

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 20-cv-02766-CMA-SKC

COLORADO UNION OF TAXPAYERS, INC.,

Plaintiff,

v.

JENA GRISWOLD, Colorado Secretary of State in her official capacity, and
JUDD CHOATE, Director of Elections, Colorado Department of State, in his official
capacity,

Defendants.

**MOTION OF BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW
FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE***

The Brennan Center for Justice at NYU School of Law (“Brennan Center”)¹ files this motion for leave to file a brief as *amicus curiae* and proposed *amicus* brief (*infra*) in the above-captioned case in support of defendants’ motion for summary judgment. District courts have discretion to allow *amicus* briefs. *See Gilbert v. United States Olympic Comm.*, No. 18-cv-00981-CMA-MEH, 2018 U.S. Dist. LEXIS 240465, at *4 (D. Colo. Nov. 27, 2018) (granting leave to file amicus brief). In determining whether to allow an *amicus* brief, district courts typically consider “(1) whether the proposed amicus is a disinterested entity; (2) whether there is opposition to the entry of the amicus; (3) whether counsel is capable of making arguments without the assistance of an amicus; (4) the strength of the information and argument presented by the potential amicus curiae’s interests; and,

¹ This motion and proposed *amicus* brief do not reflect the views, if any, of the NYU School of Law.

perhaps most importantly (5) the usefulness of information and argument presented by the potential amicus curiae to the court.” *Id.* The Brennan Center and its proposed *amicus* brief meet these standards.

The Brennan Center is a non-partisan law and public policy institute that focuses on fundamental issues of democracy and justice. Through its Democracy Program, the Brennan Center seeks to bring the ideal of self-government closer to reality by working to eliminate barriers to full participation, and to ensure that public policy and institutions reflect diverse voices and interests that make for a rich and energetic democracy. In keeping with these goals, the Brennan Center collaborates with academia, civil society, and the private bar to contribute to legal strategy, policy development, and empirical research to promote and defend reasonable campaign finance regulations, including disclosure laws like those at issue in this case. Because of its mission and goals, the Brennan Center has an interest in arguing in favor of campaign finance disclosure laws that comply with the rights guaranteed by the First Amendment and regularly does so in the Tenth Circuit and throughout the United States.²

This Court should grant this motion because the Brennan Center’s *amicus* brief is helpful to the Court and its assertions are relevant to this dispute. The *amicus* brief provides the Court with additional information, not supplied by the parties, regarding the value of campaign finance disclosure laws to voters in ballot measure contests and the

² For example, the District of New Mexico granted the Brennan Center’s motion to file a comparable *amicus* brief in *Rio Grande Foundation v. City of Santa Fe*, No. 1:17-cv-00768-JCH-CG (ECF No. 47), and the Brennan Center again participated as *amicus* in that matter on appeal in the Tenth Circuit. The Brennan Center also participated as *amicus* in *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010), another case involving campaign finance disclosures rules, and in many other cases.

risks of “dark money” spending by organizations that do not disclose their donors. This information includes relevant social science data and judicial determinations supporting the conclusion that disclosure requirements like those required by Colorado law enable voters to make informed decisions that align with their policy preferences, especially in ballot contest measures. These materials are not case-specific evidence; rather, they relate to “established truths, facts or pronouncements that do not change from case to case but apply universally” and are “of relevance to legal reasoning and the lawmaking process.” *United States v. Iverson*, 818 F.3d 1015, 1030 (10th Cir. 2016) (O’Brien, J., concurring) (quoting *United States v. Wolny*, 133 F.3d 758, 764 (10th Cir. 1998)). Courts may take account of such legislative facts regardless of whether they are established through record evidence. *Id.*; see also, e.g., *Ognibene v. Parkes*, 599 F. Supp. 2d 434, 448 (S.D.N.Y. 2009), *aff’d*, 671 F.3d 174 (2d Cir. 2011).

Accordingly, and because the information presented in the Brennan Center’s *amicus* brief is relevant to the Court’s determinations about the State’s interest in campaign finance disclosure rules, it should grant the motion for leave to file the *amicus* brief set forth below.³

³ Counsel for the Brennan Center contacted counsel for the parties by email to inquire whether their clients had a position on this motion. Counsel for defendants stated that defendants do not oppose this motion. Counsel for plaintiff has indicated that his client would oppose the presentation of expert opinion or evidence in an *amicus* brief and that he would need to review the proposed *amicus* brief before taking a position on the legal arguments presented.

