No. 26-1503

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

STUDENTS FOR LIFE-ACTION,

Plaintiff-Appellant,

v.

MARTY JACKLEY, *in his official capacity as Attorney General*,
MONAE JOHNSON, *in her official capacity as Secretary of State*,

Defendants-Appellees.

On Appeal from the U.S. District Court for the District of South Dakota
Honorable Roberto A. Lange
Civil Action No. 3:2023-cv-03010

BRIEF OF AMICUS CURIAE CAMPAIGN LEGAL CENTER IN SUPPORT OF DEFENDANTS-APPELLEES AND URGING AFFIRMANCE

Anna Baldwin
Kevin P. Hancock
Tara Malloy
Megan P. McAllen
CAMPAIGN LEGAL CENTER
1101 14th Street NW, Suite 400
Washington, D.C. 20005
Telephone: (202) 736-2200
abaldwin@campaignlegalcenter.org

Counsel for Amicus Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, *amicus curiae* Campaign Legal Center states that it is a nonprofit corporation organized under Section 501(c)(3) of the Internal Revenue Code. Campaign Legal Center has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Amicus curiae Campaign Legal Center ("CLC") is a nonpartisan, nonprofit organization working for a more transparent, inclusive, and accountable democracy at all levels of government. *See About CLC*, CLC, https://perma.cc/EDT7-R6LW (last visited July 21, 2026). CLC has participated in numerous cases addressing state and federal political disclosure requirements—including as *amicus curiae* in *Gaspee Project v. Mederos*, 13 F.4th 79 (1st Cir. 2021), and *No on E v. Chiu*, 85 F.4th 493 (9th Cir. 2023), two important decisions addressing the kind of on-advertisement donor disclaimer at issue here—as well as in every major Supreme Court campaign finance case since *McConnell v. FEC*, 540 U.S. 93 (2003). CLC submits this brief to address the compelled-speech framework governing Appellant Students for Life-Action's ("SFLA") facial challenge, and because the claims Appellant advances run counter to long-settled precedent that, if accepted, could jeopardize a range of important electoral transparency laws.[1]

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[1] Pursuant to Fed. R. App. P. 29(a)(4)(E), *amicus curiae* states that no party's counsel or person except *amicus* and its counsel authored this brief or contributed money to fund its preparation or submission. All parties have consented to the filing of this brief pursuant to Fed. R. App. P. 29(a)(2).

SUMMARY OF ARGUMENT

South Dakota Codified Law section 12-27-16 requires that certain independent communications concerning candidates and ballot questions carry an on-advertisement disclaimer identifying the speaker and its five largest contributors. The district court held that this requirement "is not the sort of compelled speech that violates the First Amendment," and that "[t]o the extent the requirement imposes any burden on speech, the statute is narrowly tailored to the state's significant interest in an informed electorate." Add. 42; App. 84; R. Doc. 44, at 42. That holding was correct, and it should be affirmed.[2]

Electoral disclaimer laws serve core First Amendment values and play a well-established and increasingly crucial role in informed voting. By identifying who pays for election-related messages, they equip voters to evaluate the speech directed at them and hold their government accountable. SFLA's compelled-speech claim errs by seeing only the burden and none of that benefit.

The district court applied the correct standard of scrutiny. As SFLA concedes—and as the district court observed below—exacting scrutiny governs electoral disclosure and disclaimer laws. Add. 25 n.6; App. 67 n.6; R. Doc. 44, at 25 n.6. SFLA preserves a strict-scrutiny theory in a single footnote, but that theory finds

[2] *Amicus* addresses that question alone; it takes no position on Appellee's separate contention that SFLA lacks standing.

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no support in the Supreme Court's cases, in this Court's cases, or in the decision of any court of appeals. And the district court correctly held that section 12-27-16 displays none of the indicia of the compelled speech that has drawn strict scrutiny: it does not require a speaker to adopt an ideologically repugnant message, it does not alter the speaker's substantive speech, and it does not discriminate on the basis of viewpoint. For example, the First Circuit so held as to a materially identical top-five-donor disclaimer, explaining that the "election-related context . . . is alone sufficient to distinguish" the compelled-speech cases on which SFLA relies. *Gaspee Project v. Mederos*, 13 F.4th 79, 95 (1st Cir. 2021).

Applying exacting scrutiny, the district court correctly concluded that section 12-27-16 easily satisfies it. The informational interest served by the statute—"[i]nforming voters of the source of an election-related communication"—is "sufficiently important," Add. 27; App. 69; R. Doc. 44, at 27, and the Supreme Court has held that this interest is alone sufficient to sustain disclaimer requirements. And the disclaimer is narrowly tailored to that interest: it reaches only communications concerning a candidate or a ballot question, categories that are election-related by definition; it conveys information at the moment a voter encounters the message, which no filed report can do; and it demands nothing more than the factual identity of the speaker's largest funders. SFLA's remaining objections—about off-ramps, thresholds, and temporal scope—quarrel with legislative line-drawing that exacting scrutiny commits to the legislature. The judgment should be affirmed.

