No. _____

In The
Supreme Court of the United States

GORDON VANCE JUSTICE, JR.;
SHARON BYNUM; MATTHEW JOHNSON;
ALISON KINNAMAN; and STANLEY O'DELL,

Petitioners,

v.

DELBERT HOSEMANN, in his official capacity as Mississippi Secretary of State; and JAMES M. HOOD, III, in his official capacity as Attorney General of the State of Mississippi,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Mississippi can, consistent with the First Amendment, prohibit a small informal group of friends and neighbors from spending more than $200 on pure speech about a ballot measure unless they become a political committee, adopt the formal structure required of a political committee, register with the State, and subject themselves to the full panoply of ongoing record-keeping, reporting, and other obligations that attend status as a political committee.

PARTIES TO THE PROCEEDINGS

Petitioners, Appellees below, are five Mississippi residents: Gordon Vance Justice, Jr.; Sharon Bynum;[1] Matthew Johnson; Alison Kinnaman; and Stanley O'Dell.

Respondents, Appellants below, are the Mississippi Secretary of State, Delbert Hosemann, and the Attorney General of Mississippi, James M. Hood, both of whom are sued in their official capacity.

[1] Sharon Bynum moved to Arkansas for work while the appeal was pending. The remaining Petitioners continue to live in Mississippi, and this Court need not address Ms. Bynum's standing. App. 13 n.7; *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264 n.9 (1977).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners seek a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The Fifth Circuit's opinion (App. 1-35) is reported at 771 F.3d 285. The district court's opinion on summary judgment (App. 40-85) is unpublished. The district court's opinion on Petitioners' motion for preliminary injunction (App. 87-123) is reported at 829 F. Supp. 2d 504.

JURISDICTION

The Fifth Circuit denied Petitioners' motion for rehearing en banc on August 21, 2015. App. 124-25. This petition is timely filed on November 19, 2015. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution, applicable to the states through the Fourteenth Amendment, provides, in relevant part, that government "shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people

peaceably to assemble, and to petition the Government for a redress of grievances."

Relevant provisions of Mississippi's campaign finance laws, Miss. Code Ann. §§ 23-15-801–813, and Miss. Code Ann. §§ 23-17-1, -47–53, -61, are reproduced in the appendix (App. 129-156).

STATEMENT

This case asks whether a small informal group of friends and neighbors, who wish to pool their money to engage in pure speech about a ballot measure, can be prohibited from doing so unless they become a "political committee," adopt the formal structure required of a political committee, register with the State, and subject themselves to the full panoply of ongoing record-keeping, reporting, and other obligations that attend status as a Mississippi political committee. The Fifth Circuit held they could be prohibited. But this holding conflicts with this Court's precedents and exacerbates three separate circuit splits relating to the regulation of ballot-measure speech, especially by small grassroots groups.

Published opinions of the First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth, Eleventh, and D.C. circuits have now created an acknowledged mish-mash of conflicting holdings. The federal courts have split on whether the formation, registration, and ongoing record-keeping, reporting, and other mandates Petitioners challenge here are "onerous burdens"

and subject to strict scrutiny or are "just disclosure" subject to lesser scrutiny. Additionally, though the circuits are uniform in recognizing that only the so-called "informational interest" can support the regulation of ballot-measure speech, they are split on the strength of this interest, which can range anywhere from "compelling," to "important," to "maybe does not exist at all and is certainly not that powerful." As a practical matter, these splits mean that identical groups, in identical situations, have received different First Amendment protections depending solely on their location.

While the circuits are split, this Court's precedents are clear. The regulations Petitioners challenge are not "disclosure" laws; they are more onerous than that and demand greater scrutiny. In both *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) ("*MCFL*"), and *Citizens United v. FEC*, 558 U.S. 310 (2010), this Court held that "the full panoply of regulations that accompany status as a political committee" substantially and directly burden speech in ways "disclosure" does not. *MCFL*, 479 U.S. at 262. Because "PACs are burdensome [and] . . . expensive to administer and subject to extensive regulations," they are unconstitutionally burdensome for for-profit corporations, unions, and nonprofit interest organizations in the absence of a compelling government interest, specifically the threat of corruption. *Citizens United*, 558 U.S. at 337. Moreover, this Court also held in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 356 (1995), that pure speech about ballot

measures presents no threat of corruption, therefore regulation of such speech rests on "different and less powerful state interests" than regulation of speech about candidates. This is especially the case where the speaker is engaged in ordinary grassroots political activity.

The Fifth and other circuits have obscured critical distinctions this Court has drawn – between PAC requirements and disclosure laws, and between pure speech about ballot measures and other kinds of "election" speech. In the process, ordinary, small grassroots speakers, like Petitioners, have been stifled because they cannot afford to retain the campaign finance attorneys and accountants necessary to comply with these regulations. *Cf. Citizens United*, 558 U.S. at 324.

1. The Petitioners; Their Political Speech and Association

Petitioners are a small, informal group of friends and neighbors in Oxford, Mississippi. App. 168-71, 180. They have been meeting regularly for years in their homes, at restaurants, and wherever else is convenient, as a group and with others, to discuss political issues of the day. App. 171. They have no formal organization or structure, no officers or directors, no bank account, and no member dues. *Id*. They are not experienced campaign organizers or politicians. App. 180. But they have engaged in political activities such as holding rallies and purchasing and

giving away copies of the Constitution on Constitution Day. App. 171-72. To fund these activities, Petitioners literally "pass the hat" at their meetings to pool their money. App. 8-9, 12, 171-72.

Petitioners wanted to continue to pass the hat to pool their money to speak about "Initiative 31," a 2011 ballot measure to reform the Mississippi Constitution to combat eminent domain abuse. App. 8. They wanted to pool their funds to buy a local newspaper advertisement, posters, and flyers, and spend less than $1,000 to do so. App. 8-9, 89-90, 157-65.[2] This is "pure speech" about a ballot measure, not "legislative action" or the "mechanics of the electoral process," such as petition circulation or signing.[3] Pooling their funds to speak about Initiative 31 "would have mirrored some of their previous political engagements." App. 8.

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[2] *See also* Oral Argument Recording No. 13-60754, 17:28-17:45, United States Court of Appeals for the Fifth Circuit (Sept. 3, 2014), http://www.ca5.uscourts.gov/OralArgRecordings/13/13-60754_9-3-2014.mp3 (hereinafter "Oral Argument Recording").

[3] This Court has carefully distinguished between these different types of activities. *E.g.*, *Doe v. Reed*, 561 U.S. 186, 212-13 (2010) (Sotomayor, J., concurring) (distinguishing treatment of measures to "control the mechanics of the electoral process" and the "regulation of pure speech" (quotation omitted)); *id.* at 216 (Stevens, J., concurring) (noting regulation of petition signing was "not a regulation of pure speech" (quotation omitted)); *id.* at 222 n.3 (Scalia, J., concurring) (distinguishing "requirements applied to political speech" and requirements applied to "legislative action").

But because Petitioners wanted to talk about a ballot measure, Mississippi law required them to become a political committee, adopt a formal organization, register with the state, and subject themselves to numerous ongoing record-keeping, reporting, and other requirements if they pooled more than $200 of their own money. It put similar requirements on any individual who spent more than $200 of her own money.

Petitioners were unwilling to subject themselves to these burdens. They sought a preliminary injunction to be able to pool and spend up to $1,000 to talk about Initiative 31 without being forced to become a political committee. App. 9, 89-90, 157-65. When that injunction was denied, they carefully monitored their spending to make sure they stayed below $200 to avoid Mississippi's regulations. App. 183. It was impossible for Petitioners to buy even a single quarter-page advertisement in their local newspaper for less than $200. App. 180, 183. They had to limit the number of posters (at $4 each) and flyers (at $0.20 each) about Initiative 31 they purchased. *Id.* Petitioners thus curtailed their speech because of Mississippi's laws.

These laws continue to curtail Petitioners' speech. For example, there were two competing ballot measures on Mississippi's November 2015 ballot. "Initiative 42" was a voter-initiated measure to amend a provision of the Mississippi Constitution regarding education. "Alternative 42" was a legislatively referred alternative to Initiative 42. *See* Miss. Sec'y

of State Sample Ballot-Initiative Measures, http://www.sos.ms.gov/Elections-Voting/Documents/Ballot%20explanation%20Revised%202.pdf. Petitioners were opposed to both measures but were unable to speak "too much" about them without again confronting Mississippi's regulatory scheme.

In this and future ballot measures, Petitioners want to pool their money to speak without fear or threat of prosecution for violating Mississippi's laws. App. 12-13, 184-85. So long as those laws remain applicable to their grassroots activities, Petitioners will continue to curtail their speech about ballot measures. *Id*.

2. Mississippi's Campaign Finance Laws

The challenged Mississippi regulations are, in relevant part, practically identical to the federal regulations struck down in *Citizens United* and *MCFL*. Just to speak about a measure on the Mississippi ballot, Petitioners must become, organize and register as, and comply with the numerous ongoing regulatory obligations imposed on, a "political committee."

Every group of two or more people who wish to raise or spend more than $200 to speak about a measure on the Mississippi ballot must become a political committee. Miss. Code Ann. §§ 23-15-801(c), 23-17-47(c). They are then subjected to ongoing

regulation as a political committee.[4] This includes a variety of structural, registration, and record-keeping obligations, *id*. §§ 23-15-803, -807; *id*. §§ 23-17-49, -51, -53, as well as detailed ongoing reporting that is due at different times and must contain different details, depending on what type of election is occurring, *id.* §§ 23-15-807(b), 23-17-51 (requiring pre-election, periodic, annual, and/or monthly reports); *id*. §§ 23-15-807(d), 23-17-53 (describing contents of various reports). *See* App. 42-49 (district court's recitation of full requirements); Part III.B, *infra* (setting out regulations in more detail). These regulations are backed by significant civil and criminal penalties, including imprisonment of one year and fines of $1,000 for *any* violation. Miss. Code Ann. § 23-17-61; *see also id.* §§ 23-15-811(a); 23-15-813(a); 23-17-51(4).

In addition, there are *two* separate Mississippi regulatory schemes: Chapter 15, Miss. Code Ann. §§ 23-15-801, *et seq.*, and Chapter 17, Miss. Code Ann. §§ 23-17-47, *et seq*. This creates yet more traps for the unwary because they contain material differences. App. 48 ("[W]hile the . . . requirements under Chapter 15 and Chapter 17 are similar in a number of respects, there remain material differences between the two."). The Fifth Circuit said that only Chapter 17 applies to speech about voter-initiated constitutional amendments and only Chapter 15 applies to all other

[4] Similarly, any individual spending more than $200 of her own money is also subject to ongoing requirements. Miss. Code Ann. § 23-17-51(2).

ballot measures. App. 3-4 n.3. But had Petitioners spent more than $200 on their speech in the 2015 election, they would still have had to: 1) determine which statutes applied to their speech; and 2) comply with *both* sets of statutes because the 2015 election involved both a voter-initiated constitutional amendment and an alternative non-initiated measure.

3. Petitioners' Lawsuit and the Lower Courts' Rulings

Petitioners filed their complaint challenging Mississippi's regulatory scheme on its face and as applied in the United States District Court for the Northern District of Mississippi in October 2011. App. 166, 191. The gravamen of Petitioner's as-applied case was that Mississippi could not constitutionally impose PAC burdens on small grassroots groups that only spoke about ballot measures.

Simultaneous with their complaint, Petitioners filed a motion for preliminary injunction. Petitioners wanted to pool and spend no more than $1,000 of their own money to speak about Initiative 31 without having to be and be regulated as a political committee. App. 89-90, 157-65. The court denied the preliminary injunction. App. 86.

Following discovery, the parties filed cross-motions for summary judgment. The court heard argument, ordered supplemental briefing, and, after completion of that briefing, issued a final decision denying Respondents' ("the State's") motion and

granting summary judgment to Petitioners. App. 39. The court explained that

> the State's interest is limited to the informational interest. That interest, in turn, is proportionately related to the amount spent or raised by Plaintiffs in furtherance of their speech. Here, the State places significant and onerous burdens on persons attempting to join together to raise or expend in excess of just $200. The Plaintiffs at issue sought to place a newspaper advertisement in the local paper, distribute flyers, and purchase posters in support of a constitutional ballot measure, but were dissuaded by the burden of the State's requirements. Simply put, as applied to a small group attempting to expend minimal funds in support of their grass-roots campaign effort, the State's requirements, particularly coupled with the confusion surrounding those requirements, unconstitutionally infringe upon the First Amendment.

App. 77 (internal citation omitted). Accordingly, the court held that "as applied to [Petitioners], the State's group registration and individual reporting requirements are unconstitutional." App. 84.

The State appealed to the United States Court of Appeals for the Fifth Circuit. In November 2014, a panel of that court reversed the district court's decision. The panel agreed Petitioners had standing; their "past enthusiastic participation in the political process" through rallies and the like indicated they

would have spoken in the 2011 and future ballot-measure elections. App. 12. But the panel did not consider Petitioners' as-applied arguments because the panel deemed "implausible" the undisputed record evidence that Petitioners are a small, grass-roots group that would not have spent large sums of money on political speech. App. 16. The panel further rejected the notion that there was any distinction between PAC burdens and "disclosure" regulations. App. 25-26. Finally, without regard to the undisputed facts of Petitioners' challenge, the panel ruled that Mississippi's informational interest was important enough to force Petitioners to comply with the statutory scheme or else remain silent. App. 27-29.

Petitioners timely asked for rehearing en banc. On December 12, 2014, the Fifth Circuit ordered the State to respond, App. 38, which it did. The court then held the petition for another eight months. On August 21, 2015, the court denied the petition without comment or a vote. App. 124-25. This petition timely followed.

REASONS FOR GRANTING THE WRIT

The Fifth Circuit's decision exacerbates various circuit splits that have formed and widened over the years. Certiorari is appropriate where the federal courts of appeals have entered decisions that conflict with each other or relevant decisions of this Court. Sup. Ct. R. 10(a) & (c). Both have happened here.

As explained in Part I, the holding below directly contradicts a holding of the Tenth Circuit in a case involving materially identical facts.

As explained in Part II, the circuits are in an acknowledged split as to whether campaign finance regulations can be imposed on ballot-measure speech based on the so-called "informational interest." The Fifth Circuit's holding here adopts the wrong side of that split. It conflicts with this Court's holding in *McIntyre* that the regulation of pure speech about ballot measures rests on "less powerful" interests than the regulation of speech about candidates, and that the "simple interest in providing voters with additional relevant information" about a speaker is "plainly insufficient to support the constitutionality" of a disclosure requirement as applied to speech about a ballot measure. 514 U.S. at 348-49, 356.

As explained in Part III, the circuits are also in an acknowledged split as to whether the full panoply of formation, registration, and ongoing record-keeping, reporting, and other requirements Petitioners challenge here are onerous "PAC burdens" and subject to strict scrutiny, or less onerous "disclosure" laws and subject to lesser scrutiny. Again, the Fifth Circuit's holding here adopted the wrong side of the split. It conflicts with this Court's decisions in *MCFL* and *Citizens United* that PAC burdens substantially and directly burden protected speech, are more than just "disclosure" requirements, and demand greater judicial scrutiny.

Finally, as set forth in Part IV, this case presents an excellent vehicle for resolving the acknowledged circuit splits and addressing issues of extraordinary national importance: The regulation of pure speech about ballot measures, especially the grassroots speech of everyday American citizens.

I. The Fifth Circuit's holding directly conflicts with the Tenth Circuit's holding in *Sampson*, a factually and legally indistinguishable case.

Petitioners' challenge to Mississippi's regulatory scheme is indistinguishable on the facts and the law from the challenge to Colorado's regulatory scheme in *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010). But the challengers in *Sampson* won, and Petitioners here lost. Although the Fifth Circuit tried to distinguish *Sampson*, it did so on inaccurate grounds. The Fifth Circuit said that *Sampson* was a post-enforcement challenge by a small group and this case is a pre-enforcement challenge and therefore a challenge by a potentially large group. But, based on the undisputed record here, there is no material difference between *Sampson* and this case; they are simply conflicting holdings. *See* App. 68-77 (district court noting the many similarities between this case and *Sampson*).

In *Sampson*, a handful of neighbors banded together to oppose an annexation that was to be on the ballot at the next election. 625 F.3d at 1251. To do

this they purchased and distributed some signs, mailed a postcard to town residents, discussed and debated the issue on the internet, and submitted a document opposing annexation to the town counsel. *Id.* The group spent roughly $782 to do these things. *Id.* at 1252. Unbeknownst to them, because they spent more than $200, they were a political committee as defined by Colorado law, and their political opposition prosecuted them for speaking without becoming a PAC. *Id.* at 1249, 1251-52.

The neighbors then turned to the federal courts to protect their free speech and association rights. The Tenth Circuit first recognized that the speech at issue was only about ballot measures, not candidates. *Id.* at 1255. The court next recognized that financial-disclosure laws "reveal only one dimension of the support for a ballot measure[:] . . . those who (presumably) have a financial interest in the outcome of the election." *Id.* at 1259. That meant that the government interest in "disclosure" about ballot-measure speech was limited at best; indeed, it was "not obvious" an informational interest even exists in pure speech about ballot measures. *Id.* at 1256. Thus, while the court was willing to "assum[e]" the interest, it would not accord it much value generally. *Id.* at 1257-59. Further, that interest was "significantly attenuated" when the speaker was a small group. *Id.* at 1259. Finally, the Tenth Circuit recognized that the burden of Colorado's PAC regulations was "substantial" because they were numerous and complicated. *Id.* at 1259-60.

The Tenth Circuit then weighed the "substantial" burden against the "minimal" interest and held "it was unconstitutional to impose that burden on Plaintiffs." *Id.* at 1260-61. Notably, the Tenth Circuit did "not attempt to draw a bright line below which a ballot-issue committee cannot be required to report contributions and expenditures." *Id.* at 1261. Rather, the court found it sufficient that "a group of individuals who have together spent less than $1,000 on a campaign" was "well below the line" and the scenario "is quite unlike ones involving the expenditure of tens of millions of dollars." *Id.*[5]

Here, the undisputed record proves this case also "is quite unlike ones involving the expenditure of tens

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[5] The rationale of *Sampson* is commonly accepted in the federal courts, even as to small groups speaking about candidates. The Ninth Circuit held that the application of campaign finance laws to a church that engaged in *de minimis* activities with regard to a ballot measure violated the First Amendment. *Canyon Ferry Rd. Baptist Church of E. Helena, Inc. v. Unsworth*, 556 F.3d 1021, 1034 (9th Cir. 2009). The en banc Eighth Circuit recognized that Minnesota's "independent expenditure law almost certainly fail[ed] [exacting scrutiny] because its ongoing reporting requirement – which is initiated upon a $100 aggregate expenditure, and is untethered from continued speech – does not match any sufficiently important disclosure interest." *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 876 (8th Cir. 2012) (en banc). And the Seventh Circuit recognized that the informational interest cannot justify even "disclosure" laws when applied to small groups because "the state's interest in disseminating such information to voters is at a low ebb" in cases involving small groups. *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 482 (7th Cir. 2012).

of millions of dollars" and is just like *Sampson*. Petitioners are also a small, informal group of friends and neighbors who have no formal organization or structure, no officers or directors, no bank account, and no dues. App. 171, 180. Petitioners have always just "pass[ed] a hat" at their meetings to pool their money to finance their activities and want to do the same with regard to measures on the Mississippi ballot. App. 12, 172. And Petitioners, like the *Sampson* challengers, sought to speak though traditional grassroots means – a local newspaper advertisement, posters, and flyers – about a ballot measure by spending less than $1,000. App. 8-9, 89-90, 157-65; *see also* Oral Argument Recording, n.2, *supra*.

The only difference between *Sampson* and this case is that this case is a pre-enforcement challenge. *See* App. 21. But this is not legally significant. Petitioners need not expose themselves to "actual arrest or prosecution to be entitled to challenge a statute that [they] claim[ ] deters the exercise of [their] constitutional rights," as the *Sampson* group accidentally did. *Steffel v. Thompson*, 415 U.S. 452, 459 (1974).

Rather than follow *Sampson*, the Fifth Circuit thought it "implausible" that Petitioners would spend a small amount of money on an issue they deemed very important. App. 16. Notwithstanding the record, the Fifth Circuit rejected the very idea that a passionate group would engage in a small amount of speech. App. 16-17. But when Petitioners' request for an injunction to pool no more than $1,000 of their

own money to speak about Initiative 31 was denied, they spent less than $200 to avoid becoming a political committee. App. 13, 89-90, 165, 183. Instead of relying on record evidence that Petitioners fundraised only by passing the hat at their meetings, App. 8-9, 12, 172, the Fifth Circuit speculated that "[m]aybe, far from being a limited operation, their small group would have been a rousing fundraising success," App. 17.

The Fifth Circuit's approach makes it virtually impossible as a practical matter for small groups like Petitioners to mount a pre-enforcement challenge. Speakers now must have enough experience or structure to know, in advance, precisely what and how much speech they will engage in. But for speakers who do not associate in a formal manner, like Petitioners, "passing the hat" for donations precludes "budgeting" for political spending. *See also Citizens United*, 558 U.S. at 334 ("The decision to speak is made in the heat of political campaigns, when speakers react to messages conveyed by others."). This means they will only know an exact amount they will spend after they have passed the hat – but by that point they may have already accidentally become a political committee, as in *Sampson*.

Regardless, the Fifth Circuit was unwilling to acknowledge the several facts demonstrating Petitioners are a small group – and specifically the request for an injunction to allow Petitioners to pool no more than $1,000. *Cf.* App. 89-90; Oral Argument Recording, n.2, *supra*. Thus, Petitioners were denied

the same rights, under the same circumstances, that the challengers in *Sampson* were entitled to exercise.

Moreover, the Fifth Circuit's desire for "[ ]certainty concerning the amount" Petitioners would pool and spend, App. 18, cannot justify its ruling here. The simple "desire for a bright-line rule" does not justify infringement of First Amendment rights where "concerns underlying the regulation of . . . political activity are simply absent with regard to" the challenger. *MCFL*, 479 U.S. at 263. A small group of friends and neighbors literally passing a hat to speak about a ballot measure is simply different than the kinds of large, formal, sophisticated groups that are invoked to justify the kinds of campaign finance laws at issue, as *Sampson* recognized. 625 F.3d at 1261. On that ground alone, Petitioners' First Amendment rights have been and are being violated.

II. There is an acknowledged circuit split and conflict with Supreme Court precedent regarding the strength of the "informational interest" in pure speech about ballot measures.

The federal courts are split as to whether the so-called "informational interest" applies with any force to pure speech about ballot measures. This split is important. As explained in Part A, no other government interest can support these regulations because ballot-measure speech presents no threat of corruption. Accordingly, this Court recognized the

weakness of the interest in *McIntyre*, as explained in Part B.

A. There is no threat of corruption in pure speech about ballot measures, meaning regulation can only be justified by the "informational interest," if at all.

In every case regarding the regulation of pure speech about ballot measures this Court has ever heard, it has 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." *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 790 (1978) (striking down a ban on corporate expenditures and contributions) (internal citation omitted); *Citizens Against Rent Control/Coal. for Fair Housing v. City of Berkeley*, 454 U.S. 290, 297-98 (1981) (quoting *Bellotti* and striking down individual contribution limits); *accord McIntyre*, 514 U.S. at 354, 356 (recognizing no threat of corruption and striking down disclosure requirements as applied to flyers about ballot measure). Accordingly, the courts uniformly hold that ballot-measure speech does not implicate most of the interests cited to justify campaign finance laws; only the so-called "informational interest" might apply. App. 26. Nevertheless, there is a circuit split as to what that fact means. App. 27.

B. *McIntyre v. Ohio Elections Commission*, this Court's only case on point, holds that the informational interest is not important as applied to pure speech about ballot measures.

McIntyre is the only case in which this Court has squarely ruled on "disclosure"[6] and the informational interest in the context of pure speech about ballot measures. This Court held that disclosure in ballot measure elections "rests on different and *less powerful* state interests" than supported disclosure in *Buckley v. Valeo*, 424 U.S. 1 (1976). *McIntyre*, 514 U.S. at 356 (emphasis added). This is because *Buckley* involved candidate elections, and "disclosures about the level of financial support a candidate has received from various sources are supported by an interest in avoiding the appearance of corruption that has no application to" pure speech about ballot measures. *Id.* at 354. Because ballot-measure speech presents no threat of corruption, there is no anticorruption interest to justify the regulation of such speech, leaving only the "less powerful" informational interest to stand alone. *Id.* at 356.

McIntyre held that the "simple interest in providing voters with additional relevant information" – the informational interest – was "plainly insufficient to

[6] As explained in Part III, below, this case is about heavier burdens on speech than just "disclosure"; it is about the "full panoply" of PAC requirements.

support the constitutionality" of the disclosure regulation at issue. *Id*. at 348-49. Notably, the First Amendment activity unconstitutionally chilled by the law in *McIntyre* was a small group's (Mrs. McIntyre, her son, and a friend) distribution of leaflets opposing a referendum on a proposed school tax levy, *id*. at 337 – grassroots political activity indistinguishable from what Petitioners want to do here, App. 12.

C. The Tenth Circuit – consistent with *McIntyre* – held the informational interest is not important as applied to pure speech about ballot measures.

The Tenth Circuit, reviewing this Court's decisions, especially *McIntyre*, concluded that it is "not obvious" that the informational interest exists when applied to pure speech about ballot measures. *Sampson*, 625 F.3d at 1256.[7] Moreover, and again based on this Court's precedents, the Tenth Circuit determined that "such disclosure has some value, but not that much." *Id.* at 1257-59. Indeed, as the Tenth Circuit noted, this Court "has never upheld a disclosure provision for ballot-issue campaigns that has been presented to it for review." *Id.* at 1258. Accordingly,

[7] *See also Doe v. Reed*, 561 U.S. at 206-07 (Alito, J., concurring) (rejecting the "breathtaking" scope and implications of the "informational interest" because it is unbounded and "runs headfirst into a half century of our case law, which firmly establishes that individuals have a right to privacy of belief and association").

while the Tenth Circuit was willing to "assum[e]" an interest in financial disclosure about pure speech about ballot measures, it also recognized that interest is not important generally, much less when applied to a small group. *Id.* at 1259; *see also* n.5, *supra*.

D. The Fifth Circuit expressly rejected the Tenth Circuit's holding in *Sampson* and ignored *McIntyre* to find the informational interest important as applied to pure speech about ballot measures; the First, Ninth, and Eleventh Circuits have done the same.

The Fifth Circuit noted the *Sampson* holding but rejected it in favor of the holdings of various other circuits. App. 27-29 (citing *Worley v. Cruz-Bustillo*, 717 F.3d 1238, 1247-48 (11th Cir. 2013); *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 57 (1st Cir. 2011); and *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1106 (9th Cir. 2003)); *see also Worley*, 717 F.3d at 1248 (acknowledging but rejecting *Sampson*). Thus, the Fifth Circuit held that "the informational interest that the Supreme Court described approvingly in *Buckley*" is "at least as strong when it comes to ballot initiatives." App. 27.

The Fifth Circuit's holding not only conflicts with *Sampson*, but it is also directly contrary to this Court's holding in *McIntyre* – which the Fifth Circuit ignored. Indeed, none of the decisions on which the Fifth Circuit relied successfully distinguished *McIntyre* either. Rather than properly address *McIntyre*,

the lower courts have adopted two theories about the informational interest and pure speech about ballot measures, *e.g.*, App. 28-29, that this Court expressly rejected in *McIntyre*, 514 U.S. at 356 & n.20 (rejecting "lobbying" rationale); *id.* at 348 n.11 (rejecting notion that people need the identity of a speaker to evaluate speech).

* * *

Though the circuits agree that only the informational interest might apply to pure speech about ballot measures, they are in an acknowledged split about the strength of that interest. In splitting, various circuits, including the Fifth Circuit here, have contradicted the only ruling from this Court that is directly on point. This circuit split and deviation from this Court's jurisprudence requires the attention of this Court.

III. There is an acknowledged circuit split and conflict with Supreme Court precedent regarding the distinction between the full panoply of formation, registration, and ongoing record-keeping, reporting, and other obligations – "PAC burdens" – and mere "disclosure" requirements.

This is not a case about "disclosure." It is about an "onerous" class of regulation weightier than that: PAC burdens. As discussed in Part A, this Court has twice recognized – in *MCFL* and *Citizens United* – critical distinctions between "PAC burdens" and

"disclosure," including how courts are to scrutinize them. As explained in Part B, this case involves PAC burdens, not disclosure.

Unfortunately, many circuits – including the Fifth here – have confused PAC burdens with disclosure requirements. This has allowed courts to downplay the onerous regulatory burdens imposed on even the smallest of speakers. It has also, in the words of the en banc Eighth Circuit, allowed "states to sidestep strict scrutiny by simply placing a 'disclosure' label on laws imposing the substantial and ongoing burdens typically reserved for PACs" and has transformed "First Amendment jurisprudence into a legislative labeling exercise." *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 875 (8th Cir. 2012) (en banc). Part C explains the ways that circuits have acknowledged the present split. Parts D, E, and F explain the three positions that the various circuits have taken.

A. In *Massachusetts Citizens for Life* and *Citizens United*, this Court expressly distinguished PAC burdens from disclosure requirements, held that PAC burdens are more burdensome, and applied greater scrutiny.

In both *MCFL* and *Citizens United*, this Court held that PAC burdens – the requirements that speakers create a formal organization, register with the government, and subject themselves to complicated regulatory schemes, including ongoing record-keeping

and reporting requirements, just to speak – are distinct from "disclosure." PAC burdens are both more and more directly burdensome on free speech than is disclosure. The differences between PAC burdens and disclosure result in a greater level of scrutiny being applied to PAC burdens than is applied to disclosure requirements.

In *MCFL*, a nonprofit corporation spent about $10,000 on flyers discussing candidates. 479 U.S. at 244. Under federal law, the nonprofit corporation had to be a "political committee" in order to speak. *Id.* at 252 (plurality). But being a political committee meant that "MCFL must make very significant efforts" to comply with regulatory requirements. *Id.* These requirements included: appointing a treasurer, various record-keeping requirements, filing a statement of organization with information about the group, reporting updates to the statement of organization within short timeframes, restrictions on how the group could terminate, and filing reports subject to differing deadlines with detailed financial and other information. *Id*. at 252-54; *see also* Part III.B, *infra*.

This Court distinguished these requirements – the "full panoply of regulations that accompany status as a political committee," *MCFL*, 479 U.S. at 262 (majority) – from disclosure requirements this

Court had previously upheld. A plurality of the Court[8] explained:

> It is true that we acknowledged in *Buckley*, *supra*, that, although the reporting and disclosure requirements of the Act "will deter some individuals who otherwise might contribute," *id*., at 68, this is a burden that is justified by substantial Government interests. *Id*., at 66-68. However, while the effect of additional reporting and disclosure obligations on an organization's *contributors* may not necessarily constitute an additional burden on speech, *the administrative costs of complying with such increased responsibilities may create a disincentive for the organization itself to speak*.

Id. at 254 n.7 (plurality) (second emphasis added). That is, the "administrative costs" forced on speakers by political committee obligations – PAC burdens – constituted a direct burden on the speech of MCFL itself above and beyond disclosure of donors.

Looking at those administrative costs, the plurality held that "[d]etailed recordkeeping and disclosure obligations, along with the duty to appoint a treasurer and custodian of the records, impose administrative costs that many small entities may be unable to bear. Furthermore, such duties require a far more complex and formalized organization than many small groups could manage." *Id.* at 254-55 (footnote

[8] Justices Brennan, Marshall, Powell, and Scalia.

omitted). Thus, while being forced to become a political committee "does not remove all opportunities for independent spending by organizations such as MCFL, the avenue it leaves open is more burdensome than the one it forecloses," which infringes on First Amendment activities. *Id.* at 255.

