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16 Attorneys for Plaintiffs

17 Americans for Prosperity &

18 Americans for Prosperity Foundation

19 **IN THE UNITED STATES DISTRICT COURT**
20 **FOR THE DISTRICT OF ARIZONA**

21 **Americans for Prosperity; Americans**
22 **for Prosperity Foundation,**

23 Plaintiffs,

24 v.

25 **Damien R. Meyer**, in his official capacity
as Chairman of the Citizens Clean

26 Elections Commission; **Amy B. Chan**,

27 in her official capacity as Commissioner

28 of the Citizens Clean Elections

No. _____

COMPLAINT FOR
DECLARATORY JUDGMENT
AND PERMANENT
INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

1 Commission; **Galen D. Paton**, in his
2 official capacity as Commissioner of the
3 Citizens Clean Elections Commission;
4 **Mark Kimble**, in his official capacity
5 as Commissioner of the Citizens
6 Clean Elections Commission;
7 **Steve M. Titla**, in his official
8 capacity as Commissioner of the
9 Citizens Clean Elections Commission;
10 **Thomas M. Collins**, in his official
11 capacity as Executive Director of the
12 Citizens Clean Elections Commission;
13 and **Adrian Fontes**, in his official
14 capacity as Secretary of State of Arizona,
15 Defendants.

16 Introduction

17 1. The First Amendment safeguards the right of individuals to donate to
18 private advocacy organizations of their choosing without undue risk that they will
19 be subjected to their identities being disclosed or other chilling by the government.
20 Yet Arizona’s recently enacted statute, *see* Ariz. Stat. § 16-971 *et seq.*
21 (“Proposition 211”), trammels that right by subjecting countless Americans
22 nationwide to governmental doxxing for doing nothing more than supporting their
23 chosen non-profit organizations and charities. Specifically, Proposition 211
24 empowers the Arizona Secretary of State, the Citizens Clean Elections
25 Commission and partisan advocacy groups, acting through the Commission, to
26 enforce far-reaching look-through disclosure and disclaimer requirements in an
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1 unrelenting effort to discourage contributions to non-profit organizations under the
2 guise of discerning the “original source” of contributions used for so-called
3 “campaign media spending,” even where the donor may have never foreseen, much
4 less intended, that the gift would ultimately be used in that particular manner.
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7 2. Making matters worse, the statute defines “campaign media spending”
8 in ways that stretch far beyond election-related activity by sweeping up speech
9 traditionally characterized as issue advocacy, effectively chilling the right to opine
10 publicly and petition one’s government under the First Amendment and shielding
11 elected officials from criticism almost the entirety of each even-numbered year.
12 For these reasons and more, Arizona’s regulation is not narrowly tailored to any
13 interest in election transparency, while imposing heavy burdens on First
14 Amendment rights.
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18 3. Proposition 211 announces itself as Arizona’s donor-identification
19 law. *See* Ariz. Stat. § 16-971 *et seq.* Under that law, on pain of “significant civil
20 penalties” (up to treble the amount of an expenditure at issue), a “covered
21 person”—any person whose total “campaign media spending” exceeds \$50,000 in
22 statewide campaigns or \$25,000 in any other campaign during a two-year election
23 cycle—must disclose not only its own donors, but its donors’ donors, and its
24 donors’ donors’ donors (and so on *ad infinitum*). Therefore, when an advocacy
25 organization crosses this spending threshold, it becomes a “covered person” and
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1 must disclose its donors who have donated more than \$5,000 in a two-year period
2 as well as its donors' donors who have donated more than \$5,000 in that time
3 period, and so on until the funds it expended are traced back to an "original
4 source," even if this "original source" never foresaw, much less intended, that the
5 donation would ultimately be used for "campaign media spending" by the
6 particular advocacy organization making the required disclosure.
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10 4. Proposition 211 then mandates that officials "make the information
11 [included in the disclosure reports] public." Ariz. Stat. § 16-973(H). Further, the
12 Commission is required to establish "disclaimer requirements for public
13 communications by covered persons" mandating that a covered communication
14 state, "at a minimum, the names of the top three donors who directly or *indirectly*
15 made the three largest contributions of original monies during the election cycle to
16 the covered person." *Id.* § 16-974(C) (emphasis added). But "indirectly" is not
17 limited to those donors who intended to support the communications in question,
18 or even those donors who intended to support the organizations making the
19 communications. As such, the disclaimer requirement puts unwitting donors at risk
20 of harm by fabricating and broadcasting supposed associational ties to
21 organizations they may not support or, for that matter, even know exist. It also
22 announces—unfairly and often misleadingly—associational connections between
23 direct donors and heterodox disclosing or disclaiming organizations, ascribing to
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1 donors the wide variety of positions organizations state out on one or another
2 emergent issue, regardless of the donors’ particular, individualized motivations for
3 donating to the organizations.
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5 5. While penetrating deeply into organizational and donor privacy,
6 Proposition 211 is also remarkably broad in its coverage. Proposition 211 uses
7 “campaign media spending” as the trigger for disclosure and disclaimer
8 requirements, which it defines broadly to include, *e.g.*, any public communication
9 that “promotes, supports, attacks or opposes a candidate within six months” of a
10 primary or general election involving that candidate or that merely “*refers* to a
11 clearly identified candidate within ninety days before a primary election until the
12 time of the general election” and is disseminated where the election is being held.
13 *Id.* § 16-971(2)(a)(ii), (iii) (emphasis added). Likewise covered is advocacy for or
14 against any “state or local initiative or referendum,” such as Proposition 211 itself,
15 or that “supports, attacks, or opposes the recall of a public officer,” as would
16 arguably be true for *any* public statements directed at *current* officeholders. *Id.*
17 § 16-971(2)(a)(iv), (v). Perhaps most sweeping of all is a catch-all covering any
18 “other partisan campaign activity,” a category that is undefined and potentially
19 ensnares *any* issue advocacy that arguably correlates with the positions associated
20 with one or another political party. *Id.* § 16-971(2)(a)(vi). Further, preparatory
21 activities—such as research, design, production, polling, data analytics, mailing,
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1 and social media list acquisition—associated with these public communications
2 constitute “campaign media spending” such that they, too, trigger disclosure and
3 disclaimer requirements. *Id.* § 16-971(2)(a)(vii).
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5 6. Proposition 211’s scope is thus breathtaking in its sweep; disclosure is
6 required whether or not an “original source” intended for his or her donation to be
7 used for a particular public communication or preparatory activity or even for
8 “campaign media spending” generally, which, as defined, cuts into the core of
9 traditional public debate over pressing issues of the day. The law lacks guardrails
10 to ensure that the speech it regulates has a sufficient nexus to the asserted interests,
11 specific to the electoral context, that Arizona purports to have in the required donor
12 information. The unduly broad reach of Proposition 211 ventures far beyond
13 anything the First Amendment permits.
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15 7. For all these reasons, Proposition 211 cannot withstand the “exacting
16 scrutiny” courts apply to compelled disclosure requirements. *Americans for*
17 *Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2383 (2021) (plurality opinion).¹
18 There is a glaring lack of fit between the chosen means and the claimed objectives.
19 The stated purpose of Proposition 211 is to stop “‘dark money,’ the practice of
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26 ¹ Although this particular subsection of the Court’s opinion was joined only by a
27 plurality of the Justices, the non-joining Justices who otherwise joined the majority
28 opinion wrote separately to suggest that strict scrutiny, an even *more* demanding
level of scrutiny, may apply. *Americans for Prosperity Found. v. Bonta*, 141 S. Ct.
2373, 2390 (2021) (Thomas, J., concurring); *id.* at 2391 (Alito, J., concurring).

1 laundering political contributions, often through multiple intermediaries, to hide
2 the original source.” Proposition 211, § 2(C). Yet any such laundering of money
3 through intermediaries is separately prohibited outside of Proposition 211. *See*
4 *Ariz. Stat. § 16-1022(B); 52 U.S.C. § 30122.* Moreover, this new, additional law
5 has no intent, knowledge, or earmarking requirement tailored to prevent any
6 calculated circumvention of existing campaign-finance laws; to the contrary, this
7 law mandates disclosure and disclaimers where funds are used in a manner wholly
8 unknown and unintended by the donors being named.

12 8. The burdens imposed by Proposition 211 are daunting and chilling.
13 Any group that engages in “campaign media spending”—defined broadly to
14 include a wide swathe of public expression and petitioning activities protected by
15 the First Amendment—above the threshold amount is subject to the onerous
16 requirement of not only disclosing the name, mailing address, occupation, and
17 employer of any individual donor, as well as the federal tax status and state of
18 incorporation of any corporate donor, but also disclosing the same information
19 with regard to its donors’ donors until an “original source” is identified. Further
20 still, all public communications made by such a group must state, at a minimum,
21 the group’s top three direct or indirect donors during the election cycle.

26 9. Proposition 211 imposes still more burdens on First Amendment
27 activity. A “covered person” is required to notify donors by providing “an
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1 opportunity to opt out of having the donation used or transferred for campaign
2 media spending.” Ariz. Stat. § 16-972(B). Without requiring affirmative consent
3 from donors before their money may be used for “campaign media spending” (and
4 their identities disclosed), Proposition 211 requires that the “covered person” sit
5 silent and muzzled for up to 21 days before using or transferring the donors’
6 monies for this purpose. This structure forces direct donors to undertake the
7 burden of affirmatively opting out, lest their identities otherwise be disclosed up to
8 two years in the future as a result of their inaction. Nor is any such opt-out option
9 available to *indirect* donors, who ostensibly have *no* ability to opt out and no
10 means of preventing their identities from being disclosed. Nor does the opt-out
11 provision apply to Proposition 211’s disclaimer requirements—thereby ensuring
12 that, at a minimum, the names of the top three direct or indirect donors to a group
13 will be included on all public communications by that group. Donors aside, the
14 “opt-out” procedure will forbid a covered person from speaking for up to three
15 weeks unless donors provide their affirmative consent before the period runs.

