No. 25-1248

IN THE

Supreme Court of the United States

RIO GRANDE FOUNDATION,

Petitioner,

v.

MAGGIE TOULOUSE OLIVER,
in Her Official Capacity as Secretary of State
of New Mexico,

Respondent.

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

BRIEF OF NATIONAL TAXPAYERS UNION FOUNDATION AND PEOPLE UNITED FOR PRIVACY FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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May 29, 2026

QUESTIONS PRESENTED

1. Demands of donor lists of nonprofits have long been reviewed under the First Amendment's "exacting scrutiny" standard. Under exacting scrutiny, a disclosure regime must be pursuant to a sufficiently important governmental interest and narrowly tailored to that interest. When a nonprofit speaks about issues that may be on the ballot—without express advocacy for or against the ballot measure—may a state demand a nonprofit donor list simply for mentioning issues on the ballot?

2. Under this Court's landmark decision in *Buckley v. Valeo*, 424 U.S. 1, 79, 81 (1976) (per curiam), campaign-style regulation and disclosure requirements should only apply to organizations with the "major purpose" of engaging in "unambiguously campaign related" speech. Is the major purpose test required before a group must register as if it were a campaign for mere production of a ballot guide without express advocacy?

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INTEREST OF *AMICI CURIAE*[1]

Founded in 1973, the National Taxpayers Union Foundation (NTUF) is a non-partisan research and educational organization dedicated to showing Americans how taxes, government spending, and regulations affect everyday life. NTUF advances principles of limited government, simple taxation, and transparency on both the state and federal levels. NTUF's Taxpayer Defense Center advocates for taxpayers in the courts, producing scholarly analyses and engaging in direct litigation and *amicus curiae* briefs upholding taxpayers' rights, challenging administrative overreach by tax authorities, and guarding against unconstitutional burdens on interstate commerce. NTUF's sister organization, National Taxpayers Union, is a § 501(c)(4) organization that, *inter alia*, produces a ballot guide to inform the public about tax issues in each state.

NTUF lent its expertise to this Court on the constitutional and practical application of donor privacy in matters such as those presented in this case. This Court recognized NTUF's *amicus* brief in the recent decision upholding the right to assert donor privacy interests against state subpoena demands in *First Choice Women's Resource Centers v. Davenport*, 608 U.S. ___, 146 S. Ct. 1114, 1125–26 (2026). NTUF also filed as *amicus* in other cases concerning

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[1] Pursuant to Supreme Court Rule 37, counsel for *Amici* represents that none of the parties or their counsel, nor any other person or entity other than *Amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Counsel for *Amici* certifies timely notice was provided to all parties of the intent to file this brief.

nonprofit donor privacy and financial privacy. *See*, *e.g.*, *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021); *see also Polselli v. Internal Revenue Serv.*, 598 U.S. 432 (2023).

People United for Privacy Foundation (PUFPF) is a nonprofit, non-partisan § 501(c)(3) organization that advocates for the right of individual Americans to come together in support of their shared values. PUFPF's vision is an America where all people can freely and privately support ideas and nonprofits they believe in, so that all sides of a debate will be heard, individuals will not face retribution for supporting important causes, and all organizations have the ability to advance their missions because the privacy of their donors is protected.

To that end, PUFPF works to advance and strengthen the constitutional right to privately associate without government permission or supervision. PUFPF provides information and resources to policymakers, media, and the public about the close and necessary relationship between citizen privacy and the freedoms of speech and association. PUFPF also submits comments on proposed legislation and rules as well as amicus briefs in litigation concerning any government action that threatens to chill nonprofit advocacy by unlawfully unmasking organizations' members and financial supporters. PUFPF believes the New Mexico law at issue in this case chills the First Amendment rights of nonprofit organizations and their donors with harmful ramifications beyond New Mexico's borders.

For these reasons, *Amici* have institutional interests in this Court's decision.

