ARIZONA SUPREME COURT

CENTER FOR ARIZONA POLICY, INC., et al., Plaintiffs/Appellants, vs. ARIZONA SECRETARY OF STATE, et al., Defendants/Appellees, and, ARIZONA ATTORNEY GENERAL and VOTERS RIGHT TO KNOW, Intervenors-Defendants/Appellees	Arizona Supreme Court No. CV-24-0295-PR Arizona Court of Appeals No. 1 CA-CV 24-0272 Maricopa County Superior Court No. CV2022-016564

AMICUS BRIEF OF CITIZENS FOR RESPONSIBILTY AND ETHICS IN WASHINGTON FILED WITH WRITTEN CONSENT OF ALL PARTIES

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Citizens for Responsibility and Ethics in Washington ("CREW") is a nonpartisan, section 501(c)(3) nonprofit corporation that seeks to combat corrupting influences in government and protect citizens' right to know the sources of influence on public officials. To that end, CREW uses materials disclosed by federal and state authorities, like those provided under the Voters' Right to Know Act. Identifying the interests to whom officials are likely to be responsive, *i.e.*, the original source of the funds that benefit them, is essential to CREW's work.

CREW is familiar with and regularly works to combat dark money and other attempts to evade disclosure, such as the abuse of earmarking provisions. CREW's knowledge of dark money corruption cases and earmarking abuses would be useful to this Court, especially in light of Petitioners' claim that the Act is invalid without an earmarking provision. Pet. for Review at 15.

ARGUMENT

When the United States Supreme Court freed independent electioneering from limits on spending, it relied on the existence of "a less restrictive alternative" still capable of "effective[ly]" achieving the public's interest in making informed

[1] No person other than CREW and its counsel sponsored or provided financial resources for the preparation of this brief.

decisions. *Citizens United v. FEC*, 558 U.S. 310, 369–70 (2010). The disclosure provisions upheld by the Court sought to achieve "total disclosure" of "every kind of political activity" to, in part, reveal the "interests to which a candidate is most likely to be responsive" and "detect any post-election special favors that may be given in return." *Buckley v. Valeo*, 424 U.S. 1, 67, 76 (1976).

While the Court predicted that the "absence of prearrangement and coordination" would "alleviat[e] the danger" of "*quid pro quo*" corruption such that an "outright ban … is not a permissible remedy," *Citizens United*, 558 U.S. at 345, 361 (quoted in Pet. for Review at 12-13), it recognized that sufficient danger remained to justify disclosure rules which do not "prevent anyone from speaking" but that reveal "whether elected officials are 'in the pocket' of so-called moneyed interests." *Id.* at 361, 366, 369-70 (upholding disclosure's application beyond independent expenditures and "the functional equivalent of express advocacy," including to referenda); *McCutcheon v. FEC*, 572 U.S. 185, 214 (2014) (independence may "undermin[e] the value of the expenditure to the candidate" but "probably not by 95 percent"). History has only confirmed that recognition of the continuing risk of corruption in independent spending and ballot initiatives. *See United States v. Householder*, 137 F. 4th 454, 463 (6th Cir. 2025) (discussed *infra*).

Aside from combatting corruption, disclosure is further justified because it permits citizens to "evaluate the arguments to which they are being subjected." *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 767, 792, n.32 (1978) (discussing referenda). "This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Citizens United*, 558 U.S. at 371 (discussing independent expenditures and other advocacy); *see also id.* at 369 ("informational interest alone is sufficient" to justify disclosure). Disclosure also provides "means of gathering the data necessary to detect violations" of the law. *Buckley*, 424 U.S. at 68.

Contrary to the promise of "effective disclosure" on which *Citizens United* relied, 558 U.S. at 369, billions in undisclosed and secretive dark money spending has flooded our elections in the past decade, infecting federal and state elections alike. "[E]lected officials" have "succumb[ed] to improper influences from [these] independent expenditures," *id.* at 361, conferring "special favors" on their dark money backers. *Buckley*, 424 U.S. at 67. Earmarking rules that depend on subjective motives, *see* Pet. for Review at 15, have proven "inadequate" in fulfilling disclosure's promise, *Am. for Prosperity Found. v. Bonta*, 594 U.S. 595, 611 (2021). Rather, Arizonans are entitled to implement the Voters Right to Know Act to actually "achieve the desired objective[s]" of disclosure. *Id.* at 609.