22 10. Proposition 211 imposes still more burdens, such as requiring a
23 “covered person” to retain “transfer records” detailing the identity of each person
24 who contributed or transferred more than \$2,500 for covered spending, the amount
25 of each contribution or transfer, and the person to whom those monies were
26 transferred. Ariz. Stat. § 16-972(A), (D), (E). In addition, donors must retain
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1 records of “previous transfers of more than \$2,500” identifying the intermediaries.
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3 *Id.* The covered person and donors must retain these records for “at least” five
4 years. *Id.* These PAC-like administrative burdens make the lack of tailoring all the
5 more glaring and problematic.
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7 11. Proposition 211 is also unconstitutionally *underinclusive*. The
8 disclosure and disclaimer requirements apply only to a “covered person,” but the
9 definition of “covered person” expressly “[d]oes not include” organizations “that
10 spend only their own business income for campaign media spending,” Ariz. Stat.
11 § 16-971(7)(b)(ii), and “business income” is in turn defined as “[m]embership or
12 *union* dues that do not exceed \$5,000 from any one person *in a calendar year.*” *Id.*
13 § 16-971(1)(b) (emphases added). As such, most labor unions are specially
14 exempted from disclosure, despite the absence of any discernible rationale
15 justifying such categorically different treatment. Further, media and tech
16 companies have a wholesale exemption from the definition of “campaign media
17 spending” so long as they are not “owned or operated by a candidate, a candidate’s
18 spouse or a candidate committee, political party or political action committee.” *Id.*
19 § 16-971(2)(b)(i).
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25 12. Beyond being facially unconstitutional, Proposition 211 is also
26 unconstitutional as-applied to Plaintiffs. Plaintiffs have made public
27 communications and conducted preparatory activities that could have been deemed
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1 “campaign media spending” under the newly-enacted Proposition 211 if completed
2 during the present election cycle, thereby triggering disclosure and disclaimer
3 requirements as to its donors as well as its donors’ donors. Public disclosure and
4 broadcasting will make individuals less likely to donate to advocacy and other non-
5 profit organizations such as Plaintiffs by both compelling association and chilling
6 the exercise of their First Amendment rights to associate freely and advocate
7 values and projects that matter to them.
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11 13. The prospect of compelled disclosure and disclaimer is especially
12 harmful for Plaintiffs and their donors, who may reasonably fear that reprisals may
13 result from any disclosure of their donations and identities. Some people publicly
14 associated with the Plaintiffs have faced boycotts, character attacks, personal
15 threats, and worse as a result. Others simply have no desire for their giving to be
16 made public. Recognizing as much, Plaintiffs have pledged to keep the identities
17 of their donors confidential. In fact, many donors who contribute to Plaintiffs in
18 amounts greater than \$5,000 during any given two-year period insist that their
19 identities remain confidential. This assurance of confidentiality is vitally important
20 and enables Plaintiffs’ continued, robust participation in the public sphere—
21 whereas Proposition 211’s compelled disclosures vitiate this understanding and
22 threaten to chill continuing donations and support for Plaintiffs.
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1 the local, state, and federal levels. In communities across the country, AFPF
2 programs share knowledge and tools that encourage participants to apply the
3 principles of a free and open society in their daily lives, believing this maximizes
4 prosperity and well-being for all. AFPF funds its activities by raising charitable
5 contributions from donors throughout the country, including in Arizona.
6 Consistent with its mission and its tax status, AFPF has taken public positions on
7 hot-button issues in Arizona, such as by running advertisements opposing the
8 passage of Proposition 211.
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12 17. Defendant Damien R. Meyer is Chairman of the Citizens Clean
13 Elections Commission (“the Commission”). Defendants Amy B. Chan, Galen D.
14 Paton, Mark Kimble, and Steve M. Titla are Commissioners of the Commission,
15 and Defendant Thomas M. Collins is the Executive Director of the Commission.
16 The Chairman and Commissioners of the Commission are responsible for
17 implementing and enforcing the provisions of Proposition 211 by: adopting and
18 enforcing rules; issuing and enforcing civil subpoenas, including third-party
19 subpoenas; initiating enforcement actions; conducting fact-finding hearings and
20 investigations; considering, investigating, and pursuing any privately-filed
21 complaints; imposing civil penalties for noncompliance, including penalties for
22 late or incomplete disclosures and for any other violations; seeking legal and
23 equitable relief in court as necessary; establishing the records persons must
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1 maintain to support their disclosures; and performing any other act that may assist
2 in implementing Proposition 211. The Executive Director of the Commission is
3 responsible for the Commission’s day-to-day operations.
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5 18. Defendant Adrian Fontes is the Secretary of State of Arizona. As the
6 Secretary of State, he is responsible for receiving disclosure reports under
7 Proposition 211 and ensuring that the disclosure reports are made public and
8 provided to the Commission.
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11 **Jurisdiction and Venue**

12 19. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

13 20. Venue in this Court is proper under 28 U.S.C. § 1391(b)(1).
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15 **Facts**

16 **I. Arizona Proposition 211**

17 21. Under Proposition 211, when a direct donor contributes “more than
18 \$5,000 in traceable monies in an election cycle” to a “covered person,” the donor
19 “must inform that covered person in writing, within ten days after receiving a
20 written request from the covered person, of the identity of each other person that
21 directly or indirectly contributed more than \$2,500 in original monies being
22 transferred and the amount of each other person’s original monies being
23 transferred.” Ariz. Stat. § 16-972(D). This is required irrespective of whether the
24 person who directly or indirectly contributed the original monies intended, desired,
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1 had any control over, *or even knew* that the direct donor would be making any such
2 contribution to a covered person. “Original monies” include “business income”
3 and “an individual’s personal monies.” *Id.* § 16-971(12). “Business income” is
4 defined to include both “[m]onies received by a person in commercial transactions
5 in the ordinary course of the person’s regular trade, business or investments” and
6 “[m]embership or union dues that do not exceed \$5,000 from any one person in a
7 calendar year.” *Id.* § 16-971(1). “Personal monies” include the following: “[a]ny
8 assets of an individual that . . . the individual had legal control over and rightful
9 title to”; “[i]ncome received by an individual or the individual’s spouse, including
10 salary . . . , dividends and proceeds from the individual’s personal investments or
11 bequests to the individual, including income from trusts established by bequests”;
12 and the “portion of assets that are jointly owned by the individual and the
13 individual’s spouse equal to the individual’s share of the asset.” *Id.* § 16-
14 971(14)(a).

21 22. “If the original monies were previously transferred, the donor must
22 disclose all such previous transfers of more than \$2,500 and identify the
23 intermediaries.” *Id.* § 16-972(D). “The donor must maintain these records for at
24 least five years and provide the records on request to the Commission.” *Id.*
25 Similar requirements apply as to “[a]ny person that makes an in-kind contribution
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1 to a covered person of more than \$5,000 in an election cycle to enable campaign
2 media spending.” *Id.* § 16-972(E).
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4 23. In both instances, the “covered person” must “maintain transfer
5 records . . . for at least five years and provide the records on request to the
6 Commission.” *Id.* § 16-972(A). “Transfer records” must include “a written record
7 of the identity of each person that directly or indirectly contributed or transferred
8 more than \$2,500 of original monies used for campaign media spending, the
9 amount of each contribution or transfer and the person to whom those monies were
10 transferred.” *Id.* § 16-971(19).
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14 24. Once “any person” has “campaign media spending” that exceeds
15 “\$50,000 in statewide campaigns or . . . \$25,000 in any other type of campaigns,”
16 it becomes a “covered person,” *id.* § 16-971(7)(a), meaning it must report “[t]he
17 identity of each donor of original monies who contributed, directly or indirectly,
18 more than \$5,000 of traceable monies or in-kind contributions,” *id.* § 16-
19 973(A)(6), as well as “[t]he identity of each person that acted as an intermediary
20 and that transferred, in whole or in part, traceable monies of more than \$5,000
21 from original sources to the covered person,” *id.* § 16-973(A)(7). Again, these
22 disclosures are required irrespective of whether the original sources intended,
23 desired, had any control over, *or even knew* that the ultimate donation to the
24 covered person would even occur. “Traceable monies” are defined to include
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1 “[m]onies that have been given, loaned or promised to be given to a covered
2 person and for which no donor has opted out” and “[m]onies used to pay for in-
3 kind contributions to a covered person to enable campaign media spending.” *Id.*
4 § 16-971(18)(a), (b). In order to “determine the sources, intermediaries and
5 amounts of indirect contributions received, a covered person may rely on the
6 information it received pursuant to section 16-972.” *Id.* § 16-973(D). Taken
7 together, these provisions mandate that a covered person must disclose the identity
8 not only of donors that “directly” contributed, but also donors that “indirectly
9 contributed” to the entity.

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14 25. Under Proposition 211, “identity” is defined broadly to include “the
15 name, mailing address, occupation and employer of” any individual donor as well
16 as the “name, mailing address, federal tax status and state of incorporation,
17 registration or partnership” of any institutional donor. *Id.* § 16-971(10)(a), (b).

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20 26. “All disclosure reports . . . shall be made electronically available to
21 the Secretary of State and to any other body as directed by law. Officials shall
22 promptly make the information public and provide it to the Commission
23 electronically.” *Id.* § 16-973(H).

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25 27. Once “any person” has “campaign media spending” that exceeds
26 “\$50,000 in statewide campaigns or . . . \$25,000 in any other type of campaigns,”
27 it becomes a “covered person,” *id.* § 16-971(7)(a), meaning its “[p]ublic
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1 communications . . . shall state, at a minimum, the names of the top three donors
2 who directly or indirectly made the three largest contributions of original monies
3 during the election cycle to the covered person.” *Id.* § 16-974(C). “Public
4 communication” is defined broadly to include “a paid communication to the public
5 by means of broadcast, cable, satellite, internet or another digital method,
6 newspaper, magazine, outdoor advertising facility, mass mailing or another mass
7 distribution, telephone bank or any other form of general public political
8 advertising or marketing, regardless of medium.” *Id.* § 16-971(17)(a).

