IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

The Gaspee Project and **Illinois Opportunity Project**, Plaintiffs, v. **Diane C. Mederos**, et al., Defendants.	Case No. 1:19-cv-00609-MSM-LDA

Plaintiffs' Memorandum in Support of Objection to Motion to Dismiss

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Introduction

Nationwide, there is an effort in several states to force disclosure regimes upon issue-advocacy organizations because incumbent politicians do not like the speech of those groups. Imposing disclosure on them gives the politicians and their allies the information they need to intimidate, bully, and otherwise silence dissenting views that dare to challenge the politicians and entrenched interests. This statute is one example of legislators' expanding disclosure requirements to set a new price on supporting issue speech: the government will post your home address on the Internet for the world to see.

The First Amendment, however, stands as a bulwark to protect Americans from these politicians' quest to coerce private information out of those who would question their policies. When a past generation of politicians made a concerted effort to discover this kind of information, the U.S. Supreme Court vindicated the right of an advocacy organization to its privacy. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). And when campaign-finance bureaucrats hounded a lady who wanted to tell her neighbors her feelings on an issue without including a state-mandated disclaimer, the Supreme Court took her side. *McIntyre v. Ohio Election Comm.*, 514 U.S. 334 (1995).

Politicians are again seeking out this sensitive, private information, knowing there are those who will seize upon it to target, embarrass, and harass citizens and corporations that engage in or support issue advocacy. As a New Jersey federal judge said late last year in a similar case, we live in "a climate marked by the so-called cancel or call-out culture that has resulted in people losing employment, being ejected or driven out of restaurants while eating their meals; and where the Internet removes any geographic barriers to cyber harassment of

others." *Ams. for Prosperity v. Grewal*, No. 3:19-cv-14228-BRM-LHG, 2019 U.S. Dist. LEXIS 170793, at *61 (D.N.J. Oct. 2, 2019).

In their complaint, Plaintiffs called upon two well established bodies of Supreme Court doctrine. The first protects the right to anonymous issue advocacy, citing cases such as *Talley v. California*, 362 U.S. 60 (1960) and *McIntyre v. Ohio Election Comm.*, 514 U.S. 334 (1995). The second relies on canonical freedom-of-association cases such as *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958) and *Gibson v. Fla. Legislative Investigation Comm*., 372 U.S. 539 (1963). Yet, in a memorandum stretching across twenty pages, Defendants never once bother to distinguish or even mention any of these controlling cases. Instead, Defendants rely exclusively on a body of campaign-finance law that overlaps with but does not overrule the cases cited above. A review of all the cases in their context shows that the Plaintiffs have stated a claim upon which relief can — and should — be granted.

I. The standard for Defendants' success on a motion to dismiss is high.

At this stage, all the plaintiff must do in the complaint is "frame a viable constitutional claim." *Morales-Tanon v. P.R. Elec. Power Auth*., 524 F.3d 15, 18 (1st Cir. 2008). *Accord Banco Cooperativo de P.R. v. Herrera (In re Herrera)*, 589 B.R. 444, 451-52 (B.A.P. 1st Cir. 2018) ("A Rule 12(b)(6) dismissal may be based on either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'"). As will be demonstrated in this brief, Plaintiffs have alleged two clear legal theories grounded in applicable U.S. Supreme Court precedent; both are sufficiently viable to survive Rule 12(b)(6).

The Court should also bear in mind the First Circuit's guideposts for cases on political speech: "[A]ny law that burdens the rights of individuals to come together for political purposes is suspect and must be viewed warily" and "[M]easures which hinder group efforts to make

independent expenditures in support of candidates or ballot initiatives are particularly vulnerable to constitutional attack." *Vote Choice v. DiStefano*, 4 F.3d 26, 34 (1st Cir. 1993).

II. The right to speaker privacy protects Plaintiffs.

Mrs. McIntyre was upset that her school district was planning to raise her taxes at an upcoming referendum. So she did that most American of things—she showed up at a meeting with a bunch of fliers in hand to convince her neighbors to join her cause. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 337 (1995). To the horror of Ohio's Elections Commission, she did not first file paperwork, create a committee, secure a treasurer, open a separate bank account, disclose her donors, and then put all that information on her fliers. For this flagrant violation of Ohio's campaign-finance statutes she was censured, condemned, and ordered to pay a fine. *Id*. at 338. She took her cause all the way to the U.S. Supreme Court, arguing that if the right to anonymous issue speech was good for the founding fathers debating the Constitution, it was good for her too.

The Supreme Court agreed, saying "[n]o form of speech is entitled to greater constitutional protection than Mrs. McIntyre's." *Id*. at 347. The Court honored the nation's long heritage of anonymous speech in the public square. *Id*. at 342. *Accord* Jonathan Turley, *Registering Publius: The Supreme Court and the Right to Anonymity*, 2002 CATO SUPREME COURT REVIEW 57, 58-61 (recounting founding era history). The Court recognized that such speech was protected even when it was done close in time to an election, as that is when voters are most likely to be paying attention. *Id*. at 347.

The Supreme Court reaffirmed *McIntyre* in *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 166 (2002), and the Fourth Circuit used it to decide an

important free-speech case just in December. *Wash. Post v. McManus*, 944 F.3d 506, 515 (4th Cir. 2019).

This Court confronted a *McIntyre* claim in *Blakeslee v. St. Sauveur*, 51 F. Supp. 3d 210 (D.R.I. 2014). There the Court considered a statute which stated:

> No person shall intentionally write, print, post, or distribute, or cause to be written, printed, posted, or distributed, a circular, flier, or poster designed or tending to injure or defeat any candidate for nomination or election to any public office, by criticizing the candidate's personal character or political action, or designed or tending to aid, injure, or defeat any question submitted to the voters, unless there appears upon the circular, flier, or poster in a conspicuous place the name of the author and either the names of the chairperson and secretary, or of two (2) officers, of the political or other organization issuing the poster, flier, or circular, or of some voter who is responsible for it, with the voter's name and residence, and the street and numbers, if any.

Id. at 211 (quoting R.I. Gen. Laws § 17-23-2). The Court enjoined the law; "none of the Defendants have opposed this motion [for summary judgment], and for good reason. Instead, the Attorney General of Rhode Island filed a response indicating that his office was unable to distinguish *McIntyre* from the facts presented here." *Id*. at 211-12.

