IN THE SUPREME COURT
STATE OF ARIZONA

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

PLAINTIFFS/APPELLANTS' RESPONSE TO AMICUS BRIEF OF CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON (CREW)

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Other Authorities

INTRODUCTION

The Citizens for Responsibility and Ethics in Washington ("CREW") Amicus Brief argues that Prop 211 (A.R.S. §§ 16-971–979) is essential to combat "dark money," CREW Br. at 4, prevent corruption, *id.* at 7, and ensure transparency in Arizona elections (*id.* at 13). It also argues that express earmarking of donations to political messages would be fruitless and that Prop 211's comprehensive disclosure requirements, which it calls "objective tracing," are necessary to achieve these goals.

But CREW is wrong as a matter of constitutional principle and empiricism. Prop 211's sweeping disclosure requirements violate the fundamental rights to free speech and privacy enshrined in the Constitution (Ariz. Const. art. II §§ 6, 8, 32). The Act's scope is so broad that it captures small donors and those that don't even know their donations will later be used to fund a nonprofit's "campaign media spending"—and that fails under the high level of scrutiny the Constitution requires. Indeed, it fails even under the less protective First Amendment analysis, because the government's interest is unproven, and the Act is nowhere close to being narrowly tailored to achieve the claimed end.

Arizona's robust constitutional protections demand that the rights to free expression, privacy, and association be safeguarded against overreaching regulation, especially when less intrusive alternatives exist.

I. "Dark money" concerns do not justify infringements on free speech and privacy rights the Arizona Constitution protects.

"Dark money" is a neologism with no legal meaning. Actually, it is a pejorative used to smear, and put on the defensive, any individuals or groups who seek to keep their personal information—such as their names, addresses, employers, and financial wherewithal—private, while exercising their constitutionally guaranteed freedom of speech. CREW contends that individuals forfeit their privacy rights when they contribute to nonprofit organizations. In so doing, CREW

overstates the government's interest in such information and ignores Arizona's strong protections for free speech and privacy. Prop 211's requirements chill protected political speech and association, intrude upon private affairs, and fail to satisfy the stringent standards imposed by the Arizona Constitution.

A. Arizona has robust free speech and privacy protections.

Our Constitution provides that "every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right." Ariz. Const. art. II § 6. This provision offers broader protection than the First Amendment. Thus, although this case is brought exclusively under the state Constitution, federal precedent can be helpful as establishing the bottom-level protections that must apply under the Freely Speak Clause.

Restrictions on speech—particularly political speech—must be narrowly tailored to serve a compelling state interest. *State v. Stummer*, 219 Ariz. 137, 143 ¶ 19 (2008) (applying strict scrutiny to content-based restrictions and stating that the government "'must regulate with narrow specificity so as to affect as little as possible the ability of the sender and receiver to communicate'") (quoting *Mountain States Tel. & Tel. Co. v. Arizona Corp. Comm'n*, 160 Ariz. 350 358 (1989)). Political speech, including independent expenditures, lies at the core of these protections. *Cf. Citizens United v. FEC*, 558 U.S. 310, 340 (2010) (affirming that independent political spending is protected First Amendment activity).

CREW makes no persuasive attempt to reconcile its mandatory disclosure desires with the Arizona Constitution, despite admitting that "[t]he Constitution is not optional."[1] And while it presses for forced disclosure of donors in Arizona, CREW itself preserves the privacy rights of its own donors. According to the Capital Research Center's website *Influence Watch*, CREW itself "does not reveal its donors,

[1] *See About CREW*.

so funding sources for the organization cannot be easily confirmed." Although its IRS 990 forms are posted online,[2] and list the foundations that contribute to its funding, those forms omit the names and information of individual donors—no doubt out of a laudable desire to protect their privacy. Unfortunately, CREW wishes to deprive other organizations of the right to do the same.

