ORAL ARGUMENT NOT YET SCHEDULED

No. 18-5239

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CAMPAIGN LEGAL CENTER, *et al.*,
Plaintiffs-Appellants,

v.

FEDERAL ELECTION COMMISSION,
Defendant-Appellee,

ELI PUBLISHING, L.C., *et al.*,
Intervenors-Appellees.

On Appeal from the United States District Court
for the District of Columbia

FEDERAL ELECTION COMMISSION'S MOTION FOR SUMMARY AFFIRMANCE

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INTRODUCTION

Appellee Federal Election Commission ("FEC" or "Commission") respectfully moves for summary affirmance of the decision below, which granted judgment to the Commission after finding a rational basis for the Commission's exercise of its prosecutorial discretion in dismissing several administrative complaints that appellants Campaign Legal Center and Democracy 21 (collectively, "Campaign Legal Center") had filed with the agency. (Addendum ("Add.") 1-22.) Campaign Legal Center asserted that the Commission acted contrary to law in dismissing its administrative complaints alleging illegal straw donor schemes involving corporate entities. Three of the respondents named in the administrative complaints, Eli Publishing, L.C. ("Eli Publishing"), its founder, Steven Lund, and F8 LLC ("F8"), intervened as defendants in the district court and are intervenors-appellees.

After the district court granted judgment for the Commission, this Court issued its opinion in *Citizens for Responsibility and Ethics in Washington v. FEC*, 892 F.3d 434 (D.C. Cir. 2018) ("*CREW*"), *pet. for reh'g en banc filed*, No. 17-5049, Doc. # 1742905 (July 27, 2018), which establishes that the district court's judgment should be summarily affirmed. In *CREW*, a panel of this Court, relying on *Heckler v. Chaney*, 470 U.S. 821 (1985) ("*Heckler*"), held "that federal administrative agencies in general and the Federal Election Commission in

particular have unreviewable prosecutorial discretion to determine whether to bring an enforcement action." *CREW*, 892 F.3d at 438 (internal citations omitted).

The Commission's dismissals that are challenged in this appeal constitute exercises of prosecutorial discretion that are unreviewable under the decision in *CREW*. Accordingly, this Court should summarily affirm the district court's judgment upholding the dismissals.

LEGAL AND FACTUAL BACKGROUND

I. THE COMMISSION

The FEC is a six-member, independent agency vested with statutory authority over the administration, interpretation, and civil enforcement of the Federal Election Campaign Act ("FECA" or "Act"). Congress authorized the Commission to "administer, seek to obtain compliance with, and formulate policy with respect to" FECA, 52 U.S.C. § 30106(b)(1); "to make, amend, and repeal such rules . . . as are necessary to carry out the provisions of [FECA]," *id*. §§ 30107(a)(8), 30111(a)(8); and to investigate possible violations of the Act, *id*. § 30109(a)(1)-(2). The FEC has "exclusive jurisdiction" to initiate civil enforcement actions for violations of FECA in the United States district courts. *Id*. §§ 30106(b)(1), 30109(a)(6). It is required under FECA to make decisions through majority votes and, for certain actions, including many enforcement decisions, with the affirmative vote of at least four Commissioners. *Id*. § 30106(c).

II. FECA'S ADMINISTRATIVE ENFORCEMENT PROCESS

FECA permits any person to file an administrative complaint with the FEC alleging a violation of the Act. *Id.* § 30109(a)(1); *see also* 11 C.F.R. § 111.4. FEC administrative enforcement matters are required by FECA to be kept confidential until the administrative process is complete. 52 U.S.C. § 30109(a)(12)(A); 11 C.F.R. § 111.21. Upon receiving a complaint, the Commission must notify any person alleged in the complaint to have committed a FECA violation (*i.e.*, the "respondent") and provide fifteen days for a response. 52 U.S.C. § 30109(a)(3). After considering the complaint and any response, the Commission must then determine whether to find there is "reason to believe" that the respondent has committed, or is about to commit, a violation of FECA, which it may do by an affirmative vote of four Commissioners. *Id*. § 30109(a)(2); *see also id.* § 30106(c).