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12 28. Proposition 211’s sweeping definition of “campaign media
13 spending”—which triggers disclosure requirements—includes, but is not limited
14 to: any public communication that “promotes, supports, attacks or opposes a
15 candidate within six months” of any election (primary or general); any public
16 communication that merely “refers to a clearly identified candidate within ninety
17 days before a primary election until the time of the general election” and is
18 disseminated where the election is being held; any public communication “that
19 promotes, supports, attacks or opposes the qualification or approval of any state or
20 local initiative or referendum”; any public communication that “promotes,
21 supports, attacks or opposes the recall of a public officer”; any “activity or public
22 communication that supports the election or defeat of candidates of an identified
23 political party or the electoral prospects of an identified political party, including
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1 partisan voter registration, partisan get-out-the-vote activity *or other partisan*
2 *campaign activity*”; and “research, design, production, polling, data analytics,
3 mailing or social media list acquisition or any other activity conducted in
4 preparation for or in conjunction with” any such public communication or activity.
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6 *Id.* § 16-971(2)(a)(ii)–(vii) (emphasis added).
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8 29. Given that the Arizona legislative session regularly extends past the
9 first week of May, public expression addressing bills under active consideration
10 will naturally trigger disclosures and disclaimers. Further ensuring that coverage
11 will be the rule rather than the exception are provisions of Proposition 211 that
12 cover spending that is deemed, for instance, to implicate possible “recall of a
13 public officer” or to align with “partisan campaign activity.” As such, Proposition
14 211 dampens debate and insulates elected officials from criticism precisely when
15 and where issues of great public importance loom largest. Moreover, given that
16 Arizona’s election cycle period begins “the day after general Election Day in even-
17 numbered years and continu[es] through the end of general Election Day in the
18 next even-numbered year,” *id.* § 16-971(8), spending thresholds are held open for a
19 two-year period, making them that much easier to cross and thus trigger
20 disclosures and disclaimers. Finally, the amount of “campaign media spending”
21 used to gauge when the threshold for disclosure and disclaimer is reached includes
22 not only activities by the relevant individual or organization, but all “campaign
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1 media spending made by entities *established, financed, maintained or controlled*
2 *by*” that organization—thereby sweeping individual organizations into a larger
3 downstream chain and triggering obligations based on all resulting expenditures.
4 *Id.* § 16-971(7)(a) (emphasis added).
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7 30. The opt-out procedure included in Proposition 211 compounds the
8 chill by imposing additional burdens. A “covered person” is required to notify
9 donors by providing “an opportunity to opt out of having the donation used or
10 transferred for campaign media spending,” in order to avoid disclosure. *Id.*
11 § 16-972(B). “The notice required . . . may be provided to the donor before or
12 after the covered person receives a donor’s monies, but the donor’s monies may
13 not be used or transferred for campaign media spending until at least twenty-one
14 days after the notice is provided or until the donor provides written consent
15 pursuant to this section, whichever is earlier.” *Id.* § 16-972(C).
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19 31. The opt-out procedure is unavailable for indirect donors or publicly-
20 broadcasted disclaimers. Although a “covered person” must request “the identity
21 of each other person that directly or indirectly contributed more than \$2,500 in
22 original monies and the amount of each other person’s original monies being
23 transferred,” *id.* § 16-972(D), only “the donor” must be notified and provided an
24 opportunity to opt out. *Id.* § 16-972(B). This leaves no tailoring whatsoever of the
25 required disclaimers or indirect-donor disclosures, which are not limited to those
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1 donors who have some modicum of awareness as to the activities at issue. As a
2 result, unknowing indirect “donors” who simply support one advocacy
3 organization without specifically contemplating that the organization will in turn
4 donate those funds to a “covered person” will nonetheless be swept into a
5 disclosure or publicly-broadcasted disclaimer by an entirely different advocacy
6 organization based on that organization’s own distinct, separate, unforeseen
7 expression.
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11 32. Proposition 211 affords a 21-day waiting period after which the
12 covered person may use a donation for “campaign media spending,” entailing
13 subsequent disclosure and disclaimer. This structure forces donors to undertake the
14 burden of affirmatively opting out—not just from truly election-related activities
15 but traditional issue advocacy—lest their identities be disclosed up to two years in
16 the future, branding them as supporting a particular issue or organization merely
17 because they failed to take state-prompted action at some time in the past.
18 Therefore, disclosures under Proposition 211 can be mandated on the basis of some
19 form of broadly-defined “campaign media spending” that was not even foreseeable
20 to donors at the time they made their donations. These misleading disclosures and
21 disclaimers also ascribe to direct donors the wide variety of issue positions taken
22 by the varied organizations they may choose to support based upon individualized,
23 nuanced considerations.
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1 33. The dollar thresholds in Proposition 211 do little to mitigate the chill.
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3 The two-year \$5,000 limit can easily be triggered by indirect donors that regularly
4 give to a non-profit organization or religious entity. For example, when a church
5 donates to a covered person, the covered person must disclose each parishioner
6 who donated over \$5,000 to the church during the two-year period—less than \$50
7 per week.
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10 34. The absurdities that would follow from the plain terms of Proposition
11 211 go further still. “Traceable monies” are defined to include “[m]onies that have
12 been . . . loaned or promised to be given to a covered person and for which no
13 donor has opted out of their use or transfer for campaign media spending.” *Id.*
14 § 16-971(18)(a). Disclosure reports made under Proposition 211 must include
15 “[t]he identity of each person that acted as an intermediary and that transferred, in
16 whole or in part, *traceable monies* of more than \$5,000 from original sources to the
17 covered person and the date, amount and source, both original and intermediate, of
18 the transferred monies.” *Id.* § 16-973(A)(7) (emphasis added). For commercial
19 loans made by a bank, the bank acts as an “intermediary,” and would for that
20 reason be required to disclose the “original sources” of the funds it loans to any
21 organization that may be a “covered person” under the law. Setting aside the issue
22 of actually *identifying* the “original sources,” indirect donors in this instance—
23 namely, bank account owners with more than \$5,000 in their accounts—obviously
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1 had no intent or knowledge that their money be used for any form of
2 electioneering. Yet if Bank A were to loan more than \$5,000 to Organization B (a
3 covered person under Proposition 211), then Organization B’s disclosures would
4 necessarily include Depositors C and D who have more than \$5,000 in their
5 accounts at Bank A.
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8 35. “In-kind contribution” is defined to include “goods, services or
9 anything of value that is provided without charge or at less than the usual and
10 normal charge.” *Id.* § 16-971(11). Therefore, *volunteers* who provide more than
11 \$5,000 in volunteer services over a two-year period to an organization must be
12 disclosed as indirect donors should the organization in turn donate to a “covered
13 person.” Attorneys doing *pro bono* work would thus trigger disclosure of their
14 own or their law firm’s identity after providing just a few hours of assistance to an
15 organization that in turn donates to a “covered person.”
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19 36. While Proposition 211’s disclosure and disclaimer requirements apply
20 to a “covered person,” the definition of “covered person” expressly “[d]oes not
21 include” organizations “that spend only their own business income for campaign
22 media spending.” *Id.* § 16-971(7)(b)(ii). “Business income” is in turn defined as
23 “[m]embership or union dues that do not exceed \$5,000 from any one person in a
24 calendar year.” *Id.* § 16-971(1)(b). As such, most unions are conspicuously
25 exempted from disclosure and the administrative burdens associated with transfer
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1 records despite the absence of any discernible justification for such preferential
2 treatment. While Proposition 211 uses a \$5,000 trigger for donor disclosures, it
3 uses the *two*-year election cycle as the relevant timeframe for purposes of this
4 trigger. *Id.* § 16-973(A)(6). On the other hand, the union exemption inexplicably
5 shortens the relevant timeframe to the “calendar year,” while using the same
6 \$5,000 trigger. *Id.* § 16-971(1)(b). Therefore, if a union’s members each
7 contribute \$4,500 in union dues per calendar year which the union subsequently
8 uses for campaign media spending, under Proposition 211’s union exemption, the
9 union would not be required to disclose the identity of its members; that exemption
10 would obtain even though the union members individually contribute \$9,000 to the
11 union during the two-year election cycle, in excess of the \$5,000 disclosure
12 threshold applicable to like-situated advocacy organizations.

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18 37. In addition, media and tech companies have a wholesale exemption
19 from the definition of “campaign media spending,” which explicitly excludes “[a]
20 news story, commentary or editorial by any broadcasting station, cable television
21 operator, video service provider, programmer or producer, newspaper, magazine,
22 *website* or other periodical publication.” *Id.* § 16-971(2)(b)(i) (emphasis added).
23
24 So long as the relevant company is not “owned or operated by a candidate, a
25 candidate’s spouse or a candidate committee, political party or political action
26 committee,” it is categorically exempt from the definition of “campaign media
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1 spending” and immune from disclosure requirements. *Id.* Media and tech
2 company contributions are also excluded when calculating the “covered person”
3 monetary threshold, which relies on the definition of “campaign media spending,”
4 through which disclaimer requirements are triggered. *Id.* §§ 16-971(7)(a),
5 16-974(C).
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8 38. Failure to comply with Proposition 211’s disclaimer, disclosure, and
9 associated administrative requirements results in “significant civil penalties,”
10 Proposition 211 § 2(D), amounting to “at least the amount of the undisclosed or
11 improperly disclosed contribution” and up to “three times that amount.” Ariz. Stat.
12 § 16-976(A).
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15 39. The Commission is “the primary agency authorized to implement and
16 enforce” Proposition 211. *Id.* § 16-974(A). As such, the Commission is
17 empowered to “[a]dopt and enforce rules”; “[i]ssue and enforce civil subpoenas,
18 including third-party subpoenas”; “[i]nitiate enforcement actions”; “[c]onduct fact-
19 finding hearings and investigations”; “[i]mpose civil penalties for noncompliance,
20 including penalties for late or incomplete disclosures and for any other violations
21 of [Proposition 211]”; “[s]eek legal and equitable relief in court as necessary”;
22 “[e]stablish the records persons must maintain to support their disclosures”; and
23 “[p]erform any other act that may assist in implementing [Proposition 211].” *Id.*
24 § 16-974(A)(1)–(8).
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1 40. Beyond the Commission, “[a]ny qualified voter in [the] state may file
2 a verified complaint with the Commission against a person that fails to comply
3 with the requirements” of Proposition 211. *Id.* § 16-977(A). “If the Commission
4 determines that the complaint, if true, states the factual basis for a violation of
5 [Proposition 211] or rules adopted pursuant to [Proposition 211], the Commission
6 shall investigate the allegations and provide the alleged violator with an
7 opportunity to be heard.” *Id.* § 16-977(B). “If the Commission dismisses at any
8 time the complaint or takes no substantive enforcement action within ninety days
9 after receiving the complaint, the complainant may bring a civil action against the
10 Commission to compel it to take enforcement action[.] . . . In any matter in which
11 the civil penalty for the alleged violation could be greater than \$50,000, any claim
12 or defense by the Commission of prosecutorial discretion is not a basis for
13 dismissing or failing to act on the complaint.” *Id.* § 16-977(C). This provision
14 clearly (and, it would seem, designedly) empowers partisan advocacy groups to
15 weaponize Proposition 211 to go after their adversaries.
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22 **II. Proposition 211’s Effect on AFP & AFPF**

23 41. The excessive, invasive reach of Proposition 211’s provisions
24 profoundly chills Plaintiffs’ exercise of their First Amendment rights. AFP has an
25 Arizona chapter, with Arizona donors, that regularly engages in issue advocacy
26 within the public arena on various state policies and controversies. Plaintiffs
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1 regularly receive charitable contributions from their donors in amounts exceeding
2 \$5,000 during any given two-year election cycle. Leading up to Election Day
3 2022, AFPF produced and broadcasted radio advertisements warning about the
4 unconstitutional aspects of Proposition 211 itself. Such advertisements would
5 constitute “campaign media spending” under Proposition 211 if they were
6 conducted during the present election cycle, *see* Ariz. Stat. § 16-971(2)(a)(iv),
7 despite the fact that they constitute grass roots lobbying communications according
8 to the IRS, *see* Treas. Reg. § 56.4911-2(b)(2)(i), (ii). And at least one Plaintiff
9 spent well in excess of \$50,000 on activities that would predictably be deemed
10 “campaign media spending” under Proposition 211 during the 2022 election cycle.

15 42. Plaintiffs generally spend donor money on public advocacy in Arizona
16 that could be deemed “campaign media spending” (as defined by Proposition 211),
17 and Plaintiffs plan to do so in the current election cycle. Also, Plaintiffs generally
18 donate to organizations that stand to qualify as covered persons under Proposition
19 211 during any given two-year election cycle, and they plan to do so during the
20 current election cycle.

24 43. Compelled disclosure will chill the associational activity of Plaintiffs
25 and their donors because they have a reasonable fear that reprisals will result from
26 the disclosure of (i) the names, addresses, occupations, and employers of their
27 individual donors and (ii) the names, addresses, federal tax status, and states of
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1 incorporation of their institutional donors. Plaintiffs and their associates have
2 fierce critics, and their opponents regularly strive to identify the organizations’
3 donors in order to chill support. Those donors who have been public in their
4 support have, as a result, too often faced boycotts, personal threats, and even
5 violence, as the Supreme Court itself has recently recognized. *Americans for*
6 *Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2381 (2021); *see also id.* at 2388
7 (quoting *John Doe No. 1 v. Reed*, 561 U.S. 186, 208 (2010) (Alito, J., concurring));
8 *id.* at 2399–2400 (Sotomayor, J., dissenting).

