IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF DELAWARE

AMERICANS FOR PROSPERITY FOUNDATION, *et al.*, *Plaintiffs*, v. ANTHONY ALBENCE, in his official capacity as State Election Commissioner for the State of Delaware, *et al.*, *Defendants*.	Case No. 1:26-cv-00445-JLH

DEFENDANTS' BRIEF IN SUPPORT OF MOTION TO DISMISS

Tara Malloy*
Megan McAllen*
David Kolker*
Elizabeth Shimek*
Campaign Legal Center
1333 New Hampshire Ave. NW, Suite 300
Washington, DC 20036
(202) 736-2200
tmalloy@campaignlegalcenter.org
mmcallen@campaignlegalcenter.org
davidkolker@campaignlegalcenter.org
eshimek@campaignlegalcenter.org

*Admitted *pro hac vice*

Delaware Department of Justice
Emily V. Burton
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
302-577-5374
Emily.Burton@Delaware.gov

Counsel for Defendants

TABLE OF CONTENTS

NATURE AND STAGE OF PROCEEDINGS 1

SUMMARY OF ARGUMENT 1

STATEMENT OF FACTS 3

I. Delaware Elections Disclosure Act 3

II. Plaintiffs Americans for Prosperity Foundation and Americans for Prosperity 6

III. Procedural History 6

ARGUMENT 8

I. Standard of Review 8

II. Plaintiffs' Facial Claim Is Foreclosed by *Delaware Strong Families* and Should Be Dismissed. 9

III. *De Novo* Review of the Act Would Likely Requires Further Factual Development 12

IV. Plaintiffs' As-Applied Claim Should Be Dismissed 13

CONCLUSION 19

TABLE OF AUTHORITIES

Cases **Pages**

Americans for Prosperity Foundation v. Albence, 191 F.4th 169 (3d Cir. 2026) 1, 2, 3, 7, 9, 13, 14, 18

Americans for Prosperity Foundation v. Albence, No. 26A349 (U.S. Oct. 1, 2026) 2

Americans for Prosperity Foundation v. Bonta, 594 U.S. 595 (2021) 2, 10, 11

Americans for Prosperity Foundation v. Harris, 809 F.3d 536 (9th Cir. 2015) 16

Americans for Prosperity v. Grewal, 2019 WL 4855853 (D.N.J. Oct. 2, 2019) 15

Americans for Prosperity v. Meyer, 724 F. Supp. 3d 858 (D. Ariz. 2024), *aff'd*, 2026 WL 2934861 (9th Cir. Sep. 30, 2026) 14, 18

Ashcroft v. Iqbal, 556 U.S. 662 (2009) 3, 9, 15

Brodzki v. Fox Broadcasting Co., 868 F. Supp. 2d 386, 388 (D. Del. 2012) 3, 8

Brown v. Socialist Workers '74 Campaign Committee (Ohio), 459 U.S. 87 (1982) 14

Buckley v. Valeo, 424 U.S. 1 (1976) 3, 10, 17, 19

Citizens United v. FEC, 558 U.S. 310 (2010) 4, 10, 12, 14

Delaware Strong Families v. Attorney General of Delaware, 793 F.3d 304 (3d Cir. 2015) 1, 5, 9, 11, 12

Delaware Strong Families v. Denn, 136 S. Ct. 2376 (2016) 6

Federal Trade Commission v. Shire ViroPharma, Inc., 917 F.3d 147 (3d Cir. 2019) 6

John Doe No. 1 v. Reed, 561 U.S. 186 (2010) 11, 17, 18

Malleus v. George, 641 F.3d 560 (3d Cir. 2011) 8, 13

McConnell v. FEC, 540 U.S. 93 (2003) 4

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958) 3, 14

No on E, San Franciscans Opposing the Affordable Housing Production Act v. Chiu, 62 F.4th 529 (9th Cir. 2023) 19

ProtectMarriage.com v. Bowen, 830 F. Supp. 2d 914 (E.D. Cal. 2011) 17

Punnett v. Carter, 621 F.2d 578 (3d Cir. 1980) 3

Reilly v. City of Harrisburg, 858 F.3d 173 (3d Cir. 2017) 9

Rubin v. Buckman, 727 F.2d 71 (3d Cir. 1984) 9

Sands v. McCormick, 502 F.3d 263 (3d Cir. 2007) 8

Texas v. Johnson, 491 U.S. 397 (1989) 18

Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478 (3d Cir. 1998) 8

Statutes, Rules, and Codes

15 Del. C. § 8002(10) 1, 4

15 Del. C. § 8002(19) 5

15 Del. C. § 8002(27) 4

15 Del. C. § 8030 (2012) 4

15 Del. C. § 8031(a) 5

15 Del. C. § 8031(a)(3) 1, 4

26 U.S.C. § 501(c)(3) 6

26 U.S.C. § 501(c)(4) 6

52 U.S.C. § 30104(f)(2)(E) 4, 5

52 U.S.C. § 30104(f)(2)(F) 4

Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 3

Other Authorities

About, Americans for Prosperity, https://perma.cc/DE36-6VKX (last visited Nov. 5, 2026) 6

About Us, Americans for Prosperity Action, https://perma.cc/3H8J-MFKV (last visited Nov. 5, 2026) 6

AFP State Chapters, Americans for Prosperity, https://perma.cc/5XK3-Y3S8 (last visited Nov. 5, 2026) 6

Americans for Prosperity Action Financial Summary (2023-2024), https://perma.cc/H397-YABV 6

Americans for Prosperity Form 990 (2024), https://perma.cc/EH4Y-64HX 6

Americans for Prosperity Foundation Form 990 (2024), https://perma.cc/E7NV-HY6Y 6

Appellants' Brief, *Americans for Prosperity Foundation v. Albence*, No. 26-2469 (3d Cir. July 15, 2026), ECF No. 15 9

Application For Writ of Injuction, *Americans for Prosperity Foundation v. Albence*, No. 26A349 (U.S. Sept. 10, 2026).....8

H.B. 300, 146th Gen. Assemb. (Del. 2012).....4

Policy of Avoiding Intra-circuit Conflict of Precedent, Internal Operating Procedures of the Third Circuit Court of Appeals.....7, 9

Response to Application, *Americans for Prosperity Foundation v. Albence*, No. 26A349 (U.S. Sep. 16, 2026).....8

NATURE AND STAGE OF PROCEEDINGS

Plaintiffs Americans for Prosperity ("AFP") and Americans for Prosperity Foundation ("AFPF") seek a declaratory judgment that the disclosure requirements for third-party ads in the Delaware Elections Disclosure Act ("Act") are unconstitutional on their face and as applied. Plaintiffs' motion for a preliminary injunction was denied on June 8, 2026, *see* Order, ECF No. 28, and this decision was affirmed by the Third Circuit on August 31, 2026, *see AFPF v. Albence*, 191 F.4th 169 (3d Cir. 2026). On October 1, 2026, the U.S. Supreme Court denied plaintiffs' emergency application for a writ of injunction. Following the Third Circuit's remand of the matter to this Court, defendants now move to dismiss plaintiffs' case under Fed. R. Civ. P. 12(b)(6) for failure to state a claim.

SUMMARY OF ARGUMENT

Three courts—this one, the Third Circuit, and the U.S. Supreme Court—have rejected plaintiffs' request to preliminarily enjoin the electioneering communications ("EC") disclosure provisions of the Act, *see* 15 Del. C. §§ 8002(10), (27); 8031(a)(3). All three courts declined to find these provisions unconstitutional either on their face or as applied to plaintiffs. Based on the reasoning underlying these decisions, this Court should dismiss the complaint: plaintiffs' facial claim is foreclosed by *Delaware Strong Families v. Attorney General of Delaware*, 793 F.3d 304 (3d Cir. 2015) ("*DSF*"), and plaintiffs fail to plead facts susceptible to establishing their entitlement to as-applied relief.

1. In denying plaintiffs' motion for preliminary injunction, this Court held that *DSF* controlled plaintiffs' facial claim. Transcript at 7:5-21.[1] This Court rejected plaintiffs' argument,

[1] The transcript of this Court's June 8, 2026 teleconference in which it provided its oral opinion on the Motion for Preliminary Injunction ("Tr.") is attached hereto as Exhibit 1.

ECF No. 5 at 2, that *DSF* had been "superseded" by *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021), noting that the former was not "obviously in conflict with the exacting scrutiny standard set forth" in the latter. Tr. at 7:8-9. Upon appeal, the Third Circuit affirmed, declining to find any conflict between the two decisions. *Albence*, 191 F.4th at 175-76. The panel thus found itself bound by *DSF* under appellate rules, and, as it noted, the "entire Court sitting en banc" would need to "grapple with whether to revisit *Delaware Strong Families*." *Albence*, 191 F.4th at 176. But instead of petitioning for en banc consideration of *DSF*, plaintiffs attempted to circumvent this step by applying immediately to the U.S. Supreme Court for an emergency injunction. The Supreme Court denied plaintiffs' application on October 1, 2026. *AFPF v. Albence*, No. 26A349 (U.S. Oct. 1, 2026).

In light of these proceedings, plaintiffs have no basis to challenge this Court's previous ruling that *DSF* forecloses their facial claim. If plaintiffs indeed want this binding precedent to be reconsidered, they are required to petition the Third Circuit for en banc review of *DSF*, as the Third Circuit panel suggested. *Albence*, 191 F.4th at 176. Plaintiffs have failed to take this step at any stage of these proceedings. Until doing so, however, they are barred from attempting to relitigate *DSF* in district court—*again*—and their facial claim must be dismissed.

