UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE MACKINAC CENTER,

Plaintiff,

v.

JOCELYN BENSON, in her official capacity as Michigan Secretary of State, *et al.*,

Defendants.

Case No: 1:26-cv-3154

Judge Paul L. Maloney

Oral argument requested

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Oral argument requested

TABLE OF CONTENTS

Table of Contents i
Table of Authorities ii
Introduction 1
Background 2
Argument 12
I. Mackinac will succeed on the merits. 13
A. Michigan's new definition of political committee is unconstitutionally vague and overbroad. 13
B. The disclosure requirements for "electioneering communications" violate the First Amendment. 18
II. Mackinac will suffer irreparable harm without an injunction. 24
III. The balance of equities favors granting an injunction. 26
IV. The Court should wave Rule 65(c)'s bond requirement. 26
Conclusion 27
Certificate of Compliance 28

TABLE OF AUTHORITIES

Cases

ACLU Fund. of Mich. v. Livingston, Cnty.,
796 F.3d 636 (6th Cir. 2015) 26

Ams. for Prosperity Found. v. Bonta,
594 U.S. 595 (2021) 11, 18, 20

Boone Cnty. Republican Party Exec. Comm. v. Wallace,
132 F.4th 406 (6th Cir. 2025) 13

Buckley v. Valeo,
424 U.S. 1 (1976) (per curiam) 1, 2, 5, 14, 15, 17

Citizens United v. FEC,
558 U.S. 310 (2010) 13, 14, 19

FCC v. Fox Television Stations, Inc.,
567 U.S. 239 (2012) 16, 22

FEC v. Mass. Citizens for Life, Inc.,
479 U.S. 238 (1986) 14

FEC v. Ted Cruz for Senate,
596 U.S. 289 (2022) 19

FEC v. Wis. Right to Life, Inc.,
551 U.S. 449 (2007) 14, 15

First Choice Women's Res. Ctrs., Inc. v. Davenport,
608 U.S. 174 (2026) 23, 25

Fischer v. Thomas,
78 F.4th 864 (6th Cir. 2023) 26

Janus v. AFSCME, Council 31,
585 U.S. 878 (2018) 7

Kentucky v. Biden,
23 F.4th 585 (6th Cir. 2022) 26

Kentucky v. Biden,
57 F.4th 545 (6th Cir. 2023) 25

McConnell v. FEC,
540 U.S. 93 (2003) 17

Miller v. City of Cincinnati,
622 F.3d 524 (6th Cir. 2010) 16

Minn. Voters All. v. Mansky,
585 U.S. 1 (2018) 16

Moltan Co. v. Eagle-Picher Indus.,
55 F.3d 1171 (6th Cir. 1995) 26

N.M. Youth Organized v. Herrera,
611 F.3d 669 (10th Cir. 2010) 15

Nat'l Republican Senatorial Comm. v. FEC,
146 S. Ct. 2404 (2026) 21

NetChoice, LLC v. Skrmetti,
191 F.4th 452 (6th Cir. 2026) 25

NetChoice, LLC v. Yost,
180 F.4th 268 (6th Cir. 2026) 23, 24

Online Merchs. Guild v. Cameron,
995 F.3d 540 (6th Cir. 2021) 12, 26

Sisters for Life, Inc. v. Louisville-Jefferson Cnty.,
56 F.4th 400 (6th Cir. 2022) 13

Wilson v. Williams,
961 F.3d 829 (6th Cir. 2020) 26

Wis. Right to Life, Inc. v. Barland,
751 F.3d 804 (7th Cir. 2014) 14, 15

Wyo. Gun Owners v. Gray,
83 F.4th 1224 (10th Cir. 2023) 22

Statutes & Regulations

10 ILCS 5/9-1.14(a) 20

26 U.S.C. § 501(c)(3) 8

52 U.S.C. 30104(f)(3)(A)(i) 20

Fla. Stat. § 106.011(8)(1) 20

Haw. Rev. Stat. Ann. § 11-302 20

Mich. Comp. Laws § 168.842(1) 2, 24

Mich. Comp. Laws § 169.202(3) 4

Mich. Comp. Laws § 169.203(1) 4, 8, 15, 16, 18, 24

Mich. Comp. Laws § 169.203(4) 3, 5, 10, 14

Mich. Comp. Laws § 169.206 3
Mich. Comp. Laws § 169.206(1) 3, 6
Mich. Comp. Laws § 169.206(2) 4
Mich. Comp. Laws § 169.211(3) 5
Mich. Comp. Laws § 169.221 5
Mich. Comp. Laws § 169.224(1) 24
Mich. Comp. Laws § 169.226(1) 3, 5, 25
Mich. Comp. Laws § 169.233(10) 7
Mich. Comp. Laws § 169.233(3) 3, 5
Mich. Comp. Laws § 169.233(8) 7
Mich. Comp. Laws § 169.235(1) 3, 5
Mich. Comp. Laws § 169.235(6) 7
Mich. Comp. Laws § 169.235(7) 7
Mich. Comp. Laws § 169.251(1) 3
Prop. 2 § 5(4) 6, 20
Prop. 2 § 51 ..... 5, 6, 21
Prop. 2 § 6 4
Prop. 2 § 9(5) 20

Other Authorities

Mich. Const., art. II, § 9 ..... 2, 24

INTRODUCTION

Michigan's newly adopted Proposal 2 transforms ordinary think tanks into political committees, and it requires journalists, nonprofit organizations, and countless others to register with the state and disclose their activity whenever they speak in public about elected officials. It is an alarming and far-reaching law. It also violates the First Amendment.

No one doubts "that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs." *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (per curiam) (quotation omitted). And the Supreme Court has long recognized that disclosure laws interfere with free expression by making it too difficult or too risky to speak. The First Amendment thus prevents the government from requiring Americans to disclose information about their protected speech and associations unless the government can satisfy a demanding standard.

Michigan cannot do that here. Proposal 2's expansive disclosure mandates for "electioneering communications" and election "expenditures" capture vast amounts of speech that have nothing to do with elections or campaigns. These requirements impose onerous costs on nonprofit organizations like the Mackinac Center for Public Policy—organizations focused on issues and public policy—which must begin monitoring and reporting information about their constitutionally protected speech the moment Proposal 2 goes into effect. And while those administrative burdens are severe, they pale in comparison to the harm Mackinac will face if it is forced to publicly disclose its donors.

