



November 29, 2022

Arizona's Voters' Right to Know Act to End Secret Spending in Arizona Elections

Arizona's Voters' Right to Know Act, which was on the ballot as Proposition 211, was passed by Arizona voters on Election Day 2022. Proposition 211 revises state law to ensure that voters in Arizona have full knowledge of the original source of money used to pay for big campaign expenditures that seek to influence Arizona elections. These revisions promote First Amendment interests by providing the information necessary for the people to engage in true self-government and to hold their elected representatives accountable once in office. The law's new provisions are clearly constitutional.

Proposition 211 focuses on persons who make big campaign expenditures in Arizona elections — more than \$50,000 in statewide elections or more than \$25,000 for other elections. The original sources of large contributions used to pay for these big expenditures will no longer be kept secret. Instead, when persons make these big campaign expenditures, they must disclose the sources of "original monies" exceeding \$5,000 received in that election cycle, as well as any intermediaries who have passed along more than \$5,000 of these big contributions to the spenders. "Original monies" generally means the personal funds of individuals or the direct business income of organizations.

The initiative also establishes a notice and opt-out system, requiring each big campaign spender to notify their donors that the donations may be used for campaign media spending in Arizona and allowing the donors to opt out of having their donations spent for such political purposes. This provision enables donors to control whether their donations will be spent on campaign media and disclosed to the public in connection with such spending. However, if donors receive notice that their donations may be used for campaign media spending and do not opt out within

twenty-one days, their donations become “traceable monies” subject to Proposition 211’s disclosure and reporting requirements.

Proposition 211 will improve transparency in Arizona elections and put an end to secret campaign spending, sometimes called dark money. Wealthy special interests will no longer be able to hide behind shell corporations, super PACs, and other intermediaries to shield the original source of money spent to influence Arizona elections.

I. Consistent with the First Amendment to the U.S. Constitution, the disclosure of dark money gives voters the information they need to engage in true self-government.

Proposition 211 recognizes that voters have the right to certain information about the political messages they receive — including information about who pays for them. Knowing who is funding a campaign or influencing government decision-making helps voters determine who supports which positions and why. As the Supreme Court has repeatedly recognized in decades of decisions upholding campaign finance disclosure provisions:

[D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches.”¹

Requiring disclosure of the sources of funding for election-related speech has been a feature of American campaign finance law for more than a century,² and Proposition 211 permanently protects the voters’ right to this information. The Supreme Court has consistently rejected challenges to electoral transparency laws, repeatedly emphasizing their constitutional validity.³

¹ *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976) (per curiam) (internal quotation marks and footnote omitted). In *Buckley*, the Supreme Court articulated the constitutional standard for disclosure laws and upheld federal disclosure requirements, explaining that disclosure served three important purposes: “providing the electorate with information, deterring actual corruption and avoiding its appearance, and gathering data necessary to enforce more substantive electioneering restrictions.” *McConnell v. FEC*, 540 U.S. 93, 196 (2003) (listing the “important state interests” identified in *Buckley*), *overruled in part on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010). The first of these, the public’s informational interest, is “alone sufficient to justify” disclosure laws. *Citizens United*, 558 U.S. at 369.

² See Publicity of Political Contributions Act, Pub. L. No. 61-274, §§ 5-8, 36 Stat. 822, 822-24 (1910).

³ See *Buckley*, 424 U.S. at 64-68 (upholding Federal Election Campaign Act disclosure requirements); *McConnell*, 540 U.S. at 194-99 (upholding McCain-Feingold Act’s federal disclosure requirements);

Specifically, effective disclosure helps prevent wealthy special interests from secretly “hiding behind dubious and misleading names” to disguise who they are and mask the source of their funding.⁴ For example, as the Supreme Court has noted, some of these groups have acknowledged that it can be “much more effective to run an ad by the ‘Coalition to Make Our Voices Heard’ than it is to say paid for by ‘the men and women of the AFL-CIO.’”⁵ But this sort of camouflage impairs democratic debate and decision-making. As the Court has explained, “[t]he right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.”⁶

