APPENDIX

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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOUG SMITH; ROBERT GRIFFIN; ALLEN VEZEY; ALBERT HAYNES; TREVOR SHAW; FAMILIES OF THE LAST FRONTIER; ALASKA FREE MARKET COALITION,

Plaintiffs-Appellants,

v.

ANNE HELZER, in her official capacity as chair of the Alaska Public Offices Commission; LANETTE BLODGETT; RICHARD STILLIE, Jr.; SUZANNE HANCOCK; DAN LASOTA, official capacities as members of the Alaska Public Offices Commissions,

Defendants-Appellees,

ALASKANS FOR BETTER ELECTIONS, INC.,

Intervenor-Defendant-Appellee.

No. 22-35612

D.C. No. 3:22-cv-00077-SLG

OPINION

Appeal from the United States District Court
for the District of Alaska
Sharon L. Gleason, Chief District Judge, Presiding

App. 2

Argued and Submitted February 9, 2023
Portland, Oregon

Filed March 15, 2024

Before: Mary H. Murguia, Chief Judge, and Danielle J. Forrest and Jennifer Sung, Circuit Judges.

Opinion by Chief Judge Murguia;
Partial Concurrence and Partial Dissent
by Judge Forrest

COUNSEL

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OPINION

MURGUIA, Chief Circuit Judge:

"Sunlight," the Supreme Court has recognized, is "the best of disinfectants" in elections. *See Buckley v. Valeo*, 424 U.S. 1, 67 (1976) (per curiam) (quoting Louis

D. Brandeis, *Other People's Money* 62 (1933)). To illuminate the use of dark money in their state's elections, Alaska voters enacted by ballot measure certain campaign-finance regulations. Five individual donors and two independent-expenditure organizations then sued the members of the Alaska Public Offices Commission ("Commission")—the agency charged with administering the state's campaign-finance laws—alleging that three of these regulations facially violate the First Amendment. The district court denied plaintiffs' motion for a preliminary injunction, concluding that they failed to establish a likelihood of success on the merits of their claims. Exercising jurisdiction under 28 U.S.C. § 1292(a)(1) and reviewing the denial of a preliminary injunction for abuse of discretion, *No on E v. Chiu*, 85 F.4th 493, 497 (9th Cir. 2023), we affirm.

I

On November 3, 2020, Alaska voters made three "sweeping changes to Alaska's system of elections" by approving the "Alaska's Better Elections Initiative" ("Ballot Measure 2"). *Kohlhaas v. State*, 518 P.3d 1095, 1100 (Alaska 2022). Ballot Measure 2 (1) "repealed the existing system of party primaries in favor of an open primary"; (2) "adopted ranked-choice voting for the general election"; and (3) implemented a series of amendments to Alaska's campaign-finance laws that "addressed the use of 'dark money' in elections." *Id.* at 1101. In *Kohlhaas*, the Alaska Supreme Court unanimously upheld the constitutionality of the first two

changes, *id.* at 1100–01; we now consider the constitutionality of a subset of the third.

At the district court, plaintiffs challenged three of Ballot Measure 2's campaign-finance regulations: (1) the individual-donor contribution-reporting requirement, Alaska Stat. § 15.13.040(r); (2) the true-source requirement, *id.* §§ 15.13.040(r) & 15.13.400(19); and (3) the on-ad donor-disclaimer requirement for political advertisements, *id.* § 15.13.090.

Under the contribution-reporting requirement, any donor who "contributes more than $2,000 in the aggregate in a calendar year to an entity" that either (1) "made . . . independent expenditures" in candidate elections in the previous or current election cycle or (2) "the contributor knows or has reason to know is likely to make independent expenditures . . . in the current election cycle" must report that contribution to the Commission within twenty-four hours.[1] *Id.*

[1] In this context, subject to some exclusions, a contribution is any "purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made, and includes the payment by a person other than a candidate or political party, or compensation for the personal services of another person" that is "made for the purpose of," among other things, "influencing the nomination or election of a candidate[.]" Alaska Stat. § 15.13.400(4). Similarly, an independent expenditure is "a purchase or a transfer of money or anything of value, or promise or agreement to [do so], incurred or made for the purpose of" among other things, "influencing the nomination or election of a candidate" and "that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate" or their agents. *Id.* §§ 15.13.400(7), (11).

§ 15.13.040(r). Failing to report such a contribution subjects the contributor to "a civil penalty of not more than $1,000 a day for each day the delinquency continues." *Id.* § 15.13.390(a)(2).

The true-source requirement—which is a subpart of the contribution-reporting requirement—provides that contributors must "report and certify the true sources of the contribution, and intermediaries, if any" and "provide the identity of the true source to the recipient of the contribution simultaneously with providing the contribution itself." *Id.* § 15.13.040(r). Any "person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services" is that contribution's true source. *Id.* § 15.13.400(19). So a contributor "who derived funds via contributions, donations, dues, or gifts is not the true source, but rather an intermediary for the true source." *Id.*

Finally, the donor-disclaimer requirement mandates that any communication intended to influence the election of a candidate contain an easily discernible on-ad disclaimer. *See id.* § 15.13.090. Since 2010, that disclaimer has required (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, as applicable, of each of the person's three largest contributors . . . during the 12-month period before the date of the communication." *Id.* Ballot Measure 2 amended the donor-disclaimer requirement to include that, if the

entity communicating is an independent-expenditure organization that "received more than 50 percent of its aggregate contributions" during the previous 12-month period "from true sources . . . who, at the time of the contribution, resided or had their principal place of business outside Alaska," the communication must disclaim that a majority of contributions to the entity came from outside the State of Alaska. *See id.* § 15.13.400(15).

Plaintiffs moved to preliminarily enjoin all three requirements, alleging that having to comply with these regulations in advance of the 2022 general election would irreparably harm their First Amendment rights. The district court denied the motion, finding that plaintiffs failed to establish a likelihood of success on the merits of their claims. Plaintiffs now timely appeal the district court's denial of that motion only as to the contribution-reporting and donor-disclaimer requirements.

II

In their merits briefing before this court, plaintiffs reiterated that their claims for relief were rooted in their desire and right to "participate fully in the November 2022 election . . . without these unconstitutional impositions." While this appeal was pending, the 2022 general election took place. We therefore ordered the parties to file simultaneous supplemental briefing to address, among other things, whether this

preliminary-injunction appeal must be dismissed as moot for want of jurisdiction.

"An interlocutory appeal of the denial of a preliminary injunction is moot when a court can no longer grant any effective relief sought in the injunction request." *Akina v. Hawaii*, 835 F.3d 1003, 1010 (9th Cir. 2016). That is, such an "interlocutory appeal may be moot even though the underlying case still presents a live controversy." *Id.* Put simply, when the event from which plaintiffs' alleged irreparable harm "flow[s]" has "concluded" or "taken place," the appeal—but not necessarily the underlying dispute—is moot. *See In Def. of Animals v. U.S. Dep't of Interior*, 648 F.3d 1012, 1013 (9th Cir. 2011) (per curiam). And "when an appeal is moot, we lack jurisdiction and must dismiss" it. *Ahlman v. Barnes*, 20 F.4th 489, 493 (9th Cir. 2021) (cleaned up).

We nevertheless retain jurisdiction over otherwise moot disputes that are capable of repetition yet evade review. *Akina*, 835 F.3d at 1011. This exception is used "sparingly," *Protectmarriage.com-Yes on 8 v. Bowen*, 752 F.3d 827, 836–37 (9th Cir. 2014), and "is reserved for extraordinary cases in which (1) the duration of the challenged action is too short to be fully litigated before it ceases, and (2) there is a reasonable expectation that the plaintiffs will be subjected to the same action again," *Akina*, 835 F.3d at 1011 (internal quotation marks omitted). "Election cases often fall within this exception, because the inherently brief duration of an election is almost invariably too short to enable full

litigation on the merits." *Porter v. Jones*, 319 F.3d 483, 490 (9th Cir. 2003).

Assuming that this appeal would otherwise be moot, we conclude that the capable-of-repetition-yet-evading-review exception applies.[2] This case, like the many others involving facial challenges to election laws and campaign-finance regulations, is exceptional. In *Alaska Right to Life Committee v. Miles*, we held that a facial First Amendment challenge to Alaska campaign-finance-disclosure laws was "not moot simply because the . . . election ha[d] come and gone." 441 F.3d 773, 779 (9th Cir. 2006). There, "[t]he provisions of Alaska law challenged by [the plaintiff] remain[ed] in place, and there [wa]s sufficient likelihood that [the plaintiff would] again be required to comply with them that its appeal [wa]s not moot." *Id.* at 779–80. So too here.

III

This appeal presents questions central to our rights as American citizens. But because of its interlocutory nature, we are restricted in our ability to "assist in the final resolution of the critical issues before the district court." *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 723 (9th Cir. 1983). Our review at this stage is "much more

[2] The partial dissent maintains that the appeal is not moot because "the challenged regulations remain in effect" and therefore "we can still grant effective relief." But we cannot grant any relief that would address plaintiffs' concerns about irreparable harm around the 2022 election, which formed the basis of the preliminary injunction motion.

limited than review of an order granting or denying a permanent injunction." *Id.* at 724. When all evidence is taken and considered, the district court's findings and conclusions may differ from its preliminary order—as may our view of them. Because our analysis is confined and the factual record yet to be fully developed, "our disposition of appeals from most preliminary injunctions provides little guidance on the appropriate resolution of the merits." *Id.* And once we have disposed of this appeal, the district court will render a final judgment on the merits, after which the losing party may appeal again. *Id.*

IV

"The grant or denial of a motion for a preliminary injunction lies within the discretion of the district court. Its order granting or denying the injunction will be reversed only if the district court abused its discretion." *Zepeda*, 753 F.2d at 724. And an abuse of discretion occurs only when the district court fails to "employ the appropriate legal standards[,]" misapprehends the law, or "rests its decision . . . on a clearly erroneous finding of fact." *Id.* at 724–25. "A finding of fact is clearly erroneous when 'the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Id.* at 725 (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). We are "not empowered to substitute [our] judgment for that" of the district court, so "we will not reverse the district court's order simply because we would have reached a different result." *Id.*

A preliminary injunction is an "extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). In *Winter*, the Supreme Court held that, to obtain an injunction, plaintiffs "must establish that [they are] likely to succeed on the merits, that [they are] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [their] favor, and that an injunction is in the public interest." *Id.* at 20. But "[w]here, as here, the government opposes a preliminary injunction, the third and fourth factors merge into one inquiry." *Porretti v. Dzurenda*, 11 F.4th 1037, 1047 (9th Cir. 2021).

A

To show a likelihood of success on the merits "in the First Amendment context, the moving party bears the initial burden of making a colorable claim that its First Amendment rights have been infringed, or are threatened with infringement, at which point the burden shifts to the government to justify the restriction on speech." *Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 478 (9th Cir. 2022) (cleaned up), *cert. denied*, 143 S. Ct. 1749 (2023). Plaintiffs here facially challenge the contribution-reporting and donor-disclaimer requirements, alleging that these regulations impermissibly burden their First Amendment right to free speech. Facial challenges are "disfavored," *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008), and "are the most difficult to mount successfully," *City of Los Angeles v.*

Patel, 576 U.S. 409, 415 (2015) (cleaned up). In the First Amendment context, a facial challenge is colorable if plaintiffs show that "a substantial number of [the regulations'] applications are unconstitutional, judged in relation to [their] plainly legitimate sweep." *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2387 (2021) (quoting *United States v. Stevens*, 559 U.S. 460, 473 (2010)). The Supreme Court has cautioned courts "not to go beyond the [regulations'] facial requirements and speculate about 'hypothetical' or 'imaginary' cases." *Wash. State Grange*, 552 U.S. at 449–50 (citation omitted).

Because both the contribution-reporting and donor-disclaimer requirements are "regulations directed only at disclosure of political speech," they are subject to exacting scrutiny, which is a "somewhat less rigorous judicial review" than strict scrutiny. *Nat'l Ass'n for Gun Rts., Inc. v. Mangan*, 933 F.3d 1102, 1112 (9th Cir. 2019) (emphasis omitted); *No on E*, 85 F.4th at 503 (collecting cases in which we and the Supreme Court have applied exacting scrutiny to disclaimer and disclosure requirements). Once the movants establish a colorable First Amendment challenge to the regulations, exacting scrutiny demands that the government show that it has (1) a sufficiently important interest (2) to which the challenged regulations are substantially related and narrowly tailored. *Ams. for Prosperity Found.*, 141 S. Ct. at 2383. "To withstand [exacting] scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Id.* (quoting *Doe v. Reed*, 561 U.S. 186, 196

(2010)). Unlike strict scrutiny, however, "exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends." *Id.* Narrow tailoring in this context therefore "require[s] a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served." *Id.* at 2384 (quoting *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 218 (2014)).

In sum, to succeed on appeal, plaintiffs must show that the district court abused its discretion when it concluded that the contribution-reporting and donor-disclaimer requirements were each substantially related and narrowly tailored to the government's asserted interest. Because we conclude that plaintiffs have not met this heavy burden, we affirm the district court's denial of plaintiffs' motion for a preliminary injunction. In so doing, we do not reach the remaining *Winter* factors, which were not passed upon by the district court and are unnecessary to our holding.

B

Defendants assert, and plaintiffs concede, that the government's interest in an informed electorate is "sufficiently important" in the campaign finance context to warrant disclosure requirements and satisfy the first prong of the exacting scrutiny test. Indeed, the Supreme Court has long made that clear. *See*, *e.g.*, *Buckley*, 424 U.S. at 66–67, 84 (upholding disclosure requirements and noting that providing the electorate

information regarding campaign finance serves various governmental interests).[3] So have we. *See*, *e.g.*, *No on E*, 85 F.4th at 505 ("We have repeatedly recognized an important (and even compelling) informational interest in requiring ballot measure committees to disclose information about contributions." (cleaned up)).[4]

With this important informational interest firmly in mind, we turn to its relationship with Alaska's contribution-reporting and donor-disclaimer requirements. For these regulations to survive exacting scrutiny, they must be substantially related to the

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[3] *See also Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 369 (2010) (finding the public's "informational interest" in "knowing who is speaking about a candidate shortly before an election" sufficient to support law requiring disclosure of funding sources); *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 196 (2003) (recognizing "providing the electorate with information" as an "important state interest[ ]"), *overruled on other grounds by Citizens United*, 558 U.S. 310.

[4] *See also Chula Vista Citizens for Jobs & Fair Competition v. Norris*, 782 F.3d 520, 540 (9th Cir. 2015) (en banc) ("[T]he government's interests in electoral integrity and in providing voters with information . . . constitute a sufficiently important governmental interest to which the . . . disclosure requirement bears a substantial relation." (cleaned up)); *Human Life of Washington Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010) (upholding disclosure laws because "[p]roviding information to the electorate is vital" and "by revealing information about the contributors to and participants in public discourse and debate, disclosure laws help ensure that voters have the facts they need to evaluate the various messages competing for their attention"); *Alaska Right to Life*, 441 F.3d at 793 ("[W]e believe that there is a compelling state interest in informing voters who or what entity is trying to persuade them to vote in a certain way.").

interest and reasonably narrowly tailored to serving it. *No on E*, 85 F.4th at 504. We address these interrelated considerations, taking each of the two challenged requirements in turn.

1

Plaintiffs do not contest that the individual-donor contribution-reporting requirement is substantially related to the state's asserted informational interest. Rather, they argue only that the requirement is not narrowly tailored. Plaintiffs reason that the requirement is (1) duplicative of existing criminal laws and reporting required by recipient organizations, and (2) too burdensome. The district court rejected both arguments as unpersuasive. We agree with the district court and conclude that the contribution-reporting requirement is both substantially related and narrowly tailored to the government's interest in providing the electorate with accurate, real-time information.

First, plaintiffs argue that because existing criminal laws prohibit making and receiving straw-donor contributions,[5] donations not made by true sources are illegal and reporting them would make little sense. Putting aside that this argument goes more to the

[5] "A straw donor contribution is an *indirect* contribution from *A*, through *B*, to the campaign. It occurs when *A* solicits *B* to transmit funds to a campaign in *B*'s name, subject to *A*'s promise to advance or reimburse the funds to *B*." *United States v. O'Donnell*, 608 F.3d 546, 549 (9th Cir. 2010). "[S]traw donor schemes . . . facilitate attempts by an individual (or campaign) to thwart disclosure requirements and contribution limits." *Id.*

true-source requirement—from which plaintiffs "do not seek relief . . . in this preliminary appeal"—violation of the criminal regulation that plaintiffs cite requires the offender to *intend* to make a straw-donor contribution, for example, by directing another to make the contribution or reimbursing them for doing so. *See* Alaska Admin. Code tit. 2, § 50.258(a). The challenged contribution-reporting requirement, on the other hand, requires disclosure of contributions regardless of whether they were made at the true source's behest. The contribution-reporting requirement therefore covers donations outside the limited reach of the criminal law.

Nor is the contribution-reporting requirement unconstitutionally redundant. As the district court recognized, the reporting requirements for contributors and recipient organizations "overlap[] . . . but [are] not completely duplicative of" one another, especially because the "contributor will *always* be in a better position . . . to both identify the true source of its own contribution and quickly report it." The individual-donor contribution-reporting requirement works in concert with the recipient independent-expenditure organizations' disclosures to the Commission, helping to ensure that the information received by voters is reliable and accurate. As we emphasized in *Brumsickle*, "[a]ccess to *reliable* information becomes even more important as more speakers, more speech—and thus more spending—enter the marketplace, which is precisely what has occurred in recent years." 624 F.3d at 1007 (emphasis added). Prompt disclosure by both

sides of a transaction ensures that the electorate receives the most helpful information in the lead up to an election.[6]

Plaintiffs attempt to analogize this case to *McCutcheon* and *Federal Election Commission v. Ted Cruz for Senate*, 142 S. Ct. 1638 (2022), but neither applies here because those cases considered redundant contribution limits, not disclosure requirements. In *McCutcheon*, the Supreme Court invalidated a "prophylaxis-upon-prophylaxis approach" to contribution limits in which a federal law targeting quid pro quo corruption in electioneering had restricted both the amount that a single donor could contribute to a candidate or committee and the amount that the donor could contribute in total to all candidates and committees. 572 U.S. at 221 (quoting *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 479 (2007)). And in *Cruz*, the Court similarly rejected a prophylaxis-upon-prophylaxis approach that limited the use of

[6] Indeed, the district court found that "requiring prompt disclosure by both parties maximizes the likelihood of prompt and accurate reporting of the information when it is most useful to the electorate," and that "the donor disclosure requirement is closely tailored to providing valuable funding information to the State and its citizens." Although the partial dissent questions "whether any marginal increase in the reliability and accuracy of information justifies the reporting burden placed on individual donors," we are "not empowered to substitute [our] judgment for that" of the district court." *Zepeda*, 754 F.2d at 725. Because the district court did not "apply incorrect substantive law" or make "a clearly erroneous finding of fact that is material to the decision," *id.*, the district court's analysis of the contribution-reporting requirement does not amount to an abuse of discretion.

post-election contributions to repay loans the candidate made to his campaign committee. 142 S. Ct. at 1652–53. But the Supreme Court in *Citizens United* recognized a stark contrast between contribution limits and disclosure requirements. 558 U.S. at 366–67. Disclosure requirements, unlike contribution limits, "may burden the ability to speak, but they impose no ceiling on campaign-related activities" and do not "prevent anyone from speaking," so they may "be justified based on a governmental interest in providing the electorate with information about the sources of election-related spending." *Id.* (cleaned up). That is precisely the case here.[7]

Second, plaintiffs insist that the contribution-reporting requirement places an onerous burden on "everyday Americans" because it demands that the

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[7] Plaintiffs' reliance on *Americans for Prosperity Foundation* also fails. That case involved neither public disclosure of information nor electioneering; rather, it arose in the context of a California law that required *all* 501(c)(3) nonprofit organizations to report confidentially their top donors to the state Attorney General each year. 141 S. Ct. at 2379–80. The government justified this broad disclosure by asserting that disclosure prevented charity fraud and self-dealing, but the record showed that the information gathered was almost never used for any sort of investigative purpose. *Id.* at 2385–87. The Supreme Court held that "[i]n reality . . . California's interest is less in investigating fraud and more in ease of administration." *Id.* at 2387. This interest could not satisfy exacting scrutiny. *Id.* But, of course, neither fraud deterrence nor administrative ease is the interest the government asserts here. The informational interest—specific and central to the public's well-recognized stake in the factual circumstances of political advertising—justifies the limited disclosures mandated by the contribution-reporting requirement.

contributor know that they are required to report at all times and because the time in which to file a report—twenty-four hours—is too short. These burdens on the contributor do not cross the line into unconstitutionality.

Partly because of the posture of this appeal, and partly because plaintiffs failed to introduce any such evidence, there is nothing in the record to indicate that compliance with the reporting structure has been overly burdensome. Plaintiffs do not raise concerns about "technological literacy and internet access" discussed in the partial dissent. Nor have plaintiffs provided any evidence that the "everyday" American they repeatedly describe contributes $2,000 or more per calendar year to a single independent-expenditure organization such that the threshold is unconstitutionally overinclusive. Defendants may be correct that these are "major" contributors, not unsophisticated parties, but at the very least, the threshold is reasonably tailored to weed out contributors with *de minimis* involvement with the recipient organization. Regardless, because we cannot consider " 'hypothetical' or 'imaginary' " cases to sustain a facial challenge,[8] we conclude that plaintiffs have failed to show that a substantial number of the applications of the contribution-reporting requirement are unconstitutional in relation to the law's "plainly legitimate sweep." *Wash. State Grange*,

[8] Plaintiffs raise several such hypotheticals in their briefing, including ones they concede are "far-fetched."

552 U.S. at 449–50; *see also Ams. for Prosperity Found.*, 141 S. Ct. at 2387.

As the district court found, Ballot Measure 2's reporting mechanism is relatively simple and "straightforward." Contributors who hit the $2,000 threshold must fill out a short online form that asks for the amount of the triggering contribution, the aggregate total amount of their contributions, the name of the recipient independent-expenditure organization, and, if the donor is not the true source of the funds, the true source's identity and the identities of any intermediaries. The process is even easier when the donor is the true source of the funds—as plaintiffs claim they "always" are for their donations. As at least one of our sister circuits has held, the simplicity of an online form and the required promptness of the disclosure both advance the state's interest in providing real-time and accurate information about electioneering communications. *See Iowa Right to Life Comm., Inc. v. Tooker*, 717 F.3d 576, 595 (8th Cir. 2013) ("With modern technology, the burden of completing the short, electronic form within two days of making a $750 expenditure is not onerous."). Without any evidence tending to show that the deadline or this brief online form—which could easily be filled out concurrently with an online donation or momentarily after signing a check—is unduly burdensome, we are not persuaded that the district

court's findings and conclusions about its likely constitutionality were erroneous.[9]

Similarly, exacting scrutiny simply requires that the threshold at which contributions are disclosed be reasonably narrowly tailored to fit the state's interest. As the Supreme Court noted in *Buckley*, this line is "necessarily a judgmental decision, best left" to the discretion of the legislature, here the people of Alaska. 424 U.S. at 83. Because "[t]he acceptable threshold for triggering reporting requirements need not be high," we have routinely upheld reporting thresholds much lower than the $2,000-per-calendar-year one here. *Nat'l Ass'n for Gun Rts.*, 933 F.3d at 1118 (citing cases upholding reporting thresholds as low as $100). On this record, we uphold this one as well.