ARGUMENT

I. Electoral Disclaimer Laws Advance First Amendment Interests and Play a Crucial Role in Informed Voting

A. Political disclosure laws like South Dakota's advance core First Amendment values

In weighing this constitutional challenge, the Court should give proper consideration to the countervailing First Amendment interests of South Dakota voters in transparent and accountable self-government. Courts have long recognized that political disclosure laws "do not prevent anyone from speaking," *Citizens United v. FEC*, 558 U.S. 310, 366 (2010), and "tangibly benefit public participation in political debate," *McConnell v. FEC*, 540 U.S. 93, 137 (2003). What SFLA fails to appreciate is that South Dakota's disclosure regime advances critical interests "rooted in the Constitution and in the First Amendment itself." *McCutcheon v. FEC*, 572 U.S. 185, 236 (2014) (Breyer, J., dissenting).

As the Supreme Court has explained, "[i]n a republic where the people are sovereign, the ability of the citizenry to make informed choices [in elections] is essential." *Buckley v. Valeo*, 424 U.S. 1, 14-15 (1976) (per curiam). Because our system of democracy is premised on "enlightened self-government," *Citizens United*, 558 U.S. at 339, disclosure laws directly serve the democratic values animating the First Amendment—"secur[ing] the widest possible dissemination of information from diverse and antagonistic sources" and facilitating "uninhibited, robust, and wide-open" debate on public issues. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 266, 270 (1964) (citation modified).

SFLA's fundamental mistake is to perceive the disclaimer requirement only in terms of the burdens it imposes on speech. But the Supreme Court has made clear that disclosure also *advances* such freedoms, criticizing the parties challenging a federal disclosure law for "ignor[ing] the competing First Amendment interests of individual citizens seeking to make informed choices in the political marketplace." *McConnell*, 540 U.S. at 197 (citation omitted).

The Supreme Court has repeatedly acknowledged the relationship between political disclosure and the First Amendment's promise of citizen self-government. Beginning with *Buckley*, the Court has upheld an array of election-related disclosure laws because they "provide[] the electorate with information as to where political campaign money comes from and how it is spent . . . in order to aid the voters in evaluating those who seek [public] office." 424 U.S. at 66-67 (citation modified); *see also McConnell*, 540 U.S. at 194-99. The Court has endorsed disclosure in connection with independent spending in particular because it allows voters to learn "who is speaking about a candidate shortly before an election," *Citizens United*, 558 U.S. at 369, and thereby "to define more of the candidates' constituencies," *Buckley*, 424 U.S. at 81. And "[w]ith modern technology, disclosure now offers a particularly effective means of arming the voting public with information," letting voters evaluate political advertising "at the click of a mouse." *McCutcheon*, 572 U.S. at 224.

Indeed, the Supreme Court reaffirmed the constitutional validity of transparency just weeks ago. Explaining why less speech-restrictive tools made a campaign-finance restriction unnecessary, the Court emphasized that transparency "matters both factually and legally." *Nat'l Republican Senatorial Comm. v. FEC*, No. 24-621, 609 U.S. ___, 2026 WL 1868932, at *10 (June 30, 2026) (quoting *McCutcheon*, 572 U.S. at 223). Factually, disclosure can "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." *Id.* And legally, "disclosure often represents a less restrictive alternative to flat bans on certain types or quantities of speech." *Id.*

Other courts similarly have understood that "[p]roviding information to the electorate is vital to the efficient functioning of the marketplace of ideas, and thus to advancing the democratic objectives underlying the First Amendment." *Hum. Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010); *see also Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 498 (7th Cir. 2012) (disclosure requirements "advance the democratic virtues in informed and transparent public discourse without impairing other First Amendment values"); *Nat'l Org. for*

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Marriage v. McKee, 649 F.3d 34, 57 (1st Cir. 2011) ("Citizens rely ever more on a message's source as a proxy for reliability and a barometer of political spin.").

As these decisions confirm, disclosure promotes meaningful participation in the political process and ensures that elected officials remain accountable to the people—bedrock principles in a democracy where "[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." *Citizens United*, 558 U.S. at 339. In the words of Justice Scalia, "requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed." *Doe v. Reed*, 561 U.S. 186, 228 (2010) (Scalia, J., concurring).

B. The explosion of independent spending following *Citizens United* only heightens the need for strong disclosure laws

The informational interest supporting disclosure laws like section 12-27-16 is particularly critical today. Since *Citizens United* opened the door to unlimited corporate and union expenditures, U.S. elections have increasingly been awash in dark-money spending, often by 501(c)(4) groups and similar entities hiding behind opaque names or otherwise organized to conceal the moneyed interests behind

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them.[3] Given this landscape, tailored donor-disclosure provisions like South Dakota's are all the more necessary to vindicate voters' informational interests.

