No. 12-56844

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LAUREL DICKRANIAN,

Plaintiff-Appellant,

v.

CITY OF LOS ANGELES
and LOS ANGELES CITY ETHICS COMMISSION

Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of California,
Case No. 12-05145

BRIEF *AMICUS CURIAE* FOR THE CAMPAIGN LEGAL CENTER SUPPORTING APPELLEES AND URGING AFFIRMANCE

J. Gerald Hebert
Paul S. Ryan*
Tara Malloy
Megan McAllen
THE CAMPAIGN LEGAL CENTER
215 E Street, N.E.
Washington, DC 20002
Telephone (202) 736-2200

Counsel for the *Amicus Curiae*
**Counsel of Record*

CORPORATE DISCLOSURE STATEMENT

The Campaign Legal Center (CLC) is a non-profit organization organized under Section 501(c)(3) of the Internal Revenue Code. The Campaign Legal Center neither has a parent corporation nor issues stock. There are no publicly held corporations that own ten percent or more of the stock of The Campaign Legal Center.

/s/ Paul S. Ryan

Paul S. Ryan

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases:

Statutes and Ordinances:

Other Materials:

STATEMENT OF INTEREST[1]

Amicus curiae Campaign Legal Center (CLC) is a nonprofit, nonpartisan organization that works to strengthen the laws governing campaign finance and political disclosure. The CLC has participated in numerous past cases addressing disclosure, including *Doe v. Reed*, 697 F.3d 1235 (9th Cir. 2012), *Cal. Pro-Life Council v. Randolph*, 507 F.3d 1172 (9th Cir. 2007), *Citizens United v. Fed. Election Comm'n (FEC)*, 558 U.S. 310 (2010), *FEC v. Wis. Right to Life*, 551 U.S. 449 (2007), *McConnell v. FEC*, 540 U.S. 93 (2003) and, most recently in the Ninth Circuit, *ProtectMarriage.com v. Bowen*, No. 11-17884 (9th Cir. filed Dec. 2, 2011) (*amicus* brief filed Apr. 23, 2012). *Amicus* thus has a longstanding, demonstrated interest in the laws at issue here.

SUMMARY OF ARGUMENT

Under City of Los Angeles ("City") law, a person that makes an "independent expenditure communication"[2] in excess of specified thresholds[3] must

---

[1] Appellant and Appellees, through counsel, have consented to the filing of this brief *amicus curiae*. No party's counsel or other person authored this brief, in whole or in part, or contributed money to fund its preparation and submission.

[2] City law defines "independent expenditure communication" to mean "a communication that expressly advocates the election or defeat of a clearly identified City candidate or ballot measure or, taken as a whole and in context, unambiguously urges a particular result in a City election and is not authorized, distributed, paid for, or behested by the affected candidate or committee." LAMC § 49.7.2(J).

[3] City law thresholds for the requirement that an independent spender file a campaign finance report and copy of the communication are as follows: (1) any

file a campaign finance report and a copy of the communication with the Los Angeles City Ethics Commission ("Ethics Commission"). LAMC § 49.7.31.[4] City law provides that, if the independent expenditure communication "supports or opposes a City candidate, the Ethics Commission staff will notify all candidates in the affected race" and will include a copy of the communication with the notice. LAMC § 49.7.31(D). City law further provides that the "Ethics Commission shall post on its website, without alteration, all copies of independent expenditure communications filed with the Ethics Commission." LAMC § 49.7.31(E).

Appellant Dickranian spent nearly eight thousand dollars mailing more than seventeen thousand copies of a letter "advocating the election of Michael Amerian for Los Angeles City Attorney." ER 80 (number of copies and cost) and 99 (description of the letter). Though Appellant's candidate advocacy clearly constituted an independent expenditure subject to disclosure, Appellant did not notify the Ethics Commission of her independent expenditure, did not send the Ethics Commission a copy of the communication, and did not include the required

---

independent expenditure of $1,000 or more; (2) an independent expenditure of $100 or more for communication distributed to 200 or more persons, if the distributor is a political committee; (3) an independent expenditure of $100 or more for communication distributed to 1,000 or more persons, if the distributor is not a political committee. LAMC § 49.7.31(A).