CREW relies on *Citizens United* to contend that transparency justifies disclosure mandates. *See* CREW Br. at 3. But *Citizens United* emphasized that disclosure laws must be narrowly tailored to avoid chilling speech or exposing donors to harassment. 558 U.S. at 340, 366-67. Prop 211 fails that test. Its requirement to disclose donors contributing $5,000 or more over a two-year election cycle, even when that money may be used for *no electioneering activities whatsoever*, and even when "original source[]" donors have *no knowledge of how the money would be ultimately used*, sweeps far beyond the limited permissible disclosure requirements envisioned in *Citizens United*. Indeed, Arizona courts have rejected similarly overbroad regulations, recognizing that disclosure requirements must be limited to express advocacy to avoid infringing on issue advocacy. *Comm. for Justice & Fairness v. Arizona Sec'y of State's Office*, 235 Ariz. 347, 355-56 ¶¶ 32-34 (App. 2014) (holding that disclosure laws must be narrowly tailored to avoid chilling protected speech).[3]

B. CREW exaggerates the "dark money" "threat."

CREW's claim that "dark money," such as the $1.9 billion cited for the 2024 federal election cycle, poses a systemic threat to democracy is misleading. *See*

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[2] *See, e.g.*, https://projects.propublica.org/nonprofits/organizations/30445391/202432629349301118/full.

[3] In *Committee for Justice & Fairness*, the plaintiff failed to advance its argument under the Arizona Constitution, so the court relied entirely on the federal First Amendment standard. *Id.* at 356 ¶ 35 n.15. Plaintiffs here, however, argue that Prop 211 violates the Arizona Constitution.

CREW Br. at 4. These figures include lawful contributions to 501(c)(4) organizations and other entities engaging in issue advocacy, which is constitutionally protected and does not require disclosure unless it involves express candidate advocacy. *Buckley v. Valeo*, 424 U.S. 1, 45-46 (1976) (distinguishing between express advocacy and direct support of candidates). CREW's reliance on federal election data also fails to account for Arizona's distinct regulatory framework, which already requires disclosure of contributions to political committees. *See* A.R.S. § 16-926.

CREW's Arizona examples—such as the $2.8 million spent by LCV Victory Fund or the $15 million in 2014 elections[4]—are instances of *lawful* issue advocacy or independent expenditures, not evidence of corruption. *See* CREW Br. at 6. Lawful advocacy is the antithesis of corruption. It represents the effort of donors to express their opinions and support issues and causes important to them. That's a feature, not a bug, of democracy. It also isn't "money in politics," as CREW contends, because donations to 501(c)(3) nonprofits like CAP can *never* be used for candidate electioneering activities, and donations to 501(c)(4) nonprofits like FEC are not direct donations to candidates, and can only be used to support or oppose candidates on a limited basis in strict compliance with federal law.

There's an obvious difference between bribery or improper influence on one hand, and people pooling their resources to advertise a cause they believe in, or to criticize a candidate whose views they disapprove of. CREW blurs that distinction, complaining about "influence[s]" on elections generally. *See, e.g.,* CREW Br. at 4, 6, 7. But democracy is all about "influencing" people through speech and persuasion, which is what issue advocacy and independent expenditures are. That's why the U.S. Supreme Court has rejected the "'generic favoritism or influence

[4]Petry & Vandewalker, *Arizona Races Funded by National Donors*, Brennan Ctr. For Just. (Sept. 19, 2024).

theory'" advanced by CREW: such a theory "'is at odds with standard First Amendment analyses because it is unbounded and susceptible to no limiting principle.'" *Citizens United*, 558 U.S. at 359 (quoting *McConnell v. FEC*, 540 U.S. 93, 296 (2003) (Kennedy, J., concurring)). Democracy simply *is* efforts by representatives "'to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies,'" and efforts by the citizenry to influence representatives in turn. *Id.* The fact that citizens who are not coordinating with a candidate choose to speak about that candidate while retaining their privacy—to avoid harassment and retaliation—is not proof of anything improper.

