ARIZONA SUPREME COURT

CENTER FOR ARIZONA POLICY, INC., et al. Plaintiffs/Appellants v. ARIZONA SECRETARY OF STATE; ARIZONA CITIZENS CLEAN ELECTIONS COMMISSION, Defendants/Appellees, and ARIZONA ATTORNEY GENERAL; VOTER'S RIGHT TO KNOW PAC Intervenor-Defendants/Appellees.	Arizona Supreme Court No. 24-0295-PR Arizona Court of Appeals Case No. CA-CV 24-0272 Maricopa County Superior Court Case No. CV2022-016564

AMICUS CURIAE BRIEF OF THE CITY OF PHOENIX IN SUPPORT OF APPELLEES

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INTEREST OF AMICUS CURIAE

Amicus Curiae City of Phoenix (the "City") is Arizona's largest municipality and a Charter City as provided in Art. XIII, § 2 of the Arizona Constitution. Under this "home rule" provision, the City may legally regulate election-related disclosure requirements that do not conflict with state law. Because the City is an Arizona municipality, it may file this amicus brief without seeking written consent. ARCAP 16(b)(1)(B).

The Court's decision in this matter will have an impact on local elections and validly adopted expenditure reporting requirements. Specifically, acceptance of Appellants' arguments would raise questions regarding the enforceability of the City's 2018 charter provision and related 2019 ordinance requiring disclosure of election-related expenditures. To hold original and intermediary source disclosure requirements unconstitutional would raise the curtain on individuals and organizations exerting influence in elections, thwarting the will of the voters. The City's enforcement experience provides useful context for the Court in terms of the practical impact of disclosure requirements that have not chilled expressive rights.

Accordingly, the City has a significant interest in ensuring that the Court decides this issue consistent with state law and in recognition of very real consequences to municipal elections.

INTRODUCTION

Arizona voters approved the Arizona Voters' Right to Know Act (the "Act") in 2022 in part based on experience. Four years earlier, voters in both Phoenix and Tempe approved amendments to their respective charters requiring disclosures of the original and intermediary sources of independent expenditures made to influence local elections (commonly referred to as "Dark Money"). The voters unequivocally expressed a desire to illuminate (a) how money enters the electoral debate and (b) who is making the contributions. The cities' charter amendments are in line with a legal framework and tradition that has prioritized the public disclosure of election-related financial contributions.

The Superior Court and the Court of Appeals decisions to grant and uphold the Motions to Dismiss correctly applied existing legal precedent by holding that the Act did not improperly burden freedoms of speech or association. Original source disclosure requirements, whether at the state or municipal level, properly inform voters about the flow of money and source of contributions seeking to influence elections. Because these requirements are limited to public interests, they do not violate the Arizona Constitution. And because the requirements are closely tied to important (even compelling) government interests related to fighting corruption and informing voters, they do not violate the freedoms of speech and association protected by both the federal and Arizona constitutions. The Act does not impose

anything more than the ordinary and minimal burdens that Arizona and federal courts have routinely upheld in challenges based on speech.

The City joins Appellees' arguments and files this amicus brief to draw attention to (a) the context in which the Act was passed and (b) the effects that overturning the voters' decision to require original and intermediary source disclosure would have on local governments.

BACKGROUND

In May 2018, the Phoenix City Council referred a City Charter amendment (the "Charter Amendment") to voters. The Amendment added the following language to the Phoenix City Charter, Chapter XIII, Section 5:[1]

> In order to foster transparency and maintain the public trust in City elections, there shall be a requirement for disclosure by any person, association of persons or entity making expenditures to influence the result of a City election. The required disclosure shall identify expenditures and contributions including original and intermediary sources of major contributions.

On November 6, 2018, voters overwhelmingly approved the Charter Amendment (designated Proposition 419) by a vote of 85.05% to 14.95%.[2] The City Council implemented the City's Charter amendment on December 18, 2019, by passing Ordinance G-6617, the "Keep Dark Money Out of Local Phoenix Elections

[1] The City Charter and Code are available at https://phoenix.municipal.codes/.
[2] Phoenix App. PHX0008-0013 contained in the City's Amicus Curiae Appendix filed with the Arizona Court of Appeals (hereinafter Phoenix App).