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12 44. For these reasons, Plaintiffs’ donors reasonably cherish and rely upon
13 their First Amendment right to donate privately.

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15 45. Accordingly, donors to AFP and AFPF frequently—and
16 understandably—insist that their personal information be kept private. Many
17 donors who have expressed a desire for their giving to be kept private contribute
18 over \$5,000 during any given two-year election cycle. AFP and AFPF studiously
19 protect donor confidentiality through longstanding policies that forbid and prevent
20 disclosure while mandating careful protection of donor-identifying information.

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24 46. Plaintiffs do not share information about a donor absent the donor’s
25 explicit permission to do so. When Plaintiffs transfer information about donors,
26 they take precautions to minimize the risk that any transfer will reach unintended
27 recipients. Plaintiffs also take the utmost precautions to enforce these policies and
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1 ensure that donor information is not leaked or disclosed. Among other things,
2 Plaintiffs train employees on the non-disclosure policies. Further, the potential
3 consequences of violating the confidentiality policy include termination. Plaintiffs
4 explain to donors the steps they take to protect donors' identities and assure them
5 that their identities will not be disclosed unless and until Plaintiffs may be legally
6 obligated to do so.
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10 47. A substantial number of donors will refrain from giving to the extent
11 doing so exposes them to the risk of public disclosure and broadcasting. In fact,
12 individual donors regularly seek assurances that information identifying them will
13 not be disclosed, and Plaintiffs provide such assurances while soliciting donors'
14 financial support and encouraging their association. To assuage any lingering fears
15 of public exposure, Plaintiffs go to great lengths to assure donors that the
16 confidentiality protections and procedures in place are legally as well as practically
17 effective and adequate to prevent disclosure.
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21 48. The public disclosures and disclaimers compelled by Proposition 211
22 threaten to undermine the assurance of confidentiality upon which many donors
23 rely when making contributions to Plaintiffs.
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25 49. Just as public disclosure and disclaimer will discourage donations, it
26 will drain donations and resources otherwise available to sustain Plaintiffs'
27 continuing activities, expression, and participation within the public arena.
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1 interest it promotes.” *Id.* at 2385 (majority opinion) (quoting *John Doe No. 1 v.*
2 *Reed*, 561 U.S. 186, 196 (2010)) (citing *Shelton v. Tucker*, 364 U.S. 479, 488
3 (1960)). “[I]t is immaterial’ to the level of scrutiny ‘whether the beliefs sought to
4 be advanced by association pertain to political, economic, religious or cultural
5 matters.’” *Americans for Prosperity Found.*, 141 S. Ct. at 2383 (plurality opinion)
6 (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958)).
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10 55. Although Proposition 211 purports to focus on expenditures and
11 “monies used to influence Arizona elections,” Proposition 211 § 2(B) (emphasis
12 added), the Supreme Court “has never suggested that the dependence of a
13 communication on the expenditure of money operates itself to introduce a
14 nonspeech element or to reduce the exacting scrutiny required by the First
15 Amendment.” *Buckley v. Valeo*, 424 U.S. 1, 16 (1976).
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18 56. “In the First Amendment context, . . . ‘a law may be invalidated as
19 overbroad if a substantial number of its applications are unconstitutional, judged in
20 relation to the statute’s plainly legitimate sweep.’” *Americans for Prosperity*
21 *Found.*, 141 S. Ct. at 2387 (majority opinion) (quoting *United States v. Stevens*,
22 559 U.S. 460, 473 (2010)). Therefore, Plaintiffs need *not* “‘establish that no set of
23 circumstances exists under which the [law] would be valid’ or show that the law
24 lacks ‘a plainly legitimate sweep.’” *Id.* (quoting *Wash. State Grange v. Wash. State*
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1 *Republican Party*, 552 U.S. 442, 449 (2008); *United States v. Salerno*, 481 U.S.
2 739, 745 (1987)).
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4 57. On their face, Proposition 211’s provisions are simultaneously too far-
5 reaching and underinclusive in their scope relative to their claimed purposes,
6 imposing burdens that serve to chill protected speech.
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8 58. ***Sweeping Scope.*** Proposition 211 is strikingly broad in its coverage
9 and lacks a nexus to any asserted state interest in elections. The massive burdens
10 triggered by Proposition 211—looking through potentially several layers of
11 monetary transfers—arise from relatively small monetary thresholds, implicate
12 activities and donations nationwide, and are not justified by any state interest
13 relative to which they are adequately tailored.
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16 59. Proposition 211’s definition of “covered person” sweeps far beyond
17 “organizations that are under the control of a candidate or the major purpose of
18 which is the nomination or election of a candidate,” subjecting organizations to
19 disclosure and disclaimer requirements even when their major purposes do not
20 involve any form of election-related activity. *Buckley v. Valeo*, 424 U.S. 1, 79
21 (1976); *see also Wis. Right To Life, Inc. v. Barland*, 751 F.3d 804, 839 (7th Cir.
22 2014) (citing *id.*) (“To avoid overbreadth concerns in this sensitive area, *Buckley*
23 held that independent groups not engaged in express election advocacy as their
24 major purpose cannot be subjected to the complex and extensive regulatory
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1 requirements that accompany the PAC designation. . . . [T]he [Supreme] Court has
2 never endorsed imposing full, formal PAC-like burdens on these speakers.”).²
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4 Under Proposition 211, non-profit and charitable organizations of any stripe that
5 happen to engage in “campaign media spending” are all treated as PACs without
6 any regard for their major purpose; disclosures and disclaimers are governmentally
7 compelled in reference to individual donors based on the organizations’
8 expenditures rather than the donors’ reasons for contributing to them.
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11 60. Separate and apart from Proposition 211’s application to organizations
12 whose major purposes do not involve election-related activity, Proposition 211
13 requires disclosures and disclaimers of donors, regardless of whether those donors
14 intended or were even aware that their donations would be transferred to another
15 organization that engaged in what Arizona now dubs “campaign media spending.”
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17 Such disclosures and disclaimers are premised on the assumption that, if Entity A
18 gives to Entity B, and Entity B gives to Entity C, then Entity A must have
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23 ² While Plaintiffs recognize that Ninth Circuit precedent currently holds that
24 disclosure requirements need not be limited according to the major purpose of an
25 organization, *see, e.g., Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990,
26 1009–10 (9th Cir. 2010), Plaintiffs respectfully maintain that such a limitation is
27 dictated by the First Amendment and reserve the right to challenge the relevant
28 precedent before the Ninth Circuit as well as the Supreme Court. Regardless of the
outcome on this point, Proposition 211 violates the First Amendment on other,
independent grounds.

1 earmarked funds to Entity C. But the Supreme Court has already rebuffed that
2 assumption as “divorced from reality” and misconceived, particularly inasmuch as
3 it targets the same calculated, bad-faith circumvention that is already prohibited.
4 *McCutcheon v. FEC*, 572 U.S. 185, 215, 216 (2014) (plurality opinion) (“One
5 problem, however, is that the District Court’s speculation relies on illegal
6 earmarking. Lest there be any confusion, a joint fundraising committee is simply a
7 mechanism for individual committees to raise funds collectively, not to circumvent
8 base limits or earmarking rules. . . . These scenarios, along with others that have
9 been suggested, are either illegal under current campaign finance laws or divorced
10 from reality.”). Even when it comes to Proposition 211’s compelled disclosures
11 and disclaimers of *direct* donors to organizations that end up spending money on
12 campaign media spending in Arizona, those rest on the false assumption that
13 donors to large, heterodox organizations support *all* of the many issues and
14 candidates that these organizations spend money supporting across the nation.
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21 61. The only government interests sufficient to withstand exacting
22 scrutiny are well enumerated and discrete: 1) “provid[ing] the electorate with
23 information as to where political campaign money comes from and how it is spent
24 by the candidate in order to aid the voters in evaluating those who seek . . . office”
25 and 2) “deter[ring] actual corruption and avoid[ing] the appearance of corruption
26 by exposing large contributions and expenditures to the light of publicity.”
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1 *Buckley v. Valeo*, 424 U.S. 1, 66–67 (1976) (internal citation and quotation
2 omitted). Proposition 211, however, is not narrowly tailored relative to either
3 interest because its disclosure and disclaimer requirements are not pegged to any
4 specified donor intent, knowledge, or earmarking relative to any electioneering or
5 even anything specifically to do with Arizona.
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8 62. As for the informational interest, “[t]he simple interest in providing
9 voters with additional relevant information does not justify a state requirement that
10 a writer make statements or disclosures she would otherwise omit.” *McIntyre v.*
11 *Ohio Elections Comm’n*, 514 U.S. 334, 348 (1995). Disclosure must inform voters
12 “concerning those who support” specific candidates or issues. *Buckley*, 424 U.S. at
13 81. Instead, Arizona “casts a dragnet for sensitive donor information from tens of
14 thousands of charities each year, even though that information [may be] relevant in
15 only a small number of cases.” *Americans for Prosperity Found. v. Bonta*, 141 S.
16 Ct. 2373, 2387 (2021). Even for direct donors, this is not a regime “whose scope is
17 in proportion to the interest served.” *Id.* (quoting *McCutcheon*, 572 U.S. at 218).
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22 63. Many courts have emphasized the importance of limiting disclosure to
23 contributions that have been specifically earmarked to support campaign-related
24 advocacy. *Indep. Inst. v. Williams*, 812 F.3d 787, 789 (10th Cir. 2016) (“The
25 provision serves the legitimate interest of informing the public about the financing
26 of ads that mention political candidates in the final weeks of a campaign, and its
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1 scope is sufficiently tailored to require disclosure only of funds earmarked for the
2 financing of such ads.”); *Lakewood Citizens Watchdog Grp. v. City of Lakewood*,
3 2021 WL 4060630, at *12 (D. Colo. Sept. 7, 2021) (“There is no earmarking
4 requirement in the ordinance This creates a mismatch between the interest
5 served—knowing who is speaking about a candidate—and the information given.”)
6 (internal quotation and citation omitted); *Indep. Inst. v. FEC*, 216 F. Supp. 3d 176,
7 191 (D.D.C. 2016) (“In addition, disclosure is limited to only those substantial
8 donors who contribute . . . for the specific purpose of supporting the
9 advertisement.”); *see also Americans for Prosperity Found. v. Bonta*, 141 S. Ct.
10 2373, 2386 (2021) (“There is a dramatic mismatch, however, between the interest
11 that the Attorney General seeks to promote and the disclosure regime that he has
12 implemented in service of that end.”); *Van Hollen v. FEC*, 811 F.3d 486, 501 (D.C.
13 Cir. 2016) (“By affixing a purpose requirement to BCRA’s disclosure provision,
14 the FEC exercised its unique prerogative to safeguard the First Amendment when
15 implementing its congressional directives.”).

