No. 14-1397

In The
Supreme Court of the United States

BUILDING INDUSTRY ASSOCIATION OF WASHINGTON,

Petitioner,

v.

ROBERT F. UTTER, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Washington Supreme Court

BRIEF OF PILLAR OF LAW INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Pillar of Law Institute is a nonprofit, nonpartisan organization organized under section 501(c)(3) of the Internal Revenue Code and is dedicated to defending political free speech and association. It is a program of the Wyoming Liberty Group. The Institute represents plaintiffs and defendants nationwide who are threatened by laws that abridge First Amendment rights. This case is of concern to *amicus* because it addresses the further collapse of constitutional protections for political speech and freedom of association, which lie at the very heart of the First Amendment.

SUMMARY OF ARGUMENT

Federal courts of appeals are widely split over the utility of "the major purpose" test. In the present case, the court below did not disregard the test entirely, but diluted it in a way that undermines the test's objective of preventing groups that do not predominantly engage in electoral advocacy from being subjected to

[1] The parties were notified ten days prior to the due date of this brief of the intention to file. The parties have consented to the filing of this brief.

No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

comprehensive disclosure. Comprehensive disclosure, distinct from event-driven disclosure, is more time-consuming and expensive for groups of all sizes, and risks other burdens including investigations, lawsuits and penalties for noncompliance. Importantly, imposing political committee, or "PAC" status on organizations without "the major purpose" of electoral advocacy pigeonholes a group like the Building Industry Association of Washington, overshadowing its numerous other activities and alienating donors and members who may only be interested in those other purposes. "The major purpose" test, properly applied, alleviates these burdens, while "a primary purpose" test does not or, perversely, heightens them. This Court should grant certiorari and re-affirm the necessity of "the major purpose" test.

This Court should likewise re-affirm the contours of "the major purpose" test, for administrative bodies – particularly the Federal Election Commission – have allowed the test to devolve into little more than a bureaucratic parlor game. The FEC not only applies "the major purpose" test on a case-by-case basis, but formulates it as it goes along. As a result, to some commissioners "the major purpose" test does not limit comprehensive disclosure to organizations predominantly engaging in electoral advocacy, but captures organizations that may merely mention candidates in their communications or otherwise have an undefined influence on elections. To reach this vague conclusion, some commissioners believe it is appropriate to invasively inquire into an overbroad range of organization's activity. Without objective criteria, "the major

purpose" test risks being as perfunctory as Washington's "a primary purpose" test. Thus, this Court should grant certiorari and affirm both the necessity of "the major purpose" test and its objective criteria in order to limit comprehensive disclosure to organizations with the major purpose of electing or defeating candidates for public office.

ARGUMENT

Shortly after the enactment of the Federal Election Campaign Act ("FECA"), this Court narrowed the reach of its most comprehensive disclosure requirements – those placed on political committees – to groups with the major purpose of advocating for the election or defeat of candidates for public office. In the present case, the Washington Supreme Court believes a group needs only "a primary purpose" of "supporting candidates or initiatives" to be subject to comprehensive campaign finance disclosure, while other courts hold that a group must at least have "the major purpose" of supporting the election or defeat of candidates to be subject to such regulation.

Since *Citizens United v. Federal Election Commission*, federal courts of appeals have differed widely as to the utility of "the major purpose" test. 558 U.S. 310, 366-67 (2010). The Eighth Circuit has carefully addressed political committee burdens under two state campaign finance regimes, recognizing that the test still provides an important exemption from

comprehensive campaign finance disclosure. *Minn. Citizens Concerned for Life v. Swanson* ("*MCCL*"), 692 F.3d 864, 872-75 (8th Cir. 2012) (en banc); *Iowa Right to Life Comm. v. Tooker* ("*IRTL*"), 717 F.3d 576, 589-90 (8th Cir. 2013). The Tenth Circuit likewise requires the test, having considered political committee designation in two states. *Colo. Right to Life Comm. v. Coffman*, 498 F.3d 1137, 1152-54 (10th Cir. 2007); *N.M. Youth Organized v. Herrera*, 611 F.3d 669, 677-79 (10th Cir. 2010). But other courts have dismissed "the major purpose" test entirely, refusing to apply it to state laws. *See Nat'l Org. for Marriage v. McKee* ("*NOM*"), 649 F.3d 34, 58-59 (1st Cir. 2011); *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 486-91 (7th Cir. 2012). The present case joins the Ninth Circuit in diluting the test. *Utter v. Bldg. Indus. Ass'n of Wash.* ("*BIAW*"), 341 P.3d 953, 967 (Wash. 2015), *citing Human Life of Wash. v. Brumsickle*, 624 F.3d 990, 1008-12 (9th Cir. 2010).

