ARIZONA SUPREME COURT

CENTER FOR ARIZONA POLICY, INC., et al., Plaintiffs/Appellants,	§	Arizona Supreme Court
	§	No. CV-24-0295-PR
	§	
	§	Court of Appeals
	§	Division One
	§	No. 1-CA-CV 24-0272
v.	§	
	§	Maricopa County
	§	Superior Court
ARIZONA SECRETARY OF STATE, et al., Defendants/Appellees,	§	No. CV2022-016564
	§	
	§	
and	§	
	§	
ARIZONA ATTORNEY GENERAL, et al.,	§	
	§	
Intervenor-Defendants/Appellees.	§	
	§	
	§	

BRIEF OF AMICI CURIAE
MAKE LIBERTY WIN AND YOUNG AMERICANS FOR LIBERTY

CHALMERS, ADAMS, BACKER & KAUFMAN LLC
Alex Kaufman
Az. Bar No. #035313
100 N. Main St., Ste. 340
Alpharetta, GA 30009
Telephone: (404) 964-5587
akaufman@chalmersadams.com
Counsel for Amici

Filed with the written consent of all parties.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

INTEREST OF AMICI CURIAE

Make Liberty Win (MLW) is a Federal *Carey* PAC that engages in election related advocacy each cycle in various states throughout the country, depending on electoral opportunities and conditions as they arise.[1] Young Americans for Liberty (YAL) is a Virginia not-for-profit corporation organized under IRC Section 501(c)(4). YAL engages in education, issue advocacy, and sometimes election activities, in states across the country. YAL does not raise money specifically to influence Arizona elections. In addition to undertaking its own activity, YAL is often MLW's largest individual contributor. MLW supports or opposes legislative candidates in dozens of states. Shortly before Arizona's July 2024 primaries, MLW decided to fund a grassroots canvassing program supporting certain legislative candidates running in Arizona's primary elections. MLW registered an Arizona political committee called Make Liberty Win Arizona (MLW Arizona), which accepted funds from MLW and filed the requisite campaign finance reports with the Secretary of State. In responding to a complaint filed with the Citizens Clean Election Commission (Commission) surrounding MLW Arizona's reporting of

[1] A *Carey* PAC (also known as a hybrid PAC) is a federal political committee that maintains separate accounts, one for receiving contributions subject to the federal source and amount limits to make contributions to candidates and another to hold receipts not subject to the federal limits to be used for independent expenditures. *See* https://www.fec.gov/updates/fec-statement-on-carey-fec/ (last visited Feb. 27, 2025).

contributions received (which complaint was dismissed following MLW Arizona's 50+ page response), MLW became intimately acquainted with the very severe burdens imposed by the Voters' Right to Know Act (VRKA). *Amici* submit this brief to provide the Court with their unique perspective and legal argument regarding the nature and workings of the VRKA beyond that provided by the parties.[2]

SUMMARY OF ARGUMENT

Throughout this litigation, the parties have, incorrectly as described below, assumed the VRKA requires disclosure of any sources of more than $5,000 in so-called "original monies" *used* for "campaign media spending" in Arizona, regardless of whether the donor of such "original monies," at the time she relinquished control of her funds, had any intent or inkling they could make their way into Arizona campaign activities. In other words, the parties have assumed the VRKA requires disclosure of such "original monies" donors without respect to earmarking. But absent an earmarking limitation, the VRKA would treat an infinite number of "intermediary" associational entities as mere pass-throughs, and mandate disclosure of donors with no meaningful connection to a covered person's media spending. *Amici* agree with Petitioners such a statute would lack the requisite substantial relationship and narrow tailoring to the state's legitimate informational interest.

[2] No one other than the identified *amici* provided financial resources for the preparation of this brief.

Amici summarize below how the VRKA regime is substantially more burdensome, and less tailored to any legitimate informational interest, than even Petitioners have described. While the State Appellees rely heavily on the opt-out requirement to argue the statute is appropriately tailored, the opt-out is a flatly unenforceable temporal ban on core political speech. It compounds the problem. Accordingly, the opt-out in § 16-972 is facially unconstitutional, and, absent an earmarking limitation, § 16-973(A)(6) is facially unconstitutional.

