IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

ROCKY MOUNTAIN GUN OWNERS, et al.,

Plaintiffs,

No. 1:14-cv-02850-CMA-KLM

v.

SCOTT GESSLER, in his official capacity
as Colorado Secretary of State, et al.,

Defendants.

BRIEF *AMICI CURIAE* OF CAMPAIGN LEGAL CENTER, DEMOCRACY 21 AND PUBLIC CITIZEN, INC. IN SUPPORT OF DEFENDANTS AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Amici curiae are nonprofit organizations that work to strengthen laws governing campaign finance and political disclosure and have participated in numerous cases addressing campaign finance disclosure. Defendants have consented to *amici*'s participation in this case and plaintiffs take no position on *amici*'s participation.

SUMMARY OF ARGUMENT

Plaintiffs Rocky Mountain Gun Owners and Colorado Campaign for Life challenge the application of Colorado's "electioneering communication" (EC) disclosure provisions, Colo. Const. art. XXVIII §§ 2(7)(a), 6(1), to purportedly "issue-based" mailers that both groups sent to Republican primary voters in June 2014. The mailers unambiguously referred to candidates for office in Colorado, were sent within thirty days of the primary election, and cost more than $1,000; therefore, they were ECs under Colorado law, and plaintiffs were required to make certain disclosures.

Plaintiffs challenge Colorado's EC disclosure definition as unconstitutionally overbroad and its reporting threshold as "too low" to survive exacting scrutiny under the First Amendment; they also claim Colorado's private enforcement mechanism violates the First Amendment.[1] The crux of plaintiffs' First Amendment argument is that their ads were not express advocacy or its functional equivalent, and that disclosure laws must be limited to these two forms of communications.[2] But the Supreme Court specifically considered, and rejected, this argument in both *McConnell v. FEC*, 540 U.S. 93 (2003), and *Citizens United v. FEC*, 558 U.S. 310 (2010). Plaintiffs' failure even to mention—let alone attempt to distinguish—this controlling precedent is fatal to their case.

The Colorado EC disclosure law challenged here is materially indistinguishable from the federal EC disclosure law, 52 U.S.C. § 30104(f). The federal law was enacted as part of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116

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[1] *Amici* primarily address the first two claims, but we note that plaintiffs mischaracterize the enforcement scheme. Plaintiffs state that in a private enforcement action, "[t]he [administrative law] judge must hold a hearing within fifteen days of [receipt of] the complaint." Pls.' Mem. Supp. Prelim. Inj. 5 ("Pls.' Br."). They fail to acknowledge that "[t]he defendant shall be granted an extension of up to thirty days upon defendant's motion, or longer upon a showing of good cause." Colo. Const. art. XXVIII, § 9(2)(a). Thus, defendants are "entitled to a continuance of the hearing for up to forty-five days" without a showing of good cause, and may receive a continuance beyond forty-five days upon a showing of good cause. *Johnson v. Griffin*, 240 P.3d 404, 407 (Colo. App. 2009).

[2] Plaintiffs' complaint claimed that the EC disclosure laws are also unconstitutional under the Colorado Constitution's free speech clause, Compl. ¶¶ 83-87, which they allege provides "greater protection of free speech than does the First Amendment." *Id.* ¶ 84. However, plaintiffs' preliminary injunction papers rely entirely on the First Amendment of the U.S. Constitution and federal case law and offer no arguments regarding how their case should be analyzed under the Colorado Constitution. Accordingly, the court should analyze their claims solely under First Amendment campaign finance jurisprudence. *See Holliday v. Reg'l Transp. Dist.*, 43 P.3d 676, 681 (Colo. App. 2001).

Stat. 81, and *twice* upheld by the Supreme Court against First Amendment challenge—on its face in *McConnell* and as applied in *Citizens United*.

Congress enacted the federal EC disclosure law to improve disclosure provisions in the Federal Election Campaign Act (FECA), which had been construed by the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976) "to reach only ... communications that expressly advocate[d] the election or defeat of a clearly identified candidate." *Id.* at 80. Under FECA, political advertisers could easily evade disclosure by omitting "magic words" of express advocacy. Congress enacted the EC disclosure provisions "to replace the narrowing construction of FECA's disclosure provisions adopted … in *Buckley*," *McConnell*, 540 U.S. at 189, and defined ECs more broadly to include "broadcast, cable, or satellite communication[s]" that "refer[] to a clearly identified candidate for federal office" and air within sixty days of a general election or thirty days of a primary election or nominating convention. 52 U.S.C. § 30104(f)(3).

