CAMPAIGN FINANCE "SEE" CHANGE IN MICHIGAN? EXAMINING MICHIGAN'S CAMPAIGN FINANCE DISCLOSURE REGIME POST-*BONTA*

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I. INTRODUCTION

In 2010, Justice Scalia stressed the importance of transparent political speech, saying that "[r]equiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed."[1] For those interested in improving our democratic institutions through

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1. Doe v. Reed, 561 U.S. 186, 228 (2010) (Scalia, J., concurring).

campaign finance reform, Justice Scalia's stance was a singular bright spot amidst a decade of Supreme Court decisions that transformed America's campaign finance landscape in favor of major donors.[2]

Traditionally, policymakers have employed four primary tools to limit the role of money in politics: contribution limits, expenditure limits, public financing, and disclosure laws.[3] However, since 2010, the Supreme Court has curtailed or removed three of these regulatory options.[4] The Court has only consistently approved of campaign finance transparency through the public disclosure of contributions and expenditures.[5] That is, until recently.

Americans for Prosperity Foundation v. Bonta, decided in 2021, concerned a California law that required charities to report their major donors to the State.[6] On its face, the case did not involve campaign finance.[7] However, the Court used what is known as the exacting scrutiny standard to determine the constitutionality of the California law.[8] That same standard is used in campaign finance disclosure cases.[9] When the Court applied exacting scrutiny in *Bonta*, it subtly altered the standard in a way that makes proving the constitutionality of disclosure laws more

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2. *See* Ian Vandewalker, *Scalia on Democracy Without Disclosure*, BRENNAN CTR. FOR JUST. (Feb. 18, 2016), https://www.brennancenter.org/our-work/analysis-opinion/scalia-democracy-without-disclosure [https://perma.cc/Y4QG-49UC]; LAWRENCE NORDEN, ET AL., BRENNAN CTR. FOR JUST., FIVE TO FOUR 1 (2016), https://www.brennancenter.org/our-work/research-reports/five-four [https://perma.cc/NDW5-RSTK].

3. Jessica Levinson, *Full Disclosure: The Next Frontier in Campaign Finance Law*, 93 DENV. L. REV. 431, 432 (2016). Contribution limits refer to caps placed on how much an individual can donate to a single candidate or committee in a single election cycle. *Academic Resources: Glossary*, OPENSECRETS, https://www.opensecrets.org/resources/learn/glossary.php [https://perma.cc/MKU5-5VLR] (last visited Oct. 15, 2022). Expenditure limits are caps on how much candidates and committees can spend during a single campaign. *Id.* Public financing refers to optional programs for candidates in which participating office-seekers receive government-provided funds for their campaign in return for following stricter limits on contributions and/or expenditures. *See id.* Disclosure laws are regulations requiring candidates and committees to report the identities of their donors and vendors. *See id.* Such laws generally also require the disclosure of each contributor's address. *See id.*

4. *See* Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010) (striking down limits on corporate independent expenditures); Ariz. Free Enter. Club's Freedom Club PAC v. Bennett, 564 U.S. 721 (2011) (invalidating public financing linked to money raised or spent on behalf of the publicly financed candidate's opponent); McCutcheon v. Fed. Election Comm'n, 572 U.S. 185 (2014) (striking down aggregate contribution limits).

5. *See Citizens United*, 558 U.S. at 371; *see also McCutcheon*, 572 U.S. at 223.

6. Ams. for Prosperity Found. v. Bonta, 141 S. Ct. 2373, 2379 (2021).

7. *Id.*

8. *Id.*

9. *Id*. at 2383 ("Regardless of the type of association, compelled disclosure requirements are reviewed under exacting scrutiny.").

difficult.[10] This may open the door to legal challenges against existing disclosure regimes in states across the country.[11] Prior to *Bonta*, disclosure laws only needed to be "substantially related" to a significant government interest.[12] Post-*Bonta*, the court requires disclosure laws to be "narrowly tailored" to those same interests.[13]

This Note argues that Michigan's disclosure regime should be maintained in full. Michigan is at particular risk of seeing such a legal challenge because of its strict requirement that candidates and committees disclose all donations, regardless of the size of the donation.[14] Michigan citizens reap unique informational benefits from comprehensive disclosure that would be diminished by raising the threshold for reporting contributions. Part II of this Note provides background on the Supreme Court's historical support of disclosure, even as it eliminated other campaign finance regulatory options.[15] Additionally, Part II provides an overview of the *Bonta* decision and concludes with an overview of Michigan's disclosure requirements under the Michigan Campaign Finance Act.[16] Part III describes the government interests in campaign finance disclosure and analyzes each in context of the Michigan Campaign Finance Act.[17] It further explores how a court might analyze a post-*Bonta* challenge to Michigan's disclosure laws using a recent challenge in the U.S. Court of Appeals for the First Circuit to a Rhode Island disclosure law as an analogy.[18] Part IV concludes that maintaining Michigan's disclosure requirements is necessary to preserve disclosure as a powerful campaign finance tool.

II. BACKGROUND

It is impossible to understand the impact of *Bonta* without being familiar with the Supreme Court's disclosure jurisprudence in the decades prior. The standard of review for disclosure regulations and rationale for the Court's support of such laws dates back to the 1976 landmark decision,

10. *Id.*
11. *See id.*
12. Buckley v. Valeo, 424 U.S. 1, 64–66 (1976).
13. *Bonta*, 141 S. Ct. at 2383.
14. MICH. COMP. LAWS § 169.226(1)(e).
15. *See infra* Part II.A.
16. *See infra* Part II.B–C.
17. *See infra* Part III.A.1–3.
18. *See infra* Part III.B.

Buckley v. Valeo,[19] which laid the foundation for the campaign finance system we know today.[20]

A. The Supreme Court Consistently Supported Disclosure Requirements

1. Buckley v. Valeo

On June 17, 1972, five burglars were caught stealing documents and wiretapping phones in the Democratic National Committee's Watergate office.[21] The scandal not only marked the beginning of the end for President Richard Nixon's presidency but it also ushered in a new era of campaign finance regulations.[22] The FBI traced money found on the burglars back to a bank account utilized by the President's candidate committee to launder secret and illegal campaign contributions.[23] The ensuing investigation "shined a light on dark secrets of the American campaign finance system."[24] Nixon's campaign committee spent an unprecedented $67 million, much of which was funded by donors that were never publicly disclosed.[25] Moreover, $850,000 came from illegal corporate contributions from some of America's most prominent companies.[26]

Congress reacted by passing significant changes to the Federal Election Campaign Act (FECA) in 1974.[27] FECA, which was enacted just three years prior, already required quarterly reporting of political fundraising and spending.[28] The 1974 amendment placed limits on political contributions and expenditures, set thresholds determining at which point contributions and expenditures needed to be disclosed, created

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19. Buckley v. Valeo, 424 U.S. 1 (1976).

20. Adam Lioz, Buckley v. Valeo *at 40*, DEMOS (2015), https://www.demos.org/sites/default/files/publications/buckley_at_40%20%282%29.pdf [https://perma.cc/3UR3-9P6Z].

21. Alfred E. Lewis, *5 Held in Plot to Bug Democrats' Office Here*, WASH. POST (June 18, 1972), https://www.washingtonpost.com/wp-dyn/content/article/2002/05/31/AR2005111001227.html [https://perma.cc/Y227-WJ4D].

22. Anthony J. Gaughan, *The Forty-Year War on Money in Politics: Watergate, FECA, and the Future of Campaign Finance Reform*, 77 OHIO ST. L.J. 791, 793–97 (2016).

23. *Id*. at 794.

24. *Id*. at 795.

25. *Id*.

26. Companies included "American Airlines, Anheuser-Busch, 3M, Chrysler, Disney, DuPont, Goodyear Tire, and Gulf Oil, among others." *Id.* at 795–96.

27. Federal Election Campaign Act Amendments, Pub. L. No. 93–443, S. 3044, 93rd Cong. (1974).

28. R. SAM GARRETT, CONG. RSCH. SERV., THE STATE OF CAMPAIGN FINANCE POLICY: RECENT DEVELOPMENTS AND ISSUES FOR CONGRESS 3 (2016).

"a system for public funding of Presidential campaign[s]," and established the Federal Election Commission (FEC).[29]

Within two years of FECA's passage, a bipartisan challenge to the law reached the Supreme Court.[30] In *Buckley v. Valeo*, challengers argued that FECA's contribution limits, expenditure limits, and disclosure requirements violated constitutionally protected freedoms of speech and association, among other claims.[31] They maintained that modern political campaigns could not engage in any meaningful communication without raising and spending money.[32] Thus, limits on contributions and expenditures restricted speech itself.[33] Regarding disclosure, the challengers recognized that making campaign finance reports publicly available was necessary to accomplish Congress' legitimate interests but argued FECA was overbroad in its application.[34]

To address these issues, the Court first needed to determine the applicable standards of review. These standards are essentially balancing tests that vary based upon the issue at stake.[35] At one end of the scale is the "strict scrutiny" standard.[36] This test is reserved for laws that affect fundamental rights and requires the government to show that the law is both narrowly tailored and serves a compelling government interest.[37] In contrast, the "rational basis" test is employed for laws that do not implicate fundamental rights and therefore can be upheld simply by showing the law is rationally related to a legitimate government interest.[38]

The *Buckley* Court applied different tests to expenditure limits, contribution limits, and disclosure requirements, respectively.[39] Expenditure limits—limits on the amount of money a candidate could spend—represented a substantial "restraint[] on the quantity and diversity of political speech," the Court said.[40] Political speech is considered a

29. Buckley v. Valeo, 424 U.S. 1, 7 (1976).

30. *Id*. at 7–8.