I. Billions in Dark Money is Spent to Buy Influence Without Transparency

Despite the promise of transparency, elections are awash in untraceable sums known as "dark money." "While the public may not [be] fully informed about the sponsorship" of this spending, "candidates and officeholders often [are]." *McConnell v. FEC*, 540 U.S. 93, 129 (2003). One analysis of the 2024 federal election cycle estimated that $1.9 billion was spent to influence the election without voters knowing the source of the funds. *See* Anna Massoglia, *Dark Money Hit a Record High of $1.9 Billion in 2024 Federal Races*, Brennan Center for Justice (May 7, 2025), https://perma.cc/FKA7-FGVB. That nearly doubled the prior record for dark money of $1 billion in the 2020 federal election cycle. *Id.* In fact, this untraceable spending has steadily increased since *Citizens United* promised transparency, amounting to an estimated total of $4.3 billion secretly spent in the intervening decade. *Id.* And those are just minimums for federal elections; they do not capture dark money in support of state candidates or ballot initiatives. *Id.*

One increasing tactic is the use of intermediaries to hide the true source of funds. *Id.* Donors take advantage of the fact that laws typically only require the spending entity, like super PACs that are not subject to any contribution or expense limits, to report the source of its funds. *See, e.g.*, 52 U.S.C. § 30104(b)(3)(A). By

using a non-disclosing intermediary, typically a 501(c)(4) group or an LLC, rather than donating directly to the spending entity, the donor can take advantage of the intermediary's ability to hide its contributors, while the spending entity will meet its obligation by reporting only the intermediary as the source of its funds. Such schemes were responsible for about $1.3 billion in dark money spending in the 2024 federal election cycle. Massoglia, *supra*.

Dark money is not partisan. Both parties benefit, with Democrats beating Republicans in dark money in the 2024 election cycle. *Id.; see also* Kenneth P. Vogel and Shane Goldmacher, *Democrats Decried Big Money. Then They Won With it in 2020.*, N.Y. Times (Jan. 29, 2022), http://bit.ly/4jWmgqt. Both the Democratic and Republican caucuses of the federal Senate and House have supporting super PACs that reliably spend their unlimited receipts in support of their allies. Each of these super PACS also has an associated non-disclosing entity from which they receive significant funds. Ian Vandewalker, *Dark Money from Shadow Parties is Booming in Congressional Elections*, Brennan Ctr. for Justice (Oct. 28, 2024), https://perma.cc/H44B-7WKS. These entities transferred a total of about $235 million to their respective super PACs in the 2024 election cycle while hiding the sources of the funds, with Democrats again outpacing Republicans.[2]

[2] *See* SMP, *Receipts from Majority Forward* (June 17, 2025), https://perma.cc/WQ2D-79U6; Senate Leadership Fund, *Receipts from One Nation*

Arizonans are not immune from dark money. A pre-election analysis of spending in the 2024 Arizona federal elections noted several instances of non-disclosing groups spending significant sums. Eric Pantry, Ian Vandewalker, *Arizona Races Funded by National Donors*, Brennan Center for Justice (Sept. 19, 2024), https://perma.cc/VN5F-F99Z (discussing $2.8 million spent by LCV Victory Fund to support state and federal democratic candidates and nearly $1 million spent by National Interest Action to influence state Republican primary election). Similar behaviors occurred in the 2022 election cycle. *See* Houston Keene, *Liberal dark money group launches ads targeting Sinema, Machin to support S1 election bill*, Fox News (June 4, 2021), https://perma.cc/J3CK-UZJ9; Saving Arizona PAC*, FEC Receipts for American Exceptionalism Institute Inc*, https://perma.cc/8ZQB-5X96 (Dec. 2, 2024) (showing super PAC raised $3 million from entity that does not disclose its sources that then spent to influence 2020 Arizona Senate race); Defend US PAC, *Raising*, https://perma.cc/7K6P-PTK3 (Dec. 2, 2024) (showing super PAC that spent to influence federal elections in Arizona in 2022 raised $ 4 million from nonprofits that do not disclose the source of their funds).