Proposal 2's new reporting requirements threaten the First Amendment rights of speakers and donors, like Mackinac and its supporters, throughout Michigan. The Court should enter a preliminary injunction prohibiting the defendants from enforcing them.

BACKGROUND

Michigan voters approved Proposal 2 on November 3, 2026. The ballot initiative amends Michigan's campaign-finance laws by, among other things, creating new reporting requirements for political speech.[1] The new law takes effect "10 days after the date of the official declaration of the vote," Mich. Const., art. II, § 9, or no later than December 3, 2026, *see* Mich. Comp. Laws § 168.842(1). Through Proposal 2, Michigan imposes burdensome regulatory requirements and disclosure obligations on organizations that spend above a threshold amount on speech that qualifies as an "electioneering communication" or an election "expenditure." But these terms capture much more than election-related speech.

The regulatory framework for campaign finance

Laws regulating campaign finance generally come in two forms.

The first are laws that apply to organizations existing primarily for election-related purposes. Most jurisdictions classify these organizations as a type of "committee," which triggers extensive compliance mandates and reporting obligations. The Supreme Court has recognized that the government can impose more burdensome regulatory requirements on these kinds of organizations—that is, organizations whose "major purpose" is election advocacy—because everything those entities do is, "by definition, campaign related." *Buckley*, 424 U.S. at 79.

The second kind of regulation applies to specific activities, rather than organizations. An organization that does not primarily engage in campaign-related spending might face reporting requirements if it spends enough money on election advocacy—even if it does so infrequently. These reports, however, are limited to disclosing information about that specific advocacy, rather than all of the organization's activities. *See, e.g.*, *id.* at 80.

[1] A copy of Proposal 2 is available at ECF No. 1-1, PageID.28.

Michigan follows this basic framework. It classifies an organization as a "committee" if that organization spends enough money on election-related "expenditures." *See* Mich. Comp. Laws §§ 169.203(4), 169.206. Once classified as a committee, an organization must comply with extensive regulatory requirements, including filing frequent campaign statements that include detailed reports about the organization, its revenue, expenditures, and fundraising activities. *See* Mich. Comp. Laws §§ 169.226(1), 169.233(3), 169.235(1). Organizations that do not qualify as "committee[s]" must comply with more limited disclosure requirements if they spend enough money on communications that expressly advocate for an election result. *See* Mich. Comp. Laws § 169.251(1). The disclosure requirements for such organizations are limited to providing information directly related to their particular election-related expenditures. *Id.*

Proposal 2 expands Michigan's disclosure and reporting requirements by broadening both regulatory categories. It redefines the qualifications for political committees, and it adds a new type of activity-based disclosure mandate for what the law calls "electioneering communications" by any organization.

Election expenditures and political committees

Michigan classifies an organization as a "committee" if it spends more than $500 on election-related "expenditures" each year when that spending is "for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party." Mich. Comp. Laws § 169.203(4). "Expenditure" is a defined term. It broadly includes any payment or transfer of value made "in assistance of, or in opposition to, the nomination or election of a candidate, the qualification, passage, or defeat of a ballot question, or the qualification of a new political party." Mich. Comp. Laws § 169.206(1). But before Proposal 2, the term did not include payments made for a communication

unless that communication expressly advocated for the election or defeat of a candidate or ballot question. *See* Mich. Comp. Laws § 169.206(2)(b), (j) (2025). That means organizations would not typically have qualified as committees for spending on political speech unless they expressly advocated for an election result.

Proposal 2 removes that limitation. The new law expands the definition of "expenditure" to include any "public communication" that "promotes, supports, attacks, or opposes a candidate" or ballot question, "regardless of whether the communication expressly advocates" for an election result. Prop. 2 § 6(1)(B)(II), (III). A "candidate" includes any individual who "[h]olds an elective office, unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline." Mich. Comp. Laws § 169.203(1)(e). And a "ballot question" is "a question that is submitted or is intended to be submitted to a popular vote at an election whether or not it qualifies for the ballot." Mich. Comp. Laws § 169.202(3). Proposal 2 thus broadly classifies most political speech about candidates or ballot questions as election-related expenditures if that speech expresses a positive or critical viewpoint.[2] And because the definition of "committee" turns on the definition of "expenditure," Proposal 2 likewise broadens the scope of organizations that qualify as committees to include groups that do not engage in express advocacy.

Michigan imposes extensive regulatory requirements on committees. While the requirements vary depending on the type of committee, all must register with the state and file several reports disclosing their activities and other financial

[2] The definition of "expenditure" includes exceptions. It does not include, for example, expenditures "by a broadcasting station, newspaper, magazine, or other periodical or publication for a news story, commentary, or editorial in support of or opposition to" a candidate or ballot question. Mich. Comp. Laws § 169.206(2)(d). Nor does it include internal communications with an organization's own members. *Id.* § 169.206(2)(a).

information. Each committee must also appoint a treasurer, who must authorize every expenditure and contribution, and append disclaimers to certain communications. *See* Mich. Comp. Laws §§ 169.221, 169.224, 169.247(1). Unlike federal law, *see Buckley*, 424 U.S. at 79-80, Michigan does not limit committee status—and its corresponding regulatory requirements—to organizations whose major purpose is election advocacy. An organization that meets the $500 contribution and expenditure requirement in § 169.203(4) must comply with the committee regulations even if it devotes only a small or fleeting amount of its resources to election-related speech.