SUMMARY OF THE ARGUMENT

There is tension in the law between robust protections for speech, particularly speech about issues of public import, and the ever-increasing donor disclosure demands under campaign finance laws such as New Mexico's law at issue in this case. States are creating more ways to regulate speech, affecting the educational ability of nonprofit public policy organizations to inform the public about complex topics, such as tax and privacy law.

The Tenth Circuit panel decision below is split 1-1-1 between a majority opinion, a concurrence that functions as a *dubitante* opinion, and a forceful dissent. The *en banc* Tenth Circuit denied further review, generating another forceful dissent. This Court should review because the case implicates a circuit split and is a case of national importance dealing with this Court's prior decisions. *See* Sup. Ct. R. 10(a), 10(c).

First, at issue is the "major purpose" test articulated in *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam). This test holds that campaign finance regulation and disclosure requirements should "only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." *Id.* at 79. The decision below also solidified a circuit split between the Tenth and its sister circuits (the Fourth, Eighth and Ninth) on how to apply the "major purpose" test and undid prior Tenth Circuit holdings on the question.

Second, the panel decision applied an imprecise version of this Court's test of exacting scrutiny on a question of national importance. Ballot guides are important tools used by nonprofits nationwide to educate the public about issues. New Mexico claims there is an informational interest about who is speaking about candidates and ballot measures before an election. But *what* is said is just as important as that it is said. Informational speech should not be regulated as if it were express advocacy, merely because it talks about items on the ballot.

Even assuming, *arguendo*, that there is a weighty enough interest, exacting scrutiny demands narrow tailoring. But the Tenth Circuit panel decision only vaguely points to a temporal window and an opt-out provision for donors to ban the use of their funds (and thus the attendant donor disclosure) for political purposes. But the window is set at 60 days before an election, while the ballot itself need not be set until 70 days before the election. This gives a nonprofit only 10 days to issue a ballot guide without becoming a regulated political committee in the state. Likewise, the opt-out provision is a look back to the beginning of the election cycle, meaning that donors must often give 22 months' notice that they wish to opt-out.

The reach of the decision below is sweeping. It breaks with Tenth Circuit precedent and creates a circuit split. And it mangled the application of this Court's exacting scrutiny test for donor list demands. Combined, these reasons suggest that this case is a good vehicle for this Court to clarify the line between freedom of speech and regulation of speech through donor disclosure. *Amici* therefore urge this Court to grant a writ of certiorari.

ARGUMENT

I. THIS CASE IS A GOOD VEHICLE TO RESOLVE THE TENSION BETWEEN ISSUE SPEECH AND DISCLOSURE.

This case is a good vehicle for this Court to resolve a tension in the law recognized a decade ago by the D.C. Circuit: "The arc of campaign finance law has been ambivalent, bending toward speech and disclosure. Indeed what has made this area of election law so challenging is that these two values exist in unmistakable tension." *Van Hollen, Jr. v. Fed. Election Comm'n*, 811 F.3d 486, 488 (D.C. Cir. 2016). The case at bar presents this Court with a chance to resolve that tension by addressing both a developing circuit split and addressing a question of national importance. *See* Sup. Ct. R. 10(a), 10(c).

The panel decision below was split 1-1-1, and it undoes decades of Tenth Circuit precedent. Judge Federico wrote a sweeping decision upholding political committee-type status for a nonprofit organization that merely refers to a clearly identified candidate or ballot question. *See* Pet. App. 15a (describing law); Pet. App. 36a (upholding law on a broad view of informational interest). But Judge Hartz specially concurred, believing "it properly follows controlling precedent" but noting that the judge is "uncomfortable with the scope of that precedent" because it fails to inform beyond mere "ad hominem arguments." Pet. App. 42a. Judge Eid wrote a forceful dissent, recognizing that "[d]isclosure laws threaten First Amendment Freedoms." Pet. App. 45a. On petition for *en banc* review before the Tenth Circuit, Judge Eid

again wrote in dissent, this time joined by Judge Tymkovich. *See* Pet. App. 3a.

