

No. _____

IN THE
Supreme Court of the United States

RIO GRANDE FOUNDATION,

Petitioner

v.

MAGGIE TOULOUSE OLIVER,
in her official capacity as
New Mexico Secretary of State,

Respondent.

*On Petition for Writ of Certiorari to the United
States Court of Appeals for the Tenth Circuit*

Petition for a Writ of Certiorari

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Questions Presented

1. First Amendment exacting scrutiny requires a “substantial relation” between a campaign-finance disclosure regime and a sufficiently important governmental interest—namely, the informational interest in identifying those who support candidates for office. The question presented is whether New Mexico’s informational interest is sufficient under exacting scrutiny to justify applying its disclosure regime to issue advocacy organizations, like Petitioner, that engage in no express advocacy or its functional equivalent.

2. Under *Buckley v. Valeo*, campaign-finance disclosure requirements serve the government’s informational interest only when applied to organizations whose “major purpose” is the election of candidates, or—for issue-advocacy organizations that lack that major purpose—when those organizations make expenditures that expressly advocate the election or defeat of a candidate. The question is whether applying New Mexico’s disclosure regime to an organization that does not meet *Buckley*’s “major purpose” test and does not engage in express advocacy, like Petitioner, constitutes narrow tailoring under exacting scrutiny absent donor earmarking.

3. This Court has long held that laws that burden political speech are subject to strict scrutiny, and, similarly, that content-based speech regulations are subject to strict scrutiny. The question is whether disclosure regimes applied to issue advocacy organizations, like Petitioner, that engage exclusively in political speech—without express advocacy or its functional equivalent—must satisfy strict scrutiny rather than exacting scrutiny.

Parties to the Proceeding

Petitioner Rio Grande Foundation (RGF) was Plaintiff-Appellant in the court below.

Respondent Maggie Toulouse Oliver, New Mexico Secretary of State, was Defendant-Appellee in the court below.

Rule 29.6 Statement

RGF does not have a parent corporation. It is not publicly held. And no publicly held corporation owns 10% or more of its stock.

Statement of Related Proceedings

The following proceedings are directly related to this case within the meaning of Rule 14:

- *Rio Grande Foundation v. Oliver*, No. 24-2070, United States Court of Appeals for the Tenth Circuit. Judgment entered on September 9, 2025. A timely petition for rehearing en banc was denied on December 30, 2025;
- *Rio Grande Foundation v. Oliver*, No. 19-cv-1174, United States District Court for the District of New Mexico. Judgment entered on March 29, 2024.

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Introduction

New Mexico compels an issue advocacy organization to disclose its donors—not because it supports any candidate, not because it engages in express advocacy, but simply because it mentioned a candidate’s name within 60 days of an election. That is not campaign finance regulation. It is the suppression of political speech.

“The ‘government may regulate in the [First Amendment] area only with narrow specificity,’ and compelled disclosure regimes are no exception.” *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 610 (2021) (“*AFPF*”) (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)) (brackets in original). As Judge Eid recognized in dissent, New Mexico’s disclosure requirements “blatantly contradict[] this directive: [The law] does not comport with New Mexico’s interest in informing the electorate; it unnecessarily burdens core political speech; and it disproportionately harms those who hold unpopular beliefs.” App. 54a (Eid, J., dissenting).

This Court should grant this petition to resolve three related questions: (1) whether the government’s informational interest is sufficient under exacting scrutiny to justify applying a campaign-finance disclosure regime to an organization that engages in no express advocacy or its functional equivalent; (2) whether such a regime can satisfy narrow tailoring absent donor earmarking; and (3) whether a disclosure regime applied exclusively to political speech—based solely on whether it mentions a candidate—must satisfy strict scrutiny rather than exacting scrutiny.

Without this Court’s intervention, state donor disclosure regimes will continue to encroach upon issue advocacy, forcing organizations legally prohibited from engaging in electoral politics to expose their donors to threats, harassment, and retaliation by those with opposing viewpoints. Time and experience have proven over and again that “disclosure can be used as a weapon to silence voices.” Hon. Neil Gorsuch, Transcript of Confirmation Hearing, U.S. Senate Comm. on the Judiciary (Mar. 20-23, 2017).¹ In a time of intensifying political polarization—where a contributor’s home address and other personal information can be retrieved in seconds by any ideological opponent with an internet connection—a mere informational interest in knowing who funds issue advocacy cannot justify the chilling effect on those who would speak or the exposure to threats, harassment, or retaliation against those who dare to speak.

This Court should grant the petition.