A "political committee" is the catch-all for any committee that does not fit into any of the other categories. *See* Mich. Comp. Laws § 169.211(3). Political committees must typically file quarterly campaign statements, which include detailed reports of the organization's revenue, expenditures, and fundraising activities, as well as the name and address of every person who contributed to the committee during the relevant reporting period. *See* Mich. Comp. Laws §§ 169.226(1), 169.233(3), 169.235(1). For donors who gave more than $100, the report must also include the donor's occupation and employer. *See* Mich. Comp. Laws § 169.226(1). Once an organization meets the minimum spending requirement for a committee, it must also report every expenditure exceeding $50, regardless of whether the expenditure was made for the purpose of influencing voters. *Id.*

Electioneering communications

Proposal 2 also creates a new reporting category for what the law deems "electioneering communications." This is an activity-based reporting mandate that requires disclosing information only when engaged in a qualifying activity. Persons who spend $5,000 or more on "electioneering communications" each calendar year must "file a report . . . within 10 days" of doing so. Prop. 2 § 51(3). The report must identify every electioneering communication made that year, disclosing the date

and amount of any disbursement for the communication; the name and address of any vendor paid as part of the communication; all candidates clearly identified in the communication; and the name, address, occupation, employer, and principal place of business of any donor who contributed more than $100 to the organization "for making electioneering communications." *Id.*

An "electioneering communication" does not have to be about an election or campaign. Rather, Proposal 2 defines "electioneering communication" to include any "general public communication" that refers to a "clearly identifiable candidate" (either directly or by implication) within 100 days of a general election or 30 days of a primary or special election and "is targeted to the relevant electorate where the candidate appears on the ballot." Prop. 2 § 5(4). The Secretary of State is tasked with "defining the meaning of 'targeted to the relevant electorate.'" *Id.* And once an organization meets the aggregated $5,000 threshold, Proposal 2 requires disclosing information about every electioneering communication made up to that point regardless of the cost of each individual communication. Prop. 2 § 51(3).

Proposal 2 does not identify what costs must be included when calculating the $5,000 trigger. Unlike other provisions within Michigan's campaign-finance laws, *see, e.g.*, Mich. Comp. Laws § 169.206(1), neither the definition of "electioneering communications" nor the related reporting requirement addresses this issue. Nor does the new law explain how to determine whether a donor's contribution was "for making electioneering communications."

Sanctions for violating the reporting requirements

Michigan imposes civil and criminal penalties for failing to comply with the state's campaign-finance regulations. A person who fails to report an independent expenditure or electioneering communication for more than 30 days is guilty of a criminal misdemeanor and faces both monetary fines and imprisonment. Prop. 2 § 51(2). The same is true for any person who fails to file the required campaign

statements for a political committee. Mich. Comp. Laws §§ 169.233(8), 169.235(6). Knowingly filing an inaccurate or incomplete report will also subject an individual to monetary fines. *Id.* §§ 169.233(10), 169.235(7).

The Mackinac Center for Public Policy

The Mackinac Center is a Michigan-based, non-partisan research and educational institute advancing policies fostering free markets, limited government, personal responsibility, and respect for private property. Reitz Decl. ¶4. Over the past four decades, Mackinac has established itself as a credible and influential voice on matters of public policy in Michigan and beyond. *Id.* Its experts have published thousands of studies and articles that have influenced state and federal policymakers throughout the country. *Id.* ¶5.

Mackinac's influence stretches far and wide. Its experts are regularly cited in major newspapers in Michigan and nationally. *Id.* Its research has been cited by the United States Supreme Court. *See Janus v. AFSCME, Council 31*, 585 U.S. 878, 896 n.3 (2018). And its policy proposals have received bipartisan support from four Michigan governors. Reitz Decl. ¶5. Even those who oppose Mackinac's ideological goals have recognized its enormous influence on Michigan public policy. *Id.*

To further its mission of challenging government overreach and promoting a free-market approach to public policy, Mackinac regularly engages in public communications on a variety of issues, including such subjects as education policy and tax reform. *Id.* ¶7. These communications come in many forms. *Id.* Mackinac distributes research, information, and commentary throughout Michigan—online, in print, and over the radio. *Id.* Among other activities, Mackinac publishes a magazine every two months, produces empirical studies analyzing public policy, reports on current events through its nonprofit news site, and hosts a monthly radio show and podcast. *Id.*

Mackinac focuses primarily on issues that affect Michiganders. *Id.* ¶8. As a result, Mackinac often speaks about legislators and other elected officials in Michigan while publishing information and commentary about ongoing policy debates and proposals. *Id.* ¶¶9-11; *see* Exhibits 1, 2, & 3. As a tax-exempt organization under 26 U.S.C. § 501(c)(3), however, Mackinac does not endorse, donate to, or otherwise participate in the campaigns of political candidates. Reitz Decl. ¶6. It does not advocate for the election or defeat of any candidates for office. *Id.*

Yet Mackinac often speaks about individuals who are "candidates" under Michigan law because it discusses the individuals involved in creating and implementing public policy in Michigan. *Id.* ¶¶8-18. This includes not only elected officials who are eligible for reelection, *see* Mich. Comp. Laws § 169.203(1)(e), but also candidates not currently serving in office who are engaged in discussions and debates about public policy. Reitz Decl. ¶8-18.

Mackinac also regularly publishes communications about ballot questions, providing educational materials for residents and voters to help them understand the issues. *Id.* ¶¶19-20. Mackinac, for example, published a policy brief earlier this year that analyzed Proposal 2. *Id.* ¶19. This brief did not take a position on whether voters should support or oppose the initiative. *Id.* Instead, the policy brief explained the issues in plain language and summarized the arguments for and against the initiative that proponents and opponents have made. *Id.*; *see also* Exhibit 5.

Although Mackinac does not engage in express election advocacy, some of Mackinac's public communications could be construed as "support[ing]," "promot[ing]," "attack[ing]," or "oppos[ing]" a ballot question or candidate under Proposal 2's new standard for expenditures. In 2012, for example, Mackinac published several stories and videos about what was then known as Proposal 4, a ballot question about unionizing home healthcare workers. Reitz Decl. ¶20.

Mackinac published news and commentary strongly criticizing the proposal. *Id.* Mackinac also published educational information in response to misleading advertisements about the proposal. *Id.*

Mackinac's speech will trigger
Proposal 2's reporting requirements

Mackinac intends to continue regularly speaking and advocating about issues affecting Michigan in the future in the same manner it has done for decades, including by discussing the candidates and other individuals who are responsible for shaping public policy, as well as issues that are or might be part of a ballot question. Reitz Decl. ¶¶23. These communications will likely fall under Proposal 2's new definition of "electioneering communications" or "expenditures" (or both), thus triggering burdensome disclosure requirements and raising the risk that Mackinac and its supporters will face threats, harassment, and reprisal from those opposed to its advocacy.

