



San Francisco Ethics Commission

25 Van Ness Avenue, STE 220
San Francisco, CA 94102-6053
ethics.commission@sfgov.org
415-252-3100 | sfethics.org

Date: August 5, 2024

To: Members of the Ethics Commission

From: Michael Canning, Policy and Legislative Affairs Manager

Re: **AGENDA ITEM 07 – Discussion and possible action regarding proposed amendments to Ethics Commission regulations on campaign finance disclaimer requirements.**

Summary and Action Requested

This memo provides an overview of proposed amendments to the Ethics Commission’s regulations regarding the City’s campaign finance disclaimer requirements.

Staff recommends the Commission review, discuss, and approve the proposed regulation amendments as drafted in [Attachment 1](#).

Background

In 2019, voters approved [Proposition F](#), which amended the Campaign and Governmental Conduct Code (C&GCC) in several ways, including changes to the City’s disclaimer requirements for primarily formed independent expenditure committees. Prior to the passage of Proposition F, these committees were required to disclose their top three contributors of \$10,000 or more on advertisements paid for by the committee. Proposition F lowered the dollar amount in this disclaimer requirement to \$5,000, raised the font requirements from 12-point font, to bolded 14-point font, and established a new requirement that these committees also disclose their “secondary major contributors.”

Per [Section 1.161](#) of the C&GCC, the secondary major contributors disclaimer rule requires that “if any of the top three major contributors is a committee, the disclaimer must also disclose both the name of and the dollar amount contributed by each of the top two major contributors of \$5,000 or more to that committee.”

In January 2020, a group of plaintiffs called *Yes on Prop B* challenged the requirement to disclose secondary major contributors established through Proposition F. The plaintiff’s request for a preliminary injunction was granted in part and denied in part, by the Honorable Charles R. Breyer, District Court Judge for the Northern District of California; a copy of the court order is included below as [Attachment 2](#). The court granted the preliminary injunction with respect to the disclosure of secondary major contributors on print advertisements that are “5” by 5” newspaper advertisements, smaller “ear” advertisements, and spoken disclaimers on digital or audio advertisements of thirty seconds or less.” The court upheld the other disclaimer requirements enacted through Proposition F.

In May 2022, another group of plaintiffs filed a lawsuit called *No on E v. David Chiu* that challenges the requirement to disclose secondary major contributors established through Proposition F. The plaintiffs filed a motion seeking preliminary injunctive relief, and Judge Breyer denied the motion. On appeal, the

Ninth Circuit affirmed the denial of preliminary injunctive relief. The plaintiffs filed a Petition for a Writ of Certiorari before the United States Supreme Court, and the Supreme Court has distributed the case for consideration at its September 30, 2024 conference.

In December of 2022, the Ethics Commission [voted to approve legislation](#) amending Section 1.161, to include exceptions to the disclaimer requirement for small print advertisements and short audio and video advertisements. This legislation was subsequently [approved by the Board of Supervisors](#) in 2023 and is reflected in the current law.

The recently added exceptions to Section 1.161(a)(1)(A-B) narrowly address small print advertisements that are 25 square inches or smaller and short audio and video advertisements that are 30 seconds or less. In case there remains the potential for situations involving larger advertisements where the additional disclaimer requirements in local law could occupy a substantial portion of the total advertisements, the draft regulation in [Attachment 1](#) seeks to remove that potential.

Proposed Regulation Regarding Campaign Finance Disclaimer Requirements

In Judge Breyer's 2020 order, the Court considered the impact of the remaining local disclaimer requirements on the Yes on Prop B campaign, with the requirements on smaller ads enjoined. In the order, Judge Breyer stated that with the smaller ad requirements enjoined, the remaining disclaimers would "...not take up more than approximately 35% of any of Yes on Prop B's proposed ads...[and that] [t]hat leaves almost two-thirds of the ad for Yes on Prop B's pro-Prop-B messaging. The Court finds that this space is sufficient to communicate Prop B's political message." Judge Breyer further stated that "[w]hile the burden imposed by the disclaimer requirements is not insignificant, it is not inappropriate given the important governmental interest at stake." (See [Attachment 2](#))

Staff looked to the Court's finding in 2020 that leaving "almost two-thirds" of an advertisement for the committee's political messaging was sufficient when balancing the need for disclaimers when developing the proposed draft regulation in [Attachment 1](#). As such, the proposed regulation only applies when complying with the City's disclaimer requirements would result in more than one-third of the total advertisement being taken up by the disclaimer.

Draft Regulation 1.161-4 creates exceptions for the City's disclaimer requirements, which can be gradually applied in situations where complying would result in more than one-third of the total advertisement being occupied with the disclaimer. The regulation gradually waives the local disclaimer requirements until either 1) the disclaimer takes up one-third or less of the total advertisement, or 2) the disclaimer requirements are waived to the point that they are comparable to the State's existing requirements.

The following summarizes what the draft regulation would allow committees to do if an advertisement's disclaimer were taking up more than one-third of the total advertisement.

- **For print advertisements:** Regulation 1.161-4(a)(1) allows the committee to first disregard the larger font requirements in local law and instead rely on the State's font requirements. If after adjusting the font requirements, the disclaimer still takes up more than one-third of the total advertisement, the committee would be able to omit any information regarding secondary major contributors.

- **For audio, radio, telephone, video, television, or electronic advertisements:** Regulation 1.161-4(a)(2) allows the committee to omit any information regarding secondary major contributors from the spoken or visual components of the disclaimer.

This regulation would give committees the ability to omit secondary major contributor information when doing so would cause the required disclaimers to take up more than one-third of the total advertisement. This exception is intended to allow greater flexibility in the application of local disclaimer rules in a way that aligns with the rationale in Judge Breyer’s order. The regulation seeks to balance committee interests in maximizing space for their political messages with the public’s interest in robust disclaimer rules that aid transparency.