But Prop 211 takes an expansive approach, stripping people of their privacy even if their donations are given with no electioneering intent, and even if there are several intermediaries between the donor and the recipient. As Amicus Americans for Prosperity puts it,[5] under Prop 211, if a donor gives to a church, and that church gives to the NAACP, and the NAACP spends it to engage in speech that triggers Prop 211, *the original donor*'s private information must be disclosed. That doesn't prevent undue influence—it chills speech. This is particularly worrisome in Arizona, where political discourse and issue advocacy are robust and polarizing, increasing the risk of donor harassment. *See Doe No. 1 v. Reed*, 561 U.S. 186, 200 (2010) (acknowledging risk of harassment from disclosure of petition signers).

C. CREW ignores privacy protections under the Arizona Constitution.

The Private Affairs Clause provides that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." Ariz. Const. art. II § 8. This provision protects individuals from unwarranted government intrusion into

[5] Brief of Amicus Curiae Americans for Prosperity and Americans for Prosperity Foundation at 7-8.

their private associations and financial details. *See* *State v. Mixton*, 250 Ariz. 282, 291-92 ¶ 36 (2021).

In *Mixton*, this Court considered Arizona's Private Affairs Clause in a case concerning whether a warrant is required for the government to obtain an internet user's Internet Protocol ("IP") address or subscriber information a user voluntarily gives the Internet Service Provider ("ISP"). *Id.* at 284 ¶ 1. Although noting that the Clause provides broader protections than the Fourth Amendment, this Court determined that IP addresses and ISP information possessed by third parties, carry with them no expectation of privacy because those third parties "often engage in pervasive and prolific derivative disclosure and sharing of internet users' online activity." *Id.* at 293 ¶ 42. This Court observed that "IP addresses and ISP information do *not* reveal intimate details of a person's life" and that "an IP address does not provide the state with an illicit view into … the substance or content of a suer's communications." *Id.* at 294-95 ¶¶ 49, 52. In other words, the Court emphasized the *nature of the information* the government sought to obtain.

Prop 211 does the reverse. It raises exactly the concerns that *Mixton* mentioned *would* invoke the protections of the Private Affairs Clause. It associates donors with particular messages, including political messages, and requires the disclosure of private information even if the donor has no knowledge of the message expressed. In other words, it pries into subjects that are often an individual's most personal and fundamental beliefs, requiring the public disclosure of occupations, employers, addresses, and financial resources of the donor. Although donors may provide some of that information to the organizations they support, they do so with an expectation of privacy that this information will not be publicly disclosed. Indeed, Appellants in this case—like CREW itself—take great pains to protect their

donors' privacy rights, and the Doe Plaintiffs rely upon the organization's privacy guarantee.[6]

Prop 211's compelled disclosure requirements inevitably lead to doxing of donors, intermediaries, and original sources, even in instances where those individuals don't know about or agree with the message the donations ultimately funded, violates privacy by exposing individuals to public scrutiny and potential retaliation. *See* NAACP v. Alabama, 357 U.S. 449, 462 (1958) (holding that compelled disclosure of membership lists can violate associational rights). This intrudes upon intimate, core beliefs that individuals have a right to keep private.

CREW's purported examples of the nefarious influence of "dark money" don't prove otherwise. As discussed in Section II below, Sen. Menendez and Gov. Vázquez-Garced accepted bribes—which is an entirely different issue; bribery is already illegal, under laws not challenged here. Representative Householder was engaged in "coordination," which is also already illegal under laws not at issue here. Such criminal instances no more justify Prop 211's intrusion into private affairs than they would justify ignoring the search warrant requirement. And as far as candidates or others "using dark money to influence local elections," CREW Br. at 7, this is simply using spooky-sounding language to describe lawful advocacy in a democracy. *Cf.* Citizens United, 558 U.S. at 359 ("The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt."). It doesn't trigger disclosure under Arizona law unless the organization