(June 17, 2025), https://perma.cc/B3GQ-LV3D; HMP, *Receipts from House Majority Forward* (June 17, 2025), https://perma.cc/ZQ9J-7YF8; Congressional Leadership Fund, *Receipts from American Action Network* (June 17, 2025), https://perma.cc/MB94-2K64.

Dark money infects local Arizona races as well. *See, e.g.*, Troy A. Rule, *Buying Power: Utility Dark Money and the Battle over Rooftop Solar*, 5 LSU J. OF ENERGY L. AND RES. 1, 7–10 (2017), bit.ly/4e5Tsui (discussing example of utility using dark money to influence local elections in Arizona in 2014 without public scrutiny, leading to approval of rate increases); Laurie Roberts, *Dark money in Arizona: Where the cash was spent*, Arizona Republic (Apr. 6, 2017), https://bit.ly/4lc1ZhN (detailing $15 million dark money spending in 2014 elections in support of both parties); Yvonne Wingett Sanchez, Rob O'Dell, *Governor's primary shatters spending records*, Arizona Republic (Aug. 31, 2014), https://perma.cc/973Y-LZ3X (discussing dark money influence on primary races).

The Supreme Court loosened the reins on independent spending with the understanding that there would be "transparency" that "enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Citizens United*, 558 U.S. at 371. The prevalence of "dark money" prevents that transparency.

II. Undisclosed Funding is the "Perfect Animal for Bribery"

Petitioners suggest that voters lack a legitimate interest in shining a light on dark money because, they claim, "the government has no anti-corruption interest" in regulating it. Pet. for Review at 12–13. Leaving aside the other justifying purposes of disclosure, experience disproves the Petitioners' view.

U.S. Senator Robert Menendez was indicted in 2015 for accepting bribes from an out-of-state doctor who was under investigation for Medicare fraud. Indictment ¶¶ 16, 221, *United States v. Menendez*, 15-cr-155 (D.N.J. Apr. 1, 2015), https://perma.cc/U5GS-VPJ7. Part of the charge involved $600,000 in contributions to a super PAC that the donor made in the name of his corporation. *Id.* ¶¶ 59–63. Despite the super PAC's obligation to act independently from Senator Menendez or his campaign, *see SpeechNow.Org v. FEC*, 599 F.3d 686, 693–64 (D.C. Cir. 2010) (*en banc*) (creating super PACs on basis that they are "independent from candidates and uncoordinated with their campaigns"), the Senator's friend and fundraiser solicited funds to the super PAC, *see United States v. Menendez*, 291 F. Supp. 3d 606, 630 (D.N.J. 2018), demonstrating the value of such contributions to the Senator.

Although a court eventually dismissed the charges because of the heightened evidentiary burden in establishing an explicit *quid pro quo* bribe between those contributions and the Senator's subsequent official acts, *see Menendez*, 291 F. Supp. 3d at 630–35, he was subsequently convicted of similarly corrupt conduct with a foreign government. Dep't of Justice, *Former U.S. Senator Robert Menendez Sentenced to 11 Years In Prison for Bribery, Foreign Agent, and Obstruction Offenses* (Jan. 29, 2025), https://perma.cc/BC94-WJRN.

Voters are not limited to transparency into those transactions that can be proven beyond reasonable doubt to reflect explicit *quid pro quos*. Rather, voters are entitled to know the identity of anyone who "may be given" special favors in response to their spending. *Buckley*, 424 U.S. at 67; *see also Libertarian Nat'l Comm. v. FEC*, 924 F.3d 533, 543 (D.C. Cir. 2019) (bribery laws do not encompass the full scope of transactions Congress may regulate consistent with the First Amendment).