That Ballot Measure 2's contribution-reporting requirement applies at all times, rather than only close to an election, does give us some pause. We have held that, "in valid electioneering disclosure laws, the frequency of required reporting does not extend

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[9] Plaintiffs briefly argue that because contributors to independent-expenditure organizations may require the assistance of a campaign-finance attorney to know when and how to report their contributions, the reporting requirement is not narrowly tailored. The partial dissent makes a similar argument. We are unconvinced. The form itself asks nothing more than basic knowledge about the contribution the donor is making or has made, and figuring out whether one must report their contribution is as simple as asking the organization whether it has made or will make an independent expenditure or conducting a quick search on the Commission's database of independent-expenditure organizations.

indefinitely to all advocacy conducted at any time but is tied to election periods or to continued political spending." *Id.* at 1117. Although the contribution-reporting requirement here applies whenever the contributor donates to an organization that has made, will make, or is likely to make independent expenditures, the "frequency of required reporting" is limited to only "continued political spending." *Id.* Once the donor has hit the threshold and filled the form out once, they need only fill it out again if they continue making contributions to that independent-expenditure organization. Accordingly, the temporal application of the requirement is not an onerous burden on the contributor, and it is reasonably tailored to the state's important interests in keeping the public informed. The contribution-reporting requirement withstands exacting scrutiny.

2

We now turn to whether Ballot Measure 2's donor-disclaimer requirement is substantially related and narrowly tailored to the government's asserted informational interest. Plaintiffs argue that (1) the disclaimer requirement "adds marginal additional value while imposing substantial cost on the speaker" because the information in the disclaimer is "already available on [the Commission's] website"; (2) the disclaimer takes up too much space and time on political advertisements; and (3) the additional out-of-state donor notice is unconstitutionally discriminatory. We disagree and hold that the district court did not abuse its

discretion in concluding that plaintiffs were unlikely to succeed on the merits of their claims as to the donor-disclaimer requirement.[10]

Our court recently addressed a relatively similar donor-disclaimer requirement. In *No on E*, the City of

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[10] Plaintiffs make two additional arguments, which we also reject. Plaintiffs broadly rely on the following language from the Supreme Court's decision in *McIntyre v. Ohio Elections Commission:* "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." 514 U.S. 334, 348 (1995). But as the district court correctly noted, *McIntyre* arose in a materially different factual context, one involving private individuals' independent and self-funded pamphleteering for ballot measures. We have previously distinguished disclaimer requirements in political advertisements from "*McIntyre*-type communications." *Yamada v. Snipes*, 786 F.3d 1182, 1203 n.14 (9th Cir. 2015) (quoting *Alaska Right to Life*, 441 F.3d at 793). And to whatever extent *McIntyre*'s reasoning applies here, it is undermined by the Supreme Court's subsequent decisions in *McConnell*, 540 U.S. at 196–97, and *Citizens United*, 558 U.S. at 369, in which the Court found the informational interest sufficient to uphold disclosure and disclaimer requirements. Indeed, in both cases, the Court did so over partial dissents that raised this very issue. *See Citizens United*, 558 U.S. at 480 (Thomas, J., concurring in part and dissenting in part); *McConnell*, 540 U.S. at 275–77 (Thomas, J., concurring in part and dissenting in part).

Plaintiffs also argue that the disclaimer requirement lacks a "limiting principle" because, if upheld, the state would have a "blank check" to require disclosure of "any and all information it wants," including the donors' contact information, "race, religion, political affiliation, sexual orientation, ethnic background, and interest-group memberships." As we have reiterated, these hypothetical and imaginary concerns are irrelevant to our analysis in the context of a facial challenge to a law that requires none of these disclaimers. *See Wash. State Grange*, 552 U.S. at 449–50.

San Francisco had adopted an ordinance that required certain political advertisements to identify the speaker's top contributors, along with the top three donors to those contributors. 85 F.4th at 498–99. Recognizing the "strong governmental interest in informing voters about who funds political advertisements" and applying exacting scrutiny, we upheld the disclaimer requirement because, among other reasons, San Francisco "show[ed] that donors to local committees are often committees themselves and that committees often obscure their actual donors through misleading and even deceptive committee names." *Id.* at 505–06. Although the *No on E* appeal involved only an as-applied challenge to the San Francisco ordinance, *see id.* at 502 n.5, we conclude that its holdings and reasoning readily apply and control in the context of this facial challenge.

In upholding the donor-disclaimer requirement in *No on E*, we rejected three arguments that mirror those made by plaintiffs here. First, we found unpersuasive the plaintiffs' argument that on-ad disclaimers took up too much space on advertisements. *Id.* at 507–08.[11] Second, citing to a First Circuit case that also

[11] The plaintiffs in *No on E* relied heavily on this court's decision in *American Beverage Association v. City & County of San Francisco*, which invalidated a city ordinance requiring health warnings for beverage advertisements. *See Am. Beverage Ass'n v. City & Cnty. of San Francisco*, 916 F.3d 749, 753–54 (9th Cir. 2019) (en banc). However, that decision is readily distinguishable from cases arising in the electioneering context. *No on E*, 85 F.4th at 507–08 ("[T]he governmental interest in informing voters about the source of funding for election-related communications is much stronger and more important than the

upheld a donor-disclaimer requirement, we rejected the plaintiffs' argument that the donor-disclaimer requirement was not narrowly tailored because the information to be disclaimed was already "available in an online database." *Id.* at 509 (citing *Gaspee Project v. Mederos*, 13 F.4th 79, 91 (1st Cir. 2021) (noting that "the on-ad donor disclaimer 'provides an instantaneous heuristic by which to evaluate generic or uninformative speaker names'" and therefore more effectively serves the government's informational interest than an online database), *cert. denied*, 142 S. Ct. 2647 (2022))). And third, we rejected the plaintiffs' claim that the disclaimer requirement was insufficiently tailored because the plaintiffs did not challenge the *disclosure* of the information—only its presence on the disclaimer—and failed to show that one could be permissible but the other not. *Id.* at 510. Agreeing with the reasons we stated in *No on E*, we reject plaintiffs' equivalent arguments here.

Having jettisoned most of plaintiffs' challenges to the donor-disclaimer requirement, we consider the one major aspect in which the disclaimer required by Ballot Measure 2 differs from the San Francisco one upheld in *No on E:* the additional disclaimer requirement for organizations that receive a majority of their contributions from true sources outside of Alaska. *See* Alaska Stat. § 15.13.090. Plaintiffs argue that this disclaimer is not narrowly tailored and unconstitutionally discriminates against out-of-state speakers, relying on

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governmental interest in warning consumers about the dangers of sugar-sweetened beverages.").

cases in which we and the Second Circuit invalidated *contribution limits* to which only out-of-state entities were subject. But those cases are inapposite.

As discussed *supra*, a contribution limit impacts speech in a manner much more severe than a disclosure or disclaimer requirement, so the former is subjected to strict scrutiny and can only be justified by the state's concern about risks of quid pro quo corruption, while the latter is subject to exacting scrutiny and can be justified by the state's informational interest. *See Citizens United*, 558 U.S. at 366–67. Nothing in the outside-entity disclaimer *restricts* out-of-state speakers' speech. Rather, the disclaimer only requires that organizations communicate whether most of their contributions came from outside Alaska—information plaintiffs concede is already validly disclosed to the Commission. And when "disclosures are permissible . . . we are not persuaded that a law requiring those same donors to be named in an on-advertisement disclaimer is insufficiently tailored." *No on E*, 85 F.4th at 511. Accordingly, at this stage, we conclude that the disclaimer requirement is both substantially related and narrowly tailored to the state's informational interest.

V

We hold that the district court acted within its discretion to conclude that plaintiffs were unlikely to succeed on the merits of their First Amendment claims.

Accordingly, the district court's order denying plaintiffs' motion for a preliminary injunction is

AFFIRMED.

FORREST, Circuit Judge, concurring in part and dissenting in part:

I agree that this case is not moot, but for different reasons than the majority. I also agree that the district court did not abuse its discretion in concluding at this preliminary stage that Plaintiffs failed to show they were likely to succeed in establishing that Ballot Measure 2's on-ad disclaimers fail under exacting scrutiny. I disagree, however, that Plaintiffs' challenge to Ballot Measure 2's duplicative individual-donor reporting requirement is unlikely to succeed. Therefore, I respectfully dissent in part.

I. BACKGROUND

A. Ballot Measure 2

Ballot Measure 2 was passed in November 2020, bringing significant changes to the rules governing Alaskan elections. *See* 2020 Alaska Laws Initiative Measure 2; *Kohlhaas v. State*, 518 P.3d 1095, 1100–01 (Alaska 2022). The only provision that I discuss is Plaintiffs' challenge to the requirement that individual donors report certain contributions to the state within 24 hours.

Plaintiffs are politically active individuals who have donated money to entities that make "independent expenditures,"[1] and two independent-expenditure entities that receive financial donations. Plaintiffs sued members of the Alaska Public Offices Commission (APOC)—the agency that administers Alaska's election laws,[2] *see* Alaska Stat. § 15.13.030—asserting, among other things, a facial challenge to Alaska Statute § 15.13.040(r).[3] This provision requires individual donors to disclose their financial contributions that exceed an annual aggregate of $2,000 and that are made to an entity that has spent money for a candidate in the prior election cycle or has or may spend money on a candidate in the current election cycle. *Id.* The disclosure must be made within 24 hours of the triggering donation. *Id.* Section 15.13.040(r) reads in full:

> Every individual, person, nongroup entity, or group that contributes more than $2,000 in the aggregate in a calendar year to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or

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[1] "'[I]ndependent expenditure' means an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate's campaign treasurer or deputy campaign treasurer, or another person acting as a principal or agent of the candidate." Alaska Stat. § 15.13.400(11).

[2] The state attorney general enforces Alaska's election laws based on APOC's investigations, examinations, reports, and recommendations. *See id.* § 15.13.030(8)–(9).

[3] Alaskans for Better Elections, Inc. intervened to defend Ballot Measure 2, which it sponsored.

> more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle shall report making the contribution or contributions on a form prescribed by the commission not later than 24 hours after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that entity by that individual, person, nongroup entity, or group during the calendar year. For purposes of this subsection, the reporting contributor is required to report and certify the true sources of the contribution, and intermediaries, if any, as defined by AS 15.13.400(19). This contributor is also required to provide the identity of the true source to the recipient of the contribution simultaneously with providing the contribution itself.

I refer to this as the "individual-donor reporting requirement" and to the described entities that receive the donations that trigger this reporting requirement as "independent-expenditure entities." Violating this individual-donor reporting requirement triggers a fine of up to $1,000 for each day that the report is delayed—regardless of whether the donor was aware of the

requirement or that the amount they donated exceeded the aggregate $2,000 threshold. *Id.* § 15.13.390(a)(2).

Notably, the individual-donor disclosures are not the only donation disclosures required under Alaska law. The independent-expenditure entities also must report the donations that they receive. As an initial matter, within 10 days of making an independent expenditure, these entities must report their officers and directors, the date and amount of all their contributions and expenditures, and "the aggregate amount of all contributions" received. *Id.* §§ 15.13.040(e), 15.13.110(h). For donors who contribute more than $50 in a year, the independent-expenditure entity also must disclose the donor. *Id.* § 15.13.040(e)(5)(A). If an independent-expenditure entity receives a contribution that exceeds an aggregate of $2,000 from a single donor or makes an expenditure exceeding $250 within 9 days of an election, the entity must file a disclosure report within 24 hours of receiving the triggering donation or making the triggering expenditure. *Id.* §15.13.110 (h), (k).

The information that independent-expenditure entities must report mirrors what the individual donors must report. Individual donors are required report their "name, address, principal occupation, and employer . . . the amount of the contribution . . . the total amount of contributions made to [the] entity [recipient] . . . during the calendar year" and the "true

source" of their donation.[4] *Id.* § 15.13.040(r). The receiving independent-expenditure entities are required to report for any individual donor who contributes more than $50 "the name, address, principal occupation, and employer" of the donor. *Id.* § 15.13.040(e)(5)(A). And for donors who give more than $2,000 in a year, the independent-expenditure entity must also report the true source of the donor's funds. *Id.* § 15.13.110(k). The overlap in these disclosure requirements is clear. For contributors who give more than $2,000 in a single year to one entity, the state receives all the same information from both the individual donor and the entity receiving the donation.

B. District Court Proceedings

The district court denied Plaintiffs a preliminary injunction, concluding that they failed to demonstrate a likelihood of success on the merits on any of their challenges. *See Smith v. Helzer*, 614 F. Supp. 3d 668, 691 (D. Alaska 2022). Applying exacting scrutiny to

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[4] "[T]rue source" is defined as:

> the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services; a person or legal entity who derived funds via contributions, donations, dues, or gifts is not the true source, but rather an intermediary for the true source; notwithstanding the foregoing, to the extent a membership organization receives dues or contributions of less than $2,000 per person per year, the organization itself shall be considered the true source.

Alaska Stat. § 15.13.400(19).

Plaintiffs' challenge to the individual-donor reporting requirement, the district court concluded that Alaska "has a sufficiently important governmental interest in providing voters with information related to the source of funds received by independent expenditure entities," *id.* at 677, and that this reporting requirement is substantially related to that informational interest and narrowly tailored to achieve its ends, *id.* at 678–81.

The district court rejected Plaintiffs' contentions that the individual-donor reporting requirement is unduly burdensome given its strict deadline and compliance burdens. *Id.* at 678–79. The district court found that the individual-donor reporting requirement is "not completely duplicative" of the independent-expenditure entities' disclosure requirement and reasoned that "requiring prompt disclosure by both parties [to a donation] maximizes the likelihood of prompt and accurate reporting of the information when it is most useful to the electorate." *Id.* at 680.

Finally, the district court determined that the temporal parameters of the individual-donor reporting requirement—covering donations made to independent-expenditure entities that have not, and may not, make expenditures in the current election cycle—do not render the law unconstitutional because the required disclosures help ensure voters have access to complete information in advance of an election and "prevents donors from sidestepping disclosure requirements by strategically donating in the final stretch of an election cycle." *Id.* at 681.

Plaintiffs timely appealed, and the district court stayed proceedings pending our decision.

II. MOOTNESS

To begin with, I agree with the majority that this interlocutory appeal from the district court's denial of a preliminary injunction is not moot even though the 2022 election cycle is over. But I reach this conclusion for different reasons. In my view, this case is not moot in the first instance, and, therefore, there is no need to reach the capable-of-repetition-yet-evading-review exception to mootness.

"Mootness doctrine addresses whether an intervening circumstance has deprived the plaintiff of a personal stake in the outcome of the lawsuit." *Moore v. Harper*, 600 U.S. 1, 14 (2023) (internal quotation marks and citation omitted). Thus, a claim is moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)); *see also Flint v. Dennison*, 488 F.3d 816, 823 (9th Cir. 2007) ("A case that has lost its character as a present, live controversy is moot and no longer presents a case or controversy amenable to federal court adjudication." (internal quotation marks and citation omitted)). And "[w]here one of the several issues presented becomes moot, the remaining live issues supply the constitutional requirement of a case or controversy." *Powell v. McCormack*, 395 U.S. 486, 497 (1969).

Accordingly, we assess mootness by considering whether we can give the appellants *any* effective relief if we decide the controversy in their favor. *See NASD Disp. Resol., Inc. v. Jud. Council*, 488 F.3d 1065, 1068 (9th Cir. 2007) ("The test for whether such a controversy exists is 'whether the appellate court can give the appellant any effective relief in the event that it decides the matter on the merits in his favor.'" (quoting *In re Burrell*, 415 F.3d 994, 998 (9th Cir. 2005))). This same test extends to considering whether an interlocutory appeal is moot, even if the underlying case still presents a live controversy. *See Akina v. Hawaii*, 835 F.3d 1003, 1010 (9th Cir. 2016). An appeal of the denial of a preliminary injunction is moot and, absent exception, must be dismissed if we cannot grant any effective relief. *See Ahlman v. Barnes*, 20 F.4th 489, 493 (9th Cir. 2021); *see also Pub. Util. Comm'n v. FERC*, 100 F.3d 1451, 1458 (9th Cir. 1996) ("The court must be able to grant effective relief, or it lacks jurisdiction and must dismiss the appeal.").

A mootness question arises when a preliminary injunction is denied and the harm the requested injunction sought to prevent occurs while the appeal is pending. For example, the plaintiffs in *Akina* sought to enjoin defendants from engaging in certain voter-registration activities or holding certain elections for Native Hawaiians. 835 F.3d at 1010. While this court was considering the appeal, the challenged election was cancelled, and a ratification vote that plaintiffs sought to challenge was never scheduled. *Id.* Accordingly, we determined the appeal was moot because we

could not provide any effective relief. *Id.* Similarly, we have found appeals moot after an underlying dispute was resolved in separate litigation, *NASD Disp. Resol., Inc.*, 488 F.3d at 1067; after an inmate challenging denial of medical treatment was released before we decided the propriety of the district court's injunction ruling, *Norsworthy v. Beard*, 802 F.3d 1090, 1092 (9th Cir. 2015); and after a challenged injunction expired before we could rule, *Ahlman*, 20 F.4th at 494.

The circumstances in each of these cases are distinguishable from the present case. Plaintiffs here seek to enjoin challenged provisions of Ballot Measure 2 while this litigation remains pending. And where the challenged regulations remain in effect, we can still grant effective relief for Plaintiffs. *Cf. McDonald v. Lawson*, ___ F.4th ___, No. 22-56220, 2024 WL 854881 (9th Cir. Feb. 29, 2024). While it is true that *some* of the Plaintiffs here referenced the then-imminent 2022 election in their complaint, alleging that Ballot Measure 2 will impact their speech rights ahead of that election, nothing in the complaint itself suggests that Plaintiffs' claimed injuries are connected to that election alone. To the contrary, Plaintiffs clearly alleged that they contributed and received donations exceeding $2,000 in elections cycles before 2022 and intend to continue to do so in future election cycles. Plaintiffs' Motion for Preliminary Injunction is also not limited to relief related specifically to the 2022 election cycle, as the majority suggests, but makes clear that they intend to participate in electioneering activity that falls within the ambit of the challenged regulations after

the 2022 election. As a result, Plaintiffs continue to have a "personal stake in the outcome of the lawsuit," *Moore*, 600 U.S. at 14 (quotation omitted), and, crucially, the court continues to have the ability to grant Plaintiffs *precisely* the relief that they seek: an injunction preventing enforcement of Alaska's challenged election regulations, *see Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 162 (2014) (stating that an injury-in-fact exists where plaintiffs' "intended future conduct is 'arguably proscribed by the statute they wish to challenge'" (alterations adopted, internal quotation marks and citation omitted)).

Clark v. City of Lakewood helps illustrate the point. 259 F.3d 996 (9th Cir. 2001), *as amended* (Aug. 15, 2001). There, we concluded that a plaintiff whose business license expired "still ha[d] a legally cognizable interest in the outcome" of his First Amendment challenge to an adult cabaret licensing ordinance "sufficient to allow him to seek injunctive relief." *Id.* at 1012. The challenged licensing scheme remained in effect, impacting the plaintiff's ability to conduct his business. *Id.* Acknowledging that "the expiration of [plaintiff's] license may make it more difficult for [him] to return to business," we concluded that this did not moot his case because applying for a new license "is not an insurmountable barrier." *Id.* Here, the individual Plaintiffs similarly remain subject to the regulatory scheme that they assert is infringing their constitutional rights. For them to face a heavy fine, they only need to make a donation exceeding the $2,000 threshold—an act they have carried out

multiple times in the past and intend to carry out in the future—and not comply with the individual-donor reporting requirement.

And Plaintiffs need not be prosecuted under the challenged regulation to experience legally cognizable harm; the ever-present, looming threat of prosecution is enough is to have a chilling effect on their protected political speech. *See Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 393 (1988) (observing that self-censorship is "a harm that can be realized even without an actual prosecution"); *but cf. Lopez v. Candaele*, 630 F.3d 775, 787 (9th Cir. 2010), *as amended* Dec. 16, 2010 ("Mere allegations of a subjective chill are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm." (alteration, internal quotation marks, and citation omitted)). Because the challenged provisions of Ballot Measure 2 were enforceable before the 2022 election and continue to be enforceable in the present, Plaintiffs have and continue to "suffer[] the constitutionally sufficient injury of self-censorship, rendering [their] . . . challenge to the statute . . . justiciable." *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1093 (9th Cir. 2003). Accordingly, as the state seemingly conceded in its supplemental briefing, this appeal simply is not moot as a threshold matter.[5]

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[5] Similarly, this case is constitutionally ripe for review because Plaintiffs have suffered self-censorship injury. *See Getman*, 328 F.3d at 1095 ("[A] finding that the plaintiff has suffered a harm 'dispenses with any ripeness concerns' " (quoting *Ariz. Right to Life Political Action Comm. v. Bayless*, 320 F.3d 1002, 1007 n. 6

The majority skips this first-level inquiry and resolves this question by applying the capable-of-repetition-yet-evading-review exception to mootness, which is commonly employed in election cases. Although I agree that there is a sufficient likelihood that Plaintiffs will be subject to enforcement in the future, I simply do not think we need to get to this (or any other) exception to mootness. Our jurisprudence applies the capable-of-repetition exception in two general categories of election cases. The first category involves plaintiffs, usually asserting as-applied First Amendment challenges, who are seeking relief for injuries premised on issues, candidates, or electioneering activities tethered to a particular election. *See*, *e.g.*, *No on E v. Chiu*, 85 F.4th 493, 500–02 (9th Cir. 2023), *as amended* Oct. 26, 2023 (opponents of a specific ballot measure in the 2020 election—California Proposition E—challenged on-ad disclosures); *Porter v. Jones*, 319 F.3d 483, 487–90 (9th Cir. 2003) (plaintiffs challenged cease-and-desist letter sent by California Secretary of State related to their website discussing strategy for 2000 presidential election); *Baldwin v. Redwood City*, 540 F.2d 1360, 1362, 1364–65 (9th Cir. 1976) (plaintiffs prevented from erecting signs on behalf of a specific candidate for city council). The second category of cases involves plaintiffs seeking relief for allegedly unconstitutional impediments to political participation at

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(9th Cir. 2003))); *see also Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1173–74 (9th Cir. 2022) ("We 'appl[y] the requirement[ ] of ripeness . . . less stringently in the context of First Amendment claims.'" (quoting *Wolfson v. Brammer*, 616 F.3d 1045, 1058 (9th Cir. 2010))).

specific and singular points in time in an election cycle—primarily the ballot stage. *See*, *e.g.*, *Norman v. Reed*, 502 U.S. 279, 287–88 (1992) (plaintiff-candidates prevented from registering party name on 1990 city election ballot); *Storer v. Brown*, 415 U.S. 724, 726–28, 737 n.8 (1974) (independent candidates and supporters challenged California statutory requirements for achieving ballot position in 1972 federal election); *Moore v. Ogilvie*, 394 U.S. 814, 815–16 (1969) (independent candidates blocked from certification and placement on 1968 Illinois state election ballot).