2. Delaware previously argued, in the alternative, that plaintiffs' facial claim failed even if *DSF* did not control because the Act is narrowly tailored to advance the government's well-established interest in an informed electorate. ECF No. 21 at 11-14. This continues to be defendants' position. However, because controlling precedent governs the facial claim, this Court need not reconsider the constitutionality of Act de novo, and in fact, such an inquiry would seem to lie beyond this Court's authority, given the Third Circuit panel's recent refusal to disturb *DSF*. Defendants therefore do not move to dismiss plaintiffs' facial claim based on a de novo defense of

the Act; to the contrary, defendants note that further discovery and record building would be necessary for the full review of the Act in the event that *DSF* were to be reconsidered. *See, e.g.*, *Albence*, 191 F.4th at 176 (noting that if DSF were "no longer good law" the "underdeveloped" record "says little" about whether the Act was sufficiently tailored).

3. Finally, the Third Circuit also affirmed this Court's denial of preliminary relief as to plaintiffs' as-applied claim, agreeing that AFP and AFPF had failed to demonstrate a "reasonable probability that disclosure of its contributors' names will subject them to threats, harassment, or reprisals." *Id*. (internal quotation marks omitted). Indeed, as defendants argued in the preliminary injunction proceedings, ECF No. 21 at 15-16, even assuming plaintiffs could prove all the allegations in their pleadings, they failed to even *allege* the type of pervasive harassment necessary for an as-applied exemption under *Buckley v. Valeo*, 424 U.S. 1, 74 (1976) and *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). In particular, plaintiffs did not "offer[] anything from *donors*"—failing to allege any threat to their donors by reason of their identification under a campaign finance law like the Act. *Albence*, 191 F.4th at 176 (emphasis added). Thus, even accepting all allegations in the pleadings as true, the complaint does not "contain sufficient factual matter . . . to state a claim [for as-applied] relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). Under that standard, not only must preliminary relief be denied, but plaintiffs' as applied challenge should be dismissed.

STATEMENT OF FACTS

I. Delaware Elections Disclosure Act

As detailed in defendants' previous filings, ECF No. 21 at 2-5, which defendants incorporate here by reference, the Delaware Legislature modeled the Act on the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81. In enacting BCRA, Congress "coin[ed] a new term, 'electioneering communications'" ("ECs"), "to replace the

narrowing [express advocacy] construction of [federal] disclosure provisions." *McConnell v. FEC*, 540 U.S. 93, 189, *overruled in part by Citizens United v. FEC*, 558 U.S. 310 (2010). It defined this term by "easily understood and objectively determinable" criteria, *id*. at 103, and extended federal disclosure to ads that refer to a federal candidate, run within 30 days of a primary election or 60 days of a general election, and are targeted to the relevant electorate, 52 U.S.C. § 30104(f)(3)(A)(i).

The Supreme Court upheld these provisions on their face in *McConnell*, 540 U.S. at 194-202, and as applied in *Citizens United*, 558 U.S. at 366-71. In upholding BCRA, the Court necessarily approved its requirement that covered groups that use their general funds to finance ECs must disclose "the names and addresses of *all* contributors" over the monetary threshold. 52 U.S.C. § 30104(f)(2)(F) (emphasis added). However, if a group creates a segregated bank account to finance its ECs and limits its spending to funds contributed "directly to this account," BCRA allows reporting only contributors to that account. *Id.* § 30104(f)(2)(E).

Like Congress, the Delaware Legislature in 2013 was also concerned that Delaware's then-existent disclosure law failed to capture "a proliferation of advertisements that [were] distributed during the campaign season and intended to influence elections." H.B. 300 at pmbl., 146th Gen. Assemb. (Del. 2012). Following the federal model, the Legislature similarly extended existing Delaware law to encompass "electioneering communications," defining these ads by the same criteria as BCRA. *See* 15 Del. C. §§ 8002(10), (27); *id.* § 8031(a)(3).

Like BCRA, the Act requires certain disclosures from organizations that spend more than a specified amount on "[t]hird-party advertisement[s]," 15 Del. C. § 8002(27), a category which includes "electioneering communication[s]": ads that refer to a clearly identified candidate, are publicly distributed by communications media within 30 days of a primary election or 60 days of a general election, and are targeted to the relevant electorate. *Id.* § 8002(10).

Organizations that spend more than $500 on covered communications must file reports with the Commissioner of Elections. *Id.* § 8031(a). Reports must list the names of those to whom the organization has paid more than $100 for third-party advertisements; those contributing more than $100 to the organization during the election period; and, if a contributor is an organization, any person owning more than a 50% interest in the contributor. *Id.*

An organization may form a dedicated unincorporated association or a Delaware PAC for the limited purpose of funding one or more third-party advertisements in Delaware, *id.* § 8002(19). If the advertiser forms an association for this purpose, the Act requires the disclosure of only the donors to the association; the Act does not require the association to disclose donors of its affiliates or sponsoring entity.[2] This mechanism resembles the "segregated bank account" option of federal law, which permits groups that finance their federal electioneering communications exclusively through such an account to report only those donors who contribute to the account. 52 U.S.C. § 30104(f)(2)(E). Delaware simply uses the structure of an unincorporated alternative entity, rather than a bank account, as the mechanism to tailor disclosure.

Soon after enactment, the Act was challenged by Delaware Strong Families and ultimately upheld by the Third Circuit in *DSF*. There, closely following *Citizens United*, the Third Circuit applied exacting scrutiny to analyze whether the Act was both "substantial[ly] relat[ed]" and "sufficiently tailored" to the important governmental interest in "provid[ing] the electorate with information as to where political campaign money comes from." *DSF*, 793 F.3d at 309 (internal quotation marks omitted). In this analysis, *DSF* carefully "compar[ed] the respective disclosure requirements of BCRA and the Act," *id.* at 308, examining the Act's monetary thresholds, the

[2] Concerned that this option may reduce donor disclosure in some instances, Delaware's General Assembly considered legislation this year to address the use of PACs and associations to finance electioneering communications but ultimately did not pass this legislation in its 2026 session.

media it covered, its reporting periods, and the donor disclosure it required. It concluded that the Act was "narrowly tailored and not impermissibly broad." *Id.* at 306. The Supreme Court subsequently denied DSF's petition for certiorari. *DSF v. Denn*, 136 S. Ct. 2376 (2016).

The Act has not been materially amended since it was sustained by *DSF*. *See supra* note 2.

II. Plaintiffs Americans for Prosperity Foundation and Americans for Prosperity

AFPF is a group organized under Section 501(c)(3) of the Internal Revenue Code. Compl. ¶ 10. In 2024, AFPF reported $4,378,810 in total revenue. *See* AFPF Form 990 at 1, https://perma.cc/E7NV-HY6Y.[3]

AFP is a group organized under Section 501(c)(4) of the IRC. Compl. ¶ 11. In 2024, AFP reported $223,730,668 in total revenue, *see* AFP Form 990 at 1, https://perma.cc/EH4Y-64HX. AFP reports four million "activists" in all fifty states, more than 100 offices across the country, and thirty-six individual state chapters; in 2024 alone, AFP hosted more than 7,500 events and claimed more than 300 legislative victories, according to its public website.[4]

Plaintiffs also operate at a federally-registered super PAC, Americans for Prosperity Action ("AFPA"), which took in over $180 million in receipts in 2023-24.[5]

III. Procedural History

AFP and AFPF initiated their action on April 17, 2026, and filed a motion for preliminary

[3] A district court can take judicial notice of matters of public record—including a party's governmental filings and public statements—on a 12(b)(6) motion to dismiss, provided the facts stated therein are "not subject to reasonable dispute." Fed. R. Evid. 201(b). *See, e.g., F.T.C. v. Shire ViroPharma, Inc.*, 917 F.3d 147, 151 n.5 (3d Cir. 2019) (taking judicial notice of party's SEC filings).

[4] *See* About Us, AFP, https://perma.cc/DE36-6VKX (last visited Nov. 5, 2026); AFP State Chapters, AFP, https://perma.cc/5XK3-Y3S8 (last visited Nov. 5, 2026).

[5] *See* AFPA Financial Summary, https://perma.cc/H397-YABV. *See also* About Us, AFP Action, https://perma.cc/3H8J-MFKV (last visited Nov. 5, 2026).

injunction on the same day. On June 8, 2026, this Court denied plaintiffs' motion. It first held that plaintiffs' facial claim was foreclosed by *DSF*, rejecting plaintiffs' argument that *DSF* was "obviously in conflict with the exacting scrutiny standard set forth in *Bonta*." Tr. at 7:8-9. This Court then found that plaintiffs' as-applied claim was also unlikely to succeed because they had failed to "show[] a reasonable probability that disclosure of [their] donors' names pursuant to the Delaware law will subject them to threats, harassments, or reprisals." *Id*. at 9:6-9.

Plaintiffs appealed and the Third Circuit affirmed this Court's decision. The Third Circuit agreed that *DSF* controlled plaintiffs' facial challenge and declined to find *DSF* in conflict with *Bonta*. 191 F.4th at 176. Consequently, it noted that reconsideration of *DSF* may require "our entire Court sitting en banc." *Id. See also* Policy of Avoiding Intra-circuit Conflict of Precedent, Internal Operating Procedures ("IOP") of the Third Circuit Court of Appeals § 9.1 (stating that "holding of a panel in a precedential opinion is binding on subsequent panels"). The panel also affirmed this Court's finding that plaintiffs had failed to offer sufficient—or any—evidence of potential donor harassment to support their as-applied challenge and expressed "little confidence" that plaintiffs would succeed on the merits of their as-applied claim. 191 F.4th at 176.[6]

Plaintiffs did not seek en banc review of their case by the Third Circuit—even though the panel had suggested that this was likely necessary under appellate rules for reconsideration of *DSF*. Instead, on September 10, 2026, plaintiffs filed an emergency application for a writ of injunction pending a petition for certiorari with the U.S. Supreme Court. The application argued that plaintiffs were likely to succeed on the merits of their facial claim, asserting that *DSF* had been superseded by *Bonta* and that the Act would not survive de novo review under the standard of scrutiny

[6] The Third Circuit held that plaintiffs had also failed to establish the non-merits factors for preliminary relief, noting that plaintiffs' delay in initiating their action was the reason they had been unable to fully litigate their claims. 191 F.4th at 176-78.

prescribed by *Bonta*. *See* App. For Writ of Injuct., *AFPF v. Albence*, No. 26A349 (U.S. Sept. 10, 2026).[7] Defendants responded, noting, inter alia, that this Court had based its denial of the motion for preliminary injunction on the precedential effect of *DSF* and had correctly declined to consider the facial constitutionality of the Act de novo. Response to App., *AFPF v. Albence*, No. 26A349 (U.S. Sep. 16, 2026). The Supreme Court denied plaintiffs' application for relief on October 1, 2026.