The recommended amendments in [Attachment 1](#) were developed by the Policy Division based on feedback from, and in collaboration with, the Commission’s Engagement & Compliance Division and the Enforcement Division, and in consultation with City Attorney’s Office.

The draft regulations from [Attachment 1](#) have been noticed to the public more than 10 days prior to the Commission’s August meeting, as required by [Charter Section 4.104](#). Thus, the Commission may vote to adopt the proposed regulations during its August meeting if desired.

Recommended Next Steps

Staff recommends the Commission vote to approve the proposed regulations as drafted.

Attachments:

Attachment 1: [Ethics Commission Campaign Finance Regulation Amendments – Noticed Publicly on 7/29/24](#)

Attachment 2: [Judge Breyer’s Order Dated February 20, 2020](#)

ATTACHMENT 1



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ETHICS COMMISSION

NOTICE OF PROPOSED REGULATIONS CONCERNING CAMPAIGN FINANCE

7/29/24

Draft Regulation Amendments to San Francisco Campaign and Governmental Conduct Code Section 1.161

Regulation 1.161-4: Exceptions to Disclaimer Requirements

...

(a) If complying with the minimum disclaimer requirements of Section 1.161 and Ethics Commission Regulation 1.161-3 results in the advertisement's disclaimer taking up more than one-third of the total advertisement, the committee may do the following:

(1) For print advertisements, including mass mailings and smaller written advertisements:

A. The committee may disregard the font requirements of Section 1.161 and Ethics Commission Regulation 1.161-3 and instead rely solely on the font requirements specified in the California Political Reform Act and its enabling regulations.

B. If after adjusting the font requirements as specified in subsection A, the disclaimer still takes up more than one-third of the total advertisement, the committee may omit information regarding any secondary major contributors, that would otherwise be required by Section 1.161 and Ethics Commission Regulation 1.161-3.

(2) For any audio, radio, telephone, video, television, or electronic advertisements for which a disclaimer must be spoken or visually displayed:

A. The committee may omit information regarding any secondary major contributors from the spoken or visual components of the disclaimer, that would otherwise be required by Section 1.161 and Ethics Commission Regulation 1.161-3.

(b) For print advertisements and the visual components of television, video, or electronic advertisements, a disclaimer takes up more than one-third of the total advertisement if the total area of the disclaimer exceeds one-third of the total area of the advertisement.



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(c) For the spoken component of any audio, radio, telephone, video, television, or electronic advertisements for which a disclaimer must be spoken, a disclaimer takes up more than one-third of the total advertisement if the total number of seconds required to speak the disclaimer exceeds one-third of the total length of the advertisement. When determining the amount of time it takes to speak a disclaimer, the disclaimer must be read in a tone and pitch similar to the rest of the advertisement, at a pace no slower than the rest of the advertisement, and at a pace that can be clearly understood.

...

ATTACHMENT 2

United States District Court
Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

YES ON PROP B, COMMITTEE IN
SUPPORT OF THE EARTHQUAKE
SAFETY AND EMERGENCY RESPONSE
BOND, et al.,

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO,

Defendant.

Case No. [20-cv-00630-CRB](#)

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
PRELIMINARY INJUNCTION**

Yes on Prop B, Committee in Support of the Earthquake Safety and Emergency Response Board, contends that the City and County of San Francisco’s new disclaimer requirements create an unconstitutional burden on its First Amendment right to advocate for earthquake safety. The Court agrees that the disclaimer rules are unconstitutional as applied to some smaller or shorter types of advertising, because they leave effectively no room for pro-earthquake safety messaging. But the rules are not an unconstitutional burden on larger or longer advertising, and requiring the committee to disclose not only its own donors but also the individuals and organizations who give money to committees that in turn support Yes on Prop B is not an unconstitutional forced association or burden on campaign contributions.

I. BACKGROUND

Under California law, any person or group of people that raises at least \$2,000 or spends at least \$1,000 for political purposes in a given year must register as a committee. Cal. Gov’t Code § 82013. Political advertising by committees is subject to a plethora of disclaimer and disclosure

1 requirements under California and San Francisco law. See, e.g. Cal. Gov't Code §§ 84200,
2 84200.5, 84202.3, 84203, 84502; see also, e.g. SF Code § 1.161.

3 This case concerns two new disclaimer requirements for committee advertising that went
4 into effect in San Francisco last year. First, the San Francisco Board of Supervisors amended San
5 Francisco's Campaign and Governmental Conduct Code to require a spoken disclaimer at the
6 beginning (rather than the end) of any audio or video advertisement. See SF Code § 1.161(a)(5);
7 see also Yes on Prop B RJN¹ (dkt. 5-1) Ex. B.

8 Last November, San Francisco voters amended the City's disclaimer laws by approving
9 Proposition F. See generally Yes on Prop B RJN Ex. C at 112–13. Proposition F passed with
10 76.89% of the vote. San Francisco RJN Ex. B at 6. Now, all ads paid for by “primarily formed”
11 independent expenditure and ballot measure committees² must include a disclosure identifying the
12 committee's top three donors of \$5,000 or more. If one of those contributors is itself a committee,
13 the ad must also disclose that committee's top two donors of \$5,000 or more in the last five
14 months. In all ads other than audio ads, the names of both primary and secondary contributors
15 must be followed by the amount of money they contributed. Id.; SF Code § 1.161(a)(1), (5). On
16 written ads, the disclosure must be in 14-point font (rather than 12-point font, which was the case
17 before Proposition F). RJN Ex. C at 112; SF Code § 1.161(a)(3).

18 Yes on Prop B is a “primarily formed committee” which supports Proposition B.³ David
19 Decl. (dkt. 5-5) ¶ 6. Yes on Prop B has received \$5,000 in funding from each of three other
20 committees: Yes on A, Affordable Housing for San Franciscans Now!, the Edwin M. Lee
21 Democratic Club Political Action Committee, and the United Democratic Club of San Francisco.