In concurrence, Justice O'Connor also distinguished PAC requirements as more burdensome than "disclosure." The PAC burdens highlighted by the plurality forced "MCFL to assume a more formalized organizational form." *Id.* at 266 (O'Connor, J., concurring). Thus, "the significant burden on MCFL in this case comes not from the disclosure requirements that it must satisfy, but from the additional organizational restraints imposed upon it by the Act." *Id.*

Because PAC burdens are more onerous than disclosure, the *MCFL* majority subjected PAC burdens to strict scrutiny: PAC burdens must be "justified by a compelling state interest" and specifically by a threat of "corruption." *Id.* at 256, 259. The Court held that groups like MCFL did not present a threat of corruption, so they could not be forced to face PAC burdens. *Id.* at 260-63.

This Court repeated *MCFL*'s analysis in *Citizens United*, again distinguishing PAC burdens from disclosure. *Citizens United* involved the federal requirement that for-profit corporations and unions speak through a political committee. 558 U.S. at 321. This requirement functioned as a "ban on speech" notwithstanding the option for corporations and

unions to establish and speak through a PAC. *Id*. at 339. This was because "PACs are burdensome alternatives" that are "expensive to administer and subject to extensive regulations" because of the formation, registration, and ongoing record-keeping, reporting and other obligations. *Id*. at 337-38 (highlighting the same requirements discussed in *MCFL*). Accordingly, this Court subjected those burdens to strict scrutiny, required the government "to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest," *id*. at 340 (internal quotation marks omitted), and held the federal regulatory scheme unconstitutional because it was not tied to a threat of corruption, *id*. at 365.

In contrast to the above analysis, the Court upheld a disclosure requirement in *Citizens United*. This disclosure requirement was a one-time, event-driven disclosure triggered only by the expenditure of $10,000, and it demanded no ongoing obligations or the creation of a separate entity. *Id.* at 366; *see also* Part III.B, *infra*. Indeed, that the disclosure analysis was separate and distinct from the PAC burdens analysis is demonstrated by simply looking at page numbers: The discussions are separated by nearly 30 pages in the published reporter. *Compare Citizens United*, 558 U.S. at 337-39 (PAC burden discussion), *with id.* at 366-67 (disclosure discussion).

Following *MCFL* and *Citizens United*, there is a jurisprudential distinction between "PAC burdens" and "disclosure" requirements. They impinge on different kinds of First Amendment rights in different ways and demand different analyses. Unfortunately, many

of the federal courts have reached conclusions in conflict with each other and contrary to binding Supreme Court precedent because they confuse and conflate that precedent.

B. Mississippi imposes PAC burdens on Petitioners.

The Mississippi regulations challenged here are PAC burdens, not disclosure. When compared to the regulations considered in *MCFL* and *Citizens United*, Mississippi's regulations impose the same formation, registration, and ongoing record-keeping, reporting, and other obligations held unconstitutional. These burdens cannot be dismissed as just "disclosure," as the Fifth Circuit erroneously did. *See* Part III.E, *infra*.

Federal PAC burdens struck down in *Citizens United* and *MCFL*	**Mississippi burdens upheld below**	**Federal disclosure requirements upheld in *Citizens United***
Must register as a political committee.[9]	Must register as a political committee.[10]	Not required to register as a political committee.[11]

[9] *Citizens United*, 558 U.S. at 337; *MCFL*, 479 U.S. at 253 (plurality); 2 U.S.C. § 431(4)(B) (now at 52 U.S.C. § 30101).

[10] App. 4; Miss. Code Ann. §§ 23-15-803(a), 23-17-49(1).

[11] *See Citizens United*, 558 U.S. at 366; 2 U.S.C. § 434(f) (now at 52 U.S.C. § 30104).

Must file an organization statement.[12]	Must file an organization statement.[13]	Not required to file an organization statement.[14]
Must report changes to organization statement within a short time frame.[15]	Must report changes to organization statement within a short time frame.[16]	Not required to file an organization statement.[17]
Must appoint a treasurer.[18]	Must appoint a treasurer.[19]	Not required to appoint a treasurer.[20]

[12] *Citizens United*, 558 U.S. at 337-38; *MCFL*, 479 U.S. at 253; 2 U.S.C. § 433(a) (now at 52 U.S.C. § 30103).

[13] App. 5; Miss. Code Ann. §§ 23-15-803(a), 23-17-49(1).

[14] *See* 2 U.S.C. § 434(f) (now at 52 U.S.C. § 30104).

[15] *Citizens United*, 558 U.S. at 337-38; *MCFL*, 479 U.S. at 253; 2 U.S.C. § 433(c) (now at 52 U.S.C. § 30103) (requiring reporting of change to the information within 10 days).

[16] Miss. Code Ann. §§ 23-15-803(c) (requiring reporting of change to the information with next report), 23-17-49 (requiring reporting of change within 10 days).

[17] *See* 2 U.S.C. § 434(f) (now at 52 U.S.C. § 30104).

[18] *Citizens United*, 558 U.S. at 337-38; *MCFL*, 479 U.S. at 253; 2 U.S.C. § 432(a) (now at 52 U.S.C. § 30102).

[19] App. 5-6; Miss. Code Ann. §§ 23-15-803(b)(ii), 23-17-49(2)(b).

[20] *See Citizens United*, 558 U.S. at 366; 2 U.S.C. 434(f) (now at 52 U.S.C. § 30104).

Must keep detailed records of donors and their employment.[21]	Must keep detailed records of donors and their employment.[22]	Not subject to formal record-keeping requirements.[23]
Must file detailed and ongoing reports with a variety of financial information beyond just "contributions" and "expenditures" with differing and confusing deadlines.[24]	Must file detailed and ongoing reports with a variety of financial information beyond just "contributions" and "expenditures" with differing and confusing deadlines.[25]	Must file a narrow, one-time, event-driven report.[26]

[21] *Citizens United*, 558 U.S. at 338; *MCFL*, 479 U.S. at 253; 2 U.S.C. § 432(c) (now at 52 U.S.C. § 30102).

[22] *See* App. 7; Miss. Code Ann. §§ 23-15-807(d), 23-17-53; *see also* Miss. Code Ann. § 23-15-801(g).

[23] *Compare* 2 U.S.C. § 434(f) (now at 52 U.S.C. § 30104), *with* 2 U.S.C. § 432 (now at 52 U.S.C. § 30102).

[24] *Citizens United*, 558 U.S. at 338; *MCFL*, 479 U.S. at 253-54; 2 U.S.C. § 434(a)(4) (now at 52 U.S.C. § 30104) (requiring quarterly, pre-election, post-general-election, six-months, and/or monthly reports); 2 U.S.C. § 434(b) (now at 52 U.S.C. § 30104) (describing contents of reports).

[25] App. 6-7; Miss. Code Ann. §§ 23-15-807(b), 23-17-51 (requiring pre-election, periodic, annual, and/or monthly reports); Miss. Code Ann. §§ 23-15-807(d), 23-17-53 (describing contents of reports).

[26] *Citizens United*, 558 U.S. at 366; 2 U.S.C. § 434(f) (now at 52 U.S.C. § 30104).

Allowed to terminate only by taking certain steps and filing a termination statement.[27]	Allowed to terminate only by taking certain steps and filing a termination statement.[28]	No requirements for termination.[29]

C. The Third and Eighth Circuits have acknowledged the circuit split about the distinction between PAC burdens and disclosure requirements.

Both the Third and Eighth Circuits have acknowledged that the circuits are split in their analysis and treatment of PAC burdens.

After the Fifth Circuit's decision here, the Third Circuit in *Delaware Strong Families v. Attorney General of Delaware*, 793 F.3d 304 (3d Cir. 2015), acknowledged that the circuits are split about the relative burdens of PAC requirements and disclosure. The Third Circuit recognized that the ongoing requirements imposed on political committees in Delaware are "much more extensive" than the event-driven, "much more limited" requirements imposed on other organizations. *Id*. at 312 n.10. The Third Circuit adopted Seventh Circuit precedent recognizing that "[d]isclosure that is singular and event-driven is 'far

[27] *MCFL*, 479 U.S. at 253; 2 U.S.C. § 433(d)(1) (now at 52 U.S.C. § 30103).

[28] App. 33; Miss. Code Ann. §§ 23-15-807(a), 23-17-51(3).

[29] *See* 2 U.S.C. § 434(f) (now at 52 U.S.C. § 30104).

less burdensome than the comprehensive registration and reporting system [oftentimes] imposed on political committees.'" *Id.* (quoting *Wis. Right to Life, Inc. v. Barland*, 751 F.3d 804, 824 (7th Cir. 2014)). And the Third Circuit expressly contrasted a contrary Eleventh Circuit holding that comprehensive political committee regulations are not burdensome. *Id.* (citing *Worley*, 717 F.3d at 1250). Notably, the Eleventh Circuit case rejected in *Delaware Strong Families* is the one the Fifth Circuit adopted here. App. 24-26.

The en banc Eighth Circuit also acknowledged a split in the circuits' treatment of PAC burdens and, specifically, a split from this Court's precedent. In *Swanson*, the court reviewed a state law that required any association (including ad hoc, informal ones) to form a political committee, appoint a treasurer, register with the state, and subject itself to ongoing record-keeping, reporting, and other obligations if it spent just $100 on independent speech about candidates. 692 F.3d at 868-70. The court recognized that these requirements were precisely the ones at issue in *MCFL* and *Citizens United*, *id.* at 874, and rejected the notion that these PAC burdens were instead "disclosure," *id.* at 875. As the en banc Eighth Circuit explained, this Court reinforced the distinction between PAC burdens and disclosure in *Citizens United*:

> The nature of the disclosure laws reviewed under exacting scrutiny in *Citizens United* were much different than Minnesota's law. . . . The effect of the laws – requiring one-time

> disclosure only when a substantial amount of money was spent – matched the government's disclosure purpose. In contrast, the effect of Minnesota's ongoing reporting requirements, which are initiated upon $100 aggregate in expenditures, and are unrelated to future expenditures, does not match any particular disclosure interest. Other requirements, such as requiring a treasurer, segregated funds, and record-keeping, are only tangentially related to disclosure.

Id. at 875 n.9. Because this Court applies strict scrutiny to PAC burdens, the Eighth Circuit recognized that strict scrutiny is the proper level of review for PAC burdens, notwithstanding that various circuit courts have applied lesser scrutiny to PAC burdens. *Id*. at 874-75 (citing, *inter alia*, *Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 548-49 (4th Cir. 2012); *Nat'l Org. for Marriage*, 649 F.3d at 55-56; *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 997-99, 1003-05 (9th Cir. 2010); and *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (en banc)). Even so, because PAC burdens are so onerous, the Eighth Circuit recognized they did not survive even intermediate scrutiny. *Id*.

D. The Third, Seventh, and Eighth Circuits recognize the distinction between PAC burdens and disclosure requirements.

As noted above, the Third, Seventh, and Eighth circuits have all recognized the distinction between PAC burdens and mere disclosure requirements. *Del. Strong Families*, 793 F.3d at 312 n.10; *Wis. Right to Life*, 751 F.3d at 824, 836; *Swanson*, 692 F.3d at 875. Each of these cases, building on the holdings of *MCFL* and *Citizens United*, have recognized that the full panoply of formation, registration, and ongoing record-keeping, reporting, and other obligations attendant to PAC status are different and more substantial burdens than one-time, event-driven disclosure requirements. *E.g.*, *Wis. Right to Life*, 751 F.3d at 836 (noting that in *Citizens United*, "the Court spent several pages explaining that a corporation's option to form an affiliated PAC is too burdensome to justify" the law and comparing PAC burdens to the "disclosure requirement at issue there").

E. The First, Second, Fourth, Fifth, Ninth, Eleventh, and D.C. Circuits reject the distinction between PAC burdens and disclosure requirements.

The Fifth Circuit's decision here rejected the distinction between PAC burdens and disclosure laws. App. 24-26. In doing so, the Fifth Circuit allied itself with the various circuits that have similarly rejected

this distinction, even in the face of *MCFL* and *Citizens United*.

In one of the earliest cases, the Ninth Circuit admitted to its history of confusion about the proper analysis under *MCFL* and its many attempts to "avoid the issue rather than stating the appropriate level of scrutiny in any given context." *Brumsickle*, 624 F.3d at 1003-05. But, based solely on the "disclosure" discussion of *Citizens United*, the Ninth Circuit held that the full panoply of formation, registration, and ongoing record-keeping, reporting, and other obligations – PAC burdens – are just "disclosure." *Id.* at 1005.[30] *But see Swanson*, 692 F.3d at 874-75 & n.9 (rejecting *Brumsickle*). Unfortunately, other circuits followed this lead. *McKee*, 649 F.3d at 41-42, 55-56 (First Circuit stating that laws requiring "registration, recordkeeping, and reporting" as PACs are "'pure disclosure laws,'" notwithstanding *MCFL* and *Citizens United*); *Real Truth*, 681 F.3d at 548-49 (Fourth Circuit stating that *Citizens United*'s discussion of

[30] Notably, the Ninth Circuit has since tried to distinguish *Brumsickle* from cases similar to this one. In *Family PAC v. McKenna*, it distinguished between "*reporting* requirements – i.e., when an organization is required to file contribution and expenditure reports with state election regulators – [and] *contribution* disclosure requirements – i.e., assuming an organization is subject to a reporting requirement, what contributions must be disclosed in the reports." 685 F.3d 800, 810 n.10 (9th Cir. 2012). In doing so, the Ninth Circuit adopted the holdings of cases that struck down formation, registration, and ongoing record-keeping, reporting, and other obligations: *Sampson*, 625 F.3d at 1249, 1259-61, and *Canyon Ferry*, 556 F.3d at 1033-34. *Id.*

"onerous" PAC burdens applies only to laws demanding corporations set up separate segregated funds and does not apply to formation, registration, and ongoing record-keeping, reporting, and other obligations); *Worley*, 717 F.3d at 1243-45 (Eleventh Circuit stating that *Citizens United*'s discussion of PAC burdens applies only to corporations, not individuals); *see also Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118, 136-38 (2d Cir. 2014) (rejecting notion that "PAC-style obligations" receive elevated review and attempting to distinguish *Wisconsin Right to Life*'s and *Swanson*'s holdings about the weight of PAC burdens); *SpeechNow.org*, 599 F.3d at 696-98 (D.C. Circuit assuming no distinction).

F. The Tenth Circuit has neither recognized nor rejected the distinction between PAC burdens and disclosure requirements.

The Tenth Circuit took a position between the other circuits in *Sampson v. Buescher*. On the one hand, like the courts that reject the distinction between PAC burdens and disclosure requirements, the Tenth Circuit referred to the full panoply of formation, registration, and ongoing record-keeping, reporting, and other obligations as "disclosure requirements" subject to intermediate scrutiny. 625 F.3d at 1255. But on the other hand, and like the courts that recognize the distinction, the Tenth Circuit also recognized these laws impose "substantial" burdens on speakers because of the "many campaign

financial-disclosure requirements" and the fact that "[t]he average citizen cannot be expected to master on his or her own" all the rules or even "sift through them all to determine which apply." *Id.* at 1259-60. And, as noted in Part I, the Tenth Circuit held these formation, registration, and ongoing record-keeping, reporting, and other obligations are unconstitutional, at least as to groups like the Petitioners here.

* * *

Notwithstanding the holdings of *MCFL* and *Citizens United*, the various federal courts of appeals have reached a significant and acknowledged split on whether there is a difference between PAC burdens and disclosure requirements. In doing so, the circuits have also split as to how weighty PAC burdens are and what level of constitutional scrutiny to apply. This confusion, deviation from this Court's jurisprudence, and these circuit splits require the attention of this Court.

IV. This case presents an excellent vehicle for resolving the splits of authority and addressing issues of extraordinary national importance.

This case is an excellent vehicle for addressing the question presented for three reasons: (1) this case implicates clearly established and mature circuit splits on discrete and important questions of law affecting First Amendment rights nationwide; (2) there are no procedural problems preventing the consideration of

the merits, which have been fully developed through more than four years of litigation; and (3) Petitioners wanted to spend less than $1,000 in 2011 but could not receive timely relief and therefore self-censored, a clear First Amendment violation.

First, the Fifth Circuit's decision implicates acknowledged and mature circuit splits on discrete and important questions of law affecting core First Amendment rights: the protection of small grassroots groups from burdensome speech regulations; the "informational interest" in pure speech about ballot measures; and the treatment of PAC burdens. This Court has already recognized that "[n]o form of speech is entitled to greater constitutional protection than" pure speech about ballot measures, especially small grassroots speech. *McIntyre*, 514 U.S. at 347. And pure speech about ballot measures occurs all the time and all across the country: Every state has at least one, and oftentimes many, forms of ballot measure.[31] Thus, the core question in this case – what the government may require of grassroots speakers who speak about ballot measures – impacts tens or even hundreds of millions of people.

Under the ruling below, individuals who speak about ballot measures in Mississippi are under the threat of fines and imprisonment if they do not

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[31] Cody Hoesly, Comment, *Reforming Direct Democracy: Lessons from Oregon*, 93 Cal. L. Rev. 1191, 1194-95 & nn.23-26 (2005) (discussing which states have initiatives, referenda, and referrals).

comply with yards of bureaucratic red tape. They are subject to this because they live within the jurisdiction of the Fifth Circuit rather than the Tenth Circuit. Nearly every federal court of appeals has now weighed in on at least one, if not several of the issues here – the analysis of PAC burdens, the importance (or not) of the informational interest, and the regulation of small groups. Those courts have, on multiple occasions, created (and acknowledged the existence of) splits of authority. No more development of the case law is necessary given the many existing circuit decisions.

Second, there are no procedural problems preventing the consideration of the merits of this case. As the Fifth Circuit confirmed, Petitioners clearly have standing; they want to speak in the future about ballot measures in a way that "mirror[s]" their previous political engagement, App. 8, but their speech about ballot measures is inhibited by the challenged regulatory scheme, App. 11-13. Moreover, the merits of this case have been fully developed through more than four years of litigation. From the initial ruling on Petitioners' motion for a preliminary injunction, App. 87, to the ruling on summary judgment, App. 40, to the panel ruling at the Fifth Circuit, App. 1, it has been clear that Petitioners are a small group of friends and neighbors who wish to pass a hat – as they have always done to fund their non-regulated political activity – to speak about Mississippi ballot measures. And, from the very beginning of the case, the courts have recognized that the law in this area is

conflicted and have not been able to harmonize these conflicts. *E.g.*, App. 27 (contrasting holdings of Tenth and Eleventh Circuits), App. 108-11 (contrasting holdings of Ninth and Tenth Circuits).

Finally, Petitioners wanted to spend more than $200, but less than $1,000 in 2011. App. 90, 157-65; Oral Argument Recording, n.2, *supra*. They could not receive timely relief and therefore self-censored, a clear First Amendment violation. Moreover, Petitioners have a proven track-record of past grassroots political activity, past very minimal fundraising efforts, and a proven desire to continue their activities in a similar way in the future. App. 8-9, 11-13.

Rather than engage these facts, the Fifth Circuit, based on pure speculation contrary to the record, determined Petitioners were actually a group that might raise a lot of money. App. 17. Based on this speculation, it upheld a scheme that imposes on Petitioners the full panoply of formation, registration, and ongoing record-keeping, reporting, and other obligations that attend status as a political committee when they engage in pure speech about ballot measures. This, even though this Court has held those same burdens unconstitutionally onerous for large corporations, unions, and formal interest groups when they speak about candidates, and this Court has also held the regulations here rest on less powerful state interests because this case is about ballot measures, not candidate elections. The Fifth Circuit's holding here makes no sense.

CONCLUSION

For the reasons stated above, Petitioners request that this Court grant their petition for a writ of certiorari.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 13-60754

GORDON VANCE JUSTICE, JR.;
SHARON BYNUM; MATTHEW JOHNSON;
ALISON KINNAMAN; STANLEY O'DELL,

Plaintiffs-Appellees

v.

DELBERT HOSEMANN, in his official capacity as Mississippi Secretary of State;
JAMES M. HOOD, III, in his official capacity as Attorney General of the State of Mississippi,

Defendants-Appellants

Appeal from the United States District Court
for the Northern District of Mississippi

(Filed Nov. 14, 2014)

Before DAVIS, DENNIS, and COSTA, Circuit Judges.

GREGG COSTA, Circuit Judge:

Reflecting Justice Brandeis's observation that "[s]unlight is said to be the best of disinfectants,"[1]

[1] Louis Brandeis, *What Publicity Can Do,* HARPER'S WEEKLY, Dec. 20, 1913, at 10.

most states require disclosure of financial contributions to political campaigns. Mississippi is one such state. This case involves a challenge to Mississippi's disclosure requirements for ballot initiatives proposing amendments to the state constitution. Plaintiffs are Mississippi citizens who contend that the disclosure requirements impermissibly burden their First Amendment rights. On competing summary judgment motions, the district court agreed with their "as-applied" challenge. It enjoined Mississippi from enforcing the requirements against small groups and individuals expending "just in excess of" Mississippi's $200 disclosure threshold.[2]

Before turning to the substance of Plaintiffs' First Amendment challenge, we must first address the following question: can these particular Plaintiffs – who had no history of contributions and did not identify how much they intended to raise in future ballot initiative cycles – pursue an as-applied challenge as a "small group" that would have spent "just in excess of" $200?

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[2] The named Defendants in this case are the Mississippi Secretary of State, Delbert Hosemann, and the Mississippi Attorney General, James Hood, sued in their official capacities. For simplicity, we will refer to the Defendants collectively as Mississippi.

I.

A. Mississippi's Disclosure Requirements

In Mississippi, as in a number of other states, voters can amend their state constitution through ballot initiatives. This initiative process is a rigorous one. To even qualify for the ballot, a petition proposing an initiative must be signed by a number of qualified electors equal to at least 12% of the number of votes cast for all candidates for governor in the most recent gubernatorial election. Miss. Const. art. 15, § 273(3). Once it is in front of the voters, an initiative must receive both a majority of the votes cast for that initiative and 40% of the total votes cast in that election. Miss. Const. art. 15, § 273(7). In 2011, the year Plaintiffs brought this suit, only three constitutional initiatives were placed on the ballot.

Chapter 17 of the Mississippi Code sets out the following disclosure requirements for political committees and individuals who receive or spend money in connection with an "amendment to the Mississippi Constitution proposed by a petition of qualified electors."[3] Miss. Code Ann. § 23-17-1(1).

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[3] In the district court proceedings, the parties contested whether Chapter 17 overlaps with Chapter 15 of the Mississippi Election Code, which requires political committees to disclose expenditures that they make "for the purpose of influencing . . . balloted measures." Miss. Code Ann. § 23-15-807(b). Although the district court was troubled by the potential for overlap and confusion between the Chapters, we conclude that Chapter 17's unambiguous definition of the "measures" it applies to – that is,

(Continued on following page)

Registration Threshold: Under Chapter 17, "[a] political committee that either receives contributions or makes expenditures in excess of Two Hundred Dollars ($200.00) shall file financial reports with the Secretary of State." Miss. Code Ann. § 23-17-51(1). This $200 threshold is higher than those that exist in a number of other states. In Washington, for instance, political committees must register on the "expectation of receiving contributions or making expenditures." Wash. Rev. Code Ann. § 42.17A.205. The same is true in Ohio and Massachusetts. *See* Ohio Rev. Code Ann. § 3517.12(A) (requiring "the circulator or committee in charge of an initiative or referendum petition" to register "prior to receiving a contribution or making an expenditure"); Mass. Office of Campaign & Pol. Fin., Disclosure and Reporting of Contributions and Expenditures Related to Ballot Questions, at 5 (revised Sept. 19, 2014), *available at* http://files.ocpf.us/pdf/legaldocs/IB-90-02-2011.pdf

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"amendment[s] to the Mississippi Constitution proposed by a petition of qualified electors" – resolves those concerns. *See* Miss. Code Ann. § 23-17-1(1). And even if that were insufficient, Chapter 17 is expressly titled "Amendments to Constitution by Voter Initiative," and the specific generally governs over the more general. *See United States v. Neary (In re Armstrong)*, 206 F.3d 465, 470 (5th Cir. 2000) ("One basic principle of statutory construction is that where two statutes appear to conflict, the statute addressing the relevant matter in more specific terms governs."). We thus conclude – consistent with the Secretary of State's interpretation of a statute it is charged with administering – that Chapter 17 and Chapter 15 do not overlap, and would not cause potential confusion among Mississippi voters about which Chapter applies to constitutional ballot initiatives.

(groups must register "prior to raising or spending any funds"). Other states, like Oregon and Montana, require registration upon the first dollar raised. *See* Or. Rev. Stat. Ann. § 260.118(2) (stating that groups must register "not later than the third business day after a chief petitioner or the treasurer receives a contribution or makes an expenditure relating to the initiative"); Mont. Code Ann. § 13-37-201 ("A political committee shall file the certification . . . within 5 days after it makes an expenditure or authorizes another person to make an expenditure on its behalf, whichever occurs first.").

Some states with large populations set the registration bar higher. Texas, for example, requires political committees to designate a treasurer before receiving or expending $500. *See* Tex. Elec. Code Ann. § 253.031(b). Federal regulations governing political action committees start at a $1,000 threshold. 11 C.F.R. § 100.5(a).

Registration Requirements: When a group registers as a political committee in Mississippi, it must file a one-page "Statement of Organization" that asks it to list the following: the name and address of the committee; whether it is registered with the Federal Election Commission or authorized by a candidate; its purpose; the names of all officers; and its director

and treasurer.[4] The one-page form is less onerous than those that exist in some other states. *See, e.g.*, *Catholic Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 440 (5th Cir. 2014) (observing that Texas has a three-page form seeking "basic information"; the form requires registrants to include the committee's acronym, its campaign treasurer, the person appointing the treasurer, and controlling entity information); *Worley v. Fla. Sec'y of State*, 717 F.3d 1238, 1250 (11th Cir. 2013) (citing Fla. Stat. Ann. § 106.03(1)(a), which requires committees to fill out "four pages of basic information"); *Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 998-99 (9th Cir. 2010) (noting that Washington requires political committees to file a two-page Political Committee Registration Form containing most of the information on Mississippi's forms plus the following: "the ballot proposition or candidate that the committee supports or opposes; how surplus funds will be distributed in the event of dissolution; and the name, address, and title of anyone who works for the committee to perform ministerial functions").

Itemization and Reporting Requirements: In Mississippi, political committees must file monthly reports with the Secretary of State that disclose contributions and expenditures, both monthly and cumulatively. Miss. Code Ann. §§ 23-17-51(3), 23-17-53.

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[4] *See* Miss. Sec'y of State, Statement of Organization for a Political Committee, *available at* http://www.sos.ms.gov/links/elections/home/tab1/Statement%20of%20Organization%20PC.pdf.

They also must itemize all contributions from individuals who have contributed $200 or more in a given month and list the donor's name, street address, and date of the donation. Miss. Code Ann. § 23-17-53(b)(vii). These are common reporting requirements, with Mississippi's $200 threshold on the high end of state disclosure laws. In Oregon, for instance, all donations from a single person or committee that aggregate to over $100 in a calendar year must be itemized. Or. Rev. Stat. Ann. § 260.083(1)(a). Montana sets its itemization level at $35, and its form asks for the donor's name, address, occupation, and employer. State of Montana, Form C-6: Political Committee Finance Report (revised May 2012), *available at* http://politicalpractices.mt.gov/content/C6CorporateAdditonPDFform2012. Florida requires committees to itemize every contribution and expenditure regardless of amount. Fla. Stat. Ann. § 106.07(4)(a). The other two states in this circuit, Louisiana and Texas, also have lower itemization requirements than Mississippi does: Louisiana has no minimum threshold requirement for itemizing donations, La. Rev. Stat. Ann. § 18:1495.5(B)(4), and Texas has a $50 threshold for reporting "the full name and address of the person making the contributions, and the dates of the contributions." Tex. Elec. Code Ann. § 254.031(a)(1).

Individual Reporting Requirements: Plaintiffs also object to monthly reporting requirements for individuals who expend over $200 to influence voters. Miss Code Ann. §§ 23-17-51(2), 23-17-53(c). Again, other states impose similar reporting requirements.

See, e.g., Ohio Rev. Code Ann. § 3517.105(C)(2)(b) (requiring individuals who expend more than $100 on a ballot initiatives to file an expenditure report); Wash. Rev. Code Ann. § 42.17A.255(2) (requiring individuals who expend more than $100 on a candidate or ballot initiatives to file an expenditure report); Mass. Gen. Laws Ann. ch. 55, § 22 (setting a $250 threshold).

B. This Lawsuit

In 2011, a proposed amendment to the Mississippi Constitution, Initiative 31, asked voters whether the government should "be prohibited from taking private property by eminent domain and then transferring it to other persons." This was one of many attempts across the country to limit states' eminent domain power in response to the Supreme Court's decision in *Kelo v. City of New London*, 545 U.S. 469 (2005). The amendment passed with over 70% support.

Plaintiffs, five "like-minded friends and neighbors" with "no formal organization or structure" wanted to support the initiative; they "think it unconscionable that the government can take property from one person and give it to another." They contend that they would have pooled their resources, and with the funds on hand purchased posters, bought advertising in a local newspaper, and distributed flyers to Mississippi voters. These activities would have mirrored some of their previous political engagements; they are

members of the Young Americans for Liberty and the Lafayette County Libertarian Party, and have organized rallies about political issues and distributed copies of the United States Constitution on Constitution Day. But in 2011, in the run-up to the election, they did not pursue any kind of political activity because of what they view as Mississippi's onerous and complicated disclosure requirements. Those laws, they argue, relegated them to the sidelines by "creat[ing] a significant chilling effect that has prevented – and continues to prevent – the Plaintiffs and other similarly situated groups from exercising their constitutional rights of free speech and association."

Plaintiffs instead filed suit in the Northern District of Mississippi, raising as-applied and facial challenges to the requirements in Chapter 17 of the Mississippi Code. In the weeks prior to the vote on Initiative 31, they sought a preliminary injunction. The district court denied it, concluding that "the information required by Mississippi's registration and disclosure forms is not overly intrusive nor do the forms seem particularly complex" and that Plaintiffs had not shown a substantial likelihood of success on the merits of their claims.

Because Plaintiffs want to "speak out in the future about ballot initiatives without fear or threat of being prosecuted or investigated for violating the campaign finance laws," they continued to maintain their suit after the 2011 election. And on cross-motions for summary judgment, the district court ruled in their favor. The court first declined to reach

their facial challenge, concluding that they had abandoned it in their summary judgment briefing. After finding that Plaintiffs had standing to pursue their as-applied challenge, the court applied exacting scrutiny to Mississippi's disclosure requirements and held that "as applied to a small group attempting to expend minimal funds in support of their grass-roots campaign effort, the State's requirements, particularly coupled with the confusion surrounding those requirements, unconstitutionally infringe upon the First Amendment."[5] *Justice v. Hosemann*, 2013 WL 5462572, at *17 (N.D. Miss. Sept. 30, 2013).

The court also addressed the disclosure requirements that apply specifically to individuals and concluded that "Mississippi's current filing requirements are unconstitutional as applied to individual persons seeking to expend just over $200 in support or opposition to constitutional measures." *Id.* at *18.

Mississippi filed this timely appeal, contending that Plaintiffs cannot maintain an as-applied challenge; that even if they could, the challenge fails as a matter of law; and that their facial challenge also lacks merit.

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[5] The court denied as moot Mississippi's motions to exclude Plaintiffs' expert witnesses because it did not rely on the experts' opinions in its analysis. The experts had offered testimony that voters do not benefit from the information required by disclosure laws.

II.

A. Standing

Although Mississippi does not challenge Plaintiffs' standing, we are obligated to ensure that we have jurisdiction. The procedural history of this case, in which Plaintiffs first raised their challenge in connection with a ballot initiative that has long since been decided, warrants that we address whether Plaintiffs still have standing to maintain this suit. Although their challenge is moot as to the 2011 election, Plaintiffs maintain that they still meet the injury requirement because Mississippi's disclosure laws will chill their political speech in future elections. *See Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 661-62 (5th Cir. 2006) (addressing and rejecting the argument that the plaintiff's challenge to state election laws was "moot because the election that gave rise to the complaint has already occurred").