ARGUMENT

I. Standard of Review

In reviewing a motion to dismiss pursuant to Rule 12(b)(6), a district court accepts as true all factual allegations in the complaint and construes it in the light most favorable to the plaintiff. *Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc*., 140 F.3d 478, 483 (3d Cir. 1998). The court relies on the complaint and attached exhibits, as well as matters of public record. *Sands v. McCormick*, 502 F.3d 263, 268 (3d Cir. 2007). *See also supra* note 3.

"[A] plaintiff's obligation to provide the grounds of his entitle[ment] to relief," however, "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Brodzki v. Fox Broad. Co*., 868 F. Supp. 2d 386, 388 (D. Del. 2012) (alteration in original) (internal quotation marks omitted) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545). The "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." *Id*. (alteration in original) (quoting *Twombly* at 545). Allegations that "are no more than conclusions, are not entitled to the assumption of truth." *Malleus v. George*, 641 F.3d 560, 563 (3d Cir. 2011), *as*

[7] Documents relating to Plaintiffs' application to the U.S. Supreme Court are available at https://perma.cc/KY4D-HNDN.

amended (June 6, 2011) (quoting *Iqbal*, 556 U.S. at 679).

II. Plaintiffs' Facial Claim Is Foreclosed by *Delaware Strong Families* and Should Be Dismissed.

In *DSF*, the Third Circuit found the Act to be narrowly tailored and to survive exacting scrutiny. *DSF*, 793 F.3d at 310-12. If *DSF* remains controlling precedent, it requires dismissal of this case.

In denying the motion for preliminary injunction, this Court ruled that *DSF* precluded plaintiffs from showing "any likelihood of success in winning a facial challenge." Tr. 7:20-21. The Third Circuit affirmed. *Albence*, 191 F.4th at 176. Whether this Court considers those decisions to be the law of the case or simply accurate statements of the law, these decisions were clearly correct.

Under principles of stare decisis and appellate rules, *see* IOP § 9.1, *DSF* remains controlling both on this Court and on a subsequent Third Circuit panel unless it is "obviously in conflict with Supreme Court precedent." *Rubin v. Buckman*, 727 F.2d 71, 74 (3d Cir. 1984) (Garth, J., concurring). *Reilly v. City of Harrisburg*, 858 F.3d 173, 177 (3d Cir. 2017), *as amended* (June 26, 2017) (noting "no subsequent panel [has] the discretion" to abandon precedent that was not "overruled by a decision of this Court en banc" or "contrary" to a ruling by the Supreme Court). Only when sitting en banc can the Third Circuit reconsider past decisions in the absence of explicit conflict with intervening Supreme Court precedent.

Plaintiffs have yet to identify any actual conflict between *DSF* and *Bonta*. Indeed, in the Third Circuit proceedings, plaintiffs conceded that there was no *explicit* disagreement between the decisions, acknowledging that *DSF* had expressly considered whether the Act is "narrowly tailored" as *Bonta* instructs. *See* Appellants' Br. at 33 n.4, *AFPF v. Albence*, No. 26-2469 (3d Cir. July 15, 2026), ECF No. 15 (quoting *DSF*, 793 F.3d at 306). Plaintiffs instead had to resort to arguing that *DSF*'s explicit holding notwithstanding, the Third Circuit's analysis there "in

function" did not include "the features [*Bonta*] demands of the narrow tailoring inquiry." *Id.* (emphasis added). But supposition about *implicit* tension between a Supreme Court holding and Circuit precedent cannot vitiate the binding effect of the latter without rendering stare decisis a nullity.

Further, there is not even any implicit tension between *Bonta* and *DSF* because *Bonta* reaffirmed that exacting scrutiny is the correct standard of review.

Bonta reviewed a California reporting law that required charities active in the state to submit tax documents and donor information to the state attorney general, on a confidential basis, to aid the state's oversight over nonprofit entities. 594 U.S. at 601-02. The California law thus did not involve elections, nor the public disclosure of campaign finance information—and thus implicated no First Amendment interest in an informed electorate.

In challenging California's reporting law, the *Bonta* plaintiffs had urged the Supreme Court to apply strict scrutiny, distinguishing, for the purpose of their argument, campaign finance laws like Delaware's that receive exacting scrutiny. The Court declined to create the two-tier system of review that the plaintiffs requested. Instead, drawing upon campaign finance precedents like *Buckley* and *Citizens United*, it reaffirmed that that the exacting scrutiny it applied in those cases was the appropriate standard for *all* types of donor disclosure laws. 594 U.S. at 608 (citing *Buckley*, 424 U.S. at 64-68; *Citizens United*, 558 U.S. at 366-67; *Davis v. FEC*, 554 U.S. 724, 744 (2008)). In the alternative, the *Bonta* plaintiffs had urged the Supreme Court to incorporate a "least restrictive means test" into exacting scrutiny. *Id.* at 608. The Court rejected this request as well, explaining that that exacting scrutiny requires "disclosure regimes" to be "narrowly tailored to the government's asserted interest" but not "the least restrictive means of achieving their ends." *Id.*

Despite *Bonta*'s reaffirmation of exacting scrutiny, plaintiffs claim that the decision

superseded *DSF* because *Bonta* implicitly heightened exacting scrutiny by stating that it requires an analysis of narrow tailoring. ECF No. 5 at 2. But at no point did *Bonta* suggest that it was *changing* the requirements of exacting scrutiny—especially not as applied to campaign finance disclosure laws, which the California law was not. To the contrary, the plurality opinion made clear that the "need for narrow tailoring" in exacting scrutiny review was present throughout its precedents, both "early in [its] compelled disclosure cases" and in "more recent decisions." 594 U.S. at 608-09. And the plurality expressly rejected the dissent's position that earlier political disclosure cases like *John Doe No. 1 v. Reed*, 561 U.S. 186 (2010), had employed a standard that required only a "modest level of tailoring." 594 U.S. at 611 (internal quotation marks omitted). Instead, the Court maintained that cases like *Reed* had in fact narrowly reviewed tailoring because the Court there had upheld disclosure "only after [it] concluded that various narrower alternatives proposed by the plaintiffs were inadequate." *Id.*

Consistent with the later *Bonta* decision, *DSF* had expressly considered whether the Act was "narrowly tailored and not impermissibly broad," 793 F.3d at 306, citing *Buckley* and *Citizens United* as the basis for the standard it applied, *id*. at 309. As this Court highlighted, *DSF* specifically reviewed "the Act's monetary thresholds, the types of media covered, the length of the statutory 'election period,' and the lack of so-called earmarking provisions," Tr. at 7, assessing the degree to which each of these features were necessary to achieve the government's informational interest. *DSF*, 793 F.3d at 310-12.

DSF also considered the Act's requirements in light of any less intrusive alternatives, which plaintiffs have claimed is the hallmark of narrow tailoring review. ECF No. 5 at 11. The Third Circuit there made a point-by-point comparison of Delaware's disclosure requirements to the sometimes "less restrictive" federal model. The Court of Appeals made note of each feature of the

Act that departed from BCRA—including for instance, the differences in the law's monetary thresholds and covered media, *DSF*, 793 F.3d at 310-11—and considered at length whether the record justified Delaware's choice of different criteria for EC disclosure, *id.* For instance, the Third Circuit reasoned that Delaware's lower thresholds for reporting were justified in light of the practical realities of state campaigns, which tended to rely on inexpensive media, such as direct mail, *id.*, not television, given that there was no major-network T.V. market serving Delaware, *id.* at 311.

In sum, *DSF* conducted the narrow tailoring review prescribed by *Bonta* and established in the Supreme Court's earlier campaign finance precedents. Because there is no conflict between the two decisions, this Court was correct to—and indeed compelled to—rule that *DSF* controls the merits of applicants' facial claim, Tr. at 7, and should now dismiss this claim with prejudice.

III. *De Novo* Review of the Act Would Likely Require Further Factual Development.

DSF controls here, and principles of *stare decisis* therefore counsel against *de novo* review of the Act. As defendants have argued previously, however, even if *DSF* did not preclude plaintiffs' facial challenge, dismissal would still be appropriate because the Act is narrowly tailored to advance the government's well-recognized state interest in informing voters "about the sources of election-related spending." *Citizens United*, 558 U.S. at 367.

Indeed, because neither the Act nor the applicable standard of review has changed since *DSF* issued, any reexamination of the constitutionality of the Act would result in a similar finding that the Act meets exacting scrutiny: plaintiffs' claim should thus be dismissed under Fed. R. Civ. Pro. 12(b)(6) regardless of whether *DSF* is considered controlling. As defendants have argued, ECF No. 21 at 11-12, the Act uses the same criteria as BCRA to define the scope of covered ECs and thus is constitutional under *McConnell* and *Citizens United*. *See supra* at pp. 3-4. The Act's voter-targeting threshold, the elections and media it covers, the 30- and 60-day pre-election time

periods in which it applies, and its monetary thresholds for disclosure all confirm a close nexus between the Act's transparency objectives and local campaign practices. And insofar as Act's monetary thresholds and covered media differ slightly from those of BCRA, these departures reflect the unique experience of campaigning in small state elections, and thus provide more, not less, support for the Act's tailoring.

The Third Circuit panel, however, noted that the existing record is "underdeveloped," and "says little about whether Delaware demands more disclosure than its interests justify" were the Act to be reviewed de novo. *Albence*, 191 F.4th at 176. As defendants noted in the Third Circuit proceedings, if Delaware were required to again defend the Act in the first instance, defendants would plan to provide additional evidence, including "testimony from voters and campaign officials who value donor disclosures, and statistics about how many people visit Delaware's donor-disclosure database." *Id*. Thus, if the facial claim is not dismissed based on the direct application of *DSF*—or the indirect application of its reasoning and the holdings in *McConnell* and *Citizens United*—defendants will seek discovery and introduce additional record evidence to demonstrate the narrow tailoring of the Act, as the Third Circuit has suggested.

