

No. 20-2022

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

RIO GRANDE FOUNDATION,

Plaintiff-Appellant,

v.

CITY OF SANTA FE, NEW MEXICO; and
CITY OF SANTA FE ETHICS AND CAMPAIGN REVIEW BOARD,

Defendants-Appellees.

Appeal from the U.S. District Court for the District of New Mexico
Honorable Judith C. Herrera
Civil Action No. 1:17-cv-00768-JCH-CG

Brief of *Amici Curiae* The Brennan Center for Justice, Common Cause, The League of Women Voters of Santa Fe County, New Mexico Ethics Watch, and Represent Us

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Federal Cases	
<i>Bluman v. FEC</i> , 800 F. Supp. 2d 281 (D.D.C. 2011), <i>aff'd</i> , 565 U.S. 1104 (2012)	22
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976).....	<i>passim</i>
<i>Citizens United v. FEC</i> , 558 U.S. 310 (2010).....	8, 10, 18, 21
<i>Coalition for Secular Gov't v. Williams</i> , 815 F.3d 1267 (10th Cir. 2016)	11
<i>Ctr. for Individual Freedom v. Madigan</i> , 697 F.3d 464 (7th Cir. 2012)	9, 13
<i>Family PAC v. McKenna</i> , 685 F.3d 800 (9th Cir. 2012)	16
<i>First Nat'l Bank of Boston v. Bellotti</i> , 435 U.S. 765 (1978).....	6, 9
<i>Human Life of Wash., Inc. v. Brumsickle</i> , 624 F.3d 990 (9th Cir. 2010)	9
<i>Independence Institute v. Williams</i> , 812 F.3d 787 (10th Cir. 2016)	3
<i>Justice v. Hosemann</i> , 771 F.3d 285 (5th Cir. 2014)	9
<i>McCutcheon v. FEC</i> , 134 S. Ct. 1434 (2014).....	8, 10
<i>Nat'l Org. for Marriage, Inc. v. McKee</i> , 669 F.3d 34 (1st Cir. 2012).....	15, 27

Ognibene v. Parkes,
 599 F. Supp. 2d 434 (S.D.N.Y. 2009), *aff'd*, 671 F.3d 174 (2d Cir.
 2011)11

ProtectMarriage.com v. Bowen,
 830 F. Supp. 2d 914 (E.D. Cal. 2011), *dismissed in part on other
 grounds*, 752 F.3d 827 (9th Cir. 2014)15

Sampson v. Buescher,
 625 F.3d 1247 (10th Cir. 2010)11

United States. v. Iverson,
 818 F.3d11

United States v. Parnas et al.,
 19-cr-725 (S.D.N.Y. 2019)22

Worley v. Florida Secretary of State
 717 F.3d 1238, 1251 (11th Cir. 2013)16

Federal Statutes

52 U.S.C. § 3012125

State and Local Statutes

Cal. Gov’t Code § 82025 (West 2017)21

The Clean Campaign Act of 2019 (HB19-1318).....3

Colorado Campaign Finance Act.....3

Denver Rev. Mun. Code § 15-35 (2017)21

Santa Fe City Campaign Code § 9-2.6*passim*

Washington DISCLOSE Act, 2018 Wash. Sess. Laws 64821

Rules

Fed. R. App. P. 29(a)(2).....1

Other Authorities

Andrew Kenney, *Colorado’s Paid Leave Bill is Dead, But Voters May Still Decide*, CPR (Apr. 30, 2020), <https://www.cpr.org/2020/04/30/colorados-paid-leave-bill-is-dead-but-voters-may-still-decide/>.....20, 21

Arthur Lupia, *Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 88:1 AM. POLI. SCI. REV. 63, 63 (Mar. 1994)13, 14

Neil Barnett & Alastair Sloan, *Democracy in the Crosshairs: How Political Money Laundering Threatens the Democratic Process*, The Atlantic Council, 15 (Oct. 2018), https://www.atlanticcouncil.org/wp-content/uploads/2018/10/Democracy_in_the_Crosshairs_updated101718.pdf16, 17

Cheryl Boudreau, *Making Citizens Smart: When do Institutions Improve Unsophisticated Citizens’ Decisions?* 31 Pol. Behav. 287 (2009).....14, 15

Chisun Lee et al., *Secret Spending in the States*, Brennan Ctr. for Justice, 3 (June 2016), https://www.brennancenter.org/sites/default/files/2019-08/Report_Secret_Spending_in_the_States.pdf17, 18, 19, 20

Citizen Voters, Inc., Ballotpedia, https://ballotpedia.org/Citizen_Voters,_Inc. (last visited May 30, 2020)20

Colorado Citizen Requirement for Voting Initiative (2020), Ballotpedia, [https://ballotpedia.org/Colorado_Citizen_Requirement_for_Voting_Initiative_\(2020\)](https://ballotpedia.org/Colorado_Citizen_Requirement_for_Voting_Initiative_(2020)) (last visited May 30, 2020).....20

Dave Levinthal, *Liberal ‘Dark Money’ Group Rails Against ‘Dark Money’*, Center for Public Integrity (Nov. 20, 2015), <https://goo.gl/HpP3so>18

Elizabeth Garrett & Daniel A. Smith, *Veiled Political Actors and Campaign Finance Disclosure Laws in Direct Democracy*, 4 ELECTION L.J. 295, 296 (2015)12, 13, 14, 15

Elizabeth Harball, *Alaska voters strike down ‘Stand for Salmon’ ballot initiative*, KTOO (Nov. 6, 2018)23

Elizabeth R. Gerber & Arthur Lupia, *Campaign Competition and Policy Responsiveness in Direct Legislation Elections*, 17:3 POL. BEHAV. 287, 289-90 (Sept. 1995).....13, 14

FEC, Statement of Reasons of Comm’r Ellen L. Weintraub in MUR 6678 (MindGeek USA, Inc., et al.), 3 (Apr. 30, 2015), <https://eqs.fec.gov/eqsdocsMUR/15044372958.pdf>.....26

FEC, Statement of Reasons of Vice Chairman Matthew S. Petersen and Comm’rs Caroline C. Hunter and Lee E. Goodman in MUR 6678 (MindGeek USA, Inc., et al.), 8-9 (Apr. 30, 2015), <http://eqs.fec.gov/eqsdocsMUR/15044372963.pdf>26