31. *Id.* at 11. The petitioners also challenged the creation of a program to provide public financing to participating presidential candidates as well as the composition and powers of the newly formed Federal Election Commission. *Id.*

32. *Id*.

33. *Id.*

34. *Id.* at 60–61.

35. RICHARD L. HASEN, PLUTOCRATS UNITED: CAMPAIGN MONEY, THE SUPREME COURT, AND THE DISTORTION OF AMERICAN ELECTIONS 22 (2016).

36. *Id*.

37. *See, e.g.*, Williams-Yulee v. Fla. Bar, 575 U.S. 433, 442 (2015); Republican Party of Minn. v. White, 536 U.S. 765, 774–75 (2002).

38. *See, e.g.*, Heller v. Doe, 509 U.S. 312, 320 (1993); City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 446 (1985).

39. *See Buckley*, 424 U.S. 1.

40. *Id.* at 19.

fundamental right, and therefore, any law limiting such speech must survive strict scrutiny.[41]

By comparison, the Court considered contribution limits, which limit the amount of donations given to a single candidate, to be a lesser threat to political speech.[42] The Court reasoned that donors do not engage in more speech by giving greater amounts to a single candidate.[43] Rather, contributions simply serve "as a general expression of support for the candidate and his views" without "communicat[ing] the underlying basis for the support."[44] In other words, the act of contributing is what constitutes speech, not the amount. Because contribution limits are far less restrictive on the fundamental right to political speech, the Court held that such limits could be found constitutional if the government showed they were "closely drawn" in order to achieve a "sufficiently important government interest."[45] The government met this burden in *Buckley*, with the Court concluding that the contribution limits in FECA addressed the State's important interest in preventing corruption without significantly undermining an individual's right to associate with a campaign or provide significant material support.[46]

Finally, the Court expressed the least concern when it came to disclosure requirements, which required political committees to submit periodic reports to the FEC detailing their contributions received and expenditures made.[47] The Court noted that disclosure "impose[s] no ceiling on campaign-related activities," unlike limits on expenditures and contributions.[48] Thus, disclosure laws can be upheld if the information obtained through disclosure bears a "substantial relation" to a "sufficiently important" government interest.[49] This standard has come to be known as "exacting scrutiny."[50] Compared to strict scrutiny, exacting scrutiny presents a far lower standard for the government because it does not require the government to adopt the least restrictive policy to achieve its goal.[51] Moreover, the interest addressed can merely be "sufficiently

41. *See id.*
42. *Id.* at 20–21.
43. *Id.* at 21.
44. *Id.*
45. *Id.* at 25.
46. *Id.* at 28–29.
47. *Id.* at 63–68.
48. *Id.* at 63–64.
49. *Id.* at 64–66.
50. *See* Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 366–67 (2010).
51. *See* Berger v. City of Seattle, 569 F.3d 1029, 1050 (9th Cir. 2009) (en banc) ("Under [the strict scrutiny] standard, the regulation is valid only if it is the least restrictive means available to further a compelling government interest.").

important" under exacting scrutiny, while strict scrutiny requires the interest to be "compelling."[52]

The Court identified three sufficiently important interests for FECA's disclosure regime.[53] First, public reporting of contributions and expenditures helps voters make informed decisions at the voting booth.[54] Knowing the source of contributions enables citizens to better place candidates on the political spectrum and may indicate to whom a candidate is likely to be responsive once in office.[55] Second, disclosure "deters corruption and avoid[s] the appearance" thereof.[56] Those who seek to unduly influence candidates via campaign contributions are less likely to do so knowing their donation will be seen by regulators and the public.[57] Further, the public is better equipped to uncover favors conferred by elected officials if contributions are known.[58] Finally, disclosure of contribution and expenditure data is essential to enforce campaign finance rules such as FECA's contribution limits.[59] Because FECA's disclosure requirements directly addressed each of these issues, the *Buckley* Court found the requirements constitutional under the exacting scrutiny standard.[60]

2. McConnell v. FEC

In 2002, Congress again expanded disclosure requirements with the passage of the Bipartisan Campaign Reform Act (BCRA).[61] The Act required that committees purchasing "electioneering communications"[62]—that is, political advertisements mentioning a federal candidate within a certain time period before an election—disclose their

52. Gaspee Project & Ill. Opportunity Project v. Mederos, 482 F. Supp. 3d 11, 16 (D.R.I. 2020).
53. *See Buckley*, 424 U.S. 1.
54. *Id*. at 66–67.
55. *Id.* at 67.
56. *Id*.
57. *Id.*
58. *Id.*
59. *Id.* at 67–68.
60. *Id.* at 84.
61. Pub. L. No. 107–155, 116 Stat. 81, 107th Cong. (2002).
62. Electioneering communications are "any broadcast, cable or satellite communication" that (1) "refers to a clearly identified candidate for Federal office;" (2) is publicly distributed within certain time periods before an election and (3) "in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate." 52 U.S.C. § 30104(f)(3).

identity on the face of the advertisement and report their donors.[63] Senator Mitch McConnell and a bipartisan group of plaintiffs quickly challenged the law on the grounds that electioneering communications did not constitute express advocacy as contemplated in *Buckley*.[64] Therefore, the plaintiffs argued, disclosure for such activity was not substantially related to the sufficiently important government interests described by the *Buckley* Court.[65]

McConnell's argument did not win the day.[66] The Court noted that while electioneering communications may not use explicit language urging views to support or reject a candidate, they were still clearly meant to influence elections.[67] Thus, the same information, anti-corruption, and enforcement interests that led the Court to uphold disclosure requirements in *Buckley* fully applied to BCRA.[68] However, in a slight departure from *Buckley*, the Court did not simply hold that the minor burdens on speech and association imposed by disclosure were outweighed by state interests. Justice O'Connor and Justice Stevens went a step further in their joint opinion by recognizing that disclosure may actively promote First Amendment interests by empowering citizens to "make informed choices in the political marketplace."[69] This framing bolstered the information interest and made clear that First Amendment proponents should favor disclosure requirements rather than merely tolerate them.

Support for disclosure provisions has not been limited to cases in which the Court has broadly affirmed the entire regulatory scheme in which the provisions sit, as was the case in BCRA. For instance, in *First Nat'l Bank of Boston v. Bellotti*,[70] the Court simultaneously struck down a ban on corporate expenditures for referendum campaigns while emphasizing the "prophylactic effect of requiring that the source of communication be disclosed."[71] In recent years, disclosure regulations have survived while a broad swath of other campaign finance regulations

63. Erin Chlopak, *One of These Things Is Not Like The Other:* NAACP v. Alabama *Is Not a Manual for Powerful, Wealthy Spenders to Pour Unlimited Secret Money into Our Political Process*, 69 AM. U.L. REV. 1395, 1402 (2020).

64. In addition to Senator McConnell, appellants included the California Democratic Party, the National Rifle Association, the American Civil Liberties Union, the U.S. Chamber of Commerce, and the AFL-CIO, among others. McConnell v. Fed. Election Comm'n, 540 U.S. 93 (2003).

65. *See McConnell*, 540 U.S. at 115–17.

66. *Id.* at 194.

67. *Id.* at 193.

68. *Id.* at 196.

69. *Id.* at 197 (quoting McConnell v. FEC, 251 F. Supp. 2d 176, 237 (D.D.C. 2003) (three-judge court)).

70. First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765 (1978).

71. *Id.* at 792 n.32.

have been dismantled by the Roberts Court.[72] Two cases are emblematic of the Court's recent hostility toward campaign finance regulations outside of disclosure: *Citizens United v. FEC* and *McCutcheon v. FEC*.

3. Citizens United v. FEC

In *Citizens United v. FEC*, the Court addressed the question of whether corporations and unions can be prohibited from spending treasury funds on independent expenditures in the form of direct advocacy or electioneering communications.[73] Independent expenditures are expenditures for communications that expressly advocate for the election or defeat of candidates and that are made without consulting or cooperating with any candidate or party.[74] By contrast, electioneering communications do not need to expressly advocate for a candidate, but rather are simply communications that refer to a clearly identified candidate within a specific number of days prior to an election and are "targeted to the relevant electorate."[75]

Citizens United, a small, conservative non-profit corporation, released a film titled *Hillary: The Movie* in 2008.[76] The film was funded through its treasury funds and heavily criticized then-presidential candidate Hillary Clinton.[77] When Citizens United sought to pay to have the movie freely-available through on-demand cable, the group ran afoul of BCRA's ban on using corporate treasury funds for electioneering communications.[78] Citizens United then filed suit to challenge the corporate electioneering communications ban as well as the disclosure requirements for legal electioneering communications.[79]

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72. *See* Citizens United v. Fed. Elections Comm'n, 558 U.S. 310, 365 (2010) (striking down limits on corporate independent expenditures); Ariz. Free Enter. Club's Freedom Club PAC v. Bennett, 564 U.S. 721, 755 (2011) (invalidating public financing linked to money raised or spent on behalf of the publicly financed candidate's opponent); McCutcheon v. Fed. Elections Comm'n, 572 U.S. 185, 218 (2014) (striking down aggregate contribution limits); *See also* David Earley & Avram Billig, *The Pro-Money Court: How the Roberts Supreme Court Dismantled Campaign Finance Law*, BRENNAN CTR. FOR JUST. (Apr. 2, 2014), https://www.brennancenter.org/our-work/analysis-opinion/pro-money-court-how-roberts-supreme-court-dismantled-campaign-finance-law [https://perma.cc/88G5-PYNJ].