Ordinance" (hereafter, the "Ordinance"), codified in Phoenix City Code ("PCC"), Ch. 12, Art. VII, Div. 3 (Sections 12-1550 through 1557).[3]

The Ordinance shares a number of important features with the Act. For example, the Ordinance requires entities that make expenditures to advocate for the election or defeat of a candidate or ballot measure to disclose the original source of funds and intermediaries if both the entity's expenditures and the donor's contributions exceed specified thresholds.[4] The "original source" is a person or entity who contributes to another person or entity "from his, her or its own resources, such as wages, investment income, inheritance, or revenue from the sale of goods or services." PCC 12-1551(D); *cf* A.R.S. § 16-971(1), (12), and (14). Entities making election expenditures are not required to report if their expenditures do not exceed a specified threshold. PCC 12-1553(A); *cf* A.R.S. §§ 16-971(7) and 973(A). When entities are required to report, they do not need to report information on donors whose annual contributions are below a minimum threshold, PCC 12-1554(A); *cf* A.R.S. § 16-973(A)(6), nor must they report "[t]he names of donors who have

[3] The codified Ordinance is included in Phoenix App. PHX0002-0006.

[4] The Act requires disclosure for expenditures that are at least $50,000 for state elections and $25,000 for other elections, A.R.S. § 16-971(7), while the Ordinance requires disclosure beginning at $1,000 of expenditures, PCC 12-1553(A). The Act also requires disclosure for donors who contribute at least $5,000, A.R.S. § 16-973(A)(6), while the Ordinance requires disclosure for donors who contribute at least $1,000, PCC 12-1554(A).

specifically restricted their donation to non-election-related uses" if those donations are not in fact so used, PCC 12-1554(B); *cf* A.R.S. § 16-972(B).

While similar in both purpose and form, the Ordinance differs from the Act in notable ways. For example, the reporting thresholds for expenditures and donor contributions differ,[5] and the Ordinance lacks a top-three donor disclosure requirement found in A.R.S. § 16-974(C). There are also minor differences in definitions and terms along with procedural distinctions, but those variances do not minimize the shared purpose and basic effect. The Clerk publishes filed reports on the Clerk's website. Since 2020, ten organizations have filed 63 reports.[6]

ARGUMENT

1. THE ACT IS FACIALLY CONSTITUTIONAL BECAUSE THE ARIZONA CONSTITUTION DOES NOT PROHIBIT ORIGINAL SOURCE DISCLOSURE REQUIREMENTS.

The Court of Appeals correctly rejected Appellants' invocation of the *expressio unius* interpretive canon and held that the Act does not violate Ariz. Const. Art. II, § 8 (the "Private Affairs Clause") because "the Act regulates public conduct, which is not covered by the protections of the Private Affairs Clause of the Arizona Constitution." *Ctr. for Arizona Policy Inc. v. Arizona Sec'y of State*, 258 Ariz. 570, ¶65 (App. 2024), *review granted* (May 6, 2025).

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[5] *See* n.2, *supra*.

[6] *See* Phoenix City Clerk, Election Funding Disclosure Reporting (Dark Money), https://www.phoenix.gov/cityclerk/darkmoney (last visited Jun. 30, 2025).

Appellants again invoke the canon in their Supplemental Brief to argue that the inclusion of expenditures for campaign committees and candidates in Article VII, § 16 of the Arizona Constitution (the "Campaign Contribution Clause") "means that [the framers of the Arizona Constitution] did *not* allow the state to compel" election expenditure disclosure in other contexts. Appellants' Suppl. Br. at 6-7. Even assuming, as Appellants argue, that the Court of Appeals erred in finding the canon inapplicable to an interpretation of the Arizona Constitution, Appellants' analysis is fundamentally flawed because it ignores the structural and historical context of the Campaign Contribution Clause. *See* Appellee's Suppl. Br. at 13-14; *see also* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 107 (2012) ("Virtually all the authorities who discuss the negative-implication canon emphasize that it must be applied with great caution, since its application depends so much on context.").

Appellants misstate the effect of the Campaign Contribution Clause, which does not "provide[] that the state *can* require" campaign finance disclosures for candidate elections, Appellants' Suppl. Br. at 6 (emphasis in original); the Campaign Contribution Clause actually states, "The legislature, at its first session, *shall* enact a law providing for" such disclosures, Ariz. Const. Art. VII, § 16 (emphasis added). While it would be proper to note that Constitution's silence on the Act's non-candidate disclosure requirements means they are not *required* by the Campaign

Contributions Clause, it is not true that the issuance of a *mandate* implies the withholding of *powers* because mandates and powers are not "items of the same class", *Sw. Iron & Steel Indus., Inc. v. State*, 123 Ariz. 78, 79 (1979). Such an inference "go[es] beyond the category to which the negative implication pertains." Scalia & Garner, 108.