[4] Though the "independent expenditure" disclosure ordinance has been amended since the District Court's entry of judgment in this case, no party disputes the continued applicability of the City's disclosure requirements to the activity at issue in this case.

"paid for by" disclaimer and other identifying information on the communication. ER 80-81.

Appellant alleges the City's independent expenditure disclosure laws are subject to strict scrutiny and facially unconstitutional under the First Amendment because they compel speech, chill speech, are overbroad and fail to advance a sufficiently important governmental interest. As detailed below, the Supreme Court and the Ninth Circuit have repeatedly rejected such arguments and upheld independent expenditure and other political disclosure requirements. Appellant's claims are meritless.

Because disclosure laws promote core First Amendment goals, any burdens they place on individual rights must be weighed against the competing democratic values and governmental interests that they protect. Disclosure laws guarantee a more transparent and responsive government, as well as "robust" and "wide-open" debate on public issues, by securing "the widest possible dissemination of information from diverse and antagonistic sources." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 266 (1964) (citation omitted). Transparency is an essential aspect of any democracy; after all, 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*, 130 S. Ct. 2811, 2837 (2010) (Scalia, J., concurring in the judgment). In the absence of meaningful campaign disclosure, voters will be

left in the dark, unable to "make informed decisions and give proper weight to different speakers and messages." *Citizens United*, 558 U.S. at 371 (emphasis added).

More than thirty-five years ago, the Supreme Court made clear in *Buckley v. Valeo*, 424 U.S. 1 (1976), that "there are governmental interests sufficiently important to outweigh the possibility of infringement [of First Amendment rights], particularly when the 'free functioning of our national institutions' is involved." *Id.* at 66 (citation omitted). One such interest is "provid[ing] 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 federal office." *Id.* at 66-67 (emphasis added) (footnote omitted) (internal quotation marks omitted).

The City's independent expenditure disclosure requirements generally, and the specific requirement that independent spenders file copies of their communications with the Ethics Commission, directly advance the governmental interests of providing the electorate with information regarding how political campaign money is spent and enabling voters to properly weigh different messages. *See Buckley*, 424 U.S. at 66 and *Citizens United*, 558 U.S. at 371. Indeed, it is difficult to imagine a more effective way of enabling voters to properly weigh different electoral messages and informing voters how political campaign money is being spent than providing them with access to copies of

independent expenditure communications themselves.

Neither Justice Scalia, nor *amicus* Campaign Legal Center, "look forward to a society which, thanks to [this Court], campaigns anonymously[,] . . . hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave." *Doe*, 130 S. Ct. at 2837 (Scalia, J., concurring in the judgment). To avoid that outcome, the District Court's decision should be affirmed.

ARGUMENT

I. Disclosure Laws Are a "Cornerstone" of Effective Campaign Finance Regulation Subject to Exacting Scrutiny, Not Strict Scrutiny.

The Supreme Court has repeatedly acknowledged that political disclosure laws both reflect and advance important First Amendment precepts. Indeed, disclosure has been called a "cornerstone" of campaign finance regulation. *See Buckley v. Am. Const. Law Found.*, 525 U.S. 182, 222-23 (1999) (O'Connor, J., concurring in the judgment in part and dissenting in part). As Justice Brandeis famously recognized nearly a century ago, "Sunlight is . . . the best . . . disinfectant," and "electric light the most efficient policeman." Louis Brandeis, *Other People's Money* 62 (Nat'l Home Library Found. ed. 1933), *quoted in Buckley*, 424 U.S. at 67. Disclosure also secures broader access to the information that citizens need to make political choices, thereby enhancing the overall quality

of public discourse.

