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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

ROBERT GRIFFIN, et al., Plaintiffs, v. RICHARD STILLIE, JR., in his official capacity as chair of the Alaska Public Offices Commission, et al., Defendants, and ALASKANS FOR BETTER ELECTIONS, INC., Intervenor-Defendant.	Case No. 3:22-CV-00077-SLG **ALASKANS FOR BETTER ELECTIONS' MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

This Court and the Ninth Circuit have already held that Plaintiffs are unlikely to succeed in their facial First Amendment challenge to some of Alaska's campaign disclosure and disclaimer laws.[1] Since then, the parties have conducted discovery to afford Plaintiffs the opportunity to bolster their case.[2] And nothing in that discovery should convince this Court to reach a different conclusion than it did four years ago.[3]

The First Amendment does not give individuals and corporations the right to anonymously contribute unlimited sums of money to independent expenditure organizations ("IEOs") to sway candidate elections. Because although the U.S. Supreme Court has struck down certain *limits* or *caps* on political contributions, it has specifically approved *disclosure* and *disclaimer* requirements as less restrictive, meaningful, and constitutionally-sound curative options. Simply put, contrary to Plaintiffs' claims, there is no constitutional right to conceal the source of unlimited political contributions.

Plaintiffs' facial challenge concerns Alaska's requirements that: (1) individuals timely report contributions to IEOs to the Alaska Public Offices Commission ("APOC");[4] (2) IEOs include certain on-ad disclaimers on political communications;[5] and (3) all contributors report the "true source" of contributions.[6] As this Court and the Ninth Circuit have confirmed, those challenges lack merit.[7]

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1 *See* Doc. 48; Doc. 56; *see also* Doc. 40 (Plaintiffs' First Amended Complaint). The United States Supreme Court also denied Plaintiffs' petition for writ of certiorari, leaving in place the Ninth Circuit's decision. *See* Doc. 62.

2 *See* Doc. 72; *see also* Doc. 109.

3 *See* Doc. 48.

4 *See* Doc. 40 at 17-18.

5 *See id.* at 18-20.

6 *See id.* at 20-21.

7 *See* Doc. 48; Doc. 56; *see also* Doc. 62.

This Court should GRANT Intervenor-Defendant Alaskans for Better Elections, Inc.'s ("ABE") motion for summary judgment.

II. BACKGROUND

A. Alaska's Campaign Finance Disclaimer And Disclosure Laws.[8]

On November 3, 2020, Alaska voters approved the "Alaska's Better Elections Initiative" ("Ballot Measure 2").[9] Ballot Measure 2 amended Alaska's campaign finance laws to "prohibit[] the use of dark money by independent expenditure groups working to influence candidate elections in Alaska and requir[e] additional disclosures by these groups."[10]

Section 7 of Ballot Measure 2 amended AS 15.13.040 to require reporting for "[e]very individual, person, nongroup entity, or group that contributes more than $2,000 in the aggregate in a calendar year" to an IEO.[11] Contributors to IEOs must now "report making the contribution or contributions on a form prescribed by the commission not later than 24 hours after the contribution" is made.[12] Ballot Measure 2 also amended AS 15.13.390(a) to add civil penalties for contributors who fail to comply with Section 7.[13]

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8 ABE has provided additional history and context, incorporated by reference, in prior briefing before this Court. *See* Doc. 46; *see also* Doc. 34.

9 *See* Doc. 56 at 6.

10 *See* Doc. 33-1 at 7-8.

11 *See id.* at 10.

12 *See id.*

13 *See id.* at 12.

"[A]s a subpart of the contribution-reporting requirement,"[14] Ballot Measure 2 also created new requirements regarding "'dark money' and the 'true source' of contributions" to IEOs.[15] These requirements prohibit IEOs from contributing or accepting "$2,000 or more of dark money," and prohibit contributions by intermediaries "without disclosing the true source of the contribution" as defined by Alaska Statute.[16] Contributions funded by "wages, investment income, inheritance, or revenue" are defined as a "true source," whereas funds derived from "contributions, donations, dues, or gifts" are from "an intermediary."[17]

Finally, Ballot Measure 2 amended Alaska's on-ad disclaimer requirements for election communications. Prior to Ballot Measure 2, under Alaska law, any communication intended to influence an election was already required to include: "(1) the name and title of the speaking entity's principal officer; (2) a statement from that principal officer approving the communication; and (3) 'identification of the name and city and state of residence or principal place of business'" of the entity's three largest contributors.[18] Section 11 of Ballot Measure 2 amended these existing disclaimer requirements by requiring those disclaimers "remain onscreen throughout the entirety of the" "broadcast,

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14 Doc. 56 at 8.

15 *See* Doc. 48 at 5-6; *see also* AS 15.13.400(5), (19).

16 *See* Doc. 48 at 5-6; *see also* AS 15.13.074(b).

17 *See* Doc. 33-1 at 13-14; AS 15.13.400(19).

18 *See* Doc. 56 at 8 (quoting AS 15.13.090).

cable, satellite, internet or other digital communication."[19] Section 12 of Ballot Measure 2 also added an onscreen disclaimer requirement to AS 15.13.090 for "a communication paid for by an outside-funded entity."[20]

Ballot Measure 2 became law in February 2021, and APOC adopted implementing regulations.[21]

B. Procedural History.

Plaintiffs filed their complaint over four years ago on April 7, 2022.[22] Broadly, their facial challenge concerns: (1) Ballot Measure 2's donor disclosure requirement; (2) certain on-ad disclaimers; and (3) Ballot Measure 2's "true source" definition for contributors.[23]

On April 25, 2022, Plaintiffs moved for a preliminary injunction in advance of the November 2022 general election.[24] This Court denied Plaintiffs' request.[25] Plaintiffs then appealed that decision to the Ninth Circuit.[26] The Ninth Circuit affirmed this Court's decision.[27] Finally, Plaintiffs filed a petition for writ of certiorari with the United States

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19 *See* Doc. 33-1 at 11.

20 *See id.*; *see also* Doc. 56 at 8-9.

21 *See* Doc. 48 at 2.

22 Doc. 1.

23 *See* Doc. 40 at 17-21.

24 *See* Doc. 18.

25 Doc. 48.

26 *See* Doc. 49.

27 Doc. 56.

Supreme Court.[28] The U.S. Supreme Court denied cert.[29]

This Court subsequently entered a scheduling order after receiving input from the parties.[30] That scheduling order included discovery and motions deadlines, but did not set a trial date;[31] discovery closed on January 9, 2026.[32] And although there are two pending motions,[33] the court-ordered dispositive motion deadline remains April 10, 2026.[34]

C. Discovery Confirmed That Alaska's Disclaimer And Disclosure Laws Satisfy Exacting Scrutiny And Do Not Violate The First Amendment.

The parties collectively took a dozen depositions,[35] and five expert reports were produced.[36] This process did not uncover evidence of widespread or excessive undue burdens on the First Amendment to satisfy Plaintiffs' facial challenge.

With respect to Alaska's reporting requirements for contributors to IEOs,[37] discovery showed that: (1) it is easy and not burdensome for contributors to report;[38]

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28 *See* Doc. 60.

29 Doc. 62.

30 Doc. 72; *see also* Doc. 71.

31 *See* Doc. 72 at 2-9.

32 *See* Doc. 109; *see also* Doc. 111.

33 *See* Doc. 112; Doc. 117.

34 *See* Doc. 109.

35 *See* Affidavit of Samuel G. Gottstein at ¶ 2 (Apr. 10, 2026) [hereinafter Gottstein Aff.].