In both categories, the claimed harm is temporally limited. That is not true here. First, Plaintiffs are individual donors and organizations that have participated in multiple past elections, and their claimed injuries are not tied to any election-specific candidate, issue, or even the 2022 election generally. Second, Plaintiffs' injuries are not all based on prohibitions triggered at a singular stage in the election cycle. The challenged individual-donor reporting requirement applies all the time, and therefore Plaintiffs' self-censorship injuries are ongoing.

Although I reach the same result as the majority, the distinction in our reasoning is not one without a difference. On the initial question of whether a case is moot, the party asserting mootness has the burden. *See Native Vill. of Nuiqsut v. Bureau of Land Mgmt.*, 9 F.4th 1201, 1209 (9th Cir. 2021). But where a court considers whether an exception to mootness applies (necessarily suggesting that the case is moot), the burden shifts to the party opposing mootness. *See id.*

(explaining that while defendants bear the burden on the initial mootness question, under the capable-of-repetition exception, the plaintiffs bear the burden of showing that there is a reasonable expectation that they will once again be subjected to the challenged activity). Indeed, the capable-of-repetition-yet-evading-review exception "provides only minimal protection to individual plaintiffs." *FERC*, 100 F.3d at 1459 (quoting *Doe v. Att'y General*, 941 F.2d 780, 784 (9th Cir. 1991)).

Moreover, we have a "virtually unflagging obligation . . . to exercise the jurisdiction given" to us. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). Unlike "[s]tanding doctrine [that] functions to ensure, among other things, that the scarce resources of the federal courts are devoted to those disputes in which the parties have a concrete stake . . . by the time mootness is an issue, the case has been brought and litigated, often . . . for years." *Friends of the Earth, Inc. v. Laidlaw Env't Servs., Inc.*, 528 U.S. 167, 191 (2000). "To abandon the case at an advanced stage may prove more wasteful than frugal." *Id.* at 191–92. Appeals that are erroneously dismissed as moot transgress the obligation to exercise our jurisdiction and lead to waste, inefficiency, and "sunk costs to the judicial system." *Id.* at 192 n.5; *see also* Fed. R. Civ. P. 1 (emphasizing the need "to secure the just, speedy, and inexpensive determination of every action and proceeding"). And the risk of such error increases

where the initial question of whether mootness even applies is skimmed over.[6]

Defendants' arguments that it would be more efficient and effective to resolve the complex issues raised by this case on an appeal from a merits decision, rather than in this interlocutory posture, are well-taken. We have said as much repeatedly. *See*, *e.g.*, *Dish Network Corp. v. FCC*, 653 F.3d 771, 776 (9th Cir. 2011), *as amended* Aug. 9, 2011 ("[S]uch appeals often result in unnecessary delay to the parties and inefficient use of judicial resources." (internal quotation marks and citation omitted)); *Zepeda v. INS*, 753 F.2d 719, 724 (9th Cir. 1983) ("We think it likely that this case, for instance, could have proceeded to a disposition on the merits in far less time than it took to process this preliminary appeal . . . In addition, our disposition of this appeal will affect the rights of the parties only until the district court renders judgment on the merits of the case, at which time the losing party may appeal again." (internal citation omitted)). We also have cautioned district courts not to unnecessarily delay resolution by awaiting interim rulings on preliminary injunctions. *See California v. Azar*, 911 F.3d 558, 583–84 (9th Cir. 2018). Surely that concern is present here where the district court stayed proceedings pending this appeal

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[6] This practice seems particularly prevalent in election cases. *See*, *e.g.*, *Alaska Right to Life Comm. v. Miles*, 441 F.3d 773, 779–80 (9th Cir. 2006); *Gaspee Project v. Mederos*, 13 F.4th 79, 84 (1st Cir. 2021); *Mazo v. N.J. Sec'y of State*, 54 F.4th 124, 135–36 (3d Cir. 2022); *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 661–62 (5th Cir. 2006); *Fla. Right to Life, Inc. v. Lamar*, 273 F.3d 1318, 1324 n.6 (11th Cir. 2001).

without explanation and with dispositive motions pending. But, regardless of concerns about efficiency, we have jurisdiction over this appeal and, therefore, a duty to proceed. *Cf. Dish Network Corp.*, 653 F.3d at 776; *Zepeda*, 753 F.2d at 724; *Azar*, 911 F.3d at 584.

III. INDIVIDUAL-DONOR REPORTING REQUIREMENT

As the majority explains, the *Winter* factors govern whether Plaintiffs are entitled to a preliminary injunction enjoining the challenged provisions in Ballot Measure 2. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The district court addressed only whether Plaintiffs had shown a likelihood of success on the merits. *See Smith*, 614 F. Supp. 3d at 691. We review a district court's decision to deny a preliminary injunction for abuse of discretion. *Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 475 (9th Cir. 2022). "A district court abuses its discretion if it rests its decision on an erroneous legal standard or on clearly erroneous factual findings." *Am. Beverage Ass'n v. City & County of San Francisco*, 916 F.3d 749, 754 (9th Cir. 2019) (en banc) (internal quotation marks and citation omitted). In assessing the likelihood-of-success factor "in the First Amendment context, [plaintiffs] . . . bear[] the initial burden of making a colorable claim that [their] First Amendment rights have been infringed, or are threatened with infringement, at which point the burden shifts to the government to justify the restriction on speech." *Cal. Chamber of Com.*, 29 F.4th at 478 (citation omitted).

A.

Plaintiffs challenge Ballot Measure 2's individual-donor reporting requirement as violative of the First Amendment. The First Amendment, through the Fourteenth Amendment, forbids states from enacting laws that "abridg[e] the freedom of speech." U.S. Const. amend. I. Political speech "is central to the meaning and purpose of the First Amendment." *Citizens United v. FEC*, 558 U.S. 310, 329 (2010). This is so because "[s]peech is an essential mechanism of democracy," "it is the means to hold officials accountable to the people," and it is a "precondition to enlightened self-government and a necessary means to protect it." *Id.* at 339; *see also Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964) ("[S]peech concerning public affairs is more than self-expression; it is the essence of self-government."). Accordingly, "[t]he First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office," *Citizens United*, 558 U.S. at 339 (internal quotation marks and citations omitted), and the Supreme Court has "frequently reaffirmed that speech on public issues occupies the 'highest rung of the hierarchy of First Amendment values,' and is entitled to special protection." *Connick v. Myers*, 461 U.S. 138, 145 (1983) (quoting *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982)).

Notwithstanding the favored status of political speech, regulation of the *disclosure* of such speech is subject to "exacting" rather than "strict" scrutiny. *See Nat'l Ass'n for Gun Rights, Inc. v. Mangan*, 933 F.3d 1102, 1112 (9th Cir. 2019). Exacting scrutiny provides

a slightly lower standard of judicial skepticism than strict scrutiny, but it is not a rubber stamp. The state must demonstrate "a substantial relation between the disclosure requirement and a sufficiently important governmental interest . . . and that the disclosure requirement [is] narrowly tailored to the interest it promotes." *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2385 (2021) (internal quotation marks and citations omitted).

Although the precise bounds of exacting scrutiny are not well defined and the cases applying it are inherently context dependent, some general principles guide this analysis. One principle running through the jurisprudence is a concern that overly burdensome or complex regulations may stifle important political expression. "The First Amendment does not permit laws that force speakers to retain a campaign finance attorney. . . ." *Citizens United*, 588 U.S. at 324. We addressed this point in *Canyon Ferry Road Baptist Church of East Helena, Inc. v. Unsworth*, 556 F.3d 1021 (9th Cir. 2009). In that case, Montana law required "incidental committees" to disclose their political expenditures. *Id.* at 1026–27. These committees also had to register and identify their treasurers and other officers; their expenditures; and their donors' names, addresses, and occupations. *Id.* at 1027, 1034. "Incidental committee" was broadly defined to cover any time two or more persons made an expenditure for or against a candidate or ballot proposition. *Id.* at 1026. While we recognized that Montana, as a general matter, had an important interest in providing information about the

constituencies advocating for and against ballot issues, we held that this interest was not served in proportion to the burdens imposed on donors making small, in-kind expenditures by, for example, printing copies of a ballot petition. *Id.* at 1031, 1033–34. Judge Noonan, concurring, identified two primary burdens imposed on donors under Montana's regulations: (1) having to "[r]ead[ ] and understand[ ] the statute with the help of counsel" and (2) having to form "an independent political committee, registered with the state, equipped with a campaign treasurer, a depository, and a new name" and file the required forms. *Id.* at 1035–36 (Noonan, J., concurring).

Another principle at play is the Supreme Court's repeated concern about "'prophylaxis-upon-prophylaxis approaches' to regulating campaign finance." *FEC v. Cruz*, 596 U.S. 289, 306 (2022) (alteration adopted) (quoting *McCutcheon v. FEC*, 572 U.S. 185, 221 (2014)). The Court has explained that stacking regulations on top of more regulations "is a significant indicator that the [challenged] regulation may not be necessary for the interest it seeks to protect." *Id.* In *Cruz*, for example, the Court held that regulations limiting candidates from being repaid more than $250,000 on loans made to their own campaigns in order to advance anti-corruption interests failed under "closely drawn" scrutiny where individual contributions to candidates were already regulated for the same anti-corruption purposes. *Id.* at 293–95, 305–06. And in *Arizona Free Enterprise Club's Freedom Club PAC v.*

Bennett, the Court struck down an Arizona matching-funds regulation, noting that the provision did little to serve the state's anti-corruption interests where the state also maintained "ascetic contribution limits, strict disclosure requirements, and the general availability of public funding." 564 U.S. 721, 752 (2011). While aspects of these cases are distinguishable, the central theme—that as regulations become increasingly duplicative, their service to the asserted governmental interest becomes more trivial—is an apt one.

Americans for Prosperity Foundation is further illustrative. There, the Supreme Court considered a First Amendment associational challenge to a California law requiring charitable organizations to disclose their major donors. *Ams. for Prosperity Found.*, 141 S. Ct. at 2379, 2382. Reviewing the law under exacting scrutiny, the Court found that there was a "dramatic mismatch" between the interest promoted—policing fraud—and the disclosure regime enacted. *Id.* at 2386. The Court explained that the collected information played no role in advancing California's investigative, regulatory, or enforcement efforts and "[m]ere administrative convenience" for the state was not a sufficient justification for the burdens imposed on donors. *Id.* at 2386–87. Accordingly, the Court held that California's compelled-disclosure regulation was facially unconstitutional. *Id.* at 2385.

B.

Plaintiffs assert a facial challenge[7] to Ballot Measure 2's individual-donor reporting requirement, arguing that the law is duplicative and not narrowly tailored and that it imposes significant burdens on their political speech without adequately advancing Alaska's informational interests.

i. Alaska's Interest

Alaska indisputably has an important interest in informing voters about who funds political activity. *See Citizens United*, 558 U.S. at 371 (stating that disclosures "enable[ ] the electorate to make informed decisions and give proper weight to different speakers and messages"); *No on E*, 85 F.4th at 504 (observing that "[c]ourts have long recognized the governmental interest in the disclosure of the sources of campaign funding"). But under exacting scrutiny, that interest—important as it is—does not govern in a vacuum. We must assess to what degree the challenged regulation promotes this interest in the context of the full complement of reporting requirements. *See Ams. for Prosperity Found.*, 141 S. Ct. at 2385–87. Through that lens,

[7] While the majority correctly notes that facial challenges are *generally* "disfavored," Maj. Op. at 12–13, it fails to mention that facial challenges to legislation in the First Amendment context are treated with more solicitude. *See S. Or. Barter Fair v. Jackson County, Or.*, 372 F.3d 1128, 1134 (9th Cir. 2004) ("Courts generally disfavor facial challenges to legislation, although this reluctance is somewhat relaxed in the First Amendment context.").

the challenged individual-donor reporting requirement does very little—*if anything at all*—to further Alaska's informational interest.

As described above, the individual-donor reporting requirement mirrors the reporting requirement imposed on the independent-expenditure entities that receive the donations, which has not been challenged. At the $2,000 threshold, both the donors and the recipient entities must report the same information by the same deadline—within 24 hours of the triggering donation. Alaska Stat. §§ 15.13.040(e), (r), 15.13.110(k). Additionally, both parties must report the true source of the funds donated. Given this overlap, the individual-donor reporting requirement furthers Alaska's informational interest only minimally. *See Ams. for Prosperity Found.*, 141 S. Ct at 2386 (discussing the "means-ends fit that exacting scrutiny requires" and concluding a state "is not free to enforce *any* disclosure regime that furthers its interests"); *see also McCutcheon*, 572 U.S., at 218 ("In the First Amendment context, fit matters. Even when the Court is not applying strict scrutiny, [it] still require[s] 'a fit . . . whose scope is 'in proportion to the interest served. . . .'" (quoting *Bd. Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989))).

The majority (as well as the district court and Defendants) agrees, as a general matter, that Alaska's interest is "informational" or in obtaining "reliable and accurate" information. *See* Maj. Op. at 17. But in explaining how the individual-donor reporting requirement promotes this interest, the majority first echoes the district court's claims that "the contributor will

always be in a better position than the [independent-expenditure entity] to both identify the true source of its own contribution and quickly report it." *Smith*, 614 F. Supp. 3d at 680 (emphasis added). While there is no doubt that the donors are in the best position to know the true source of their donated funds, Ballot Measure 2 addressed this concern by requiring individual donors that give more than $2,000 to a single independent-expenditure entity in a year to provide to the entity "the identity of the true source . . . of the contribution simultaneously with providing the contribution." Alaska Stat. § 15.13.040(r). This undermines any suggestion that the independent-expenditure entities do not have access to this information. Likewise, there is every expectation that in submitting their reports, the independent-expenditure entities are simply going to parrot what their donors told them about the true source of the contributions. In fact, Defendants admitted as much. Thus, it remains true that the two layers of reporting are duplicative.

The district court and the majority further assert that "maximiz[ing] the likelihood" of accurate information is itself a justifiable basis for imposing a reporting requirement, even if the added requirement is a duplicative, belt-and-suspenders safeguard. *Smith*, 614 F. Supp. 3d at 680. This reasoning inevitably implicates a false binary (the information received by the state is either "reliable and accurate" *because of* the duplicative reporting requirements, or it is not reliable and accurate) and ignores that gradations of reliability and accuracy occur on a spectrum. Of course, any

single disclosure report may be accurate or inaccurate. But when assessing whether the state's informational interest is advanced by the individual-donor reporting requirement, we must consider whether the donor reports increase the reliability and accuracy of the *aggregate* information provided to the public. Thus, the proper question is whether any marginal increase in the reliability and accuracy of information justifies the reporting burden placed on individual donors.[8] I am not convinced that it is here because exacting scrutiny requires "a substantial relation between the disclosure requirement and a sufficiently important governmental interest." *Ams. for Prosperity Found.*, 141 S. Ct. at 2385 (quoting *Doe v. Reed*, 561 U.S. 186, 196 (2010)); *see also Acorn Invs., Inc. v. City of Seattle*, 887 F.2d 219, 225–26 (9th Cir. 1989) (explaining that a substantial relation exists when the challenged law "further[s]" or advances an important government interest).

ii. Burdens Imposed

The individual-donor reporting requirement imposes several burdens on donors. First, as in *Canyon Ferry Road*, individual donors face the burden of "[r]eading and understanding the statute with the help

[8] I am not disputing the district court's factual finding that duplicative reporting requirements may as a general matter increase the accuracy of information. I dispute that the district court properly applied exacting scrutiny in analyzing Alaska's asserted information interest relative to the burdens being imposed by the duplicative individual-donor reporting requirement. *See Cruz*, 596 U.S. at 306; *see also Bennett*, 564 U.S. at 752.

of counsel." 556 F.3d at 1035–36 (Noonan, J., concurring). Alaska's statutory scheme, which utilizes numerous specialized and unfamiliar terms and multiple cross references, is not simple to understand. While becoming informed about the law is not a unique or insurmountable obligation, it is still a burden that must be considered, particularly where the relatively low financial threshold triggering the reporting requirement is unlikely to ensure that only those with significant resources will be required to file donation reports.[9] It must also be remembered that the reporting requirement imposes strict liability for failure to comply. *See* Alaska Stat. § 15.13.390(a); *see also Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974) (noting that "a rule of strict liability that compels a publisher or broadcaster to guarantee the accuracy of his factual assertions may lead to intolerable self-censorship").

Additionally, the individual-donor reporting requirement forces donors to predict whether the entities that they are donating to are "likely to make independent expenditures in one or more candidate elections in the current election cycle." Alaska Stat. § 15.13.040(r).

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[9] The majority suggests that "everyday" Americans do not donate over $2,000 in a year to a single political organization and that this financial threshold may well ensure that the reporting requirement will apply only to "'major contributors,' not unsophisticated parties." Maj. Op. at 19. Without supporting evidence, this seems an improbable assumption. It does not naturally follow that because a donor can afford to contribute $2,001 towards political activity, she either has the sophistication to understand election law or can afford to pay an attorney hundreds of dollars an hour for advice about complying with her reporting requirement.

The majority assumes that individual donors can accomplish this by simply conducting a "quick search on the [APOC]'s database of independent-expenditure organizations" or "simpl[y] . . . asking the organization" directly "whether it has made or will make an independent expenditure." Maj. Op. at 21 n.9. I also reject these assumptions. The donor's deadline for filing a required report is 24 hours from the time of donation. It is unreasonable to assume that a donor will have all the information about the recipient entity necessary to determine whether a report is required before making a donation. And if a donor were to reach out to the recipient entity to confirm the necessary information, the donor is not guaranteed to receive a timely response—presumably most or all independent-expenditure entities operate during normal business hours. Moreover, unlike knowledge of the law, internet access is not a requirement of citizenship. Nor is it a given that all donors will have internet access. Many Americans take online connectivity for granted, but there are obstacles to accessing the internet that may have particular relevance in Alaska, the vast majority of which is remote.[10] An Alaskan who does not have personal

[10] As of 2020, Alaska had the *worst* internet speeds and coverage in the country. *See* Kristen M. Renberg, PhD & Angela Sbano, *The Air We All Breathe: Internet Bans in Probation Conditions*—Dalton v. State, 38 Alaska L. Rev. 171, 180 (2021) ("Alaska ranks lowest in terms of Internet coverage, prices, and speeds, 'with 61% wired and fixed wireless broadband coverage and no low-priced (wired) plan availability' " (citing Tyler Cooper & Julia Tanberk, *Best and Worst States for Internet Coverage, Prices and Speeds, 2020*, BroadbandNow Res. (Mar. 3, 2020))). "Alaska faces a particularly steep challenge to widespread,

internet access may not be able to simply jaunt down to a nearby coffee shop or library.

The significance of the burdens placed on individual donors is highlighted by comparison to the burdens imposed by the independent-expenditure entities' overlapping reporting requirement. Independent-expenditure entities must register with APOC, and they are necessarily familiar with their reporting obligations and the filing process given that their normal operations, including receiving donations, fall under regulated activity. *See* Alaska Stat. § 15.13.050. Thus, it is reasonable to expect that these entities have more experience and resources than individual donors for understanding their obligations and compiling and filing the required reports within the statutory deadline.

Beyond understanding the reporting obligation, preparing and filing the required reports imposes burdens on individual donors. While the form itself may be straightforward, the 24-hour filing deadline is very short. *Id.* § 14.13.040(r). The report form also must be filled out and filed online. Discounting the tangible obstacles imposed by these circumstances, the majority all but accepts the state's description of the online filing process as streamlined, which, in turn, leads to glaring blind spots about technological literacy and internet access, previously referenced. The filing process is also not as simple as filling in a few data fields and hitting "submit." Individual donors must create an

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equitable Internet access. . . . [L]ess than 60% of people living on tribal lands have access to broadband. . . . " *Id.*

account in APOC's online filing system. The state provided screenshots of the report form, but it did not present evidence of how accounts are created or how donors must navigate the APOC website to file their reports.[11] These details matter in a system where if a donor fails at any step of the process, or takes more than 24 hours to complete the process, she faces a fine of up to $1,000 a day, with no outer limit. To summarize: The civically minded retiree who donates over $2,000 to any organization that supports or may support a candidate seeking election must know about the individual-donor reporting requirement and what it demands, determine whether her donation triggers a report, access the internet, register for an APOC account, locate the required reporting form on the APOC website, and fill it out within 24 hours of making a triggering donation. If she fails to check every one of these boxes in time, she is on the hook for what could be significant fines. All of this so that the state can collect the same information from her that it receives from the organization to which she donated. In my view, this is another example of a "mismatch" between the state's asserted informational interest and the requirement it is imposing. *See Ams. for Prosperity Found.*, 141 S. Ct. at 2379.

Moreover, I share the majority's apprehension about the limitless temporal bounds of the 24-hour reporting requirement. I frankly fail to see any

[11] The screenshots of the "test" site the state submitted appear to indicate a donor would need to navigate through five different pages to reach the proper disclosure form.

justification for a strict enforcement regime that surveils year-round and imposes harsh penalties on contributors for potentially minor violations before, during, and after an election cycle. Even assuming that prompt disclosure is helpful to voters *during an election cycle*, why a 24-hour filing deadline is needed in the lulls between active elections is a mystery.

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"[Alaska] is not free to enforce *any* disclosure regime that furthers its interests. It must instead demonstrate its need for universal production in light of any less intrusive alternatives." *Id.* at 2386. It has not done so here. Rather, Plaintiffs have shown that they are likely to succeed in showing that Ballot Measure 2's individual-donor reporting requirement fails to satisfy exacting scrutiny because the burdens it imposes are not "in proportion to the interest served."[12]

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[12] Because of the procedural posture of the case, I do not reach the issue of severability. However, if the district court determines that Ballot Measure 2 is severable under Alaska state law, then it can sever potentially unconstitutional provisions of the statute when it decides the merits of this case. *See Sam Francis Found. v. Christies, Inc.*, 784 F.3d 1320, 1325 (9th Cir. 2015) (en banc) ("Severability is a matter of state law." (alteration and citation omitted)); *see also Forrer v. State*, 471 P.3d 569, 598 (Alaska 2020) ("A provision is severable if the portion remaining is independent and complete in itself so that it may be presumed that the legislature would have enacted the valid parts without the invalid part. However, when the invalidation of a central pillar so undermines the structure of the Act as a whole, then the entire Act must fall." (alteration, internal quotation marks, and citation omitted)); *Planned Parenthood of the Great N.W. v. State*, 375 P.3d 1122, 1153 (Alaska 2016) (Fabe, C.J., concurring) ("[T]he *presence* of a severability clause does not necessarily mean that a

Id. (quoting *McCutcheon*, 572 U.S. at 218). In denying Plaintiffs' motion for a preliminary injunction, the district court failed to properly weigh the burdens of the individual-donor reporting requirement against the degree to which Alaska's informational interest is actually served by requiring individual donors to report the same information that is collected from the entities that receive the donations. *See id.*; *Ariz. Free Enter. Club's Freedom Club PAC*, 564 U.S. at 752. The majority's characterization of the obligations imposed on individual donors glosses over the practical realities for individuals who may choose to engage in political expression by donating money and the significant financial penalties that will result if they do not perfectly comply with the near-immediate reporting requirement. Moreover, it is reasonable to expect that the individual-donor reporting requirement risks chilling individual donors from fully participating in political expression. *See*, *e.g.*, *Counterman v. Colorado*, 600 U.S. 66, 75 (2023) ("Prohibitions on speech have the potential to chill, or deter, speech outside their boundaries. A speaker may be unsure about the side of a line on which his speech falls. . . . Or he may simply be concerned about the expense of becoming entangled in the legal system. The result is 'self-censorship' of speech that could not be proscribed—a cautious and restrictive exercise of First Amendment freedoms." (internal quotation marks and citation omitted)). For all these reasons, I would reverse as to Plaintiffs'

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statute's constitutionally invalid provisions are severable from the remainder of the statutory scheme.").

challenge to the individual-donor reporting requirement and remand for the district court to consider the remaining *Winter* factors.