PROPOSED *AMICUS* BRIEF OF BRENNAN CENTER FOR JUSTICE

As numerous courts have recognized, social science research and real-world experience confirm that electoral transparency promotes the First Amendment value of enlightened self-government, particularly for ballot initiatives. Knowing the funders behind a specific campaign provides a critical informational cue that helps voters make informed choices that align with their policy preferences. This is especially so for ballot elections that ask voters to decide on complex policy issues about which most have incomplete information. Knowing who supports or opposes an initiative, even at modest levels, is often an effective proxy for a more comprehensive understanding of the initiative's expected policy benefits. Voters with this information are more likely to make the same choices they would have made if they had had more complete information. And voters need this information now more than ever, given increased spending on elections, including ballot initiatives, including by out-of-state and foreign actors.

Setting the appropriate threshold for campaign disclosure requires balancing competing First Amendment interests, which is a necessarily fact-specific judgment that should ordinarily be left to voters and their elected representatives. In this case, policymakers and voters determined the appropriate threshold, and their judgment warrants considerable deference. For these and other reasons set forth by defendants, this Court should reject plaintiff's constitutional challenges and uphold the validity of the Colorado laws at issue.

ARGUMENT

I. Campaign Disclosure Statutes Further the Core First Amendment Goal of Self Government

Facilitating and enlarging public discussion and participation in the electoral process are “goals vital to a self-governing people.” *Buckley v. Valeo*, 424 U.S. 1, 92-93 (1976). “In a republic where the people are sovereign, the ability of the citizenry to make informed choices [in elections] is essential.” *Id.* at 14-15. Fostering “enlightened self-government” is the basic objective of the First Amendment’s protections for political speech. *Citizens United v. FEC*, 558 U.S. 310, 339-40 (2010). Campaign disclosure rules advance that goal, offering a “reasonable and minimally restrictive method of furthering First Amendment values by opening the basic processes of our ... election system to public view.” *Buckley*, 424 U.S. at 82; *see also Citizens United*, 558 U.S. at 369 (campaign disclosure helps voters make “informed choices in the political marketplace”). Thus, in most circumstances disclosure rules serve to “further[], not abridge[], pertinent First Amendment values,” and are typically upheld. *Buckley*, 424 U.S. at 93; *see also McCutcheon v. FEC*, 134 S. Ct. 1434, 1460 (Roberts, CJ., plurality opinion) (“[w]ith modern technology, disclosure now offers a particularly effective means of arming the voting public with information”).

The Supreme Court’s determinations on the value of campaign transparency apply as much to ballot campaigns as to candidate elections. In ballot campaigns, the Court has noted, “[i]dentification of the source of advertising” enables the public “to evaluate the arguments to which they are being subjected” and on which they will be asked to vote. *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 792 n.32 (1978). Decisions from circuit courts around the country have reaffirmed that “[e]ducating voters is at least as important,

if not more so, in the context of initiatives and referenda as in candidate elections.” *Center for Individual Freedom v. Madigan*, 697 F.3d 464, 480 (7th Cir. 2012); see also *Justice v. Hosemann*, 771 F.3d 285, 298 (5th Cir. 2014); *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1006 (9th Cir. 2010).

II. Information About Campaign Funders Helps Voters Make Informed Decisions, Especially for Ballot Initiative Contests

Disclosure of the funders behind campaign spending provides voters with a critical informational shortcut that helps them to make informed decisions, especially in ballot contests, where many other informational shortcuts are unavailable. This is true even for relatively modest expenditures, where donor disclosure helps reveal overall trends in who is supporting or opposing an initiative and is also critical to preventing transparency rules and other requirements from being evaded.