The "essence of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Roark & Hardee LP v. City of Austin*, 522 F.3d 533, 542 (5th Cir. 2008) (internal quotation marks omitted). To establish standing, a plaintiff must show that: (1) he has suffered, or imminently will suffer, a concrete and particularized injury-in-fact; (2) the injury is fairly traceable to the defendant's conduct; and (3) a favorable judgment is likely to redress the injury. *Id.*

In First Amendment pre-enforcement challenges, "chilling a plaintiff's speech is a constitutional harm adequate to satisfy the injury-in-fact requirement." *Hous. Chronicle Publ'g Co. v. City of League City*, 488 F.3d 613, 618 (5th Cir. 2007). As the Supreme Court has explained, "it is not necessary that [a plaintiff] first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights." *Steffel v. Thompson*, 415 U.S. 452, 459 (1974). Instead, once a plaintiff has shown more than a "subjective chill" – that is, that he "is seriously interested in disobeying, and the defendant seriously intent on enforcing, the challenged measure" – the case presents a viable "case or controversy" under Article III. *Int'l Soc'y for Krishna Consciousness of Atlanta v. Eaves*, 601 F.2d 809, 815 (5th Cir. 1979); *see also Hous. Chronicle*, 488 F.3d at 619.

Although Plaintiffs focused on their intent, as a group and as individuals, to pass a hat, hang fliers, and buy a local ad to support Initiative 31, they also planned on continuing their political advocacy in future ballot initiative cycles. Their past enthusiastic participation in the political process indicates that they would have done so; it is likely that a group motivated enough to organize political rallies would speak out about other ballot initiatives if given the opportunity. Eminent domain is not the only public policy issue that concerns these Plaintiffs. Not only have they organized political rallies, but they also are

members of two libertarian organizations and have a demonstrated passion for the Constitution.

But Mississippi's disclosure laws, they contend, prevented – and still prevent – them from engaging in that kind of political activism, which unquestionably implicates Chapter 17's disclosure requirements. Plaintiffs have thus shown that they have a legitimate fear of criminal penalties for failure to comply with Chapter 17.[6] For that reason, they have standing to pursue this case.[7]

B. As-Applied Challenge

The standing inquiry is distinct from one of the foundational issues in this case: is there is a sufficient basis in the record from which to evaluate Plaintiffs' as-applied challenge? As one of our sister circuits has implicitly recognized, even when a group of plaintiffs has general standing to challenge the

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[6] The "traceability" and "redressability" elements of the standing requirements are uncontested and clearly met on these facts.

[7] During this appeal, one of the Plaintiffs, Sharon Bynum, moved out of Mississippi. Even assuming that she now lacks standing to maintain her suit, the remaining Plaintiffs still live in Mississippi and have standing to challenge Mississippi's laws. For that reason, Bynum's potential lack of standing does not affect the outcome of the case. *See Vill. Of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264 n.9 (1977) ("Because of the presence of [one plaintiff with standing], we need not consider whether the other individual and corporate plaintiffs have standing to maintain the suit.").

constitutionality of a statute, the plaintiffs might not have developed a sufficiently concrete record to sustain their as-applied challenge. *See Human Life of Wash.*, 624 F.3d at 1022 (finding that the plaintiffs had standing because of a "reasonable fear of enforcement of the Disclosure Law," but rejecting their as-applied challenge because the complaint was "devoid of information from which [it] could conclude that the Disclosure Law is unconstitutional as applied to" them).

Confusion abounds over the scope of as-applied and other types of First Amendment challenges that a plaintiff can pursue when challenging a statute. *See* Scott Keller & Misha Tseytlin, *Applying Constitutional Decision Rules Versus Invalidating Statutes In Toto*, 98 VA. L. REV. 301, 307 (2012) ("The Supreme Court has explicitly acknowledged that there is much confusion over the definitions and attributes of facial, as-applied, and overbreadth challenges." (citing *United States v. Stevens*, 130 S. Ct. 1577, 1587 (2010))). Although as-applied challenges are generally favored as a matter of judicial restraint because they result in a narrow remedy, a developed factual record is essential. Particularized facts are what allow a court to issue a narrowly tailored and circumscribed remedy. *See Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331 (2010) ("The distinction [between as-applied and facial challenges] is both instructive and necessary, for it goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint."); *Sonnier v. Crain*, 613 F.3d 436, 459 (5th

Cir. 2010), *withdrawn in part,* 634 F.3d 778 (5th Cir. 2011) (Dennis, J., concurring in part and dissenting in part) ("The facial/as-applied distinction merely 'goes to the breadth of the remedy employed' because a facial challenge is an argument for the facial invalidation of a law, whereas an as-applied challenge is an argument for the narrower remedy of as-applied invalidation." (citation omitted)); *see also*, *e.g.*, *United States v. Phillips*, 645 F.3d 859, 863 (7th Cir. 2011) ("[W]hen we are presented with an as-applied challenge, we examine only the facts of the case before us and not any set of hypothetical facts under which the statute might be unconstitutional.").

In this case, the record is bereft of facts that would allow us to assume that Plaintiffs intend to raise "just in excess of" $200 as a group or as individuals. At oral argument, their counsel asserted that they will hew closely to Mississippi's $200 threshold. And in a post-argument submission they went one better, declaring – in what may be a first for a non-profit or for-profit entity – that they would turn away a $1 million donation. Their "just in excess of" $200 group pledge, and the post-argument emphasis on how "modest" their fundraising goals are, is inconsistent with the scant record before us.

In their Complaint, each of the five Plaintiffs indicated an intent to spend "in excess of $200" to support Initiative 31. How much "in excess of" $200? Nothing in the record provides a clear answer. But

what can be pieced together from the Complaint[8] indicates that the group would raise and spend at least a number of multiples above that $200 threshold. For one thing, even if each plaintiff gave just a $201 donation,[9] the result would be over $1000 in contributions. The expenditure side of the planned group also indicates an amount significantly above $200. The Complaint discusses Plaintiffs' desire to purchase posters at $4 apiece, buy ads in a local newspaper which would cost between $383 and $1200 per day depending on their size, and distribute flyers that would run $.20 each. The Complaint thus belies the assertion that the group would raise and spend an amount barely above $200. That contention also seems implausible. Plaintiffs describe the eminent domain power permitted in *Kelo*, the issue on the 2011 ballot, as "unconscionable." Why would a political group stop accepting contributions at an amount "just in excess of" $200 when additional funds could

[8] That Complaint is our start and end point because Plaintiffs were never deposed, nor did they offer sworn affidavits expanding on what they alleged in the Complaint.

[9] The Complaint alleges that each Plaintiff "wishes to spend in excess of $200 of his [or her] money, individually or in combination with the other Plaintiffs." Because they also seek to challenge the regulations governing individual spending on ballot initiatives, it is unclear how much of this amount would go to the group and how much would be spent individually. But Plaintiffs challenge the law requiring groups to disclose the names and addresses of contributors who donate more than $200, so in order to have standing on that claim the Complaint is best read as indicating that the Plaintiffs would donate $201 or more to the group.

be used to oppose an unconscionable practice? "A group raising money for political speech will, we presume, always hope to raise enough to make it worthwhile to spend it." *SpeechNow.org v. Fed. Election Comm'n*, 599 F.3d 686, 698 (D.C. Cir. 2010) (en banc).

Maybe, far from being a limited operation, their small group would have been a rousing fundraising success. Initiative 31 passed with over 70% support; that overwhelming outcome suggests that Plaintiffs are not the only Mississippians bothered by the *Kelo* decision. Moreover, the record contains a deposition of a novice political operator named Atlee Breland, who started a political committee to oppose a different 2011 ballot initiative and raised over $22,000 over several weeks. If Breland could raise that kind of money, these Plaintiffs, who have experience organizing political rallies, might have pulled off something similar. On this record, we cannot assume or find it plausible that these Plaintiffs, with their claimed bona fide interest in public issues, would have capped their spending at a specific low dollar amount. Nor can we accept that they would voluntarily cap their spending in future ballot initiatives that could very well hold some of their other strongly held political beliefs in the balance. As explained above, this case is not moot despite the passage of Initiative 31 because Plaintiffs profess a desire to support or oppose future ballot initiatives. We thus cannot assess their likely future contributions and expenditures in terms of a single constitutional amendment. *See Worley*, 717 F.3d at 1252 (noting that those challenging Florida's

disclosure laws "acknowledge they seek to raise *more* money in the future" which further distinguished the case from an as-applied challenge in a prior case (italics in original)).

But even if we accepted that Plaintiffs want to limit their contributions, a problem still exists because of the uncertainty concerning the amount at which they would do so. As a result of that indefiniteness, the scope of the district court's as-applied ruling is necessarily vague, and the hallmarks of a traditional as-applied remedy – dependability and a limited scope – are entirely absent. *See* Nathaniel Persily & Jennifer 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) (observing that in an as-applied challenge, if possible, "a court will excise the plaintiff and those similarly situated from the statute's constitutional reach by effectively severing the unconstitutional applications of the statute from the unproblematic ones"). What minimal level of contributions is "just in excess of" $200 for which the district court ruling affords protection? Is a group raising $300 exempt from the disclosure requirements? What about $500, or $800? At oral argument, Plaintiffs' counsel could not identify a definite level at which the order applies. This is problematic from the perspective of both the regulator and the regulated. Recall that standing rules are relaxed for First Amendment cases so that citizens whose speech might otherwise be chilled by

fear of sanction can prospectively seek relief. The speech of Plaintiffs, or of others hoping to engage in fundraising for constitutional amendments, has not been "unchilled" in any meaningful sense by the district court's ruling because they do not know the dollar amounts at which the ruling provides protection. To find out, they would need to either risk violating the law or go back to federal court in a separate pre-enforcement suit to determine the constitutionality of the disclosure laws as applied to their planned fundraising level for the next initiative. Mississippi faces a problem from the other side of the coin. It does not specify at what levels it may enforce Chapter 17, which the district court did not invalidate as whole. Like Plaintiffs, Mississippi does not know where the constitutional line is, and thus has no reliable method of enforcing its own laws while ensuring compliance with a federal court order.

Based on these concerns, other courts, when faced with similar "as-applied" challenges that lack a sufficiently specific record, have declined to issue as-applied remedies. For instance, the Eleventh Circuit concluded that the plaintiffs in *Worley v. Florida Secretary of State*, 717 F.3d 1238 (11th Cir. 2013), who brought claims against Florida's disclosure requirements almost identical to the claims in this case, could not maintain an as-applied challenge, reasoning:

> [W]e are not equipped to evaluate this case as an as applied challenge because the record does not tell us enough about what

> Challengers are doing. While Challengers have emphasized that they are merely a grassroots group of four people who want to spend a modest amount of money in a ballot issue election, they also emphasize their desire to solicit contributions. We know little if anything about how much money they intend to raise or how many people they wish to solicit. We will not speculate about their future success as fundraisers. Based on the record we do have, we consider this challenge to the Florida PAC regulations to be a facial challenge.

Id. at 1249-50; *see also*, *e.g.*, *Human Life of Wash.*, 624 F.3d at 1022 ("Not only is the complaint devoid of information from which we could conclude that the Disclosure Law is unconstitutional as applied to Human Life, it is not clear from the record that the complaint was verified by a Human Life official with personal knowledge of the facts alleged therein."); *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 475-76 (7th Cir. 2001) ("Here, the Center has not broadcast *any* communications in Illinois, so it would be impossible for this court to fashion a remedy tailored to its own particular speech activities and those of similar groups, for we have only a general idea of what its hypothetical broadcasts would say. The Center has not laid the foundation for an as-applied challenge here. We analyze its claims under the standards governing facial challenges." (emphasis in original)).

The cases Plaintiffs rely on do not counsel a different result; rather, they illustrate the concrete facts that properly underlie an as-applied challenge to a statute. In *Sampson v. Buescher*, for instance, Colorado plaintiffs alleged that they spent $782.02 to oppose a petition that would have annexed their neighborhood to a nearby town. 625 F.3d 1247, 1251-52 (10th Cir. 2010). The court found that the disclosure laws as applied to them were unconstitutional given how little they had spent to oppose the petition. *Id.* at 1261. And in two district court cases out of Wisconsin, the plaintiffs who brought pre-enforcement challenges to disclosure statutes testified that they would have spent roughly $300 and $500, respectively, for their causes. *See Hatchett v. Barland*, 816 F. Supp. 2d 583, 593 (E.D. Wis. 2011); *Swaffer v. Cane*, 610 F. Supp. 2d 962, 964-65 (E.D. Wis. 2009). The courts found constitutional violations only as to those named plaintiffs, and accordingly issued remedies tailored to their specific situations. *See Hatchett*, 816 F. Supp. 2d at 610; *Swaffer*, 610 F. Supp. 2d at 972; *see also*, *e.g.*, *Canyon Ferry Rd. Baptist Church of East Helena, Inc. v. Unsworth*, 556 F.3d 1021, 1028 (9th Cir. 2009) (considering an as-applied challenge to Montana's disclosure law based on a church's actual *de minimis* contribution to a campaign). Those kinds of stipulations and facts, which the courts drew on in issuing their orders, are entirely absent here. Plaintiffs' as-applied challenge, asserted both as a collective group and by each Plaintiff individually, therefore fails.

C. Facial Challenge

In the normal course, when a plaintiff alleges an insupportable as-applied challenge, courts instead treat the constitutional challenge as a facial one. *See Worley*, 717 F.3d at 1249-50 (concluding that plaintiffs could not maintain an as-applied challenge and instead "consider[ing] this challenge to the Florida PAC regulations to be a facial challenge"); *Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118, 127 (2d Cir. 2011) ("[W]here plaintiffs asserting both facial and as-applied challenges have failed to [lay] the foundation for an as-applied challenge, courts have proceeded to address the facial challenge." (internal quotation marks omitted) (alterations in original)); *United States v. Fisher*, 149 F. App'x 379, 383 (6th Cir. 2005) (treating defendant's as-applied challenge, which the court deemed "irrelevant" based on circuit precedent, as a facial challenge). This makes sense because absent a viable as-applied challenge, a facial challenge is the only means of providing the relief sought. *Cf. Citizens United*, 558 U.S. at 331 ("[T]he distinction between facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge.").

There is a potential complication in this case, however, because the district court stated that Plaintiffs had "abandoned" their facial challenge. Although the district court correctly refused to consider a facial challenge given that it granted Plaintiffs relief on an

as-applied basis, *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008) (explaining that facial challenges "are disfavored" and "run contrary to the fundamental principle of judicial restraint"), we do not read the record as indicating any affirmative waiver of the facial challenge in the event the narrower as-applied challenge failed to provide the requested relief. In the district court, Plaintiffs challenged the entire statutory scheme as too burdensome. Although emphasizing their argument that the laws were unconstitutional as applied to small groups, the arguments seeking application of strict scrutiny and contesting any informational interest in the disclosure of financial contributions to ballot initiatives sought facial invalidation of the statute. And any doubt is resolved by their brief on appeal, in which they ask us to "hold Mississippi's scheme unconstitutional for *all* ballot measure committees."

Because the challengers have standing and both parties request a ruling on the facial constitutionality of Mississippi's disclosure laws, we will consider whether Plaintiffs can "establish that no set of circumstances exists under which [the law] would be valid or that the statute lacks any plainly legitimate sweep." *Catholic Leadership Coal.*, 764 F.3d at 426 (internal quotation marks omitted) (alteration in original) (quoting *United States v. Stevens*, 559 U.S. 460, 472 (2010)).[10] This is a high hurdle to overcome; "[o]f

[10] Plaintiffs may also seek invalidation of a statute as overbroad if they "demonstrate that 'a substantial number of [the

(Continued on following page)

the federal courts of appeals that have decided these cases, every one has upheld the disclosure regulations against the facial attacks." *Madigan*, 697 F.3d at 470; *see also SpeechNow.org*, 599 F.3d at 696 ("The Supreme Court has consistently upheld organizational and reporting requirements against facial challenges.").

Plaintiffs attempt to meet this difficult burden by arguing that Mississippi's disclosure requirement should be subject to strict scrutiny. We recently rejected this position, holding that disclosure and organizational requirements are subject to the lesser but still meaningful standard of exacting scrutiny. *Catholic Leadership Coal.*, 764 F.3d at 424. That label means that "the government must show a 'sufficiently important governmental interest that bears a substantial relation' to the requirement." *Id.* (quoting *SpeechNow.org*, 599 F.3d at 696). Other circuits have uniformly adopted the same standard. *See Worley*, 717 F.3d at 1244 (collecting cases from the First, Fourth, Seventh, Eighth, Ninth, and Tenth Circuits). The circuits' consensus is true to Supreme Court precedent, which from *Buckley v. Valeo*, 424 U.S. 1, 19 (1976), to *Citizens United v. Federal Election Commission*, 558 U.S. 310, 370-71 (2010), to *McCutcheon*

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law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'" *Catholic Leadership Coal.*, 764 F.3d at 426 (alteration in original) (quoting *Stevens*, 559 U.S. at 473). But Plaintiffs disclaim any reliance on an overbreadth theory in this case.

v. Federal Election Commission, 134 S. Ct. 1434, 1459 (2014), has treated disclosure requirements far more favorably than laws that limit political contributions and expenditures. *See, e.g.*, *McCutcheon*, 134 S. Ct. at 1459-60 (observing that disclosure requirements are "justified based on a governmental interest in provid[ing] the electorate with information about the sources of election-related spending" and "often represent[ ] a less restrictive alternative to flat bans on certain types or quantities of speech").

Plaintiffs acknowledge this overwhelming body of case law rejecting the higher level of scrutiny they seek, but argue that other language in *Citizens United*, which discussed "burdensome" political action committee requirements that apply to corporations, supports their position. In *Worley*, the Eleventh Circuit thoroughly and persuasively rejected that argument:

> [T]he Court [in *Citizens United*] analyzed the prohibition on political contributions by corporations under strict scrutiny because it entirely prevented a corporation from speaking *as a corporation*, and the only justification given for the ban was that it was "corporate speech." In this context, strict scrutiny applied "notwithstanding the fact that a PAC created by a corporation can still speak" because "[a] PAC is a separate association from the corporation." "So the PAC exemption from § 411b's [corporate treasury] expenditure ban, § 441b(b)(2), [still did] not allow corporations to speak." It is true, of course,

> that *Citizens United* discussed PAC regulations as "burdensome alternatives." But nowhere did *Citizens United* hold that PAC regulations themselves constitute a ban on speech or that they should be subject to strict scrutiny.

717 F.3d at 1244 (citations and emphasis omitted) (alterations in original). We agree with *Worley*'s reading of *Citizens United*. For these reasons, we apply exacting scrutiny to Mississippi's disclosure requirements.

The first question under the exacting scrutiny standard is whether the government has identified a "sufficiently important governmental interest" in its disclosure scheme. The government typically asserts two interests to justify disclosure laws: (1) an interest in rooting out corruption, and (2) an interest, as the Supreme Court described it in *Buckley*, in "provid[ing] the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office." 424 U.S. at 66-67 (citation and internal quotation marks omitted).[11] As Mississippi acknowledges, the corruption rationale is not implicated in ballot initiatives as it is in candidate elections. Plaintiffs argue that neither is

[11] A third interest that is sometimes mentioned – "gathering the data necessary to detect violations of . . . contribution limitations," *Buckley*, 424 U.S. at 68 – is also not implicated in this case because Mississippi does not limit contributions.

the informational interest and urge us to follow the Tenth Circuit's lead in *Sampson* and hold, at a minimum, that this informational interest "is significantly attenuated when the organization is concerned with only a single ballot issue and when the contributions and expenditures are slight." 625 F.3d at 1259.

It is true that our cases recognizing a governmental interest in disclosure did so in the context of candidate elections. *See Catholic Leadership Coal.*, 764 F.3d at 440 (stating the public "has an interest in knowing who is speaking about a candidate and who is funding that speech, no matter whether the contributions were made toward administrative expenses or independent expenditures" (quoting *SpeechNow.org*, 599 F.3d at 698)); *Let's Help Fla. v. McCrary*, 621 F.2d 195, 200 (5th Cir. 1980) (observing that measures that "require political committees to register with the state and to file information about each contribution and contributor throughout the campaign . . . . provide adequate disclosure without directly restricting contributions or other important first amendment rights"). But the informational interest that the Supreme Court described approvingly in *Buckley* seems to be at least as strong when it comes to ballot initiatives. The vast majority of our sister circuits to have considered the issue have so held. *See Worley*, 717 F.3d at 1247-48 (citing cases from the First, Seventh, Ninth, and D.C. Circuits). Candidate elections are typically partisan contests, in which the candidate's party affiliation provides voters who cannot research every candidate with a general

sense of whether they are likely to agree with a candidate's views. Ballot initiatives lack such a straightforward proxy. 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. For example, if disclosure laws reveal that unions are supporting a proposed constitutional amendment, that may indicate to antiunion voters that they may want to vote against the measure and to prounion voters that they may want to vote for it. *See Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1106 (9th Cir. 2003). ("[B]allot-measure language is typically confusing, and the long-term policy ramifications of the ballot measure are often unknown. At least by knowing who backs or opposes a given initiative, voters will have a pretty good idea of who stands to benefit from the legislation."). Or as the First Circuit put it:

> In an age characterized by the rapid multiplication of media outlets and the rise of internet reporting, the "marketplace of ideas" has become flooded with a profusion of information and political messages. Citizens rely ever more on a message's source as a proxy for reliability and a barometer of political spin.

See Nat'l Org. for Marriage v. McKee (Nat'l Org. for Marriage I), 649 F.3d 34, 57 (1st Cir. 2011). These benefits accrue to the voters even when small-dollar

donors are disclosed. *See Nat'l Org. for Marriage, Inc. v. McKee (Nat'l Org. for Marriage II)*, 669 F.3d 34, 41 (1st Cir. 2012), *cert. denied*, 133 S. Ct. 163 (2012) ("The issue is . . . not whether voters clamor for information about each 'Hank Jones' who gave $100 to support an initiative. Rather, the issue is whether the cumulative effect of disclosure ensures that the electorate will have access to information regarding the driving forces backing and opposing each bill." (citations and internal quotation marks omitted)); *see also Worley*, 717 F.3d at 1251 ("[D]isclosure of a plethora of small contributions could certainly inform voters about the breadth of support for a group or a cause."). For these reasons, we conclude that Mississippians – who in deciding constitutional amendments act "as lawmakers" – "have an interest in knowing who is lobbying for their vote."[12] *Cal. Pro-Life Council*, 328 F.3d at 1106.

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[12] The longstanding recognition of this important informational interest also defeats Plaintiffs' argument that Mississippi's laws are unconstitutional because fear of losing anonymity will chill individuals' political speech. Plaintiffs cite *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 466 (1958), in which the Supreme Court held that the NAACP's "immunity from state scrutiny of membership lists . . . is here so related to the right of the members to pursue their lawful private interests privately and to associate freely with others in so doing as to come within the protection of the Fourteenth Amendment." They cite no cases finding that this anonymity interest overcomes the governmental interest in disclosure in the campaign finance context, and similar arguments have failed in other contexts. *See, e.g.*, *Doe v. Reed*, 561 U.S. 186, 228 (2010) (Scalia, J., concurring) ("There are laws against threats and intimidation; and harsh

(Continued on following page)

The only remaining question is whether Mississippi's disclosure requirements are "substantial[ly] relat[ed]" to this informational interest. *Doe v. Reed*, 561 U.S. 186, 196 (2010). Plaintiffs' concerns with Mississippi's disclosure requirements begin with the Statement of Organization that political committees must file. (Individuals do not have to file a comparable registration document.) Their claim that the Statement of Organization is unconstitutionally burdensome, however, is incompatible with our reasoning in *Catholic Leadership Coalition of Texas v. Reisman*, 764 F.3d 409 (5th Cir. 2014). The disclosure provision at issue there was actually more burdensome than Mississippi's requirement; unlike Chapter 17 in Mississippi, Texas's election code provision requires general-purpose political committees to appoint a treasurer *before* receiving contributions in excess of $500 or engaging in more than $500 in aggregate expenditures and contributions. 764 F.3d at 416. By contrast, political committees in Mississippi must file a statement of organization "no later than ten (10) days after receipt of contributions aggregating in excess of" $200. Miss. Code Ann. § 23-17-49(1). And political committees in Texas must fill out a three-page form that asks them questions like the group's acronym and whether it has a controlling entity.

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criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self-governance. Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed.").

Catholic Leadership Coal., 764 F.3d at 440. Mississippi's form asks only eight questions on a single page. *See* Statement of Organization, *supra* note 4.

We upheld Texas's treasurer-appointment requirement because "all that the provision requires is that a general-purpose committee take simple steps to formalize its organizational structure and divulge additional information to the government." *Catholic Leadership Coal.*, 764 F.3d at 439. *Catholic Leadership Coalition* found that "any burden created by the treasurer-appointment requirement – essentially filling out and mailing a three-page form – appears to be exceedingly minimal." *Id.* at 440 (citation omitted). Those burdens were more than justified, we reasoned, because the "treasurer serves as the cornerstone of Texas's entire general-purpose committee campaign-finance disclosure regime." *Id.* at 441. Mississippi's minimal registration burdens, which are central to its disclosure scheme and proportional to its relatively small population, thus also survive exacting scrutiny review.

That leaves the question whether the $200 disclosure thresholds for group reporting and individual itemizations, as well as the various reporting requirements that kick in at that level, are facially unconstitutional. There must be "no set of circumstances" under which Mississippi's disclosure requirements are constitutional. *See id.* at 434. Consider, as one illustration, a group that raises $1,000 to support a constitutional ballot initiative in Mississippi, which is the level at which federal regulations kick in. That

group must fill out a one-page Statement of Organization form and file monthly expenditure reports. Even then, although it must keep track of all contributions received, it only has to itemize contributions that exceed $200.

The district court was correct in its preliminary injunction ruling that "the information required by Mississippi's registration and disclosure forms is not overly intrusive." *Justice v. Hosemann*, 829 F. Supp. 2d 504, 519 (N.D. Miss. 2011). Mississippi is not asking groups to adopt a complex structure; instead, it is asking them to do "little more if anything than a prudent person or group would do in these circumstances anyway." *Worley*, 717 F.3d at 1250 (internal quotation marks omitted). Such requirements are commonplace, and often more onerous, in other states with constitutional ballot initiatives. *See, e.g.*, *id.* at 1251 (noting that Florida committees must itemize every donation, at any level, by the donor's name and address, and include the donor's occupation if the donation exceeds $100); N.D. Cent. Code Ann. § 16.1-08.1-03.1 (requiring committees to itemize each contribution over $100); Ohio Rev. Code Ann. § 3517.10(A), (B)(4)(e) (requiring all contributions to be itemized except "contributions totaling $25 or less received at a specific fund-raising activity"). All of these state-level requirements are magnitudes lighter than federal regulations governing political action committees that have withstood First Amendment challenge, *see SpeechNow.org*, 599 F.3d at 698, and require, among other things, that a PAC designate a

treasurer and submit monthly reporting forms that are supplemented by 31 pages of instructions. Federal Election Commission (FEC), *Campaign Guide for Nonconnected Committees* (May 2008), *available at* http://www.fec.gov/pdf/nongui.pdf, at 3-9; FEC Form 3X, Report of Receipts and Disbursements, *available at* http://www.fec.gov/pdf/forms/fecfrm3x.pdf; Instructions for FEC Form 3X and Related Schedules, *available at* http://www.fec.gov/pdf/forms/fecfrm 3xi.pdf.

Even at lower levels of fundraising and expenditure, the disclosure regulations further Mississippi's interest in providing information to voters. *See Worley*, 717 F.3d at 1251 ("Florida also advances its informational interest through a first-dollar disclosure threshold because knowing the source of even small donations is informative in the aggregate and prevents evasion of disclosure."); *Nat'l Org. for Marriage II*, 669 F.3d at 41 ("The issue is . . . not whether voters clamor for information about each 'Hank Jones' who gave $100 to support an initiative. Rather, the issue is whether the cumulative effect of disclosure ensures that the electorate will have access to information regarding the driving forces backing and opposing each bill." (internal quotation marks omitted)). And the less money groups or individuals expend, the fewer forms they have to fill out. A group that raises only $250 in a month, for instance, would fill out the one-page Statement of Organization and an expenditure report that would also double as a termination report. *See* Miss. Code Ann. § 23-17-51(3). Taking all of those considerations into account,

we conclude that Mississippi's calibrated reporting and itemization requirements for committees engaged in campaigns related to constitutional amendments survive First Amendment scrutiny at most levels – and certainly at enough levels to withstand this facial challenge.[13]

For the same reasons, we conclude that the disclosure requirements for individuals who, independent of any committee, wish to expend funds to support or oppose constitutional amendments survive a facial challenge. These reporting requirements, which kick in when a person spends more than $200, further the informational interest in disclosure and are not burdensome. An individual donating more than $200 must complete one form, a monthly report, and only expenditures exceeding $200 to a single source within that month need be itemized. Plaintiffs are unable to show that these disclosure requirements for individuals are unconstitutional in all applications.

[13] We therefore need not consider whether the $200 threshold is subject to exacting scrutiny or the much lighter "wholly without merit" standard of review. *Cf. Worley*, 717 F.3d at 1251-52 (noting that the First Circuit's adoption of the "wholly without rationality" standard was "instructive" but applying exacting scrutiny to Florida's disclosure threshold).

For all of these reasons, the requirements that Mississippi has enacted in Chapter 17 of the Mississippi Code[14] survive Plaintiffs' facial challenge.

* * *

Plaintiffs' as-applied and facial constitutional challenges therefore fail. Accordingly, we REVERSE the district court and RENDER judgment in favor of Defendants.

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[14] Plaintiffs contend that the Chapter 17 forms Mississippi provides do not match up with the actual requirements in Chapter 17. Even assuming that is the case (and the district court declined to make such a finding), we do not see how this gives rise to a First Amendment violation. In general, it makes little sense to assume, even viewing the evidence in the light most favorable to Plaintiffs, that Mississippi will prosecute someone who fills out a form correctly because the form itself is incompatible with Chapter 17. There is no evidence in the record that anything of that nature has ever happened in Mississippi. Moreover, because we conclude that Plaintiffs' arguments, discussed at length above, are insufficient to establish a First Amendment violation, "the existence of a federal constitutional question" based on the forms confusion is "entirely contingent on an unresolved interpretation of Mississippi law." *Moore v. Hosemann*, 591 F.3d 741, 745 (5th Cir. 2009). We therefore would find it appropriate to abstain from deciding that difficult state law question, to the extent it exists, under *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941).

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 13-60754

D.C. Docket No. 3:11-CV-138

GORDON VANCE JUSTICE, JR.; SHARON BYNUM; MATTHEW JOHNSON; ALISON KINNAMAN; STANLEY O'DELL,

Plaintiffs-Appellees

v.

DELBERT HOSEMANN, in his official capacity as Mississippi Secretary of State; JAMES M. HOOD, III, in his official capacity as Attorney General of the State of Mississippi,

Defendants-Appellants

Appeal from the United States District Court for the Northern District of Mississippi, Oxford

Before DAVIS, DENNIS, and COSTA, Circuit Judges.

JUDGMENT

(Filed Nov. 14, 2014)

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is reversed and judgment in favor of Defendants is rendered.

IT IS FURTHER ORDERED that plaintiffs-appellees pay to defendants-appellants the costs on appeal to be taxed by the Clerk of this Court.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

December 12, 2014

Mr. Harold Edward Pizzetta III
Office of the Attorney General
for the State of Mississippi – Civil Litigation
P.O. Box 220
Jackson, MS 39205-0220

No. 13-60754
Gordon Justice, Jr., et al v. Delbert Hosemann, et al
USDC No. 3:11-CV-138

Dear Counsel:

Please be advised that the court has requested a response to the Appellees' petition for rehearing en banc to be electronically filed in this office on or before December 22, 2014.