36 *See* Exhibits A-E *to* Gottstein Aff.

37 *See* Doc. 40 at 17-18.

38 *See* Exhibit C at 1-4 *to* Gottstein Aff.; *id.* at 8-15 *to* Gottstein Aff. (providing a step-by-step process for contributors unfamiliar with myAlaska); Exhibit D at 9-10 *to* Gottstein Aff.; Exhibit F at 5, 9-10, 17-18 *to* Gottstein Aff.; Exhibit G at 24 *to* Gottstein Aff.

(2) IEOs are able to rely on contributor reports;[39] and (3) these requirements have not led to any reduction or "chilling" of political contributions.[40] With respect to on-ad disclaimers,[41] discovery showed that: (1) IEOs are still able to engage in effective campaign communications;[42] (2) voters care about those disclaimers;[43] and (3) there has been no reduction or "chilling" effect on contributions, whether inside or outside of Alaska.[44] And with respect to Ballot Measure 2's "true source" reporting requirements,[45] discovery showed that: (1) it has not led to a decrease or "chilling" of political contributions;[46] and (2) Alaskans have a great interest in maintaining a ban on "dark money" in political campaigns.[47]

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[39] *See* Exhibit C at 3 *to* Gottstein Aff. ("In reality, it can be helpful and more efficient that a contributor first reports. This is because the contributor knows information about the source of funds better than I do, and I can use their Form 15-5 information to accurately report their contribution on our required reports. It means that I do not have to go searching for their information or reach out to them for clarification, since I can glean the information from their APOC filing."); *see also* Exhibit F at 12 *to* Gottstein Aff.

[40] *See* Exhibit C at 3-4 *to* Gottstein Aff.; Exhibit D at 5-6, 12-13 *to* Gottstein Aff.; *see also* Doc. 117-4 at 43-46.

[41] *See* Doc. 40 at 18-20.

[42] *See* Exhibit C at 3 *to* Gottstein Aff.; Exhibit D at 11 *to* Gottstein Aff.; Exhibit F at 14 *to* Gottstein Aff.; Exhibit G at 28 *to* Gottstein Aff.

[43] *See* Exhibit C at 4 *to* Gottstein Aff.; Exhibit D at 6-8 *to* Gottstein Aff.; Exhibit G at 13-14, 16-17.

[44] *See* Exhibit C at 3-4 *to* Gottstein Aff.; Exhibit D at 5-6, 12-13 *to* Gottstein Aff.; *see also* Doc. 117-4 at 43-46.

[45] *See* Doc. 40 at 20-21.

[46] *See* Exhibit C at 3-4 *to* Gottstein Aff.; Exhibit D at 5-6, 12-13 *to* Gottstein Aff.; *see also* Doc. 117-4 at 43-46.

[47] *See* Exhibit C at 4 *to* Gottstein Aff.; Exhibit D at 6-8 *to* Gottstein Aff.; Exhibit G at 13-14, 16-17.

III. LEGAL STANDARD

Because Plaintiffs have brought a facial challenge against provisions of Ballot Measure 2,[48] they can succeed only if "a substantial number of its applications are unconstitutional, judged in relation to the [initiative's] plainly legitimate sweep."[49] "Facial challenges are disfavored for several reasons;"[50] "they raise the risk of 'premature interpretation of statutes on the basis of factually barebones records,'"[51] "run contrary to the fundamental principle of judicial restraint,"[52] and "threaten 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."[53]

Additionally, summary judgment is proper when a "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."[54] If the moving party satisfies its initial burden of production, then the non-moving party must "identify with reasonable particularity the evidence that precludes summary

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48 Plaintiffs confirmed on the record that they are only bringing a facial challenge at oral argument on June 13, 2022.

49 *See United States v. Stevens*, 559 U.S. 460, 473 (2010) (quoting *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008)).

50 *Washington State Grange*, 552 U.S. at 450.

51 *Id.* (quoting *Sabri v. United States*, 541 U.S. 600, 609 (2004)).

52 *Id.*

53 *Id.* at 451; *see also id.* ("We must keep in mind that '[a] ruling of unconstitutionality frustrates the intent of the . . . people.'" (first alteration in original) (quoting *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329 (2006))).

54 Fed. R. Civ. P. 56(a).

judgment."[55] A "mere 'scintilla' of evidence will not be sufficient to defeat a properly supported motion for summary judgment; rather, the nonmoving party must introduce some 'significant probative evidence.'"[56] If the non-moving party fails to make this showing, the moving party is entitled to summary judgment.[57]

IV. <u>ARGUMENT</u>

Plaintiffs claim that the First Amendment prohibits the State from requiring: (1) disclosure of the "true source" of large contributions to IEOs; (2) reporting within 24 hours by those who contribute over $2,000 to IEOs; and (3) on-ad disclaimers identifying an IEO's three largest contributors, and whether a majority of an IEO's funds have come from outside Alaska.[58] They are wrong as a matter of law and cannot meet their burden for their facial challenge.

The First Amendment does not give major contributors to IEOs the right to remain anonymous. The First Amendment does not allow major contributors to IEOs to ignore reporting obligations. And the First Amendment does not exempt IEOs that influence the outcome of elections from having to disclaim who is funding their advertisements.

The U.S. Supreme Court has repeatedly concluded that disclosure and disclaimer requirements for election communications do not violate the First Amendment; rather, they

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55 *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996) (citation omitted).

56 *Summers v. Teichert & Son, Inc.*, 127 F.3d 1150, 1152 (9th Cir. 1997) (citation omitted).

57 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

58 *See* Doc. 40 at ¶¶ 85-105.

satisfy exacting scrutiny because they promote the government's (and the electorate's) need for information and their interest in informed elections. As the Court explained in *Citizens United v. FEC*, "[t]he First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech . . . in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."[59] Indeed, the First Circuit in *Gaspee Project v. Mederos* recently rejected a First Amendment challenge — very similar to Plaintiffs' — against campaign finance laws with lower reporting thresholds (contributions exceeding $1,000) and more robust disclaimers (listing an electioneering organization's top five contributors) than are at issue here.[60] This decision is also entirely consistent with how the Ninth Circuit has interpreted campaign disclaimer and disclosure laws.[61]

Because all of Alaska's challenged campaign disclosure and disclaimer provisions easily satisfy exacting scrutiny, this Court should grant ABE's motion for summary judgment.

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[59] 558 U.S. at 371.

[60] *See generally* 13 F.4th 79 (1st Cir. 2021), *cert. denied*, 2022 U.S. LEXIS 2127 (Apr. 25, 2022).

[61] *See generally Hum. Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010) (holding that Washington's disclaimer and disclosure provisions for entities opposing ballot initiatives do not violate the First Amendment); *Yamada v. Snipes*, 786 F.3d 1182 (9th Cir. 2015) (concluding that Hawaii's campaign disclaimer and disclosure laws for independent entities supporting or opposing candidates do not violate the First Amendment); *No on E v. Chiu*, 85 F.4th 943 (9th Cir. 2023) (affirming that the informational interest in election communications for disclaimers satisfies exacting scrutiny in the context of a facial challenge); *Smith v. Helzer*, 95 F.4th 1207 (9th Cir. 2024) (Doc. 56) (affirming denial of a preliminary injunction in this case).

A. Exacting Scrutiny Applies To All Of Plaintiffs' Claims.

As this Court has previously held, exacting scrutiny applies to all of Plaintiffs' claims.[62] This application was affirmed by the Ninth Circuit.[63] And the Alaska Supreme Court recently reached the same conclusion, and held that exacting scrutiny applies to Alaska's (prior) disclaimer and disclosure requirements.[64]

This Court should continue to apply exacting scrutiny to all of Plaintiffs' claims.