The federal EC law was challenged on its face in *McConnell* on exactly the same ground plaintiffs assert here: that the law regulated "'communications' that do not meet *Buckley*'s definition of express advocacy." 540 U.S. at 190. The Supreme Court rejected this claim and upheld the EC disclosure provisions as to "the entire range of electioneering communications," regardless of whether such communications were express advocacy or its functional equivalent. *Id*. at 196. In *Citizens United*, the BCRA disclosure provisions were again challenged, this time as applied to ads promoting a documentary about then-candidate Hillary Clinton. All the parties agreed that the ads were not express advocacy or its equivalent. Br. for Appellant at 51, *Citizens United*,

558 U.S. 310 (No. 08-205); Br. for Appellee at 36. But the Supreme Court held 8-1 that the public had “an interest in knowing who is speaking about a candidate shortly before an election.” 558 U.S. at 369. The Court specifically “reject[ed] Citizens United’s contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy.” *Id*.

The Colorado EC law, enshrined in the state constitution, is materially identical to the federal law, and it defines ECs by reference to the same “easily understood and objectively determinable” criteria. *McConnell*, 540 U.S. at 194. It requires disclosures in connection with broadcast and print communications that “unambiguously refer[] to any candidate” and are distributed “within thirty days before a primary election or sixty days before a general election” to “an audience that includes members of the electorate for such public office.” Colo. Const. art. XXVIII § 2(7)(a). Like its federal analogue, the Colorado EC law advances the public’s “interest in knowing who is speaking about a candidate shortly before an election.” *Citizens United*, 558 U.S. at 369.

Plaintiffs assert nevertheless that “[a]ny government regulation of issue-driven political expression outside of the sphere of express election advocacy is constitutionally forbidden.” Pls.’ Br. 8-9. But this Court, based on *McConnell* and *Citizens United*, recently rejected a virtually identical challenge: “[T]he *McConnell* Court held that the First Amendment does not ‘erect[ ] a rigid barrier between express and so-called issue advocacy,’ and … the *Citizens United* Court rejected an as applied challenge brought on the grounds that the type of speech should determine the duty of disclosure.” *Independence Inst. v. Gessler*, No. 14-cv-02426-RBJ, 2014 WL 5431367, at

*5 (D. Colo. Oct. 22, 2014). For these reasons, plaintiffs' motion for preliminary injunction should be denied.

ARGUMENT

I. Plaintiffs' Attempt to Restrict Disclosure Laws to Express Advocacy Is Foreclosed by Supreme Court Precedent.

The Supreme Court has twice considered—and twice upheld—the federal EC disclosure provisions: facially in *McConnell*, 540 U.S. at 196, and as applied in *Citizens United*, 558 U.S. at 367. The Supreme Court's rejection of attempts to limit disclosure laws to express advocacy or its functional equivalent is binding on this Court.

The "major premise" of the facial challenge in *McConnell* was that "*Buckley* drew a constitutionally mandated line between express advocacy and so-called issue advocacy." 540 U.S. at 190. The plaintiffs argued that disclosure requirements for ECs must "mak[e] an exception for those 'communications' that do not meet *Buckley*'s definition of express advocacy." *Id. McConnell* rejected the claim and held that neither precedent nor the First Amendment "requires Congress to treat so-called issue advocacy differently from express advocacy" for disclosure purposes. *Id.* at 194.

McConnell noted that *Buckley* had found the phrase "for the purpose of ... influencing a federal election" in FECA's disclosure provisions vague and had construed the statute to reach only express advocacy. *Id.* at 191 (internal quotation marks omitted). The Court explained that *Buckley*'s holding was "specific to the statutory language" of FECA, *id.* at 192-93, and refused to elevate *Buckley*'s express advocacy limitation—"an endpoint of statutory interpretation"—into "a first principle of constitutional law." *Id.* at 190. The vagueness concerns "that persuaded the Court in

Buckley to limit FECA's reach to express advocacy [were] simply inapposite" as to BCRA's "easily understood and objectively determinable" EC definition. *Id.* at 194.

The Court thus upheld BCRA's EC disclosure provisions, finding that "the important state interests that prompted *Buckley* to uphold FECA's disclosure requirements"—providing the electorate with information, deterring corruption, and enabling enforcement of the law—"apply in full to BCRA." *Id.* at 196. Explicitly recognizing that the EC definition encompassed both express advocacy and "genuine issue ads," *id*. at 206, the Court upheld the EC disclosure requirements as "to the entire range of 'electioneering communications.'" *Id.* at 196.