When evaluating the constitutionality of campaign regulations, the Supreme Court applies varying standards of scrutiny depending on the nature of the regulation and the weight of the First Amendment burdens imposed. Although disclosure laws can implicate the First Amendment rights to speak and associate freely, they also advance the public's interest in maintaining an informed electorate and open government. Because disclosure is considered a "less restrictive alternative to more comprehensive regulations of speech" that advance these interests, the Court has traditionally reviewed disclosure laws under a more relaxed standard than other electoral regulations. *Citizens United*, 558 U.S. at 369; *see also Buckley*, 424 U.S. at 68 ("[D]isclosure requirements—certainly in most applications—appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist.").[5] As the Court noted in *Citizens United*, disclosure requirements "do not prevent anyone from

[5] By comparison, campaign contribution and expenditure limitations are subject to more searching review because they are considered more "restrictive" of First Amendment rights. As the "most burdensome" campaign finance regulations, expenditure restrictions are subject to strict scrutiny and reviewed for whether they are "narrowly tailored" to "further a compelling interest." *FEC v. Wis. Right to Life*, 551 U.S. 449, 476 (2007); *see also Buckley*, 424 U.S. at 44-45. Contribution limits are deemed less burdensome of speech, and are constitutionally "valid" if they "satisf[y] the lesser demand of being closely drawn to match a sufficiently important interest." *McConnell*, 540 U.S. at 136, *quoting FEC v. Beaumont*, 539 U.S. 146, 162 (2003) (internal quotations omitted). Finally, disclosure requirements are the "least restrictive" campaign finance regulations and are subject only to "exacting scrutiny." *Buckley*, 424 U.S at 68.

speaking." 558 U.S. at 366 (internal citations omitted); *see also Family PAC v. McKenna*, 685 F.3d 800, 806 (9th Cir. 2012) ("Disclosure requirements . . . impose no ceiling on campaign-related activities, and do not prevent anyone from speaking.") (quoting *Citizens United*, 558 U.S. at 366).

The Court in *Buckley* upheld disclosure provisions contained in the Federal Election Campaign Act Amendments of 1974 (FECA), 88 Stat. 1263 (1974), even as it invalidated the Act's expenditure limitations, because disclosure represented the "least restrictive means of curbing the evils of campaign ignorance." 424 U.S. at 68. Ultimately, the fact that disclosure laws may impact individual rights does not end the constitutional inquiry, because "important First Amendment-related interests lie on both sides of the constitutional equation."[6] Although disclosure requirements may burden constitutionally protected rights, such requirements have reliably been upheld as constitutionally valid because they serve the First Amendment's overall purpose of promoting open and responsive democratic governance.

Disclosure obligations are subject only to "exacting scrutiny"—they are valid so long as there is "a 'substantial relation' between the disclosure

---

[6] *See* Justice Stephen Breyer, *Madison Lecture: Our Democratic Constitution*, 77 N.Y.U. L. Rev. 245, 253 (2002). In general, "campaign finance laws, despite the limits they impose, help to further the kind of open public political discussion that the First Amendment also seeks to encourage, not simply as an end, but also as a means to achieve a workable democracy." *Id.*

requirement and a 'sufficiently important' governmental interest." *Citizens United*, 558 U.S. at 366-67 (quoting *Buckley*, 424 U.S. at 64, 66). To withstand exacting scrutiny, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Doe*, 130 S. Ct. at 2818 (quoting *Davis v. FEC*, 554 U.S. 724, 744 (2008) (internal quotation marks omitted).

Since *Buckley*, the Supreme Court has consistently applied "exacting scrutiny" and has consistently upheld disclosure laws against constitutional challenge. Indeed, the Court has upheld challenged disclosure laws three times by 8 to 1 votes in the past decade alone.