[6] Nonprofit organizations generally consider it an *ethical obligation* to preserve the confidentiality of their donors' information. *See, e.g.,* Hart, et al., *Nonprofit Internet Strategies: Best Practices for Marketing, Communications, and Fundraising Success* 64 (2005) ("It is extremely important to develop ethical rules and guidelines surrounding information and confidentiality. … [D]onors count on nonprofits to respect their privacy."); *Hank Rosso's Achieving Excellence in Fund Raising* 440 (Eugene R. Tempel, 2d ed. 2003) (""[c]onfidentiality is indispensable to the trust relationship that must exist between a nonprofit organization and its constituents."

was formed with the main purpose of expressly supporting a candidate or ballot measure. *See* *Comm. for Just. & Fairness*, 235 Ariz. at 353 ¶ 22 (disclosure required only when the speaker was required to register as a PAC). And the idea of government seeking to equalize "influence" is both futile and undemocratic. *Buckley v. Valeo*, 424 U.S. 1, 26 (1976). Prop 211's broad tracing provisions risk punishing lawful speech and association, contrary to Arizona's constitutional mandate to protect privacy. *See* *Mixton*, 250 Ariz. at 291 ¶ 35.

D. Transparency is for government; privacy is for individuals.

CREW's assertion that *Citizens United* promised transparency that "dark money" undermines is inaccurate. CREW Br. at 7. Although *Citizens United* upheld disclosure for corporate entities, individuals donating directly to candidates or campaigns, and donations coordinated with candidates—none of which are at issue here—it cautioned *against* overbroad requirements that burden speech; the Court acknowledged the danger of chilling speech, but that issue wasn't raised by the plaintiffs and wasn't addressed by the Court. 558 U.S. at 369-70.[7] And the Court made clear in *Americans for Prosperity Foundation v. Bonta* , 594 U.S. 595 (2021) that the privacy rights of donors must be protected to prevent such chill.

But CREW's repeated invocation of "transparency" ignores a crucial fact: transparency is for government, while privacy is for people. Transparency is the opposite of privacy, and privacy is a constitutionally protected individual right. Transparency *in government* is a good thing—because government is funded by the public and wields coercive powers, so its operations should be above-board and subject to democratic control. But the reverse is true of individuals:[8] they have the

[7] Indeed, *Citizens United* did not keep its donors private and offered no instance of harassment of retaliation. *Id.* at 370. The opposite is true here.

[8] *See further* *Reed*, 561 U.S. at 207 (Alito, J., concurring) ("Were we to accept respondents' asserted informational interest, the State would be free to require petition signers to disclose all kinds of demographic information, including the

right not to be "disturbed in [their] private affairs," Ariz. Const. art. II § 8, and "protect[ing] and maintain[ing] [that] individual right[]" is the purpose of government. *Id.* § 2. To force private citizens to be "transparent" whenever they speak on political matters is to create a system in which people are afraid to speak their minds—which is bad for individual rights and also for democracy.

Prop 211's sweeping, onerous, and comprehensive disclosure requirements of non-electioneering activities and small donors ($5,000 or more over two years or $2,500 of "original monies") greatly exceed the scope of permissible disclosure, violating Arizona's heightened free speech protections. *See Citizens United*, 558 U.S. at 368-69; *see also Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 281 ¶ 45 (2019). Existing Arizona laws, such as Sections 16-926 and 16-941, already provide mechanisms to provide legitimate transparency, rendering Prop 211's additional comprehensive disclosure unnecessary.

II. The "bribery" concern is exaggerated and addressed by existing laws.

CREW's claim that undisclosed funding is the "perfect animal for bribery" CREW Br. at 7, relies on isolated examples of criminal conduct that don't justify Prop 211's sweeping measures. Arizona's existing anti-corruption framework and federal precedent demonstrate that targeted laws, not across-the-board, one-size-fits-all disclosure mandates, are the appropriate response to such concerns.