However, this constitutional infirmity may be avoided simply by adhering to the plain text of the statute. This Court construes statutes to avoid unconstitutionality "where the language makes it plausible to do so." *Az. Petition Partners, LLC v. Thompson*, 255 Ariz. 254, 260 (2023). Here, a constitutional construction is not merely plausible but is the most straightforward reading of the VRKA. The statute already limits compelled disclosures to those who *directed funds to the covered person for Arizona campaign activity*. A.R.S. § 16-973(A)(6) (requiring disclosure of donors of "original monies who contributed, directly or indirectly, more than $5,000 … *for* campaign media spending … *to* the covered person") (emphasis added). Section 16-973(A)(6), read individually and in its statutory context, clearly incorporates an earmarking limitation.

ARGUMENT

I. If A.R.S. § 16-973(A)(6) Is Not Limited to Disclosure of Earmarked Contributions, It Imposes a Burden of Unprecedented Severity.

a. The parties fail to convey the practical burdens presented by the VRKA's so-called "disclosure" regime.

In order to determine the appropriate level of constitutional scrutiny, the court must first understand the effect of a law and the burden it imposes on protected activity. The VRKA "directly regulates core political speech." *See Az. Petition Partners, LLC*, 255 Ariz. at 258. The law is triggered by "campaign media spending," defined so broadly that it sweeps in not just express advocacy and what federal law would consider "electioneering," but virtually any communications or even "activities" regarding candidates, measures, or political parties. A.R.S. § 16-971(2). All parties acknowledge the VRKA burdens speech to some extent; it follows that "no presumption of constitutionality applies," *id.*, and Arizona bears the burden of justifying its law. The State Defendants' dogged attempts to pass off the VRKA scheme as a traditional disclosure law must fail. *See Suppl. Br. of Defendants-Appellees Ariz. Citizens Clean Elections Com'n, et al.* ("Com'n Suppl. Br.") at 7-8, 18-19. If donor intent is irrelevant under § 16-973(A)(6), the VRKA imposes burdens on speech and association fundamentally different and more severe than any "disclosure" law ever considered by any federal or state court.

Typical disclosure requirements simply require the regulated person to disclose information *already reasonably available* regarding the immediate sources of its funds. One can be expected to know the identities of (and be in direct communication with) one's immediate donors. The statute upheld in *McConnell v. FEC*, 540 U.S. 93, 197-98 (2003), and again in *Citizens United v. FEC*, 558 U.S. 310, 368-71 (2010), only required the identification of the contributors who gave more than $1,000 directly to the entity funding the electioneering communication. Accordingly, if an organization contributes to a sponsor of electioneering communications, *the organization itself* would be disclosed on the electioneering report required by 52 U.S.C. § 30104(f).[3] The VRKA, by contrast—if the textually-explicit donor-intent element is ignored—would flatly prohibit any "covered person" from *using* its *own* money for "campaign media spending" unless it is able to discern and disclose the supposed "original" source of any funds in excess of $5,000, regardless of how far removed that "original monies" donor is from the covered person, in time or number of transactions. A.R.S. § 16-972(C) ("[T]he donor's monies may not be used or transferred for campaign media spending until

[3] Efforts to exploit the disclosure rules to hide the true source of contributions are addressed by means of an earmarking rule requiring disclosure of the actual source of any earmarked transfer. *See* 11 C.F.R. § 110.6. These cases did not reach, and federal law does not require, the kind of look-through disclosures that would be required under the VRKA.

at least twenty-one days after the notice is provided or until the donor provides written consent.").

