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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCANS SUPPORTING  
 PROP B, *et al*,  
*Plaintiffs*,  
 v.  
 DAVID CHIU, *et al.*,  
*Defendants*.

No. 3:22-cv-02785-LB

**NOTICE OF MOTION AND  
 MOTION FOR TEMPORARY  
 RESTRAINING ORDER AND  
 PRELIMINARY  
 INJUNCTION; MEMORANDUM OF  
 POINTS AND AUTHORITIES**

Hearing date: TBD  
 Hearing time: TBD  
 Courtroom: TBD  
 Judge: Honorable Laurel Beeler

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## NOTICE OF MOTION AND MOTION

To all parties and their counsel of record:

Please take notice that, as soon as the matter may be heard, before the Honorable Laurel Beeler of the United States District Court for the Northern District of California, Plaintiffs will and hereby move the Court under Rule 65 of the Federal Rules of Civil Procedure and Local Rules 7-1 and 6-2, for a temporary restraining order and for a preliminary injunction prohibiting Defendants and their officers, agents, divisions, commissions, and all persons acting under or in concert with them, from enforcing requirements that speakers disclose the top donors to the speakers' top donors on their communications ("on-communication secondary donor disclosure") at S.F. Campaign and Governmental Conduct Code ("S.F. Code") § 1.161(a), <https://bit.ly/3MzrSXp>.

Plaintiffs request that bond be waived or set in the amount of \$1.00. This Court has discretion to waive the security requirements of Fed. R. Civ. P. 65(c) or require only a nominal bond. *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999). "Courts [in the Ninth Circuit] also have denied bond requirements where the plaintiff was pursuing litigation that would vindicate important constitutional rights." *Thomas v. Cty. of Riverside Sheriff's Dep't*, No. EDCV 10-01846 VAP(DTBx), 2011 U.S. Dist. LEXIS 164992, at \*80 (C.D. Cal. July 7, 2011) (quotation marks omitted) (compiling cases). Given that Plaintiffs seek to vindicate important First Amendment rights, the Court should waive the bond requirement or set bond at a nominal amount.

## MEMORANDUM OF POINTS AND AUTHORITIES

## INTRODUCTION

The City and County San Francisco ("City" or "San Francisco") coopts speakers' messages about candidates and measures, forcing speakers not just to replace part of their message with the City's speech, but to make the City's message the focus of any message. The City forgets that "the First Amendment 'has its fullest and most urgent application'" in the context of "[f]ree discussion about" political issues like candidacies

1 and ballot measures. *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989)  
 2 (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)).

3 To coopt a speaker’s message, the City must show that it has a compelling or  
 4 important interest and that its compelled speech—a requirement that speakers state  
 5 in their communications the donors to their donors—are narrowly or sufficiently  
 6 related to that interest. This the City cannot do. It already satisfies the only possible  
 7 interest—that in informing the public about those who wish to financially support a  
 8 candidate or measure—by demanding that speakers disclose donor information to the  
 9 City, which the City then publishes for anyone surfing the web from the comfort of  
 10 their living room couch to review. S.F. Code § 1.110(a).

11 But that is not enough for the City. It demands that speakers include their top  
 12 three donors in any communication and, if any of those donors is a committee, the  
 13 donor’s top two contributors. And internet video advertisements must begin with this  
 14 information, distracting and driving away listeners before they have even heard the  
 15 speaker’s message. This violates a speaker’s right to decide “what to say and what to  
 16 leave unsaid.” *Hurley v. Irish-American Gay, Lesbian and Bisexual Grp.*, 515 U.S. 557,  
 17 573 (1995) (quotation marks omitted).

18 Moreover, the City’s compelled messaging cannot inform voters because it in fact  
 19 misleads them, making them believe that secondary donors who may in fact oppose a  
 20 message have supported a candidate or measure. Indeed, given that this misleading  
 21 disclosure may harm secondary donors’ reputations, it will keep primary donors like  
 22 Plaintiff Edwin M. Lee Asian Pacific Democratic Club PAC sponsored by Neighbors for  
 23 a Better San Francisco Advocacy (“Ed Lee Dems”) from supporting messages they  
 24 would like to share in and from associating with allies like San Franciscans  
 25 Supporting Prop B (“SPB” or “Committee”).

26 Todd David formed SPB to support the passage of San Francisco Charter  
 27 Amendment B (“Prop B” or “Proposition B”), but given that the compelled speech  
 28 requirements frighten away donors, make it impossible to share many of its messages,

1 and too alter the content of others, the Committee will not speak absent injunctive  
 2 relief against the on-communication secondary donor disclosure requirements at S.F.  
 3 Code § 1.161(a).

#### 4 STATEMENT OF ISSUES TO BE DECIDED

5 Whether the on-communication secondary donor disclosure requirements at S.F.  
 6 Code § 1.161(a) are unconstitutional and should be enjoined.

#### 7 STATEMENT OF FACTS

##### 8 I. PLAINTIFFS

9 Plaintiff SPB is a primarily formed independent expenditure committee, registered  
 10 with the California Secretary of State and required to file campaign reports with the  
 11 San Francisco Ethics Commission. David Decl. ¶ 3. Todd David formed the Committee  
 12 with the goal of supporting Prop B, which would change the duties, composition, and  
 13 appointment method for the Building Inspection Commission. *Id.* ¶ 4.

14 As the Committee's treasurer, Todd David oversees the Committee's fundraising  
 15 and expenditures. *Id.* ¶ 2. Mr. David has substantial experience in San Francisco  
 16 politics, including past management of the San Francisco Parent PAC and other  
 17 primarily formed committees. *Id.* ¶ 23. But while the City's on-communication  
 18 secondary donor disclosure demands remain, Mr. David and the Committee will be  
 19 unable to share their messages with voters, in this or future elections. *Id.* ¶¶ 22, 25.

20 Plaintiff Ed Lee Dems is a grassroots organization dedicated to engaging Asian  
 21 Pacific Islander ("API") Americans in the Democratic Party, supporting strong API  
 22 leaders, and empowering young API people in the political process. Cheng Decl. ¶ 3. It  
 23 also works to benefit the API community and San Franciscans in general by  
 24 advocating for increased neighborhood safety; affordable housing and health care;  
 25 supporting local public schools, public transportation, and public parks; and furthering  
 26 civil rights, women's rights, and LGBT rights. *Id.* ¶ 4. Ed Lee Dems is supporting the  
 27 Committee's efforts because Prop B's reforms will help fight San Francisco's affordable  
 28 housing problems. *Id.* ¶ 5.

As long as the City's requirements are in place, however, Ed Lee Dems cannot support any efforts by SPB or other committees that would result in on-communication disclosure of its donors. *Id.* ¶¶ 8, 11. Such disclosure will scare away donors to Ed Lee Dems, and it would undermine the organization's mission. For example, disclosure of David Chiu as a secondary donor would imply that he is improperly supporting an issue before the City, damaging the reputation of a prominent member of the API community. *Id.* ¶ 7.

## II. SAN FRANCISCO'S DISCLOSURE AND COMPELLED SPEECH REGIME

San Francisco expands on the campaign disclosure regime required "by the California Political Reform Act, California Government Code Section 81000 *et seq.*" S.F. Code § 1.112(a)(1). Any statement required by the state must also be filed "in an electronic format with the Ethics Commission." *Id.*

### A. California's already comprehensive regime

California defines a committee as "any person or combination of persons who directly or indirectly" receives \$2,000 or more in contributions or makes \$1,000 or more in independent expenditures. Cal. Gov't Code § 82013. A "Primarily formed committee" means a committee . . . which is formed or exists primarily to support or oppose . . . [a] single candidate [or] . . . single measure." Cal. Gov't Code § 82047.5.

A committee must file a "statement of organization . . . with the Secretary of State" and "the local filing officer," here the S.F. Ethics Commission, "within 10 days" of qualifying as a committee. Cal. Gov't Code § 84101(a). Committees are required to file reports at various times. *See* Cal. Gov't Code §§ 84200(a) (semiannual); 84202.3 (adding dates on quarters); 84200.5 (preelection); 84200.8 (preelection).

Those forced to register as committees must report the total "contributions received during the period covered by the campaign statement and the total cumulative amount of contributions received." *Id.* § 84211(a). They must state the total contributions received by donors contributing \$100 or more and then state the total given by those contributing less. *Id.* § 84211(c) and (d). And then the reporting

1 requirements become really specific: If any donor has given aggregate contributions of  
 2 \$100 or more to the committee, and that donor has given any money to the committee  
 3 during that reporting period, the committee must give the donor's full name, street  
 4 address, occupation, and employer, as well as the date and amount of the contribution  
 5 during the period and the total contributions the person has given. *Id.* § 84211(f).

6 Furthermore, California calls any contribution aggregating \$1,000 or more that is  
 7 given within 90 days of an election a "Late contribution," and it requires that  
 8 committees report such contributions within 24 hours of receiving them, including "the  
 9 date and amount of the late contribution" and the contributor's full name, "street  
 10 address, occupation, and the name of the contributor's employer." *Id.* §§ 82036, 84203.  
 11 Thus, in the months preceding an election, the public has near realtime access to  
 12 information about a committee's top donors, through both the state and the San  
 13 Francisco Ethics Commission. S.F. Code §§ 1.110(a), 1.112(a)(1).

14 In addition to disclosing donors to the government, California has strict content  
 15 and format requirements for communications by ballot measure committees. *See* Cal.  
 16 Gov't Code §§ 84501-84511. For example, a communication must state, "Ad paid for  
 17 by[, ] followed by the name of the committee." *Id.* § 84502(a)(1). The committee's name  
 18 must include the proposition number or letter, and whether the committee supports or  
 19 opposes the measure. *Id.* § 84107.

20 After the disclaimer, committees must then add top donor disclosure: each  
 21 communication must state, "committee major funding from' followed by the names of  
 22 the top [three] contributors to the committee," *id.* § 84503(a), who have given  
 23 "cumulative contributions of" \$50,000 or more, *id.* § 84501(c)(1). Strict requirements  
 24 govern how this information must be communicated. *See id.* §§ 84504 (radio and  
 25 telephone); 84504.1 (video); 84504.2 (print ads); 84504.3 (electronic media); 84504.6  
 26 (online platforms).

## 27 B. San Francisco intensifies the compelled speech requirements

28 While incorporating all of the state's campaign finance reporting regime, San

1 Francisco multiplies the compelled speech requirements. Not only must a speaker  
 2 disclose its own name and the names of its top three donors, but it must disclose on  
 3 the face of each communication the top two donors of each of their top three donors.  
 4 S.F. Code § 1.161(a)(1). In addition, San Francisco lowers the threshold for donor  
 5 reporting, demanding disclosure for donors who have given \$5,000 or more, not just  
 6 those who gave \$50,000 or more. *Id.* Except for audio and video communications, the  
 7 ad must note the amount given by each of these nine donors. *Id.*; S.F. Ethics Comm’n,  
 8 *Regulations to Campaign Finance Reform Ordinance San Francisco Campaign and*  
 9 *Governmental Conduct Code*, § 1.161-3(a)(4) (“S.F. Reg.”), <https://bit.ly/3KK5WYe>.

10 After listing a committee’s three largest donors, a communication must further tell  
 11 voters that the speaker’s financial disclosures, which the speaker has turned over to  
 12 the City and includes the just-named top donors, may be found at the Commission’s  
 13 website. S.F. Code § 1.161(a)(2); see City and Cty. of S.F. Ethics Comm’n, *Independent*  
 14 *Expenditure Ads Referring to City Candidates*, <https://bit.ly/38l7KcE> (emphasis in  
 15 original) (“IE Reg.”) (“**Financial disclosures are available at sfethics.org**”  
 16 (emphasis in original).

17 1. *Print communications (e.g., mailers and newspaper ads)*

18 For print ads designed to be individually distributed, such as mailers and  
 19 newspaper ads, the text must be at least as big as Arial 14-point font. *Id.* The  
 20 “Committee major funding” statement and each of the primary contributors must  
 21 begin a separate line. *Id.* (emphasis omitted). The line for each of the primary donors  
 22 “must be numbered by placing the numerals 1, 2, and 3, respectively, before each”  
 23 donor’s name. S.F. Reg. § 1.161-3, <https://bit.ly/3KK5WYe>. The words “contributors  
 24 include” must follow each of the primary donors, that followed by the secondary donors  
 25 who gave to that primary donor. *Id.* With the disclaimer announcing the speaker’s  
 26 name, the three primary donors, and notice where to find financial disclosures, the  
 27 disclosure requirement must take up at least 5 lines.

28 In practice, for communications like those SPB wishes to run, the City’s

requirements will capture much if not most of a speaker’s message. Given the Committee’s donors, the disclaimer required here will consume 100% of a two by four inch newspaper “ear” ad, about 70% of a five by five inch ad, about 35% of a five by ten inch ad, and about 23% of an 8.5 by 11 inch mailer. *See* David Decl., ¶¶ 16-18; Exs. 2-5.

## 2. *Audio and video communications*

San Francisco requires that the disclaimer and on-communication disclosure be the focus of an audio or video communication—the first thing the audience sees and hears. S.F. Code § 1.161(a)(5). Such communications must begin stating “**Ad paid for by [committee’s name].**” IE Reg. (emphasis in original). The on-communication disclosure follows: “**Committee major funding from [name(s) and dollar amount contributed of top three (3) donors of \$5,000 or more],**” with each of those primary contributors followed by their “**top two (2) contributors of \$5,000 or more.**” *Id.* Audio and video communications must then state, “**Financial disclosures are available at sfethics.org.**” *Id.*

The City also requires that video communications carry a written banner with the disclosure. The written statement is similar to that for print ads. The “Committee major funding” statement and each of the primary contributors must begin a separate line. *Id.* The line for each of the primary donors “must be numbered by placing the numerals 1, 2, and 3, respectively, before each” donor’s name. S.F. Reg. § 1.161-3. The words “contributors include” must follow each of the primary donors, that followed by the secondary donors who gave to that primary donor. *Id.* With the disclaimer announcing the speaker’s name, the three primary donors, and notice where to find financial disclosures, the disclosure requirement must take up at least 5 lines.