I respectfully dissent in part.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

DOUG SMITH, et al., Plaintiffs, v. ANNE HELZER, et al., Defendants, and ALASKANS FOR BETTER ELECTIONS, INC., Intervenor-Defendant.	Case No. 3:22-cv-00077-SLG

ORDER RE MOTIONS FOR PRELIMINARY INJUNCTION

(Filed Jul. 14, 2022)

Before the Court at Docket 18 is Plaintiffs' motion for a preliminary injunction.[1] Defendants responded in

[1] Plaintiffs are Doug Smith, Robert Griffin, Allen Vezey, Albert Haynes, Trevor Shaw, Families of the Last Frontier, and Alaska Free Market Coalition. Plaintiffs additionally filed a motion for a preliminary injunction at Docket 7. This order addresses both motions, which involve the same three claims. Also pending before the Court are motions to dismiss filed by Defendants and Intervenor-Defendant Alaskans for Better Elections ("ABE") at Dockets 31 and 33, respectively. ABE incorporated by reference its motion to dismiss into its opposition to the motion for preliminary injunction. *See* Docket 34 at 3.

opposition at Docket 30,[2] and Intervenor-Defendant Alaskans for Better Elections, Inc. ("ABE"), also responded in opposition at Docket 34. Plaintiffs filed their reply at Docket 39. Oral argument was held in Anchorage, Alaska on June 13, 2022.

BACKGROUND

On November 3, 2020, Alaskan voters enacted by initiative Ballot Measure 2, entitled "An Act Replacing the Political Party Primary with an Open Primary System and Ranked-Choice General Election, and Requiring Additional Campaign Finance Disclosures" ("the Measure").[3] The Measure officially became law 90 days later on February 28, 2021.[4] On June 9, 2021, the Alaska Public Offices Commission ("APOC") adopted regulations implementing the Measure.[5] In April 2022, Plaintiffs initiated this action and filed a motion for a preliminary injunction seeking to enjoin the enforcement of several provisions of Alaska's campaign

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[2] Defendants are the five members of the Alaska Public Offices Commission who are sued in their official capacities: Commission Chair Anne Helzer and Commission members Van Lawrence, Richard Stillie, Jr., Suzanne Hancock, and Dan LaSota.

[3] Docket 33-1 at 2, 36–37 (Kendall Aff., Ex. C, "Ballot Language and Legislative Affairs Summary for Ballot Measure 2"). The Ballot Measure is also referred to on the Ballot Measure itself as "Alaska's Better Elections Initiative." *See* Docket 33-1 at 7 (Kendall Aff., Ex. A).

[4] Docket 40 at 4, ¶ 17 (Am. Compl.).

[5] *Id.* at ¶ 18.

finance laws, including certain provisions added by Ballot Measure 2.[6]

The ranked-choice voting provisions of the Measure were challenged in state court and upheld by the Alaska Supreme Court.[7] The present litigation concerns three sets of campaign finance provisions. *First*, the Measure imposes disclosure requirements on donors to organizations that make independent expenditures in elections. Pursuant to Section 7 of the Measure, Alaska Statute § 15.13.040 is amended to impose a reporting requirement on "[e]very individual, person, nongroup entity, or group that contributes more than $2,000 in the aggregate in a calendar year to an entity that made one or more independent expenditures in one or more candidate elections";[8] the reporting must be made within 24 hours of the time that the donation was made.[9] In conjunction with Section 7,

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[6] Docket 1 (Compl.); Docket 7.

[7] *Kohlhaas v. State*, Case No. S-18210 (Alaska Jan. 19, 2022).

[8] Although the text of Section 7 purports to add a new subsection (s) to Alaska Statute § 15.13.040, the text of Section 7 is codified under Alaska Statute § 15.13.040(r). Accordingly, the Court refers to subsection (r) throughout this order, except when quoting the text of Ballot Measure 2.

[9] Section 7 reads in full: "(s) Every individual, person, nongroup entity, or group that contributes more than $2,000 in the aggregate in a calendar year to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle shall report making the contribution or contributions on a form

Section 15 of the Measure amends Alaska Statute § 15.13.390(a) to establish new civil penalties for contributors who fail to comply with Section 7.[10]

Second, Ballot Measure 2 amends existing statutory financial disclaimer requirements for political communications. Section 11 of the Measure provides that the requisite disclaimers be easily discernable

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prescribed by the commission not later than 24 hours after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of the contributions made to that entity by that individual, person, nongroup entity, or group during the calendar year. For purposes of this subsection, the reporting contributor is required to report and certify the true sources of the contribution, and intermediaries, if any, as defined by AS 15.13.400(18). This contributor is also required to provide the identity of the true source to the recipient of the contribution simultaneously with providing the contribution itself."

[10] Section 15 adds a new subsection (2) that reads: "A person who, whether as a contributor or intermediary, delays in reporting a contribution as required by AS 15.13.040(s) is subject to a civil penalty of not more than $1,000 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court"; and a new subsection (3) that reads: "A person who, whether as a contributor or intermediary, misreports or fails to disclose the true source of a contribution in violation of AS 15.13.040(s) [Ballot Measure 2, Section 7] or AS 15.13.074(b) is subject to a civil penalty of not more than the amount of the contribution that is the subject of the misreporting or failure to disclose. Upon a showing that the violation was intentional, a civil penalty of not more than three times the amount of the contribution in violation may be imposed. These penalties as determined by the commission are subject to right of appeal to the superior court."

throughout the "entirety" of the "broadcast, cable, satellite, internet or other digital communication."[11] Section 12 of the Measure adds a new subsection to Alaska Statute § 15.13.090 applicable to political communications by print or video that are "paid for by an outside-funded entity," which requires a disclaimer throughout the entirety of the communication stating that "A MAJORITY OF CONTRIBUTIONS TO (OUTSIDE-FUNDED ENTITY'S NAME) CAME FROM OUTSIDE THE STATE OF ALASKA."[12] Prior to the

[11] Section 11 reads in full: "AS 15.13.090(c) is amended to read: (c) To satisfy the requirements of (a)(1) of this section and, if applicable, (a)(2)(C) of this section, a communication that includes a print or video component must have the following statement or statements placed in the communication so as to be easily discernible, **and in a broadcast, cable, satellite, internet or other digital communication the statement must remain onscreen throughout the entirety of the communication**; the second statement is not required if the person paying for the communication has no contributors or is a political party: This communication was paid for by (person's name and city and state of principal place of business). The top contributors of (person's name) are (the name and city and state of residence or principal place of business, as applicable, of the largest contributors to the person under AS 15.13.090(a)(2)(C))." (Amended text in bold.)

[12] Section 12 adds a new subsection (g) to Alaska Statute § 15.13.090, which reads: "To satisfy the requirements of (a)(1) of this section and, if applicable, (a)(2)(C) of this section, a communication paid for by an outside-funded entity as that term is defined in AS 15.13.400(19) that includes a print or video component must have the following statement placed in the communication so as to be easily discernible, and in a broadcast, cable, satellite, internet or other digital communication the statement must remain onscreen throughout the entirety of the communication; the statement is not required if the outside entity paying for the communication has no contributors or is a political party: 'A MAJORITY OF CONTRIBUTIONS TO (OUTSIDE-FUNDED

implementation of Ballot Measure 2, political communications were already required by statute to include: (1) a sponsor disclaimer stating who paid for the communication; and (2) a disclaimer listing the names and locations of the person or organization's top three contributors.[13]

Third, Ballot Measure 2 creates new statutory requirements applicable to independent expenditure entities regarding "dark money" and the "true source" of contributions to these entities. "Dark money" is defined by Section 17 as "a contribution whose source or sources, whether from wages, investment income, inheritance, or revenue generated from selling goods or services, is not disclosed to the public."[14] Section 6 of the Measure amends Alaska Statute § 15.13.040(j)(3) to require an independent expenditure entity to report on the "true source" of "contributions and all intermediaries" over $2,000.[15] And pursuant to Section 9, "[i]ndividuals,

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ENTITY'S NAME) CAME FROM OUTSIDE THE STATE OF ALASKA.' "

[13] Alaska Stat. § 15.13.090(a)(1), (2).

[14] Section 17 reads in full: "AS. 15.13.400 is amended by adding a new paragraph to read: (17) 'dark money' means a contribution whose source or sources, whether from wages, investment income, inheritance, or revenue generated from selling goods or services, is not disclosed to the public. Notwithstanding the foregoing, to the extent a membership organization receives dues or contributions of less than $2,000 per person per year, the organization itself shall be considered the true source."

[15] Section 6 reads in full: "AS 15.13.040(j)(3) is amended to read: (3) for all contributions described in (2) of this subsection, the name, address, date, and amount contributed by each contributor, [AND] for all contributions described in (2) of this subsection

persons, nongroup entities, or groups subject to AS 15.13.040(s) may not contribute or accept $2,000 or more of dark money as that term is defined in AS 15.13.400(17)," and disclosure of the true source of funds is required of contributions made by intermediaries.[16] Finally, Section 14 imposes a requirement on the recipient entity to report the "true source" and "all intermediaries" of certain contributions within 24 hours of receipt,[17]

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in excess of $250 in the aggregate during a calendar year, the principal occupation and employer of the contributor, **and for all contributions described in (2) of this subsection in excess of $2,000 in the aggregate during a calendar year, the true source of such contributions and all intermediaries, if any, who transferred such funds, and a certification from the treasurer that the report discloses all of the information required by this paragraph.**" (Amended text in bold.)

[16] Section 9 reads in full: "AS 15.13.074(b) is amended to read: (b) A person or group may not make a contribution anonymously, using a fictitious name, or using the name of another. **Individuals, persons, nongroup entities, or groups subject to AS 15.13.040(s) may not contribute or accept $2,000 or more of dark money as that term is defined in AS 15.13.400(17), and may not make a contribution while acting as an intermediary without disclosing the true source of the contribution as defined in AS 15.13.400(18).**" (Amended text in bold.)

[17] Section 14 reads in full: "AS 15.13.110 is amended by adding a new subsection to read: (k) Once contributions from an individual, person, nongroup entity, or group to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle exceed $2,000 in a single year, that entity shall report that contribution, and all subsequent contributions, not later than 24 hours after

and Section 18 provides a statutory definition of "true source" as used in Section 14.[18]

LEGAL STANDARD

In *Winter v. Natural Resources Defense Council, Inc.*, the Supreme Court held that plaintiffs seeking preliminary injunctive relief must establish that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) a preliminary injunction is in the public interest.[19] *Winter* places the burden on a plaintiff to

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receipt. For purposes of this subsection, the entity is required to certify and report the true source, and all intermediaries if any, of the contribution as defined by AS 15.13.400(18)."

[18] Section 18 reads in full: "AS 15.13.400 is amended by adding a new paragraph to read: (18) 'true source' means the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services. A person or legal entity who derived funds via contributions, donations, dues, or gifts is not the true source, but rather an intermediary for the true source. Notwithstanding the foregoing, to the extent a membership organization receives dues or contributions of less than $2,000 per person per year, the organization itself shall be considered the true source."

[19] 555 U.S. 7, 20 (2008). When, as here, the government is a party to the action, "the balance of equities factor and the public interest factor merge." *Jones v. Bonta*, 34 F.4th 704, 713 (9th Cir. 2022) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)).

make a showing on all of the *Winter* factors before a court will issue a preliminary injunction.[20]

"Courts asked to issue preliminary injunctions based on First Amendment grounds face an inherent tension: the moving party bears the burden of showing likely success on the merits . . . and yet within that merits determination the government bears the burden of justifying its speech-restrictive law."[21] Accordingly, "in the First Amendment context, the moving party bears the initial burden of making a colorable

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[20] *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Following *Winter*, the Ninth Circuit addressed the first element—the likelihood of success on the merits—and held that the Circuit's "serious questions" approach to preliminary injunctions was still valid "when applied as a part of the four-element *Winter* test." *Id.* at 1131–35. Accordingly, if a plaintiff shows "that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips *sharply* in the plaintiff's favor.'" *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (quoting *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013)). "Serious questions are 'substantial, difficult, and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation.'" *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991) (quoting *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (en banc)). They "need not promise a certainty of success, nor even present a probability of success, but must involve a 'fair chance on the merits.'" *Id.* (quoting *Marcos*, 862 F.2d at 1362). All of the *Winter* elements must still be satisfied under this approach for a preliminary injunction to issue.

[21] *Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 478 (9th Cir. 2022) (alteration in original) (quoting *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1115 (9th Cir. 2011)).

claim that its First Amendment rights have been infringed, or are threatened with infringement, at which point the burden shifts to the government to justify the restriction on speech."[22]

DISCUSSION

For a preliminary injunction to issue, the Court must determine that each of the *Winter* factors are satisfied. The Court turns first to assessing Plaintiffs' likelihood of success on the merits. Because Plaintiffs advance a facial, as opposed to an as-applied, challenge to certain provisions of Alaska election law,[23] Plaintiffs must demonstrate that a "substantial number of applications [of the challenged provisions] are unconstitutional, judged in relation to [their] plainly legitimate sweep."[24] In that regard, courts will not engage in "speculat[ion] about 'hypothetical' or 'imaginary' cases."[25]

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[22] *Thalheimer*, 645 F.3d at 1116, *overruled on other grounds by Bd. of Trs. of Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195 (9th Cir. 2019).

[23] *See* Docket 39 at 18 (Plaintiffs acknowledging that "[t]his is a facial challenge," "not an as-applied challenge").

[24] *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2387 (2021) (quoting *United States v. Stevens*, 559 U.S. 460, 473 (2010)).

[25] *Yamada v. Snipes*, 786 F.3d 1182, 1201 (9th Cir. 2015) (citing *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008)).

I. Likelihood of Success on the Merits

A. Count I

In Count I, Plaintiffs assert that "[c]ompelling individual donors to report donations to independent expenditures violates the First Amendment."[26] Specifically, Plaintiffs allege that the donor disclosure requirements in Sections 7 and 15 of Ballot Measure 2 are unconstitutional for two reasons: (1) "because they compel individual independent expenditure donors to report donations within 24 hours to Defendants when the recipient organizations must also report them"; and (2) because "they require donors to report donations to groups that are not actively engaged in independent expenditures."[27]

1. Standard of Review

The Court agrees with the parties that the appropriate standard of review applicable to resolution of Count I is exacting scrutiny.[28] To withstand exacting scrutiny, "there must be 'a substantial relation between the disclosure requirement and a sufficiently important governmental interest.'"[29] That is, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment

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[26] Docket 40 at 17.

[27] Docket 40 at 17–18, ¶¶ 88, 91.

[28] Docket 18-1 at 7 (citing *Ams. for Prosperity Found.*, 141 S. Ct. at 2383); Docket 30 at 5.

[29] *Ams. for Prosperity Found.*, 141 S. Ct. at 2383 (quoting *Doe v. Reed*, 561 U.S. 186, 196 (2010)).

rights."[30] "While exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends, it does require that they be narrowly tailored to the government's asserted interest."[31] Narrow tailoring "require[s] a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served."[32]

2. Sufficiently Important Governmental Interest

The parties dispute whether the State has a sufficiently important interest to justify the challenged provisions of Ballot Measure 2. Defendants contend that the State has two important interests with regard to the challenged provisions of the Measure: (1) "the State's interest in an informed electorate" and (2) the State's interest in "'deterr[ing] actual corruption and avoid[ing] the appearance of corruption by exposing large contributions and expenditures to the light of publicity.'"[33]

Plaintiffs, to the contrary, assert that Defendants lack a sufficiently important governmental interest in relation to the challenged provisions of Ballot Measure

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[30] *Id.* (quoting *Reed*, 561 U.S. at 196).

[31] *Id.* at 2383.

[32] *See id.* at 2384 (quoting *McCutcheon v. FEC*, 572 U.S. 185, 218 (2014)).

[33] Docket 30 at 5–7 (quoting *Buckley v. Valeo*, 424 U.S. 1, 67 (1976)).

2. They concede that "laws requiring disclosure of campaign contributions may serve a governmental interest."[34] But, specifically as to the donor disclosure requirement, Plaintiffs maintain that because the State already requires each independent expenditure entity to report the donations that it receives, "[t]here is no state interest in requiring individual donors to report information to the government that the government already has."[35]

The Court finds that the State has a sufficiently important governmental interest in providing voters with information related to the source of funds received by independent expenditure entities. The Supreme Court and the Ninth Circuit have repeatedly recognized that disclaimer and disclosure laws advance the important governmental interest of "providing the voting public with the information with which to assess the various messages vying for their attention in the marketplace of ideas."[36] In *Citizens United*

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[34] Docket 18-1 at 7 (citing *Buckley*, 424 U.S. at 81).

[35] Docket 18-1 at 10; *see* Alaska Stat. § 15.13.040(d).

[36] *Hum. Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1008 (9th Cir. 2010); *see also Citizens United v. FEC*, 558 U.S. 310, 368 (2010); *McConnell v. FEC*, 540 U.S. 93, 196 (2003), *overruled on other grounds by Citizens United*, 558 U.S. 310; *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 792 n.32 (1978) ("Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected."); *Buckley*, 424 U.S. at 76; *Family PAC v. McKenna*, 685 F.3d 800, 806 (9th Cir. 2012) (noting the "important (and even compelling) informational interest" in "informing the voting public" through disclosure of contributions to ballot measure committees).

v. FEC, for example, the Supreme Court noted that the challenged disclaimer requirement, which applied to electioneering communications funded by independent groups, served an important state interest because a reasonable disclosure requirement "enables the electorate to make informed decisions and give proper weight to different speakers and messages."[37] And in *Buckley v. Valeo*, the Supreme Court recognized that disclosure and disclaimer requirements help citizens "make informed choices in the political marketplace," particularly when independent groups run ads "while hiding behind dubious and misleading names."[38] Indeed, while disclaimers may burden First Amendment rights in some ways, they also "advanc[e] the democratic objectives underlying the First Amendment" because "[p]roviding information to the electorate is vital to the efficient functioning of the marketplace of ideas."[39] The Ninth Circuit, too, has recognized that the government's informational interest in election communications is "vital," "important and well recognized."[40] And the Ninth Circuit has stressed that "[a]ccess to reliable information becomes even more important as more speakers, more speech—and thus more spending—enter the marketplace, which is precisely what has occurred in recent years."[41]

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[37] 558 U.S. at 371.

[38] *Id.* at 367 (describing holding of *Buckley*) (quoting *McConnell*, 540 U.S. at 197).

[39] *Brumsickle*, 624 F.3d at 1005.

[40] *Id.* at 1008, 1017.

[41] *Id.* at 1007.

Accordingly, the State has demonstrated a sufficiently important governmental interest as required by the exacting scrutiny standard.[42]

3. Substantial Relationship

Plaintiffs contend that the donor disclosure requirement in Section 7 of Ballot Measure 2 is not justified by a substantial and narrowly tailored relationship with the State's informational interest because it is unduly burdensome and duplicative of other reporting requirements, and because it is not sufficiently related to a specific election.[43] The Court discusses each claim in turn.

a. The Donor Disclosure Requirement Is Not Unduly Burdensome

Plaintiffs assert that the "burdensome nature" of the donor disclosure requirement "suffices by itself to render the requirement unconstitutional" for three

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[42] The Court further finds that the State has an important governmental interest in deterring the appearance of and actual corruption in elections, as well as foreign influence in elections. *See* Alaska Stat. § 15.13.068. Indeed, the Supreme Court has long recognized that disclosure laws "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." *Buckley*, 424 U.S. at 67. However, as the Court finds that Plaintiffs are unlikely to prevail on their claim that the challenged provisions are unconstitutional based on their substantial relationship to the State's informational interest, it does not separately address the anti-corruption interest in this order.

[43] Docket 18-1 at 7–12.

reasons.[44] *First*, they contend that Section 7 imposes "compliance burdens typically reserved for sophisticated parties" on "anyone who writes a moderate-sized check" and maintain that "[r]equiring individuals to meet standards usually reserved for sophisticated parties violates the First Amendment."[45] *Second*, Plaintiffs assert that the obligation to report donations within 24 hours is "a tremendous burden."[46] *Third*, Plaintiffs contend that compliance with the donor disclosure requirement demands "both encyclopedic and prophetic knowledge of Alaska independent expenditure groups," because "a donor must report not only a contribution to an active independent expenditure group, but also a contribution to any group that has made independent expenditures in the past two years or is likely to do so in the future."[47]

In response, Defendants contend that compliance with the disclosure requirements is neither "tremendous[ly] burden[some]" nor does it require "encyclopedic and prophetic knowledge."[48] Defendants assert that "the plaintiffs offer no evidence that individual donors will find compliance difficult" and describe the burden as limited to "filling out a single online form."[49] Defendants further argue that the donor disclosure

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[44] Docket 18-1 at 8.

[45] Docket 18-1 at 8-9 (citing *Sampson v. Buescher*, 625 F.3d 1247, 1259 (10th Cir. 2010)).

[46] Docket 18-1 at 9.

[47] Docket 18-1 at 9.

[48] Docket 30 at 13 (quoting Docket 18-1 at 9).

[49] Docket 30 at 13.

requirement is narrowly tailored to further the State's claimed interests and as such survives exacting scrutiny.[50]

The Court finds that the donor disclosure requirement is not unduly burdensome so as to render Sections 7 and 15 unconstitutional. Foremost, Plaintiffs provide no evidence to suggest that filling out the online form required by Section 7 within 24 hours of making a contribution is difficult. Indeed, Plaintiffs fail to provide evidence from the previous 16 months since the donor disclosure requirement took effect to support their assertion that compliance has been burdensome or onerous. Instead, they have opted to bring a facial challenge; but Plaintiffs cannot sustain a facial challenge based on "'hypothetical' or 'imaginary' cases."[51] In contrast, the State has filed seven screen shots of the relevant Statement of Contributions Form 15-5, which appears to be a straightforward document that enables a donor to promptly comply with the reporting requirement.[52]

Plaintiffs rely on *Americans for Prosperity Foundation v. Bonta*, where the Supreme Court invalidated a donor disclosure requirement.[53] But *Americans for Prosperity* is not a case concerning electioneering by independent expenditure entities. Rather, it concerned

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[50] Docket 30 at 8.

[51] *Yamada*, 786 F.3d at 1201 (citing *Wash. State Grange*, 552 U.S. at 450).

[52] *See* Docket 30-2 (Hebdon Decl., Ex. B).