This is not a hypothetical concern. The Supreme Court has described at length the dangers posed by election messages broadcast by groups using "misleading names to conceal their identity" and the sources of their funding:

> "Citizens for Better Medicare," for instance, was not a grassroots organization of citizens, as its name might suggest, but was instead a platform for an association of drug manufacturers. And "Republicans for Clean Air," which ran ads in the 2000 Republican Presidential primary, was actually an organization consisting of just two individuals—brothers who together spent $25 million on ads supporting their favored candidate.

McConnell, 540 U.S. at 128 (citing *McConnell v. FEC*, 251 F. Supp. 2d 176, 232-33 (D.D.C. 2003) (per curiam)). The district court recognized as much below, explaining that because groups can finance election-related speech "while hiding behind dubious and misleading names," disclaimers help citizens "make informed choices in the political marketplace." Add. 25; App. 67; R. Doc. 44, at 25 (quoting *Citizens United*, 558 U.S. at 367). A disclaimer identifying an organization's largest contributors is directly responsive to that danger: it tells voters, at the moment of the message, whose money is behind a name that may reveal nothing.

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[3] *See, e.g.*, Anna Massoglia, *Dark Money Hit a Record High of $1.9 Billion in 2024 Federal Races*, Brennan Ctr. for Justice (May 7, 2025), https://perma.cc/R6YC-KKEE.

The effects of dark-money advertising can be particularly pronounced in state and local elections.[4] Such races draw comparatively little press scrutiny, and the outside groups that spend in them are frequently organized elsewhere, with names that disclose nothing about their backers or their stake in the outcome. Contributor disclaimers are often the only practical means by which voters in those contests learn who is seeking to influence them.

The growing share of campaign advertisements disseminated through digital media has only made it more critical for voters to know who is really vying to influence their electoral choices. *See* Abby K. Wood & Ann M. Ravel, *Fool Me Once: Regulating "Fake News" and Other Online Advertising*, 91 S. Cal. L. Rev. 1223, 1225 (2018) (observing that "[t]racing the money behind [online advertisements] is next to impossible under current regulations and advertising platforms' current policies"). SFLA's own communications here—mass text messages sent on the eve of a primary—illustrate the point.

Transparency is a powerful corrective for these contemporary challenges. In particular, top-donor disclaimers on electioneering advertisements "provide voters with the necessary information at the time they hear (or see) the 'sound bite' and without having to independently explore the myriad pressures to which they are

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4 *See, e.g.*, Chisun Lee et al., *Secret Spending in the States*, Brennan Ctr. for Justice 3 (June 26, 2016), https://perma.cc/QSX4-S8LR.

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regularly subjected." *Yes on Prop B v. City & County of S.F.*, 440 F. Supp. 3d 1049, 1059 (N.D. Cal. 2020) (citation omitted).

Nor is South Dakota an outlier. Jurisdictions across the country have recognized the benefits of an informed electorate and strengthened their disclosure laws accordingly. Many states now require sponsors of political advertisements to identify their largest contributors as part of a requisite on-ad disclaimer, recognizing that "on-message disclosure of the source of money behind the speaker is . . . an effective means for achieving voter understanding and knowledge." *Mass. Fiscal All. v. Sullivan*, No. 18-12119-RWZ, 2018 WL 5816344, at *3 (D. Mass. Nov. 6, 2018) (citing *McKee*, 649 F.3d at 57). *See* Alaska Stat. § 15.13.090; Cal. Gov't Code § 84503; Conn. Gen. Stat. § 9-621(h); D.C. Code § 1-1163.15; Haw. Rev. Stat. § 11-393; Me. Stat. tit. 21-A, § 1013-B; Mass. Gen. Laws ch. 55, § 18G; R.I. Gen. Laws § 17-25.3-3; Vt. Stat. tit. 17, § 2972; Wash. Rev. Code § 42.17A.350. SFLA's theory would place every one of these laws in constitutional jeopardy.

II. As SFLA Concedes, Exacting—not Strict—Scrutiny Applies

A. Exacting scrutiny has long governed electoral disclosure laws, and SFLA's attempt to assert a strict-scrutiny argument fails

The district court applied the correct standard of review, and it did so with SFLA's agreement. As the court noted below, "SFLA recognizes that exacting scrutiny is prevailing law for evaluating disclaimer and disclosure laws," and merely "urges a change in law to apply strict scrutiny." Add. 25 n.6; App. 67 n.6; R. Doc.

44, at 25 n.6. SFLA repeats that concession on appeal. After suggesting that electoral disclaimer laws "should be given the highest form of First Amendment scrutiny—strict scrutiny," SFLA immediately acknowledges that "the Supreme Court and this Court have held that First Amendment challenges to donor disclosure and disclaimer laws involving speech related to elections are evaluated under exacting scrutiny." SFLA Br. 15 (citing *Citizens United*, 558 U.S. at 366-67, and *Iowa Right to Life Comm., Inc. v. Tooker*, 717 F.3d 576, 591 (8th Cir. 2013)). The concession is correct and should end the inquiry: This Court's ruling in *Tooker* is binding, and it applies exacting scrutiny to election-related disclosure requirements.