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23 ¹ Yes on Prop B's request for judicial notice is unopposed and asks for notice of three documents
24 made publicly available by San Francisco or the State of California. Because these documents
25 come from sources whose accuracy cannot reasonably be questioned, Yes on Prop B's request is
26 granted. See Daniels-Hall v. Nat'l Educ. Ass'n, 629 F.3d 992, 998–99 (9th Cir. 2010). San
27 Francisco has also requested that the Court notice publicly available documents, plus a municipal
28 ordinance. San Francisco RJN (dkt. 20). San Francisco's request is also granted. See id.; see also
Tollis, Inc. v. Cty. of San Diego, 505 F.3d 935, 938 n.1 (9th Cir. 2007). Finally, the unopposed
motion to file an amicus curiae brief (dkt. 24) is granted. See also Statement of Non-Opposition
(dkt. 26).

² A “primarily formed” committee is one created to support or oppose a single candidate or
measure appearing on the ballot. Cal. Gov't Code § 82047.5.

³ Proposition B is an earthquake safety and emergency response bond. David Decl. ¶ 8.

1 Id. ¶ 12. Yes on Prop B wishes to spend its modest budget on cost-effective forms of advertising,
2 including six-, fifteen-, and thirty-second digital video advertisements, yard or window signs, and
3 Chinese language newspaper ads. Id. ¶ 29, Mot. (dkt. 5) at 1.

4 Those ads will be subject to Proposition F’s new disclaimer requirements. Yes on
5 Prop B’s video ads must include the following disclaimer, spoken at the beginning of the video:

6 Ad paid for by Yes on Prop B, Committee in support of the
7 Earthquake Safety and Emergency Response Bond. Committee
8 major funding from: 1. United Democratic Club of San Francisco –
9 contributors include San Francisco Association of Realtors,
10 Committee on Jobs Government Reform Fund; 2. Edwin M. Lee
11 Democratic Club Political Action Committee – contributors include
12 Committee on Jobs Government Reform Fund; 3. Yes on A,
13 Affordable Homes for San Franciscans Now! – contributors include
14 Salesforce.com, Inc., Chris Larsen. Financial disclosures are
15 available at sfethics.org.

16 Muir Decl. (dkt. 5-3) ¶ 34. That disclaimer takes roughly twenty-eight seconds to read “in a
17 clearly spoken manner and in a pitch and tone substantially similar to the rest of a typical
18 television advertisement.” Id. ¶ 35.

19 Print ads must include the following disclosure:

20 Ad paid for by Yes on Prop B, Committee in Support of the
21 Earthquake Safety and Emergency Response Bond. Committee
22 major funding from: 1. United Democratic Club of San Francisco
23 (\$5,000) – contributors include San Francisco Association of
24 Realtors (\$6,500), Committee on Jobs Government Reform Fund
25 (\$5,000), 2. Edwin M. Lee Democratic Club Political Action
26 Committee (\$5,000) – contributors include Committee on Jobs
27 Government Reform Fund (\$5,000), 3. Yes on A, Affordable Homes
28 for San Franciscans Now! (\$5,000) – contributors include
Salesforce.com, Inc. (\$300,000), Chris Larsen (\$250,000) Financial
disclosures are available at sfethics.org.

Id. Ex. 1. That disclosure, when printed in size 14-point font, takes up 100% of the most common
and economical ads printed in Chinese language newspapers (so-called “ear” ads), 75 to 80% of a
5” by 5” ad, and 31 to 33% of a 5” by 10” ad. Id. ¶¶ 66–67. It occupies approximately 35% of a
typical 14” by 22” horizontal window sign, id. ¶¶ 58, 61, and approximately 35 to 38% of one side
of a typical 5.5” by 8.5” palm card, id. ¶¶ 52–53.

Yes on Prop B seeks a preliminary injunction “prohibiting defendant the City and County
of San Francisco and its officers, agents, divisions, commissions, and all persons acting under or

1 in concert with it, from enforcing the spoken disclaimer rule in San Francisco Campaign &
 2 Governmental Conduct Code Section 1.161(a)(5) and amendments to Section 1.161 imposed by
 3 Proposition F.” Mot. at 1.

4 **II. LEGAL STANDARD**

5 A preliminary injunction is an “extraordinary remedy” that should only be awarded upon a
 6 clear showing that the plaintiff is entitled to such relief. See Winter v. Natural Res. Def. Council,
 7 Inc., 555 U.S. 7, 22 (2008). The party seeking a preliminary injunction must establish: (1) a
 8 likelihood of success on the merits; (2) a likelihood of irreparable harm absent preliminary relief;
 9 (3) that the balance of equities tips in the plaintiff’s favor; and (4) that an injunction is in the
 10 public interest. See id. at 20. Alternatively, the moving party must demonstrate that “serious
 11 questions going to the merits were raised and the balance of hardships tips sharply in the
 12 plaintiff’s favor,” and that the other two Winter elements are met. Alliance for Wild Rockies v.
 13 Cottrell, 632 F.3d 1127, 1134–35 (9th Cir. 2011). The “[l]ikelihood of success on the merits is the
 14 most important Winter factor.” Disney Enters., Inc. v. VidAngel, Inc., 869 F.3d 848, 856 (9th Cir.
 15 2017) (internal quotation marks omitted). It is Yes on Prop B’s burden to establish each of the
 16 four Winter elements, but San Francisco’s burden to demonstrate Proposition F’s constitutionality.
 17 Klein v. City of San Clemente, 584 F.3d 1196, 1201 (9th Cir. 2009).

18 **III. DISCUSSION**

19 Yes on Prop B presents two theories of Proposition F’s constitutional infirmity: that the
 20 disclaimer requirements are so lengthy they impose an undue burden on political speech and that
 21 requiring Yes on Prop B to disclose its secondary contributors unconstitutionally forces it to
 22 associate with those entities and impermissibly chills political contributions. See Mot. at 1–2.
 23 This order evaluates the likelihood of success on each theory, before analyzing whether the
 24 standard for a facial challenge has been satisfied and discussing the other three Winter factors.