[53] *See* Docket 18-1 at 8.

the right of private charities to withhold donor names, and it contained an extensive record that demonstrated that government investigators had only rarely used the donor information to detect charitable fraud, the asserted state interest in that case.[54] In contrast, here, the donor disclosure requirement in Section 7 is directly related to the State's important interest in promptly providing voters with information about the source of funding of political advertisements by independent expenditure entities. Moreover, the donor disclosure requirement is tailored to that interest through both the $2,000 minimum and the temporal requirements, discussed below.[55]

b. The Donor Disclosure Requirement Is Not Unduly Duplicative

Plaintiffs next contend that the donor disclosure requirement is unconstitutional because it imposes a "burden on citizens even though [the State] *already has* a source of the *same information*."[56] Plaintiffs maintain that because the "[d]isclosure of donations by the donee political entitles" is already required by Alaska Statute § 15.13.040(d), "the burden on individual donors is great, and the marginal gain to the state is very small."[57] "fulfills any legitimate interest Alaska

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[54] *See Ams. for Prosperity Found.*, 141 S. Ct. at 2381.

[55] Alaska Stat. § 15.13.040(r); *see also* Docket 30 at 10.

[56] Docket 18-1 at 10.

[57] Docket 18-1 at 11.

may claim."[58] Accordingly, Plaintiffs assert that "[t]here is no state interest in requiring individual donors to report information to the government that the government already has."[59]

Defendants respond that the donor disclosure requirement complements, as opposed to duplicates, other requirements of Alaska campaign finance law. Specifically, Defendants contend that the donor disclosure requirement traces the "true source" of the donor's funds, such that "the law reasonably obligates the donor to provide and certify the truth of this information."[60] In the absence of the donor disclosure requirement, Defendants maintain that "[p]lacing this obligation solely on the recipient would lead to incomplete or inaccurate reporting of true sources," whereas "[r]equiring both sides of the transaction to report . . . ensures that no transactions are missed."[61]

The Court finds that the donor disclosure requirement in Section 7 overlaps with, but is not completely duplicative of, the reporting requirements for independent expenditure entities. As ABE notes, "the contributor will *always* be in a better position than the [independent expenditure entity] to both identify the

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[58] Docket 18-1 at 10; *see* Alaska Stat. § 15.13.040(d) ("Every person making an independent expenditure shall make a full report of expenditures made and contributions received, upon a form prescribed by the commission, unless exempt from reporting.").

[59] Docket 18-1 at 10.

[60] Docket 30 at 12.

[61] Docket 30 at 12.

true source of its own contribution and quickly report it."[62] Requiring the donor, in addition to the recipient, to report contributions over $2,000 does not unreasonably burden the donor. Rather, requiring prompt disclosure by both parties maximizes the likelihood of prompt and accurate reporting of the information when it is most useful to the electorate.[63]

Plaintiffs' reliance on *McCutcheon v. FEC*, 572 U.S. 185, 221 (2014), is unavailing. In *McCutcheon*, the Supreme Court considered the constitutionality of a regime that imposed limitations on both candidate contributions and expenditures. Here, by contrast, Plaintiffs are challenging the constitutionality of disclosure requirements. As such, the Supreme Court's "prophylaxis-upon-prophylaxis" analysis is inapplicable to the present litigation.

Because the donor disclosure requirement is closely tailored to providing valuable funding information to the State and its citizens, Plaintiffs are not likely to succeed on their claim that Sections 7 and 15 of Ballot Measure 2 are unconstitutional because they are duplicative of other reporting requirements.

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[62] Docket 33 at 21.

[63] Docket 33 at 22 & n.102; *see Yes on Prop B v. City & County of San Francisco*, 440 F. Supp. 3d 1049, 1059 (N.D. Cal. 2020).

c. The Temporal Parameters of the Donor Disclosure Requirement Are Not Unconstitutional

Plaintiffs also take issue with the provisions of Section 7 that extend the reporting requirement beyond a current election cycle to contributions made to an entity that made independent expenditures in the previous election cycle, as well as to contributions made to an entity that the donor "knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle."[64] Plaintiffs assert that "the government has no business requiring disclosure of current donations to groups that engaged in independent expenditures in the past or may do so in the future."[65] Plaintiffs maintain that the temporal reach of the donor disclosure requirement is not "tied with precision to specific election periods" or "carefully tailored" to any sufficiently important governmental interest.[66]

In response, Defendants acknowledge that the disclosure law "might sweep in some excess information at the margins" as it applies to contributions made during a current election cycle to an entity that has not made any expenditures in the current cycle, but did make them in the past cycle.[67] However, Defendants

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[64] Alaska Stat. § 15.13.040(r).

[65] Docket 18-1 at 11.

[66] Docket 18-1 at 11–12 (citing *Nat'l Ass'n for Gun Rights, Inc. v. Mangan*, 933 F.3d 1102, 1117–18 (9th Cir. 2019)).

[67] Docket 30 at 10.

argue that this does not make the disclosure requirement impermissibly overbroad, as it furthers the law's purpose. Defendants explain: "If the law covered only contributions to entities that had *already* made expenditures [in the current election] cycle, many relevant contributions would be missed" because "an entity could amass a secret war chest and delay reporting by beginning its expenditures at the last minute, leaving voters to sort through reports after the election."[68]

Foremost, the Court reiterates that Plaintiffs cannot sustain a facial challenge to the donor disclosure provisions of Ballot Measure 2 based on " 'hypothetical' or 'imaginary' cases."[69] Plaintiffs have not submitted any evidence that they have been impacted by the temporal scope of the donor reporting requirement. Nor have they demonstrated that a "substantial number" of contributions subject to the donor reporting requirement are unconstitutional in relation to the "plainly legitimate sweep" of the requirement.[70] The Court finds that the temporal reach of Section 7 is substantially related and narrowly tailored to the State's important interest in providing voters with prompt information related to the funding of political advertisements in a current election cycle. Specifically, requiring the disclosure of donations made to independent expenditure entities in the previous election cycle

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[68] Docket 30 at 10.

[69] *Yamada*, 786 F.3d at 1201 (citing *Wash. State Grange*, 552 U.S. at 450).

[70] *Ams. for Prosperity Found.*, 141 S. Ct. at 2387.

and are likely to make independent expenditures in the current election cycle helps ensure that voters will promptly have access to complete information regarding the source of independent expenditures in advance of an election, and prevents donors from sidestepping disclosure requirements by strategically donating in the final stretch of an election cycle.

For the foregoing reasons, Plaintiffs have not established a likelihood of success on the merits of Count I.[71]

B. Count II

In Count II, Plaintiffs assert that "[t]he entirety of AS 15.13.090, as modified by Sections 11 and 12 of Ballot Measure 2, is unconstitutional" because it "[c]ompel[s] speakers to recite government-imposed scripts on campaign materials" and discriminates against nonresidents in violation of the First Amendment.[72] Alaska Statute § 15.13.090, as modified by the Measure, requires political advertisements by independent

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[71] The Court has applied the more stringent "likelihood of success on the merits" analysis; however, applying the more relaxed "substantial question" analysis would yield the same result. Even assuming, without deciding, that the "balance of hardships tips *sharply* in the plaintiff's favor," Plaintiffs have not carried their burden at this stage of the litigation to demonstrate that an adequately "serious question" exists with regard to the constitutional validity of the donor disclosure provisions in Sections 7 and 15.

[72] Docket 40 at 18–20.

expenditure entities to include three on-ad disclaimers: (1) a sponsor disclaimer; (2) a top-three-donor disclaimer; and (3) when applicable, an out-of-state disclaimer.[73]

1. Standard of Review

As a threshold matter, the parties disagree as to which standard of review applies to the disclaimer requirements: strict scrutiny or exacting scrutiny. Plaintiffs maintain that the disclaimer requirements are subject to strict scrutiny because they are content-based requirements that "force[] Plaintiffs to alter their advertisements that seek to inform or convince people on a particularly political issue, to also encourage viewers or listeners to consider Plaintiffs' own donors."[74] They point to *National Institute of Family & Life Advocates (NIFLA) v. Becerra*, in which the Supreme Court applied strict scrutiny to strike down a California statute compelling crisis pregnancy centers to post notices about the availability of abortion services.[75] Plaintiffs also rely on *ACLU of Nevada v.*

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[73] Plaintiffs do not specifically challenge the sponsor disclaimer by itself but do assert that the three disclaimers are overly burdensome when considering their cumulative effect because "they take up such a significant portion of an advertisement." *See* Docket 40 at 19–20, ¶ 98.

[74] Docket 18-1 at 14-15. Specifically with regard to the out-of-state disclaimer, Plaintiffs also assert that strict scrutiny is the appropriate standard because it is a "law[] that discourage[s] a certain class of people from making political contributions and thus burden[s] political speech." Docket 18-1 at 24.

[75] 138 S. Ct. 2361 (2018); *see also* Docket 18-1 at 13–14.

Heller, a case in which the Ninth Circuit applied strict scrutiny to a Nevada law that "require[d] certain groups or entities publishing 'any material or information relating to an election, candidate or any question on a ballot' to reveal on the publication the names and addresses of the publication's financial sponsors."[76] There, the court recognized a "constitutionally determinative distinction between on-publication identity disclosure requirements and after-the-fact reporting requirements," holding that the former should receive strict scrutiny because such requirements "involve the direct alteration of the content of a communication."[77]

Defendants, by contrast, contend that exacting scrutiny is the appropriate standard because the Supreme Court applied that standard to "both disclosures and disclaimers" in *Citizens United*, "even though the plaintiff had advocated for strict scrutiny—like the plaintiffs here—on the theory that disclaimers constitute 'compelled speech' or 'content-based restrictions on political speech.'"[78] They assert that *Heller* is no longer good law because it was decided before *Citizens United* and maintain that the Ninth Circuit now "recognizes *Citizens United* as the controlling law on

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[76] 378 F.3d 979, 981, 992 (9th Cir. 2004) (emphasis omitted); *see also* Docket 18-1 at 18.

[77] *Heller*, 378 F.3d at 994.

[78] Docket 30 at 14–15 (citing *Citizens United*, 558 U.S. at 366; Br. for Appellant at 43–44, *Citizens United*, 558 U.S. 310 (Case No. 08-205), 2009 WL 6147).

political disclaimers."[79] Plaintiffs reply that *Citizens United* is inapposite because it "said not one word about compelled speech" and only addressed a "stand by your ad" disclaimer.[80] They assert that the Measure "goes far beyond" such a disclaimer and that "[t]he State's interest in forcing a candidate to acknowledge his own ad is different from exposing donors on the face of the ad."[81]

The Court finds that, to the extent that the Ninth Circuit's decision in *Heller* can be read as requiring strict scrutiny for all on-ad political disclaimer requirements, such a holding is "clearly irreconcilable" with the Supreme Court's subsequent decision in *Citizens United.*[82] Contrary to Plaintiffs' assertions, the Supreme Court did consider compelled speech in *Citizens*

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[79] Docket 30 at 15 (citing *Yamada*, 786 F.3d at 1202).

[80] Docket 39 at 10.

[81] Docket 39 at 10.

[82] *See United States v. Delgado-Ramos*, 635 F.3d 1237, 1239 (9th Cir. 2011) (quoting *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc)). For a Supreme Court decision to "effectively overrule[ ]" Ninth Circuit precedent, the Supreme Court decision must "undercut the theory or reasoning underlying the prior circuit precedent in such a way that the cases are clearly irreconcilable." *Id.* (quoting *Miller*, 335 F.3d at 900). It appears that *Citizens United* and *Heller* are irreconcilable in this respect because *Citizens United*'s reasoning in applying exacting scrutiny, which distinguished on-ad disclaimer and disclosure requirements as less burdensome than outright caps or bans on electioneering activities, undercuts the reasoning underlying *Heller*'s application of strict scrutiny, which instead turned on the temporal distinction between on-publication and after-the-fact disclosure requirements. *Compare Citizens United*, 558 U.S. at 366, *with Heller*, 378 F.3d at 994.

United because one of the challenged statutory provisions that the Supreme Court upheld required that "televised electioneering communications funded by anyone other than a candidate must include a disclaimer" stating the "name and address (or Web site address) of the person or group that funded the advertisement."[83] The Supreme Court made clear that its rationale in employing exacting scrutiny applied to both disclosures *and* disclaimers, explaining that "[d]isclaimer and disclosure requirements may burden the ability to speak, but they 'impose no ceiling on campaign-related activities,' and 'do not prevent anyone from speaking.' "[84] Indeed, the Ninth Circuit has since recognized *Citizens United* as controlling on the appropriate level of scrutiny for political disclaimer requirements.[85] In *Chula Vista Citizens for Jobs & Fair*

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[83] *See Citizens United*, 558 U.S. at 366 (citing 2 U.S.C. § 441d(a)(3)).

[84] *Id.* at 366 (citation omitted) (first quoting *Buckley*, 424 U.S. at 64; then quoting *McConnell*, 540 U.S. at 201); *see also Reed*, 561 U.S. at 196 (stating that disclosure requirements are subject to less demanding standard of review because they are "not a prohibition on speech").

[85] *See Montanans for Cmty. Dev. v. Mangan*, 735 Fed. App'x 280, 284 (9th Cir. 2018) (citing *Citizens United*, 558 U.S. at 369) (applying exacting scrutiny to "paid-for" attribution requirement for electioneering communications); *Chula Vista Citizens for Jobs & Fair Competition v. Norris*, 782 F.3d 520, 535–36 (9th Cir. 2015) (en banc) (citing *Citizens United*, 558 U.S. at 366–67); *Yamada*, 786 F.3d at 1194 (applying exacting scrutiny to requirement that political advertisements include disclaimer stating whether they are broadcast or published with approval of a candidate); *see also San Franciscans Supporting Prop B v. Chiu*, Case No. 22-cv-02785-CRB, 2022 WL 1786573, at *4 (N.D. Cal. June 1, 2022) (concluding that Heller's analysis of disclaimer law

Competition v. Norris, for example, the Ninth Circuit, sitting en banc, cited *Citizens United* to conclude that exacting scrutiny applied to California's statutory requirement that the name of the official proponent of a ballot initiative must appear on each section of the initiative petition that is circulated to voters.[86]

Thus, even if a disclosure or disclaimer is viewed as compelling speech, exacting scrutiny is the appropriate standard to apply in considering Plaintiffs' likelihood of success on the merits of Count II. To survive exacting scrutiny, the disclaimer requirements must be "substantially related to a sufficiently important governmental interest"[87] and "be narrowly tailored to the government's asserted interest."[88]

2. Sufficiently Important Governmental Interest

As discussed above, the Court finds that the State has a sufficiently important governmental interest in

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as content-based restriction subject to strict scrutiny is no longer good law in light of Citizens United and other Supreme Court cases applying exacting scrutiny to disclaimers), *appeal filed*, Case No. 22-15824 (9th Cir. June 6, 2022).

[86] 782 F.3d at 535–36 (citing *Citizens United*, 558 U.S. at 366–67).

[87] *Brumsickle*, 624 F.3d at 1005; *cf. Ams. for Prosperity Found.*, 141 S. Ct. at 2383 ("Under strict scrutiny, the government must adopt 'the least restrictive means of achieving a compelling state interest,' rather than a means substantially related to a sufficiently important interest." (citation omitted) (quoting *McCullen v. Coakley*, 573 U.S. 464, 478 (2014))).

[88] *Ams. for Prosperity Found.*, 141 S. Ct. at 2383.

providing voters with information related to the funding of political advertisements by independent expenditure organizations. While Plaintiffs argue in their motion that the out-of-state disclaimer does not serve an important state interest in preventing corruption,[89] Defendants respond that they do not "seek[] to justify the out-of-state disclaimer as a means of preventing quid pro quo corruption."[90] Thus, the Court will only consider whether the disclaimers are justified based on the State's informational interest.

3. Substantial Relation

Plaintiffs assert that the on-ad disclaimer requirements significantly burden their First Amendment rights in three ways and that these burdens are not justified by a substantial and narrowly tailored relationship between the disclaimers and the State's informational interest.[91] The Court discusses each of Plaintiffs' claimed burdens in turn.

a. Top-Three-Donor Disclaimer

Plaintiffs assert that the disclaimer requirements, particularly the top-three-donor disclaimer contained in Section 11 of the Measure, burden their First Amendment rights because they "force[] them to speak

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[89] *See* Docket 18-1 at 24.

[90] Docket 30 at 20.

[91] Docket 18-1 at 21, 26–27.

a message they do not want to voice."[92] They maintain that the top-three-donor disclaimer is akin to the crisis pregnancy center notices invalidated in *NIFLA* because Plaintiffs "believe strongly in the right to privacy for citizens and would not include their donors' information in their advertisements if not forced to by the law."[93]

Given this burden, Plaintiffs contend that the top-three-donor disclaimer is not substantially related to an informational interest or narrowly tailored because the State's interest in informing the electorate is already served by other disclosure requirements; thus, the on-ad top-three-donor disclaimer "only provides, at best, a marginal gain in convenience for viewers to see these names on the ad itself, rather than having to trouble themselves to find it on the Internet."[94] Further, Plaintiffs assert that "[t]he on-ad sponsor disclaimer (the name of the independent expenditure committee) alone easily satisfies any information interest" and that conveying the top three donors on the ad may actually "decrease viewers' information by giving them a distorted view of the organization's overall donors."[95]

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[92] Docket 18-1 at 16.

[93] Docket 18-1 at 16–17 ("Forcing an organization committed to limited government and personal freedom to announce the names of its donors in advertisements is similar to forcing pro-life groups to share information about abortion access.").

[94] Docket 18-1 at 19.

[95] Docket 18-1 at 20. In addition, Plaintiffs cite *McIntyre v. Ohio Elections Com'n*, 514 U.S. 334, 348–49 (1995), for the

Defendants disagree with Plaintiffs' assessment of the burdens created by the top-three-donor disclaimer. They contend that *NIFLA* is not analogous because that case "was not about political disclaimers, and the disclaimers there were much more burdensome."[96] Further, Defendants maintain that there is a sufficiently substantial relation between the top-three-donor disclaimer requirement and the government's informational interest, asserting that: (1) the on-ad sponsor disclaimer alone is insufficient because "disclosing donor information prevents entities from 'hiding behind dubious and misleading names' . . . while trying to influence the outcome of elections";[97] and (2) including "[donor] information in the ads themselves advances [the government's informational interest]

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proposition that "[t]he 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." Docket 18-1 at 19. However, *McIntyre* is factually distinct from this litigation, as it involved "individuals acting independently and using only their own modest resources" to engage in unorganized political speech regarding ballot initiatives. *See* 514 U.S. at 351–52; *cf.* Docket 33 at 30 (Intervenor-Def.'s Mot. to Dismiss) ("Here, there are already minimum contribution and expenditure thresholds to protect limited and unsophisticated political speech from arguably burdensome requirements, and Ballot Measure 2 did not change Alaska's disclaimer and disclosure requirements for ballot initiatives." (footnote omitted)). Indeed, as the Supreme Court's more recent decision in *Citizens United* demonstrates, an informational interest can be sufficiently important to justify disclaimer requirements for electioneering communications made by independent expenditure entities. *See* 558 U.S. at 369–71.

[96] Docket 30 at 16.

[97] Docket 30 at 16 (quoting *McConnell*, 540 U.S. at 196–97).

more efficiently and effectively than requiring voters to search for disclosure forms online."[98]

In support of these contentions, Defendants cite *Gaspee Project v. Mederos*, a recent case in which the First Circuit applied exacting scrutiny to uphold a Maine law requiring on-ad disclaimers identifying the ad sponsor's top five donors.[99] In *Gaspee*, the First Circuit rejected the plaintiffs' arguments that the disclaimer "serve[d] no informational interest and [was] essentially redundant of [a separate] disclosure requirement."[100] The court determined that the on-ad disclaimer was "not entirely redundant to the donor information revealed by public disclosures" because it was "a more efficient tool for a member of the public who wishes to know the identity of the donors backing the speaker."[101] Further, the court noted that an on-ad disclaimer "may be more effective in generating discourse" because it "may elicit debate as to both the extent of donor influence on the message and the extent

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[98] Docket 30 at 17.

[99] 13 F.4th 79, 91 (1st Cir. 2021), *cert. denied*, Case No. 21-890, 2022 WL 1205841 (U.S. Apr. 25, 2022); *see also* Docket 30 at 17–18.

[100] *Gaspee Project*, 13 F.4th at 91.

[101] *Id.* ("The public is 'flooded with a profusion of information and political messages,' and the on-ad donor disclaimer provides an instantaneous heuristic by which to evaluate generic or uninformative speaker names." (quoting *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 57 (1st Cir. 2011))).

to which the top five donors are representative of the speaker's donor base."[102]

Balancing the burdens against the governmental interest, the Court finds that the on-ad top-three-donor disclaimer requirement is substantially related to the important governmental interest in an informed electorate and is narrowly tailored to further that interest. The Court agrees with Defendants that the burden here on independent expenditure entities is much lower than in *NIFLA*, where pro-life pregnancy crisis centers were required to "inform women how they can obtain state-subsidized abortions," which was "the very practice that [they] are devoted to opposing."[103] Here, while Plaintiffs may hold broad ideological concerns about privacy, the on-ad top-three-donor disclaimer does not require them to convey a message that is directly contrary to whatever political statement they seek to make in their electioneering communications.

With regard to the substantial relation between the burdens created by the on-ad top-three-donor disclaimer requirement and the government's informational interest, the Court finds the reasoning of the First Circuit in *Gaspee Project* persuasive. While voters have access to donor information through the required disclosures to the APOC, the on-ad placement of some of that information provides a far more efficient and effective form of disclosure. As the Supreme

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[102] *Id.*

[103] *NIFLA*, 138 S. Ct. at 2371.

Court noted in *Citizens United*, there is value in the "prompt disclosure" of such information, as it "can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters."[104] Given the modest nature of the burden imposed by the on-ad top-three-donor disclaimer requirement and the fact that exacting scrutiny does not require that the government use the least restrictive means possible, there is a sufficient relationship between the government's informational interest and the on-ad top-three-donor disclaimer requirement to withstand constitutional scrutiny.[105] Plaintiffs are unlikely to succeed on the merits of Count II based on the on-ad top-three-donor disclaimer requirement.

b. Out-of-State Disclaimer

Plaintiffs challenge the out-of-state disclaimer requirement in Section 12 of the Measure as unduly burdensome because it discriminates against nonresidents without sufficient justification, asserting that "[o]ut-of-state campaign contribution restrictions like Alaska's are routinely invalidated by courts."[106]

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[104] *Citizens United*, 558 U.S. at 371.

[105] *See Family PAC*, 685 F.3d at 809 (upholding disclosure requirements when they "impose[d] only modest burdens on First Amendment rights, while serving a governmental interest in an informed electorate that is of the utmost importance").

[106] Docket 18-1 at 23–25 (citing *Thompson v. Hebdon*, 7 F.4th 811 (9th Cir. 2021); *Landell v. Sorrell*, 382 F.3d 91 (2d Cir. 2004); *SD Voice v. Noem*, 380 F. Supp. 3d 939 (D.S.D. 2019)). Plaintiffs also cite two cases regarding bans on out-of-state petition

Plaintiffs primarily rely on *Thompson v. Hebdon*, a recent decision in which the Ninth Circuit held that Alaska's nonresident aggregate contribution limit, which barred candidates from accepting more than $3,000 per year from non-Alaskans, violated the First Amendment.[107] There, the court concluded that the contribution limit did not serve an anti-corruption interest and that even if it did, the limit was not sufficiently tailored to serve that interest.[108]

Plaintiffs assert that there is not a substantial relation between the out-of-state disclaimer and the State's informational interest because "the donors to independent expenditure groups are already disclosed to the state, and to the public on the state's website, so one can easily determine whether any particular group draws it support from outside Alaska."[109] Further, they maintain that the disclaimer requirement is not narrowly tailored due to the Measure's over-inclusive definition of "outside-funded entity": a group that takes donations from a true source with a principal place of business outside Alaska.[110] Plaintiffs suggest that "one's principal place of business is a poor proxy for one's interest in Alaska's elections," particularly

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circulators. Docket 18-1 at 26 (citing *We the People PAC v. Bellows*, 519 F. Supp. 3d 13 (D. Me. 2021), *appeal filed*, Case No. 21-1149 (1st Cir. Feb. 23, 2021); *Citizens in Charge v. Gale*, 810 F. Supp. 2d 916 (D. Neb. 2011)).