The result of the decision below is a circuit split and undoes important prior Tenth Circuit decisions protecting donor disclosure and misappropriation of campaign finance laws to non-political actors. And this case is one of national importance, for states are importing campaign finance ideas—such as "electioneering communications" regulation—to issue speech or educational materials about ballot measures and candidates. This impacts the work of *Amici*, who try to inform voters on the complexities of tax policies and disclosure laws—all while never advocating for or against any ballot measure or candidate for office.

Amici care about donor privacy, but there is a practical concern too: NTUF's sister organization, National Taxpayers Union, is a § 501(c)(4) nonprofit organization that regularly produces a ballot guide to inform the public about tax issues in each state. *See*, *e.g.*, Nat'l Taxpayers U., 2025 *Guide to All Tax Ballot Questions Across the Country* (Oct. 29,2025) https://www.ntu.org/publications/detail/2025-ballot-guide. These guides are informative and are "not intended to provide endorsements or recommendations to voters." *Id*. (emphasis removed). This is a decades-long project to educate voters. *See*, *e.g.*, Nat'l Taxpayers U., *National Taxpayers Union Presents: General Election Ballot Guide 2006 The Taxpayer's Perspective* (Oct. 20, 2006) https://www.ntu.org/library/doclib/2026/05/2006-10-20-National-Ballot-Guide.pdf. Depending on the year, these guides can run hundreds of pages as the ballot guide attempts to be as comprehensive as possible. *See*, *e.g.*, Nat'l Taxpayers U., *NTU's 2021 Ballot*

Guide: Voters Face Billions of Dollars in Tax Increases in Off-Year Election (Oct. 26, 2021) https://www.ntu.org/library/doclib/2026/05/2021ballot-guide-copy.pdf (251 pages of analysis down to the local municipal level). These resources are informational and hardly what anyone would consider to be a campaign advertisement.

Such guides are helpful to the public because tax law has its own vernacular: *ad valorem*, mill levy, assessment, remittance, basis, capitalization. And tax polices matter in both the rate and base of the tax, often confusing voters. If left to stand, the decision below threatens vital educational work, particularly topics like tax law, an area that even many find "hopelessly and uniquely complex." Lawrence Zelenak, *Maybe Just A Little Bit Special, After All?*, 63 DUKE L.J. 1897, 1906 (2014) (detailing popular media presentations of tax complexity from *Ozzie and Harriet* in 1949 to *Rosanne* in 1990). The opinion of the Tenth Circuit in this case jeopardizes a vital educational tool.

A. This Case Created a Circuit Split on this Court's "Major Purpose" Test.

The Petition raises the issue of the New Mexico law, and the decision below, eliding the "major purpose" test articulated by this Court in *Buckley v. Valeo*, 424 U.S.1, 79 (1976) (per curiam) ("To fulfill the purposes of the Act," regulation need "only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate."). *See* Pet. 18–24. Groups with the major purpose of political activity "can be assumed

to fall within the core area sought to be addressed by Congress," and "are, by definition, campaign related." *Id*. On the question of whether an organization must have a "major purpose" of political activity before campaign finance obligations attach, the 1-1-1 decision creates a circuit split between the Tenth Circuit and the Fourth, Eighth, and Ninth Circuits, as well as, *sub silentio*, endangering decades of Tenth Circuit precedent applied to New Mexico. *See* Sup. Ct. R. 10(a). This circuit split imperils groups across the country from knowing whether their speech will be deemed a "political purpose" or not by mere indirect indications and innuendo that can satisfy the test of the court below.

