

No. 26-88

In the Supreme Court of the United States

ALASKA POLICY FORUM,
Petitioner,

v.

ALASKA PUBLIC OFFICES COMMISSION, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Alaska
Supreme Court

AMICI BRIEF OF THE AMERICAN CENTER FOR
LAW & JUSTICE AND THE FOUNDATION FOR
GOVERNMENT ACCOUNTABILITY IN SUPPORT
OF PETITIONER

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INTEREST OF AMICI¹

The American Center for Law and Justice (“ACLJ”) is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have appeared often before this Court as counsel for parties, *e.g.*, *Trump v. Anderson*, 601 U.S. 100 (2024); *Lamb’s Chapel v. Center Moriches Union Free School District*, 508 U.S. 384 (1993); or as amici, *e.g.*, *Fischer v. United States*, 603 U.S. 480 (2024); *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021); *McDonnell v. United States*, 579 U.S. 550 (2016).

The Foundation for Government Accountability (“FGA”) is a 501(c)(3) non-profit organization that helps millions achieve the American Dream by improving welfare, workforce, health care, and election policy at both the state and federal levels. FGA’s policy reforms are grounded in the principles of government transparency, the free market, individual freedom, and limited constitutional government.

The ACLJ and the FGA have a particular interest in this case because it presents a direct threat to the ability of nonprofit, religious, educational, and public-interest organizations to speak on issues of public concern. Such organizations exist to participate in

¹ Pursuant to Supreme Court Rule 37.6, amici state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from amici, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief. In accordance with Rule 37.2, counsel of record for all parties received notice of amici’s intention to file this brief at least 10 days prior to the due date.

public debate. They educate. They persuade. They advocate. They address questions of law, morality, public policy, and civic life. The First Amendment protects that work.

SUMMARY OF ARGUMENT

This Court's precedents have long protected the right of nonprofit, religious, and public-interest organizations to speak on matters of public concern without being treated as regulated campaign actors. That protection does not evaporate simply because the issue an organization discusses later appears on a ballot. Amici write to address the associational-freedom dimension of this case.

The decision below threatens that protection in three respects. First, it disregards this Court's recognition that ideological nonprofits—formed to disseminate ideas rather than amass capital—do not pose the corruption concerns that justify regulating business corporations' political spending, and that speech about *ballot measures* receives the fullest First Amendment protection precisely because there is *no candidate* who could be corrupted.

Second, the Alaska Supreme Court collapsed the constitutional distinction between issue advocacy and campaign advocacy that this Court's precedents have carefully preserved, treating Alaska Policy Forum's ("APF") discussion of ranked-choice voting as campaign advocacy solely because that policy later became the subject of a ballot measure, even though APF never named the measure or told voters how to cast their ballots.

Third, the decision below lets the State evade First Amendment scrutiny simply by attaching an

election-law label to protected issue speech—a maneuver this Court has repeatedly rejected in other contexts. Because the decision below threatens the ability of religious, charitable, and public-interest organizations nationwide to speak about the issues that matter most to them, this Court should grant review.

ARGUMENT

I. PUBLIC-INTEREST ORGANIZATIONS CHANNEL ASSOCIATION FOR PURPOSES OF PUBLIC DEBATE.

This case implicates a fundamental First Amendment principle: association in support of ideas and policies. Public-interest organizations must remain free to discuss public issues without becoming regulated campaign speakers merely because those issues later appear on a ballot. “Discussion of public issues” is “integral to the operation of the system of government established by our Constitution.” *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). This Court has emphasized that the First Amendment provides the broadest protection to such political expression in order “to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *Roth v. United States*, 354 U.S. 476, 484 (1957).

The First Amendment protects not only isolated individual expression, but also the right of citizens to join together to advance shared ideas. U.S. CONST. AMEND. I. Nonprofit advocacy organizations are First Amendment speakers. “It is beyond debate that freedom to engage in association for the advancement

of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958).

That protection applies with particular force to speech about public issues, on or off the ballot. Speech opposing or favoring a referendum question is thus at the heart of the First Amendment’s protection, and “[t]he inherent worth of . . . 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.” *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 776-77 (1978). Critically, this Court held that “[t]he risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue[,]” because a public issue has no candidate to be corrupted. *Id.* at 790; see also *Citizens Against Rent Control/Coalition for Fair Hous. v. City of Berkeley*, 454 U.S. 290 (1981) (invalidating contribution limits on ballot-measure committees). This Court reaffirmed that principle in the school-referendum context, explaining that “[t]he principles enunciated in *Buckley* extend equally to issue-based elections” and that leafletting opposing a ballot question “is the essence of First Amendment expression.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995).