[107] 7 F.4th at 824.

[108] *See id.* at 824–25.

[109] Docket 18-1 at 26.

[110] Docket 18-1 at 27.

because a donor may have "significant operations in Alaska" while "happening to be headquartered elsewhere."[111]

Defendants disagree, maintaining that the out-of-state disclaimer is "narrowly tailored to the important state interest in informing voters," particularly when entities use misleading names, such as "Families of the Last Frontier," that imply that they are primarily funded by Alaska residents.[112] While Defendants acknowledge that donors with an out-of-state principal place of business may still have a valid interest in Alaska's elections, they note that those donors are not barred from participating—the Measure only requires disclosure.[113]

As Defendants note, *Thompson* and the other cases that Plaintiffs cite concerned contribution limits or bans on non-resident petition circulators rather than the type of disclaimer requirement at issue here.[114] While the out-of-state disclaimer places some burden on political speech, it is not nearly as burdensome as an outright ban or cap on contributions or

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[111] Docket 18-1 at 27.

[112] Docket 30 at 19–20; *see*, *e.g.*, Docket 33 at 11–12, 12 n.57 (citing Docket 33-1 at 4, 20, ¶¶ 11, 20 (Kendall Aff.)) (noting that Families of the Last Frontier received over 99.5% of its funding from out-of-state donations in 2018).

[113] Docket 30 at 20.

[114] Docket 30 at 19 ("The plaintiffs' arguments about this all rest on the mistaken premise that this disclaimer is analytically equivalent to banning or limiting the quantity of out-of-state speech in Alaska's elections.").

certain political activities. It does not limit how much out-of-state donors can give, nor does it even directly burden out-of-state donors; rather, it burdens independent expenditure entities that receive over a certain percentage of their funds from out-of-state donors. Thus, given the relatively minimal burden it imposes, there is a sufficiently substantial relation between the out-of-state disclaimer and the State's informational interest.

With respect to tailoring, the Court again finds the reasoning of *Gaspee Project* instructive. While there are other avenues for voters to learn about independent expenditure entities' funding sources, an on-ad disclaimer makes that information far more accessible and presents it at a highly useful time for voters attempting to weigh competing political messages. And though an entity's principal place of business may be an imperfect proxy for its interest in Alaska's elections, it is likely an accurate measure in most cases; exacting scrutiny does not require a perfect fit between a state's important informational interest and the means used to further that interest. Thus, the Court finds that the out-of-state disclaimer has a substantial relation to Defendants' informational interest and is narrowly tailored to further that interest. Plaintiffs are unlikely to succeed on the merits of Count II based on the out-of-state disclaimer requirement.

c. Ad Space

Plaintiffs also assert that all three disclaimers, taken together, "restrict[] their ability to speak their preferred message" because the disclaimers consume substantial ad space.[115] They primarily rely on *American Beverage Association v. City & County of San Francisco*, a case in which the Ninth Circuit overturned a district court's denial of a preliminary injunction against enforcement of a mandatory health warning on ads for sugar-sweetened beverages.[116] There, the Ninth Circuit held that the disclaimer impermissibly compelled speech because the warning was required to "occupy at least 20% of the advertisement," but expert testimony showed that a 10% warning would have sufficed.[117] Thus, "the 20% requirement [was] not justified and [was] unduly burdensome when balanced against its likely burden on protected speech."[118]

Defendants respond that Plaintiffs "offer no evidence to support their conclusory assertions that the

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[115] Docket 18-1 at 16, 22.

[116] 916 F.3d 749, 754 (9th Cir. 2019); Docket 18-1 at 22; Docket 39 at 11–12.

[117] 916 F.3d at 754, 757.

[118] *Id.* at 757. However, the court was careful to note that its holding was based on the specific facts of the case; it "[did] not hold that a warning occupying 10% of product labels or advertisements necessarily is valid, nor [did it] hold that a warning occupying more than 10% of product labels or advertisements necessarily is invalid." *Id.*

disclaimers will take up too much space in their advertisements."[119]

The Court finds that *American Beverage Association* is not controlling here, as that case concerned commercial speech. Different considerations are at play when regulating political advertisements, and the State's interest in an informed electorate may justify more burdensome disclaimers. Indeed, in *Citizens United*, the disclaimer requirement upheld by the Supreme Court required the plaintiff to devote four seconds of a ten-second ad to a disclaimer—a full 40% of the ad space.[120] There, the Supreme Court explicitly rejected the plaintiff's argument that the disclaimer was impermissible because it "decrease[d] both the quantity and effectiveness of the group's speech by forcing it to devote four seconds of each advertisement to the spoken disclaimer."[121]

Moreover, unlike in *American Beverage Association*, the disclaimers here are not required by law to take up a certain percentage of ad space; nor do Plaintiffs offer evidence that shorter or less prominent disclaimers would serve the State's informational interest equally well.[122] While Plaintiffs assert that the required disclaimers "easily and obviously consume 20 percent of a standard thirty-or sixty-second TV or

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[119] Docket 30 at 17.

[120] *See Citizens United*, 558 U.S. at 320, 366, 371.

[121] *Id.* at 368.

[122] *Cf. Am. Beverage Ass'n*, 916 F.3d at 757.

radio ad,"[123] they do not supply one of their advertisements as an example or otherwise provide evidentiary support for this claim sufficient to demonstrate that a "substantial number of [the disclaimer requirements'] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep."[124]

In sum, the Court finds that Plaintiffs have not demonstrated that the ad space consumed by the three disclaimers is unduly burdensome in light of the vital informational interest served by those disclaimers. The specifics of how the disclaimers must be displayed or spoken are substantially related to the State's important informational interest and are narrowly tailored to serve that interest. Plaintiffs are thus unlikely to succeed on the merits of Count II based on the ad space consumed by the disclaimers.[125]

C. Count III

In Count III, Plaintiffs challenge Sections 6, 9, 14, and 18 of Ballot Measure 2. Together, these sections

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[123] Docket 39 at 11.

[124] *Ams. for Prosperity Found.*, 141 S. Ct. at 2387.

[125] The Court has applied the more stringent "likelihood of success on the merits" analysis to the Plaintiffs' challenges to the disclaimer requirements; however, applying the more relaxed "substantial question" analysis would yield the same result. Even assuming, without deciding, that the "balance of hardships tips *sharply* in [their] favor," Plaintiffs have not carried their burden at this stage of the litigation to demonstrate that an adequately "serious question" exists with regard to the disclaimer requirements.

require an independent expenditure entity to identify the "true source" of all contributions it receives of over $2,000. Plaintiffs assert that "[c]ompelling primary and secondary donor disclosure violates the First Amendment."[126] Plaintiffs contend that Ballot Measure 2's "true source" requirement burdens speech in multiple significant ways, including by demanding that recipients disclose information they may not have, limiting who an independent expenditure entity may solicit funds from, and sweeping uninterested third parties into Alaskan elections.[127] Plaintiffs also assert that "Ballot Measure 2 violates [the] freedom of private association by compelling independent expenditure groups to track and disclose not only their own donors, but also donors to those donors, and donors to those donors' donors, reaching out indefinitely to what it defines as the 'true source' of the money."[128]

1. Standard of Review

Plaintiffs assert, and Defendants do not contest, that exacting scrutiny applies to Claim III.[129] The Court applies that standard to the challenged sections.

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[126] Docket 40 at 20.

[127] Docket 18-1 at 30–31.

[128] Docket 18-1 at 28.

[129] Docket 18-1 at 28; Docket 30 at 21–27.

2. Sufficiently Important Governmental Interest

As discussed above, the Court finds that the State has a sufficiently important governmental interest in providing voters with information related to the funding of political advertisements by independent expenditure entities.

3. Substantial Relation

Plaintiffs contend that the recipient disclosure obligations of Ballot Measure 2 are not substantially related to the government's stated interest because these sections "could have been more narrowly tailored by only requiring disclosure of donors who actively participating [sic] in determining how these funds are used."[130] Plaintiffs assert that because the "'true source' requirement is not 'tied with precision' or 'carefully tailored' to actual electoral activity," these sections of Ballot Measure 2 fail to meet the exacting scrutiny standard.[131] Plaintiffs assert that the First Amendment protects major contributors to independent expenditure entities from being required to disclose the "true source" of the contribution to the independent expenditure entity, that is in turn required by these sections of Ballot Measure 2 to report this information to the State.

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[130] Docket 40 at 21, ¶ 105 (citing *Nat'l Ass'n of Mfrs. v. Taylor*, 582 F.3d 1 (D.C. Cir. 2009)).

[131] Docket 18-1 at 29.

Defendants respond that the State and its voters have an important interest in knowing who is contributing to independent expenditure entities.[132] And the ABE maintains that "there is no constitutional right to make 'dark money' contributions."[133]

The Court finds that Ballot Measure 2's "true source" definition, together with its requirement that independent expenditure entities 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.

The Court further notes that Plaintiffs' hypothetical examples have not demonstrated that the true source disclosure requirements in Sections 6, 9, 14, and 18 are inadequately tailored. Plaintiffs lack standing to maintain an action based on hypothetical scenarios by non-parties to this action. And the Ninth Circuit has stressed that courts are not to "speculate about 'hypothetical' or 'imaginary' cases" when evaluating a facial challenge to a disclosure requirement.[134]

For these reasons, the Court finds that the true source reporting requirements in Sections 6, 9, 14, and 18 of Ballot Measure 2 withstand review under

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[132] Docket 30 at 21.

[133] Docket 33 at 35.

[134] *Yamada*, 786 F.3d at 1201 (9th Cir. 2015) (citing *Wash. State Grange*, 552 U.S. at 450).

exacting scrutiny, and thus Plaintiffs are not likely to succeed on the merits of Claim III.[135]

CONCLUSION

Preliminary injunctive relief is an extraordinary remedy, and in the context of elections, the Supreme Court has recognized that "lower federal courts should ordinarily not alter . . . election rules on the eve of an election."[136] Plaintiffs waited over one year to seek preliminary injunctive relief; such "[a] delay in seeking a preliminary injunction is a factor to be considered in weighing the propriety of relief."[137] As set forth above, the Court has determined that Plaintiffs have not demonstrated a likelihood of success on any of the three counts pleaded in their complaint. Because the failure to meet any *Winter* factor warrants denial of a

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[135] The Court has applied the more stringent "likelihood of success on the merits" analysis to the Plaintiffs' challenges to the true source reporting requirements; however, applying the more relaxed "substantial question" analysis would yield the same result. Even assuming, without deciding, that the "balance of hardships tips *sharply* in [their] favor," Plaintiffs have not carried their burden at this stage of the litigation to demonstrate that an adequately "serious question" exists with regard to the true source reporting requirements.

[136] *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam) (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam); *Frank v. Walker*, 574 U.S. 929 (2014); *Veasey v. Perry*, 574 U.S. 951 (2014)).

[137] *See Lydo Enters., Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984).

motion for preliminary injunctive relief, the Court does not address the remaining three *Winter* factors.

In light of the foregoing, IT IS ORDERED that Plaintiffs' motions for a preliminary injunction at Docket 7 and Docket 18 are DENIED.

DATED this 14th day of July, 2022 at Anchorage, Alaska.

/s/ *Sharon L. Gleason*
UNITED STATES DISTRICT JUDGE

ALASKA'S BETTER ELECTIONS INITIATIVE

AN INITIATIVE TO:

PROHIBIT THE USE OF DARK MONEY BY INDEPENDENT EXPENDITURE GROUPS WORKING TO INFLUENCE CANDIDATE ELECTIONS IN ALASKA AND REQUIRE ADDITIONAL DISCLOSURES BY THESE GROUPS; ESTABLISH A NONPARTISAN AND OPEN TOP FOUR PRIMARY ELECTION SYSTEM; CHANGE APPOINTMENT PROCEDURES FOR CERTAIN ELECTION BOARDS AND WATCHERS AND THE ALASKA PUBLIC OFFICES COMMISSION; ESTABLISH A RANKED-CHOICE GENERAL ELECTION SYSTEM; SUPPORT AN AMENDMENT TO THE UNITED STATES CONSTITUTION TO ALLOW CITIZENS TO REGULATE MONEY IN ELECTIONS; REPEAL SPECIAL RUNOFF ELECTIONS; REQUIRE CERTAIN NOTICES IN ELECTION PAMPHLETS AND POLLING PLACES; AND AMEND THE DEFINITION OF POLITICAL PARTY.

A BILL BY INITIATIVE
For an Act Entitled

"An Act prohibiting the use of dark money by independent expenditure groups working to influence candidate elections in Alaska and requiring additional disclosures by these groups; establishing a nonpartisan and open top four primary election system for election to state executive and state and national legislative offices; changing appointment procedures relating to precinct watchers and members of precinct election boards, election district absentee and

questioned ballot counting boards, and the Alaska Public Offices Commission; establishing a ranked-choice general election system; supporting an amendment to the United States Constitution to allow citizens to regulate money in Alaska elections; repealing the special runoff election for the office of United States Senator and United States Representative; requiring certain written notices to appear in election pamphlets and polling places; and amending the definition of 'political party'."

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

***Section 1.** The uncodified law of the State of Alaska is amended by adding a section to read: FINDINGS AND INTENT. The People of the State of Alaska find:

(1) It is in the public interest of Alaska to improve the electoral process by increasing transparency, participation, access, and choice.

(2) The people of Alaska hold that political power and influence should not be allocated based on wealth. Instead, reasonable limits on the role of money in elections are necessary to secure the equal rights of Alaskans and to protect the integrity of Alaska elections. Several rulings of the United States Supreme Court have erroneously changed the meaning of the First Amendment to the United States Constitution so as to empower unlimited spending as "free speech" without proper consideration of factors such as the danger of corruption and the undermining of self-governance in Alaska by the undue influence of wealth, including from outside the state. These mistaken

Supreme Court decisions have invalidated longstanding anti-corruption laws in Alaska. Alaska shall now affirm the rights and powers of its citizens by prohibiting the use of dark money in its candidate elections and by supporting an amendment to the United States Constitution allowing citizens to regulate the raising and spending of money in elections.

(3) 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.

(4) It is in the public interest of Alaska to adopt a primary election system that is open and nonpartisan, which will generate more qualified and competitive candidates for elected office, boost voter turnout, better reflect the will of the electorate, reward cooperation, and reduce partisanship among elected officials.

(5) It is in the public interest of Alaska to adopt a general election system that reflects the core democratic principle of majority rule. A ranked-choice voting system will help ensure that the values of elected officials more broadly reflect the values of the electorate, mitigate the likelihood that a candidate who

is disapproved by a majority of voters will get elected, encourage candidates to appeal to a broader section of the electorate, allow Alaskans to vote for the candidates that most accurately reflect their values without risking the election of those candidates that least accurately reflect their values, encourage greater third-party and independent participation in elections, and provide a stronger mandate for winning candidates.

***Sec. 2. AS** 15.10.120(c) is amended to read:

(c) An election supervisor shall appoint one nominee of the political party **or political group with the largest number of registered voters at the time of the preceding gubernatorial election** [OF WHICH THE GOVERNOR IS A MEMBER] and one nominee of the political party **or political group with** [THAT RECEIVED] the second largest number of registered voters at the time of [VOTES STATEWIDE IN] the preceding gubernatorial election. **However, the election supervisor may appoint a qualified person registered as a member of a third political party or political group or as a nonpartisan or undeclared voter if,** [IF] a party district committee or state party central committee of the party **or group with the largest number of registered voters** [OF WHICH THE GOVERNOR IS A MEMBER] or the party or group with [THAT RECEIVED] the second largest number of **registered voters at the time of** [VOTES STATEWIDE IN] the preceding gubernatorial election fails to present the names prescribed by (b) of this section by April 15 of a regular election year or at least 60 days before a special **primary** election [, THE ELECTION

SUPERVISOR MAY APPOINT ANY QUALIFIED INDIVIDUAL REGISTERED TO VOTE].

***Sec. 3. AS 15.10.170 is amended to read:**

Sec. 15.10.170. Appointment and privileges of watchers. (a) The precinct party committee, where an organized precinct committee exists, or the party district committee where no organized precinct committee exists, or the state party chairperson where neither a precinct nor a party district committee exists, may appoint one or more persons as watchers in each precinct and counting center for any election. Each candidate [NOT REPRESENTING A POLITICAL PARTY] may appoint one or more watchers for each precinct or counting center in the candidate's respective district or the state for any election. Any organization or organized group that sponsors or opposes an initiative, referendum, or recall may have one or more persons as watchers at the polls and counting centers after first obtaining authorization from the director. A state party chairperson, a precinct party committee, a party district committee, or a candidate [NOT REPRESENTING A POLITICAL PARTY OR ORGANIZATION OR ORGANIZED GROUP] may not have more than one watcher on duty at a time in any precinct or counting center. A watcher must be a United States citizen. The watcher may be present at a position inside the place of voting or counting that affords a full view of all action of the election officials taken from the time the polls are opened until the ballots are finally counted and the results certified by the election board or the data processing review board. The election board or the data processing review board may require each watcher to present written proof showing appointment by the precinct party committee, the party district

committee, the organization or organized group, or the candidate the watcher represents [THAT IS SIGNED BY THE CHAIRPERSON OF THE PRECINCT PARTY COMMITTEE, THE PARTY DISTRICT COMMITTEE, THE STATE PARTY CHAIRPERSON, THE ORGANIZATION OR ORGANIZED GROUP, OR THE CANDIDATE REPRESENTING NO PARTY].

(b) In addition to the watchers appointed under (a) of this section, in a primary election **or** [,] special **primary** election **or special election** under AS 15.40.140, [OR SPECIAL RUNOFF ELECTION UNDER AS15.40.141,] each candidate may appoint one watcher in each precinct and counting center.

***Sec. 4.** AS 15.13.020(b) is amended to read:

(b) The governor shall appoint two members of each of the two political parties **or political groups with the largest number of registered voters at the time of** [WHOSE CANDIDATE FOR GOVERNOR RECEIVED THE HIGHEST NUMBER OF VOTES IN] the most recent preceding general election at which a governor was elected. The two appointees from each of these two parties **or groups** shall be chosen from a list of four names to be submitted by the central committee of each party **or group**.

***Sec. 5.** AS 15.13.020(d) is amended to read:

(d) Members of the commission serve staggered terms of five years, or until a successor is appointed and qualifies. The terms of no two members who are members of the same political party **or political group** may expire in consecutive years. A member may not serve more than one term. However, a person appointed to fill the unexpired term of a predecessor may be appointed to a successive full five-year term.

*Sec. 6. AS 15.13.040(j)(3) is amended to read:

(3) for all contributions described in (2) of this subsection, the name, address, date, and amount contributed by each contributor, [AND] for all contributions described in (2) of this subsection in excess of $250 in the aggregate during a calendar year, the principal occupation and employer of the contributor**, and for all contributions described in (2) of this subsection in excess of $2,000 in the aggregate during a calendar year, the true source of such contributions and all intermediaries if any. who transferred such funds, and a certification from the treasurer that the report discloses all of the information required by this paragraph.**

***Sec. 7.** AS 15.13.040 is amended by adding a new subsection to read:

(s) Every individual, person, nongroup entity, or group that contributes more than $2,000 in the aggregate in a calendar year to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle shall report making the contribution or contributions on a form prescribed by the commission not later than 24 hours after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that entity

by that individual, person, nongroup entity, or group during the calendar year. For purposes of this subsection, the reporting contributor is required to report and certify the true sources of the contribution, and intermediaries, if any, as defined by AS 15.13.400(18). This contributor is also required to provide the identity of the true source to the recipient of the contribution simultaneously with providing the contribution itself.

***Sec. 8.** AS 15.13.070 is amended by adding a new subsection to read:

(g) Where contributions are made to a joint campaign for governor and lieutenant governor,

(1) An individual may contribute not more than $1,000 per year; and

(2) A group may contribute not more than $2,000 per year.

***Sec. 9.** AS 15.13.074(b) is amended to read:

(b) A person or group may not make a contribution anonymously, using a fictitious name, or using the name of another. **Individuals, persons, nongroup entities, or groups subject to AS 15.13.040(s) may not contribute or accept $2,000 or more of dark money as that term is defined in AS 15.13.400(17), and may not make a contribution while acting as an intermediary without disclosing the true source of the contribution as defined in AS 15.13.400(18).**

***Sec. 10.** AS 15.13.074(c) is amended to read:

(c) A person or group may not make a contribution

(1) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 when the office is to be filled at a general election before the date that is 18 months before the general election;

(2) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 for an office that is to be filled at a special election or municipal election before the date that is 18 months before the date of the regular municipal election or that is before the date of the proclamation of the special election at which the candidate or individual seeks election to public office; or

(3) to any candidate later than the 45th day

(A) after the date of the primary **or special primary** election if the candidate was [ON THE BALLOT AND WAS] not **chosen to appear on the general or special election ballot** [NOMINATED] at the primary **or special primary** election; or

(B) after the date of the general **or special** election, or after the date of a municipal or municipal runoff election.

***Sec. 11.** AS 15.13.090(c) is amended to read:

(c) To satisfy the requirements of (a)(1) of this section and, if applicable, (a)(2)(C) of this section, a communication that includes a print or video component must have the following statement or statements placed in the communication so as to be easily discernible, **and in a broadcast. cable, satellite, internet**

or other digital communication the statement must remain onscreen throughout the entirety of the communication; the second statement is not required if the person paying for the communication has no contributors or is a political party:

> This communication was paid for by (person's name and city and state of principal place of business). The top contributors of (person's name) are (the name and city and state of residence or principal place of business, as applicable, of the largest contributors to the person under AS 15.13.090(a)(2)(C)).

***Sec. 12.** AS 15.13.090 is amended by adding a new subsection to read:

(g) To satisfy the requirements of (a)(1) of this section and, if applicable, (a)(2)(C) of this section, a communication paid for by an outside-funded entity as that term is defined in AS 15.13.400(19) that includes a print or video component must have the following statement placed in the communication so as to be easily discernible, and in a broadcast, cable, satellite, internet or other digital communication the statement must remain onscreen throughout the entirety of the communication; the statement is not required if the outside entity paying for the communication has no contributors or is a political party: "A MAJORITY OF CONTRIBUTIONS TO (OUTSIDE-FUNDED ENTITY'S NAME) CAME FROM OUTSIDE THE STATE OF ALASKA."

