ORAL ARGUMENT NOT YET SCHEDULED

No. 18-5239

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CAMPAIGN LEGAL CENTER & DEMOCRACY 21,
Plaintiffs-Appellants,

v.

FEDERAL ELECTION COMMISSION,
Defendant-Appellee.

F8, ELI PUBLISHING, AND STEVEN J. LUND,
Intervenors-Appellees.

On Appeal from the United States District Court
for the District of Columbia, No. 1:16-cv-00752-TNM
Before the Honorable Trevor McFadden

REPLY BRIEF OF PLAINTIFFS-APPELLANTS CAMPAIGN LEGAL CENTER AND DEMOCRACY 21

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GLOSSARY OF ABBREVIATIONS

AOB	Appellants' Opening Brief
BCRA	Bipartisan Campaign Reform Act
CLC	Campaign Legal Center
CREW	Citizens for Responsibility & Ethics in Washington
FEC	Federal Election Commission
FECA	Federal Election Campaign Act
LLC	Limited Liability Company
MUR	Matter Under Review
OGC	FEC Office of General Counsel

SUMMARY OF ARGUMENT

For almost fifty years, the Federal Election Campaign Act ("FECA") has prohibited making contributions "in the name of another." 52 U.S.C. § 30122. Faced with several "crystal clear" schemes to launder contributions through corporate entities to conceal the true contributors, JA 169, three FEC Commissioners balked at enforcing this longstanding straw-donor prohibition, asserting that closely held corporations, such as respondents to the three administrative complaints here, lacked sufficient "notice" of the law's applicability, and a new "legal interpretation" of this longstanding prohibition was necessary before it could be fairly applied. JA 159-60.

On the merits, their "insufficient notice" rationale is contrary to FECA's unambiguous language and purposes, and flatly contradicted by the administrative records in these three matters (or "MURs").

Perhaps for that reason, the FEC and Intervenors-Appellees F8 LLC *et al.* ("F8") are focused above all on insulating the dismissals from judicial scrutiny. But both concede, as they must, that dismissals based on interpretations of law remain reviewable following *Citizens for Responsibility & Ethics in Wash. v. FEC*, 892 F.3d 434, 441 n.11 (D.C. Cir. 2018) ("*CREW*"). And they still cannot identify any grounds for the dismissals other than the controlling Commissioners' *legal* conclusion that finding "reason to believe" would give rise to constitutional notice concerns, much less show that this determination was something committed to the

agency's absolute discretion—although they strain to do so, resorting to *post hoc* guesswork about what the Commissioners "effectively" meant and speculating about "abstract" "agency considerations" underlying the dismissals. FEC Br. 18, 39.

This Court should decline the Appellees' invitation to shield the Commission from the accountability that FECA requires. 52 U.S.C. § 30109(a)(8).

ARGUMENT

I. APPELLANTS HAVE STANDING.

The FEC's revived challenge to the standing of Appellants Campaign Legal Center ("CLC") and Democracy 21 just duplicates the same arguments that were rejected below. Appellants extensively briefed their claims of informational and organizational injury in the district court, and supported their standing with detailed factual affidavits[1]—reproduced in an Addendum here—which Judge Bates thoroughly considered and sustained based on a careful review of this Court's precedents.

"The law is settled that 'a denial of access to information' qualifies as an injury in fact 'where a statute (on the claimants' reading) requires that the information be publicly disclosed and there is no reason to doubt their claim that the information would help them.'" *Envtl. Def. Fund v. EPA*, 922 F.3d 446, 452 (D.C.

[1] *See CLC v. FEC*, No. 16-cv-752 (D.D.C. Aug. 2, 2016), Dkt. 18 (Opp'n to FEC Mot. to Dismiss); Dkt. 18-1 (Ryan Decl.); Dkt. 18-2 (Wertheimer Decl.); *see also* Pls.' Summ. J. Mem. at 18-19, Dkt. 30.

Cir. 2019) (internal quotation marks omitted) (citing *Friends of Animals v. Jewell*, 824 F.3d 1033, 1040-41 (D.C. Cir. 2016); *Ethyl Corp. v. EPA*, 306 F.3d 1144, 1148 (D.C. Cir. 2002); and *FEC v. Akins*, 524 U.S. 11, 21 (1998)).

The district court was satisfied that CLC and Democracy 21 met this test: "'[g]iven [their] goals and organizational activities, there is no reason to doubt' that [Appellants] suffered an injury in fact when they were denied information concerning the contributions identified in these three administrative complaints." JA 42. The Commission provides no basis for reversing this holding.

A. The dismissals have deprived CLC and Democracy 21 of information required to be disclosed under FECA.

The FEC argued below that Appellants possessed "the very information they could possibly obtain," but the district court found otherwise with respect to three of the five MURs. JA 41 ("[I]t is clear that the Commission's General Counsel ["OGC"] did not believe it knew the entire story about the contributions identified in these three administrative complaints."). Nothing has changed since then.

The FEC nevertheless reasserts, without elaboration, that "much of the potential information" Appellants seek is "already public." FEC Br. 20. This is demonstrably contradicted by the record.

Specialty Group and Kingston Pike, for example, were formed by William S. Rose, Jr. in the weeks before the 2012 elections, shortly before making a series of contributions totaling more than $12 million. JA 255-56. The entities were

concededly "funded with private capital," JA 257, but there is nothing in the record, or anywhere else, that suggests either generated $12 million in revenue during the six days between their formation and Specialty Group's first contribution, nor did respondents "identify the source of the 'private capital,'" explain "what, if anything, the sources of the capital received in exchange for their funds," or "state who . . . decided that the funds would be contributed to FreedomWorks." JA 257-58, 262. As OGC concluded, "the facts are disputed." JA 267.

And, although Appellants and OGC have highlighted Steven J. Lund's apparent connection to F8 LLC (and his acknowledged connection to Eli Publishing), OGC only recommended finding "reason to believe" that F8 was "not the true source of the $1 million contribution," JA 20 (Compl. ¶ 37), and specifically left open the possible role of "Unknown Respondents" in connection with that entity. *Id.* (Compl. ¶ 39). *See also* JA 122 (recommending an investigation "*to determine whether others played a role* in funding th[e] contributions [from F8 and Eli Publishing]") (emphasis added).

Nor is Appellants' informational injury solely contingent on their political committee allegations, as the Commission suggests. FEC Br. 20. FECA and Commission regulations affirmatively require complete and accurate disclosure of the true sources of funds contributed to influence federal elections. *See, e.g.*, 52 U.S.C. §§ 30102, 30103, 30104, 30122; 11 C.F.R. § 110.4(b). And the straw-donor

allegations here center on FECA provisions aimed at providing "the electorate with information as to where political campaign money comes from . . . to aid the voters in evaluating those who seek federal office." *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976).

As the Commission and courts have repeatedly acknowledged, section 30122 "promotes full disclosure of the actual source of political contributions." JA 260; *United States v. O'Donnell*, 608 F.3d 546, 553-54 (9th Cir. 2010). The implication that violations of FECA's straw-donor prohibition cannot give rise to a cognizable informational injury is at odds with the statute's text, purpose, and history—not to mention with the Commission's consistent acknowledgment over many decades that the provision's essential purpose is disclosure. *See* Appellants' Opening Br. ("AOB") 40-42.[2]

B. CLC and Democracy 21 are harmed by their inability to access the information.

Article III standing requirements do not, as the FEC asserts, categorically limit cognizable informational injuries to voters or "participa[nts] in the political process." FEC Br. 20.

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[2] *See also, e.g.*, S. Rep. No. 93-689, at 2 (1974) (noting FECA was initially "predicated upon the principle of public disclosure"); FEC Mem. in Opp'n to Mots. to Dismiss, *FEC v. Johnson*, No. 2:15-cv-00439-DB, 2017 WL 8224819 (D. Utah Nov. 17, 2017) (confirming that section 30122 "promotes the important and long-recognized government interests in disclosure of the true sources and amounts of campaign contributions").

As a threshold matter, this argument properly sounds in prudential, not constitutional, standing. The FEC disclaims any prudential standing argument, but the zone-of-interests test "is not a demanding one" and Appellants easily clear that bar as well. *Mendoza v. Perez*, 754 F.3d 1002, 1017 (D.C. Cir. 2014).

For Article III purposes, as the lower court correctly held, there is no support for the claim that informational injury must bear on "personal voting" to be cognizable under FECA, and "all other proffered uses [of information allegedly withheld] are legally insufficient." JA 44. Moreover, by definition, any information required to be disclosed under FECA is "related" to or "useful" to voting. *See, e.g.*, 52 U.S.C. § 30101(8)(A)(i) (defining "contribution" as "any gift" made "for the purpose of *influencing any election*") (emphasis added). The FEC cannot seriously claim that the identities of donors giving as much as $12 million to influence elections is not "useful" to informed voting.

Instead, the Commission maintains that Appellants need *themselves be voters* or "political participants." Governing precedent rejects this contention. FEC Br. 21-22. *Akins*, for example, "found nothing in [FECA] that suggests Congress intended to exclude voters from the benefits of these provisions, *or otherwise to restrict standing*." 524 U.S. at 20 (emphasis added). Nor does FECA command uniquely narrow standards for informational injury. *See Shays v. FEC*, 414 F.3d 76, 90 (D.C.

Cir. 2005) (rejecting claim "that campaign finance laws require unique standing rules").

Therefore, "[l]ike the plaintiffs in *Friends of Animals*, [Appellants] here have proposed valid uses, related to their organizational missions, for the information that they seek." JA 44. As recognized below, Appellants "are engaged in a number of campaign-finance related activities—including public education, litigation, administrative proceedings, and legislative reform efforts—where the sought-after information would likely prove useful." JA 42. *See* Wertheimer Decl. ¶¶ 4, 5, 11; Ryan Decl. ¶¶ 7, 12-15, 18-21, 31-32. Appellants have "established their informational standing": the dismissals "deprived [them] of information to which they are entitled by statute," and they have shown "that the information would be helpful to them." *Id.*

Tellingly, the Commission cannot articulate how the information Appellants seek is in any way disconnected from "the type of harm Congress sought to prevent" by enacting these disclosure provisions. *Elec. Privacy Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity*, 878 F.3d 371, 378 (D.C. Cir. 2018) ("*EPIC*"). Nor has the Commission "explained why this Court should demand a more specific showing from plaintiffs under this Act, *which is built around extensive disclosure requirements*, than the D.C. Circuit has required under the Endangered

Species Act, where the reporting requirements are merely 'secondary.'" JA 44 (emphasis added).

