

BRENNAN CENTER FOR JUSTICE

July 14, 2021

Melissa Malerman, Director
Disclosure, Filings and Compliance Division
Bureau of Elections
Michigan Department of State
Richard H. Austin Building—1st Floor
430 W. Allegan Street
Lansing, MI 48918
Via email to: Disclsoure@Michigan.gov

RE: LaBrant request for declaratory ruling

Dear Ms. Malerman:

The Brennan Center for Justice at N.Y.U. School of Law¹ respectfully submits this comment regarding Robert LaBrant’s request for a declaratory ruling/interpretive statement.² Disclosure of the sources of funding for ballot question committees is required by Michigan law, and we are aware of no provision allowing a political party to use its administrative fund to avoid such disclosure.³ Nor is there any constitutional obstacle to a state requiring disclosure of the sources of financing for ballot elections.⁴

For more than three decades, the Supreme Court has consistently and repeatedly affirmed the constitutionality of disclosure for electoral spending, including by an

¹ The Brennan Center is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice and studies, litigates, and drafts legislative solutions regarding money in politics. The opinions expressed in this testimony are only those of the Brennan Center and do not necessarily reflect the opinions of the N.Y.U. School of Law.

² See Robert S. LaBrant, *Request for Declaratory Ruling /Interpretive Statement Under MCL 169.215*, June 28, 2021, available at https://www.michigan.gov/sos/0,4670,7-127-1633_23669_23716-69259--,00.html.

³ See Mich. Comp. Laws § 169.225; § 169.233a; § 169.241(2).

⁴ Cf. Brief for The Brennan Center for Justice et al. as Amici Curiae Supporting Respondents, *Rio Grande Fdn. v. City of Santa Fe* (No. 20-2022), 2020 WL 3638443, available at <https://www.brennancenter.org/sites/default/files/2020-07/2020-07-02-%20Rio%20Grande%20Amici%20Brief.pdf>.

8-1 majority in *Citizens United*.⁵ “In a republic where the people are sovereign, the ability of the citizenry to make informed choices [in elections] is essential.”⁶ Campaign disclosure rules advance the goal of self-government, offering a “reasonable and minimally restrictive method of furthering First Amendment values by opening the basic processes of our . . . election system to public view.”⁷ Therefore, in most circumstances they serve to “further[], not abridge[], pertinent First Amendment values,” and are typically upheld.⁸

The Supreme Court’s reasoning about the importance of campaign transparency is just as applicable 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.⁹ Recent decisions from circuit courts around the country agree that “[e]ducating voters is at least as important, if not more so, in the context of initiatives and referenda as in candidate elections.”¹⁰

This body of law is amply supported by research showing that information about donors’ identities is especially valuable to voters in ballot question elections, where such information constitutes an effective proxy for understanding the policy effects of a proposal.¹¹ As one federal court recently put it, “bringing more transparency and informing the electorate of special interests seeking to influence ballot

⁵ 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”).

⁶ *Buckley v. Valeo*, 424 U.S. 1, 14-15 (1976).

⁷ *Id.* at 82; see also *Citizens United*, 558 U.S. at 369 (campaign disclosure helps voters make “informed choices in the political marketplace”)

⁸ *Buckley*, 424 U.S. at 93.

⁹ *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 792 n.32 (1978).

¹⁰ *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).

¹¹ Elizabeth Garrett & Daniel A. Smith, *Veiled Political Actors and Campaign Finance Disclosure Laws in Direct Democracy*, 4 ELECTION L.J. 295, 298 (2015); 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”).

measures helps citizens evaluate who stands to gain and lose from proposed legislation.”¹²

The Brennan Center urges the Michigan Bureau of Elections to respond to Mr. LaBrant’s request by preserving transparency regarding the sources of funding for ballot question committees in Michigan elections.

Sincerely,

s/ Ian Vandewalker

Ian Vandewalker

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Brennan Center for Justice at N.Y.U. School of Law

¹² *Rio Grande Fdn. v. City of Santa Fe*, 437 F.Supp.3d 1056 (D.N.M. 2020).