73. *Citizens United*, 558 U.S. 318–19.

74. 11 C.F.R. § 100.16(a) (2014).

75. 11 C.F.R. § 100.29(a) (2014).

76. *Citizens United*, 558 U.S. at 319.

77. *Id.* at 320.

78. *Id.* at 321.

79. *Id.*

Congress has a long history of prohibiting corporate political spending dating back to the Tillman Act in 1907.[80] The Court consistently upheld such bans, reasoning that barring direct corporate involvement would "eliminate the effect of aggregated wealth on federal elections,"[81] curb the influence of "those who exercise control over large aggregations of capital,"[82] and help to regulate the "substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization."[83] In *Austin v. Michigan Chamber of Commerce*, the Court upheld Michigan's ban on corporations' use of treasury funds to support candidates, stating that the law addressed "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas."[84] The Court again reaffirmed this stance in 2002 by upholding BCRA's ban on corporate spending on electioneering communications.[85]

Despite the *Austin* precedent, the Court reversed course in *Citizens United* and ruled that prohibitions on corporate independent spending were no longer constitutional.[86] Whereas *Austin* had expanded upon *Buckley*'s conception of corruption by recognizing that vast aggregations of wealth could distort the political process, *Citizens United* explicitly rejected any rationale for campaign finance limits outside of quid pro quo corruption.[87] Quoting *Buckley*, the Court reiterated that the government had no interest "in equalizing the relative ability of individuals and groups to influence the outcome of elections."[88]

The Court also declared that independent expenditures could not cause meaningful corruption or the appearance of corruption.[89] According to the Court, the fact that speakers may gain access and influence due to their political spending is a natural feature of our political system and does not necessarily mean officials are corrupt.[90] Under this rationale, when legislators listen more to wealthy donors or to an organization that spent heavily on their behalf it reflects "responsiveness" rather than the conferral

80. *See* McConnell v. Fed. Elections Comm'n, 540 U.S. 93, 115–16 (2003).

81. Pipefitters v. United States, 407 U.S. 385, 416 (1972).

82. United States v. In'l Union United Auto., Aircraft & Agr. Implement Workers of Am., 352 U.S. 567, 585 (1957).

83. Fed. Elections Comm'n v. Nat'l Right to Work Comm., 459 U.S. 197, 207 (1982).

84. Austin v. Mich. Chamber of Com., 494 U.S. 652, 659–60 (1990).

85. *McConnell*, 124 S. Ct. at 203–09.

86. Citizens United v. Fed. Elections Comm'n, 558 U.S. 310, 319 (2010).

87. *Id.* at 359–61.

88. *Id*. at 350 (quoting Buckley v. Valeo, 424 U.S. 1, 48 (1976)).

89. *Id.* at 357 ("[W]e now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.").

90. *Id.* at 359.

of special privileges.[91] Moreover, the Court stated that independent expenditures would not cause the public to lose faith in our democracy because, "[b]y definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate. The fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials."[92] Absent from the Court's analysis was any empirical evidence demonstrating that the public does not view independent expenditures as corrupting. As a result, the Court ruled that the Government could no longer limit independent "political speech on the basis of the speaker's corporate identity."[93]

The earliest sign that *Citizens United* would change the landscape of American campaign finance came with the D.C. Circuit's decision in *SpeechNow.org v. FEC*.[94] In that case, SpeechNow.org, a conservative organization similar to Citizens United, sought to overturn limits on contributions to political action committees (PACs).[95] At the time, individuals could contribute no more than $5,000 to a PAC per calendar year.[96] SpeechNow.org only wished to make independent expenditures and argued that they should be exempt from contribution limits.[97] The District Court, following *Buckley*, employed intermediate scrutiny to examine the contribution limits and found them valid.[98] By the time the D.C. Circuit was ready to rule on SpeechNow.org's appeal, however, the *Citizens United* decision had been announced. The D.C. Circuit reasoned that if, as *Citizens United* stated, independent spending posed no risk of corruption or of creating the appearance of corruption, then it logically follows that contributions to independent expenditure-only groups could also carry no corruption threat.[99] In other words, "there [would be] no corrupting 'quid' for which a candidate might in exchange offer a corrupt 'quo.'"[100] The decisions in *SpeechNow.org* and *Citizens United* combined to allow the creation of political action committees capable of accepting unlimited contributions to fund advertising directly supporting or opposing candidates for office, better known as Super PACs.[101]

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91. *Id.*
92. *Id.* at 360.
93. *Id.* at 365.
94. SpeechNow.org v. Fed. Elections Comm'n, 599 F.3d 686 (D.C. Cir. 2010).
95. *Id.* at 690.
96. *Id.* at 691.
97. SpeechNow.org v. Fed. Elections Comm'n, 567 F. Supp. 2d 70, 71 (D.D.C. 2008).
98. *Id.* at 76, 82.
99. *SpeechNow.org*, 599 F.3d at 694–95.
100. *Id.*
101. HASEN, *supra* note 35, at 33.

While the *Citizens United* Court narrowed the government's interest in preventing corruption to simply stopping outright bribery and rejected any anti-corruption interest in limiting independent expenditures, it also reiterated its support of disclosure requirements.[102] Justice Kennedy wrote that the "informational interest alone [was] sufficient to justify application" of disclosure requirements to communications like Citizens United's movie.[103] In fact, Justice Kennedy seemed to indicate that as technological advancements improved the quality of campaign finance disclosure, the need for campaign finance limits diminished.[104] With its decision, the Court articulated a new balance in its campaign finance jurisprudence: "The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."[105]

4. McCutcheon v. FEC

In the 2014 decision of *McCutcheon v. FEC*, the Court took a similar tack, striking down aggregate contribution limits while pointing to the role of disclosure in serving the government's anti-corruption interests.[106] Republican donor Shaun McCutcheon contributed a total of $33,088 to sixteen federal candidates and $27,328 to multiple noncandidate committees in the 2011–2012 election cycle.[107] He alleged that he wanted to donate an additional $1,776 to each of twelve additional candidates and $25,000 to three other Republican national party committees but was prevented from doing so by aggregate contribution limits.[108] He further alleged that he wished to contribute another $60,000 to candidates and $75,000 to noncandidate committees in the 2013–2014 cycle.[109] However, due to aggregate contribution limits established in FECA as amended by

102. *See* Citizens United v. Fed. Elections Comm'n, 558 U.S. 310, 369 (2010).
103. *Id.*
104. *See id.* at 370 (citations omitted) ("It must be noted, furthermore, that many of Congress' findings in passing BCRA were premised on a system without adequate disclosure. With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.").
105. *Id.* at 371.
106. McCutcheon v. Fed. Elections Comm'n, 572 U.S. 185 (2014).
107. *Id.* at 194.
108. *Id.* at 194–95.
109. *Id.* at 195.

BCRA, individuals were limited to donating $48,600 to federal candidates in total and $74,600 to noncandidate committees.[110]

In striking down the aggregate contribution limits, Chief Justice Roberts explained that the strength of modern-day disclosure laws and technologies rendered aggregate contribution limits unnecessary to fight corruption.[111] Disclosure in the era of *Buckley* was hampered by the fact that campaign finance reports sat in file cabinets at the FEC, making it difficult to access and aggregate the data.[112] Today, reports are available almost immediately online through the FEC's website and through nonprofit watchdog organizations such as OpenSecrets.org and FollowTheMoney.org.[113] As a result, "disclosure is effective to a degree not possible at the time *Buckley*, or even *McConnell*, was decided."[114]

Disclosure serves important government interests by informing the public, preventing corruption and the appearance thereof, and enabling enforcement.[115] Increasingly, it is the only means by which these interests are being served.[116] Reasoning that "[d]isclosure is a less restrictive alternative to more comprehensive regulations of speech,"[117] the Court

110. *Id.* at 194.

111. *Id.* at 223–24.

112. *Id.* at 224.

113. *Id.* Although the Roberts Court touted the efficacy of disclosure when striking down aggregate contribution limits in *McCutcheon* and independent expenditure restrictions in *Citizens United*, the very nonprofit organizations Roberts cited have both disagreed with the Court's rosy depiction of the state of campaign finance transparency. *See* KARL EVERS-HILLSTROM, OPENSECRETS, MORE MONEY, LESS TRANSPARENCY: A DECADE UNDER CITIZENS UNITED 2 (Jan. 14, 2020), https://dkftve4js3etk.cloudfront.net/news/reports/citizens-united/OpenSecrets-more-money-less%20transparency-a-decade-under-citizens-united.pdf [https://perma.cc/DEL8-CAET] ("We have a decade of evidence, demonstrated by nearly one billion dark money dollars, that the Supreme Court got it wrong when they said political spending from independent groups would be coupled with necessary disclosure"); *see also* Ed Bender, *McCutcheon Ruling Ignores Disclosure Reality*, FOLLOWTHEMONEY.ORG (Apr. 3, 2014), https://www.followthemoney.org/research/blog/mccutcheon-ruling-ignores-disclosure-reality [https://perma.cc/26RW-BYKC] ("[S]tate disclosure systems are fragmented, offer incomplete information or in some cases no information at all. The agencies are dependent on lawmakers who control the agency purse strings, and many government disclosure systems are hopelessly mired in twentieth century technology."). The Center for Response Politics (also known as OpenSecrets.org) and the National Institute on Money in Politics (also known as FollowTheMoney.org) merged June 2, 2021. The organization is now simply called OpenSecrets. Press Release, OpenSecrets, Leading Money-in-Politics Data Nonprofits Merge to Form OpenSecrets, a State-of-the-Art Democratic Accountability Organization (Jun. 2, 2021), https://www.opensecrets.org/news/2021/06/opensecrets-merger-press-release [https://perma.cc/5S8T-HH4F].