Sincerely,

LYLE W. CAYCE, Clerk

By: /s/ Shea E. Pertuit
Shea E. Pertuit, Deputy Clerk
504-310-7666

cc:
Mr. Paul Vincent Avelar
Mr. Russell Latino III
Ms. Diana Kaye Simpson

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF MISSISSIPPI
OXFORD DIVISION

GORDON VANCE JUSTICE, JR., et al.	PLAINTIFFS
V.	CAUSE NO.: 3: 11-CV-138-SA-SAA
DELBERT HOSEMANN, in his official capacity as Mississippi Secretary of State; JIM HOOD, in his official capacity as Attorney General of the State of Mississippi	DEFENDANTS

ORDER GRANTING SUMMARY JUDGMENT

(Filed Sep. 30, 2013)

For the reasons set forth in a Memorandum Opinion entered this day, the Court grants in part and denies in part Plaintiffs' Motion for Summary Judgment [42], denies Defendants' Motion for Summary Judgment [44], and finds Defendants' Motion to Exclude [46] and Defendants' Motion to Strike [53] moot.

SO ORDERED, this the 30th day of September, 2013.

/s/ Sharion Aycock
U.S. DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION

GORDON VANCE JUSTICE, JR., et al. — PLAINTIFFS

V. — CAUSE NO.: 3:11-CV-138-SA-SAA

DELBERT HOSEMANN, in his official capacity as Mississippi Secretary of State; JIM HOOD, in his official capacity as Attorney General of the State of Mississippi — DEFENDANTS

MEMORANDUM OPINION

(Filed Sep. 30, 2013)

Presently before the Court are the parties' cross-motions for summary judgment [42, 44], Defendants' Motion to Exclude [46], and Defendants' Motion to Strike [53]. Plaintiffs challenge the constitutionality of Mississippi's campaign finance disclosure scheme as it applies to small groups and individuals intending to support or oppose state constitutional ballot measures. The State defends the disclosure scheme, contending that it imposes no undue constitutional hardship on groups such as Plaintiffs'.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs are "a group of like-minded friends and neighbors" who have been meeting regularly for the

past few years, as a group and with others, to discuss the political issues of the day. According to Plaintiffs, they "have no formal organization or structure. They meet at their homes, at restaurants, and wherever else is convenient. They have no officers or directors, no bank account, and no member dues." Plaintiffs initially wished to associate with one another and with others for the purposes of running independent political advertisements advocating the passage of Initiative 31, a proposed amendment to the Mississippi Constitution which was indeed passed by popular vote during a state-wide election held November 8, 2011. Initiative 31 proposed to "amend the Mississippi Constitution to prohibit state and local government from taking private property by eminent domain and then conveying it to other persons or private businesses for a period of 10 years after acquisition."

Plaintiffs sought to pool funds in order to purchase posters, buy advertising in a local newspaper, and distribute flyers supporting the Initiative. However, in order to do so, Plaintiffs determined that they would have to register as a "political committee" under Mississippi campaign finance law. Moreover, Plaintiffs additionally sought to individually spend in excess of $200 of their own money to support Initiative 31, but, even as individuals, were required to report their involvement to the State.

Plaintiffs thereafter filed suit in this Court, seeking a declaratory judgment that the reporting and disclosure scheme is unconstitutional as applied to

Plaintiffs. Following a hearing, this Court denied Plaintiffs' petition for a temporary restraining order and preliminary injunction. On November 8, 2011, the state-wide election was held as scheduled and Initiative 31 was approved by popular vote. Plaintiffs continued to maintain the suit, contending that although they were unable to litigate their claims prior to the 2011 election, they continue to desire to speak out about constitutional ballot measures in future elections.

Under Mississippi law, groups seeking to support or oppose state-wide balloted measures must look to two Chapters of the Mississippi Code, both of which can be found in Title 23. Chapter 15 sets forth the Mississippi Election Code generally, while Chapter 17 governs amendments to the Mississippi Constitution by voter initiative.

Under Chapter 15, a political committee is defined as "any committee, party, club, association, political action committee, campaign committee or other groups of persons or affiliated organizations which receives contributions aggregating in excess of [$200] during a calendar year, or has made such expenditures aggregating in excess of [$200] during a calendar year." MISS. CODE ANN. § 23-15-801(c). Political committees that "make expenditures for the purpose of influencing or attempting to influence the action of voters for or against the nomination for election, or election, of one or more candidates *or balloted measures* at such election" are required to file a number of reports. MISS. CODE ANN. § 23-15-807(b)

(emphasis added). First, in any calendar year during which there is a regularly scheduled election, such committees must file a "preelection report." *Id.* at § 23-15-807(b)(i). Additionally, once every four years, political committees are required to file a "periodic report." *Id.* at § 23-15-807(b)(ii). Finally, in every calendar year except those in which a periodic report must be filed, political committees must file a "calendar year" or annual report. *Id.* at § 23-15-807(b)(iii). The obligation to file such reports is extinguished only upon the submission of a "final report" indicating that the committee "will no longer receive any contributions or make any disbursement and that [the committee] has no outstanding debts or obligations." *Id.* at § 23-15-807(a).

For each of the Chapter 15 reports, the content requirements remain the same and are found under Mississippi Code § 23-15-807(d). Chapter 15 reports must include:

- The total amount of contributions received in the covered period. MISS. CODE ANN. § 23-15-807(d)(i).
- The total amount of expenditures for the covered period. *Id.* at § 23-15-807(d)(i).
- The total amount of contributions received in the covered year. *Id.*
- The total amount of expenditures for the covered year. *Id.*
- The total amount of cash on hand. *Id.* at § 23-15-807(d)(iii).

- The identification of each person or political committee who, within the covered reporting period, makes a contribution when that person's or political committee's annual contributions exceed $200 in the aggregate. *Id.* at § 23-15-807(d)(ii)(1).
- The identification of each person or political committee who, within the covered reporting period, receives an expenditure from the committee when the committee's annual expenditures to that person or political committee exceed $200 in the aggregate. *Id.* at § 23-15-807(d)(ii)(2).

Additionally, Chapter 15 also places requirements on individuals under its independent expenditure provision. MISS. CODE ANN. § 23-15-809(a). Under that provision, every person "who makes independent expenditures in an aggregate amount or value in excess of [$200] during a calendar year shall file a statement containing the information required under Section 23-15-807." *Id.* Notably, however, the independent expenditure provision also provides that "[s]tatements required to be filed by this section shall include . . . "[i]nformation indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved." *Id.* at § 23-15-809(b)(i).

On the other hand, Chapter 17 of the Mississippi Code governs amendments to the Mississippi Constitution by way of voter initiative. MISS. CODE ANN. § 23-17-1 et seq. That Chapter sets forth its own

parameters for political committees. Under Chapter 17, a person is defined as "any individual, family, firm, corporation, partnership, association or other legal entity." MISS. CODE ANN. § 23-17-47(b). A political committee is "any person, other than an individual, who receives contributions or makes expenditures for the purpose of influencing the passage or defeat of a measure on the ballot." *Id.* at § 23-17-47(c).[1] "Measure" is defined as "an amendment to the Mississippi Constitution proposed by a petition of qualified electors under Section 273, Mississippi Constitution of 1890." *Id.* at § 23-17-1(1). Similar to Chapter 15, any political committee that receives contributions or makes expenditures in excess of $200 is required to file financial reports with the Secretary of State. *Id.* at § 23-17-51(1). Contribution is defined, in pertinent part, to encompass "any gift, subscription, loan, advance, money or anything of value made by a person or political committee . . . but does not include noncompensated, nonreiumbursed volunteer personal services." *Id.* at § 23-17-47(a). Chapter 17 financial reports are to be filed monthly and must continue until all contributions and expenditures cease. *Id.* at § 23-17-51(3).

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[1] Although not addressed by the parties, the Court notes that based on a plain reading of the statute there is least some ambiguity as to whether Plaintiffs' informal association should even be properly categorized as an "association or other legal entity" under § 23-17-47(b). The Court is, however, able to definitively conclude that such an association should not be considered an "individual, family, firm, corporation, [or] partnership."

For purposes of Chapter 17, each political committee report must include:

- The name, address, and telephone number of the committee filing the statement. MISS. CODE ANN. § 23-17-53(a).
- The total amount of contributions received during the covered period. *Id.* at § 23-17-53(b)(1).
- The total amount of expenditures made during the covered period. *Id.* at § 23-17-53(b)(2).
- The cumulative amount of those respective totals. *Id.* at § 23-17-53(b)(3).
- The balance of cash and cash equivalents on hand at the beginning and end of the covered period. *Id.* at § 23-17-53(b)(4).
- The total amount of contributions received in the covered period from persons contributing less than $200. *Id.* at § 23-17-53(b)(v).
- The total amount of contributions received in the covered period from persons contributing in excess of $200. *Id.* at § 23-17-53(b)(vi).
- The name and street address of each person contributing in excess of $200 during the covered period with the amount of contribution, the date of receipt, and the cumulative amount contributed by that person. *Id.* at § 23-17-53(b)(vii).

Notably, Chapter 17 also places filing requirements on individuals. Under Chapter 17, any individual

"who on his or her own behalf expends in excess of [$200] for the purpose of influencing the passage or defeat of a measure" must file monthly financial reports with the Secretary of State. MISS. CODE ANN. § 23-17-51(2). "Measure" is again defined as "an amendment to the Mississippi Constitution proposed by a petition of qualified electors under Section 273, Mississippi Constitution of 1890." *Id.* at § 23-17-1(1). That individual must continue to file reports until all expenditures cease. *Id.* at § 23-17-51(3). Chapter 17 individual reports must include:

- The name, address, and telephone number of the person filing the statement. MISS. CODE ANN. § 23-17-53(a).
- The total amount of expenditures made during the covered period. *Id.* at § 23-17-53(c)(i).
- The cumulative amount of that total for each measure. *Id.* at § 23-17-53(c)(ii).
- The name and street address of each person to whom an expenditure of greater than $200 was made, the amount of each separate expenditure made to that person during the covered period, and the purpose of the expenditure. *Id.* at § 23-17-53(c)(iii).
- The total amount of contributions received during the covered period. *Id.* at § 23-17-53(c)(iv).
- The cumulative amount of contributions received for each measure. *Id.* at § 23-17-53(c)(iv).

- The name and street address of each person who contributed more than $200 and the amount contributed. *Id.* at § 23-17-53(c)(iv).

Thus, while the individual and political committee reporting requirements under Chapter 15 and Chapter 17 are similar in a number of respects, there remain material differences between the two. First, as to their respective applications, the Chapter 15 political committee requirements apply to associations that "make expenditures for the purpose of influencing or attempting to influence the action of voters for or against the nomination for election, or election, of one or more candidates *or balloted measures at such election.*" MISS. CODE ANN. § 23-15-807(b) (emphasis added). On the other hand, Chapter 17 applies in a more limited but arguably duplicitous context, placing requirements only on individuals and associations who receive or expend funds for the "purpose of influencing the passage or defeat of a [constitutional] measure on the ballot." MISS. CODE. ANN. § 23-17-47(c) (defining a political committee); *Id.* at § 23-17-51(2) (placing an individual expenditure requirement on individual persons); *Id.* at § 23-17-1(1) (defining "measure" as a constitutional measure).[2] As to their requirements, Chapter 15 and Chapter 17

[2] The Court finds it noteworthy while Chapter 17 indeed applies only to constitutional ballot measures, a potential proponent must cross-reference the Chapter's definitional section to reach that conclusion.

differ as to both when reports are required, and what those respective reports must include.

Although for present purposes the State claims that only Chapter 17 applies to groups or individuals attempting to influence constitutional measures, Plaintiffs argue that being forced to navigate through the potentially conflicting statutes only serves to multiply the burdens imposed by the scheme. Claiming that these requirements effectively chilled and continue to chill their attempt to speak out regarding constitutional ballot measures, Plaintiffs seek to have this Court determine that Mississippi's political financial disclosure regime places an unconstitutional burden on Plaintiff's First Amendment rights. The Court turns to the merits of the parties' contentions.

STANDARD OF LAW

Summary judgment is warranted under Rule 56(a) of the Federal Rules of Civil Procedure when the evidence reveals no genuine dispute regarding any material fact, and the moving party is entitled to judgment as a matter of law. The rule "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

The party moving for summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact." *Id.* at 323, 106 S. Ct. 2548. The nonmoving party must then "go beyond the pleadings" and "designate 'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324, 106 S. Ct. 2548 (citation omitted). In reviewing the evidence, factual controversies are to be resolved in favor of the nonmovant, "but only when . . . both parties have submitted evidence of contradictory facts." *Little v. Liquid Air Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994) (en banc). When such contradictory facts exist, the Court may "not make credibility determinations or weigh the evidence." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000). However, conclusory allegations, speculation, unsubstantiated assertions, and legalistic arguments have never constituted an adequate substitute for specific facts showing a genuine issue for trial. *TIG Ins. Co. v. Sedgwick James of Wash.*, 276 F.3d 754, 759 (5th Cir. 2002); *SEC v. Recile*, 10 F.3d 1093, 1097 (5th Cir. 1997); *Little*, 37 F.3d at 1075.

DISCUSSION AND ANALYSIS

I. Standing

Although not heavily contested between the parties, this Court need initially consider whether the

Plaintiffs have standing to maintain the current action. Notably, although Plaintiffs complaint challenged the constitutionality of Mississippi's political finance disclosure scheme both facially and as-applied, the Plaintiffs' arguments at the summary judgment stage have been almost exclusively grounded in an as-applied context. Based on the briefing of the parties, the Court considers the Plaintiffs' challenge only under an as-applied framework, and deems the facial challenge abandoned. *Int'l Women's Day March Planning Comm. v. City of San Antonio*, 619 F.3d 346, 356 (5th Cir. 2010) (quoting *Keelan v. Majesco Software Inc.*, 407 F.3d 332, 340 (5th Cir. 2005) ("If a party wishes to preserve an argument for appeal, the party 'must press and not merely intimate the argument during the proceedings before the district court.'").

Under Fifth Circuit and United States Supreme Court precedent, the Court determines that the Plaintiffs at issue indeed have standing to bring their as-applied challenge. In order to maintain standing for purposes of Article III jurisdiction, a plaintiff must show: (1) it has suffered, or imminently will suffer, a concrete and particularized injury-in-fact; (2) the injury is fairly traceable to the defendant's conduct; and (3) a favorable judgment is likely to redress the injury. *Houston Chronicle Pub. Co. v. City of League City*, 488 F.3d 613, 617 (5th Cir. 2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)). Although here, Plaintiffs' action is a pre-enforcement challenge, the Fifth

Circuit has clearly established that "[c]hilling a plaintiff's speech is a constitutional harm adequate to satisfy the injury-in-fact requirement." *Id.* (internal citations omitted). This is likely so because "it is not necessary that [a party] first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights." *Id.* (quoting *Steffel v. Thompson*, 415 U.S. 452, 94 S. Ct. 1209, 39 L. Ed. 2d 505 (1974)).

Because mere allegations of a "subjective chill" are not an adequate substitute for a present objective harm or threat, however, a plaintiff relying on the chilling exception must still demonstrate the likelihood of imminent future prosecution. *Id.* at 618-19. Once that showing is fulfilled, however, the Fifth Circuit has before at least implied that plaintiffs should have standing to bring either an as-applied or facial challenge. *Id.* at 623 (finding that plaintiffs' as-applied challenge failed because it was underpinned only by "*future* enforcement *intentions.*") (emphasis in original); *see also Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 331, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010) (articulating that "the distinction facial and as-applied challenges is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case involving a constitutional challenge."); *Gonzales v. Carhart*, 550 U.S. 124, 167, 127 S. Ct. 1610, 167 L. Ed. 2d 480 (2007) (noting that in the case of a pre-enforcement challenge the "facial attack

should not have been entertained in the first instance" and enunciating that when presented with "discrete and well-defined instances a particular condition has or is likely to occur in which the [conduct] prohibited by the Act [will take place]" an as-applied challenge is the correct mechanism).

In the case at hand, Plaintiffs discretely aver that they sought to purchase posters, buy advertising in a local newspaper, and distribute flyers supporting the Initiative. They aver, and Defendants cannot contest, that those expenses would have indeed exceeded the State's $200 registration threshold requirement. Moreover, the State refuses to contest that Chapter 17 would have applied with full-force to Plaintiffs as soon as they crossed that monetary threshold. Additionally, the State did apply, at the time of Plaintiffs' desired involvement, and continues to apply the statute to such groups. In Assistant Secretary of State Kim Turner's deposition, for instance, she noted that a contemporaneously active association who had apparently received in excess of $200 in contributions "need[ed] to be registered." Thus, the Court finds that Plaintiffs have sufficiently shown more than "subjective chill" and have standing to raise the current challenge.

II. First Amendment Challenges

Having concluded that standing is present, the Court turns to the merits of the action. Under the First Amendment, Plaintiffs challenge the requirements

placed on both individuals and associations attempting to influence constitutional ballot measures in Mississippi. In order to evaluate those respective challenges, the Court must first determine what level of scrutiny to apply. That determination, in turn, will guide the remainder of the Court's analysis.

Generally, "[l]aws that burden political speech are subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Citizens United*, 558 U.S. at 340, 130 S. Ct. 876. On the other hand, however, the Court has before "subjected strictures on campaign-related speech that [it] found less onerous to a lower level of scrutiny." *Arizona Free Enter. Club's Freedom Club PAC v. Bennett*, ___ U.S. ___, 131 S. Ct. 2806, 2817, 180 L. Ed. 2d 664 (2011). Significant for present purposes, "[d]isclosure requirements may burden the ability to speak, but they 'impose no ceiling on campaign-related activities,' and 'do not prevent anyone from speaking.'" *Citizens United*, 558 U.S. at 366-67, 131 S. Ct. 2806; *Asgeirsson v. Abbott*, 696 F.3d 454, 463 (5th Cir. 2012) ("For First Amendment purposes, the requirement to make information public is treated more leniently than are other speech regulations. The Court has often upheld disclosure provisions even where it has struck down other regulations of speech in the same statutes."). Thus, with that in mind, "[t]he Court has [consequently] subjected these requirements to 'exacting scrutiny,' which requires a 'substantial relation' between the

disclosure requirement and a 'sufficiently important' governmental interest." *Id.* (citing *Buckley v. Valeo*, 424 U.S. 1, 66, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (Buckley I)).

A. Exacting Scrutiny

Although Plaintiffs contend that strict scrutiny should apply here, they acknowledge that Mississippi places no substantive cap on contributions, but instead merely requires the disclosure of information relating to contributions received and expended. Particularly damaging to Plaintiffs' position, however, is the fact that the Fifth Circuit recently articulated that "disclosure laws" are subject to "exacting rather than strict scrutiny." *See Asgeirsson*, 696 F.3d at 462. Moreover, as the Eleventh Circuit recently opined in an extraordinarily similar context, applying strict scrutiny to a disclosure scheme would run in contradiction to all Circuit Courts to have recently considered the question. *Worley v. Florida Sec. of State*, 717 F.3d 1238, 1244 (11th Cir. 2013) (collecting cases from the First, Seventh, Eighth, Ninth, and Tenth Circuits). Because Mississippi's statutory scheme places no cap on contributions, instead merely imposing reporting and disclosure requirements, this Court applies exacting scrutiny to Mississippi's political finance disclosure requirements. Under that framework, in order to withstand constitutional scrutiny, there must be a substantial relation between the disclosure requirement and a sufficiently important

governmental interest. *Asgeirsson*, 696 F.3d at 464 n.11 (citing *Citizens United*, 130 S. Ct. at 914).

B. Sufficiently Important Governmental Interest

In support of its registration, recording, and reporting requirements, Mississippi relies almost exclusively on the informational interest allegedly served by the statutory scheme's requirements.[3] Plaintiff ardently argue that there is no such interest in the context of constitutional ballot measures, or, that at the very least, it is significantly diminished in regard to such measures.

In *Buckley I*, the Supreme Court found that disclosure laws could be supported by at least three rationales in the context of a candidate election. 424 U.S. 1, 66-69, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976). In regard to the potential information interest of the State, the Court articulated:

> [D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political

[3] Although the State additionally contends that the system furthers its interest in "gather[ing] data necessary to deter and detect violations of campaign finance laws," no Circuit to have considered the government's interest in the context of a ballot initiative has recognized such a theory and the Court refuses to do so here.

> spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

Buckley I, 424 U.S. at 66, 96 S. Ct. 612 (footnote omitted).

Plaintiffs argue that this informational interest is limited to the context of candidates running for office; they argue that it does not apply, or alternatively, applies with much less force in the context of ballot initiatives. Plaintiffs note that the while the Supreme Court has discussed the utility of disclosure laws in the ballot issue context on three occasions, it has done so only in dicta.

First, in *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978), the Supreme Court invalidated a Massachusetts statute prohibiting corporate expenditures in ballot-issue campaigns. *Id.* at 767, 98 S. Ct. 1407. However, the Court stated that people "may consider, in making their judgment, the source and credibility of the advocate. . . . Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected." *Id.* at 791-92, 792 n.32, 98 S. Ct. 1407.

Second, in *Citizens Against Rent Control v. City of Berkely*, 454 U.S. 290, 102 S. Ct. 434, 70 L. Ed. 2d 492 (1981), the Court invalidated a municipal ordinance setting a cap on contributions to committees supporting or opposing ballot measures. *Id.* at 291-94, 102 S. Ct. 434. The Court concluded that the cap was not necessary because another provision in the ordinance mandated disclosure, stating, "The integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed; if it is thought wise, legislation can outlaw anonymous contributions." *Id.* at 299-300, 102 S. Ct. 434.

Third, in *Buckley v. American Const. Law Found., Inc.*, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999) (*Buckley II*), the Court invalidated a Colorado statute requiring the disclosure of the names of paid initiative circulators and the amount paid to each circulator. However, the Court, remarking on requirements that were not being challenged, stated:

> We explained in [*Buckley I*] that disclosure provides the electorate with information "as to where political campaign money comes from and how it is spent," thereby aiding electors in evaluating those who seek their vote. We further observed that disclosure requirements "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. . . . In this regard, the State and supporting amici stress the importance of disclosure as a control or check

> on domination of the initiative process by affluent special interest groups. . . . Disclosure of the names of initiative sponsors, and of the amounts they have spent gathering support for their initiatives, responds to that substantial state interest. . . . Through the disclosure requirements that remain in place, voters are informed of the source and amount of money spent by proponents to get a measure on the ballot; in other words, voters will be told who has proposed a measure and who has provided funds for its circulation.

Id. at 202-03, 119 S. Ct. 636 (citations, brackets, and internal quotation marks omitted).

Persuasively, the Eleventh Circuit recently joined the ranks of courts recognizing the informational interest justification for ballot initiatives. *Worley v. Florida Secretary of State*, 717 F.3d 1238, 1249 (11th Cir. 2013); *see also Family PAC v. McKenna*, 685 F.3d 800, 803-14 (9th Cir. 2012); *Nat'l Org. for Marriage, Inc. v. McKee* (*McKee II*), 669 F.3d 34, 39-41 (1st Cir. 2012); *Nat'l Org for Marriage, Inc v. McKee* (*McKee I*), 649 F.3d 34, 41-44, 55-61 (1st Cir. 2011). There, the court considered, and rejected, many of the arguments presented by Plaintiffs here. *See id.* at 1247-1249. Relying principally on the aforementioned Supreme Court precedent, the Eleventh Circuit concluded that "promoting an informed electorate in a ballot issue election is a sufficiently important governmental interest to justify" the imposition of political committee regulations. *Id.* at 1249. Based on both

Supreme Court precedent and persuasive Circuit Court precedent, this Court determines that promoting an informed electorate, even in regard to constitutional ballot measures, is a sufficiently important governmental interest.

C. Substantial Relation

As articulated in the Court's previously entered order, when evaluating the substantial relation between the State's interest and the measures imposed to achieve that interest, the Court must assess the "fit" between the two. *See Canyon Ferry Road Baptist Church of East Helena v. Unsworth*, 556 F.3d 1021, 1034 (9th Cir. 2009). This inquiry is "one of degree, not kind, for it is well established that, in the ordinary case, a state informational interest is sufficient to justify the mandatory reporting of expenditures and contributions in the context of ballot initiatives." *Id.* (citing *Alaska Right to Life Comm. v. Miles*, 441 F.3d 773, 789-92 (9th Cir. 2006); *Cal. Pro-Life Council, Inc. v. Randolph*, 507 F.3d 1172, 1189 (9th Cir. 2007) (*CPLC II*)).

Plaintiffs argue that "no informational interest can exist at the point that Mississippi imposes [its registration, reporting, and disclosure] burdens." In other words, Plaintiffs argue that the statutes' threshold amount for registration and disclosure of anything greater than $200 is too low compared to the burdens the subsequent requirements impose.

The disagreement between the parties in regard to the "fit" largely boils down to just how exacting the Court's scrutiny should be. Mississippi argues that the "fit" or substantial relation should be considered only in regard to the State's informational interest in general. In terms of the degree to which that interest may vary based on the size of respective associations, Mississippi contends that the Court should only weigh the legislature's threshold determination under the lens of "wholly without rationality" review. Stated another way, Mississippi argues that exacting scrutiny should apply to the scheme generally, but complaints regarding the legislature's threshold determination for which groups are regulated should only be second-guessed if that determination was "wholly without rationality." Plaintiffs, on the other hand, argue that this approach completely defangs the exacting scrutiny framework, converting the inquiry into merely a rational basis analysis and precluding small groups from adequately raising an as-applied challenge.

In support of the State's proposed "wholly without rationality" standard, Defendants point primarily to the First Circuit's analysis in *McKee I*. There, the court gave extensive attention to the Supreme Court's decision in *Buckley I*, and noted that "[f]ollowing [*Buckley I*], we have granted 'judicial deference to plausible legislative judgments' as to the appropriate location of a reporting threshold, and have upheld such legislative determinations unless they are 'wholly without rationality.'" *McKee I*, 649 F.3d at

60 (internal citations omitted). Accordingly, the court found that the particular threshold amount at issue was not "wholly without rationality" and was thus constitutional. *Id.* at 61.

In *Buckley I*, however, the Supreme Court considered whether a $10 record keeping threshold and a $100 disclosure threshold were sufficient to survive constitutional scrutiny in the face of an overbreadth challenge. *Buckley I*, 424 U.S. at 82-83, 96 S. Ct. 612. The Court stated:

> The $10 and $100 thresholds are indeed low. Contributors of relatively small amounts are likely to be especially sensitive to recording or disclosure of their political preferences. These strict requirements may well discourage participation by some citizens in the political process, a result that Congress hardly could have intended. Indeed, there is little in the legislative history to indicate that Congress focused carefully on the appropriate level at which to require recording and disclosure. Rather, it seems merely to have adopted the thresholds existing in similar disclosure laws since. But we cannot require Congress to establish that it has chosen the highest reasonable threshold. The line is necessarily a judgmental decision, best left in the context of this complex legislation to congressional discretion. *We cannot say, on this bare record, that the limits designated are wholly without rationality.*

Id. at 83, 96 S. Ct. 612 (emphasis added). Unfortunately, however, *Buckley I* does not necessarily provide binding precedent for the present case. Notably, the challenge to the reporting requirements considered in *Buckley I* was an overbreadth challenge, unlike the as-applied challenge raised here. Indeed, under the overbreadth doctrine, "a statute is *facially* invalid if it prohibits a substantial amount of protected speech." *United States v. Williams*, 553 U.S. 285, 292, 128 S. Ct. 1830, 170 L. Ed. 2d 650 (2008) (emphasis added). Significantly, "invalidating a law that in some of its applications is perfectly constitutional . . . has obvious harmful effects" and its application subsequently requires that the "statute's overbreadth be substantial, not only in an absolute sense, but also relative to the statute's plainly legitimate sweep." *Id.*, 128 S. Ct. 1830. Stated alternatively, "[i]nvalidation for overbreadth is strong medicine that is not to be casually employed." *Id.* at 293.

Although neither is invalidation under the exacting scrutiny framework "to be casually employed," courts have remained ardent that exacting scrutiny is "more than a rubber stamp." *Worley*, 717 F.3d at 1249 (quoting *Minnesota Citizens Concerned for Life v. Swanson*, 692 F.3d 864, 876 (8th Cir. 2012)). Under exacting scrutiny, the Court has "closely scrutinized disclosure requirements," demanding that "the strength of the governmental interest . . . reflect the seriousness of the actual burden on First Amendment rights. *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 744, 128

S. Ct. 2759, 171 L. Ed. 2d 737 (2008). The Court has showed no hesitancy in striking down impermissible constitutional infringements under such review. *See Minn. Citizens*, 692 F.3d at 875 (collecting cases and noting that although possibly less rigorous than strict scrutiny, "[t]he Supreme Court has not hesitated to hold laws unconstitutional under [exacting scrutiny]."). Thus, without additional guidance from the Fifth Circuit, this Court is hesitant to simply import the more deferential overbreadth framework into the exacting scrutiny context.

Persuasively, both the Tenth and Eleventh Circuits recently subjected even the monetary threshold registration requirements of two voter initiative statutes to exacting scrutiny, declining to extend the "wholly without rationality" standard of review to the legislatures' threshold determination. *See Sampson v. Buescher*, 625 F.3d 1247, 1247 (10th Cir. 2010); *Worley*, 717 F.3d at 1238.

Illustratively, in *Sampson v. Buescher*, the court considered an as-applied challenge to Colorado's campaign committee requirements mandating that groups seeking to support or oppose a ballot issue register and report as a political committee. 625 F.3d at 1249. There, state law required registration once the organization had raised or expended in excess of $200. *Id.* Such registration required the committee to identify the name of the committee, the name of a registered agent, the committee's address and telephone number, the identities of all affiliated candidates or committees, and the purpose or nature of the

committee. *Id.* at 1250. The committee was further required to maintain a separate checking account, report the names and addresses of persons who contributed twenty dollars or more, and include the employer and occupation for anyone contributing one hundred dollars or more. *Id.*

The plaintiffs at issue had raised less than one thousand dollars in monetary and in-kind contributions. *Id.* at 1249. The court ultimately concluded that "[t]here is virtually no proper governmental interest in imposing disclosure requirements on ballot-initiative committees that raise and expend so little money, and that limited interest cannot justify the burden that these requirements impose on such a committee." *Id.* Although the court downplayed the significance of the state's informational interest in the ballot initiative context, the court ultimately assumed such an interest at least existed. *Id.* at 1259 (concluding that although attenuated, "there is a legitimate public interest in financial disclosure from campaign organizations.").

The court therefore carefully balanced the burdens of the thorough regulatory scheme, placing particular emphasis in the Supreme Court's admonition that "[p]rolix laws chill speech for the same reason that vague laws chill speech: People of common intelligence must necessarily guess at the law's meaning and differ as to its application." *Id.* (quoting *Citizens United*, 558 U.S. at 324, 130 S. Ct. at 889). Accordingly, the court noted that the contributions at issue were "sufficiently small that they say little

about the contributors' views of their financial interest in the [ballot] issue." *Id.* at 1260. Juxtaposed with the burden imposed by such requirements, the court found that "the financial burden of state regulation on [p]laintiffs' freedom of association approache[d] or exceede[d] the value of their financial contributions to their political effort; and the governmental interest in imposing those regulations [was] minimal, if not nonexistent, in light of the small size of the contributions." *Id.* at 1261. Thus, the court found that the burden imposed by the scheme could simply not be constitutionally borne by the limited value of such information. *Id.*

Similarly, the Eleventh Circuit recently considered a similar disclosure scheme in *Worley.* 717 F.3d at 1249. Notably, the Eleventh's Circuit decision in *Worley* was handed down well after this Court's Memorandum Opinion on Plaintiffs' motion for a temporary restraining order and preliminary injunction entered November 3, 2011. There, the Eleventh Circuit considered a facial challenge to Florida's political committee requirements, which, in pertinent part, requires persons raising or expending in excess of five hundred dollars annually to register and report as a political committee. *Id.* Once registered, Florida political committees are required to appoint a treasurer and establish a campaign depository, make all expenditures by check, keep detailed records, file regular reports itemizing contributions and expenditures, submit to random audits, and maintain records for at

least two years following the pertinent election. *Id.* at 1241.