In fact, the Supreme Court has recognized that disclosure does not meaningfully inhibit First Amendment interests; rather, disclosure *advances* those interests.⁷ One of the primary purposes of the First Amendment is to preserve “uninhibited, robust, and wide-open” public debate.⁸ Disclosure equips voters with information about who is supporting the messages, candidates, and ballot measures in an election, enabling people to participate in the kind of public debate that is necessary for effective self-governance. This is why, time and again, the Supreme Court has upheld election-related financial disclosure regimes as constitutional,⁹ noting that disclosure requirements “‘impose no ceiling on campaign-related activities’ and ‘do not prevent anyone from speaking.’”¹⁰

By ensuring voters have the information needed to hold elected officials accountable, disclosure also ensures that officeholders remain responsive to the public. As the Supreme Court has observed, “prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations

Citizens United, 558 U.S. at 366-71 (same); see also *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 299-300 (1981) (expressing approval of disclosure in the ballot initiative context); *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 792 & n.32 (1978) (striking down corporate expenditure ban in part because disclosure sufficed to enable “the people . . . to evaluate the arguments to which they are being subjected”).

⁴ *McConnell*, 540 U.S. at 197.

⁵ *Id.* at 128 n.23 (citation omitted).

⁶ *Citizens United*, 558 U.S. at 339.

⁷ See *id.*

⁸ *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

⁹ See *Citizens United*, 558 U.S. at 366-71; *McConnell*, 540 U.S. at 194-99; *id.* at 321-22 (Kennedy, J., concurring in the judgment in part and dissenting in part). Because disclosure does not prevent speech, the Court has consistently applied a less demanding standard of scrutiny to disclosure laws than it has to other forms of campaign finance regulation. *Citizens United*, 558 U.S. at 366.

¹⁰ *Id.* at 366 (citation omitted).

and elected officials accountable for their positions and supporters.”¹¹ Indeed, the Court has long recognized the importance of transparency in a variety of contexts, including ballot initiatives and lobbying.¹² Thus, the Court has broadly recognized that ensuring the accountability of public officials and enabling self-governance are core First Amendment interests, which are furthered by robust disclosure regimes.¹³

The Supreme Court’s recent decision in *Americans for Prosperity Foundation v. Bonta* does not undermine these well-established precedents. The law at issue there had nothing to do with election spending or disclosure of information to voters. Rather, the invalidated law broadly required all charitable organizations soliciting funds in California to report confidentially a list of their major donors to the state Attorney General.¹⁴ While the Supreme Court clarified that all disclosure laws must be “narrowly tailored,” the Court distinguished and approvingly cited precedents *upholding* electoral disclosure requirements.¹⁵ Lower courts have subsequently continued to uphold narrowly tailored electoral disclosure laws.¹⁶ Indeed, as the U.S. Court of Appeals for the First Circuit recently noted in upholding an electoral disclosure law, “a well-informed electorate is as vital to the survival of a democracy as air is to the survival of human life”¹⁷

¹¹ *Id.* at 370; *see also Buckley*, 424 U.S. at 67 (“A public armed with information about a candidate’s most generous supporters is better able to detect any post-election special favors that may be given in return.”).

¹² *See, e.g., Bellotti*, 435 U.S. at 792 n.32 (ballot initiative); *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 203 (1999) (“Through the disclosure requirements . . . voters are informed of the source and amount of money spent . . . [and] will be told ‘who has proposed [a measure],’ and ‘who has provided funds for its circulation.’” (second alteration in original)); *Citizens Against Rent Control*, 454 U.S. at 299 (“The integrity of the political system will be adequately protected if [ballot measure] contributors are identified”); *United States v. Harriss*, 347 U.S. 612, 625 (1954) (upholding federal lobbying disclosure statute).

¹³ *See Knox v. Serv. Emps. Int’l Union, Local 1000*, 567 U.S. 298, 308 (2012) (“Our cases have often noted the close connection between our Nation’s commitment to self-government and the rights protected by the First Amendment.”); *see also Chula Vista Citizens for Jobs & Fair Competition v. Norris*, 782 F.3d 520, 533 (9th Cir. 2015) (en banc) (“[T]he initiative system is, at its core, a mechanism to ensure that the people, rather than corporations or special interests, maintain control of their government.”).

¹⁴ *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2389 (2021).