In *McConnell v. FEC*, 540 U.S. 93 (2003), the Court by an 8 to 1 vote upheld the "electioneering communication" reporting and disclosure requirements of the Bipartisan Campaign Reform Act of 2002 (BCRA), 116 Stat. 81 (2002). 540 U.S. at 194-99 (opinion of the Court); *id*. at 321-22 (Kennedy, J., concurring in the judgment in part and dissenting in part); *see also* 2 U.S.C. §§ 434(f)(2)(A), (B), and (D). All members of the Court except for Justice Thomas found the BCRA disclosure requirements justified solely on the basis that they vindicated rather than violated the truly relevant First Amendment interest: that of "individual citizens seeking to make informed choices in the political marketplace." *McConnell*, 540 U.S. at 197 (citation omitted).

In *Citizens United*, the Court again by an 8 to 1 vote upheld federal law disclosure requirements and reiterated the value of transparency in "[enabling] the electorate to make informed decisions and give proper weight to different speakers and messages." 558 U.S. at 371. Furthermore, the Court in *Citizens United* upheld and stressed the importance of "paid for by" disclaimers of the sort Appellant Dickranian failed to comply with. Such disclaimers "provid[e] the electorate with information and insure that the voters are fully informed about the person or group who is speaking[.]" *Id.* at 368 (internal quotation marks omitted) (internal citations omitted) (citing *McConnell*, 540 U.S. at 196 and *Buckley*, 424 U.S. at 76). "At the very least," the *Citizens United* Court explained, "the disclaimers avoid confusion by making clear that the ads are not funded by a candidate or political party." 558 U.S. at 368.

The Supreme Court continued its strong support of disclosure laws most recently in *Doe*, where the Court upheld by an 8 to 1 vote a Washington State law providing disclosure of ballot measure petition signatories, reasoning that "[p]ublic disclosure . . . promotes transparency and accountability in the electoral process to an extent other measures cannot." 130 S. Ct. at 2820. Justice Scalia explained in concurrence:

> There are laws against threats and intimidation; and harsh criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self-governance. Requiring people to stand up in public for their political acts fosters civic

> courage, without which democracy is doomed. For my part, I do not look forward to a society which, thanks to the Supreme Court, campaigns anonymously (*McIntyre*) and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism. This does not resemble the Home of the Brave.

Id. at 2837 (Scalia, J., concurring in the judgment).

II. The City's Independent Expenditure Disclosure Laws Are Substantially Related to Sufficiently Important Governmental Interests and Are Thus Constitutional.

In *Buckley*, the Supreme Court identified three broad categories of governmental interests supporting campaign finance disclosure requirements. 424 U.S. at 66-68. "First," the Court explained, "disclosure provides the electorate with information as to where political campaign money comes from and how it is spent," which "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." *Id*. at 66-67 (emphasis added). "Second," the *Buckley* Court explained, "disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." *Id*. "Third, and not least significant, recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations." *Id.* at 67-68.

The City's independent expenditure disclosure laws are substantially related to all three of these important governmental interests and are thus constitutional.

A. The City's Independent Expenditure Disclosure Laws Provide the Electorate With Information as to Where Political Campaign Money Comes From and How It Is Spent.

Fundamentally, the First Amendment embraces the principle that "debate on public issues should be uninhibited, robust, and wide-open." *N.Y. Times*, 376 U.S. at 270. This Court has repeatedly recognized the same in the context of campaign disclosure laws. In *Family PAC*, for example, this Court noted that disclosure requirements "impose only modest burdens on First Amendment rights" but serve "a governmental interest in an informed electorate that is of the utmost importance." 685 F.3d at 809. *See also Human Life of Wash. v. Brumsickle*, 624 F.3d. 990, 1005-06 (9th Cir. 2010), *cert. denied*, 131 S. Ct. 1477 (2011) ("Providing 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."). Having an informed and active citizenry is plainly essential to the election process. *See, e.g.*, *Doe*, 130 S. Ct. at 2828 (Sotomayor, J., concurring) (finding that disclosure advances the vital interest in "sustaining the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government") (quoting *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 788-89 (1978)); *Citizens United*, 558 U.S. at 371 ("[T]ransparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.").