Opinions Below

The Tenth Circuit’s order denying Petitioner’s request for rehearing en banc (App. 1a–9a) is reported at 162 F.4th 1251. The Tenth Circuit’s decision (App. 10a–54a) is reported at 154 F.4th 1213. The district court’s decision (App. 55a–106a) is reported at 727 F. Supp. 3d 988.

¹ Available at <https://www.congress.gov/115/chrg/CHRG-115shrg28638/CHRG-115shrg28638.htm>.

Jurisdiction

The district court had jurisdiction under 28 U.S.C. § 1331 because the claim presents a federal question arising under the First Amendment of the U.S. Constitution and 42 U.S.C. § 1983.

On March 29, 2024, the district court issued an opinion granting Defendant-Appellee's motion for summary judgment and denying Plaintiff-Appellant's summary judgment motion. App. 55a.

The Tenth Circuit had jurisdiction over the appeal under 28 U.S.C. § 1291 because the district court's judgment was a final decision.

On September 9, 2025, the Tenth Circuit entered its judgment, App. 10a, and on December 30, 2025, it denied Petitioner's timely-filed petition for rehearing en banc, App. 1a.

On March 17, 2026, Petitioner filed an application to extend time to file its petition for a writ of certiorari, and on March 24, 2026, that application was granted extending the time to file until April 29, 2026.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

Provisions Involved

The First Amendment provides in relevant part that "Congress shall make no law . . . abridging the freedom of speech."

42 U.S.C. § 1983, states in relevant part:

Every person who, under color of any statute . . . of any State . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights,

privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law

The law at issue, the New Mexico Campaign Reporting Act, N.M. Stat. Ann. § 1-19-25 et seq., provides in relevant part:

A. A person who makes an independent expenditure . . . shall file a report with the secretary of state

B. The report required by Subsection A of this section shall state:

(1) the name and address of the person who made the independent expenditure;

(2) the name and address of the person to whom the independent expenditure was made and the amount, date and purpose of the independent expenditure . . . ; and

(3) the source of the contributions used to make the independent expenditure as provided in Subsections C and D of this section.

C. A person who makes independent expenditures required to be reported under this section in an amount totaling three thousand dollars (\$3,000) or less in a nonstatewide election or nine thousand dollars (\$9,000) or less in a statewide election shall report the name and address of each person who has made contributions of more than a total of two hundred dollars (\$200) in the election cycle that were earmarked or made in response to a solicitation to fund independent expenditures and shall report the amount of each such contribution made by that person.

D. A person who makes independent expenditures required to be reported under this section in an amount totaling more than three thousand dollars (\$3,000) in a nonstatewide election or nine thousand dollars (\$9,000) in a statewide election, in addition to reporting the information specified in Subsection C of this section, shall either:

(1) if the expenditures were made exclusively from a segregated bank account consisting only of funds contributed to the account by individuals to be used for making independent expenditures, report the name and address of, and amount of each contribution made by, each contributor who contributed more than two hundred dollars (\$200) to that account in the election cycle; or

(2) if the expenditures were made in whole or part from funds other than those described in Paragraph (1) of this subsection, report the name and address of, and amount of each contribution made by, each contributor who contributed more than a total of five thousand dollars (\$5,000) during the election cycle to the person making the expenditures; provided, however, that a contribution is exempt from reporting pursuant to this paragraph if the contributor requested in writing that the contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee or political committee.

N.M. Stat. Ann. § 1-19-27.3.

“independent expenditure” means an expenditure that is:

- (1) made by a person other than a candidate or campaign committee;
- (2) not a coordinated expenditure as defined in the Campaign Reporting Act; and
- (3) made to pay for an advertisement that:
 - (a) expressly advocates the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot question;
 - (b) is susceptible to no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate or ballot question; or
 - (c) refers to a clearly identified candidate or ballot question and is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election at which the candidate or ballot question is on the ballot;

N.M. Stat. Ann. § 1-19-26(Q).

Statement of the Case

A. New Mexico requires donor disclosure for ads that mention a candidate or ballot question near an election.

The New Mexico Campaign Reporting Act (“the Act”) requires any person making independent expenditures that exceed \$1,000 in a non-statewide

election or \$3,000 in a statewide election to report the name and address of donors who funded those expenditures. N.M. Stat. Ann. §§ 1-19-27.3(A)(1), (B).

