at 64-68; *Citizens United*, 558 U.S. at 366-67; and *Davis* v. *FEC*, 554 U.S. 724, 744 (2008)).

In Petitioners' view, however, on-ad disclosure transforms an electoral transparency requirement into a speech compulsion and renders decisions approving analogous election-related disclosure laws either inapplicable or implicitly overruled.

The problem with that argument is that the Court has already rejected it. The claim that an "on-ad donor disclaimer requirement for issue advocacy" is compelled speech subject to strict scrutiny, Pet. 10, would equally apply to the on-ad disclaimers the Court upheld in *Citizens United*. And indeed, Citizens United unsuccessfully challenged BCRA's disclaimer requirements and called for strict scrutiny on that very ground. *Compare* Pet. 18 n.2 (suggesting that the Court in *Citizens United* "did not consider or decide a compelled speech challenge to" BCRA's disclaimers), *with* Br. for Appellant 43, *Citizens United*, 558 U.S. 310 (No. 08-205) (challenging BCRA's "oral and written

disclaimers" as "compelled speech requirements" subject to strict scrutiny on the ground that they "compel Citizens United 'to utter statements' in its advertisements and political documentary that it 'would rather avoid'" (quoting *Hurley* v. *Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995))).

The notices held unconstitutional in *NIFLA* were of a different breed entirely. They singled out certain medical clinics and required them to "inform women how they c[ould] obtain state-subsidized abortions," which was "the very practice that [those clinics] [we]re devoted to opposing." 138 S. Ct. at 2371. By requiring pro-life clinics to deliver a substantive message about abortion resources at the exact moment they were attempting "to dissuade women from choosing that option," the Court reasoned, the required notice "plainly 'alter[ed] the content'" of their speech. *Id.* (citation omitted). Moreover, viewpoint discrimination appeared to be "inherent in the design and structure" of that law: it "require[d] primarily pro-life pregnancy centers to promote the State's own preferred message advertising abortions," thus "compel[ling] individuals to contradict their most deeply held beliefs." *Id.* at 2379 (Kennedy, J., concurring).

The law here, by contrast, like other campaign-finance disclosure requirements before it, provides that any group spending over $1,000 on electioneering communications in Rhode Island disclose factual information about the largest contributors behind its election-related advertising. The dubious contention that this disclosure "undermines [Petitioners']

philosophical commitments," Pet. 13, even if true, is not an issue presented in this case. Petitioners' pleadings contain no factual allegations about their supposed "philosophical commitments" or how they are offended by truthful financial disclosures. Regardless, Petitioners have disclaimed any as-applied or overbreadth challenge, and their personal views have no bearing on whether the Act is facially unconstitutional in all applications. And a generally applicable campaign-finance disclosure requirement is patently not "similar to forcing pro-life groups to share information about abortion." Pet. 16.

The doctrinal distinction Petitioners attempt to draw between "filings with a state agency" and on-ad disclosure, an argument they base on *McIntyre*, Pet. 18, is impossible to square with the Court's approval of on-ad campaign-finance disclaimers. Whatever differences there may be between "a regulation of 'the mechanics of the electoral process' and a regulation of 'pure speech,'" Pet. 18 (quoting *McIntyre*, 514 U.S. at 345), the information required in a top-donor disclaimer is not the latter. Rather than require "self-identification" by an individual leafleteer like Mrs. McIntyre, top-donor disclaimers provide financial information about the five largest contributors to a group funding electioneering communications; "even though money may 'talk,' its speech is less specific, less personal, and less provocative than a handbill." 514 U.S. at 355. Rhode Island's disclaimer requirement fits comfortably within the Court's later and more specific holdings approving BCRA's disclaimers.

Petitioners' arguments that the Act is impermissibly content-based and content-altering simply cannot be reconciled with *Citizens United* or the Court's other electoral disclosure holdings. Indeed, the challenger in *Citizens United* also argued that federal disclosure and disclaimer requirements were "content-based restrictions on political speech" subject to strict scrutiny, and also invoked *McIntyre* as a basis for finding that on-ad disclaimers violated a right to anonymous speech. *See* Br. for Appellant, *supra*, at 45-46. But the Court applied exacting scrutiny and upheld the disclaimers in full. 558 U.S. at 367. The First Circuit's "refus[al] to apply strict scrutiny," Pet. 18, was perfectly consistent with this authority.[3]

Petitioners conspicuously fail to grapple with *Citizens United*, suggesting only that it was a "pre-*NIFLA* decision" with limited bearing on the constitutionality