On the state level, a jury convicted former Ohio House Speaker Larry Householder of "conspiring to solicit and receive almost $60 million in return for passing a billion-dollar [taxpayer-funded] bailout of a failing nuclear energy company." *Householder*, 137 F. 4th at 463. As part of the scheme, an executive of the utility recommended that Householder set up a 501(c)(4) to receive "undisclosed and unlimited contributions" to elect candidates who would vote him in as speaker. *Id.* at 464. Because the entity would not be a registered political committee, "nobody would ever know" the utility was behind its activities. *Id.* Through it, the utility and Householder were able to secure the elections of Householder's allies by, among other things, funding a supportive super PAC, *id.* at 466; Receipts of Growth & Opportunity PAC, Inc., FEC (last visited June 11, 2025), https://perma.cc/6DED-MBU7, and paying for issue ads to successfully

beat back an advocacy campaign against the utility bailout, *Householder*, 137 F. 4th at 467.

Notably, and contrary to Petitioners' suggestion that there can be no anti-corruption interests in ballot initiative transparency, *see* Pet. Supp. Br. at 11, one part of Householder's bribery scheme involved preventing a ballot referendum to overturn the bailout he had secured. *Householder*, 137 F. 4th at 467–69. Ballot initiatives and referenda may be closely tied to elected officials who value their success or failure. Officials may also treat initiatives unequally based on the identities of their backers and opponents, which voters are entitled to scrutinize. *See id.* at 468 (discussing Householder's pressure on the state Attorney General to block the initiative by leveraging utility's involvement). Financial disclosures further provide useful "heuristics" for voters to weigh, Abby K. Wood, *Campaign Finance Disclosure*, 14 ANN. REV. L. & SOC. SCI. 11, 19 (2018), explaining why advocates often misrepresent themselves, Amanda Garrett, *Part 3: Scrutiny of bailout pushes Householder's Enterprise into advertising frenzy*, Akron Beacon Journal (Aug. 4, 2020), https://perma.cc/VB78-QEZ6 (reporting ads against initiative were designed to avoid "unwanted scrutiny" of their backers).

The effectiveness of the Householder scheme led one prosecutor to note that supposedly non-political and independent 501(c) groups were the "perfect animal for bribery." *Ohio corrupt case HB6: Winks, nods, texts and more can prove*

bribery, Ohio Politics Explained (Jan. 9, 2023) at 6:46–:50, https://bit.ly/3HaD5wL. But for federal law enforcement's fortuitous involvement, voters would still be unaware of their tax-dollars waste in a corrupt bargain.

Additional examples abound. In 2022, the governor of Puerto Rico and her donors were indicted on bribery charges that involved payments to supportive super PACs. Indictment ¶¶ 31, 48, 88, 97–100, 106, 107, 110, 114, 138, 140, 142, 160, 168, 173–74, *United States v. Vazquez Garced*, 22-cr-342 (D.P.R. 2022) https://perma.cc/753Y-ZUW2. In 2024, a jury convicted a North Carolina insurance mogul for his part in "a bribery scheme involving independent expenditure accounts and improper campaign contributions." Dept. of Justice, *Chairman of Multinational Investment Company and Company Consultant Convicted of Bribery Scheme at Retrial* (May 15, 2024), https://perma.cc/G2SX-9VPW.

In yet another case, a foreign national was convicted of funding super PACs "in an effort to buy influence" with elected officials." U.S. Att'y's Office Southern District of California, *Mexican Businessman Jose Susumo Azano Matsura Sentenced for Trying to Buy Himself a Mayor* (Oct. 27, 2017), https://bit.ly/2WxmHkk. A jury convicted another individual of acting as a conduit for unlawful foreign contributions to benefit then President Obama, including to a super PAC that supported him. *United States v. Michel*, No. 19-148-1 (CKK), 2024

WL 1603362, at *1–*4 (D.D.C. Apr. 12, 2014). Two foreigners were indicted for making contributions to "independent expenditure committee[s]" to be "reported in the name of [a shell company] instead of their own names" in order to "obtain access to exclusive political events and gain influence with politicians." Indictment ¶¶ 13-14, *United States v. Parnas*, No. 19-CR-725 (S.D.N.Y. Oct. 9, 2019), https://bit.ly/2OhCjCl.