B. Alaska's "True Source" Disclosure Requirements Are Constitutional.

This Court has previously found "that Ballot Measure 2's 'true source' definition, together with its requirement that [IEOs] report these true sources to the State, are both substantially-related and narrowly tailored to fulfill the State's informational interest in informing voters about the actual identity of those trying to influence the outcome of elections."[65] This Court also found that Plaintiffs "lack standing to maintain an action based on hypothetical scenarios by non-parties to this action," as courts should not speculate "when evaluating a facial challenge to a disclosure requirement."[66] Curiously, Plaintiffs did not maintain their "true source" challenge before the Ninth Circuit.[67]

Plaintiffs nevertheless claim that the First Amendment protects individuals and corporations from having to disclose the "true source" of major contributions to IEOs,

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[62] *See* Doc. 48 at 9-10, 21-25, 37.

[63] *See* Doc. 56 at 12-14.

[64] *See generally Alaska Pol'y F. v. APOC*, 583 P.3d 701 (Alaska 2026).

[65] *See* Doc. 48 at 38.

[66] *See id.* at 38-39.

[67] *See* Doc. 56 at 9.

mischaracterizing Ballot Measure 2's provision as requiring the reporting of "secondary," "layer[ed]," or "intermediary" donors.[68] Plaintiffs suggest that disclosing the "true source" of contributions of $2,000 or more to IEOs will improperly "chill" free speech, unintentionally capture unsuspecting true sources, improperly disclose valuable confidential donor lists to the public, and be overly burdensome.[69] These arguments fail, and the provisions are constitutional.

Before Ballot Measure 2, no "person or group [could] . . . make a contribution anonymously, us[e] a fictious name, or us[e] the name of another."[70] But IEOs were still able to receive "dark money" contributions from obscured sources.[71] This loophole was closed in Ballot Measure 2.

Requiring major contributors to IEOs to disclose the "true source" of their contributions does not violate the First Amendment. The U.S. Supreme Court has made it abundantly clear that voters and the government have an interest in knowing who contributes to elections, and precise tailoring of the "true source" requirement for IEOs means the public will be less likely to mistake an intermediary for the actual origin of

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68 *See* Doc. 40 at ¶¶ 100-105. These types of disclosures would only be necessary if the contributor is an intermediary and is not itself a true source. *See* AS 15.13.400(19).

69 *See* Doc. 40 at ¶¶ 100-105.

70 *See* former AS 15.13.074(b) (2020); *see also* 52 U.S.C. § 30122 ("No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.").

71 *See* AS 15.13.400(5), (19). Indeed, Plaintiff FLF itself has both received and contributed substantial sums of "dark money" in the past. *See* Doc. 33-1 at 3-4.

funding.[72] The Court has recognized that disclosure and disclaimer requirements are a constitutionally sound, less restrictive, and meaningful way for the government to ensure transparency without having to cap or otherwise limit political contributions themselves.[73] And the purpose of such requirements is to know who, exactly, is making contributions to influence the outcome of elections.[74] Prompt disclosure of the "true source" of contributions to IEOs serves these informational interests and enhances the government's ability to enforce the law;[75] it is therefore *more* narrowly tailored than a rule that allows the names of less meaningful intermediaries to be disclosed as major donors.

Thus, rather than being over or under inclusive, Ballot Measure 2's "true source" reporting requirement more precisely tailors Alaska's disclosure regime to advance the

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72 *See Citizens United*, 558 U.S. at 367; *see also McConnell*, 540 U.S. at 196. For example, the IEO "Council on Good Government" received contributions from FLF in 2020, who in turn received contributions from the "Republican State Leadership Committee" and "GOPAC" in 2018 and 2019 respectively. *See* Doc. 33-1 at 3-4.

73 *See Citizens United*, 558 U.S. at 366-71; *SpeechNow.org*, 599 F.3d at 696.

74 *See Citizens United*, 558 U.S. at 367 ("[D]isclosure could be justified based on a governmental interest in 'provid[ing] the electorate with information' about the sources of election-related spending." (second alteration in original) (quoting *Buckley*, 424 U.S. at 66)); *McConnell*, 540 U.S. at 196; *see also Buckley*, 424 U.S. at 67 ("Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants[.]" (quotation omitted)); *Mariani v. United States*, 212 F.3d 761, 775 (3rd Cir. 2000) (en banc) ("Proscription of conduit contributions (with the concomitant requirement that the true source of contributions be disclosed) would seem to be at the very core of the [*Buckley*] Court's analysis."); *Nat'l Ass'n of Mfrs. v. Taylor*, 582 F.3d 1, 9 (D.C. Cir. 2009) ("[T]he [Supreme] Court, recognizing the lesser burdens that disclosure generally imposes on First Amendment interests, has upheld numerous statutes requiring disclosures by those endeavoring to influence the political system.").

75 For example, full disclosure of original sources helps ensure that foreign interests do not interfere in Alaska's elections. *See* AS 15.13.068 (prohibiting foreign contributions or expenditures).

State's informational interest. Ballot Measure 2's definition requires disclosure of the "true source" of funds, goes no further than necessary, and only applies to major contributions ($2,000 or more) to IEOs.[76] It is difficult to imagine a better fit to achieve the State's informational interest: Ballot Measure 2's definition of "true source" illuminates the *real* source of contributions intended to influence the outcome of elections. Indeed, *every* informational interest implicated by a campaign finance regime is promoted when the true source of funds is revealed. Without that type of meaningful disclosure, publicly available information will be either misleading or incomplete, wholly defeating the anti-corruption and educational value of the information in the first place.

In contrast, Plaintiffs' expressed concerns about and implied solution for Ballot Measure 2's "true source" requirement make no sense. Plaintiffs believe the First Amendment gives donors the right to anonymously contribute unlimited sums of money to influence the outcome of elections.[77] But there is no constitutional right to make "dark money" contributions.

There is no Court, *anywhere*, that has held donors making political contributions to

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76 *See* AS 15.13.040(r). This is why Plaintiffs' characterization of Ballot Measure 2's "true source" definition as being a "secondary donor" requirement is misplaced. *See* Doc. 40 at ¶¶ 100-105. Ballot Measure 2's provisions do not require a contributor to report where the contribution came from ad infinitum. Those provisions only require that the "true source" is disclosed — i.e., "the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services" — and nothing more, unless the contribution comes from an intermediary. *See* AS 15.13.400(19). Each of the individual Plaintiffs would satisfy Ballot Measure 2's definition of "true source." *See* Doc. 40 at ¶¶ 5-9.

77 *See* Doc. 40 at ¶¶ 100-105.

IEOs (or to candidates themselves) must be allowed to do so anonymously.[78] This Court need not be the first. The First Amendment does not give citizens the right to sign petitions anonymously.[79] The First Amendment does not give individuals the right to directly contribute to candidates anonymously.[80] The First Amendment does not provide a right to anonymously contribute to lobbying efforts.[81] And with these constraints in mind, it would be nonsensical for individuals and corporations to have a constitutional right to anonymously contribute unlimited amounts to IEOs.