APF’s speech about ranked-choice voting here implicated no candidate and created no risk that any officeholder would be beholden to APF. Treating that speech as regulable campaign advocacy would import

an anticorruption rationale that this Court has already held does not extend to ballot-measure speech. *See generally Buckley v. Am. Const. L. Found.*, 525 U.S. 182, 203 (1999) (“We note, furthermore, that ballot initiatives do not involve the risk of ‘*quid pro quo*’ corruption present when money is paid to, or for, candidates.” (emphasis in original)).

In the present case, donor disclosure requirements aggravate the constitutional problem. Nonprofit political advocacy groups have a First Amendment right to preserve the anonymity of their supporters or members. Governments have often used disclosure requirements to target organizations with political views that depart from prevailing orthodoxy. “[C]ompelled disclosure of affiliation with groups engaged in advocacy” can be as powerful a restraint on freedom of association as requiring “identifying arm-bands[.]” *Patterson*, 357 U.S. at 462 (internal citation omitted). As Justice Harlan trenchantly observed, “[i]nviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.” *Id.*

The threat to First Amendment associational rights from compelled disclosure parallels the threat experienced by NAACP members in the civil rights era. *Id.* (noting that disclosure of the identity of NAACP members “exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility[]”); *see also Citizens United v. FEC*, 558 U.S. 310, 483 (2010) (Thomas, J., concurring in part and

dissenting in part) (“Of course . . . disclosure requirements enable private citizens and elected officials to implement political strategies *specifically calculated* to . . . prevent the lawful, peaceful exercise of First Amendment rights.” (emphasis in original)).

This Court recently reaffirmed that principle. A regime that compels an organization to disclose its associations must satisfy “exacting scrutiny,” meaning that the regime must be “narrowly tailored to the government’s asserted interest.” *Ams. for Prosperity Found.*, 594 U.S. at 608. A speaker need not prove that donors or members will actually suffer harassment; the risk of a chilling effect is itself enough, “[b]ecause First Amendment freedoms need breathing space to survive.” *Id.* at 618–19 (citation omitted). The registration and reporting obligations that follow from Alaska’s campaign-advocacy label impose exactly that kind of burden on APF and similarly situated organizations.

Public-interest organizations are paradigmatic First Amendment speakers. They are formed to disseminate ideas, persuade citizens, and participate in debates about public policy. That is especially true of nonprofit advocacy organizations. In *FEC v. Massachusetts Citizens for Life, Inc.*, this Court emphasized that such an organization “was formed to disseminate political ideas, not to amass capital.” 479 U.S. 238, 259 (1986). Its resources reflected “its popularity in the political marketplace[,]” not economic power. *Id.* The Court therefore rejected the assumption that voluntarily formed ideological

organizations pose the same concerns as corporations organized for economic gain. *Id.*

Ideological nonprofits like Massachusetts Citizens for Life (“MCFL”) or APF do not present the same concerns that justify restricting corporate political spending in the first place. Such restrictions exist to prevent the “unfair deployment of wealth for political purposes[]” and to ensure that political competition remains “competition among ideas.” *Id.* MCFL posed no such danger because the resources available to it were “not a function of its success in the economic marketplace, but its popularity in the political marketplace.” *Id.*

The Court accordingly identified three characteristics that set ideological advocacy corporations apart from ordinary business corporations: such an organization is “formed for the express purpose of promoting political ideas, and cannot engage in business activities[]”; the organization has “no shareholders or other persons affiliated so as to have a claim on its assets or earnings[]”; and it “was not established by a business corporation or a labor union,” nor does it “accept contributions from such entities.” *Id.* at 263–64. Those characteristics reflect a common principle: an organization dedicated to disseminating ideas, rather than amassing capital, cannot corrupt the political process merely by speaking about it.

That principle matters here. APF is not alleged to have been a political committee, campaign arm, or ballot-measure committee. It is a nonprofit public-policy organization. It spoke about matters of public

concern. Organizations like APF exist to speak about public issues. They do not become campaign committees simply because the public issue they address later appears on a ballot. This Court has repeatedly warned against regulatory regimes that burden organizations for doing what the First Amendment protects.

The holding of the court below threatens that principle. Many issues addressed by nonprofit organizations eventually become subjects of ballot measures or electoral campaigns. Religious organizations discuss abortion, conscience protections, parental rights, education, and marriage. Charitable organizations discuss poverty, homelessness, immigration, and healthcare. Public-interest groups and think tanks discuss election integrity, free speech, taxation, government accountability, school choice, voting systems, and economic reform.

If a state may treat discussion of those issues as campaign advocacy whenever one of those issues appears on a ballot, then organizations must monitor not only what they say, but how regulators might later characterize their speech in light of political developments. The predictable result is self-censorship at precisely the moment public interest is greatest.

Public-interest organizations do not surrender constitutional protection by speaking about issues that voters also care about. Nor does the presence of an election convert issue speech into electoral advocacy. The First Amendment protects the

discussion of public issues before, during, and after election season.