***Sec. 13.** AS 15.13.110(f) is amended to read:

(f) During the year in which the election is scheduled, each of the following shall file the campaign

disclosure reports in the manner and at the times required by this section:

(1) a person who, under the regulations adopted by the commission to implement AS 15.13.100, indicates an intention to become a candidate for elective state executive or legislative office;

(2) [A PERSON WHO HAS FILED A NOMINATING PETITION UNDER AS15.25.140 - 15.25.200 TO BECOME A CANDIDATE AT THE GENERAL ELECTION FOR ELECTIVE STATE EXECUTIVE OR LEGISLATIVE OFFICE;

(3)] a person who campaigns as a write-in candidate for elective state executive or legislative office at the general election; and

(3)[(4)] a group or nongroup entity that receives contributions or makes expenditures on behalf of or in opposition to a person described in **(1) or (2)** [(1)–(3)] of this subsection, except as provided for certain independent expenditures by nongroup entities in AS 15.13.135(a).

***Sec. 14.** AS 15.13.110 is amended by adding a new subsection to read:

(k) Once contributions from an individual, person, nongroup entity, or group to an entity that made one or more independent expenditures in one or more candidate elections in the previous election cycle, that is making one or more independent expenditures in one or more candidate elections in the current election cycle, or that the contributor knows or has reason to know is likely to make independent expenditures in one or more candidate elections in the current election cycle exceed $2,000 in a single year, that entity shall

report that contribution, and all subsequent contributions, not later than 24 hours after receipt. For purposes of this subsection, the entity is required to certify and report the true source, and all intermediaries if any, of the contribution as defined by AS 15.13.400(18).

***Sec. 15.** AS 15.13.390(a) is amended to read:

(**1**) A person who fails to register when required by AS 15.13.050(a) or who fails to file a properly completed and certified report within the time required by AS 15.13.040, 15.13.060(b)–(d), 15.13.110(a)(1), (3), or (4), (e), or (f) is subject to a civil penalty of not more than $50 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court. A person who fails to file a properly completed and certified report within the time required by AS 15.13.110(a)(2) or 15.13.110(b) is subject to a civil penalty of not more than $500 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court

(2) A person who, whether as a contributor or intermediary, delays in reporting a contribution as required by AS 15.13.040(s) is subject to a civil penalty of not more than $1,000 a day for each day the delinquency continues as determined by the commission subject to right of appeal to the superior court;

(3) A person who, whether as a contributor or intermediary, misreports or fails to disclose the true source of a contribution in violation of AS 15.13.040(s) or AS 15.13.074(b) is subject to a civil penalty of not more than the amount of the contribution that is the subject of the

misreporting or failure to disclose. Upon a showing that the violation was intentional, a civil penalty of not more than three times the amount of the contribution in violation may be imposed. These penalties as determined by the commission are subject to right of appeal to the superior court;

(4) A person who violates a provision of this chapter, except [A PROVISION REQUIRING REGISTRATION OR FILING OF A REPORT WITHIN A TIME REQUIRED] as otherwise specified in this section, is subject to a civil penalty of not more than $50 a day for each day the violation continues as determined by the commission, subject to right of appeal to the superior court[.]; **and**

(5) An affidavit stating facts in mitigation may be submitted to the commission by a person against whom a civil penalty is assessed. However, the imposition of the penalties prescribed in this section or in AS 15.13.380 does not excuse that person from registering or filing reports required by this chapter.

***Sec. 16.** AS 15.13.400(4) is amended to read:

(4) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made, and includes the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that is rendered to the candidate or political party, and that is made for the purpose of

(i) influencing the nomination or election of a candidate;

(ii) influencing a ballot proposition or question; or

(iii) supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020;

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;

(ii) ordinary hospitality in a home;

(iii) two or fewer mass mailings before each election by each political party describing **members of the party running as candidates for public office in that election** [THE PARTY'S SLATE OF CANDIDATES FOR ELECTION], which may include photographs, biographies, and information about the [PARTY'S] candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee;

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party; or

(vii) an opportunity to participate in a candidate forum provided to a candidate without compensation to the candidate by another person and for which a candidate is not ordinarily charged;

***Sec. 17.** AS 15.13.400 is amended by adding a new paragraph to read:

(17) "dark money" means a contribution whose source or sources, whether from wages, investment income, inheritance, or revenue generated from selling goods or services, is not disclosed to the public. Notwithstanding the foregoing, to the extent a membership organization receives dues or contributions of less than $2,000 per person per year, the organization itself shall be considered the true source.

***Sec. 18.** AS 15.13.400 is amended by adding a new paragraph to read:

(18) "true source" means the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services. A person or legal entity who derived funds via contributions, donations, dues, or gifts is not the true source, but rather an intermediary for the true source. Notwithstanding the foregoing, to the extent a membership organization receives dues or contributions of less than $2,000 per person per year, the organization itself shall be considered the true source.

***Sec. 19.** AS 15.13.400 is amended by adding a new paragraph to read:

(19) "outside-funded entity" means an entity that makes one or more independent expenditures in one or more candidate elections and that, during the previous 12-month period, received more than 50 percent of its aggregate contributions from true sources, or their equivalents, who, at the time of the contribution, resided or had their principal place of business outside Alaska.

***Sec. 20.** AS 15.15 is amended by adding a new section to read:

Sec. 15.15.005. Top four nonpartisan open primary. A voter qualified under AS 15.05 may cast a vote for any candidate for each elective state executive and state and national legislative office, without limitations based on the political party or political group affiliation of either the voter or the candidate.

***Sec. 21.** AS 15.15.030(5) is amended to read:

(5) The names of the candidates [AND THEIR PARTY DESIGNATIONS] shall be placed in separate sections on the state general election ballot under the office designation to which they were nominated. **If a candidate is registered as affiliated with a political party or political group, the** [THE] party affiliation, if any, **may** [SHALL] be designated after the name of the candidate**, upon request of the candidate. If a candidate has requested designation as nonpartisan or undeclared, that designation shall be placed after the name of the candidate. If a candidate is not registered as affiliated with a political art or political group and has not requested to be designated as nonpartisan or undeclared, the candidate shall be designated as undeclared.** The lieutenant governor and the

governor shall be included under the same section. Provision shall be made for voting for write-in [AND NO-PARTY] candidates within each section. Paper ballots for the state general election shall be printed on white paper.

***Sec. 22.** AS 15.15.030 is amended by adding new paragraphs to read:

(14) The director shall include the following statement on the ballot:

> A candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or group or that the party or group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the political party or political group.

(15) Instead of the statement provided by (14) of this section, when candidates for President and Vice-President of the United States appear on a general election ballot, the director shall include the following statement on the ballot:

> A candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or political group or that the political party or political group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the party or group. The election for President and Vice-President of the United States is different. Some candidates for President and Vice-President are the official nominees of their political party.

(16) The director shall design the general election ballots so that the candidates are selected by ranked-choice voting.

(17) The director shall design the general election ballot to direct the voter to mark candidates in order of preference and to mark as many choices as the voter wishes, but not to assign the same ranking to more than one candidate for the same office.

***Sec. 23.** AS 15.15.060 is amended by adding a new subsection to read:

(e) In each polling place, the director shall require to be posted, in a location conspicuous to a person who will be voting, the following notice, written in bold:

> A candidate's designated affiliation does not imply that the candidate is nominated or endorsed by the political party or group or that the party or group approves of or associates with that candidate, but only that the candidate is registered as affiliated with the party or group.

***Sec. 24.** AS 15.15.350 is amended by adding new subsections to read:

(c) All general elections shall be conducted by ranked-choice voting.

(d) When counting ballots in a general election, the election board shall initially tabulate each validly cast ballot as one vote for the highest-ranked continuing candidate on that ballot or as an inactive ballot. If a candidate is highest-ranked on more than one-half of the active ballots, that candidate is elected and the tabulation is complete. Otherwise, tabulation proceeds in sequential rounds as follows:

(1) if two or fewer continuing candidates remain, the candidate with the greatest number of votes is elected and the tabulation is complete; otherwise, the tabulation continues under (2) of this subsection;

(2) the candidate with the fewest votes is defeated, votes cast for the defeated candidate shall cease counting for the defeated candidate and shall be added to the totals of each ballot's next-highest-ranked continuing candidate or considered an inactive ballot under (g)(2) of this section, and a new round begins under (1) of this subsection.

(e) When counting general election ballots,

(1) a ballot containing an overvote shall be considered an inactive ballot once the overvote is encountered at the highest ranking for a continuing candidate;

(2) if a ballot skips a ranking, then the election board shall count the next ranking. If the next ranking is another skipped ranking, the ballot shall be considered an inactive ballot once the second skipped ranking is encountered; and

(3) In the event of a tie between the final two continuing candidates, the procedures in AS 15.15.460 and AS 15.20.430–15.20.530 shall apply to determine the winner of the general election. In the event of a tie between two candidates with the fewest votes, the tie shall be resolved by lot to determine which candidate is defeated.

(f) The election board may not count an inactive ballot for any candidate.

(g) In this section,

(1) "continuing candidate" means a candidate who has not been defeated;

(2) "inactive ballot" means a ballot that is no longer tabulated, either in whole or in part, by the division because it does not rank any continuing candidate, contains an overvote at the highest continuing ranking, or contains two or more sequential skipped rankings before its highest continuing ranking;

(3) "overvote" means an instance where a voter has assigned the same ranking to more than one candidate;

(4) "ranking" or "ranked" means the number assigned by a voter to a candidate to express the voter's choice for that candidate; a ranking of "1" is the highest ranking, followed by "2," and then "3," and so on;

(5) "round" means an instance of the sequence of voting tabulation in a general election;

(6) "skipped ranking" means a blank ranking on a ballot on which a voter has ranked another candidate at a subsequent ranking.

***Sec. 25.** AS 15.15.360(a) is amended to read:

(a) The election board shall count ballots according to the following rules:

(1) A voter may mark a ballot only by filling in, making "X" marks, diagonal, horizontal, or vertical marks, solid marks, stars, circles, asterisks, checks, or plus signs that are clearly spaced in the oval opposite the name of the candidate, proposition, or question

that the voter desires to designate. **In a general election, a voter may mark a ballot that requires the voter to vote for candidates in order of ranked preference by the use of numerals that are clearly spaced in one of the ovals opposite the name of the candidate that the voter desires to designate.**

(2) A failure to properly mark a ballot as to one or more candidates does not itself invalidate the entire ballot.

(3) [IF A VOTER MARKS FEWER NAMES THAN THERE ARE PERSONS TO BE ELECTED TO THE OFFICE, A VOTE SHALL BE COUNTED FOR EACH CANDIDATE PROPERLY MARKED.

(4)[(5)] The mark specified in (1) of this subsection shall be counted only if it is substantially inside the oval provided, or touching the oval so as to indicate clearly that the voter intended the particular oval to be designated.

(5)[(6)] Improper marks on the ballot may not be counted and do not invalidate marks for candidates properly made.

(6)[(7)] An erasure or correction invalidates only that section of the ballot in which it appears.

(7)[(8)] A vote marked for the candidate for President or Vice-President of the United States is considered and counted as a vote for the election of the presidential electors.

(9) [REPEALED]

(10) [REPEALED]

(11) [REPEALED]

(12) [REPEALED]

***Sec. 26. AS 15.15.370** is amended to read:

Sec. 15.15.370. Completion of ballot count; certificate. When the count of ballots is completed, and in no event later than the day after the election, the election board shall make a certificate in duplicate of the results. The certificate includes the number of votes cast for each candidate, **including, for a candidate in a general election, the number of votes at each round of the ranked-choice tabulation process under AS 15.15.350, and the number of votes** for and against each proposition, yes or no on each question, and any additional information prescribed by the director. The election board shall, immediately upon completion of the certificate or as soon thereafter as the local mail service permits, send in one sealed package to the director one copy of the certificate and the register. In addition, all ballots properly cast shall be mailed to the director in a separate, sealed package. Both packages, in addition to an address on the outside, shall clearly indicate the precinct from which they come. Each board shall, immediately upon completion of the certification and as soon thereafter as the local mail service permits, send the duplicate certificate to the respective election supervisor. The director may authorize election boards in precincts in those areas of the state where distance and weather make mail communication unreliable to forward their election results by telephone, telegram, or radio. The director may authorize the unofficial totaling of votes on a regional basis by election supervisors, tallying the votes as indicated on duplicate certificates. To **ensure** [ASSURE] adequate protection, the director shall prescribe the manner in which the ballots, registers, and all other election records and materials are thereafter preserved, transferred, and destroyed.

***Sec. 27.** AS 15.15.450 is amended to read:

Sec. 15.15.450. Certification of state ballot counting review. Upon completion of the state ballot counting reviews the director shall certify the person receiving the largest number of votes for the office for which that person was **nominated or elected, as applicable,** [A CANDIDATE AS ELECTED TO THAT OFFICE] and shall certify the approval of a justice or judge not rejected by a majority of the voters voting on the question. The director shall issue to the elected candidates and approved justices and judges a certificate of their election or approval. The director shall also certify the results of a proposition and other question except that the lieutenant governor shall certify the results of an initiative, referendum, or constitutional amendment.

***Sec. 28.** AS 15.20.081(a) is amended to read:

(a) A qualified voter may apply in person, by mail, or by facsimile, scanning, or other electronic transmission to the director for an absentee ballot under this section. Another individual may apply for an absentee ballot on behalf of a qualified voter if that individual is designated to act on behalf of the voter in a written general power of attorney or a written special power of attorney that authorizes the other individual to apply for an absentee ballot on behalf of the voter. The application must include the address or, if the application requests delivery of an absentee ballot by electronic transmission, the telephone electronic transmission number, to which the absentee ballot is to be returned, the applicant's full Alaska residence address, and the applicant's signature. However, a person residing outside the United States and applying to vote absentee in federal elections in accordance with AS

15.05.011 need not include an Alaska residence address in the application. A person may supply to a voter an absentee ballot application form with a political party or group affiliation indicated only if the voter is already registered as affiliated with the political party or group indicated. [ONLY THE VOTER OR THE INDIVIDUAL DESIGNATED BY THE VOTER IN A WRITTEN POWER OF ATTORNEY UNDER THIS SUBSECTION MAY MARK THE VOTER'S CHOICE OF PRIMARY BALLOT ON AN APPLICATION. A PERSON SUPPLYING AN ABSENTEE BALLOT APPLICATION FORM MAY NOT DESIGN OR MARK THE APPLICATION IN A MANNER THAT SUGGESTS CHOICE OF ONE BALLOT OVER ANOTHER, EXCEPT THAT BALLOT CHOICES MAY BE LISTED ON AN APPLICATION AS AUTHORIZED BY THE DIVISION.] The application must be made on a form prescribed or approved by the director. The voter or registration official shall submit the application directly to the division of elections. For purposes of this subsection, "directly to the division of elections" means that an application may not be submitted to any intermediary that could control or delay the submission of the application to the division or gather data on the applicant from the application form. However, nothing in this subsection is intended to prohibit a voter from giving a completed absentee ballot application to a friend, relative, or associate for transfer to the United States Postal Service or a private commercial delivery service for delivery to the division.

***Sec. 29.** AS 15.20.081(h) is amended to read:

(h) Except as provided in AS 15.20.480, an absentee ballot returned by mail from outside the United States or from an overseas voter qualifying under AS

15.05.011 that has been marked and mailed not later than election day may not be counted unless the ballot is received by the election supervisor not later than the close of business on the

(1) 10th day following a primary election or special **primary** election under AS 15.40.140; or

(2) 15th day following a general election [, SPECIAL RUNOFF ELECTION,] or special election, other than a special **primary** election described in (1) of this subsection.

***Sec. 30.** AS 15.20.190(a) is amended to read:

(a) Thirty days before the date of an election, the election supervisors shall appoint, in the same manner provided for the appointment of election officials prescribed in AS 15.10, district absentee ballot counting boards and district questioned ballot counting boards, each composed of at least four members. At least one member of each board must be a member of the same political party **or political group with the largest number of registered voters at the time of the preceding election** [OF WHICH THE GOVERNOR IS A MEMBER], and at least one member of each board must be a member of the political party **or political group with the second largest number of registered voters at the time of** [WHOSE CANDIDATE FOR GOVERNOR RECEIVED THE SECOND LARGEST NUMBER OF VOTES IN] the preceding gubernatorial election. The district boards shall assist the election supervisors in counting the absentee and questioned ballots and shall receive the same compensation paid election officials under AS 15.15.380.

***Sec. 31. AS 15.20.203(i)** is amended to read:

(i) The director shall mail the materials described in (h) of this section to the voter not later than

(1) 10 days after completion of the review of ballots by the state review board for a primary election [,] or [FOR] a special **primary** election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION];

(2) 60 days after certification of the results of a general election [,SPECIAL RUNOFF ELECTION,] or special election other than a special **primary** election described in (1) of this subsection.

***Sec. 32.** AS 15.20.203(j) is amended to read:

(j) The director shall make available through a free access system to each absentee voter a system to check to see whether the voter's ballot was counted and, if not counted, the reason why the ballot was not counted. The director shall make this information available through the free access system not less than

(1) 10 days after certification of the results of a primary election [,] or a special **primary** election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION]; and

(2) 30 days after certification of the results of a general or special election, other than a special **primary** election described in (1) of this subsection.

***Sec. 33.** AS 15.20.207(i) is amended to read:

(i) The director shall mail the materials described in (h) of this section to the voter not later than

(1) 10 days after completion of the review of ballots by the state review board for a primary election [,] or [FOR] a special **primary** election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION];

(2) 60 days after certification of the results of a general or special election, other than a special **primary** election described in (1) of this subsection.

***Sec. 34.** AS 15.20.207(k) is amended to read:

(k) The director shall make available through a free access system to each voter voting a questioned ballot a system to check to see whether the voter's ballot was counted and, if not counted, the reason why the ballot was not counted. The director shall make this information available through the free access system not less than

(1) 10 days after certification of the results of a primary election [,] or a special **primary** election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION]; and

(2) 30 days after [THE] certification of the results of a general or special election, other than a special **primary** election described in (1) of this subsection.

***Sec. 35.** AS 15.20.211(d) is amended to read:

(d) The director shall mail the materials described in (c) of this section to the voter not later than

(1) 10 days after completion of the review of ballots by the state review board for a primary election [,] or [FOR] a special **primary** election

under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION];

(2) 60 days after certification of the results of a general or special election, other than a special **primary** election described in (1) of this subsection.

***Sec. 36.** AS 15.20.211(f) is amended to read

(f) The director shall make available through a free access system to each voter whose ballot was subject to partial counting under this section a system to check to see whether the voter's ballot was partially counted and, if not counted, the reason why the ballot was not counted. The director shall make this information available through the free access system not less than

(1) 10 days after certification of the results of a primary election [,] or a special **primary** election under AS 15.40.140 [THAT IS FOLLOWED BY A SPECIAL RUNOFF ELECTION]; and

(2) 30 days after [THE] certification of the results of a general or special election, other than a special **primary** election described in (1) of this subsection.

***Sec. 37.** AS 15.25.010 is amended to read:

Sec. 15.25.010. Provision for primary election. Candidates for the elective state executive and state and national legislative offices shall be nominated in a primary election by direct vote of the people in the manner prescribed by this chapter. **The primary election does not serve to determine the nominee of a political party or political group but serves only to narrow the number of candidates**

whose names will appear on the ballot at the general election. Except as provided in AS 15.25.100(d), only the four candidates who receive the greatest number of votes for any office shall advance to the general election [THE DIRECTOR SHALL PREPARE AND PROVIDE A PRIMARY ELECTION BALLOT FOR EACH POLITICAL PARTY. A VOTER REGISTERED AS AFFILIATED WITH A POLITICAL PARTY MAY VOTE THAT PARTY'S BALLOT. A VOTER REGISTERED AS NONPARTISAN OR UNDECLARED RATHER THAN AS AFFILIATED WITH A PARTICULAR POLITICAL PARTY MAY VOTE THE POLITICAL PARTY BALLOT OF THE VOTER'S CHOICE UNLESS PROHIBITED FROM DOING SO UNDER AS 15.25.014. A VOTER REGISTERED AS AFFILIATED WITH A POLITICAL PARTY MAY NOT VOTE THE BALLOT OF A DIFFERENT POLITICAL PARTY UNLESS PERMITTED TO DO SO UNDER AS 15.25.014].

***Sec. 38.** AS 15.25.030(a) is amended to read:

(a) A person [MEMBER OF A POLITICAL PARTY] who seeks to become a candidate [OF THE PARTY] in the primary election or a special primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and must state in substance

(1) the full name of the candidate;

(2) the full mailing address of the candidate;

(3) if the candidacy is for the office of state senator or state representative, the house or senate district of which the candidate is a resident;

(4) the office for which the candidate seeks nomination;

(5) the [NAME OF THE] political party **or political group with whom the candidate is registered as affiliated, or whether the candidate would prefer a nonpartisan or undeclared designation placed after the candidate's name on the ballot** [OF WHICH THE PERSON IS A CANDIDATE FOR NOMINATION];

(6) the full residence address of the candidate, and the date on which residency at that address began;

(7) the date of the primary election **or special primary election** at which the candidate seeks nomination;

(8) the length of residency in the state and in the district of the candidate;

(9) that the candidate will meet the specific citizenship requirements of the office for which the person is a candidate;

(10) that the candidate is a qualified voter as required by law;

(11) that the candidate will meet the specific age requirements of the office for which the person is a candidate; if the candidacy is for the office of state representative, that the candidate will be at least 21 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of state senator, that the candidate will be at least 25 years of age on the first scheduled day of

the first regular session of the legislature convened after the election; if the candidacy is for the office of governor or lieutenant governor, that the candidate will be at least 30 years of age on the first Monday in December following election or, if the office is to be filled by special election under AS 15.40.230–15.40.310, that the candidate will be at least 30 years of age on the date of certification of the results of the special election; or, for any other office, by the time that the candidate, if elected, is sworn into office;

(12) that the candidate requests that the candidate's name be placed on the primary **or special primary** election ballot;

(13) that the required fee accompanies the declaration;

(14) that the person is not a candidate for any other office to be voted on at the primary or general election and that the person is not a candidate for this office under any other declaration of candidacy or nominating petition;

(15) the manner in which the candidate wishes the candidate's name to appear on the ballot;

(16) if the candidacy is for the office of the governor, the name of the candidate for lieutenant governor running jointly with the candidate for governor; and

(17) if the candidacy is for the office of lieutenant governor, the name of the candidate for governor running jointly with the candidate for lieutenant governor.

[(16) THAT THE CANDIDATE IS REGISTERED TO VOTE AS A MEMBER OF THE POLITICAL PARTY WHOSE NOMINATION IS BEING SOUGHT].

***Sec. 39.** AS 15.25.060 is repealed and reenacted to read:

Sec. 15.25.060. Preparation and distribution of ballots. The primary election ballots shall be prepared and distributed by the director in the manner prescribed for general election ballots except as specifically provided otherwise for the primary election. The director shall prepare and provide a primary election ballot that contains all of the candidates for elective state executive and state and national legislative offices and all of the ballot titles and propositions required to appear on the ballot at the primary election. The director shall print the ballots on white paper and place the names of all candidates who have properly filed in groups according to offices. The order of the placement of the names for each office shall be as provided for the general election ballot. Blank spaces may not be provided on the ballot for the writing or pasting in of names.

***Sec. 40.** AS 15.25.100 is repealed and reenacted to read:

Sec. 15.25.100. Placement of candidates on general election ballot. (a) Except as provided in (b)-(g) of this section, of the names of candidates that appear on the primary election ballot under AS 15.25.010, the director shall place on the general election ballot only the names of the four candidates receiving the greatest number of votes for an office. For purposes of this subsection and (b) of this section,

candidates for lieutenant governor and governor are treated as a single paired unit.