As Justice Scalia wrote, "harsh criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self-governance. Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed."[82] Simply put, the First Amendment does not guarantee anonymity for election

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[78] *See* Doc. 40 at ¶¶ 100-105; *see also* Doc. 18 at 28-33; Doc. 39 at 14-18. Indeed, all relevant cases support that there is no right to such anonymous contributions. *See, e.g.*, *Citizens Against Rent Control/Coal. for Fair Hous. v. Berkeley*, 454 U.S. 290, 299-300 (1981) (reasoning that although "[p]lacing limits on contributions which in turn limit expenditures plainly impairs freedom of expression," "[t]he integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed; if it is thought wise, legislation can outlaw anonymous contributions"); *Worley*, 717 F.3d at 1254 (upholding a disclaimer requirement where "Florida PACs have to disclose their contributors in a public forum").

[79] *See Reed*, 561 U.S. at 197-99 (rejecting a facial challenge to prevent the disclosure of names and addresses of petition signers).

[80] *See* AS 15.13.074(b); *see also* 52 U.S.C. § 30122.

[81] *United States v. Harriss*, 347 U.S. 612, 625 (1954) (upholding disclosure requirements from the Lobbying Act, which provide "a modicum of information from those who for hire attempt to influence legislation or who collect or spend funds for that purpose" including "who is being hired, who is putting up the money, and how much").

[82] *Reed*, 561 U.S. at 228 (Scalia, J., concurring).

advocacy, and it certainly does not do so for major contributors to IEOs.

Additionally, Plaintiffs' fantastical claims regarding a cascade of negative effects have no basis in the requirements of Ballot Measure 2.[83] If an organization contributes to an IEO, that organization and the contributor will only need to disclose the true source (or sources) *of that contribution*, not the true source or sources of its annual budget or all of the money it has ever received.[84] This is a reasonable limitation within Ballot Measure 2 which requires disclosure only up to the amount of the contribution itself and not a penny more.[85] Moreover, certain nonprofits would lose their tax exempt status if they were to give to an IEO in the manner suggested by Plaintiffs.[86]

"Hypothetical borderline situations [that] are conjured up" do not warrant invalidating this disclosure requirement.[87] For example, Plaintiffs' oft-repeated hypothetical of a realtor being listed as a true source ignores how organizations are able to

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83 *See* Doc. 40 at ¶¶ 103-104; *see also* Doc. 18 at 28-33; Doc. 39 at 14-18.

84 *See* AS 15.13.040(r).

85 *See id.* For example, if a $100 million organizational contributor made a $1 million contribution to an IEO, the IEO (and contributor) would only need to report the true source of $1 million. *See id.* This is not "a dramatic mismatch." *See Ams. for Prosperity Found.*, 141 S. Ct. at 2386.

86 *See* Doc. 18 at 29; *see also* 26 U.S.C. § 501(c)(3) (stating that such organizations shall "not participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office").

87 *Harriss*, 347 U.S. at 626 ("Hypothetical borderline situations are conjured up in which such persons choose to remain silent because of fear of possible prosecution for failure to comply with the Act. . . . The hazard of such restraint is too remote to require striking down a statute which on its face is otherwise plainly within the area of congressional power and is designed to safeguard a vital national interest.").

support IEOs without making unsuspecting private donations public.[88] Alaska Statute 15.13.074(i) already requires certain IEOs to inform would-be contributors that they intend to influence the outcome of an election before soliciting any contributions,[89] and — as the State's proposed regulations and APOC's recent advisory opinion confirm — IEOs can create segregated accounts to allow donors to give to an account that is not used to make contributions to IEOs.[90] In other words, individuals who donate to an organization that contributes to an IEO can make clear that their donations should not be used for election purposes; that way, if and when that organization contributes to an IEO, those individuals who did not want their donations to be used for political speech will not be named as true sources. Ballot Measure 2 cannot prevent all outright fraud or misuse of funds, and much of Plaintiffs' speculative concerns are traceable to the relationship between donors and recipients, not the requirements of Ballot Measure 2.[91]

The First Amendment does not guarantee individuals and corporations the right to report misleading information about the source of campaign contributions. Ballot Measure 2's definition of "true source," which seeks to shine a light on the proliferation of "dark money" in politics, is both substantially related and narrowly tailored to achieve the State's informational interest in knowing the actual identity of those trying to influence the

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[88] *See* Doc. 18 at 29-30.

[89] AS 15.13.074(i).

[90] *See* Doc. 33-1 at 38-56.

[91] *See* Doc. 18 at 29-30; Doc. 40 at ¶ 32 ("[O]rganizations may without [a contributor's] knowledge or consent use general fund dollars to support other organizations which may . . . support an [IEO]."); *see also* 26 U.S.C. § 501(c)(3); AS 15.13.074(i).

outcome of elections.[92] Plaintiffs' claims attempting to invalidate Ballot Measure 2's "true source" disclosure requirements should be dismissed.

C. Alaska's Contributor Disclosure Requirements Are Constitutional.

In addition to attacking the content of contributor disclosures to IEOs, Plaintiffs also claim that Ballot Measure 2's requirement that contributors to IEOs must themselves report the "true source" of their contribution of $2,000 or more within 24 hours is unconstitutional.[93] Plaintiffs assert that this new requirement for contributors is overly burdensome, duplicative, and over-inclusive.[94] Again, Plaintiffs miss the mark.

As this Court previously found, "the State has a sufficiently important governmental interest in providing voters with information related to the source of funds received by independent expenditure entities,"[95] because "the State has an important governmental interest in deterring the appearance of and actual corruption in elections."[96] And, as was the case when they requested a preliminary injunction,[97] Plaintiffs still have not presented evidence showing a widespread compliance burden that would be required to succeed in

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92 *See* Doc. 56 at 6 ("'Sunlight,' the Supreme Court has recognized, is 'the best of disinfectants' in elections." (quotations omitted)).

93 *See* Doc. 40 at ¶¶ 85-91.

94 *Id.*

95 *See* Doc. 48 at 11.

96 *See id.* at 12 n.42.

97 *See id.* at 14-15.

this facial challenge.[98]

Indeed, the Ninth Circuit recognized that the contributor reporting requirement "works in concert with the recipient [IEOs]' disclosures to [APOC], helping to ensure that the information received by voters is reliable and accurate."[99] And the Court of Appeals explained Plaintiffs' facial challenge failed because courts "cannot consider 'hypothetical' or 'imaginary' cases to sustain a facial challenge."[100] Even the dissent recognized that contributor disclosure requirements "may as a general matter increase the accuracy of information."[101]

Moreover, the U.S. Supreme Court has consistently recognized that the government has an interest in requiring disclosure of contributions.[102] After all, in *Buckley*, the Court

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98 *See* Exhibit C at 1-4 *to* Gottstein Aff.; *id.* at 8-15 *to* Gottstein Aff. (providing a step-by-step process for contributors unfamiliar with myAlaska); Exhibit D at 9-10 *to* Gottstein Aff.; Exhibit F at 5, 9-10, 17-18 *to* Gottstein Aff.; Exhibit G at 24 *to* Gottstein Aff.

99 *See* Doc. 56 at 17.

100 *See id.* at 19-20.

101 *See* Doc. 56 at 47 n.8.