The unbounded nature of the Defendants' presumed VRKA scheme distinguishes it from all cases considering other look-through requirements. The State cites *No on E v. Chiu*, 85 F.4th 493, 506, 510 (9th Cir. 2023), *reh'g en banc denied*, *cert. denied*, 220 L.Ed.2d 10 (Oct. 7, 2024), holding an "original-source requirement[]" was "substantially related" to the informational interest (CCEC Resp. at 11), but the ordinance at issue there only required disclosure of donors two levels removed from the spender (the Ninth Circuit emphasized the law "does not have an unconstrained reach") and only implicated *donor* organizations "making an affirmative choice to engage in election-related activity." *Id.* at 510. As for *Smith v. Helzer*, 614 F.Supp.3d 668, 674-75 (D. Alaska 2022), *aff'd*, 95 F.4th 1207 (9th Cir. 2024), the plaintiffs did not even challenge the "true source" requirement on appeal or dispute the existence of a government interest. 95 F.4th at 1212. In short, no federal or state court has ever reviewed a statute of the argued-for scope and severity of the VRKA.

Therefore, while tedious, it is critical to understand VRKA's infinite look-back requirement in practice. The covered person, of course, only receives funds from an immediate donor. The VRKA radically redefines the covered person's funds—including, if the State's position is adopted, unearmarked funds—as the

"*donor's* monies," and prohibits their use for protected speech unless and until the covered person can track down the "original monies" donor and secure his consent for the covered person's own spending plans. § 16-972(B). The opt-out regime stipulates that, upon the covered person's request, the last person donating to the covered person

> must inform that covered person in writing, within ten days after receiving a written request … of the identity of each other person that directly or indirectly contributed more than $2,500 in original monies being transferred and the amount of each other person's original monies being transferred. If the original monies were previously transferred, the donor must disclose all such previous transfers of more than $2,500 and identify the intermediaries. The donor must maintain these records for at least five years and provide the records on request to the commission.

A.R.S. § 16-972(D); *see also* §§ 16-971(19) (defining "transfer records").[4]

In other words, the last donor is required (somehow) to make a representation to the covered person of the provenance of all dollars constituting the funds provided, traced back to the "original" business or individual-income source. A.R.S. § 16-971(12) (defining "original monies"). If the covered person does not receive these transfer records, it is prohibited from using the funds for campaign media

[4] Nonprofits and PACs are not typically required to adopt a particular accounting method, so a transferor who gives $10,000 when it has $100,000 in its account would somehow have to figure out how to declare which of its donors the $10,000 came from. Even assuming the organization has sufficiently detailed records to apply a generally accepted accounting principle, like FIFO or LIFO, the "original monies" identified would vary depending on which method the intermediary applies.

spending, because it is impossible to request consent from unidentified donors. A.R.S. § 16-972(C).

An example will help illustrate the absurd dynamics of the alleged VRKA model. Consider an individual who donates $10,000 in December 2024 to the 501(c)(4) Sierra Club (organization A) because they appreciate the Sierra Club's efforts to preserve a wooded area near the donor's home in Washington State. In January 2025, the Sierra Club contributes $100,000 to another organization (B) because it appreciates B's research into environmental problems in Texas. In January 2026, B contributes $125,000 to C, a federal political committee advocating candidates in Democratic primary elections in targeted congressional districts throughout the country. Finally, in October 2026, C contributes to NARAL Pro-Choice America (D) to support its last-minute independent expenditures in favor of an unexpectedly strong candidate for Arizona Attorney General who promises to fight any federal effort limiting abortion funding.

In this scenario, if the State's anti-textual reading of § 16-973(A)(6) controls, the VRKA would require the covered person to disclose the Sierra Club's donor, suggesting she funded the campaign activity in Arizona, with all intervening independent associations treated as mere "intermediaries."

b. This regime directly bans, and otherwise chills, constitutionally protected speech and association.

In *Arizona Petition Partners, LLC*, this Court recognized that a "law's mere existence, and the penalties for violating it, can exert a chilling effect on speech." 255 Ariz. at 258 (internal quotations omitted). The VRKA's opt-out process goes beyond chill, facially *prohibiting* a group from spending its own money unless and until it secures the necessary "transfer records" from its donor(s) and secures consent from the "original monies" source(s) (or waits 21 days without a response). Often, "the decision to speak is made in the heat of political campaigns, when speakers react to messages conveyed by others," *Citizens United*, 558 U.S. at 334, or otherwise in reaction to late-breaking events, *see Ariz. Right to Life PAC v. Bayless*, 320 F.3d 1002, 1009 (9th Cir. 2003) (providing examples of necessary spontaneous speech in the course of striking down a 24-hour advance notice requirement for expenditures in final ten days before election). A.R.S. § 16-972 forces would-be speakers to forestall expenditures temporarily or entirely. It is an expenditure limit, not a disclosure law. *See Cath. Leadership Coal. v. Reisman*, 764 F.3d 409, 435 (5th Cir. 2014) (statute requiring PACs to collect contributions from ten different contributors before spending more than $500 was not a disclosure law, because it "prevent[ed] a … committee from exceeding $500 in expenditures … until the committee can persuade ten donors to contribute").