Finally, Appellants have not abandoned organizational standing. *See* FEC Br. 19 n.1. Appellants demonstrated both elements of organizational standing below, by showing that the dismissals "injured the organization[s'] interest[s]"—specifically, their informational interests—and that each organization "used its resources to counteract that harm." *People for the Ethical Treatment of Animals v. USDA*, 797 F.3d 1087, 1094 (D.C. Cir. 2015). *See* Ryan Decl. ¶¶ 13-15, 25-26, 31-32; *see also* JA 12-14 (Compl. ¶¶ 11-16).[3]

II. APPELLEES' CLAIMS OF UNREVIEWABILITY FAIL.

Appellees advance an all-embracing principle of unreviewability that would cover any FEC dismissal decision that invokes the words "prosecutorial discretion"; can be retrospectively recast as based on "litigation risk"; or roots its statutory interpretations in an analysis of judicial precedent and the Constitution. This extends *CREW* well past its breaking point.

[3] The underlying harm in this case is informational with respect to either claimed basis for standing, and in similar circumstances, this Court has "not engaged in a separate analysis of informational and organizational injury." *EPIC*, 878 F.3d at 381 (Williams, J., concurring). But insofar as their theory of standing necessitates demonstrating that CLC and Democracy 21 "used [their] resources to counteract" the informational harm, they have done so. *See* Ryan Decl. ¶¶ 13-15, 25-26, 31-32.

A. The demand that *CREW* be treated as a self-executing "magic words" limitation on judicial review is unsustainable.

1. *CREW* does not bar review of dismissals founded on legal error.

According to the Commission, *CREW* created a rule of reflexive unreviewability for any dismissal decision that contains the words "prosecutorial discretion" because "this panel cannot overrule precedent." FEC Br. 25. But neither could the panel in *CREW*, which is why the decision must be read in harmony with *Akins* and other decisions. *See* AOB 18-19, 26-29. If a dismissal is premised on legal error, this Court retains the ability to say so.

The Commission's uncompromising approach to its own discretion following *CREW* is out of step with numerous relevant authorities—most notably, as Appellants have explained, the *en banc* and Supreme Court decisions in *Akins*. *See* AOB 26-29 (citing, *inter alia*, *Akins*, 524 U.S. at 26; *Akins v. FEC*, 101 F.3d 731, 734 (D.C. Cir. 1996) (en banc), *vacated on other grounds*, 524 U.S. 11 (1998); *Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995); *Democratic Cong. Campaign Comm. v. FEC*, 831 F.2d 1131, 1133-34 (D.C. Cir. 1987) ("*DCCC*")). Elsewhere, too, this Court has recognized that section 30109(a)(8) "creates a cause of action of considerable breadth." *Nader v. FEC*, 725 F.3d 226, 228 (D.C. Cir. 2013); *cf. Unity08 v. FEC*, 596 F.3d 861, 866-67 (D.C. Cir. 2010) (noting FECA's express authorization of preenforcement review in two

"exceptionally compelling" circumstances—including suits under section 30109(a)(8) "about violations . . . on which the Commission has failed to act").

In any event, however much *CREW* is ultimately understood to have transformed the reviewability of FEC non-enforcement decisions, it still would not preclude review here. *CREW* recognized that "[t]he interpretation an agency gives to a statute is not committed to the agency's unreviewable discretion." 892 F.3d at 441 n.11. And, as Appellants have explained, these dismissals were premised on *legal* determinations; *CREW* does not apply. *See* AOB 19-23.

The dismissal in *CREW* rested on very different facts and was justified on the basis of multiple discretionary factors. The administrative complaint there was dismissed only after a unanimous reason-to-believe vote and a difficult investigation into a single, "defunct" association that obstructed OGC's efforts at every turn. 892 F.3d at 438. *See* AOB 23-26. Here, by contrast, there were no such logistical obstacles to justify a discretionary dismissal—only legal concerns raised by the controlling Commissioners.

In an effort to nevertheless escape the review that *CREW* expressly reserved for legal determinations, the Commission here characterizes the controlling Commissioners' *constitutional* analysis as non-legal. FEC Br. 29-30, 36-37. Intervenors likewise argue that an "exercise of discretion" based on the controlling Commissioners' belief that non-enforcement was "compelled" under their "review

of the legal landscape" and constitutional rights is *per se* immunized from judicial review. F8 Br. 28. Otherwise put, dismissals based on interpretations of FECA are reviewable; dismissals based on interpretations of FECA given "the legal landscape" and the Constitution are not.

This is absolutely backwards. The FEC cites no case holding an agency's analysis of the Constitution or judicial precedent *unreviewable*, as indeed, this Court has warned that an agency may receive no deference at all in this area. *See*, *e.g.*, *Akins*, 101 F.3d at 740; *see also* AOB 17, 38. The FEC, by discussing at length the degree to which the Commissioners' constitutional analysis warrants *deference*, FEC Br. 36-37, tacitly admits this principle: the only question is the *standard* of review for an agency's interpretations of case law, not whether review is available in the first instance.

2. Appellees identify no basis for the dismissals unconnected to "legal and constitutional" notice concerns.

The linchpin of the Commissioners' "discretionary" analysis was their legally and factually unsupportable conclusion that five distinct administrative complaints required dismissal because all respondents lacked notice of a clear statutory prohibition.

Of course, the FEC now strains to expand the "notice" rationale—which was entirely based on constitutional and legal considerations—into a wide-ranging examination of "the many variables" that *conceivably* could have undergirded the

FEC's exercise of discretion. FEC Br. 27. This post hoc attempt to manufacture additional "discretionary" bases for the dismissals unconnected to the notice rationale do not succeed; moreover, they "come too late and from the wrong source." *DCCC*, 831 F.2d at 1135 n.6.

This is especially the case because the "new" discretionary bases the FEC identifies are drawn from the controlling Commissioners' 240-word *quotation* of a passage from *Heckler v. Chaney*, 470 U.S. 821 (1985)—which appears in a footnote to their Statement without any corresponding discussion of how or whether it applies to these complaints. JA 159 n.69. According to Appellees, this token reference to *Heckler* amounts to a discretionary judgment about the FEC's "enforcement priorities" and policy goals. F8 Br. 17; FEC Br. 26-32. *See also* FEC Summ. J. Reply at 4-5, Dkt. 41 (quoting *Heckler* as exclusive evidence that the controlling Commissioners analyzed "'whether agency resources are better spent on this violation or another [and] whether the particular enforcement action requested best fits the agency's overall policies'"). But simply repeating that the controlling Commissioners "did consider the *Chaney* factors," FEC Br. 27, cannot make it so.

The FEC demurs by accusing *Appellants* of "assert[ing] that the controlling Commissioners did not actually exercise prosecutorial discretion because they did not use certain words." FEC Br. 26. This is pure projection: Appellants have cautioned *against* according talismanic effect to any mere use of the words

"prosecutorial discretion" or "*Heckler*." *See, e.g.*, AOB 13, 18, 26-29, 36. They have certainly never "demand[ed]" particular "buzzwords" (FEC Br. 27) to differentiate reviewable from unreviewable dismissals. The controlling Commissioners simply referenced no factors *other than legal and constitutional notice concerns* to justify their votes against reason to believe.

Intervenors take a slightly different tack, suggesting the "'factors which are peculiarly within' the agency's expertise" identified in *Heckler*—"(1) 'whether a violation has occurred'; (2) 'whether the agency is likely to succeed if it acts'; and (3) 'whether the particular enforcement action requested best fits the agency's overall policies'"—"involve reliance on propositions of law." F8 Br. 28-29 (quoting *Heckler*, 470 U.S. at 831). Even if that were true, Intervenors do not contend that *these* dismissals considered, much less rested on, any of those grounds. It defies logic to argue that because the discretionary factors cited in *Heckler* supposedly involved "propositions of law," it follows that *these* dismissals—which also involved propositions of law—must also have rested on factors "peculiarly within" the agency's expertise.

3. The Commission's demands for unbounded prosecutorial discretion would vitiate FECA's judicial review provision and heighten concerns about agency abdication.

Both Appellees ascribe to Appellants various arguments about FECA's enforcement scheme that they have not pressed. In particular, Appellees attempt to

elide the distinction between judicial review for legal error under section 30109(a)(8) and FECA's limited private right of action; the latter is not directly implicated here, so there is no danger of "transfer[ring] prosecutorial discretion to individual complainants" or "plac[ing] the enforcement of the campaign finance laws in the hands of potentially politically-motivated complainants." F8 Br. 20; *see also* FEC Br. 30-31 (conflating arguments of Amicus and Appellants to suggest *Appellants* have advanced a view under which "split votes" must "routinely serve as springboards" to citizen suits). Recognizing the availability of judicial review for dismissals based on legal error does not empower "partisan activists to pursue their own enforcement priorities." F8 Br. 6. It prevents the Commission from dismissing complaints based on erroneous interpretations of law.

As both Appellees also emphasize, "FECA's enforcement structure is built around bipartisan consensus." F8 Br. 20; *see also* FEC Br. 30. But neither explains why that should justify treating a dismissal founded on the legal views of a partisan bloc of three Commissioners as automatically unreviewable if the decision is couched in discretionary terms.[4]

[4] Incredibly, the FEC suggests that according absolute unreviewability to *non*-majority dismissals invoking "discretion"—as opposed to reserving it for decisions that garner four votes—would be *more* consonant with the statutory scheme, FEC Br. 30, even though this Court has explicitly "resist[ed] confining the judicial check to cases in which . . . the Commission 'act[s] on the merits.'" *DCCC*, 831 F.2d at 1134 (declining to "immunize" deadlock dismissal from review under *Heckler*).