Citizens United confirmed that EC disclosure provisions are constitutional even as applied to ads that do not constitute express advocacy or its functional equivalent. Citizens United's challenge to the EC disclosure provisions relied principally on *FEC v. Wisconsin Right To Life, Inc.*, 551 U.S. 449 (2007) ("*WRTL*"), which addressed BCRA's restrictions on corporate spending on ECs, not its disclosure requirements for ECs. *Id.* at 457. In *WRTL*, the Court had concluded that BCRA's prohibition on corporate funding of ECs could constitutionally apply only to speech that was "express advocacy or its functional equivalent," and not to "'issue advocacy[]' that mentions a candidate for federal office." *Id*. at 456, 481. Citizens United, citing *WRTL*'s holding that BCRA's *expenditure* restrictions could only reach "express advocacy and its functional equivalent," sought "to import a similar distinction into BCRA's *disclosure* requirements." 558 U.S. at 368-69 (emphasis added). The Supreme Court "reject[ed] this contention,"

id. at 369, explaining that the constitutional limitations it had established with respect to expenditure limits did not apply to disclosure requirements:

> [D]isclosure is a less restrictive alternative to more comprehensive regulations of speech. In *Buckley,* the Court upheld a disclosure requirement for independent expenditures even though it invalidated a provision that imposed a ceiling on those expenditures. In *McConnell,* three Justices who would have found [BCRA's ban on corporate funding of ECs] to be unconstitutional nonetheless voted to uphold BCRA's disclosure and disclaimer requirements. And the Court has upheld registration and disclosure requirements on lobbyists, even though Congress has no power to ban lobbying itself. For these reasons, *we reject Citizens United's contention that the disclosure requirements must be limited to speech that is the functional equivalent of express advocacy*.

Id. (emphasis added) (internal citations omitted). The Court could scarcely have made its conclusion clearer: disclosure may extend beyond express advocacy.

Colorado law—like BCRA—defines "electioneering communications" without regard to whether they contain "genuine issue advocacy" or "issue-driven political expression." If Colorado's EC disclosure law were instead predicated upon a communication's lack of neutrality, it might implicate the vagueness concerns raised in *Buckley*, and would no longer rely on the "easily understood and objectively determinable" criteria of the federal EC law approved in *McConnell*. 540 U.S. at 194. Incredibly, though the crux of plaintiffs' argument is that Colorado's EC definition is "overly broad" under the First Amendment,[3] they cite neither *McConnell* nor *Citizens United* and do not even attempt to distinguish

[3] Plaintiffs invoke overbreadth but establish no basis for applying that "'strong medicine.'" *New York v. Ferber*, 458 U.S. 747, 769 (1982). Overbreadth invalidates a law only if it is "*substantial*, not only in an absolute sense, but also relative to the statute's plainly legitimate sweep." *United States v. Williams*, 553 U.S. 285, 292 (2008). A plaintiff must "demonstrate … *from actual fact* that a substantial number of instances exist in which the [l]aw cannot be applied constitutionally." *New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 14 (1988) (emphasis added).

them. Regardless of that omission, their argument lacks merit: It has been rejected by the Supreme Court, and should be rejected here.

II. Plaintiffs Can Provide No Legal Authority to Support Their Position.

Rather than engaging with the controlling Supreme Court decisions reviewing EC disclosure laws, plaintiffs invoke only *lower* court cases—principally, the Seventh Circuit's decision in *Wisconsin Right to Life, Inc. v. Barland*, 751 F.3d 804 (7th Cir. 2014)—to support their contention that "government may only regulate 'express election advocacy' or its equivalent." Pls.' Br. 8. Plaintiffs' reliance on *Barland* is misplaced.