114. *McCutcheon*, 572 U.S. at 224.

115. *See* Buckley v. Valeo, 424 U.S. 1, 66–68 (1976).

116. *See* Levinson, *supra* note 3, at 433.

117. Citizens United v. Fed. Elections Comm'n, 558 U.S. 310, 369 (2010).

struck down major regulatory provisions aimed at controlling money in politics.[118] Though disclosure was never meant to be the sole campaign finance solution, transparency laws now bear much of the burden when it comes to regulating money in politics.[119]

B. Americans for Prosperity v. Bonta Raises the Specter of a Heightened Standard of Scrutiny for Campaign Finance Disclosure Laws

Critics raised red flags[120] when the Court seemingly laid the groundwork to roll back campaign finance disclosure laws in *Americans for Prosperity v. Bonta*.[121] The case itself did not involve political contributions or expenditures.[122] Rather, *Bonta* arose out of a challenge to a California law requiring disclosure of certain charitable fundraising.[123] Utilizing authority granted to the Attorney General to supervise and regulate charitable giving, California required nonprofits renewing their registrations to submit the names and addresses of donors who had contributed more than $5,000 in a given tax year.[124] For years, the state did little to enforce this disclosure requirement.[125] That changed in 2010, at which point the plaintiffs, Americans for Prosperity Foundation (the Foundation) and the Thomas More Law Center (the Law Center), began receiving deficiency letters from the California Department of Justice threatening suspension of their registrations and fines for the organizations' directors and officers.[126]

Both organizations filed complaints stating that the required donor disclosures violated their First Amendment rights and the rights of their

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118. *See Buckley,* 424 U.S. 1 (striking down expenditure limits); *Citizens United*, 558 U.S. 310 (striking down limits on corporate independent expenditures); *McCutcheon,* 572 U.S. 185 (striking down aggregate contribution limits).

119. *See* Levinson, *supra* note 3, at 433.

120. *See, e.g.,* Ian Millhiser, *The Supreme Court Just Made Citizens United Even Worse*, VOX (July 1, 2021), https://www.vox.com/2021/7/1/22559318/supreme-court-americans-for-prosperity-bonta-citizens-united-john-roberts-donor-disclosure (arguing that courts are likely to strike down disclosure laws in their entirety) [https://perma.cc/3MUU-TTJL]; Ciara Torres-Spelliscy, *The Supreme Court Moves the Goalposts on Donor Transparency*, BRENNAN CTR. FOR JUST. (July 13, 2021), https://www.brennancenter.org/our-work/analysis-opinion/supreme-court-moves-goalposts-donor-transparency [https://perma.cc/NZ39-V7EM]. *See also* Rick Hasen, *The Supreme Court Is Putting Democracy at Risk*, N.Y. TIMES (July 3, 2021), https://www.nytimes.com/2021/07/01/opinion/supreme-court-rulings-arizona-california.html [https://perma.cc/XE6A-NPBS].

121. Ams. for Prosperity Found. v. Bonta, 141 S. Ct. 2373 (2021).

122. *Id.*

123. *Id.* at 2379.

124. *Id.* at 2380.

125. *Id.*

126. *Id.*

contributors.[127] They argued that such requirements discouraged contributions and put their donors at risk of reprisals for their support of the two conservative organizations.[128] After the District Court found in favor of the Foundation and the Law Center, the Ninth Circuit reversed, holding that the District Court had incorrectly imposed a narrow tailoring burden when applying the exacting scrutiny standard used in disclosure cases.[129] Instead, the government had successfully shown their disclosure regime was substantially related to their interest in "investigative efficiency and effectiveness."[130]

At the Supreme Court, this disagreement over the application of exacting scrutiny became the issue on which the case would be won or lost.[131] The Law Center, though not the Foundation, first maintained that a strict scrutiny standard should have been applied, arguing that heightened scrutiny was necessary to protect charities' rights of association and that exacting scrutiny should be limited to the electoral context.[132] The Court was quick to bat this notion aside, stating that the exacting scrutiny test applied in *Buckley* had itself been derived from a non-electoral case,[133] *NAACP v. Alabama*.[134]

The Foundation and the Law Center argued, in the alternative, that the exacting scrutiny standard applied should include a least restrictive means test akin to strict scrutiny.[135] Conversely, the California Attorney General maintained that the exacting scrutiny standard required no tailoring beyond demonstrating that the policy was substantially related to its sufficiently important interest.[136]

When it came time to decide, the Court split the difference.[137] The Court held that "[w]here exacting scrutiny applies, the challenged requirement must be narrowly tailored to the interest it promotes, even if it is not the least restrictive means of achieving that end."[138] Citing *Shelton v. Tucker*, the Court said that even a legitimate and substantial government interest cannot be justified if means are available that would avoid stifling

127. *Id*.
128. *Id*.
129. Ams. For Prosperity Found. v. Becerra, 903 F.3d 1000, 1008–09 (9th Cir. 2018).
130. *Bonta*, 141 S.Ct. at 2381 (citing *Ams. For Prosperity Found*, 903 F.3d at 1009–12).
131. *See id.* at 2383.
132. *Id*.
133. *Id*.
134. Nat'l Ass'n for Advancement of Colored People v. Alabama ex rel. Patterson, 357 U.S. 449, 460–61 (1958).
135. *Bonta*, 141 S. Ct. at 2383.
136. *Id*.
137. *Id*.
138. *Id*. at 2384.

fundamental liberties.[139] Further, the Court stated that the question of whether burdens are overbroad must be addressed first regardless of the severity of the burden on individuals.[140] Recall that under *Buckley*, exacting scrutiny simply required that the government show its policy bore a "substantial relation" to a "sufficiently important" government interest.[141] By requiring that disclosure laws be narrowly tailored, rather than substantially related, to the government's interest regardless of the severity of the burden, the *Bonta* Court shifted the exacting scrutiny standard closer to a strict scrutiny standard that is less favorable to government regulation.[142]

In the end, the middle ground staked out by the Court between the parties' conceptions of exacting scrutiny favored the nonprofits challenging California's disclosure regime.[143] The Court characterized California's disclosure requirements as a "dragnet for sensitive donor information from tens of thousands of charities each year, even though that information will become relevant in only a small number of cases involving filed complaints."[144] The Court further pointed to the fact that California was only one of three states to require such information and had not actively enforced the policy until 2010.[145] Thus, the Court ruled that the California disclosure regulations were overbroad and more focused on convenience than investigative efficacy.[146]

The final section of Justice Robert's *Bonta* opinion answered the question as to whether the Court found California's statute unconstitutional on its face or simply as applied to the petitioners.[147] A facial challenge requires proving that a law is unconstitutional regardless of its application.[148] Successful facial challenges render a statute unenforceable against anyone.[149] In *Bonta*, the Court found that the overbroad nature of California's disclosure regulation was categorical and

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139. *Bonta*, 141 S. Ct. at 2384 (quoting Shelton v. Tucker, 364 U.S. 479, 488 (1960)).

140. *Id.* at 2385 ("The point is that a reasonable assessment of the burdens imposed by disclosure should begin with an understanding of the extent to which the burdens are unnecessary, and that requires narrow tailoring.").

141. Buckley v. Valeo, 424 U.S. 1, 64–66 (1976).

142. Hasen, *supra* note 120.

143. *Bonta*, 141 S. Ct. at 2389.

144. *Id.* at 2387.

145. *Id.*

146. *Id.*

147. *Id.* at 2387–89.

148. Nathaniel Persily and Jennifer S. Rosenberg, *Defacing Democracy?: The Changing Nature and Rising Importance of As-Applied Challenges in the Supreme Court's Recent Election Law Decisions*, 93 MINN. L. REV. 1644, 1647 (2009).

149. *Id.*

thus likely to chill speech regardless of the disclosing entity.[150] Chief Justice Roberts disregarded the notion that some individuals and organizations might not be as concerned with disclosing their identities as the plaintiffs, stating that the mere risk of unnecessary chilling of speech through the indiscriminate application of the requirement warranted the facial challenge.[151] The dissent argued that a facial challenge was only warranted where plaintiffs could show a substantial number of organizations and individuals had been subjected to the harassment and reprisals claimed by the plaintiffs.[152] Nonetheless, Chief Justice Roberts returned to his previous analysis that a statute's overbreadth must be addressed before concerns about burdens on individuals come into play.[153]

Although the ruling in *Bonta* dealt specifically with nonprofits rather than electoral committees, experts in campaign finance have expressed concerns that the decision will eventually affect political disclosure.[154] In adding the narrowly tailored requirement, the Court did not indicate it was creating a separate exacting scrutiny standard to be applied outside the electoral context. Thus, without further guidance, lower courts may now be forced to decide whether a requirement to disclose political contributions of certain amounts are sufficiently tailored.[155] If that is the case, Michigan may be among the first states to see a challenge due to its stringent disclosure requirements for candidates and committees.