This banner must last for at least 17% of the time that shorter ads run, and up to 33% of the time longer ads run. IE Reg. (“at least five (5) seconds of a broadcast of 30 seconds or less or for at least 10 seconds of a broadcast longer than 30 seconds”). It requires that “[e]ach top contributor . . . be disclosed on a separate horizontal line,”



1 and the entire compelled message with top donor information must take up “one third  
2 of the display screen” that the audience sees. *Id.*

3 In practice, the burden on a speaker is much greater. It takes 32-33 seconds to  
4 speak the City’s compelled message. David Decl. ¶¶ 12-13. This consumes 100% of a  
5 15-second ad, 100% of a 30-second ad, and 53-55% of a 60-second ad. *Id.* ¶ 14. The  
6 shorter length ads are the most preferred and effective, Derse Decl. ¶¶ 10-11, Sinn  
7 Decl. ¶¶ 8-9, yet the City’s compelled speech denies the Committee the ability to use  
8 either 15- or 30-second ads. Sinn Decl. ¶ 10; David Decl. ¶ 14.

### 9 3. *Penalties and enforcement*

10 The City punishes violations of the on-communication donor disclosure  
11 requirement with criminal, civil and administrative penalties. S.F. Code § 1.170.  
12 Knowing or willful violations are misdemeanors, punishable by fines up to \$5,000 for  
13 each violation, up to six months in county jail, or both. *Id.* at § 1.170(a). Failure to  
14 report contributions or expenditures is punishable by the greater of \$5,000 or three  
15 times the amount not reported. *Id.* Intentional or negligent violations are punished  
16 with civil fines up to \$5,000 for each violation or three times the amount not reported.  
17 *Id.* at § 1.170(b). Any other violations are punished administratively, with the same  
18 potential fines. *Id.* at § 1.170(c); San Francisco Charter, appendix C, § C3.699-  
19 13(c)(i)(3), <https://bit.ly/3KP3SOI>. If a committee does not comply with the on-  
20 communication donor disclosure requirement, its “treasurer[] . . . may be held  
21 personally liable for violations.” S.F. Code § 1.170(g).

22 Any individual “may file a complaint with the Ethics Commission, City Attorney, or  
23 District Attorney,” who are required to investigate the complaint. S.F. Code § 1.168(a).  
24 Upon belief that a violation has occurred, the Commission must forward any  
25 complaint it receives to the district attorney and City attorney. San Francisco Charter,  
26 appendix C, § C3.699-13. “The City Attorney . . . may bring a civil action to enjoin  
27 violations of or compel compliance . . .” *Id.* at § 1.168(b). If the City attorney and  
28 district attorney do not take action, the Commission may conduct its own investigation



1 and initiate an enforcement hearing. San Francisco Charter, appendix C, § C3.699-13.

2 III. IMPACT ON PLAINTIFFS' SPEECH

3 The Committee is a primarily formed independent expenditure committee formed  
4 to support the passage of Prop B. David Decl. ¶¶ 3-4. Plaintiff Todd David is the  
5 treasurer of the Committee and oversees its fundraising and expenditures. *Id.* ¶ 2. The  
6 Committee wishes to support the measure with 8.5 by 11 inch mailers; 2 by 2 inch ear  
7 ads, 5 by 5 inch ads, and 5 by 10 inch ads in newspapers; and internet ads of varying  
8 lengths, including 15-, 30-, and 60-second ads. *Id.* ¶ 5. All these ads will trigger San  
9 Francisco's on-communication disclosure requirements.

10 To date, the Committee has raised \$15,000, including \$5,000 each from Concerned  
11 Parents Supporting the Recall of Collins, Lopez and Moliga ("Concerned Parents");  
12 BOMA SF Ballot Issues PAC; and Edwin M. Lee Asian Pacific Democratic Club PAC  
13 sponsored by Neighbors for a Better San Francisco Advocacy ("Ed Lee Dems"). *Id.* ¶ 6.  
14 The Committee hopes to raise further funds, including additional \$5,000+  
15 contributions. *Id.* ¶ 8. Potential contributors have expressed concern about the  
16 secondary donor disclosure requirements and are reluctant to contribute if their  
17 donors must be disclosed on the Committee's communications. *Id.* ¶ 20.

18 Two of the Committee's major contributors, Concerned Parents and Ed Lee Dems  
19 are themselves committees that have received \$5,000 or more from donors, triggering  
20 the secondary donor on-communication disclosure requirement. David Decl. ¶ 7.

21 Plaintiff Ed Lee Dems works to empower young Asian Pacific Islander ("API")  
22 people in the political process and to support strong API leaders. Cheng Decl. ¶ 3. It  
23 also sustains the API community by advocating for better neighborhood safety, public  
24 parks, public transportation, and public schools; for affordable housing and health  
25 care; and for civil rights, women's rights, and LGBT rights. *Id.* ¶ 4. Ed Lee Dems  
26 believes that Prop B will benefit the community by bringing needed reform to the  
27 Building Inspection Commission, and that contributing to SPB would help get that  
28 message out. *Id.* ¶ 5.

1 Ed Lee Dems cannot support the Committee, however, if the Committee makes any  
 2 communications that would trigger the on-communication secondary donor disclosure.  
 3 *Id.* ¶ 11. Doing so could harm the reputations of leaders that it wants to uphold as  
 4 part of its mission, including City Attorney David Chiu, and it would lose the support  
 5 of donors if they knew it was supporting groups that triggered the on-communication  
 6 secondary donor disclosure. *Id.* ¶ 9.

7 Furthermore, the City's compelled speech requirements will make the Committee's  
 8 messages impossible or ineffective. Taken together, the requirements will take 32-33  
 9 seconds to state, thus consuming 100% of the Committee's 15-second and 30-second  
 10 internet video ads and 53-55% of the 60-second ads. David Decl. ¶¶ 13-14. They will  
 11 take up at least 33% of the screen during the first 5 seconds of the 15-second video ads  
 12 and the first 10 seconds of the longer ads. IE Reg.<sup>1</sup> For the Committee's newspaper  
 13 ads, the disclaimer would consume 100% of the two by four inch ads, 70% of the five by  
 14 five inch ads, and 35% of the five by ten inch ads. David Decl. ¶¶ 16-17. And they  
 15 would consume 23% of the face of an 8.5 by 11 inch mailer. *Id.* ¶ 18.

16 The Committee and Mr. David would like to share its messages in support of Prop  
 17 B, without the on-communication secondary donor disclosure the City demands, but it  
 18 refrains from doing so because it fears the penalties for exercising its First  
 19 Amendment rights. Accordingly, they will refrain from speaking absent a restraining  
 20 order and further injunctive relief. David Decl. ¶¶ 25-26.

21 Furthermore, Mr. David has long been active in San Francisco politics, creating  
 22 primarily formed and other committees to advocate about measures and candidates,  
 23 including the San Francisco Parent PAC and Yes on Prop B, Committee in Support of  
 24 the Earthquake Safety and Emergency Response Bond. David Decl. ¶¶ 23-24. Mr.  
 25 David will create primarily formed committees in future elections, but San Francisco's  
 26

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27  
 28 <sup>1</sup> Under state law, such disclaimers use up 33% of the screen. If San Francisco's 4%  
 line height rule were used, the Committee's disclaimer would use up approximately  
 51% of the screen. David Decl. ¶ 15.

1 requirements will continue to limit the messages that Mr. David and his committees  
 2 will be able to share. David Decl. ¶ 25. The law will also continue to inhibit others  
 3 from associating with and supporting the messages of Mr. David and his committees.  
 4 David Decl. ¶ 8; Cheng Decl. ¶¶ 8-9, 11. Ed Lee Dems, in particular, will be unable to  
 5 support Mr. David's or other committees as long as San Francisco requires on-  
 6 communication secondary donor disclosure. Cheng Decl. ¶¶ 8-9, 11.

#### 7 ARGUMENT

8 The Court should grant Plaintiffs' request for a temporary restraining order and a  
 9 preliminary injunction because (1) they "are likely to succeed on the merits;" (2) they  
 10 will "suffer irreparable harm in the absence of preliminary relief; (3) the balance of  
 11 equities tips in their favor; and (4) an injunction is in the public interest." *Short v.*  
 12 *Brown*, 893 F.3d 671, 675 (9th Cir. 2018) (citing *Winter v. Nat. Res. Def. Council, Inc.*,  
 13 555 U.S. 7, 20 (2008)). "When the government is a party, these last two factors merge."  
 14 *East Bay Sanctuary Covenant v. Garland*, 994 F.3d 962, 975 (9th Cir. 2021) (citations  
 15 omitted). The Court's "analysis is substantially identical for the [preliminary]  
 16 injunction and the TRO." *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d  
 17 832, 839 n.7 (9th Cir. 2001).

#### 18 I. PLAINTIFFS ARE LIKELY TO ESTABLISH THAT SAN FRANCISCO'S COMPELLED SPEECH 19 FAILS FIRST AMENDMENT SCRUTINY.

20 San Francisco's demand for secondary on-communication disclosure is a form of  
 21 compelled speech that cannot survive First Amendment scrutiny. It goes beyond any  
 22 disclaimer or disclosure that the Supreme Court has ever approved, and it is not  
 23 tailored to any interest that might justify a speaker's right to decide "what to say and  
 24 what to leave unsaid." *Hurley*, 515 U.S. at 573 (quotation marks omitted); *see also*  
 25 *Riley v. Nat'l Fed'n of Blind*, 487 U.S. 781, 797 (1988) (holding that "freedom of  
 26 speech" is "a term necessarily comprising the decision of both what to say and what  
 27 not to say" (emphasis in original)). "Mandating speech that a speaker would not  
 28 otherwise make," as the Code does here, "necessarily alters the content of the speech."

1 *Riley*, 487 U.S. at 795. In such situations, “the First Amendment direct[s] that  
 2 government not dictate the content of speech absent compelling necessity, and then,  
 3 only by means precisely tailored.” *Id.* at 800. While strict scrutiny should apply here to  
 4 this content-altering compelled speech, San Francisco’s on-communication disclosure  
 5 requirements cannot withstand the tailoring required under either strict or exacting  
 6 scrutiny.

7 A. Strict scrutiny applies to San Francisco’s content-based, compelled messaging

8 Although the Supreme Court has applied exacting scrutiny to true disclaimer and  
 9 disclosure requirements, strict scrutiny must apply to the hybrid that San Francisco  
 10 has created. The Supreme Court recently signaled that it may be increasing the  
 11 scrutiny given to any disclosure regime. *Compare Ams. for Prosperity Found. v. Bonta*,  
 12 141 S. Ct. 2373, 2383 (2021) (“*AFPF*”) (Roberts, C.J., op.) (exacting scrutiny applies to  
 13 disclosure requirement), *with id.* at 2390 (Thomas, J., concurring) (strict scrutiny  
 14 applies to all disclosure requirements), *with id.* at 2391 (Alito, J., concurring)  
 15 (withholding judgment whether strict or exacting scrutiny applies).

16 But even prior to *AFPF*, strict scrutiny and not exacting scrutiny was required for  
 17 the hybrid of disclosure and disclaimers at issue here. Disclaimers and disclosure are  
 18 terms of art, and their proper demarcation is critical to constitutionally applying them.  
 19 In the jargon of campaign regulation, disclaimer statutes require that a  
 20 communication state who made it—who “is responsible for the content of th[e]  
 21 advertising,” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 366 (2010), while  
 22 disclosure statutes require that speakers report *to the government* their expenditures  
 23 and contributions, *Buckley v. Valeo*, 424 U.S. 1, 63 (1976) (per curiam). So defined,  
 24 disclosure and disclaimer requirements “impose no ceiling on campaign-related  
 25 activities.” *Citizens United*, 558 U.S. at 366. That is, a true disclaimer is short, little  
 26 more than a two-or three-second statement about who made the ad. And disclosure is  
 27 information that the speaker gives to the government, that it may then make available  
 28 using its own resources to the public. Given that true disclosure has no effect on a

1 message’s length, and a true disclaimer is so short, neither acts to “impose [a] ceiling  
 2 on campaign-related activities,” *id.*, or to “reduce[] the quantity of expression,”  
 3 *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 197 (2014). Given that San  
 4 Francisco’s hybrid of disclaimer and disclosure requirements does reduce the quantity  
 5 of discussion, the City must meet strict scrutiny’ demands for a “compelling interest  
 6 and . . . least restrictive means.” *McCutcheon*, 572 U.S. at 197.

7 Moreover, strict scrutiny further applies as San Francisco has devised a content-  
 8 based restriction on speech, as compelling a speaker to share the government’s  
 9 message “necessarily alters the content of the speech.” *Riley*, 487 U.S. at 795; *see id.* at  
 10 800 (requiring “precisely tailored” to a “compelling necessity”). Accordingly, the Ninth  
 11 Circuit has already required strict scrutiny for similar on-communication disclosure  
 12 requirements, and held that the law was unconstitutional. *ACLU of Nev. v. Heller*, 378  
 13 F.3d 979, 992 (9th Cir. 2004) (discussing “most ‘exacting scrutiny’”).

14 Under strict scrutiny, San Francisco’s compelled speech requirements must  
 15 “promote[] a compelling interest and [be] the least restrictive means to further [that]  
 16 interest.” *McCutcheon*, 572 U.S. at 197. But even under exacting scrutiny, the  
 17 government must establish “a substantial relation between the disclosure requirement  
 18 and a sufficiently important governmental interest.” *AFPP*, 141 S. Ct. at 2383  
 19 (Roberts, C.J., opinion) (quotation marks omitted). And San Francisco’s law cannot  
 20 escape the doubts raised if less restrictive means exist under either of these standards.  
 21 *Id.* at 2386 (majority op.) (requiring that the government “demonstrate its need for”  
 22 more burdensome requirements “in light of any less intrusive alternatives”); *cf.*  
 23 *McCutcheon*, 572 U.S. at 218 (“In the First Amendment context, fit matters[, e]ven  
 24 when the Court is not applying strict scrutiny . . .”).

25 San Francisco’s secondary on-communication disclosure requirements are not  
 26 substantially related to the only applicable governmental interest, much less narrowly  
 27 tailored to a compelling interest. And the requirements utterly fail any inquiry, under  
 28 strict or exacting scrutiny, into whether less restrictive alternatives are available.

1 B. San Francisco’s compelled messaging about secondary donors does not serve a  
2 substantial or compelling interest

3 The Supreme Court has recognized only three interests as substantial enough to  
4 save disclosure laws under exacting scrutiny: fighting actual or apparent corruption,  
5 combatting circumvention of contribution limits, and the informational interest.  
6 *Buckley*, 424 U.S. at 66-68. None of these could support San Francisco’s law.