In fact, the coexistence of the Campaign Contribution Clause and the Private Affairs Clause and the Free Speech Clause, without acknowledgment of any tension between them, demonstrates that the framers of the Arizona Constitution viewed election funding disclosures as important governmental interests that did not conflict with the freedoms enshrined therein.

2. THE ACT IS FACIALLY CONSTITUTIONAL UNDER THE FREE SPEECH CLAUSE BECAUSE THE FUNDING DISCLOSURE REQUIREMENTS SERVE A COMPELLING GOVERNMENTAL INTEREST TO INFORM VOTERS AND MAINTAIN PUBLIC TRUST IN ELECTIONS.

This Court should affirm dismissal because the Act survives scrutiny under Ariz. Const. Art. II § 6 (the "Free Speech Clause") by serving at least two compelling governmental interests. First, the Act serves to provide the public with important information regarding the identities of people and organizations exerting electoral influence. Second, the Act serves anti-corruption interests by providing information that enables state regulators to discover potential corruption.

A. Requiring Disclosure of the Original Funding Source Serves Anti-corruption Interests.

In rejecting the Act as an anti-corruption tool, Appellants are too quick to dismiss the efficacy of independent expenditure disclosure requirements to fight corruption and apply the United States Supreme Court's precedents too broadly. Appellants assert that donations to elected officials implicate bribery and corruption while donations to independent organizations do not.

Appellants concede that disclosure requirements related to direct contributions to candidates and candidate committees are both valid and help fight corruption. Appellant's Opening Br. at 21. Appellants reject the anti-corruption interest with respect to the Act because, in Appellants' view, independent expenditures do not implicate *quid pro quo* corruption—that is, a donor helps a candidate get elected, and in return, the candidate-turned-officer uses his or her office to benefit the donor. Appellants rely on *Citizens United v. Federal Election Com'n,* 558 U.S. 310, 361 (2010), but their reliance is misplaced. In striking down *expenditure limits*, the Court noted that "*categorical bans* on speech that are asymmetrical to preventing *quid pro quo* corruption" violate the First Amendment, i*d.* at 361 (emphasis added), but it did not address anti-corruption interests at all while upholding *disclosure requirements*, *see id*. at 366-71.

Indeed, the potential for a *quid pro quo* does not disappear entirely merely because a donor chose to help the candidate through an independent expenditure

instead of a donation to the candidate committee. *Cf. Caperton v. Massey*, 556 U.S. 868 (2009) (holding that due process required recusal of a state judge with respect to a party who had made independent expenditures to support the judge's election). Candidates for office are principally concerned with getting elected, and any contribution to that cause creates the same incentives, whether the contribution is in the form of a direct monetary donation to the campaign or paid advertisements that directly benefit the candidate. Original source disclosure, therefore, closes a potential loophole to campaign disclosure requirements created by the rise of independent expenditures.

B. Requiring Disclosure of the Original Funding Source Serves Informational Interests.

Original source disclosures such as the Act and the Ordinance also serve important informational interests that the United States Supreme Court has repeatedly upheld as "a less restrictive alternative to more comprehensive regulations of speech." *Citizens United* 558 U.S. at 369. Even disregarding anti-corruption interests served by disclosure, an "informational interest alone is sufficient to justify" a requirement to disclose election-related spending. *Id*.; *see also Buckley v. Valeo*, 424 U.S. 1, 66 (1976)); *McConnell v. Fed. Election Comm'n*, 540 U.S. 93 (2003), overruled on other grounds by *Citizens United*, 558 U.S. 310.

While federal case law provides relatively little information on the application of informational interests to non-candidate elections, there is a simple reason for

that: the relevant cases interpret *federal* disclosure laws, and the federal interests differ significantly from the states' interests. There are no initiative elections in the federal system. States, on the other hand, must concern themselves with how contributions may affect the conduct of both candidate elections and ballot questions.

The disclosure of the original funding sources provides voters with vital information necessary to "aid the voters in evaluating" decisions at the ballot box. *See Buckley* 424 U.S. at 66. By its own terms, the Act was passed to "promote self-government and ensure responsive officeholders" and to "assist Arizona voters in making informed election decisions by securing their right to know the source of monies used to influence Arizona elections." 2022 Ariz. Legis. Serv. Prop. 211, Section 2(B). The City's Charter Amendment similarly carries the express purpose to "foster transparency and maintain the public trust in City elections." Phoenix City Charter Chapter XIII, Section 5.

Original source disclosure serves substantially the same interests as other disclosure requirements that are either permitted or required by the Arizona Constitution. For example, the Campaign Contribution Clause requires the Legislature to "enact a law providing for a general publicity, before and after election, of all campaign contributions to, and expenditures of campaign committees and candidates for public office."