II. THE ALASKA SUPREME COURT COLLAPSED THE DISTINCTION BETWEEN ISSUE ADVOCACY AND CAMPAIGN ADVOCACY.

The decision below warrants review because it erases the constitutional line between issue advocacy and candidate campaign advocacy. APF discussed ranked-choice voting. Alaska treated that discussion as campaign advocacy because ranked-choice voting was part of Measure 2. That reasoning allows the government to regulate speech on issues based on the audience’s presumed awareness of an election and the government’s inference that opposition to a policy implies opposition to a ballot measure. That is precisely the kind of uncertainty this Court’s campaign-speech cases have sought to avoid.

In *Buckley*, this Court confronted statutory language regulating spending “for the purpose of . . . influencing” elections. 424 U.S. at 77. The Court held that such language could not constitutionally be applied broadly because it risked reaching “groups engaged purely in issue discussion.” *Id.* at 79. To avoid vagueness and overbreadth, the Court limited the reach of the statute to “communications that expressly advocate the election or defeat of a clearly identified candidate.” *Id.* at 80. In *FEC v. Wisconsin Right to Life, Inc.*, the Court reaffirmed that speakers do not lose First Amendment protection simply because their speech on issues has electoral relevance. 551 U.S. 449, 474 (2007). “Discussion of issues cannot be suppressed simply because the issues may also be pertinent in an election.” *Id.*

A vague standard that allows regulators to decide after the fact whether speech is “for the purpose of influencing” an election chills protected expression. Speakers must know, before they speak, whether they are engaging in regulated campaign advocacy or protected issue advocacy. Without a clear line, they will “hedge and trim” their speech. *Buckley*, 424 U.S. at 43 (citation omitted). That concern applies with full force when the government regulates speech on issues because a policy question appears on a ballot. Ballot measures often involve public questions that have been debated for years: abortion, education, taxation, marriage, criminal justice, election administration, religious liberty, labor law, environmental policy. Organizations do not cease to be issue First Amendment speakers merely because one of those issues becomes the subject of a ballot referendum.

This Court’s decision in *Massachusetts Citizens for Life* reinforces that conclusion. There, the Court explained that *Buckley* “adopted the ‘express-advocacy’ requirement to distinguish discussion of issues and candidates from more pointed exhortations to vote for particular persons.” 479 U.S. at 249. That distinction preserves the ability of ideologically oriented organizations to participate in public debate without being treated as campaign actors whenever their views have electoral implications. *Massachusetts Citizens for Life* illustrates where that line actually falls. The newsletter at issue there did not merely discuss a public issue; it identified and photographed specific candidates by name and, in substance, told voters to support them. *Id.* The Court held that the publication was “an explicit directive[]” to support named candidates, and that “[t]he fact that

this message is marginally less direct than ‘Vote for Smith’ does not change its essential nature.” *Id.*

Wisconsin Right to Life makes the point even clearer. The Court rejected a test that depended on intent, effect, or contextual inquiry because such an approach would “unquestionably chill a substantial amount of political speech.” *Wisconsin Right to Life*, 551 U.S. at 469. The Court held that issue speech remains protected unless it “is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.” *Id.* at 470. And the Court emphasized that speakers have a right to engage in issue advocacy when public interest in the issue is highest. *Id.* at 473.

The Alaska Supreme Court took the opposite approach. It treated timing, context, and audience assumptions as sufficient to transform APF’s policy speech into electoral advocacy. The court reasoned that because ranked-choice voting was on the ballot, APF’s opposition to ranked-choice voting could only be understood as opposition to the ballot measure. In other words, the court equated opposition to a policy with opposition to the electoral instrument that might enact that policy.

That approach collapses the distinction between speech on issues and election-related advocacy. If criticizing a policy that appears on a ballot qualifies as election advocacy, then there is no meaningful category of *issue* advocacy during ballot-measure campaigns. The placing of a matter on a ballot would in effect silence nonprofits from touching that matter on pain of regulatory consequences. A church that

preaches about abortion while abortion appears on a ballot could be deemed to advocate for or against the measure. A parental-rights organization that discusses school curricula while an education initiative is pending could be characterized as engaging in campaign activity. A think tank that criticizes ranked-choice voting, tax policy, or criminal-justice reform could become a regulated campaign speaker whenever the issue is placed before voters.

The First Amendment does not tolerate that result. The constitutional question is not whether listeners might connect speech on an issue to an election. The question is whether the government can restrict or suppress that speech whenever it bears upon a matter that happens to be on the ballot. A rule that allows the government to answer that question by relying on timing, context, and presumed audience understanding rather than words themselves leaves speakers without the breathing space the First Amendment requires.