7 The anticircumvention interest exists only as a corollary to the anticorruption  
8 interest, and the anticorruption interest cannot exist in the context of independent  
9 expenditures, which by definition cannot pose the risk of dollars being exchanged for  
10 political favors. *See McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 352 n.15 (1995)  
11 (noting that “[t]he risk of corruption perceived in cases involving candidate elections  
12 simply is not present in a popular vote on a public issue” (citations and quotation  
13 marks omitted)); *Citizens United*, 558 U.S. at 357 (holding that the anticorruption  
14 interest does not apply to expenditures made independent of candidates); *Republican*  
15 *Party v. King*, 741 F.3d 1089, 1102 (10th Cir. 2013) (rejecting any “freestanding” anti-  
16 circumvention interest where the anti-corruption interest does not exist).

17 Moreover, the government has no interest in informing the public about whatever  
18 might strike it or the government’s fancy. Disclosure laws justified under the  
19 government’s informational interest must inform voters “concerning those who  
20 support” a ballot measure or candidate before the voters, *Buckley*, 424 U.S. at 81, not  
21 in doxing supporters of a speaker or organization generally. Thus courts must analyze  
22 whether there exists in a given case a “public interest in knowing who is spending and  
23 receiving money to support or oppose a ballot issue.” *Sampson v. Buescher*, 625 F.3d  
24 1247, 1256 (10th Cir. 2010); *see also Buckley*, 424 U.S. at 66 (noting interest in “where  
25 political campaign money comes from” (quotation marks omitted)); *Family PAC v.*  
26 *McKenna*, 685 F.3d 800, 806 (9th Cir. 2012) (“an interest in learning who supports and  
27 opposes ballot measures”). And, to ensure that disclosure requirements actually get at  
28 monetary support for a candidate or ballot measure, courts have emphasized the

1 importance of limiting disclosure to contributions earmarked to support such  
 2 advocacy. *See Van Hollen v. Fed. Election Comm’n*, 811 F.3d 486, 497 (D.C. Cir. 2016)  
 3 (using cancer society example to explain earmarking); *Indep. Inst. v. Williams*, 812  
 4 F.3d 787, 797 (10th Cir. 2016) (noting importance of earmarking); *Lakewood Citizens*  
 5 *Watchdog Grp. v. City of Lakewood*, No. 21-cv-01488-PAB, 2021 U.S. Dist. LEXIS  
 6 168731, at \*33-36 (D. Colo. Sep. 7, 2021) (same); *Indep. Inst. v. Fed. Election Comm’n*,  
 7 216 F. Supp. 3d 176, 191 (D.D.C. 2016) (three judge panel) (noting that requirements  
 8 tailored to donors giving “for the specific purpose of supporting the advertisement”).

9 The challenged provisions do not serve the informational interest. Section 1.161  
 10 forces the Committee to include a long statement about the top two donors to each of  
 11 its top three donors. S.F. Code § 1.161(a)(1) (defining top donors as those giving \$5,000  
 12 or more). But San Francisco does not require that the secondary donors contribute to  
 13 the primary donors with the goal of supporting the Committee’s communications in  
 14 favor of Prop B. It does not even require that the secondary donors have knowledge,  
 15 much less a suspicion, that their donations might eventually support Prop B.

16 Indeed, those secondary donors may be giving to the Committee’s donors for any  
 17 number of reasons. For example, some donors may intend to support the efforts of Ed  
 18 Lee Dems to promote the representation of Asian-Pacific Islanders in San Francisco  
 19 politics and leadership; to further civil rights, women’s rights, and LGBT rights; to  
 20 support public schools, public transportation, and local parks; and to secure access to  
 21 affordable housing and health care. *See Cheng Decl.* ¶¶ 3-4. When they give the  
 22 organization \$5, \$50, or \$5,000, they may have no clue that Ed Lee Dems cares  
 23 anything about Prop B, much less that their donations might help support Ed Lee  
 24 Dems’s donation to another committee that supports Prop B. Indeed, some Ed Lee  
 25 Dems donors might oppose Prop B.

26 For example, when David Chiu for Assembly 2022 donated to Ed Lee Dems, it is  
 27 highly unlikely that Mr. Chiu knew that Ed Lee Dems would be donating to SPB, or  
 28 that his committee might be listed as a donor on one of SPB’s communications. Cheng



Decl. ¶ 7. Nonetheless, in the name of informing San Francisco’s voters, the disclaimer San Francisco requires would lead voters to believe that Mr. Chiu is running for another office and improperly taking positions on City issues. *Id.*

The D.C. Circuit further illustrated the point in *Van Hollen v. Fed. Election Comm’n*, 811 F.3d 486 (D.C. Cir. 2016). Upholding an FEC regulation’s earmarking requirement, the court noted “the intuitive logic” that an expansive donor disclosure regime would spread misinformation. *Id.* at 497-98. The court contemplated a “not unlikely scenario” where a partisan Republican gave to the American Cancer Society’s general mission “to fund the ongoing search for a cure,” yet found herself reported as supporting Cancer Society ads that attacked “Republicans in Congress” whose deficit-reducing efforts would mean “fewer federal grants for scientists studying cancer.” *Id.* at 497. “Wouldn’t a rule requiring disclosure of [the] Republican donor, who did *not* support issue ads against her own party, convey some misinformation to the public about who *supported* the advertisements?” *Id.* (emphasis in original).<sup>2</sup>

The level of confusion is inevitable when secondary donors are included directly on the face of an ad, with similar billing to the primary speaker and its actual financial supporters. It is only natural to assume that individuals listed on the face of a communication support it. By forcing the Committee to include secondary donors on its communications, San Francisco misleads the public, making voters believe that the secondary donors support Prop B and the Committee’s communications in support of Prop B, even though they may in fact oppose both. This not only fails to serve the informational interest, but subverts it. It undermines voters’ efforts “to place [the ballot measure] in the political spectrum,” *Buckley*, 424 U.S. at 67, to understand

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<sup>2</sup> Likewise, if the Southern Baptist Convention were to donate to the ACLU for its efforts in fighting the patentability of human genetic material, it would be an exaggeration to conclude that it supported an ad run by the ACLU in favor of legal abortion. See ACLU, *BRCA — Statement of Support from the Ethics & Religious Liberty Commission, Southern Baptist Convention*, <https://bit.ly/3xEs8QP> (noting ideological alliance on issues).



1 which groups and individuals in the political spectrum support and do not support the  
 2 measure. *See also id.* at 81 (noting that the interest must “help[] voters to define more  
 3 of the [measure’s] constituencies”); *ProtectMarriage.com - Yes on 8 v. Bowen*, 752 F.3d  
 4 827, 832 (9th Cir. 2014) (“where a particular ballot measure or candidate falls on the  
 5 political spectrum”).

6 San Francisco’s on-communication secondary donor disclosure falls far short of  
 7 exacting scrutiny’s requirement that it be substantially related to the informational  
 8 interest. Accordingly, there is even less chance that it could survive strict scrutiny’s  
 9 requirement that it be narrowly tailored, even if San Francisco somehow  
 10 demonstrated that it had a compelling interest. The requirements are  
 11 unconstitutional, both facially and as applied to the Committee’s speech.

12 C. Less restrictive means to achieve the informational interest highlight the  
 13 unconstitutionality of the compelled speech requirements

14 Even if San Francisco could demonstrate a substantial relation to the  
 15 informational interest, “a substantial relation to an important interest is not enough  
 16 to save a disclosure regime that is insufficiently tailored.” *AFPP*, 141 S. Ct. at 2384.  
 17 Narrow tailoring is demanded “where First Amendment activity is chilled—even if  
 18 indirectly—[b]ecause First Amendment freedoms need breathing space to survive.” *Id.*  
 19 (quotation marks omitted) (alteration in original). San Francisco’s requirements  
 20 directly chill the Committee’s and others’ speech, and the City must therefore  
 21 “demonstrate its need for universal production in light of any less intrusive  
 22 alternatives.” *Id.* at 2386. It cannot do so.

23 The internet did not exist when *Buckley* upheld the Federal Election Campaign  
 24 Act’s disclosure provisions. We no longer live in 1976, when accessing the disclosure  
 25 information required obtaining documents from Washington, D.C. and compiling  
 26 information from paper records, and yet *Buckley* gave no hint of a need for on-  
 27 communication disclosure. Inquisitive San Francisco voters need only visit the Ethics  
 28 Commission’s offices near City Hall, where all the “[c]ampaign statements are to be

1 open for public inspection and reproduction.” S.F. Code § 1.110(a). In fact, they do not  
 2 need to even leave their home or campaign office to discover their ideological  
 3 opponents’ doings, as the Commission is required to “make campaign statements  
 4 available through its website.” *Id.* And, if a list of a speaker’s top contributors and its  
 5 contributors’ contributors were really necessary to serve an informational interest,  
 6 then San Francisco might try to follow the state’s example and require that speakers  
 7 “maintain an accurate list of the committee’s top . . . contributors,” and provide that to  
 8 the Ethics Commission. Cal. Gov’t Code § 84223(a). The Commission could then make  
 9 it publicly “available through its website.” S.F. Code § 1.110(a); *see Riley*, 487 U.S. at  
 10 800 (noting that the government could “itself publish [any] financial disclosure forms  
 11 it requires,” thus “communicat[ing] the desired information to the public without  
 12 burdening a speaker with unwanted speech”).

13 Moreover, San Francisco cannot argue that the compelled speech is constitutional  
 14 because it only results in more speech. Given speakers’ limited resources, San  
 15 Francisco’s compelled speech requirements force speakers to decide what part of their  
 16 message they will lose to make room for the City’s message. The City’s compelled  
 17 message for the Committee will use up 100% of a 15-second internet video ad, 100% of  
 18 a 30-second ad, and 53-55% of a 60-second ad, as well as a third to half the screen at  
 19 the beginning of each ad for the written requirements, David Decl. ¶¶ 14-15; 100% of a  
 20 two by four inch newspaper ad, about 70% of a five by five ad, and about 35% of a five  
 21 by ten inch ad, *id.* ¶¶ 16-17; and about 23% of the face of an 8.5 by 11 inch mailer, *id.*  
 22 ¶ 18. That is, for many ads, San Francisco forces individuals and groups to give up  
 23 speaking altogether. And with respect to all ads, it violates a speaker’s right to decide  
 24 “what to say and what to leave unsaid.” *Hurley*, 515 U.S. at 573 (quotation marks  
 25 omitted). “No governmental interest that has been suggested is sufficient to justify the  
 26 restriction on the quantity of political expression . . . .” *Buckley*, 424 U.S. at 55.

27 Nor can San Francisco argue that such on-communication secondary donor  
 28 disclosure to reveal contributions that are hidden when funneled through multiple

committees. California law already requires that if a contributor gives a contribution to a committee, but that money is earmarked as a contribution to another committee or to support a ballot measure or candidate, then the money must be reported by all parties as a contribution for that final committee, ballot measure, or candidate. Cal. Gov't Code § 85704.

San Francisco might assert that the on-communication secondary disclosure is nonetheless necessary because it is easier for voters to get the disclosure from the speaker's communication than from the Commission's website. But mere "convenience" is too weak an interest to justify an infringement on core First Amendment rights. *AFPP*, 141 S. Ct. at 2387 (noting that "[m]ere administrative convenience does not remotely 'reflect the seriousness of the actual burden,' and 'the weakness of the [government's] interest in administrative convenience'").

"The availability of the less speech-restrictive reporting and disclosure requirement confirms that a statute like the one here at issue cannot survive the applicable narrow tailoring standard." *Heller*, 378 F.3d at 995. Whether under strict scrutiny, as in *Heller*, or under exacting scrutiny, San Francisco's on-communication secondary donor disclosure fails tailoring and is facially unconstitutional.

D. San Francisco's effective proscription of shorter ads fails any scrutiny

Owing to the length of its demanded messages, the City has crossed the line from merely requiring disclaimers and disclosure to limiting how much a committee can speak, indeed to proscribing many messages. Because San Francisco in fact "reduce[s] the quantity of expression," its requirements must "promote[] a compelling interest and [be] the least restrictive means to further" it. *McCutcheon*, 572 U.S. at 197. Furthermore, the City may not rely on the informational interest to sustain its speech limits. The Supreme "Court has identified only one legitimate governmental interest for restricting campaign finances," or the speech those finances make possible: "preventing corruption or the appearance of corruption." *Id.* at 206. Put more strongly, the Supreme Court has "consistently rejected attempts to suppress campaign speech

1 based on other legislative objectives.” *Id.* at 207.

2 Given that this case involves ballot measures and not candidate elections, there  
3 can be no actual or apparent risk of quid pro quo corruption. *See id.* at 208 (noting  
4 interest “confined to . . . *quid pro quo* corruption); *McIntyre*, 514 U.S at 352 n.15  
5 (noting no corruption risk for ballot measures). Thus, San Francisco lacks any  
6 legitimate interest in limiting Plaintiffs’ speech or association, and it certainly cannot  
7 demonstrate that its restrictions are properly tailored to a nonexistent interest.

8 Moreover, the City cannot deny that its compelled messaging effectively proscribes  
9 shorter messages. Online video advertising is one of the preferred advertising methods  
10 for “ballot measure campaigns, especially for small” ones. Sinn Dec. ¶ 5. And shorter  
11 video ads, those lasting 15 seconds or less, are becoming the preferred length for such  
12 ads. Derse Decl. ¶ 11. But San Francisco’s demanded disclaimer and disclosure takes  
13 32-33 seconds to share, David Decl. ¶ 13, ruling out the use of the shorter, preferred  
14 15-second ads. Indeed, speakers cannot use even 30 second ads, as the City’s  
15 demanded message would still require more time than the message.

16 And even if a speaker could afford a 60-second ad, it would be useless to getting out  
17 the speaker’s chosen message. To be effective, an ad must get a viewer’s attention  
18 within the first three to five seconds. Derse Decl. ¶ 12; Sinn Dec. ¶ 6. After that time,  
19 a viewer will change the channel, scroll down the page, or otherwise avoid the ad.  
20 Derse Decl. ¶¶ 12-15; Sinn Dec. ¶¶ 11-18. It is difficult to see how San Francisco’s  
21 disclaimer and disclosure requirements could even be considered remotely engaging.  
22 *See* Sinn Dec. ¶16. They all follow the same format: announcing a speaker’s name, a  
23 statement that funding information will follow, up to nine donors, and a statement  
24 that the donor and other financial information may be found at the Ethics  
25 Commission’s website. This is not must-see TV.