The panel concurrence highlights the Ninth Circuit's analysis in *Canyon Ferry Road Baptist Church of East Helena, Inc. v. Unsworth*, 556 F.3d 1021 (9th Cir. 2009). *See* Pet. App. 42a (Hartz, J., concurring *dubitante*). In *Canyon Ferry*, 556 F.3d at 1024, 1034, the Ninth Circuit held that the *de minimis* value of a Montana church copier and volunteer time was not sufficient to require generalized donor disclosure. The *Canyon Ferry* court also specifically stated that it "[could] not say that the informational value derived by the citizenry is the same across expenditures of all sizes." *Id*. at 1033. The Ninth Circuit held "[a]s the monetary value of an expenditure in support of a ballot issue approaches zero, financial sponsorship fades into support and then into mere sympathy." *Id*. Voters gain little information about "the *financial* backing" of a campaign when a group's "activities [are] of minimal economic effect." *Id*. at 1034 (emphasis in original).

Likewise in *Minnesota Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 872 (8th Cir. 2012) (en banc), the Eighth Circuit struck down a law requiring independent expenditure funds to have "virtually identical regulatory burdens" to those imposed on political committees. In that case, "Minnesota ha[d], in effect, substantially extended the reach of [political committee]-like regulation to *all* associations that *ever* make independent expenditures." *Id.* (emphasis in original). This included having to file periodic reports, even if the fund no longer engaged in political activity. *Id.* at 873 ("Perhaps most onerous is the ongoing reporting requirement. Once initiated, the requirement is potentially perpetual regardless of whether the association ever again makes an independent expenditure.") The *Swanson* court required "the major purpose" test to ensure that only political organizations face that burden. *Id.* at 877.

In *North Carolina Right to Life, Inc. v. Leake*, the Fourth Circuit followed *Buckley* and struck down a definition of "political committee" that reached groups without the "primary purpose" of supporting and opposing candidates. This ruling began "with *Buckley v. Valeo*'s mandate that campaign finance laws must be 'unambiguously related to the campaign of a particular . . . candidate.'" *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 287 (4th Cir. 2008) (quoting *Buckley*, 424 U.S. at 80) (ellipsis in *Leake*). The Fourth Circuit recognized that the *Buckley* Court "did indeed mean exactly what it said when it held that an entity must have '*the* major purpose' of supporting or opposing a candidate to be designated a political committee." *Id.* at 288 (quoting *Buckley*, 424 U.S. at

79) (emphasis in *Leake*). That is because "Narrowly construing the definition of political committee in that way ensures that the burdens of political committee designation only fall on entities whose primary, or only, activities are within the 'core' of Congress's power to regulate elections." *Id.* Based on this reasoning, the Fourth Circuit found North Carolina's law unconstitutional when it attached political committee disclosure and reporting to groups without the major purpose of electoral politics. *Id.* at 289 (striking N.C. Gen. Stat. § 163-278.6(14) as unconstitutional).[2]

The Tenth Circuit used to be in line with its sister circuits, including in examining New Mexico law. In *New Mexico Youth Organized v. Herrera*, 611 F.3d 669 (10th Cir. 2010) ("*NMYO*"), the Tenth Circuit held that New Mexico campaign finance law's definition of "political committee" must satisfy "the major purpose test." *Id.* at 677 (citing *Buckley*, 424 U.S. at 79). Significantly, *NMYO* dealt with political committee registration and disclosure, *see id.* at 672, similar to

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[2] It is sometimes said that a subsequent Fourth Circuit decision, *Real Truth About Abortion, Inc. v. Federal Election Commission*, 681 F.3d 544 (4th Cir. 2012), limited *Leake*'s applicability. But the *Real Truth* decision expressly distinguished *Leake* because North Carolina "provided absolutely no direction as to how [it] determine[d] an organization's major purpose and was implemented using unannounced criteria." *Id.* at 558 (internal citation and punctuation omitted). The *Real Truth* court further recognized that *Leake* focused on "expenditure ratios and organizational documents" in determining an organization's major purpose but held that the Federal Election Commission could use other criteria in its regulation of federal electioneering communications. *Id.* at 557–58.

what Rio Grande Foundation faces for running a ballot guide close to the election. In *NMYO*, New Mexico law mandated generalized donor disclosure when an organization spent just $500 in a year "for political purposes." *Id.* at 678 (citing N.M. Stat. § 1-19-26(L)). The Tenth Circuit, using *Buckley* as a guide, held that a political committee may "only encompass organizations that are under the control of a candidate or *the major purpose* of which is the nomination or election of a candidate." *Id.* at 677 (quoting *Buckley*, 424 U.S. at 79) (emphasis added). The *NMYO* court found that because the group had not spent "a *preponderance* of its expenditures on express advocacy or contributions to candidates," neither could be regulated as a political committee. *Id.* at 678 (emphasis added).