FEC, First General Counsel’s Report: Matter Under Review (MUR) 6678 (MindGeek USA, Inc., et al.), 9-10 (Aug. 15, 2014), <http://eqs.fec.gov/eqsdocsMUR/15044372921.pdf>24

Gene Maddaus, *FPPC Rejects Claim Wanda Used Foreign Money in Beverly Hills Election*, Variety (Oct. 7, 2016), <https://variety.com/2016/biz/asia/fppc-rejects-wanda-foreign-money-beverly-hills-election-1201882010/>25

Greg Moran, *Feds Say Azano Wanted to ‘Buy a Mayor,’* The San Diego Union-Tribune (July 27, 2016, 7:38 PM), <http://www.sandiegouniontribune.com/sdut-feds-say-azano-wanted-to-buy-a-mayor-2016jul27-story.html>23

Ian Vandewalker & Lawrence Norden, *Getting Foreign Funds Out of America’s Elections*, Brennan Ctr. for Justice, 18 (April 6, 2018), https://www.brennancenter.org/sites/default/files/publications/Getting%20Foreign%20Funds%20Out%20of%20America%27s%20Elections.%20Final_April9.pdf.....25

Ian Vandewalker, *Since Citizens United, a Decade of Super PACs*,
 Brennan Ctr. for Justice (Jan. 14, 2020),
<https://www.brennancenter.org/our-work/analysis-opinion/citizens-united-decade-super-pacs>.....18

Jennifer A. Heerwig & Katherine Shaw, *Through a Glass, Darkly: The Rhetoric and Reality of Campaign Finance Disclosure*, 102
 GEO. L.J. 1443, 1471-72 (2014)13

Julian Barnes & Adam Goldman, *F.B.I. Warns of Russian Interference in 2020 Race and Boosts Counterintelligence*, N.Y.
 Times (Apr. 26, 2019).....22

Laine Welch, *Show me the salmon money: APOC filings show most comes from Outside Alaska for both pros/cons of updating habitat protections*, Alaska Fish Radio (Apr. 24, 2018),
<http://www.alaskafishradio.com/show-me-the-salmon-money-apoc-filings-show-most-comes-from-outside-alaska-for-both-pros-cons-of-updating-habitat-protections/>.....23

Melik Kaylan, *The Latest Bombshell: How Dark Money From Hostile States Has Entered Our Elections*, Forbes (Oct. 10, 2018, 11:08 PM), <https://www.forbes.com/sites/melikkaylan/2018/10/10/the-latest-bombshell-how-dark-money-from-hostile-states-has-entered-our-elections/#2541ec6a5cc5>.....16

Michael Kang, *Campaign Disclosure in Direct Democracy*, 97 MINN. L. REV. 1700, 1714-15 (2013)12

Ryan Byrne, *Signatures verified for Maine ballot initiative designed to void international hydroelectric transmission project*, Ballotpedia News (Mar. 6, 2020, 1:06 PM),
<https://news.ballotpedia.org/2020/03/06/signatures-verified-for-maine-ballot-initiative-designed-to-void-international-hydroelectric-transmission-project/>24

Shawn Musgrave, *Offshore money pours into slot machine initiative in Massachusetts*, New Eng. Ctr. for Investigative Reporting (Nov. 3, 2016), <https://www.wgbh.org/news/2016/11/03/offshore-money-pours-into-slot-machine-initiative-in-massachusetts>.....23

Special Counsel Robert S. Mueller, III, *Report on the Investigation into Russian Interference In The 2016 Presidential Election*, U.S. Dep’t of Justice, 1 (Mar. 2019),
<https://www.justice.gov/storage/report.pdf>22

Steve Mistler, *Documents Shed Light On Effort To Fund Casino Campaign, Now Facing \$4M Fine for Ethics Violations*, Me. Pub. Radio (Nov. 3, 2017),
<https://www.mainepublic.org/post/documents-shed-light-effort-fund-casino-campaign-now-facing-4m-fine-ethics-violations>23

Steve Mistler, *Questions Swirl On Foreign Influence In Maine Elections As Canadian Energy Company Readies Campaign*, Me. Pub. Radio (Dec. 13, 2019),
<https://www.mainepublic.org/post/hydro-quebec-gears-political-battle-over-cmps-proposed-transmission-line>24

CORPORATE DISCLOSURE STATEMENT

Amici certify that none has a parent corporation or issues stock, and therefore that no publicly held company owns 10% or more of any of their stock.

INTEREST OF *AMICI CURIAE*¹

The Brennan Center for Justice at N.Y.U. School of Law (“Brennan Center”)² is a non-partisan law and public policy institute that focuses on the fundamental issues of democracy and justice. Through its Democracy Program, the Brennan Center seeks to bring the ideal of self-government closer to reality by working to eliminate barriers to full participation, and to ensure that public policy and institutions reflect diverse voices and interests that make for a rich and energetic democracy. In keeping with these goals, the Brennan Center collaborates with legal academics, civil society, and the private bar to contribute to legal strategy, policy development, and empirical research to promote reasonable campaign finance reforms and other policy objectives that are central to its mission. The Brennan Center testified before the Santa Fe Ethics and Campaign

¹ The parties received timely notice and have consented to the filing of this brief under Fed. R. App. P. 29(a)(2). No party’s counsel or other person except *amici* and their counsel authored this brief or contributed money to fund its preparation or submission.

² This brief does not purport to convey the position, if any, of the New York University School of Law.

Review Board (“ECRB”) in 2015 as the ECRB deliberated amendments to the City’s Campaign Code, including amendments to the section at issue in this case. The Center also submitted an *amici* brief in this litigation in the district court.

Common Cause is a nonprofit organization that promotes reform of government ethics and campaign finance at the national, state, and local levels. Its New Mexico chapter has been instrumental in the adoption of campaign finance laws, including disclosure laws, in the State of New Mexico and the cities of Albuquerque, Las Cruces, and Santa Fe. Its representative in Santa Fe was directly and personally involved in drafting and advocating for the 2005 ordinance that became Santa Fe Campaign Code § 9-2.6 (Ord. No. 2004-14, § 29) and the amendments to that section that were enacted in 2007, 2013, and 2015 (Ord No. 2007-11, § 7; Ord. No. 2013-28, § 3; Ord. No. 2015-23, § 3). Common Cause New Mexico therefore has an interest in the administration and enforcement of that law, which is the matter at issue in this case.