Much of Mackinac's speech and advocacy will likely qualify as an "expenditure" under Proposal 2's new standard because it could be construed as supporting, promoting, attacking, or opposing a candidate or ballot question. That standard, for example, could have impacted Mackinac's extensive communications about Michigan's lockdown policies during the COVID-19 pandemic, which criticized Governor Whitmer's policy decisions when she was a "candidate" under Michigan law. *Id.* ¶12; *see COVID-19, Lockdowns and Emergency Powers*, https://perma.cc/U8SA-97JS (collecting studies and information). The cost for producing these various publications far exceeded $500. Reitz Decl. ¶12.

Mackinac intends to continue publishing similar communications discussing Michigan's elected officials and ballot questions in the future, as it has done for nearly 40 years. *Id.* ¶23. That includes, for example, the following communications targeted primarily at Michiganders:

- Mackinac's *Business Subsidy Scorecard*, which scores individual state legislators based on whether they voted for taxpayer-funded subsidies (which Mackinac opposes);
- Mackinac's reporting on current events in Michigan as part of its nonprofit news service, *Michigan Capital Confidential*, which often refers to individual candidates within the electioneering window;
- MichiganVotes (https://michiganvotes.org), which publishes current information about legislative activity, including by referring to legislators by name within the electioneering window;
- *The Mackinac on Michigan Show*, which discusses Michigan news and politics and, as part of those discussions, mentions candidates and elected officials within the electioneering window;
- *Impact* magazine, published six times a year, which mentions policymakers and political candidates by name;
- Mackinac's *Issues & Ideas Forum*, which publishes events discussing public policy in Michigan within the electioneering window, often featuring elected officials or other individuals who might be candidates under Michigan law.

Reitz Decl. ¶¶8-22; Exhibits 1-6.

Many of these communications would trigger the reporting requirement for electioneering communications, as Mackinac spends more than $5,000 during the electioneering window on them. *Id.* ¶¶16, 17, 22. The cost for *The Mackinac on Michigan Show* or an issue of *Impact* by themselves exceed that threshold. *Id.* ¶¶16-17.

Some of them, however, would also transform Mackinac into a political committee if the state determines that the communications were made "for the purpose of influencing or attempting to influence the action of the voters." Mich. Comp. Laws § 169.203(4). Yet Mackinac has no way of determining which of its communications qualify as supporting, promoting, attacking, or opposing a candidate or ballot question, as this broad phrase could include virtually every statement made about those subjects. Reitz Decl. ¶¶37-38. Mackinac will thus be required to either refrain from speech that could fit these vague standards or face

the risk that it will be subjected to the burdensome reporting requirements that apply to political committees. *Id.* ¶37.

The burden on Mackinac and its supporters

Mackinac faces significant harm if it is required to comply with Proposal 2's new reporting requirements. Not only will Mackinac suffer unrecoverable monetary harm, diminishing the resources available to engage in protected speech, but it will also suffer "inevitable" damage to its associational freedom from being forced to disclose information about its supporters and business partners. *See Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021) (plurality) (quotation omitted).

On the administrative side, Mackinac presently does not operate like a political committee (or similar organization focused on election advocacy), and so it will need to spend significant resources to comply with the new regulatory burdens that Proposal 2 imposes. Reitz Decl. ¶ 39. Mackinac, for example, does not have the systems in place to continuously monitor its contributions and expenditures to ensure that it timely files the periodic reports that political committees must file in Michigan. *Id.* This will be an indefinite, labor-intensive process, requiring Mackinac to constantly track its public communications to determine which communications might trigger a disclosure obligation. *Id.* This is not a task that Mackinac is currently able to do, so it will likely require hiring new personnel, or at the very least reassigning current personnel to new jobs, just to comply. *Id.*

In addition to the regulatory burdens, Mackinac faces significant harm from Proposal 2's donor-disclosure requirements. Mackinac relies on financial support from individuals, corporations, and foundations that share its commitment to free markets and liberty. *Id.* ¶¶24-25. That financial support, however, depends on Mackinac's ability to associate privately with its supporters. *Id.* ¶26.

Mackinac often engages on controversial issues, which draws strong opposition from those who disagree. *Id.* While some of that is expected, Mackinac has

experienced harassment far beyond ordinary civic engagement. *Id.* ¶¶26-27. Several years ago, for example, Mackinac was subjected to several death threats in response to research it was doing related to public sector unions. *Id.* ¶28. That eventually led to the U.S. Department of Justice prosecuting a woman from Illinois for threatening to kill multiple individuals and their families. *See id.*; Exhibit 7. And it was not the only time Mackinac has experienced these kinds of threats and harassment. *See* Reitz Decl. ¶30; Exhibit 9.

Activists have also targeted Mackinac's supporters. In one case, an organization that disagreed with Mackinac's ideological views targeted an insurance company that had financially supported Mackinac for many years. Reitz Decl. ¶29, Exhibit 8. The organization, which had endorsed the insurance company to its members, threatened to withdraw that endorsement unless it stopped supporting Mackinac. Reitz Decl. ¶29; Exhibit 8. These threats worked: the insurance company ceased its support for Mackinac. Reitz Decl. ¶29; Exhibit 8.

This experience makes Proposal 2's new donor-disclosure mandates particularly troubling for Mackinac. Reitz Decl. ¶31. If Mackinac's donors believe that giving to the organization will result in publicly disclosing their identities, many will stop giving—or give less—to avoid potential harassment and other forms of reprisal. *Id.* ¶¶31-37.

ARGUMENT

The Court should enter a preliminary injunction because (1) Mackinac will likely succeed on the merits, (2) Mackinac will suffer irreparable harm absent an injunction, (3) the balance of equities weighs in Mackinac's favor, and (4) an injunction will serve the public interest. *Online Merchs. Guild v. Cameron*, 995 F.3d 540, 546–47 (6th Cir. 2021). While all four factors favor Mackinac here, "as in many First Amendment cases, the key inquiry is the first one: Who is likely to prevail on

the constitutional claim?" *Sisters for Life, Inc. v. Louisville-Jefferson Cnty.*, 56 F.4th 400, 403 (6th Cir. 2022). The answer is Mackinac.