102 *See Citizens United*, 558 U.S. at 369 ("[T]he public has an interest in knowing who is speaking about a candidate shortly before an election."); *id.* at 371 ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of . . . entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *McConnell*, 540 U.S. at 196 ("[I]mportant state interests . . . — providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions — apply [to the law's] . . . disclosure requirements[.]"); *Buckley*, 424 U.S. at 66 ("[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[.]" (footnote omitted) (quotation omitted)); *id.* at 68 ("[D]isclosure requirements, as a general matter, directly serve substantial governmental interests."); *see also SpeechNow.org*, 599 F.3d at 696 ("The Supreme Court has consistently upheld organizational and reporting requirements against

upheld disclosure of all contributions to political committees exceeding $100, which is just 5% of Ballot Measure 2's threshold.[103] And more recently, in *Gaspee Project*, the First Circuit concluded that a $1,000 threshold for disclosing contributions to certain organizations was narrowly tailored to the government's informational interest.[104] The Ninth Circuit has also repeatedly upheld campaign disclosure requirements for entities who make more than $1,000 in independent expenditures.[105] Given these holdings, there should be no question that the $2,000 "line" established by Ballot Measure 2 is both sufficiently related and narrowly tailored to the State's informational interest in contributors to IEOs.[106] This is especially true considering the State's prior $50, $250, and $500 reporting thresholds in other contexts, which include a contributor reporting requirement at one quarter the contribution amount set by Ballot Measure 2.[107]

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facial challenges."); *see id.* at 698 (upholding the application of political committee disclosure requirements to entities making independent expenditures because "the public has an interest in knowing who is speaking about a candidate and who is funding that speech").

[103] *See Buckley*, 424 U.S. at 82-84.

[104] *See Gaspee Project*, 13 F.4th at 88-90, *cert. denied*, 2022 U.S. LEXIS 2127. Likewise, the first appellate decision that opened the door to unlimited contributions to SuperPACs unanimously upheld the reporting requirements applicable to such political committees. *See SpeechNow.org*, 599 F.3d at 696-99. All federal political committees must disclose the identity of their contributors who give more than $200 within a calendar year. *See* 52 U.S.C. § 30104(b)(3).

[105] *See Brumsickle*, 624 F.3d at 1012-14; *Yamada*, 786 F.3d at 1194-1201.

[106] *See Buckley*, 424 U.S. at 83 (noting that any disclosure "line is necessarily a judgmental decision, best left in the context of this complex legislation to . . . discretion"); *see also Gaspee Project*, 13 F.4th at 88-90.

[107] *See* AS 15.13.040(e)(5)(A) (requiring IEOs to report all contributions of $50 or more); AS 15.13.040(k) (requiring those who contribute $500 or more to ballot initiative groups to independently report their contributions); AS 15.13.110(b) (requiring IEOs to

The State also has an interest in "prompt disclosure" for contributions to IEOs,[108] and has previously required reporting within 24 hours.[109] After all, quick disclosures are more informative and useful to voters than post hoc reporting,[110] and help enable voters to "react to th[at] speech"[111] and "make informed choices in the political marketplace."[112]

With this framework in mind, it is clear that Ballot Measure 2's provisions requiring large IEO donors to report their contributions within 24 hours, rather than relying solely on disclosure by the IEOs, also satisfy exacting scrutiny. This requirement is neither overly burdensome nor unnecessarily duplicative because a contributor will *always* be in a better position than an IEO to both identify the true source of its own contribution *and* quickly report it.[113] It allows IEOs to rely on self-reported true source filings.[114] And it is also

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report all contributions of $250 or more within 24 hours if they are made "within nine days of the election"); AS 15.13.110(h) (same).

108 *See Citizens United*, 558 U.S. at 370 ("With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.").

109 *See* AS 15.13.110(b), (h).

110 *See Yes on Prop B v. City & Cnty. of San Francisco*, 440 F. Supp. 3d 1049, 1059 (N.D. Cal. 2020).

111 *See Citizens United*, 558 U.S. at 371.

112 *See id.* at 367 (quoting *McConnell*, 540 U.S. at 197).

113 *See* AS 15.13.400(19); *See* Exhibit C at 3 *to* Gottstein Aff.; *see also* Exhibit F at 12 *to* Gottstein Aff.

114 *See* Exhibit C at 3 ("In reality, it can be helpful and more efficient that a contributor first reports. This is because the contributor knows information about the source of funds better than I do, and I can use their Form 15-5 information to accurately report their contribution on our required reports. It means that I do not have to go searching for their information or reach out to them for clarification, since I can glean the information from their APOC filing.") *to* Gottstein Aff.; *see also* Exhibit F at 12 *to* Gottstein Aff.

reasonable to place this modest obligation on major donors to IEOs, who will already have been told of the need to provide real-time information about the true source of any contribution to a receiving IEO.[115] Having an independent reporting obligation helps: (1) ensure accurate and timely reporting;[116] (2) insulate IEOs from reporting inaccurate information outside of their control;[117] and (3) protect unsuspecting donors from unwanted public disclosures.[118]

Plaintiffs' claim that Ballot Measure 2's contributor disclosure requirements violate the First Amendment has no basis in law. For starters, Plaintiffs have previously taken the Supreme Court's "prophylaxis-upon-prophylaxis" comment entirely out of context.[119]

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115 *See* AS 15.13.110(k) (reporting requirement for IEOs); *see also* AS 15.13.074(i) (requiring certain IEOs to inform would-be donors of their intent before either soliciting or accepting any contributions).

116 That is part of why Ballot Measure 2's maximum civil penalties for violations by both contributors and IEOs are not identical, which reflect the inherent disparity in information between the two sides of these contributions. *Compare* AS 15.13.390(a)(2)-(3) (establishing penalties for contributors to IEOs), *with* AS 15.13.390(a)(1) (outlining penalties for IEOs). If anything, Ballot Measure 2's provisions could be seen as protecting IEOs from unknowingly reporting false information about the true source of contributions received by correctly placing the burden of disclosing the true source of a contribution on the contributor itself. *See* AS 15.13.390(a). Placing the responsibility of reporting on the contributor is also important when some IEOs (like FLF) serve as both an IEO *and* as a contributor. *See* Doc. 33-1 at ¶ 12 (showing that FLF made $23,000 in contributions to another IEO, the Council on Good Government, in 2020). It is also telling that Plaintiffs have failed to allege any unconstitutional burden about Alaska's existing reporting requirements for contributors to ballot initiative groups. *See* AS 15.13.040(k).

117 *Compare* AS 15.13.390(a)(2)-(3) (establishing penalties for contributors to IEOs), *with* AS 15.13.390(a)(1) (outlining penalties for IEOs).

118 Because of the civil penalties for contributors to IEOs, donors should take more seriously their obligation to investigate and confirm the true sources of funds. *See* AS 15.13.390(a)(2)-(3).

119 *See* Doc. 40 at ¶ 87 (citing *McCutcheon*, 572 U.S. at 221).

Instead of relating to disclosure requirements, that language concerned a regime which imposed two distinct, layered contribution *limits*, neither of which are at issue here.[120] There is no constitutional prohibition against "double reporting" in the election context as Plaintiffs suggest.[121] Requiring a major contributor to timely disclose where the funds for their own contribution to an IEO came from is not comparable to the double "prophylaxis" at issue in *McCutcheon v. FEC*, which involved an aggregate annual contribution limit on top of individual contribution limits to particular federal candidates.

Additionally, Plaintiffs' suggestion that requiring contributors to timely report donations to IEOs who "are not actively engaged in independent expenditures" violates the First Amendment is wrong.[122] Ballot Measure 2's "previous election cycle" lookback period not only provides a bright line to would-be contributors,[123] but also prevents an IEO from taking on massive amounts of debt during a campaign, only to have those debts conveniently paid for after the election in order to avoid disclosures during a campaign. IEOs exist to influence the outcome of elections;[124] all contributions to IEOs — even if made before, during, or after an election cycle — can therefore reasonably be expected to be used for such a purpose.[125]

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120 *See McCutcheon*, 572 U.S. at 221 (quoting *FEC v. Wisconsin Right to Life*, 551 U.S. 449, 479 (2007)).