Consider the comparison between § 17-23-2 and § 17-25.3-3 — the statute at issue in this case. In the latter statute, no person may

> fund . . . any written, typed, or other printed communication [which unambiguously identifies a candidate or referendum and is made either within sixty (60) days before a general or special election or town meeting for the office sought by the candidate or referendum; or thirty (30) days before a primary election, for the office sought by the candidate; and is targeted to the relevant electorate] unless such communication bears upon its face the words 'Paid for by' and the name of the entity, the name of its chief executive officer or equivalent, and its principal business address.

There are two small substantive differences between the two statutes. Neither one matters here. One, the *Blakeslee* statute is narrower in that a flier must "injure" or "criticize" or "aid," whereas this statute must merely "identify," and two, the latter statute only covers materials distributed

within one or two months of the election. But this time component makes no difference under *McIntyre* because she engaged in her advocacy before an "imminent" election. *McIntyre*, 514 U.S. at 337.

In the Court's words: "That this advocacy occurred in the heat of a controversial referendum vote only strengthens the protection afforded to Mrs. McIntyre's expression: Urgent, important, and effective speech can be no less protected than impotent speech, lest the right to speak be relegated to those instances when it is least needed." *Id*. at 347. *Accord Citizens United v. FEC*, 558 U.S. 310, 334 (2010) ("It is well known that the public begins to concentrate on elections only in the weeks immediately before they are held. There are short timeframes in which speech can have influence."); *Wash. State Republican Party v. Wash. State Pub. Disclosure Comm'n*, 4 P.3d 808, 821 (Wash. 2000) ("*Buckley* intended to protect issue advocacy which discusses and debates issues in the context of an election. Issue advocacy thus does not become express advocacy based upon timing. The right to freely discuss issues in the context of an election, including public issues as they relate to candidates for office, is precisely the kind of issue advocacy the Court recognized was beyond the reach of regulation.").

The Plaintiffs here are looking to do much the same thing as Mrs. McIntyre. The Gaspee Project wishes to provide voters with taxation information as they think about whether they want to vote to raise their taxes at referendum. Compl., Dkt. 1, ¶ 28. In fact, Gaspee's advocacy differs from Mrs. McIntyre's in only immaterial two respects: it will mail the information rather than distribute it by hand, and it will not encourage people to vote for or against the referenda it references. *Compare id*. with *McIntyre*, 514 U.S. at 337. Illinois Opportunity Project wishes to mail information about how incumbent legislators voted on a particular bill rather than information on referenda, but it too will not encourage to vote one way or the other on those

incumbents. Compl. ¶ 29. The fact that the speech is undertaken by a group rather than an individual is of no constitutional consequence. *ACLU of Nev. v. Heller*, 378 F.3d 979, 989-90 (9th Cir. 2004). This Court previously struck down a similar law, and Plaintiffs have a viable claim that it should do the same again.

III. The right to organizational privacy protects Plaintiffs.

The NAACP of the 1950s was without a doubt an issue-advocacy organization. The National Association for the Advancement of Colored People had been founded decades earlier, in New York, as a non-profit organization dedicated to supporting the success of African-Americans. In the era of Jim Crow, it sponsored rallies, organized demonstrations, and talked a lot about issues, frequently mentioning elected officials by name. *See* Gilbert Jonas, FREEDOM'S SWORD: THE NAACP AND THE STRUGGLE AGAINST RACISM IN AMERICA, 1906-1969, 169-230 (Routledge 2005); Patricia Sullivan, LIFT EVERY VOICE: THE NAACP AND THE MAKING OF THE CIVIL RIGHTS MOVEMENT, 385-428 (New Press 2009).

The NAACP's issue advocacy did not sit well with the entrenched interests in state capitals across the South. So using several different tools and tactics, government officials tried to get access to the NAACP's membership list, anxious to know who had the temerity to contribute money to the group that was making their lives so miserable. The Supreme Court put its foot down and stopped the State of Alabama's ham-handed effort to get the list. *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958); *accord Bates v. City of Little Rock*, 361 U.S. 516 (1960); *Gibson*, 372 U.S. 539. The Court held that the freedom-of-association embedded in the First Amendment included a right to private association. *Id*. at 466. And this right is *especially important* for groups that take controversial stands on issues in the public square which may engender backlash, the Court said. *Id*. at 460.

In the original NAACP case, the Court confronted the question how to square its holding with a prior case, *Zimmerman*, where it had held that the State of New York could compel the Klu Klux Klan to turn over its membership list. Only the Klan's violent criminality was a sufficiently compelling state interest to override that organization's right to private association, the Court reasoned. *Id.* at 465 (discussing *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63 (1928)). The Court returned to this criminality standard in its Red Scare cases, *Uphaus v. Wyman*, 360 U.S. 72, 80 (1959); *Barenblatt v. United States*, 360 U.S. 109, 128 (1959). Later circuit court decisions follow this same pattern, *Dole v. Service Employees Union*, 950 F.2d 1456, 1461 (9th Cir. 1991); *Trade Waste Mgmt. Asso. v. Hughey*, 780 F.2d 221, 238 (3d Cir. 1985), or recognize it explicitly, *Familias Unidas v. Briscoe*, 619 F.2d 391, 401 (5th Cir. 1980).

The Supreme Court eventually clarified that though the NAACP had a legitimate fear of harassment, it was not the NAACP's burden to prove the likelihood of harassment; rather it was the government's burden to prove the necessity of its access to private information. *Baird v. State Bar of Ariz.*, 401 U.S. 1, 6-7 (1971); *Cal. Bankers Ass'n v. Shultz*, 416 U.S. 21, 55 (1974). In a free society, citizens' privacy is the presumption, and the burden is on the government to show its need — not on the citizens to show likely victimization if their names are exposed. *Shelton v. Tucker*, 364 U.S. 479, 487-88 (1960). *See McCutcheon v. FEC*, 572 U.S. 185, 210 (2014) ("When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.").

Again, the Plaintiffs stand in the same stead as the NAACP. They are legitimate, legal, nonprofit organizations that wish to speak out on issues. They are private associations of members and supporters who pool their resources to talk about the issues that are important to them. They are not campaign committees or political parties. They are private associations that

speak on issues important in their communities, just like the NAACP. Their membership lists should receive the same protection as the NAACP.