FECA's entire enforcement regime is structured to prevent non-majority blocs from entrenching their incorrect interpretations of law. Although these interpretations "would not be binding legal precedent," *Common Cause v. FEC*, 842 F.2d 436, 449 n.32 (D.C. Cir. 1988), as a practical matter, deadlock "decisions" *do* constrain future enforcement and the conduct of regulated parties: here, by signaling that there will be no liability unless the controlling Commissioners' standard is met. Even if the Commission later chose to depart from this interpretation, any respondent would have a potent defense to enforcement. When the controlling view is infected with legal error about FECA's substantive requirements, according it absolute immunity would crystallize those errors ever afterward.

This concern is exacerbated when there is reason to believe the Commission has abdicated its enforcement mandate, a charge Appellants have raised and documented repeatedly in this litigation. *See, e.g.*, AOB 33 n.3 (observing that FEC's citation to "a lone enforcement case involving straw donors . . . does not suffice to defeat concerns about agency abdication"); *id.* at 44 & n.7 (noting Commission's apparent intent to "give every regulated class one bite of the apple before it will enforce the law" and its continuing refusal to enforce section 30122); *id.* at 50-52 (explaining that controlling Commissioners' notice theory was fabricated to avoid enforcement). Indeed, abdication concerns are evident in the Commission's entire posture toward these matters. By declining to pursue five distinct enforcement

complaints based on the contrived need for "public guidance," and then withholding that "guidance" for more than four years, the controlling Commissioners effectively sanctioned ongoing straw-donor violations through multiple subsequent election cycles. *See* AOB 33 & n.3; JA 169-70.

The FEC counters that it has "continued to pursue" enforcement in "similar" cases, but points to a grand total of three MURs—none of which involve comparable legal or factual situations. FEC Br. 31. Even though MUR 6920 (American Conservative Union ("ACU")) did involve a similar theory of liability under section 30122 and the FEC took action against that corporate respondent, it did so for "conduct [that occurred] prior to the decision here," FEC Br. 31—which meant that ACU also lacked "notice of the governing norm." JA 148. These cases only demonstrate how inconsistent the FEC's regulation of straw donors has been. *See* AOB 33 n.3, 44 n.7. The whole point of judicial review for FEC dismissals is to guard against such arbitrariness. *Common Cause*, 842 F.2d at 449 (recognizing that "meaningful" review avoids the "possibility that similarly situated parties may not be treated evenhandedly").

B. The Commission did not dismiss the political committee claims as an exercise of prosecutorial discretion.

The controlling Commissioners at no point even suggested they were dismissing the alleged violations of 52 U.S.C. §§ 30102, 30103, and 30104 on discretionary grounds. They simply chose "not [to] discuss" them, because "OGC

did not recommend that we find reason to believe" on those claims. JA 152 n.36. However, the Commission now contends (at 39) that the "political committee claims were effectively also dismissed as a matter of prosecutorial discretion." How the FEC divines—three years later—that these were the "effective" grounds upon which the controlling Commissioners proceeded is unexplained. Regardless, this was not the reason they gave, and cannot be the basis for withholding review.

C. The controlling Commissioners' new "legal standard" is ripe for review and contrary to law.

For obvious reasons, the FEC has not characterized the announcement of a new "intent" standard for application of section 30122 as a matter committed to its unfettered discretion. Instead, it tries to shield this part of the controlling Commissioners' decision from judicial scrutiny on ripeness grounds.

But the formulation of an intent standard was essential to the controlling Commissioners' reasoning. *See* AOB 30-33. The FEC now attempts to decouple their "intent" standard from their "fair notice" rationale. But it does not dispute that one major reason provided by the controlling Commissioners for their refusal to proceed was their belief that section 30122, as written, did not adequately notify corporations about what it proscribed, and therefore had the potential to "chill" constitutionally protected activity. FEC Br. 54.

Appellees also have no answer for Appellants' contention that they have suffered injury from the controlling Commissioners' standard because, as a result,

they have been denied disclosure in connection to *these* three straw-donor complaints. *See* AOB 32. The FEC assures that a Commission vote against reason to believe "under the proposed standard in a future matter" would be reviewable, FEC Br. 55, but that possibility hardly ameliorates Appellants' current informational injury.

Withholding review of the standard would cut to the very heart of Congress's intent when it created informational rights under FECA. Although the FEC now equivocates about the degree to which section 30122 *directly* requires reporting, FEC Br. 55, there is no serious dispute that the straw-donor prohibition was enacted to ensure disclosure of campaign spending—to say nothing of the obvious informational purposes underlying the political committee provisions. *See supra* Part I. Courts have recognized congressional purpose as a factor in ripeness analysis when delay would frustrate that purpose. *See*, *e.g.*, *Pacific Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 202 (1983).

On the merits, the control group's "subjective intent" standard is contrary to law because it has no basis in FECA and is not compelled by the First Amendment. The text of section 30122 contains no intent requirement, as the FEC is forced to acknowledge (at 58). Elsewhere FECA sets forth an alternative enforcement regime for "knowing and willful" violations, providing for higher civil fines and potential criminal prosecution. 52 U.S.C. § 30109(a)(5)(B)-(C), (d)(1)(D). The Commission

spills much ink arguing that these stepped-up provisions do not suggest that section 30122 was intended to operate without a scienter requirement, but it is a fundamental principle of statutory interpretation that Congress means what it says—or in the case of section 30122, what it does not say. This Court should reject the invitation "to create ambiguity where the statute's text and structure suggest none." *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 227 (2008).

III. THE DISMISSALS WERE CONTRARY TO LAW.

The parties agree that when the FEC dismisses an enforcement complaint based upon interpretations of FECA, it is reviewed under a "contrary to law" standard, 52 U.S.C. § 30109(a)(8)(C), that looks to whether the dismissal (1) rests on an impermissible interpretation of law, or (2) is "arbitrary or capricious, or an abuse of discretion." *Orloski v. FEC*, 795 F.2d 156, 161 (D.C. Cir. 1986). The parties diverge, however, on the treatment of the controlling Commissioners' constitutional arguments and interpretations of case law—where Appellees claim that dismissals justified on the basis of constitutional considerations, if called "discretionary," must escape judicial scrutiny entirely. But as already explained, AOB 37-39, these dismissals were based entirely on legal questions well within the courts' relative expertise, and should be reviewed *de novo*.

A. Dismissal of the straw-donor claims was contrary to law.

The FEC's chief complaint is that Appellants spend too much time on the "reductive" proposition that section 30122 is unambiguous. FEC Br. 40. But it fails to acknowledge why this would be: the controlling Commissioners justified their dismissals based entirely on their "insufficient legal notice" theory, so the law's clarity is central to the defensibility of their decision-making.

1. The statute is not ambiguous.

The controlling Commissioners recognized that the straw donor prohibition specifically covers "partnerships, *corporations* and other organizations," JA 153 (emphasis added), and that "closely held corporations and corporate LLCs may be considered straw donors in violation of section 30122." JA 154, 158.

Nevertheless, the FEC now characterizes section 30122 as ambiguous because it is "doubtful" that "Congress anticipated corporations . . . making contributions." FEC Br. 42. However, "the best evidence of Congress's intent is the statutory text." *NFIB v. Sebelius*, 567 U.S. 519, 544 (2012). And FECA, on its face, prohibits straw donors in the form of a "*corporation* . . . or any other organization." 52 U.S.C. § 30101(11) (emphasis added). Indeed, the FEC admitted below that Congress likely would *not* "have wished to exempt corporations from the prohibition on straw donors." FEC Summ. J. Mem. at 26, Dkt. 34.

The Commission has no basis for even turning to congressional intent. "If the statutory language is unambiguous," the "inquiry" into legislative purpose "ceases." *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016). But even if the statute were unclear, the FEC's speculative arguments about congressional intent are repudiated by the legislative history. As Appellants have explained, AOB 42 n.6, Congress was well aware of the possibility of corporate contributions, and engaged in a massive legislative undertaking, culminating in the Bipartisan Campaign Reform Act of 2002 ("BCRA"), to halt the millions of dollars in corporate "soft money" donated to federal party committees in the 1990s.[5]

The FEC's final attempt to bolster its theory of statutory ambiguity is a strained analogy between this case and *Van Hollen v. FEC*, 811 F.3d 486 (2016). The latter challenged an FEC rule, 11 C.F.R. § 104.20(c)(10), that narrowed federal disclosure requirements for corporations and unions newly permitted to fund certain "electioneering communications" following *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007). The statute required "persons" funding these communications

[5] The FEC tries to erase the entire soft-money experience, arguing (at 43) that the massive corporate donations to federal party committees were not "'contributions' under FECA because they were not 'hard money.'" Whether the FEC then or now classifies soft-money donations as "contributions" is irrelevant to the underlying point, which is that Congress certainly was aware of large-scale corporate campaign giving before BCRA. *McConnell v. FEC*, 540 U.S. 93, 122-23 (2003); *see also id.* at 123 (noting that a "literal reading" of FECA would have always required "hard money" limits on all party donations).

to disclose *all* "contributors who contributed an aggregate amount of $1,000 or more," 52 U.S.C. § 30104(f)(2)(E)-(F), but the FEC rule required corporations and unions to report only "contributors" who gave "*for the purpose* of furthering electioneering communications." 11 C.F.R. § 104.20(c)(10) (emphasis added).

Van Hollen upheld the rule at *Chevron* Step Two, but only after finding that Congress's use of the terms "contributors" and "contributed" was unclear. 811 F.3d at 491. FECA defines "contribution" as something given "for the purpose of influencing any election for Federal office," 52 U.S.C. § 30101(8)(A)(i), but the FEC concluded that it was uncertain whether all persons who contributed to a corporation—"such as shareholders who have acquired stock" or "customers who have purchased the corporation's products or services"—met this definition. 811 F.3d at 495.

The FEC suggests that *Van Hollen* is analogous because it too was concerned with the scope of the term "person" under FECA, and whether or how it covered "corporations," 52 U.S.C. § 30101(11). This distorts the decision. *Van Hollen* found no ambiguity in the definition of "person," nor did the Commission argue that corporations should be exempt from disclosure on that basis.