If the Commission affirmatively votes to find reason to believe, FECA's potential subsequent enforcement steps include investigating the allegations, determining whether there is "probable cause" regarding the alleged violation, and engaging in conciliation with the respondent. *Id.* § 30109(a)(2)-(5). As with the reason-to-believe determination, a finding of probable cause and accepting a conciliation agreement each requires the affirmative vote of four FEC Commissioners to proceed. *Id.* If the FEC is unable to reach a conciliation agreement with a respondent, FECA authorizes the Commission to institute a civil

enforcement action in federal district court, upon an affirmative vote of at least four Commissioners. *Id.* § 30109(a)(6)(A). If, at any point in the process, the Commission lacks the required four affirmative votes to proceed on a matter, it may dismiss the administrative complaint.

III. CAMPAIGN LEGAL CENTER'S ADMINISTRATIVE COMPLAINTS AND THE ADMINISTRATIVE PROCEEDINGS

In the district court, Campaign Legal Center sought judicial review of the Commission closing its file on five administrative complaints that the organization had submitted to the agency. The district court found that Campaign Legal Center lacked standing to challenge the Commission's dismissal of two of these administrative complaints and dismissed that portion of the case. (Add. 4 n.2 (citing *Campaign Legal Ctr. v. FEC*, 245 F. Supp. 3d 119, 125 (D.D.C. 2017)).) Campaign Legal Center does not appeal that decision; the remaining three administrative complaints are the subject of Campaign Legal Center's appeal of the district court judgment. *See* Plaintiffs-Appellants' Statement as to Issues on Appeal at 1-3 (Sept. 7, 2018) (Doc. # 1749602).

All three administrative complaints concerned contributions that closely held corporations or corporate limited liability companies ("LLCs") made to registered independent-expenditure-only political committees (or "super PACs"). (Add. 3-4.) Two administrative complaints focused on $1 million contributions that two LLCs, Eli Publishing and F8, each made to Restore Our Future, Inc. ("Restore Our

Future"). (Add. 3.) Campaign Legal Center alleged that Steven Lund, the founder of Eli Publishing, and operators of F8 were in fact the true sources of the contributions to Restore Our Future, and that these respondents thus violated FECA (*id.*), which provides that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person," 52 U.S.C. § 30122. Campaign Legal Center also alleged that F8 and Eli Publishing were "political committees" that had failed to register and file reports in violation of FECA (Add. 3), which requires, *inter alia*, that political committees register with the Commission, maintain names and addresses of contributors, and file periodic reports disclosing to the public most receipts of $200 or more, 52 U.S.C. §§ 30103, 30104(a)-(b).

The other administrative complaint concerned contributions totaling approximately $12 million from Specialty Investment Group Inc. ("Specialty Group") and its subsidiary, Kingston Pike Development LLC ("Kingston Pike"), to FreedomWorks for America ("FreedomWorks"). (Add. 4.) William Rose was Specialty Group's chief executive officer, president, and board chairman, and the sole manager of Kingston Pike. (*Id.*) Campaign Legal Center alleged that a FreedomWorks board member, Richard Stephenson, made the contributions through Specialty Group and Kingston Pike, with the assistance of FreedomWorks'

executive vice president Adam Brandon, in violation of FECA's prohibition on contributions made in the name of another, 52 U.S.C. § 30122. (Add. 4.) Campaign Legal Center also alleged that Specialty Group and Kingston Pike were "political committees" that had failed to register and file reports as required by FECA. (*Id*.)

IV. THE FEC'S DISMISSALS OF APPELLANTS' ADMINISTRATIVE COMPLAINTS

In February 2016, the Commission, by a vote of 3-3, did not vote to find reason to believe regarding the violations Campaign Legal Center had alleged in its administrative complaints. (Add. 5.) In April 2016, then-Chairman Matthew S. Petersen, Commissioner Caroline C. Hunter, and former Commissioner Lee E. Goodman, who were the three Commissioners not voting to find reason to believe in these matters, issued a statement of reasons explaining their vote. (Add. 23-37.) These Commissioners later supplemented this statement. (Add. 38-41.) As noted by the district court, the Commissioners who voted to find reason to believe that violations occurred and voted to proceed with an investigation also issued a statement of reasons. (Add. 5.) Because Commissioners Petersen, Hunter, and Goodman were the Commissioners voting against making reason-to-believe findings, their "rationale[s] necessarily state[] the agency's reasons for acting as it did," and they accordingly constitute the "controlling group" of Commissioners in

these matters. *FEC v. Nat'l Republican Senatorial Comm.*, 966 F.2d 1471, 1476 (D.C. Cir. 1992).