The Colorado chapter of Common Cause has likewise been a prominent advocate for open, honest, and accountable government in that state. The organization has researched, written, and been influential in the adoption of campaign finance laws, including disclosure laws, at both the state and local levels. The organization was instrumental in the drafting, passage, and implementation of Denver’s campaign finance regulations amendment, Measure 2E. It also

contributed to disclosure ordinances in the cities of Lakewood and Aurora. At the state level, Colorado Common Cause was the lead organization behind 2002's Initiative 27, the Colorado Campaign Finance Act, whose disclosure requirements for independent campaign spenders were upheld by this court in *Independence Institute v. Williams*, 812 F.3d 787 (10th Cir. 2016). Colorado Common Cause also played an integral role in the development of The Clean Campaign Act of 2019 (HB19-1318), which further expanded Colorado's disclosure requirements. Colorado Common Cause therefore has an interest in campaign finance administration and enforcement in this circuit.

The League of Women Voters of Santa Fe County believes that methods of financing political campaigns and public offices should ensure the public's right to know, combat corruption and undue influence, maximize fiscal accountability and transparency, and allow maximum citizen participation in the political process. The more transparency there is about campaign financing for all types of campaigns, the more informed the electorate. Fostering an informed electorate is the mission of the League of Women Voters at all levels. Accordingly, the League of Women Voters of Santa Fe County has an interest in supporting the City of Santa Fe's disclosure ordinance.

New Mexico Ethics Watch ("NMEW") is a nonpartisan New Mexico nonprofit organization dedicated to promoting ethics and accountability in

government and public life in New Mexico. NMEW advances its mission through research, public reports, policy advocacy, compliance actions, and media outreach. Central to NMEW operations is the principle that in order to have ethical governance, the public must have transparent elections and government operations, free of conflicts of interest and unknown financial supporters. Part of that transparency requires the disclosure of the sources of support for advertising in elections for candidates and ballot initiatives. NMEW believes the City of Santa Fe has passed and implemented a strong, but reasonable, mechanism that mandates disclosure of contributions to political associations under certain conditions. NMEW has a fundamental interest in upholding the City's disclosure requirements because transparency is an essential element on the road to a more ethical government. Accordingly, NMEW has an interest in supporting the City of Santa Fe's disclosure ordinance.

Represent Us, formerly New Mexicans for Money Out of Politics ("NMMOP") is a nonprofit, non-partisan organization based in Santa Fe, New Mexico. NMMOP believes that disclosure requirements like those that the City of Santa Fe has enacted in § 9-2.6 are in the public interest as they help voters make informed choices, further the core goals of the First Amendment, and help combat the threat of dark money. Accordingly, NMMOP has an interest in supporting the City of Santa Fe's disclosure ordinance.

Amici submit this brief to provide the Court with additional information concerning the value of campaign finance disclosure laws like the challenged City ordinance. The brief explains relevant Supreme Court and circuit court jurisprudence concerning the value of disclosure in furthering core First Amendment values, highlights social science research and other pertinent facts substantiating disclosure’s importance in helping voters make informed decisions, and sets forth developments over the past decade – including the rise of secret campaign spending and the emerging threat of foreign interference in U.S. elections – that make strong electoral transparency rules like § 9-2.6 more critical than ever.

SUMMARY OF ARGUMENT

Amici – a diverse coalition of organizations, many with close ties to New Mexico and the City of Santa Fe – respectfully submit this brief in support of Defendants-Appellees, the City of Santa Fe and the Santa Fe Ethics and Campaign Review Board (collectively, “the City”). The District Court properly found that § 9-2.6 is constitutional under governing Supreme Court and Tenth Circuit precedents. We agree with the court’s ruling and write separately to underscore four critical points about the importance of campaign transparency laws, including the ordinance challenged here, in advancing the First Amendment’s foundational objective of enlightened self-government.

First, the Supreme Court and circuit courts across the country have long recognized that electoral disclosure rules like § 9-2.6, while they can burden First Amendment-protected interests, also advance the most important underlying goal of the First Amendment's protections for political speech: fostering a more informed electorate. For that reason, such rules are typically upheld.

Second, social science research and real-world experience acknowledged by numerous courts confirm that electoral transparency promotes the First Amendment value of enlightened self-government, particularly for ballot initiatives. Knowing the funders behind a specific campaign provides a critical informational cue that helps voters make informed choices that align with their policy preferences. This is especially so for ballot elections which, by their very nature, ask voters to decide on complex policy issues about which most have incomplete information. Knowing who supports or opposes an initiative, even at modest levels, is often an effective proxy for a more comprehensive understanding of the initiative's expected policy benefits. Voters with this information are more likely to make the same choices they would have made if they had had more complete information.

Third, recent changes to the electoral landscape have made campaign transparency even more critical to safeguard the political values embodied by the First Amendment. The last decade has witnessed an explosion of secret money in

federal, state, and local contests, which among other things has exacerbated our political system's vulnerability to foreign interference. At the state and local levels, where campaign costs are low, even modest expenditures of secret money can have a significant and distorting effect. Ballot initiative races are especially popular targets in this regard because they often have a direct impact on the bottom lines of wealthy individuals and entities, including foreign nationals (some with ties to foreign governments). And whereas federal law at least nominally prohibits foreign campaign spending in candidate races, the evenly divided Federal Election Commission has deadlocked on whether that prohibition even applies to ballot contests.

Fourth, setting the appropriate threshold for campaign disclosure requires balancing competing First Amendment interests, which is a necessarily fact-specific judgment that should ordinarily be left to voters and their elected representatives. In this instance, City policymakers deliberated carefully over the appropriate threshold, and their judgment warrants considerable deference.

For these and other reasons set forth by the City, this Court should affirm the District Court and hold that § 9-2.6 is constitutional.

ARGUMENT

I. Campaign Disclosure Statutes Like § 9-2.6 Further Core First Amendment Interests.

For more than three decades, from *Buckley v. Valeo* to *Citizens United v. FEC* and beyond, the Supreme Court has consistently and repeatedly affirmed the constitutionality of disclosure for electoral spending. Indeed, it has done so – including by an 8-1 majority in *Citizens United* – even while dismantling other campaign finance laws. See *Citizens United v. FEC*, 558 U.S. 310, 366-67 (2010); *McCutcheon v. FEC*, 134 S. Ct. 1434, 1459 (2014) (plurality opinion) (disclosure “minimizes the potential for abuse of the campaign finance system”).