The Act defines an “independent expenditure” as a payment made by someone other than a candidate or campaign committee, not coordinated with any campaign, to pay for an advertisement that: (a) expressly advocates the election or defeat of a clearly identified candidate or ballot question; (b) is susceptible to no other reasonable interpretation than as an appeal to vote for or against a candidate or ballot question; or (c) merely *refers* to a clearly identified candidate or ballot question and is disseminated within thirty days before a primary or sixty days before a general election. N.M. Stat. Ann. § 1-19-26(Q) (emphasis added). This petition concerns independent expenditures regulated by subsection (c), which captures speech that neither expressly advocates nor is the functional equivalent of express advocacy. App. 20a.

Specifically, the Act requires disclosure of: (1) donors who contributed more than \$200 and earmarked their contributions for independent expenditures, N.M. Stat. Ann. §§ 1-19-27.3(C), or (2) any donor who contributed more than \$5,000 during the election cycle—a two year period—unless the donor affirmatively opted out of having their contribution used for independent expenditures, N.M. Stat. Ann. § 1-19-27.3(D).

All reports are posted publicly on the Secretary of State’s website. N.M. Stat. Ann. § 1-19-32(c). Violations are punishable by up to one year in prison, a \$1,000 fine, or both, N.M. Stat. Ann. § 1-19-36, and

civil penalties of up to \$20,000, N.M. Stat. Ann. § 1-19-34.6(B).

B. Petitioner Rio Grande Foundation sought to mail a legislative scorecard that mentioned candidates but did not advocate for or against their election.

Petitioner Rio Grande Foundation (“RGF”) is a New Mexico 501(c)(3) nonprofit “issue advocacy” group “[d]edicated to increasing liberty and prosperity for all of New Mexico’s citizens.” App. 61a. As a 501(c)(3), RGF is legally prohibited from participating in or intervening in any political campaign. 26 U.S.C. § 501(c)(3).

RGF publishes a “Freedom Index” that tracks legislators’ floor votes on bills that are important to RGF. App. 61a. The Freedom Index is “a scorecard about specific legislators’ votes, mentions incumbent legislators by name, but does not exhort the public to vote for or against a specific candidate.” App. 76a. The parties agree it is not express advocacy or its functional equivalent. App. 30a.

RGF sought to mail the Freedom Index—which would have named incumbent legislators and provided information on the legislators’ votes with RGF’s evaluation score—to thousands of New Mexico voters within 60 days of the November 2020 general election. App. 16a. RGF did not mail out the Freedom Index because that would have triggered the Act’s donor disclosure requirements. App. 16a.

RGF intends to engage in substantially similar issue advocacy that may fall within 60 days of future New Mexico elections but refrains from doing so because of the Act’s donor disclosure requirements.

App. 62a. RGF’s donors have expressed concern that disclosure would subject them to retaliation and harassment, and that several would stop contributing to RGF as a result. App. 17a, 95a.

C. Procedural History.

RGF and the Illinois Opportunity Project—later dismissed from the case—filed suit in December 2019, challenging the Act’s disclosure and disclaimer provisions as violations of the First and Fourteenth Amendments. App. 64a–65a.

The district court dismissed for lack of standing without reaching the merits. App. 66a. On appeal, the Tenth Circuit reversed as to the disclosure challenge, upheld the dismissal on standing as to the disclaimer challenge, and remanded to the district court. App. 66a. On remand, the district court upheld the disclosure law on the merits. App. 11a.

A divided Tenth Circuit panel affirmed. App. 11a, 40a.

Judge Hartz concurred only because he believed the panel was bound by controlling precedent. He wrote separately to express his discomfort with that precedent and his view that the disclosure requirements for expenditures in support of or opposed to ballot initiatives are “not only unjustified but are harmful to the public interest.” App. 42a. Judge Hartz expressed his belief that the American people have the discernment to judge a political argument on its merits without knowing its author, while, at the same time, properly weighing the anonymity of the argument in their analysis. App. 42a–43a.

Judge Eid dissented. App. 44a. She concluded that New Mexico’s donor disclosure requirement fails the tailoring analysis of exacting scrutiny because the law: “unnecessarily burdens core political speech, ignores serious concerns of retaliation against donors, and disproportionately harms those who hold unpopular beliefs.” App. 44a. Judge Eid wrote the donor disclosure law “far exceeds the bounds of permissible First Amendment regulation and overlooks less restrictive alternatives for furthering the government’s interest in informing the electorate.” App. 44a–45a.