121 *See* Doc. 40 at ¶ 89.

122 *See id.* at ¶ 91.

123 *See* AS 15.13.040(r).

124 *See* AS 15.13.400(9)(B), (14).

125 *See* 2 ACC 50.384(b)(2) (outlining what an IEO can do with its remaining funds if it does not intend to remain active); *see also* 2 AAC 50.384(c) (explaining that an IEO "that

Because Ballot Measure 2 has a higher disclosure threshold for contributions to IEOs than other regimes already found to satisfy exacting scrutiny, and places reasonable obligations on major contributors to timely report their contributions to IEOs, Ballot Measure 2's contributor disclosure provisions are both substantially related and narrowly tailored to the State's and electorate's informational interests.

These provisions do not violate the First Amendment.

D. Alaska's On-Ad Disclaimers Are Constitutional.

Plaintiffs also claim that Alaska's on-ad disclaimer requirements, which were modified in part by Ballot Measure 2, are also unconstitutional.[126] Specifically, Plaintiffs argue that AS 15.13.090 — which requires that on-ad disclaimers include: (1) who an ad is "paid for by";[127] (2) an IEO's three largest contributors;[128] and (3) a factual statement for when a majority of an IEO's funds have come from outside Alaska[129] — amounts to improperly compelled speech.[130] Again, Plaintiffs are wrong. Alaska's on-ad disclaimer requirements are constitutional.

In *Citizens United*, on an 8-1 vote,[131] the U.S. Supreme Court rejected an entity's

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does not plan to remain active" must disburse "all campaign money" within a set period of time). In other words, all IEOs must either "re-register annually" or disburse their funds to qualifying entities within a relatively short period of time. *See* 2 AAC 50.384(b)-(c).

126 *See* Doc. 40 at ¶¶ 92-99.

127 *See* AS 15.13.090(a).

128 *See* AS 15.13.090(a)(2)(C).

129 *See* AS 15.13.090(g).

130 *See* Doc. 40 at ¶¶ 92-99.

131 *See Citizens United*, 558 U.S. at 317 (explaining that eight Justices agreed with Part IV of the opinion, which pertained to disclaimer and disclosure requirements); *see also*

First Amendment claim that it should not be "forc[ed] . . . to devote [time and space in] . . . each advertisement to [a] . . . disclaimer."[132] As the *Citizens United* Court explained, "[w]ith the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters."[133] There, the Court held that even a four-second audio disclaimer in a ten-second ad did not violate the First Amendment under exacting scrutiny, even when the ad appeared to promote a movie about a candidate rather than directly support or oppose the candidate.[134]

If an audio disclaimer can take up to 40% of an ad's running time without violating the First Amendment,[135] then Alaska's disclaimer requirements certainly satisfy exacting scrutiny against Plaintiffs' facial challenge.[136] For example, in *Gaspee Project*, the First Circuit recently upheld a top-*five* contributor disclaimer regime.[137] If a top-five contributor disclaimer does not violate the First Amendment — and the Supreme Court declined to say otherwise[138] — then neither should Alaska's less onerous top-three contributor regime.[139]

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id. at 366-71; *id.* at 395-96 (Stevens, J., concurring in part); *id.* at 480-85 (Thomas, J., dissenting in part).

132 *Id.* at 368.

133 *Id.* at 370.

134 *See id.* at 366-71.

135 *See id.*

136 *See* AS 15.13.090.

137 *See* 13 F.4th at 91-93.

138 *See Gaspee Project*, 2022 U.S. LEXIS 2127 (Apr. 25, 2022) (denying cert).

139 *See* AS 15.13.090(a)(2)(C).

The First Circuit's decision is entirely consistent with how other courts, including in this circuit, have considered similar challenges to campaign disclaimer requirements since *Citizens United*.[140]

Ballot Measure 2's minor modifications to AS 15.13.090 do not render Alaska's campaign disclaimer laws unconstitutional. All Ballot Measure 2 did was clarify that "broadcast, cable, satellite, Internet[,] or other digital communication[s]" must now "remain onscreen throughout the entirety of the communication" just like print or otherwise "static" ads.[141] Ballot Measure 2 also added a new disclaimer for any IEO that "receive[s] more than 50 percent of its . . . contributions from . . . outside Alaska."[142] This new disclaimer is reasonable given Alaska's extensive history of outside influence in elections and the public's resulting interest in such information,[143] as it "helps voters to define more

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140 *See Yamada*, 786 F.3d at 1202 (concluding that disclaimer requirements for election advertisements "impose[] only a modest burden" on the First Amendment); *Yes on Prop B*, 440 F. Supp. 3d at 1059-62 (rejecting a First Amendment facial challenge to disclaimer requirements based on *Citizens United*); *Mass. Fiscal All. v. Sullivan*, No. 18-12119-RWZ, 2018 U.S. Dist. LEXIS 189403 at *7-*9 (D. Mass. Nov. 6, 2018) (upholding a top-five contributor disclaimer requirement).

141 *See* AS 15.13.090(c).

142 *See* AS 15.13.400(15); *see also* AS 15.13.090(g).

143 *See Thompson v. Dauphinais*, 217 F. Supp. 3d 1023, 1029 (D. Alaska 2016), *rev'd in part*, *Thompson v. Hebdon*, 140 S. Ct. 348 (2019) ("[S]everal factors . . . make Alaska highly, if not uniquely, vulnerable to corruption in politics and government. . . . A . . . factor is Alaska's almost complete reliance on one industry for a majority of its revenues."); *see also id.* at 1039 ("[T]he unique combination of Alaska's small population, geographic isolation, and great natural resources make it extremely dependent on outside industry and interests. . . . [S]uch dependency makes Alaska especially vulnerable to exploitation by outside industry and interests[.]"). Although the Ninth Circuit has since struck down Alaska's limits on out-of-state contributions, the district court's underlying factual findings are still relevant to provide context for Ballot Measure 2's new on-ad disclaimer. *See*

of the [IEO's] constituencies."[144] Both contemporaneous disclosures modified by Ballot Measure 2 "serves informational functions" that do not violate the First Amendment,[145] and allow voters to "react to the speech" and "make informed choices in the political marketplace" without having to be familiar with researching online disclosure reports.[146] And, for a facial challenge, these added disclosures do not take up an inordinate amount of air or screen time.[147]

Indeed, as this Court previously found, "providing voters with information related to the funding of political advertisements by" IEOs is a sufficiently important governmental interest and is narrowly tailored to the required disclaimers.[148] This is because of the value in "prompt disclosure," and "the modest nature of the burden imposed by the on-ad top-three donor disclaimer requirement."[149] This Court also found that the

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Thompson v. Hebdon, 909 F.3d 1027, 1031 (9th Cir. 2018); *see also Hebdon*, 7 F.4th at 824-27.

144 *Buckley*, 424 U.S. at 81; *see also* Exhibit C at 4 *to* Gottstein Aff.; Exhibit D at 6-8 *to* Gottstein Aff.; Exhibit G at 13-14, 16-17.

145 *Buckley*, 424 U.S. at 83.

146 *See Citizens United*, 558 U.S. at 367, 371 (quoting *McConnell*, 540 U.S. at 197); *see also McConnell*, 540 U.S. at 258-59 (Scalia, J., concurring in part and dissenting in part) ("The 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."); *Yes on Prop B*, 440 F. Supp. 3d at 1060 ("There is simply no reason to presume [that] . . . voters will misunderstand the import of the very disclaimers they voted to require.").