These decisions recognize that “facilitat[ing] and enlarg[ing] public discussion and participation in the electoral process” are “goals vital to a self-governing people.” *Buckley v. Valeo*, 424 U.S. 1, 92-93 (1976). “In a republic where the people are sovereign, the ability of the citizenry to make informed choices [in elections] is essential.” *Id.* at 14-15. Fostering “enlightened self-government” is the basic objective of the First Amendment’s protections for political speech. *Citizens United*, 558 U.S. at 339-40. Campaign disclosure rules advance that goal, offering a “reasonable and minimally restrictive method of furthering First Amendment values by opening the basic processes of our . . . election system to public view.” *Buckley*, 424 U.S. at 82; see also *Citizens United*, 558 U.S. at 369 (campaign disclosure helps voters make “informed choices in the

political marketplace”). Thus, in most circumstances they serve to “further[], not abridge[], pertinent First Amendment values,” and are typically upheld. *Buckley*, 424 U.S. at 93.

The Supreme Court’s teachings on the value of campaign transparency apply as much to ballot campaigns as to candidate elections. In ballot campaigns, the Court has noted, “[i]dentification of the source of advertising” enables the public “to evaluate the arguments to which they are being subjected” and on which they will be asked to vote. *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 792 n.32 (1978). Recent decisions from circuit courts around the country have reaffirmed that “[e]ducating voters is at least as important, if not more so, in the context of initiatives and referenda as in candidate elections.” *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 480 (7th Cir. 2012); *see also Justice v. Hosemann*, 771 F.3d 285, 298 (5th Cir. 2014) (the informational interest in disclosure is “at least as strong” in the ballot context as in candidate elections, given that ballot initiatives “are often numerous, written in legalese, and subject to the modern penchant for labelling laws with terms embodying universally-accepted values”); *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1006 (9th Cir. 2010) (disclosure is especially pertinent in the ballot context, 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”) (internal citations omitted).

Although courts have long recognized the salutary effects of campaign disclosure, digital age technology has only increased these benefits. “With the advent of the Internet,” the *Citizens United* Court observed, “prompt disclosure of expenditures” allows voters to see in real time “whether elected officials are ‘in the pocket’ of so-called moneyed interests.” 558 U.S. at 370 (internal citations and quotations omitted). Writing for a plurality of the Court several years later, Chief Justice Roberts noted that “[w]ith modern technology, disclosure now offers a particularly effective means of arming the voting public with information. . . . Because massive quantities of information can be accessed at the click of a mouse, disclosure is effective to a degree not possible at the time *Buckley*, or even *McConnell*, was decided.” *McCutcheon*, 134 S. Ct. at 1460 (plurality opinion). Greater access to such information empowers voters to better assess the messages they receive and make decisions that are truly consistent with their preferences, further enhancing disclosure’s democratic benefits and the ultimate objectives of the First Amendment.

This Court’s precedents are not to the contrary. It too has recognized the value of campaign transparency, as the District Court correctly concluded. Pl.-Appellant’s App. 87-88; Br. for Defs.-Appellees 20-23, 27. Although it has

invalidated certain campaign disclosure regimes as applied to specific plaintiffs, it has acknowledged that “[v]oters certainly have an interest in knowing who finances support [for] or opposition to a given ballot initiative,” and that transparency rules for ballot campaigns, like candidate campaigns are generally constitutional. *See Coalition for Secular Gov’t v. Williams*, 815 F.3d 1267, 1280 (10th Cir. 2016); *see also Sampson v. Buescher*, 625 F.3d 1247, 1257 (10th Cir. 2010) (acknowledging that “on three occasions [the Supreme Court] has spoken favorably of such [ballot-campaign disclosure] requirements”).

As explained below, these precedents are based not on mere suppositions, but are grounded in empirical scholarship and the real-world observations of numerous courts.³ *See Part II, infra.*

³ These observations are quintessential examples of legislative fact-finding—i.e. the recognition of “established truths, facts or pronouncements that do not change from case to case but apply universally” and are “of relevance to legal reasoning and the lawmaking process.” *United States v. Iverson*, 818 F.3d 1015, 1030 (O’Brien, J., concurring) (quoting *United States v. Wolny*, 133 F.3d 758, 764 (10th Cir. 1988)). Courts may take account of legislative facts regardless of whether they are established through record evidence. *Id.*; *see also, e.g., Ognibene v. Parkes*, 599 F. Supp. 2d 434, 448 (S.D.N.Y. 2009) (considering legislative facts in determining whether public’s perception of corruption was sufficient to justify upholding campaign contribution limits), *aff’d*, 671 F.3d 174 (2d Cir. 2011).

II. Campaign Transparency’s Role in Promoting Enlightened Self-Government Consistent with the First Amendment is Well-Documented, Especially for Ballot Initiative Contests

The longstanding recognition by federal courts that campaign transparency furthers the political values undergirding the First Amendment is well-founded. Disclosure of the funders behind campaign spending provides voters with a critical informational shortcut that helps them to make informed decisions. Donor transparency is particularly critical in ballot contests, where many other informational shortcuts are unavailable. This is true even for relatively modest expenditures, where donor disclosure helps reveal overall trends in who is supporting or opposing an initiative and is also critical to preventing transparency rules and other requirements from being evaded.

a. Informational Shortcuts Help Voters Make Decisions

A lack of complete information about one’s choices is an enduring feature of the American voting experience. *See* Elizabeth Garrett & Daniel A. Smith, *Veiled Political Actors and Campaign Finance Disclosure Laws in Direct Democracy*, 4 ELECTION L.J. 295, 296 (2015) (hereinafter *Veiled Political Actors*). This is especially so in ballot elections, where voters are asked to make important and frequently complex policy decisions, often based on little more than a short description of a measure’s substance. *See id.* at 296-97; Michael Kang, *Campaign Disclosure in Direct Democracy*, 97 MINN. L. REV. 1700, 1714-15 (2013)

(hereinafter *Direct Democracy*); Elizabeth R. Gerber & Arthur Lupia, *Campaign Competition and Policy Responsiveness in Direct Legislation Elections*, 17:3 POL. BEHAV. 287, 289-90 (Sept. 1995) (hereinafter *Campaign Competition*). Cues that usually aid voters in the candidate context – like party affiliation, life experience, and demeanor – are unavailable. Jennifer A. Heerwig & Katherine Shaw, *Through a Glass, Darkly: The Rhetoric and Reality of Campaign Finance Disclosure*, 102 GEO. L.J. 1443, 1471-72 (2014) (hereinafter *Rhetoric and Reality*). Even highly engaged voters might find a ballot question confusing or may not be well-informed about all of its salient aspects. See Garrett & Smith, *Veiled Political Actors*, at 296-97; Arthur Lupia, *Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections*, 88:1 AM. POLI. SCI. REV. 63, 63 (Mar. 1994) (hereinafter *Shortcuts*).