In their statement, the controlling Commissioners explained that they did not vote to find reason to believe a violation had occurred as "'an exercise of the Commission's prosecutorial discretion.'" (Add. 5 (quoting Add. 36).) Though the controlling Commissioners agreed with the other Commissioners that "closely held corporations and corporate LLCs may be considered straw donors" under FECA (Add. 30), and articulated how they intended to apply the statute in such situations going forward (Add. 34-35), they determined that the issue presented in the administrative complaints was one "'of first impression'" before the Commission. (Add. 5 (quoting Add. 24).) The controlling Commissioners found that the Supreme Court's decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), significantly altered the agency's historical approach to corporate contributions and FECA's prohibition against contributions in the name of another. (Add. 23-24.) They understood the Commission's inquiry into whether FECA's prohibition against contributions in the name of another as having historically focused on whether "a corporation (or some other person) paid or reimbursed individuals for making the contributions in their names." (Add. 23.) They concluded that in the pre-*Citizens United* era "the Commission ha[d] never addressed the inverse of the conventional corporate straw-donor scheme," in which a corporation or corporate

LLC could be considered to be making a contribution in the name of another in violation of section 30122, as alleged in Campaign Legal Center's administrative complaints. (Add. 29.) Because corporations could not make any contributions under FECA at the time the prohibition against conduit contributions was enacted, the controlling Commissioners further found that "Congress likely did not contemplate that corporations could violate the prohibition against giving in the name of another by acting as straw donors for contributions." (Add. 31.) In support of this view of the changing legal landscape, the controlling Commissioners also noted that its Office of General Counsel, "with the benefit of varying fact patterns . . . significantly refined its analysis for considering these types of matters." (Add. 24; Add. 29-30 (explaining how the Office of General Counsel's analysis differed among the administrative complaints).) These Commissioners thus determined that the question presented by the administrative complaints was an issue of first impression. (Add. 31.)

The controlling Commissioners considered several additional factors as well. They found that the agency had never before applied section 30122 to a situation where neither FECA's contribution limits nor its source prohibition were at issue. (Add. 24.) The controlling Commissioners thus found that the pending matters "differ[ed] substantially" from prior matters. (Add. 31.) They also considered prior precedent in other contexts "treat[ing] funds deposited in a corporate account

as the corporation's funds, even if the corporation's owner could legally convert them into his or her own personal funds." (Add. 31.) The controlling Commissioners further observed that FEC regulations provide that contributions from corporate LLCs are attributed to the corporate entity, not its owners (Add. 33 (discussing 11 C.F.R. § 110.1(g))), and that the Commission had "previously considered but rejected an attribution rule that would deem the individual owners of corporate LLCs as the makers of those LLCs' contributions" (Add. 24). In light of such historical treatment, the controlling Commissioners found that "it would be reasonable for Respondents to conclude that contributions made by their closely held corporations and corporate LLCs were lawful and not contributions in the name of another." (Add. 33.) Finally, the controlling Commissioners expressed their concern that the rights recognized in *Citizens United* would be rendered "hollow" if closely held corporations and corporate LLCs were presumed to be straw donors when they made contributions. (Add. 24.)

For these reasons, the controlling Commissioners concluded that it had been unclear whether and under what circumstances a contribution made by a closely-held corporation or corporate LLC to a super PAC constituted an improper contribution in the name of another that should be attributed to the entity's owner as the "true contributor" rather than the entity itself. (Add. 33.) Given this understanding, the Commissioners found that the respondents that were the subject

of Campaign Legal Center's administrative complaints did not have adequate notice regarding the application of section 30122 to closely-held corporations and corporate LLCs and, in light of their "due process, fair notice, and First Amendment clarity" concerns (Add. 24), concluded that the pending matters "should be dismissed in an exercise of the Commission's prosecutorial discretion" (Add. 36).

V. PROCEEDINGS BEFORE THE DISTRICT COURT

In the court below, Campaign Legal Center challenged the Commission's dismissals of its administrative complaints as contrary to law. The court below determined that the Commission's actions could be "contrary to law only if [the Commission] failed to show a rational basis for dismissing these complaints." (Add. 7-11.)