IV. The campaign-finance cases cited by Defendants do not foreclose a successful claim by Plaintiffs.

In the face of this avalanche of cases, Defendants have nothing to say on point — they make no effort to distinguish the decisions or show their invalidity. Instead, Defendants recite that Rhode Island's law covers electioneering communications, and electioneering communications may be regulated under campaign-finance law. Memorandum Supporting Motion to Dismiss, Dkt. 17, at 8-20 (hereafter Memo.). While this is true, the problem is that the Rhode Island General Assembly has classified virtually *all* issue-advocacy undertaken close to an election as automatically constituting electioneering communications. *See* Compl. ¶ 33. When an entity besides a campaign sponsors an electioneering communication, it must register and be subject to a host of disclaimer and disclosure requirements that Plaintiffs now challenge. *Id*. at ¶¶ 19-22. It is this (mis)classification that renders application to the Plaintiffs here unconstitutional.

Plaintiffs prevail for two powerful reasons. First, they are engaged in genuine issue advocacy, *not* electioneering communications.[1] As such, their claim should be analyzed under the *NAACP* line of cases for issue groups, not *Buckley v. Valeo* and its progeny, which apply to campaigns, parties, and PACs. *Ams. for Prosperity Found. v. Becerra*, 919 F.3d 1177, 1180-81 (9th Cir. 2019) (Ikuta, J., dissenting from denial of rehearing en banc) (*Buckley* only applies in the "electoral context," otherwise the higher strict scrutiny standard set by *NAACP* and its progeny govern compelled disclosure of non-electoral, nonprofit activity).[2]

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[1] "[W]e assume that the interests that justify the regulation of campaign speech might not apply to the regulation of genuine issue ads." *McConnell v. FEC,* 540 U.S. 93, 206 n.88 (2003); *see FEC v. Wis. Right to Life, Inc.,* 551 U.S. 449, 469-70 (2007) (Roberts, C.J., for himself and Alito, J.).

[2] Interestingly, the law at issue in *Buckley* contained a provision designed to force campaign-style disclosure onto non-electoral issue groups such as Common Cause, the American Conservative Union,

Second, even if the Court disagrees, however, and believes that the *Buckley* cases govern, Plaintiffs still prevail. When the court considers a compelled disclosure regime in the electoral context, it must survive exacting scrutiny, which means it must be justified by a "sufficiently important government interest," and there must be a "substantial relation" tailoring the requirement to the interest. *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 55 (1st Cir. 2011). In *Vote Choice*, the First Circuit identified three such compelling interests: "forced disclosure may be warranted when the spotlighted information enhances voters' knowledge about a candidate's possible allegiances and interests, inhibits actual and apparent corruption by exposing large contributions to public view, or aids state officials in enforcing contribution limits." *Vote Choice*, 4 F.3d at 32; *accord Daggett v. Comm'n on Governmental Ethics & Election Practices*, 205 F.3d 445, 465 (1st Cir. 2000).

A. Defendants have a single, weak interest justifying their invasion of Plaintiffs' privacy.

Of those interests identified in *Vote Choice*, two do not apply here: there are no contribution limits for Plaintiffs because they are not campaign committees, political action committees, or political parties; and Plaintiffs are not candidate committees, and thus pose no threat of quid pro quo corruption. *Citizens United*, 558 U.S. at 357; *Buckley*, 424 U.S. at 26.

Thus, there is only the voters' informational interest and the Defendants acknowledge as much. Memo. at 12. That informational interest, however, is not an unlimited warrant for government to require any information from any person or organization that speaks about politics broadly defined. *Doe v. Reed*, 561 U.S. 186, 206-08 (2010) (Alito, J., concurring). The

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the American Civil Liberties Union and the environmental groups. The DC Circuit struck it down, and this part of the opinion below was not appealed to the Supreme Court. *Buckley v. Valeo*, 519 F.2d 821, 877-78 (D.C. Cir. 1975). *See* Lilian BeVier, *Mandatory Disclosure, "Sham Issue Advocacy," and* Buckley v. Valeo*: A Response to Professor Hasen*, 48 UCLA L. REV. 285, 291 (2000).

government cannot successfully assert an informational interest in funders of issue advocacy; such an interest must be tightly tied to electioneering to be constitutional. *Citizens Union of N.Y. v. AG of N.Y.*, 408 F. Supp. 3d 478, 507-08 (S.D.N.Y. 2019).

But, as has been explained, Plaintiffs are not engaged in electioneering because their ads do not "support, oppose, promote, or attack" a candidate. *Vermont Right to Life Committee, Inc. v. Sorrell,* 758 F.3d 118, 122 (2nd Cir. 2014) (quoting Vermont's independent expenditure statute). Instead, Plaintiffs are providing information for voters' consideration without supporting or attacking: "Issue advocacy conveys information and educates. An issue ad's impact on an election, if it exists at all, will come only after the voters hear the information and choose — uninvited by the ad — to factor it into their voting decisions." *FEC v. Wis. Right to Life, Inc.,* 551 U.S. 449, 470 (2007) (plurality).

Moreover, if the Court disagrees with Plaintiffs on the speaker privacy (*McIntyre*) count, then the informational interest in donor disclosure is significantly lessened because the sponsoring organization will be apparent on the face of every advertisement. Who sponsored the ad "will signify more about the candidate's loyalties than the disclosed identity of an individual contributor will ordinarily convey." *Vote Choice*, 4 F.3d at 35.

Finally, even if the Plaintiffs somehow are engaged in electioneering communications, the informational interest is very weak. The Supreme Court generally treats the informational interest with less heft than the anti-corruption and anti-limit-avoidance interests. *See, e.g., First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 777 (1978) ("The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual."); *McIntyre*, 415 U.S. at 348 n.11 (favorably quoting *New York v. Duryea*, 351 N.Y.S.2d 978, 996 (1974). A candidate's stance on

issues is likely more relevant information to voters than who contributed to support an organization sharing such information. Lilian BeVier, *Mandatory Disclosure, "Sham Issue Advocacy," and* Buckley v. Valeo*: A Response to Professor Hasen*, 48 UCLA L. REV. 285, 303 (2000).