Judge Eid explained that donor disclosure laws “threaten First Amendment freedoms in several ways. To begin, they decrease the efficacy of advocacy by deterring the formation of groups. They endanger dissenting opinions. And in some cases, they lead to significant retaliation against donors—including economic reprisal, loss of employment, and threats of physical violence or death.” App. 45a (citing *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958); *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 481–82 (2010) (Thomas, J., concurring in part and dissenting in part)). “These real-world effects undoubtedly chill speech by disincentivizing political activity that would trigger disclosure requirements.” App. 46a.

Then Judge Eid explained why New Mexico’s donor disclosure law was unconstitutionally tailored. After recognizing that “government regulation of First Amendment rights must be ‘proportion[ate] to the interest served,’” App. 49a (quoting *AFPP*, 594 U.S. at 609) (alteration in original), Judge Eid concluded that “there is a ‘dramatic mismatch’ between the

informational interest and ‘the disclosure regime that [New Mexico] has implemented in service of that end.’” App. 50a (quoting *AFPP*, 594 U.S. at 612) (alteration in original).

She explained that the disclosure law “does not provide voters with quality information about who is commenting on a candidate or ballot question during election season. [And it] applies even to general-fund donors—many of whom support the totality of [RGF’s] activities but may not endorse a specific advertisement.” App. 50a (internal quotation marks omitted). Even so, the disclosure law “subjects these donors to the same disclosure requirements as those who directly fund a specific advertisement. And because the [law] draws no distinctions, the electorate has no way to differentiate between general and specific donors. This result does not comport with New Mexico’s interest in informing the electorate.” App. 50a.

Judge Eid elucidated that “New Mexico could have outlined a special earmarking system for those advertisements in the [law].” App. 52a. This is proper tailoring because “[a]n earmarking system directly links speaker to content, ensuring that voters truly understand the source of election-related content.” (internal quotation marks omitted). But “New Mexico does not explain why this alternative—which not only burdens less speech, but also better serves the state’s informational interest—is beyond its reach.” App. 52a (internal quotation marks and citation omitted).

New Mexico’s opt-out system for general fund donors, *see* N.M. Stat. Ann. § 1-19-27.3(D)(2), is insufficient because “donors may not understand the need to opt out of advertisements they do not

recognize as advocacy.” App. 52a–53a. Because New Mexico’s law “captures advertisements that present competing but reasonable interpretations and have a more subtle political purpose,” App. 53a (internal quotation marks omitted), it creates a “cloud of uncertainty—which covers a significant amount of speech—is not the ‘[p]recision of regulation’ the First Amendment requires.” App. 53a (quoting *NAACP v. Button*, 371 U.S. at 438).

Even though “the monetary thresholds and timing requirements tighten the scope” of New Mexico’s donor disclosure law, they do not justify the state’s need for the disclosure regime when a less burdensome earmarking system was available.” App. 53a. Accordingly, in Judge Eid’s view, New Mexico’s donor disclosure law failed exacting scrutiny. App. 54a.

The Tenth Circuit denied Petitioner’s petition for a rehearing en banc. App. 2a.

Judge Eid, joined by Judge Tymkovich, filed a dissenting opinion. App. 3a. In it, Judge Eid extolled the Nation’s history and tradition of anonymous speech and explained its value, “particularly [for] speech by those with unpopular beliefs.” App. 3a–4a. Judge Eid then explained the burden that New Mexico’s donor disclosure law placed on Petitioner and reiterated her argument that the law failed exacting scrutiny’s tailoring requirements. App. 5a. In her view, “allowing [New Mexico’s] regulatory scheme to survive exacting scrutiny because the state made some effort at tailoring is flatly inconsistent with [the circuit court’s] responsibility under *[AFPP]*.” App. 6a (internal quotation marks omitted).

This petition followed.

Reasons for Granting the Writ

I. There is no government informational interest to justify donor disclosure for pure issue advocacy.

Campaign finance disclosure regimes serve the government's "informational interest" by "increase[ing] the fund of information concerning those who support the candidates," and "help[ing] define more of the candidates' constituencies." *Buckley v. Valeo*, 424 U.S. 1, 81 (1976) (per curiam). But the governmental interest in disclosure regimes is candidate focused: preventing corruption or its appearance, preventing campaign contribution limit circumvention, and gaining information on who supports the candidates because this "alert[s] the voter to the interests to which a candidate is most likely to be responsive." *Id.* at 66–67. Disclosure of donors to issue groups does not serve any of these interests.