Furthermore, the triggering thresholds, under prior Tenth Circuit law, were suspiciously low. The *NMYO* court applied another Tenth Circuit decision, *Colorado Right to Life Committee, Inc. v. Coffman*, 498 F.3d 1137, 1153 (10th Cir. 2007), and held the $500 trigger unconstitutionally low. *NMYO*, 611 F.3d at 679. Relatedly, in *Coalition for Secular Government v. Williams*, the Tenth Circuit held that an organization's planned activity of $3,500 was impermissibly low for triggering Colorado's regulation of an organization as an "issue committee" with attendant reporting requirements similar to those proposed in the bill draft. *Coal. for Secular Gov't v. Williams*, 815 F.3d 1267, 1275, 1281 (10th Cir. 2016). Nor is *Coalition for Secular Government* a recent development. In 2010, the Tenth Circuit also examined burdensome disclosure requirements for small ballot measure organizations under Colorado's

campaign finance disclosure scheme in *Sampson v. Buescher*, 625 F.3d 1247, 1260 (10th Cir. 2010), and held that Colorado's requirements "substantial[ly]" burdened the organization's First Amendment rights, the court balanced the "substantial" burden of reporting and disclosure against the informational interest at stake, which it considered "minimal."

It is difficult to square how the *Rio Grande Foundation* holding and rationale does not work against decades of Tenth Circuit precedent in *NMYO*, *Coalition for Secular Government*, and *Sampson*. Nor is it obvious how a nonprofit can comply with this case and the holdings of the Fourth, Eighth, and Ninth Circuits. This Court should take this case to resolve this circuit split.

B. "The Centre Cannot Hold" Between the Freedom of Speech and the Demands of Disclosure.

This is a case of national importance, and the decision below conflicts with this Court's jurisprudence on donor disclosure. *See* Sup. Ct. R. 10(c). Ten years ago, Judge Janice Rodgers Brown noted in the unanimous opinion in *Van Hollen* that this "Court's campaign finance jurisprudence subsists, for now, on a fragile arrangement that treats speech, a constitutional right, and transparency, an extra-constitutional value, as equivalents." *Van Hollen*, 811 F.3d at 501. That tension between robust speech protections and burdensome disclosure demands is ever increasing and "'the centre cannot hold.'" *Id.* (quoting William Butler Yeats, *The Second Coming* (1919)). The case at bar is the warning before

the tension snaps and injures the First Amendment's freedoms. Faithful application of "exacting scrutiny" is the means this Court gave to resolving that tension.

But the primary opinion below gave only a cursory review of the stated interests and tailoring by New Mexico in regulating ballot guides. Judge Eid's dissent called the review as looking "through rose-colored glasses." *Compare* Pet. App. 34a–35a (reasoning temporal window, $3,000 threshold, and complicated opt-out procedure as sufficient for tailoring) *with* Pet. App. 49a (Eid, J., dissenting) (recognizing that exacting scrutiny's "narrow-tailoring inquiry does not ask whether the government has 'made some effort' to limit the scope of a disclosure regime," instead "[o]ur precedents demand more").

Under *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021) ("*AFPF*") and other landmark cases dating back to the Civil Rights Era,[3] New Mexico must show its disclosure law survives "exacting scrutiny." Exacting scrutiny "requires that there be a substantial relation between the disclosure requirement and a sufficiently important governmental interest" and that "the disclosure requirement be narrowly tailored to the interest it promotes." *Id.* at 611 (quotation marks and citations omitted).