26 Besides the spoken disclaimer swallowing at least half of the ad’s dialogue, a  
27 written disclaimer must take up one third of the screen for at least the first 10  
28 seconds. IE Reg.; Cal. Gov’t Code § 84504.1(b). But the black box dominating the

1 message could end up consuming more than one-third of the screen for ads that have  
 2 multiple primary and secondary donors, since each primary donor must be set on its  
 3 own line from any other text, and each line must take up at least 4% of the screen. *Id.*  
 4 The disclaimer would take up at least one third of the screen. IE Reg.; David Decl.  
 5 ¶ 15. San Francisco’s requirements result in internet video ads that are “unlikely to  
 6 capture a user’s attention,” such that speakers are at best “paying for [viewers to see  
 7 and hear the City’s] statement and not for the campaign’s message.” Sinn Decl. ¶ 19.

8 The City’s requirements similarly consume or dominate the Committee’s  
 9 newspaper ads. As with the video ads, the requirements for newspaper ads require a  
 10 line or two stating that the Committee made the ad and announcing that donor  
 11 information will follow, then one to three lines for each of the primary donors and  
 12 their donors, and then a line directing readers to the Ethics Commission’s website for  
 13 that and other donor information. IE Reg.; S.F. Code § 1.161(a)(1)-(3); Cal. Gov’t Code  
 14 § 84504.2. The Committee’s 2 by 4 inch ads are entirely consumed by the City’s  
 15 message before that message is even complete. David Decl. ¶ 16; Ex. 2. While the  
 16 Committee’s five by five inch ads contains enough room to finish the City’s compelled  
 17 message, doing so leaves little room for anything else. The City’s message takes up  
 18 about 70% of a five by five inch ad, using up all the space other than a banner at the  
 19 top, and leaving no room to persuade voters about anything. David Decl. ¶ 16; Ex. 3.

20 Even for longer five by ten inch ads, the City’s demanded disclosure and disclaimer  
 21 “is unduly burdensome,” as it “drown[s] out” the Committee’s message. *Am. Bev. Ass’n*  
 22 *v. City & Cty. of S.F.*, 916 F.3d 749, 761 (9th Cir. 2019) (Ikuta, J., concurring); *id.* at  
 23 757 (en banc). The disclaimer and disclosure requirements consume about 35% of even  
 24 the Committee’s longer newspaper ads. David Decl. ¶ 17. And the requirements would  
 25 take up about 23% of the front face of an 8.5 by 11 inch mailer. *Id.* ¶ 18.

26 Thus, San Francisco cannot seek refuge for its disclaimer and on-communication  
 27 disclosure requirements under previous decisions upholding disclaimers and  
 28 disclosure. When San Francisco’s requirements consume 23-35% of even the

1 Committee’s longer communications, and the requirements swallow entirely the  
 2 Committee’s shorter communications, the City cannot claim that its requirements  
 3 “‘impose no ceiling on campaign-related activities,’ [or that its requirements] ‘do not  
 4 prevent anyone from speaking’.” *Citizens United*, 558 U.S. at 366 (citations omitted).  
 5 Like the expenditure limits at issue in *Buckley*, San Francisco’s requirements  
 6 “necessarily reduce[ ] the quantity of expression by restricting the number of issues  
 7 discussed, the depth of their exploration, and the size of the audience reached.”  
 8 *McCutcheon*, 572 U.S. at 197 (alteration in original). And, because “political speech  
 9 must prevail against laws that would suppress it, whether by design or inadvertence,”  
 10 *Citizens United*, 558 U.S. at 340, San Francisco’s restrictions are unconstitutional.  
 11 Like the expenditure limits at issue in *Buckley*, they are not narrowly tailored to  
 12 promoting a compelling interest. In particular, limiting speech fails to further any  
 13 interest in informing the public.

14 But even if exacting scrutiny were applied, San Francisco’s laws would be  
 15 unconstitutional. Exacting scrutiny is at least equal to, if not a higher standard than  
 16 the intermediate scrutiny applied, for example, to commercial speech. *Compare AFPP*,  
 17 141 S. Ct. at 2383 (requiring a substantial relation to an important governmental  
 18 interest and narrow tailoring), *with Am. Bev. Ass’n*, 916 F.3d at 755-56 (discussing  
 19 *Zauderer* test). And the Ninth Circuit has already held that a less burdensome law  
 20 was unconstitutional under the lesser scrutiny for commercial speech.

21 In *American Beverage Association*, the Ninth Circuit sitting en banc addressed San  
 22 Francisco’s demand that advertisements for sugar-sweetened beverages carry a health  
 23 warning. 916 F.3d at 753. Applying the *Zauderer* test for “compelled commercial  
 24 speech,” the Ninth Circuit examined whether San Francisco’s disclosure requirement  
 25 was “unduly burdensome.” *Id.* at 756. And, as with all heightened scrutiny, the City  
 26 had the burden of proof: It had to demonstrate that its law was “neither unjustified  
 27 nor unduly burdensome.” *Id.* The en banc court concluded that a disclosure  
 28 requirement taking only 20% of the speaker’s message was “not justified when

1 balanced against its likely burden on protected speech.” *Id.* at 757. But the burden  
 2 imposed in *American Beverage Association*, taking up 20% of the message, was smaller  
 3 than the *least* burdensome requirement that the City now imposes on the Committee’s  
 4 speech. No less than in *American Beverage Association*, the City’s requirements act to  
 5 “‘drown[] out’ Plaintiffs’ messages and ‘effectively rule[] out the possibility of having  
 6 [an advertisement] in the first place.’” *Id.* (alterations in original).

7 Whatever the level of scrutiny, San Francisco’s burdens on political speech—  
 8 drowning out or preventing messages entirely—are unconstitutional as applied to the  
 9 Committee’s speech. And they are likewise unconstitutional as applied to any other  
 10 ads where the City swallows more than 20% of a message, as the disclosure always  
 11 drowns out such messages.

12 E. San Francisco’s compelled messaging violates Plaintiffs’ freedom of association

13 In driving away potential donors, San Francisco’s on-communication secondary  
 14 donor disclosure requirements force the Plaintiffs and others to give up their First  
 15 Amendment right to freely associate with others, preventing them from strengthening  
 16 their voices and sharing their messages. The Supreme Court has long held that “the  
 17 right of association is a basic constitutional freedom that is closely allied to freedom of  
 18 speech and a right which, like free speech, lies at the foundation of a free society.” *Fed.*  
 19 *Election Comm’n v. Nat’l Right to Work Comm.*, 459 U.S. 197, 206-07 (1982) (citation  
 20 and quotation marks omitted). “Protected association furthers a wide variety of  
 21 political, social, economic, educational, religious, and cultural ends, and is especially  
 22 important in preserving political and cultural diversity and in shielding dissident  
 23 expression from suppression by the majority.” *AFPP*, 141 S. Ct. at 2382 (quotation  
 24 marks omitted). In particular, “compelled disclosure of affiliation with groups engaged  
 25 in advocacy may constitute as effective a restraint on freedom of association as [other]  
 26 forms of governmental action.” *Id.* (quotation marks omitted).

27 As discussed above, Ed Lee Dems has donors who would be upset to have their  
 28 names listed on communications advocating positions in which they have no interest



1 or that they oppose. Cheng Decl. ¶ 9. They would withdraw their funding, making it  
2 harder for the organization to pursue its many other goals. *Id.*

3 Furthermore, the disclaimer and disclosure requirements mislead the voters in a  
4 way that would undermine the organization's goals. For example, San Francisco's  
5 rules would require that David Chiu for Assembly 2022 be listed as a secondary donor  
6 on the communications. But Mr. Chiu is a defendant to this lawsuit as the City  
7 Attorney. He is not running for Assembly, nor is he inappropriately taking positions  
8 on issues. But listing him and that committee on communications here would lead  
9 voters to think otherwise, harming his reputation. And, as supporting leaders like Mr.  
10 Chiu is part of the mission for Ed Lee Dems, the organization cannot associate with  
11 SPB and support its communications.

12 The City's requirements thus violate Plaintiffs' freedom of association while  
13 misleading rather than informing voters. The requirements do not serve the  
14 informational interest and are unconstitutional.

## 15 II. THE CHALLENGED PROVISIONS IRREPARABLY HARM PLAINTIFFS.

16 "Irreparable harm is relatively easy to establish in a First Amendment case," as a  
17 party need only "demonstrate[] the existence of a colorable First Amendment claim."  
18 *CTIA - The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 851 (9th Cir. 2019)  
19 (quotation marks omitted). That is because "[t]he loss of First Amendment freedoms,  
20 for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod*  
21 *v. Burns*, 427 U.S. 347, 373 (1976); accord *CTIA*, 928 F.3d at 851. "When, as here, a  
22 party seeks to engage in political speech in an impending election, a delay of even a  
23 day or two may be intolerable." *Sanders Cnty. Republican Cent. Comm. v. Bullock*, 698  
24 F.3d 741, 748 (9th Cir. 2012) (quotation marks omitted).

25 Plaintiffs have demonstrated irreparable harm: Until San Francisco's restrictions  
26 are enjoined, the Committee cannot share its chosen messages, and Ed Lee Dems will  
27 not be able to contribute to and associate with committees when that might risk on-  
28 communication disclosure of its donors. Furthermore, as long as San Francisco's



1 compelled speech requirements are in place, Mr. David and his committee's will be  
 2 restricted from speaking in future elections. David Decl. ¶ 25. And they and Ed Lee  
 3 Dems will continue to be limited in their ability to associate with and support the  
 4 messages of other committees. David Decl. ¶ 8; Cheng Decl. ¶ 11.

5 III. THE BALANCE OF EQUITIES, AND THE PUBLIC INTEREST, FAVOR PLAINTIFFS.

6 "Courts have consistently recognized the significant public interest in upholding  
 7 First Amendment principles." *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 2021  
 8 U.S. App. LEXIS 35760, at \*29 (9th Cir. 2021). Thus, where it is likely that the First  
 9 Amendment has been violated, an "injunction serves the interests of the general public  
 10 by ensuring that the government's [actions] comply with the Constitution . . . because  
 11 all citizens have a stake in upholding the Constitution." *Hernandez v. Sessions*, 872  
 12 F.3d 976, 996 (9th Cir. 2017) (quotation marks omitted); *see also Rodriguez v. Robbins*,  
 13 715 F.3d 1127, 1145 (9th Cir. 2013) (noting that the government "cannot suffer harm  
 14 from an injunction that merely ends an unlawful" or unconstitutional practice).  
 15 Accordingly, "[t]he public interest and the balance of the equities favor preventing the  
 16 violation of [Plaintiffs] constitutional rights." *Ariz. Dream Act Coal. v. Brewer*, 855  
 17 F.3d 957, 978 (9th Cir. 2017) (quotation marks omitted).

18 CONCLUSION

19 Plaintiffs' motion for temporary restraining order and for a preliminary  
 20 injunction should be granted.

21 Dated: May 12, 2022

Respectfully submitted,

22 /s/ Nicholas Sanders  
 23 Nicholas Sanders (SBN 307,402)  
 24 James R. Sutton (SBN 135,930)  
 25 THE SUTTON LAW FIRM  
 26 150 Post St. Ste. 405  
 San Francisco, CA 94108  
 Tel.: 415-732-7700  
 jsutton@campaignlawyers.com  
 nsanders@campaignlawyers.com

/s/ Owen Yeates  
 Owen Yeates (pro hac vice)  
 Alan Gura (SBN 178221)  
 INSTITUTE FOR FREE SPEECH  
 1150 Connecticut Ave., NW, Ste. 801  
 Washington, DC 20036  
 Tel.: 202-301-3300  
 oyeates@ifs.org  
 agura@ifs.org

*Counsel for Plaintiffs*

## 1 CERTIFICATE OF NOTICE

2 Pursuant to Rule 65(b)(1)(B), the undersigned contacted representatives for  
3 Defendants to ask whether they would accept service of the above Notice of Motion  
4 and Motion for Temporary Restraining Order and Preliminary Injunction.

5 I spoke with Andrew Shen, who is currently, or has recently been, the Deputy City  
6 Attorney assigned as counsel for the San Francisco Ethics Commission (the  
7 “Commission”) at the City Attorney’s office, on May 10, 2022, and Mr. Shen said that  
8 he was working to consolidate service into one litigator at the City’s Attorney’s office.  
9 On May 11, 2022, Mr. Shen told me that Deputy City Attorney Tara Steeley would be  
10 handling the case and would have the authority to accept service on behalf of all  
11 defendants.

12 Ms. Steeley and I spoke on May 11, 2022. From that call, I understood that she  
13 would be accepting service for all defendants. I emailed Ms. Steeley a summary of my  
14 understanding of the conversation, and she responded that she would accept service of  
15 summons for Defendants David Chiu and the City and County of San Francisco, but  
16 that she could not accept service for Defendant Chesa Boudin and Defendant  
17 Commission.

18 After the email from Ms. Steeley, I again called Mr. Shen. Because of Mr. Shen’s  
19 assignment to the Commission, I understand that he is most likely to have the  
20 authority to accept service on behalf of the Commission. I left a voicemail asking  
21 whether Mr. Shen or someone else in the City Attorney’s office would represent the  
22 Commission and accept service. Mr. Shen has not yet responded.

23 I also contacted the Commission to speak with either Executive Director LeeAnn  
24 Pelham or Chief of Enforcement Pat Ford. I was directed to Mr. Ford with an  
25 indication that he could handle all inquiries about service. Mr. Ford did not answer his  
26 phone, and I left a voicemail asking who would accept service on the Commission’s  
27 behalf. Mr. Ford responded by email on May 12, 2022, that the City Attorney’s office  
28 handles litigation against the City and that Plaintiffs should contact Ms. Steeley and

1 Mr. Shen.

2 Defendant Chesa Boudin is represented by counsel for Plaintiffs in other matters,  
3 and we regularly communicate. After Ms. Steeley's refusal to accept service for Mr.  
4 Boudin, I spoke with Mr. Boudin by phone to ask who would accept service in the  
5 District Attorney's office of the above Motion. Mr. Boudin indicated that the City  
6 Attorney should accept service on behalf of him and his office, and indicated that he  
7 would call the City Attorney assigned to the District Attorney's office to discuss service  
8 at his earliest convenience. Mr. Boudin has not yet been able to provide me with any  
9 additional information.

10 Because the City Attorney's office seems to be the only entity which can accept  
11 service for Mr. Boudin and the Commission, I called Ms. Steeley again on May 12,  
12 2022. Ms. Steeley did not answer her phone, and I left a voicemail asking whether she  
13 might reconsider accepting service on behalf of all defendants to avoid having three  
14 separate Deputy City Attorneys handling service. Ms. Steeley has not yet responded.