As Judge Noonan asked rhetorically, "How do the names of small contributors affect anyone else's vote? Does any voter exclaim, 'Hank Jones gave $ 76 to this cause. I must be against it!'" *Canyon Ferry Rd. Baptist Church of E. Helena, Inc. v. Unsworth*, 556 F.3d 1021, 1036 (9th Cir. 2009) (Noonan, J., concurring). Judge Noonan's pithy observation is backed up by social science showing that donor information is substantially less useful information for voters than party affiliation and major endorsements. Dick Carpenter and Jeffrey Milyo, *The Public's Right to Know Versus Compelled Speech: what does social science research tell us about the benefits and costs of campaign finance disclosure in non-candidate elections?*, 40 FORDHAM URB. L.J. 603, 618-23 (2012).

Thus, the Tenth Circuit would say of disclosure of express advocacy for ballot measures, "Perhaps [the Supreme Court's] view can be summarized as 'such disclosure has some value, but not that much.'" *Sampson v. Buescher*, 625 F.3d 1247, 1257 (10th Cir. 2010). The compelled disclosure of donors to the Gaspee Project has even *less* value, as it seeks to engage only in *non-express* advocacy about a ballot measure. In short, Defendants have only one shaky pillar on which to base their invasion of Plaintiffs' privacy, and its worth is "some, but not that much," and certainly not enough to prevail here.

B. The Rhode Island statute is not tailored to the government's actual interest.

To survive exacting scrutiny, the law must show a "substantial relation" or "substantial nexus" between the asserted interest and the ends used.[3] *McKee*, 649 F.3d at 56; *Vote Choice*, 4 F.3d at 32. Defendants offer five ways their law is "carefully circumscribed" to fit their informational interest. They argue that Rhode Island achieved this tailoring by limiting: "(1) the format of the independent expenditure and electioneering communication; (2) the amount of the independent expenditure and electioneering communication; (3) the time frame of the independent expenditure and electioneering communication; (4) the targeting of the electioneering communication; and (5) the type of donations subject to the Act." Memo. at 15.

Yet all of these overlap inevitably with genuine issue advocacy. Issue ads are run on television, radio, and in the mail just like electioneering communications. Issue ads cost money to run, just like electioneering communications. Issue ads are run during the time when citizens are most likely to be thinking about public policy. *See* supra, at 7, quoting *McIntyre*, 514 U.S. at 346; *Citizens United*, 558 U.S. at 334; and *Wash. State Republican Party*, 4 P.3d at 821 (all stating that issue speech is protected when it occurs proximate in time to an election). Issue ads that seek to influence or report on an incumbent legislator run in the same district from which he is elected. So the law's "carefully circumscribed" scope in fact embraces all genuine issue advocacy. As such, vis-a-vis issue advocacy, it is really no circumcision at all.

Rhode Island's lack of tailoring is also evident from the expansive scope of its statute compared to those in other states cited in the briefing. Rhode Island's statute, unlike Maine's, has no presumption or escape hatch. *McKee*, 649 F.3d at 43. Unlike Vermont's, it has no qualifier for

[3] Circuit courts disagree about whether exacting scrutiny in the disclosure context requires narrow tailoring. *See Iowa Right to Life Comm., Inc. v. Tooker*, 717 F.3d 576, 591 (8th Cir. 2013) (discussing different circuit opinions). Plaintiffs reserve the right to argue on appeal that the First Circuit should use the narrow tailoring test.

"supports, promotes, opposes, or attacks" — mere mention of a candidate or referendum is sufficient. *Sorrell*, 758 F.3d at 122. Unlike the federal regulation, Rhode Island's statute covers general fund donors. *Independence Institute v. FEC*, 216 F. Supp. 3d 176, 185 (D.D.C. 2016). Finally, unlike the laws in Vermont and Delaware, it applies to both candidates and ballot initiatives. *Sorrell*, 758 F.3d at 122; *Del. Strong Families v. AG of Del.*, 793 F.3d 304, 307 (3d Cir. 2015).

The fact that Rhode Island covers general fund donors is especially problematic. As the D.C. Circuit has pointed out, donors to a general fund for an issue organization may not support the organization's issue advocacy even if they support the totality of the organization's activities. *Van Hollen v. FEC*, 811 F.3d 486, 497 (DC Cir. 2016). This reflects both the weakness of the governmental interest (because the government is providing voters with poor quality information, as many of the donors may not actually support the particular ad) and the weakness of the fit (because many of the donors being disclosed may not actually support the ad, but the law scoops them into disclosure anyway).

As a result, in a host of ways, Rhode Island's law is the most all-encompassing, most aggressive, most speech-regulating of all the examples offered by Defendants. It cannot stand.

C. The Rhode Island statute is not automatically acceptable under existing precedent.

The cases Defendants cite in their brief do not compel a different conclusion. Most directly relevant to this court is the First Circuit's decision in *National Organization for*

Marriage v. McKee.[4] The Maine statute at issue in *McKee*, however, is distinguishable on several points.[5]

First, and most importantly, the challenge in *McKee* was based on an entirely different legal theory. There, the plaintiffs argued that the statute was "unconstitutionally vague and overbroad." *Id*. at 40. The plaintiffs in *McKee* did not base their arguments on *McIntyre* or *NAACP*; neither case is even mentioned in the decision.[6] This is a new challenge, raising new legal theories, and though *McKee's* language may in some instances have relevance, its holdings are not dispositive of the issues presented in this case.

Second, the Maine statute only established a *presumption* that an issue ad that mentioned a candidate close to an election was an electioneering communication; the ad sponsor could rebut the presumption through an administrative hearing. *Id*. at 43. Rhode Island, by contrast, automatically and irrefutably classifies *all* such speech as electioneering communication, with no opportunity to show that an ad should not be so classified. One can suppose any number of circumstances when an advertisement may mention a candidate for office without intending electioneering; as just one example, if an American Legion post puts up fliers or sends out post-cards inviting people to attend a Veterans Day ceremony, and lists the local congressman as the keynote speaker — then the Legion is engaging in an electioneering communication and must

[4] At the same time the First Circuit decided *McKee*, it also decided a similar challenge to Rhode Island's campaign-finance statute, upholding it. *Nat'l Org. for Marriage v. Daluz*, 654 F.3d 115, 116 (1st Cir. 2011). One year later, the Rhode Island legislature amended its campaign-finance law to substantially expand the scope of regulation beyond that upheld by the First Circuit in *Daluz*. Memo. at 3 (explaining 2012 statute).