25 **A. Constitutional Standard**

26 As a preliminary matter, the parties dispute the appropriate standard for evaluating
 27 Proposition F’s constitutionality. Because “[d]isclaimer and disclosure requirements may burden
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1 the ability to speak, but . . . do not prevent anyone from speaking,” they are subject to “exacting
2 scrutiny.”⁴ Citizens United v. FEC, 558 U.S. 310, 366 (2010). This standard “requires a
3 ‘substantial relation’ between the disclosure requirement and a ‘sufficiently important’
4 governmental interest.” Id. at 366–67. “[T]he strength of the governmental interest must reflect
5 the seriousness of the actual burden on First Amendment rights.” Davis v. FEC, 554 U.S. 724,
6 744 (2008).

7 Yes on Prop B nonetheless contends the Court should apply strict scrutiny, because “the
8 Supreme Court has avoided applying these standards in a mechanical manner, particularly when a
9 regulation appears on its face to fit within on[e] category, but has broader First Amendment
10 implications.” Mot. at 10. Neither of the cases Yes on Prop B cites for this proposition is on
11 point. Both involved laws that effectively penalized candidates who expended more than a
12 threshold amount of personal funds, by raising contribution limits or providing public funds for
13 their opponents. See Davis, 554 U.S. at 738–40; Ariz. Free Enter. Club’s Freedom Club PAC v.
14 Bennett, 564 U.S. 721, 736–37 (2011). The Court applied strict scrutiny to these schemes,
15 because they constituted an “unprecedented penalty” on campaign expenditures. Davis, 554 U.S.
16 at 739.

17 Yes on Prop B does not cite a case which employed this logic to subject disclosure or
18 disclaimer requirements to strict scrutiny. Even if the logic of Davis and Bennett could be
19 extended to the disclaimer and disclosure context, for the reasons explained below, most
20 applications of Proposition F do not impose such “a special and significant burden” on First
21 Amendment rights that strict scrutiny would apply. Cf. Davis, 554 U.S. at 739. The only possible
22 exception is its application to smaller or shorter advertisements that are completely occupied by
23 the required disclaimers. As explained below, that application of Proposition F is unconstitutional
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⁴ Before the Supreme Court clarified that disclaimer and disclosure requirements are subject to
exacting scrutiny, some courts subjected these laws to strict scrutiny. See, e.g. Cal. Republican
Party v. Fair Political Practices Comm’n, No. CIV-S-04-2144 FCD PAN, 2004 U.S. Dist. LEXIS
22160, at *13 (E.D. Cal. Oct. 27, 2004). This approach is no longer good law. See Human Life of
Wash., Inc. v. Brumsickle, 624 F.3d 990, 1013 (9th Cir. 2010) (“[T]he Supreme Court has made
clear that exacting scrutiny, not strict scrutiny, is applicable to campaign finance disclosure
requirements.”).

1 regardless of the standard of review. For the reasons explained above, the Court will subject all
2 other applications of the law to exacting scrutiny.

3 **B. Burden on Speech**

4 Yes on Prop B’s first theory of Proposition F’s constitutional infirmity is that the
5 disclaimer requirements “are so long and cumbersome” that they leave no room for political
6 advertising’s political message. Mot. at 13–17. The merits of this argument depend to some
7 extent on the type of ad. The smaller or shorter the ad, the greater the burden. This section
8 therefore proceeds by considering two categories of Yes on Prop B’s proposed advertisements:
9 those in which the required disclaimers take up more than 40% of the ad and those in which the
10 required disclaimers take up 40% or less of the ad.

11 **1. Yes on Prop B’s proposed 5” by 5” newspaper advertisements, smaller**
12 **“ear” advertisements, and digital/audio advertisements of 30 seconds or**
13 **less.**

14 San Francisco agrees that when Proposition F’s disclaimers take up more than 40% of the
15 space or run time of a given ad they impose an unconstitutional burden on political speech. Opp’n
16 (dkt. 18) at 4. Both parties have called for the Court to enjoin Proposition F’s application where
17 its disclaimer requirements will occupy more than 40% of a given Yes on Prop B advertisement.
18 Id. at 24; Mot. at 1. The Court agrees that such an injunction is necessary.

19 Yes on Prop B’s required disclaimers consume 75 to 100% of 5” by 5” newspaper
20 advertisements, smaller “ear” advertisements, and digital/audio advertisements 30 seconds or less
21 in length. Muir Decl. ¶¶ 36, 67. Proposition F virtually forecloses the use of these ads, because
22 the mandated disclaimers leave little or no room for the political message. This is especially
23 troubling because the burden is greatest for some of the most cost-effective types of advertising.
24 David Decl. ¶¶ 28–30. Perversely, a law intended to reveal the influence of money in politics may
25 have the unintended result of severely hampering the political speech of underfunded committees.
26 The First Amendment cannot tolerate a law that, as a practical matter, forecloses certain forms of
27 political speech and requires Yes on Prop B to expend precious funds on more expensive
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1 advertising or forgo its political expression altogether. Cf. Buckley v. Valeo, 424 U.S. 1, 17–19
 2 (1976) (“substantial . . . restraints on the quantity and diversity of political speech” are
 3 unconstitutional). The burden Proposition F imposes on these forms of advertising is
 4 unconstitutional whether it is reviewed under strict or exacting scrutiny.

5 Because Yes on Prop B has shown a likelihood of success on the merits of this issue, it has
 6 also demonstrated that the other Winter factors weigh in favor of a preliminary injunction. First
 7 Amendment violations constitute irreparable harm and demonstrate that the balance of hardships
 8 tips in the plaintiff’s favor. Am. Beverage Ass’n v. City & Cty. of San Francisco, 916 F.3d 749,
 9 758 (9th Cir. 2019). There is also a strong public interest in avoiding constitutional violations. Id.