C. The Michigan Campaign Finance Act

The remainder of this Note will focus on the potential ramifications of the *Bonta* ruling on Michigan's campaign finance disclosure regime. Therefore, it is worthwhile to briefly outline where Michigan's campaign finance law stands today. Currently, all committees must disclose a donor's name and street address regardless of the amount they contribute.[156] As of 2018, Michigan was one of just nine states requiring political committees to disclose all contributors, regardless of the amount donated.[157] Anonymous contributions are not allowed and any candidate or committee that receives an anonymous donation of any size must donate

150. *Bonta*, 141 S. Ct. at 2387.
151. *Id.* at 2388.
152. *Id.* at 2392.
153. *Id.* at 2388–89.
154. *See* Hasen, *supra* note 120.
155. *Id.*
156. MICH. COMP. LAWS § 169.226(1)(e).
157. *CFI Law Database*, CAMPAIGN FIN. INSTIT., https://cfinst.github.io/#disclosure?question=CandDonorExemption&year=2018 [https://perma.cc/KKD8-EQPU] (last visited Oct. 9, 2021).

the money to a tax-exempt charity.[158] Required disclosure of employer and occupation is slightly more tailored, as it is only required to be disclosed by donors that give more than $100 in aggregate.[159]

While the disclosure of donors is relatively stringent for most campaigns, there is a carveout for candidates and committees engaged in small amounts of raising and spending.[160] Candidate committees and independent spending committees are not required to file disclosure reports if they have not received or spent more than $1,000.[161] Further, unlike the federal government and nearly half of all states, Michigan does not define electioneering communications as political advertisements mentioning a candidate within a certain time frame before an election.[162] In fact, Michigan does not define electioneering communications at all, which means spending on such communications is not disclosed.[163]

Disclosure in Michigan is feast or famine. The combination of strict disclosure requirements for candidates and committees engaged in direct advocacy compared with the complete lack of electioneering communications disclosure means different categories of donors receive vastly different treatment. That disparity may add additional fuel to the fire of those seeking to reduce or eliminate disclosure requirements in the state. However, when the full scope of the public's interest in disclosure is factored in, Michigan's disclosure requirements stand up to scrutiny.

III. ANALYSIS

Though *Bonta* heightened the exacting scrutiny standard, it remains a two-part test.[164] First, the governmental interest the law addresses must be proven to be sufficiently important.[165] If the statute passes that hurdle, the government must then prove the law is narrowly tailored.[166] The *Bonta* Court noted that the tailoring must produce "a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served . .

158. MICH. COMP. LAWS § 169.241(2).
159. MICH. COMP. LAWS § 169.226(1)(e).
160. *See* MICH. COMP. LAWS § 169.233(6).
161. *Id.*
162. *See* CAMPAIGN FIN. INSTIT., *supra* note 157; 11 C.F.R. § 100.29 (2014).
163. RICH ROBINSON, MICH. CAMPAIGN FIN. NETWORK, $70 MILLION HIDDEN IN PLAIN VIEW 3 (2011), https://mcfn.org/pdfs/reports/MICFN_HiddenInPlainViewP-rev.pdf [https://perma.cc/2FH6-Z6HT].
164. Ams. for Prosperity Found. v. Bonta, 141 S. Ct. 2373, 2385 (2021).
165. *Id.* at 2385–86.
166. *Id.*

."[167] While courts are unlikely to rule against Michigan's disclosure rules for candidate contributions and independent expenditures on the grounds that they do not address a sufficiently important government interest, the State will likely face a stiffer task in proving that the disclosure regime meets the heightened tailoring requirement under *Bonta*.

A. Michigan's Candidate Contribution and Independent Expenditure Disclosure Laws Serve a Significant Government Interest

The *Buckley* Court described three valid government interests in disclosure requirements: informing the public, preventing corruption, and enabling enforcement.[168] The Roberts Court substantially curtailed the anti-corruption interest in *Citizens United* by limiting the definition of corruption to quid pro quo corruption and the appearance thereof.[169] However, the three disclosure interests outlined in *Buckley* were not affected by *Bonta* because *Bonta* altered the degree to which a policy needs to be tailored to a government interest rather than the types of interests considered legitimate.[170] Each interest applies to Michigan's disclosure requirements for candidate disclosures, while only the informational interest is relevant to the state's independent expenditure requirements.[171]

1. The Informational Interest

In essence, the informational interest is "an interest in increasing voter competence."[172] Today, it is the only interest that continues to apply to disclosure of contributors to candidate committees and independent expenditure committees.[173] In his *Citizens United* opinion, Justice Kennedy focused solely on the information interest in upholding the government's disclosure requirements for electioneering communications.[174]

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167. *Id.* at 2384 (citing McCutcheon v. Fed. Elections Comm'n, 572 U. S. 185, 218 (2014)).

168. Buckley v. Valeo, 424 U.S. 1, 66–68 (1976).

169. *See supra* Section II(A)(3).

170. *See supra* Section II(B).

171. Abby K. Wood, *Learning from Campaign Finance Information*, 70 EMORY L.J. 1091, 1093–94 (2021).

172. *Id.* at 1103.

173. Daniel R. Ortiz, *The Informational Interest*, 27 J. L. & POL. 663, 665–66 (2012).

174. Citizens United v. Fed. Elections Comm'n, 558 U.S. 310, 369 (2010).

The *Buckley* Court outlined three primary informational benefits of campaign finance disclosure.[175] Committee campaign finance reports that itemize contributions and expenditures help voters evaluate candidates, understand where office seekers fall on the political spectrum, and discern which interests candidates are most likely to respond to once elected.[176] In the years since, courts and scholars have interpreted and expanded upon these rationales in various ways.[177]

First, courts have focused on disclosure as an "informational shortcut" that allows voters to see past rhetoric to understand candidates' and committees' true positions based on where they receive funding.[178] For example, if a candidate receives a donation from a labor union's political action committee, the public will understand that the candidate is more likely to take pro-labor policy stances in office.[179] That inference holds true even if the donation is nominal because the mere act of donating signals support.[180]

The public is also informed by examining aggregated contributions.[181] For instance, the National Institute on Money in Politics, a nonprofit that gathered campaign finance data from all fifty states and has since merged with the Center for Responsive Politics to form OpenSecrets, used employer and occupation information from campaign finance reports to tag donors by their economic interest.[182] That data can then be used to analyze which industries support a given candidate.[183] The more contributions that are required to be disclosed, the more accurate this

175. Buckley v. Valeo, 424 U.S. 1, 66–67 (1976).

176. *Id.*

177. Lear Jiang, *Disclosure's Last Stand? The Need to Clarify the "Informational Interest" Advanced by Campaign Finance Disclosure*, 119 COLUM. L. REV. 487, 512–13 (2018); *see* Justice v. Hosemann, 771 F.3d 285, 298 (5th Cir. 2014) ("The initiatives on a ballot are often numerous, written in legalese, and subject to the modern penchant for labelling laws with terms embodying universally-accepted values. Disclosure laws can provide some clarity amid this murkiness."); Ctr. for Individual Freedom v. Madigan, 697 F.3d 464, 490 (7th Cir. 2012) ("Amidst this cacophony of political voices—super PACs, corporations, unions, advocacy groups, and individuals, not to mention the parties and candidates themselves—campaign finance data can help busy voters sift through the information and make informed political judgments.").

178. Jiang, *supra* note 177, at 512.

179. *Id.* at 513.

180. *Id.*

181. *Id.* at 510.

182. *See About Our Data,* FOLLOWTHEMONEY.ORG, https://www.followthemoney.org/our-data/about-our-data [https://perma.cc/3ZCY-JY77] (last visited Mar. 7, 2022); Press Release, OpenSecrets *supra* note 113.

183. *See, e.g.,* Calder Burgam, *Energy Interests Power Pruitt*, FOLLOWTHEMONEY.ORG (Jan. 17, 2017), https://www.followthemoney.org/research/blog/energy-interests-power-pruitt [https://perma.cc/BH4K-E6JX].

analysis can be. Together these informational shortcuts make this conception of the information interest the broadest, as it recognizes the importance of disclosing a broad range of data, as well as contributions of all sizes.[184]

Second, some courts have expressed the view that disclosure merely helps voters gauge the reliability of candidates' positions.[185] It is therefore less valuable in evaluating political action committees or ballot measure committees, which do not have to follow-up on promises that they make.[186] As an example, disclosure allows voters to better assess a candidate who vows to regulate fossil fuels but accepts large contributions from the oil industry.[187]

Third, disclosure can help voters understand patterns in giving, particularly when disclosure is mandated year-round rather than just close to elections.[188] Knowing the timing of an expenditure or contribution allows the public to tie that transaction to a specific election or legislative vote.[189]

Finally, the Second Circuit validated the information interest by arguing that it promotes speech.[190] This rationale focuses on independent spending.[191] Disclosure allows candidates "to rapidly address election-related speech in the final weeks of a campaign"[192] and "to more quickly and effectively respond" to accusations.[193]

Professor Abby Wood has highlighted an additional informational benefit of disclosure ignored by courts, which she dubbed candidate "valence" information.[194] Under the "valence" theory, campaign finance disclosure helps voters evaluate candidates' individual integrity rather

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184. Jiang, *supra* note 177, at 513.

185. *Id.* at 513–14 ("The Tenth Circuit has espoused this view, holding that it was 'not obvious that there is . . . a public interest' in disclosure of donor information in elections when '[n]o human being is being evaluated,' implying that voters must primarily use campaign finance data as a way to evaluate candidates and not issues." (quoting Sampson v. Buescher, 625 F.3d 1247, 1256–57 (10th Cir. 2010))).