¹⁵ *Id.* at 2383-85 (citing *Buckley*, 424 U.S. at 64-68; *Citizens United*, 558 U.S. at 366-367; *Davis v. FEC*, 554 U.S. 724, 744 (2008); *Doe v. Reed*, 561 U.S. 186, 198-99, 201 (2010)).

¹⁶ *See Gaspee Project v. Mederos*, 13 F.4th 79, 86-89 (1st Cir. 2021), *cert. denied*, 142 S. Ct. 2647 (2022); *see also Smith v. Helzer*, No. 3:22-CV-00077-SLG, 2022 WL 2757421, at *4 (D. Alaska July 14, 2022); *San Franciscans Supporting Prop B v. Chiu*, No. 22-CV-02785-CRB, 2022 WL 1786573, at *4 (N.D. Cal. June 1, 2022).

¹⁷ *Gaspee Project*, 13 F.4th at 95-96.

Finally, the Supreme Court has long recognized that laws cannot constitutionally discriminate against the poor.¹⁸ This principle is especially critical in the context of elections and voting rights.¹⁹ Political power and influence should not be allocated based on wealth, and while *Citizens United* protects wealthy interests' right to spend unlimited amounts to influence elections, disclosure laws protect the countervailing right of the electorate to assess the credibility and merits of the messages paid for by that spending.²⁰

In sum, as the finding in Section 2(A) of Proposition 211 notes, the “People of Arizona have the right to know the original source of all major contributions used to pay, in whole or in part, for campaign media spending” through “prompt, accessible, comprehensible and public disclosure of all donors who give more than \$5,000 to fund campaign media spending in an election cycle and the source of those monies.” This right is “guaranteed by the First Amendment of the United States Constitution and also protected by the Arizona constitution, to promote self-government and ensure responsive officeholders, to prevent corruption 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.”

II. Proposition 211’s transparency requirements are consistent with longstanding legislative measures designed to prevent the evasion of disclosure laws and court rulings upholding those measures.

Laws that shine light on the money behind election ads have always sought to inform the public of the original source of funding for electioneering campaigns. But as the Supreme Court has noted, “[d]espite years of enforcement of the [campaign finance laws], substantial evidence demonstrates how candidates, donors, and parties test the limits of the current law. . . .”²¹

Here, the temptation to “test the limits” has been greatly exacerbated since the Supreme Court’s decision in *Citizens United*. That decision not only opened the door to unlimited corporate independent expenditures, but also led to the creation of “super PACs” — i.e., political committees that can receive unlimited contributions,

¹⁸ See, e.g., *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996) (finding unconstitutional a state statute requiring payment of court fees in order to appeal termination of one’s parental rights); *Boddie v. Connecticut*, 401 U.S. 371 (1971) (finding unconstitutional a state law restricting the right to divorce based on the ability to pay court fees and costs).

¹⁹ See, e.g., *Bullock v. Carter*, 405 U.S. 134, 144 (1972) (striking down a filing fee requirement as a condition for a candidate to have his name placed on the ballot, and explaining, “we would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic status”); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966) (striking down a state statute requiring payment of a poll tax as a voter qualification).

²⁰ See *Citizens United*, 558 U.S. at 365-69.

²¹ *FEC v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431, 457 (2001).

including unlimited contributions from corporations, as long as they make no direct contributions to, and do not coordinate with, candidates or political parties.²²

In other words, before the Supreme Court's decision in *Citizens United* and the D.C. Circuit Court of Appeals' decision in *SpeechNow.org v. FEC*, federal law limited contributions to political committees, including those that only make independent expenditures, to \$5,000 per year, and prohibited all corporations from making independent expenditures from general treasury funds. But after those court decisions, corporations have increasingly provided an attractive vehicle to direct unlimited funds to such groups, while concealing the true sources of such funds. Indeed, during the 2020 election cycle, dark money groups reported spending more than \$1 billion on campaign-related activities, but revealed little about their donors.²³ Thus, contrary to the assumption in *Citizens United* that "prompt disclosure of expenditures [would] provide shareholders and citizens with the information needed to hold corporations and elected officials accountable,"²⁴ huge amounts of campaign spending come with no such information.