This Court should grant certiorari in the present case and affirm the necessity of "the major purpose" test because this case illustrates that comprehensive disclosure remains burdensome and should not apply to groups that do not predominantly engage in electoral advocacy. This Court should also take the opportunity to place contours on the test because its current application by certain agencies provides little guidance to organizations seeking to avoid the burdens of comprehensive disclosure.

I. This Court Devised the Major Purpose Test to Limit the Burdens of Comprehensive Campaign Finance Disclosure on Non-Political Groups

Although disclosure regulations are preferable to bans on speech, they are not free from constitutional concerns. In Washington State, political groups large and small may now be subjected to comprehensive reporting for spending minimal funds on political engagement. Less discussed, but growing in frequency – and illustrated in the present case – are burdens that attend this disclosure: compliance costs, extensive and costly investigations to ensure compliance with reporting, prolonged litigation, and penalties for failing to properly comply. As made particularly clear in this case, pigeonholing – forcing a group to identify as something it clearly is not – is a particularly troubling burden. *See BIAW*, 341 P.3d at 966 ("There is likely no question of fact about whether the primary purpose of BIAW is to support candidates or initiatives.") The result is law that leaves politics accessible only to professionals or those who can afford compliance services and legal counsel, and even then these burdens are not unavoidable. This transforms campaign finance regulation into a tool for excluding citizens from the political process by punishing political speech.

"The major purpose" test remains an important limiting construction to preserve constitutional rights for groups engaging in political speech. The test reflects traditional tailoring analyses performed by

this Court. It limits the application of more burdensome, ongoing political committee disclosure regulations to groups whose "major purpose is the nomination or election of a candidate." *Buckley v. Valeo*, 424 U.S. 1, 79 (1976). At the same time, it ensures that more properly tailored, event-driven disclosure applies to groups without that major purpose. This dividing line represents the wisdom of the *Buckley* Court – that government could properly demand politically sophisticated, professional groups to register as PACs but that these same burdens would be untenable for smaller, less sophisticated groups to bear. *See, e.g., Fed. Elec. Comm'n v. Mass. Citizens for Life* ("*MCFL*"), 479 U.S. 238, 266 (1986) (O'Connor, J., concurring) ("In my view, the significant burden on MCFL in this case comes not from the disclosure requirements that it must satisfy, but from the additional organizational restraints imposed upon it by the Act.")

In today's political climate, there is a strong push for comprehensive disclosure to apply to all groups. This is usually done under the auspices of promoting a one-size-fits-all disclosure without realizing the import of "the major purpose" test. As the Second Circuit understood in one of the first treatments of the FECA, some limiting construction is necessary to make the law compatible with the First Amendment. Otherwise, under an all-reaching theory,

> every little Audubon Society chapter would be a "political committee," for "environment" is an issue in one campaign after another. On

> this basis, too, a Boy Scout troop advertising for membership to combat "juvenile delinquency" or a Golden Age Club promoting "senior citizens' rights" would fall under the Act. The dampening effect on first amendment rights and the potential for arbitrary administrative action that would result from such a situation would be intolerable.

U.S. v. Nat'l Comm. for Impeachment, 469 F.2d 1135, 1142 (2d Cir. 1972). Today, these arbitrary administrative actions have become the norm, and should prompt this Court to reaffirm the import of "the major purpose" test.

A. Comprehensive Disclosure Is More Burdensome Than Event-Driven Disclosure

This Court has recognized the difficulty of comprehensive disclosure for small groups. *MCFL*, 479 U.S. at 254-55. Following this precedent, comprehensive disclosure placed on political committees, or "PACs" – which requires the reporting of nearly all of an organization's financial activity – has been distinguished from limited, event-driven disclosure, such as that triggered when making independent expenditures. *MCCL*, 692 F.3d at 875 n.9; *MCFL*, 479 U.S. at 262. This distinction is important; "disclosure" is not always just "disclosure." All-encompassing, comprehensive disclosure regimes might be suitable for politically sophisticated electorally-focused PACs. However, those same systems are a clumsy and overly

burdensome fit for political amateurs and groups of all sizes that do not predominantly engage in electoral advocacy.