Although the court ultimately held that the statutory framework withstood constitutional scrutiny, the court subjected it, including the monetary threshold, to exacting scrutiny. *Id.* at 1251 ("While we hold that the disclosure scheme survives exacting scrutiny, we nevertheless find the [First Circuit's "wholly without rationality" discussion] assessing disclosure thresholds to be instructive."). Further, however, the court noted that such deference was particularly applicable in facial challenges to such statutes. *Id.*

This Court is particularly persuaded by the Eleventh Circuit's recent announcement in *Worley*, and finds significant the court's refusal to adopt the "wholly without rationality" step within the larger exacting scrutiny framework. *Id.* Additionally, the Court is mindful that while the Eleventh Circuit articulated that the discussion regarding disclosure thresholds in *McKee I* was "instructive," the Eleventh Circuit cautioned that the scheme presently before it survived "exacting scrutiny." *Id.* Thus, in considering Plaintiffs' as-applied challenge, this Court now considers whether Mississippi's interest in the registration and reporting requirements constitutionally carry the regulatory burden the requirements likewise impose on individuals and groups such as the Plaintiffs here.

1. Political Committee Registration Requirement

Even granting leeway to the State and assuming that only Chapter 17 applies to persons and groups attempting to support or oppose constitutional ballot measures, Mississippi law compels groups to commence filing financial reports with the Mississippi Secretary of State as soon as they receive contributions or make expenditures in excess of $200. MISS. CODE ANN. § 23-17-49(1). In conjunction with that requirement and within ten days of crossing the $200 threshold, those political committees must file a statement of organization and include the name and address of the committee and all officers, indicate the name of the director of the committee and the treasurer, and set forth a brief statement identifying the measure that the committee seeks to pass or defeat. *Id.* at § 23-17-49(1)-(2).

Chapter 17 committees must then file monthly reports with the Secretary of State until all contributions and expenditures cease. *Id.* at § 23-17-51(3). Those reports must include detailed information regarding both the committee's funding sources and organizations which receive disbursements from the committee. *Id.* at § 23-17-53(a)-(b). Additionally, they must also include the totals for the committee's cash on hand and cash equivalents. *Id.*

As noted above, the Tenth Circuit was confronted with a similar disclosure scheme. *Sampson*, 625 F.3d at 1249-1250. Again, there, Colorado law converted any group that had as its major purpose supporting

or opposing a ballot measure and accepted contributions or made expenditures in excess of $200 into an issue committee. *Id.* Issue committees were thereafter required to file a statement of registration, were required to open and maintain a separate bank account, and were prohibited from expending or accepting in excess of $100 in cash. *Id.* at 1249. They were required to report all contributions and expenditures, including the name and address for persons contributing $20 or more and the occupation and employer for persons contributing $100 or more. *Id.*

The Colorado plaintiffs were an informal association of neighbors opposed to the annexation of their unincorporated residential development. *Id.* In their attempt to campaign against annexation, the plaintiffs wrote letters, distributed flyers, and printed "No Annexation" signs. *Id.* at 1251. In all, the committee expended approximately $782.02 for signs, a banner, post cards, and postage. *Id.* at 1254. In gauging the "fit" between Colorado's interest in the disclosure requirements and the burden absorbed by plaintiffs, the court noted that the funds at issue were "sufficiently small that they say little about the contributors' views of their financial interest" in the substantive ballot measure. *Id.* at 1261. Weighing the respective interests further, the court held that "the financial burden of state regulation on Plaintiffs' freedom of association approaches or exceeds the value of their financial contributions to their political effort; and the governmental interest in imposing

those regulations is minimal, if not nonexistent, in light of the small size of the contributions." *Id.*

Moreover, in *Canyon Ferry*, the Ninth Circuit held even under a more lenient wholly without rationality analysis that Montana's zero-dollar threshold for disclosure was unconstitutional as applied to in-kind de minimis contributions. 556 F.3d at 1034. There, under Montana law, "a political committee that is not specifically organized or maintained for the primary purpose of influencing elections but that may incidentally become a political committee by making a contribution or expenditure to support or oppose a candidate and/or issue" was deemed an "incidental committee." *Id.* at 1026. Incidental committees were thereafter required to report all transactions that were contributions or expenditures and were made in connection with a statewide issue. *Id.* at 1027.

The plaintiffs in that case were members of a church that had sought to express support for an amendment to the Montana constitution. *Id.* at 1024. In furtherance of that aim, church members printed out the petition and made copies on the church's copy machine, placed copies of the petition in the church foyer, distributed flyers, advertised the screening of a simulcast event through public service announcements on local radio stations, and aired the simulcast program at a church service. *Id.*

In analyzing the challengers' claim that the scheme violated the First Amendment, the court

noted that "in the ballot issue context, the relevant informational goal is to inform voters as to 'who backs or opposes a given initiative' financially, so that others will 'have a pretty good idea of who stands to benefit from the legislation.'" *Id.* at 1032. Further, "[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." *Id.* at 1033. Articulating that if even the Supreme Court's rationality test "for disclosure levels has any force at all, there must be a level below which mandatory disclosure of campaign expenditures by incidental committees' runs afoul of the First Amendment," the court held that the requirements impermissibly infringed upon the group's free speech rights. *Id.* at 1034.

Turning to the case at hand, the Court finds that Mississippi's requirements for groups raising or expending in excess of $200 are too burdensome. Even under the State's now enunciated view of the regulatory scheme, as soon as informal associations in Mississippi accept or expend funds in excess of $200, they are compelled to form a political committee and file a statement of organization with the Mississippi Secretary of State. Having crossed that threshold, the committee takes on monthly reporting obligations that are not extinguished until the committee no longer receives funds or makes expenditures. Further, although the State contends that the required forms are neither complex nor difficult to complete, the Court finds significant the fact that the forms do not

comport with the statutes at issue. Thus, even if a potential advocate follows the state's own instructions, he or she might nonetheless be fearful of a failure to comport.

Although the State attempts to assuage the issue by ensuring that its enforcement is lax, the statute's plain wording presents no such gentle assurances. The statute imposes significant criminal penalties for violators, including both monetary penalties and jail time. Additionally, despite the fact that the Secretary of State has published a number of informational handbooks and pamphlets to attempt to assist potential speakers in achieving compliance, those sources leave many of the aforementioned ambiguities unresolved. That published guidance primarily reiterates the importance of complying with the applicable requirements, emphasizing that "[i]nitiative sponsors and all individuals active in the initiative process must become familiar with the various laws regarding the conduct and regulation of elections." *Constitutional Initiative in Mississippi: A Citizen's Guide* 11 (2009). Moreover, the published guidance plainly articulates, "[e]ngaging in prohibited or illegal campaign practices can lead to criminal prosecution and other liability." *Id.* According to the statute's text, "[a]ny violation of Sections 23-17-49 through 23-17-59 is punishable by imprisonment in the county jail for not more than one (1) year, or a fine not to exceed ($1,000), or by both such fine and imprisonment." MISS. CODE ANN. § 23-17-61.

Finally, the Court finds that the overlapping requirements of Chapter 15 and Chapter 17 indeed serve to add to the burden on potential speakers. Despite the fact that the State contends only Chapter 17 applies, the language of the statute reveals no such caveat, and the parties have been unable to point the Court to any judicial decisions confirming that position as a reality. Moreover, the Court places weight in the simple fact that the Secretary of State's published guidance fails to preclude application of Chapter 15 to persons attempting to influence constitutional ballot initiatives. *See Campaign Finance Guide: Ensuring Compliance and Improving Disclosure* 12 (2010) (explaining that "[a] political committee is any committee, party, club, association, political action committee, or other group that makes contributions or disbursements of more than $200 aggregate in a calendar year toward influencing or attempting to influence voters."). Although the Chapter 17 political committee guidance cross-references only the punitive section of Chapter 15, the guide explicitly disclaims any reliance on that publication to avoid prosecution. It states, "*[t]his guide is for general information purposes only. Initiative sponsors should review the constitutional and statutory provisions related to Mississippi's constitutional initiative and the relevant case law.*" *Constitutional Initiative in Mississippi: A Citizen's Guide* 11 (emphasis added); *see also id.* at 10 ("No attempt to include all campaign finance disclosure requirements is made in this publication. Refer to the law in MISS. CODE ANN. §§ 23-17-47 through 23-17-53 (1972) *and MISS. CODE*

ANN. §§ 23-15-801 through 23-15-815.") (emphasis added).[4]

The Court finds it extraordinarily significant, and frankly disconcerting, that the requirements Plaintiffs are indeed subjected to cannot be simply ascertained from a plain reading of the respective statutes, or even from the State's published guidance. Indeed, the State's best argument for the sole application of Chapter 17 is that the Court should turn to the canons of construction to determine whether Plaintiffs such as these are regulated by the duplicitous, yet distinctive requirements of both Chapters 15 and 17. As pointed out by Plaintiffs, however, resort to a canon of statutory construction presupposes that the statute's meaning is not readily ascertainable from a plain reading of the text. *See Bates v. United States*, 522 U.S. 23, 29, 118 S. Ct. 285, 139 L. Ed. 2d 215 (1997) (instructing that courts "ordinarily" should "resist reading words or elements into a statute that do not appear on its face."). In *Sampson*, the Tenth Circuit plainly emphasized that,

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[4] In the State's supplemental memorandum submitted following the motion for summary judgment hearing, the State contends that "[g]iven that no state court has found the Secretary's forms to be inconsistent with state law, any argument . . . that the Secretary was acting inconsistently with state law would, at best, create a question regarding uncertain state election law warranting abstention." Notably, this Court does not find that that Secretary's forms do not comply with state law, only that, unlike the State contends, the forms do not establish that the statutory framework is simple and straightforward.

> [t]he average citizen cannot be expected to master on his or her own the many campaign financial-disclosure requirements set forth in Colorado's constitution, the Campaign Act, and the Secretary of State's Rules Concerning Campaign and Political Finance. Even if those rules that apply to issue committees may be few, one would have to sift through them all to determine which apply.

625 F.3d at 1259-1260. In observing that such groups might well be required to consult an attorney, and that the cost of those attorneys' fees might well significantly overshadow the amount such groups initially intended to even spend, the Tenth Circuit took notice of the Supreme Court's admonition in *Citizens United* that "[t]he First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day."). *Id.* at 1260 (quoting *Citizens United*, 558 U.S. at 324, 130 S. Ct. at 889).

Where, as here, potential speakers might well require legal counsel to determine which regulations even apply, above and beyond how to comport with those requirements, the burdens imposed by the State's regulations are simply too great to be borne by the State's interest in groups raising or expending as

little as $200.[5] Contrary to the State's contention that Plaintiffs here failed to allege confusion regarding the potential dual application of the State's regulations, even the Plaintiffs' verified complaint averred, "[t]he burden of complying with Mississippi's regulations is compounded by the fact that there are multiple statutes contained in different sections of the Mississippi Code that one has to wade through to figure out all the relevant registration, reporting, and disclosure obligations." Unlike the regulatory scheme confronted by the Eleventh Circuit in *Worley* where Florida's laws required "little more if anything that a prudent person or group would do in these circumstances anyway," *Worley*, 717 F.3d at 1250, Mississippi's requirements are such that a prudent person might have extraordinary difficulty merely determining what is

[5] The State's supplemental memorandum also makes reference to the potential need for *Pullman* abstention. Despite the late nature of the argument, the Court considers and rejects its applicability. To invoke *Pullman*, the issue before the court must "involve (1) a federal constitutional challenge to state action and (2) an unclear issue of state law that, if resolved, would make it unnecessary for us to rule on the federal question." *Moore v. Hosemann*, 591 F.3d 741, 745 (5th Cir. 2009) (internal citations omitted). Stated another way, "generally, *Pullman* abstention is appropriate only when there is an issue of uncertain state law that is fairly subject to an interpretation [by a state court] which will render unnecessary or substantially modify the federal constitutional question." *Id.* Although the Court determines that the overlap between Chapters 15 and 17 increases the hardship placed on Plaintiffs, the Court finds the regulatory burdens too significant for the limited amount of speech involved here irrespective of any potential state rulings on the precise statutory applicability.

required. The Plaintiffs averments here indeed confirm that possibility as a reality.

As held by numerous circuits, in the context of a ballot-initiative, the State's interest is limited to the informational interest. That interest, in turn, is proportionately related to the amount spent or raised by Plaintiffs in furtherance of their speech. *Sampson*, 625 F.3d at 1259 ("while assuming that there is a legitimate public interest in financial disclosure from campaign organizations, we also recognize that this interest is significantly attenuated when the organization is concerned with only a single ballot issue and when the contributions and expenditures are only slight."). Here, the State places significant and onerous burdens on persons attempting to join together to raise or expend in excess of just $200. The Plaintiffs at issue sought to place a newspaper advertisement in the local paper, distribute flyers, and purchase posters in support of a constitutional ballot measure, but were dissuaded by the burden of the State's requirements. Simply put, as applied to a small group attempting to expend minimal funds in support of their grass-roots campaign effort, the State's requirements, particularly coupled with the confusion surrounding those requirements, unconstitutionally infringe upon the First Amendment.

2. Individual Reporting Requirement

Plaintiffs next likewise challenge the reporting requirements placed on individuals essentially

making independent expenditures in an attempt to influence the passage or defeat of constitutional ballot measures. Assuming initially that only Chapter 17 applies to individual persons expending in excess of $200 for the purpose of influencing the passage or defeat of a constitutional measure, such individuals are still faced with substantive requirements and potential penalties. As previously articulated, individuals *expending* in excess of $200 must file a report initially identifying the person's name, address, and telephone number. MISS. CODE ANN. § 23-17-51(2); MISS. CODE ANN. § 23-17-53(a). Further, they must provide the total amount of expenditures made during the covered monthly period, the cumulative total expended in support or opposition of that measure, and the name, street address, and amount of contribution for each person to whom a disbursement of greater than $200 was made. MISS. CODE ANN. §§ 23-17-53(c)(i)-(iii). Finally, despite the fact that it is a person's expenditures rather than acceptance of contributions that triggers the reporting requirement, individual persons must also include "[t]he total amount of contributions received during the period covered by the financial report, the cumulative amount of that total for each measure, and the name and street address of each person who contributed more than [$200] and the amount contributed." *Id.* at § 23-17-53(c)(iv). Once again, those reports must continue to be filed until "all contributions and expenditures cease." *Id.* at § 23-17-51(3).

Although individuals expending in excess of $200 are not required to file a statement of organization as they are not actually converted into a political committee, the Secretary of State's guidance makes no such distinction. Instead, it instructs:

> Any person or group which accepts contributions or makes expenditures for or against an initiative . . . and those contributions or expenditures TOTAL more than $200 must register with the Secretary of State. This registrations is accomplished by completing and filing with the Secretary of State a form entitled "Statement of Organization for a Political Committee." Regardless of what a person or group calls itself, if it accepts enough contributions to total over $200, OR it spends over $200 on the initiative campaign, it must file the statement of organization and monthly financial reports. Failing to do so results in fines of $50 per day and exposes the committee or individual to possible criminal prosecution.

Constitutional Initiative in Mississippi: A Citizen's Guide 11.

In addition to the less than cohesive guidance issued in regard to Chapters 17's textual requirements, would-be individual speakers must also at least initially examine Chapter 15 to ensure their conduct comports with that Chapter as well. Although Mississippi now reassures that only Chapter 17 applies, the Secretary of State's guidance once again reiterates, "[n]o attempt to include all campaign finance

disclosure requirements is made in this publication. Refer to the law in MISS. CODE ANN. §§ 23-17-47 through 23-17-53 (1972) *and MISS. CODE ANN. §§ 23-15-801 through 23-15-815.*" *Id.* at 10 (emphasis added).

Under Chapter 15, individuals are potentially governed under the independent expenditure provision. MISS. CODE ANN. § 23-15-809. That section provides that "[e]very person who makes independent expenditures in an aggregate amount or value in excess of [$200] during a calendar year shall file a [financial statement including the information required of political committees]." *Id.* However, the independent expenditure provision goes on to articulate that those reports are required to include "information indicating whether the independent expenditure in support of, or in opposition to, the candidate involved." MISS. CODE ANN. § 23-15-809(a). Thus, it seems possible that such reports may not ultimately be required in the context of constitutional initiatives on that ground alone. Nonetheless, navigating through the law certainly serves to increase the statutory burden placed on persons attempting to expend funds in support or opposition to a measure.

Once again, based on the minute level of speech involved, Mississippi's scheme is simply too burdensome to be carried by the State's informational interest in individual speakers attempting to expend in excess of only $200. The potentially applicable statutory provisions present a myriad of pitfalls for the unwary, requiring in-depth analysis to determine

which law applies, and then what the law requires and what it does not. Further, the Secretary of State's guidance provides no relief; it at times further obfuscates the requirements, but never provides substantial clarification that might preclude the State's potential avenues of enforcement. Thus, the Court finds that Mississippi's informational interest in persons expending $200 is too limited to carry the burden imposed by those regulations. The Court therefore finds that Mississippi's current filing requirements are unconstitutional as applied to individual persons seeking to expend just over $200 in support or opposition to constitutional measures.

3. Individual and Political Committee Reporting and Recording Obligations

Moreover, Plaintiffs also challenge a number of recording and reporting obligations imposed on political committees and individuals who raise or expend in excess of $200 to support or oppose a ballot initiative. Specifically, Plaintiffs challenge Mississippi Code § 23-17-49(2)(a), which requires that political committees disclose the name and addresses of their officers, and Mississippi Code § 23-17-53(a), which requires that individuals expending in excess of $200 provide his or her name, address, and telephone number. Additionally, Plaintiffs attack Mississippi Code § 23-17-53(b)(vii), which requires, in part, that political committees disclose the name and street address of each person from whom a contribution

in excess of $200 was received during the covered period.

However, because the Court determines that groups and individuals, such as Plaintiffs here, who seek to expend just in excess of $200 in support or opposition of a ballot measure cannot constitutionally be subjected to Mississippi's current individual and political committee reporting requirements, the Court need not reach this contention. As articulated by the Supreme Court, "[e]mbedded in the traditional rules governing constitutional adjudicating is the principle that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the [c]ourt." *Broadrick v. Oklahoma*, 413 U.S. 601, 611, 93 S. Ct. 2908, 37 L. Ed. 2d 830 (1973). Likewise, "[a] closely related principle is that constitutional rights are personal and may not be asserted vicariously." *Id.*, 93 S. Ct. 2908 (citing *McGowan v. Maryland*, 366 U.S. 420, 429-30, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961)).

Under the overbreadth doctrine, and in the unique context of the First Amendment, those traditional standing requirements may be relaxed to permit litigants to "challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." *Id.* at 612. The Plaintiffs here,

however, have remained ardent that they are challenging Mississippi's regulations as they apply only to the present Plaintiffs and to similar small groups or individuals. In Plaintiffs' recent Notice of Supplemental Authority, for instance, Plaintiffs articulated that a recently issued opinion "should not affect this Court's analysis of the Plaintiffs' as-applied challenge." Additionally, Plaintiffs' have specifically disavowed that they are bringing an overbreadth challenge, stating, "Plaintiffs are not, of course, making an overbreadth argument, they are making an as-applied challenge." The challenge to Mississippi's requirements regarding what political committees and individuals must actually report is therefore left for another day, to potentially be brought by a group that is governed by the substantive reporting and recording obligations Mississippi imposes on political committees and individuals receiving or expending higher amounts.

III. Motion to Strike and Motion to Exclude

Finally, the Court turns to Defendants' Motion to Exclude and Motion to Strike. In particular, Defendants' Motion to Exclude seeks to preclude the expert opinion of David Primo. Defendants' Motion to Strike, on the other hand, seeks to bar the eighty-four paragraph declaration of Diana Stimpson, on grounds that she was not disclosed as a witness and her declaration would not qualify as a permissible summary under Rule 1006. The Court has considered all of the aforementioned arguments, however, and has

determined that summary judgment is due in favor of Plaintiffs irrespective of any rulings on those motions. Therefore, Defendants' Motion to Exclude [46] and Motion to Strike [53] are deemed moot.

CONCLUSION

For the foregoing reasons, the Court determines that the regulations Mississippi currently places on individuals and groups seeking to raise or expend in excess of $200 in support or opposition of a constitutional ballot measure do not survive exacting scrutiny under the First Amendment. Significantly, the Court does not hold that Mississippi may not regulate individuals and groups attempting to influence constitutional ballot measures. Instead, the Court holds only that under the current regulatory scheme, which is convoluted and exacting, the requirements are too burdensome for the State's $200 threshold. The Court finds that the $200 threshold is simply too low for the substantial burdens that the statute imposes on groups and individuals. Thus, as applied to Plaintiffs, the State's group registration and individual reporting requirements are unconstitutional. Accordingly, the Court grants in part and denies in part Plaintiffs' Motion for Summary Judgment [42], denies Defendants' Motion for Summary Judgment [44], and finds Defendants' Motion to Exclude [46] and Defendants' Motion to Strike [53] moot.

SO ORDERED, this the 30th day of September, 2013.

/s/ Sharion Aycock
U.S. DISTRICT JUDGE

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

GORDAN VANCE JUSTICE, JR. ET AL.	**PLAINTIFFS**
v.	**CIVIL ACTION NO.: 3:11-CV-138-SA-SAA**
DELBERT HOSEMANN, in his official capacity as Mississippi Secretary of State; JIM HOOD, in his official capacity as Attorney General of the State of Mississippi	**DEFENDANTS**

ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER & PRELIMINARY INJUNCTION

(Filed Nov. 3, 2011)

Pursuant to a memorandum opinion to issue this day, Plaintiffs' Motion for Temporary Restraining Order & Preliminary Injunction is DENIED.

SO ORDERED on this, the 3rd day of November, 2011.

/s/ Sharion Aycock
UNITED STATES DISTRICT JUDGE

THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

GORDAN VANCE JUSTICE, JR. ET AL.	**PLAINTIFFS**
v.	**CIVIL ACTION NO.: 3:11-CV-138-SA-SAA**
DELBERT HOSEMANN, in his official capacity as Mississippi Secretary of State; JIM HOOD, in his official capacity as Attorney General of the State of Mississippi	**DEFENDANTS**

MEMORANDUM OPINION

(Filed Nov. 3, 2011)

Plaintiffs have moved for a temporary restraining order and/or preliminary injunction to enjoin enforcement of Mississippi's political committee and individual registration, reporting, and disclosure laws (MISS. CODE ANN. §§ 23-17-47 *et seq.* and MISS. CODE ANN. §§ 23-15-801 *et seq.*). Plaintiffs contend these statutes impose an unconstitutional infringement on their rights to free speech and association. This Court held a hearing on November 1, 2011, and heard arguments from both sides. For the following reasons, the Court denies the motion.

FACTUAL BACKGROUND

Plaintiffs are "a group of like-minded friends and neighbors" who have been meeting regularly for the past few years, as a group and with others, to discuss the political issues of the day. According to Plaintiffs, they "have no formal organization or structure. They meet at their homes, at restaurants, and wherever else is convenient. They have no officers or directors, no bank account, and no member dues." Plaintiffs wish to associate with one another and with others for the purposes of running independent political advertisements advocating the passage of Initiative 31, a proposed amendment to the Mississippi Constitution which will be decided by popular vote in the upcoming election on November 8, 2011. Initiative 31 would "amend the Mississippi Constitution to prohibit state and local government from taking private property by eminent domain and then conveying it to other persons or private businesses for a period of 10 years after acquisition. Exceptions from the prohibition include drainage and levee facilities, roads, bridges, ports, airports, common carriers, and utilities. The prohibition would not apply in certain situations, including public nuisance, structures unfit for human habitation, or abandoned property."

Specifically, Plaintiffs "wish to pool their funds to purchase posters, buy advertising in a local newspaper, and distribute flyers targeted to Mississippi voters, urging them to vote for the passage of Initiative 31." However, according to Plaintiffs, to undertake these activities, Plaintiffs would have to register as a

"political committee" under Mississippi's campaign finance laws and comply with administrative, reporting, and disclosure requirements such as appointing a formal treasurer, filing a statement of organization, and filing regular reports with the State listing their names, addresses, occupations, and employers and the same information of anyone else who decides to add more than $200 to their cause. Plaintiffs contend that these laws substantially burden and chill the Plaintiffs' and others' rights to free speech under the First and Fourteenth Amendments to the United States Constitution. Plaintiffs wish to pool funds in excess of $200 and spend money on speech that supports Initiative 31, but claim they are inhibited from doing so because it would trigger Mississippi's campaign disclosure requirements. Plaintiffs contend that even purchasing a ¼ page advertisement in the local newspaper for one day would cost more than $200 and trigger the reporting and disclosure requirements of MISS. CODE ANN. §§ 23-17-47 *et seq*. and MISS. CODE ANN. §§ 23-15-801 *et seq*.

Plaintiffs filed the instant lawsuit on October 20, 2011, seeking a declaratory judgment that MISS. CODE ANN. §§ 23-17-47 *et seq*. and MISS. CODE ANN. §§ 23-15-801 *et seq*. are unconstitutional on their face and as applied, as well as an injunction prohibiting their enforcement. On the same day, Plaintiffs also filed a motion for a Temporary Restraining Order (TRO) & Preliminary Injunction [3]. The State filed its response on October 27, 2011. At the hearing held on November 1, 2011, Plaintiffs announced that they

seek an injunction prohibiting enforcement of Mississippi's political committee and individual registration, reporting and disclosures laws, as they apply to Plaintiffs, for contributions and expenditures of less $1,000 in support of Initiative 31.[1]

STATUTORY FRAMEWORK

At issue are two sets of statutes mandating registration and disclosure of expenditures and contributions in support of or opposition to ballot measures: MISS. CODE ANN. §§ 23-15-801 *et seq.* and MISS. CODE ANN. §§ 23-17-47 *et seq.* The provisions of the statutes Plaintiffs contend are applicable to them are as follows:

1. MISS. CODE ANN. §§ 23-15-801 *et seq.*

Section 23-15-801(c) defines a "political committee" as "any committee, party, club, association, political action committee, campaign committee or other groups of persons or affiliated organizations which receives contributions aggregating in excess of Two Hundred Dollars ($200.00) during a calendar year

[1] Although Plaintiffs' Motion asks the Court to enjoin Mississippi's registration and disclosure laws "as they apply to the Plaintiffs," the request for the Court to set a $1,000 threshold was presented for the first time at the hearing. Plaintiffs also bring a facial challenge in their Complaint, but have not argued that as a basis for granting their requested TRO and preliminary injunction.

or which makes expenditures aggregating in excess of Two Hundred Dollars ($200.00) during a calendar year for the purpose of influencing or attempting to influence the action of voters for or against . . . balloted measures." MISS. CODE ANN. § 23-15-801(c). No later than ten days after "receipt of contributions aggregating in excess of Two Hundred Dollars ($200.00), or . . . having made expenditures aggregating in excess of Two Hundred Dollars ($200.00)," each political committee must file a "statement of organization" with the Secretary of State's Office, containing: (1) the name and address of the committee and all officers and (2) a designation of a director of the committee and a custodian of books and accounts of the committee, who shall be designated treasurer. MISS. CODE ANN. § 23-15-803.

Additionally, political committees must file preelection reports, periodic reports every four years, and yearly reports in the three years between periodic reports. MISS. CODE ANN. § 23-15-807(b). These reports must include:

> (i) For the reporting period and the calendar year, the total amount of all contributions and the total amount of all expenditures of the candidate or reporting committee which shall include those required to be identified pursuant to item (ii) of this paragraph as well as the total of all other contributions and expenditures during the calendar year. Such reports shall be cumulative during the calendar year to which they relate;

(ii) The identification of:

1. Each person or political committee who makes a contribution to the reporting candidate or political committee during the reporting period, whose contribution or contributions within the calendar year have an aggregate amount or value in excess of Two Hundred Dollars ($200.00) together with the date and amount of any such contribution;

2. Each person or organization, candidate or political committee who receives an expenditure, payment or other transfer from the reporting candidate, political committee or its agent, employee, designee, contractor, consultant or other person or persons acting in its behalf during the reporting period when the expenditure, payment or other transfer to such person, organization, candidate or political committee within the calendar year have an aggregate value or amount in excess of Two Hundred Dollars ($200.00) together with the date and amount of such expenditure.

(iii) The total amount of cash on hand of each reporting candidate and reporting political committee;

MISS. CODE ANN. § 23-15-807(d). Failure to comply with these regulations can carry fines of up to $500. MISS. CODE ANN. § 23-15-813. Willful violations of these regulations are misdemeanors punishable by a fine of up to $3,000 and imprisonment of up to six months. MISS. CODE ANN. § 23-15-811(a).

B. MISS. CODE ANN. §§ 23-17-47 *et seq.*

Section 23-17-47 defines a "political committee" as "any person, other than an individual, who receives contributions[2] or makes expenditures[3] for the purpose of influencing the passage or defeat of a measure on the ballot." MISS. CODE ANN. § 23-17-47. Each political committee must file with the Secretary of State a statement of organization no later than ten days after making expenditures in excess of $200 or receiving contributions in excess of $200. MISS. CODE ANN. § 23-17-49. The statement shall include: (1) the name and address of the committee and all officers; (2) a designation of a director of the committee and a custodian of books and accounts of the committee, who shall be designated treasurer, and (3) a brief

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[2] "Contribution" is defined as "any gift, subscription, loan, advance, money or anything of value made by a person or political committee for the purpose of influencing the passage or defeat of a measure on the ballot, for the purpose of obtaining signatures for the proposed ballot measures and attempting to place the proposed measure on the ballot, and for the purpose of opposing efforts to place a proposed measure on the ballot; but does not include noncompensated, nonreimbursed volunteer personal services." MISS. CODE ANN. § 23-17-47(a).

[3] "Expenditure" is defined as "any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person or political committee for the purpose of influencing any balloted measure, for the purpose of obtaining signatures for a proposed ballot measure and attempting to place the proposed measure on the ballot, and for the purpose of opposing efforts to place a proposed measure on the ballot." Miss. Code Ann. § 23-17-47(d).

statement identifying the measure that the committee seeks to pass or defeat. *Id.*

Any political committee that either receives contributions in excess of $200 or makes expenditures in excess of $200 is additionally required to file monthly reports with the Secretary of State until all contributions and expenditures cease. MISS. CODE ANN. § 23-17-51. This monthly reporting requirement also applies to individuals who expend in excess of $200 for the purpose of influencing the passage or defeat of a ballot measure. *Id.* This reporting obligation continues until "all contributions and expenditures cease." *Id.* Additionally, "[i]n all cases a financial report shall be filed thirty (30) days following the election on a measure." *Id.* The financial reports must contain the following information:

> (a) The name, address and telephone number of the committee or individual person filing the statement.
>
> (b) For a political committee:
>
> > (i) The total amount of contributions received during the period covered by the financial report;
> >
> > (ii) The total amount of expenditures made during the period covered by the financial report;
> >
> > (iii) The cumulative amount of those totals for each measure;

(iv) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the financial report;

(v) The total amount of contributions received during the period covered by the financial report from persons who contributed Two Hundred Dollars ($200.00) or less, and the cumulative amount of that total for each measure;

(vi) The total amount of contributions received during the period covered by the financial report from persons who contributed Two Hundred Dollars ($200.00) or more, and the cumulative amount of that total for each measure; and

(vii) The name and street address of each person from whom a contribution(s) exceeding Two Hundred Dollars ($200.00) was received during the period covered by the financial report, together with the amount contributed, the date of receipt, and the cumulative amount contributed by that person for each measure.

(c) For an individual person:

(i) The total amount of expenditures made during the period covered by the financial report;

(ii) The cumulative amount of that total for each measure; and

> (iii) The name and street address of each person to whom expenditures totaling Two Hundred Dollars ($200.00) or more were made, together with the amount of each separate expenditure to each person during the period covered by the financial report and the purpose of the expenditure.
>
> (iv) The total amount of contributions received during the period covered by the financial report, the cumulative amount of that total for each measure, and the name and street address of each person who contributed more than Two Hundred Dollars ($200.00) and the amount contributed.

MISS. CODE ANN. § 23-17-53. Any person who violates this section is subject to fines as provided by § 23-15-813 (discussed above).