15 We have sent the Complaint and Motion for Temporary Restraining order, along  
16 with their accompanying documents, to Ms. Steeley, for Defendants Chiu and San  
17 Francisco. We have also sent them to the main email address at the District Attorney's  
18 office, districtattorney@sfgov.org, and to the main email address for the San Francisco  
19 Ethics Commission, ethics.commission@sfgov.org.

20 All the Defendants know that the lawsuit has been filed, and copies of the  
21 Complaint and Motion have been sent to all Defendants. All Defendants have  
22 adequate notice of the Complaint and Motion, and the only point of contention is who  
23 will accept official service. Further notice of the Motion should not be required.

24 Dated: May 12, 2022

/s/ Nicholas Sanders

Nicholas Sanders (SBN 307,402)  
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing by emailing it to the following:

Tara Steeley  
Office of City Attorney David Chiu  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Pl.  
San Francisco, CA 94102  
tara.steeley@sfcityatty.org

*Counsel for Defendant David Chiu and  
City and Defendant City and County of  
San Francisco*

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Andrew Shen  
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San Francisco, CA 94102  
andrew.shen@sfcityatty.org

*Sometimes assigned as counsel for the  
San Francisco Ethics Commission*

Dated: May 12, 2022

/s/ Owen Yeates

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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCANS SUPPORTING  
 PROP B, *et al.*,

*Plaintiffs,*

v.

DAVID CHIU, *et al.*,

*Defendants.*

No.:

**DECLARATION OF TODD DAVID  
 IN SUPPORT OF MOTION FOR  
 TEMPORARY RESTRAINING  
 ORDER AND PRELIMINARY  
 INJUNCTION**

Hearing:

Date: TBD  
 Time: TBD  
 Crtrm: TBD  
 Judge: TBD

**DECLARATION OF TODD DAVID**

I, Todd David, declare as follows:

1. I am a plaintiff in the above referenced action. I am an adult and am competent to make the statements contained herein, which are based on my personal knowledge.

2. I am the founder and treasurer of San Franciscans Supporting Prop B (“SPB” or the “Committee”), where I oversee SPB’s fundraising and expenditures.

3. The Committee is a primarily formed independent expenditure committee, registered with the California Secretary of State and required to file campaign reports with the San Francisco Ethics Commission.

4. I founded the Committee to support the passage of San Francisco Charter Amendment B (“Prop B” or “Proposition B”) in the June 7, 2022 election. This measure would change the duties and composition of the Building Inspection Commission, as well as the way that its members are appointed. I formed the Committee because I believed that there is a need to get out the vote with the portion of the City’s electorate with which I am familiar.

5. To get out its message, the Committee wishes to use 8.5 inch by 11 inch mailers; 2 inch by 2 inch ear ads, 5 inch by 5 inch ads, and 5 inch by 10 inch ads in newspapers; and internet video ads of different lengths, including 15-, 30-, and 60-second ads.

6. The Committee has raised \$15,000 to date, including \$5,000 each from Concerned Parents Supporting the Recall of Collins, Lopez and Moliga (“Concerned Parents”); BOMA SF Ballot Issues PAC; and Edwin M. Lee Asian Pacific Democratic Club PAC sponsored by Neighbors for a Better San Francisco Advocacy (“Ed Lee Dems”). The Concerned Parents committee has received funding from Neighbors for a Better San Francisco Advocacy Committee (\$468,800) and Arthur Rock (\$350,000). Ed Lee Dems has received funding from Neighbors for a Better San Francisco Advocacy Committee (\$100,000) and David Chiu for Assembly 2022 (\$10,600).

1           7.       Because Concerned Parents and Ed Lee Dems are committees, they have  
2 contributed \$5,000 to the Committee, and they both have donors who have given them  
3 \$5,000 or more, San Francisco's law will require that our Committee report those  
4 secondary donors on our communications.

5           8.       The Committee hopes to obtain additional funds, including other  
6 contributions of \$5,000 or more. Several potential contributors, who have supported  
7 my committees in the past, have said that they are reluctant to contribute or  
8 contribute in those amounts because they do not want to offend their donors. They are  
9 concerned that their donors will not want to appear on ads that they did not contribute  
10 for, for a committee that they didn't give money to.

11          9.       The City's secondary donor disclosure requirements will force SPB to  
12 change its communications, cutting out part of the message that we want to share. For  
13 shorter communications, like small newspaper ads, we will have to give up sharing the  
14 message altogether.

15          10.      I caused to be made examples of the disclaimer and disclosure statements  
16 that we will have to use in our messages. Copies of these examples are Exhibits 1-5.  
17 Exhibit 1 is an example of the written disclaimer and disclosure statement for video  
18 ads, Exhibit 2 is an example of the required statement in two by two inch newspaper  
19 ads, Exhibit 3 is an example of the required statement in five by five inch newspaper  
20 ads, Exhibit 4 is an example of the required statement in five by ten inch newspaper  
21 ads, and Exhibit 5 has an example of the statement required for mailers.

22          11.      Based on the Committee's current top three contributors of \$5,000 or  
23 more, an example of the written disclaimer and disclosure statement that must appear  
24 on a typical video ad is in Exhibit 1. I understand that the required statement must be  
25 spoken at the beginning of the ad.

26          12.      I understand that SPB must have the following spoken disclaimer at the  
27 beginning of a video ad before any political message can be conveyed:  
28

1 Ad paid for by San Franciscans Supporting Prop. B 2022.  
2 Committee major funding from: Concerned Parents  
3 Supporting the Recall of Collins, Lopez and Moliga —  
4 contributors include Neighbors for a Better San Francisco  
5 Advocacy Committee, Arthur Rock. BOMA SF Ballot Issues  
6 PAC. Edwin M. Lee Asian Pacific Democratic Club PAC  
7 sponsored by Neighbors for a Better San Francisco Advocacy  
— contributors include Neighbors for a Better San Francisco  
Advocacy Committee, David Chiu for Assembly 2022.  
Financial disclosures are available at sfethics.org.

8 13. I have spoken the required disclaimer and disclosure statement and it  
9 took me approximately 32-33 seconds to say the whole thing, reading in a clearly  
10 spoken manner and in a pitch and tone substantially similar to the rest of a typical  
11 television advertisement.

12 14. Thus, the required spoken disclaimer statement would take up 100% of a  
13 15-second ad, 100% of a 30-second ad, and 53-55% of a 60-second ad.

14 15. I estimate that the Committee's written disclaimer for the Committee's  
15 video ads will take up approximately 35% of the screen. This is with letters that are  
16 about 2.7% of the screen height. If the letters were the required 4% of screen height,  
17 the disclaimer would take up about 51% of the screen. Regardless, the disclaimer must  
18 appear at the beginning of the ad for at least 10 seconds of a video longer than 30  
19 seconds and the first 5 seconds of a shorter ad. Written on a black background, this  
20 disclaimer will certainly distract from the Committee's message. *See Ex. 1.*

21 16. Based on the Committee's current top three contributors of \$5,000 or  
22 more, and the requirement that the required disclaimer and disclosure statement  
23 appear in at least 14-point type in print ads, the required statement for the Committee  
24 would take up 100% of a two by four inch ad and about 70% of a five by five inch ad.  
25 These requirements will make it impossible for the Committee to communicate a  
26 message through two by four inch and five by five inch ads. There is no room for the  
27 Committee's message in the two by four inch ads, and not room for much more than a  
28 banner across the top of the five by five inch ads. *See Exs. 2 and 3.*



1           17.     Moreover, the required disclaimer and disclosure statement would  
2 dominate and distract from the Committee's messages in the larger five by ten inch  
3 ads, as the font size in newspapers is significantly smaller than 14-point. The required  
4 statement would consume about 35% of a 5-inch by 10-inch ad. The ad would in large  
5 part be a disclaimer statement. *See* Ex. 4.

6           18.     Based on the Committee's current top three contributors of \$5,000 or  
7 more, an example of the disclaimer and disclosure statement that must appear on a  
8 typical mailer or sign is in Exhibit 5. This disclaimer would use up about 23% of the  
9 face of an 8.5-inch by 11-inch mailer.

10          19.     The donors to Concerned Parents and Ed Lee Dems have not given our  
11 committee any contributions or any other kind of support. We have not communicated  
12 with them about our messages, and they have not had any control over our messages,  
13 had input into them, or indicated to us support for them. They also have no control  
14 over the Committee or any of its decisions, including what measures it might support.

15          20.     Potential donors have expressed concern to me about the secondary  
16 disclosure rules and are more reluctant to contribute to committees where their donors  
17 need to be disclosed. Their contributors may not wish to have their names and  
18 contribution amounts appear on campaign advertisements that they have not donated  
19 to. Such disclosure would lead voters to believe that the secondary donors supported  
20 the Committee's communications and wished to associate with it, when they did not.  
21 And such association could in fact harm their reputations.

22          21.     More than using up the space needed for the Committee's messages, the  
23 City's requirements make it difficult to share the Committee's messages at all. The  
24 requirements scare away the donors needed to fund the messages.

25          22.     The Committee would like to share messages supporting Prop B in the  
26 June 7, 2022 election, without the City's compelled speech. But we fear that the City  
27 will penalize me and the Committee if we share messages lacking the City's required  
28 message. And some of our messages are not possible if we comply with the City's

1 demands. So, unless we obtain an injunction from the Court, we will not share our  
2 messages with the public.

3       23. The City's on-communication secondary donor disclosure requirements  
4 will continue to be a problem in future elections, as it has been in past elections. I have  
5 long been active in San Francisco politics, creating primarily formed and other  
6 committees to advocate about measures and candidates. Until recently I managed the  
7 San Francisco Parent PAC, which supports and opposes local measures and  
8 candidates for school board.

9       24. In 2020, I formed Yes on Prop B, Committee in Support of the  
10 Earthquake Safety and Emergency Response Bond, which was on San Francisco's  
11 March 3, 2020 ballot. That committee and I were unable to share our messages,  
12 however, because of San Francisco's requirements that communications disclose  
13 secondary donors. I filed a federal lawsuit against the requirements, but the court of  
14 appeals dismissed that case as moot after the election passed.

15       25. I will continue to create primarily formed committees in future elections,  
16 to share ads and communications substantially and materially similar to those we  
17 wanted to share in 2020 and that we want to share now. But I and the committees I  
18 form will be unable to share our messages, in this or in any future election, while San  
19 Francisco's requirements remain in place.

20       26. The time between when the public knows that a measure will be on the  
21 ballot and the election is often quite small. The Committee will not be able to speak  
22 about Prop B unless the Court grants relief before the election on June 7, 2022.

23       Pursuant to 28 U.S.C § 1746, I declare under penalty of perjury that the  
24 foregoing is true and correct.

25 Executed on May 10, 2022.

26 

27 \_\_\_\_\_  
28 Todd David

# **Exhibit 1**

## **Video Ad**





**Ad paid for by San Franciscans Supporting Prop. B 2022. Committee major funding from:**

**1. Concerned Parents Supporting the Recall of Collins, Lopez and Moliga (\$5,000) - contributors include Neighbors for a Better San Francisco Advocacy Committee (\$468,800), Arthur Rock (\$350,000).**

**2. BOMA SF Ballot Issues PAC (\$5,000).**

**3. Edwin M. Lee Asian Pacific Democratic Club PAC sponsored by Neighbors for a Better San Francisco Advocacy (\$5,000) - contributors include Neighbors for a Better San Francisco Advocacy Committee (\$100,000), David Chiu for Assembly 2022 (\$10,600).**

**Financial disclosures are available at [sfethics.org](https://sfethics.org).**



# **Exhibit 2**

**Ear Ad**

EAR AD

**Ad paid for by San Franciscans**  
**Supporting Prop. B 2022. Committee**  
**major funding from:**

- 1. Concerned Parents Supporting the Recall of Collins, Lopez and Moliga (\$5,000) - contributors include Neighbors for a Better San Francisco Advocacy Committee (\$468,800).**

# **Exhibit 3**

**5x5 Ad**





**Ad paid for by San Franciscans Supporting Prop. B  
2022. Committee major funding from:**

- 1. Concerned Parents Supporting the Recall of Collins, Lopez and Moliga (\$5,000) - contributors include Neighbors for a Better San Francisco Advocacy Committee (\$468,800), Arthur Rock (\$350,000).**
- 2. BOMA SF Ballot Issues PAC (\$5,000).**
- 3. Edwin M. Lee Asian Pacific Democratic Club PAC sponsored by Neighbors for a Better San Francisco Advocacy (\$5,000) - contributors include Neighbors for a Better San Francisco Advocacy Committee (\$100,000), David Chiu for Assembly 2022 (\$10,600).**

**Financial disclosures are available at [sfethics.org](https://sfethics.org).**

# **Exhibit 4**

**5x10 Ad**



- Will not raise taxes!
- Speed up delays. Saves Costs.
- Help small business and homeowners expedite their building plans.

**ENDORSED BY:**

- Alice B. Toklas LGBT Democratic Club
- San Francisco Labor Council
- Supervisor Matt Haney
- Supervisor Rafael Mandelman
- Supervisor Gordon Mar
- Supervisor Myran Melgar
- Supervisor Aaron Peskin
- Supervisor Hillary Ronen
- Supervisor Ahsha Safai
- Supervisor Catherine Stefani
- Supervisor Shamann Walton

**Ad paid for by San Franciscans Supporting Prop. B 2022. Committee major funding from:**

1. Concerned Parents Supporting the Recall of Collins, Lopez and Moliga (\$5,000) - contributors include Neighbors for a Better San Francisco Advocacy Committee (\$468,800), Arthur Rock (\$350,000).
  2. BOMA SF Ballot Issues PAC (\$5,000).
  3. Edwin M. Lee Asian Pacific Democratic Club PAC sponsored by Neighbors for a Better San Francisco Advocacy (\$5,000) - contributors include Neighbors for a Better San Francisco Advocacy Committee (\$100,000), David Chiu for Assembly 2022 (\$10,600).
- Financial disclosures are available at [sfethics.org](https://sfethics.org).**

# **Exhibit 5**

## **Mailer Disclaimer**

## Disclaimer for Mailers

**Ad paid for by San Franciscans Supporting Prop B 2022.**

**Committee major funding from:**

- 1. Concerned Parents Supporting the Recall of Collins, Lopez and Moliga (\$5,000) — contributors include Neighbors for a Better San Francisco Advocacy Committee (\$468,800), Arthur Rock (\$350,000).**
  - 2. BOMA SF Ballot Issues PAC (\$5,000).**
  - 3. Edwin M. Lee Asian Pacific Democratic Club PAC sponsored by Neighbors for a Better San Francisco Advocacy (\$5,000) — contributors include Neighbors for a Better San Francisco Advocacy Committee (\$100,000), David Chiu for Assembly 2022 (\$10,600).**
- Financial disclosures are available at [sfethics.org](https://sfethics.org).**

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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCANS SUPPORTING  
 PROP B, *et al.*,

*Plaintiffs,*

v.