Event-driven disclosure usually requires an organization to report its spending on specific advertisements – independent expenditures or electioneering communications – but does not reveal a group's donors unless they specifically give to support such advertising. *See, e.g.*, WASH. REV. CODE § 42.17A.255 (Reports for independent expenditures); § 42.17A.305 (Reports for electioneering communications). Comprehensive reporting for political committees, on the other hand, can require disclosure of all contributions an organization receives that aggregate over $25 in a year, "pledges" for contributions that aggregate over $100, all payments of any kind over $50, and require these reports regularly from an appointed treasurer. *See* WASH. REV. CODE §§ 42.17A.240, 42.17A.235. Political committees are subject to both comprehensive and event-driven disclosure; all organizations are subject to event-driven reporting.

The burdens of campaign disclosure largely stem from cost, since both comprehensive and event-driven reporting require time and money to complete. This Court must recognize, as too few courts have, that by measuring time and money alone comprehensive reporting is significantly *more* burdensome for large and small groups alike. This Court should also recognize the other burdens that inevitably attend comprehensive disclosure. Preventing these burdens is,

after all, the major purpose behind "the major purpose" test.

B. Investigations and Lawsuits Are A Burden All Their Own

The burdens of investigations that attend comprehensive disclosure are an almost inherent result, and an even more chilling abridgment of political speech. For groups large and small, this is even more time and money spent engaging with government bureaucracy that could be spent doing what the organization wants to do – including participate in American democracy. To the government, however, investigations are just business-as-usual. As a commissioner at the Federal Election Commission recently opined in a case where the commission declined to investigate a group by a split vote, "[a] [reason-to-believe] finding *merely* gives the Commission the statutory authority to open an investigation in order to determine whether or not there is probable cause to believe a violation, in fact, occurred." Supplemental Statement of Reasons ("SOR") of Commissioner Steven T. Walther, Matter Under Review ("MUR") 6396 (Crossroads Grassroots Policy Strategies), Dec. 30, 2014, at 7, *available at* http://eqs.fec.gov/eqsdocs MUR/14044364941.pdf (emphasis added) (hereinafter "Walther SOR"). If this is not burdensome enough, the expense of lawsuits that follow investigations can spell the end of many organizations. *See Fed. Elec. Comm'n v. Wis. Right to Life*, 551 U.S. 449, 469 (2007) (noting the importance of "minimal if any discovery,

to allow parties to resolve disputes quickly" to protect free speech).

The burden of investigations and litigation is compounded when political opposition has the right to private action under the law. Unlike federal law, which permits private complaints against political speakers but only permits the Federal Election Commission and Department of Justice to enforce campaign finance laws, Washington law allows for private rights of action such as the present case. WASH. REV. CODE § 42.17A.765(4); *see BIAW*, 341 P.3d at 957-60. The unseemly motivations behind the present case are apparent. *See* Kimberly A. Strassel, *A Washington State Smear Campaign*, WALL ST. J., Sept. 3, 2010, *available at* http://www.wsj.com/news/articles/SB10001424052748704206804575468043179596942. But even in light of this unseemliness, this corrupt process gave pause to only one member of the court below, and then only because of the case's length: "The events in question that prompted the citizen inquiry in this case occurred the better part of a decade and two election cycles ago. . . . In this case, the system . . . *has worked as intended*." *BIAW*, 341 P.3d at 976 (Madsen, C.J., concurring/dissenting) (emphasis added). A system that allows decade-long inquisitions into political activity is bad enough; law should not be interpreted to make them even easier to instigate.

C. Political Committee Status Pigeonholes A Group and Its Contributors

Historically, only small or threatened groups have been relieved from the burdens of comprehensive disclosure before this Court. *See, e.g., MCFL* 479 U.S. at 263-65; *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87, 101-02 (1982). But subjecting even large, established membership organizations to comprehensive disclosure when they do not have the major purpose of electoral advocacy – whether business interest groups like BIAW or advocacy organizations like the Sierra Club – carries unique burdens. This specifically stems from requiring political committees to disclose almost every single financial transaction involving the organization. *See* WASH. REV. CODE § 42.17A.240.