Setting aside the temporal *ban* on speech imposed by § 16-972(B), if a covered person is required to trace and disclose "original sources" irrespective of earmarking

under § 16-973(A)(6), "the potential chilling effect" of such burden "is readily apparent" on its face. *Az. Petition Partners, LLC*, 255 Ariz. at 259. Groups like YAL and MLW will avoid activity that could be considered "campaign media spending" in Arizona rather than burden their donors, their donors' donors, and their donors' donors' donors, *ad infinitum*, with retroactive requests for tedious information for "transfer records," and executing the burdensome "opt-out" notice procedure. These requirements impose substantial administrative burdens themselves, impacting donors to an unlimited number of other nonprofits, deterring future donations. *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 610 (2021) ("When it comes to 'a person's beliefs and associations,' '[b]road and sweeping state inquiries into these protected areas ... discourage citizens from exercising rights protected by the Constitution.'") (quoting *Baird v. State Bar of Ariz.*, 401 U.S. 1, 6 (1971) (plurality opinion)); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, (1986) (practical effect of forcing organizations to assume more burdensome accounting procedures would be to discourage electoral speech).

II. If A.R.S. § 16-973(A)(6) Is Not Limited to Disclosure of Earmarked Contributions, It Fails Any Level of Constitutional Scrutiny.

a. Compelling infinite look-back disclosure of unearmarked contributions *undermines* Arizona's informational interest.

Arizona has a legitimate interest in disclosure of information reflecting "*who* is speaking about … candidate[s] shortly before an election," *Citizens United*, 558

U.S. at 369 (emph. added), or "alert[ing] the voter to the interests to which a candidate is most likely to be responsive," *Buckley v. Valeo*, 424 U.S. 1, 67 (1976). *See also Buckley,* 424 U.S. at 67 ("A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return."); *Canyon Ferry Rd. Baptist Church v. Unsworth*, 556 F.3d 1021, 1034 (9th Cir. 2009); *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1106 (9th Cir. 2003).[5] If the State's theory of the VRKA is accepted, however, the statute compels disclosure untethered to this interest.

In the example above, the Sierra Club's funds only reached NARAL after the independent decisions of multiple associations disposing of their own funds in their discretion. Ignoring the independence of these associations and treating a covered person's political speech as if it were the product of a far removed "original monies" donor distorts rather than illuminates "*who* is speaking."

For one, the focus on tracing funds back to their supposed "origin" as some person's business or personal income, rather than on whether an individual or entity directed funds to the covered person, obscures "who" is speaking, suggesting intent that did not exist. This is inconsistent with U.S. Supreme Court precedent repeatedly

[5] To the extent the Arizona Constitution (Art. VII, § 16) reflects a state-asserted informational interest narrower in scope than that recognized in First Amendment jurisprudence (limited to funds given to candidates or candidate campaigns and excluding independent speech), then Defendants cannot assert an interest in applying the VRKA to independent speech whatsoever.

recognizing voluntary associations have their own corporate identity as speakers, apart from their donors. In *California Medical Association v. FEC* ("*CMA*"), the Court squarely rejected the notion that communications by a corporate-sponsored PAC are the speech of the corporation itself. 453 U.S. 182, 196 (1981) ("CALPAC instead is a separate legal entity that receives funds from multiple sources and that engages in independent political advocacy."). *Accord Citizens United*, 558 U.S. at 337 ("A PAC is a separate association from the corporation."); *Zimmerman v. City of Austin, Tex*., 881 F.3d 378, 395 (5th Cir. 2018), *cert. denied*, 586 U.S. 1051 (following *CMA* to hold contributors retained no legal interest in the disposition of unearmarked contributions).