Instead, the FEC was defending a rule defining the "contributors" to a corporation—a term the Court specifically found unclear in this context, and thus interpreted as an "implicit delegation" to the FEC. 811 F.3d at 497. There is no such

"statutory gap" here. *Id.* *Van Hollen* certainly did not suggest that mere speculation about congressional "expectations" would render an *unambiguous* statutory provision so unclear that it failed to give notice to the "persons" it clearly covered.

2. Commission guidance addressing closely held corporations did not "confuse" application of section 30122.

The FEC does not seriously contest the statute's clarity. The crux of its defense is that "[e]ven if Section 30122 [w]as [c]lear," the FEC's administrative guidance on the attribution of corporate contributions may have "reasonably . . . confused" these respondents. FEC Br. 44; JA 421.

But the FEC concedes that none of the administrative guidance cited by the controlling Commissioners concerned straw donors or the application of section 30122. Instead, as Appellants have discussed, AOB 47-50, these authorities concerned the default rules for attributing corporate contributions to their original source for the purposes of applying the *corporate contribution ban* at 52 U.S.C. § 30118. *See* JA 155-57. Neither Appellee explains how this guidance, given that it is all off point, could possibly support the theory that respondents were "confused" about the scope of section 30122.

The FEC also denies that these authorities concerned only "default" rules, arguing that "a corporate contribution or expenditure was not just 'typically' attributed to the corporation under Commission authorities, but rather it was attributed to the corporation even when an individual was its true source." FEC Br.

46. This argument is equally misplaced. Even assuming the attribution rules did function as more than a "default," they were still relevant only in cases involving violations of the corporate contribution ban.

Indeed, accepting the FEC's argument would have destabilizing implications for the efficacy of the straw-donor ban, because contributions from *most* types of entities are subject to similar default attribution rules, including partnerships, 11 C.F.R. § 110.1(e), and political commitees, 52 U.S.C. § 30116(a)(2), (8). If the existence of such default rules truly casts doubt on the applicability of section 30122, any entity engaged in a straw-donor scheme could also be "confused" about the provision's reach. A reading of the law that would unravel the entire statutory scheme is not defensible.

3. The "inadequate notice" theory is refuted by the record.

Neither Appellee contends that any respondents raised notice concerns in response to these three admininistrative complaints. AOB 50. Indeed, the only record evidence the FEC raises to support this "notice" theory comes from MUR 6485 (W Spann), which is not before this Court. Reliance on evidence from a different case to establish what respondents *here* actually knew or did not know is inherently arbitrary and capricious.

The FEC asserts that Edward Conard, respondent in MUR 6485, received a legal opinion from Ropes & Gray concluding that he could "create an entity for the

sole purpose of making a [contribution]. . . [which] would not require full public disclosure of his name.'" FEC Br. 47 (citing JA 149 & n.8). However, as the FEC fails to mention, the opinion also acknowledged that "the FEC might seek to look through the contributing entity to the underlying contributor." W Spann/Conard Resp., Cohen Decl. ¶ 8, MUR 6485 (Oct. 3, 2011), https://www.fec.gov/files/legal/murs/6485/17044423850.pdf. A fair reading of this opinion could not lead the reasonable person to believe that laundering a contribution through a corporation was a lawful way to avoid disclosure; on the contrary, it explicitly warned Conard that the FEC might pierce the corporate veil to ascertain "the underlying contributor."

Regardless, the administrative respondents *here* cannot—and did not—rely on confidential legal advice that someone else received.

4. The "dispute" regarding the controlling Commissioners' new standard does not signify statutory ambiguity.

The FEC also attempts to manufacture a "lack of pre-existing clarity" by pointing to a "dispute" between the controlling and dissenting Commissioners regarding the proper standard for applying section 30122 to corporate straw donors. FEC Br. 49.

But this "dispute" is entirely of the controlling Commissioners' making. They were the only ones—not the dissenting Commissioners, JA 165, 170—who believed that applying the law as written would be "manifestly unfair" without the addition

of a narrowing "intent" standard, JA 154, 158-59. The FEC's argument about what this purported "debate" signifies is utterly circular, boiling down to the claim that statute was unclear because the controlling group "debated" its clarity.

Appellees fare no better when they argue that legal ambiguity can be inferred from what they characterize as OGC's evolving approach to enforcing section 30122. FEC Br. 49-50; F8 Br. 36. The Commission claims OGC first focused on whether the true donor exercised "direction and control" over the corporate straw donor, but then "clarified" that the analysis should consider "whether a source transmitted property to another with the purpose that it be used to make or reimburse a contribution." FEC Br. 49. But insofar as OGC mentioned "direction and control" at all, it was irrelevant to the outcome in these MURs: OGC recommended finding reason to believe without regard or reference to who "controlled or directed" the corporate contributions from Eli Publishing, F8, Specialty Group, and Kingston. JA 116-18, 261-64; *see also* MUR 6485 at 21 (Suppl.), https://www.fec.gov/files/legal/murs/6485/16044390492.pdf (OGC's "revised" analysis expressly "d[id] not alter [OGC's] stated conclusions" as to W Spann).

Indeed, Appellants' administrative complaints did not rely on a "direction and control" theory, but instead focused on how the corporate respondents had not generated sufficient commercial revenue—or any revenue—to cover their million-dollar campaign contributions. *See, e.g.*, JA 117-18; JA 261-64. In the relevant time

period, the corporate respondents had no significant sources of revenue outside of funds received from the unknown true donors, and conducted little or no business beyond serving as conduits for campaign contributions. AOB 6-9; JA 117-118; *see also* F8 Br. 37 n.8 (noting only that F8 and Eli Publishing "were not . . . created for the purpose of the contributions" but again sidestepping whether they served as conduits). These were not "difficult case[s]." JA 165.

The controlling Commissioners' fixation on formulating a new standard to address all imaginable complications in the application of section 30122 to corporations—none of which were actually presented in these three MURs—was a red herring. Perhaps this "debate" would be relevant to some hypothetical, more difficult case. But it was not necessary to resolve these three administrative complaints.

B. Failing to address the political committee allegations was arbitrary and capricious on its face.

Appellees' only justification for the controlling Commissioners' failure to consider the political committee allegations is that "OGC did not recommend" a reason-to-believe finding "with respect to [these] allegations," FEC Br. 52; F8 Br. 40, and the Commissioners were entitled to rest on that advice.

This argument elides key language from OGC's recommendations. OGC did not recommend finding *no* reason to believe, JA 152 n.36, but instead counseled the Commission to "take no action *at this time*" as to those allegations. JA 109 (emphasis

added). Its recommendation was only that the Commissioners investigate the straw-donor allegations *before*—not to the exclusion of—the political committee claims. JA 121. The Commission cannot excuse its failure to consider the political committee status of respondents based upon an OGC recommendation that did not advise against doing so.

Because the controlling Commissioners declined to consider whether the respondent corporations were straw donors, they were obligated to analyze whether appellants' alternative theory of violation merited an investigation. The FEC now proposes a new justification for their failure, arguing that "the record lacked a basis to find reason to believe that the corporate respondents were political committees." FEC Br. 52. This explanation appeared in neither OGC's recommendations nor the controlling Statement of Reasons.

Moreover, the claim is wrong. Both F8 LLC and Specialty Group made million-dollar contributions to federal super PACs and appeared to have campaign activity as their *sole* purpose in the relevant period. JA 117-18, 257-58. Specialty Group was also admittedly funded "in part for 'political purposes.'" JA 251. Eli Publishing's scant sales revenue of $72,000 in 2011 and $70,000 in 2012 was eclipsed by its $1 million contribution. JA 110. The record readily supported finding that the corporate respondents were "political committees," because they (1) had received/made "contributions" or "expenditures" of $1,000 or more, 52 U.S.C.

§ 30101(4)(A), and (2) had a "major purpose" of influencing the "nomination or election of a candidate," *Buckley*, 424 U.S. at 79. If the controlling Commissioners were sincerely concerned about the "novelty" of enforcing section 30122 against corporate straw donors, taking the political committee route would have been a well-established way to ensure public disclosure of the true sources of these campaign contributions.

CONCLUSION

For these reasons and those stated in Appellants' Opening Brief, the district court's ruling should be reversed.

Dated: September 4, 2019

Respectfully submitted,

/s/ Megan P. McAllen

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CERTIFICATE OF COMPLIANCE

This response complies with the word limit of Fed. R. App. P. 32(a)(7)(B)(ii) because it contains 6,450 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

This filing complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this response has been prepared using Microsoft Office Word 2016 in Times New Roman 14-point font.

/s/ Megan P. McAllen
Megan P. McAllen

CERTIFICATE OF SERVICE

I hereby certify that on September 4, 2019, I electronically filed this Reply Brief with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, thereby serving all persons required to be served.

I further certify that I caused the required copies of the Reply Brief to be filed with the Clerk of the Court.

/s/ Megan P. McAllen
Megan P. McAllen

ADDENDUM

ADDENDUM – TABLE OF CONTENTS

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER and DEMOCRACY 21, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant, F8, ELI PUBLISHING, and STEVEN J. LUND, Intervenor-Defendants.	Civil Action No: 1:16-cv-00752-JDB

DECLARATION OF PAUL S. RYAN

I, Paul S. Ryan, declare as follows:

1. I am an attorney licensed to practice in the courts of California and the District of Columbia.

2. Since September 2004, I have been employed as an attorney with the Campaign Legal Center (CLC).

3. Since October 2015, I have served in the position of CLC Deputy Executive Director. My responsibilities include overseeing CLC's Federal Regulatory Program and its State and Local Reform Program as well as general management.

CLC Mission and Programs

4. CLC was created in 2002 by Trevor Potter, a former chairman and commissioner of the Federal Election Commission (FEC). Its founding purpose was to defend the newly-enacted Bipartisan Campaign Reform Act of 2002 (BCRA) against constitutional challenge.

Today, CLC's mission includes "improving democracy" through the continued defense of campaign finance reform, efforts to ensure their proper implementation and enforcement, the provision of advice and assistance in the drafting and implementation of new laws, and service as a legal and policy resource for the public and other organizations. CLC, *Mission and Who We Are*, http://www.campaignlegalcenter.org/about/mission-and-who-we-are.