[3] The courts of appeals to have considered the question have uniformly agreed with the First Circuit that the exacting scrutiny applied in *Buckley* and *Citizens United*—not the strict scrutiny applied in *NIFLA*, *McIntyre*, or *Reed*—provides the appropriate standard for the review of comparable campaign-finance disclosure and disclaimer laws. *See*, *e.g.*, *Vermont Right to Life Comm., Inc.* v. *Sorrell*, 758 F.3d 118, 132-33 & n.13 (2d Cir. 2014); *Real Truth About Abortion, Inc.* v. *FEC*, 681 F.3d 544, 548-49 (4th Cir. 2012); *Justice* v. *Hosemann*, 771 F.3d 285, 296-97 (5th Cir. 2014); *Libertarian Party of Ohio* v. *Husted*, 751 F.3d 403, 420-21 (6th Cir. 2014); *National Ass'n for Gun Rights, Inc.* v. *Mangan*, 933 F.3d 1102, 1112-14 (9th Cir. 2019); *Worley* v. *Florida Sec'y of State*, 717 F.3d 1238, 1242-45, 1247 (11th Cir. 2013).

of electioneering communication disclaimer requirements. Pet. 18 n.2. That Petitioners consign *Citizens United* to a footnote and otherwise largely ignore a half-century of directly relevant campaign-finance disclosure decisions by this Court—including cases in which the Court considered and rejected arguments materially indistinguishable from those pressed here—is reason enough to deny review.

2. Petitioners' attempt to relitigate whether disclosure requirements can extend beyond express advocacy, a question this Court has answered in the affirmative on multiple occasions, illustrates even more clearly why their case failed below.

The suggestion that this Court's campaign-finance disclosure cases constitute "limited precedents upholding narrow express advocacy disclosures," Pet. 4, is directly at odds with what those decisions said. *See Citizens United*, 558 U.S. at 39 ("[W]e reject Citizens United's contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy."); *McConnell*, 540 U.S. at 194-96 (approving BCRA's disclosure requirements as to "the entire range of 'electioneering communications'" and explicitly "reject[ing] the notion that the First Amendment requires Congress to treat so-called issue advocacy differently from express advocacy").[4]

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[4] In 2017, the Court summarily affirmed the decision of a three-judge federal district court upholding BCRA's disclosure provisions as applied to purported "genuine issue advocacy," and

Nevertheless, Petitioners' case hinges on drawing the same unworkable constitutional line between express advocacy and "issue speech" that this Court has repeatedly repudiated in the context of disclosure. As the Court has confirmed, the strength of the public's interest in knowing who funds election-related communications turns not on how starkly a communication's point of view is expressed, but rather on whether the communication is election-related. Provided a disclosure law is narrowly tailored to achieve the government's informational interest, as this law is, its requirements can extend to election-related communications regardless of the presence or absence of "magic words" of express advocacy (*e.g.*, "vote for/against" or "elect" Candidate Doe).

The facts here illustrate the soundness of this conclusion. Petitioners' proposed mailings may not "expressly advocate how voters should vote," but they target the relevant electorate weeks before an election, unambiguously identify referenda or candidates, and "forecast the negative consequences that will supposedly flow from certain outcomes." Pet. App. 11 n.2. "Communications such as these," the First Circuit recognized, "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

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finding plaintiff's argument for an express advocacy limitation foreclosed by precedent and "entirely unworkable as a constitutional rule." *Independence Inst.*, 216 F. Supp. 3d at 187-88, *summarily aff'd*, 137 S. Ct. 1204 (2017).

advocacy in the election-law disclosure context." Pet. App. 11 n.2.

Because this Court has already created a detailed framework for the constitutional review of campaign-finance disclosure laws—and has used it to evaluate both reporting and on-ad identification requirements—there is no need to unsettle well-established standards by revisiting that issue.[5]

II. The Decision Below Was Correct.

Unsurprisingly, given how closely the First Circuit hewed to this Court's governing precedents, Petitioners do not come close to showing that the court's application of exacting scrutiny was erroneous.