As to the purported interest in identifying donors looking for favors, the Sierra Club's donor who appreciated the Sierra Club's local advocacy is not interested in any decisions a candidate for Arizona Attorney General might make as an officeholder, and the candidate would have no favor to possibly provide to such a donor, even if he knew the donor's identity.

Even the State Appellees cannot explain how the VRKA furthers Arizona's informational interest *except in reference to earmarked transactions*. In attempting to describe "Prop 211's … plainly legitimate sweep," the Commission *et al.* hypothesize a "mining company *funnel[ing]* money through three intermediary LLCs." *Com'n Suppl. Br.* at 13-14 (emphasis added). In other words, the State

acknowledges the dependence on earmarking by noting "the voters' explicit goal" was to "shine a light" on "*laundering* political contributions." *Id.* at 18 (quoting 2022 Ariz. Legis. Serv. Prop 211 § 2(C)) (emph. added).

b. The VRKA is not narrowly tailored

The VRKA's infinite look-through disclosure actively *misleads* the public, disserving the claimed interest. But even if the statute actually advanced Arizona's informational interest to some degree, it is still facially unconstitutional because it is far more burdensome than necessary to achieve the goal.

The State relies heavily on the notion that the opt-out process tailors the statute to avoid disclosure of unwitting donors. If the opt-out procedure is followed—the State argues—the "original monies" donors will be required to affirmatively authorize "campaign media spending" with their (supposed) funds, which then provides a reason the public should know the identities of such people.

In this scheme, the opt-out process *creates* a link between "original monies" donor and "covered person" that would never exist in the absence of the VRKA. Manufacturing a link to justify disclosure of the link does not make the statute narrowly tailored, and certainly not when the opt-out process requires the covered person to sit idly *on its own money* for up to three weeks waiting on answers from people who have no idea who the would-be speaker is and what they're even being

asked. Far from lessening the burden, the VRKA's opt-out is *itself* a blatantly unconstitutional temporal ban on core political speech.

The "opt-out" provision states, "*[b]efore the covered person may use or transfer a donor's monies for campaign media spending*, the donor must be notified in writing that the monies may be so used and must be given an opportunity to opt out of having the donation used or transferred for campaign media spending." A.R.S. § 16-972(B). The covered person is prohibited from disbursing the funds for "*at least* 21 days after the notice is provided," unless the donor responds earlier with affirmative assent. *Id.* § 16-972(C). Prohibiting an entity from "using" *its own money* is a temporal *ban* on speech. This opt-out-waiting-period is therefore facially unconstitutional to the extent it acts to restrict independent expenditures (uncoordinated with any relevant candidate), because Arizona has no legitimate interest in any temporal ban on such expenditures.[6]

The brief analysis of the opt-out provision in *Americans for Prosperity v. Meyer*, 724 F.Supp.3d 858, 873-74 (D. Ariz. 2024), *appeal filed*, No. 24-2933 (9th Cir.), is erroneous. The district court claimed "the opt-out provision is straightforward":

[6] As a matter of law, "[i]ndependent expenditures…do not give rise to corruption or the appearance of corruption." *Citizens United*, 558 U.S. at 357; *see also American Tradition P'ship, Inc. v. Bullock*, 567 U.S. 516 (2012) (per curiam) (summarily reversing judgment of state supreme court that state-specific evidence justified limits on independent expenditures).

> If covered persons wish to use donations for campaign media spending, they can provide the required notice to their donors at the time of the donation. Alternatively, covered persons could provide the notice later and the donors could provide immediate written consent. Under either of these options, covered persons would be free to spend donations immediately. Because covered persons and their donors can easily avoid the 21-day period, the opt-out provision is not unduly burdensome.

Id. at 873. *Meyer* thus blithely claimed, to the extent a covered person would have to sit silent for 21 days, "it would only come about because of decisions made by the … covered persons, or their donors." *Id*.