I. MACKINAC WILL SUCCEED ON THE MERITS.

Proposal 2's registration and reporting requirements violate the First Amendment. The law's expansive definition of "committee" imposes vague and overbroad regulatory requirements on organizations that never engage in election advocacy. And the new category for "electioneering communications" requires anyone who spends money while mentioning an elected official to register with the state and disclose their activity. These reporting requirements are unconstitutional, and Mackinac will thus succeed on the merits of its claims.

A. Michigan's new definition of political committee is unconstitutionally vague and overbroad.

1. Laws regulating political speech through registration and disclosure mandates must satisfy exacting scrutiny. *Boone Cnty. Republican Party Exec. Comm. v. Wallace*, 132 F.4th 406, 422, 428 (6th Cir. 2025). This requires the government to prove there is "a substantial relation between the disclosure requirement and a sufficiently important government interest, and that the disclosure requirement [is] narrowly tailored to the interest it promotes." *Id.* at 428. It's a difficult standard to meet. The government "is not free to enforce *any* disclosure regime that furthers its interest." *Bonta*, 594 U.S. at 613. So it must show that it "seriously undertook to address the problems it faces with less intrusive tools readily available to it." *Sisters for Life*, 56 F.4th at 404 (citation modified).

For campaign-finance disclosures, the Supreme Court has recognized a "sufficiently important" interest "in providing the electorate with information about the sources of election-related spending." *Citizens United v. FEC*, 558 U.S. 310, 367 (2010) (citation modified). But any disclosure mandate must be tailored to that goal.

Not all *political* speech is *election* speech. And the government cannot rely on its interest in election-related transparency to impose sweeping regulations on "groups engaged purely in issue discussion." *See Buckley*, 424 U.S. at 79-80.

To avoid such overbreadth, "independent groups not engaged in express election advocacy as their major purpose cannot be subjected to the complex and extensive regulatory requirements" reserved for political committees. *Wis. Right to Life, Inc. v. Barland*, 751 F.3d 804, 839 (7th Cir. 2014) (citing *Buckley*, 424 U.S. at 79). Designating an organization as a political committee typically "impose[s] well-documented and onerous burdens." *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 477 n.9 (2007). Committees must often route all contributions and expenditures through a treasurer and file frequent public reports disclosing information about their finances and donors. *See, e.g.*, *Citizens United*, 558 U.S. at 337-38. These regulatory requirements "create a disincentive" for organizations that might otherwise engage in political speech. *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 254-56 (1986). So the government can enact such comprehensive regulations only on groups "the major purpose of which" is *election* advocacy. *Buckley*, 424 U.S. at 79-80; *see also Barland*, 751 F.3d at 839.

2. Proposal 2 violates this rule by expanding Michigan's committee regulations to cover far more than organizations focused on election advocacy. In fact, after Proposal 2, an organization (like Mackinac) could be classified as a "committee" even if it engages in no election advocacy whatsoever.

The problem arises from the new definition of "expenditure." Michigan classifies an organization as a "committee" if it makes $500 or more in "expenditures" in one year. *See* Mich. Comp. Laws § 169.203(4). Before Proposal 2, an "expenditure" only included public communications that expressly advocated for an election result. Proposal 2 modifies that definition to include any public communication that "promotes, supports, attacks, or opposes" a candidate or ballot question. Thus, an

organization can meet the $500 expenditure threshold by "attack[ing]" or "support[ing]" a political candidate, even if it never engages in election advocacy. And because every elected official is automatically deemed a "candidate" unless he or she is ineligible to run for reelection, *see* Mich. Comp. Laws § 169.203(1)(e), any public communication criticizing such officials could qualify as an expenditure—no matter how far removed from an election it may be. Such an overbroad regulation is not narrowly tailored to the state's interest in disclosing information about the source of funds for election-related spending. *See Barland*, 751 F.3d at 835-38; *N.M. Youth Organized v. Herrera*, 611 F.3d 669, 676-78 (10th Cir. 2010).

The breadth is made worse by the low monetary trigger. Mackinac's annual revenue over the last several years has averaged above $10 million. Reitz Decl. ¶25. Yet it would qualify as a political committee for spending a mere $500 on public communications that "promote[], support[], attack[], or oppose[]" a candidate or ballot question. That means Mackinac could trigger the "onerous" regulatory requirements for political committees, *Wis. Right to Life, Inc.*, 551 U.S. at 477 n.9, if it spends only 0.005% of its revenue on communications that might vaguely praise or criticize an elected official. This problem is precisely why the Supreme Court adopted the major-purpose test when it interpreted federal law. *See Buckley*, 424 U.S. at 79-80; *see also Herrera*, 611 F.3d at 676-78. The lack of any similar limit restricting committee status to organizations focused on election advocacy is fatal here.

Nor is Michigan saved by the provision that limits committee status if an organization's expenditures are made "for the purpose of influencing or attempting to influence the action of the voters." Mich. Comp. Laws § 169.203(4). That is the same vague and "impermissibly broad" language that the Supreme Court held insufficient in *Buckley*. *See Buckley*, 424 U.S. at 80. As the Supreme Court explained, such a phrase "could be interpreted to reach groups engaged purely in

issue discussion." *Id.* at 79. But information about "groups engaged purely in issue discussion" is too "remote" from the state's interest in disclosing election-related spending to justify the comprehensive, burdensome regulatory requirements imposed on political committees. *Id.* Michigan's "committee" definition suffers the same problem.

3. The new definition of "expenditure" is also vague, rendering the committee regulations unconstitutional as applied outside of express election advocacy. The First Amendment forbids enforcement of laws so vague as to chill protected speech. *Miller v. City of Cincinnati*, 622 F.3d 524, 539 (6th Cir. 2010). "[R]egulated parties should know what is required of them so they may act accordingly." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). "[P]recision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way." *Id.*

Michigan's committee designation law violates the First Amendment because it depends on the unconstitutionally vague definition of "expenditure," which captures all public communications that "promote[], support[], attack[], or oppose[]" a candidate or ballot question. This phrase—"promotes, supports, attacks, or opposes"—is incapable of a reasoned application in this broad context. *Cf. Minn. Voters All. v. Mansky*, 585 U.S. 1, 16, 23 (2018). As explained above, virtually any statement that praises or criticizes a candidate could be construed as "promoting" or "attacking" that person. And this problem is made worse by the fact that most elected officials are automatically classified as candidates by default. *See* Mich. Comp. Laws § 169.203(1)(e). So either every public criticism or praise of the newly elected governor, for example, qualifies as an "expenditure," or there is an unclear and unknowable line that marks the boundary between criticism and "attack," or between praise and "support." Either result violates the First Amendment.