The district court's application of exacting scrutiny also accords with a long and unbroken line of authority. The Supreme Court has repeatedly recognized that electoral reporting and disclaimer laws are reviewed under "exacting scrutiny," a standard that requires a "substantial relation between the [disclosure requirement]" and a "sufficiently important governmental interest." *Buckley*, 424 U.S. at 64, 95. In *McConnell*, the Court applied exacting scrutiny to sustain the disclaimer requirements of the Bipartisan Campaign Reform Act, including its "paid for by" and non-authorization statements, as justified by "the important governmental interest of shedding the light of publicity on campaign financing." 540 U.S. at 196, 231 (citation modified). And in *Citizens United*—by a vote of eight to one—the Court again applied exacting scrutiny to uphold those disclaimer requirements, rejecting the argument that a speaker could not be "forc[ed]" to "devote" advertising space to a mandated disclaimer. 558 U.S. at 366-68.

Both courts of appeals to consider on-advertisement top-donor disclaimers have confirmed that exacting scrutiny is the correct standard. *See No on E v. Chiu*, 85 F.4th 493, 502-03 (9th Cir. 2023); *Gaspee Project v. Mederos*, 13 F.4th 79, 84-85 (1st Cir. 2021). The Ninth Circuit reaffirmed the point the following year, holding that because on-ad donor-disclaimer requirements are "regulations directed only at disclosure of political speech," they "are subject to exacting scrutiny, which is a 'somewhat less rigorous judicial review' than strict scrutiny." *Smith v. Helzer*, 95 F.4th 1207, 1214 (9th Cir.) (quoting *Nat'l Ass'n for Gun Rts., Inc. v. Mangan*, 933 F.3d 1102, 1112 (9th Cir. 2019)), *cert. denied sub nom. Smith v. Stillie*, 145 S. Ct. 567 (2024) (mem.). The Tenth Circuit is in accord, reaffirming after *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021), that disclosure and disclaimer laws are reviewed "under the 'exacting scrutiny' standard of review," not strict scrutiny. *Wyo. Gun Owners v. Gray*, 83 F.4th 1224, 1243-44 (10th Cir. 2023). And most recently, the Tenth Circuit applied exacting scrutiny to uphold New Mexico's donor-disclosure requirements against a materially similar First Amendment challenge brought by an issue-advocacy nonprofit. *Rio Grande Found. v. Oliver*, 154 F.4th 1213, 1224-30 (10th Cir. 2025), *petition for cert. filed*, No. 25-1248 (U.S. Apr. 29, 2026). No court of appeals has held otherwise.

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SFLA's half-hearted attempt—made in a footnote—to argue that strict scrutiny applies to section 12-27-16 lacks merit. *See* SFLA Br. 16 n.2. The footnote relies on concurring opinions in *Bonta* and a single passage from this Court's decision in *Swanson*. But neither helps. The *Bonta* majority applied exacting scrutiny, declining to adopt the view urged in the concurrences SFLA cites. *See Bonta*, 594 U.S. at 607-08. And while *Swanson* questioned whether exacting scrutiny suits campaign-finance laws burdening "associations that engage in minimal speech," it did not decide the question. *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 875 (8th Cir. 2012) (en banc). That case involved ongoing, PAC-style registration and reporting obligations, not a one-time disclaimer on a communication the speaker has chosen to make, as in this case. In any event, this Court applied exacting scrutiny to election-related disclosure in *Tooker* the following year.

B. South Dakota's disclaimer law does not resemble the type of "compelled speech" that merits strict scrutiny review

Unable to displace exacting scrutiny head-on, SFLA seeks to do so by relabeling the disclaimer as "compelled speech." SFLA Br. 11-12. The district court correctly rejected that effort, holding that "South Dakota's statute requiring on-ad donor disclosures is not the sort of compelled speech that violates the First Amendment." Add. 42; App. 84; R. Doc. 44, at 42. That conclusion was right, and it follows directly from this Court's cases, from the compelled-speech doctrine's

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own limits, and from the only appellate decision to address a materially identical statute.

As the district court explained, "[t]he compelled speech doctrine prohibits the government from making someone disseminate a political or ideological message." Add. 39; App. 81; R. Doc. 44, at 39 (quoting *Ark. Times LP v. Waldrip*, 37 F.4th 1386, 1394 (8th Cir. 2022) (en banc)). Strict scrutiny has accordingly been reserved for laws compelling speech that contravenes a speaker's views or ideology, alters the speaker's substantive message, or discriminates on the basis of viewpoint. None of those factors is present here.