22 64. Proposition 211 automatically requires disclosure of donors and
23 intermediaries as well as disclaimer of a covered person’s top three direct or
24 indirect donors. But Proposition 211 does not require that contributions be made
25 by donors having any awareness, much less intent, that their funds will be used for
26 the particular public communications or preparatory activities that trigger the
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1 specific disclosures and disclaimers at issue. Absent any such earmarking
2 limitation, such requirements manifestly are not tailored to any pertinent interests
3 in this realm. Even those who donate *directly* to advocacy organizations as
4 heterodox and expansive as Plaintiffs may not donate for the *specific purpose* of
5 supporting the *specific* public communications that Plaintiffs wind up circulating in
6 Arizona as public debates materialize and crystalize. Donors who contribute to
7 non-profit and charitable organizations without earmarking their funds for any
8 election-related purpose and who do so in response to general solicitations (as
9 opposed to solicitations for specific election-related activity) are not donating for
10 the purpose of influencing an election or even with the knowledge that their funds
11 will be so used. Rather, these donors are donating in support of the overarching
12 mission of the organizations. The organizations' subsequent use of the
13 unearmarked funds is the organizations' speech, *not* that of individual donors.

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20 65. Because Proposition 211 ties disclosure requirements to the campaign
21 media spending of heterodox organizations without attempting to limit itself
22 according to any earmarking or knowledge requirement, donors are destined to be
23 disclosed based on the unforeseeable, varied speech *organizations* may decide to
24 undertake, in response to myriad intervening developments. Far from pegging
25 individual-identifying disclosures and disclaimers to individuals' contributions and
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1 rationales for same, Proposition 211 in effect requires individual disclosures and
2 disclaimers based on unpredictable expenditures made by the organizations.
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4 66. Further, given that Proposition 211 requires disclosure of individual
5 donors' occupations and employers, it subjects unwitting employers to doxxing
6 based not on any sort of connection to campaign media spending in Arizona, but
7 rather based on the unintended and unwitting actions of their employees.
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10 67. The disclosures required by Proposition 211 *undermine* the State's
11 traditionally recognized interest in "provid[ing] the electorate with information."
12 *Buckley v. Valeo*, 424 U.S. 1, 66 (1976). Although Proposition 211 is styled the
13 "Voters' Right to Know Act," Proposition 211 § 1, it requires no nexus between
14 any covered donor, on the one hand, and Arizona voters, on the other. Far from
15 improving voters' knowledge, Proposition 211 stands affirmatively to mislead
16 interested voters by directly tying named donors to candidates and issues those
17 donors may support only glancingly, or not at all. The sheer *volume* of information
18 to be disclosed under Proposition 211 further undermines the state's informational
19 interest, given voters' likely inability to appreciate any contributors beyond direct
20 donors. Only by relying on false, unexamined assumptions does Proposition 211
21 even purport to improve voters' understandings. In actuality, donors (both direct
22 and indirect) contribute to a particular organization—and in turn to the
23 organization's donees—for a plethora of reasons. By tying a single donation to all
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1 downstream activities and donations and mandating disclosures and disclaimers on
2 the basis of same, Proposition 211 chills protected speech and confuses voters, in
3 violation of the First Amendment.
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5 68. Nor can any claimed anti-corruption interest aid defense of
6 Proposition 211. Because requiring disclosures and disclaimers of unwitting,
7 attenuated donors does not meaningfully curb “dark money” practices, it is not
8 “narrowly tailored” to any “sufficiently important governmental interest.”
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10 *Americans for Prosperity Found.*, 141 S. Ct. at 2385 (internal quotation and
11 citation omitted). Particularly as to campaign media spending on ballot initiatives,
12 there is no conceivable anti-corruption interest *at all* given that no candidate is in
13 play.
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15 69. Regardless, such “dark money” practices are *already* illegal under
16 Arizona law: “It is unlawful for any person to make a contribution in the name of
17 another person, knowingly permit a person’s name to be used to effect a
18 contribution in the name of another person or knowingly accept a contribution
19 made by a person in the name of another person. A person who violates this
20 subsection is guilty of a class 6 felony.” Ariz. Stat. § 16-1022(B). “Contribution”
21 is defined in this context to include “any money, advance, deposit or other thing of
22 value that is made to a person *for the purpose of influencing* an election.” *Id.*
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1 § 16-901(11) (emphasis added). Yet Proposition 211 is indifferent to the purpose
2 animating a particular donation.
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4 70. These practices are illegal under federal law as well. Pursuant to 52
5 U.S.C. § 30122, “[n]o person shall make a contribution in the name of another
6 person or *knowingly* permit his name to be used to effect such a contribution, and
7 no person shall *knowingly* accept a contribution made by one person in the name of
8 another person.” 52 U.S.C. § 30122 (emphasis added). “Contribution” is defined
9 to include “any gift, subscription, loan, advance, or deposit of money or anything
10 of value made by any person *for the purpose of influencing* any election for
11 Federal office” and “the payment by any person of compensation for the personal
12 services of another person which are rendered to a political committee without
13 charge for any purpose.” 52 U.S.C. § 30101(8)(A)(i), (ii) (emphasis added).
14 Again, however, Proposition 211 does not limit itself according to a particular
15 purpose or knowledge requirement.
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21 71. In applying Section 30122 to closely held corporations and corporate
22 LLCs, the FEC asks “whether funds were *intentionally funneled* through [one of
23 these entities] *for the purpose of* making a contribution that evades the Act’s
24 reporting requirements.” *Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 355 (D.C.
25 Cir. 2020) (emphases added); *see also United States v. Whittemore*, 776 F.3d 1074,
26 1081 (9th Cir. 2015) (“[T]he jury was permitted to conclude that Whittemore acted
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1 without the *requisite intent* by giving funds to his donees without *the purpose* that
2 these funds be used for improper campaign contributions, and, on that basis, to
3 return a verdict of acquittal.”) (emphases added); *United States v. El-Saadi*, 549 F.
4 Supp. 3d 148, 162 (D.D.C. 2021) (“And the offense of permitting one’s name to be
5 used for a conduit contribution is not ‘brought about’ or ‘accomplished’ until the
6 recipient political committee either wittingly or, as here, unwittingly accepts that
7 contribution in the name of a straw donor acting *on behalf of* an undisclosed
8 principal.”) (emphasis added).

12 72. Proposition 211 thus purports to tackle a problem that has already
13 been solved while venturing far beyond any colorable solution to that problem.
14 The specific provisions trespass over a constitutional line because they are not
15 limited to those donations or activities that are “for the purpose of influencing an
16 election,” nor are they otherwise narrowly defined. Proposition 211 operates to
17 mandate disclosure and potential disclaimer of parishioners contributing just \$50
18 per week, individuals who merely deposit money at banks, and volunteers
19 performing acts of service (including attorneys doing *pro bono* work) regardless of
20 their knowledge or intent that their funds or services would enable “campaign
21 media spending” in Arizona. Such applications are far removed from any asserted
22 state interest underlying Proposition 211.
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1 73. These applications sharpen the contrast between Proposition 211 and
2 existing laws that prevent donors from circumventing campaign finance
3 regulations—the latter require intent. See ¶¶ 69–71. Proposition 211’s
4 contribution to extant legislation is ensnaring individuals who do *not* intend their
5 contributions to support *any* particular candidate or campaign.
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8 74. Advocacy organizations as heterodox as Plaintiffs may take nuanced,
9 idiosyncratic positions across a wide variety of issues. It cannot fairly be assumed,
10 even as to those who donate *directly* to such advocacy organizations, that *all* such
11 donors necessarily support *all* positions advocated by the organizations. By
12 ascribing a single, uniform, all-encompassing viewpoint to these donors,
13 Proposition 211 is relying upon a false assumption—one that is as unfair to donors
14 as it is misleading to voters.
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18 75. Such disclosures have the practical effect of chilling First Amendment
19 activity while sheltering elected officials from criticism on issues of public
20 importance. In no way are such disclosures “narrowly tailored” to any
21 “sufficiently important governmental interest.” *Americans for Prosperity Found.*,
22 141 S. Ct. at 2385 (internal quotation and citation omitted).
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25 76. This lack of a nexus is all the more apparent and troubling given
26 Proposition 211’s sweeping, unbounded definition of “campaign media spending.”
27 As noted, the capacious definition includes, *e.g.*, public communications that
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1 *merely reference* candidates for office; that are taken as criticizing or supporting
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3 current officeholder who may be subject to “recall”; that are deemed to fall within
4 a catch-all for “other partisan campaign activity”; or that constitute preparatory
5 activities for the making of any such broadly-defined communications. “Campaign
6 media spending” associated with “statewide campaigns” as well as “any other type
7 of campaigns” falls within the ambit of Proposition 211. Ariz. Stat. § 16-971(7)(a).
8
9 The upshot regulates and penalizes incidental, issue-oriented references to a
10 staggering variety of state and local officeholders and candidates.
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12 77. By its terms, Proposition 211 targets traditional issue advocacy
13 extending far outside anything fairly characterized as electioneering. If
14 Proposition 211 had been in effect, advocacy organizations that are devoted to civil
15 rights or immigration policy would have triggered coverage just by referencing
16 Sherriff Joe Arpaio’s contempt proceedings preceding his 2016 election in
17 Maricopa County, Arizona. Such organizations’ only choice would be to self-
18 censor or to subject themselves—plus their donors, and all of their donors’
19 donors—to Proposition 211’s far-reaching disclosure, disclaimer, and associated
20 administrative burdens.³ The same dilemma will now be confronted by advocacy
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26 ³ See, e.g., Bill Morlin, *Arizona Sheriff Joe Arpaio Faces Criminal Contempt*
27 *Charges*, Southern Poverty Law Center (Oct. 31, 2016) (available at
28 <https://www.splcenter.org/hatewatch/2016/10/31/arizona-sheriff-joe-arpaio-faces-criminal-contempt-charges>).

1 groups across the spectrum that may predictably want to speak to how state
2 prosecutors and judges are handling abortion restrictions in the wake of *Dobbs v.*
3 *Jackson Women’s Health Organization*.⁴ Other advocacy organizations will
4 confront the dilemma when addressing issues of election integrity—issues that are
5 inextricably bound up with elected officials and candidates in Arizona whose views
6 may diverge in critical respects.⁵ By indiscriminately subjecting all such advocacy
7 groups, and, by extension, all of their many donors, and chains of donors
8 nationwide, to invasive disclosures and significant burdens, Proposition 211 chills
9 robust, undampened issue advocacy concerning issues of pressing public
10 importance.

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15 78. Making matters worse, Proposition 211 defines “campaign media
16 spending” to include a public communication that “promotes, supports, attacks or
17 opposes the recall of a public officer.” Ariz. Stat. § 16-971(2)(a)(v). Notably, any
18 speech that criticizes or praises an existing officeholder could potentially be
19 characterized as advocating (at least implicitly) for or against the target

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23 ⁴ See, e.g., *Abortion Rights at the Ballot Box*, ACLU (Aug. 18, 2022) (available
24 at <https://www.acluaz.org/en/news/abortion-rights-ballot-box>); Christine Vestal,
25 *Liberal Prosecutors in Red States Vow Not to Enforce Abortion Bans*, Pew Trusts
(June 24, 2022) (available at <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/06/24/liberal-prosecutors-in-red-states-vow-not-to-enforce-abortion-bans>).

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27 ⁵ See, e.g., Ian Vandewalker, *Arizona Primary Shows How Election Deniers Win*
28 *Where Their Party Pushes the Big Lie*, Brennan Center (Aug. 4, 2022) (available at
<https://www.brennancenter.org/our-work/analysis-opinion/arizona-primary-shows-how-election-deniers-win-where-their-party-pushes>).