186. *Id.*

187. *See id.* at 513. ("For example, if two candidates both campaign on a platform of greater financial regulation, but only one receives donations from major investment banks, a voter understands that the candidate who did not receive such contributions may be more inclined to keep her word.").

188. *Id.* at 514 (citing Human Life of Wash., Inc. v. Brumsickle, 624 F.3d 990, 1018 (9th Cir. 2010)).

189. *See Human Life*, 624 F.3d at 1018.

190. *Id.* at 514–15 (citing Vt. Right to Life Comm., Inc. v. Sorrell, 758 F.3d 118, 134 (2d Cir. 2014)).

191. *Vt. Right to Life*, 758 F.3d at 134.

192. *Id.*

193. *Id.* at 134 n.14.

194. Wood, *supra* note 171, at 1109–10.

than just the candidates' policies or ideological leanings.[195] Wood highlights studies showing that ads lose persuasiveness and speakers lose credibility when voters learn that the communication was funded by anonymous donors.[196] Another study found that respondents viewed ads funded through small donations "as most credible and trustworthy," while communications paid for by both large and anonymous contributors were "much less credible and trustworthy."[197]

Despite the importance of the information interest to the continued constitutionality of disclosure regimes,[198] courts have failed to recognize that a single disclosure requirement can have multiple underlying rationales at once.[199] The rationales also vary depending on the type of information being disclosed.[200] Here, a hypothetical proves instructive.

Suppose Candidate A and Candidate B are opponents in a congressional race. Both have stated that they favor greater regulation of the financial sector. Several investment banks decide to create an independent spending committee called Americans for a Stronger Economy to support Candidate A and attack Candidate B. Requiring independent spending committees to disclose their donors would reveal to the public that Americans for a Stronger Economy was funded largely by banks and might lead the public to infer that Candidate A is more likely to advance policies that favor the financial sector. Further, the disclosure would have the additional benefit of empowering Candidate B to better respond to Americans for a Stronger Economy's attacks because the speakers would no longer be hidden behind an innocuous name. In this way, the disclosure requirement serves multiple rationales.

However, independent expenditure disclosure requirements would not tell the public much about the individual integrity of Candidate A because the regulation only concerns expenditures made by independent actors who have not coordinated with Candidate A. To better determine if Candidate A will keep his promise of stronger financial regulations, the public could look to Candidate A's contribution reports to see his direct

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195. *Id.*

196. *Id.* at. 1113 (citing Conor M. Dowling & Amber Wichowsky, *Does It Matter Who's Behind the Curtain? Anonymity in Political Advertising and the Effects of Campaign Finance Disclosure*, 41 AM. POL. RSCH. 965, 981–82, 985–86 (2013)).

197. *Id.* (citing Travis N. Ridout, Michael M. Franz & Erika Franklin Fowler, *Sponsorship, Disclosure and Donors: Limiting the Impact of Outside Group Ads*, 68 POL. RSCH. Q. 154, 155, 163–64 (2015)).

198. David Ortiz does not mince words in describing the importance of the information interest to continued campaign finance disclosure requirements. According to Ortiz, "Disclosure now hangs on this single thread." Ortiz, *supra* note 175, at 666.

199. Jiang, *supra* note 177, at 520.

200. *Id.*

donors. The public might determine that Candidate A is untrustworthy if Candidate A is accepting large direct contributions from the very industry he has promised to regulate. With this in mind, it is relatively easy to see that each of Michigan's campaign finance disclosure requirements furthers a valid government interest, even if the specific informational interest served varies.

As discussed, Michigan requires that the name and address of every donor be disclosed.[201] Donors contributing more than $100 must also disclose employment and occupation information.[202] Each of these pieces of information play an important role in informing the public. Providing donors' names serves to provide an "informational shortcut" that helps voters better understand candidates' beliefs based on their contributors and those donating to supportive independent expenditure committees.[203] Voters can also use identity information for candidate committee contributions to evaluate the integrity of office seekers.[204] Similarly, candidates benefit from disclosure of contributors to independent expenditure committees because the information empowers them to better refute independent attack ads.[205] Address information plays an important role in differentiating between donors with the same name.[206] Occupation and employer information plays a similar role with the added benefit that it allows the public to better understand which industries are supporting particular candidates.[207]

If anything, Michigan could go further in providing information to the public by regulating campaign finance disclosure by requiring groups engaged in electioneering communications to disclose their donors. The Court in *McConnell v. FEC* held that "the important state interests that prompted the *Buckley* Court to uphold FECA's disclosure requirements . . . apply in full to [electioneering communications]."[208] However, because Michigan does not regulate electioneering communications, Michigan citizens are left uninformed regarding a significant portion of total political spending.[209] The Michigan Campaign Finance Network estimated that, in

201. MICH. COMP. LAWS § 169.226(1)(e).
202. *Id.*
203. *Cf.* Jiang, *supra* note 177, at 512.
204. *Cf. id.* at 513–14.
205. *Cf.* Vt. Right to Life Comm., Inc. v. Sorrell, 758 F.3d 118, 134 (2d Cir. 2014).
206. *Scorecard: Essential Disclosure Requirements for Contributions to State Campaigns*, *2016*, FOLLOWTHEMONEY.ORG (Mar. 15, 2016), https://www.followthemoney.org/research/institute-reports/scorecard-essential-disclosure-requirements-for-contributions-to-state-campaigns-2016 [https://perma.cc/9EKD-XBK5].
207. *Id.*
208. McConnell v. Fed. Elections Comm., 540 U.S. 93, 196 (2003).
209. *See* ROBINSON, *supra* note 163, at 9.

2010, only 61 percent of spending on elections for statewide offices was disclosed.[210] That figure drops below 50 percent when the Republican Gubernatorial primary is excluded, which featured large disclosed contributions from just two entities: $6 million in self-funding by Rick Snyder and $1 million in public campaign funds.[211] As a result of the lack of electioneering communications data, the public is denied a substantial source of information regarding candidates and those that seek to influence elections.

2. The Anti-Corruption Interest

The Court in *Buckley* stated that disclosure can help "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity."[212] Disclosure accomplishes this by "discourag[ing] those who would use money for improper purposes either before or after the election"[213] and providing the public with "information about a candidate's most generous supporters [so they are] better able to detect any post-election special favors that may be given in return."[214] However, the anti-corruption interest has become less relevant since the Court in *Citizens United* found independent expenditures are not corrupting.[215] The interest remains in effect for candidate disclosures, though it is further diminished by the fact that the definition of corruption has been narrowed to only include quid pro quo corruption.[216]

Despite the multiple ways in which the anti-corruption interest has been narrowed, it remains a relevant factor when examining Michigan's campaign finance disclosure regime. First, quid pro quo bribery via campaign contributions, while rare, is a concern.[217] Second, in the

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210. *Id.*
211. *Id.*
212. Buckley v. Valeo, 424 U.S. 1, 67 (1976).
213. *Id.*
214. *Id.*
215. Citizens United v. Fed. Elections Comm., 558 U.S. 310, 360 (2010) ("[I]ndependent expenditures do not lead to, or create the appearance of, quid pro quo corruption. In fact, there is only scant evidence that independent expenditures even ingratiate. Ingratiation and access, in any event, are not corruption.").
216. *See id.* at 359–61; *see also* ZEPHYR TEACHOUT, CORRUPTION IN AMERICA 232 (2014) ("The [*Citizens United*] opinion comprehensively redefined corruption, and in so doing, redefined the rules governing political life in the United States.").
217. *See* Steve Carmody & Rick Pluta, *State Rep. Larry Inman Indicted for Extortion, Bribery, and Lying to FBI*, MICH. RADIO (May 16, 2019, 3:46 PM), https://www.michiganradio.org/politics-government/2019-05-16/state-rep-larry-inman-indicted-for-extortion-bribery-and-lying-to-fbi [https://perma.cc/YF3B-C2BQ].

occasional circumstances that the Sixth Circuit has heard campaign finance disclosure cases, they have tended to lean upon the corruption interest.[218]

The last time the Sixth Circuit weighed in on a campaign finance disclosure issue was *Frank v. City of Akron* in 2002.[219] In that case, current and former Akron City Council members and several political contributors challenged an amendment to the city charter that implemented contribution limits and required public disclosure of every donor's home address.[220] The amendment further required donors contributing more than $50 to identify their employer.[221] In upholding the disclosure requirements, the court only looked to the corruption interest, saying simply, "[d]isclosure provisions such as these serve a significant governmental interest in providing an accountability mechanism to track campaign donors and safeguard against corruption."[222]

Five years prior, in *Kentucky Right to Life v. Terry*,[223] a nonprofit organization challenged Kentucky's requirement that organizations identify the sponsor of each paid political advertisement.[224] The organization argued that the law violated their First Amendment right to anonymously publish their political views.[225] The Sixth Circuit rejected the plaintiff's argument, stating that the government had a sufficient interest in preventing "actual and perceived corruption by immediately notifying the public of any possible allegiance a particular candidate may feel toward the publisher."[226] While this analysis would no longer be valid because *Citizens United* eliminated the application of the corruption interest to independent spending, it is notable that the Sixth Circuit ignored the information interest.[227]

Should Michigan's current campaign finance disclosure face a challenge, the Sixth Circuit might take a cue from Justice Kennedy's *Citizens United* majority opinion and focus exclusively on the disclosure's informational benefits.[228] However, the Circuit's precedent, the ongoing

218. *See* Frank v. City of Akron, 290 F.3d 813 (6th Cir. 2002); Ky. Right to Life v. Terry, 108 F.3d 637 (6th Cir. 1997).
219. *Frank*, 290 F.3d 813.
220. *Id.* at 816.
221. *Id.*
222. *Id.* at 819.
223. *Ky. Right to Life*, 108 F.3d 637.
224. *Id.* at 641.
225. *Id.*
226. *Id.* at 648.
227. *See* Citizens United v. Fed. Elections Comm'n, 558 U.S. 310, 360 (2010).
228. *Id.* at 369.

risk of corruption, and the appearance of corruption make the anti-corruption interest relevant.