First, section 12-27-16 does not "force[]" the "dissemination of a view contrary to one's own." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 576 (1995). A funding disclaimer conveys only factual information about who paid for a communication; it is purely informative. If SFLA is ideologically opposed to anything here, it is not the content of the disclaimer but the requirement that it include a disclaimer at all. If merely voicing an ideological objection to a campaign-finance law triggered strict scrutiny, the longstanding doctrinal framework for the review of such laws would be thrown into chaos. As the First Circuit put it, an on-ad disclaimer "imposes no obligation to annunciate something inimical either to the message of the communication itself or to the fundamental beliefs of the speaker." *Gaspee*, 13 F.4th at 95.

Second, the disclaimer does not "alter" the speaker's substantive message—the factor that has elicited compelled-speech concern elsewhere. In *National Institute of Family and Life Advocates v. Becerra*, 585 U.S. 755 (2018) ("*NIFLA*"), the required notice forced pro-life pregnancy centers to advertise the availability of state-funded abortion—"the very practice that [they] are devoted to opposing"—and thereby "plainly alter[ed] the content" of their message. *Id.* at 766, 771 (citation modified). Likewise, in *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988), compelling professional fundraisers to disclose the percentage of contributions actually turned over to charity "necessarily alter[ed] the content of the[ir] speech" by impeding the very solicitation they were making. *Id.* at 795, 799. The district court here canvassed each of these decisions, Add. 39; App. 81; R. Doc. 44, at 39, and correctly concluded that a campaign-finance disclaimer does not alter or impede the speaker's substantive message or purpose. On the contrary, an electoral disclaimer may *further* the speaker's message, because both the advertisement and the disclaimer serve to inform voters. And *Riley* itself recognized that a disclaimer merely stating a speaker's status would not alter the speaker's message. 487 U.S. at 799 n.11. Here, the speaker "can for the most part control the content of any particular communication and must disclose only some of the funding sources undergirding that communication." *Gaspee*, 13 F.4th at 95.

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SFLA's own version of the alteration argument confirms the point. Its objection is that the disclaimer "commandeers a portion of the speaker's own communication"—roughly fifty words of space and time that would otherwise carry its message. SFLA Br. 12-13. But that is a complaint about the disclaimer's size, not its content. The district court rightly held that "[t]he fact that the disclaimer consumes space or time in a communication that the speaker would have used in a different manner" does not render it unconstitutional compelled speech. Add. 41; App. 83; R. Doc. 44, at 41. The Ninth Circuit agrees: "[a]ny argument that the . . . requirement violates the First Amendment because of the length and content of the disclaimer is appropriately addressed as part of the exacting scrutiny analysis." *No on E*, 85 F.4th at 503-04. The concern that a disclaimer consumes space a speaker would prefer to use otherwise "animate[s] the entirety of the exacting scrutiny standard." *Id.* at 503. It is weighed there, not by relabeling the requirement as compelled speech and demanding a different test.

Third, section 12-27-16 does not discriminate on the basis of viewpoint. Unlike a law that targets speakers because of the views they advocate, the statute applies to all covered independent communication expenditures concerning candidates and ballot questions, regardless of the views expressed. *Cf. NIFLA*, 585 U.S. at 779 (Kennedy, J., concurring) (expressing concern that viewpoint discrimination appeared "inherent in the design and structure" of a law requiring pro-life pregnancy centers to promote the State's own preferred message).

The district court's conclusion is confirmed by the only court of appeals to have confronted an analogous facial challenge to a materially identical statute. In *Gaspee*, two nonprofit organizations engaged in issue advocacy brought a facial First Amendment challenge to Rhode Island's requirement that covered organizations identify themselves and their five largest donors on certain election-related communications. 13 F.4th at 82-83. They argued—as SFLA does here—that compelling an organization "to identify itself and its five largest donors in a disclaimer" was unconstitutionally compelled speech. *Id.* at 95. Relying on *NIFLA*, the *Gaspee* plaintiffs lost. The First Circuit held that the requirement "does not unconstitutionally require compelled speech," explaining that "[d]isclaimers—in the unique election-related context—serve the salutary purpose of helping the public to understand where money comes from," and that "[t]he election-related context . . . is alone sufficient to distinguish" the compelled-speech cases. *Id.* at 95 (internal quotation marks and citation omitted). The district court quoted that reasoning and adopted it. Add. 40; App. 82; R. Doc. 44, at 40. It was right to do so. *Gaspee* arose in the same posture as this case—a facial challenge resolved on the pleadings; it concerned the same kind of requirement—an on-advertisement disclaimer naming

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the speaker's five largest donors; and it was brought by organizations engaged in issue advocacy, like SFLA.

Nor is that reasoning confined to as-applied challenges. Although the Ninth Circuit's decision in *No on E* presented only an as-applied claim, that court has since held that its "holdings and reasoning readily apply and control in the context of [a] facial challenge" to a materially identical on-ad donor disclaimer. *Helzer*, 95 F.4th at 1220.