A. Rhode Island demonstrated a sufficiently important interest in an informed electorate.

Like other provisions of the Act, the challenged disclaimer requirement is supported by a substantial

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[5] For the same reason, the Court's denial of this Petition need not await a decision in *City of Austin* v. *Reagan Nat'l Advertising of Austin, Inc.*, No. 20-1029. *Reagan* involves an outright ban on certain digitized billboards; the questions it raises about identifying content-based speech restrictions subject to strict scrutiny are not relevant to an electoral disclosure law that "do[es] not prevent anyone from speaking." *Citizens United*, 558 U.S. at 366 (quoting *McConnell*, 540 U.S. at 201). Petitioners' suggestion otherwise only confirms that their disagreement is with settled law, not the First Circuit's adherence to it. *See* Pet. 4, 14, 31.

and well-recognized state interest: informing voters "about the sources of election-related spending." *Citizens United*, 558 U.S. at 367. As this Court has affirmed on numerous occasions, disclosure not only advances significant interests by opening the electoral process to public view, but is also generally "a reasonable and minimally restrictive" means of doing so. *Buckley*, 424 U.S. at 82; *see also id*. at 69; *Citizens United*, 558 U.S. at 369.

Petitioners' contrary assertion that the state's informational interest is categorically "not important," Pet. 19, cannot be reconciled with this Court's precedents. Far from "recogniz[ing] the limited scope of informational interests" supporting electoral disclosure laws, Pet. 20, the Court's precedents have affirmed the opposite: transparency properly "enables the electorate to make informed decisions and give proper weight to different speakers and messages," *Citizens United*, 558 U.S. at 371.

Requiring immediate on-ad disclosure of the sponsor's largest contributors is supported by the same important informational interests held sufficient to justify federal disclaimer and disclosure provisions. As this Court has recognized, contributor disclosure prevents advocates from seeking to influence voters while "hiding behind dubious and misleading names" or "concealing their identities" to disguise the interests they promote. *McConnell*, 540 U.S. at 196-97 (quoting *McConnell* v. *FEC*, 251 F. Supp. 2d 176, 237 (D.D.C. 2003) (per curiam)). To that end, Rhode Island's top-donor disclaimer ensures that Rhode Islanders can

discern the people and interests behind campaign-related messages being conveyed to them, even when entities "adopt seductive names" that obscure their true purposes and affiliations. *Citizens Against Rent Control/Coal. for Fair Housing* v. *City of Berkeley*, 454 U.S. 290, 298 (1981).

The important interests advanced by disclaimers are not "satisfie[d]" by after-the-fact reporting, as Petitioners claim. Pet. 22. Nor does the state's informational interest "disappear[]," Pet. 21, because the Act provides for both disclaimers and reporting. If anything, contemporaneous disclosures accompanying an electioneering communication are more immediately informative and useful to voters than post hoc reporting: top-donor disclaimers "provide voters with the necessary information at the time they hear (or see) the 'sound bite' and without having to independently 'explore the myriad pressures to which they are regularly subjected.'" *Yes on Prop B* v. *City & Cnty. of San Francisco*, 440 F. Supp. 3d 1049, 1059 (N.D. Cal. 2020) (citation omitted).

Rather than limit or restrict anyone's speech, disclaimers enable voters to "react to th[at] speech" and "make informed choices" in the political marketplace. *Citizens United*, 558 U.S. at 371. Disclaimers complement reporting requirements by ensuring that disclosure information is "easily available to the average citizen," 2012 R.I. Pub. Laws Ch. 446 § 1(3)(iii)—even voters who may not have ready access to smartphones or be familiar with researching online disclosure reports. Taking a recent example from Rhode Island, the

top-donor disclaimer would instantly inform voters that a pro-casino ad run by "Citizens to Create Jobs and Protect Revenue, Inc." was actually funded by casino management.[6] Depriving citizens of immediate contextual information about the election-related messages they receive does not advance First Amendment values; on the contrary, "[t]he premise of the First Amendment is that the American people are neither sheep nor fools, and hence fully capable of considering both the substance of the speech presented to them and its proximate and ultimate source." *McConnell*, 540 U.S. at 258-59 (Scalia, J., concurring in part and dissenting in part).

B. The First Circuit's narrow tailoring determinations were well-founded and consistent with precedent.

The First Circuit's conclusions on tailoring are similarly consistent with the decisions of this Court. "While exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends, it does require that they be narrowly tailored to the government's asserted interest." *Americans for Prosperity*, 141 S. Ct. at 2383. The lower court carefully scrutinized the disclaimer law and found it consistent with that standard. And the Act's

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[6] *See* Amanda Milkovits, *More than $1.7 Million Reported Spent on Tiverton Casino Campaign*, Providence J. (Oct. 12, 2016), https://www.providencejournal.com/story/news/2016/10/12/more-than-17-million-reported-spent-on-tiverton-casino-campaign/25216768007.

limitations and "off-ramps," the court reasoned, ensure a close fit between the important informational interests it serves and the disclosure it requires. Pet. App. 24-25. Petitioners' objections to this careful application of exacting scrutiny are unavailing—all the more so given the broad facial nature of their challenge.