[5] To the extent that this Court concludes that *McKee* cannot be distinguished, Plaintiffs reserve the right to argue on appeal for it to be overturned.

[6] Of course, a statute that may be constitutional after challenge on one legal theory may be unconstitutional after challenge on a different legal theory. *Gonzales v. Carhart*, 550 U.S. 124, 169 (2007) (Thomas, J., concurring); *Cutter v. Wilkinson*, 544 U.S. 709, 727 n.2 (2005) (Thomas, J., concurring).

register and disclose its donors. In Maine, such a group could prove its innocence to the relevant authorities; in Rhode Island no such option exists.

Third, the Maine statute only applied to speech mentioning candidates. The Rhode Island statute covers speech about both candidates *and* ballot referenda. Though Illinois Opportunity Project wishes to share information about incumbents who may be candidates for reelection, Gaspee Project wishes only to share information relevant to ballot referenda. The government's interest in regulating speech about ballot issues is lower than for speech about candidates. *McIntyre*, 514 U.S. at 356; *see Buckley v. Am. Constitutional Law Found*., 525 U.S. 182, 203 (1999).

Fourth, Defendants overstate *McKee's* holding that there is no difference between express advocacy and issue advocacy. To the contrary, *McKee* recognizes: "The division between pure 'issue discussion' and 'express advocacy' of a candidate's election or defeat is a conceptual distinction that has played an important, and at times confounding, role in a certain set of modern Supreme Court election law precedents." *McKee* at 35. The First Circuit took a pass on resolving any of these confounding concerns: "We ultimately conclude, however, that the distinction is not important for the issues addressed in this appeal" because of the specific vagueness and overbreadth challenges before the court. *Id*. Here, however, this distinction is obviously front and center.

The other cases cited by the Defendants are also distinguishable. The Vermont statute at issue in *Vermont Right to Life Committee, Inc. v. Sorrell* defined an electioneering communication as one which "refers to a clearly identified candidate for office and that promotes or supports a candidate for that office or attacks or opposes a candidate for that office." 758 F.3d at 122. Thus, the hypothetical American Legion postcard would not have been covered by the

Vermont statute because it did not "promote, support, attack, or oppose" a candidate. Many other forms of issue communication, such as a legislative scorecard that presented straightforward information on an incumbent's record, would also likely not fall within that statute's ambit. *See Ams. for Prosperity v. Grewal*, No. 3:19-cv-14228-BRM-LHG, 2019 U.S. Dist. LEXIS 170793, at *57 (D.N.J. Oct. 2, 2019) (discussing Americans for Prosperity issue-based legislative scorecard). In Rhode Island, however, all these communications would be covered for merely *mentioning* an incumbent legislator's name. Finally, *Independence Institute v. FEC*, 216 F. Supp. 3d 176 (D.D.C. 2016), *summarily aff'd* 137 S. Ct. 1204 (2017), required disclosure only for donors who supported the particular advertisement. *Id*. at 185. Rhode Island's law reaches donors of at least $1,000 to the organization's general fund, regardless of whether any of the money actually even paid for the particular advertisement. R.I. Gen. Laws § 17-25.3-1(h).

The statutes at issue in both *Sorrell* and *Delaware Strong Families* covered only candidates; neither case speaks to the Gaspee Project's issue advocacy focused on *referenda*. *Sorrell*, 758 F.3d at 122; *Del. Strong Families*, 793 F.3d at 307. Like *McKee* both *Sorrell* and *Delaware Strong Families* focused on overbreadth and vagueness — with no mention of *McIntyre* or *NAACP*. The Montana statute at issue in *Mangan* required registration and disclaimer, but did not necessarily mandate donor disclosure for issue advocacy groups. *N.A. for Gun Rights, Inc. v. Mangan*, 933 F.3d 1102, 1110 (9th Cir. 2019). In sum, the cases cited by Defendants all reviewed different types of challenges brought against laws that were more narrowly constructed than the all-encompassing Rhode Island statute at issue here. As such, none resolve the issues presented in this particular case.

Citizens United is the final case relied upon by the Defendants. *Citizens United* concerned "pejorative" ads nationwide promoting *Hillary: the Movie,* which was itself a critique of a sitting

U.S. Senator running for President. *Citizens United v. FEC*, 558 U.S. 310, 320 (2010). Citizens United, which produced the movie, also would pay to "make Hillary available [for free] on a video-on-demand channel called 'Elections '08.'" *Id*. Finally, the content of the movie "depicts interviews with political commentators and other persons, most of them quite critical of Senator Clinton." *Id.*

In short, *Hillary: the Movie* was political commentary about a political candidate.[7] Thus, it differs from Plaintiffs' advocacy in three substantial ways: (1) it was targeted to voters nationwide because she was a candidate. Plaintiff IOP's advocacy is targeted to citizens specific to their legislative districts because of their incumbent representatives. Plaintiff Gaspee Project's advocacy is targeted to citizens specific to their municipalities because of their referendum choices. If *Hillary: the Movie* had only run in New York, the Court may have seen it in a different light, as Clinton represented New York in the U.S. Senate at the time, and thus it could have been genuine issue advocacy specific to the legislator's district; (2) it was clearly "critical" and "pejorative," whereas Plaintiffs' advocacy will be primarily informational; and (3) perhaps most importantly, Citizens United argued the movie was issue advocacy, but nothing in the record indicated that it talked about a specific policy, vote, or legislative initiative as opposed to a candidate. Plaintiffs' advocacy, by contrast, will be specific to particular policy questions important in these communities. For all these reasons, *Citizens United* does not support Defendants' motion.