DAVID CHIU, *et al.*,

*Defendants.*

No.:

**DECLARATION OF JAY CHENG IN  
 SUPPORT OF MOTION FOR  
 TEMPORARY RESTRAINING  
 ORDER AND PRELIMINARY  
 INJUNCTION**

Hearing:

Date: TBD  
 Time: TBD  
 Crtrm: TBD  
 Judge: TBD

**DECLARATION OF JAY CHENG**

I, Jay Cheng, declare as follows:

1. I am an adult and am competent to make the statements contained herein, which are based on my personal knowledge.

2. I am the Treasurer for the Edwin M. Lee Asian Pacific Democratic Club PAC (“Ed Lee Dems” or “Club”).

3. Ed Lee Dems was founded in 1992 as the Asian Pacific Democratic Club and renamed in 2018 to recognize San Francisco Major Edwin M. Lee’s legacy of service. As a grassroots organization, the Club seeks to engage Asian Pacific Islander (“API”) Americans in the Democratic Party, support strong API elected leaders, and empower API youth in the political process.

4. The Club has a long history of political advocacy in San Francisco. It seeks to improve neighborhood safety; increase affordable housing and health care; support local public schools, public transportation, and public parks; and to further civil rights, women’s rights, and LGBT rights. To achieve these ends, it organizes voter registration drives, trains caring leaders and volunteers to give back to the community, and hosts events to educate voters about issues and candidates. It has published a variety of political endorsements and stances on San Francisco ballot measures for upcoming elections on its website. While much of its ballot- and candidate-related activity in the past has been done through mail, that is becoming less effective with developments in technology.

5. Ed Lee Dems believes that the passage of Proposition B in the June 2022 election will provide greatly needed reform to the Building Inspection Commission to streamline how long it takes for businesses to obtain building permits. To that end, we wish to contribute to San Franciscans Supporting Prop B (“SFSPB”) in its effort to educate the public on the benefits that passing Proposition B would bring.

6. Ed Lee Dems has had a long relationship with Todd David and his committees, including San Franciscans Supporting Prop B, and the Club plans to



1 similarly support his future committees, as well as similar committees whose advocacy  
2 efforts align with Ed Lee Dems' values.

3       7. Donors contribute to Ed Lee Dems to support any of its various goals and  
4 projects, and some donors do not support all of its goals and projects. For example,  
5 City Attorney David Chiu is no longer in the Assembly, nor is he running for it. And,  
6 as City Attorney, it would be improper for him to take a position on ballot measures  
7 like Prop B. But because of the past contribution from David Chiu for Assembly 2022  
8 ("Chiu for Assembly") to Ed Lee Dems, San Francisco's on-communication disclosure  
9 would require that that Chiu for Assembly be listed as a donor on the communications  
10 by San Franciscans Supporting Prop B ("SPB"). This would mislead voters into  
11 believing that the City Attorney is running for another office and improperly taking  
12 positions on issues, damaging Mr. Chiu's reputation.

13       8. Because damaging the reputations of API elected leaders would be  
14 contrary to the Club's mission, Ed Lee Dems would have to remove its support from  
15 SPB and ask that its donations be returned were SPB to trigger San Francisco's on-  
16 communication disclosure requirements for secondary donors.

17       9. In addition, it is generally hard to fundraise for a grassroots organization  
18 like Ed Lee Dems. The Club has donors who would be upset to end up on disclaimers  
19 on issues that they have no interest in, or even contrary positions on. They would  
20 withdraw their support if they knew that Ed Lee Dems supported groups making  
21 communications that triggered such on-communication disclosure. And the loss of  
22 funding would make it even harder for Ed Lee Dems to pursue its other goals,  
23 harming the API community, which relies on the Club to represent its interests.

24       10. This makes it difficult for volunteer-run organizations like Ed Lee Dems  
25 to participate in politics, to associate with groups like SPB and to amplify its voice by  
26 combining with others with similar views on particular issues.

27       11. Ed Lee Dems has donated to other committees, including the SF  
28 Workforce Housing Alliance PAC 2020, Alice B. Toklas Lesbian & Gay Democratic

1 Club PAC, the San Francisco Democratic County Central Committee, Yee for  
2 Controller 2014, Jones for Insurance Commissioner 2014, Ting for Assembly 2014, and  
3 Jones for Attorney General 2018. And the Club intends to engage in materially and  
4 substantially similar activity in the future—donating to primarily formed committees  
5 like SPB in future elections, which intend to make communications about candidates  
6 and ballot measures. But if San Francisco’s secondary donor disclosure requirements  
7 remain in place, Ed Lee Dems will not be able to contribute to allies whose activities  
8 would trigger San Francisco’s requirements that donors’ donors be disclosed on the  
9 face of the allies’ communications.

10 I declare, under penalty of perjury, that the foregoing is true and correct.  
11 Executed on May 10, 2022.

12  
13   
14 Jay Cheng

1 Alan Gura (SBN 178,221)  
Owen Yeates (pro hac vice pending)  
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5 Counsel for Plaintiffs

6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA

8 SAN FRANCISCANS SUPPORTING  
9 PROP B, *et al.*,

10 *Plaintiffs,*

11 v.

12 CITY AND COUNTY OF SAN  
13 FRANCISCO, *et al.*,

14 *Defendants.*

No.:

**DECLARATION OF NICOLE  
DERSE IN SUPPORT OF MOTION  
FOR PRELIMINARY INJUNCTION**

Hearing:

Date: TBD  
Time: TBD  
Crtrm: TBD  
Judge: TBD

**DECLARATION OF NICOLE DERSE**

I, Nicole Derse, declare as follows:

1. I am an adult and am competent to make statements contained herein, which are based on my personal knowledge.

2. I am a political consultant with over 19 years of experience helping candidates, communities and causes win on issues, having worked for two prominent presidential campaigns as well as for numerous state and local candidate and ballot measure campaigns.

3. I have been awarded the American Association of Political Consultants' (AAPC) "40 under 40 Award" for my work leading successful campaigns throughout California and across the country, and I won the AAPC's "Ballot Measure Campaign of the Year Award" for my work leading the San Francisco campaign to support home sharing.

4. I am the founder and principal of 50+1 Strategies, a strategic management and political consulting firm for candidates, causes, and organizations.

5. 50+1 Strategies' comprehensive campaign services include everything from developing and managing a budget, to writing a campaign plan, to directing data-driven field programs, to designing a targeted direct communications program. Our current and former clients include numerous local and state ballot measures and candidates.

6. Among other things, 50+1 Strategies specializes in its digital strategy and development services for candidates and ballot measure campaigns, including the development and placement of online ads, website design and development, integration of online and offline organizing programs, and management of online identity, email and donor lists, and social media.

7. In my experience, effective campaigns reach people via their preferred media. In the past decades, voters have increasingly diversified the ways in which they consume information, and many are migrating away from traditional TV and

1 print media to online sources. For example, many people are increasingly getting their  
2 information through social media platforms, such as Facebook, Twitter, etc. Digital  
3 advertising is often the only way to reach these individuals who seek their news and  
4 information online.

5       8.       Successful campaigns must adapt to this change in voter preferences.  
6 Thus, digital advertising has begun to play an increasingly important role in  
7 communicating political messages, whether it is a ballot measure campaign, a  
8 candidate campaign, or an independent expenditure campaign supporting a candidate  
9 for public office. As a result of this shift, digital spending has steadily increased as a  
10 share of campaign budgets each cycle.

11       9.       This is especially true for smaller campaigns, which are increasingly able  
12 to reach larger audiences through lower cost digital media ads. Smaller budgets  
13 cannot afford large broadcast buys in traditional media, which is still the preferred  
14 way to communicate given its ability to reach a large audience. For example, very  
15 basic audio and video digital ads can be produced at a low cost and disseminated via  
16 digital ads.

17       10.      These digital video and audio ads are generally preferred to “static”  
18 digital ads when a campaign is attempting to communicate campaign messaging that  
19 explains why a voter should vote in a particular way.

20       11.      More and more of these video and audio ads are lasting less than 15  
21 seconds or less.

22       12.      It is important that a video or audio ad command a user’s attention in the  
23 first three to five seconds of the ad or risk losing the viewer’s attention. For traditional  
24 TV or radio ads, the risk has always been that the audience might change the channel.

25       13.      On social media or other websites, a video must catch the attention of the  
26 user *in the first place* as he or she scrolls through the site or risk being overlooked.

27       14.      Moreover, a user who actually begins to view or listen to a digital ad will  
28 likely be tempted to stop doing so (by, for example “skipping” it, if possible) if his or

1 her attention is not engaged in the first three to five seconds.

2 15. Based on my years of experience, I believe that a spoken disclaimer of 10  
3 seconds or more will effectively rule out audio and video ads of 6 seconds, 15 seconds,  
4 or even 30 seconds because those ads will be comprised mostly or entirely of the  
5 disclaimer. This will prevent campaigns from reaching and communicating with many  
6 voters who obtain their information primarily online.

7 16. Because of the length added by San Francisco's secondary donor  
8 disclosure at Campaign & Governmental Conduct Code Section 1.161(a), campaigns  
9 may be forced to produce and purchase longer, more expensive ads, which will of  
10 course favor campaigns with more money, and will be to the detriment to smaller,  
11 grassroots campaigns.

12 17. I also believe that having the disclaimer statements spoken at the  
13 beginning of audio and digital campaign ads will discourage voters from listening to or  
14 viewing even ads longer than 15 seconds because they will not grab a user's attention  
15 with a compelling message and will encourage users to skip those ads (if possible).  
16 This will thus compromise the effectiveness of those ads.

17 I declare, under penalty of perjury, that the foregoing is true and correct.  
18 Executed on April 20, 2022.

19 DocuSigned by:  
20 *Nicole Derse*  
21 6605409D9FC746A...  
22 NICOLE DERSE  
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28

1 Alan Gura (SBN 178,221)  
Owen Yeates (pro hac vice pending)  
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5 Counsel for Plaintiffs

6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA

8 SAN FRANCISCANS SUPPORTING  
9 PROP B, *et al.*,

10 *Plaintiffs,*

11 v.

12 CITY AND COUNTY OF SAN  
13 FRANCISCO, *et al.*,

14 *Defendants.*

No.:

**DECLARATION OF ANDREW SINN  
IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION**

Hearing:

Date: TBD  
Time: TBD  
Crtrm: TBD  
Judge: TBD



**DECLARATION OF ANDREW SINN**

I, Andrew Sinn, declare as follows:

1. I am an adult and am competent to make statements contained herein, which are based on my personal knowledge.

2. I am the Chief Financial and Operations Officer for 50+1 Strategies, a national strategic management and political consulting firm for candidates, causes, and organizations.

3. The comprehensive campaign services offered by 50+1 Strategies include everything from developing and managing a budget, to writing a campaign plan, to directing data-driven field programs, to designing a targeted direct communications program. Our current and former clients include numerous local and state ballot measures and candidates.

4. 50+1 Strategies specializes in digital strategy and development services for candidates and ballot measure campaigns, including the development and placement of online ads, website design and development, integration of online and offline organizing programs, and management of online identity, email and donor lists, and social media.

5. In our experience, online video ads are by far the preferred digital advertising medium among candidate and ballot measure campaigns, especially for small campaigns, because they are more engaging than typical static ads and thus are the most effective way of conveying a campaign's message.

6. To be effective, video (and audio) ads must grab the viewer's attention by front loading the more interesting and important aspects of a speaker's message at the beginning of the ad. In essence, most of an ad's messaging should be in first three to five seconds, with the remainder of the ad serving as reinforcement of that initial message.

7. Digital video advertisements can be purchased in units of various ad lengths (also known as "inventory") and are available in "skippable" and "unskippable"

1 formats. For skippable advertisements, viewers have the choice of watching the ad in  
2 full or skipping the ad after viewing it for about 3 to 5 seconds. For the unskippable  
3 advertisements, the viewer must watch the ad in full before their selected content can  
4 be viewed.

5 8. In my experience, the most effective digital video ad units for campaigns  
6 are “unskippable” digital video ads lasting between 6 and 15 seconds. Ads of these  
7 lengths also constitute the majority of unskippable inventory available in the  
8 marketplace.

9 9. I find that unskippable ads are preferred because it is more likely that  
10 the full campaign video will be watched by the viewer. Six and 15 second unskippable  
11 spots are also less expensive than longer unskippable ads, which are only available on  
12 certain premium platforms.

13 10. However, San Francisco’s secondary donor disclosure requirements  
14 render these preferred 6- and 15-second unskippable ads entirely unfeasible because  
15 the spoken disclosure requirement will take up the full 6 to 15 seconds of the ad.

16 11. Inventory above 15 seconds is generally skippable on most of the popular  
17 platforms (e.g. Facebook and YouTube). In my experience, skippable video ads are less  
18 preferred because they are up to two to three times more expensive and because  
19 viewers will often skip those ads. Viewers will be particularly likely to skip such ads  
20 when a disclaimer takes up the first 3 to 5 seconds. Users who hear a disclaimer  
21 spoken at the beginning of the ad are less likely to be engaged and thus more likely to  
22 skip it, if possible.

23 12. In other words, campaigns typically have about 3 to 5 seconds to convince  
24 a viewer of a skippable ad to continue to watch the ad, but their ability to do so is  
25 severely compromised by a mandated donor disclosure statement at the beginning of  
26 an ad that is uncompelling and unrelated to the campaign’s message.

27 13. Moreover, while users of streaming platforms like YouTube will simply  
28 see video ads appear on their screen, video digital ads will otherwise typically be

1 viewed by users only as they scroll down through a social media website or through a  
2 website. These ads must catch the user's attention as he or she scrolls down or  
3 through a website. If interested, a user will watch the ad or will click on the video to  
4 enlarge it and watch it.

5 14. Digital video inventory is often purchased through bidding exchanges,  
6 where campaigns typically agree to pay for a certain number of "impressions" of the  
7 ad, usually setting an upper limit on that number. An impression occurs when a video  
8 simply crosses a viewer's screen, including when the viewer scrolls through Facebook,  
9 down the New York Times home page, etc., and regardless of whether the viewer  
10 actually views the ad.