3. The Enforcement Interest

The enforcement interest is concerned with how gathering campaign finance data allows the government to detect violations of campaign finance law.[229] Like the anti-corruption interest, there is Sixth Circuit precedent recognizing the interest.[230] In *Ky. Right to Life*, described in the previous section, the court highlighted the enforcement interest.[231] Disclosing the sponsors of independent spending would provide the state with "a method of detecting those expenditures which are not truly independent by providing a paper trail to detect violations by unscrupulous PACs routing expenditures through individuals."[232] Although the interest has been waning in importance simply because there are now fewer campaign finance laws to enforce,[233] it is not completely defunct. The State has a strong interest in maintaining candidate contribution limits to avoid corruption or the appearance of corruption.[234] However, to ensure contribution limits are followed, the government needs to know how much each donor has contributed.[235] For that reason alone, courts should consider enforcement an integral benefit of disclosure.

Evaluating the government interests is an important step when discussing the constitutionality of Michigan's disclosure regime. However, the Court's recent decision in *Bonta* did nothing to change the calculus when it comes to this component of the exacting scrutiny standard since the decision simply altered the degree to which a government policy must be tailored to its interest.[236] Therefore, it is unlikely a future challenge to the existing disclosure requirements will turn on the issue of the government's interest. The same cannot be said for the second component of the exacting scrutiny standard. For most of the life of the Michigan Campaign Finance Act (MCFA), disclosure requirements simply needed

229. Buckley v. Valeo, 424 U.S. 1, 67–68 (1976).
230. *Ky. Right to Life*, 108 F.3d at 648.
231. *Id.*
232. *Id.*
233. Levinson, *supra* note 3, at 463 n.200.
234. *Buckley*, 424 U.S. at 26 ("It is unnecessary to look beyond [FECA's] primary purpose to limit the actuality and appearance of corruption resulting from large individual financial contributions in order to find a constitutionally sufficient justification for the $1,000 contribution limitation.").
235. *See Buckley*, 424 U.S. at 67–68 (1976).
236. *See* Ams. for Prosperity Found. v. Bonta, 141 S. Ct. 2373, 2384 (2021) ("Where exacting scrutiny applies, the challenged requirement must be narrowly tailored to the interest it promotes, even if it is not the least restrictive means of achieving that end.").

to be "substantially related" to an important government interest.[237] But under *Bonta*, a substantial relation is no longer enough.[238] Instead, the state will need to show that its disclosure regime is narrowly tailored.[239]

B. Making the Case for Michigan's Disclosure Laws Post-Bonta

The *Bonta* conception of exacting scrutiny states that "[w]here exacting scrutiny applies, the challenged requirement must be narrowly tailored to the interest it promotes, even if it is not the least restrictive means of achieving that end."[240] Furthermore, the question of whether the law is sufficiently tailored must be answered prior to considering the weight of the burden on individuals' rights to free speech.[241] Put another way, no matter how minor a burden a disclosure provision places on an individual's speech, it will be found unconstitutional if it is not narrowly tailored.[242] The Court described what it means to narrowly tailor by quoting *McCutcheon v. FEC*:

> In the First Amendment context, fit matters. Even when the Court is not applying strict scrutiny, we still require a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served, that employs not necessarily the least restrictive means but a means narrowly tailored to achieve the desired objective (citations omitted). [243]

While reading descriptions of the standard is a strong starting point, it is equally instructive to see the standard in practice within the campaign finance context. Fortunately, such a case study exists: the First Circuit recently applied the *Bonta* standard to Rhode Island's independent expenditure and electioneering communications disclosure regulations in *Gaspee Project v. Mederos*.[244]

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237. *Buckley*, 424 U.S. at 64–66.
238. *See Bonta*, 141 S. Ct. at 2384.
239. *Id.*
240. *Id.*
241. *Id.* at 2385.
242. *Id.*
243. *Id*. at 2384 (citing McCutcheon v. Fed. Elections Comm'n, 572 U.S. 185, 218 (2014)).
244. Gaspee Project v. Mederos, 13 F.4th 79, 82 (1st Cir. 2021).

1. Gaspee Project v. Mederos

The Rhode Island Independent Expenditures and Electioneering Communications Act regulates campaign finance disclosures by specific entities engaged in political speech.[245] Under the Act, any person or entity that spends $1,000 or more in a calendar year on independent expenditure or electioneering communications must register with the Rhode Island Board of Elections.[246] Registered organizations are required to file reports disclosing any donors that contributed more than $1,000 within the election cycle.[247] Finally, those engaged in electioneering communications must disclose their name and the names of their top five donors from the previous year on the electioneering communication ads.[248] The plaintiffs in *Gaspee Project*, two nonprofit organizations, challenged these three provisions on First Amendment grounds.[249]

The First Circuit rejected all three claims.[250] In doing so, the court offered a clear example of exacting scrutiny analysis. The Court first identified the relevant government interest, in this case the state's informational interest in disclosure.[251] Next, the Court found strong evidence of narrow tailoring in the multiple ways individuals could be excluded from its requirement.[252] Political spenders and donors could avoid the Act's requirements by keeping their outlays under $1,000, while those engaged in nonpolitical speech were excluded entirely.[253] The Act also included temporal limitations such that independent spenders and donors had to spend $1,000 within one calendar year to be affected and electioneering communications covered only those ads that appeared thirty or sixty days before a primary or general election, respectively.[254] If donors wished to donate more than $1,000 and remain anonymous, they could do so as long as their contribution was not dedicated to an independent expenditure or electioneering communication.[255] Taken together, these provisions constituted narrow tailoring sufficient to survive exacting scrutiny.

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245. Independent Expenditures and Electioneering Communications Act, RI GEN. LAWS § 17-25.3-1 (2012).
246. *Id.* § 17-25.3-1(c).
247. *Id.* at § 17-25.3-1(h).
248. *Id.* at § 17-25.3-3(a).
249. *Gaspee Project*, 13 F.4th at 83.
250. *Id.* at 82.
251. *Id.* at 86–87.
252. *Id.* at 88–89.
253. *Id.* at 88.
254. *Id.*
255. *Id.* at 89.

Gaspee Project is instructive in that it models how the heightened exacting scrutiny standard might be applied in the campaign finance context and provides clues about how Michigan could defend against a potential challenge to its disclosure laws. In several ways, Michigan's campaign finance regime shares characteristics of the Act at issue in *Gaspee Project*. The Michigan Campaign Finance Act contains a carveout allowing committees raising and spending less than $1,000 to avoid filing with the state.[256] Additionally, Rhode Island law took pains to exclude nonpolitical speakers by limiting the scope of what constituted an independent expenditure and electioneering communication.[257] Michigan has avoided regulating electioneering communications altogether, which allows individuals to engage in issue advocacy without disclosing their activities or donors.[258] Finally, Michigan tailored its employer and occupation disclosure rules to only affect donors contributing $100 or more.[259]

In one important way, Michigan's disclosure law departs drastically from the narrowly tailored example in Rhode Island. Namely, Michigan requires candidates and committees to disclose the identity and address of every contributor, regardless of the size of their contribution.[260] Outside of contributing a small amount to a candidate or committee that has no intention of raising more than $1,000, there is no option for a donor to engage in direct advocacy while avoiding attribution.[261] Michigan is one of only nine states to maintain such an expansive requirement.[262] Thus, the obvious concern is that a court will determine that the core of Michigan's disclosure regime—the requirement that candidates and committees disclose their donors—is out of proportion with the interest it serves. In fact, the Ninth and Tenth Circuits have already suggested that the informational value of disclosure decreases with the amount of money being spent.[263]

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256. MICH. COMP. LAWS § 169.233(6).
257. *Gaspee Project*, 13 F.4th at 88.
258. ROBINSON, *supra* note 163, at 3.
259. *Id.*
260. MICH. COMP. LAWS § 169.226(1)(e).
261. *See* MICH. COMP. LAWS § 169.233(6).
262. CAMPAIGN FIN. INSTIT., *supra* note 157.
263. *See* Canyon Ferry Rd. Baptist Church of E. Helena, Inc. v. Unsworth, 556 F.3d 1021, 1033–34 (9th Cir. 2009) (suggesting that Montana's zero-dollar threshold for incidental committees to report their expenditures and the source of their funds was facially unconstitutional); Sampson v. Buescher, 625 F.3d 1247, 1260 (10th Cir. 2010) (quoting *Canyon Ferry*, 556 F.3d at 1033) (internal quotation marks omitted) (agreeing with the Ninth Circuit that "[a]s a matter of common sense, the value of this financial information to the voters declines drastically as the value of the expenditure or contribution sinks to a negligible level.").