Unsurprisingly, the Plaintiffs characterize these requirements as "onerous," while the State describes them as "minimal." The State contends that each report required by the statute is actually a one page form supplied by the Secretary of State's office. The State points out that Mississippi's registration and disclosure thresholds are not particularly low compared to other states. *See ProtectMarriage.com v. Bowen*, 599 F. Supp. 2d 1197, 1221 n.10 (E.D. Cal. 2009) (listing contribution disclosure thresholds of all states, which range from "first dollar reporting" to $300). The State also argues that Mississippi's disclosure and registration forms are significantly less

complex and require less disclosure than many of the campaign forms in other states.[4]

TRO/PRELIMINARY INJUNCTION STANDARD

A preliminary injunction is considered extraordinary relief, and a determination as to whether a set of circumstances warrant such relief rests in the discretion of the district court subject only to four preconditions enumerated by the Fifth Circuit. *Canal Auth. of State of Florida v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974). To prevail on a motion for preliminary injunction, a plaintiff must show (1) a substantial likelihood that plaintiff will prevail on the merits; (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted; (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant; and (4) that granting the preliminary injunction will not disserve the public interest. *Id.* The party seeking such relief must prove each of the four elements enumerated before a temporary restraining order or preliminary injunction can be granted. *Miss. Power & Light Co. v. United Gas Pipeline*, 760 F.2d 618, 621 (5th Cir. 1985).

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[4] In its response, the State attached the registration and reporting forms for Oregon, Montana, Massachusetts, Ohio, North Dakota, and Washington.

DISCUSSION

I. Substantial Likelihood that the Plaintiffs will Prevail on the Merits

Plaintiffs must first demonstrate a substantial likelihood they will prevail on the merits. In other words, Plaintiffs must demonstrate a substantial likelihood that Mississippi's disclosure laws are unconstitutional as applied to them. However, "burdens at the preliminary injunction stage track the burdens at trial." *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418, 126 S. Ct. 1211, 1219, 163 L. Ed. 2d 1017 (2006). Therefore, as an initial matter, the Court must determine what level of scrutiny is applicable to the laws in question.

A. Applicable Level of Scrutiny

Plaintiffs assert that strict scrutiny applies to Mississippi's campaign laws. Generally, "[l]aws that burden political speech are subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Citizens United v. Federal Election Comm'n*, 558 U.S. ___, ___, 130 S. Ct. 876, 898, 175 L. Ed. 2d 753 (2010) (internal quotation marks omitted). Under strict scrutiny, "[i]f a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative." *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 813, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000); *see also Sable Commc'n of Cal., Inc. v.*

FCC, 492 U.S. 115, 126, 109 S. Ct. 2829, 106 L. Ed. 2d 93 (1989) ("The Government may . . . regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest").

However, the Supreme Court has distinguished laws that "restrict the amount of money a person or group can spend on political communications" and laws that simply require disclosure of information by those engaging in political speech. *Buckley v. Valeo*, 424 U.S. 1, 19, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (*Buckley I*). "Disclaimer and disclosure requirements may burden the ability to speak, but they impose no ceiling on campaign related activities and do not prevent anyone from speaking." *Citizens United*, 130 S. Ct. at 914 (citations and internal quotation marks omitted). For that reason, disclosure requirements have not been subjected to strict scrutiny, but rather to what the Court has termed "exacting scrutiny." *See id.* Exacting scrutiny, a less stringent standard than strict scrutiny, "requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Id.* (citing *Buckley I*, 424 U.S. at 64, 66, 96 S. Ct. 612).[5] Similarly, in *Doe*

[5] The question of whether the level of scrutiny applied to campaign finance disclosure laws is "strict," or "exacting," or whether these are different standards has admittedly been unclear until recently. *See Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1003-05 (9th Cir. 2010) (discussing the Supreme Court's arguably inconsistent precedents in this area).

v. Reed, 130 S. Ct. 2811, 2819, 177 L. Ed. 2d 493 (2010), the Supreme Court stated:

> We have a series of precedents considering First Amendment challenges to disclosure requirements in the electoral context. These precedents have reviewed such challenges under what has been termed "exacting scrutiny." That standard requires a substantial relation between the disclosure requirement and a sufficiently important governmental interest.

Plaintiffs, however, contend that "strict scrutiny is required because the Supreme Court applied strict scrutiny to PAC burdens in *Citizens United.*" However, this is a misreading of *Citizens United.*

Citizens United addressed the Bi-Partisan Campaign Reform Act of 2002 ("BCRA"), which prohibited corporations and unions from using general treasury funds to make expenditures for "electioneering communication" or for speech expressly advocating the election or defeat of a candidate. *Citizens United*, 130 S. Ct. at 887. However, corporations could, subject to federal regulations, form and speak through Political Action Committees (PACs). *Id.* Applying strict scrutiny, the Court held that the BCRA was an impermissible ban on independent expenditures by corporations, regardless of the corporation's abilities to speak through PACs. The Court explained:

> The law before us is an outright ban, backed by criminal sanctions. Section 441b makes it a felony for all corporations – including

nonprofit advocacy corporations – either to expressly advocate the election or defeat of candidates or to broadcast electioneering communications within 30 days of a primary election and 60 days of a general election. Thus, the following acts would all be felonies under § 441b: The Sierra Club runs an ad, within the crucial phase of 60 days before the general election, that exhorts the public to disapprove of a Congressman who favors logging in national forests; the National Rifle Association publishes a book urging the public to vote for the challenger because the incumbent U.S. Senator supports a handgun ban; and the American Civil Liberties Union creates a Web site telling the public to vote for a Presidential candidate in light of that candidate's defense of free speech. These prohibitions are classic examples of censorship.

Section 441b is a ban on corporate speech notwithstanding the fact that a PAC created by a corporation can still speak. A PAC is a separate association from the corporation. So the PAC exemption from § 441b's expenditure ban, § 441b(b)(2), does not allow corporations to speak. Even if a PAC could somehow allow a corporation to speak – and it does not – the option to form PACs does not alleviate the First Amendment problems with § 441b. PACs are burdensome alternatives; they are expensive to administer and subject to extensive regulations. For example, every PAC must appoint a treasurer, forward donations to the treasurer promptly,

> keep detailed records of the identities of the persons making donations, preserve receipts for three years, and file an organization statement and report changes to this information within 10 days.

Id. at 897 (citations omitted). Although the Court found PAC requirements to be "burdensome," the most salient feature of § 441(b) was that it amounted to an "outright ban," because it did not allow corporations to speak on their own behalf. Instead, they could only speak through a separate entity such as a PAC. The laws at issue here, although they share some similar features with the PAC requirements discussed in *Citizens United*, do not prevent groups or individuals from speaking on their own behalf – they merely require certain financial disclosures. Moreover, *Citizens United* upheld, applying exacting scrutiny, a separate law (2 U.S.C. § 434(f)) requiring, *inter alia*, that a person who spends more than $10,000 on electioneering communications in a calendar year must file a disclosure statement with the FEC identifying the person making the expenditure, the amount of the expenditure, the election to which the communication was directed, and the names of certain contributors. *Id.* at 913-14. Accordingly, the Court finds that exacting scrutiny is the appropriate standard to apply to Mississippi's disclosure laws. *See id.*; *Reed*, 130 S. Ct. at 2818; *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 55 (1st Cir. 2011) ("disclosure requirements have not been subjected to strict scrutiny, but rather to 'exacting scrutiny.'" (citing *Citizens United*, 130 S. Ct. at 914; *Reed*, 130 S. Ct. at 2818));

Brumsickle, 624 F.3d at 1024 ("As the latest in a trilogy of recent Supreme Court cases, *Reed* confirmed that exacting scrutiny applies in the campaign finance disclosure context"). Therefore, the Government must demonstrate a "substantial relation" between the disclosure requirement and a "sufficiently important governmental interest." *Citizens United*, 130 S. Ct. at 914.

B. Important Governmental Interest

The State asserts that the most important interest served by Mississippi's disclosure laws is the "informational interest." In *Buckley I*, the Supreme Court found that disclosure laws may be supported by an informational interest, stating:

> [D]isclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

Buckley I, 424 U.S. at 66 (footnote omitted).

Plaintiffs argue that this informational interest is limited to the context of candidates running for office; they argue that it does not apply, or alternatively, applies with much less force in the context of ballot initiatives. Plaintiffs note that the while the Supreme Court has discussed the utility of disclosure laws in the ballot issue context on three occasions, it has done so only in dicta.

In *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978), the Supreme Court invalidated a Massachusetts statute prohibiting corporate expenditures in ballot-issue campaigns. *Id.* at 767, 98 S. Ct. 1407. However, the Court stated that people "may consider, in making their judgment, the source and credibility of the advocate. . . . Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected." *Id.* at 791-92, 792 n.32, 98 S. Ct. 1407.

In *Citizens Against Rent Control v. City of Berkely*, 454 U.S. 290, 102 S. Ct. 434, 70 L. Ed. 2d 492 (1981), the Supreme Court invalidated a municipal ordinance setting a cap on contributions to committees supporting or opposing ballot measures. *Id.* at 291-94, 102 S. Ct. 434. The Court concluded that the cap was not necessary because another provision in the ordinance mandated disclosure, stating, "The integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed; if it is

thought wise, legislation can outlaw anonymous contributions." *Id.* at 299-300, 102 S. Ct. 434.

Finally, in *Buckley v. American Const. Law Found., Inc.*, 525 U.S. 182, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999) (*Buckley II*), the Court invalidated a Colorado statute requiring the disclosure of the names of paid initiative circulators and the amount paid to each circulator. However, the Court, remarking on requirements that were not being challenged, stated:

> We explained in [*Buckley I*] that disclosure provides the electorate with information "as to where political campaign money comes from and how it is spent," thereby aiding electors in evaluating those who seek their vote. We further observed that disclosure requirements "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. . . . In this regard, the State and supporting amici stress the importance of disclosure as a control or check on domination of the initiative process by affluent special interest groups. . . . Disclosure of the names of initiative sponsors, and of the amounts they have spent gathering support for their initiatives, responds to that substantial state interest. . . . Through the disclosure requirements that remain in place, voters are informed of the source and amount of money spent by proponents to get a measure on the ballot; in other words, voters will be told who has proposed a measure

> and who has provided funds for its circulation.

Id. at 525 U.S. at 202-03, 119 S. Ct. 636 (citations, brackets, and internal quotation marks omitted).

Plaintiffs further argue that the Supreme Court has "squarely rejected the application of the informational interest to ballot elections," relying on *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 348-49, 115 S. Ct. 1511, 131 L. Ed. 2d 426 (1995). In *McIntyre*, the Plaintiff was fined for distributing anonymous leaflets in opposition to a referendum on a school tax levy, which violated an Ohio law prohibiting the distribution of unsigned leaflets. *Id.* at 337-38, 115 S. Ct. 1511. The Court stated, in response to the State's argument that it had a compelling interest in "providing the electorate with relevant information," that:

> The simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures she would otherwise omit. Moreover, in the case of a handbill written by a private citizen who is not known to the recipient, the name and address of the author add little, if anything, to the reader's ability to evaluate the document's message. Thus, Ohio's informational interest is plainly insufficient to support the constitutionality of its disclosure requirement.

Id. at 348-49, 115 S. Ct. 1511. The Court finds, for substantially the reasons expressed by the court in

Cal. Pro-Life Council, Inc. v. Getman, 328 F.3d 1088, 1104 (9th Cir. 2003) (*CPLC I*), that *McIntyre* does not stand for the proposition the Plaintiffs assert. In *CPLC I*, the court stated:

> Like the Court in *McIntyre*, CPLC asks us to disregard California's informational interest in disclosure and hold that ballot-measure advocacy is absolutely protected speech. We think *McIntyre* is distinguishable from the case at bar, as the *McIntyre* Court itself observed. There the Court drew a distinction between prohibiting the distribution of anonymous literature and the mandatory disclosure of campaign-related expenditures and contributions. *Id.* at 353-55, 115 S. Ct. 1511 (distinguishing [*Buckley I*]). Though contributing and expending money is a form of speech, the Court explained that this type of speech is less worthy of protection than McIntyre's "personally crafted" leaflet:
>
> > A written election-related document – particularly a leaflet – is often a personally crafted statement of a political viewpoint. Mrs. McIntyre's handbills surely fit that description. As such, identification of the author against her will is particularly intrusive; it reveals unmistakably the content of her thoughts on a controversial issue. Disclosure of an expenditure and its use, without more, reveals far less information. It may be information that a person prefers to keep secret, and undoubtedly it often gives away something about the

> spender's political views. Nonetheless, even though money may "talk," its speech is less specific, less personal, and less provocative than a handbill – and as a result, when money supports an unpopular viewpoint it is less likely to precipitate retaliation.

CPLC I, 328 F.3d at 1104 (footnote omitted) (quoting *McIntyre*, 514 U.S. at 355, 115 S. Ct. 1511). Additionally, the Court notes that the *McIntyre* applied strict scrutiny to the Ohio statute, *McIntyre*, 514 U.S. at 347-48, 115 S. Ct. 1511, rather than the exacting scrutiny standard enunciated in *Citizens United* and *Reed*.

The Tenth Circuit has taken a dim view of the informational interest in the context of ballot initiatives. In *Sampson v. Buescher*, a case heavily relied on by the Plaintiffs, the court opined:

> Thus, the reporting and disclosure requirements for Colorado issue committees (at least those committees addressing ballot issues) must be justified on the third ground – the informational interest. We must therefore analyze the public interest in knowing who is spending and receiving money to support or oppose a ballot issue. It is not obvious that there is such a public interest. Candidate elections are, by definition, ad hominem affairs. The voter must evaluate a human being, deciding what the candidate's personal beliefs are and what influences are likely to be brought to bear when he or she must

> decide on the advisability of future governmental action. The identities of those with strong financial ties to the candidate are important data in that evaluation. In contrast, when a ballot issue is before the voter, the choice is whether to approve or disapprove of discrete governmental action, such as annexing territory, floating a bond, or amending a statute. No human being is being evaluated. When many complain about the deterioration of public discourse-in particular, the inability or unwillingness of citizens to listen to proposals made by particular people or by members of particular groups-one could wonder about the utility of ad hominem arguments in evaluating ballot issues. Nondisclosure could require the debate to actually be about the merits of the proposition on the ballot. Indeed, the Supreme Court has recognized that "[a]nonymity . . . provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent." *McIntyre*, 514 U.S. at 342, 115 S. Ct. 1511.

625 F.3d 1247, 1256-57 (10th Cir. 2010). The court concluded, "assuming that there is a legitimate public interest in financial disclosure from campaign organizations, we also recognize that this interest is significantly attenuated when the organization is concerned with only a single ballot issue and when the contributions and expenditures are slight." *Id.* at 1259.

The Ninth Circuit, by contrast, has held that the informational interest applies even more strongly in the context of ballot initiatives. For example, in *CPLC I*, the court stated:

> Though the [*Buckley I*] Court discussed the value of disclosure for candidate elections, *the same considerations apply just as forcefully, if not more so, for voter-decided ballot measures*. Even more than candidate elections, initiative campaigns have become a money game, where average citizens are subjected to advertising blitzes of distortion and half-truths and are left to figure out for themselves which interest groups pose the greatest threats to their self-interest. Knowing which interested parties back or oppose a ballot measure is critical, especially when one considers that ballot-measure language is typically confusing, and the long-term policy ramifications of the ballot measure are often unknown. At least by knowing who backs or opposes a given initiative, voters will have a pretty good idea of who stands to benefit from the legislation.
>
> Voters act as legislators in the ballot-measure context, and interest groups and individuals advocating a measure's defeat or passage act as lobbyists; both groups aim at pressuring the public to pass or defeat legislation. We think Californians, as lawmakers, have an interest in knowing who is lobbying for their vote, just as members of Congress may require lobbyists to disclose who is paying for the lobbyists' services and how much.

328 F.3d at 1105-06 (internal quotations, citations, and footnote omitted) (emphasis added); *see also Brumsickle*, 624 F.3d at 1007 ("Access to reliable information becomes even more important as more speakers, more speech – and thus more spending – enter the marketplace, which is precisely what has occurred in recent years. Like campaigns for elected office, ballot initiatives are the subject of intense debate and, accordingly, greater expenditures to ensure that messages reach voters."); *Canyon Ferry Road Baptist Church v. Unsworth*, 556 F.3d 1021, 1032 (9th Cir. 2009) (stating "as a general matter, mandating disclosure of the financiers of a ballot initiative may prevent the wolf from masquerading in sheep's clothing" and finding "we have little trouble concluding that Montana's informational interest is generally 'important' in the context of Montana's statewide ballot issues.").

After careful consideration of the above precedent, this Court is of the opinion that the Ninth Circuit's view of the State's informational interest in the context of ballot initiatives is more persuasive. Accordingly, the Court finds that Mississippi informational interest in this context is "important," satisfying the first prong of exacting scrutiny. Because the Court finds that the State's informational interest is a sufficiently important interest to survive exacting scrutiny, the Court need not decide at this point whether the State's interest in detecting violations of its campaign finance laws in the context of ballot

initiative spending is sufficiently important to survive exacting scrutiny.

C. Substantial Relation

The Court must next assess the "fit" between Mississippi's disclosure requirements and the State's informational interest. *See Canyon Ferry*, 556 F.3d at 1034. The inquiry is "one of degree, not kind, for it is well established that, in the ordinary case, a state informational interest is sufficient to justify the mandatory reporting of expenditures and contributions in the context of ballot initiatives." *Id.* (citing *Alaska Right to Life Comm. v. Miles*, 441 F.3d 773, 789-92 (9th Cir. 2006); *Cal. Pro-Life Council, Inc. v. Randolph*, 507 F.3d 1172, 1189 (9th Cir. 2007) (*CPLC II*). The Plaintiffs argue that "no informational interest can exist at the point that Mississippi imposes those burdens [registration, reporting, or disclosure provisions of Mississippi's campaign finance laws]." In other words, Plaintiffs argue that the statutes' threshold amount for registration and disclosure is too low relative to the burdens it imposes.

In *Buckley I*, the Supreme Court considered whether a $10 record keeping threshold and a $100 disclosure threshold passed constitutional review. *Buckley I*, 424 U.S. at 82-83, 96 S. Ct. 612. The Court stated:

> The $10 and $100 thresholds are indeed low. Contributors of relatively small amounts are likely to be especially sensitive to recording

> or disclosure of their political preferences. These strict requirements may well discourage participation by some citizens in the political process, a result that Congress hardly could have intended. Indeed, there is little in the legislative history to indicate that Congress focused carefully on the appropriate level at which to require recording and disclosure. Rather, it seems merely to have adopted the thresholds existing in similar disclosure laws since. But we cannot require Congress to establish that it has chosen the highest reasonable threshold. The line is necessarily a judgmental decision, best left in the context of this complex legislation to congressional discretion. *We cannot say, on this bare record, that the limits designated are wholly without rationality.*

Id. at 83, 96 S. Ct. 612 (emphasis added). *Buckley I's* deference to the legislature in setting disclosure thresholds unless they are "wholly without rationality" has continued to be followed in recent cases. *See*, *e.g.*, *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 60 (1st Cir. 2011) ("Following [*Buckley I*], we have granted judicial deference to plausible legislative judgments as to the appropriate location of a reporting threshold, and have upheld such legislative determinations unless they are wholly without rationality.") (citations and internal quotes omitted); *Nat'l Org. for Marriage v. Daluz*, 654 F.3d 115, 119 (1st Cir. 2011); *Canyon Ferry*, 556 F.3d at 1033; *ProtectMarriage.com v. Bowen*, 599 F. Supp. 2d 1197, 1220-21 (E.D. Cal. 2009); *Jackson v. Leake*, 476 F. Supp. 2d 515, 526 (E.D.N.C. 2006).

Plaintiffs argued at the hearing that *Randall v. Sorrell* disavowed this deference in favor of the "exercise of independent judicial judgment." 548 U.S. 230, 249, 126 S. Ct. 2479, 165 L. Ed. 2d 482 (2006). However, of particular import, *Sorrell* addressed a law imposing a substantive cap on campaign contributions as opposed to a disclosure law. As the First Circuit recognized in *McKee* while addressing a similar argument, "[t]he limits at issue in *Sorrell*, however, were substantive contribution limits, the setting of which presents different considerations than the determination of the threshold for a reporting requirement, and which is subject to different standards of review." *McKee*, 649 F.3d at 61. As the Court held in *Citizens United*, "[d]isclaimer and disclosure requirements may burden the ability to speak, but they impose no ceiling on campaign related activities and do not prevent anyone from speaking." *Citizens United*, 130 S. Ct. at 914 (citations and internal quotation marks omitted). Therefore, this Court does not read *Sorrell* as changing the degree of deference the Court affords the legislature in setting disclosure thresholds.

Plaintiffs cite three cases in which reporting requirements for ballot initiative related spending were found to be unconstitutional as applied: *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010); *Hatchett v. Barland*, ___ F. Supp. 2d ___, 2011 WL 4336740 (E.D. Wis. Sept. 4, 2011); and *Swaffer v. Cane*, 610 F. Supp. 2d 962 (E.D. Wis. 2009). This Court finds significant, however, that none of these three cases

discuss *Buckley I's* "wholly without rationality" test, among other distinctions discussed below.

In *Sampson*, the Tenth Circuit held that Colorado's campaign reporting and disclosure requirements were unconstitutional as applied to a committee that had raised less than $1,000 in opposition to a ballot proposal to annex their neighborhood into a nearby town. *Sampson*, 625 F.3d at 1261. As stated above, the Tenth Circuit first determined that the State's interest in disclosure "appl[ies] only partially (or perhaps not all) to ballot-issue campaigns." *Id.* at 1255. The court also noted that, "[t]he case before us is quite unlike ones involving the expenditure of tens of millions of dollars on ballot issues presenting 'complex policy proposals.'" *Id.* at 1261.

The court then determined that "The average citizen cannot be expected to master on his or her own the many campaign financial-disclosure requirements set forth in Colorado's constitution, the Campaign Act, and the Secretary of State's Rules Concerning Campaign and Political Finance." *Id.* at 1259. Here, the State argues that Mississippi's four forms (each of which are one page long) "could not be argued to be beyond the understanding of the 'average citizen' as they are less complex than many of the forms completed by average citizens on a routine basis."[6]

[6] To illustrate its point, the State has supplemented the record with sundry forms such as, *inter alia*, a Mississippi driver's license application, hunting license application, or gym membership application.

Additionally, as the State points out, the Colorado statute at issue went beyond Mississippi's disclosure requirements, in that: (1) a $20, as opposed to $200, donor reporting threshold applied; (2) all monetary contributions received must be deposited in a separate account in the committee's name; (3) no contribution or expenditure exceeding $100 could be in cash; (4) the group must have a registered agent; (5) the group must register before accepting any contributions; and (6) the group must disclose the names and address of the financial institution used. *See id.* at 1249-51. For these reasons, the Court finds *Sampson* distinguishable.

In *Swaffer* and *Hatchett*, the Eastern District of Wisconsin addressed two different versions of a Wisconsin statute. In *Swaffer*, the law required registration and disclosures by any individual or group who spent in excess of $25 in a calendar year promoting or opposing a vote on a referendum. *Swaffer*, 610 F. Supp. 2d at 966. In *Hatchett*, the court addressed an amended version of the law which raised the threshold to $750 per calendar year. *Hatchett*, 2011 WL 4336740 at *4. As the State again points out, the Wisconsin statutes at issue is more onerous than its Mississippi counterpart in that they: (1) prohibited groups or individuals from using anonymous contributions in excess of $10, and instead required them to donate such contributions to charity; (2) prohibited the receipt of any contribution or the expenditure of any funds at a time where is a vacancy of the office of treasurer

of a group; (3) required a dedicated bank account; (4) required all contributions, disbursements and obligations exceeding $10 to be recorded by the group treasurer or the individual; and (5) required an itemized disclosure giving the name and address of any contributor giving more than $20 in a calendar year. *Id.* at 600-01, at *16.

The State cites the cases of *Human Life of Washington v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010), *Alaska Right to Life Committee v. Miles*, 441 F.3d 773 (9th Cir. 2006), *ProtectMarriage.com v. Bowen*, 599 F. Supp. 2d 1197 (E.D. Cal. 2009), and *Olson v. City of Golden*, ___ F. Supp. 2d ___, 2011 WL 3861433 (D. Colo. 2011), in support of upholding Mississippi's disclosure laws. In *Brumsickle*, the Ninth Circuit upheld Washington's disclosure law, which was triggered on the mere "expectation" of a group receiving *any* contributions or making any expenditures. *Brumsickle*, 624 F.3d at 997. Any such group was designated as a "political committee," and required to (1) appoint a treasurer; (2) open a bank account in the state of Washington; and (3) file a two page registration form. *Id.*[7] The court concluded that "because the Disclosure Law's somewhat modest political committee disclosure requirements are substantially related to the government's interest in informing the electorate, they survive exacting scrutiny." *Id.* at 1014.

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[7] The law imposed additional reporting requirements on groups that raise or spend more than $5,000 in a year or receive more than $500 from any single donor. *Id.* at 998.

Similarly, in *Miles*, the Ninth Circuit upheld Alaska's campaign disclosure laws even applying (in accordance with Ninth Circuit precedent at the time) strict scrutiny. *Miles*, 441 F.3d at 789. The Alaska law required an entity making campaign related independent expenditures to file disclosure reports if its annual operating budget exceeded $150. The court found these burdens were "not particularly onerous." *Id.* at 791.

In *Bowen*, the Eastern District of California upheld a California disclosure statute that required disclosure of any contributor donating more than $100. *Bowen*, 599 F. Supp. 2d at 1220-21. The court, again applying strict scrutiny, found "the legislative line drawn is narrowly tailored to the State's compelling information interest, that the threshold need not be indexed for inflation, and that a contrary holding would call into question scores of statutes in which the legislature or the people have sought to draw similar lines." *Id.* at 1220.

Finally, in *Olson*, the court rejected a first amendment challenge to a reporting requirement for any expenditure of $50 or more "by any person or organization for the purpose of expressly advocating the election or defeat of any candidate, ballot issue, ballot question or issue." *Olson*, 2011 WL 3861433, at *1. The Court concluded:

> Golden has carried its burden in showing that the disclosure requirements of the 2005 Ordinance served a compelling purpose in

> providing information to the public about the source of non-campaign funds expended on behalf of a candidate or issue and deterring corruption or the appearance of corruption. In addition, Golden has shown that the 2005 Ordinance was narrowly tailored to that purpose. The disclosure requirements were not onerous, involving only the reporting of expenditures over $50. The report required identifying and contact information about the person making such expenditure, the candidate or issue that the expenditures were intended to support or oppose, information about the vendors and a description of the expenditure, and the date and amount of the expenditure. This provided the information the public would need to understand who spent money on behalf of a candidate or issue, how much, how, and what the effect of that expenditure might be.

Id. at *9.

In light of the foregoing authority, the Court finds that the Plaintiffs have failed to demonstrate a substantial likelihood of success on the merits. The State has demonstrated an informational interest that is at least "important," if not compelling, and the disclosure laws here are substantially related to the interest. The requirements here do not limit the amount of money that may be raised or expended by the Plaintiffs. They do not unduly inhibit the ability of the Plaintiffs to raise money, nor do they impose overly burdensome structural requirements on the Plaintiffs. The information required by Mississippi's

registration and disclosure forms is not overly intrusive nor do the forms seem particularly complex. Additionally, the Court finds it significant that Mississippi's registration and disclosure thresholds fall "well within spectrum of those mandated by its sister states." *Bowen*, 599 F. Supp. 2d at 1221. The Court cannot say that the $200 threshold set by the legislature for registration and disclosure is "wholly without rationality." In sum, the Court finds the State has carried its burden of showing that the disclosure laws at issue are substantially related to its important informational interest. Therefore, the Court finds that the Plaintiffs have failed to demonstrate a substantial likelihood of success on the merits.

II. Substantial Threat of Irreparable Injury to the Plaintiff

The United States Supreme Court has held that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 2690, 49 L. Ed. 2d 547 (1976). However, because the Court has found that the Plaintiff's are unlikely to succeed on the merits of their claim, and additionally finds below that the third and fourth *Canal Authority* factors are not met, the Court need not determine whether Plaintiffs' assertion that their ballot initiative related speech will be chilled if they are forced to comply with Mississippi's disclosure laws constitutes an irreparable injury.

III. Harm to the Plaintiff Versus Harm to the Defendant & Public Interest

The Court finds that the harm to the Defendant is outweighed by any harm to the Plaintiff if the Court fails to grant a preliminary injunction. The Court additionally finds that granting a preliminary injunction would not serve the public interest. As the court stated in *Bowen*, "if disclosure is prevented, the people of California will be denied the ability to fully inform themselves of the circumstances surrounding the passage of Proposition 8. For the reasons already articulated, the balance of hardships favors the Plaintiffs and consideration of the public interest weighs against injunctive relief." 599 F. Supp. 2d at 1226; *see also Worley v. Roberts*, 749 F. Supp. 2d 1321, 1325 (N.D. Fla. 2010) (holding "the disruption that would be caused by the invalidation of this disclosure requirement, on the eve of the election, would be substantial").

Furthermore, as the State argues, Plaintiffs have waited until the eleventh hour to file this lawsuit and have not demonstrated any emergency basis for the entry of a temporary restraining order or preliminary injunction. In *Respect Maine PAC v. McKee*, the First Circuit denied granting the Plaintiffs an emergency injunction enjoining Maine's election laws in part because of the untimeliness of the suit, stating:

> In determining the weight to be accorded to the appellants' claims, we also note that this "emergency" is largely one of their own making. The appellants, well aware of the

> requirements of the election laws, chose not to bring this suit until August 5, 2010, shortly before the November 2 elections. . . . Further, the case law on which they rely is not new. They rely primarily on *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 128 S. Ct. 2759, 171 L. Ed. 2d 737 (2008), which was decided on June 26, 2008. *Citizens United v. Fed. Election Comm'n*, ___ U.S. ___, 130 S. Ct. 876, ___ L. Ed. 2d ___ (2010), was decided in January 2010.

622 F.3d 13, 16 (1st Cir. 2010); *see also Garrard v. City of Grenada*, 2005 WL 2175729 (N.D. Miss. Sept. 8, 2005) (noting that temporary restraining order requested prior to mayoral and city council elections was denied because of its "eleventh hour filing"). Similarly, in *Worley*, the court denied the Plaintiffs' request for a preliminary injunction of Florida's disclosure laws, stating:

> There have been no changes in the relevant facts or law that explain the last-minute filing of the lawsuit. This is, instead, an emergency entirely of the plaintiffs' own making. And the disruption that would be caused by the invalidation of this disclosure requirement, on the eve of the election, would be substantial. If the plaintiffs were likely to prevail on the merits, the late filing of the claim would perhaps not be fatal. But when a claim seeks to depart from long-established precedent, and does so too late to allow meaningful appellate review, the balance of equities and public interest at least suggest

> caution. Enforcement of the disclosure requirement will not be preliminarily enjoined.

Worley, 749 F. Supp. 2d at 1324.

Here, the lateness of the Plaintiffs' motion, filed nineteen days before the election, weighs against granting the extraordinary remedy of injunctive relief. "It is well established that in election-related matters, extreme diligence and promptness are required." *McClafferty v. Portage County Bd. of Elections*, 661 F. Supp. 2d 826, 839 (N.D. Ohio 2009); *Cf. Reynolds v. Sims*, 377 U.S. 533, 585, 84 S. Ct. 1362, 12 L. Ed. 2d 506 ("under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case").

CONCLUSION

For the foregoing reasons, the Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction is DENIED.

SO ORDERED on this, the 3rd day of November, 2011.

/s/ Sharion Aycock
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 13-60754

GORDON VANCE JUSTICE, JR.; SHARON BYNUM; MATTHEW JOHNSON; ALISON KINNAMAN; STANLEY O'DELL,

Plaintiffs-Appellees

v.

DELBERT HOSEMANN, in his official capacity as Mississippi Secretary of State; JAMES M. HOOD, III, in his official capacity as Attorney General of the State of Mississippi,

Defendants-Appellants

Appeal from the United States District Court for the Northern District of Mississippi, Oxford

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ON PETITION FOR REHEARING EN BANC

(Filed Aug. 21, 2015)

(Opinion 11/14/2014, 5 Cir., ___, ___, F.3d ___)

Before DAVIS, DENNIS, and COSTA, Circuit Judges.