Finally, SFLA never explains why the addition of contributor information to a disclaimer changes the constitutional analysis. The on-advertisement disclaimer required by section 12-27-16 is functionally indistinguishable from the federal disclaimers the Supreme Court has repeatedly upheld under exacting scrutiny. *See McConnell*, 540 U.S. at 196-97; *Citizens United*, 558 U.S. at 366-68. That South Dakota's disclaimer identifies an organization's five largest donors, rather than only its own name, is a difference in the quantum of factual information, not in kind. Nor does SFLA acknowledge that accepting its argument would effectively create two wholly distinct constitutional regimes for two nearly identical electoral disclaimer systems—exacting scrutiny for the various federal disclaimers, and strict scrutiny for contributor disclaimers like South Dakota's—creating conflict in First Amendment jurisprudence where now there is unanimity.

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III. South Dakota's Disclaimer Law Enables Voters to Cast Informed Votes and Easily Satisfies Exacting Scrutiny

A. The informational interests supporting the law are well-established and significant

Exacting scrutiny's "first imperative" is a "sufficiently important" governmental interest. *Gaspee*, 13 F.4th at 88; *see Buckley*, 424 U.S. at 64. The district court correctly held that South Dakota satisfies this requirement. "Identifying donors of an organization who make independent communication expenditures informs voters of the source of the communication and helps them to gauge any bias, motives, and validity within the messages," the court explained, and "[i]nforming voters of the source of an election-related communication is a sufficiently important interest." Add. 27; App. 69; R. Doc. 44, at 27. South Dakota's statute therefore "satisf[ies] the first imperative of exacting scrutiny." *Id.* (quoting *Gaspee*, 13 F.4th at 88).

That holding was not a close call. For the reasons set out in Part I, the Supreme Court has held that the informational interest "alone is sufficient to justify application of . . . disclaimer and disclosure requirements." *Citizens United*, 558 U.S. at 369. Disclosure "permits citizens and shareholders to react to the speech of corporate entities in a proper way," and "[t]his transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." *Id.* at 371. Every court of appeals to consider an on-ad top-donor disclaimer has agreed that this interest is sufficiently important. *See Gaspee*, 13 F.4th at 88; *No on E*, 85 F.4th at 504-05; *Helzer*, 95 F.4th at 1215.

SFLA's response is that the State's informational interest "is not boundless." SFLA Br. 22. That may be true in the abstract, but it does not identify any error below. The interest South Dakota asserts is the same interest the Supreme Court has sustained repeatedly, in the same electoral setting, as to the same kind of requirement. Nor do the decisions SFLA marshals to cabin that interest bear on it. *See* SFLA Br. 17, 21-23, 26. *McIntyre v. Ohio Elections Commission* concerned a private citizen's self-funded handbills, *see* 514 U.S. 334 (1995); whatever *McIntyre* said of those, *McConnell* and *Citizens United* have since sustained electoral disclaimers on the informational interest. SFLA also cites *Bonta*, but that case did not even concern elections: it involved California's demand that every charity file its donor schedule with the Attorney General each year—a requirement the State defended as an aid to policing charitable fraud, but which the record showed did little to advance any investigation. 594 U.S. at 616. California's actual interest was thus "more in ease of administration," which failed exacting scrutiny. *Id.* at 614; *see also Helzer*, 95 F.4th at 1217 n.7 (upholding a disclaimer requirement while distinguishing *Bonta* because it "involved neither public disclosure of information nor electioneering").

Thus, neither the Supreme Court nor any court of appeals has retreated from the proposition that voters have a substantial interest in knowing who is paying for the election-related messages directed at them. To the contrary, the Court reaffirmed the point again just weeks ago. *See Nat'l Republican Senatorial Comm.*, 2026 WL 1868932, at *10.

B. The disclaimer is properly tailored to that interest

Exacting scrutiny's second requirement is a "substantial relation" between the disclaimer and the informational interest. *Buckley*, 424 U.S. at 64. As the district court recognized, while *Bonta* "does not require that disclosure regimes be the least restrictive means of achieving their ends, it does require that they be narrowly tailored to the government's asserted interest." Add. 26; App. 68; R. Doc. 44, at 26 (quoting *Bonta*, 594 U.S. at 608). That means "a fit that is not necessarily perfect, but reasonable." *Id.* (quoting *McCutcheon*, 572 U.S. at 218). The Tenth Circuit reaffirmed that principle just last year in rejecting a materially identical tailoring attack: "exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends." *Rio Grande Found.*, 154 F.4th at 1228 (quoting *Bonta*, 594 U.S. at 608). Section 12-27-16 comfortably satisfies that standard, for the reasons the district court gave.

The statute reaches only election-related speech. The disclaimer applies only to an "independent communication expenditure," which South Dakota law defines as a communication "concerning a candidate or a ballot question." SDCL § 12-27-1(11). As the district court explained, "'candidate' or 'ballot question' is, by definition, election-related," so "any issue advocacy about a candidate or ballot question that triggers the disclosure and disclaimer requirements is inherently linked to an election, narrowly tailoring the statute toward achieving the state's sufficiently important interest in creating an informed electorate." Add. 38; App. 80; R. Doc. 44, at 38. The court reinforced that limit by construing the statute's reference to "public office holders" not to extend to non-candidate office holders. Add. 42; App. 84; R. Doc. 44, at 42. The statute thus does not sweep in the year-round civic discourse SFLA imagines. *See, e.g.*, SFLA Br. 18-20.

