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COMMENTARY

*From Dark Money to Disclosure: How Prop. 211 Affects
Contributors to Nonprofits in Arizona*

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Political spending has become an increasingly regulated feature of modern business. While companies and individuals have long engaged in political advocacy - both directly and through nonprofit intermediaries - recent developments in Arizona law signal a shift toward greater transparency. At the center of this shift is Arizona's Voters' Right to Know Act and the pending Arizona Supreme Court case, *Center for Arizona Policy v. Arizona Secretary of State*.¹ Together, they raise important questions for Arizona donors about disclosure obligations and the future of political activity.

How Prop. 211 Transforms Disclosure

The Voters' Right to Know Act, also called Proposition ("Prop") 211, is Arizona's governing campaign finance disclosure law that was passed by 72% of Arizona voters in 2022.² Prop. 211 was passed in response to concerns about "dark money" – funds given by individuals or corporations used to influence elections without revealing their original source.³ Prop. 211 requires entities - including nonprofits - called "covered persons" that spend above a specific threshold on "campaign media spending"⁴ to disclose their original donors.⁵ These thresholds are \$50,000 for statewide elections and \$25,000 for local races.⁶ Donations and the names of donors

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¹ 560 P.3d 923 (Ariz. Ct. App. Div. 1 2024).

² Nicole Ludden & Alysa Horton, *Dark Money's Day in Court*, ARIZONA AGENDA (Sept. 11, 2025), <https://www.arizonaagenda.com/p/dark-moneys-day-in-court>.

³ In more technical terms, dark money exists when individuals or corporations donate to a §501(C)(4) or (C)(4) non-profit or Political Action Committee (PAC), who are not required to disclose their donors because they are a nonprofit, and then the nonprofit donates to an independent expenditure committee (IEC). Therefore, Prop. 211 disclosure requirements are notably broader than those that federal law requires.

⁴ "Campaign Media Spending" generally covers advertisements intended to influence voters. Ariz. Rev. Stat. Ann. § 16-971(2).

⁵ Ariz. Rev. Stat. Ann. § 16-973(A).

⁶ *Id.*

who contributed \$5,000 or more to a “covered person” must be disclosed.⁷ Additionally, the identity of any person that contributed over just \$2,500 in “original monies” (personal or business income)⁸ to the donor’s contribution to a covered person must be disclosed as well.⁹ Moreover, these upstream donors are subject to disclosure without prior notice by the covered person.

A Summary of the Arguments For and in Opposition of Prop. 211

The pending Arizona Supreme Court case centers on whether Prop. 211's disclosure requirements unconstitutionally burden the speech and association rights of contributing individuals and businesses. Plaintiffs argue the law is impermissibly vague, administratively unworkable, and creates a chilling effect by exposing donors to retaliation or economic harm.¹⁰ In the State's Oral Argument, it calls Prop. 211 a vital “sunlight” measure used to combat dark money.¹¹ They counter that Prop. 211 merely provides voters with information without restricting speech or prohibiting donations - a position consistent with *Citizens United*'s endorsement of disclosure.¹² However, Plaintiffs argue that Prop. 211 goes a step further than *Citizen's United* and requires disclosure for nonprofits that have never before been required to make disclosures.

The State argues – and the lower courts agreed – that Prop. 211's purpose is to ensure pure elections, prevent corporate influences, and publicize sources of campaign funds.¹³ The State further argues that Arizona's Constitution already prohibits corporations from making contributions “for the purpose of influencing any election,”¹⁴ suggesting the Framers did not view campaign contributions as private information.¹⁵

Considerations for Nonprofit Donors

Prop. 211, if upheld, creates substantial compliance challenges for Arizona nonprofits. Corporate and individual contributions to politically active nonprofits - once confidential - now trigger public disclosure if the nonprofit meets campaign spending thresholds. Corporate and individual donors can no longer treat nonprofit intermediaries as shields for anonymity. Donors who would like to remain anonymous must track not only their own contributions but also monitor whether recipient organizations approach spending thresholds that would trigger disclosure.

As a result of this law, Plaintiffs assert that reputational and economic risks have increased. Donors to nonprofits who are disclosed must assess whether employees and

⁷ *Id.*

⁸ Ariz. Rev. Stat. Ann. § 16-971(12).

⁹ Ariz. Rev. Stat. Ann. § 16-973(E).

¹⁰ Brief of Petitioner, *Ctr. for Ariz. Policy, Inc. v. Ariz. Sec'y of State* (Ariz. App. 2024) (No. 1 CA-CV 24-0272).

¹¹ Oral Argument, *Ctr. for Ariz. Policy, Inc. v. Ariz. Sec'y of State* (Ariz. 2025) (No. 1 CA-CV 24-0272).

¹² *Citizens United v. FEC*, 558 U.S. 310, 367 (2010).

¹³ IR-116, 6/21/23 Ruling at 13 (APP040).

¹⁴ Ariz. Const. art. XIV, § 18.

¹⁵ Brief of Respondent at 66, *Ctr. for Ariz. Policy, Inc. v. Ariz. Sec'y of State* (Ariz. App. 2024) (No. 1 CA-CV 24-0272).

community members will support - or oppose - their political activities. The possibility of economic retaliation or social backlash must be factored into every political spending decision. Counsel for the Plaintiffs, Andrew Gould, argues that "there has to be an avenue for people, as they want to influence policy . . . to be able to do it anonymously without having their names disclosed so that their business, their job, their social relationships are destroyed, or they're ostracized."¹⁶

Preparing for the Post-Decision Environment

If Prop. 211 is upheld, this could become a model for national and state-level dark money transparency laws and enhance electoral trust, but it may deter large anonymous donations, leading to less money in elections. If Prop. 211 is struck down, this could begin a possible nationwide trend towards strengthening speech and associational constitutional rights.

Prop. 211 reflects a growing national debate about the role of transparency in political speech. In sum, supporters argue that voters have a right to know which businesses and individuals are funding election messaging and that disclosure deters corruption and hidden influence. Critics counter that compelled disclosure - particularly through layered nonprofit structures - can chill participation and expose donors to economic or social retaliation. For Arizona donors to nonprofits, the key takeaway is not merely who wins *Center for Arizona Policy v. Arizona Secretary of State*, but what the case signals for transparency in elections going forward.

¹⁶ Nicole Ludden & Alysa Horton, *supra* note 2.