1 officeholder’s recall. Proposition 211 thus further chills such speech within the
2 relevant time periods. At the very least, Proposition 211 sows uncertainty and
3 leaves room for standardless discretion (on the part of the Commission combined
4 with private complainants), which is anathema in the First Amendment context.
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6 *See Seattle Affiliate of Oct. 22nd Coal. to Stop Police Brutality, Repression &*
7 *Criminalization of a Generation v. City of Seattle*, 550 F.3d 788, 802–03 (9th Cir.
8 2008).
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11 79. Proposition 211 specifically defines “campaign media spending” to
12 include any activity or public communication “that supports the election or defeat
13 of candidates of an identified political party or the electoral prospects of an
14 identified political party, including partisan voter registration, partisan get-out-the-
15 vote activity or *other partisan campaign activity*.” Ariz. Stat. § 16-971(2)(a)(vi)
16 (emphasis added). Here, too, Proposition 211 invites and empowers the exercise of
17 standardless, unpredictable discretion—and, indeed, partisan weaponization—in
18 characterizing objectionable advocacy as “other partisan campaign activity.”
19 Especially in today’s hyper-partisan climate, such open-ended standards make it all
20 too easy for regulators to target and persecute perceived political enemies by
21 painting advocacy on one or another hot-button issue as “partisan.” Raging
22 political controversies of our times—across issues such as immigration, abortion,
23 taxation, and election integrity—occupy issue advocacy organizations around the
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1 country and find expression in Arizona. Meanwhile, Republicans and Democrats
2 are staking out competing positions and squaring off on these issues as they
3 campaign in Arizona. Because it is unavoidably the case that issue advocacy may
4 align with the campaign platforms of one political party or the other (or at least be
5 so perceived), this sub-provision affords a catch-all trigger for regulating issue
6 advocacy that is at the core of what the First Amendment protects against
7 governmental intrusion.
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11 80. Compounding the uncertainties and problems posed by Proposition
12 211's expansive definitions are the mechanisms by which these definitions are to
13 be construed and enforced. The Commission itself is not subject to political
14 accountability and, depending on how it is constituted at a particular point in time,
15 may arrive at unpredictable, malleable, opportunistic views of what exactly
16 triggers coverage and the potentially crushing burdens and penalties that follow.
17 Even beyond the Commission, however, "[a]ny qualified voter" in Arizona is *also*
18 authorized to complain about anything he or she may perceive to violate
19 Proposition 211. Ariz. Stat. § 16-977(A). Thus, all those wanting to advocate in
20 Arizona now face exposure not only to the Commission, but to innumerable private
21 enforcers who may exert pressure on the Commission or urge a judge to "compel"
22 the Commission to go after any disfavored speaker or speech that poses perceived
23 offense. *Id.* § 16-977(C).
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1 81. Notably, Proposition 211 ensnares third parties around the country
2 whose nexus to Arizona elections may be extremely attenuated to the point of
3 nonexistence. A citizen of Virginia who donated to a group that aligned with his or
4 her values could later discover that his or her home address was disclosed to the
5 public, not because of who he or she gave to, but because of the political speech of
6 another group he or she has never heard of, never donated to, and may even
7 disagree with—merely because some portion of the money he or she gave to a
8 different entity, for different reasons, ended up weaving its way to a group that was
9 engaged in issue advocacy in Arizona, in ways that Proposition 211 adventurously
10 equates with electioneering.

11 82. In fact, Proposition 211 reaches activity occurring wholly outside
12 Arizona’s borders. “Campaign media spending” includes any “activity conducted
13 in *preparation for* . . . any of the [other] activities” included in the definition of
14 “campaign media spending.” Ariz. Stat. § 16-971(2)(a)(vii) (emphasis added).
15 These preparatory activities include, but are not limited to, “[r]esearch, design,
16 production, polling, data analytics, mailing [and] social media list acquisition.” *Id.*
17 Proposition 211 therefore regulates an out-of-state organization that spends over
18 \$50,000 designing and producing a “public communication” that merely “refers to
19 a clearly identified candidate” in an online post or national newsletter discussing a
20 salient political issue, so long as the post or newsletter “is disseminated in the
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1 jurisdiction where the candidate’s election is taking place” within “ninety days
2 before a primary election until the time of the general election.” *Id.*
3 § 16-971(2)(a)(iii). This is particularly concerning for online posts that are
4 “disseminated” wherever users have access to the internet.
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7 83. ***Underinclusive.*** Conspicuous, inexplicable carve-outs render
8 Proposition 211 impermissibly underinclusive. A law is unconstitutionally
9 underinclusive when its reach is too limited, regulating some activities while
10 excluding others that are no less integral to the government’s claimed interest.
11 *Brown v. Entm’t Merchs. Ass’n*, 564 U.S. 786, 802 (2011). This “analysis serves to
12 ‘ensure that the proffered state interest actually underlies the law.’” *Mariani v.*
13 *United States*, 212 F.3d 761, 773–74 (3d Cir. 2000) (quoting *Austin v. Mich.*
14 *Chamber of Commerce*, 494 U.S. 652, 677 (1990) (Brennan, J., concurring)).
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18 84. Here, Proposition 211’s disclosure and disclaimer requirements apply
19 only to a “covered person,” but the definition of “covered person” expressly
20 “[d]oes not include” organizations “that spend only their own business income for
21 campaign media spending,” Ariz. Stat. § 16-971(7)(b)(ii), and “business income” is
22 in turn defined as “[m]embership or union dues that do not exceed \$5,000 from any
23 one person in a calendar year,” *id.* § 16-971(1)(b). That exclusion dovetails with
24 the different timeframes associated with donor disclosures, on the one hand, and
25 the union exemption, on the other; Proposition 211 treats most labor unions more
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1 favorably than it does other advocacy associations, exempting them from its
2 extensive disclosure requirements and associated administrative burdens without
3 any ostensible justification for this preferential treatment. Further still, media and
4 tech companies have a wholesale exemption from the definition of “campaign
5 media spending.”
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8 85. Because unions as well as media and tech companies are
9 conspicuously and inexplicably exempted from disclosure and disclaimer
10 requirements, it should be apparent that the “proffered” interest does not “actually
11 underlie[]” the proposed law. *Mariani*, 212 F.3d at 773–74. Any valid state
12 interest underlying Proposition 211’s disclosure and disclaimer requirements would
13 ostensibly apply to unions, the media, and tech companies just as it applies to any
14 other person or organization. “There is no precedent supporting laws that attempt
15 to distinguish between corporations which are deemed to be exempt as media
16 corporations and those which are not. [The Supreme Court] ha[s] consistently
17 rejected the proposition that the institutional press has any constitutional privilege
18 beyond that of other speakers.” *Citizens United v. FEC*, 558 U.S. 310, 352 (2010)
19 (internal citations and quotations omitted); *see also Citizens United v. Gessler*, 773
20 F.3d 200, 210, 216 (10th Cir. 2014) (“We reject the Secretary’s contention that the
21 media exemptions can be justified on the ground that the First Amendment
22 provides greater protection for the press than other speakers. . . . Because
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1 Colorado has determined that it does not have a sufficient informational interest to
2 impose disclosure burdens on media entities, it does not have a sufficient interest to
3 impose those requirements on [Plaintiff].”).

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5 86. *Administrative Burdens.* The administrative costs and burdens
6 associated with maintaining “transfer records” for “at least” five years and
7 notifying donors regarding the use of their funds for “campaign media spending”
8 unduly burden protected First Amendment activity, further confirming the lack of
9 requisite tailoring. *See FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 254 n.7
10 (1986) (plurality opinion) (“[T]he administrative costs of complying with such
11 increased responsibilities may create a disincentive for the organization itself to
12 speak.”).

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17 87. Proposition 211 also places additional burdens on Plaintiffs under the
18 guise of providing donors with a choice to opt out. To begin, the opt-out provision
19 forbids speech for up to a 21-day period unless and until donors provide
20 affirmative consent or decline to opt out. Because elections and political matters
21 often require prompt speech, “timing is of the essence in politics . . . [W]hen an
22 event occurs, it is often necessary to have one’s voice heard promptly, if it is to be
23 considered at all.” *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 163 (1969)
24 (Harlan, J., concurring). Any “delay may permanently vitiate the expressive
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1 content” of such a message. *NAACP v. City of Richmond*, 743 F.2d 1346, 1356
2 (9th Cir. 1984).
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4 88. Moreover, the opt-out provision provides a veto right to donors,
5 thereby exacerbating the chilling effect. For a nationwide advocacy group with
6 heterodox views, such as AFP and AFPF, donors may agree with some of the
7 group’s positions while disagreeing with others. By providing a special veto power
8 to such donors nationwide, Proposition 211’s opt-out procedure creates the risk that
9 donors will hamstring the advocacy of groups such as AFP and AFPF.
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12 89. Making matters worse, Arizona’s law—if permitted to stand—
13 threatens to subject AFP and AFPF to a head-spinning array of opt-out provisions
14 from other states that would be no less empowered to impose themselves
15 maximally on the natural flow of political expression and donations nationwide.
16 Other states would be free to follow Arizona’s lead, or to go their own way, by
17 fashioning and imposing *their own* opt-out provisions potentially with different
18 requirements and timelines, effectively hamstringing and muzzling advocacy
19 organizations around the country in dizzying red tape.
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23 90. Notably, the opt-out procedure does not apply at all to disclaimers or
24 indirect donors, reflecting another defect in tailoring. Only “the donor” must be
25 notified and afforded an opportunity to opt out. Ariz. Stat. § 16-972(B). And even
26 “the donor” may be disclosed up to *two years* after making his or her donation
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1 based on some form of “campaign media spending”—as broadly defined—that
2 was unforeseeable at the time he or she made the donation.
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4 91. Even if the opt-out procedure applied to indirect donors, Proposition
5 211 would be unworkable. Covered entities would be required to identify and then
6 notify individuals whose money changed hands multiple times before being
7 contributed to a covered entity engaged in campaign media spending in Arizona.
8 Tracing the flow of fungible money across time and organizations may pose
9 unworkable burdens for many covered entities. And indirect “donors” would
10 predictably be baffled by notices asking whether money that was originally given
11 to one entity for one purpose may be used by an entirely different entity for a
12 different purpose.
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16 92. More troubling, applying the opt-out procedure to indirect donors
17 would have even greater chilling effects, subjecting a covered entity’s speech to
18 veto not only by direct donors, but also by individuals who have only an attenuated
19 link to the covered entity’s finances. Indirect donors who have no direct
20 connection to an advocacy organization could nevertheless “opt out” of having
21 their money (which was originally donated to one group and then transferred to
22 another without their knowledge) used for campaign media spending, thus enabling
23 them to shut down the speech of covered entities subject to Proposition 211.
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1 93. Proposition 211 also imposes formidable, gratuitous burdens by
2 requiring transfer records as it does. Any person donating more than \$5,000 in
3 traceable monies to a covered person is required to inform that covered person in
4 writing of the identity of each person that directly or indirectly contributed more
5 than \$2,500 in original monies and the amount of such transfer, as well as all
6 previous transfers of more than \$2,500. Ariz. Stat. § 16-972(D). But those being
7 disclosed to the covered person pursuant to this provision, based on any donation
8 exceeding \$2,500, have no control over the ultimate use of their funds or even
9 knowledge as to how their funds will end up being used, meaning they have no
10 control over to whom their identity will be disclosed. Absent any ability for donors
11 to earmark their funds or opt out of disclosure to the covered person, this operates
12 as a trap for unwary donors who would otherwise have no reason to know that
13 donating would subject them to disclosure to some other unknown entity. Nor are
14 any protections necessarily in place to ensure that these records remain confidential
15 in the hands of the covered person. Because no direct transfer or relationship of
16 any kind between the original donor and the covered person is required, there is no
17 assurance that the covered person will respect any wishes of the original source
18 and there are no policies or protocols for preventing further disclosure.