In *Barland*, the Seventh Circuit stated—incorrectly—that *Citizens United* had found that the ads for *Hillary: The Movie* were the functional equivalent of express advocacy. 751 F.3d at 836.[4] Based on this faulty premise, *Barland* characterized the Supreme Court's rejection of the claim that "disclosure requirements must be limited to speech that is the functional equivalent of express advocacy" as "dicta." *Id*. Under no fair reading of *Citizens United* is its discussion of express advocacy dicta. The part of the opinion *Barland* cites discusses Citizen United's *movie*, not the ads for the movie. *See id.* at 824 (citing *Citizens United*, 558 U.S. at 324-25).[5] The parties and the lower court agreed that the ads were not the equivalent of express advocacy. *Citizens United v.*

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[4] Express advocacy requires the use of certain "magic words," *McConnell*, 540 U.S. at 191, and "the functional equivalent of express advocacy" requires that a communication be "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." *WRTL*, 551 U.S. at 469-70. Neither test was conceivably met by Citizens United's promotional ad that stated, in its entirety, "[i]f you thought you knew everything about Hillary Clinton ... wait 'til you see the movie," *Citizens United*, 530 F. Supp. 2d at 276 n.2.

[5] Citizens United also challenged the application of disclosure requirements to the movie, but the Supreme Court focused principally on the ads, and upheld application of disclosure to the movie "for the same reasons." 558 U.S. at 371.

FEC, 530 F. Supp. 2d 274, 280 (D.D.C. 2008) (per curiam). Nothing in the Supreme Court's opinion remotely suggests any disagreement with this consensus; indeed, the Court's analysis was obviously premised on the same view.

In any event, *Barland* itself recognized that it was *bound* by the Supreme Court's statement in *Citizens United*—whether or not it was dicta—"that the 'distinction between express advocacy and issue discussion does not apply in the disclosure context.'" 751 F.3d at 836 (citation omitted). Plaintiffs cite *Barland* for the proposition that "issue-driven advocacy" cannot be constitutionally subject to disclosure laws. But they do not even attempt to reconcile their assertion with *Barland*'s own acknowledgment that "event-driven" disclosure requirements such as the Colorado EC law can be applied to advertisements that are not express advocacy.

Barland recognized that in the "specific context" of "the disclosure requirement for [ECs]," *Citizens United* "declined to apply the express-advocacy limiting principle." *Id*. *Barland* was unequivocal on this point, stating plainly that "*Citizens United* approved event-driven disclosure for federal [ECs]." The Colorado EC law here is also "event-driven," requiring a one-time report if and only if a group spends more than a threshold amount on ECs in a calendar year. *Compare* C.R.S.A. § 1-45-108(1)(a)(III), *with* 52 U.S.C. § 30104(f). Unlike the Wisconsin law considered in *Barland*, the Colorado law does not require plaintiffs to register a political committee (or "PAC"), appoint a treasurer, submit regular reports according to a statutory schedule, or meet any other type of "PAC-style" disclosure requirement. *See* 751 F.3d at 836-38.

Barland thus not only fails to support the plaintiffs' claim; it is fatal to their claim. *Barland* held only that *Citizens United* does not compel the conclusion that Wisconsin's "PAC-style" regulation may be applied to issue advocacy. Whatever the merit of that holding, *Barland* recognized that in the "specific ... context" of "a far more modest" "event-driven" EC disclosure requirement, the Supreme Court "declined to enforce *Buckley*'s express-advocacy limitation." *Id*. at 836.

Finally, even insofar as *Barland* questioned only extensive PAC-style regulation of election-related "issue advocacy," its skepticism toward such regulation makes it an outlier. Every other Circuit to have addressed the issue, including the Tenth Circuit, has recognized that *Citizens United* held that disclosure is not limited to express advocacy.[6] As *Barland* acknowledges, even the Seventh Circuit has held that disclosure may extend beyond express advocacy. *See Ctr. For Indv'l Freedom v. Madigan*, 697 F.3d 464, 484 (7th Cir. 2012) ("Whatever the status of the express advocacy/issue discussion distinction may be in other areas of campaign finance law, *Citizens United* left no doubt that disclosure requirements need not hew to it to survive First Amendment scrutiny."). This Court should follow the growing consensus that *Citizens United* means

[6] *See Free Speech v. FEC*, 720 F.3d 788, 795 (10th Cir. 2013), *cert. denied*, 134 S. Ct. 2288 (U.S. 2014) ("[I]n addressing the permissible scope of disclosure requirements, the Supreme Court not only rejected the 'magic words' standard … but also found that disclosure requirements could extend beyond speech that is the 'functional equivalent of express advocacy' to address even ads that 'only pertain to a commercial transaction.'") (citation omitted); *see also*, *e.g.*, *Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118, 132 (2d Cir. 2014), *petition for cert. filed*, No. 14-380 (Sept. 29, 2014); *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 54-55 (1st Cir. 2011); *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1016 (9th Cir. 2010).

what it says: For disclosure purposes, there is no constitutional line between express advocacy and so-called "issue advocacy."[7]

III. Colorado's Disclosure Law is Materially Similar to its Federal Counterpart and Is Similarly Tailored to Advance the State's Informational Interests.