A. Informational Shortcuts Help Voters Make Decisions

A lack of complete information about one’s choices is an enduring feature of the American voting experience. See Elizabeth Garrett & Daniel A. Smith, *Veiled Political Actors and Campaign Finance Disclosure Laws in Direct Democracy*, 4 ELECTION L.J. 295, 296 (2015) (hereinafter *Veiled Political Actors*). This is especially so in ballot elections, where voters are asked to make important and frequently complex policy decisions, often based on little more than a short description of a measure’s substance. See *id.* at 296-97; Michael Kang, *Campaign Disclosure in Direct Democracy*, 97 MINN. L. REV. 1700, 1714-15 (2013) (hereinafter *Direct Democracy*); Elizabeth R. Gerber & Arthur Lupia, *Campaign Competition and Policy Responsiveness in Direct Legislation Elections*, 17:3 POL. BEHAV. 287, 289-90 (Sept. 1995) (hereinafter *Campaign Competition*). Cues that usually aid voters in the candidate context – like party affiliation, life experience, and

demeanor – are unavailable. Jennifer A. Heerwig & Katherine Shaw, *Through a Glass, Darkly: The Rhetoric and Reality of Campaign Finance Disclosure*, 102 GEO. L.J. 1443, 1471-72 (2014) (hereinafter *Rhetoric and Reality*). Even highly engaged voters might find a ballot question confusing or may not be well-informed about all its salient aspects. See Garrett & Smith, *Veiled Political Actors*, at 296-97; Arthur Lupia, *Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 88:1 Am. POLI. SCI. REV. 63, 63 (Mar. 1994) (hereinafter *Shortcuts*).

A sizeable body of research shows, however, that knowing who is spending money to influence a contest is a “particularly credible” informational cue to help voters make reasoned choices consistent with their policy preferences. Garrett & Smith, *Veiled Political Actors*, at 298. As the Seventh Circuit stated, “[r]esearch shows that one of the most useful heuristic cues influencing voter behavior in initiatives and referenda is knowing who favors or opposes a measure.” *Madigan*, 697 F.3d at 480-81 & n.14. Campaign finance disclosure helps voters understand the overall interests at stake and where they stand in relation to those interests. A voter who knows how both the Sierra Club and the oil and gas industry spent on an environmental proposal, for example, can determine “whether passage of the ballot question is likely to be in her interest, without knowing more about the details of the proposal.” Garrett & Smith, *Veiled Political Actors*, at 298. Disclosure also enables voters to better assess a message’s credibility; “how campaign statements affect a voter’s beliefs depends on her assessment of the campaigner’s incentive to tell the truth.” Gerber & Lupia, *Campaign Competition*, at 290.

Empirical data substantiates these conclusions. A frequently-cited study of voter behavior on a series of ballot measures dealing with tort reform found that the single

largest determinant of low-information respondents' voting behavior was "whether they knew the insurance industry's preferred electoral outcome." See Lupia, *Shortcuts*, at 70. Likewise, a laboratory study designed to replicate the voter experience found that subjects were more likely to make decisions about how to vote consistent with their interests when they received information from speakers that they knew shared those interests. See Cheryl Boudreau, *Making Citizens Smart: When do Institutions Improve Unsophisticated Citizens' Decisions?* 31 POL. BEHAV. 287, 292-94, 303 (2009). That study found that learning a speaker's interests were contrary to their own also tended to help subjects make choices aligned with their own interests. *Id.* at 294, 303. The study ultimately concluded that these results "largely support[ed] scholars in the information shortcuts camp." *Id.* at 304.

B. Voters Glean Key Information from Even Modest Spending

Voters can benefit from disclosure of even comparatively modest contributions and expenditures. Among other things, such disclosure helps voters discern whether the measure truly has broad support or whether one or two wealthy individuals have manufactured the appearance of a grassroots campaign. See Garrett & Smith, *Veiled Political Actors*, at 325. Even in instances where many individual donors do support or oppose an initiative, moreover, knowing their identities can still provide valuable insights – such as whether an initiative "was funded by the citizens it is intended to affect or by out-of-state ... individuals." *Protectmarriage.com v. Bowen*, 830 F. Supp. 2d 914, 948 n.16 (E.D. Cal. 2011), *dismissed in part on other grounds*, 752 F.3d 827 (9th Cir. 2014); *see also, e.g., Nat'l Org. for Marriage, Inc. v. McKee*, 669 F.3d 34, 41 (1st Cir. 2012) (recognizing that the public has an interest in knowing that a ballot measure has been supported by "even small gifts" because "the cumulative effect of disclosure ensures that

the electorate will have access to information regarding the driving forces backing and opposing each bill” (quotations marks omitted)); *Family PAC v. McKenna*, 685 F.3d 800, 810 (9th Cir. 2012) (same). Finally, as the Eleventh Circuit recognized in *Worley v. Florida Secretary of State*, “knowing the source of even small donations” can help “prevent[] evasion of disclosure” (or other campaign finance) requirements using repeated small donations from the same source. 717 F.3d 1238, 1251 (11th Cir. 2013). It is appropriate to set disclosure thresholds at levels that can help detect and deter such behavior.