IV. Plaintiffs' As-Applied Claim Should Be Dismissed.

Plaintiffs' as-applied claim merits dismissal completely independently of *DSF*'s application to their facial claim. Plaintiffs simply fail to allege the type of pervasive harassment required to receive an as-applied exemption from the Act under *Buckley* and *NAACP*. Nor do plaintiffs plead facts from which one could plausibly infer that any harm will befall their donors due to their disclosure under Delaware's Act. Instead, the bulk of plaintiffs' allegations of fact are so general and conclusory that they are not even "entitled to the assumption of truth" typically accorded upon a motion to dismiss. *Malleus*, 641 F.3d at 563 (internal quotation marks omitted). Plaintiffs' as-applied claim should be dismissed.

The Supreme Court has recognized one basis for an as-applied challenge to election-related disclosure: if a plaintiff shows "a reasonable probability that the group's members would face threats, harassment, or reprisals if their names were disclosed." *Citizens United*, 558 U.S. at 370. This exemption was designed to protect "dissident" viewpoints that would otherwise be removed from "the free circulation of ideas." *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 91, 93 (1982). Groups who have won this exemption have often confronted not only private hostility, but also governmental harassment and surveillance. *See id.* at 98-100; *NAACP*, 357 U.S. at 462.

In deciding the Motion for Preliminary Injunction, this Court held that plaintiffs had failed to demonstrate a likelihood of success on their as-applied claim given the "scant" "evidence and argument" they presented to show that disclosure under the Act would subject their donors "to threats, harassments, or reprisals from Government officials and private parties." Tr. at 9:3-10:22. The Third Circuit affirmed, reiterating that in light of the "slim" record, 191 F.4th at 174, it had "little confidence in the likelihood of success" of plaintiffs' as-applied claim, *id.* at 176.

Defendants agree that plaintiffs have offered virtually no allegations of any supposed harassment threatening donors. Indeed, plaintiffs have failed to even *allege* any likelihood of donor harm sufficient to meet *Buckley*'s standard for an as-applied exemption from campaign finance disclosure. As this Court observed, plaintiffs' case relies "on generic allegations and/or allegations regarding contexts unrelated to disclosure of donors in the election communications context." Tr. at 8:6-9. Thus, even if plaintiffs' allegations are assumed to be true and all inferences drawn in their favor, they fail to state a claim for as-applied relief.

First, most of plaintiffs' allegations of harm are general and conclusory. For this reason, an Arizona district court rejected a similar as-applied claim by AFPF and AFP in their challenge to

an Arizona law requiring election spenders to disclose the original sources of their funds. *AFP v. Meyer*, 724 F. Supp. 3d 858, 879 (D. Ariz. 2024) (dismissing plaintiffs' as-applied claim because it was "based on generic allegations regarding the treatment of their donors in unrelated matters"), *aff'd*, 2026 WL 2934861 (9th Cir. Sep. 30, 2026). The Ninth Circuit recently affirmed this ruling, reiterating that AFP and AFPF's allegations there were "conclusory and devoid of any specifics" and "d[id] not suffice" to sustain an as-applied claim. *Meyer*, 2026 WL 2934861, at *18 (internal quotation marks omitted). Plaintiffs repeat the same failure here: the vast majority of their allegations similarly "amount to nothing more than '[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Id.* at *18 (quoting *Iqbal*, 556 U.S. at 678). *See, e.g.*, Compl. ¶ 37 ("Plaintiffs and their supporters have been subject to threats and harassment in the past . . ."); *id.* ¶ 40 ("Donors whose associations with Plaintiffs are known to the public have received threats of physical harm and/or public harassment."); *id.* ¶ 41 ("Other donors, supporters, and employees of AFP and AFPF have repeatedly faced public threats, harassment, and intimidation . . .").

Plaintiffs allege only a handful of more concrete instances of supposed harassment. They make reference to "harassment and threats in Vermont from groups that disagree with Plaintiffs on economic policy initiatives," Compl. ¶ 42; an unruly protest at AFP's 2011 summit in Washington, D.C., *id.* ¶ 38; and alleged vandalism of AFP's Fargo, North Dakota office in 2019, *id.* Plaintiffs also reference the records purportedly created in past cases concerning the activities of AFP and AFPF and dicta therein regarding harassment. *See* Connolly Decl. ¶¶ 18-22, ECF No. 5-2.[8]

[8] No case has granted either AFP or AFPF an as-applied exemption from disclosure based on donor harassment. Plaintiffs cite an unpublished New Jersey decision, but the court there made no findings as to whether AFP merited an as-applied exemption from the law at issue. *AFP v. Grewal*, No. 3:19-cv-14228, 2019 WL 4855853, at *20 (D.N.J. Oct. 2, 2019). And in *Bonta*, the district court's grant of a preliminary injunction was reversed by the Ninth Circuit, which found that AFPF

Although plaintiffs gesture at unrelated cases elsewhere, they have not articulated any well plead facts to support their claims *here*.[9] And even if AFPF or AFP was able to better substantiate their claims, these alleged incidents do not amount to the kind of pervasive threats and harassment that warrants an as-applied exemption for disclosure under *Buckley* and *NAACP*, and none are alleged to have occurred because plaintiffs' donors were identified in a campaign finance disclosure report.

The exemption at issue here was created for politically and socially marginalized groups that had suffered significant, longstanding harassment from both the government and private parties. Plaintiffs do not meet this standard. They are national, well-funded organizations, who claim four million activists and over 100 offices in all fifty states—and a history of significant legislative success. *See supra* at p. 6 and note 4. AFP and AFPF themselves announce their leadership and board members on their website, *see supra* note 4, demonstrating that their leadership has no genuine fear of reprisal from disclosure of their identities. Similarly, AFP claims they have knocked on "27 million+ doors" since 2022, hardly a sign of a cowed membership. *See supra* note 4. Yet they scrape together only a handful of instances of supposed harassment over a more than 15-year period—none of which involves a nexus to donors identified in campaign finance disclosure reports. And with respect to some claimed incidents—*e.g.*, the vandalization of an office building, Compl. ¶ 38—plaintiffs aver no facts to indicate that this was a response to AFP's political positions, or even connected to AFP's occupancy at all. Finally, plaintiffs make no

---

had not shown a reasonable probability of harassment by either the state or the general public if the Attorney General collected its donor information. *AFPF v. Harris*, 809 F.3d 536, 540-41 (9th Cir. 2015).

[9] The only support for the claimed harassment at the 2011 protest is a single news article, Compl. ¶ 39; the only "evidence" for vandalism is half of a blog post that was re-published as an opinion column, where the link for the rest of the blog is broken, Connolly Decl. ¶ 20.

allegation that they were unable to avail themselves of police protection with respect these claimed incidents, in stark contrast to the plaintiff groups in *NAACP* or *Brown*.[10] *See also Reed*, 561 U.S. at 215.

Moreover, several of plaintiffs' more specific allegations of "harassment" appear to describe instances where individuals simply disagreed with plaintiffs' public positions, which is itself speech protected by the First Amendment. *See, e.g.*, Compl. ¶ 40 (alleging boycott of AFP supporters' businesses). For instance, plaintiffs complain that Vermont and Maine legislators have "singled out AFP,"[11] but they offer as examples only one legislator's statements criticizing AFP's position on energy and the organization's failure to disclose its donors. Plaintiffs complain that legislators have attempted to "impede [their] operations in Northeastern states by introducing legislation targeting AFP," Connolly Decl. ¶ 21, but the only legislative activity they identify is Vermont's attempt to close a possible "loophole" in its state campaign finance disclosure law, *id.* Plaintiffs cannot claim the First Amendment shields them from lawful criticism of their political activities or the general application of a campaign finance disclosure law: "[t]hat is simply not the nature of their right." *ProtectMarriage.com v. Bowen*, 830 F. Supp. 2d 914, 932 (E.D. Cal. 2011). If an organization engages in political advocacy, it is foreseeable that it will stir speech and action in response—but a critical reception is not "harassment" but rather expressive activity that itself

[10] Although the "harassment" exemption was designed to protect "minor" parties and dissident viewpoints that may otherwise be removed from "the free circulation of ideas," *Buckley*, 424 U.S. at 71 (internal citation omitted), this does not mean that a mainstream group like AFP could never fall victim to serious harassment. But the prospect of severe chill is comparatively remote and should not be automatically credited without substantial factual support. Plaintiffs' allegations fall far short here.

[11] Plaintiffs' declarant identifies just two statements from one Vermont legislator to this end: a blog post discussing AFP's stance on an energy statute, and a brief statement where she mentions that AFP and the Sierra Club are organizations that may be able to avoid making disclosures under existing Vermont law. Connolly Decl. ¶ 21.

receives constitutional protection. *Texas v. Johnson*, 491 U.S. 397, 408-09 (1989) (citation omitted) ("[A] principal 'function of free speech . . . is to invite dispute."). The fact that plaintiffs would prefer to conduct their activities in secret to avoid "harsh criticism," *Reed*, 561 U.S. at 228 (Scalia, J., concurring), does not entitle them to do so, short of a demonstrable and serious risk of injury specific to their own donors.