1. As emphasized below, Petitioners "mount[] only a facial challenge" and "do not contend the Act is overbroad"—but they demonstrated neither that the law's "alleged lack of tailoring is 'categorical' and present in every application," nor a "'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.'" Pet. App. 25-26 (quoting *Americans for Prosperity*, 141 S. Ct. at 2386-87).

Notwithstanding Petitioners' decision to forgo developing any arguments based on the law's application to concrete, real-world conduct—theirs or anyone else's—they have continued to invoke concerns about the law's effects on their contributors, suggesting that disclosure creates "the real possibility of personal harassment." Pet. 27. But Petitioners repeatedly disclaimed any as-applied challenge below, and the amended complaint is "bereft of any . . . factual allegations" regarding the Act's effects on Petitioners. Pet. App. 25. Instead, they raised generalized concerns about the associational burdens of disclosure that would apply with equal force to every disclosure law, including those upheld by this Court. *Cf. Buckley*, 424 U.S. at 69-74 (rejecting a blanket disclosure exemption

for minor parties based on "highly speculative" fears of potential retaliation).

It was thus unsurprising that the First Circuit found no basis for Petitioners' argument that the Act was insufficiently tailored. *See* Pet. App. 25-26, 28-30. Far from its constitutional analysis admitting "no stopping point," Pet. 23, the court recognized that a "state does not have limitless power" to require informational disclaimers; it was just satisfied that the Act's careful tailoring places this particular disclaimer law on the right side of the constitutional line in the face of Petitioners' sweeping facial claims. Pet. App. 24.

2. Applying exacting scrutiny, the First Circuit recognized that the Act's threshold criteria and numerous narrowing features ensure its disclosure requirements are tightly tied to their informational objectives. These features also serve to protect the privacy and associational rights Petitioners stress throughout their Petition.

The Act uses the exact same criteria as federal law to define the scope of covered electioneering communications. *See supra* at 9-11. Thanks to the donor opt-out provision, monetary thresholds, and other definitional criteria, it also "provides off-ramps for individuals who . . . prefer to avoid attribution," cabining top-donor disclaimers to those who *choose* to give at least $1,000 for election-related advertising. Pet. App. 18. Carveouts for 501(c)(3) organizations and for certain communications, such as news stories, messages to shareholders, or unpaid social media posts, *see supra* at 10-12,

likewise ensure that disclosure extends only to the groups most likely to engage in significant election-related spending.

The Act's voter-targeting threshold, the elections and media it covers, the 30- and 60-day pre-election time periods in which it applies, and the monetary amounts at which disclosure and disclaimer obligations commence all ensure a close nexus between the Act's transparency objectives and local campaign practices. *See supra* at 8-12.[7] That is sharply distinguishable from the non-electoral regulation in *Americans for Prosperity*, which involved a "dramatic mismatch" between the disclosure regime and the "weak[]" interest in administrative convenience it only tangentially advanced. 141 S. Ct. at 2386-87.

In view of the Act's narrowing features, Petitioners' concerns about $76 donors or disclaimers that require the "top 10 or 15 or 100 donors," Pet. 19, 21-22, are merely "an exercise in hyperbole." Pet. App. 19. Disclaimers need only include the spender's five largest donors—and perhaps fewer, if fewer than five donors gave more than $1,000 (or larger donors availed themselves of the donor opt-out provision). Because the law is narrowly drawn to focus only on large donors who choose to support electioneering expenditures, the First Circuit correctly perceived that the disclaimers are "directly tied to educating voters" and minimally

[7] The donor-disclosure threshold of $1,000 is also the same as federal law, notwithstanding Rhode Island's much smaller size. *See* 52 U.S.C. § 30104(f)(2).

burdensome. Pet. App. 23-24; *see also* Pet. App. 19 (noting that "the Act's spending and temporal thresholds coalesce to render the disclaimer requirement applicable in only a limited set of circumstances"). The First Circuit also, in accordance with this Court's teachings, declined to second-guess legislative line-drawing regarding the precise number of contributors disclosed in top-donor disclaimers. Pet. App. 23-24. There is no need for the Court to revisit these well-founded determinations.