5. CLC works to realize its mission in four programmatic areas: public education, litigation, regulatory practice, and legislative policy.

6. The instant case was brought to challenge the FEC's dismissal of five administrative complaints filed by CLC and Democracy 21 ("D21") against entities and individuals (collectively, "respondents") for making "straw donor" contributions to "independent expenditure-only" political committees (commonly referred to as "super PACs") in violation of various disclosure provisions of the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30101 et seq., and FECA's straw donor prohibition, *id.* § 30122.[1]

7. The FEC's failure to require the disclosure of the true donors to the committees named in the administrative complaints—and the lack of accurate reporting of the donors to super PACs under FECA that results from the FEC's failure—deprives CLC of the information necessary to fulfill its mission and programmatic goals.

a. ***Public Education***

8. A central aspect of CLC's programmatic work, and a key way it advances its organizational mission, is through public education efforts.

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[1] *See* Certification in MURs 6487 and 6488 (F8 LLC, et al.) (dated Feb. 23, 2016); Certification in MUR 6485 (W Spann LLC, et al.) (dated Feb. 23, 2016); Certification in MUR 6711 (Specialty Investment Group, Inc., et al.) (dated Feb. 23, 2016); Certification in MUR 6930 (Prakazrel "Pras" Michel, et al.) (dated Feb. 23, 2016).

9. CLC seeks to advance voters' "informational interest" in political disclosure by educating the public regarding the persons and entities funding political communications and thereby enabling the public "to evaluate the full context of the message." CLC, *Our issues: Disclosure*, http://www.campaignlegalcenter.org/issues/266.

10. My experience is that most voters do not have the time or expertise to review FEC campaign reports to find and analyze specific information regarding who is financing political activity. This work is often performed by intermediary groups and individuals, such as reporters, bloggers, and nonprofit organizations such as CLC that do the research and legal analysis and disseminate the information to the voters.

11. CLC in particular seeks to educate the public of instances where those who finance independent spending obtain undue influence over or access to candidates and officeholders so that voters can "hold those officeholders accountable and prevent corruption." CLC, *Disclosure*, http://www.campaignlegalcenter.org/issues/266.

12. Without accurate and verified donor disclosure, CLC is harmed in its efforts to engage in this education effort. It cannot fully and accurately analyze connections between campaign contributions and policy outcomes, nor communicate to the public specific instances of political quid pro quo corruption. In fact, the use of straw donors, such as the LLC respondents in the administrative complaints here, to hide the true source of a contribution suggests a heightened possibility of an effort to hide the very connection between contributions and policy outcomes that CLC seeks to highlight. CLC's public education programmatic activities are directly impeded by the FEC's failure to enforce the federal disclosure laws.

13. In addition, the inadequate reporting of the donors to super PACs and the difficulty in ascertaining who is financing independent spending often means that reporters

contact CLC for guidance as to the law as well as advice on how to find information about significant donors to political committees who are not being properly reported. This work requires CLC to divert resources and funds from other organizational needs to devote to this type of media outreach.

14. CLC expends significant resources to assist reporters and other media representatives in their investigative research into donors to independent groups such as super PACs. CLC estimates that its staff handles at least 20 press calls a week. According to internal tracking, CLC staff has been quoted or mentioned in approximately 475 separate articles since February 1 of this year.

15. Many of these press calls and contacts involve questions about the sources of the funds being contributed to super PACs supporting specific candidates. This information is relevant to an analysis of the interests to which a candidate is likely to be responsive and to detecting any overlap in the interests supporting a super PAC and those supporting a candidate. In addition, the identity of the contributors to a super PAC may be relevant to an analysis of whether the super PAC is acting truly independently of the candidate.

b. ***Litigation***

16. CLC's litigation program is also adversely affected by the FEC's refusal to investigate the respondents' failure to comply with the disclosure laws.

17. CLC was active as either an *amicus curiae* or counsel to a party in 19 cases in 2015, including representing the Delaware Attorney General in a constitutional challenge to the state's electioneering communications disclosure law. The majority of the cases concerned the constitutionality or legality of various disclosure regimes applicable to campaign expenditures by

groups "independent" of candidates or party committees, such as the independent expenditure-only committees named in the administrative complaints here.

18. CLC's litigation program is adversely affected by the FEC's action because CLC frequently cites in its briefs specific information about individual contributors reported in disclosure reports filed pursuant to FECA.

19. CLC's litigation is also impacted by the FEC's failure to enforce the disclosure laws because the lack of information impedes the compilation of an evidentiary record in defensive litigation showing that the laws under challenge advance a cognizable governmental interest, mostly commonly the state's anti-corruption interest. Without knowledge of the identities of large campaign contributors, CLC is unable to link contributions to political favors and thereby create a record substantiating quid pro quo corruption.

20. In particular, CLC has been active in litigating the constitutionality of restrictions on contributions to independent expenditure-only committees for over a decade, including participating as *amici curiae* in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010), and *North Carolina Right to Life v. Leake*, 525 F.3d 274 (4th Cir. 2008).[2] CLC believes the constitutionality of such restrictions will remain a fundamental focus of its future litigation efforts.

21. Key to any defense of contribution restrictions applicable to independent expenditure-only committees is a record corroborating the anti-corruption interests they serve, with evidence demonstrating, for instance, the political influence and access obtained by large

[2] CLC also participated as an *amicus* in the following cases challenging the constitutionality of restrictions on contributions to independent expenditure-only committees: *San Jose Silicon Valley Chamber of Commerce Political Action Committee v. City of San Jose*, 546 F.3d 1087 (9th Cir. 2008); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684 (9th Cir. 2010); *Thalheimer v. City of San Diego*, 645 F.3d 110911 (9th Cir. 2011).

contributors to super PACs, as well as any explicit quid pro quos that arise from such unregulated contributions. In the *SpeechNow* litigation, CLC attempted as *amici* to introduce evidence into the record relating to the donors to independent expenditure committees and the political influence their donations purchased.

c. *Regulatory practice*

22. Another program inhibited by the FEC's failure to investigate, as well as its general failure to ensure accurate donor disclosure, is CLC's regulatory practice, which aims to ensure the effective implementation and enforcement of campaign finance laws.

23. In the period between March 2015 and March 2016, CLC filed eight new complaints with the FEC, submitted three sets of comments on FEC rulemakings and sent eight letters to federal regulatory agencies such as the IRS or SEC on enforcement matters.

24. The FECs failure to enforce the straw donor prohibition in connection to the five complaints filed by CLC and D21 has had a detrimental impact on CLC's regulatory practice.

25. First, it has created a roadmap for other donors to evade the applicable disclosure laws by employing LLCs as straw donors to conceal contributions to super PACs. CLC has had to divert its resources to the effort to counter these clear violations of 52 U.S.C. § 30122, and has filed an additional four complaints with the FEC to address this abuse.[3]

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[3] *See* CLC & Democracy 21 Complaint re: DE First Holdings (Feb. 22, 2016), http://www.campaignlegalcenter.org/sites/default/files/CLC%20FEC%20Complaint%20Against%20DE%20First%20Holdings.pdf; CLC and Democracy 21 Complaint re: Andrew Duncan and IGX (Feb. 22, 2016), http://www.campaignlegalcenter.org/sites/default/files/CLC%20FEC%20Complaint%20Against%20Duncan.pdf; CLC & Democracy 21 Complaint re: Decor Services LLC (Mar. 2, 2106), http://www.campaignlegalcenter.org/sites/default/files/FEC%20Complaint%20Decor%20Services.pdf; CLC & Democracy 21 Complaint re: Children of Israel LLC (Mar. 22, 2106), http://www.campaignlegalcenter.org/sites/default/files/FEC%20Complaint%20Decor%20Services.pdf.

26. The FEC's failure to investigate CLC's administrative complaints and to ensure accurate donor disclosure has also hindered CLC's efforts to expose violations of other campaign finance restrictions, such as those barring contributions by governmental contractors, 52 U.S.C. § 30119, or foreign nationals, 52 U.S.C. § 30121.

27. Finally, the lack of accurate donor disclosure hampers CLC's ability to effectively participate in rulemaking proceedings before the FEC and other agencies. Without a clear understanding of the financing of federal elections, CLC will be disadvantaged in its efforts to craft new rules and guidance, as well as analyze proposed rules and participate in other FEC guidance proceedings.

d. ***Legislative policy***

28. Also adversely impacted by the FEC's failure to investigate are CLC's efforts to achieve legislative and policy solutions that are effective, realistic and can survive judicial review under current Supreme Court jurisprudence. CLC provides advice and assistance in support of important money in politics reforms, aiding legislators, other nonprofit organizations, ballot measure groups and policymakers in the drafting and analysis of legislation and administrative regulations.

29. CLC's State and Local Reform Program engages in activities ranging from drafting state and local reform proposals or ballot initiatives to providing expert witness testimony in state and local legislative or agency hearings. CLC is currently advising or advised in the last year more than 15 states or local municipalities (in Arizona, Arkansas, Austin, California, Idaho, Illinois, Maine, Michigan, Missouri, New Mexico, Ohio, Oregon, South Dakota, Texas, Utah, Washington, and Washington, DC) on campaign finance, pay-to-play and disclosure reforms.

30. At the federal level, plaintiffs are asked testify before Congress on problems with the current campaign finance laws and to provide its expertise in the drafting of campaign finance legislation. For example, in its July 2015 testimony before the United States Senate Committee on the Judiciary, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts, CLC discussed the lack of disclosure of political contributions to super PACs.[4]

31. The FEC's failure to ensure accurate reporting under FECA of the donors funding independent expenditures impacts CLC's achievement of policy goals because it hinders the creation of a legislative record. CLC works to assist lawmakers and other advocates in building a legislative record, based on national, regional and local evidence of problems to be remedied by legislation, and its experts testify before governmental bodies in support of legislation and provide evidence of money-in-politics problems.