4. The combination of a vague and overbroad definition is also what distinguishes Michigan's law from others that have survived scrutiny. In *McConnell v. FEC*, 540 U.S. 93 (2003), for example, the Supreme Court rejected a vagueness challenge to the federal statute that regulates political parties using similar language as the definition of "expenditure" here. *Id.* at 170 n.64. The Supreme Court held that the "words 'promote,' 'oppose,' 'attack,' and 'support' clearly set forth the confines within which potential *party speakers* must act in order to avoid triggering the provision." *Id.* (emphasis added). But the holding came in a specific context: it only regulated "actions taken by political parties," which are "*presumed* to be in connection with election campaigns." *Id.* (emphasis added) (citing *Buckley*'s major-purpose test).

That is not the case for Michigan's statute, which captures public communications by *any* organization that spends a mere $500 publicly discussing a candidate or ballot question. Unlike a political party, or an organization whose major purpose is election advocacy, there is no presumption that the activities of an issue-focused group like Mackinac is "by definition, campaign related." *Id.* (quoting *Buckley*, 424 U.S. at 79). So there is no natural limit on what speech this provision captures.

Consider a concrete example. Several years ago, Mackinac published a series of studies analyzing Michigan's response to the pandemic and proposing new policy solutions for the future. *See* Reitz Decl. ¶12. One study, for example, proposed ten rules to "help policymakers balance two vital interests: meeting the demands of mitigating a pandemic and protecting Michiganders' constitutional rights." Exhibit 10 at 2. The study was highly critical of Gov. Whitmer's response to the pandemic, arguing that her actions were often inconsistent and lacked any reasoned justification. Does such criticism qualify as "attack[ing]" the governor? Even though this particular study was published in February 2021—almost two years before her

next election—she qualified as a "candidate" under Michigan law. *See* Mich. Comp. Laws § 169.203(1)(e). So it is at least plausible that publishing this study would have qualified as an "expenditure" under Proposal 2, potentially triggering an obligation that Mackinac register as a political committee.

And that is just one study on one issue Mackinac has published. What about its policy brief from August of 2020, that analyzed the history of Michigan's emergency powers law and accused Governor Whitmer of taking "unprecedented" action that "[n]o other governor in Michigan history has attempted?" Exhibit 11 at 1. Is that a sufficiently critical claim to qualify as "attack[ing]" or "oppos[ing]" her? Nothing in the statute's text gives any clear way to answer that question.

* * *

Proposal 2's expansive definition of "committee," created by expanding the definition of "expenditure" to include public communications that "promote[], support[], attack[], or oppose[]" a candidate or ballot question, is unconstitutional as applied to organizations like Mackinac that don't have express election advocacy as their major purpose—or even a major purpose—because it is not narrowly tailored the government's informational interest in disclosing the source of election-related spending.

B. The disclosure requirements for "electioneering communications" violate the First Amendment.

Proposal 2's new disclosure requirement for speech deemed an "electioneering communication" fails exacting scrutiny and is unconstitutionally vague.

1. *The definition of electioneering communications is overbroad and fails exacting scrutiny.*

The government must prove that there is "a substantial relation between" Proposal 2's new reporting requirement for electioneering communications, "and that the disclosure requirement [is] narrowly tailored to the interest it promotes." *Bonta*, 594 U.S. at 611 (quotation omitted). And, to "defend[] a restriction on speech

as necessary," the government must "point to record evidence or legislative findings demonstrating the need to address a special problem." *FEC v. Ted Cruz for Senate*, 596 U.S. 289, 307 (2022) (citation modified). It cannot do so here.

The definition of "electioneering communications" captures far more speech than necessary. Proposal 2 simply recharacterizes vast amounts of speech as "electioneering" to fit it within the state's interest in disclosing information about the source of election-related spending. The law does not require "electioneering communications" to concern elections at all. It deems public communications that merely mention a candidate for office within 100 days of the general election an "electioneering communication" if it is targeted to the electorate where that candidate is running. That definition treats newspaper articles and nonpartisan voters guides the same as a campaign's television ads and radio spots. And it requires journalists to register their speech with the state if they report about a legislator's voting record within 100 days of his reelection. There is a "dramatic mismatch" between the state's interest in transparency for election-related spending and the amount of speech that Proposal 2 sweeps in. *See Bonta*, 594 U.S. at 612.

Michigan's definition of "electioneering communication" is far broader than the federal definition the Supreme Court approved in *Citizens United*. There, the Court acknowledged that a commercial mentioning a candidate for office airing "shortly before the election" could be covered even if it is not about the election itself. *See Citizens United*, 558 U.S. at 369. But the law in *Citizens United* only captured communications broadcast over television and radio, with exemptions for traditional news media and commentary. And "shortly before" an election meant 60 days, or the traditional period after Labor Day when campaigns are in full swing competing for voters' attention. Here, Proposal 2 almost *doubles* the length of time that a communication can qualify as "electioneering," and it expands the category of

speech to any kind of public communication—capturing far more than the kind of political advertisement that the state's informational interest is tied to.

The overbreadth here is made worse by the fact that Michigan's legislature operates year-round. That means public communications reporting on or commenting about legislative activity is deemed "electioneering" for more than 25% of the calendar year if it discusses a legislator who happens to be eligible for reelection. While incumbent officials would certainly enjoy requiring those who talk about them during the months leading up to an election to register with the state, the First Amendment prohibits such an overbroad and dystopian mandate.