Indeed, when the Seventh Circuit reviewed a Wisconsin statute which labeled all issue advocacy that made suggestive references to a candidate as an electioneering communication

[7] Additionally, the Seventh Circuit identified the paragraph on disclosure as dicta, entitled to respect but not binding. *Wis. Right to Life, Inc. v. Barland*, 751 F.3d 804, 824-25 (7th Cir. 2014).

when run close in time to an election, the state regulators leaned heavily on the same paragraph from *Citizens United*. The Seventh Circuit replied:

> It's a mistake to read *Citizens United* as giving the government a green light to impose political-committee status on every person or group that makes a communication about a political issue that also refers to a candidate. That's what GAB § 1.28(3)(b) does. During the 30/60-day preelection periods, all political speech about issues counts as express advocacy — thus triggering full political-committee status and other restrictions — if the speaker names and says pretty much anything at all about a candidate for state or local office.
>
> This is a serious chill on debate about public issues, which does not stop during election season. Consider two neighbors who want to print and distribute flyers encouraging support for a municipal or school project in their city. If they do so within the 30/60-day preelection periods, they can't mention the positions of any local official running for reelection — say the mayor or members of the city council or the school board — for fear of being deemed a political committee and required to organize, register, and file regular financial reports. Stating their views on a policy issue and listing the positions of the candidates — pro or con — might be construed as "support" or "condemnation" within the meaning of the rule. Or say a local nature club wants to distribute a newsletter throughout the community educating the public about the positions of local officials on budgetary support for the parks; it can't do so during the preelection period without risking being required to register and report as a PAC. A grass-roots Tea Party issue-advocacy group might be considered a regulable state PAC if during the preelection blackout period, it publishes a pamphlet complaining about high taxes or intrusive regulation and listing the voting records of state legislators on these subjects. Indeed, the antifilibuster issue ads at stake in *Wisconsin Right to Life II* would be deemed fully regulable under GAB § 1.28(3)(b) if aired during the 30/60-day preelection periods.

Wis. Right to Life, Inc. v. Barland, 751 F.3d 804, 836-37 (7th Cir. 2014). This long passage from the 7th Circuit is directly on point here. Judge Sykes could just have easily have written: "A local free-market group wants to provide voters with information about comparative tax burdens in advance of a local referendum to raise taxes. Or a national labor-reform group wants to mail out fliers with a legislative scorecard on an important union-related bill." Discussing a similar independent-expenditure statute in Minnesota, an en banc 8th Circuit similarly cautioned against allowing states to use *Citizens United* to "sidestep strict scrutiny by simply placing a 'disclosure'

label on laws imposing the substantial and ongoing burdens typically reserved for PACs risks transforming First Amendment jurisprudence into a legislative labeling exercise." *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 875 (8th Cir. 2012). This Court should prevent similar mislabeling in this case.

D. The Court should also consider the burden on the Plaintiffs in this analysis.

The Supreme Court sometimes phrases "exacting scrutiny" as a balancing test, wherein "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Doe,* 561 U.S. at 196 (quoting *Davis v. FEC*, 554 U.S. 724, 744 (2008)); *accord Nat'l Org. for Marriage v. McKee*, 666 F. Supp. 2d 193, 204 (D. Me. 2009). In other words, the test also requires the Court to consider the burden on the Plaintiffs' speech and association rights to weigh against the governmental interest.

While the state has one interest that is relatively weak, Plaintiffs and other issue-advocacy organizations and their members face burdens that are numerous, specific, and substantial: loss of privacy, fear of official retaliation, fear of activist harassment, greater difficulty at charitable solicitation, and an undermining of their messages' effectiveness. Such burdens are very compelling and outweigh the government's interest.

a. Plaintiffs and their members have a substantial interest in maintaining their privacy.

The first burden that Plaintiffs will suffer from the law is the loss of privacy. A desire for anonymity when speaking on issues may be motivated "by a desire to preserve as much of one's privacy as possible." *McIntyre*, 514 U.S. at 342. A business or association as well as an individual might wish to maintain that privacy. *ACLU of Nev.*, 378 F.3d at 990. "[D]epriving individuals of this anonymity is a broad intrusion" into their private affairs. *Id*. at 988. The protections of the *NAACP* cases apply to popular and unpopular groups alike because they all

have an interest in privacy. *Gibson*, 372 U.S. at 556-57; *accord id*. at 569-70 (Douglas, J., concurring).

Privacy is no less important for being ephemeral. It "has always been a fundamental tenet of the American value structure." *California v. Byers*, 402 U.S. 424, 450 (1971) (Harlan, J., concurring) (quoting Robert McKay, *Self-Incrimination and the New Privacy*, 1967 SUP. CT. REV. 193, 210). Privacy is an end in itself that courts must respect and protect. *United States v. Connolly*, 321 F.3d 174, 188 (1st Cir. 2003) ("A constitutionally-based right of access to otherwise private personal financial data of one's own and one's family imposes a high price on the exercise of one's constitutional right…"). Privacy interests are especially pronounced when private financial information is involved. *See Hughes Salaried Retirees Action Comm. v. Adm'r of the Hughes Non-Bargaining Ret. Plan*, 72 F.3d 686, 695 n.8 (9th Cir. 1995). "[O]ur nation values individual autonomy and privacy," *United States v. Valdes-Vega*, 738 F.3d 1074, 1076 (9th Cir. 2013), and the loss of that privacy is in itself a substantial burden.

b. Plaintiffs and their members have a reasonable fear of official retaliation.

The second burden that Plaintiffs' members and contributors will suffer as a result of the law is the fear of official retaliation. *Buckley* recognized that compelled disclosure may lead to "threats, harassment, or reprisals from … Government officials." 424 U.S. at 293. Similarly, *McIntyre* said, "[t]he decision in favor of anonymity may be motivated by fear of … official retaliation." 514 U.S. at 341. Companies or individuals could reasonably worry that their contributions to issue-advocacy groups could harm their standing with Rhode Island's decision-makers. *Nat'l Rifle Ass'n (NRA) v. City of Los Angeles*, 2:19-cv-03212-SVW-GJS, at *13 (C.D. Cal. Dec. 19, 2019) ("Plaintiff Doe maintains he and other potential contractors are chilled from engaging in the bidding process because they are reluctant to reveal business ties with the NRA

for fear of the stigma the City may attach to their bids and future business ventures. The legislative record establishes Doe's fear of hostility is well-founded."). There are a variety of formal and informal ways that officials could retaliate. Officials could look unfavorably on requests for meetings with the governor or other senior decision-makers, discount a company's lobbying position on legislation or regulations, and otherwise close the door to the governor's administration. That is a high price to pay for any person or entity that also wishes to financially support issue advocacy. Privacy and protection from disclosure is the best way to avoid the possibility of an official "enemies list." *See Lake v. Rubin*, 162 F.3d 113, 115 (D.C. Cir. 1998).

c. Plaintiffs and their members have a reasonable fear of harassment from activists outside government.