10 **2. Yes on Prop B’s other proposed advertisements.**

11 Larger and longer advertisements present a different case, which the rest of this section
 12 evaluates under the exacting scrutiny framework.

13 **a. Governmental interest.**

14 The Ninth Circuit has recognized that in the referendum context, where “voters act as
 15 legislators, the government has a vital interest in providing the public with information about who
 16 is trying to sway its opinion.” Brumsickle, 624 F.3d at 1017 (internal alterations and citations
 17 omitted). “Given the complex detail involved in ballot initiatives, and the sheer volume of
 18 relevant information confronting voters, voters cannot be expected to make such a determination
 19 on their own.” Id. Disclaimer and disclosure requirements that help “voters . . . determine who is
 20 behind the advertisements seeking to shape their views” therefore serve a “sufficiently important”
 21 governmental interest. Id. at 1017–18.

22 Yes on Prop B argues that San Francisco has failed to offer any justification for the new
 23 formatting rules “[o]ther than boiler-plate statements about the need for more disclosure.” Mot. at
 24 17. It contends that without more specific arguments or a “factual record” demonstrating “why it
 25 is now necessary for disclaimers to be spoken at the beginning of audio and digital ads, and why
 26 print disclaimers must be so much bigger,” San Francisco cannot demonstrate an important
 27 governmental interest. Id.; see also Reply (dkt. 22) at 6 (“The City has provided no evidence or
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1 rationale as to why disclaimers on print ads had to change from 12-point font to 14-point font, or
 2 why an entire disclaimer must be spoken for all audio and video ads instead of just identifying the
 3 sponsor.”). But “[t]he quantum of empirical evidence needed to satisfy heightened judicial
 4 scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the
 5 justification raised.” Nixon v. Shrink Mo. Gov’t PAC, 528 U.S. 377, 391 (2000). It is hardly
 6 novel or implausible to suggest that the informational interest described above is better served by
 7 more noticeable, easier-to-read font or more obvious, difficult to ignore, and complete disclaimers.

8 **b. First Amendment burden.**

9 The next question is whether this interest “reflect[s] the seriousness of the actual burden on
 10 First Amendment rights.” Davis, 554 U.S. at 744. San Francisco argues it must, because the
 11 Supreme Court has upheld a four-second disclaimer requirement as applied to a ten-second
 12 advertisement. Opp’n at 8 (citing Citizens United, 558 U.S. at 368). San Francisco concludes that
 13 “the Supreme Court [has] recognized that disclaimers that take 40% of advertising space satisfy
 14 exacting scrutiny.” Id.

15 The Court declines the invitation to establish a bright-line rule that disclaimer requirements
 16 are not unduly burdensome so long as they consume no more than 40% of a political
 17 advertisement. The burden imposed by a given disclaimer will vary depending on the type of
 18 disclaimer, relevant advertisement, and various other case-specific factors. For instance, the four-
 19 second disclaimer in Citizens United had to be displayed, not spoken. 558 U.S. at 366. It was
 20 accompanied by a spoken disclaimer that was considerably shorter than the one required by
 21 Proposition F. Id. Yes on Prop B suggests this disclaimer format is less burdensome than a
 22 spoken disclaimer lasting for a comparable percentage of the ad. Reply at 2. That may be true for
 23 some ads, but not for others. In any event, the Court is convinced that the extent of the burden on
 24 First Amendment activity will depend on facts other than the percentage of ad forfeited to a
 25 disclaimer. A bright-line, 40% rule would lead to absurd results. Id. at 6.

26 That being said, Citizens United does establish that a disclaimer may commandeer a
 27 prominent position in a political ad without offending the First Amendment. That is the case here.
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1 With Proposition F’s application to the smaller ads enjoined, its disclaimers will not take up more
 2 than approximately 35% of any of Yes on Prop B’s proposed ads. David Decl. ¶¶ 32–33. That
 3 leaves almost two-thirds of the ad for Yes on Prop B’s pro-Prop-B messaging. The Court finds
 4 that this space is sufficient to communicate Prop B’s political message. See, e.g. Muir Decl.
 5 Ex. 1. While the burden imposed by the disclaimer requirements is not insignificant, it is not
 6 inappropriate given the important governmental interest at stake. Brumsickle, 624 F.3d at 1017–
 7 18. This is especially true because most of the disclaimer’s length is attributable to its content,
 8 which is substantially related to San Francisco’s informational interest. See supra Section C.1.

9 Yes on Prop B offers a mathematical formula of its own. It argues the disclaimer
 10 requirements must be unduly burdensome, because the Ninth Circuit has struck down a
 11 requirement that warnings about the dangers of sugar occupy 20% of printed ads for sugar-
 12 sweetened beverages. Mot. at 13–14 (citing Am. Beverage Assoc., 916 F.3d at 756). But
 13 American Beverage Association is distinguishable, because it applied a different standard to a
 14 different type of speech.

15 The Ninth Circuit evaluated the sugar warning under the Zauderer test, which applies to
 16 “required warnings on commercial products,” and asks, inter alia, whether the mandatory
 17 disclaimer is “unjustified or unduly burdensome.” Am. Beverage Assoc., 916 F.3d at 756.
 18 American Beverage Association concluded San Francisco had failed to meet its burden of showing
 19 that the sugar warning was not unjustified or unduly burdensome, because “the record here shows
 20 that a smaller warning—half the size—would accomplish Defendant’s stated goals.” Id. at 757.
 21 Specifically, a study in the record suggested that a smaller warning would still reduce
 22 consumption of sugary beverages and improve consumers’ awareness of such beverages’ dangers.
 23 Id. The Ninth Circuit acknowledged that in other circumstances, a more prominent disclaimer
 24 might be warranted. Id. (“To be clear, we do not hold that a warning occupying 10% of product
 25 labels or advertisements necessarily is valid, nor do we hold that a warning occupying more than
 26 10% of product labels or advertisements necessarily is invalid.”). There is no similar empirical
 27 evidence in the record here, and the fact that the content of the challenged disclaimer is a major
 28 factor contributing to its length suggests a smaller disclaimer would not be equally effective.