Narrow tailoring requires the government to show it seriously considered other alternatives to address the problem. *Bonta*, 594 U.S. at 613-14. There are ample ways to further the state's informational interest here without broadly classifying every mention of a candidate's name as electioneering. The state could, for example, limit the definition of "electioneering" in a similar way as the federal law and many states do—applying only 60 days before an election and to communication channels typically reserved for political advertisements. *See* 52 U.S.C. 30104(f)(3)(A)(i). The state could also limit the definition to only include communications that are not susceptible of any reasonable interpretation other than as an appeal to vote for or against the candidate—a standard less strict than requiring express advocacy, but one that excludes communications that are obviously not election-related. *See, e.g.*, Fla. Stat. § 106.011(8)(1); Haw. Rev. Stat. Ann. § 11-302; 10 ILCS 5/9-1.14(a). The state could even expand the definition to include online advertisements without capturing all communications whatsoever. *Compare* Prop. 2 § 5(4) (capturing any "form of general public communication"), *with id.* § 9(5) (defining "internet communication" to only include "that is placed or promoted for a fee on another person's website, digital device, application, or advertising platform"). Many states have adopted these and other narrower rules: a sign that Michigan's new approach

stretches far broader than necessary. *See Nat'l Republican Senatorial Comm. v. FEC*, 146 S. Ct. 2404, 2422-23 (2026).

2. The reporting requirements for electioneering communications are impermissibly vague.

The reporting requirements for electioneering communications are also unconstitutionally vague—twice over. The law gives no explanation as to how to calculate the aggregate costs when assessing whether one has hit the $5,000 trigger. And its requirement that speakers disclose donors who contributed more than $100 "for making electioneering communications" does not give organizations or their donors fair notice about what triggers disclosure.

On the $5,000 trigger, Proposal 2 requires organizations to disclose all of their electioneering communications once they "make[] electioneering communications aggregating $5,000 or more in a calendar year." Prop. 2 § 51(3). But the law gives no indication about what costs go into that calculation. Does $5,000 include internal staff time, requiring organizations to calculate the proportionate costs of having each employee work on a communication? Does a publication about an empirical study include the cost of conducting the research itself, or just producing the communication about it? If the former, does the law require looking back at research costs if an organization publishes research conducted six months ago? What about research from a year or two earlier?

These are not wild hypotheticals. Earlier this year, Mackinac published its July 15 edition of *Impact*, which would qualify as an electioneering communication under Proposal 2 because one of the articles mentions individuals running for office within the electioneering window. Reitz Decl. ¶18; Exhibit 12. But Mackinac began work on this issue months earlier, and its many articles were the product of countless employees' time. Reitz Decl. ¶18. Does the staff time from April 2026 to prepare a magazine published on July 15 count toward the $5,000 aggregate? Does the

number include the cost for the entire magazine, or just the article that mentions the candidates? Proposal 2 fails to inform Mackinac "what is required of [it] so [it] may act accordingly." *Fox Television*, 567 U.S. at 253.

That problem is compounded for the donor-disclosure mandate. Proposal 2's requirement that organizations disclose the identity of donors giving more than $100 "for making electioneering communications" does not give sufficient notice to either Mackinac or its donors about what triggers this requirement. That means the disclosure mandate will chill free association even when the donation isn't covered by the law, as donors will refrain from giving if Mackinac cannot assure them that their identity will be protected. *Id.* ¶¶32-35,

The Tenth Circuit held that such "lack of guardrails" rendered a similar Wyoming law unconstitutionally vague. *See Wyo. Gun Owners v. Gray*, 83 F.4th 1224, 1238 (10th Cir. 2023). There, the law required organizations to disclose donors whose contributions "relate to an independent expenditure or electioneering communication." *Id.* at 1237 (citation modified). The court explained that it was "far from clear how the Secretary could determine whether [the plaintiff] reported contributions related to its electioneering communications," allowing the state "to sanction [the plaintiff] for failing to adhere to the 'best' method for deciding which contributions in an undifferentiated pool relate to some communication." *Id.* at 1238. The state "could adopt a theory—as it did on appeal—that the statute obliges an organization in [the plaintiff's] position to disclose *all* contributions made during the election cycle," or "it could find it proper for [the plaintiff] to pick and choose five donors whose contributions collectively amounted to the communication's cost." *Id.* The problem was not simply that the statute left open hard questions at the margins. The problem was that the law gave no guidance as to what those hard questions even were. *Id.*

So too here. While Mackinac receives some restricted contributions (from donors who want to support Mackinac's work on specific matters like labor, education, or reporting), it does not trace particular dollars from a donor and pair those dollars with particular communications that Mackinac paid for. Reitz Decl. ¶25. If a donor contributes to Mackinac specifically to support its nonprofit news service *Michigan Capitol Confidential*, which frequently publishes communications that qualify as electioneering under Proposal 2, is that donation "for making electioneering communications?" Is Mackinac required to disclose every donor who gives during an election year or during the 100 days before an election, on the assumption that their donations are funding electioneering communications? If a donor gives Mackinac a contribution because it supports Mackinac's advocacy related to right-to-work legislation, must that donor be disclosed if Mackinac publishes an electioneering communication about a right-to-work bill proposed by a legislator who is up for reelection? The vague phrase "for making electioneering communications" gives no guidance about how to answer these and myriad other questions.

The vagueness is made worse because it implicates donor disclosure. "Demands for private donor information . . . chill protected First Amendment associational rights" and create an "inevitable" deterrent on free speech. *First Choice Women's Res. Ctrs., Inc. v. Davenport*, 608 U.S. 174, 187 (2026) (citation modified). And that's true even when the demand is never enforced. *Id.* at 192-93. "The value of a sword of Damocles is that it hangs—not that it drops." *Id.* at 192. The fact that Mackinac and its donors do not know what will trigger the disclosure requirement for electioneering communications only exacerbates the First Amendment problem, as it chills more speech and association than the statute might even cover. *See NetChoice, LLC v. Yost*, 180 F.4th 268, 294 (6th Cir. 2026).