And crucially, plaintiffs fail to allege any such harassment suffered by their donors because their names appeared in a campaign finance report or similar disclosure. To the extent they allude to any specific incidents of harassment, all involve the experiences of plaintiffs' leadership, employees, and public-facing associates—and were occasioned by their public advocacy and activities, not in response to information gleaned from disclosure reports filed with a government agency. But, as both this Court and the Third Circuit emphasized, plaintiffs must show a reasonable probability that *disclosure under the Act* will be the cause of any donor harassment. *See, e.g.*, *Albence*, 191 F.4th at 176 (noting that plaintiffs have not "offered anything from donors—just 'generic, undated' examples of 'threats to AFP as an organization as opposed to specific donors'") (quoting Tr. at 9:14-10:22). The Arizona district court reiterated this point when rejecting AFPF and AFP's as-applied claim there, noting that plaintiffs "need not make voluminous allegations of possible harm" but "they must make some allegations that can plausibly be tied to [Arizona law]," including a "factual basis for believing the disclosures required by [Arizona law] will lead to threats, harassment, or reprisals." *Meyer*, 724 F. Supp. 3d at 879 (internal quotation marks omitted). Plaintiffs have failed to make these necessary allegations both here and in Arizona.

This omission is all the more glaring because plaintiffs operate an affiliated super PAC that took in over $180 million in federal receipts in 2023-24; in the same period, the PAC reported the names of over two thousand donors. *See supra* note 5. Plaintiffs make no allegation that any of

these contributors have ever faced harassment from this disclosure, nor do they suggest that any of their public disclosure reports have otherwise caused harm to their donors.

Finally, plaintiffs make the conclusory allegation that compliance with the Act will make it "likely that potential donors will refuse to contribute, and current donors will cease to contribute." Connoly Decl. ¶ 24. But the mere possibility that disclosure may discourage some donors from contributing is hardly sufficient to obtain an as-applied exemption. *Buckley*, 424 U.S. at 68 (upholding federal disclosure law even though it is "undoubtedly true" that disclosure might "deter" some donors from making contributions); *No on E, San Franciscans Opposing the Affordable Hous. Prod. Act v. Chiu*, 62 F.4th 529, 543 (9th Cir. 2023) (holding that "donors' alleged desire not to have their names listed" is insufficient to establish a real deterrent effect on fundraising). A disclosure law is not unconstitutional simply because an organization's donors have avoided public disclosure in the past and prefer to continue to contribute in secret.

Thus, even if plaintiffs' allegations are assumed to be true and all inferences drawn in their favor, they fail to state a claim for as-applied relief.

CONCLUSION

For these reasons, plaintiffs' Complaint should be dismissed.

Dated: November 6, 2026

Respectfully submitted,

Tara Malloy*
Megan McAllen*
David Kolker*
Elizabeth Shimek*
Campaign Legal Center
1333 New Hampshire Ave. NW, Suite 300
Washington, DC 20036
(202) 736-2200
tmalloy@campaignlegalcenter.org
davidkolker@campaignlegalcenter.org
mmcallen@campaignlegalcenter.org
eshimek@campaignlegalcenter.org

*Admitted *pro hac vice*

Delaware Department of Justice

/s/ Emily V. Burton
Emily V. Burton (No. 5142)
Delaware Department of Justice
820 N. French Street, 6th Floor
Wilmington, DE 19801
302-577-5374
Emily.Burton@Delaware.gov

Counsel for Defendants

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AMERICANS FOR PROSPERITY FOUNDATION, et al.,	)	
Plaintiffs,	)	C.A. No. 26-445-JLH
v.	)	
ALBENCE, et al.,	)	
Defendants.	)	

Monday, June 8, 2026
4:00 p.m.
Teleconference

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JENNIFER L. HALL
United States District Court Judge

APPEARANCES:

BAKER & HOSTETLER, LLP
BY: JEREMY DOUGLAS ANDERSON, ESQ.
BY: ALLEN DICKERSON, ESQ.

Counsel for the Plaintiff

APPEARANCES CONTINUED:

DELAWARE DEPARTMENT OF JUSTICE
BY: EMILY V. BURTON, ESQ.

-and-

CAMPAIGN LEGAL CENTER
BY: TARA MALLOY, ESQ.
BY: MEGAN McALLEN, ESQ.

Counsel for the Defendant

16:03:35 THE COURT: Good afternoon, everyone. This is Jen Hall. We're here to reconvene the hearing on the preliminary injunction motion in Americans for Prosperity Foundation v. Albence, civil action number 26-445.

16:03:48 Do we have someone from Plaintiffs' side here?

16:03:52 MR. ANDERSON: Yes, Your Honor. Jeremy Anderson and Allen Dickerson are both on the line.

16:03:58 THE COURT: Very good.

16:03:59 And do we have someone from Defendants here?

16:04:03 MS. BURTON: Indeed, Your Honor. Emily Burton, Tara Malloy, and Megan McAllen are all here.

16:04:11 THE COURT: Great.

16:04:12 Pending before the Court is Plaintiffs' motion for a preliminary injunction. That's at docket number 4. The motion has been fully briefed and the parties submitted

16:04:23 1 declarations and other evidence in support of their papers,
16:04:26 2 all of which has been considered. That's at D.I. 5, 21, and
16:04:32 3 25. The parties were given the opportunity to request an
16:04:35 4 evidentiary hearing, but they assured the Court that neither
16:04:40 5 side wanted an evidentiary hearing. That's at docket 26.
16:04:43 6 That said the parties submitted some declarations and
16:04:46 7 exhibits in connection with their papers as D.I. 5, 22, and
16:04:50 8 25, and both sides agreed during the hearing today that the
16:04:55 9 Court may consider and rely upon those materials. The
16:04:57 10 record of evidence before the Court, is, however, very slim.
16:05:02 11 We've heard oral argument from the parties
16:05:05 12 today. Given that the challenge implicates conduct in the
16:05:10 13 upcoming election, the Court's prepared to render a prompt
16:05:15 14 decision by ruling on the motion from the bench.
16:05:18 15 Plaintiffs' one-count complaint challenges the
16:05:23 16 constitutionality of certain provisions of the Delaware
16:05:26 17 Elections Disclosure Act. Specifically, Plaintiff argues
16:05:30 18 that "Delaware's disclosure requirements set forth in 15
16:05:34 19 Delaware Code §8031" violate the First Amendment because
16:05:40 20 they "are not substantially related to a sufficiently
16:05:43 21 important government interest, nor are they narrowly
16:05:47 22 tailored to any interest they allegedly promote."
16:05:50 23 As relevant here, §8031(a) provides that
16:05:57 24 Any person other than a candidate committee or a
16:06:02 25 political party who makes an expenditure for any third-party

advertisement that causes the aggregate amount of expenditures for the third-party advertisements made by such person to exceed $500 during an election period shall file a third-party advertisement report with the Commissioner.

15 Delaware Code §8002 paragraph 21 defines "third-party advertisement" to mean "an independent expenditure or an electioneering communication."

An "electioneering communication" is "a communication by any individual or other person (other than a candidate committee or political party) that:

(1)Refers to a clearly identified candidate; and (2)Is publicly distributed within 30 days before a primary election or special election, or 60 days before a general election to an audience that includes members of the electorate for the office sought by such candidate."

That's §8002 paragraph 10(a).

And the "third-party advertisement report" must include the "full name and mailing address of each person who has made contributions during the election period in an aggregate amount or value in excess of $100. And that's §8031(a)(3). §8032 provides that the report shall be publicly available.

The gist of all this--and the focus of the parties--is that organizations that pay for ads that run shortly before an election that refer to a clearly

identified candidate must file a report with the Delaware Commission of elections that contains the names of those who have donated $100 or more during the election period.

Plaintiffs allege that they want to run ads in the pre-election window that will mention candidates for election, but that Plaintiffs have refrained from doing so because essentially they don't want to disclose their donors and they don't want to violate the Delaware Elections Disclosure Act.

Plaintiffs contend that the Act is unconstitutional because it violates the right to private association and free speech, in violation of the First Amendment. Plaintiffs ask the Court to grant a preliminary injunction to prevent the enforcement of the Act.

"A preliminary injunction is an extraordinary remedy that should be granted only in limited circumstances." And that's a quote from the Third Circuit in *Delaware State Sportsmen's Association v. Delaware Dep't of Safety.* It's at 108 F.4th 194, page 200 in 2024. The case also explains that district courts have discretion to grant or deny preliminary injunctions, but "[f]our canonical guideposts are (1)the likelihood of success on the merits; (2)the risk of irreparable injury absent preliminary relief; (3)the balance of the equities; and (4)the public interest." And "the first two factors are the most critical."

16:09:32 The parties agree that the "exacting scrutiny" standard applies here. According to the Supreme Court, exacting scrutiny requires that there be a substantial relation between the disclosure requirement and a sufficiently important governmental interest, meaning that the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights. And that's from a case called *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 at page 607 from 2021. That case also explains that exacting scrutiny also requires that the disclosure requirement be narrowly tailored to the interest it promotes. And that's on pages 608 to 611. However, "exacting scrutiny does not require that disclosure regimes be the least restrictive means of achieving their ends."

The Third Circuit has previously addressed the constitutionality of the Delaware Elections Disclosure Act. In 2015, the Third Circuit held in a case called *Delaware Strong Families v. Attorney General of Delaware* that application of the act to the Plaintiffs in that case survived exacting scrutiny. And the case cite for that is 793 F.3d 304 at pages 309 to 312.

Plaintiffs are argue that this Court is not bound by *Delaware Strong Families* because, subsequently, in 2021, the Supreme Court clarified in *Bonta* that exacting

scrutiny requires that the disclosure requirement be narrowly tailored to the interest it promotes. And Plaintiffs say that requirement was not there when *Delaware Strong Families* came out.

But this Court is bound by third circuit precedent unless it is obviously in conflict with subsequent precedent from the Supreme Court. I'm unpersuaded that *Delaware Strong Families* is obviously in conflict with the exacting scrutiny standard set forth in *Bonta*. Indeed, Delaware Strong Families expressly concluded that the Delaware Elections Disclosure Act was "narrowly tailored." That case rejected challenges that the Act's monetary thresholds, the types of media covered, the length of the statutory "election period," and the lack of so-called earmarking provisions. And the Third Circuit's observation that exacting scrutiny does not require use of the least restricted means of advancing the state's interest is entirely consistent with *Bonta*.

Accordingly, I find that Plaintiff has failed to demonstrate any likelihood of success in winning a facial challenge to the constitutionality of the Act.