Notwithstanding the enormous secret spending since *Citizens United*, campaign finance laws have long recognized the potential to evade proper transparency, and the courts have upheld legislation designed to minimize that evasion.²⁵ For example, the Federal Election Campaign Act (FECA) bars giving a contribution in the name of another person.²⁶ This restriction not only helps prevent evasion of the contribution limits, but also helps ensure that persons do not hide their contributions by using someone else as an intermediary or front group. The Third Circuit has explained why this restriction is constitutional:

Buckley carefully considered the danger posed by compelled disclosure. It held that the state interests promoted by the FECA's reporting and disclosure requirements justified the indirect burden imposed on First Amendment interests, and that the compelled disclosure requirements were constitutional in the absence of a

²² The D.C. Circuit's decision in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc) directly gave rise to super PACs by striking down the contribution limits applicable to political committees that make only independent expenditures.

²³ OpenSecrets, *'Dark money' topped \$1 billion in 2020, largely boosting Democrats* (March 17, 2021), available at <https://www.opensecrets.org/news/2021/03/one-billion-dark-money-2020-electioncycle/>.

²⁴ 558 U.S. at 370.

²⁵ Indeed, despite striking down the limits on corporate independent expenditures, *Citizens United* extolled the virtues of disclosure in promoting First Amendment interests: "The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." 558 U.S. at 371.

²⁶ 52 U.S.C. § 30122.

“reasonable probability” that disclosures would subject their contributors to “threats, harassment, or reprisals.” [424 U.S.] at 74. *Proscription of conduit contributions (with the concomitant requirement that the true source of contributions be disclosed) would seem to be at the very core of the Court’s analysis. In light of Buckley, we reject [plaintiff’s] argument that [52 U.S.C. § 30122] fails to advance a compelling state interest.*²⁷

Similarly, FECA contains an anti-earmarking provision, 52 U.S.C. § 30116(a)(8), which states that a contribution made “directly or indirectly” and “earmarked or otherwise directed through an intermediary” must be treated the same as a direct contribution; moreover, the intermediary must report the “original source” to both the Federal Election Commission and the “intended recipient.” Unfortunately, as the Supreme Court has recognized, this earmarking provision can be easily evaded; thus, the Court has explicitly recognized the provision’s limited effectiveness and held that this kind of measure is not the constitutional limit of legislative power:

[T]he earmarking provision . . . would reach only the most clumsy attempts to pass contributions through to candidates. To treat the earmarking provision as the outer limit of acceptable tailoring would disarm any serious effort to limit the corrosive effects of . . . “‘understandings’ regarding what donors give what amounts to the party, which candidates are to receive what funds from the party, and what interests particular donors are seeking to promote.”²⁸

Viewed in the broader context of disclosure provisions and measures to prevent their evasion, Proposition 211 sits at the core, not the “outer limit,” of what legislatures can do to ensure that the original sources of campaign expenditures are made transparent to the people. The initiative’s focus is both simple and narrowly tailored: it requires disclosure of the original source of large campaign contributions used in “campaign media spending”²⁹ supporting or opposing candidates for office or ballot initiatives in Arizona.

²⁷ *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (en banc) (emphasis added).

²⁸ *Colorado Republican*, 533 U.S. at 462 (citation omitted); see also 52 U.S.C. § 30104(i)(3) (Under federal law, certain kinds of “bundled” contributions — i.e., contributions collected and forwarded by lobbyist intermediaries to candidates or political parties — must be disclosed in reports to the Federal Election Commission.)

²⁹ “Campaign media spending” in Proposition 211 covers the full range of election-influencing spending, including but not limited to public communications that expressly advocate for or against the nomination or election of a candidate; public communications that promote, support, attack, or oppose a candidate within the six months preceding an election involving that candidate; public communications that promote, support, attack, or oppose the qualification or approval of an

Proposition 211 requires any person³⁰ who spends more than \$50,000 on statewide elections or more than \$25,000 on other elections in Arizona on campaign media spending in an election cycle (a “covered person”) to keep track of the large donations it receives and disclose where this money came from.³¹ After reaching the initial threshold and filing an initial disclosure report, covered persons must file subsequent disclosure reports for every additional \$25,000 spent for statewide elections or \$15,000 spent for other elections on campaign media spending.³²