11 15. In other words, a campaign generally pays for each time a digital video ad  
12 crosses a user's screen, whether or not the ad is viewed, so in order to make the  
13 payment worthwhile it is essential that each digital video entices the user on social  
14 media or a programmatic website to stop scrolling, pay attention, and watch the ad.

15 16. However, persuading a user to stop scrolling and to watch an ad is  
16 difficult if a lengthy mandated funder disclosure statement, which are typically not  
17 engaging, is taking up time at the beginning of the ad.

18 17. Even "muted" video ads on social media and other websites, which are  
19 those for which the user has not activated an audio function, will be less likely to  
20 engage scrolling viewers with the disclaimers. This is because most ads include  
21 captioning when they are muted, so if the message must initially include the  
22 disclosure statement, that disclosure statement will take up most of the visual space  
23 and accordingly, will be less likely to attract attention of the user. Moreover, effective  
24 video advertising will synchronize its video images with its audio messaging, so any  
25 differentiating of the two compromise a video ad's effectiveness.

26 18. Furthermore, I understand that video ads longer than 30 seconds must  
27 include the displayed "black box" disclaimer at the beginning of the video for at least  
28 10 seconds, and video ads lasting 30 seconds or less must include the "black box"

1 disclaimer for at least 5 seconds, which will further discourage views.

2 19. Thus, based on the pricing system described above, a campaign that  
3 places a digital video ad that begins with a lengthy mandated statement about the ad's  
4 funders is unlikely to capture a user's attention. The result is that a campaign will in  
5 essence be paying for that statement and not for the campaign's message. The  
6 ramifications of this are particularly severe for smaller, local campaigns, which  
7 generally have more limited resources available to further their political messages.

8 I declare, under penalty of perjury, that the foregoing is true and correct.

9 Executed on April 18, 2022.

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13 ANDREW SINN  
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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCANS SUPPORTING  
 PROP B, EDWIN M. LEE ASIAN  
 PACIFIC DEMOCRATIC CLUB PAC  
 SPONSORED BY NEIGHBORS FOR A  
 BETTER SAN FRANCISCO  
 ADVOCACY, and TODD DAVID,

*Plaintiffs,*

v.

DAVID CHIU, in his official capacity as  
 San Francisco City Attorney, the SAN  
 FRANCISCO ETHICS COMMISSION,  
 CHESA BOUDIN, in his official  
 capacity as San Francisco District  
 Attorney, and the CITY AND COUNTY  
 OF SAN FRANCISCO,

*Defendants.*

No.: 22-2785

**COMPLAINT**

(First and Fourteenth Amendments, 42  
 U.S.C. § 1983)

## INTRODUCTION

1  
2 1. San Francisco coopts speakers’ messages about political candidates and  
3 ballot measures, forcing speakers not just to replace their message with what the City  
4 wants said, but to put the City’s message front and center, before listeners hear  
5 anything else. The City, however, forgets that “legislative restrictions on . . . advocacy  
6 of the passage or defeat of legislation” are “wholly at odds with the guarantees of the  
7 First Amendment.” *Meyer v. Grant*, 486 U.S. 414, 428 (1988) (quoting *Buckley v. Valeo*,  
8 424 U.S. 1, 48-50 (1976) (per curiam)) (quotation marks omitted). The City’s  
9 displacement of people’s political speech cannot survive constitutional scrutiny.

10 2. No governmental interest underlies the City’s on-communication disclosure  
11 requirements for secondary donors—donors to a speaker’s donors. The City itself  
12 satisfies any interest it may have in an informed electorate by making all the donor  
13 disclosure available on the internet. S.F. Campaign and Governmental Conduct Code  
14 § 1.110(a) (“S.F. Code”). The City nonetheless demands that speakers disclose on the  
15 face of their communications their top three donors and, if any such donor is a  
16 committee, that speakers further disclose that donor’s top two contributors. Audio and  
17 video advertisements must begin with this information, distracting and driving away  
18 listeners before they even hear the speaker’s message. Contrary to the City’s demands,  
19 however, the First Amendment leaves to speakers the right to decide “what to say and  
20 what to leave unsaid.” *Hurley v. Irish-American Gay, Lesbian and Bisexual Grp.*, 515  
21 U.S. 557, 573 (1995) (quotation marks omitted).

22 3. Todd David formed San Franciscans Supporting Prop B (altogether “the  
23 Committee”) with the goal of supporting San Francisco Charter Amendment B (“Prop  
24 B” or “Proposition B”) in the June 7, 2022 election. Plaintiff Edwin M. Lee Asian  
25 Pacific Democratic Club PAC sponsored by Neighbors for a Better San Francisco  
26 Advocacy (“Ed Lee Dems”) supports the Committee’s advocacy given Ed Lee Dems’s  
27 longstanding concerns about affordable housing in San Francisco.

28 4. Plaintiffs do not challenge any law requiring that the Committee disclose its

1 donors to the City, nor do they challenge any law requiring that the City disclose that  
2 information to the public. Plaintiffs do not even challenge the requirement that the  
3 Committee list its own donors on its communications. But requiring that the  
4 Committee disclose its donors' donors on its communications is the breaking point:  
5 Going so far swallows the Committee's communications, scares away donors and  
6 otherwise limits speakers' and donors' ability to speak and associate, and misleads  
7 voters as to who supports the Committee's communications. Absent injunctive relief,  
8 Plaintiffs will not be able to associate with one another and share their  
9 communications with voters. This Court should strike down San Francisco's  
10 redundant and burdensome on-communication secondary donor disclosure demands,  
11 and ensure that the City and its officials stop violating the Committee's and its donors'  
12 First Amendment rights.

#### 13 JURISDICTION AND VENUE

14 5. This Court has jurisdiction under 28 U.S.C. § 1331, because this action  
15 arises out of the First and Fourteenth Amendments to the United States Constitution,  
16 and under 42 U.S.C. § 1983, because it involves a deprivation of rights secured by the  
17 Constitution.

18 6. Venue for this action is proper in the United States District Court for the  
19 Northern District of California because "a substantial part of the events [and]  
20 omissions giving rise to the claim occurred" and are occurring here and because a  
21 defendant resides within it. 28 U.S.C. § 1391; see also Civil L.R. 3-2(c).

#### 22 PARTIES

23 7. Plaintiff San Franciscans Supporting Prop B is a primarily formed  
24 independent expenditure committee that registered with the California Secretary of  
25 State and is required to file campaign reports with the San Francisco Ethics  
26 Commission. It was formed for the purpose of supporting the passage of Prop B, which  
27 would change the duties, composition, and appointment method for the Building  
28 Inspection Commission.

8. Plaintiff Todd David is the Committee’s treasurer. In this capacity, Mr. David oversees the Committee’s fundraising and expenditures. Mr. David has had substantial experience in San Francisco politics, including managing the San Francisco Parent PAC, which supports and opposes local measures and candidates for school board.

9. Plaintiff Ed Lee Dems is a grassroots organization dedicated to engaging Asian Pacific Islander (“API”) Americans in the Democratic Party, supporting strong API leaders, and empowering young API people in the political process. It also works to benefit the API community and San Franciscans in general by advocating for increased neighborhood safety; affordable housing and health care; supporting local public schools, public transportation, and public parks; and furthering civil rights, women’s rights, and LGBT rights. Ed Lee Dems is supporting the Committee’s efforts because Prop B’s reforms will help fight San Francisco’s affordable housing problems.

10. Defendant David Chiu is the City Attorney for the City and County of San Francisco. He is responsible for civil enforcement of Article 1, Chapter 1 of the San Francisco Campaign and Governmental Conduct Code (the “San Francisco Campaign Finance Reform Ordinance” or “Ordinance”). S.F. Code § 1.104 (definition of “Enforcement authority”); *id.* at § 1.102 (name for Chapter 1); *id.* at §§ 1.166, 1.168, 1.170 (discussing duties and authority in civil actions, including penalties pursued). Mr. Chiu is sued in his official capacity as City Attorney.

11. Defendant Chesa Boudin is the District Attorney for the City and County San Francisco. He is responsible for criminal enforcement of the Ordinance. *Id.* at § 1.104 (definition of “Enforcement authority”); *id.* at §§ 1.168, 1.170 (discussing duties and authority in criminal actions, including penalties pursued). Mr. Boudin is sued in his official capacity as District Attorney.

12. Defendant San Francisco Ethics Commission is responsible for administrative enforcement of the Ordinance, as well as investigating complaints and referring them to the City Attorney and the District Attorney. *Id.* at § 1.104 (definition



1 of “Enforcement authority”); *id.* at §§ 1.164, 1.166, 1.168, 1.170 (defining duties and  
2 authority).

3 13. Defendant City and County of San Francisco (“San Francisco” or “the City”)  
4 is the municipal corporation governing the City of San Francisco, California. San  
5 Francisco has enacted and is enforcing the laws challenged in this complaint,  
6 including through the City Attorney, District Attorney, and Ethics Commission.

### 7 FACTS

#### 8 *San Francisco’s Impositions on Protected Campaign Speech*

9 14. A “‘Committee’ means any person or combination of persons who directly or  
10 indirectly . . . [r]eceive contributions totaling two thousand dollars (\$2,000) or more in  
11 a calendar year,” or that “[m]akes independent expenditures totaling one thousand  
12 dollars (\$1,000) or more in a calendar year.” Cal. Gov’t Code § 82013(a)-(b); *see* S.F.  
13 Code § 1.104 (defining “Committee . . . as set forth” in the California code).

14 15. “[A]ll committees making expenditures which support or oppose any  
15 candidate for City elective office or any City measure shall . . . comply with” written  
16 and spoken on-communication donor disclosure requirements. S.F. Code § 1.161(a).

17 16. A “‘Primarily formed committee’ means a committee . . . which is formed or  
18 exists primarily to support or oppose . . . [a] single candidate [or] . . . single measure.”  
19 Cal. Gov’t Code § 82047.5(a)-(b).

20 17. Committees must include specific content in advertisements, which are  
21 broadly defined as “any general or public communication that is authorized and paid  
22 for by a committee for the purpose of supporting or opposing . . . a ballot measure or  
23 ballot measures.” Cal. Gov’t Code § 84501(a)(1).

24 18. San Francisco requires that primarily formed committees include on the face  
25 of such communications what it calls “disclaimer requirements,” which include both  
26 proper disclaimers and on-communication disclosure. The communication must first  
27 state, “Ad paid for by [committee’s name].” City and Cty. of S.F. Ethics Comm’n,  
28 *Independent Expenditure Ads Referring to City Candidates*, <https://bit.ly/38l7KcE>

(emphasis removed) (“IE Reg.”); *see also* Cal. Gov’t Code § 84502(a)(1) (incorporated into City law by S.F. Code § 1.106).

19. Next, the communication must state “both the name of and the dollar amount contributed by each of the top three major contributors of \$5,000 or more.” S.F. Code § 1.161(a)(1). This disclosure of the primary donors should begin by stating, “Committee major funding from . . .” IE Reg.; *see also* Cal. Gov’t Code § 84501, 84503 (state rule requiring on-communication disclosure of top three primary donors, but limited to those giving \$50,000 or more).

20. “If any of [those] top three major contributors is a committee, the disclaimer must also disclose both the name of and the dollar amount contributed by each of the top two major contributors of \$5,000 or more to that committee.” S.F. Code § 1.161(a)(1).

21. After listing the donors to the committee (the primary donors) and the donors to the donors (secondary donors), a communication must further tell voters that the speaker’s financial disclosures, including the primary and secondary donors, is already available at the Commission’s website. S.F. Code § 1.161(a)(2); *see* IE Reg. (“**Financial disclosures are available at sfethics.org**” (emphasis in original)).

22. In print ads designed to be individually distributed, such as mailers and newspaper ads, the text must be at least as big as Arial 14-point font and appear in a printed or drawn box with a solid white background. IE Reg. In larger print ads, including yard signs and billboards, the text of each line must be big enough to take up “at least five percent (5%) of the advertisement.” *Id.*

23. Each of the primary contributors must begin separate lines. *Id.* Each of those lines must be numbered by adding “the numerals 1,2, and 3, respectively, before each major contributor’s name.” S.F. Reg. 1.161-3. Each of the secondary contributors “must be included immediately following the name and contribution amount of the relevant major contributor. . . [and] must be separated from the name of and dollar amount contributed by the corresponding major contributor by one space, followed by one em

1 dash, followed by one space, followed by the words ‘contributors include,’ followed by  
2 one space.” *Id.*

3 24. Including the speaker’s name and committee funding line, the three primary  
4 donors, and the notice where to find financial disclosures, the City’s disclaimer and  
5 disclosure requirements must consume at least five lines.

6 25. For the Committee’s communications, the City’s requirements consume  
7 100% of a two by four inch print “ear” ad, about 70% of a five by five inch print ad,  
8 about 35% of a five by ten inch print ad, and about 23% of the face of an 8.5 by 11 inch  
9 mailer.

10 26. Audio and video communications include radio ads, telephone calls, audio  
11 only electronic media ads, television, and video ads. Speakers must ensure that  
12 listeners or viewers of any audio or video message hear the on-communication  
13 disclosure before any other part of the message, by giving the disclosure at the  
14 beginning of the advertisement. S.F. Code § 1.161(a)(5). The speaker may, however,  
15 omit speaking the dollar amounts. *Id.*

16 27. As with print ads, audio and video communications must also include the  
17 disclaimers stating the speaker’s name (“**Ad paid for by**”). IE Reg. (emphasis in  
18 original). Then follows the on-communication disclosure, which must begin with the  
19 statement “Committee major funding from,” followed by each of the top primary  
20 donors and their top two secondary donors. *Id.* The disclosure section must end by  
21 stating that the information is also available at the Commission’s website:  
22 (“**Financial disclosures are available at sfethics.org.**”) *Id.* (emphasis in original).

23 28. For the Committee’s video communications, the City’s spoken requirements  
24 will swallow 32-33 seconds, or all of any ad that lasts less than 30 seconds. And the  
25 spoken requirements consume 50% or more of ads that last between 30 and 60  
26 seconds.

27 29. In addition, the written disclaimer and disclosure accompanying a video ad  
28 must occupy the screen for the first five seconds of a 30-second or less ad, and they

1 must occupy the screen for the first 10 seconds of a longer ad. IE Reg.; *see also* Cal.  
 2 Gov't Code § 84504.1(a); S.F. Reg. 1.161-3. The "size for the smallest letters must be  
 3 four percent of the height of the display screen." IE Reg. Moreover, "[e]ach top  
 4 contributor must be disclosed on a separate horizontal line separate from other text."  
 5 *Id.* All this material must be enveloped in a solid black background and occupy at least  
 6 33% of the bottom of the screen. *Id.*; *see also* Cal. Gov't Code § 84504.1(b)(1).