1 The applicable constitutional standard is another distinguishing factor. Exacting scrutiny,
 2 not the Zauderer test, applies in this case. Yes on Prop B oversimplifies when it argues that
 3 American Beverage Association necessarily controls the result here because political speech
 4 enjoys greater protection than commercial speech. Mot. at 14. It ignores the factual distinctions
 5 between these cases, and the fact that the political context raises concerns not present in a
 6 commercial speech case. The referendum context implicates the important governmental interest
 7 in informing voters about who is paying for political advertising. Brumsickle, 624 F.3d at 1017–
 8 18.

9 Finally, San Francisco has taken the position that Proposition F does not mandate
 10 disclaimers for live telephone calls. Opp’n at 2 n.2. Given that representation the Court need not
 11 decide whether the disclaimer requirements are constitutional when applied to this form of
 12 advertising.⁵

13 C. Secondary Contributor Disclosure Requirements

14 Yes on Prop B also argues that the secondary contributor disclosure requirements are
 15 unconstitutional, regardless of the format they appear in.

16 1. Governmental interest.

17 As explained above, the governmental interest in helping “voters . . . determine who is
 18 behind the advertisements seeking to shape their views” is “sufficiently important.” Brumsickle,
 19 624 F.3d at 1017–18.

20 Yes on Prop B argues that “the relationship between the secondary contributor and the
 21 ultimate speaker is far too attenuated” to demonstrate a substantial relation between the disclosure
 22 requirement and the informational interest. Mot. at 22. But “individuals and entities interested in
 23 funding election-related speech often join together in ad hoc organizations with creative but
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25 ⁵ In any case, the Court agrees with San Francisco’s interpretation of the applicable requirements.
 26 Yes on Prop B argues Proposition F applies to live phone calls because “[t]he City ordinance
 27 cross-references the Political Reform Act which, in turn, defines ‘advertisement’ broadly as ‘any
 28 general or public communication that is authorized and paid for by a committee for the purpose of
 supporting or opposing . . . a ballot measure.’ Reply at 2 n.1 (citing Cal. Gov’t Code
 § 84501(a)(1)). A phone call from a live volunteer to a specific voter is not a “general or public
 communication.”

1 misleading names.” ACLU v. Heller, 378 F.3d 979, 994 (9th Cir. 2004). As the Ninth Circuit has
2 recognized, “reporting and disclosure requirements can expose the actual contributors to such
3 groups and thereby provide useful information concerning the interests supporting or opposing a
4 ballot proposition,” when “simply supplying the name . . . of the organization . . . does not provide
5 useful information.” Id.

6 These observations explain the utility of the secondary contributor disclosures. If Yes on
7 Prop B only revealed that it had received funding from the United Democratic Club of San
8 Francisco, that would not be particularly revealing. The fact that the United Democratic Club of
9 San Francisco received substantial funding from the San Francisco Association of Realtors and the
10 Committee on Jobs Government Reform Fund is helpful to voters in understanding “the interests
11 supporting” the Club, see id., and therefore “who is behind the advertisements seeking to shape
12 their views.” Brumsickle, 624 F.3d at 1017–18. The secondary contributor disclosure
13 requirements effectuate the interests served by the primary disclosure requirements, by helping
14 voters understand who the primary contributors actually are.

15 The persuasive precedent Yes on Prop B cites in support of its position is distinguishable.
16 Citizens Union of New York v. Attorney General of New York, 408 F. Supp. 3d 478 (S.D.N.Y.
17 2019), struck down as unconstitutional a law that required 501(c)(3) non-profit organizations to
18 disclose the identities of donors that gave more than \$2,500 if the non-profit itself gave more than
19 \$2,500 to a 501(c)(4) organization engaged in lobbying. Id. at 504. The court concluded that
20 “[t]he link between a 501(c)(3) donor and the content of lobbying communications by the
21 501(c)(4) is too attenuated to effectively advance any informational interest.” Id. at 505. But this
22 conclusion depended on the unique nature of a 501(c)(3), which “by definition cannot engage in
23 substantial lobbying activity.” Id. It made little sense to tie donors to lobbying activities because
24 they made a donation to an organization that could not, by law, engage in substantial lobbying
25 activity. Id. That is not the case here—none of the relevant parties are 501(c)(3)s.

26 Yes on Prop B also argues that the secondary contributor disclaimers are unnecessary,
27 because other disclosure laws require that most of this information be made publicly available
28 online. Mot. at 20–21. This argument proves too much. If it were correct, no disclaimer would

1 withstand constitutional muster if all it did was provide information that was already on the
 2 internet. But the Supreme Court has approved disclaimer requirements that were at least partially
 3 redundant of reporting requirements. Citizens United, 558 U.S. at 366.

4 True, the Ninth Circuit has suggested that because disclaimer requirements “affect the
 5 content of the communication itself” they are more constitutionally suspect than laws that
 6 “requir[e] the reporting of funds used to finance speech.” Heller, 378 F.3d at 987. But it has also
 7 upheld disclaimer requirements for political advertising as an appropriate means of furthering the
 8 government’s interest in informing voters “who or what entity is trying to persuade them to vote in
 9 a certain way.” Yamada v. Snipes, 786 F.3d 1182, 1203 n.14 (9th Cir. 2015). And it has
 10 recognized that the voting public “cannot be expected to explore the myriad pressures to which
 11 they are regularly subjected” and may “render a decision based upon a thirty-second sound bite
 12 they hear the day before the election.” Cal. Pro-Life Council, Inc. v. Getman, 328 F.3d 1088,
 13 1106 (9th Cir. 2003). The government may therefore constitutionally “provide[] its voters with a
 14 useful shorthand for evaluating the speaker behind the sound bite.” Id. The secondary contributor
 15 disclaimers provide voters with the necessary information at the time they hear (or see) the “sound
 16 bite” and without having to independently “explore the myriad pressures to which they are
 17 regularly subjected.” See id. That is why they further a sufficiently important governmental
 18 interest.