Proposal 2 fails to give "sufficient notice" about who must be disclosed under the new reporting requirement for electioneering communications, which invites

arbitrary and discriminatory enforcement. *Id.* Because that lack of notice implicates the exercise of First Amendment rights, it is unconstitutional. *Id.*

II. MACKINAC WILL SUFFER IRREPARABLE HARM WITHOUT AN INJUNCTION.

"The loss of First Amendment freedoms, for even minimal periods of time, amounts to irreparable injury." *Sisters for Life, Inc.*, 56 F.4th at 408 (citation modified). Because the new regulatory requirements for committees and electioneering communications violate the First Amendment, Mackinac will suffer irreparable harm absent an injunction. *Id.*

Mackinac's harm is certain and imminent. Proposal 2 takes effect on December 3, 2026 (ten days after the Michigan Board of State Canvassers will meet to certify the results of the election). *See* Mich. Const., art. II, § 9; Mich. Comp. Laws § 168.842(1). Not only does that trigger Mackinac's obligations to monitor and report on its speech, it also imposes immediate burdens on Mackinac ability to fundraise from donors who are wary of having their information disclosed to the public.

Mackinac must register as a committee "[a]s soon as" it "spends . . . $500.00 or more in a calendar year" on "expenditures." *See* Exhibit 13 at 4; Mich. Comp. Laws § 169.224(1). Because an "expenditure" under Proposal 2 includes any public communication that merely "promotes, supports, attacks, or opposes" a candidate for office, Mackinac risks qualifying as a committee if it publishes anything that praises or criticizes the newly elected governor, attorney general, secretary of state, and countless other politicians. *See* Mich. Comp. Laws § 169.203(1)(e).

Consider just one example. In October, Mackinac published a piece criticizing Attorney General Nessel for her antitrust lawsuit against an insurance company. *See* Reitz Decl. ¶10; Exhibit 14. When Attorney General-elect Eli Savit takes office in January 2027, he automatically becomes a candidate under Michigan law. *See* Mich. Comp. Laws § 169.203(1)(e). Thus, if Mackinac publishes additional

commentary, research, or other communications about this lawsuit and issue, Mackinac risks triggering committee status if its criticism is construed as "attack[ing]" or "oppos[ing]" a candidate.

That creates a twofold form of irreparable harm. To start, it requires Mackinac to immediately incur compliance costs that it will not be able to recover to monitor its expenses and communications. Mackinac must begin monitoring all of its public communications to assess how much each communication costs and whether it could be construed as promoting, supporting, attacking, or opposing a candidate or ballot question. But Michigan's "sovereign immunity . . . makes monetary losses like these irreparable." *Kentucky v. Biden*, 57 F.4th 545, 556 (6th Cir. 2023). Mackinac is not currently equipped to ensure such compliance, so it must spend significant resources to do so. Those expenses "are unrecoverable" and thus irreparable. *Id.*

That's not all. Even one $500 expense that transforms Mackinac into a political committee will require Mackinac to start disclosing information about its donors and business partners. *See* Mich. Comp. Laws § 169.226(1). Donor disclosure creates an "inevitable" chill on free speech and association, discouraging supporters from associating with an organization. *First Choice Women's Res. Ctr.*, 608 U.S. at 187 (quotation omitted). This chill alone inflicts irreparable harm. *NetChoice, LLC v. Skrmetti*, 191 F.4th 452, 458-59 (6th Cir. 2026).

Mackinac faces the same inevitable problem with disclosing donors and information related to its future electioneering communications. While this requirement will not be triggered until the next electioneering window opens, Mackinac's irreparable harm "need not be already underway before [it] may seek preliminary relief, particularly when the alleged harm takes the form of deterred or chilled speech." *Id.* It is "certain" that Mackinac will engage in electioneering communications during the next window, based on Mackinac's long history of doing so and its intent to continue. The reporting requirement will thus inevitably chill

Mackinac's exercise of its First Amendment rights, as donors wary of disclosure choose to give less or not give at all. And that harm could materialize immediately, given the vague scope of the disclosure law and who it affects.

Without an injunction, Mackinac is certain to "suffer [irreparable] harm *before* final judgment." *Fischer v. Thomas*, 78 F.4th 864, 868 (6th Cir. 2023). So it is entitled to an injunction today.

III. THE BALANCE OF EQUITIES FAVORS GRANTING AN INJUNCTION.

The last two factors for a preliminary injunction "merge when the Government is the opposing party." *Wilson v. Williams*, 961 F.3d 829, 844 (6th Cir. 2020) (quotation omitted). And because "the public's true interest lies in the correct application of the law," *Kentucky v. Biden*, 23 F.4th 585, 612 (6th Cir. 2022), the plaintiff's likelihood of success drives the outcome here, *see Online Merchs. Guild*, 995 F.3d at 560. The balance of equities thus favors granting an injunction because Mackinac is likely to prevail on the merits and "it is always in the public interest to prevent violation of a party's constitutional rights." *ACLU Fund. of Mich. v. Livingston, Cnty.*, 796 F.3d 636, 649 (6th Cir. 2015) (quotation omitted).

IV. THE COURT SHOULD WAVE RULE 65(C)'S BOND REQUIREMENT.

The Sixth Circuit considers Rule 65(c)'s bond requirement discretionary. *Moltan Co. v. Eagle-Picher Indus.*, 55 F.3d 1171, 1176 (6th Cir. 1995). To decide whether to require security, courts consider factors such as "the strength of [the plaintiff's case] and the strong public interest involved." *Id.* Both factors weigh against requiring a security here. Mackinac's case is strong on the merits, and because that means that Proposal 2 violates the First Amendment, the public interest strongly favors waiving the bond. Nor will an injunction harm defendants in any way, let alone financially.

CONCLUSION

The Court should grant Mackinac's motion for a preliminary injunction.

Dated: November 19, 2026

Respectfully submitted,

s/ Brett R. Nolan
Brett R. Nolan
Alan Gura
Nathan Ristuccia[3]
INSTITUTE FOR FREE SPEECH
1150 Connecticut Ave., NW, Suite 801
Washington, D.C. 20036
(202) 301-3300
bnolan@ifs.org
agura@ifs.org
nristuccia@ifs.org

Counsel for the plaintiff

[3] Not a D.C. Bar Member but providing legal services in the District of Columbia exclusively before federal courts, as authorized by D.C. Ct. App. R. 49(c)(3).

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the above brief complies with LCivR 7.2(b)(i) because it contains 7,801 words, as calculated by Microsoft Word for Microsoft 365.

/s/ Brett R. Nolan

Counsel for the plaintiff