A. Arizona has strong anti-corruption measures.

Arizona has a comprehensive anti-corruption framework that addresses CREW's concerns without infringing on free speech or privacy. Section 13-2602 already criminalizes bribery of public servants. CREW's reliance on cases like *United States v. Menendez*, 291 F. Supp.3d 606 (D.N.J. 2018), and *United States v. Householder*, 137 F.4th 454 (6th Cir. 2024), is misplaced, as those cases involved

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signer's race, religion, political affiliation, sexual orientation, ethnic background, and interest-group memberships.").

explicit criminal conduct prosecuted under corruption laws, not a failure of disclosure regimes.

Menendez involved a donor using a corporation to funnel contributions to a super PAC, which was prosecuted under federal bribery laws, not disclosure failures, 291 F. Supp. 3d at 630. Similarly, *Householder* involved a 501(c)(4) used to hide utility contributions, which was uncovered through federal enforcement, not disclosure laws. 137 F.4th at 464. These cases demonstrate that targeted criminal laws, not broad disclosure mandates, effectively address corruption. Arizona's analogous statutes have long provided similar protections, making Prop 211's expansive requirements redundant and overly intrusive. *See, e.g., State v. Hendricks*, 66 Ariz. 235, 242 (1947) (broadly construing bribery of public official statute); *Hoy v. State*, 53 Ariz. 440, 456-57 (1939) (upholding conviction under prior version of Section 13-2602 for bribery scheme).

The other examples CREW cites only reinforce the fact that any illicit *quid-pro-quo* exchange with a public official is illegal and discoverable, and those instances are in fact prosecuted under laws not at issue here. CREW's bribery examples therefore fail to demonstrate any need for broad disclosure of *non*criminal, indeed *constitutionally protected*, activities.

B. Ballot initiatives and independent expenditure don't raise an anti-corruption concern.

CREW's corruption arguments rest entirely on examples of direct or coordinated payments to elected officials in consideration for actions by them in their official capacities. They don't involve independent expenditures that don't involve illicit coordination—which is what's relevant here. The U.S. Supreme Court has recognized that independent spending poses less risk of public corruption. *See McCutcheon v. FEC*, 572 U.S. 185, 214 (2014) (noting that independent spending does not involve the same *quid pro quo* concerns, citing *Citizens United*). CREW

has no basis, therefore, for asserting that comprehensive disclosure requirements for independent organizations like CAP and FEC would pass constitutional muster under the First Amendment, let alone the broader protections the Arizona Constitution provides.

CREW's argument that disclosure is necessary for ballot initiatives, citing *Householder*, ignores the distinct nature of ballot initiatives. *Householder* involved a specific bribery conspiracy. Part of that scheme involved payment *to the office holder* in consideration of his effort to prevent a ballot measure appearing on the ballot, *not* a systemic disclosure failure by those supporting or opposing that ballot measure. The plan did not involve Householder receiving a benefit because of donations to independent groups seeking to run ads opposing the ballot measure. But Prop 211 captures *those* donors in its comprehensive disclosure scheme. *See First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 790 (1978) ("The risk of corruption perceived in cases involving candidate elections … simply is not present in a popular vote on a public issue.")

Arizona's existing laws, such as Section 16-941 (regulating independent expenditures), adequately address such concerns without Prop 211's overreach. Prop 211's tracing provisions, which capture donations to donors, intermediaries, and sources of "original monies"—however attenuated from the message the original monies later funded—and regardless of intent, exposes donors to the threat of harassment, threats, and violence if they support issue advocacy unrelated to candidates. *Cf. NAACP*, 357 U.S. at 462.