Though official retaliation is likely more informal and *sub rosa*, the reality of public retaliation is very visible and very real for companies and individuals.

Harassment by those outside government was the fear at the heart of *NAACP v. Alabama*, where members who were exposed would face "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." 357 U.S. at 462-63. Thankfully there is no longer a segregated South with church bombings and burning crosses, but public hostility is still a characteristic of polarized politics. *Grewal*, No. 3:19-cv-14228-BRM, 2019 U.S. Dist. LEXIS 170793, at *61. Unfortunately, "disclosure [here] becomes a means of facilitating harassment that impermissibly chills the exercise of First Amendment rights." *Doe*, 561 U.S. at 207-08 (Alito, J., concurring).

Members and contributors may have a real fear that all these repercussions may follow from a decision to support issue advocacy. Newspapers are filled with examples from the past decade where publicly disclosed issue activities have led to substantial harassment.[8]

i. Disclosed donors suffer from economic retaliation.

Corporations that support issue-advocacy groups like Plaintiffs may find that disclosure forces them into unanticipated hot water. Target and Best Buy were subject to boycotts and brand damage when they gave money to a Chamber of Commerce affiliate that praised a candidate for governor in Minnesota who supported business-friendly policies. That candidate also supported traditional marriage. When their donations became public, they faced substantial backlash from customers and shareholders and were forced to apologize. *See* Taren Kingser & Patrick Schmidt, *Business in the Bulls-Eye? Target Corp. and the Limits of Campaign Finance Disclosure*, 11 ELECTION L.J. 21, 29-32 (2012). "The Target episode and other instances of attempted consumer boycotts aimed at companies that donate to controversial causes suggest the potential for reputational risk and resulting harm to investors when a company's political donations become known." Richard Briffault, *The Uncertain Future of the Corporate Contribution Ban*, 49 VAL. U.L. REV. 397, 427-428 (2015).

In another instance, retailers were protested for stocking carrots from a company whose owner donated to the Proposition 8 campaign in California. Maria Ganga, "Carrot firm's olive branch," L.A. Times (Oct. 9, 2008), https://www.latimes.com/archives/la-xpm-2008-oct-09-me-juice9-story.html. A Hyatt hotel and a self-storage company were also targeted for boycotts

[8] Though a motion to dismiss is limited to complaint itself, briefs at this stage may still rely on facts available in the public record. *O'Brien v. Deutsche Bank Nat'l Tr. Co.*, 948 F.3d 31 (1st Cir. 2020) ("Because this appeal arises from an order of dismissal under Rule 12(b)(6) for failure to state a claim upon which relief can be granted, we draw the operative facts primarily from the complaint. We may also incorporate facts from documents incorporated by reference into the complaint, matters of public record, and facts susceptible to judicial notice.").

based on their owners' donations supporting Proposition 8. *Id*. Prominent executives also lost their jobs after their donations became public. Joel Gehrke, "Mozilla CEO Brendan Eich forced to resign for supporting traditional marriage laws," Wash. Examiner (April 3, 2014), https://www.washingtonexaminer.com/mozilla-ceo-brendan-eich-forced-to-resign-for-supporting-traditional-marriage-laws; Jesse McKinley, "Theater Director Resigns Amid Gay-Rights Ire," N.Y. Times (Nov. 12, 2008), https://www.nytimes.com/2008/11/13/theater/13thea.html.

Though these examples all related to fights over the definition of marriage, many may reasonably fear precipitating the wrath of organized labor thru such disclosure. A union-backed group in Washington State has targeted the board members for the free-market Freedom Foundation. *See, e.g., Will your next home purchase support the extremist right-wing movement in the Northwest? A shocking look at the dark side of Conner Homes*, Northwest Accountability Project (May 24, 2018), https://nwaccountabilityproject.com.

During the massive fight over the collective-bargaining reforms in Wisconsin, campaign donors to Governor Scott Walker were subject to union retaliation. Lindsay Beyerstein, "Massive Protest in Wisconsin Shows Walker's Overreach," Huffington Post (May 25, 2011), https://www.huffpost.com/entry/weekly-audit-massive-prot_b_835966 (union encourages members to withdraw funds from a local bank, many of whose executives were campaign donors to the governor); *accord* Don Walker, "WSEU circulating boycott letters," Milwaukee J. Sentinel (March 30, 2011), http://archive.jsonline.com/newswatch/118910229.html; Roy Wenzl, "Charles Koch, employees reveal e-mailed threats from past year," Wichita Eagle (Feb. 17, 2012), https://www.kansas.com/news/article1086445.html.

In another situation, a coalition of gun-control and climate-change groups targeted corporations that supported the American Legislative Exchange Council (ALEC), a 501(c)(3) organization, after internal documents listing donors were leaked to the media. Ciara Torres-Spelliscy, *Shooting Your Brand in the Foot: What* Citizens United *Invites*, 68 RUTGERS L. REV. 1297, 1360-1363 (2016). Over 80 companies have ended their financial support due to activist and shareholder pressure. *See id.* at n.382.

In polarized times, taking sides on difficult topics in the public square often prompts a harassing response from activists of the opposite view. *See* Katie Rogers and Annie Karni, "Trump's Opponents Want to Name His Big Donors. His Supporters Say It's Harassment," N.Y. Times (Aug. 8, 2019), https://www.nytimes.com/2019/08/08/us/politics/trump-donors-joaquin-castro.html.

ii. Disclosed donors may be subject to physical retaliation.

When Mayor Mitch Landrieu of New Orleans decided to remove the city's four Confederate monuments, he found himself blacklisted among construction companies. When he finally did secure a crane, opponents poured sand in the gas tank and interfered with its operation. According to the Mayor, "We were successful, but only because we took extraordinary security measures to safeguard equipment and workers, and we agreed to conceal their identities." Mitch Landrieu, IN THE SHADOW OF STATUTES: A WHITE SOUTHERNER CONFRONTS HISTORY 2-3 (Penguin 2018). The owner of a contracting company that agreed to remove monuments and his wife received death threats, and his car was set ablaze in the parking lot of his office. *Id*. at 187. The City had to keep secret the identities of the companies that bid on the work and promised law enforcement protection to the winners. *Id*. at 192.