A sizeable body of research shows, however, that knowing who is spending money to influence a contest is a “particularly credible” informational cue to help voters make reasoned choices consistent with their policy preferences. Garrett & Smith, *Veiled Political Actors*, at 298.⁴ Campaign finance disclosure helps voters understand the overall interests at stake and where they stand in relation to those

⁴ See *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 480-81 & n.14 (7th Cir. 2012) (upholding disclosure rules in part because “[r]esearch shows that one of the most useful heuristic cues influencing voter behavior in initiatives and referenda is knowing who favors or opposes a measure”).

interests. A voter who knows how both the Sierra Club and the oil and gas industry spent on an environmental proposal, for example, can determine “whether passage of the ballot question is likely to be in her interest, without knowing more about the details of the proposal.” Garrett & Smith, *Veiled Political Actors*, at 298. Disclosure also enables voters to better assess a message’s credibility. See Gerber & Lupia, *Campaign Competition*, at 290 (“[T]he inference that a person draws from the statement ‘Trust me’ is likely to differ depending on whether it is made by her mother or a used car salesman. Similarly, how campaign statements affect a voter’s beliefs depends on her assessment of the campaigner’s incentive to tell the truth.”).

Empirical data substantiates these conclusions. A frequently cited study of voter behavior on a series of ballot measures dealing with tort reform found that the single largest determinant of a low-information respondent’s voting behavior was “whether they knew the insurance industry’s preferred electoral outcome.” See Lupia, *Shortcuts*, at 70. Likewise, a laboratory study designed to replicate the voter experience found that subjects were more likely to make decisions about how to vote consistent with their interests when they received information from speakers that they knew shared those interests. See Cheryl Boudreau, *Making Citizens Smart: When do Institutions Improve Unsophisticated Citizens’ Decisions?* 31 POL. BEHAV. 287, 292-94, 303 (2009). That study found that

learning a speaker's interests were contrary to their own also helped subjects make choices aligned with their own interests under some circumstances. *Id.* at 294, 303. The study ultimately concluded that these results “largely support[ed] scholars in the information shortcuts camp.” *Id.* at 304.

b. Voters Glean Key Information from Even Modest Spending

Voters can benefit from disclosure of even comparatively modest contributions and expenditures. Among other things, such disclosure helps voters discern whether the measure truly has broad support or whether one or two wealthy individuals have manufactured the appearance of a grassroots campaign. *See* Garrett & Smith, *Veiled Political Actors*, at 325 (it is helpful for voters to understand when “a group that sounds as though thousands of Americans in favor of education reform have bankrolled a movement is really controlled and funded by one multi-millionaire with his own, possibly idiosyncratic version of reform”).

Even in instances where many individual donors do support or oppose an initiative, moreover, knowing their identities can still provide valuable insights – such as whether an initiative “was funded by the citizens it is intended to affect or by out-of-state . . . individuals.” *ProtectMarriage.com v. Bowen*, 830 F. Supp. 2d 914, 948 n.16 (E.D. Cal. 2011), *dismissed in part on other grounds*, 752 F.3d 827 (9th Cir. 2014); *see also, e.g., Nat’l Org. for Marriage, Inc. v. McKee*, 669 F.3d 34, 41 (1st Cir. 2012) (recognizing that the public has an interest in knowing that a

ballot measure has been supported by “even small gifts” because “the cumulative effect of disclosure ensures that the electorate will have access to information regarding the driving forces backing and opposing each bill”) (internal quotations omitted); *Family PAC v. McKenna*, 685 F.3d 800, 810 (9th Cir. 2012) (same).

Finally, as the Eleventh Circuit recognized in *Worley v. Florida Secretary of State*, “knowing the source of even small donations” can help “prevent[] evasion of disclosure” (and other campaign finance requirements). 717 F.3d 1238, 1251 (11th Cir. 2013). This is especially pertinent given technological developments that make it possible for malign actors to use artificial intelligence to “automate and anonymize” small donations to manipulate elections.⁵ For instance, a hostile foreign government or non-state actor could utilize electronic bots to funnel money from various sources (including stolen credit card information) in the form of mass, automated small donations—which would together have the cumulative impact of many thousands or potentially millions of dollars—all while remaining anonymous.⁶ Setting disclosure thresholds relatively low can help raise awareness

⁵ Neil Barnett & Alastair Sloan, *Democracy in the Crosshairs: How Political Money Laundering Threatens the Democratic Process*, The Atlantic Council, 15 (Oct. 2018), https://www.atlanticcouncil.org/wp-content/uploads/2018/10/Democracy_in_the_Crosshairs_updated101718.pdf. (hereinafter *Political Money Laundering*).

⁶ Melik Kaylan, *The Latest Bombshell: How Dark Money From Hostile States Has Entered Our Elections*, Forbes (Oct. 10, 2018, 11:08 PM), <https://www.forbes.com/sites/melikkaylan/2018/10/10/the-latest-bombshell-how-dark-money-from-hostile-states-has-entered-our-elections/#2541ec6a5cc5>.

of this threat by revealing suspicious patterns, like a large number of donors whose identities cannot be verified or an apparent proliferation of small out-of-state donations for an obscure local race.⁷

Disclosure of relatively smaller contributions and expenditures is especially critical in the context of local elections in which even small amounts of money can have an outsized impact.⁸ Given the comparatively modest sums that could sway a race in a small jurisdiction like Santa Fe, the City's decision to set appropriate threshold for disclosure requirements is a fact- and context-specific matter warranting significant deference. *See* Parts III.a and IV, *infra*.