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26 94. These transfer records afford obvious dangers unmatched by any
27 putative upside. Because they are not meant to be publicized in the same way that
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1 the disclosures by covered persons are, they can serve no such informational
2 interest. At the same time, they place donors at grave risk, given that there is no
3 control over how these records are stored or used. To make matters worse,
4 Proposition 211 mandates that transfer records be retained far beyond the election
5 cycle in which the donation is made. “A covered person must maintain transfer
6 records . . . for at least five years.” Ariz. Stat. § 16-972(A). This extends several
7 years beyond the relevant election cycle and expenditures. Such an ongoing
8 requirement “discourages [non-PACs], particularly small [ones] with limited
9 resources, from engaging in protected political speech.” *Iowa Right to Life*
10 *Comm., Inc. v. Tooker*, 717 F.3d 576, 597 (8th Cir. 2013) (quoting *Minn. Citizens*
11 *Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 874 (8th Cir. 2012)); *see also*
12 *Swanson*, 692 F.3d at 873 (“[A]n association is compelled to decide whether
13 exercising its constitutional right is worth the time and expense of entering a long-
14 term morass of regulatory red tape.”).

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21 95. For all these reasons, “the collective burdens associated with”
22 complying with Proposition 211 operate to “chill political speech,” *Minn. Citizens*
23 *Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 874 (8th Cir. 2012), and to
24 “interfere[] with the ‘open marketplace’ of ideas protected by the First
25 Amendment.” *Citizens United v. FEC*, 558 U.S. 310, 354 (2010) (quoting *N.Y.*
26 *State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 208 (2008)). “[T]he
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1 protections of the First Amendment are triggered not only by actual restrictions on
2 an individual’s ability to join with others to further shared goals. The risk of a
3 chilling effect on association is enough, “[b]ecause First Amendment freedoms
4 need breathing space to survive.” *Americans for Prosperity Found. v. Bonta*, 141
5 S. Ct. 2373, 2389 (2021) (quoting *NAACP v. Button*, 371 U.S. 415, 433 (1963)).
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8 **96. *Other Laws Provide Narrower Alternatives.*** The absence of requisite
9 tailoring becomes all the more apparent upon reviewing the laws other states have
10 enacted in attempting to stop so-called “dark money,” which laws are much more
11 narrowly tailored than Arizona’s. While Plaintiffs do not take a position as to
12 whether any other state laws are sufficiently tailored to survive scrutiny under the
13 First Amendment, it suffices to note they are more narrowly tailored than Arizona’s
14 law.
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18 **97.** Many states require disclosure only of donors who donate for the
19 *purpose* of influencing election-related activity. Under Montana law, incidental
20 committees, which are defined as “political committee[s] that [are] not specifically
21 organized or operating for the primary purpose of supporting or opposing
22 candidates or ballot issues,” Mont. Code § 13-1-101(24)(a), only must disclose
23 information regarding contributions which are “*designated by the contributor* for a
24 specified candidate, ballot issue, or petition for nomination or that are made by the
25 contributor *in response to an appeal* by the incidental committee for contributions
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1 to support incidental committee election activity.” *Id.* § 13-37-232(2) (emphases
2 added). This earmarking requirement operates to make Montana’s law more
3 narrowly tailored than Proposition 211, which contains no such requirement.
4 Similarly, other states require disclosure only when donors donate *for the purpose*
5 of furthering an independent expenditure. *See, e.g.*, Okla. Stat. tit. 74, ch. 62, State
6 Ethics Comm’n Rule 2.107(E). Still other states require disclosure of donors who
7 make a “contribution,” which these states subsequently define to include a purpose
8 requirement. *See, e.g.*, Ark. Code §§ 7-6-220(b)(4), 7-6-207(b)(1)(B),
9 7-6-201(4)(A); Ga. Code §§ 21-5-34(f)(2)(A), 21-5-3(7); Kan. Stat. §§ 25-4150,
10 25-4148(b)(2), 25-4143(e)(1)(A).

11 98. Other states directly prohibit contributions and expenditures incurred
12 “in a fictitious name, anonymously, or by one . . . person through an agent, relative
13 or other person in such a manner as to conceal the identity of the source of the
14 contribution.” *See, e.g.*, Idaho Code § 67-6614. And, as noted, Arizona itself
15 already has laws, not at issue here, that prohibit conscious funneling of money
16 through one entity in an effort to influence elections on behalf of another. *See* ¶ 69.
17 Proposition 211 gratuitously goes much further than these other regulations do in
18 purported pursuit of the same purposes, and it reflects an unprecedented,
19 unjustifiable lack of tailoring.
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1 99. Proposition 211 also goes far beyond the disclosure requirements
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3 under the federal Bipartisan Campaign Reform Act (“BCRA”), which were upheld
4 as applied in *Citizens United v. FEC*, 558 U.S. 310 (2010). The additional burdens
5 imposed by Arizona’s law are “a far cry” from BCRA, *Wis. Right to Life, Inc. v.*
6 *Barland*, 751 F.3d 804, 841 (7th Cir. 2014), which contains no look-through
7 provision as to indirect donors or intermediaries and imposes no associated transfer
8 record or opt-out correspondence requirements.
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11 100. Equally important, BCRA is clearer and more circumscribed in
12 specifying the references that can trigger it. BCRA defines “electioneering
13 communication,” which is the basis for disclosure, *see* 52 U.S.C. § 30104(f)(1), to
14 only include those that “refer[] to a clearly identified candidate for Federal office.”
15 *Id.* § 30104(f)(3)(A)(i)(I). “Federal office” is defined as “the office of President or
16 Vice President, or of Senator or Representative in, or Delegate or Resident
17 Commissioner to, the Congress.” *Id.* § 30101(3). In stark contrast, Proposition
18 211 regulates activity associated with “statewide campaigns” and “*any other type*
19 *of campaigns.*” Ariz. Stat. § 16-971(7)(a) (emphasis added). Proposition 211 thus
20 designedly encompasses a wide variety of elected officials involved in a wide
21 variety of facets of everyday life, from state prosecutors, to county sheriffs, to all
22 elected judges. *See* ¶ 77 & nn. 3–5. Proposition 211 uniquely imperils the ability
23 of advocacy groups to speak on hot-button issues, such as immigration or abortion,
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1 if they so much as reference any state and local officials within the relevant
2 windows, are taken as expressing support or opposition for a staggering panoply of
3 current officeholders potentially subject to recall, or are otherwise deemed (by the
4 Commission or any aggrieved voter) to be “partisan.” *See* Ariz. Stat.
5 § 16-971(2)(a).
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8 101. Proposition 211’s disclosure requirements are also triggered by
9 advocacy concerning ballot initiatives (as to which there is no conceivable anti-
10 corruption interest), while BCRA’s disclosure requirements are not. And unlike
11 Proposition 211, BCRA’s disclosures do not turn on vague standards that invite
12 standardless discretion, such as speech that “promotes . . . or opposes the recall of a
13 public officer” or involves “partisan campaign activity.” Ariz. Stat.
14 § 16-971(2)(a)(v), (vi).
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18 102. BCRA also is more tailored when it comes to timeframes and media
19 of communication. “Electioneering communication” under BCRA is defined as
20 “any broadcast, cable, or satellite communication which refers to a clearly
21 identified candidate for Federal office; is made within 60 days before a general,
22 special, or runoff election . . . or 30 days before a primary . . . election . . . ; and . . .
23 is targeted to the relevant electorate.” 52 U.S.C. § 30104(f)(3)(A)(i).
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26 103. By contrast, Proposition 211 defines “campaign media spending” to
27 include *all* public communications referring to a clearly identified candidate
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1 “within *ninety days* before a primary election *until* the time of the general election”
2 disseminated in the jurisdiction of the election, as well as preparatory activities
3 associated with these communications. Ariz. Stat. § 16-971(2)(a)(iii), (vii)
4 (emphases added). Proposition 211 also covers broader *forms* of public
5 communications than BCRA, such as those made by means of the “internet or
6 another digital method, newspaper, magazine, outdoor advertising facility, mass
7 mailing or another distribution, telephone bank or any other form of general public
8 political advertising or marketing, regardless of medium.” *Id.* § 16-971(17)(a). In
9 these respects and others, BCRA is more narrowly tailored than Proposition 211.
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14 104. ***Right to Petition.*** The First Amendment also protects the right “to
15 petition the Government for a redress of grievances.” U.S. Const. amend. I. “The
16 right to petition is cut from the same cloth as the other guarantees of that
17 Amendment, and is an assurance of a particular freedom of expression.”
18 *McDonald v. Smith*, 472 U.S. 479, 482 (1985). The Supreme Court has
19 “recognized this right to petition as one of ‘the most precious of the liberties
20 safeguarded by the Bill of Rights,’ and ha[s] explained that the right is implied by
21 ‘[t]he very idea of a government, republican in form.’” *BE & K Const. Co. v.*
22 *NLRB*, 536 U.S. 516, 524–25 (2002) (quoting *United Mine Workers of Am., Dist.*
23 *12 v. Ill. Bar Ass’n*, 389 U.S. 217, 222 (1967); *United States v. Cruikshank*, 92 U.S.
24 542, 552 (1876)). “[T]he right to petition extends to all departments of the
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1 government, including the executive department, the legislature, agencies, and the
2 courts.” *White v. Lee*, 227 F.3d 1214, 1231 (9th Cir. 2000).

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4 105. The Supreme Court has “recurrently treated the right to petition
5 similarly to, and frequently as overlapping with, the First Amendment’s other
6 guarantees of free expression.” *McDonald v. Smith*, 472 U.S. 479, 490 (1985)
7 (Brennan, J., concurring). Through its broad definition of “campaign media
8 spending,” Proposition 211 encompasses far more than election-related activity,
9 sweeping up speech addressing the pressing issues of the day. Through its
10 daunting disclosure, disclaimer, and associated administrative requirements and
11 burdens, Proposition 211 chills the right to opine publicly and petition one’s
12 government in violation of this “precious” First Amendment right.

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16 **B. Proposition 211 Is Unconstitutional As Applied To Plaintiffs.**

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18 106. Proposition 211 is also unconstitutional specifically as applied to AFP
19 and AFPF.