New Mexico cannot declare a governmental interest by "fiat." *Yellowbear v. Lampert*, 741 F.3d 48, 59 (10th Cir. 2014) (Gorsuch, J.). Information about non-candidate associations is not a government interest. The only exception is when disclosure regimes apply to "groups engaged purely in issue discussion" when they "make expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate." *Buckley*, 424 U.S. at 79–80. Otherwise, "the reach" of the disclosure law would be "impermissibly broad" because "the relation of the information sought" from issue advocacy groups that do not have "the major

purpose” of nominating or electing candidates “may be too remote” from the government’s “informational interest.” *Id.*

Indeed, *Buckley* held that disclosure laws for issue advocacy groups should “not reach all partisan discussion,” but “only [] disclosure of those expenditures that expressly advocate a particular election result” to serve the government’s “informational interest” of “shed[ding] the light of publicity on spending that is unambiguously campaign related.” *Id.* at 80–81.

This is the origin of issue speech regulation. It reasonably expanded to “the functional equivalent” of express advocacy. *See Citizens United*, 558 U.S. at 324–25. But New Mexico has gone beyond the bounds of informing the public on who supports candidates by requiring donor disclosure when issue advocacy groups merely mention a candidate’s name within a defined pre-election window. *See* N.M. Stat. Ann. § 1-19-26(Q)(3)(c).

The Tenth Circuit held that *Citizens United* allows New Mexico to impose its disclosure regime on RGF’s issue advocacy communications. App. 25a (citing 558 U.S. at 369). But the passage from *Citizens United* that the Tenth Circuit cites should be applied cautiously, if at all.

The *Citizens United* court wrote only a four-sentence paragraph to explain why disclosure regimes could go beyond *Buckley*’s express advocacy limitation. 558 U.S. at 369. *Citizens United*’s disclosure holding was premised on speech that, while not technically express advocacy, was its functional equivalent—a film designed to influence voters

against the election of Hillary Clinton. 558 U.S. at 319–20. That holding does not resolve—and should not be read to resolve—whether disclosure requirements may constitutionally extend to speech that is neither express advocacy nor its functional equivalent, as is undisputedly the case here. The Tenth Circuit’s application of *Citizens United* to this case therefore exceeds this Court’s holding.

And the reasons the *Citizens United* court used to justify its holding do not apply to pure issue advocacy. One reason was that *McConnell v. Federal Election Commission*, 540 U.S. 93, 321 (2003), upheld the disclosure regime for electioneering communications in federal elections. But speech that simply mentions a candidate is not express advocacy.

The claim that *Buckley* “upheld a disclosure requirement for independent expenditures even though it invalidated a provision that imposed a ceiling on those expenditures,” *Citizens United*, 558 U.S. at 369 (citing *Buckley*, 424 U.S. at 75–76), overlooks the fact that this passage is merely the beginning of *Buckley*’s explanation for why disclosure regimes for issue groups must be limited to when they engage in express advocacy. 424 U.S. at 75–81. Indeed, the *Buckley* Court explained the Federal Election Campaign Act’s § 434(e) disclosure regime had “serious” constitutional vagueness problems. *Id.* at 76–78. And to avoid declaring it unconstitutional, the Court had to interpret the statute so that the disclosure regime’s application to issue groups was limited to only “combinations that expressly advocate the election or defeat of a clearly identified candidate,” i.e. express advocacy. *Id.* at 79–80. This implies that a

disclosure requirement on pure issue advocacy would violate the First Amendment.

The *McConnell* Court said that this decision in *Buckley* “was the product of statutory interpretation rather than a constitutional command.” 540 U.S. at 192. But this ignores the establishment of “the major purpose” test in that portion of *Buckley*, which is based on First Amendment principles. That test confines political committee regulation, like donor disclosure, to “organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” 424 U.S. at 79. *See also Pub. Citizen v. Fed. Election Comm’n*, 547 F. Supp. 3d 51, 53 (D.D.C. 2021) (“[I]n order to protect issue advocacy under the First Amendment, the Supreme Court narrowed the definition of ‘political committee’ by establishing the ‘major purpose’ test in *Buckley v. Valeo*.”).

And *Citizens United*’s argument that lobbyist disclosure requirements justify disclosure regimes for issue groups, 558 U.S. at 369 (citing *United States v. Harriss*, 347 U.S. 612, 625 (1954)), overlooks the fact that the lobbyist disclosure rules cited do not apply to “advertisements, which directly or indirectly urge the passage or defeat of legislation,” which is mere issue advocacy. *Harriss*, 347 U.S. at 615 & n.2; *see also id.* at 624 & n.14 (“the stated exceptions” to the lobbyist disclosure law are found in footnote 2).