III. Campaign Transparency Is More Important Than Ever

Campaign transparency has become especially critical over the last decade, during which “dark money” spending by groups that hide their true agendas behind innocuous-sounding names and do not disclose their donors has become far more common. In recent years, this trend has coincided with increased efforts by foreign governments and corporations to manipulate the U.S. electorate, including in ballot races.

A. Dark Money from Undisclosed Sources is a Growing Problem in U.S. Elections

The Court should evaluate the challenged laws here against the wave of secret election spending that has occurred over the last decade—a wave that reached new heights in the 2020 election cycle.⁴ While it reaffirmed the constitutionality of disclosure, *Citizens United* and its progeny allowed a range of new outside actors, including super PACs, to raise unlimited funds to spend on elections. These entities have spent billions

⁴ See Ciara Torres-Spelliscy, *Dark Money in the 2020 Election*, Brennan Ctr. for Justice (Nov. 20, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/dark-money-2020-election>.

of dollars in federal and state races over the last decade.⁵ A significant portion of this unconstrained spending has come from organizations that do not disclose their donors.⁶ These groups typically hide behind names designed to make them appear local and grassroots-oriented, like “Proper Role of Government Education Association” (payday lenders in Utah) and “American Family Voices” (funded by unions, environmental interests, and retail lobbying groups).⁷

Dark money is particularly influential at the state and local levels, where it “frequently flows from special interests with a direct and immediate economic stake in the outcome of a contest.”⁸ The Brennan Center’s study of dark money spending in six states found that the share of non-candidate outside spending that was fully transparent declined sharply from 76 percent in 2006 to just 29 percent in 2014.⁹ Given that state and local contests are relatively low-cost compared to federal elections, dark money expenditures can have a particularly distorting impact at these levels.¹⁰

⁵ See Chisun Lee et al., *Secret Spending in the States*, Brennan Ctr. for Justice (June 2016), at 9, https://www.brennancenter.org/sites/default/files/2019-08/Report_Secret_Spending_in_the_States.pdf (*Secret Spending*); Ian Vandewalker, *Since Citizens United, a Decade of Super PACs*, Brennan Ctr. for Justice (Jan. 14, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/citizens-united-decade-super-pacs>.

⁶ See Lee et al., *Secret Spending*, at 5.

⁷ *Id.* at 4; Dave Levinthal, *Liberal ‘Dark Money’ Group Rails Against ‘Dark Money’*, Center for Public Integrity (Nov. 20, 2015), <https://goo.gl/HpP3so>.

⁸ Lee et al., *Secret Spending*, at 3.

⁹ *Id.* at 2.

¹⁰ See *id.* at 10.

Ballot contests, which often have direct economic consequences for wealthy interests, are a frequent target of dark money spending.¹¹ Donor anonymity in this context can help to mask the self-interest and out-of-state forces underlying messages that seek to sway voters.¹² The Brennan Center has documented numerous examples of secret money groups spending to influence ballot contests from across the country, including a Washington State ballot proposal on genetically modified foods, where household brand companies spent \$11 million through a Washington, D.C.-based nonprofit, and a California ballot proposal to raise taxes on oil companies in which a Texas oil company funded an opposition campaign under the name “Californians for Good Schools and Good Jobs.”¹³

Examples likewise abound here in the Tenth Circuit. A group called Citizen Voters, for instance, was the leading spender supporting a 2020 ballot campaign to amend the Colorado state constitution to prohibit noncitizens from voting.¹⁴ The group, based in Florida and led by a former Missouri state legislator, directed \$1.4 million to measure’s campaign committee, representing more than 99 percent of its funding.¹⁵ The same group has backed similar measures across the country, including in Florida (where it has spent

¹¹ *Id.* at 14.

¹² *Id.* at 10.

¹³ *Id.* at 15-17.