7 30. The City punishes violations of these requirements with criminal, civil and  
 8 administrative penalties. S.F. Code § 1.170.

9 31. Knowing or willful violations are misdemeanors, punishable by fines up to  
 10 \$5,000 for each violation, up to six months in county jail, or both. *Id.* at § 1.170(a).  
 11 Failure to report contributions or expenditures is punishable by the greater of \$5,000  
 12 or three times the amount not reported. *Id.*

13 32. Intentional or negligent violations are enforced with civil fines up to \$5,000  
 14 for each violation or three times the amount not reported. *Id.* at § 1.170(b).

15 33. Any other violations are punished administratively, with the same potential  
 16 fines. *Id.* at § 1.170(c); San Francisco Charter, appendix C, § C3.699-13(c)(i)(3).

17 34. Any individual "may file a complaint with the Ethics Commission, City  
 18 Attorney, or District Attorney," which are required to investigate the complaint. S.F.  
 19 Code § 1.168(a). Upon belief that a violation has occurred, the Commission must  
 20 forward any complaint it receives to the district attorney and City Attorney. San  
 21 Francisco Charter, appendix C, § C3.699-13. "The City Attorney . . . may bring a civil  
 22 action to enjoin violations of or compel compliance . . . ." *Id.* at § 1.168(b). If the City  
 23 Attorney and District Attorney do not take action, the Commission may conduct its  
 24 own investigation and initiate a hearing to enforce the provisions. San Francisco  
 25 Charter, appendix C, § C3.699-13.

26 35. If a committee does not comply with the on-communication donor disclosure  
 27 requirement, its "treasurer[] . . . may be held personally liable for violations." S.F.  
 28 Code § 1.170(g).

*Impact on Plaintiffs' Speech*

36. The Committee wishes to voice its support for Proposition B in the upcoming election, including internet video ads that are 15, 30, and 60 seconds long, newspaper print ads that measure two by four inches, five by five inches, and five by ten inches, and mailers. But the Committee does not want to lose a large part of every communication to accommodate the City's compelled speech.

37. The Committee has three donors that have contributed more than five thousand dollars each, satisfying the monetary threshold for the on-communication disclosure requirement.

38. The secondary on-communication donor disclosure requirements are triggered for two of the Committee's primary contributors, as they each have two donors who have given them at least \$5,000. *Id.* at § 1.161(a)(1).

39. The on-communication disclosure requirement for secondary donors will force the Committee to alter its message and to surrender space and time to accommodate the government's speech.

40. The City's on-communication disclosure requirements, taken together, will consume 32-33 seconds of the Committee's video ads. The City's requirements will force the Committee to forego video ads less than 30 seconds entirely, and—combined with the written disclosure that must occupy the opening of the video ad—make even its longer ads ineffective.

41. The City's requirements also consume the Committee's print messages, including newspaper ads and mailings. The requirements will force the Committee to forego shorter print messages entirely and take over the messages of longer ads.

42. The secondary donors have not contributed to the Committee or supported the Committee and its messaging in any other way. They are not involved in the Committee's governance or spending decisions, and they have no role in selecting candidates to support or in choosing what content will be shown in the Committee's communications. Nonetheless, the Committee must now identify four secondary

1 donors—Neighbors for a Better San Francisco Advocacy Committee, Arthur Rock,  
2 Neighbors for a Better San Francisco Advocacy Committee, and David Chiu for  
3 Assembly 2022—on the face of its communications.

4 43. The City’s disclosure requirements have compromised the Committee’s  
5 ability to associate with other committees to advance its messages. If the donors to Ed  
6 Lee Dems were listed on the Committee’s ads, Ed Lee Dems would lose future  
7 donations from current donors. Ed Lee Dems would therefore be required to withdraw  
8 its support from the Committee.

9 44. The Committee would like to share its messages in support of Proposition B  
10 in the 2022 election, without the changes in content demanded by the City, but it  
11 refrains from doing so because it fears the penalties for exercising its First  
12 Amendment rights. Accordingly, it will refrain from speaking absent a restraining  
13 order and further injunctive relief.

14 45. Plaintiff David fears possible liability for actions the Committee takes  
15 contrary to S.F. Code § 1.161. He has repeatedly formed committees before, including  
16 Yes on Prop B, Committee in Support of the Earthquake Safety and Emergency  
17 Response Bond, for the March 3, 2020 election ballot. He and that committee filed a  
18 challenge before this Court, but it was dismissed as moot once the election passed. Mr.  
19 David will engage in materially and substantially similar activity in the future,  
20 establishing committees and using them to speak about San Francisco candidates and  
21 measures. He will continue to be silenced as long as the City forces his committees to  
22 carry government messages.

23 46. Plaintiff Ed Lee Dems has a long history of participating in San Francisco  
24 politics. It plans to engage in engage in substantially and materially similar conduct in  
25 the future, supporting committees like San Franciscans Supporting Prop B. But Ed  
26 Lee Dems will be unable to do so as long as San Francisco’s secondary on-  
27 communication donor disclosure requirements remain in place.

COUNT I:  
RIGHT OF FREE SPEECH, U.S. CONST., AMENDS. I, XIV  
42 U.S.C. § 1983

47. Plaintiff realleges and incorporates by reference paragraphs 1 through 46.

48. The First Amendment, which applies against Defendants by operation of the Fourteenth Amendment, guarantees freedom of speech.

49. The Supreme Court has long held that “speech concerning public affairs is more than self-expression; it is the essence of self-government.” *Garrison v. La.*, 379 U.S. 64, 74-75 (1964). And the First Amendment’s protection of that self-governance requires “that a speaker ha[ve] the autonomy to choose the content of his own message.” *Hurley*, 515 U.S. at 573.

50. Moreover, “by compelling [committees] to speak a particular message, it ‘alters the content of [their] speech.’” *Nat’l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2365 (2018) (quoting *Riley v. Nat’l Fed’n of Blind*, 487 U.S. 781, 795 (1988)). Such content based laws are presumptively unconstitutional.

51. San Francisco’s secondary donor on-communication disclosure requirement forces the Committee to either give up its protected First Amendment right to speak about a candidate or proclaim the City’s message as part of its speech.

52. This compelled speech requirement cannot satisfy the strict scrutiny or exacting scrutiny standards required by the U.S. Supreme Court for compelled speech and disclosure laws.

53. On its face, and as applied against Plaintiffs, Defendants’ commandeering of political communications under S.F. Code § 1.161(a) and S.F. Regulation 1.161-3 violates the First Amendment right to speech.

54. By enforcing these provisions, Defendants, under the color of law, deprive Plaintiffs of the right of free speech in violation of the First and Fourteenth Amendments to the United States Constitution. Plaintiffs are thus damaged in violation of 42 U.S.C. § 1983 and are therefore entitled to damages; declaratory and



preliminary and permanent injunctive relief against enforcement and maintenance of Defendants' unconstitutional customs, politics, and practices; and attorney's fees and expenses pursuant to 42 U.S.C. § 1988.

COUNT II:  
RIGHT OF ASSOCIATION, U.S. CONST., AMENDS. I, XIV  
42 U.S.C. § 1983

55. Plaintiff realleges and incorporates by reference paragraphs 1 through 46.

56. The First Amendment, which applies against Defendants by operation of the Fourteenth Amendment, guarantees freedom of association.

57. The Supreme Court has long held that “the right of association is a basic constitutional freedom that is closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society.” *Fed. Election Comm’n v. Nat’l Right to Work Comm.*, 459 U.S. 197, 206-07 (1982) (citation and quotation marks omitted). “Protected association furthers a wide variety of political, social, economic, educational, religious, and cultural ends, and is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority.” *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021) (quotation marks omitted). In particular, “compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action.” *Id.* (quotation marks omitted) (alteration in original).

58. In driving away potential donors, San Francisco’s on-communication secondary donor disclosure requirement forces the Plaintiffs and others to give up their First Amendment right to freely associate with others, preventing them from strengthening their voices and getting their messages out.

59. The compelled speech requirement at S.F. Code § 1.161(a) and S.F. Regulation 1.161-3, in forcing Plaintiffs and others to give up their right to association, cannot satisfy the scrutiny required for First Amendment violations, either facially or as applied against Plaintiffs.



60. By enforcing these provisions, Defendants, under the color of law, deprive Plaintiffs of the right to freedom of association, in violation of the First and Fourteenth Amendments to the United States Constitution. Plaintiffs are thus damaged in violation of 42 U.S.C. § 1983 and are therefore entitled to damages; declaratory and preliminary and permanent injunctive relief against enforcement and maintenance of Defendants' unconstitutional customs, politics, and practices; and attorney's fees and expenses pursuant to 42 U.S.C. § 1988.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendants as follows:

A. A declaration that on its face, the secondary donor on-communication disclosure requirements at S.F. Code § 1.161(a) and S.F. Regulation 1.161-3 violate Plaintiffs' First Amendment rights to freedom of speech and association;

B. A declaration that, as applied to Plaintiffs, the secondary donor on-communication disclosure requirement at S.F. Code § 1.161(a) and S.F. Regulation 1.161-3 violate Plaintiffs' rights to freedom of speech and association;

C. Preliminary and permanent injunctive relief barring Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing the secondary donor on-communication disclosure requirement in S.F. Code § 1.161(a) and S.F. Regulation 1.161-3 or any successor sections thereto;

D. Preliminary and permanent injunctive relief barring Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing the secondary donor on-communication disclosure requirement in S.F. Code § 1.161(a)(1) and S.F. Regulation 1.161-3 or any successor sections thereto against Plaintiffs;

E. Against the City and against the other Defendants in their official capacities, an award of nominal damages in the amount of \$17.91;

- 1 F. Ordinary taxable costs of suit;
- 2 G. Attorney's fees and costs pursuant to 42 U.S.C. § 1988; and
- 3 H. Any other relief this Court may grant in its discretion.
- 4

5 Dated: May 11, 2022

/s/ Alan Gura

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCANS SUPPORTING  
 PROP B, *et al.*,

*Plaintiffs,*

v.

DAVID CHIU, *et al.*,

*Defendants.*

No. 3:22-cv-02785-LB

**[PROPOSED] TEMPORARY  
 RESTRAINING ORDER AND  
 ORDER TO SHOW CAUSE**

Hearing:

Date: TBD  
 Time: TBD  
 Crtrm: TBD  
 Judge: Honorable Laurel Beeler

1 Before the Court is Plaintiffs' notice of motion and motion for entry of a  
 2 temporary restraining order and order to show cause as to why a preliminary  
 3 injunction should not issue (the "Motion") against Defendants. Having considered the  
 4 Motion, the pleadings, and evidence in this case, the Court hereby orders as follows:

5 Plaintiffs' Motion is **GRANTED**. The Court finds that Plaintiffs have  
 6 demonstrated a likelihood of success on the merits, or at the least that there are  
 7 serious questions of constitutional importance; irreparable harm in the absence of  
 8 relief; that the balance of equities tips in Plaintiffs' favor; and that a temporary  
 9 restraining order is in the public interest.

10 Plaintiffs are likely to succeed on the merits. The on-communication disclosure  
 11 requirements for secondary donors at S.F. Campaign and Governmental Conduct Code  
 12 § 1.161(a) violate Plaintiffs' First Amendment rights to freedom of speech and  
 13 association. The compelled speech at Section 1.161(a) makes Plaintiffs' shorter  
 14 messages impossible to share, and "drown[s] out" their longer messages. *Am. Bev.*  
 15 *Ass'n v. City & Cty. of S.F.*, 916 F.3d 749, 761 (9th Cir. 2019) (Ikuta, J., concurring).  
 16 Moreover, in forcing speakers to tell the public that individuals and groups have  
 17 associated with them who have in fact not, and in scaring away donors, the  
 18 Defendants violate Plaintiffs' right to freedom of association.

19 Having established a likelihood of harm, Plaintiffs have shown irreparable  
 20 harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment  
 21 freedoms, for even minimal periods of time, unquestionably constitutes irreparable  
 22 injury."). "When, as here, a party seeks to engage in political speech in an impending  
 23 election, a delay of even a day or two may be intolerable." *Sanders Cnty. Republican*  
 24 *Cent. Comm. v. Bullock*, 698 F.3d 741, 748 (9th Cir. 2012) (quotation marks omitted).

25 The remaining factors are also in Plaintiffs' favor. "Courts have consistently  
 26 recognized the significant public interest in upholding First Amendment principles."  
 27 *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 2021 U.S. App. LEXIS 35760, at  
 28 \*29 (9th Cir. 2021). Thus, where it is likely that the First Amendment has been

1 violated, an “injunction serves the interests of the general public by ensuring that the  
 2 government’s [actions] comply with the Constitution . . . because all citizens have a  
 3 stake in upholding the Constitution.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th  
 4 Cir. 2017) (quotation marks omitted).

5 Accordingly, the Court hereby preliminarily ENJOINS Defendants and their  
 6 agents, officers, and representatives from enforcing against Plaintiffs the on-  
 7 communication disclosure requirements for secondary donors at S.F. Code § 1.161(a).  
 8 This Temporary Restraining Order shall take effect immediately and remain in effect  
 9 pending a hearing for preliminary injunction or further order of this Court.

10 The Court further finds that this action is a proper case for granting an order to  
 11 show cause regarding issuance of a preliminary injunction. Defendants should submit  
 12 briefs in opposition by \_\_\_\_\_. Any reply by Plaintiffs will be due \_\_\_\_\_. Parties shall  
 13 appear before this Court on \_\_\_\_\_, 2022, at \_\_\_\_\_ a.m./p.m. to show cause, if there is  
 14 any, why this Court should not enter a Preliminary Injunction, pending a final ruling  
 15 on Plaintiffs’ claims.

16 Furthermore, this Court has discretion to waive the security requirements  
 17 under Rule 65(c) of the Federal Rules of Civil Procedure. Given that injunctive relief  
 18 here “would vindicate important constitutional rights,” the Court waives the bond  
 19 requirement for this Temporary Restraining Order. *Thomas v. Cty. of Riverside*  
 20 *Sheriff’s Dep’t*, No. EDCV 10-01846 VAP(DTBx), 2011 U.S. Dist. LEXIS 164992, at \*80  
 21 (C.D. Cal. July 7, 2011) (quotation marks omitted) (compiling cases).

22 Dated:

23 \_\_\_\_\_  
 24 THE HONORABLE LAUREL BEELER  
 25 U.S. DISTRICT JUDGE  
 26  
 27  
 28