Bribery indictments, never mind convictions secured beyond reasonable doubt, will "deal with only the most blatant and specific attempts of those with money to influence governmental action.'" *Libertarian Nat'l Comm*, 924 F.3d at 543 (quoting *Buckley*, 424 U.S. at 28). The value of supposedly independent spending to many officials can be seen in their behavior. It is now common for officials to fundraise for these supposedly independent groups, *see, e.g.*, Ian Vandewalker, *The Rise of Shadow Parties*, Brennan Center for Justice (Oct. 22, 2018), https://bit.ly/30IqScm (discussing example of then-Minority Leader Nancy Pelosi fundraising for supposedly independent group), which are often staffed with loyal and reliable associates of the candidate. *See, e.g.* Brent Ferguson, *Super PACs: Gobbling Up Democracy*, Brennan Center for Justice (June 23, 2015), https://bit.ly/2X6dg8F ("[C]andidate's top aides … now leav[e] campaign teams to work for supportive super PACs."); Albert W. Alschuler, *Limiting Political Contributions After McCutcheon, Citizens United, and SpeechNow,* 67 FLA. L.

REV. 389, 394 & n.23 (2016) (discussing how the managers of the super PAC supporting President Obama were also close to him).

Rather than declare that independent spending can never give rise to corruption, *cf.* Pet. for Review at 12–13, the United States Supreme Court recognized that "the absence of prearrangement and coordination" only partially "undermines the value of the expenditure of the candidate," and "probably not by 95 percent." *McCutcheon*, 572 U.S. at 214. In the absence of limits, disclosure is the sole remaining bulwark left to alert voters to the possibility that "elected officials are 'in the pocket' of so-called moneyed interests." *Citizens United*, 558 U.S. at 361, 366, 369–70

III. Objective Tracing of Funds is Needed to "[A]chieve the [D]esired [O]bjective" of Adequate Disclosure; Earmarking is Not the Answer

Given the risk of corruption from significant independent spending and the general ability to earn "special favors" outside of *quid pro quo* transactions, *Buckley*, 424 U.S. at 67—as well as the informational interests disclosure serves—voters have the right to utilize means that can actually "achieve the[ir] desired objective," *Bonta*, 594 U.S. at 609.

Petitioners contend that the preferable and "easy solution" to achieve this goal is to utilize an earmarking system, Pet. for Review at 15, rather than the objective criteria of the Voters' Right to Know Act. Federal law imposes just such

an earmarking restriction. *See* 52 U.S.C. § 30122. It was this type of earmarking restraint the Tenth Circuit suggested in *Wyoming Gun Owners v. Gray* could save Wyoming's vague disclosure law. 83 F.4th 1224, 1248 (10th Cir. 2023) (discussing *Independent Institute v. Williams*, 812 F.3d 787, 789 n.1 (10th Cir. 2016) (to be disclosed under examined law, "donor must intend the donations be used for electioneering communications and not for other activities of the speaker")).[3] Disclosure is triggered under federal law by sums far smaller than those in the Voters' Right to Know Act. *Compare* 52 U.S.C. § 30101(4) (groups spending $1,000 or more on electioneering subject to reporting); *id.* at § 30104(b)(3)(A) (donors of $200 or more to be disclosed) *with* A.R.S. § 16-973 ($50,000 and $25,000 triggers for disclosure covering contributions of $5,000 or more). Nonetheless, the law as applied has proven seriously deficient, "reach[ing] only the most clumsy attempts to pass contributions through." *FEC v. Colo. Republican Fed. Campaign Com.*, 533 U.S. 431, 462–63 (2001). It effectively relies on the voluntary compliance of those involved to disclose their transactions while providing the public with no means to verify compliance.

In particular, federal earmarking law focuses not on the electioneering motives of the donor, but on the donor's desire to target the ultimate recipient.