3. Petitioners levy two principal complaints about the tailoring analysis, asserting that the disclaimer provision should have failed exacting scrutiny because the information is confusing to voters and is otherwise available in campaign-finance reports. They are wrong on both counts.

a. There is no basis for Petitioners' contention that top-donor disclaimers lack informational value to voters or could "potentially mislead[]" them. Pet. 26. As a general matter, the narrowing criteria discussed above readily account for Petitioners' speculation about "misleading" disclosure. Donors who wish to remain anonymous by not supporting $1,000 or more in electioneering ads may do so, *see* R.I. Gen. Laws § 17-25.3-1(i)(1), (2), ensuring that disclosure under the Act "narrowly targets only those donations specifically intended to be used for election communications." Pet. App. 49. Rather than requiring donors to appear in disclaimers on ads with which they disagree, the Act protects those donors' rights—by affording an opt-out mechanism and enabling them to "be made aware of

the spending being done in their names." 2012 R.I. Pub. Laws Ch. 446 § 1(3)(v).

The Court rejected a comparable theory of facial invalidity under the First Amendment based on a challenger's speculation about "voter confusion" in *Washington State Grange* v. *Washington State Republican Party*, 552 U.S. 442, 455 (2008). There, the Court declined to "presume" that requiring candidates to self-designate their party preferences in primary elections would lead to voter confusion and thereby impinge on political parties' associational rights. *Id.* at 454-55. As in this case, the challengers "brought their suit as a facial challenge," so there was "no evidentiary record against which to assess their assertions that voters will be confused"—just "sheer speculation" about that possibility. *Id.* So too here.

In any event, the First Circuit entertained Petitioners' hypotheticals about the potential for disclosure to "mislead" voters or "elicit threats" to particular groups. Pet. App. 24. But in the absence of any specific facts or allegations on either front, it reasonably concluded that such speculation was insufficient to hold the law unconstitutional in all applications. *Id.* The Petition (at 26) faults the court's observation that such concerns "do not necessarily arise in all cases," Pet. App. 24, but the real sticking point was Petitioners' inability to show that they arise in *any* cases. In the event they do, an as-applied challenge would be an appropriate means to address them.

Furthermore, this Court in *Citizens United* confronted similar arguments that disclaimers might be "uninformative" and misleading as applied to non-express advocacy. Br. for Appellant, *supra*, at 50-51. But the Court rejected those arguments, holding instead that "the public has an interest in knowing who is speaking about a candidate shortly before an election," "[e]ven if the ads only pertain to a commercial transaction." 558 U.S. at 369.

When voters are targeted with electioneering ads that seek to influence their choices at the polls, they have an interest in knowing the major financial backers of those ads. Petitioners suggest that such transparency may not be "important to citizens." Pet. 27. On the contrary, the information's value to Rhode Islanders is reflected in the legislative choices of their democratically elected representatives. The Act itself, now in effect for nearly a decade, is proof enough that the public "care[s]," Pet. 25, about the disclosure information it provides.

b. Petitioners also contend that reporting and disclaimer requirements cannot coexist as part of an appropriately tailored disclosure regime if the contributor information in a disclaimer also must be disclosed in campaign-finance reports. For the reasons already explained *supra* at 25-27, however, top-donor disclaimers serve informational purposes distinct from post hoc reporting. An "on-ad donor disclaimer provides an instantaneous heuristic by which to evaluate generic or uninformative speaker names," Pet. App. 22, and is especially important as Election Day draws near, "when

it would be most relevant to [voters'] decision-making." 2012 R.I. Pub. Laws Ch. 446 § 1(3)(vi).

The state's choice to employ a means of disclosure that ensures voters directly receive information "about the sources of election-related spending," *Citizens United*, 558 U.S. at 367, falls well within the range of permissible legislative discretion, *cf. id.* at 326; *Buckley*, 424 U.S. at 82-84.

III. This Case Is an Exceptionally Poor Vehicle.

1. The heart of Petitioners' exacting scrutiny argument before this Court is that the top-donor disclaimer requirement is insufficiently tailored because it is allegedly duplicative of the Act's reporting requirements; that argument, however, was not addressed in any depth in their briefing in the courts below, where they argued that the Act's sponsorship disclaimer and reporting requirements were also unconstitutional. This claim, apart from being incorrect on its merits, *see supra* at 25-27, 33, was not sufficiently developed in the lower courts to permit proper review. Indeed, given Petitioners' decision to abandon much of their case upon reaching this Court, the same could be said for all of their arguments here.