Plaintiffs' complaint includes both facial and as-applied claims, but their preliminary injunction memorandum refers only to the facial claims. Even if their as-applied claims were before the Court, they would fail because they rest on the same theory rejected facially in *McConnell* and as-applied in *Citizens United*. "A plaintiff cannot successfully bring an as-applied challenge to a statutory provision based on the same factual and legal arguments the Supreme Court expressly considered when rejecting a facial challenge to that provision." *Republican Nat'l Comm. v. FEC*, 698 F. Supp. 2d 150, 157 (D.D.C. 2010) (three-judge court), *aff'd*, 130 S. Ct. 3544 (2010). Plaintiffs highlight nothing about their mailers that would serve as grounds for as-applied relief other than that their mailers were not express advocacy or its functional equivalent.[8]

[7] Likewise, the Supreme Court has repeatedly endorsed measures requiring disclosure in connection with "issue advocacy" in other settings. The Court has long approved of disclosure in the context of lobbying. *Citizens United*, 558 U.S. at 369 (citing *United States v. Harriss*, 347 U.S. 612, 625 (1954)). The Court has also expressed approval of disclosure requirements for ballot-measure expenditures, although such requirements involve issue advocacy rather than express candidate advocacy. *See First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 792 n.32 (1978); *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 298 (1981). The Supreme Court's decisions upholding EC disclosure requirements are thus fully consistent with its longstanding recognition that the public interest in knowing the identity of those financing political advocacy extends beyond express candidate advocacy.

[8] Even as a factual matter, the characterization of plaintiffs' mailers as purely "issue-driven" is questionable, given that they contain provocative depictions of candidates and repeatedly call on voters to "act" or "vote [their] values." *See* Compl. Exs. A, B, C. In any event, the Supreme Court has recognized only one constitutionally mandated as-applied exemption from a facially valid political disclosure law: Where there is "a reasonable probability that [a] group's members would face threats, harassment, or reprisals if their names were disclosed." *Citizens United*, 558 U.S. at 370; *see also Buckley*, 424 U.S. at 74. Here, beyond an unsupported assertion that

Plaintiffs' objections to the tailoring of Colorado's law can be reduced to two general lines of attack: First, they argue that the challenged EC disclosure provisions amount to "PAC-like" requirements, and "PAC-like" disclosure requirements impose unconstitutional burdens; and second, they argue that the $1,000 reporting threshold is unconstitutionally low in the context of "issue-based" speech. Both arguments are irretrievably flawed, and cannot overcome *Citizens United* and *McConnell*.

First, their claims about "PAC-like" requirements are incorrect: the Colorado EC law is a modest, event-driven reporting requirement. But even if the law were more extensive, plaintiffs are also wrong in asserting that "PAC-like reporting and disclosure requirements are impermissibly burdensome to political speech that does not expressly advocate for or against the election of candidates." Pls.' Br. 10.

In support of their claim that disclosure entails inherent "burdens," plaintiffs offer only generalized assertions and citations to inapposite precedent. They chiefly rely on the *non*-disclosure portion of *Citizens United*, as well as the Supreme Court's decision in *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) ("*MCFL*"). But these cases did not discuss "PAC burdens" in the context of an EC disclosure law. Instead, they considered whether the option to form a PAC and engage in PAC spending was an adequate *substitute* for direct corporate campaign expenditures.

Citizens United held that requiring corporations to speak through a PAC was tantamount to a ban on speech by the corporation itself. 558 U.S. at 337. That holding

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Colorado's private enforcement mechanism encourages "political shenanigans," Pls.' Br. 2, plaintiffs have raised no evidence or argument regarding potential harassment sufficient to meet *Buckley*'s as-applied exemption standard.

has nothing to do with whether reporting requirements are unduly burdensome. As in *Citizens United*, the law at issue in *MCFL* required MCFL to speak through a "separate segregated fund" and barred use of general treasury funds for speech—a "substantial" restriction on MCFL's speech. 479 U.S. at 252 (plurality opinion of Brennan, J.). The law also imposed "extensive requirements" and "stringent restrictions" with no parallel here: It regulated MCFL's internal management, imposed strict *ongoing* reporting requirements irrespective of continued activity and established a formal termination process. *Id.* at 253-54. The law here imposes none of these restrictions on plaintiffs. There is no comparison between the PAC restrictions in cases like *Barland* and *MCFL* and the event-driven reporting required under Colorado law.