But "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is

[3] *See, e.g.*, *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539 (1963); *Talley v. California*, 362 U.S. 60 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958).

undeniably enhanced by group association," and that there is a "vital relationship between freedom to associate and privacy in one's associations." *NAACP*, 357 U.S. at 460, 462. This language recognizes two rights: (1) to engage in debate concerning public policies and issues, and (2) associational privacy, to effectuate that right. Furthermore, freedom of association must be protected "not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference," such as registration and disclosure requirements and the attendant sanctions for failing to disclose. *Bates*, 361 U.S. at 523 (collecting cases); *see also NAACP v. Button*, 371 U.S. 415, 433 (1963) (noting that the freedoms of speech and association are "delicate and vulnerable" to "[t]he threat of sanctions [which] may deter their exercise almost as potently as the actual application of sanctions").

The government here claims there is an informational interest about who is speaking about candidates and ballot measures before an election. *See*, *e.g.*, Pet. App. 30a–31a. To the decision below, any communication that meets the state's definition is "inherently made for political purpose[s] by their very definition." Pet. App. 31a (*see* citing N.M. Stat. §§ 1-19-26(P), (W)). But that is circular: the communication is deemed political because the law deems it political. This sets aside decades of recognition that there is a difference between political speech and speech about issues of public policy. For example, this Court has long held that "a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs." *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

The informational interest is all the more attenuated when discussing ballot questions, which are issues of public import, as opposed to the "sham" ads discussing candidates that lead this Court to uphold the federal "electioneering communications" regulations. Such ads were about domestic violence and aimed at turning the electorate against a candidate. *See*, *e.g.*, *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 194 n.78 (2003) ("One striking example is an ad that a group called 'Citizens for Reform' sponsored during the 1996 Montana congressional race, in which Bill Yellowtail was a candidate. The ad stated: 'Who is Bill Yellowtail? He preaches family values but took a swing at his wife. And Yellowtail's response? He only slapped her,'" and so this Court reasoned that "[t]he notion that this advertisement was designed purely to discuss the issue of family values strains credulity.'"). In contrast, discussing a legislator's voting record or the effect of a tax question on the ballot is hardly such a sham ad—and it should not be treated as such if there is no express advocacy for or against the candidate or ballot issue. Therefore, the government bears the burden of showing how the information interest is weighty enough in this specific context of a ballot guide.

Mere passing curiosity from the public is not a substantial interest in disclosure. People want to know all sorts of things about their neighbors, but public interest does not automatically withstand First Amendment scrutiny. With civil society groups, the government often asserts that the public wants to know the funding of such organizations, though that is somewhat in doubt in the academic literature. *See*, *e.g.*, David M. Primo and Jeffery D. Milyo, CAMPAIGN

FINANCE AND AMERICAN DEMOCRACY WHAT THE PUBLIC REALLY THINKS AND WHY IT MATTERS 5 (U. Chicago P. 2020) (academic examination where authors conducted intensive public surveys on campaign finance disclosure and concluded "public opinion simply does not offer a strong foundation for expanding campaign finance regulations: the argument that reform will improve trust in government or public perceptions of democracy does not hold up in the data").

But tailoring is essential to survive exacting scrutiny. As the *Buckley* Court observed, laws regulating speech must be drafted with precision, otherwise they force speakers to "hedge and trim" their preferred message. *Buckley*, 424 U.S. at 43 (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)). Thus, to "pass First Amendment scrutiny," the government must show the regulation is "tailored" to the government's "stated interests" for that regulation of core First Amendment activity. *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 168 (2002). Exacting scrutiny is "not a loose form of judicial review." *Wis. Right to Life, Inc. v. Barland*, 751 F.3d 804, 840 (7th Cir. 2014). It is instead a "strict test," *Buckley*, 424 U.S. 66, requiring an analysis of the burdens imposed, and whether those burdens advance the government's stated interest because, "[i]n the First Amendment context, fit matters." *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 218 (2014) (Roberts, C.J., controlling opinion).