Large, diverse organizations that provide their members with everything from education to lobbying representation to insurance services to cornhole tournaments attract members and contributors who may not necessarily agree with the organization's limited electoral advocacy. *See generally Bldg. Indus. Ass'n of Washington*, http://www.biaw.com (last visited June 4, 2015). When a group needs only "a primary purpose" of engaging in electoral activity to become a political committee, it places an identity on the group that is, at best, incomplete and at worst, divisive. By disclosing an organization's contributors who associate with it for any number of primary purposes

outside of electoral advocacy, this inaccuracy is compounded.[2] This pigeonholing of a group and its members into a "PAC" will discourage membership, contributions and other association. This is a "perverse result," indeed, but one not even considered by the court below. *See BIAW*, 341 P.3d at 966, *citing NOM*, 649 F.3d at 59.

D. Laws That Comprehensively Regulate Political Speech and Penalize Noncompliance Are Ceilings on Political Speech

Organizations must comply with campaign finance disclosure, but comprehensive reporting is more burdensome, invites invasive investigations and lawsuits and, at the end of these, threatens to penalize noncompliance or imperfect compliance. Violations of the Washington Fair Campaign Practices Act can be weighty. WASH. REV. CODE § 42.17A.750(1)(d) ("A person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each violation.") Violators can even go to jail. WASH. REV. CODE

[2] This brief does not address tailoring or governmental interests at length. However, disclosing all contributors to an organization with "a primary purpose" rather than "the major purpose" of electoral activity does not serve any form of tailoring to address the government's informational interest. It is, in fact, antithetical to the informational interest because donors may contribute for many other reasons when a group does not have "the major purpose" of engaging in elections.

§ 42.17A.750(2)(a) ("A person who, with actual malice, violates a provision of this chapter is guilty of a misdemeanor. . . .") Since political committees have so many more ways to err under comprehensive disclosure, these are often but more opportunities to be punished. This Court has recently ruled that "[d]isclaimer and disclosure requirements may burden the ability to speak, but they 'impose no ceiling on campaign-related activities,' . . . and 'do not prevent anyone from speaking[.]'" *Citizens United*, 558 U.S. at 366 (citations omitted). In light of the increasing prevalence of the burdens discussed in this section, this Court should re-evaluate this conclusion.

The burdens of disclosure are too often ignored or dismissed. There remains a variety of political speech and association that, even with significant money behind it, should not be subjected to the comprehensive disclosure that attends political committee status or any regulation whatsoever. Whether it is a group of two people speaking out about agricultural issues or an established interest group concerned with the consequences of onerous building regulation, occasional express advocacy or electioneering communications should not, by themselves, make any association a political committee. The burdens – reporting, investigations, pigeonholing and penalties – should be, in short, avoidable. Thus, the law must be clear so that speakers do not "give a law a wide berth, in this instance by forgoing constitutionally protected speech." *Madigan*, 697 F.3d at 503-04 (Posner, J., concurring/dissenting). Downgrading "the major

purpose" to "a primary purpose" test should not be allowed, for its vagueness and overbreadth will permit rather than alleviate the burdens of comprehensive disclosure.

Forgoing the imposition of PAC status on groups whose major purpose is not the nomination or election of a candidate for office would not signal the end of disclosure. It would simply ensure that groups engaged in more extensive electoral speech would be subject to more extensive PAC-style reporting. Just the same, groups engaged in nominal electoral speech would be subject to less extensive reporting regimes. In this way, regulatory programs that impinge on political speech are carefully tailored so that they avoid being overly burdensome for some groups while furthering the government's interest in campaign finance disclosure.

II. The Current Application of "The Major Purpose" Test Is Vague and Overbroad Enough Already

Whatever the disclosure requirements, there is sizeable consensus that they burden free speech in some fashion and are thus subject to exacting scrutiny. *But see MCCL*, 692 F.3d at 875 ("Allowing states to sidestep strict scrutiny by simply placing a 'disclosure' label on laws imposing the substantial and ongoing burdens typically reserved for PACs risks transforming First Amendment jurisprudence into a legislative labeling exercise.") Likewise, there is

agreement that "the major purpose" test exists to narrow the scope of comprehensive disclosure to groups that exist principally to engage in electoral advocacy. *See BIAW*, 341 P.3d at 967. But many lower courts have ignored the necessity of clarity in the law that would ensure the ability of groups to avoid the burdens of disclosure for simply speaking out about politics. While acknowledging that it serves as a narrowing construction, some circuits defer not only the test's case-by-case application but case-by-case formulation to the regulatory bodies that enforce the law the test is meant to constrain. *See, e.g., Free Speech v. Fed. Elec. Comm'n*, 720 F.3d 788, 797-98 (10th Cir. 2013); *Real Truth About Abortion v. Fed. Elec. Comm'n*, 681 F.3d 544, 556 (4th Cir. 2012). As a result, in practice "the major purpose" test too often serves not as a way for groups of speakers to avoid the burdens of political committee status, but for the government to apply those burdens.