2. Outlining Potential Responses

The State of Michigan has two options if a challenge arises: fight for the existing disclosure regime or weaken the requirements to show disclosure regulations are narrowly tailored. If the State chooses the former route, it will need to make the case that accounting for every single donor is necessary to achieve its interests. The Court in *Bonta* found the disclosure requirements for nonprofits overbroad because they imposed a burden on every donor in the interest of administrative convenience.[264] As such, the scope of the law was not proportionate to the interest it served.[265] Campaign finance disclosure, on the other hand, carries three clear and legitimate interests—informational, anti-corruption, and enforcement.[266] Examining each major disclosure provision in turn demonstrates the ways in which the Michigan statute is sufficiently tailored to one or more of the three interests outlined in *Buckley*.

Michigan's requirement that candidates and committees disclose every contribution, regardless of size, is the most likely provision to face a challenge. Plaintiffs would almost assuredly compare it to the disclosure requirement in *Bonta*, which the Court determined indiscriminately placed a burden on tens of thousands of charities and their donors.[267] But Michigan's comprehensive disclosure rule is distinguishable due to the interests it serves. Requiring information on every donor serves an important informational purpose by allowing voters to understand who is giving to a candidate or committee. The public can then use this information to determine where a candidate stands on important issues,[268] whether candidates are likely to keep their word on campaign promises,[269] and to evaluate or respond to attack ads by independent expenditure committees.[270] Since the important information is the "who" and not the "how much," requiring disclosure of all donors is important.[271] Furthermore, as discussed previously, disclosing contributions of small amounts can be helpful when those contributions are examined in the

264. Ams. for Prosperity Found. v. Bonta, 141 S. Ct. 2373, 2387 (2021).
265. *Id.*
266. Buckley v. Valeo, 424 U.S. 1, 66–68 (1976).
267. *Bonta*, 141 S. Ct. at 2387.
268. Jiang, *supra* note 177, at 512.
269. *Id.* at 513–14.
270. *Id*. at 514–15 (citing Vt. Right to Life Comm., Inc. v. Sorrell, 758 F.3d 118, 134 (2d Cir. 2014)).
271. *See* Ctr. for Individual Freedom v. Madigan, 697 F.3d 464, 480–81 (7th Cir. 2012) ("[O]ne of the most useful heuristic cues influencing voter behavior in initiatives and referenda is knowing who favors or opposes a measure.").

aggregate.[272] For example, the New York City Campaign Finance Board provides an interactive heatmap showing the zip codes where candidates are raising money.[273] The map might help a voter evaluate candidates in a particular race by allowing the voter to see that their neighborhood is supporting one candidate, while the opposing candidate is receiving a majority of support from wealthy interests in another part of town. Regardless of how it is used, maps like this are most effective when they can include every donation regardless of size.

Complete itemization of contributions also helps the anti-corruption and enforcement interests by accounting for every single dollar that enters the political sphere. This, in turn, reduces uncertainty about a candidate's source of support. It also improves election agencies' ability to ensure that contribution limits are being followed by letting officials see how much an individual has contributed from the first dollar.

Michigan's prohibition on anonymous contributions supports a similar purpose as the $0 itemization threshold described above but is tailored to an even greater degree to the enforcement interests. Anonymous contributions, by their nature, cannot be tied back to a contributor. This makes it impossible to accurately assess whether a contributor has reached the contribution limit.

Finally, the Michigan Campaign Finance Act's requirement that a contributor donating more than $100 disclose her employer and occupation is narrowly tailored to achieve the informational and anti-corruption interests. As stated previously, employer and occupation information allow the public to better understand which industries are supporting a given candidate, serving as a valuable indicator of a candidate's likely policy positions. Moreover, such data helps serve the anti-corruption interest by showing when a specific industry is funneling money to candidates in advance of or shortly after a vote on a bill of significance. While such data might not be enough to prove quid pro quo corruption on its own, evidence of industry executives donating in concert could be useful evidence of corruption. The occupation and employer requirements are further tailored in that they do not apply to every single contributor but rather to those donating $100 or more.[274]

In addition to focusing on the ways in which the affirmative duties imposed by the Michigan Campaign Finance Act are tailored, it is important to also note the ways the Act allows individuals to avoid

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272. *See supra* Part III.A.1.

273. *Individual Contributions to Participating 2021 Candidates*, N.Y. CITY CAMPAIGN FIN. BD., https://www.nyccfb.info/follow-the-money/cunymap-2021 [https://perma.cc/7U9X-EF42] (last visited Mar. 7, 2022).

274. MICH. COMP. LAWS § 169.242(2).

disclosure. The Act does not require actors engaged in small campaigns that raise or spend less than $1,000 to disclose anything.[275] Under the current disclosure regime, those that want to spend larger amounts can do so by using Michigan's electioneering communications loophole: any communication made independently of a candidate that does not expressly advocate for the election or defeat of a candidate is not required to be disclosed, even if the ad specifically mentions or displays the candidate.[276] Together, these carveouts provide ample opportunity for donors both big and small to engage in the political process without their identity being disclosed.

If, on the other hand, Michigan wished to avoid the time and expense of litigation, it could choose to voluntarily shift its donor itemization threshold. The Court, in *Buckley*, has already stated that the task of drawing monetary thresholds for disclosure is a line-drawing exercise best left to legislatures.[277] As of 2018, such non-zero thresholds in various states ranged from $20 to $300.[278] By simply picking a threshold, even at the lower end of the spectrum, the legislature would make it difficult for courts to conclude the law had not been sufficiently tailored. This approach would not have a great impact on the State's anti-corruption or enforcement interests by virtue of only affecting small donations. However, the information interest would suffer as the public would lose visibility into the sources of candidates' and committees' support.

Although retaining Michigan's distinct campaign finance regime poses some risk, it is worth it. Campaign finance disclosure is one of the last remaining tools for counteracting the pernicious impacts of money in politics.[279] While the Supreme Court overstated the degree to which technology has improved the disclosure landscape,[280] digitization of campaign finance has made it easier than ever to compile contribution records to better understand the impact of donors big and small. The State's information interest applies to contributions of all sizes, while the importance of the anti-corruption and enforcement interests grows in proportion to the size of contributions being disclosed. Retaining Michigan's disclosure laws enables the state and its voters to realize the

275. MICH. COMP. LAWS § 169.233(6).

276. *See* ROBINSON, *supra* note 163, at 3.

277. Buckley v. Valeo, 424 U.S. 1, 83 (1976).

278. *See* CAMPAIGN FIN. INSTIT., *supra* note 157; Colorado requires candidates to report any contribution of $20 or more. *Id.*; COLO. REV. STAT. § 1-45-108. On the other end of the spectrum, New Jersey only requires disclosure of donors contributing more than $300. N.J. STAT. § 19:44A-8(f).

279. Levinson, *supra* note 3.

280. *See* OpenSecrets, *supra* note 113.

full benefits of its disclosure regime, even if remaining campaign finance laws continue to tumble around it.

IV. CONCLUSION

In another era, campaign finance reformers may have been far less concerned about the Supreme Court's decision in *Americans for Prosperity Foundation v. Bonta*. After all, the case did not deal with political contributions, and disclosure has traditionally been just one of multiple ways money in politics can be regulated. However, context matters. The ruling came on the heels of more than a decade of deregulatory decisions that have left democracy reform advocates with a diminished set of tools at their disposal.[281] Moreover, it is unclear whether *Bonta* will be an isolated case, since recent changes in the Court's composition have resulted in the most conservative Court in generations.[282]

Bonta opened the door for campaign finance disclosure challenges by raising the exacting scrutiny standard such that the government must now show disclosure laws are "narrowly tailored," rather than "substantially related," to a sufficiently important government interest.[283] Opponents of transparent elections who decide to test the post-*Bonta* waters will likely choose to challenge disclosure requirement in states that require political committees to disclose every donor under the argument that such laws are insufficiently tailored.[284] Michigan is one of just nine such states.[285] Still, those seeking to defend Michigan's disclosure regime should not be deterred. First, disclosure advocates should emphasize the ways in which the Michigan Campaign Finance Act is already tailored to allow some participation by those seeking to avoid disclosure. Second, advocates

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281. *See* Citizens United v. Fed. Elections Comm'n, 558 U.S. 310 (2010) (striking down limits on corporate independent expenditures); Ariz. Free Enter. Club's Freedom Club PAC v. Bennett, 564 U.S. 721 (2011) (invalidating public financing linked to money raised or spent on behalf of the publicly financed candidate's opponent); McCutcheon v. Fed. Elections Comm'n, 572 U.S. 185 (2014) (striking down aggregate contribution limits).

282. Joan Biskupic, *The Supreme Court Hasn't Been This Conservative Since the 1930s*, CNN (Sep. 26, 2020, 6:33 PM), https://www.cnn.com/2020/09/26/politics/supreme-court-conservative/index.html [https://perma.cc/DK6T-LZL8].

283. Ams. for Prosperity Found. v. Bonta, 141 S. Ct. 2373, 2384 (2021).

284. *See* Bradley A. Smith, *Americans for Prosperity Foundation v. Bonta: A First Amendment for the Sensitive*, 2020–2021 CATO SUP. CT. REV. 63, 89 (2021) ("Thus, it is true that by putting some teeth into 'exacting scrutiny,' campaign disclosure laws might be trimmed at the margin. For example, many states require public disclosure of political contributions at very low levels, and it may be hard to sustain these under the 'informational' interest after *AFPF*.").

285. *See* CAMPAIGN FIN. INSTIT., *supra* note 157.

should highlight the broad range of state interests that apply to campaign finance disclosure and the fact that comprehensive campaign finance disclosure is necessary to give these interests full effect. If they can accomplish that, advocates will ensure that *Bonta* is not the beginning of the end for disclosure in Michigan and across the country.