Core First Amendment rights, *Elrod v. Burns*, 427 U.S. 347, 356 (1976) (“political belief and association constitute the core of those activities protected by the First Amendment”), should not be curtailed by a small passage that is arguably dicta, lacks thorough

analysis, and rests on shaky authority in an opinion focused on many other First Amendment issues.

While “the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application, . . . that is not enough” to allow speech regulation. *Wis. Right to Life, Inc. v. Fed. Election Comm’n*, 551 U.S. 449, 474 (2007) (internal quotation marks and citation omitted). “Discussion of issues cannot be suppressed simply because the issues may also be pertinent in an election. Where the First Amendment is implicated, the tie goes to the speaker, not the censor.” *Id.*; see also *Citizens United*, 558 U.S. at 327 (“First Amendment standards, however, ‘must give the benefit of any doubt to protecting rather than stifling speech.’” (quoting *Wis. Right to Life*, 551 U.S. at 469)).

This Court recognizes “that the distinction between campaign advocacy and issue advocacy may often dissolve in practical application” because “[c]andidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions.” *Wis. Right to Life*, 551 U.S. at 456–57 (internal quotation marks omitted). Even so, “the interests held to justify the regulation of campaign speech and its functional equivalent might not apply to the regulation of issue advocacy,” like RGF’s Freedom Index. *Id.* at 457 (internal quotation marks omitted). “[T]he First Amendment requires [courts] to err on the side of protecting political speech rather than suppressing it.” *Id.* Issue advocacy that simply mentions a candidate or ballot question shortly before an election should not be regulated like express advocacy or its functional equivalent. *Id.*

Therefore, this Court should grant the petition to resolve whether the government's informational interest extends to donor disclosure for organizations engaged exclusively in pure issue advocacy.

II. Applying a disclosure regime to an organization that fails Buckley's "major purpose" test cannot satisfy narrow tailoring absent donor earmarking.

New Mexico's disclosure regime "must be narrowly tailored to the interest it promotes." *AFPP*, 594 U.S. at 610. "A substantial relation is necessary but not sufficient to ensure that the government adequately considers the potential for First Amendment harms before requiring that organizations reveal sensitive information about their members and supporters." *Id.* at 609. "In the First Amendment context, fit matters." *Id.* (internal quotation marks omitted).

"This means that, beyond proving a balanced relationship between the disclosure scheme's burdens and the government's interests, the government must 'demonstrate its need' for the disclosure regime 'in light of any less intrusive alternatives.'" *Wyo. Gun Owners v. Gray*, 83 F.4th 1224, 1247 (10th Cir. 2023) (quoting *AFPP*, 594 U.S. at 613). It is the government's burden to prove its interest and that its law is properly tailored. *Id.* (internal quotation marks omitted). When it "fails to make that showing, it cannot prevail." *Id.* (internal quotation marks omitted).

If the government's interest is informing the public about who supports or opposes candidates for office, then disclosure regulations can never be properly tailored when applied to undisputed issue advocacy

groups that do not engage in express advocacy or its functional equivalent.

Here, the only interest that imposing New Mexico's disclosure regime on RGF serves is the state's informational interest. *See* App. 28a. But the purpose of the informational interest is to increase knowledge about a candidate for public office. Indeed, *Buckley* created the governmental information interest justification for donor disclosure to "increase[] the fund of information concerning those who support the candidates," and to "help[] voters to define more of the candidates' constituencies." 424 U.S. at 81. However, RGF is not affiliated with any candidate. It is merely an issue advocacy group whose donors contributed to support it—not to support the election or defeat of any candidate. Indeed, as a 501(c)(3) nonprofit organization, RGF is prohibited from doing so. 26 U.S.C. § 501(c)(3) (prohibiting "participat[ing] in, or interven[ing] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office").

As such, RGF does not, and cannot, have "the major purpose" of electing anyone. 424 U.S. at 79. Because RGF is too detached from any candidate, donor disclosure does not provide information about any candidate. Imposing "the reach" of the disclosure law on RGF is "impermissibly broad" because "the relation of the information sought" from RGF is "too remote" from the government's "informational interest." *Id.* Indeed, RGF's donors have no connection to any candidate that would serve the government's informational interest.

Buckley held that disclosure laws for issue advocacy groups should “not reach all partisan discussion,” but “only . . . disclosure of those expenditures that expressly advocate a particular election result” to serve the government’s “informational interest” of “shed[ding] the light of publicity on spending that is unambiguously campaign related.” *Id.* at 80–81. The government’s informational interest is grounded in gaining information about candidates and their supporters. Disclosure of RGF general donors does not increase this wealth of knowledge. Therefore, absent donor earmarking for express advocacy, it is impossible to properly tailor a disclosure regime applied to an issue advocacy organization that does not engage in express advocacy or its functional equivalent.