In *Buckley*, the Supreme Court highlighted the importance of voters knowing not only where political money comes from, but also "how it is spent." 424 U.S. at 66. The City's independent expenditure communication disclosure requirements generally, and the specific requirement that an independent spender file with the Ethics Commission a copy of the spender's communication, directly advance the City's interests in enabling voters to properly weigh electoral messages and informing voters where political money comes from and how the money was spent. Indeed, it is difficult to imagine a better way for a voter to know how a person such as Appellant spent money to influence a City election than to review a copy of the independent expenditure communication itself.

Candidates, too, have an important informational interest that is served by the City's independent expenditure disclosure requirements. As the First Circuit recognized in *National Organization for Marriage v. Daluz*, 654 F.3d 115 (1st Cir. 2011), notification to a candidate of an independent expenditure "serves the informational interest by permitting a candidate to distance herself from individuals or organizations whose views she does not share" and further serves voters' "imperative for accurate information about electoral candidates" by "facilitating candidate response" to independent expenditures. *Id.* at 119 (citing *Buckley*, 424 U.S. at 67-68). The City law requiring independent spenders to file a copy of their independent expenditure communications with the Ethics

Commission directly facilitates such a candidate response. Knowing precisely what independent spenders are saying to voters enables candidates to alert voters to any factual inaccuracies in such communications.

Appellant explicitly acknowledges that the City's informational interest is "substantially related to the disclosure of where political money comes from and how it is spent," Appellant's Opening Br. at 19, yet fails to recognize the obvious—that the City's requirement that independent spenders file with the Ethics Commission a copy of their communication serves this same purpose: informing voters of how the money was spent.

The City's challenged independent expenditure disclosure laws are substantially related to the City's sufficiently important interest in providing the electorate, as well as candidates, with information as to where political campaign money comes from and how it is spent and are thus constitutional.

B. The City's Independent Expenditure Disclosure Laws Deter Corruption and the Appearance of Corruption.

The Supreme Court has long recognized that "informed public opinion is the most potent of all restraints upon misgovernment." *Buckley*, 424 U.S. at 67 n.79 (quoting *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936)). The *Buckley* Court held that "disclosure requirements deter actual corruption and avoid the appearance of corruption," explaining that 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." 424 U.S. at 67. "The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office." *Id*.

More recently in *Citizens United*, specifically with regard to independent political spending, the Court recognized that disclosure can provide "citizens with the information needed to hold . . . elected officials accountable for their positions and supporters" and "see whether elected officials are 'in the pocket' of so-called moneyed interests." 558 U.S. at 370 (internal quotation marks omitted) (quoting *McConnell*, 540 U.S. at 259 (opinion of Scalia, J.)). Though the *Citizens United* Court held that a prohibition on corporate independent expenditures violates the First Amendment, the less burdensome requirement that political spending be disclosed permits voters to "react to the speech of corporate entities in a proper way." *Id*. at 371. In other words, voters should have the information needed to determine whether officeholders are corrupt and, if so, vote them out of office.

The City's independent expenditure disclosure requirements deter elected officials from corruptly granting "any post-election special favors that may be given in return" for independent expenditure support, *Buckley*, 424 U.S. at 67, and enable voters to put a stop to corrupt officeholders "'in the pocket' of so-called moneyed interests," *Citizens United*, 558 U.S. at 370, by voting them out of office.

The City's challenged independent expenditure disclosure laws are substantially related to the City's sufficiently important interest in deterring corruption and the appearance of corruption and are therefore constitutional.

C. The City's Independent Expenditure Disclosure Laws Enable Enforcement of Contribution Limits and Other Campaign Finance Laws.

The Supreme Court has recognized that disclosure requirements serve the governmental interest in "gathering the data necessary to detect violations" of contribution limits and other campaign finance laws. *See Buckley*, 424 U.S. at 68 ("to detect violations of the contribution limitations"); *McConnell*, 540 U.S. at 196 ("to enforce more substantive electioneering restrictions").