This analysis ignores the practical reality of the notice requirement and of political speech in general. *Meyer* simply assumes the "covered person" knew in advance it would want to engage in "campaign media spending" in Arizona, and has direct and easy communication with "original monies" donors to collect necessary information at the time or subsequently. *Meyer*, 724 F.Supp.3d at 873.

These assumptions are belied by the reality of political speech recognized by many courts. Groups cannot be in "control" of the timing of this waiting period unless they can predict the political future. The U.S. Supreme Court has noted even sophisticated nonprofits "cannot predict what issues will be matters of public concern during a future blackout period….WRTL had no way of knowing well in advance that it would want to run ads on judicial filibusters[.]" *FEC v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 462 (2007) (Roberts, C.J., for the Court). *See also* authorities cited at p. 13, *supra*. Established political organizations like MLW are

often fundraising year-round and only decide which specific races (or even states) to engage in after the fact – sometimes only shortly before election day.

Given this reality, *Meyer* also wrongly assumes a covered person would have easy access to the supposed "original monies" donors. The VRKA's infinite look-through regime means an entity that decides *after* fundraising that it wants to engage in "campaign media spending" in Arizona would have to try to piece this information together retroactively. But even if the entity had anticipated it, the opt-out notices themselves would likely be met with a stunned disbelief. "Before you can accept my money, you need me to give you written representation of which specific donors' contributions constitute the money we are providing you?" Such requests for transfer records themselves would stifle fundraising, and quite understandably. Nonprofit entities are not in the business of providing forensic accounting of which of their donors the transfer should be allocated to or providing their contact information; it is a nonsense request (because funds are generally treated as fungible) that would require a stilted and generic accounting. Therefore, gathering the "transfer records" would have to be done retroactively, and in an infinite-lookback regime, there is no reason to believe it would even be *possible*, much less easy, to trace funds back to an original source. The whole regime is built upon fantastical assumptions that ignore political reality.

In sum, the requirement to secure (express or constructive) opt-outs from "original monies" donors imposes a hard ban on spending money until the entity is able to meet the requirements. This takes it from the realm of mere "disclosure" requirements to an external temporal ban. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," and "the timeliness of *political* speech is particularly important." *Elrod v. Burns*, 427 U.S. 347, 373, 374 n. 9 (1976) (*emph.* added). *See Citizens United*, 558 U.S. at 338-39 (recognizing corporations had a right to speak immediately "to make [their] views known…in a current campaign" rather than be forced to establish a PAC).

These obvious logistical difficulties presented by the opt-out requirement are matched by the fact it also *substantively* degrades the covered person's property rights over its own funds. Forcing an entity to sit on its own legally-held funds unless and until the supposed "original monies" donors—potentially multiple organizations deep–consents to its political program effectively transforms the entity's wholly-owned funds into some kind of community-held property where the donors, or donors to donors to donors, are vested with veto power. This is contrary to the principles recognized in *CMA* and *Zimmerman*.

The State has no legitimate interest in forcing would-be speakers to wait before spending their own money, particularly where independent speech is at issue. The opt-out requirement is, therefore, unconstitutional.

III. The VRKA's Plain Text Limits Disclosures to Earmarked Contributions.

Even if the opt-out provision is severable from the rest of the VRKA, for the reasons explained in Section II above, the disclosure obligation in § 16-973(A)(6) would also be facially unconstitutional if construed to require disclosure without respect to "original monies" donors' intent. Fortunately, the statute itself already provides a ready path out of the constitutional infirmity. While the parties have assumed the statute's infinite lookback is not limited to earmarked contributions, the most straightforward reading of the VRKA reveals that it is. Adhering to this plain meaning provides the only constitutionally permissible construction. *See Az. Petition Partners, LLC*, 255 Ariz. at 260.

"When interpreting statutes, [a court must] begin with the text," including its context. *In re Riggins*, 257 Ariz. 1, 544 P.3d 64, 67 (2024) (internal citation omitted). Here, the text of § 16-973(A)(6), alone and in context, plainly and unambiguously incorporates a donor-intent element.