This was Judge Eid’s point. She wrote, “government regulation of First Amendment rights must be ‘proportion[ate] to the interest served.’” App. 48a (quoting *AFPF*, 594 U.S. at 609) (citing *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 348 (1995) (“The simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures she would otherwise omit.”)) (alteration in original). Further, the government must demonstrate its need for the disclosure regime in light of any less intrusive alternatives. App. 50a (quoting *Wyo. Gun Owners*, 83 F.4th at 1247 (quoting *AFPF*, 594 U.S. at 614)) (cleaned up). “And here, even accounting for New Mexico’s tailoring efforts, there is a ‘dramatic mismatch’ between the informational interest and ‘the disclosure regime that [New Mexico] has implemented in service of that end.’” App. 50a

(quoting *AFPP*, 594 U.S. at 612) (alteration in original).

Indeed, Judge Eid explained that the disclosure law did not provide voters with useful information about who was speaking about a candidate. *Id.* That is because the law “applies even to general-fund donors—many of whom support the totality of an organization’s activities, but may not endorse a specific advertisement,” and to “those who directly fund a specific advertisement.” *Id.* (cleaned up). With no discernable difference between the two distinct types of contributors “the electorate has no way to differentiate between general and specific donors. This result does not comport with New Mexico’s interest in informing the electorate.” *Id.*

Additionally, the two-year election period makes the picture blurrier. “[T]he law requires a sufficiently large general-fund donation made twenty-two months before the next general election to be publicly disclosed alongside donations earmarked” for communications like RGF’s Freedom Index. App. 6a–7a. “This not only burdens speech tenuously tied to an election, but also muddies the informational signal New Mexico seeks to highlight for the public. After all, most candidates have not yet announced their campaigns and ballot initiatives likely have not yet been certified this far in advance.” App. 7a.

“But perhaps more fatal to New Mexico’s position is that there is a clear alternative means of furthering [its purported] interest.” App. 51a. Instead of “imposing the [same] broad-sweeping disclosure requirement” on issue speech as it does for express advocacy, or its equivalent, “New Mexico could have outlined a special earmarking system” in its

disclosure regime for speech from issue groups like RGF. App. 51a–52a.

“An earmarking system ‘directly links speaker to content,’ ensuring that voters truly understand the source of election-related content.” App. 52a (quoting *Wyo. Gun Owners*, 83 F.4th at 1248). Applying the same disclosure system to two very different types of donors causes the actual donors behind the ad “to be lost in the shuffle.” App. 7a. “This undermines New Mexico’s stated interest in informing the electorate,” because the public will undervalue the influence of contributions from donors that contributed specifically for ads, while overvaluing the contributions from general donors, which are “presumably more numerous.” App. 7a–8a.

Nor are opt-out provisions enough to “save the disclosure [regime].” App. 52a. Because some groups hardly ever engage in express advocacy, or its equivalent, and focus on educating the public on a candidate’s actions, “donors may not understand the need to opt out of advertisements they do not recognize as advocacy.” App. 52a–53a. And because of the length of the election cycle, “[d]onors who fail to anticipate that a nonprofit they contributed to will make an independent expenditure *years in the future* are simply out of luck.” App. 7a (emphasis in original).

“The presence of a clear alternative that addresses New Mexico’s interest in an informed electorate further undermines [its disclosure regime].” App. 8a (citing *AFPP*, 594 U.S. at 613 (requiring a state to “demonstrate its need” for a given disclosure law “in light of any less intrusive alternatives”). New Mexico never explains why it cannot use this less burdensome approach on speech, which also more efficiently serves

its informational interest. *See* App. 52a. Accordingly, “[t]he lack of tailoring to New Mexico’s informational interest ‘is categorical—present in every case’—as are the severe burdens [the disclosure regime] places on associational freedom.” App. 53a (quoting *AFPF*, 594 U.S. at 615). “[A]llowing [New Mexico’s] regulatory scheme to survive exacting scrutiny because the state ‘made some effort’ at tailoring is flatly inconsistent with [the Court’s] responsibility under *Americans for Prosperity Foundation*.” App. 6a.

New Mexico’s disclosure regime “casts far too wide a net. By requiring the disclosure of certain general-fund donors, the law unnecessarily burdens core political speech, ignores serious concerns of retaliation against donors, and disproportionately harms those who hold unpopular beliefs.” App. 8a. This improperly tailored disclosure law, “by definition, impermissibly suppresses too much constitutionally protected speech.” App. 8a.