A filed report is not an adequate substitute. SFLA's principal tailoring argument is that the State could require entities to report donor information to the Secretary of State for later publication online. SFLA Br. 20-21. The district court correctly rejected it: "[i]mmediately accessible voter information is different from information a voter could access through searching state publications and files." Add. 40; App. 82; R. Doc. 44, at 40. That conclusion rests on unanimous appellate authority. *See No on E*, 85 F.4th at 509 ("[B]ecause of its instant accessibility, an on-advertisement disclaimer is a more effective method" of informing voters.); *Gaspee*, 13 F.4th at 91 (An on-ad disclaimer "provides an instantaneous heuristic by which to evaluate generic or uninformative speaker names" and is "not entirely

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redundant" of public filings.); *Majors v. Abell*, 361 F.3d 349, 353 (7th Cir. 2004) ("[T]he very thing that makes reporting less inhibiting than notice in the ad itself—fewer people are likely to see the report than the notice—makes reporting a less effective method of conveying information that by hypothesis the voting public values."). The Ninth Circuit rejected the identical argument again in *Helzer*, declining the contention that a disclaimer "add[s] marginal additional value" because the information was "already available on [the Commission's] website." 95 F.4th at 1219. The district court was therefore right that "requiring the on-ad disclaimers is narrowly tailored to South Dakota's informational interest because it informs voters of the source of a communication in a manner other alternatives could not similarly do." Add. 41; App. 83; R. Doc. 44, at 41.

The space the disclaimer occupies does not defeat tailoring. SFLA renews its reliance on cases invalidating commercial-product warnings. SFLA Br. 21. The district court correctly distinguished them: *American Beverage Association v. City & County of San Francisco*, 916 F.3d 749 (9th Cir. 2019) (en banc), and *R.J. Reynolds Tobacco Co. v. FDA*, 696 F.3d 1205 (D.C. Cir. 2012), "involve commercial products and are not analogous to the present case; they do not address the specific issue of on-ad disclaimers for election-related communications." Add. 41; App. 83; R. Doc. 44, at 41. "In the election context, donor disclaimers are not unconstitutional as compelled speech simply because they use ad space the speaker would have preferred using differently." *Id.* Indeed, the Supreme Court has upheld a disclaimer occupying *40 percent* of an advertisement. *See Citizens United*, 558 U.S. at 320, 366, 371. And the Ninth Circuit has twice rejected the argument that on-ad donor disclaimers take up too much space and time. *No on E*, 85 F.4th at 507-08; *Helzer*, 95 F.4th at 1220.

Listing top donors informs rather than misleads. SFLA suggests that naming an organization's five largest donors may give voters a "distorted view" of its funding or associate donors with messages they do not endorse. SFLA Br. 25. The district court correctly addressed and rejected that theory below, describing it as "a novel argument but not one that renders the statute unconstitutional": "[l]isting an organization's top five donors gives voters and the general public a view of the top five funders of the organization, which is useful information in understanding who funds the messenger, even if those donors may not directly approve of the particular message." Add. 40 n.10; App. 82 n.10; R. Doc. 44, at 40 n.10.

The absence of an earmarking mechanism is not a constitutional defect. SFLA contends that section 12-27-16 fails tailoring because it provides no "off-ramp" permitting donors to segregate their funds or opt out. SFLA Br. 23-25. That objection was litigated below, but as an as-applied claim. The district court correctly held that "SDCL § 12-27-16 is narrowly tailored despite the lack of an off-ramp provision or minimum donor donation amount." Add. 82; App. 128; R. Doc. 82, at

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38. SFLA now presses that same objection as a reason to hold the statute facially invalid. SFLA Br. 23-25.

The lower court's holding was correct. The Ninth Circuit rejected the identical argument in *No on E*, explaining that although courts have sustained disclosure laws limited to earmarked contributions, none has "suggested that, or had occasion to consider whether, a law fails narrow tailoring unless it is limited to the disclosure of earmarked contributions." 85 F.4th at 510.