PER CURIAM:

(✓) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ Gregg Costa
UNITED STATES CIRCUIT JUDGE

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* Judge Jolly did not participate in the consideration of the rehearing en banc.

RELEVANT CONSTITUTIONAL PROVISIONS

AmendmentI. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when

the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the

United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

RELEVANT CODES AND STATUTES

42 U.S.C.A. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Miss. Code Ann. § 23-15-801. Definitions

(a) "Election" shall mean a general, special, primary or runoff election.

(b) "Candidate" shall mean an individual who seeks nomination for election, or election, to any elective office other than a federal elective office and for purposes of this article, an individual shall be deemed to seek nomination for election, or election:

(i) If such individual has received contributions aggregating in excess of Two Hundred Dollars ($ 200.00) or has made expenditures aggregating in excess of Two Hundred Dollars ($ 200.00) or for a candidate for the Legislature or any statewide or state district office, by the qualifying deadlines specified in Sections 23-15-299 and 23-15-977, whichever occurs first; or

(ii) If such individual has given his or her consent to another person to receive contributions or make expenditures on behalf of such individual and if such person has received such contributions aggregating in excess of Two Hundred Dollars ($ 200.00) during a calendar year, or has made such expenditures aggregating in excess of Two Hundred Dollars ($ 200.00) during a calendar year.

(c) "Political committee" shall mean any committee, party, club, association, political action committee, campaign committee or other groups of persons or affiliated organizations which receives contributions aggregating in excess of Two Hundred Dollars ($ 200.00) during a calendar year or which makes expenditures aggregating in excess of Two Hundred Dollars ($ 200.00) during a calendar year for the purpose of influencing or attempting to influence the action of voters for or against the nomination for election, or election, of one or more candidates, or balloted measures and shall, in addition, include each political party registered with the Secretary of State.

(d) "Affiliated organization" shall mean any organization which is not a political committee, but which directly or indirectly establishes, administers or financially supports a political committee.

(e) (i) "Contribution" shall include any gift, subscription, loan, advance or deposit of money or anything of value made by any person or political committee for the purpose of influencing any election for elective office or balloted measure;

(ii) "Contribution" shall not include the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee; or the cost of any food or beverage for use in any candidate's campaign or for use by or on behalf of any political committee of a political party;

(iii) "Contribution to a political party" includes any gift, subscription, loan, advance or deposit of money or anything of value made by any person, political committee, or other organization to a political party and to any committee, subcommittee, campaign committee, political committee and other groups of persons and affiliated organizations of the political party.

(iv) "Contribution to a political party" shall not include the value of services provided without compensation by any individual who volunteers on behalf of a political party or a candidate of a political party.

(f) (i) "Expenditure" shall include any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person or political committee for the purpose of influencing any balloted measure or election for elective office; and a written contract, promise, or agreement to make an expenditure;

(ii) "Expenditure" shall not include any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate; or nonpartisan activity designed to encourage individuals to vote or to register to vote;

(iii) "Expenditure by a political party" includes 1. any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any political party and by any contractor, subcontractor, agent, and consultant to the political party; and 2. a written contract, promise, or agreement to make such an expenditure.

(g) The term "identification" shall mean:

(i) In the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and

(ii) In the case of any other person, the full name and address of such person.

(h) The term "political party" shall mean an association, committee or organization which nominates a candidate for election to any elective office whose name appears on the election ballot as the candidate of such association, committee or organization.

(i) The term "person" shall mean any individual, family, firm, corporation, partnership, association or other legal entity.

(j) The term "independent expenditure" shall mean an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate or any authorized committee or agent of such candidate, and which is not made in concert with or at the request or suggestion of any candidate or any authorized committee or agent of such candidate.

(k) The term "clearly identified" shall mean that:

(i) The name of the candidate involved appears; or

(ii) A photograph or drawing of the candidate appears; or

(iii) The identity of the candidate is apparent by unambiguous reference.

§ 23-15-803. Registration of political committees

(a) Statements of organization. Each political committee shall file a statement of organization no later than ten (10) days after receipt of contributions aggregating in excess of Two Hundred Dollars ($ 200.00), or no later than ten (10) days after having made expenditures aggregating in excess of Two Hundred Dollars ($ 200.00).

(b) Contents of statements. The statement of organization of a political committee shall include:

(i) The name and address of the committee and all officers;

(ii) Designation of a director of the committee and a custodian of books and accounts of the committee, who shall be designated treasurer; and

(iii) If the committee is authorized by a candidate, the name, address, office sought, and party affiliation of the candidate.

(c) Change of information in statements. Any change in information previously submitted in a statement of organization shall be reported and noted on the next regularly scheduled report.

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§ 23-15-805. Filing of reports; public inspection and preservation of reports

(a) Candidates for state, state district, and legislative district offices, and every political committee,

which makes reportable contributions to or expenditures in support of or in opposition to a candidate for any such office or makes reportable contributions to or expenditures in support of or in opposition to a statewide ballot measure, shall file all reports required under this article with the Office of the Secretary of State.

(b) Candidates for county or county district office, and every political committee which makes reportable contributions to or expenditures in support of or in opposition to a candidate for such office or makes reportable contributions to or expenditures in support of or in opposition to a countywide ballot measure or a ballot measure affecting part of a county, excepting a municipal ballot measure, shall file all reports required by this section in the office of the circuit clerk of the county in which the election occurs. The circuit clerk shall forward copies of all reports to the Office of the Secretary of State.

(c) Candidates for municipal office, and every political committee which makes reportable contributions to or expenditures in support of or in opposition to a candidate for such office, or makes reportable contributions to or expenditures in support of or in opposition to a municipal ballot measure shall file all reports required by this article in the office of the municipal clerk of the municipality in which the election occurs. The municipal clerk shall forward copies of all reports to the Office of the Secretary of State.

(d) The Secretary of State, the circuit clerks and the municipal clerks shall make all reports received under this subsection available for public inspection and copying and shall preserve such reports for a period of five (5) years.

(e) The provisions of this section applicable to the reporting by a political committee of contributions and expenditures regarding statewide ballot measures shall apply to the statewide special election for the purpose of selecting the official state flag provided for in Section 1 of Laws, 2001, ch. 301.

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§ 23-15-807. Reporting requirements; contributions and disbursements of candidates and political committees

(a) Each candidate or political committee shall file reports of contributions and disbursements in accordance with the provisions of this section. All candidates or political committees required to report may terminate its obligation to report only upon submitting a final report that it will no longer receive any contributions or make any disbursement and that such candidate or committee has no outstanding debts or obligations. The candidate, treasurer or chief executive officer shall sign each such report.

(b) Candidates who are seeking election, or nomination for election, and political committees that make expenditures for the purpose of influencing or attempting to influence the action of voters for or

against the nomination for election, or election, of one or more candidates or balloted measures at such election, shall file the following reports:

(i) In any calendar year during which there is a regularly scheduled election, a preelection report, which shall be filed no later than the seventh day before any election in which such candidate or political committee has accepted contributions or made expenditures and which shall be complete as of the tenth day before such election;

(ii) In 1987 and every fourth year thereafter, periodic reports, which shall be filed no later than the tenth day after April 30, May 31, June 30, September 30 and December 31, and which shall be complete as of the last day of each period; and

(iii) In any calendar years except 1987 and except every fourth year thereafter, a report covering the calendar year which shall be filed no later than January 31 of the following calendar year.

(c) All candidates for judicial office as defined in Section 23-15-975, or their political committees, shall file in the year in which they are to be elected, periodic reports which shall be filed no later than the tenth day after April 30, May 31, June 30, September 30 and December 31.

(d) Contents of reports. Each report under this article shall disclose:

(i) For the reporting period and the calendar year, the total amount of all contributions and the

total amount of all expenditures of the candidate or reporting committee which shall include those required to be identified pursuant to item (ii) of this paragraph as well as the total of all other contributions and expenditures during the calendar year. Such reports shall be cumulative during the calendar year to which they relate;

(ii) The identification of:

1. Each person or political committee who makes a contribution to the reporting candidate or political committee during the reporting period, whose contribution or contributions within the calendar year have an aggregate amount or value in excess of Two Hundred Dollars ($ 200.00) together with the date and amount of any such contribution;

2. Each person or organization, candidate or political committee who receives an expenditure, payment or other transfer from the reporting candidate, political committee or its agent, employee, designee, contractor, consultant or other person or persons acting in its behalf during the reporting period when the expenditure, payment or other transfer to such person, organization, candidate or political committee within the calendar year have an aggregate value or amount in excess of Two Hundred Dollars ($ 200.00) together with the date and amount of such expenditure.

(iii) The total amount of cash on hand of each reporting candidate and reporting political committee;

(iv) In addition to the contents of reports specified in items (i), (ii) and (iii) of this paragraph, each political party shall disclose:

1. Each person or political committee who makes a contribution to a political party during the reporting period and whose contribution or contributions to a political party within the calendar year have an aggregate amount or value in excess of Two Hundred Dollars ($ 200.00), together with the date and amount of the contribution;

2. Each person or organization who receives an expenditure by a political party or expenditures by a political party during the reporting period when the expenditure or expenditures to the person or organization within the calendar year have an aggregate value or amount in excess of Two Hundred Dollars ($ 200.00), together with the date and amount of the expenditure.

(e) The appropriate office specified in Section 23-15-805 must be in actual receipt of the reports specified in this article by 5:00 p.m. on the dates specified in paragraph (b) of this section. If the date specified in paragraph (b) of this section shall fall on a weekend or legal holiday then the report shall be due in the appropriate office at 5:00 p.m. on the first working day before the date specified in paragraph (b) of this section. The reporting candidate or reporting political committee shall ensure that the reports are delivered to the appropriate office by the filing deadline. The Secretary of State may approve specific

means of electronic transmission of completed campaign finance disclosure reports, which may include, but not be limited to, transmission by electronic facsimile (FAX) devices.

(f) (i) If any contribution of more than Two Hundred Dollars ($ 200.00) is received by a candidate or candidate's political committee after the tenth day, but more than forty-eight (48) hours before 12:01 a.m. of the day of the election, the candidate or political committee shall notify the appropriate office designated in Section 23-15-805, within forty-eight (48) hours of receipt of the contribution. The notification shall include:

1. The name of the receiving candidate;

2. The name of the receiving candidate's political committee, if any;

3. The office sought by the candidate;

4. The identification of the contributor;

5. The date of receipt;

6. The amount of the contribution;

7. If the contribution is in-kind, a description of the in-kind contribution; and

8. The signature of the candidate or the treasurer or director of the candidate's political committee.

(ii) The notification shall be in writing, and may be transmitted by overnight mail, courier service, or other reliable means, including electronic facsimile (FAX), but the candidate or candidate's committee shall ensure that the notification shall in fact be received in the appropriate office designated in Section 23-15-805 within forty-eight (48) hours of the contribution.

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§ 23-15-809. Statements by persons other than political committees; filing; indices of expenditures

(a) Every person who makes independent expenditures in an aggregate amount or value in excess of Two Hundred Dollars ($ 200.00) during a calendar year shall file a statement containing the information required under Section 23-15-807. Such statement shall be filed with the appropriate offices as provided for in Section 23-15-805, and such person shall be considered a political committee for the purpose of determining place of filing.

(b) Statements required to be filed by this section shall include:

(i) Information indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(ii) Under penalty of perjury, a certification of whether or not such independent expenditure is

made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(iii) The identification of each person who made a contribution in excess of Two Hundred Dollars ($ 200.00) to the person filing such statement which was made for the purpose of furthering an independent expenditure.

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§ 23-15-811. Penalties

(a) Any candidate or any other person who shall wilfully and deliberately and substantially violate the provisions and prohibitions of this article shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in a sum not to exceed Three Thousand Dollars ($ 3,000.00) or imprisoned for not longer than six (6) months or by both fine and imprisonment.

(b) In addition to the penalties provided in paragraph (a) of this section, any candidate or political committee which is required to file a statement or report which fails to file such statement or report on the date in which it is due may be compelled to file such statement or report by an action in the nature of a mandamus.

(c) No candidate shall be certified as nominated for election or as elected to office unless and until he

files all reports required by this article due as of the date of certification.

(d) No candidate who is elected to office shall receive any salary or other remuneration for the office unless and until he files all reports required by this article due as of the date such salary or remuneration is payable.

(e) In the event that a candidate fails to timely file any report required pursuant to this article but subsequently files a report or reports containing all of the information required to be reported by him as of the date on which the sanctions of paragraphs (c) and (d) of this section would be applied to him, such candidate shall not be subject to the sanctions of said paragraphs (c) and (d).

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§ 23-15-813. Civil penalty for failure to file campaign finance disclosure report; notice to candidate of failure to file; assessment of penalty by Secretary of State; hearing; appeal

(a) In addition to any other penalty permitted by law, the Secretary of State shall require any candidate or political committee, as identified in Section 23-15-805(a), and any other political committee registered with the Secretary of State, who fails to file a campaign finance disclosure report as required under Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, or who shall file a report which fails to substantially comply with the

requirements of Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, to be assessed a civil penalty as follows:

(i) Within five (5) calendar days after any deadline for filing a report pursuant to Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53, the Secretary of State shall compile a list of those candidates and political committees who have failed to file a report. The Secretary of State shall provide each candidate or political committee, who has failed to file a report, notice of the failure by first-class mail.

(ii) Beginning with the tenth calendar day after which any report shall be due, the Secretary of State shall assess the delinquent candidate and political committee a civil penalty of Fifty Dollars ($ 50.00) for each day or part of any day until a valid report is delivered to the Secretary of State, up to a maximum of ten (10) days. However, in the discretion of the Secretary of State, the assessing of the fine may be waived in whole or in part if the Secretary of State determines that unforeseeable mitigating circumstances, such as the health of the candidate, interfered with timely filing of a report. Failure of a candidate or political committee to receive notice of failure to file a report from the Secretary of State is not an unforeseeable mitigating circumstance, and failure to receive the notice shall not result in removal or reduction of any assessed civil penalty.

(iii) Filing of the required report and payment of the fine within ten (10) calendar days of notice by the Secretary of State that a required statement has not been filed, constitutes compliance with Sections 23-15-801 through 23-15-813, or Sections 23-17-47 through 23-17-53.

(iv) Payment of the fine without filing the required report does not in any way excuse or exempt any person required to file from the filing requirements of Sections 23-15-801 through 23-15-813, and Sections 23-17-47 through 23-17-53.

(v) If any candidate or political committee is assessed a civil penalty, and the penalty is not subsequently waived by the Secretary of State, the candidate or political committee shall pay the fine to the Secretary of State within ninety (90) days of the date of the assessment of the fine. If, after one hundred twenty (120) days of the assessment of the fine the payment for the entire amount of the assessed fine has not been received by the Secretary of State, the Secretary of State shall notify the Attorney General of the delinquency, and the Attorney General shall file, where necessary, a suit to compel payment of the civil penalty.

(b) (i) Upon the sworn application, made within sixty (60) calendar days of the date upon which the required report is due, of a candidate or political committee against whom a civil penalty has been assessed pursuant to paragraph (a), the Secretary of State shall forward the application to the State Board

of Election Commissioners. The State Board of Election Commissioners shall appoint one or more hearing officers who shall be former chancellors, circuit court judges, judges of the Court of Appeals or justices of the Supreme Court, and who shall conduct hearings held pursuant to this article. The hearing officer shall fix a time and place for a hearing and shall cause a written notice specifying the civil penalties that have been assessed against the candidate or political committee and notice of the time and place of the hearing to be served upon the candidate or political committee at least twenty (20) calendar days before the hearing date. The notice may be served by mailing a copy thereof by certified mail, postage prepaid, to the last known business address of the candidate or political committee.

(ii) The hearing officer may issue subpoenas for the attendance of witnesses and the production of books and papers at the hearing. Process issued by the hearing officer shall extend to all parts of the state and shall be served by any person designated by the hearing officer for the service.

(iii) The candidate or political committee has the right to appear either personally, by counsel or both, to produce witnesses or evidence in his behalf, to cross-examine witnesses and to have subpoenas issued by the hearing officer.

(iv) At the hearing, the hearing officer shall administer oaths as may be necessary for the proper conduct of the hearing. All hearings shall be

conducted by the hearing officer, who shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of the proceedings, but the determination shall be based upon sufficient evidence to sustain it. The scope of review at the hearing shall be limited to making a determination of whether failure to file a required report was due to an unforeseeable mitigating circumstance.

(v) Where, in any proceeding before the hearing officer, any witness fails or refuses to attend upon a subpoena issued by the commission, refuses to testify, or refuses to produce any books and papers the production of which is called for by a subpoena, the attendance of the witness, the giving of his testimony or the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(vi) Within fifteen (15) calendar days after conclusion of the hearing, the hearing officer shall reduce his or her decision to writing and forward an attested true copy of the decision to the last known business address of the candidate or political committee by way of United States first-class, certified mail, postage prepaid.

(c) (i) The right to appeal from the decision of the hearing officer in an administrative hearing concerning the assessment of civil penalties authorized pursuant to this section is granted. The appeal

shall be to the Circuit Court of Hinds County and shall include a verbatim transcript of the testimony at the hearing. The appeal shall be taken within thirty (30) calendar days after notice of the decision of the commission following an administrative hearing. The appeal shall be perfected upon filing notice of the appeal and by the prepayment of all costs, including the cost of the preparation of the record of the proceedings by the hearing officer, and the filing of a bond in the sum of Two Hundred Dollars ($ 200.00), conditioned that if the decision of the hearing officer be affirmed by the court, the candidate or political committee will pay the costs of the appeal and the action in court. If the decision is reversed by the court, the Secretary of State will pay the costs of the appeal and the action in court.

(ii) If there is an appeal, the appeal shall act as a supersedeas. The court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may be tried in vacation, in the court's discretion. The scope of review of the court shall be limited to a review of the record made before the hearing officer to determine if the action of the hearing officer is unlawful for the reason that it was 1. not supported by substantial evidence, 2. arbitrary or capricious, 3. beyond the power of the hearing officer to make, or 4. in violation of some statutory or constitutional right of the appellant. The decision of the court may be appealed to the Supreme Court in the manner provided by law.

(d) If, after forty-five (45) calendar days of the date of the administrative hearing procedure set forth in paragraph (b), the candidate or political committee identified in paragraph (a) of this section fails to pay the monetary civil penalty imposed by the hearing officer, the Secretary of State shall notify the Attorney General of the delinquency. The Attorney General shall investigate the offense in accordance with the provisions of this chapter, and where necessary, file suit to compel payment of the unpaid civil penalty.

(e) If, after twenty (20) calendar days of the date upon which a campaign finance disclosure report is due, a candidate or political committee identified in paragraph (a) of this section shall not have filed a valid report with the Secretary of State, the Secretary of State shall notify the Attorney General of those candidates and political committees who have not filed a valid report, and the Attorney General shall thereupon prosecute the delinquent candidates and political committees.

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§ 23-17-1. Procedures by which qualified electors may initiate proposed amendments to the constitution

(1) For purposes of this chapter, the following term shall have the meaning ascribed herein:

"Measure" means an amendment to the Mississippi Constitution proposed by a petition of qualified

electors under Section 273, Mississippi Constitution of 1890.

(2) If any qualified elector of the state desires to initiate a proposed amendment to the Constitution of this state as authorized by subsections (3) through (13) of Section 273 of the Mississippi Constitution of 1890, he shall first file with the Secretary of State a typewritten copy of the proposed initiative measure, accompanied by an affidavit that the sponsor is a qualified elector of this state.

(3) The sponsor of an initiative shall identify in the text of the initiative the amount and source of revenue required to implement the initiative. If the initiative requires a reduction in any source of government revenue, or a reallocation of funding from currently funded programs, the sponsor shall identify in the text of the initiative the program or programs whose funding must be reduced or eliminated to implement the initiative.

(4) The person proposing the measure shall also include all the information required under Section 273, Mississippi Constitution of 1890.

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§ 23-17-47. Definitions applicable to §§ 23-17-47 through 23-17-59

For the purposes of Sections 23-17-47 through 23-17-59, the following terms shall have the meanings ascribed to them in this section:

(a) "Contribution" means any gift, subscription, loan, advance, money or anything of value made by a person or political committee for the purpose of influencing the passage or defeat of a measure on the ballot, for the purpose of obtaining signatures for the proposed ballot measures and attempting to place the proposed measure on the ballot, and for the purpose of opposing efforts to place a proposed measure on the ballot; but does not include noncompensated, nonreimbursed volunteer personal services.

(b) "Person" means any individual, family, firm, corporation, partnership, association or other legal entity.

(c) "Political committee" means any person, other than an individual, who receives contributions or makes expenditures for the purpose of influencing the passage or defeat of a measure on the ballot.

(d) "Expenditure" means any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person or political committee for the purpose of influencing any balloted measure, for the purpose of obtaining signatures for a proposed ballot measure and attempting to place the proposed measure on the ballot, and for the purpose of opposing efforts to place a proposed measure on the ballot.

§ 23-17-49. Statement of organization of political committees; when to file; contents of statement; changes in statement

(1) Each political committee shall file with the Secretary of State a statement of organization no later than ten (10) days after receipt of contributions aggregating in excess of Two Hundred Dollars ($ 200.00), or no later than ten (10) days after having made expenditures aggregating in excess of Two Hundred Dollars ($ 200.00).

(2) The statement of organization of a political committee must include:

(a) The name and address of the committee and all officers;

(b) Designation of a director of the committee and a custodian of books and accounts of the committee, who shall be designated treasurer; and

(c) A brief statement identifying the measure that the committee seeks to pass or defeat.

Any change in information previously submitted in a statement of organization shall be reported and filed within ten (10) days.

§ 23-17-51. Political committees and certain individuals to file financial reports; when to file; penalties

(1) A political committee that either receives contributions or makes expenditures in excess of Two Hundred Dollars ($ 200.00) shall file financial reports with the Secretary of State.

(2) An individual person who on his or her own behalf expends in excess of Two Hundred Dollars ($ 200.00) for the purpose of influencing the passage or defeat of a measure shall file financial reports with the Secretary of State.

(3) The financial reports required in this section shall be filed monthly, not later than the tenth day of the month following the month being reported, after a political committee or an individual exceeds the contribution or expenditure limits. Financial reports must continue to be filed until all contributions and expenditures cease. In all cases a financial report shall be filed thirty (30) days following the election on a measure.

(4) Any person, who violates the provisions of this section, shall be subject to a fine as provided in Section 23-15-813.

§ 23-17-53. Content of financial reports

A financial report of a political committee, or an individual person, as required by Section 23-17-51, shall contain the following information:

(a) The name, address and telephone number of the committee or individual person filing the statement.

(b) For a political committee:

(i) The total amount of contributions received during the period covered by the financial report;

(ii) The total amount of expenditures made during the period covered by the financial report;

(iii) The cumulative amount of those totals for each measure;

(iv) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the financial report;

(v) The total amount of contributions received during the period covered by the financial report from persons who contributed Two Hundred Dollars ($ 200.00) or less, and the cumulative amount of that total for each measure;

(vi) The total amount of contributions received during the period covered by the financial report from persons who contributed Two Hundred

Dollars ($ 200.00) or more, and the cumulative amount of that total for each measure; and

(vii) The name and street address of each person from whom a contribution(s) exceeding Two Hundred Dollars ($ 200.00) was received during the period covered by the financial report, together with the amount contributed, the date of receipt, and the cumulative amount contributed by that person for each measure.

(c) For an individual person:

(i) The total amount of expenditures made during the period covered by the financial report;

(ii) The cumulative amount of that total for each measure; and

(iii) The name and street address of each person to whom expenditures totaling Two Hundred Dollars ($ 200.00) or more were made, together with the amount of each separate expenditure to each person during the period covered by the financial report and the purpose of the expenditure.

(iv) The total amount of contributions received during the period covered by the financial report, the cumulative amount of that total for each measure, and the name and street address of each person who contributed more than Two Hundred Dollars ($ 200.00) and the amount contributed.

§ 23-17-61. Penalties for violating §§ 23-17-49 through 23-17-59

Any violation of Sections 23-17-49 through 23-17-59 is punishable by imprisonment in the county jail for not more than one (1) year, or by a fine not to exceed One Thousand Dollars ($ 1,000.00), or by both such fine and imprisonment.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

GORDON VANCE JUSTICE, JR., ET AL — PLAINTIFFS

VS. — NO. 3:11CV138

DELBERT HOSEMANN, ET AL — DEFENDANTS

HEARING ON MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

BEFORE HONORABLE SHARION AYCOCK

Federal Building, Aberdeen, Mississippi
November 1, 2011

APPEARANCES:

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* * *

[6] We're not even asking Your Honor to go that far today, but a – in Your Honor's equitable power to enter the injunction here, we would ask that Your Honor protect speech from these burdens at a level at least as high as $1,000.

There's not much time between today and the election, and my clients would like to be able to engage in the sort of advocacy that they had hoped to engage in in the first place. And $1,000, even that, won't get them very far.

As laid out in the verified complaint, a quarter-page ad in the local newspaper costs $383 per day. At that rate, they wouldn't even be able to run three days' worth of advertising before they triggered and were forced into Mississippi's campaign finance regulations, campaign finance regulations which are difficult to understand, campaign finance [7] regulations which are oftentimes in conflict with each other, campaign finance regulations which scare people away from being involved in politics, because even an unknowing violation of them can result in fines, $50 a day up to $500.

Your Honor, those – for those reasons, the plaintiffs are likely to succeed on the merits of their claim, at least for an as-applied challenge.

For the other elements of what the plaintiffs have to show here, there is no harm to defendants. There is no harm to the State, because there is no

interest in enforcing an unconstitutional law. Moreover, there's nothing to revise in the State's election procedures.

* * *

[10] THE COURT: Why do you request a 1,000-dollar limit instead of 200? Where did you – why arbitrarily selecting the figure of 1,000?

MR. AVELAR: Your Honor, I don't know that $1,000 is arbitrary. I take $1,000 from, I think, two elements. One, what is it that my clients realistically can do in a couple of [11] days since they're just a couple of individuals and that's all that they're going to be pooling money from amongst is a couple of individuals?

It doesn't make much sense for me to come in here today and ask for $25,000 if there's no way my clients can reach $25,000. And, frankly, I don't think they can reach $25,000 in a week. A thousand dollars they can reach and a thousand dollars is practical.

The other reason I say $1,000 is because the Tenth Circuit in the *Sampson* case really talked about speech at levels less than $1,000. In that case, the amount at issue was, I believe, $782 and some change.

The *Sampson* court, especially there at the conclusion, at the very end of the – of its opinion, said, well, we're talking here about speech that's less than $1,000. That's certainly protected, and, certainly,

there's not a state interest at less than $1,000 and probably more than that.

So I take $1,000 from the *Sampson* court's observation that certainly, at least at $1,000, the burdens imposed on speech totally outweigh whatever public interest there could possibly be in registration, reporting, and disclosure.

And, again, I believe that Your Honor's ability to say $1,000 is premised upon – on your ability to provide equitable relief here to the movants.

* * *

[15] THE COURT: Let me see if I can summarize your position before I hear from the defendants, okay.

You tell me this is not a corruption case, and I should bear that in mind at all times that I'm hearing argument. This is a ballot initiative case, and it differs from a lot of the case law that I might otherwise be looking at in this area. You consider it a burden on political speech.

You tell me that the only legitimate point that the government might be able to raise is the informational interest, but no United States Supreme Court case to date has directly applied the benefit of the informational interest as opposed to – as it bears on ballot initiatives.

And so you're asking this Court to treat this as an applied constitutional question, or on these

particular set of facts, by raising the limit as to these particular plaintiffs to $1,000 as soon as possible so that they can raise money and [16] essentially put three ads in the paper?

MR. AVELAR: Yes, Your Honor, except for they couldn't quite place three ads in the paper given the price, but –

THE COURT: Two ads in the paper.

MR. AVELAR: – two ads and some change. And the only other thing that I would add is that, it's not just that I consider these a burden. It's that the Supreme Court has already found them to be a burden both in *Citizens United* and *Buckley*.

THE COURT: And the burden of completing four pages of forms for the State of Mississippi is not justified in this case?

MR. AVELAR: Your Honor, it's not just completing the forms. It's – it's doing all of the things that are necessary to properly complete the forms. For example –

THE COURT: Tell me why that is such a burden. When I look at three or four forms and they're one-page forms, why is that? How is that such a burden?

MR. AVELAR: Let's start, first of all, Your Honor, with the Statement of Organization, which is the first form you have to fill out if you become a political committee in Mississippi. That form requires

– it's not just a form. It also requires you to designate two people – at least two people as officers, a director and a treasurer.

And the treasurer has to essentially take on legal [17] liability for conforming all of the committee's actions to Mississippi State law, to the campaign finance laws, which I've said before are kind of onerous and kind of complicated. And just a simple mistake can subject you to a 50-dollar per day fine up to $500. And mistakes are pretty common and pretty easy to make.

For example, in the State's brief, they say that if information changes on your statement of organization, you have until your next report to change that information and let the State know about it. Well, that's what one provision of Mississippi law says.

Another provision of Mississippi law – I believe it's 23-17-49 – says that, in fact, for committees talking about ballot initiatives to change the Mississippi Constitution, you have only ten days.

So that's one of those little nuances that have to be known and known in advance, and if the – Mississippi itself doesn't know that, then how can nonlawyers be expected to know that and be conversant with it? That simple mistake can result in a 500-dollar fine.

THE COURT: With what frequency does the State fine individuals or PACs for noncompliance on the forms?

MR. AVELAR: That I don't know, Your Honor. But under the statutes as written, they can. It is that they – there is the very real threat of being fined for noncompliance.

[18] THE COURT: It seems to me that you stressed on several occasions in your brief, in your memo, and today too that this is a small group of friends in a living room in Oxford, Mississippi, who just want to meet and converse with another small group of friends on this initiative.

So the scenario is that this is just innocent, modest. It has no – it has such an insignificant effect on political life in Mississippi that it should be – this relief should be granted.

How do I know that – what assurance can you give me, through case law or application of as applied, if the exception is made on this occasion, then how does that impact other persons that perhaps have a less innocent mission behind their work? How does it impact other situations? How does it even impact the other ballot initiatives that are on the ballot November 8th?

MR. AVELAR: I would say a couple of things, Your Honor. First of all, as the Supreme Court has repeatedly stressed, political speech, no matter what it is, is – cannot be suspect. Political speech is highly protected under our Constitution and for good reason.

What we're asking for today, Your Honor, is a preliminary injunction that applies only to the plaintiffs, that applies only to the plaintiffs so long as they stay below a threshold that is greater than $200 but not unlimited and [19] that other people who desire that sort of relief have to make their own constitutional First Amendment case.

After the election, once we're involved in the larger litigation on this issue, that becomes an issue to talk about when we're talking about facial challenges. But I would say that, for present purposes, that concern is addressed by the narrow constraints on the injunctive relief that this court can enter.

THE COURT: So do you continue your – do you continue this lawsuit if the Court grants your relief, and under these facts as to these particular plaintiffs, raise the limit to $1,000?

MR. AVELAR: Yes, Your Honor. The lawsuit would continue, because my clients are people who want to talk about valid initiatives going forward. It's not just in this election. It's in the next election and the next election.

And they – because that issue is alive, we will be litigating the larger issue of, does the informational interest apply here at all? Under what circumstances does it apply? Where is an appropriate threshold? Those are all issues that can be hashed out in the larger litigation.

But for present purposes, for purposes only of the preliminary injunction, the relief that we seek is very narrow. It is only for these plaintiffs and the group of people – the small group of people that they are working with, only under [20] $1,000, and only for purposes of this election.

* * *

[44] THE COURT: But if relief is not granted by election day, you will lose it forever?

MR. AVELAR: That is correct, Your Honor.

And I would just add, that if there is no decision by election day, that my clients won't go above the 200-dollar threshold, they will submit to being chilled essentially by Mississippi's regulations and not to –

[45] THE COURT: At 200.

MR. AVELAR: At 200. They will not exceed the 200-dollar floor and, therefore, will not be able to even buy a single quarter-page ad in their local newspaper.