The *Buckley* Court understood the connection between independent expenditures and contribution limits, explaining in detail how expenditures that are not truly independent could be used to circumvent and undermine contribution limits—leading to corruption of candidates. The *Buckley* Court made clear that "expenditures controlled by or coordinated with the candidate and his campaign might well have virtually the same value to the candidate as a contribution and would pose similar dangers of abuse." 424 U.S. at 46. For this reason, "such controlled or coordinated expenditures are treated as contributions rather than expenditures" under campaign finance law and are generally subject to contribution limits so as to "prevent attempts to circumvent [contribution limits]

through prearranged or coordinated expenditures amounting to disguised contributions." *Id.* at 46-47 (emphasis added). According to the *Buckley* Court, it is the "absence of prearrangement and coordination of an expenditure with the candidate" that "not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate." *Id.* at 47.

Throughout the decades since *Buckley*, the Court has consistently reiterated this broad view of what constitutes coordination and the potential for corruption presented by coordinated spending. *See Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 614-17 (1996) (holding that an ad would not be treated as coordinated because the ad was developed "independently and not pursuant to any general or particular understanding with a candidate" and stressing that "the constitutionally significant fact . . . is the lack of coordination between the candidate and the source of the expenditure"); *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 443 (2001) (observing that there is a "functional, not a formal" definition of contributions, which includes expenditures made in coordination with a candidate); *McConnell*, 540 U.S. at 221-22 ("[E]xpenditures made after a 'wink or nod' often will be as useful to the candidate as cash.").

Most recently, in *Citizens United*, the Court once again repeated with approval its conclusion in *Buckley* that "prearrangement and coordination" presents

the "danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." 558 U.S. at 345 (quoting *Buckley*, 424 U.S. at 47).

Consequently, it is vitally important that the Ethics Commission and voters of Los Angeles be able to monitor independent expenditure communications to make sure that they are, in fact, independent expenditures and not "coordinated expenditures amounting to disguised contributions" in violation of the City's contribution limits. *Buckley*, 424 U.S. at 47. The City's independent expenditure disclosure laws directly facilitate the enforcement of City contribution limits by enabling the Ethics Commission and members of the public to better determine if a particular political communication was an "independent expenditure communication"—meaning it was not "behested" by a candidate (i.e., made in coordination with a candidate). *See* LAMC § 49.7.2(J) (defining an "independent expenditure communication" as a communication that is not "behested" by a candidate); *see also* LAMC § 49.7.2(A) (defining "behested").

Determining whether a particular communication was behested by a candidate (i.e., coordinated with a candidate) requires examining the communication itself. A communication is behested by a candidate if the "communication reproduces or redistributes, in whole or substantial part, a campaign, officeholder, or legal defense communication." LAMC §

49.7.2(A)(1)(b). A communication is behested by a candidate if the "communication includes information about a candidate's campaign plans, projects, or needs that is not generally available to the public or is provided directly or indirectly by the candidate." LAMC § 49.7.2(A)(1)(c). A communication is behested by a candidate if the "communication is made in connection with fundraising events or campaign activities co-sponsored by the candidate and the spender." LAMC § 49.7.2(A)(1)(f).

The City's requirement that a person making an independent expenditure communication file a copy of the communication with the Ethics Commission, which the Ethics Commission then posts unaltered to its website, facilitates the enforcement of the City's contribution limits by enabling the Ethics Commission and the public to examine the communication and determine whether it meets any of the above-described elements of the definition of "behested." And by enabling the enforcement of the City's contribution limits, the City's independent expenditure disclosure requirements also serve the City's interest in deterring corruption and the appearance of corruption threatened by above-limit contributions.

Furthermore, as noted by the City in its brief, the "City's disclosure rules serve an additional interest and function relating to the City's matching funds program." Appellees' Answering Br. at 29. Independent expenditures exceeding a

specified threshold result in the release of candidates participating in the matching funds program from the applicable spending limit; failure to notify the Ethics Commission of independent expenditures may result in candidates continuing to be bound by spending limits that would otherwise be removed by operation of City law. *Id*. at 30.