C. Exacting scrutiny and narrow tailoring.

Under federal jurisprudence, disclosure requirements must satisfy exacting scrutiny, meaning they must be substantially related to a sufficiently important governmental interest and narrowly tailored to avoid unnecessary burdens on speech. *Bonta*, 594 U.S. at 608; *Buckley*, 424 U.S. at 64. As Plaintiffs have

demonstrated in the courts below and in their Supplement Brief,[9] Arizona's Constitution requires the highest level of scrutiny when free speech and privacy rights are implicated—at least as high as federal strict scrutiny. Prop 211's requirements fail that test by, *inter alia*, capturing protected issue advocacy and non-electioneering activities. *See* A.R.S. § 16-973.

CREW's claim that voters are entitled to know the identity of anyone who "'may be given 'special favors" dramatically misinterprets *Buckley*. That case upheld disclosure for contributions *directly tied to candidates*, not broad tracing of funds to nonprofit organizations. *See* 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."). Prop 211 isn't limited to donors to candidates, but applies to donors *not* tied to candidates or even to candidate elections at all. CREW's much broader position—that "voters are entitled to know the identity of anyone who 'may be given' special favors in response to their spending," CREW Br. at 9, would require the disclosure of *absolutely everyone's* private information, because absolutely anyone "may" receive something that could be called a "favor" in "response" to spending. That's just what the *Citizens United* Court meant when it said that a "'generic favoritism or influence theory … is unbounded and susceptible to no limiting principle.'" 558 U.S. at 359 (citation omitted)).

Such overbreadth chills lawful speech, because donors will avoid contributing to organizations that engage in issue advocacy to avoid public exposure. *See Bonta*, 594 U.S. at 616 (invalidating disclosure law due to chilling effect); *Reed*, 561 U.S. at 200 (recognizing harassment risks from disclosure). That violates the Freely Speak and Private Affairs Clauses.

[9] Plaintiffs/Appellants' Supp. Br. at 5; *see also Brush & Nib*, 247 Ariz. at 282 ¶ 46.

III. Comprehensive tracing and forced disclosure of private donations only chills speech and violates privacy.

CREW's claim that so-called "objective tracing" is necessary to achieve transparency, and that earmarking is ineffective, is unsupported by evidence and ignores less restrictive alternatives that protect speech and privacy.

A. Earmarking to the specific message as a targeted alternative.

CREW dismisses earmarking as "impotent," citing instances where donors evaded disclosure through intermediaries. CREW Br. at 17. But its' examples reflect enforcement challenges, not an inherent flaw in earmarking. Federal law (52 U.S.C. § 30122) requires disclosure of contributions intended for specific candidates or electioneering, providing a targeted approach that avoids Prop 211's overbreadth. *See Wyoming Gun Owners v. Gray*, 83 F.4th 1224, 1248 (10th Cir. 2023) (suggesting earmarking as a less intrusive alternative and stating that the government owes its citizens "'[p]recision of regulation [where the] area so closely touch[es] out most precious freedoms'"). The fact that such laws may have to be enforced against wrongdoers who try to violate them doesn't prove such laws are inadequate.

Arizona's existing disclosure laws provide a framework for transparency without Prop 211's burdens. Section 16-926 requires disclosure of contributions to political committees, while Section 16-941 regulates independent expenditures. These laws, combined with anti-corruption statutes like Section 13-2602, address CREW's legitimate concerns without infringing on privacy or speech.

Of course, if Arizona's existing disclosure laws, such as Section 16-926, are inadequate, they could be enhanced with targeted, intentional earmarking provisions to capture contributions intended for specific electioneering messaging, while exempting issue advocacy and small donors, and thus complying with the Constitution. Indeed, advances in enforcement technology, such as FEC data analysis tools, demonstrate that earmarking can be effective when properly enforced. *See* FEC First General Counsel's Report, MUR 8082 (Unknown Respondents) (Sep.

29, 2023). CREW's assertion that "objective tracing" is necessary due to the "inadequacy" of earmarking ignores evidence that targeted disclosure laws can be effective. *See* FEC Certification, MUR 7464 (Ohio Works) (Jun. 7, 2023) (adopting recommendations to address conduit contributions and redacting names of donors).