32. Second, crucial to enactment of such legislation is a communications effort that describes the public interests advanced by the legislation, in particular the prevention of the purchase of political influence and access. Without accurate donor disclosure, communications that attempt to "follow the money"—one of the most effective and important forms of advocacy for campaign finance legislation or ballot measures—are greatly impeded.

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[4] Testimony of Lawrence M. Noble, *Revisiting IRS Targeting: Progress of Agency Reforms and Congressional Options*, U.S. Senate Committee on the Judiciary (July 29, 2015), http://www.campaignlegalcenter.org/sites/default/files/Larry%20Noble%20Testimony%20before%20Senate%20Judiciary%20on%20-%20IRS%20501cs%207-29-15.pdf..

I declare under penalty of perjury that the foregoing information is true and correct.

Executed this 1 day of August, 2016.

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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER and DEMOCRACY 21, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant, F8, ELI PUBLISHING, and STEVEN J. LUND, Intervenor-Defendants.	Civil Action No: 1:16-cv-00752-JDB

Declaration of Fred Wertheimer

1. I am President of Democracy 21 and its affiliate, Democracy 21 Education Fund (hereafter, "Democracy 21"), and have been since Democracy 21 began operations in 1997. Prior to serving as President of Democracy 21, I was President of Common Cause from 1981 through 1995.

2. Democracy 21 is a nonprofit, nonpartisan organization dedicated to making democracy work for all citizens through support of campaign finance and other political reforms. To accomplish these goals, Democracy 21 conducts public education efforts, participates in litigation involving the constitutionality and interpretation of the campaign finance laws, engages in advocacy efforts in support of campaign finance reform and in efforts to help ensure that campaign finance laws are properly enforced and implemented. Democracy 21 also participates in rulemakings and advisory opinion proceedings, and other administrative matters at the Federal Election Commission (FEC).

3. With regard to its public education efforts, Democracy 21 regularly publishes a Political Money Report, which is distributed to the media and to interested individuals and groups. This Report makes use of campaign finance information filed with the FEC under federal campaign finance disclosure requirements, as presented by organizations which compile and publish such data. Attached to this declaration as Exhibits A to C are examples of Democracy 21 Political Money Reports which make use of such FEC campaign finance data.

4. Democracy 21 also makes use of FEC campaign finance data, again as presented by organizations which compile and publish such data, in op-ed articles which Democracy 21 publishes and distributes to the media and to the public. Attached to this declaration as Exhibits D to F are examples of op-ed articles by Democracy 21 which make use of such FEC campaign finance data.

5. Democracy 21 receives press calls on issues relating to campaign finance matters. These calls include, for instance, questions regarding donors to Super PACs and the sources of funds being used to finance federal election activities. While it is difficult to specifically quantify the number of press contacts Democracy 21 receives, there are numerous calls from reporters seeking comment on campaign finance matters, including questions relating to the interests of donors making federal contributions.

6. Democracy 21 participates in litigation relating to campaign finance matters as *amicus curiae,* and lawyers for Democracy 21 participate in such litigation as counsel. Participation in such litigation frequently involves the use of campaign finance disclosure data. In *McCutcheon v. FEC,* 134 S. Ct. 1434 (2014), for instance, Democracy 21 lawyers served as co-counsel on an *amicus* brief submitted to the Supreme Court that included extensive analysis of campaign finance information reported to the FEC, as presented by organizations which

compile and publish such data. This included data about the number and size of "soft money" contributions to the political parties (prior to enactment of the Bipartisan Campaign Reform Act of 2002), the number and size of contributions made to joint fundraising committees, the number and size of contributions made to the national political parties and the number of donors who reached the aggregate limit on contributions to federal candidates. This use of FEC campaign finance disclosure data was an important part of the argument made in the brief.

8. Frequently, Democracy 21 has participated in litigation jointly with the Campaign Legal Center. In many instances, this litigation has involved the constitutionality or effective interpretation of FEC disclosure laws. *E.g., SpeechNow.org v. FEC*, 599 F.3d 686 (D.C.Cir. 2010) (*amicus*); *Independence Institute v. FEC,* Civ. No. 1:14-cv-01500 (D.D.C.) (three judge court) (*amicus*); *Van Hollen v. FEC* , 811 F.3d 486 (D.C. Cir. 2016) (counsel).

9. Democracy 21 participates in rulemakings, advisory opinion proceedings and other administrative matters at the FEC, often jointly with the Campaign Legal Center. Filings with the FEC often include information obtained from campaign finance disclosure reports, as presented by organizations which compile and publish such data.

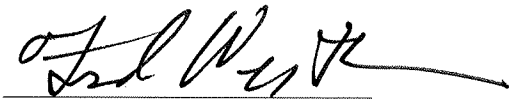
10. Democracy 21 engages in lobbying activities on behalf of federal campaign finance reforms. In that capacity, representatives of Democracy 21 have testified before Congress on problems with the current campaign finance system and reforms to address the problems. As part of such lobbying efforts, including in such testimony, Democracy 21 uses information from FEC campaign finance disclosure reports, as presented by organizations which compile and publish such data.

11. To the extent that the FEC does not require and obtain full and accurate disclosure information about the true sources of funds being spent in federal elections, including the true

sources of funds that are contributed to Super PACs, Democracy 21 is injured because it is deprived of complete and accurate information about campaign financing that it can use in its efforts to educate the public, and to conduct effective advocacy before the courts, the FEC and the Congress.

I declare under penalty of perjury that the foregoing information is true and correct.

Executed this 2d day of August, 2016.



Fred Wertheimer

Platforms show that both parties could not be farther apart on campaign finance reform.

WERTHEIMER'S
POLITICAL MONEY REPORT

July 21, 2016

A NOTE FROM FRED

In the 2016 election, super PACs have already raised almost a billion dollars for use in presidential and congressional races and are on track to far exceed the amount raised by super PACs in the 2012 election. Forty-nine percent of the $936 million came from just 100 donors, according to ***Open Secrets.*** Ordinary Americans look at the role of super PACs in our elections and they see Washington rigged to benefit the wealthiest people in the country. Super PACs are a byproduct of the Supreme Court's decision in *Citizens United* that struck down the ban on corporate independent expenditures in federal elections. The Supreme Court majority either did not know or did not care about the massive flow of huge, influence-buying contributions this decision would unleash on our political system. There are ways however to challenge the existence of super PACs. A new Supreme Court majority could reverse lower court decisions that struck down the $5,000 per year limit on contributions to independent spending federal PACs. This would for all practical purposes shut down super PACs. As well, the Stop Super PAC-Candidate Coordination Act introduced by Rep. Price and Senator Leahy would shut down the super PACs that only support one candidate and were used to support most 2016 presidential candidates.

"GOP's moneyed class finds its place in new Trump world," says *the New York Times*. Lobbyists and donors mingled at many parties around Cleveland this week. "While some of the party's elite donors have shunned Mr. Trump's coronation this week, they are still paying for it." A top lobbyist noted that while Trump is talking about changing Washington and the lobbying world, "The political and influence class is going on as before." **Read more**

Exhibit A

Trump campaign gives its blessing to super PACs. *POLITICO* said that the Trump campaign signaled at the convention that it has dropped its opposition to the major pro-Trump PACs. At a meeting of major donors organized by Rebuilding America PAC, a slideshow featured a quote from Mike Pence saying "Supporting Rebuild America Now is one of the best ways to stop Hillary Clinton and elect Donald Trump." Pence's staff said he was considering attending future fundraising events for the group. **Read more**

"Voters have a right to know who is paying for a political campaign before they go to the polls," said FEC Commissioner Ann Ravel in a *LA Times* op-ed. Ravel says that states can take the lead in advocating for stronger campaign finance laws. "Curbing dark money will someday get a national solution. In the meantime, local and state measures to increase transparency can make an impact." **Read more**

"On campaign finance, Republicans and Democrats could not be farther apart," says *the Huffington Post*. The Republican Party platform introduced Monday in Cleveland calls for rolling back all contribution limits, less disclosure and the repeal of McCain-Feingold limits on soft money. Meanwhile, the Democratic platform calls for a constitutional amendment to overturn *Citizens United* and *Buckley v Valeo* and endorses creating a public financing system for federal elections and increased disclosure for outside groups. **Read more**

Clinton campaign "rolling out the red carpet" for donors at the Philadelphia convention. Individuals that have raised more than $100,000 are being treated to an exclusive week of events, including receptions, briefings with campaign staffers and an exclusive party with Bill Clinton. **Read more**

Trump's children begin fundraising for their dad. Donald Trump Jr. is headlining his first solo fundraiser next week in Texas. "For Republican donors who have little positive to say about Trump, the children are a safe topic" said *AP*. A top Republican donor said he "can't argue that the kids are phenomenal." **Read more**

What will happen to Pence's campaign cash? The latest campaign

finance data shows that Gov. Mike Pence has more than $7 million in his gubernatorial campaign bank account. He cannot transfer it directly to the Trump campaign, but he is legally allowed to transfer it to a super PAC. He could also just keep the money in his state account. **Read more**

2016 FACT OF THE DAY

Trump and the RNC raised $52 million in June, but that is still less than the $68 million Clinton and the DNC collected in June. **Read more**

IN THE STATES

WI: Koch backed groups have pulled more than $2 million in ad buys they had bought for Sen. Ron Johnson. **Read more**

MO: Missouri is one of the few states that has no limits on campaign contributions. So far in the gubernatorial primary, three out of the four Republican candidates have received more than $1 million from an individual or family. **Read more**

MD: The husband of Amie Hoeber who is currently running for Congress in Maryland has donated more than $2 million to a pro-Hoeber super PAC. **Read more**

CA: The state's top political watchdog is introducing a proposal to crack down on lobbyists by giving state regulators the power to require suspected lobbyists to reveal if they are being paid to influence government decisions. **Read more**

By: Fred Wertheimer **(@FredWertheimer)** & Kathryn Beard **(@KathrynBeard)**

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House votes to make dark money darker.

WERTHEIMER'S
POLITICAL MONEY REPORT

June 16, 2016

A NOTE FROM FRED

The Center for Responsive Politics reports that outside groups have already spent $400 million to influence the 2016 elections. That is increase of 175 percent over the nearly $146 million outside groups had spent by June of 2012. If that rate of increase were to continue to the November general election, the amount of outside spending would reach $1.8 billion in the 2016 federal elections.