[3] As intervenors explain, the Tenth Circuit did not mandate such earmarking. Voters' Right to Know Resp. to Pet. for Review at 14-15, Doc. 6.

Thus, the Federal Election Commission recently concluded that contributions laundered through various nonprofits to support a candidate's election, and which were eventually spent for that purpose, nevertheless did not meet the earmarking requirements. Rather, because the donors "had [no] reason to know that their funds would be contributed" to the ultimate recipient super PAC, the earmarking rule was deemed inapplicable, even though the participants "understood that the funds they provided … likely would support the efforts" of the intended candidate. Federal Election Commission ("FEC") Second General Counsel's Report, MUR 7464 (Ohio Works) (May 5, 2023) at 13, 16–17, https://perma.cc/4FTM-S59Y; Certification, MUR7464 (Ohio Works) (June 7, 2023), https://perma.cc/4ZUZHQGY (adopting FEC counsel's recommendations); *see also* FEC First General Counsel's Report, MUR 7465 (Freedom Vote) (July 1, 2019) at 23, https://perma.cc/8A8D-3D34 (FEC staff rejecting conduit claim because "there is no additional information indicating that any donor sought to funnel funds through [intermediary] for the purpose of making contributions" to a specific super PAC). Of course, a donor seeking "special favors," *Buckley*, 424 U.S. at 67, need not care which super PAC spends the money, so long as it benefits the official from which favors may be sought.

Even more broadly targeted earmarking laws that avoid this particular absurdity and trace funds back to anyone who seeks to influence elections would

still fail. For example, another federal law requires some organizations to disclose those who donate to them to influence elections. *See* 52 U.S.C. § 30104(b)(3)(A), (c)(1), (c)(2)(C). An investigation by the Federal Election Commission revealed one such group accepted a half-million-dollar contribution from a still-unknown donor expressly earmarked "for the reelection of" a specific candidate. FEC General Counsel's Brief, MUR 7465 (Freedom Vote) (Sept. 20, 2021) at 16, https://perma.cc/4AAV-M9MJ. Despite the law, the donor was never reported. That was likely because the recipient organization, while pocketing the funds and spending them as directed, returned to the donor a boilerplate letter declaring that the recipient does not "accept contributions earmarked to support or oppose candidates for public office" as a matter of policy, and so interpreted the contribution to only be a general grant. *Id.*

Other groups have sent similar letters to evade reporting obligations. *See* Matt Corley, *FEC investigation spurred by CREW complaint reveals Ohio dark money secrets*, CREW (Oct. 17, 2023), https://perma.cc/ZJL7-UK8F; *see also, e.g.*, Patriot Majority USA, *FEC Form 5, Report of Independent Expenditures Made and Contributions Received, January 31 Year-End Report* (Jan. 23, 2019), https://perma.cc/34U3-QJYT (reporting no contributions for over $4 million in independent expenditure electioneering, citing "[a]s a matter of policy, Patriot Majority USA does not accept funds earmarked for independent expenditure

activity or for other political purposes in support or opposition to federal candidates").

Having disclaimed the subjective motive that all participants know to exist, those involved may then evade the law's reporting obligations. Voters are deprived of any means of discerning whether anything is amiss: they would not know whether the absence of reporting was due to lack of qualifying intent or, rather, a violation of the law. *Cf. Buckley*, 424 U.S. at 68 (one purpose of disclosure provides "means of gathering the data necessary to detect violations" of the law). The only reason the public learned about the existence of the half-million-dollar undisclosed contribution was because the recipient organization spent so heavily on visible electioneering as compared to its total spending, revealed in public tax filings, that available evidence demonstrated the group failed its legal obligation to register and report as a political committee. FEC General Counsel's Brief MUR 7465 (Freedom Vote) at 1. Had the group simply been more circumspect, it could have hidden the transaction entirely.