Second, plaintiffs argue that Colorado's $1,000 threshold for EC reporting is "too low" to pass muster under the exacting scrutiny standard. Pls.' Br. 10-13. But the scope of plaintiffs' proposed remedy is far from clear. They attack the threshold because it triggers disclosure obligations once a group spends "more than $1,000," but they do not indicate what level—if any—above $1,000 would be permissible. Furthermore, even if plaintiffs planned to spend exactly $1,001, the determination of monetary thresholds in campaign finance laws "is necessarily a judgmental decision, best left in the context of this complex legislation to congressional discretion." *Buckley*, 424 U.S. at 83. The legislature's chosen limits are valid unless they are "wholly without rationality." *Id*.

Colorado's reporting thresholds are undoubtedly reasonable. The difference between Colorado's thresholds, *see* Colo. Const. art. XXVIII § 6(1), and those of BCRA, *see* 52 U.S.C. § 30104(f)(1), (f)(2)(F), reflects the difference in the elections the two

laws regulate. Colorado's EC provisions apply to the elections of a mid-sized state, whereas BCRA applies to federal elections, including nationwide presidential elections and senatorial elections in states of all sizes. The disclosure thresholds contained in comparable state laws reflect this obvious contrast, and in fact, many other states use thresholds well below $1,000.[9] The First Circuit has upheld Maine's $100 threshold. *Nat'l Org. for Marriage v. McKee*, 649 F.3d at 60-61.

Ultimately, the dispositive point is that "the public has an interest in knowing who is speaking about a candidate shortly before an election." *Citizens United*, 558 U.S. at 369. Colorado's law, like BCRA, does not cover communications made more than sixty days before a general election or thirty days before a primary, a time period the Supreme Court has found an acceptable proxy for whether communications mentioning a candidate are "specifically intended to affect election results." *McConnell*, 540 U.S. at 127. Here, plaintiffs actually *admit* that their communications had that intent and effect. They seek protection from the EC disclosure requirements precisely *because* their speech occurred "on the eve of an election, when the electorate's ear is most inclined to listen, and when the speech is most likely to make a difference," Pls.' Br. 2—in other words, when the public's interest in disclosure is at its apex.

CONCLUSION

For the foregoing reasons, this Court should deny plaintiffs' motion for preliminary injunction.

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[9] *See, e.g.*, Idaho Code Ann. § 67-6630 ($100); Mass. Gen. Laws ch. 55, § 18F ($250); Me. Rev. Stat. tit. 21-A, § 1019-B ($100); S.D. Codified Laws § 12-27-17 ($100); Vt. Stat. Ann. tit. 17, §§ 2891, 2893 ($500); Wash. Rev. Code §§ 42.17A.260(1), -.305(1)(b)(ii) ($1,000).

Dated this 25th day of November, 2014.

Respectfully submitted,

/s/ Steven K. Imig

Steven K. Imig*
(CO Bar No. 39016)
Lewis, Bess, Williams & Weese P.C.
1560 Broadway, Suite 1400
Denver, CO 80202
Tel.: (303) 861-2828
simig@lewisbess.com

Fred Wertheimer
DEMOCRACY 21
2000 Massachusetts Avenue, NW
Washington, D.C. 20036
Tel.: (202) 355-9600

Donald J. Simon
SONOSKY, CHAMBERS, SACHSE
ENDRESON & PERRY, LLP
1425 K Street, NW, Suite 600
Washington, D.C. 20005
Tel.: (202) 682-0240

Scott L. Nelson
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street, NW
Washington, D.C. 20009
Tel.: (202) 588-1000

Counsel for *Amici Curiae*

J. Gerald Hebert
Tara Malloy
Megan P. McAllen
Catherine Hinckley Kelley
THE CAMPAIGN LEGAL CENTER
215 E Street, NE
Washington, D.C. 20002
Tel.: (202) 736-2200

Counsel for *Amici Curiae*

**Counsel of Record*

CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2014, I electronically filed the foregoing Brief *Amici Curiae* with the Clerk of the Court of the U.S. District Court of the District of Colorado by using the CM/ECF system, which will accomplish electronic notice and service for all counsel of record.

/s/ Steven K. Imig

Steven K. Imig