These disclosures include the identity of each person who contributed more than \$5,000, directly or indirectly, of “original monies” – the personal funds of individuals or the direct business income of organizations – to the covered person during the election cycle, along with the dates and amounts contributed.³³ Covered persons must also identify any intermediaries who previously transferred more than \$5,000 of the contributions received. Proposition 211 will thus inform the public whenever a series of big money transfers is used to hide the original sources of big special interest spending on electioneering.³⁴

Proposition 211 places no obligation on big election spenders who finance election ads in their own names without attempting to hide behind other persons, corporations, or front groups. Individuals who pay for campaign media spending with only their own personal money, as well as businesses that spend only their own business income, will not be required to file *any* reports under the initiative.³⁵

initiative or referendum; public communications referring to a candidate in the candidate’s electoral district in the period beginning ninety days before a primary through the general election; activities or public communications supporting the election or defeat of candidates of an identified political party, including partisan voter registration or “get out the vote” activity; and research, design, production, polling, data analytics, mailing, or social media list acquisition in preparation for or in conjunction with any other campaign media spending activities. *See* Section 16-971(2).

³⁰ “Person” includes both natural persons and entities such as corporations, limited liability companies, labor organizations, partnerships, or associations. *See* Section 16-971(13).

³¹ *See* Sections 16-971(7), 16-973(A).

³² *See* Section 16-973(B).

³³ *See* Section 16-973(A)(6). In-kind contributions used to enable campaign media spending by covered persons, and the funds used to pay for those contributions, are also “traceable monies” and subject to the reporting requirements of Proposition 211. *See* Sections 16-971(18), 16-973. In that case, persons providing the in-kind contribution — i.e., making a direct payment for or contributing goods or services for campaign media spending — are choosing to spend their money directly on campaign media in coordination with a covered person.

³⁴ *See* Sections 16-972(D) and (E), 16-173(E). More generally, Proposition 211 prohibits “structured transactions,” i.e., any attempt to structure any “solicitation, contribution, donation, expenditure, disbursement, or other transaction” in order to evade the requirements of the initiative. *See* Section 16-975.

³⁵ *See* Section 16-971(7)(b).

Additionally, PACs and political parties that receive no more than \$20,000 from any one person in an election cycle, as well as candidate committees, will not be “covered persons” required to report any additional information.³⁶ In other words, political committees that comply with reasonable contribution limits, rather than accepting and spending unlimited funds from wealthy special interests, will have no additional reporting obligations.

For PACs and political parties that are covered persons, Proposition 211 allows them to comply with the new disclosure requirements by including that information in the periodic campaign reports already required by law.³⁷ If one of these groups makes major expenditures in the twenty days before an election, however, the initiative requires additional reports within three days to ensure voters are not left in the dark before the election about the sources of this last-minute spending.³⁸ Proposition 211 thus imposes minimal additional reporting requirements for these entities while still enabling voters to obtain key information.

To facilitate the disclosure of original sources of election spending, while empowering donors who may not want their money spent on election campaigns, Proposition 211 establishes a notice and opt-out system. Under this system, a covered person must provide notice to donors that their money may be spent on campaign media in Arizona before spending donors’ money on such activities. A covered person also must notify donors that certain donor information may be reported to the government, and the covered person must give donors twenty-one days to opt out of having their money spent on campaign media in Arizona.³⁹ A covered person can choose whether to provide this notice when first soliciting donations or after a donation has been received, but the donation cannot be used for campaign media spending until the date of receipt of the donor’s written consent (which can be provided at any time) or twenty-one days after the notice has been provided, whichever is earlier.⁴⁰ Donors who opt out will not be reported in a covered person’s disclosure reports or named in an advertisement’s disclaimer.⁴¹

³⁶ *Id.*

³⁷ *See* Section 16-973(I). PACs and political parties are currently required by statute to submit detailed public reports on a quarterly basis, with an additional preelection report due ten days prior to election day. *See* A.R.S. § 16-927(A). Reports must include all receipts and disbursements made during the reporting period, including itemized reports of all contributions from in-state individuals exceeding \$100 in aggregate for the election cycle, all out of state contributions, and all contributions from candidate committees, PACs, political parties, partnerships, corporations, and LLCs, along with an itemized list of all disbursements in excess of \$250. *See* A.R.S. § 16-926(B).

³⁸ *See* Section 16-973(J).