¹⁴ Patty Nieberg, Associated Press, “Colorado, two other states pass amendments clarifying that ‘only citizens’ can vote,” *Colorado Sun*, Nov. 8, 2020, <https://coloradosun.com/2020/11/08/amendment-76-colorado-passes/>.

¹⁵ *Id.*; *Colorado Amendment 76, Citizen Requirement for Voting Initiative (2020)*, Ballotpedia, <https://bit.ly/3yInG17>.

\$8.3 million), Alabama, and North Dakota.¹⁶ Another organization that does not disclose its donors, Washington, D.C.-based nonprofit Sixteen Thirty Fund, has contributed \$500,000 to Colorado Families First, an issue committee seeking to put a paid sick leave measure on the state ballot in 2020.¹⁷ The same group spent over \$10 million in Colorado ballot and candidate campaigns in 2018.¹⁸

B. Dark Money Loopholes Exacerbate the Risk of Foreign Interference

Dark money also exacerbates the threat of foreign interference in U.S. elections. The United States has a compelling interest in “limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.” *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (Kavanaugh, J.) (three judge court), *aff’d*, 565 U.S. 1104 (2012). Nevertheless, foreign interference in U.S. campaigns is increasingly common, and has been extensively documented in state and local ballot campaigns.¹⁹ Weak disclosure

¹⁶ *Florida Amendment 1, Citizen Requirement for Voting Initiative* (2020), Ballotpedia, <https://bit.ly/3k8ZY8j>; *Citizen Voters, Inc.*, Ballotpedia, <https://bit.ly/3iJrPfK>.

¹⁷ Andrew Kenney, *Colorado’s Paid Leave Bill is Dead, But Voters May Still Decide*, CPR (Apr. 30, 2020), <https://bit.ly/3sa2eQa>.

¹⁸ *Id.*

¹⁹ See, e.g., Shawn Musgrave, *Offshore money pours into slot machine initiative in Massachusetts*, New Eng. Ctr. for Investigative Reporting (Nov. 3, 2016), <https://bit.ly/3yJqxqE>; Steve Mistler, *Documents Shed Light On Effort To Fund Casino Campaign, Now Facing \$4M Fine for Ethics Violations*, Me. Pub. Radio (Nov. 3, 2017), <https://bit.ly/3fYPruM>; Laine Welch, *Show me the salmon money: APOC filings show most comes from outside Alaska for both pros/cons of updating habitat protections*, Alaska Fish Radio (Apr. 24, 2018), <https://bit.ly/3AGuixG>; Elizabeth Harball, *Alaska voters strike down ‘Stand for Salmon’ ballot initiative*, KTOO (Nov. 6, 2018), <https://bit.ly/37CgWWJ>; Ryan Byrne, *Signatures verified for Maine ballot initiative designed to void international hydroelectric transmission project*, Ballotpedia News (Mar. 6, 2020, 1:06 PM), <https://bit.ly/3CVNF7Q>; Steve Mistler, *Questions Swirl On*

rules make such spending far easier to hide. It has only been through multiple in-depth investigations by the media and others that some cases of groups accepting funds linked to foreign governments and other foreign interests have been uncovered.²⁰

Moreover, while foreign dark money targeting candidate elections (including at the state and local level) is at least in theory prohibited, see 52 U.S.C. § 30121, the same is not true for ballot elections. The evenly divided Federal Election Commission has split 3-3 on whether the ban on campaign spending by foreign nationals applies to state and local ballot races, rendering federal law inoperable with respect to such contests.²¹ This makes transparency regarding who is behind that spending all the more important. As one member of the FEC put it: “The ballot measure is the mechanism designed to most directly express the will of the American people regarding the laws that govern us.”²² Absent an outright prohibition on such spending, transparency is the best mechanism available to ensure that U.S. voters make informed decisions.

IV. The State’s Determination That a \$5,000 Reporting Threshold Is Needed to Serve the Voters’ Informational Interests Is Entitled to Deference

Disclosure requirements must be substantially related to a “sufficiently important governmental interest,” and narrowly tailored to that interest. *Americans for Prosperity*

Foreign Influence In Maine Elections As Canadian Energy Company Readies Campaign, Me. Pub. Radio (Dec. 13, 2019), <https://bit.ly/3jSD30H>.