Sometimes, public hostility against people associated with controversial views is manifested as property crimes such as graffiti. *See, e.g.,* Savannah Pointer, "Man Arrested After Allegedly Vandalizing Chick-fil-A with Political Messages," Western J. (Oct. 3, 2018), https://www.westernjournal.com/man-arrested-vandalizing-chick-fil/; Anna Almendrala, "Chick-Fil-A In Torrance, Calif., Graffitied With 'Tastes Like Hate,'" Huffington Post (Aug. 4, 2012), https://www.huffpost.com/entry/chick-fil-a-graffiti-torrance_n_1738807. Other times, property crime is more destructive, such as arson or bombing. William K. Rashbaum, "At George Soros's Home, Pipe Bomb Was Likely Hand-Delivered, Officials Say," N.Y. Times (Oct. 23, 2018), https://www.nytimes.com/2018/10/23/nyregion/soros-caravan-explosive-bomb-home.html.

iii. Disclosed donors are subject to other forms of hostility.

In many instances, intimidation tactics stop short of physical violence but still cross legal and social lines from legitimate protest into illegitimate harassment. *See, e.g.*, *520 S. Mich. Ave. Assocs. v. Unite Here Local 1*, 760 F.3d 708, 720-21 (7th Cir. 2014) ("Many of the Union's other activities are disturbingly similar to trespass and harassment."); *Wal-Mart Stores, Inc. v. United Food & Commercial Workers Internat. Union*, 248 Cal. App. 4th 908, 923 (2016) (employees report "union activity made them feel intimidated, embarrassed, upset, or fearful there would be violence").

The Internet adds a whole new level of possibilities for harassment. Posting donor information online, including one's home address, opens the door to harassment on a heretofore unimaginable scale, where an activist in one state can target a someone in minute detail. *Doe*, 561 U.S. at 207-08 (Alito, J., concurring). *Accord Frank v. City of Akron*, 303 F.3d 752, 753 (6th Cir. 2002) (Boggs, J., dissenting from denial of rehearing en banc). Any donor may reasonably

fear that activists who care passionately about the environment, labor rights, gun rights, or any other issue may target them over the Internet.

d. Plaintiffs face a burden from the increased difficulty of their charitable solicitation.

Charitable solicitation is a form of free speech protected by the First Amendment. *Ill. ex rel. Madigan v. Telemarketing Assocs*., 538 U.S. 600, 611-12 (2003). The law makes it harder for Plaintiffs and any other issue-advocacy group to raise the funds they need to undertake their missions. *Vote Choice, Inc. v. Di Stefano*, 814 F. Supp. 195, 200 (D.R.I. 1993) (donor disclosure makes fundraising more difficult); *United States Servicemen's Fund v. Eastland,* 488 F.2d 1252, 1265-67 (D.C. Cir. 1973), *vacated on other grounds,* 421 U.S. 491 (1975) (same); *Canyon Ferry Rd. Baptist Church of E. Helena, Inc.*, 556 F.3d at 1036 (Noonan, J., concurring) (same); *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371, 379 (Tex. 1998) (same); *Nat'l Fed'n of Republican Assemblies v. United States*, 218 F. Supp. 2d 1300, 1312 n.13 (S.D. Ala. 2002) (same); (same); *Nat'l Rifle Ass'n*, 2:19-cv-03212-SVW-GJS, at *18-19 (same); *Pollard v. Roberts*, 283 F. Supp. 248, 258 (E.D. Ark.), *aff'd per curiam*, 393 U.S. 14 (1968). *See Buckley*, 424 U.S. at 68 ("It is undoubtedly true that public disclosure of contributions to candidates and political parties will deter some individuals who otherwise might contribute."); *id*. at 83 ("[S]trict [disclosure] requirements may well discourage participation by some citizens in the political process."). Compelled disclosure makes people less likely to donate, and that increases Plaintiffs' difficulty in fundraising to support their mission.

e. The law will decrease the effectiveness of Plaintiffs' messages.

Finally, Plaintiffs fear the disclosure of their donors will decrease the effectiveness of its message. Their members and supporters may fear that disclosure will make the messages their donations support less effective. "Nondisclosure could require the debate to actually be about the

merits of the proposition on the ballot. Indeed, the Supreme Court has recognized that '[a]nonymity … provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent.'" *Sampson*, 625 F.3d at 1256-57 (quoting *McIntyre*, 514 U.S. at 342); *accord Wash. Post*, 944 F.3d at 515 ("many political advocates today also opt for anonymity in hopes their arguments will be debated on their merits rather than their makers."). Social science backs up when courts have already concluded. Travis N. Ridout, et al., *Sponsorship, Disclosure, and Donors: Limiting the Impact of Outside Group Ads*, 68 POL. RESEARCH Q. 154, 155 (2015) (viewers respond more positively to an ad from an unknown group than to an ad from a known group or campaign); *id*. at 163 (disclosure leading to news reports about a group's big donors reduces that group's message effectiveness).

Plaintiffs reasonably believe disclosure of their donors may distract from the effectiveness of their message. If people do not like political donors generally, or certain political donors in particular, they may fixate on the donors behind the speaker rather than the content of the message. Plaintiffs believe the content of the message itself, the power of the idea it conveys, should command our attention.

Plaintiffs, then, face multiple burdens from the law: their privacy is invaded, they have well-founded fears of official and activist retaliation, their charitable solicitation will be more difficult, and their messages may be less effective. All of this must be weighed against the one weak government interest offered.

CONCLUSION

As the First Circuit has recognized in the past, "The first amendment lies at the heart of our most cherished and protected freedoms. Among those freedoms is the right to engage in

issue-oriented political speech." *Faucher v. Fed. Election Com.*, 928 F.2d 468, 472 (1st Cir. 1991); *accord Clifton v. FEC*, 114 F.3d 1309, 1312 (1st Cir. 1997) ("In *Massachusetts Citizens* [*v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, (1986)], the Supreme Court … recognized a First Amendment right to issue advocacy."). As the First Circuit has further recognized, "compelled disclosure of information about a person's political contributions can seriously infringe on the privacy of association and belief guaranteed by the First Amendment." *Vote Choice v. DiStefano*, 4 F.3d at 31; *accord Vote Choice, Inc.*, 814 F. Supp. at 199. This Court should vindicate Plaintiffs' speech and association rights. The motion to dismiss should be denied to allow them to proceed with this important First Amendment challenge.

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