2. The Petition focuses on distinct provisions of the Act that Petitioners lack standing to challenge—namely, the disclaimers applicable to video and radio advertisements, R.I. Gen. Law § 17-25.3-3(c), (d), which the Petition gives central billing, *see*, *e.g.*, Pet. 2. But standing "is not dispensed in gross."

DaimlerChrysler Corp. v. *Cuno*, 547 U.S. 332, 353 (2006) (citation omitted). The application of top-donor disclaimers to video and radio advertisements is not a question properly presented in Petitioners' challenge. Neither Petitioner alleged that it seeks to disseminate television or radio advertisements, and they disavowed a facial overbreadth challenge. Petitioners' Article III standing to maintain their pre-enforcement challenge rests exclusively on their claimed desire to distribute electioneering communications to "thousands of Rhode Island voters" by mail, Pet. App. 65, meaning they lack the requisite personal stake to challenge these other aspects of the law.

3. Nor is that the only barrier to review here. The other jurisdictional questions clouding this case, as well as its posture and framing, likewise weigh against using it as a vehicle for the broad facial ruling Petitioners seek.

Petitioners emphasize that this pre-enforcement challenge involves "a pure question of law," Pet. 4, but if that is true, it is because they seek a sweeping facial ruling and have anchored it with only the barest factual outline of their own plans and activities, *see* Pet. App. 25-26, 29; *see also supra* at 13. The lower courts did not assess whether Petitioners had stated a cognizable injury capable of being redressed here, but intervening developments provide reason to question whether this action presents any live case or controversy. Illinois Opportunity Project, for example, an out-of-state group, alleged only a desire to circulate mailers regarding a specific piece of Rhode Island

legislation in a past session that is no longer under consideration. Pet. App. 65.

Even assuming Petitioners satisfy the minimum standards of Article III, this case is still proceeding on a meager factual record upon which to evaluate Petitioners' categorical facial claims. The constitutional ruling Petitioners urge would radically upend existing campaign-finance jurisprudence; the Court should at least not take that step on a record containing only vague and assumed facts about the law's application to Petitioners. *Cf. Illinois Opportunity Project* v. *Bullock*, 482 F. Supp. 3d 1097, 1103-04 (D. Mont. 2020) (finding that Illinois Opportunity Project lacked standing to challenge electioneering communication disclosure law based on speculation about donor loss that it failed to support at summary judgment). A ruling in Petitioners' favor would also be unlikely to fully resolve the case given that their challenge failed at the pleadings stage, and discovery and factual supplementation of the record related to issues including standing would be appropriate if the case were remanded.

4. Finally, Petitioners' preemptive concerns about the laws of other jurisdictions are not a basis for review here. Petitioners assert a need for prospective "clarity" because "other jurisdictions are increasingly adopting similar laws." Pet. 28-29. But any concerns about another state's disclosure law should be addressed in a direct challenge to that law—not to Rhode Island's. More importantly, the Petition does not identify a single other appellate court decision that has even considered the constitutionality of a top-donor

disclaimer requirement, much less one that conflicts with the ruling below. That casts considerable doubt on Petitioners' suggestion that immediate review is needed because such laws are both "typical" and responsible for "widespread" violations of protected speech rights. *See* Pet. 28-29.

This Court ordinarily resists "the natural urge to proceed directly to the merits of [an] important dispute and to 'settle' it for the sake of convenience and efficiency." *Hollingsworth* v. *Perry*, 570 U.S. 693, 704-05 (2013) (quoting *Raines* v. *Byrd*, 521 U.S. 811, 820 (1997)). At a minimum, allowing these questions to develop in the lower courts will better reveal whether there is any need to harmonize different strands of the Court's First Amendment jurisprudence. *Cf. United States* v. *Mendoza*, 464 U.S. 154, 160 (1984). It would also give the Court an opportunity to assess such requirements in a more complete factual context, with plaintiffs whose standing to challenge them is less in doubt.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

PAUL M. SMITH
MEGAN P. MCALLEN
TARA MALLOY
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Suite 400
Washington, DC 20005
(202) 736-2200

PETER F. NERONHA
Attorney General
MICHAEL W. FIELD
Counsel of Record
KATHERINE CONNOLLY SADECK
RHODE ISLAND OFFICE OF
THE ATTORNEY GENERAL
150 S. Main St.
Providence, RI 02903
(401) 274-4400
mfield@riag.ri.gov

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