²⁰ See Ian Vandewalker & Lawrence Norden, *Getting Foreign Funds Out of America’s Elections*, Brennan Ctr. for Justice, 15 (April 6, 2018), https://www.brennancenter.org/sites/default/files/2019-08/Report_Foreign_Funds.pdf.

²¹ FEC, Statement of Reasons of Vice Chairman Matthew S. Petersen and Comm’rs Caroline C. Hunter and Lee E. Goodman in MUR 6678 (MindGeek USA, Inc., et al.), 8-9 (Apr. 30, 2015), <http://eqs.fec.gov/eqsdocsMUR/15044372963.pdf>.

²² FEC, Statement of Reasons of Comm’r Ellen L. Weintraub in MUR 6678 (MindGeek USA, Inc., et al.), 3 (Apr. 30, 2015), <https://eqs.fec.gov/eqsdocsMUR/15044372958.pdf>.

Foundation v. Bonta, 141 S. Ct. 2373, 2385 (2021) (quotation marks omitted). As the Tenth Circuit has recognized, campaign disclosure requirements for ballot contests clearly further a vital government interest. See *Coalition for Secular Gov't v. Williams*, 815 F.3d 1267, 1280 (10th Cir. 2016) (“[v]oters certainly have an interest in knowing who finances support [for] or opposition to a given ballot initiative”); *Sampson v. Buescher*, 625 F.3d 1247, 1257 (10th Cir. 2010) (acknowledging that “on three occasions [the Supreme Court] has spoken favorably of such [ballot-campaign disclosure] requirements”). In the absence of statutes requiring disclosure, many groups sponsoring or opposing ballot issues simply would not disclose the sources of their funding, leaving voters with no reliable or practical way to discover who was paying for messages seeking to influence them. Journalistic investigations might help ameliorate this problem, but only in a few instances and usually only *after* the election has taken place. This case is thus nothing like *Bonta*, where the Court found that California’s requirement that charitable foundations disclose their donors was not narrowly tailored because the state did not need such donor information to further its stated goal of preventing charitable fraud in the vast majority of cases and, in the small minority of matters where it did need the information, could have obtained it by other means. See *id.* at 2387.

The only “tailoring” question in this case is what the appropriate disclosure threshold should be for *all* Colorado issue committees.²³ This inquiry is “inherently

²³ Since the plaintiff does not face an ongoing or imminent enforcement action, it almost certainly lacks standing to bring an as-applied challenge like the ones that succeeded in *Coalition for Secular Government* and *Sampson*. See *Rio Grande Foundation v. City of Santa Fe*, No. 20-2022, --F.4th--, 2021 U.S. App. LEXIS 22899, at *10 (10th Cir. Aug. 3, 2021). The distinction between its as-applied and facial challenge is an important one. A successful facial challenge, of course, would invalidate the statute as to everyone, leaving Colorado without a disclosure requirement for spending on ballot initiatives. But there is no basis for concluding that “a substantial number of [the law’s] applications are

inexact,” necessitating “substantial deference to legislative judgments” *Family PAC*, 685 F.3d at 811; see also *Buckley*, 424 U.S. at 83 (upholding monetary thresholds of \$10 and \$100 for federal record-keeping and reporting provisions for contributions because “the line is necessarily a judgmental decision, best left in the context of this complex legislation to congressional discretion”); *McKee*, 649 F.3d at 60 (“Following *Buckley*, we have granted ‘judicial deference to plausible legislative judgments’ as to the appropriate location of a reporting threshold, and have upheld such legislative determinations unless they are wholly without rationality.” (quotation marks and citations omitted)).

As defendants explain, the \$5,000 threshold was carefully crafted by the General Assembly to reach only a minority of issue committees and is significantly higher than those used in most other states. Defendants’ Mot. Summ. Jmt., at 14 (ECF No. 76). In 2020, only about a quarter of all active issue committees reached the threshold, with the vast majority of those that did spending far more than \$5000. *Id.* at 14-15. The state’s careful approach appropriately balances the public’s interest in campaign disclosure with legitimate free speech concerns and merits considerable deference.

CONCLUSION

For the foregoing reasons, *amicus curiae* urges the Court to grant defendants’ motion for summary judgment.

unconstitutional, judged in relation to the statute’s plainly legitimate sweep.” *Bonta*, 141 S. Ct. at 2387.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing on August 13, 2021. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF System.

/s/ Timothy R. Carwinski _____

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