The Alaska rule is especially troubling because it penalizes continuity. APF did not suddenly become a campaign actor by *continuing* to discuss ranked-choice voting, as it had before, after Measure 2 qualified for the ballot. An organization's continued discussion of an issue exemplifies consistent issue advocacy, not new action geared to an election. Public-interest organizations frequently speak about issues over long periods of time. The fact that political actors later put one of those issues to voters does not transform the organization's preexisting policy advocacy into electoral advocacy.

Nor does it matter that APF's views were pointed, forceful, or one-sided. Issue advocacy often is. The First Amendment protects persuasion, criticism, and advocacy, not merely detached academic description. A rule that treats vigorous policy criticism as campaign advocacy because a related issue appears on the ballot would chill precisely the speech most central to democratic self-government.

The decision below therefore presents a serious and recurring First Amendment problem. States increasingly regulate election-related speech, and ballot measures often concern controversial public issues. Without this Court's intervention, issue-oriented speakers will face uncertainty about when their ordinary advocacy becomes regulated campaign activity. The Court should grant review to reaffirm that issue advocacy does not become campaign advocacy merely because the issue is electorally salient.

III. CONSTITUTIONAL RIGHTS CANNOT BE RENAMED AWAY THROUGH REGULATORY LABELS.

The decision below also conflicts with a basic First Amendment principle recently reaffirmed by this Court: constitutional rights cannot be defeated by labels. The government may not avoid constitutional scrutiny by describing protected speech as something else. "What's in a name?" Juliet asked. "That which we call a rose / By any other word would smell as sweet." WILLIAM SHAKESPEARE, *ROMEO AND JULIET*, act 2, sc. 2. Alaska's theory asks this Court to accept the opposite: that a name can change what a thing is. Call issue speech "campaign advocacy," the State

insists, and it becomes campaign advocacy. Registration, reporting, and disclosure obligations follow automatically, whatever the speech actually said. But a state cannot relabel a rose as a thistle merely by calling it one, and it cannot relabel issue speech into campaign advocacy merely by attaching that name to it. *See Chiles v. Salazar*, 146 S. Ct. 1010, 1023 (2026) (The rights the First Amendment protects “cannot be renamed away” or “nullified by ‘mere labels’”; “The First Amendment is no word game.”).

This Court reached the same result when California tried to impose disclosure mandates on pregnancy centers by labeling the regulated speech “professional speech.” “[T]his Court has not recognized ‘professional speech’ as a separate category of speech[,]” because “[s]peech is not unprotected merely because it is uttered by ‘professionals.’” *Nat’l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 767 (2018) (“*NIFLA*”). The Court warned that “[h]istory is littered with examples of governments that have sought” to manipulate speech through such labels “to increase state power” and “suppress” disfavored viewpoints. *Chiles*, 146 S. Ct. at 1015 (quoting *NIFLA*, 585 U.S. at 771).

Alaska’s “campaign advocacy” label operates the same way. It does not describe what APF actually said; rather, it consigns APF’s issue speech to a regulatory category so as to subject it to registration, reporting, and disclosure burdens that could not otherwise be imposed on ordinary public debate.

This Court has made the same point in other First Amendment contexts. In *Riley v. National Federation of the Blind*, the Court held that “state labels cannot be dispositive of . . . First Amendment protection.” 487 U.S. 781, 796 (1988) (quoting *Bigelow v. Virginia*, 421 U.S. 809, 826 (1975)). The government cannot change the constitutional character of speech by changing the label attached to it. Nor can it dilute First Amendment protection by embedding speech regulation within a broader regulatory scheme.

A state cannot expand permissible election regulatory power by labeling issue advocacy as campaign advocacy whenever the issue becomes the subject of a ballot measure. The constitutional line turns on the nature of the speech, not the regulator’s characterization of it.

The danger of accepting Alaska’s label is substantial. Once issue speech is classified as campaign advocacy, significant consequences follow, such as registration, reporting, disclosures, and mandatory disclaimers. The speaker is no longer treated as an ordinary participant in public debate, but as an election actor subject to burdensome campaign-finance regulations.

That cascade of consequences confirms why the threshold characterization matters. The State should not be allowed to inflict those consequences by mislabeling issue advocacy as campaign speech.

This Court’s intervention is needed because the principle at stake extends far beyond APF. Ballot measures frequently concern issues on which

religious and public-interest organizations have long spoken. Those organizations cannot fulfill their missions if their speech becomes regulated whenever the issue enters the electoral arena. The First Amendment protects their right to continue speaking.

Issue advocacy remains issue advocacy even when the issue is politically important, electorally relevant, or the subject of a ballot measure. A state may regulate genuine campaign advocacy, but it may not evade the First Amendment by relabeling public-policy speech as campaign activity whenever the issue becomes electorally relevant. That is the “word game” *Chiles* forbids.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

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