Plaintiffs spend a lot less time on their as-applied challenge. That said, the parties agree that a plaintiff can succeed with an as-applied challenge in the context of an election communication donor disclosure

16:13:08 requirement if the plaintiff can demonstrate a "reasonable
16:13:13 probability that disclosure of its contributors names will
16:13:18 subject them to threats, harassment, or reprisals from
16:13:21 either government officials or private parties." And that's
16:13:24 from the *Citizens United* case, 558 U.S. at page 367.
16:13:33 Here, Plaintiffs as-applied challenge is based
16:13:38 on generic allegations and/or allegations regarding contexts
16:13:43 unrelated to disclosure of donors in the election
16:13:46 communications context.
16:13:48 Plaintiffs submitted evidence via a declaration
16:13:51 that they "understand that both current and potential future
16:13:56 donors to our organization are fearful of having their names
16:14:00 and addresses disclosed as donors to or supporters of AFP
16:14:07 and/or AFPF." That's document number five at paragraph 17.
16:14:14 And that "AFP, AFPF, their employees, supporters, and donors
16:14:22 have been subject to threats and harassment in the past."
16:14:25 And that's at paragraph 18.
16:14:26 Plaintiffs then provide evidence of generic
16:14:29 examples such as that "in Vermont we have experienced
16:14:34 consistent harassment and threats from groups that disagreed
16:14:36 with us on economic policy initiatives to the point where we
16:14:40 had to hire security for our events." That's paragraph 19.
16:14:43 An AFP office in North Dakota was vandalized. That's
16:14:49 paragraph 20. Legislators in other states have made public
16:14:53 comments critical of AFP. That's paragraph 21. And in

other litigations AFP has provided other courts with firsthand evidence of threats. That's at paragraph 22.

The evidence and argument presented by Plaintiffs for their as-applied challenge is scant. The Court cannot say on this record that Plaintiffs have demonstrated a likelihood of success in showing a reasonable probability that disclosure of Plaintiffs' donors names pursuant to the Delaware law will subject them to threats, harassments, or reprisals from Government officials and private parties. There are no allegations or evidence of threats from Delaware government officials historically nor is there any suggestion that Delaware will target Plaintiffs in the future. Plaintiffs' evidence with respect to threats from private parties is generic, undated, focuses entirely on threats to AFP as an organization as opposed to specific donors, and is not specific to disclosure of donor information, nor is it tied to electioneering communications, Delaware, or electioneering communications in Delaware.

And while I'll accept for the purposes of the argument that the proposition that some potential donors would not contribute and current donors would stop contributing if Plaintiffs decided to make electioneering communications and are required to disclose donor information pursuant to the Delaware law, that is not

16:16:21 sufficient to show a likelihood of success that this
16:16:26 campaign finance law is unconstitutional as applied to
16:16:29 Plaintiffs. Disclosure in this context is constitutionally
16:16:33 permissible even when it places some burden on first
16:16:37 amendment rights because the state has a substantial
16:16:40 interest in disclosing to the public the identities of the
16:16:44 persons funding electioneering communications.
16:16:47 The record before the Court is insufficient to
16:16:49 demonstrate a likelihood of success that Plaintiffs' donors
16:16:53 will be subjected to threats, harassments, or reprisals due
16:16:56 to the Delaware statute.
16:16:57 And I footnote this: While certain remarks in
16:17:02 Plaintiffs' briefing and by Plaintiffs' counsel during the
16:17:07 oral argument today suggests that Plaintiffs may think it is
16:17:12 relevant to their challenge that some or all of the ads they
16:17:15 intend to run might not be the functional equivalent of
16:17:19 express advocacy, the legal implications of that were not
16:17:22 fairly presented to the Court in this motion, so the Court
16:17:24 has not considered that issue.
16:17:26 For all the reasons stated, I conclude that the
16:17:30 record does not demonstrate a likelihood of success on
16:17:34 Plaintiffs facial or as-applied challenge.
16:17:40 I will exercise my discretion to decline to
16:17:42 enter the injunction. The Delaware Act under consideration
16:17:47 is not a new law. It has been on the books for more than a

16:17:50 decade. The status quo is that the law is enforceable.
16:17:54 Plaintiffs have not shown a likelihood of success. Even if
16:17:57 all of the other factors favored Plaintiffs, the Court is
16:18:02 exercised its discretion to deny the injunction.
16:18:04 And that completes the Court's ruling on the
16:18:06 motion.
16:18:07 I'm not sure how the parties intend to proceed
16:18:14 given the Court's ruling today. If Plaintiff does file an
16:18:19 appeal in denial of the PI to the Third Circuit, it seems to
16:18:26 me it would be a good idea to have the parties meet and
16:18:29 confer and let us know their positions as to whether the
16:18:33 matter should continue forward in the District Court while
16:18:38 that appeal is pending.
16:18:41 So that's my thinking. Can I hear anybody's
16:18:45 comments on that?
16:18:47 MR. DICKERSON: Your Honor, this is Allen
16:18:53 Dickerson for the Plaintiffs. That seems reasonable to us.
16:18:57 We'll plan to meet and confer with opposing counsel in the
16:19:03 event that an appeal is taken.
16:19:03 THE COURT: All right. Thank you.
16:19:03 Can I hear from Defendants?
16:19:06 MS. BURTON: From Defendants, Your Honor, we'll
16:19:09 meet and confer with Plaintiffs once they have determined
16:19:12 whether or not to appeal.
16:19:14 THE COURT: All right. Thank you very much.

16:19:17 Thanks, everyone. Have a good night. We'll be adjourned.

16:19:22 MS. BURTON: Thank you, Your Honor.

16:19:24 MR. DICKERSON: Thank you.

16:19:26 (Court adjourned at 4:19 p.m.)

I hereby certify the foregoing is a true and accurate transcript from my stenographic notes in the proceedings.

/s/ Stacy M. Ingram, RPR
Official Court Reporter
U.S. District Court

$

$100 [2] - 4:20, 5:3
$500 [1] - 4:3

/

/s [1] - 12:11

1

1)Refers [1] - 4:11
1)the [1] - 5:22
10(a) [1] - 4:16
108 [1] - 5:19
15 [2] - 3:18, 4:5
17 [1] - 8:14
18 [1] - 8:17
19 [1] - 8:22
194 [1] - 5:19

2

2)Is [1] - 4:12
2)the [1] - 5:23
20 [1] - 8:24
200 [1] - 5:19
2015 [1] - 6:18
2021 [2] - 6:9, 6:25
2024 [1] - 5:19
2026 [1] - 1:10
21 [3] - 3:2, 4:5, 8:25
22 [2] - 3:7, 9:2
25 [2] - 3:3, 3:8
26 [1] - 3:5
26-445 [1] - 2:14
26-445-JLH [1] - 1:5

3

3)the [1] - 5:24
30 [1] - 4:12
304 [1] - 6:22
309 [1] - 6:22
312 [1] - 6:22
367 [1] - 8:5

4

4 [1] - 2:24
4)the [1] - 5:24
4:00 [1] - 1:11
4:19 [1] - 12:4

5

5 [2] - 3:2, 3:7
558 [1] - 8:5
594 [1] - 6:9
595 [1] - 6:9

6

60 [1] - 4:13
607 [1] - 6:9
608 [1] - 6:12
611 [1] - 6:12

7

793 [1] - 6:22

8

8 [1] - 1:10
844 [1] - 1:13

A

absent [1] - 5:23
accept [1] - 9:20
according [1] - 6:2
accordingly [1] - 7:19
accurate [1] - 12:9
achieving [1] - 6:14
Act [8] - 3:17, 5:9, 5:10, 5:14, 6:17, 7:11, 7:21, 10:24
act [1] - 6:20
Act's [1] - 7:12
action [1] - 2:14
actual [1] - 6:7
address [1] - 4:18
addressed [1] - 6:16
addresses [1] - 8:13
adjourned [2] - 12:1, 12:4
ads [3] - 4:24, 5:4, 10:15
advancing [1] - 7:17
advertisement [4] - 4:1, 4:4, 4:6, 4:17
advertisements [1] - 4:2
advocacy [1] - 10:17
AFP [6] - 8:13, 8:15, 8:23, 8:25, 9:1, 9:15
AFPF [2] - 8:14, 8:15
afternoon [1] - 2:11
aggregate [2] - 4:1, 4:20
agree [2] - 6:1, 7:23
agreed [1] - 3:8
al [2] - 1:4, 1:7
Albence [1] - 2:14
ALBENCE [1] - 1:7
allegations [3] - 8:7, 9:10
allege [1] - 5:4
allegedly [1] - 3:22
Allen [2] - 2:17, 11:16
ALLEN [1] - 1:23
Amendment [3] - 3:19, 5:13, 6:7
amendment [1] - 10:5
Americans [2] - 2:13, 6:8
AMERICANS [1] - 1:3
amount [2] - 4:1, 4:20
Anderson [1] - 2:16
ANDERSON [2] - 1:22, 2:16
appeal [4] - 11:9, 11:13, 11:19, 11:24
APPEARANCES [2] - 1:19, 2:1
application [1] - 6:20
applied [6] - 7:23, 7:24, 8:6, 9:4, 10:2, 10:22
applies [1] - 6:2
argue [1] - 6:23
argues [1] - 3:17
argument [4] - 3:11, 9:3, 9:21, 10:14
as-applied [5] - 7:23, 7:24, 8:6, 9:4, 10:22
association [1] - 5:12
Association [1] - 5:18
assured [1] - 3:4
attorney [1] - 6:19
audience [1] - 4:14
available [1] - 4:22

B

BAKER [1] - 1:22
balance [1] - 5:24
based [1] - 8:6
BEFORE [1] - 1:16
bench [1] - 3:14
between [1] - 6:4
Bonta [4] - 6:9, 6:25, 7:9, 7:18
books [1] - 10:25
bound [2] - 6:24, 7:5
briefed [1] - 2:25
briefing [1] - 10:13
burden [2] - 6:7, 10:4
Burton [1] - 2:20
BURTON [4] - 2:3, 2:20, 11:22, 12:2
BY [5] - 1:22, 1:23, 2:3, 2:5, 2:6