* * *

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI WESTERN DIVISION

GORDON VANCE JUSTICE, JR.; SHARON BYNUM; MATTHEW JOHNSON; ALISON KINNAMAN AND STANLEY O'DELL,

Plaintiffs,

v.

Civil Action No. 3:11CV138-A-A

DELBERT HOSEMANN, in his official capacity as Mississippi Secretary of State; JIM HOOD, in his official capacity as Attorney General of the State of Mississippi,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF INTRODUCTION

(Filed Oct. 20, 2011)

1. This case is a First Amendment challenge to campaign finance laws that burden the rights of ordinary people to band together and speak effectively about proposed ballot measures in the State of Mississippi. The Plaintiffs are five Mississippi residents who wish to associate with one another and with others to speak out in favor of the passage of

Initiative 31 in the upcoming election on November 8, 2011.

2. The U.S. Supreme Court has repeatedly made clear that speech like Plaintiffs' is at the core of the First Amendment. But under Mississippi law, Plaintiffs can be fined or even jailed if they individually or collectively spend or receive more than $200 to support or oppose a ballot initiative without registering with the state and complying with a host of burdensome regulations.

3. This action challenges the provisions of Mississippi's campaign finance laws that require groups who spend or receive more than $200 on speech in support of a ballot initiative to register as "political committees" and to comply with onerous administrative, organizational, and reporting requirements in order to exercise their First Amendment rights. This action also challenges the provisions of Mississippi's campaign finance laws that require individuals who spend more than $200 on ballot initiative speech to report personal information to the state in order to exercise their First Amendment rights. Among other types of information, the mandatory reporting provisions challenged here require individuals and the members of groups who spend more than $200 on ballot issue speech to disclose their names, addresses, telephone numbers, occupations, and employers to state.

4. These provisions violate the First Amendment by placing significant burdens on the rights to

speech and association and by requiring the disclosure of sensitive personal information as a condition of speaking out about political issues.

JURISDICTION

5. Plaintiffs bring this civil rights lawsuit pursuant to the First and Fourteenth Amendments to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgments Act, 28 U.S.C. § 2201. Plaintiffs seek injunctive and declaratory relief prohibiting the enforcement of the State's campaign finance laws, MISS. CODE ANN. §§ 23-15-801 *et seq.*, and MISS. CODE ANN. §§ 23-17-47 to -59, to themselves and to all groups and individuals who spend money to advocate for or against Mississippi ballot initiatives.

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

VENUE

7. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b).

PARTIES

8. Plaintiff Gordon Vance Justice, Jr. wishes to associate with his fellow plaintiffs and with others in order to speak out more effectively in support of proposed Initiative 31 and in support of or opposition to other ballot issues in the future. To this end, he

wishes to spend in excess of $200 of his own money, individually or in combination with the other Plaintiffs, to speak in favor of Initiative 31 and in support of or opposition to other ballot issues in the future. He is a resident of Oxford, Mississippi.

9. Plaintiff Sharon Bynum wishes to associate with her fellow plaintiffs and with others in order to speak out more effectively in support of proposed Initiative 31 and in support of or opposition to other ballot issues in the future. To this end, she wishes to spend in excess of $200 of her own money, individually or in combination with the other Plaintiffs, to speak in favor of Initiative 31 and in support of or opposition to other ballot issues in the future. She is a resident of Oxford, Mississippi.

10. Plaintiff Matthew Johnson wishes to associate with his fellow plaintiffs and with others in order to speak out more effectively in support of proposed Initiative 31 and in support of or opposition to other ballot issues in the future. To this end, he wishes to spend in excess of $200 of his own money, individually or in combination with the other Plaintiffs, to speak in favor of Initiative 31 and in support of or opposition to other ballot issues in the future. He is a resident of Oxford, Mississippi.

11. Plaintiff Alison Kinnaman wishes to associate with her fellow plaintiffs and with others in order to speak out more effectively in support of proposed Initiative 31 and in support of or opposition to other ballot issues in the future. To this end, she wishes to spend in excess of $200 of her own money, individually

or in combination with the other Plaintiffs, to speak in favor of Initiative 31 and in support of or opposition to other ballot issues in the future. She is a resident of Oxford, Mississippi.

12. Plaintiff Stanley O'Dell wishes to associate with his fellow plaintiffs and with others in order to speak out more effectively in support of proposed Initiative 31 and in support of or opposition to other ballot issues in the future. To this end, he wishes to spend in excess of $200 of his own money, individually or in combination with the other Plaintiffs, to speak in favor of Initiative 31 and in support of or opposition to other ballot issues in the future. He is a resident of Oxford, Mississippi.

13. Defendant Delbert Hosemann is the Mississippi Secretary of State. Pursuant to MISS. CODE ANN. §§ 23-15-813 and -815, the Secretary is responsible for prescribing rules and regulations to carry out the provisions of Mississippi's campaign finance laws, and for enforcing Mississippi's campaign finance statutes, rules and regulations. At all times relevant to this complaint, the Secretary was acting under color of state law. Plaintiffs sue the Secretary in his official capacity and seek only prospective declaratory and injunctive relief against him.

14. Defendant Jim Hood is the Mississippi Attorney General. Pursuant to MISS. CODE ANN. §§ 23-15-811 and -813, the Attorney General is responsible for enforcing Mississippi's campaign finance statutes, rules and regulations. Pursuant to MISS.

CODE ANN. § 7-5-1, the Attorney General "shall intervene and argue the constitutionality of any statute when notified of a challenge thereto." At all times relevant to this complaint, the Attorney General was acting under color of state law. Plaintiffs sue the Attorney General in his official capacity and seek only prospective declaratory and injunctive relief against him.

STATEMENT OF FACTS

15. Plaintiffs are five individuals who wish to associate with one another and with others for the purpose of running independent political advertisements that expressly advocate the passage of proposed Initiative 31 in the upcoming election on November 8, 2011.

16. Plaintiffs, a group of like-minded friends and neighbors, have been meeting regularly for a few years, as a group and with others, to discuss political and legal issues of the day. They have no formal organization or structure. They meet at their homes, at restaurants, and wherever else is convenient. They have no officers or directors, no bank account, and no member dues.

17. On various occasions, individually and as a group, Plaintiffs have been members of and worked with the student group Young Americans for Liberty and the Lafayette County Libertarian Party. They have also engaged in other political activities and activism, such as organizing rallies about political

issues and publicly distributing copies of the United States Constitution on Constitution Day, among others. To fund these activities, Plaintiffs have simply pooled their money, by "passing the hat" at meetings.

18. One issue Plaintiffs have discussed often and feel strongly about is private property rights, and, specifically, the impact on property rights of the power of eminent domain. Plaintiffs think it unconscionable that the government can take property from one person and give it to another – as the U.S. Supreme Court permitted in *Kelo v. City of New London*, 545 U.S. 469 (2005), one of the most controversial Supreme Court decisions of our time.

19. In the years since *Kelo*, many states have passed new laws aimed at curbing the use of eminent domain for private development. Three attempts at reform have been made in Mississippi, but have failed. Initiative 31, the fourth attempt at eminent domain reform, is on the ballot this November.

20. If passed, Initiative 31 would "amend the Mississippi Constitution to prohibit state and local government from taking private property by eminent domain and then conveying it to other persons or private businesses for a period of 10 years after acquisition," with certain exceptions.[1]

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[1] Mississippi Secretary of State, Elections Division Proposed Ballot Summary of Initiative 31, *available at* http://www.sos.ms.gov/page.aspx?s=7&s1=1&s2=84.

21. Plaintiffs have researched and discussed the initiative and eminent domain abuse at several of their meetings. Although Plaintiffs are not affiliated with the sponsors of Initiative 31 and played no role in placing it on the ballot, they strongly support the initiative and believe that it should be passed.

22. Toward that end, Plaintiffs wish to speak out, both as individuals and as a group, to convince other citizens of Mississippi to vote for Initiative 31. Specifically, they wish to pool their funds to purchase posters, buy advertising in a local newspaper, and distribute flyers targeted to Mississippi voters, urging them to vote for the passage of Initiative 31.

23. To undertake these activities, however, Plaintiffs would have to register as a "political committee" under Mississippi's campaign finance laws and to comply with the administrative, reporting, and disclosure regulations that apply to such committees. This would include appointing a formal treasurer, filing a statement of organization, and filing regular reports with the State listing their names, addresses, occupations, and employers and the same information of anyone else who decides to add more than $200 to their cause.

Mississippi's Campaign Finance Laws

Definitions

24. Mississippi's campaign finance scheme applies differently to groups and individuals depending

on the type of election in which they wish to speak and raise and spend money.

25. Under Mississippi campaign finance law, individuals and groups, like the Plaintiffs, who wish to speak out about voter initiatives that would amend the Mississippi Constitution must abide by those statutes set forth in MISS. CODE ANN. §§ 23-15-801 *et seq.*, and in MISS. CODE ANN. §§ 23-17-47 to -59.

26. The following applies to individuals and groups, like the Plaintiffs, who wish to speak out about voter initiatives that would amend the Mississippi Constitution.

27. State law defines a "political committee" as "any person, other than an individual, who receives contributions or makes expenditures for the purpose of influencing the passage or defeat of a measure on the ballot." MISS. CODE ANN. § 23-17-47(c). Initiative 31, which would amend the Mississippi Constitution, is a "measure." MISS. CODE ANN. § 23-17-1(c).

28. "Contribution" is defined, in relevant part, as "any gift, subscription, loan, advance, money or anything of value made by a person or political committee for the purpose of influencing the passage or defeat of a measure on the ballot." MISS. CODE ANN. § 23-17-47(a).

29. "Expenditure" is defined, in relevant part, as "any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person or political committee for the

purpose of influencing any balloted measure." MISS. CODE ANN. § 23-17-47(d).

30. Under Mississippi law, groups that meet the definition of "political committee" must formally organize and register with the state once they raise or spend more than $200. MISS. CODE ANN. § 23-17-49(1).

31. Under the above provisions, if Plaintiffs pool more than $200 of their own money in order to finance their speech and other activities in support of Initiative 31, they must formally register with the state as a "political committee." As a political committee, Plaintiffs would be subjected to the regulations that apply to political committees.

Political Committee Regulations

32. Political committees that wish to speak out in support of initiatives to amend the Mississippi Constitution must file a statement of organization with the Secretary of State within ten days of receiving more than $200 in contributions or making more than $200 in expenditures. MISS. CODE ANN. § 23-17-49(1).

33. The statement of organization must include, among other things, the name and address of the committee and all of its officers; the identity of the organization's director and treasurer; and a statement identifying the ballot measure that the committee

aspires to support or oppose. MISS. CODE ANN. § 23-17-49(2).

34. Any change to the information previously submitted in a statement of organization must be reported to the state in writing within ten days. MISS. CODE ANN. § 23-17-49(2).

35. Once registered as a political committee, a group must file regular reports of all contributions received and expenditures made. Committees must file pre-election reports, periodic reports every four years, and yearly reports in the three years between periodic reports. MISS. CODE ANN. § 23-15-807(b).

36. Under MISS. CODE ANN. § 23-15-807(d), the pre-election, periodic, and annual reports must contain the following information:

a. the name, address, occupation, and employer for each person or political committee contributes more than $200 to the committee during the reporting period, along with the date and amount of the contribution;

b. the name, address, occupation, and employer of each person or entity to whom the committee makes an expenditure of more than $200, along with the date and amount of the expenditure;

c. the total amount of all contributions

d. the total amount of all expenditures; and

e. the total amount of cash on hand.

37. In addition to the reports described above, political committees involved in voter initiatives must also file monthly financial reports. MISS. CODE ANN. § 23-17-51.

38. Under MISS. CODE ANN. § 23-17-53(a) and (b), the monthly reports must contain the following information:

a. the total amount of contributions received and expenditures made during the month;

b. the cumulative totals of contributions received and expenditures made for each measure on which the committee spends funds;

c. the balance of funds for the beginning and the end of the month;

d. the total amount of contributions received during the month from persons who contributed $200 or more, along with the cumulative amount of that total for each measure; and

e. the name and street address of each person who made a contribution exceeding $200 during the month, together with the amount contributed, the date of receipt, and the cumulative amount contributed by that person for each measure.

39. Political committees may terminate their operations only when they report to the State that they have no outstanding debts or obligations and will no longer receive any contributions or make any disbursements. Until that time, political committees

must continue to file reports of their activities to the State.

Regulations of Individuals

40. Under Mississippi law, individuals who spend more than $200 to "influence[e] the passage or defeat of a measure" must also file monthly reports of their activities to the State. MISS. CODE ANN. § 23-17-51.

41. As with a political committee, an individual's monthly report must contain, per MISS. CODE ANN. § 23-17-53(a) and (c), the following information:

a. the name, address, and telephone number of the individual;

b. the total amount of expenditures made during the month;

c. a cumulative total of all expenditures for each measure;

d. the name and address of each person to whom the individual has made more than $200 in expenditures, together with the amount of each expenditure;

e. the total amount of contributions received during the month, the cumulative amount of that total for each measure, and the name and street address of each person who contributed more than $200.

42. Like committees, individuals must continue to file monthly reports until they stop making expenditures or receiving contributions, except in all

cases, they must file post election report within thirty days after the election.

Criminal Penalties and Public Availability of Information

43. All of the reports described above are preserved for five years and are publicly available. MISS. CODE ANN. § 23-15-805(d). The reports are also made available on the Secretary of State's website, http://www.sos.ms.gov/elections3.aspx

44. Those who violate Mississippi's campaign finance laws are subject to a fine of $50 per day, up to a maximum of $500. MISS. CODE ANN. § 23-15-813. Willful violations are misdemeanors punishable by a fine of up to $3,000 and imprisonment of up to six months, or both. MISS. CODE ANN. § 23-15-811(a).

Injury to Plaintiffs

45. Plaintiffs wish to pool funds in excess of $200 and spend that money on speech that supports Initiative 31. Plaintiffs are ready, willing, and able to spend their collective funds on posters, flyers, and local media advertisements in support of the initiative. To do so, however, Plaintiffs would have to formally organize their group into a "political committee" under Mississippi law and comply with the regulations that apply to such committees or being subjected to Mississippi's individual reporting regulations.

46. For example, a quarter-page advertisement in the local newspaper would cost approximately $383 for a single day. A half-page ad would cost $600 per day, and a full page ad would cost $1200 per day. As a result, Plaintiffs could not run even one small advertisement in the local paper without having to register as a political committee or being subjected to Mississippi's individual reporting regulations.

47. Posters advocating for the passage of Initiative 31 would cost approximately $4 apiece. As a result, Plaintiffs, individually or as a group, could purchase no more than 50 posters without being subjected to Mississippi's campaign finance laws.

48. Flyers supporting the initiative would cost $0.20 apiece. Thus, if Plaintiffs, individually or as a group, were to print flyers they would have to reduce their other advocacy for Initiative 31 to avoid being subjected to Mississippi's campaign finance laws.

49. Plaintiffs are not experienced campaign organizers or politicians. As a small, informal group of lay persons, Plaintiffs would have to spend a great deal of time reviewing and complying with the campaign finance laws and the regulations that apply to political committees and to them as individuals. Plaintiffs engage in political activities in their spare time, so complying with these regulations imposes a significant burden on their ability to speak and associate and would reduce the amount of speech and political activities in which they could engage.

50. The burden of complying with Mississippi's regulations is compounded by the fact that there are multiple statutes contained in different sections of the Mississippi Code that one has to wade through to figure out all the relevant registration, reporting, and disclosure obligations. Specifically, individuals and groups, like the Plaintiffs, who wish to speak out about voter initiatives that would amend the Mississippi Constitution must abide those statutes set forth in MISS. CODE ANN. §§ 23-15-801 *et seq.*, and in MISS. CODE ANN. §§ 23-17-47 to -59.

51. The multiplicity of statutes creates traps for the unwary:

a. For example, for the monthly reports, disclosure about an individual contributor is triggered only when the contributor gives more than $200 that month. If that same contributor gives less than $200 the following month, no individual disclosure is required. MISS. CODE ANN. § 23-17-53 (b)(vii).

b. However, the pre-election, periodic, and annual reports require disclosure about individual contributors when those contributors give more than $200 in a year. MISS. CODE ANN. § 23-15- 807(d)(ii)(1).

c. Thus, although Plaintiffs would not have to disclose in their monthly reports personal information about a person who contributed $67 each month, they would have to disclose that information in their pre-election, periodic, and annual reports if that person contributed

$67 each month for three months (totaling $201).

52. Although Mississippi maintains these separate provisions regulating individuals and political committees independently speaking about voter initiatives to amend the Mississippi Constitution, the Secretary of State's 2011 Campaign Finance Guide[2] offers no guidance to independent voter initiative committees about MISS. CODE ANN. §§ 23-17-47 to -59, and instead provides guidance to political committees only as to MISS. CODE ANN. §§ 23-15-801 *et seq*.

53. Plaintiffs also object to the necessity of disclosing personal information, including their names, addresses, occupations, and employers, as a condition of raising and spending funds to support Initiative 31 and of speaking alone, as individuals. They further object to the requirement that they associate their employers with speech and political activities they wish to undertake as private individuals. They fear reprisals if their personal information is disclosed on a State website.

54. Further, all of the Plaintiffs fear punishment for speaking if they accidentally fail to comply with Mississippi's very complex campaign finance laws.

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[2] *Available at:* http://www.sos.ms.gov/links/elections/candidates_lobbyist center/tab2/CampaignFinanceGuide.pdf

55. The plaintiffs have begun to purchase and distribute flyers and posters supporting Initiative 31 and will continue to do so until the election. However, they will carefully monitor their spending to make sure they stay below the $200 threshold. Thus, they will make fewer posters and fewer flyers and distribute these to fewer people than they would if they were not worried about having to comply with Mississippi's campaign finance laws.

56. But for the registration, reporting, and disclosure requirements of MISS. CODE ANN. §§ 23-15-801 *et seq.*, and MISS. CODE ANN. §§ 23-17-47 to -59, Plaintiffs would purchase at least a one-quarter page advertisement, for at least a single day, close to the election. Plaintiffs would also engage in additional speech, including the purchase and distribution of more posters and flyers in and around the Oxford area than they will be able to right now under the $200 threshold.

57. Mississippi's campaign finance laws contained in MISS. CODE ANN. §§ 23-15-801 *et seq.*, and MISS. CODE ANN. §§ 23-17-47 to -59, as well as the actions of the Defendants in implementing and enforcing those provisions, substantially burden and chill Plaintiffs' and others' rights to free speech and association under the First and Fourteenth Amendments to the United States Constitution.

58. As a political committee or as individuals, Plaintiffs would also be compelled to collect and disclose information about any individuals who

contribute more than $200 to their efforts. This requirement makes it impossible for Plaintiffs to accept contributions informally or to "pass the hat" for donations – as they have done in the past – to fund more speech.

59. But for the requirement that they collect detailed information about their contributors and report that information about those who contribute over $200 in the aggregate, Plaintiffs would accept contributions informally and continue to "pass the hat" for donations at their meetings.

60. By requiring political committees and individuals to report to the Secretary of State the identities, addresses, occupations, employers of anyone who contributes $200 or more, the disclosure requirements for political committees require Plaintiffs – and those who may wish to contribute to their efforts – to choose between their privacy and their rights to free speech and association. Plaintiffs are also concerned that some people who may want to contribute to their effort would not do so if it meant their name and address would be disclosed to the public and on the internet.

61. While Plaintiffs want to speak, individually and as a group, and associate to speak about ballot issues in the future, the burden and cost of complying with these requirements are making them – and will continue to make them – avoid doing so.

62. Plaintiffs are all politically active. In addition to spending money on speech during this election

cycle, they want to be able to spend their own money and associate freely with one another and with others and speak out in the future about ballot initiatives without fear or threat of being prosecuted or investigated for violating the campaign finance laws.

63. In sum, and as described above, Mississippi's campaign finance laws create a significant chilling effect that has prevented – and continues to prevent – the Plaintiffs and other similarly situated groups from exercising their constitutional rights of free speech and association.

CONSTITUTIONAL VIOLATIONS

First Claim for Relief

(First Amendment – Burdening Protected Speech: Registration, Reporting, and Disclosure for Groups)

64. Plaintiffs incorporate and reallege the allegations in ¶¶ 1-63 of this complaint as though set forth in this section.

65. Mississippi, through its campaign finance statutes, and the rules and regulations promulgated thereunder, imposes onerous registration, reporting, and disclosure requirements on groups that pool their money "for the purpose of influencing the passage or defeat of a measure on the ballot."

66. Mississippi, through its campaign finance statutes, and the rules and regulations promulgated thereunder, imposes onerous registration, reporting,

and disclosure requirements on groups that make expenditures "for the purpose of influencing the passage or defeat of a measure on the ballot."

67. The registration, reporting, and disclosure requirements for political committees impose substantial compliance costs for groups that merely advocate the passage or defeat of a ballot issue. These costs are excessive in relation to any purported state interest.

68. Both on their face and as applied to Plaintiffs, the registration, reporting, and disclosure requirements for political committees unconstitutionally burden and chill rights to free speech and association in violation of the First and Fourteenth Amendments to the United States Constitution.

69. As a direct and proximate result of the registration, reporting, and disclosure requirements for political committees, Plaintiffs and others similarly situated have suffered and will continue to suffer irreparable harm to their constitutional rights. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from implementing and enforcing the political-committee provisions of MISS. CODE ANN. §§ 23-15-801 *et seq.*, and MISS. CODE ANN. §§ 23-17-47 to -59, against groups who seek to influence the passage or defeat of a measure on the ballot, Plaintiffs and others similarly situated will continue to suffer great and irreparable harm.

Second Claim for Relief

(First Amendment – Burdening Protected Speech: Reporting, and Disclosure for Individuals)

70. Plaintiffs incorporate and reallege the allegations in ¶¶ 1-63 of this complaint as though set forth in this section.

71. Mississippi, through its campaign finance statutes, and the rules and regulations promulgated thereunder, imposes onerous reporting and disclosure requirements on individuals that that make expenditures to "influence[e] the passage or defeat of a measure."

72. The reporting and disclosure requirements for individuals impose substantial compliance costs for individuals that merely advocate the passage or defeat of a ballot issue. These costs are excessive in relation to any purported state interest.

73. Both on their face and as applied to Plaintiffs, the reporting and disclosure requirements for individuals unconstitutionally burden and chill rights to free speech in violation of the First and Fourteenth Amendments to the United States Constitution.

74. As a direct and proximate result of the registration, reporting, and disclosure requirements for individuals, Plaintiffs and others similarly situated have suffered and will continue to suffer irreparable harm to their constitutional rights. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless

Defendants are enjoined from implementing and enforcing the individual reporting provisions of MISS. CODE ANN. §§ 23-17-51 and -53, Plaintiffs and others similarly situated will continue to suffer great and irreparable harm.

Third Claim for Relief

(First Amendment – Anonymous Speech: Reporting Requirement for Groups)

75. Plaintiffs incorporate and reallege the allegations in ¶¶ 1-63 of this complaint as though set forth in this section.

76. Under MISS. CODE ANN. §§ 23-15-801 *et seq.*, and MISS. CODE ANN. §§ 23-17-47 to -59 and the rules and regulations promulgated thereunder, political committees must disclose the full name and address of all committee officers, and the name, address, occupation, and employer of each person who has made contributions greater than $200 in the aggregate within the reporting period, together with the amount and date of the contribution(s).

77. All reports filed with the Secretary are considered public records and the contents of those reports are made available on the Secretary's website.

78. Both on their face and as applied to Plaintiffs, the disclosure requirements for political committees burden and chill rights to anonymous speech and association under the First and Fourteenth Amendments to the Constitution of the United States by

requiring Plaintiffs and others similarly situated to disclose their identities and their personal information as a condition of speaking and associating with others.

79. As a direct and proximate result of MISS. CODE ANN. §§ 23-15-801 *et seq.*, and MISS. CODE ANN. §§ 23-17-47 to -59, Plaintiffs and others similarly situated have suffered and will continue to suffer irreparable harm to their constitutional rights. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from implementing and enforcing the political-committee provisions of MISS. CODE ANN. §§ 23-15-801 *et seq.*, and MISS. CODE ANN. §§ 23-17-47 to -59, against groups who seek to influence the passage or defeat of a measure on the ballot, Plaintiffs and others similarly situated will continue to suffer great and irreparable harm.

Fourth Claim for Relief

(First Amendment – Anonymous Speech: Reporting Requirement for Individuals)

80. Plaintiffs incorporate and reallege the allegations in ¶¶ 1-63 of this complaint as though set forth in this section.

81. Under MISS. CODE ANN. §§ 23-17-51 and -53 and the rules and regulations promulgated thereunder, individuals who spend in excess of $200 of their own money to advocate for or against a ballot measure

must disclose their full name and address, as well as the name and address, of each person to whom expenditures totaling $200 or more were made, together with the amount of each separate expenditure to each person during the period covered by the financial report and the purpose of the expenditure.

82. All reports filed with the Secretary are considered public records and the contents of those reports are made available on the Secretary's website.

83. Both on their face and as applied to Plaintiffs, the disclosure requirements for individuals burden and chill rights to anonymous speech and association under the First and Fourteenth Amendments to the Constitution of the United States by requiring Plaintiffs and others similarly situated to disclose their identities and their personal information, as well as the identities and personal information of others they associate with as a condition of speaking and associating with others.

84. As a direct and proximate result of MISS. CODE ANN. §§ 23-17-51 and -53, Plaintiffs and others similarly situated have suffered and will continue to suffer irreparable harm to their constitutional rights. Plaintiffs have no adequate legal, administrative, or other remedy by which to prevent or minimize this harm. Unless Defendants are enjoined from implementing and enforcing the individual reporting provisions of MISS. CODE ANN. §§ 23-17-51 and -53, Plaintiffs and others similarly situated will continue to suffer great and irreparable harm.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief as follows:

1. For entry of judgment declaring that MISS. CODE ANN. §§ 23-15-801 *et seq.*, and 23-17-47 to -59, and the rules and regulations promulgated thereunder are unconstitutional on their face and as applied to the extent that they: impose registration, reporting, and disclosure obligations on groups that independently advocate the passage or defeat of ballot issues; and impose reporting, and disclosure obligations on individuals that independently advocate the passage or defeat of ballot issues.

2. For entry of a temporary restraining order, a preliminary injunction, and a permanent injunction against the Defendants prohibiting the enforcement of these regulations, laws, rules, and policies;

3. For an award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

4. For such further legal and equitable relief as the Court may deem just and proper.

Dated: October 20, 2011.

Respectfully Submitted on Behalf of Plaintiffs,

WELLS MARBLE & HURST, PLLC	**INSTITUTE FOR JUSTICE**
By: /s/ Russell Latino III Russell Latino III (MS Bar No. 102281) P.O. Box 131 Jackson, MS 39205-0131 Tel: (601) 605-6900 Fax: (601) 605-6901 Email: rlatino@wellsmarble.com, ljennings@wellsmarble.com	Paul V. Avelar (AZ Bar No. 023078)* 398 S. Mill Avenue, Suite 301 Tempe, AZ 85281 Tel: (480) 557-8300 Fax: (480) 557-8305 Email: pavelar@ij.org Steven M. Simpson (DC Bar No. 462553)* 901 North Glebe Road, Suite 900 Arlington, VA 22203-1854 Tel: (703) 682-9320 Fax: (703) 682-9321 Email: wmellor@ij.org, ssimpson@ij.org * Motions for admission *pro hac vice* to be filed

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
Western Division

GORDON VANCE JUSTICE, JR.; SHARON BYNUM; MATTHEW JOHNSON; ALISON KINNAMAN AND STANLEY O'DELL, Plaintiffs, v. DELBERT HOSEMANN, in his official capacity as Mississippi Secretary of State; JIM HOOD, in his official capacity as Attorney General of the State of Mississippi, Defendants.	Civil Action No. 3:11-cv-00138-SA-SAA VERIFICATION OF SHARON BYNUM

I, Sharon Bynum, declare as follows:

1. I have personal knowledge of my own actions and intentions to engage in political speech in Mississippi ballot issue elections in this and future elections, including the information set forth in the attached Complaint.

2. If called upon to testify I would competently testify as to the matters in the Complaint concerning my political speech and desire to engage in political speech related to Mississippi ballot issue elections now and in the future.

3. I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, belief, and information.

Executed this 19th day of October, 2011

/s/ Sharon Bynum
Sharon Bynum

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
Western Division

GORDON VANCE JUSTICE, JR.; SHARON BYNUM; MATTHEW JOHNSON; ALISON KINNAMAN AND STANLEY O'DELL, Plaintiffs, v. DELBERT HOSEMANN, in his official capacity as Mississippi Secretary of State; JIM HOOD, in his official capacity as Attorney General of the State of Mississippi, Defendants.	Civil Action No. 3:11-cv-00138-SA-SAA VERIFICATION OF MATTHEW JOHNSON

I, Matthew Johnson, declare as follows:

1. I have personal knowledge of my own actions and intentions to engage in political speech in Mississippi ballot issue elections in this and future elections, including the information set forth in the attached Complaint.

2. If called upon to testify I would competently testify as to the matters in the Complaint concerning my political speech and desire to engage in political speech related to Mississippi ballot issue elections now and in the future.

3. I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, belief, and information.

Executed this 20th day of October, 2011

/s/ Matthew Johnson
Matthew Johnson

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
Western Division

GORDON VANCE JUSTICE, JR.; SHARON BYNUM; MATTHEW JOHNSON; ALISON KINNAMAN AND STANLEY O'DELL, Plaintiffs, v. DELBERT HOSEMANN, in his official capacity as Mississippi Secretary of State; JIM HOOD, in his official capacity as Attorney General of the State of Mississippi, Defendants.	Civil Action No. 3:11-cv-00138-SA-SAA VERIFICATION OF GORDON VANCE JUSTICE, JR.

I, Gordon Vance Justice, Jr., declare as follows:

1. I have personal knowledge of my own actions and intentions to engage in political speech in Mississippi ballot issue elections in this and future elections, including the information set forth in the attached Complaint.

2. If called upon to testify I would competently testify as to the matters in the Complaint concerning my political speech and desire to engage in political speech related to Mississippi ballot issue elections now and in the future.

3. I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, belief, and information.

Executed this 18th day of October, 2011

/s/ Gordon Vance Justice, Jr.
Gordon Vance Justice, Jr.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
Western Division

GORDON VANCE JUSTICE, JR.; SHARON BYNUM; MATTHEW JOHNSON; ALISON KINNAMAN AND STANLEY O'DELL, Plaintiffs, v. DELBERT HOSEMANN, in his official capacity as Mississippi Secretary of State; JIM HOOD, in his official capacity as Attorney General of the State of Mississippi, Defendants.	Civil Action No. 3:11-cv-00138-SA-SAA VERIFICATION OF ALISON KINAMAN

I, Alison Kinnaman, declare as follows:

1. I have personal knowledge of my own actions and intentions to engage in political speech in Mississippi ballot issue elections in this and future elections, including the information set forth in the attached Complaint.

2. If called upon to testify I would competently testify as to the matters in the Complaint concerning my political speech and desire to engage in political speech related to Mississippi ballot issue elections now and in the future.

3. I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, belief, and information.

Executed this 18th day of October, 2011

/s/ Alison Kinnaman
Alison Kinnaman

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
Western Division

GORDON VANCE JUSTICE, JR.; SHARON BYNUM; MATTHEW JOHNSON; ALISON KINNAMAN AND STANLEY O'DELL, Plaintiffs, v. DELBERT HOSEMANN, in his official capacity as Mississippi Secretary of State; JIM HOOD, in his official capacity as Attorney General of the State of Mississippi, Defendants.	Civil Action No. 3:11-cv-00138-SA-SAA VERIFICATION OF STANLEY O'DELL

I, Stanley O'Dell, declare as follows:

1. I have personal knowledge of my own actions and intentions to engage in political speech in Mississippi ballot issue elections in this and future elections, including the information set forth in the attached Complaint.

2. If called upon to testify I would competently testify as to the matters in the Complaint concerning my political speech and desire to engage in political speech related to Mississippi ballot issue elections now and in the future.

3. I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge, belief, and information.

Executed this 18th day of October, 2011

/s/ Stanley O'Dell
Stanley O'Dell