The City's challenged independent expenditure disclosure laws, including the requirement that independent spenders file a copy of their independent expenditure communication with the Ethics Commission, are substantially related to the City's sufficiently important interest in enforcing contribution limits and other campaign finance laws and are thus constitutional.

III. The City's Independent Expenditure Disclosure Requirements Do Not Entail Unconstitutional Compelled Speech.

Appellant argues that the City's independent expenditure disclosure requirements are facially unconstitutional compelled speech under the First Amendment. Appellant's argument is without merit. The Supreme Court considered and rejected such a claim of facial unconstitutionality in *Buckley*. 424 U.S. at 64-84. While the Court noted that "compelled disclosure" can "infringe on privacy of association and belief guaranteed by the First Amendment" and is therefore subject to "exacting scrutiny," the Court went on to uphold the challenged disclosure requirements. 424 U.S. at 64, 84 ("In summary, we find no

constitutional infirmities in the recordkeeping reporting, and disclosure provisions of the Act.").

Rejecting the compelled speech argument, the *Buckley* Court explained that "there are governmental interests sufficiently important to outweigh the possibility of infringement, particularly when the free functioning of our national institutions is involved." *Id.* at 66 (citation omitted) (internal quotation marks omitted). And as detailed in Section II, *supra*, the *Buckley* Court held that campaign finance disclosure requirements are not unconstitutional compelled speech because they are substantially related to the three sufficiently important governmental interests of informing voters, deterring corruption, and enabling enforcement of contribution limits.

To be certain, the Supreme Court has held that compelled disclosure may violate the First Amendment as applied to a group that can show "a reasonable probability that the compelled disclosure . . . will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Buckley*, 424 U.S. at 74. The case law for such compelled speech claims is well developed, stretching from *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958) through *Buckley*, 424 U.S. at 61-74, *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87 (1982) and *McConnell*, 540 U.S. at 197-98.

This Court is most certainly familiar with this line of cases, having recently decided *Doe v. Reed*, 697 F.3d 1235 (9th Cir. 2012). Yet Appellant ignores this line of cases altogether and instead cites several inapposite court decisions regarding laws easily distinguishable from those at issue in this case. For example, Appellant argues that the City's "literature-filing requirement is unconstitutional speech compulsion" and cites for this proposition a Fourth Circuit decision striking down a Baltimore ordinance requiring certain health care providers to post a sign in their window stating that they do "not provide or make referral for abortion or birth control services." Appellant's Opening Br. at 12-13 (citing *Greater Baltimore Ctr. for Pregnancy Concerns, Inc. v. Mayor of Baltimore*, 683 F.3d 539 (4th Cir. 2012), *reh'g en banc granted*, 2012 WL 7855859 (4th Cir. Aug. 15, 2012)). However, the plaintiff in *Greater Baltimore* was forced by a Baltimore ordinance to communicate a message the plaintiff did not create. Appellant, by contrast, objects in this case to a City law requiring her to file a copy, unaltered and unedited, of a message she did create.

The City disclosure law at issue in this case is easily distinguishable from the Baltimore ordinance at issue in *Greater Baltimore.* Appellant was free to, and did in fact, communicate to thousands of City voters precisely the message of her choosing. For this reason, this Court should reject Appellant's argument that the

City's independent expenditure disclosure requirements entail unconstitutional compelled speech.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's decision below.

RESPECTFULLY SUBMITTED this 24th day of June 2013.

/s/ Paul S. Ryan
Paul S. Ryan* CABA# 218212
J. Gerald Hebert
Tara Malloy
Megan McAllen
THE CAMPAIGN LEGAL CENTER
215 E Street, N.E.
Washington, DC 20002
Telephone (202) 736-2200

**Counsel of Record*

CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)

This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) and 32(a)(7)(B) because this brief contains 4,859 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in Times New Roman 14 point font.

/s/ Paul S. Ryan
Paul S. Ryan

Dated: June 24, 2013

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 24, 2013.

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.

/s/ Paul S. Ryan
Paul S. Ryan

Dated: June 24, 2013