III. Campaign Transparency Is More Important Than Ever Given the Last Decade's Explosion in Secret Campaign Spending and the Increased Threat of Foreign Interference in U.S. Elections.

Campaign transparency has become especially critical over the last decade, during which secret campaign spending by groups that hide their true agendas behind innocuous-sounding names and do not disclose their donors has become far more common. In recent years this trend has coincided with increased efforts by hostile foreign governments and other foreign nationals to manipulate the U.S. electorate, including in ballot races.

⁷ *See* Barnett & Sloan, *Political Money Laundering*, at 19-20.

⁸ *See* Chisun Lee et al., *Secret Spending in the States*, Brennan Ctr. for Justice, 3 (June 2016), https://www.brennancenter.org/sites/default/files/2019-08/Report_Secret_Spending_in_the_States.pdf.

a. Dark Money from Undisclosed Sources is a Growing Problem in U.S. Elections

The Court should evaluate § 9-2.6 against the wave of secret election spending that has occurred over the last decade. While it reaffirmed the constitutionality of disclosure, *Citizens United* and its progeny allowed a range of new outside actors, including super PACs, to raise unlimited funds to spend on elections. These entities have spent billions of dollars in federal and state races over the last decade.⁹ A significant portion of this unconstrained spending has come from organizations that do not disclose their donors (often referred to as “dark money” groups).¹⁰ These groups typically hide behind innocuous names designed to make them appear local and grassroots-oriented, like “Proper Role of Government Education Association” (a front for payday lenders in Utah) and “American Family Voices” (funded by unions, environmental interests, and retail lobbying groups).¹¹

⁹ See Lee et al., *Secret Spending*, at 9; Ian Vandewalker, *Since Citizens United, a Decade of Super PACs*, Brennan Ctr. for Justice (Jan. 14, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/citizens-united-decade-super-pacs> (showing that since 2010, super PACs have spent almost \$3 billion on federal elections, including over \$1 billion in the 2016 elections).

¹⁰ See Lee et al., *Secret Spending*, at 5.

¹¹ *Id.* at 4; Dave Levinthal, *Liberal ‘Dark Money’ Group Rails Against ‘Dark Money’*, Center for Public Integrity (Nov. 20, 2015), <https://goo.gl/HpP3so>.

Dark money is particularly influential at the state and local levels, where it “frequently flows from special interests with a direct and immediate economic stake in the outcome of a contest.”¹² The Brennan Center’s study of dark money spending in six states found that the share of non-candidate outside spending that was fully transparent declined sharply from 76 percent in 2006 to just 29 percent in 2014.¹³ Given that state and local contests are relatively low-cost compared to federal elections, dark money expenditures can have a particularly distorting impact at these levels.¹⁴

Ballot contests, which often have direct economic consequences for wealthy interests, are a frequent target of dark money spending.¹⁵ Donor anonymity in this context can help to mask the self-interest and out-of-state forces underlying messages that seek to sway voters.¹⁶ The Brennan Center has documented numerous examples of secret money groups spending to influence ballot contests from across the country, including a Washington State ballot proposal on genetically modified foods, where household brand companies spent \$11 million through a Washington, D.C.-based nonprofit, and a California ballot proposal to

¹² Lee et al., *Secret Spending*, at 3.

¹³ *Id.* at 2.

¹⁴ *See id.* at 10.

¹⁵ *Id.* at 14.

¹⁶ *Id.* at 10.

raise taxes on oil companies in which a Texas oil outfit funding an opposition campaign hid behind the name “Californians for Good Schools and Good Jobs.”¹⁷

Examples likewise abound here in the Tenth Circuit. A group called Citizen Voters, for instance, is the leading spender supporting a 2020 ballot campaign to amend the Colorado state constitution to prohibit noncitizens from voting.¹⁸ The group is based in Florida and led by a former Missouri state legislator.¹⁹ As of April 29, 2020, it has directed \$1.43 million to the measure’s campaign committee – 99 percent of the committee’s funding – but its donors are unknown.²⁰ The same group has backed similar measures across the country, including in Florida (where it has spent over \$4.7 million), Alabama, and North Dakota.²¹ Another organization that does not disclose its donors, Washington, D.C.-based nonprofit Sixteen Thirty Fund, has contributed \$500,000 to Colorado Families First, an issue committee seeking to put a paid sick leave measure on the state ballot in 2020.²²

¹⁷ *Id.* at 15-17.

¹⁸ *Colorado Citizen Requirement for Voting Initiative (2020)*, Ballotpedia, [https://ballotpedia.org/Colorado_Citizen_Requirement_for_Voting_Initiative_\(2020\)](https://ballotpedia.org/Colorado_Citizen_Requirement_for_Voting_Initiative_(2020)) (last visited May 30, 2020).

¹⁹ *Citizen Voters, Inc.*, Ballotpedia, https://ballotpedia.org/Citizen_Voters,_Inc. (last visited May 30, 2020).

²⁰ *Id.*

²¹ *Id.*

²² Andrew Kenney, *Colorado’s Paid Leave Bill is Dead, But Voters May Still Decide*, CPR (Apr. 30, 2020), <https://www.cpr.org/2020/04/30/colorados-paid-leave-bill-is-dead-but-voters-may-still-decide/>.

The same group spent over \$10 million in Colorado ballot and candidate campaigns in 2018.²³

These are just a few examples of the powerful role that dark money can play in shaping ballot contests. In response to this phenomenon, jurisdictions across the country have strengthened their disclosure laws to ensure greater transparency in elections. *E.g.*, Washington DISCLOSE Act, 2018 Wash. Sess. Laws 648; Cal. Gov't Code § 82025 (West 2017); Denver Rev. Mun. Code § 15-35 (2017). It is more than reasonable for the City of Santa Fe to maintain its own strong protections.

b. Dark Money Loopholes Enable Foreign Money to Infiltrate Our Elections

Dark money also exacerbates the growing threat of foreign interference in U.S. elections. While international exchanges of information and ideas carry many benefits, foreign nationals do not have the same “basic investment in the well-being of the country” as do U.S. citizens and permanent residents. *Citizens United*, 558 U.S. at 424 n.51 (Stevens, J., dissenting). For that reason, as the Supreme Court has acknowledged, “the United States has a compelling interest . . . in limiting the participation of foreign citizens in activities of American democratic

²³ *Id.*

self-government, and in thereby preventing foreign influence over the U.S. political process.” *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (Kavanaugh, J.) (three judge court), *aff’d*, 565 U.S. 1104 (2012).