The district court's analysis refutes SFLA's assertion that "South Dakota's statute stands alone." SFLA Br. 31. Alaska's on-ad disclaimer, sustained in *Smith*, "does not have a minimum donor threshold or off-ramp provision," and it compels disclosure of donors' locations as well as their names, plus a further statement about out-of-state funding. Add. 81; App. 127; R. Doc. 82, at 37; *see* Alaska Stat. § 15.13.090. San Francisco's ordinance, sustained in *No on E*, reaches secondary contributors and requires listing the amounts they gave in 14-point type. Add. 81; App. 127; R. Doc. 82, at 37. As the district court found, "both of those laws' requirements are arguably broader than South Dakota's," which demands only the names of five contributors and a notation that the communication is independently funded. *Id.*

Nor does any authority support SFLA's claim. SFLA asserts that "[c]ourts across the country have recognized that the absence of donor off-ramps is fatal to

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narrow tailoring." SFLA Br. 23. They have not. Neither the Supreme Court nor any court of appeals has held that the informational interest applies only when contributors earmark their donations. The Fourth Circuit went the other way, reversing a district court for imposing an earmarking limitation to "cure" a disclosure requirement. *Ctr. for Individual Freedom, Inc. v. Tennant*, 706 F.3d 270, 292 (4th Cir. 2013). And *Wyoming Gun Owners*—the decision on which SFLA principally relies—disclaims the rule SFLA draws from it: the Tenth Circuit "d[id] not hold legislatures must include an earmarking provision to survive narrow tailoring." 83 F.4th at 1249 n.8. The district court correctly distinguished that decision, which addressed "a more extensive and burdensome requirement" that "contained constitutionally vague language as opposed to the more limited, on-ad disclaimer requirement at issue in this case." Add. 81; App. 127; R. Doc. 82, at 37. SFLA ultimately concedes as much, acknowledging that "an off-ramp may not be indispensable in every disclosure regime." SFLA Br. 24. That concession is fatal to the facial claim it now presses. A statute is not facially invalid for omitting a feature the First Amendment does not require.

The $100 threshold is a legislative line-drawing judgment. The district court correctly held that South Dakota's threshold does not defeat tailoring, noting that "other courts have also upheld similarly low thresholds." Add. 32; App. 74; R. Doc. 44, at 32. This Court has upheld disclosure requirements triggered by spending of $50 for legislative races and $100 for statewide races and ballot questions. *Minn. State Ethical Pracs. Bd. v. Nat'l Rifle Ass'n*, 761 F.2d 509, 512 (8th Cir. 1985) (per curiam); *see also McKee*, 649 F.3d at 59-61 (upholding $100 threshold). More fundamentally, exacting scrutiny does not license courts to second-guess where a legislature draws such lines. As the First Circuit explained in the very context presented here, the "line-drawing exercise—which asks, at bottom, whether to mandate a list of five top donors or some greater or lesser number—is a task best left to the legislature." *Gaspee*, 13 F.4th at 92. The district court quoted that language and applied it. Add. 32-33; App. 74-75; R. Doc. 44, at 32-33.

SFLA's contrary authorities do not help it. SFLA leans heavily on *Wyoming Gun Owners*, but that decision was *as applied*, and it turned on the interaction of an "impermissibly vague" reporting trigger with an accounting problem unique to the plaintiff. 83 F.4th at 1237. Wyoming's requirement to report contributions that "relate to" an electioneering communication was vague and left a small organization with "no way to comply . . . without overdisclosing." 83 F.4th at 1247-50. That is a fit-and-notice problem with a *reporting* regime—not a holding about on-advertisement top-donor disclaimers. The Tenth Circuit expressly declined to read its decision as unsettling *Gaspee*, explaining that it did "not understand *Gaspee Project* to be in tension with our analysis." *Id.* at 1249. And the same court has since applied exacting scrutiny to *uphold* New Mexico's donor-disclosure requirements against a challenge brought by an issue-advocacy nonprofit. *See Rio Grande Found.*, 154 F.4th at 1224-30.

SFLA's reliance on *First Choice Women's Resource Centers, Inc. v. Davenport*, 608 U.S. ___, 146 S. Ct. 1114 (2026), fares no better. *First Choice* is an Article III standing decision: the Court held that a nonprofit served with a state attorney general's investigative subpoena demanding its donor list need not "await a state court order enforcing the subpoena" before suing in federal court, and it remanded. The Court did not reach exacting scrutiny, and it did not address narrow tailoring or fit. Nor is a targeted investigative subpoena issued to a particular organization by an official who had singled out its category of advocacy for criticism remotely comparable to a generally applicable disclaimer that applies to every covered independent communication expenditure regardless of the speaker's identity or views.

CONCLUSION

For the foregoing reasons the district court's dismissal of SFLA's facial compelled-speech claim should be affirmed.

Dated: July 22, 2026

Respectfully submitted,

/s/ *Anna Baldwin*
Anna Baldwin
Kevin P. Hancock
Tara Malloy
Megan P. McAllen
CAMPAIGN LEGAL CENTER
1101 14th Street NW, Suite 400
Washington, DC 20005
Telephone: (202) 736-2200
Facsimile: (202) 736-2222
abaldwin@campaignlegal.org

Counsel for Amicus Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32 because this brief contains 6,446 words, excluding the parts of the brief exempted by Rule 32(f).

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Dated: July 22, 2026

/s/ *Anna Baldwin*
Anna Baldwin

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2026, I electronically filed a copy of the foregoing Brief *Amicus Curiae* using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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/s/ *Anna Baldwin*
Anna Baldwin

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