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21 107. Given the requirements that public disclaimers accompany covered
22 communications, Ariz. Stat. § 16-974(C), and that “[o]fficials shall promptly make
23 the information” included in the disclosure reports “public,” *id.* § 16-973(H), there
24 is a serious risk of harm to Plaintiffs’ donors, Plaintiffs’ donors’ donors, and so on.
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27 108. This compelled disclosure and disclaimer will chill the expression of
28 Plaintiffs and their donors because they have a reasonable fear that threats,

1 harassment, and reprisals will result from any disclosure or broadcasting of their
2 donations. Plaintiffs and their associates have fierce critics, and their opponents
3 regularly strive to identify the organizations’ donors in order to threaten, attack,
4 and sow fear among those who support organizations like Plaintiffs. Once
5 suspected donors are publicly outed, they are empirically at risk of facing boycotts,
6 character attacks, personal threats, and even violence, ¶¶ 13, 43, particularly “[i]n a
7 climate marked by the so-called cancel or call-out culture that has resulted in
8 people losing employment, being ejected or driven out of restaurants while eating
9 their meals[,] and where the Internet removes any geographic barriers to cyber
10 harassment of others.” *Americans for Prosperity v. Grewal*, 2019 WL 4855853, at
11 *20 (D.N.J. Oct. 2, 2019). Therefore, in the case of the Plaintiffs, “[t]he deterrent
12 effect feared by these organizations is real and pervasive[.]” *Americans for
13 Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2388 (2021).

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20 109. Plaintiffs’ “supporters have been subjected to bomb threats, protests,
21 stalking, and physical violence. Such risks are heightened in the 21st century and
22 seem to grow with each passing year, as ‘anyone with access to a computer [can]
23 compile a wealth of information about’ anyone else, including such sensitive
24 details as a person’s home address or the school attended by his children.” *Id.*
25 (quoting *John Doe No. 1 v. Reed*, 561 U.S. 186, 208 (2010) (Alito, J., concurring)).
26 Plaintiffs’ “donors face a reasonable probability of threats, harassment, and
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1 reprisals if their affiliations are made public.” *Americans for Prosperity Found.*,
2 141 S. Ct. at 2400 (Sotomayor, J., dissenting). All disclosures required by
3 Proposition 211 are indeed made “public,” Ariz. Stat. § 16-973(H), and disclaimers
4 are broadcasted publicly, *id.* § 16-974(C).
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7 110. Part and parcel of Plaintiffs’ commitment to maintain confidentiality,
8 Plaintiffs have implemented protocols to protect and secure the confidentiality of
9 donor information. *See* ¶¶ 45–47. Plaintiffs scrupulously protect donor
10 confidentiality with strict security measures to avoid inadvertent or unauthorized
11 disclosure. For example, Plaintiffs maintain donor information in a highly-secure
12 database and restrict access for most employees. Only those individuals who have
13 a need to know the donor information are given access the database. Plaintiffs
14 have consistently protected the confidentiality of their donor information by
15 training staff members and rarely sharing such information outside of AFP and
16 AFPP.
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21 111. Just as Plaintiffs promise confidentiality and anonymity in soliciting
22 donations, Plaintiffs’ donors rely on such assurances in making their donations.
23 The compelled disclosures associated with Proposition 211 violate the
24 understandings and assurances surrounding many of the donations Plaintiffs
25 receive. Therefore, judicial relief is important to vindicate the assurances Plaintiffs
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1 have provided to individual donors that their individual donor information will not
2 generally become known outside of AFP and AFPF.
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4 112. This evidence demonstrates a “reasonable probability that the
5 group[s’] members would face threats, harassment, [and] reprisals if their names
6 were disclosed,” making Proposition 211 unconstitutional as applied to Plaintiffs.
7 *Citizens United v. FEC*, 558 U.S. 310, 370 (2010) (internal citation omitted).
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9 113. As to Plaintiffs’ own direct donors, disclosures and disclaimers will
10 chill speech because they attribute to these donors the wide variety of unique
11 positions Plaintiffs take across whatever may materialize as the pressing issues of
12 the day. “The disclosure requirement ‘creates an unnecessary risk of chilling’ in
13 violation of the First Amendment, indiscriminately sweeping up the information of
14 every major donor with reason to remain anonymous.” *Americans for Prosperity*
15 *Found.*, 141 S. Ct. at 2388 (quoting *Sec’y of State of Md. v. Joseph H. Munson Co.,*
16 *Inc.*, 467 U.S. 947, 968 (1984)).
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18 114. “Regardless of the type of association, compelled disclosure
19 requirements” such as Proposition 211 “are reviewed under exacting scrutiny.”
20 *Americans for Prosperity Found.*, 141 S. Ct. at 2383 (plurality opinion).
21 Proposition 211, with its various disclaimer and disclosure requirements and
22 associated administrative burdens, is not “narrowly tailored” to *any* “sufficiently
23 important governmental interest.” *Id.* at 2385 (majority opinion). Its provisions
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1 are simultaneously too far-reaching and underinclusive in scope relative to their
2 claimed purposes, demonstrating an obvious lack of tailoring to any asserted state
3 interest and placing extreme and undue burdens on First Amendment rights.
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5 115. As applied to Plaintiffs, Proposition 211 will unconstitutionally chill
6 the organizations' protected speech, especially considering the history of threats
7 and violence specifically directed toward these organizations and their donors.
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10 **Count II – First Amendment (Compelled Association)**

11 **(Pursuant to 28 U.S.C. §§ 2201, 2202; 42 U.S.C. §§ 1983, 1988)**

12 116. Plaintiffs repeat, re-allege, and incorporate the allegations in
13 paragraphs 1–115 of this Complaint as though fully set forth herein.
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15 117. Proposition 211's disclosure and disclaimer regime also violates the
16 First Amendment by improperly compelling association. In particular, Proposition
17 211 affiliates organizations and their donors with various issue positions, other
18 organizations, and candidates based on the ultimate use of their fungible donations,
19 irrespective of their own intent or beliefs. Given that Proposition 211 requires no
20 nexus between any covered donor, on the one hand, and Arizona voters, on the
21 other, it will publicly and falsely compel donors (including Plaintiffs and their
22 donors) to associate with causes they have no interest in and may even oppose.
23 Donors (both direct and indirect) contribute to a particular organization—and in
24 turn to the organization's donees—for a plethora of reasons. By tying a single
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1 donation to all downstream activities and donations and mandating disclosures and
2 disclaimers on the basis of same, Proposition 211 compels association both on its
3 face and as applied to Plaintiffs, in violation of the First Amendment.
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5 **A. Proposition 211 Compels Association on its Face.**

6 118. “The First Amendment protects the basic right to freely associate for
7 expressive purposes; correspondingly, ‘[t]he right to eschew association for
8 expressive purposes is likewise protected.’” *Crowe v. Or. State Bar*, 989 F.3d 714,
9 729 (9th Cir. 2021) (quoting *Janus v. AFSCME*, 138 S. Ct. 2448, 2463 (2018)).
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12 119. Proposition 211 unconstitutionally compels association by requiring
13 covered persons to disclose individuals who may stand diametrically opposed to
14 their values or particular issue positions. Proposition 211 thereby associates
15 “donors” with a covered person merely because they contributed to an entirely
16 different entity, after which their fungible donation was transferred one or more
17 times and then received by the covered person, in spite of the fact that the covered
18 person used the donation for a specific purpose well removed from the donor’s
19 initial, generalized expression of support. For example, a Christian group that
20 becomes a covered person is compelled to affiliate itself with a mosque that may
21 have donated to a religious-liberty organization that in turn donated to the Christian
22 group. The mosque is similarly compelled to affiliate itself with the Christian
23 group simply because it donated to a religious-liberty organization, even though it
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1 had no specific intent or knowledge that this donation would make its way to the
2 Christian group. Proposition 211 violates the constitutional rights of both the
3 indirect donor (the mosque) and the covered person (the Christian group) by
4 mandating these affiliations. Further, to the extent the indirect donor (the mosque)
5 is one of the top three donors to the covered person (the Christian group) during
6 the election cycle, the Christian group will be required to list the name of the
7 mosque on the disclaimer accompanying its public communications.
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11 120. The burden runs both ways. Donors from New York who contribute
12 to one group aligned with their values will later discover that Arizona has
13 associated their contributions with an entirely different group pursuing a distinct
14 mission and activity that Arizona then deemed to be electioneering. Rather than
15 associating donors based on who they actually gave to, Proposition 211 associates
16 donors based on the political speech of another group they may have never heard
17 of, never donated to, and may disagree with in relevant part—merely because some
18 portion of the money they gave to a different entity for a distinct cause with a
19 distinct mission wound its way to a group advocating on a particular issue in
20 Arizona.
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25 121. Such compulsory association violates the First Amendment, as
26 “[f]orcing free and independent individuals to endorse ideas they find
27 objectionable is always demeaning,” and “a law commanding ‘involuntary
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1 affirmation’ of objected-to beliefs would require ‘even more immediate and urgent
2 grounds’ than a law demanding silence.” *Janus*, 138 S. Ct. at 2464 (quoting *W. Va.*
3 *State Bd. of Educ. v. Barnette*, 319 U. S. 624, 633 (1943)).

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5 122. The Supreme Court “has recognized the vital relationship between
6 freedom to associate and privacy in one’s associations.” *NAACP v. Alabama ex rel.*
7 *Patterson*, 357 U.S. 449, 462 (1958). “[C]ompelled disclosure of affiliation with
8 groups engaged in advocacy may constitute as effective a restraint on freedom of
9 association as [other] forms of governmental action.” *Id.* “[P]articularly where a
10 group espouses dissident beliefs,” the “[i]nviolability of privacy in group
11 association may in many circumstances be indispensable to preservation of
12 freedom of association.” *Id.* Therefore, even compelled disclosure of
13 organizations’ *direct* donors violates their freedom of association as protected by
14 the First Amendment.

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19 **B. Proposition 211 Compels Association As Applied to Plaintiffs.**

20 123. Proposition 211 unconstitutionally compels association by Plaintiffs
21 and their donors. A reasonable probability of donor harm, *see* ¶¶ 108–109, arises
22 from the government’s express drawing of ties to organizations their donors may
23 not support or even know exist. Because Plaintiffs donate amounts exceeding
24 \$5,000 to organizations that may qualify as covered persons under Proposition 211,
25 those covered persons—and any additional covered persons they subsequently
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1 donate to in amounts exceeding \$5,000—would need to disclose the identities of
2 Plaintiffs as well as *Plaintiffs’ donors*. The premise and thrust of such disclosure
3 would be that associational ties exist between Plaintiffs’ donors and other
4 organizations, even though Plaintiffs’ donors could not have known precisely how
5 their donations would be used, relative to Arizona or otherwise.
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8 124. As a result, Plaintiffs and their donors will be compelled to associate
9 with various issue positions, other organizations, and candidates in Arizona based
10 on the ultimate use of their fungible donations, even where they did not and could
11 not intend or foresee this ultimate use when they made their initial donation to an
12 entirely different entity. Therefore, both on its face and as applied to Plaintiffs,
13 Proposition 211 compels association, in flagrant violation of the First Amendment.
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16 **Prayer for Relief**

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18 Wherefore, Plaintiffs respectfully request that judgment be entered in their
19 favor and against the Defendants as follows:
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21 1. A declaration that Proposition 211 violates the First Amendment (as
22 incorporated by the Fourteenth Amendment) both facially and as-applied to
23 Plaintiffs, and is therefore null and void in its entirety;
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25 2. An order permanently enjoining Defendants from implementing and
26 enforcing any portion of Proposition 211;
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