Nevertheless, foreign interference in U.S. campaigns is increasingly common. There is no doubt, as Special Counsel Robert Mueller concluded, that “[t]he Russian government interfered in the 2016 presidential election in a sweeping and systematic fashion.”²⁴ The Kremlin and other hostile foreign governments again tried to influence U.S. voters in the 2018 midterm elections, and it is certain they will seek to do so again in 2020 and beyond.²⁵

Non-U.S. actors not only target federal contests – they also spend in state and local elections. In 2019, for instance, two high-profile Republican donors, Lev Parnas and Igor Fruman, were indicted for, among other things, funneling tens of thousands of dollars from a Ukrainian government official to two Nevada state candidates in order to influence their positions on policies that would benefit future business ventures. Indictment ¶¶ 20-25, *United States v. Parnas et al.*, 19-cr-725 (S.D.N.Y. 2019). And in 2012, a Mexican property developer directed more than

²⁴ Special Counsel Robert S. Mueller, III, *Report on the Investigation into Russian Interference In The 2016 Presidential Election*, U.S. Dep’t of Justice, 1 (Mar. 2019), <https://www.justice.gov/storage/report.pdf>.

²⁵ Julian Barnes & Adam Goldman, *F.B.I. Warns of Russian Interference in 2020 Race and Boosts Counterintelligence*, N.Y. Times (Apr. 26, 2019), <https://www.nytimes.com/2019/04/26/us/politics/fbi-russian-election-interference.html>.

\$600,000 into San Diego's mayoral race in an effort to "buy a mayor," according to prosecutors.²⁶

Ballot contests are not immune. For example, committees formed to influence Maine and Massachusetts ballot questions related to gambling in 2016 and 2017 were funded largely by hundreds of thousands of dollars from a Japanese firm and two Cambodian employees.²⁷ In 2018, an Alaskan ballot measure that would have heightened protections for wildlife habitats drew \$12 million in opposition spending from the mining, oil, and gas industry, some of which came from foreign-owned corporations in Canada and Japan.²⁸ And this November, Maine voters will vote on the future of a proposed electric transmission line that

²⁶ Greg Moran, *Feds Say Azano Wanted to 'Buy a Mayor,'* The San Diego Union-Tribune (July 27, 2016, 7:38 PM), <http://www.sandiegouniontribune.com/sdut-feds-say-azano-wanted-to-buy-a-mayor-2016jul27-story.html>.

²⁷ Shawn Musgrave, *Offshore money pours into slot machine initiative in Massachusetts*, New Eng. Ctr. for Investigative Reporting (Nov. 3, 2016), <https://www.wgbh.org/news/2016/11/03/offshore-money-pours-into-slot-machine-initiative-in-massachusetts>; Steve Mistler, *Documents Shed Light On Effort To Fund Casino Campaign, Now Facing \$4M Fine for Ethics Violations*, Me. Pub. Radio (Nov. 3, 2017), <https://www.mainepublic.org/post/documents-shed-light-effort-fund-casino-campaign-now-facing-4m-fine-ethics-violations>.

²⁸ Laine Welch, *Show me the salmon money: APOC filings show most comes from Outside Alaska for both pros/cons of updating habitat protections*, Alaska Fish Radio (Apr. 24, 2018), <http://www.alaskafishradio.com/show-me-the-salmon-money-apoc-filings-show-most-comes-from-outside-alaska-for-both-pros-cons-of-updating-habitat-protections/>; Elizabeth Harball, *Alaska voters strike down 'Stand for Salmon' ballot initiative*, KTOO (Nov. 6, 2018), <https://www.ktoo.org/2018/11/06/ballot-measure-1-additional-protections-for-salmon-habitats/>.

would run from the Canadian border through the state. Hydro-Quebec, a utility company whose sole shareholder is the provincial government of Quebec, has formed a committee to spend against the measure.²⁹

Municipal ballot contests have similarly drawn spending from entities with links to foreign corporations. In 2012, for example, a committee opposed to a Los Angeles ballot measure regulating the adult film industry was revealed to have been partially funded by foreign nationals affiliated with a Luxembourg-based online pornography company.³⁰ Those funds included contributions from a corporation based in Cyprus and corporate donations directed by a German citizen.³¹ Likewise, in 2016, China's Dalian Wanda Group was accused of directing \$1.2 million to a committee established by its U.S.-based subsidiary to

²⁹ Ryan Byrne, *Signatures verified for Maine ballot initiative designed to void international hydroelectric transmission project*, Ballotpedia News (Mar. 6, 2020, 1:06 PM), <https://news.ballotpedia.org/2020/03/06/signatures-verified-for-maine-ballot-initiative-designed-to-void-international-hydroelectric-transmission-project/>; Steve Mistler, *Questions Swirl On Foreign Influence In Maine Elections As Canadian Energy Company Readies Campaign*, Me. Pub. Radio (Dec. 13, 2019), <https://www.mainepublic.org/post/hydro-quebec-gears-political-battle-over-cmps-proposed-transmission-line>.

³⁰ FEC, First General Counsel's Report: Matter Under Review (MUR) 6678 (MindGeek USA, Inc., et al.), 9-10 (Aug. 15, 2014), <http://eqs.fec.gov/eqsdocsMUR/15044372921.pdf>.