This is just one example of how completely broken our campaign finance system is as a result primarily of disastrous Supreme Court decisions by the Roberts Court. Another example: since the *Citizens United* decision in 2010, more than $500 million dollars in secret money has been spent by nonprofit groups to influence federal elections. Secret money is the most dangerous money in American politics. It allows large donors and officeholders to exchange money for political favors in secret without any means to hold the donors and officeholders accountable for illegal activity. Polls show that citizens overwhelmingly reject the current campaign finance system. To avoid an even more disaffected and cynical public than what exists today, the next Congress must act to reform and fix the system.

Jimmy Carter endorses public financing as a campaign finance solution. In an interview at the Clinton Global Initiative, former President Carter said, "Another thing we could do is go back to presidential campaigns just using public funds for the general election." "Personally, I would like to see public funds used for all elections - Congress, U.S. Senate, governor and president." When Carter ran for president in 1976, he received $20 million in public financing. **Read more.**

Exhibit B

Trump's relationship with the RNC sours and is "plagued by distrust, power struggles and strategic differences." Sources told *POLITICO* that the RNC feels Trump's campaign is trying to take control over the two Trump/RNC fundraising committees. As well, the RNC gave Trump a list of more than 20 top donors to call regarding fundraising and Trump only called three of them. The Trump campaign meanwhile has "deep skepticism" about the RNC's commitment to the candidate. **Read more.**

Clinton launches first general-election ad buy. The campaign has purchased TV ad time in seven states including Florida, Ohio and Virginia. The ads released for preview showed Clinton attacking numerous Trump statements and painting him as "extreme, unqualified and perhaps unhinged." **Read more.**

Another big sponsor backs away from Republican convention. Sources say billionaire hedge-fund manager Paul Singer will not donate to or attend the convention in Cleveland. Singer gave $1 million to the convention in 2012, but so far this election cycle, has spent millions trying to prevent Trump from winning the nomination. Last week, a spokesman said David Koch would also not be funding or attending the convention. **Read more.**

House votes to make dark money darker. The House approved a bill Tuesday that would open the door to illegal foreign influence in U.S. elections. The bill by Rep. Peter Roskam exempts non-profit groups from disclosing the names of their donors to the IRS. Democracy 21 and other reform groups **sent a letter** to the House earlier this week warning that the bill would eliminate the only protection the government has to prevent foreign interests from illegally funneling money into elections. **Read more.**

Another new anti-Trump super PAC forms. The former leader of the "Draft Biden" effort launched a new super PAC aimed at stopping Trump, but not supporting Clinton. The Keep America Great super PAC is focused on attracting supporters of Bernie Sanders and "disaffected Republicans". The groups founder Jon Cooper says the new PAC is designed to attract voters who are not enamored with Clinton, but who are against Trump. **Read more.**

Polarized House committee voted Wednesday to censure IRS

commissioner. The House Oversight and Government Reform Committee voted 23 to 15 along party lines to censure Commissioner Koskinen. Democracy 21 and other groups **sent a letter** to the committee earlier this week attacking the case as "meritless" and said, "There is no justification for taking unwarranted action... to punish Commissioner Koskinen." **Fred challenged** as "irresponsible" the Koskinen attack by Republican committee members. **Read more.**

2016 FACT OF THE DAY

$400 million - The amount that outside groups have spent so far in the 2016 election. This amount "dwarfs the amount spent by this point in the 2012 election," according to The Center for Responsive Politics. **Read more.**

IN THE STATES

NY: "New York legislators back alcohol at brunch. But ethics reform? Hopes are fading," says a headline in *the New York Times*. The NY legislative session ends today, but major proposals like limiting the corrupting influence of money in politics and ethics reforms remain unresolved. **Read more.**

CA: *The Los Angeles Times* looks at the political rise and fall of the Calderon brothers. Former State Senator Ron Calderon was sentenced this week to mail fraud after he accepted bribes from undercover FBI agents and a corrupt hospital executive. His brother Tom Calderon, a former state assemblyman, was charged with money laundering after attempting to cover up his brother's bribes. **Read more.**

By: Fred Wertheimer **(@FredWertheimer)** & Kathryn Beard **(@KathrynBeard)**

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WERTHEIMER'S
POLITICAL MONEY REPORT

May 27, 2016

A NOTE FROM FRED

As we approach the end of the primary season, here are a couple of money-in-politics lessons we have learned midpoint in the elections:

There has never been a national election with so much political money coming from so many billionaires and multimillionaires. As of May, the top ten donors and their spouses have given a total of more than $100 million to super PACs for the 2016 election, according to the Center for Responsive Politics. Twenty-eight donors and their spouses each have given at least $2.5 million. To put this in perspective, the average family of four earns $54,000 per year. This extraordinary flow of huge contributions is providing the Super Rich with magnified influence over elections and corrupting influence over government decisions. It is also creating deep cynicism among the American people about their interests being fairly represented in Washington.

Meanwhile, Donald Trump has leaped into the big money chase, going in the blink of an eye from self-described "Mr. Can't-Be-Bought" to self-defined "Mr. Puppet." During the primaries, self-financing Donald Trump repeatedly pointed out he couldn't be bought by big donors. He attacked his primary opponents for their super PACs, saying that when donors give huge contributions to Jeb Bush for example, "they have him just like a puppet," and that "[Bush will] do whatever they want." Trump now has super PACs fighting over which one will be his "official" pro-Trump super PAC and he is raising huge contributions for a Trump/RNC joint fundraising committee. "Mr. Can't-Be-Bought" has left the building and "Mr. Puppet" has arrived.

To read more lessons learned, read my op-ed for *the Huffington Post.*

Exhibit C

Drama over RNC/Trump fundraising deal as *Reuters* reports that Donald Trump fired his national political director over disagreements over the RNC deal. Trump alledgedly told staffers that political director Rick Wiley "should be fired" for leaving out Nevada from the 11 states included in the RNC agreement. **Read more from *Reuters.*** As well, *CNN* reports that "discord is already brewing" between the Trump campaign and the RNC. A GOP donor reports that Trump donors plan to meet to discuss if the RNC has Trump's best interests at heart. They are concerned that the fundraising deal could "fill the RNC's coffers but leave far less to benefit" Trump. **Read more from *CNN***

Sanders and Clinton spend big in California. Both campaigns announced that they are spending additional money in ad buys in the state before its primary on June 7th. The Sanders' campaign announced a new ad buy of around $2 million and Clinton soon followed with a new ad featuring Morgan Freeman and labor leaders. **Read more**

Trump seeks support of energy industry. "Trump is seeking to make inroads with the fossil fuel industry as he moves into the general election." Trump spoke Thursday at a North Dakota petroleum convention. Prominent coal industry exec Bob Murray already supports Trump and after meeting with him said, "He's got his head on right." Other industry leaders like T.Boone Pickens have said they will fundraise for Trump. **Read more**

Clinton's best defense - campaign finance reform. According to Eliza Newlin Carney at *the American Propsect*, "Clinton has overlooked her most potent tool for fighting back: her own sweeping democracy reform platform." Carney cites Clinton's appeals to Wall Street donors and coordination with big money outside groups as contributing to her image as untrustworthy. A better approach would be to embrace her reform platform where she pledged to match small contributions with public funds and "pull back the curtain on secret money." **Read more**

Public financing system worked, but needs reforms. *The Atlantic* looks at the history of the public financing system for elections. Fred says, "The bottom line is this system did exactly what it was supposed to do for more than

two decades. The system was not perfect, but it allowed candidates to run competitive races for office. It kept candidates away from private-influence money. It worked." However, Congress has failed to modernize the system and reforms are needed. **Read more**

Clinton network of "Hillblazers" raises big bucks. Since the beginning of this year, the Clinton campaign has added 125 major donors to her "Hillblazers" list of supporters that raised at least $100,000. As of the end of April, the "Hillblazers" had raised a combined $41 million. The donors are spread across the country, but many are based in New York or California. **Read more**

2016 FACT OF THE DAY

60 percent - The percentage of campaign contributions to local D.C. elected officials that came from corporations and out-of-D.C. donors, according to a new report from U.S. PIRG. **Read more**

IN THE STATES

NY: NY Jets Owner Woody Johnson announced that he is one of the six finance vice chairmen at the RNC that are focused on fundraising for Trump. **Read more**

NY: *POLITICO* reports that Mayor Bill de Blasio took an "unusually personal role in raising money for a nonprofit group backing his political agenda," according to those who received fundraising appeals from de Blasio. The nonprofit group Campaign for One New York is under investigation regarding if donors received preferential treatment from de Blasio and his aides. **Read more**

FL: Republican U.S. Senate candidate Carlos Beruff has spent more than $3 million on ads statewide. Beruff is largely self-funding his campaign. **Read more**

SC: SC House members amended a bill Thursday to require non-profit organizations to reveal the source of the money that they spend on elections. **Read more**

By: Fred Wertheimer **(@FredWertheimer)** & Kathryn Beard **(@KathrynBeard)**

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Wertheimer for Huffington Post: Eight Lessons We've Learned About Money in Politics This Election

May 26, 2016 All Press Releases, Featured Articles, Homepage, Press Releases

The Huffington Post

Eight Lessons We've Learned About Money in Politics This Election

By: Fred Wertheimer

May 26, 2016

As we approach the end of the primary season, here are eight money-in-politics lessons we have learned midpoint in the elections.

1. The Supreme Court majority did not have a clue about what it was doing in the McCutcheon case.

In the *McCutcheon* case, Supreme Court Justices labeled the examples presented to the Court by Democracy 21 and others "divorced from reality" and "wild hypotheticals." These examples accurately predicted the outcome if the Court struck down the aggregate limit on individual contributions to party committees. Now, huge single checks are being written to joint fundraising committees created by Clinton and Trump, and their respective parties. The $33,400 limit on individual contributions to a national party for campaign use is being eviscerated and the presidency is on the auction block. The "wild hypotheticals" were correct and the Supreme Court was "divorced from reality."