147 *See* Exhibit C at 4 *to* Gottstein Aff.; Exhibit D at 6-8 *to* Gottstein Aff.; Exhibit G at 13-14, 16-17.

148 *See* Doc. 48 at 25-36.

149 *See id.* at 30.

out-of-state funding disclaimers requirement satisfied exacting scrutiny because it is narrowly tailored to the State's informational interest.[150] And the Ninth Circuit, consistent with *No on E v. Chiu*, were "not persuaded that a law requiring [already-disclosed] . . . donors to be named in an on-ad disclaimer is insufficiently tailored."[151] In fact, even the dissent agreed "that Plaintiffs failed to show they were likely to succeed in establishing that Ballot Measure 2's on-ad disclaimers fail under exacting scrutiny."[152]

Concluding that AS 15.13.090 does not violate the First Amendment would be entirely consistent with prior decisions from this circuit. In *Human Life of Washington, Inc. v. Brumsickle*, the Ninth Circuit upheld on-ad disclaimer requirements for independent expenditure entities seeking to influence the outcome of ballot initiatives.[153] This principle was more recently affirmed in *Yamada v. Snipes*, where the Ninth Circuit upheld on-ad disclaimer requirements for certain entities making independent expenditures to influence the outcome of elections.[154] In sum, on-ad disclaimers for election communications — like the ones required by AS 15.13.090 — are constitutional.

Plaintiffs' claim that Alaska's campaign disclaimer requirements violate the First Amendment is wrong for at least four reasons. First, the *Citizens United* Court made it

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150 *See id.* at 30-33.

151 *See* Doc. 56 at 25.

152 *See id.* at 26.

153 *See* 624 F.3d at 1017-19; *see also id.* at 1017 (recognizing that the Supreme Court in *Citizens United* "unreservedly affirmed the public's interest 'in knowing who is speaking about a candidate shortly before an election'" (quoting *Citizens United*, 558 U.S. at 369)).

154 *See* 786 F.3d at 1201-03.

clear that exacting scrutiny applies to required disclaimers in the context of political campaigns.[155] Cases that predate *Citizens United*, like *McIntyre v. Ohio Elections Commission*[156] and *ACLU of Nevada v. Heller*,[157] therefore need not be followed.[158]

Second, contrary to Plaintiffs' suggestion,[159] the Supreme Court has treated mandatory disclaimers in the election context differently. In the non-election context, the Court considered different (and less compelling) government interests that would have required disclaimers that were directly contradictory to the underlying purpose of the organizations.[160] But when the Court has looked at disclaimers in the election context, the

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[155] *Citizens United*, 558 U.S. at 366-67.

[156] *See generally* 514 U.S. 334 (1995). Although the *McIntyre* Court found it was "inconsistent with American ideals" to fine "an individual leafleteer," it did "not thereby hold that the State may not in other, larger circumstances require the speaker to disclose its interest by disclosing its identity." *See id.* at 358 (Ginsburg, J., concurring); *see also id.* (Ginsburg, J., concurring) ("In for a calf is not always in for a cow."). Paid advertisements — especially in the context of IEOs — are "other, larger circumstances" the *McIntyre* Court did not address.

[157] *See generally* 378 F.3d 979 (9th Cir. 2004).

[158] The situation presented here is also easily distinguishable from both of those cases. In both instances at issue was whether a citizen could engage in *de minimus* and unorganized anonymous political speech for or against initiatives. *McIntyre*, 514 U.S. at 337-38; *Heller*, 378 F.3d at 1000-02. Here, there are already minimum contribution and expenditure thresholds to protected limited and unsophisticated political speech from arguably burdensome requirements. *See* AS 15.13.110. IEOs, and major contributors to them, do not fall within *McIntyre*'s narrow category of protected political speech. Moreover, Ballot Measure 2 did not change Alaska's disclaimer and disclosure requirements for ballot initiatives. *See* AS 15.13.110(g).

[159] *See* Doc. 40 at ¶ 96.

[160] *See, e.g.*, *Nat'l Inst. of Fam. & Life Advocs. v. Becerra* (*NIFLA*), 138 S. Ct. 2361 (2018) (concluding that a state law requiring a pro-life organization to disclose ways to obtain an abortion violated the First Amendment); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557 (1995) (holding that the First Amendment's right to free association permits an organization to restrict who may participate in its parade). After

government's strong informational interest has been found to justify on-ad disclaimers, even when those disclaimers might dilute an IEO's stated goals.[161]

Third, Plaintiffs' attempt to equate *outright limitations* on out-of-state contributions with Ballot Measure 2's *conditional disclaimer* about such contributions should be rejected.[162] All of the cases previously cited by Plaintiffs concern unconstitutional limits or bans on IEOs or candidates actually receiving out-of-state contributions.[163] *None* of those cases apply to Ballot Measure 2's requirement for a factual, content-neutral disclaimer for IEOs that receive over 50% of their contributions from sources outside Alaska.[164] And Plaintiffs are free to add whatever information they like about the source of their funds or why those sources are honorable.[165] The required information is a fact Alaskans find useful in assessing messages influencing their vote, and is far less restrictive

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all, forcing a pro-life organization to provide information that is categorically opposed to its mission has little bearing on requiring a factual disclaimer about funding in election communications. *See generally NIFLA*, 138 S. Ct. 2361.

161 *See Citizens United*, 558 U.S. at 366-71; *McConnell*, 540 U.S. at 196-202; *Buckley*, 424 U.S. at 66-68; *see also Yes on Prop B*, 440 F. Supp. 3d at 1057 (distinguishing an election disclaimer from a commercial disclaimer at issue in *Am. Beverage Ass'n v. City & Cnty. of San Francisco*, 916 F.3d 749 (9th Cir. 2019) (en banc)).

162 *See* Doc. 40 at ¶ 95.

163 *See generally Hebdon*, 7 F.4th 811; *Landell v. Sorrell*, 382 F.3d 91 (2d Cir. 2002), *rev'd by Randall v. Sorrell*, 548 U.S. 230 (2006); *We the People PAC v. Bellows*, 519 F. Supp. 3d 13 (D. Me. 2021); *SD Voice v. Noem*, 380 F. Supp. 3d 939 (D. S.D. 2019).

164 AS 15.13.090(g).

165 *See Meese v. Keane*, 481 U.S. 465, 467-68, 480-82 (1987) (concluding that requiring that a foreign film on acid rain being labeled as "political propaganda" did not violate the First Amendment, noting that film producers are free to include additional information about themselves to their viewers).

than a limit or prohibition on out-of-state contributions.

Finally, Plaintiffs' last-ditch attempt to rely on as-applied facts in their facial challenge should be rejected.[166] Plaintiffs added new allegations of burden in their first amended complaint about on-ad disclaimers.[167] But even these allegations do not support a facial challenge to AS 15.13.090. Plaintiffs' assumption that the required disclaimers would be read at a glacial "two words per-second"[168] is not as fast as many people speak,[169] far slower than people can ordinarily comprehend,[170] and has absolutely no basis in law or fact.[171] Moreover, even if read at Plaintiffs' suggested "speed," federal election law would permit AS 15.13.090's on-ad disclaimers to take up to 60% of a 10-second ad.[172] Plaintiffs' suggestion that an election disclaimer cannot "take up more than 20% of any . . . ad,"[173]

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166 *See* Doc. 39 at 18 ("This is a facial challenge.").

167 *See* Doc. 40 at ¶¶ 64-82.