(b) If two candidates tie in having the fourth greatest number of votes for an office in the primary election, the director shall determine under (g) of this section which candidate's name shall appear on the general election ballot.

(c) Except as otherwise provided in (d) of this section, if a candidate nominated at the primary election dies, withdraws, resigns, becomes disqualified from holding office for which the candidate is nominated, or is certified as being incapacitated in the manner prescribed by this section after the primary election and 64 days or more before the general election, the vacancy shall be filled by the director by replacing the withdrawn candidate with the candidate who received the fifth most votes in the primary election.

(d) If the withdrawn, resigned, deceased, disqualified, or incapacitated candidate was a candidate for governor or lieutenant governor, the replacement candidate is selected by the following process:

(1) if the withdrawn, resigned, deceased, disqualified, or incapacitated candidate was the candidate for governor, that candidate's lieutenant governor running mate becomes the candidate for governor, thereby creating a vacancy for the lieutenant governor candidate;

(2) when any vacancy for the lieutenant governor candidate occurs, the candidate for governor shall select a qualified running mate to be the lieutenant governor candidate and notify the director of that decision.

(e) The director shall place the name of the persons selected through this process as candidates for governor and lieutenant governor on the general election ballot.

(f) For a candidate to be certified as incapacitated under (c) of this section, a panel of three licensed physicians, not more than two of whom may be of the same party, shall provide the director with a sworn statement that the candidate is physically or mentally incapacitated to an extent that would, in the panel's judgment, prevent the candidate from active service during the term of office if elected.

(g) If the director is unable to make a determination under this section because the candidates received an equal number of votes, the determination may be made by lot under AS 15.20.530.

***Sec. 41.** AS 15.25.105(a) is amended to read:

(a) If a candidate does not appear on the primary election ballot or is not successful in advancing to the general election and wishes to be a candidate in the general election, the candidate may file as a write-in candidate. Votes for a write-in candidate may not be counted unless that candidate has filed a letter of intent with the director stating

(1) the full name of the candidate;

(2) the full residence address of the candidate and the date on which residency at that address began;

(3) the full mailing address of the candidate;

(4) the [NAME OF THE] political party or political group **with whom the candidate is registered as affiliated, or whether the**

candidate would prefer a nonpartisan or undeclared designation. [OF WHICH THE CANDIDATE IS A MEMBER, IF ANY];

(5) if the candidate is for the office of state senator or state representative, the house or senate district of which the candidate is a resident;

(6) the office that the candidate seeks;

(7) the date of the election at which the candidate seeks election;

(8) the length of residency in the state and in the house district of the candidate;

(9) the name of the candidate as the candidate wishes it to be written on the ballot by the voter;

(10) that the candidate meets the specific citizenship requirements of the office for which the person is a candidate;

(11) that the candidate will meet the specific age requirements of the office for which the person is a candidate; if the candidacy is for the office of state representative, that the candidate will be at least 21 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of state senator, that the candidate will be at least 25 years of age on the first scheduled day of the first regular session of the legislature convened after the election; if the candidacy is for the office of governor or lieutenant governor, that the candidate will be at least 30 years of age on the first Monday in December following election or, if the office is to be filled by special election under

AS 15.40.230–15.40.310, that the candidate will be at least 30 years of age on the date of certification of the results of the special election; or, for any other office, by the time that the candidate, if elected, is sworn into office;

(12) that the candidate is a qualified voter as required by law; and

(13) that the candidate is not a candidate for any other office to be voted on at the general election and that the candidate is not a candidate for this office under any other nominating petition or declaration of candidacy.

***Sec. 42.** AS 15.25.105(b) is amended to read:

(b) If a write-in candidate is running for the office of governor, the candidate must file a joint letter of intent together with a candidate for lieutenant governor. [BOTH CANDIDATES MUST BE OF THE SAME POLITICAL PARTY OR GROUP.]

***Sec. 43.** AS 15.30.010 is amended to read:

Sec. 15.30.010. Provision for selection of electors. Electors of President and Vice President of the United States are selected by election at the general election in presidential election years[.], **in the manner and as determined by the ranked-choice method of tabulating votes described in AS 15.15.350-15.15.370.**

***Sec. 44.** AS 15.40.140 is amended to read:

Sec. 15.40.140. Condition of calling special primary election and special election. When a vacancy occurs in the office of United States senator or United States representative, the governor shall, by proclamation, call a special **primary** election **to be**

held on a date not less than 60, nor more than 90, days after the date the vacancy occurs, to be followed by a special, election on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary election [UNDER AS 15.40.142(a)]. However, **in an election year in which a candidate for that office is not regularly elected,** if the vacancy occurs on a date that is **not** less than 60**, nor more than 90**, days before [OR IS ON OR AFTER] the date of

(1) the primary election**, the** [IN THE GENERAL ELECTION YEAR DURING WHICH A CANDIDATE TO FILL THE OFFICE IS REGULARLY ELECTED, THE GOVERNOR MAY NOT CALL A] special **primary** election **shall be held on the date of the primary election with the subsequent special election to be held on the date of the general election; or**

(2) the general election, the special primary election shall be held on the date of the general election with the subsequent special election to be held on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary and general election.

***Sec. 45.** AS 15.40.160 is amended to read:

Sec. 15.40.160. Proclamation. The governor shall issue the proclamation **calling the special primary election and special election** at least 50 days before the

[(1)] special **primary** election [; AND

(2) IF A SPECIAL RUNOFF ELECTION IS REQUIRED UNDER AS 15.40.141(a), SPECIAL RUNOFF ELECTION].

***Sec. 46.** AS 15.40.165 is amended to read:

Sec. 15.40.165. Term of elected senator. At the special election, [OR, AS PROVIDED BY AS 15.40.141, AT THE SPECIAL RUNOFF ELECTION,] a United States senator shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States Senate meets, convenes, or reconvenes following the certification of the results of the special election [OR SPECIAL RUNOFF ELECTION] by the director.

***Sec. 47.** AS 15.40.170 is amended to read:

Sec. 15.40.170. Term of elected representative. At the special election, [OR, AS PROVIDED BY AS 15.40.141, AT THE SPECIAL RUNOFF ELECTION,] a United States representative shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States house of representatives meets, convenes, or reconvenes following the certification of the results of the special election [OR SPECIAL RUNOFF ELECTION] by the director.

***Sec. 48.** AS 15.40.190 is amended to read:

Sec. 15.40.190. Requirements of petition for [NO-PARTY] candidates. Petitions for the nomination of candidates **must be executed under oath,** [NOT REPRESENTING A POLITICAL PARTY SHALL BE SIGNED BY QUALIFIED VOTERS OF THE STATE EQUAL IN NUMBER TO AT LEAST

ONE PERCENT OF THE NUMBER OF VOTERS WHO CAST BALLOTS IN THE PRECEDING GENERAL ELECTION AND SHALL] state in substance that which is required for **a declaration of candidacy under AS 15.25.030, and include the fee required under AS 15.25.050(a)** [NOMINATION PETITIONS BY AS 15.25.180].

***Sec. 49.** AS 15.40.220 is amended to read:

Sec. 15.40.220. General provisions for conduct of the special primary election and special [RUNOFF] election. Unless specifically provided otherwise, all provisions regarding the conduct of the **primary election and** general election shall govern the conduct of the special **primary** election and [THE] special [RUNOFF] election of the United States senator or United States representative, including provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; [PROVISION FOR RUNNING AS, VOTING FOR, AND COUNTING BALLOTS FOR A WRITE-IN CANDIDATE;] provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

***Sec. 50.** AS 15.40.230 is amended to read:

Sec. 15.40.230. Condition and time of calling special primary election special election. When a person appointed to succeed to the office of lieutenant governor succeeds to the office of acting governor, the

acting governor shall, by proclamation, call a special **primary** election to be held on a date not less than 60, nor more than 90, days after the date the vacancy in the office of the governor occurred **and a subsequent special election to be held on the first Tuesday that is not a state holiday occurring not less than 60 days after the special primary election.** However, if the vacancy occurs on a date that is less than 60 days before or is on or after the date of the primary election in years in which a governor is regularly elected, the acting governor shall serve the remainder of the unexpired term and may not call a special election.

***Sec. 51.** AS 15.40.240 is amended to read:

Sec. 15.40.240. Conditions for holding special primary election and special election with primary or general election. If the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the primary **election in an election year in which a governor is not regularly elected the acting Governor shall by proclamation, call the special primary election to be held on the date of the primary election and the special election to be held on the date of the general election,** [IN YEARS IN WHICH A GOVERNOR IS REGULARLY ELECTED] or, if the vacancy occurs on a date not less than 60, nor more than 90, days before the date of the [PRIMARY ELECTION OR] general election in election years in which a governor is not regularly elected, the acting governor shall, by proclamation, call the special **primary** election to be held on the date of the [PRIMARY ELECTION OR] general election **with the subsequent special election to be held on the first Tuesday that is not a state holiday**

occurring not less than 60 days after the special primary and general election.

***Sec. 52.** AS 15.40.250 is amended to read:

Sec. 15.40.250. Proclamation of special primary election and special election. The acting governor shall issue the proclamation **calling the special primary election and special election** at least 50 days before the **special primary** election.

***Sec. 53.** AS 15.40.280 is amended to read:

Sec. 15.40.280. Requirements of petition for [NO-PARTY] candidates. Petitions for the nomination of candidates **must be executed under oath.** [NOT REPRESENTING A POLITICAL PARTY SHALL BE SIGNED BY QUALIFIED VOTERS OF THE STATE EQUAL IN NUMBER TO AT LEAST ONE PERCENT OF THE NUMBER OF VOTERS WHO CAST BALLOTS IN THE PRECEDING GENERAL ELECTION, SHALL INCLUDE NOMINEES FOR THE OFFICE OF GOVERNOR AND LIEUTENANT GOVERNOR, AND SHALL] state in substance that which is required for **a declaration of candidacy under AS 15.25.030. and include the fee required under AS 15.25.050(a)** [NOMINATION PETITIONS BY AS 15.25.180].

***Sec. 54.** AS 15.40.310 is amended to read:

Sec. 15.40.310. General provisions for conduct of the special primary election and special election. Unless specifically provided otherwise, all provisions regarding the conduct of the **primary and** general election shall govern the conduct of the special **primary election and special** election of the governor and lieutenant governor, including provisions concerning voter qualifications; provisions regarding the

duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

***Sec. 55.** AS 15.40.330 is amended to read:

Sec. 15.40.330. Qualification and confirmation of appointee. (a) The appointee shall meet the qualifications of a member of the legislature as prescribed in Sec. 2, art. II**,** of the state constitution, **and, if the predecessor in office was a member of a political party or political group at the time of the vacancy, (1)** shall be a member of the same political party **or political group** as [THAT WHICH NOMINATED] the predecessor in office**;**[,] and **(2)** shall be subject to confirmation by a majority of the members of the legislature who are members of the same political party **or political group as** [WHICH NOMINATED] the predecessor in office and of the same house as was the predecessor in office. If the predecessor in office was not **a member of** [NOMINATED BY] a political party or **political group at the time of the vacancy or,** if no other member of the predecessor's political party **or political group** is a member of the predecessor's house of the legislature, the governor may appoint any qualified person. If the appointee is not a member of a political party **or political group, as provided in (b) of this section,** the appointment is not subject to confirmation. If the appointee is a member of a political party **or political group,** the

appointment is subject to confirmation as provided by **(b) of** this section for the confirmation of political party or **political group** appointees.

(b) A member of a political party **or political group** is a person who supports the political program of a **political** party **or political group.** The **absence of a political party or political group designation after a candidate's name on an election ballot** [FILING FOR OFFICE OF A CANDIDATE AS AN INDEPENDENT OR NO-PARTY CANDIDATE] does not preclude a candidate from being a member of a political party **or political group.** Recognition of a [AN INDEPENDENT OR NO-PARTY] candidate as a member of a **political** party **or political group** caucus of members of the legislature at the legislative session following the election of the [INDEPENDENT OR NO-PARTY] candidate is recognition of that person's **political** party **or political group** membership **for the purposes of confirmation under this section** [AT THE TIME FILINGS WERE MADE BY PARTY CANDIDATES FOR THE PRECEDING GENERAL ELECTION].

***Sec. 56.** AS 15.40.380 is amended to read:

Sec. 15.40.380. Conditions for part-term senate appointment and special election. If the vacancy is for an unexpired senate term of more than two years and five full calendar months, the governor shall call a special **primary election and a special** election by proclamation, and the appointment shall expire on the date the state senate first convenes or reconvenes following the certification of the results of the special election by the director.

***Sec. 57.** AS 15.40.390 is amended to read:

Sec. 15.40.390. Date of special primary election and special election. The special **primary** election to fill a vacancy in the state senate shall be held on the date of the first **primary** [GENERAL] election held more than **60 days** [THREE FULL CALENDAR MONTHS] after the senate vacancy occurs, **and the special election shall be held on the date of the first general election thereafter.**

***Sec. 58. AS 15.40.400** is amended to read:

Sec. 15.40.400. Proclamation of special primary election and special election. The governor shall issue the proclamation calling the **special primary election and** special election at least 50 days before the **special primary** election.

***Sec. 59. AS 15.40.440** is **amended to** read:

Sec. 15.40.440. Requirements of petition for [NO-PARTY] candidates. Petitions for the nomination of candidates [NOT REPRESENTING A POLITICAL PARTY SHALL BE SIGNED BY QUALIFIED VOTERS EQUAL IN NUMBER TO AT LEAST ONE PERCENT OF THE NUMBER OF VOTERS WHO CAST BALLOTS IN THE PROPOSED NOMINEE'S RESPECTIVE HOUSE OR SENATE DISTRICT IN THE PRECEDING GENERAL ELECTION. A NOMINATING PETITION MAY NOT CONTAIN LESS THAN 50 SIGNATURES FOR ANY DISTRICT, AND] must **be executed under oath,** state in substance that which is required in **a declaration of candidacy under AS 15.25.030, and include the fee required under AS 15.25.05001** [PETITIONS FOR NOMINATION BY AS 15.25.180].

***Sec. 60. AS 15.40.470** is amended to read:

Sec. 15.40.470. General provision for conduct of the special primary election and special election. Unless specifically provided otherwise, all provisions regarding the conduct of the **primary election and** general election shall govern the conduct of the special **primary election and special** election of state senators, including provisions concerning voter qualifications; provisions regarding the duties, powers, rights, and obligations of the director, of other election officials, and of municipalities; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, reviewing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting.

***Sec. 61.** AS 15.45.190 is amended to read:

Sec. 15.45.190. Placing proposition on ballot. The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot of the first statewide general, special, special **primary** [RUNOFF], or primary election that is held after

(1) the petition has been filed;

(2) a legislative session has convened and adjourned; and

(3) a period of 120 days has expired since the adjournment of the legislative session.

***Sec. 62.** AS 15.45.420 is amended to read:

Sec. 15.45.420. Placing proposition on ballot. The lieutenant governor shall direct the director to

place the ballot title and proposition on the election ballot for the first statewide general, special, special **primary** [RUNOFF], or primary election held more than 180 days after adjournment of the legislative session at which the act was passed.

***Sec. 63.** AS 15.58.010 is amended to read:

Sec. 15.58.010. Election pamphlet. Before each state general election, and before each state primary, special, or special **primary** [RUNOFF] election at which a ballot proposition is scheduled to appear on the ballot, the lieutenant governor shall prepare, publish, and mail at least one election pamphlet to each household identified from the official registration list. The pamphlet shall be prepared on a regional basis as determined by the lieutenant governor.

***Sec. 64.** AS 15.58.020(a) is amended by adding a new paragraph to read:

(13) the following statement written in bold in a conspicuous location:

> Each candidate may designate the political party or political group that the candidate is registered as affiliated with. A candidate's political party or political group designation on a ballot does not imply that the candidate is nominated or endorsed by the party or political group or that the party or group approves of or associates with that candidate.
>
> In each race, you may vote for any candidate listed. If a primary election was held for a state office, United States senator, or United States representative, the four candidates who received the most votes for the office in the primary election advanced to the general

election. However, if one of the four candidates who received the most votes for an office at the primary election died, withdrew, resigned, was disqualified, or was certified as incapacitated 64 days or more before the general election, the candidate who received the fifth most votes for the office advanced to the general election.

At the general election, each candidate will be selected through a ranked-choice voting process and the candidate with the greatest number of votes will be elected. For a general election, you must rank the candidates in the numerical order of your preference, ranking as many candidates as you wish. Your second, third, and subsequent ranked choices will be counted only if the candidate you ranked first does not receive enough votes to continue on to the next round of counting, so ranking a second, third, or subsequent choice will not hurt your first-choice candidate. Your ballot will be counted regardless of whether you choose to rank one, two, or more candidates for each office, but it will not be counted if you assign the same ranking to more than one candidate for the same office.

***Sec. 65.** AS 15.58.020(b) is amended to read:

(b) Each primary, special, or special **primary** [RUNOFF] election pamphlet shall contain only the information specified in (a)(6) and (a)(9) of this section for each ballot measure scheduled to appear on the primary, special, or special **primary** [RUNOFF] election ballot.

***Sec. 66.** AS 15.58.020 is amended by adding a new subsection to read:

(c) Notwithstanding (a) of this section, if a pamphlet is prepared and published under AS 15.58.010 for a

(1) primary election, the pamphlet must contain the following statement written in bold in a conspicuous location, instead of the statement provided by (a)(13) of this section:

> In each race, you may vote for any candidate listed. The four candidates who receive the most votes for a state office, United States senator, or United States representative will advance to the general election. However, if, after the primary election and 64 days or more before the general election, one of the four candidates who received the most votes for an office at the primary election dies, withdraws, resigns, is disqualified, or is certified as incapacitated, the candidate who received the fifth most votes for the office will advance to the general election.
>
> Each candidate may designate the political party or political group that the candidate is registered as affiliated with. A candidate's political party or political group designation on a ballot does not imply that the candidate is nominated or endorsed by the party or group or that the party or group approves of or associates with that candidate;

(2) a special primary election, the pamphlet must contain the following statement written in

bold in a conspicuous location, instead of the statement provided by (a)(13) of this section:

> In each race, you may vote for any candidate listed. The four candidates who receive the most votes for a state office or United States senator will advance to the special election. However, if, after the special primary election and 64 days or more before the special election, one of the four candidates who received the most votes for a state office or United States senator at the primary election dies, withdraws, resigns, is disqualified, or is certified as incapacitated, the candidate who received the fifth most votes for the office will advance to the general election. Each candidate may designate the political party or political group that the candidate is registered as affiliated with. A candidate's political party or political group designation on a ballot does not imply that the candidate is nominated or endorsed by the party or group or that the party or group approves of or associates with that candidate.

***Sec. 67.** AS 15.58.030(b) is amended to read:

(b) Not [NO] later than July 22 of a year in which a state general election will be held, an individual who becomes a candidate for the office of United States senator, United States representative, governor, lieutenant governor, state senator, or state representative under AS 15.25.030 [OR 15.25.180] may file with the lieutenant governor a photograph and a statement advocating the candidacy. [AN INDIVIDUAL WHO BECOMES A CANDIDATE FOR THE OFFICE OF UNITED STATES SENATOR, UNITED STATES

REPRESENTATIVE, GOVERNOR, LIEUTENANT GOVERNOR, STATE SENATOR, OR STATE REPRESENTATIVE BY PARTY PETITION FILED UNDER AS 15.25.110 MAY FILE WITH THE LIEUTENANT GOVERNOR A PHOTOGRAPH AND A STATEMENT ADVOCATING THE CANDIDACY WITHIN 10 DAYS OF BECOMING A CANDIDATE.]

***Sec. 68.** AS 15.80.010(9) is amended to read:

(9) "federal election" means a general, special, special **primary** [RUNOFF], or primary election held solely or in part for the purpose of selecting, nominating, or electing a candidate for the office of President, Vice-President, presidential elector, United States senator, or United States representative;

***Sec. 69.** AS 15.80.010(27) is amended to read:

(27) "political party" means an organized group of voters that represents a political program and

(A) that [NOMINATED A CANDIDATE FOR GOVERNOR WHO RECEIVED AT LEAST THREE PERCENT OF THE TOTAL VOTES CAST FOR GOVERNOR AT THE PRECEDING GENERAL ELECTION OR] has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding general election;

(B) if the office of governor was not on the ballot at the preceding general election but the office of United States senator was on that ballot, that [NOMINATED A CANDIDATE FOR UNITED STATES SENATOR WHO RECEIVED AT LEAST THREE PERCENT OF THE TOTAL VOTES CAST FOR UNITED STATES SENATOR AT THAT GENERAL ELECTION OR] has registered voters in the state equal in number to at least three percent of the total

votes cast for United States senator at that general election; or

(C) if neither the office of governor nor the office of United States senator was on the ballot at the preceding general election, that [NOMINATED A CANDIDATE FOR UNITED STATES REPRESENTATIVE WHO RECEIVED AT LEAST THREE PERCENT OF THE TOTAL VOTES CAST FOR UNITED STATES REPRESENTATIVE AT THAT GENERAL ELECTION OR] has registered voters in the state equal in number to at least three percent of the total votes cast for United States representative at that general election;

***Sec. 70.** AS 15.80.010 is amended by adding a new paragraph to read:

(46) "ranked-choice voting" means, in a general election, the method of casting and tabulating votes in which voters rank candidates in order of preference and in which tabulation proceeds in sequential rounds in which (a) a candidate with a majority in the first round wins outright, or (b) last-place candidates are defeated until there are two candidates remaining, at which point the candidate with the greatest number of votes is declared the winner of the election.

***Sec. 71.** AS 39.50.020(b) is amended to read:

(b) A public official or former public official other than an elected or appointed municipal officer shall file the statement with the Alaska Public Offices Commission. Candidates for the office of governor and lieutenant governor and, if the candidate is not subject to AS 24.60, the legislature shall file the statement under AS 15.25.030 [OR 15.25.180]. Municipal officers, former municipal officers, and candidates for elective

municipal office, shall file with the municipal clerk or other municipal official designated to receive their filing for office. All statements required to be filed under this chapter are public records.

***Sec. 72.** AS 15.25.014, 15.25.056, 15.25.110, 15.25.120, 15.25.130, 15.25.140, 15.25.150, 15.25.160, 15.25.170, 15.25.180, 15.25.185, 15.25.190, 15.25.200; AS 15.40.141, 15.40.142, 15.40.150, 15.40.200, 15.40.210, 15.40.290, 15.40.300, 15.40.450, and 15.40.460 are repealed.

***Sec. 73.** The provisions of this act are independent and severable. If any provision of this act, or the applicability of any provision to any person or circumstance, shall be held to be invalid by a court of competent jurisdiction, the remainder of this act shall not be affected and shall be given effect to the fullest extent possible.

***Sec. 74.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION; VOTER EDUCATION AS TO CHANGES MADE TO STATE ELECTION SYSTEMS THROUGH ADOPTION OF A RANKED-CHOICE VOTING SYSTEM.

For a period of not less than two calendar years immediately following the effective date of this Act, the director of elections shall, in a manner reasonably calculated to educate the public, inform voters of the changes made to the state's election systems in this Act.