19 2. First Amendment burden.

20 Yes on Prop B offers two theories of the secondary contributor disclaimer requirement’s
 21 burden on First Amendment rights. First, that the requirement infringes on the committee’s
 22 associational rights, and second that it impermissibly chills political contributions.

23 a. Associational rights.

24 According to Yes on Prop B, the secondary contributor disclaimers are a form of
 25 unconstitutional forced association because they “requir[e] that plaintiffs display on the face of
 26 every political communication the names and contribution amounts of secondary contributors with
 27 whom they have not associated” and “force[] the Committee to credit these secondary
 28

1 contributors as endorsers of that message, regardless of whether that is actually true.” Mot. at 18.
 2 In support of this argument, Yes on Prop B cites cases like Janus v. American Federation of State,
 3 County, and Municipal Employees, 138 S. Ct. 2448 (2018), for the proposition that the First
 4 Amendment guarantees the right not to associate. Mot. at 19. But Janus and its ilk are
 5 distinguishable, because Yes on Prop B is not being forced to associate with anyone. It is not, for
 6 example, being forced to fund speech it disagrees with. Cf. Janus, 138 S. Ct. at 2459–60. What it
 7 is required to do is accurately report that it has chosen to associate, at least indirectly, with certain
 8 organizations and individuals by taking money from groups they support financially.

9 Yes on Prop B’s argument reduces to a theory of forced association by way of confusion.
 10 Yes on Prop B thinks it is being forced to associate with its secondary contributors because the
 11 disclaimers will confuse voters into believing that Yes on Prop B is more closely associated with
 12 its secondary contributors than it actually is. See Mot. at 17 (“Prop. F requires that the Committee
 13 identify on the face of its political messages, individuals and entities that they have not associated
 14 with, information that will ultimately confuse and misinform the electorate.”); see also id. at 21
 15 (“[B]y requiring the names of secondary contributors to appear on the political communications of
 16 a third-party to whom they have not contributed, Prop. F implies to the voting public that those
 17 secondary contributors knew, approved, and directed their money to fund the third party’s
 18 communication.”).

19 Yes on Prop B’s problem is that the Supreme Court has flatly rejected a virtually identical
 20 voter confusion theory of association. Washington State Grange v. Washington State Republican
 21 Party, 552 U.S. 442 (2008), upheld a Washington state law that dictated that elections for “partisan
 22 offices” should occur “in two stages: a primary and a general election.” Id. at 447. Candidates
 23 declared their “party preference, or independent status” in the primary. Id. Political parties could
 24 not “prevent a candidate who [was] unaffiliated with, or even repugnant to, the party from
 25 designating it as his party of preference.” Id. The top two vote-getters in the primary advanced to
 26 the general election, maintaining the party preference they declared at the primary stage. Id. at
 27 447–48.

28 Washington’s Republican Party challenged the law on the theory that it “burden[ed] their

1 associational rights because voters [would] assume that candidates on the general election ballot
2 [were] the nominees of their preferred parties.” Id. at 454. The Court held that relying “on the
3 possibility that voters will be confused as to the meaning of the party preference designation” was
4 “sheer speculation” and “the fatal flaw in [the Republican Party’s] argument.” Id. The Supreme
5 Court concluded that its case law “reflect[ed] a greater faith in the ability of individual voters to
6 inform themselves about campaign issues.” Id. There was “simply no basis to presume that”
7 voters would misunderstand the import of the party preference designation. Id. This was
8 “especially true” because “it was the voters of Washington themselves, rather than their elected
9 representatives, who enacted” the relevant law. Id. at 455.

10 So too here. There is simply no reason to presume San Francisco voters will
11 misunderstand the import of the very disclaimers they voted to require. The only evidence Yes on
12 Prop B posits to the contrary is a single sentence in Margaret Muir’s declaration that “recipients of
13 campaign communications perceive that a person listed as a funding source on that
14 communication is associated with the message sought to be conveyed.” Muir Decl. ¶ 18. Even
15 assuming this statement is accurate and admissible, it does not establish Yes on Prop B’s
16 contention that voters will mistakenly believe the secondary contributors are more closely
17 associated with the pro-Proposition B message than is true. Voters may accurately determine that
18 secondary contributors are associated with Yes on Prop B because they financially support
19 organizations that support Yes on Prop B. But, as the Supreme Court has recognized, there is
20 simply no reason to believe voters will be deceived into believing that a closer association exists
21 by the very disclaimers they voted to require.

22 Yes on Prop B relies on California Republican Party v. Fair Political Practices
23 Commission as support for its voter-confusion theory of forced association, but that unpublished
24 case is unpersuasive here for three reasons. First, the court in Fair Political Practices applied strict
25 scrutiny, 2004 U.S. Dist. LEXIS 22160, at *13–14, which the Ninth Circuit has since determined
26 “set[s] the bar too high” in cases concerning disclaimer and disclosure requirements, Brumsickle,
27 624 F.3d at 1013.

28 Second, Fair Political Practices is distinguishable. It considered a law that “required that

1 any committee paying for an advertisement supporting or opposing a ballot measure identify on
 2 the face of the advertisement the committee’s two largest contributors of \$50,000 or more.” Fair
 3 Pol. Practices Comm’n, 2004 U.S. Dist. LEXIS 22160, at *3. The court enjoined application of
 4 that requirement to political party committees. Id. at *23. But that result rested on the unique
 5 nature of political parties. The court reasoned that it was unnecessary to disclose a political
 6 party’s financial backers, because “[i]n the context of political parties, the true ‘speaker’ is the
 7 political party.” Id. at *18. In contrast, the court recognized that “primarily formed committees”
 8 might be “ad hoc organizations with creative but misleading names.” Id. (citing Heller, 378 F.3d
 9 at 994). Disclosing the top financial contributors of primarily formed committees could, therefore,
 10 “prove useful at identifying the true ‘speaker,’” and thus further “a compelling interest in
 11 unveiling for the voters the true ‘speakers’ behind such an advertisement.” Id.