³¹ *Id.*

defeat a Beverly Hills ballot measure that would have benefited a rival real estate company.³²

Weak disclosure rules make such spending far easier to hide. It has only been through multiple in-depth investigations by the media and others that some cases of dark money groups accepting funds linked to foreign governments and other foreign nationals have been uncovered.³³

Moreover, while dark money targeting candidate elections (including at the state and local level) is at least in theory prohibited, *see* 52 U.S.C. § 30121, the

³² The Dalian Wanda case is a good illustration of how the prohibition on campaign spending by foreign nationals can easily be evaded even where its application is clear (as it is not in ballot initiative cases, *see infra*). Enforcement actions against the company before both the FEC and the California Fair Political Practices Commission (FPPC) were dismissed on the grounds that the company's spending on the ballot initiative was funneled through a U.S. subsidiary and directed by a lawful permanent resident. *See* FEC, Approval of Factual and Legal Analysis in MUR 7141 (Wang Jianlin, et al.), 1-4, (Nov. 2, 2017), <https://eqs.fec.gov/eqsdocsMUR/17044432154.pdf>; Gene Maddaus, *FPPC Rejects Claim Wanda Used Foreign Money in Beverly Hills Election*, *Variety* (Oct. 7, 2016), <https://variety.com/2016/biz/asia/fppc-rejects-wanda-foreign-money-beverly-hills-election-1201882010/>. But it is not hard to see how such campaign spending can still serve to advance the interests of a foreign government or other foreign national. After all, those running a subsidiary on behalf of a parent would have a fiduciary responsibility to pursue the parent company's best interests – including through campaign spending, making transparency all the more important. *See* Ian Vandewalker & Lawrence Norden, *Getting Foreign Funds Out of America's Elections*, Brennan Ctr. for Justice, 18 (April 6, 2018), https://www.brennancenter.org/sites/default/files/publications/Getting%20Foreign%20Funds%20Out%20of%20America%27s%20Elections.%20Final_April9.pdf.

³³ *See id.* at 15.

same cannot be said for ballot elections. In 2015, the evenly-divided Federal Election Commission split 3-3 on the issue of whether the ban on campaign spending by foreign nationals applied to the Los Angeles ballot race described above, effectively rendering federal law inoperable with respect to such contests.³⁴ As a result, foreign interests have what amounts to a legal right to spend money on ballot elections nationwide.³⁵

The fact that foreign campaign spending in ballot contests is permitted makes transparency regarding who is behind that spending all the more important. As one member of the FEC put it: “The ballot measure is the mechanism designed to most directly express the will of the American people regarding the laws that govern us.”³⁶ In the very least, voters should have the right to know if efforts to influence them are being funded from abroad. In a contest over local zoning rules, for instance, ads funded by local businesses are likely to receive a much different hearing than those paid for by a foreign real estate conglomerate. In a referendum

³⁴ FEC, Statement of Reasons of Vice Chairman Matthew S. Petersen and Comm’rs Caroline C. Hunter and Lee E. Goodman in MUR 6678 (MindGeek USA, Inc., et al.), 8-9 (Apr. 30, 2015), <http://eqs.fec.gov/eqsdocsMUR/15044372963.pdf>.

³⁵ Even if this were not the case, the prohibition on campaign spending by foreign nationals is easy for most corporations to evade by funneling the money through domestic subsidiaries, as explained in note 32, *supra*.

³⁶ FEC, Statement of Reasons of Comm’r Ellen L. Weintraub in MUR 6678 (MindGeek USA, Inc., et al.), 3 (Apr. 30, 2015), <https://eqs.fec.gov/eqsdocsMUR/15044372958.pdf>.

on potentially controversial issues like abortion or police brutality, voters benefit from knowing whether hard-hitting ads are funded by U.S. groups genuinely interested in the underlying policies or foreign governments primarily looking to highlight American divisions. Absent an outright prohibition on such spending, transparency is the best mechanism available to ensure that U.S. voters make informed decisions.

IV. Section 9-2.6 Adopts a Reasonable Approach to Balancing Competing First Amendment Interests that Warrants Considerable Deference.

Given the context described above, the District Court was correct in upholding § 9-2.6. As the court noted, the City of Santa Fe is a small municipality in which even modest campaign spending can have a significant impact. *See* Pl.-Appellant’s App. 88; Br. for Defs.-Appellees 29-30. City voters have an interest in knowing where money spent to influence their votes comes from, and the “exact point where the governmental interest becomes great enough to justify disclosure” is one that should ordinarily be left to the City and its citizens. Pl.-Appellant’s App. 89; *see also Buckley*, 424 U.S. at 83 (upholding monetary thresholds of \$10 and \$100 for federal record-keeping and reporting provisions regarding contributions, concluding that “the line is necessarily a judgmental decision, best left in the context of this complex legislation to congressional discretion”); *see also* Br. for Defs.-Appellees 42; *McKee*, 649 F.3d at 60 (“Following *Buckley*, 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.’”) (internal quotations and citations omitted).

The challenged ordinance is the product of years of careful consideration by the City to address dark money spending and other challenges in its elections, having been enacted in 2005 and amended over the years to tailor it to the unique needs of the jurisdiction. Appellees’ Suppl. App. 14 (Decl. of Justin Miller ¶ 19). In 2015, the City’s Ethics and Campaign Review Board (ECRB) amassed a thorough record to justify maintaining its \$250 disclosure threshold. *See* Br. For Defs.-Appellees 4-5; Appellees’ Suppl. App. 64-65 (statement of Stefanie Beninato); *Id.* at 65 (statement of Warren Martinez); *Id.* at 16 (Decl. of Justin Miller ¶ 30, 32). That process also resulted in the City limiting disclosure only to donations specifically earmarked for electoral purposes to avoid burdening other expression. Pl.-Appellant’s App. 70; Br. For Defs.-Appellees 41-42. This careful approach appropriately sought to balance the public’s interest in disclosure with legitimate free speech concerns and deserves considerable deference.

CONCLUSION

First Amendment protections for speech aim, above all else, to help the American people with the task of self-government. *Buckley*, 424 U.S. at 14-15.

Electoral transparency rules like § 9-2.6 help ensure that voters with imperfect information can still make informed decisions that align with their policy preferences at the ballot box. These safeguards are more important than ever given the proliferation of dark money spending in elections coupled with efforts from abroad to manipulate the U.S. electorate. *Amici* therefore urge the Court to affirm the judgment of the District of New Mexico and to hold that Santa Fe City Campaign Code § 9-2.6 comports with the First Amendment and the New Mexico Free Speech Clause.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing on July 2, 2020. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF System.

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. 29(a)(5) because this brief contains 6312 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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I hereby certify that a copy of the foregoing **Brief of Amici Curiae The Brennan Center for Justice, Common Cause, The League of Women Voters of Santa Fe County, New Mexico Ethics Watch, and Represent Us** as submitted in Digital Form via the court's ECF system is an exact copy of the written document filed with the Clerk and has been scanned for viruses with the most recent version of a commercial virus scanning program (Bit Defender, version 6.6.6.84, which is updated daily) and, according to the program, is free of viruses. In addition, I certify all required privacy redactions have been made.

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