³⁹ *See* Sections 16-972(B), (C), and (D).

⁴⁰ *Id.*

⁴¹ Covered persons may accept funds from donors who have opted out, but such funds cannot be used for campaign media spending.

To ensure that covered persons have the information necessary to complete their disclosure reports, Proposition 211 requires donors who give more than \$5,000 in traceable monies to a covered person to identify to the covered person, upon request, both the sources of original money of more than \$2,500 constituting the contribution and any intermediaries that previously transferred more than \$2,500 of the contribution.⁴² The covered person may rely on this information to make the required reports, unless the covered person has reason to know the information is false or unreliable.⁴³ Donors do not have to provide the original sources of all the funds in their possession, but instead need only inform the covered person of the original sources of the specific funds being contributed. These provisions make Proposition 211 especially narrowly tailored because donors will always be in a better position than the covered person to know the original source of the funds being contributed and because donors need not disclose anything about their own contributors whose money is not being donated to the covered person.

On the rare occasions when donors or their families would be subject to a serious risk of physical harm if their identity were publicly disclosed, Proposition 211 provides a procedure for their protection.⁴⁴ Consistent with existing constitutional protections,⁴⁵ donors who meet this condition may petition the Citizens Clean Election Commission to remain anonymous. The appropriately high “serious risk of physical harm” standard ensures that those who would face actual danger for their support of particular campaigns may be protected, while safeguarding the public’s right to information necessary to protect their First Amendment right to self-government through the disclosure reports.

Finally, Proposition 211 empowers the non-partisan Arizona Citizens Clean Elections Commission and the people of Arizona to effectuate these important transparency requirements. The initiative empowers the Commission to implement

⁴² See Sections 16-972(D) and (E), 16-173(E).

⁴³ See Section 16-173(D).

⁴⁴ See Section 16-173(F).

⁴⁵ See *McConnell*, 540 U.S. at 197–99 (“Buckley rejected the contention that FECA’s disclosure requirements could not constitutionally be applied to minor parties and independent candidates because the Government’s interest in obtaining information from such parties was minimal and the danger of infringing their rights substantial. In *Buckley* . . . we found no evidence that any party had been exposed to economic reprisals or physical threats as a result of the compelled disclosures”) discussing *Buckley*, 424 U.S. at 74. See also, *Citizens United*, 558 U.S. at 370 (Requirements to disclose the identity of a group’s donors could be “unconstitutional as applied to an organization if there were a reasonable probability that the group’s members would face threats, harassment, or reprisals if their names were disclosed. . . *Citizens United*, however, has offered no evidence that its members may face similar threats or reprisals. To the contrary, *Citizens United* has been disclosing its donors for years and has identified no instance of harassment or retaliation”) (internal citations omitted).

and enforce its provisions, including the authority to adopt rules, conduct fact-finding hearings and investigations, initiate enforcement actions, and impose civil penalties or seek relief in court, among other powers.⁴⁶ In particular, the Commission must adopt rules for on-ad disclaimers for political ads run by covered persons, including that such disclaimers must generally identify the top three sources of original monies to the covered person.⁴⁷ The initiative also provides a complaint process, in which any qualified Arizona voter may file a verified complaint with the Commission against a person who fails to comply with the Voters' Right to Know Act or related regulations.⁴⁸ If the Commission fails to take substantive enforcement action within ninety days or dismisses the complaint, the complainant also has the ability to bring a civil action against the Commission in Arizona courts.⁴⁹ This system is similar to FECA's citizen suit provisions, ensuring ongoing public oversight of enforcement measures under the initiative.⁵⁰

In sum, Proposition 211 follows a long, constitutional tradition of ensuring disclosure to the public of critical election information. The initiative responds directly and appropriately to court rulings that have opened the door to new kinds of election spending and new opportunities to evade longstanding disclosure requirements, and it is narrowly tailored to end secret spending in Arizona elections. The initiative fits comfortably within the kinds of pro-transparency measures that the Supreme Court has consistently upheld.

⁴⁶ See Section 16-974.

⁴⁷ See Section 16-974(C).

⁴⁸ See Section 16-977(A).

⁴⁹ See Section 16-977(C).

⁵⁰ See 52 U.S.C. § 30109(a)(8).