12 It is true that the result in Fair Political Practices also rested on a theory of association by
 13 voter confusion akin to Yes on Prop B’s. The court found it was “not difficult to imagine a
 14 situation in which the contributor will be identified as a major donor on an advertisement
 15 containing a political message with which the contributor does not agree.” Id. at *19. But this
 16 logic also depended in part on the unique nature of political parties. The court noted that
 17 “[c]ontributions are made to political parties for many reasons, including agreement with a party’s
 18 general philosophy, support of certain platform positions, or simply opposition to the competing
 19 party.” Id. at *18–19. And in any event, Fair Political Practices is an unreported decision of
 20 another court which predates the Supreme Court’s decision in Washington State Grange. To the
 21 extent Fair Political Practices and Washington State Grange conflict, the Supreme Court’s
 22 decision must control.

23 **b. Chilling effect on donations.**

24 Yes on Prop B also complains that the secondary contributor disclosure requirements chill
 25 political contributions. Mot. at 20. Its principal officer, Todd David, states that certain would-be
 26 contributors have declined to donate due to concerns about having their own contributor’s names
 27 listed on the committee’s advertising. See David Decl. ¶ 23–25. Even assuming this claim is true
 28

1 and admissible, the Ninth Circuit has held that the possibility that “individuals who would prefer
 2 to remain anonymous [will be deterred] from contributing to a ballot measure committee”
 3 establishes only a “modest burden” on First Amendment rights. Family PAC v. McKenna, 685
 4 F.3d 800, 806 (9th Cir. 2012) (survey showing that contributors may “think twice” about donating
 5 if it would mean publicly disclosing their names and addresses did not show that the disclosure
 6 law “actually and meaningfully deter[ed] contributors” and thus established only a “modest
 7 burden”). At most, Yes on Prop B’s evidence establishes that the chilling effect on campaign
 8 contributions is a modest burden reasonably related to the important informational interest
 9 discussed above.

10 **D. Facial Challenge**

11 Yes on Prop B seeks a preliminary injunction blocking all enforcement of Proposition F.
 12 Mot. at 1. Because this relief would “reach beyond the particular circumstances of these
 13 plaintiffs,” Yes on Prop B must “satisfy [the] standards for a facial challenge.” John Doe No. 1 v.
 14 Reed, 561 U.S. 186, 194 (2010). To do this, it must at least show that a “substantial number of
 15 [Proposition F’s] applications are unconstitutional, judged in relation to the statute’s plainly
 16 legitimate sweep.” Wash. State Grange, 552 U.S. at 450 n.6 (internal quotation marks omitted).
 17 Yes on Prop B’s burden is heavy, because “[f]acial challenges are disfavored.” Id. at 450.

18 Yes on Prop B has failed to meet its heavy burden. As discussed above, it has not even
 19 shown that Proposition F is unconstitutional as applied to all of Yes on Prop B’s proposed
 20 advertising. It offers no evidence or argument that Proposition F is generally unconstitutional in
 21 its application to the numerous other advertising for and against ballot measures in San Francisco.
 22 Its arguments are tailored to its own disclosures (the content of which varies by committee) and
 23 advertising. See generally Mot. The injunction issued by this Order applies only to
 24 Proposition F’s enforcement against Yes on Prop B.

25 Rather than addressing the standard for a facial challenge, Yes on Prop B argues that
 26 enjoining the law only as applied to its own advertisements will confuse other committees, chill
 27 speech, and lead to needless repeat litigation. Reply at 14–15. The risk of confusion and repeat
 28

1 litigation is irrelevant to the standard for a facial challenge. See Wash. State Grange, 552 U.S. at
 2 450 n.6. The possibility of a chilling effect is necessarily tied up in the merits and does not
 3 warrant a broader injunction for the reasons explained above.

4 Yes on Prop B also cites Citizens United to suggest that facial review is preferable to an
 5 as-applied challenge in these circumstances. Reply at 15. The Court’s determination that facial
 6 review was appropriate in that case rested on its conclusion that “a statute which chills speech can
 7 and must be invalidated where its facial invalidity has been demonstrated.” Citizens United, 558
 8 U.S. at 336 (emphasis added). Therein lies the crucial distinction: Yes on Prop B has not
 9 demonstrated Proposition F’s facial invalidity.

10 **E. Other Winter Factors**

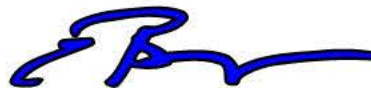
11 The “most important” Winter factor, likelihood of success on the merits, favors San
 12 Francisco. VidAngel, 869 F.3d at 856. Yes on Prop B’s arguments that the other Winter factors
 13 weigh in its favor rely on its position that it has demonstrated a likelihood of success on the merits.
 14 See Mot. at 23–24. Yes on Prop B has therefore failed to demonstrate that any of the Winter
 15 factors weigh in favor of a preliminary injunction.

16 **IV. CONCLUSION**

17 The City and County of San Francisco are enjoined from enforcing the disclaimer laws
 18 adopted through Proposition F against Yes on Prop B’s proposed 5” by 5” newspaper
 19 advertisements, smaller “ear” advertisements, and spoken disclaimers on digital or audio
 20 advertisements of thirty seconds or less. Yes on Prop B’s requested injunctive relief is otherwise
 21 denied.

22 **IT IS SO ORDERED.**

23 Dated: February 20, 2020



24 CHARLES R. BREYER
 25 United States District Judge