Therefore, this Court should grant the petition to review whether the application of a disclosure regime to an organization that does not meet *Buckley*’s “major purpose” test is narrowly tailored under exacting scrutiny absent donor earmarking.

III. Disclosure requirements targeting pure political speech should satisfy strict scrutiny, not exacting scrutiny.

The application of donor disclosure requirements to issue advocacy that does not expressly or implicitly advocate for or against a candidate is content based and should be subject to strict scrutiny.

“Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Such “facial distinctions based on a message are obvious, defining regulated speech by particular subject matter.” *Id.* It does not matter if the restriction is viewpoint neutral. “[A] speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter.” *Id.*

The disclosure requirement RGF challenges is clearly content based because it applies only because of the topic discussed: if an ad mentions a candidate or ballot question close to an election, then the disclosure requirements apply.

In *Reed*, this Court held that “a law banning the use of sound trucks for political speech—and only political speech—would be a content-based regulation, even if it imposed no limits on the political viewpoints that could be expressed.” *Id.* at 169. Here, New Mexico’s disclosure regime applies not to all speech, but only to speech that mentions a candidate or ballot question—a facial distinction based on subject matter that is the hallmark of content-based regulation under *Reed*.

Content-based laws are presumptively unconstitutional and can stand only if they survive strict scrutiny, which requires the government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. *Id.* at 163, 171. “A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech.” *Id.* at 165. “[A]n innocuous justification cannot transform a facially content-based law into one that is content neutral.” *Id.* at 166.

This Court has long held that content-based restrictions on speech fundamentally undermine the protections of the First Amendment. “[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Dep’t of Chicago v. Mosley*, 408 U.S. 92, 95 (1972). “Any restriction on expressive activity because of its content would completely undercut the profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *Id.* at 96 (citation and quotations omitted). “[C]ontent-based speech restrictions are especially likely to be improper attempts to value some forms of speech over others, or are particularly susceptible to being used by the government to distort public debate.” *City of Ladue v. Gilleo*, 512 U.S. 43, 60 (1994) (O’Connor, J., concurring).

And political speech is at the core of what the First Amendment is designed to protect. *Morse v. Frederick*, 551 U.S. 393, 403 (2007); *see also e.g., NAACP v.*

Claiborne Hardware Co., 458 U.S. 886, 913 (1982) (“Expression on public issues has always rested on the highest rung of the hierarchy of First Amendment values”); *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 411 (2000) (Thomas, J., dissenting) (“Political speech is the primary object of First Amendment protection”); *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964) (“[Speech] concerning public affairs is more than self-expression; it is the essence of self-government”). “There is practically universal agreement that a major purpose of the First Amendment was to protect the free discussion of governmental affairs, including discussions of candidates.” *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 755 (2011).

Given the vital importance of political speech and its status as the primary object of the First Amendment, and because strict scrutiny applies to content-based restrictions on speech, *Reed*, 576 U.S. at 159, strict scrutiny should also apply to donor disclosure laws regulating issue advocacy that simply mentions a candidate. The application of such disclosure requirements not only burdens political speech (issue advocacy), but it also singles out speech based on its political content—speech that simply mentions a candidate.

Nonetheless, this Court has applied exacting scrutiny to First Amendment challenges to donor disclosure laws. *See, e.g., AFPP*, 594 U.S. at 608. But unlike the electioneering communications at issue there, the pure issue advocacy set forth in this case—where disclosure is applied to such speech simply because it mentions a candidate, while not expressly or implicitly advocating for or against a candidate’s

election—is pure political speech. The application of the disclosure requirement on some political speech that simply mentions a candidate, but not others, is content based. This Court’s precedent indicates that strict scrutiny applies to restrictions on political speech and content-based restrictions on speech. Two constitutional wrongs don’t make a restriction constitutional.

Because of the importance of political speech, courts should not apply lesser scrutiny to content-based electoral disclosure laws than they apply to content-based laws involving other kinds of speech.

This Court should grant the petition and hold that when the government compels disclosure of donors to organizations engaged exclusively in political speech—without express advocacy or its functional equivalent—it must satisfy strict scrutiny. Anything less leaves the First Amendment’s core protection of political speech at the mercy of disclosure regimes that, as this case demonstrates, can be weaponized to silence those who wish to speak.

Conclusion

For the reasons stated above, this Court should grant the petition for writ of certiorari.

Respectfully submitted,

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