168 *See id.* at ¶ 66.

169 *See* Mark Liberman, *How fast do people talk in court?*, Language Log (Mar. 21, 2009), https://languagelog.ldc.upenn.edu/nll/?p=1255 (concluding that the average rate that attorneys spoke during depositions was 164 words per minute).

170 *See* Douglas Heingartner, *Now Hear This, Quickly*, NEW YORK TIMES (Oct. 2, 2003), https://www.nytimes.com/2003/10/02/technology/now-hear-this-quickly.html ("Scientists have long known that people can understand speech at a rate of up to 400 words a minute and beyond.").

171 *See* AS 15.13.090(d) (requiring disclaimers to "be read in a manner that is easily heard").

172 *See* FEC Advisory Opinion 2007-33 (July 29, 2008) (concluding that a 12-word spoken disclaimer is required for election advertisements, even for a ten second ad).

173 *See* Doc. 40 at ¶ 65.

which is a rule applied to commercial speech rather than election disclaimers,[174] is simply wrong.[175]

The First Amendment does not protect a "right" to conceal the sources of funding for campaign speech. Just because Families of the Last Frontier would prefer not to disclaim that it has actually received the vast majority of its funds from outside the Last Frontier in the past does not make Ballot Measure 2 unconstitutional.[176] The State has an informational interest in providing voters with "the information needed to hold corporations and elected officials accountable for their positions and supporters,"[177] which includes Ballot Measure 2's disclaimer for when a majority of an IEO's contributions come from people or entities who are not from Alaska.[178]

Ballot Measure 2's minor changes to Alaska's disclaimer requirements for IEOs

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174 *See Am. Bev. Ass'n*, 916 F.3d at 757-58 (holding that certain compelled commercial speech which required 20% of a product's advertising space violated the First Amendment).

175 *See Citizens United*, 558 U.S. at 366-71; *see also Yes on Prop B.*, 440 F. Supp. 3d at 1056-57 (rejecting an as-applied challenge to election disclaimers that took up more than 20% of advertisements).

176 *See* Doc. 40 at ¶ 45; *see also* Doc. 33-1 at ¶¶ 10-11, 14 (showing that over 99.5% of FLF's contributions in 2018, and over 96.5% of its contributions in 2019, consisted of "dark money" from outside Alaska). Indeed, FLF has "adopt[ed a] seductive name[]" to obscure its donors' true purposes and affiliations. *See Citizens Against Rent Control*, 454 U.S. at 298. It speaks volumes that FLF wants to "hid[e] behind [a] dubious and misleading name[]" by not having to disclose that it, in fact, received a majority of its contributions from "families" outside Alaska. *See McConnell*, 540 U.S. at 197 (quoting *McConnell*, 251 F. Supp. 2d at 237).

177 *See Citizens United*, 558 U.S. at 370.

178 *See* AS 15.13.090(g).

satisfy exacting scrutiny.[179]

V. CONCLUSION

Under the Constitution, the electorate is entitled to know who is influencing Alaska's elections. The voters passed Ballot Measure 2 to ensure they had this transparency. As stated in Ballot Measure 2 itself:

> The people of Alaska have the right to know in a timely manner the source, quantity, timing, and nature of resources used to influence candidate elections in Alaska. This right requires the prompt, accessible, comprehensible, and public disclosure of the true and original sources of funds used to influence these elections, and is essential to the rights of free speech, assembly, and petition guaranteed by the First Amendment to the United States Constitution and shall be construed broadly.[180]

Because Alaska's campaign disclosure and disclaimer requirements are constitutional, and Plaintiffs have not come close to meeting the high burden required for a facial challenge, this Court should GRANT ABE's motion for summary judgment.

CASHION GILMORE & LINDEMUTH
Attorneys for Intervenor-Defendant

DATED: April 10, 2026

/s/ Scott Kendall
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179 *See Citizens United*, 558 U.S. at 371 ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to reach to the speech . . . in a proper way.").

180 *See* Doc. 33-1 at 8.

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2026, a copy of the foregoing document was served via CM/ECF on all counsel of record.

By: */s/ Scott Kendall*

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

ROBERT GRIFFIN, et al., Plaintiffs, v. RICHARD STILLIE, JR., in his official capacity as chair of the Alaska Public Offices Commission, et al., Defendants, and ALASKANS FOR BETTER ELECTIONS, INC., Intervenor-Defendant.	Case No. 3:22-CV-00077-SLG **AFFIDAVIT OF SAMUEL G. GOTTSTEIN**

UNITED STATES DISTRICT COURT)
) ss.
DISTRICT OF ALASKA)

I, Samuel G. Gottstein, being first duly sworn and deposed, hereby state as follows:

1) I am counsel for the Intervenor-Defendant, Alaskans for Better Elections, Inc. ("ABE") in the above-captioned matter.

2) The following depositions took place for this case: (1) ABE's 30(b)(6) representative was deposed on September 25, 2025; (2) the Alaska Public Offices Commission's 30(b)(6) representative was deposed on October 6, 2025; (3) Art Hackney was deposed on October 20, 2025; (4) David Primo was deposed on October 22, 2025; (5) Robert Griffin was deposed on November 10, 2025; (6) Families of the Last Frontier's 30(b)(6) representative was deposed on November 10, 2025; (7) Alaska Free Market Coalition's 30(b)(6) representative was deposed on November 12, 2025; (8) Trevor Shaw was deposed on November 12, 2025; (9) Stanley Vezey was deposed on November 14, 2025; (10) Abby Wood was deposed on January 6, 2026; (11) Kimberly Hayes was deposed on January 7, 2026; and (12) John-Henry Heckendorn was deposed on January 9, 2026.

3) Attached as Exhibit A is a true and correct copy of the expert report by David M. Primo, Ph.D.

4) Attached as Exhibit B is a true and correct copy of the expert report by Arthur J. Hackney.

5) Attached as Exhibit C is a true and correct copy of the expert report by Kimberly A. Hays.

6) Attached as Exhibit D is a true and correct copy of the expert report by John-Henry Heckendorn.

7) Attached as Exhibit E is a true and correct copy of the expert report by Abby K. Wood, Ph.D.

8) Attached as Exhibit F is a true and correct copy of the condensed transcript of Kimberly Hays' deposition, which took place on January 7, 2026.

9) Attached as Exhibit G is a true and correct copy of the transcript of John-Henry Heckendorn's deposition, which took place on January 9, 2026.

FURTHER AFFIANT SAYETH NAUGHT.

Samuel G. Gottstein
Alaska Bar No. 1511099

SUBSCRIBED AND SWORN to before me this 10th day of April, 2026.

JENNIFER A. DITCHARO
NOTARY PUBLIC
STATE OF ALASKA
My Commission Expires April 5, 2029

Notary Public in and for Alaska

My Commission Expires: 4/5/29

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

ROBERT GRIFFIN, et al., Plaintiffs, v. RICHARD STILLIE, JR., in his official capacity as chair of the Alaska Public Offices Commission, et al., Defendants, and ALASKANS FOR BETTER ELECTIONS, INC., Intervenor-Defendant.	Case No. 3:22-CV-00077-SLG **[PROPOSED] ORDER GRANTING ALASKANS FOR BETTER ELECTIONS' MOTION FOR SUMMARY JUDGMENT**

THIS COURT, having considered Intervenor-Defendant Alaskans for Better Elections' Motion for Summary Judgment, and any opposition and reply thereto, hereby GRANTS the motion.

Dated _______________, 2026.

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Sharon L. Gleason
United States District Judge