Indeed, earmarking measures are so impotent that consultants advertise ways to influence elections while remaining secret. For example, consultants offered a plan to a Florida Utility to launder funds intended to influence federal elections through intermediaries, promising the process would "minimiz[e] all public reporting." *See* FEC First General Counsel's Report, MUR 8082 (Unknown

Respondents) (Sept. 29, 2023) at 6-8, https://perma.cc/3QB7-A3AQ. In another example, a consultant solicited funds for "independent efforts to support" a candidate, stating a "501c4" is "[t]he vehicle for these efforts" and promising "no disclosure." @CleanTechFacts, X (Oct. 22, 2024), https://perma.cc/4FPZ-HVEU. In another example, a political fundraiser emailed potential donors for $25,000 to support a ballot initiative, promising that "no one will know that you contributed." @CraigDMauger, X (June 6, 2025), https://perma.cc/YBU3-5QGJ (quoting evidence submitted in Michigan trial). These pitches rely on the ease of evading subjective earmarking by misrepresenting clients' motivations, which outsiders cannot detect. The clients, on the other hand, remain free to alert benefited officials and seek special favors in return for their spending.

In contrast to this documented reality of intermediaries' use, Petitioners only proffer a hypothetical about church members unwittingly contributing to campaigns. Pet. for Review at 16. Even changing the hypothetical so that it would be covered by the Act, *see, e.g.*, A.R.S. § 16-971(2) (only certain communications covered), A.R.S. § 16-973(6) (only sources of $5,000 or more are disclosed), and assuming the participants do not take advantage of their ability under the Act to "opt out of having their monies used for … electioneering communications," *Wyoming Gun Owners*, 83 F.4th at 1249 (concluding such option ensures sufficiently tailoring); *see* A.R.S. § 16-972(C), the example is not borne out in

reality. The hypothetical intermediary church would risk its tax status if it did not restrict its grant to prevent its use in the recipient's hypothetical electioneering, and both would risk losing their contributors if they misused their contributions—a misuse and uninvited association that the Voters Right to Know Act requires to be disclosed for the donor's benefit. *Cf.*, *Citizens United*, 558 U.S. at 370 (disclosure permits stakeholders to monitor for misuse).

If it is indeed a misuse, the constitutional remedy for an unwanted identification is "more speech, not less." *Id.* at 361. If it is not, then the donor's identity could reveal special pleading or a conflict of interest, or a donor who "may be given" a "special favor." *Buckley*, 424 U.S. at 67. Regardless, experience shows subjective earmarking rules would exclude this hypothetical donor only because they deprive voters of nearly all meaningful disclosure.

The failure of earmarking tests based on subjective motives demonstrates that the "burdens" of the Voters' Right to Know Act "are []necessary" to achieve disclosure legitimately sought by the voters. *Bonta*, 594 U.S. at 611; *Ward v. Rock Against Racism*, 491 U.S. 781, 799–800 (1989) ("[N]arrow tailoring is satisfied [if]… governmental interest would be achieved less effectively absent the regulation"). Even though not required by exacting scrutiny, *Bonta*, 594 U.S. at 608, objective and verifiable tracing provisions like those in the Voters' Right to Know Act are the "least restrictive means" to meeting the goals of disclosure,

because of the inadequacies and ineffectiveness of earmarking restrictions. *Id*.; *see also Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 282 (2019) (Arizona courts "often rel[y] on federal case law in addressing free speech claims").

CONCLUSION

Arizona voters overwhelmingly passed the Voters' Right to Know Act to "provid[e] the electorate with information about the sources of election-related spending." *Citizens United*, 558 U.S. at 367. It targets the real "sources," *id.*—those who can claim reward for their spending because they did not opt out of electioneering—while ensuring privacy to those who direct their funds to activities unlikely to win "special favors." *Buckley*, 424 U.S. at 67. It provides voters with information to "detect violations" through verifiable disclosures, *id.*, without the need to resort to intrusive investigations into individuals' subjective motivations or relying on voluntary compliance. Ultimately, the "inadequa[cy]" of "any less intrusive alternatives" simply "demonstrate[s] [the voters's] need[s]" for the Voters' Right to Know Act to "achieve the desired objective[s]" of disclosure. *Bonta*, 594 U.S. at 609, 611, 613.

June 24, 2025.

Respectfully Submitted,

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