To be sure, there is some irony in arguing against the as-applied vagueness and overbreadth not of a law, but of a saving construction that is nearly four decades old. *Compare Buckley*, 424 U.S. at 78-79 *with* 52 U.S.C. § 30101(4)(A) (federal "political committee" still defined solely using a monetary threshold). Nevertheless, "the major purpose" test, as it is known today, too often fails to narrow the reach of comprehensive disclosure. Allowing it to become "a primary purpose" test will serve only to eliminate its protections completely.

A. "The Major Purpose" Test Is Ever-Evolving

The Federal Election Commission has the longest history with "the major purpose" test, but for years has avoided instituting understandable, objective measures to govern its use. Ostensibly, the test requires regulators to examine a group's central organizational purpose or to compare its overall spending on independent expenditures with other spending to determine whether it is, in fact, a political committee subject to comprehensive reporting. *See, e.g., IRTL*, 717 F.3d at 583-84. Both prongs have devolved to little more than bureaucratic parlor games.

Previous cases have urged this Court to review the FEC's application of "the major purpose" test. *See, e.g*., Petition for a Writ of Certiorari at 32-40, *Free Speech v. Fed. Elec. Comm'n*, 134 S.Ct. 2288 (No. 13-772) (denying certiorari). In the last year, the disagreement within the FEC over the test has only become more pronounced. One commissioner recently called three other commissioners' interpretation of "the major purpose" test "unreasonable and contrary to law." Walther SOR at 10. This centered on whether major purpose spending could only be gauged by measuring independent expenditures or advertisements that contained the functional equivalent of express advocacy, or whether the FEC could consider communications merely mentioning a federal candidate as weighing toward the major purpose of electoral activity. *Id*. at 11. The current commission also

disagrees on what constitutes the proper scope of investigation for determining central organizational purpose. Both disagreements are best illustrated in a recent 6-0 vote by the FEC to dismiss a complaint. The Commission voted uniformly, but the commissioners who support an all-encompassing major purpose test appear to have recognized limits only when applied to an organization that spends a good deal of its time filing complaints with their agency about other groups:

> In the past, some Commissioners have expressed dissatisfaction with any political committee analysis that failed to place nearly all of an organization's speech and activities under a microscope, writing how the political committee analysis must be "fact intensive" and consider an organization's "full range of campaign activities," including any "public communications mentioning federal candidates." Consistent with this view, these Commissioners supported investigations into any spending on "other materials discussing various candidates" and "overhead or administrative expenses." Their bounded approach in this matter is a welcome new precedent in contrast to past practices.

Concurring SOR of Comm'rs Lee E. Goodman and Caroline C. Hunter, FEC MUR 6795 (Citizens for Responsibility and Ethics in Washington), Jan 29, 2015, at 7, *available at* http://eqs.fec.gov/eqsdocsMUR/15044370612.pdf (citations omitted). The breadth of inquiry referenced in this statement quotes from

recent cases, all reviewed by the current commissioners, and implies that not only is the test capable of arbitrary and discriminatory enforcement, but is, in fact, arbitrarily and discriminatorily applied by some FEC commissioners. *Id.*; *see also* SOR of Commissioner Donald F. McGahn, FEC MUR 5831 (Softer Voices, et al.), Feb. 1, 2011, *available at* http://eqs.fec.gov/eqsdocsMUR/11044284676.pdf.

Since 2007, it has been the FEC's official policy that "the major purpose" test's contours are to be understood by reviewing the agency's "public files for the Political Committee Status Matters and other closed enforcement matters, as well as advisory opinions and filings in civil enforcement cases." Political Committee Status, 72 Fed. Reg. 5595, 5604 (Feb. 7, 2007). The fundamental disagreement among the agency's commissioners about whether there are, in fact, limits to how far the agency may go to determine major purpose has hopelessly muddled this already-questionable policy. *See Citizens United*, 558 U.S. at 324 ("Prolix laws chill speech for the same reason that vague laws chill speech: People 'of common intelligence must necessarily guess at [the law's] meaning and differ as to its application.'" (quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)). The nation's agency entrusted with enforcing federal election law cannot bring clarity or sense to "the major purpose" test. The purpose of this test is to be a limiting construction designed to narrow the reach of more burdensome political committee regulations. But when people of ordinary intelligence, even