The Campaign Contribution Clause also promotes transparency by requiring disclosure both before and after the election for "campaign committees and candidates for public office" regardless of whether they take office. And like the Campaign Contribution Clause, disclosure of the original funding sources, as required by the Act and the Ordinance, serves the constitutional mandate to enact "registration *and other laws* to secure the purity of elections and guard against abuses of the elective franchise." Ariz. Const. Art. XIV, § 18 (emphasis added).

Without original source disclosure, it is trivial to circumvent the purposes of independent expenditure disclosure laws, including the Campaign Contribution Clause. *See* Stuart McPhail, *Publius, Inc.: Corporate Abuse of Privacy Protections for Electoral Speech*, 121 Penn St. L. Rev. 1049 (2017). An "original source" requirement is necessary to avoid sidestepping direct contribution disclosure to exert influence in an election through the use of an intermediary.

Original source disclosure requirements provide voters with relevant information about the messages they receive about the election by allowing voters to see which people and entities are behind the messages and who stands to benefit from the success or failure of a ballot measure.

C. <u>Federal Law is Insufficient to Address the State's Interests.</u>

Appellants' attempt to distinguish disclosures related to initiative election-related expenditures from campaign expenditures based on federal tax law similarly

fails to consider the bigger picture. *See, e.g.*, Appellants' Suppl. Br. at 7; Opening Br. at 22; Reply Br. at 7. While it is true that 26 U.S.C. § 501(c)(3) prohibits participation in "any political campaign on behalf of (or in opposition to) any candidate for public office," nothing guarantees that Congress will not later amend the code to alter or remove this restriction.

Even if federal tax law overlapped with election spending disclosure laws, federalism permits a state to independently address its interests in requiring disclosure, just as Arizona's home rule principle permits a charter city to independently address its interests in protecting the integrity of its elections, and by extension, election-related disclosure requirements. *See, e.g.*, *City of Tucson v. State*, 229 Ariz. 172 (2012).

Further, the Internal Revenue Code does not address ballot questions or actions by for-profit entities, nor does it prohibit election-related spending by non-profits organized under 26 U.S.C. § 501(c)(4). Appellants imply that nonprofit organizations have some kind of special status with respect to election spending disclosure, *e.g.*, Appellants' Suppl. Br. at 8, but the nature of an organization does not dictate the state's interests. Instead, the attempt to influence the outcome of an election is the exclusive focus of the Act. *See* Ariz. Const. Art. XIV, § 18.

This Court should reject Appellants' myopic view of the governmental interests served by original and intermediary source disclosure requirements and find

that source-of-funding disclosures serve the compelling governmental interests of fighting corruption and informing voters.

3. DISMISSAL IS APPROPRIATE BECAUSE THE FUNDING DISCLOSURE REQUIREMENTS ARE NARROWLY TAILORED TO THE PUBLIC INTEREST.

This Court should uphold the Act because the Act, like the Ordinance, is narrowly tailored to the public interest, imposing only minimal burdens on free speech and applying requirements that are not substantially over- or under-inclusive.

A. Original Source Disclosure does not Unduly Burden Speech Rights.

Original source disclosure requirements like the Act and the Ordinance do not impose an undue burden on anyone's ability to participate in the electoral process. These requirements do not impose any limitations on contributions or expenditures for election-related speech, such as those the Supreme Court struck down in *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (striking down a provision *prohibiting* an "electioneering communication" by corporations and unions) and *Buckley*, 424 U.S. 1 (striking down a provision *prohibiting* independent election expenditures by individuals above a threshold amount).

Anonymity is not an unconditionally protected right under the federal or state constitutions, especially when it comes to participation in the electoral process. As noted above, the Campaign Contribution Clause of the Arizona Constitution *requires* public disclosure of contributions to candidates, Ariz. Const. Art. VII, § 16,

and nothing in the text of the Arizona Constitution or constitutional free speech principles suggests a prohibition on mandating contribution disclosures for non-candidate elections.

While the courts have protected anonymity in certain circumstances, the United States Supreme Court has struck down disclosure laws only in a limited number of circumstances, such as:

- when anonymity is necessary to safely associate with others, *e.g.*, *Nat'l Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449 (1958);
- when disclosure involves "broad and sweeping state inquiries" into "a person's beliefs and associations," *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 610 (2021) (holding such disclosures unconstitutional outside of an election context); or
- when regulation touches *non-monetary* participation in electoral activity and excessively burdens the individual petition circulators' electoral activities, *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182 (1999).