Actually, it's doubtful that "objective tracing" is necessary. As the former Federal Elections Commission Chairman observes,

> [e]ach wave of regulation, we have been promised, will clean up the political system, return power to the people and herald a bright new future for American political life. Yet the promise is never fulfilled. After each reform measure, the system has remained 'corrupt' and 'unequal.' … [and] each time we are told that the situation could be remedied if we could plug a few more 'loopholes.' … This promise—the promise of 'clean' elections, greater political equality and a return of power to 'the people'—is the Siren song of campaign finance. … But like the song of the Sirens, which lured many sailors before Odysseus to their doom, the song of campaign finance reform is ultimately a path to the destruction of some of our most cherished freedoms.

Smith, *The Sirens' Song: Campaign Finance Regulation and the First Amendment*, 6 J.L. & Pol'y 1, 4–5 (1997). The problem with the "quixotic" effort to eliminate every alleged "loophole," Smith writes, "is not merely that [it] do[es] not work. The greater problem is the long-term threat [it] pose[s] to political liberty." *Id.* at 4.

CREW's claim that objective tracing is the "least restrictive means" is unfounded. *See* CREW Br. at 19. Targeted enhancements, such as strict enforcement of earmarking or increased penalties for conduit contributions, would accomplish government objectives of actual enforcement while preventing the damage to constitutional protections. But Prop 211 is overbroad and violates the speech and privacy rights of Plaintiffs, making it an improper means of addressing concerns about evasion. *Cf. State v. Boehler*, 228 Ariz. 33, 37-39 ¶ 11-15 (App. 2011) (striking a *content neutral* speech regulation where it was not targeted to avoid overbreadth).

B. Prop 211's chilling effect.

Prop 211's "objective" (i.e., comprehensive) tracing provisions requiring disclosure of donors contributing $5,000 over two years, intermediaries, and "original monies" capture protected activities like independent candidate and issue advocacy. *See* A.R.S. § 16-973. This chills speech by deterring contributions to organizations that may engage in electioneering, even tangentially. *See Bonta*, 594 U.S. at 616 (noting chilling effect of broad disclosure); *Comm. for Just. & Fairness*, 235 Ariz. at 353 ¶¶ 22-25 (limiting disclosure to express advocacy).

And although an "opt-out" provision (A.R.S. § 16-972(C)) *might* cure a donor's associational concerns regarding the recipient's future electioneering activities, it doesn't cure the chilling effect, because others will opt out to avoid disclosure even though they support the political messaging. The "opt out" provision places an undue burden on individuals by forcing them to navigate complex regulations, further chilling participation. *See Bonta*, 594 U.S. at 614 (criticizing compliance burdens).[10] Prop 211's failure to distinguish between independent expenditures, coordinated expenditure, direct candidate advocacy, and ballot measure, thus risks punishing lawful speech, violating Arizona's free speech protections. *See Brush & Nib*, 247 Ariz. at 280.

CONCLUSION

Prop 211 violates the Constitution's robust protections for free speech and privacy by imposing overbroad disclosure requirements that chill political speech and association. CREW's claims about "dark money" and the supposed need for "objective tracing" are overstated and fail to justify Prop 211's infringement on fundamental rights. Arizona's existing disclosure and anti-corruption laws,

[10] *Citizens United* found that a burdensome regulatory regime applied to speech was the functional equivalent of a prior restraint because it effectively forced people to "ask a governmental agency for prior permission to speak." 558 U.S. at 335.

combined with targeted enhancements like earmarking, provide less restrictive means to achieve transparency without violating the Freely Speak Clause, or even the less protective First Amendment. This Court should strike down the Act to preserve Arizona's commitment to individual liberties and robust political discourse.

Respectfully submitted this 1st day of August 2025 by:

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