C

C.A [1] - 1:5
campaign [1] - 10:2
CAMPAIGN [1] - 2:5
candidate [5] - 3:24, 4:10, 4:11, 4:15, 5:1
candidates [1] - 5:5
cannot [1] - 9:5
canonical [1] - 5:21
case [8] - 5:20, 6:8, 6:10, 6:18, 6:20, 6:21, 7:12, 8:5
causes [1] - 4:1
CENTER [1] - 2:5
certain [2] - 3:16, 10:12
certify [1] - 12:8
challenge [8] - 3:12, 7:21, 7:23, 7:24, 8:6, 9:4, 10:15, 10:22
challenges [2] - 3:15, 7:12
Circuit [4] - 5:17, 6:16, 6:18, 11:9
circuit [1] - 7:5
Circuit's [1] - 7:15
circumstances [1] - 5:17
cite [1] - 6:21
Citizens [1] - 8:5
civil [1] - 2:14
clarified [1] - 6:25
clearly [2] - 4:11, 4:25
Code [2] - 3:19, 4:5
comments [2] - 8:25, 11:15
Commission [1] - 5:2
Commissioner [1] - 4:4
committee [2] - 3:24, 4:10
communication [4] - 4:7, 4:8, 4:9, 7:25
communications [5] - 8:9, 9:18, 9:24, 10:7
complaint [1] - 3:15
completes [1] - 11:5
conclude [1] - 10:20
concluded [1] - 7:10
conduct [1] - 3:12
confer [3] - 11:11, 11:18, 11:23
conflict [2] - 7:6, 7:8
connection [1] - 3:7
consider [1] - 3:9
consideration [1] - 10:24
considered [2] - 3:2, 10:19
consistent [2] - 7:18, 8:20
constitutionality [3] - 3:16, 6:17, 7:21
constitutionally [1] - 10:3
contains [1] - 5:2
contend [1] - 5:10
context [3] - 7:25, 8:9, 10:3
contexts [1] - 8:7
continue [1] - 11:12
CONTINUED [1] - 2:1
contribute [1] - 9:22
contributing [1] - 9:23
contributions [1] - 4:19
contributors [1] - 8:2
Counsel [2] - 1:24, 2:7
counsel [2] - 10:13, 11:18
count [1] - 3:15
COURT [6] - 1:1, 2:11, 2:18, 2:22, 11:20, 11:25
Court [20] - 1:17, 2:23, 3:4, 3:9, 3:10, 5:13, 6:2, 6:23, 6:25, 7:5, 7:7, 9:5, 10:8, 10:18, 11:3, 11:12, 12:4, 12:11, 12:12
Court's [3] - 3:13, 11:5, 11:8
courts [2] - 5:20, 9:1
covered [1] - 7:13
critical [2] - 5:25, 8:25
current [2] - 8:11, 9:22

D

D.I [2] - 3:2, 3:7
Dakota [1] - 8:23
days [2] - 4:12, 4:13
decade [1] - 11:1

decided [1] - 9:23
decision [1] - 3:14
declaration [1] - 8:10
declarations [2] - 3:1, 3:6
decline [1] - 10:23
Defendant [1] - 2:7
Defendants [4] - 1:8, 2:19, 11:21, 11:22
defines [1] - 4:5
DELAWARE [2] - 1:1, 2:2
Delaware [24] - 1:14, 3:16, 3:19, 4:5, 5:1, 5:8, 5:18, 6:17, 6:18, 6:19, 6:24, 7:3, 7:8, 7:10, 7:11, 9:8, 9:11, 9:12, 9:18, 9:19, 9:25, 10:11, 10:24
Delaware's [1] - 3:18
demonstrate [4] - 7:20, 8:1, 10:9, 10:21
demonstrated [1] - 9:6
denial [1] - 11:9
deny [2] - 5:21, 11:4
Dep't [1] - 5:18
DEPARTMENT [1] - 2:2
determined [1] - 11:23
Dickerson [2] - 2:17, 11:17
DICKERSON [3] - 1:23, 11:16, 12:3
disagreed [1] - 8:20
disclose [2] - 5:7, 9:24
disclosed [1] - 8:13
disclosing [1] - 10:6
Disclosure [4] - 3:17, 5:9, 6:17, 7:11
disclosure [11] - 3:18, 6:4, 6:11, 6:13, 7:1, 7:25, 8:2, 8:8, 9:7, 9:16, 10:3
discretion [3] - 5:20, 10:23, 11:4
distributed [1] - 4:12
DISTRICT [2] - 1:1, 1:1
district [1] - 5:20
District [3] - 1:17, 11:12, 12:12
docket [2] - 2:24, 3:5
document [1] - 8:14
donated [1] - 5:3
donor [3] - 7:25, 9:16, 9:24
donors [10] - 5:7, 8:8, 8:12, 8:13, 8:15, 9:7, 9:16, 9:21, 9:22, 10:9
DOUGLAS [1] - 1:22
due [1] - 10:10
during [5] - 3:8, 4:3, 4:19, 5:3, 10:13

E

earmarking [1] - 7:15
economic [1] - 8:21
either [1] - 8:4
election [13] - 3:13, 4:3, 4:13, 4:14, 4:19, 4:25, 5:3, 5:5, 5:6, 7:14, 7:25, 8:8
electioneering [6] - 4:7, 4:8, 9:17, 9:18, 9:23, 10:7
elections [1] - 5:2
Elections [4] - 3:17, 5:8, 6:17, 7:11
electorate [1] - 4:15
Emily [1] - 2:20
EMILY [1] - 2:3
employees [1] - 8:15
ends [1] - 6:15
enforceable [1] - 11:1
enforcement [1] - 5:14
enter [1] - 10:24
entirely [2] - 7:18, 9:14
equities [1] - 5:24
equivalent [1] - 10:16
ESQ [5] - 1:22, 1:23, 2:3, 2:5, 2:6
essentially [1] - 5:7
et [2] - 1:4, 1:7
event [1] - 11:19
events [1] - 8:22
evidence [8] - 3:1, 3:10, 8:10, 8:18, 9:2, 9:3, 9:10, 9:13
evidentiary [2] - 3:4, 3:5
exacting [8] - 6:1, 6:3, 6:10, 6:13, 6:21, 6:25, 7:9, 7:16
examples [1] - 8:19
exceed [1] - 4:3
excess [1] - 4:20
exercise [1] - 10:23
exercised [1] - 11:4
exhibits [1] - 3:7
expenditure [2] - 3:25, 4:7
expenditures [1] - 4:2
experienced [1] - 8:19
explains [2] - 5:20, 6:10
express [1] - 10:17
expressly [1] - 7:10
extraordinary [1] - 5:15

F

F.3d [1] - 6:22
F.4th [1] - 5:19
f]our [1] - 5:21
facial [2] - 7:20, 10:22
factors [2] - 5:25, 11:3
failed [1] - 7:19
fairly [1] - 10:18
Families [5] - 6:19, 6:24, 7:4, 7:8, 7:10
favored [1] - 11:3
fearful [1] - 8:12
file [3] - 4:3, 5:1, 11:8
finance [1] - 10:2
First [3] - 3:19, 5:12, 6:7
first [2] - 5:25, 10:4
firsthand [1] - 9:2
five [1] - 8:14
focus [1] - 4:23
focuses [1] - 9:14
footnote [1] - 10:12
FOR [2] - 1:1, 1:3
foregoing [1] - 12:8
forth [2] - 3:18, 7:9
forward [1] - 11:12
Foundation [2] - 2:14, 6:9
FOUNDATION [1] - 1:4
free [1] - 5:12
full [1] - 4:18
fully [1] - 2:25
functional [1] - 10:16
funding [1] - 10:7
future [2] - 8:11, 9:13

G

general [1] - 4:13
General [1] - 6:19
generic [3] - 8:7, 8:18, 9:14
gist [1] - 4:23
given [3] - 3:3, 3:12, 11:8
Government [1] - 9:9
government [3] - 3:21, 8:4, 9:11
governmental [2] - 6:5, 6:6
grant [2] - 5:13, 5:21
granted [1] - 5:16
great [1] - 2:22
groups [1] - 8:20
guideposts [1] - 5:22

H

HALL [1] - 1:16
Hall [1] - 2:12
harassment [3] - 8:3, 8:16, 8:20
harassments [2] - 9:9, 10:10
hear [2] - 11:14, 11:21
heard [1] - 3:11
hearing [4] - 2:12, 3:4, 3:5, 3:8
held [1] - 6:18
hereby [1] - 12:8
hire [1] - 8:22
historically [1] - 9:11
Honor [5] - 2:16, 2:20, 11:16, 11:22, 12:2
HONORABLE [1] - 1:16
HOSTETLER [1] - 1:22

I

idea [1] - 11:10
identified [2] - 4:11, 5:1
identities [1] - 10:6
implicates [1] - 3:12
implications [1] - 10:17
important [2] - 3:21, 6:5
IN [1] - 1:1
include [1] - 4:18
includes [1] - 4:14
indeed [2] - 2:20, 7:9
independent [1] - 4:6
individual [1] - 4:9
information [2] - 9:17, 9:25
Ingram [1] - 12:11
initiatives [1] - 8:21
injunction [6] - 2:13, 2:24, 5:14, 5:15, 10:24, 11:4
injunctions [1] - 5:21
injury [1] - 5:23
insufficient [1] - 10:8
intend [2] - 10:16, 11:7
interest [9] - 3:21, 3:22, 5:24, 6:5, 6:6, 6:12, 7:2, 7:17, 10:6
irreparable [1] - 5:23
issue [1] - 10:19

J

Jen [1] - 2:12
JENNIFER [1] - 1:16
Jeremy [1] - 2:16
JEREMY [1] - 1:22
Judge [1] - 1:17
June [1] - 1:10
JUSTICE [1] - 2:2