the nation's top campaign finance experts, cannot give clarity or definition to it then its purpose is lost. This grants the FEC, and state regulators, the ability to freewheel and invent factors that will trigger political committee status on the go. Indeed, the FEC has expressly rejected efforts to maintain an objective, definable list of factors or triggers for a major purpose finding because they would not be "exhaustive enough." 72 Fed. Reg. at 5602. Instead, interested citizens may consult hundreds of advisory opinions and enforcement matters to learn how the law works. *Id*. The abject failure of the FEC to sensibly administer "the major purpose" test in a way sensitive to First Amendment interests indicates that this Court should reject yet more permissive standards.

There is no reason to believe the Washington Public Disclosure Commission, Washington Attorney General, courts or private citizens in Washington State will have clearer interpretations of an even vaguer and broader test that only seeks "a primary purpose." This Court should grant review in this case and not only affirm the necessity of "the major purpose" test, but affirm that limiting constructions need objective contours to actually limit the reach of comprehensive disclosure.

B. The Inability to Know How the Test Works Makes Laws Unconstitutionally Vague and Overbroad

Laws that burden political speech, whether subject to strict or exacting scrutiny, must be understandable so that ordinary citizens may comply with them and, importantly, *not* comply with them when they do not have to. This principle has been lost in too many lower courts, and regulation often gets a pass when the government labels its system of political speech regulation as "disclosure." The limiting construction behind "the major purpose" test – designed to narrow the reach of political committee regulations – is too often seen as but an invitation to probe into activities of private associations to justify the government's informational interest that has, in certain offices on the top floor of the FEC, become an ominous "right to know." *See, e.g.*, Walther SOR at 6; *cf*. *Buckley*, 424 U.S. at 236-41 (Burger, C.J. concurring/dissenting).

The trouble with "the major purpose" test is that it no longer serves as a limiting construction due to its vague application. The test does not allow organizations to readily determine whether or not they are a political committee, and are thus subject to comprehensive disclosure. This inability to know leaves organizations with only two choices. An organization engaging in politics may either bear the costs of complying with comprehensive disclosure – accepting the label of a "PAC" when it is not – or simply avoid

politics altogether. To refuse comprehensive disclosure – no matter how justified – risks investigations, lawsuits, and possibly fines, so it is no choice at all. *See Arnett v. Kennedy*, 416 U.S. 134, 230-31 (1974) (Marshall, J., dissenting) ("That this Court will ultimately vindicate . . . speech . . . is of little consequence – for the value of a sword of Damocles is that it hangs – not that it drops. . . .") That the burdens of comprehensive disclosure are unavoidable to nearly any organization that engages in a modicum of electoral advocacy is the pinnacle of vagueness and overbreadth.

III. This Court Should Re-Affirm "The Major Purpose" Test and Its Contours

In the present case this Court should grant certiorari and re-affirm the narrow reach of comprehensive campaign finance disclosure and the broad freedom of speech and association guaranteed to all Americans. This would not require a sweeping ruling that would disrupt campaign finance rules. Rather, by simply re-affirming that a group must have "the major purpose" of engaging in express advocacy for the election or defeat of candidates to be subjected to comprehensive reporting regimes, this Court would bring much-needed clarity to election law. However, citizens would enjoy much greater protection with guidance of just how "the major purpose" of a group is to be determined and the difference between comprehensive and event-driven disclosure.

"The major purpose" test should not be perfunctory and should only measure independent expenditures, which are already required to be reported individually as in the FECA and under Washington law. If a majority of funds are spent on independent expenditures, the group has "the major purpose" of electoral advocacy. Organizations with myriad other activities that want to be political committees may, of course, voluntarily submit to comprehensive reporting, but wide-ranging, fact-intensive inquiries into press releases, blog posts and public statements are far too arbitrary for determining central organizational purpose. The narrower reporting of independent expenditures is buttressed by other speech-specific reports, such as electioneering communications, providing a less-restrictive means of disclosure and protecting membership organizations such as BIAW from burdensome forms, inquisitions from government agencies and politically opposed citizens. *See* WASH. REV. CODE § 42.17A.305. This solution will not entirely alleviate these burdens, but will at least allow quick, unequivocal resolution of exactly what groups are subject to comprehensive campaign finance disclosure.

CONCLUSION

For the foregoing reasons, the Pillar of Law Institute respectfully requests this Court grant the petition for certiorari.

Respectfully submitted,

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