Starting with the particular provision, the text of § 16-973(A)(6) limits its application to donors of "original monies" who intended their funds would be used for campaign media spending in Arizona. This is clear from the grammatical structure of the subsection. It requires "the identity of each donor of original monies who contributed . . . more than $5,000 . . . *for* campaign media spending . . . *to* the covered person." A.R.S. § 16-1973(A)(6) (emphasis added). The dependent

clauses—"for campaign media spending" and "to the covered person"—both modify the subject, that is, the "donor . . . who contributed." The *donor* who contributed must have contributed for a purpose ("campaign media spending" in Arizona) and to a person (a "covered person").

The statutory text thus clearly allows, and arguably even compels, a construction requiring disclosure of "original monies" only where such monies were earmarked by the donor. In the seminal campaign finance case of *Buckley*, 424 U.S. at 80, the Court, working with a far more ambiguous statutory text, incorporated an analogous donor-intent requirement to avoid otherwise overbroad disclosure obligations that would chill campaign speech.[7]

The construction here suggested by *amici* accords with the plain text of § 16-973(A)(6), and is consistent with, and effectuates, the express purpose and intent of the Act. Section 2 of the Act explains "the People of Arizona affirm their desire to stop . . . the practice of *laundering* political contributions, often through multiple intermediaries, *to hide the original source*." VRKA Section 2.A.C. These references to laundering and hiding denote *intentional* acts affirmatively calculated to shield from disclosure those who nonetheless intended to fund campaign ads in Arizona.

[7] *Buckley* limited the reach of FECA § 434(e) to require disclosure "statements" only by those whose independent spending unmistakably reflected their *intent* to affect an election because, otherwise, the statute's relation to the government interest was "too remote."

To this end, the Act aims to achieve the "public disclosure of the identity of all donors who give more than $5,000 *to fund campaign media spending* in an election cycle and the source of those monies, regardless of whether they passed through one or more intermediaries." VRKA Section 2.A. Even assuming the rest of the statute can be applied if the opt-out notice and waiting period is severable, the disclosures required under § 16-973(A)(6), when read in isolation *and* in context of the entire VRKA scheme, include only those donors of original monies who intended or authorized their funds to be used for campaign media spending in Arizona.

CONCLUSION

The judgment below should be reversed and judgment entered for Plaintiffs-Appellants.

Respectfully submitted,

CHALMERS, ADAMS, BACKER & KAUFMAN LLC

/s/ Alex Kaufman
Alex Kaufman
Az. Bar No. #035313
akaufman@chalmersadams.com

Dan Backer
dbacker@chalmersadams.com

Petra Mangini
pmangini@chalmersadams.com

Jerad Najvar
jnajvar@chalmersadams.com

100 N Main St, Ste. 340
Alpharetta, Georgia 30009
[Tel.] (404) 964-5587

Counsel for Amici Curiae Make Liberty Win and Young Americans for Liberty

CERTIFICATE OF SERVICE

I certify the foregoing document was served on June 24, 2025, by means of the court's electronic filing system, upon all counsel of record as follows:

Mary O'Grady
Eric M. Fraser
Alexandra N. Karpurk
Counsel for Arizona Citizens Clean Elections Commission

Craig A. Morgan
Shayna Stuart
Counsel for Arizona Secretary of State Adrian Fontes

Alexander W. Samuels
Nathan T. Arrowsmith
Kathryn E. Boughton
Counsel for Intervenor/Appellee Attorney General Kris Mayes

Daniel J. Adelman
Chanele N. Reyes
David Kolker
Tara Malloy
Elizabeth D. Shimek
Counsel for Voters' Right to Know

/s/ Alex Kaufman
Alex Kaufman

CERTIFICATE OF COMPLIANCE

1. This certificate of compliance concerns an amicus curiae brief, and is submitted under Rule 16(b)(4)

2. The undersigned certifies that the brief/motion to which this Certificate is attached uses type of at least 14 points, is double-spaced, and contains 20 pages.

3. The document to which this Certificate is attached does not exceed the word limit that is set by Rule 14, Rule 22, Rule 23, or Rule 29, as applicable.

/s/ Alex Kaufman
Alex Kaufman