By contrast, the New Mexico law triggers, in many cases, an open-ended disclosure of the names and addresses of everyone who contributes $5,000 to an entity that makes public communications over $3,000

that simply mention the name of a candidate or talk about the subject of a ballot measure. *See* Pet. App. 35a (discussing state's asserted tailoring); *See* N.M. Stat. § 1-19-27.3(D)(2) (disclosure threshold).

The temporal limitation is a functional nullity. In New Mexico, speech about ballot measures triggers registration and reporting requirements if done within 60 days of an election. N.M. Stat. § 1-19-26(Q)(3)(c); Pet. App. 15a (Tenth Circuit panel decision discussing same). But the Secretary of State can place ballot questions on the ballot up to 70 days before the election. *See*, *e.g.*, N.M. Stat. § 1-16-3(A). That gives a nonprofit as little as 10 days to analyze, write, and publish about a ballot measure before the campaign finance rules trigger burdensome donor disclosure. The temporal window is impossible to meet for a comprehensive ballot guide.

Nor is protective earmarking, where a donor states they wish their funds to not be used for any activity New Mexico regulates as political, any help. *See* N.M. Stat. § 1-19-27.3(D)(2). Earmarking by a donor to prohibit use for political activity is only available if done up to *twenty-two* months in advance since the state's election cycle is defined so broadly. N.M. Stat. § 1-1-3.1(A); *see also* Pet. App. 6a–7a (Eid, J., dissenting from denial of *en banc* review) (noting same). This is not like the earmarked disclosure at issue in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), and instead resembles the disclosure regimes designed for campaign committees. In contrasting the disclosure burdens dealt with by the Court in the 1986 case *Massachusetts Citizens for Life, Inc. v. Federal Election Commission*, 479 U.S. 238 (1986) ("*MCFL*"),

the *Citizens United* Court specifically held that the limited disclosure of an independent expenditure report is a "less restrictive alternative to more comprehensive regulations of speech," such as those in the New Mexico law at issue here. *Citizens United*, 558 U.S. at 369 (contrasting federal independent expenditure reports with the burdens discussed in *MCFL*).

Additionally, in *MCFL*, both the plurality and the concurrence were troubled by the burdens placed upon nonprofit corporations by certain disclosure requirements. The plurality was concerned with the detailed record keeping, reporting schedules, and limitations on solicitation of funds to only "members" rather than the general public. *MCFL*, 479 U.S. at 253–54 (Brennan, J., plurality opinion). Likewise, Justice O'Connor was concerned with the "organizational restraints" imposed upon nonprofit corporations, including "a more formalized organizational form" and a significant loss of funding availability. *Id*. at 266 (O'Connor, J. concurring).

Tax law is prolix, and even well-educated voters need help. Judge Learned Hand lamented: "In my own case the words of such an act as the Income Tax, for example, merely dance before my eyes in a meaningless procession" due to "cross-reference to cross-reference, exception upon exception—couched in abstract terms that offer no handle to seize hold of." Learned Hand, *Thomas Walter Swan*, 57 YALE L.J. 167, 169 (1947). Voters need help untangling tax provisions on the ballot, tax votes by legislators, and the like. Donor disclosure provisions too often require public engagement, for it is not often obvious to the

electorate or legislators that there are real dangers of outing members and supporters of causes.

But New Mexico law, as broadly affirmed by the Tenth Circuit in this case, regulates such activities as inherently political. *See* Pet. App. 22a–23a That is even if, as here, the communication is "susceptible to another reasonable interpretation of their purpose." Pet. App. 24a. Importing campaign finance concepts to issue speech by nonprofits compels the groups to disclose their donors. That tension in the law—issue speech triggering rules designed for candidates—is one of national import as more states seek to regulate speech about public policy. This case is a good vehicle for setting out guidance on how to apply exacting scrutiny to these situations.

CONCLUSION

For the foregoing reasons, *Amici* respectfully requests that this Court grant a writ of certiorari and reverse the decision below.

Respectfully submitted,

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