K

King [1] - 1:13

L

lack [1] - 7:14
law [5] - 9:8, 9:25, 10:2, 10:25, 11:1
least [2] - 6:14, 7:16
legal [1] - 10:17
LEGAL [1] - 2:5
legislators [1] - 8:24
length [1] - 7:13
less [1] - 7:22
likelihood [7] - 5:22, 7:20, 9:6, 10:1, 10:9, 10:21, 11:2
limited [1] - 5:16
line [1] - 2:17
litigations [1] - 9:1
LLP [1] - 1:22

M

mailing [1] - 4:18
MALLOY [1] - 2:5
Malloy [1] - 2:21
materials [1] - 3:9
matter [1] - 11:12
McAllen [2] - 2:6, 2:21

mean [1] - 4:6
meaning [1] - 6:5
means [2] - 6:14, 7:17
media [1] - 7:13
meet [3] - 11:10, 11:18, 11:23
Megan [1] - 2:21
MEGAN [1] - 2:6
members [1] - 4:14
mention [1] - 5:5
merits [1] - 5:22
might [1] - 10:16
Monday [1] - 1:10
monetary [1] - 7:12
most [1] - 5:25
motion [6] - 2:13, 2:23, 2:25, 3:14, 10:18, 11:6
MR [3] - 2:16, 11:16, 12:3
MS [3] - 2:20, 11:22, 12:2
must [3] - 4:17, 5:1, 6:6

N

name [1] - 4:18
names [4] - 5:2, 8:2, 8:12, 9:7
narrowly [4] - 3:21, 6:11, 7:2, 7:11
new [1] - 10:25
night [1] - 12:1
North [1] - 8:23
notes [1] - 12:9
number [3] - 2:14, 2:24, 8:14

O

observation [1] - 7:15
obviously [2] - 7:6, 7:8
OF [2] - 1:1, 2:2
office [2] - 4:15, 8:23
Official [1] - 12:11
officials [3] - 8:4, 9:9, 9:11
once [1] - 11:23
one [1] - 3:15
one-count [1] - 3:15
opportunity [1] - 3:3
opposed [1] - 9:15
opposing [1] - 11:18
oral [2] - 3:11, 10:14
organization [2] - 8:12, 9:15
organizations [1] - 4:24

P

p.m [2] - 1:11, 12:4
page [3] - 5:19, 6:9, 8:5
pages [2] - 6:12, 6:22
papers [2] - 3:1, 3:7
paragraph [8] - 4:5, 4:16, 8:14, 8:17, 8:22, 8:24, 8:25, 9:2
parties [12] - 2:25, 3:3, 3:6, 3:11, 4:24, 6:1, 7:23, 8:4, 9:10, 9:14, 11:7, 11:10
party [7] - 3:25, 4:2, 4:4, 4:6, 4:10, 4:17
past [1] - 8:16
pay [1] - 4:24
pending [2] - 2:23, 11:13
period [4] - 4:3, 4:19, 5:3, 7:14
permissible [1] - 10:4
person [4] - 3:24, 4:3, 4:9, 4:18
persons [1] - 10:7
PI [1] - 11:9
places [1] - 10:4
Plaintiff [4] - 1:24, 3:17, 7:19, 11:8
plaintiff [2] - 7:24, 8:1
Plaintiffs [23] - 1:5, 5:4, 5:6, 5:10, 5:13, 6:20, 6:23, 7:3, 7:22, 8:6, 8:10, 8:18, 9:4, 9:5, 9:12, 9:23, 10:3, 10:14, 10:22, 11:2, 11:3, 11:17, 11:23
plaintiffs' [1] - 9:13
Plaintiffs' [7] - 2:15, 2:23, 3:15, 9:7, 10:9, 10:13
plan [1] - 11:18
point [1] - 8:21
policy [1] - 8:21
political [2] - 3:25, 4:10
positions [1] - 11:11
potential [2] - 8:11, 9:21
pre [1] - 5:5
pre-election [1] - 5:5
precedent [2] - 7:6, 7:7
preliminary [6] - 2:13, 2:24, 5:13, 5:15, 5:21, 5:23
prepared [1] - 3:13
presented [2] - 9:3, 10:18
prevent [1] - 5:14
previously [1] - 6:16
primary [1] - 4:12
private [4] - 5:11, 8:4, 9:10, 9:14
probability [2] - 8:2, 9:7
proceed [1] - 11:7
proceedings [1] - 12:9
promote [1] - 3:22
promotes [2] - 6:12, 7:2
prompt [1] - 3:13
proposition [1] - 9:21
Prosperity [2] - 2:13, 6:8
PROSPERITY [1] - 1:3
provide [1] - 8:18
provided [1] - 9:1
provides [2] - 3:23, 4:21
provisions [2] - 3:16, 7:15
public [3] - 5:24, 8:24, 10:6
publicly [2] - 4:12, 4:22
purposes [1] - 9:20
pursuant [2] - 9:8, 9:25

Q

quo [1] - 11:1
quote [1] - 5:17

R

reasonable [3] - 8:1, 9:6, 11:17
reasons [1] - 10:20
reconvene [1] - 2:12
record [4] - 3:10, 9:5, 10:8, 10:21
refer [1] - 4:25
reflect [1] - 6:6
refrained [1] - 5:6
regarding [1] - 8:7
regimes [1] - 6:14
rejected [1] - 7:12
related [1] - 3:20
relation [1] - 6:4
relevant [2] - 3:23, 10:15
relief [1] - 5:23
rely [1] - 3:9
remarks [1] - 10:12
remedy [1] - 5:16
render [1] - 3:13
report [4] - 4:4, 4:17, 4:21, 5:1
Reporter [1] - 12:11
reprisals [3] - 8:3, 9:9, 10:10
request [1] - 3:3
require [2] - 6:13, 7:16
required [1] - 9:24
requirement [5] - 6:4, 6:11, 7:1, 7:3, 8:1
requirements [1] - 3:18
requires [3] - 6:3, 6:10, 7:1
respect [1] - 9:13
restricted [1] - 7:17
restrictive [1] - 6:14
rights [2] - 6:7, 10:5
risk [1] - 5:23
RPR [1] - 12:11
ruling [3] - 3:14, 11:5, 11:8
run [3] - 4:24, 5:4, 10:16

S

Safety [1] - 5:19
scant [1] - 9:4
scrutiny [8] - 6:1, 6:3, 6:10, 6:13, 6:21, 7:1, 7:9, 7:16
security [1] - 8:22
seriousness [1] - 6:7
set [2] - 3:18, 7:9
shall [2] - 4:3, 4:21
shortly [1] - 4:25
show [1] - 10:1
showing [1] - 9:6
shown [1] - 11:2
side [2] - 2:15, 3:5
sides [1] - 3:8
slim [1] - 3:10
so-called [1] - 7:14
someone [2] - 2:15, 2:19
sought [1] - 4:15
special [1] - 4:13
specific [2] - 9:15, 9:16
specifically [1] - 3:17
speech [1] - 5:12
spend [1] - 7:22
Sportsmen's [1] - 5:18
Stacy [1] - 12:11
standard [2] - 6:2, 7:9
state [1] - 10:5
State [1] - 5:18
state's [1] - 7:17
states [1] - 8:24
STATES [1] - 1:1
States [1] - 1:17
status [1] - 11:1
statute [1] - 10:11
statutory [1] - 7:14
stenographic [1] - 12:9
stop [1] - 9:22
Street [1] - 1:13
strength [1] - 6:6
Strong [5] - 6:19, 6:24, 7:4, 7:8, 7:10
subject [3] - 8:3, 8:16, 9:8
subjected [1] - 10:10
submitted [3] - 2:25, 3:6, 8:10
subsequent [1] - 7:6
subsequently [1] - 6:24
substantial [2] - 6:3, 10:5
substantially [1] - 3:20
succeed [1] - 7:24
success [7] - 5:22, 7:20, 9:6, 10:1, 10:9, 10:21, 11:2
sufficient [1] - 10:1
sufficiently [2] - 3:20, 6:5
suggestion [1] - 9:12
suggests [1] - 10:14
support [1] - 3:1
supporters [2] - 8:13, 8:15
Supreme [3] - 6:2, 6:25, 7:7
survived [1] - 6:21

T

tailored [4] - 3:22, 6:11, 7:2, 7:11
TARA [1] - 2:5
Tara [1] - 2:21
target [1] - 9:12
Teleconference [1] - 1:11
THE [8] - 1:1, 1:1, 1:16, 2:11, 2:18, 2:22, 11:20, 11:25
thinking [1] - 11:14
third [6] - 3:25, 4:2, 4:4, 4:6, 4:17, 7:5
Third [5] - 5:17, 6:16, 6:18, 7:15, 11:9
third-party [5] - 3:25, 4:2, 4:4, 4:6, 4:17
threats [9] - 8:3, 8:16, 8:20, 9:2, 9:8, 9:11, 9:13, 9:15, 10:10
thresholds [1] - 7:13
tied [1] - 9:17
today [4] - 3:8, 3:12, 10:14, 11:8
transcript [1] - 12:9
true [1] - 12:8
two [1] - 5:25
types [1] - 7:13

U

U.S [3] - 6:9, 8:5, 12:12
unconstitutional [2] - 5:11, 10:2
undated [1] - 9:14
under [1] - 10:24
UNITED [1] - 1:1
United [2] - 1:17, 8:5
unless [1] - 7:6
unpersuaded [1] - 7:7
unrelated [1] - 8:8
upcoming [1] - 3:13

V

value [1] - 4:20
vandalized [1] - 8:23
Vermont [1] - 8:19
via [1] - 8:10
violate [2] - 3:19, 5:8
violates [1] - 5:11
violation [1] - 5:12

W

Wilmington [1] - 1:14
window [1] - 5:5
winning [1] - 7:20

§

§8002 [2] - 4:5, 4:16
§8031 [1] - 3:19
§8031(a [1] - 3:23
§8031(a)(3) [1] - 4:21
§8032 [1] - 4:21