2. There has never been a national election with so much political money coming from so many billionaires and multimillionaires.

As of May, the top ten donors and their spouses have given a total of more than $100 million to super PACs for the 2016 election, according to the Center for Responsive Politics. Twenty-eight donors and their spouses each have given at least $2.5 million. The top donor, a hedge fund CEO, has given $16.6 million. To put this in perspective, the average family of four earns $54,000 per year. This extraordinary flow of huge contributions is providing the Super Rich with magnified influence over elections and corrupting influence over government decisions. It is also creating deep cynicism among the American people about their interests being fairly represented in Washington.

3. Donald Trump went in the blink of an eye from self-described "Mr. Can't-Be-Bought" to self-defined "Mr. Puppet."

During the primaries, self-financing Donald Trump repeatedly pointed out he couldn't be bought by big donors. He attacked his primary opponents for their super PACs, saying that when donors give huge contributions to Jeb Bush for example, "they have him just like a puppet," and that "[Bush will] do whatever they want." Trump now has super PACs fighting over which one will be his "official" pro-Trump super PAC and he is raising huge

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Fred Wertheimer for SCOTUS Blog on McDonnell decision

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Exhibit D

contributions for a Trump/RNC joint fundraising committee. "Mr. Can't-Be-Bought" has left the building and "Mr. Puppet" has arrived.

4. Sometimes "coordination" is not "coordination."

Campaign finance law prohibits coordination between an outside spending group, like a super PAC, and a federal candidate. Correct the Record is a super PAC focused on refuting claims made about Hillary Clinton. Using a dubious scheme devised by the super PAC and Clinton's campaign lawyer, Correct the Record is openly and explicitly coordinating its activities with the Clinton campaign, claiming the right to do so because it is operating online. This effort means the Clinton campaign can control the spending of unlimited contributions made to Correct the Record and circumvent the $2,700 candidate contribution limit. So much for the ban on coordinated expenditures.

5. The gulf is huge between the American people and Clinton and Trump when it comes to big money in our politics.

Citizens overwhelmingly object to big money rigging Washington. Meanwhile, Clinton and Trump are vacuuming up every big contribution they can find. The Clinton/DNC joint fundraising committee has raised $60 million and the pro-Clinton Super PAC has raised $76 million from big donors. Trump meanwhile is racing to play catch up. He has announced plans to raise $1 billion for the general election after self-financing most of his primary expenditures. This will include many big donor contributions. Clinton and Trump have refused to learn the lessons of history and they are raising the same kind of big contributions that were responsible for the Watergate and soft money campaign finance scandals.

6. The best laid plans sometimes go awry as the Koch brothers found out in the 2016 election.

The Koch brothers and their network originally planned to spend an unheard of $889 million during this election cycle to finance their long-term goal of a Republican takeover of Washington. With Donald Trump, a candidate they have voiced strong objections too, being the presumptive Republican presidential nominee, their dream is apparently gone. So too is the $889 million campaign. The Koch brothers are now focusing their financial activities on helping Republicans keep control of the Senate. Koch groups have already spent $12 million in five Senate races and have reserved an additional $30 million more in ad buys later this year in Senate races.

7. The Sanders campaign has demonstrated once more the potential of the Internet to dramatically increase the role of small contributions in financing campaigns.

In his 2008 and 2012 presidential campaigns, Obama raised an historic amount online – more than $1 billion from more than eight million donors. Bernie Sanders has followed this model. As of May, sixty-two percent of the $206 million raised by Sanders has come from small contributions, according to the Center for Responsive Politics. The challenge ahead involves making technologic breakthroughs so that raising large sums of small contributions online becomes the rule, not the exception. The Internet and social media have revolutionized our society and can also revolutionize the way our campaigns are financed – dramatically increasing the role of small contributions in campaigns and greatly diluting the impact of big money.

8. Campaigns, political operatives and campaign finance lawyers have become more brazen than ever in flouting the campaign finance laws.

The law prohibits candidates from "directly or indirectly" controlling a super PAC, but Jeb Bush had his longtime political strategist run the pro-Bush super PAC. Donors have illegally been hiding their contributions from the public by giving them to super PACs in the name of LLC corporations. Trump strategists say they plan to pay for campaign staff from an RNC account that is restricted by law to being used only to pay for buildings. As a Republican campaign finance lawyer recently stated, "We are in an environment in which there has been virtually no enforcement of the campaign finance laws..." When laws aren't enforced, you don't have laws.

We are halfway through the 2016 national elections and the onslaught of political money from billionaires and multimillionaires will continue and increase. This is not the way our democracy is meant to work or the way our country is meant to be governed.

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Fred Wertheimer Op-ed for the Huffington Post on Fixing the Presidential Public Financing System

April 20, 2016 All Press Releases, Featured Articles, Homepage, Press Releases, Wertheimer Op-eds

The Huffington Post

A Cure for a Political Disaster: Fixing the Presidential Public Financing System

By: Fred Wertheimer

April 20, 2016

The current system of financing presidential elections is a political disaster. And the American people are paying the price.

According to *Open Secrets*, super PACs supporting presidential candidates have raised $416 million as of March 21. These funds were provided primarily by the Super Rich.

Altogether, super PACs have raised $607 million to support federal candidates in the 2016 election, with more than 40 percent of this total coming "from just 50 mega-donors and their relatives," according to *The Washington Post*. That amounts to $1.2 million per donor.

Welcome to the home of the oligarchs and the land of the billionaires.

The corrupt system we have today stems from the existence of dual financing systems for federal elections. It provides enormous advantages to the wealthy and the policies they support.

One system, created by Congress, includes disclosure of all money raised for campaigns and limits on contributions to candidates and parties. The second system, created by the Supreme Court, includes unlimited contributions spent by outside groups and dark money laundered through "social welfare" nonprofits.

The Supreme Court's system has allowed billionaires and millionaires to play an unprecedented and dangerous role in American politics. Individual-candidate super PACs are serving as vehicles for these mega-donors to make unlimited contributions to support a presidential candidate and circumvent the $2,700 candidate contribution limit. The contribution limit was enacted to prevent corruption.

Conservative Court of Appeals Judge Richard Posner, seen by many as the most influential jurist outside the Supreme Court, captured the enormous damage done by the Court's financing system. Judge Posner stated, "Our political system is pervasively corrupt due to our Supreme Court taking away campaign-contribution restrictions on the basis of the First Amendment."

The unfolding presidential election illustrates the problems created for our political system.

The Republican primary is essentially a two person race. Billionaire Donald Trump is competing against Senator Ted Cruz who is heavily backed by billionaires. The Democratic primary is also a two person race. Hillary Clinton, supported by wealthy donors financing a pro-Clinton super PAC, is competing against Senator Bernie Sanders, the exception in the race who is repeating President Barack Obama's historic breakthrough in online small donor fundraising.

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Exhibit E

Waiting in the wings for the general election are super PACs and their mega-donors who will spend untold millions of dollars to support the major party nominees. The mega-donors who support the winner will be first in line to influence the new administration.

There was a time when we had a presidential campaign finance system that worked for the American people, not for the Super Rich.

Created in 1974, the presidential public financing system was used by almost all major party presidential candidates from 1976 through 1996. The system provided for competitive races while minimizing the role of big money in financing the presidential candidate campaigns.

Under the system, Republicans and Democrats each won the presidency three times; incumbents and challengers each won three times.

Washington Post columnist E.J Dionne wrote in 2006, "The public financing of presidential campaigns, instituted in response to the Watergate scandals of the early 1970s, was that rare reform that accomplished exactly what it was supposed to achieve."

The presidential system eventually broke down, however, because Congress never allowed it to be updated and modernized. As a result, while the costs of running for president skyrocketed, the overall spending limit for participating candidates only increased by incremental cost of living adjustments.

Today, the presidential public financing system is defunct and needs to be repaired to again serve the interests of the American people.

The Empower Act, introduced by Senator Tom Udall (S.1176) and Representatives David Price and Chris Van Hollen (H.R. 2143), would create a revitalized, effective system.

Modeled on the successful New York City public financing system, the legislation would provide multiple public funds to match small contributions at a 6 to 1 ratio. Instead of participating candidates agreeing to spending limits that are impossible to calculate today because of unlimited outside money, candidates are required to abide by substantially lower contribution limits.

A repaired presidential public financing system would dramatically increase the amount of clean resources available to participating candidates and thereby greatly dilute the importance and impact of outside spending groups and their mega-donors.

A fixed system also would empower ordinary Americans in the political process by making their small contributions much more important and valuable to presidential candidates. And candidates would have an alternative way to finance their presidential campaigns without becoming obligated to big money funders.

The presidential election in 2016 is taking place in a corrupt campaign finance system. We need to ensure this does not happen again.

Democracy 21

Fred Wertheimer statement: FEC Reports Confirm Billionaires and Millionaires Playing Dominant Role in Presidential Campaigns

August 1, 2015 All Press Releases, Press Releases

The FEC reports filed by individual-candidate Super PACs confirm that billionaires and millionaires have become the dominant players in financing the 2016 presidential campaigns.

The FEC reports also reveal that individual-candidate Super PACs are in the process of replacing candidate committees in the financing of the 2016 presidential campaigns. As of June 30, individual-candidate Super PACs supporting Republican presidential candidates had raised at least four times the amount raised by the Republican candidate committees.

Meanwhile, huge contributions from the wealthiest individuals in the country are flooding the presidential campaigns – the kind of contributions that can result in corruption and the appearance of corruption.

At least 25 individuals gave or raised $1 million each for the Super PAC supporting Jeb Bush, according to the *Wall Street Journal*. The largest contribution reportedly came from billionaire Mike Fernandez who gave $3 million. And then there is one billionaire, Donald Trump, who has decided that the best presidential candidate to finance is Donald Trump.

The 2016 presidential candidates and their individual-candidate Super PACs are wiping out the nation's anti-corruption candidate contribution limits. In doing so, the presidential candidates and the Super PAC supporting them are creating the kind of system that the Supreme Court has described as an inherently corrupt system.

As the 2016 campaign unfolds, the American people are watching the perversion of the American presidency take place before their eyes.

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Exhibit F