Courts consistently hold that anonymity is not reasonably necessary to support or oppose a candidate or ballot measure through a financial contribution, and removal of anonymity has not been held to impose an unreasonable burden with

respect to *monetary* contributions to election-related activity. *E.g. Buckley v. Valeo*, 424 U.S. 1 (upholding disclosure requirements while striking down contribution limits); *Buckley v. ACLF*, 525 U.S. 182 (upholding disclosure requirements related to payors of petition circulators while striking down disclosure related to circulators themselves); *McConnell v. Fed. Election Comm'n*, 540 U.S. 93 (2003) (upholding disclosure requirements for "soft money" contributors to activities intended to influence the outcome of a federal election); *Citizens United*, 558 U.S. at 366-67 (upholding disclosure provisions while striking down prohibitions on corporate independent expenditures).

The City's experience with its Ordinance also demonstrates that disclosure of the funding source does not impose an undue administrative burden. Individuals and organizations that choose to involve themselves in City elections have easy access to disclosure requirements through the City's website. *See* n.5, *supra*. Most reports require only a single page and can be filled out in a few minutes.[7]

B. <u>The Act's Requirements are Closely Tied to the Public Interest.</u>

The Act, like the Ordinance, only requires disclosure for speech with a close nexus with elections. The Act regulates "campaign media spending," which lists specific kinds of spending or in-kind contributions that are directly related to an election, each of which requires a public communication or activity that is in some

[7] *See* Phoenix App. PHX0015 and PHX0021.

form related to the election of candidates or approval of initiatives and referenda. A.R.S. § 16-971(2). In each case, there is a necessary connection to an election, and qualifying communications become progressively broader as the election nears.

Other features of both the Act and Ordinance further limit the burden on organizations and their donors to anti-corruption and informational interests advanced by disclosure. The expenditure and contribution thresholds ensure that incidental engagement with elections will not trigger disclosure, while donors and organizations can agree to maintain anonymity of donors who do not want their funds to go to election-related activity.

The Act's opt-out provision also sufficiently excludes disclosure of donors to organizations when the donation is only minimally attached to speech. Appellants resort to unrealistic scenarios to paint a picture of unwitting donors being tied to causes they do not support. *E.g.* Pet. for Rev. at 16. However, these scenarios all reflect hypothetical decisions made by intermediary organizations. If a donor does not reasonably expect her donation to be used for election-related purposes, disclosure requirements for election-related activities are no burden *to the donor*. The Act, like the Ordinance, allows organizations seeking to engage in election-related activity to first get consent from donors and attribute election-related expenditures to consenting donors. However, both the Act and the Ordinance leave the details of these arrangements up to the organization. If, in compliance with the

Act, an organization ultimately discloses information about one of its donors without that donor's knowledge or consent, it is because of the organization's own choices—not a direct consequence a disclosure requirement.

To the extent one *could* contrive a scenario in which original source disclosure results in a burdensome disclosure despite reasonable efforts to shield a donation from election-related use, this Court should take up that question if and when it arises, rather than throw out a valuable tool to close loopholes in disclosure requirements permitted by the Arizona Constitution in a facial challenge to the law.

Because the burdens imposed by disclosure laws are minor compared to the interests they promote, the Act survives judicial scrutiny, and this Court should uphold dismissal.

4. THE COURT SHOULD GIVE DUE CONSIDERATION TO THE VOTERS' PREFERENCES.

Although a ballot measure cannot overcome clear constitutional mandates, when weighing the sufficiency of the state's interest, this Court should consider the overwhelming approval that these measures received at the ballot box. Across the State and its cities over multiple years, voters have consistently approved disclosure requirements with levels of support that transcend partisan divides. State voters approved the Act with 72.3% of the vote in 2022. In 2018, voters in Phoenix and

Tempe approved charter amendments requiring election-spending disclosure with 85.0%[8] and 87.6%[9] approval, respectively.

CONCLUSION

Mandated funding disclosure of election-related spending is consistent with the constitutions of both Arizona and the United States. In addition to anti-corruption purposes, it provides voters with transparency in election messaging. As shown by the City's experience since the adoption of its own disclosure ordinance, the burdens on individuals and organizations are minimal.

A challenge to the Act is also effectively a challenge to municipalities' ability to implement similar measures approved by overwhelming majorities. For the reasons provided herein, this Court should affirm the decision of the Arizona Court of Appeals.

RESPECTFULLY SUBMITTED this 24th day of June, 2025.

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[8] Phoenix App. PHX0008.
[9] Phoenix App. PHX0027.