In its detailed analysis of the controlling Commissioners' exercise of prosecutorial discretion (Add. 11-19), the district court determined that the question of when a closely held corporation or corporate LLC may be a straw donor under section 30122 was "an issue of first impression for the Commission" (Add. 12), that "even sophisticated lawyers were confused" by the regulatory environment (Add. 13-15), and credited the controlling Commissioners' concerns about notice and due process, as well as the importance of safeguarding First Amendment activity (Add. 16-19). In accordance with this analysis, the district

court concluded that "there was a rational basis for the Commission's exercise of its prosecutorial discretion." (Add. 1, 19.) The district court also rejected as unripe Campaign Legal Center's challenge to the controlling Commissioners' articulation of a standard to evaluate section 30122's applicability in future, similar cases. (Add. 19-21.) The district court thus granted the motions for summary judgment filed by the Commission and F8, Eli Publishing, and Steven Lund, and it denied Campaign Legal Center's motion for summary judgment.

VI. THIS COURT'S DECISION IN *CREW*

On June 15, 2018, following the issuance of the district court's decision, a panel of this Court issued its decision in *CREW*.[1] In that case, the plaintiffs had challenged a decision by a controlling group of Commissioners not to vote to pursue enforcement action under both FECA and the Administrative Procedure Act ("APA"). *CREW*, 892 F.3d at 437. The Commissioners who had voted not to proceed in the underlying administrative matter had determined that the matter did not warrant the further use of Commission resources for a number of reasons and dismissed for prosecutorial discretion. *Id.* at 438.

On appeal of the district court's decision upholding the dismissal, the majority of the panel found that the Supreme Court's decision in *Heckler* "controls

[1] In July 2018, the appellants in *CREW* filed a petition for rehearing en banc. *See supra* p. 1.

this case." *Id.* at 439. In *Heckler*, the Supreme Court had held that "agency decisions not to institute [enforcement] proceedings" are generally unreviewable. *Heckler*, 470 U.S. at 837. In line with this reasoning, this Court determined that the declining-to-proceed Commissioners "placed their judgment squarely on the ground of prosecutorial discretion. Nothing in [FECA] overcomes the presumption against judicial review." *CREW*, 892 F.3d at 439. The Court further reasoned that other provisions of FECA that direct that the "Commission 'shall' take specific actions after making certain threshold legal determinations," such as finding reason to believe that a violation occurred, failed to "constrain the Commission's discretion whether to make those legal determinations in the first instance." *Id*. at 439.

In addition, the majority determined that FECA does not provide meaningful standards for reviewing the Commission's exercise of prosecutorial discretion and that the agency's prosecutorial discretion dismissals are therefore not subject to judicial review. *Id.* For similar reasons, it found that review is also foreclosed under the APA, reasoning that the D.C. Circuit "has held that if an action is committed to the agency's discretion under APA § 701(a)(2) — as agency enforcement decisions are — there can be no judicial review for abuse of discretion, or otherwise." *Id*. at 441 (citing cases). Accordingly, the opinion explained, "[i]t follows that [plaintiffs are] not entitled to have the court evaluate

for abuse of discretion the individual considerations the controlling Commissioners gave in support of their vote not to initiate enforcement proceedings." *Id.* at 441.

ARGUMENT

This Court should summarily affirm the district court's judgment for the Commission. The Commission's dismissals that Campaign Legal Center challenges in this case were based upon prosecutorial discretion. This Court's recent decision in *CREW* establishes that such challenges to the controlling Commissioners' exercise of prosecutorial discretion in connection with the underlying administrative matters are unreviewable.

I. STANDARD OF REVIEW

"Summary affirmance is appropriate where the merits are so clear as to justify summary action." U.S. Court of Appeals for the D.C. Circuit, Handbook of Practice and Internal Procedures at 35-36; *see also Jenkins v. Dist. of Columbia*, No. 18-5021, 2018 WL 3726280, at *1 (D.C. Cir. July 20, 2018) (citing *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam)). In circumstances where the merits are so clear, "no benefit will be gained from further briefing and argument of the issues presented." *Taxpayers Watchdog*, 819 F.2d at 298; *Cascade Broad. Grp. Ltd. v. F.C.C.*, 822 F.2d 1172, 1174 (D.C. Cir. 1987) (per curiam) ("[S]ummary disposition will be granted where the merits of the appeal or petition for review are so clear that 'plenary briefing, oral argument,

and the traditional collegiality of the decisional process would not affect our decision.'" (quoting *Sills v. Federal Bureau of Prisons*, 761 F.2d 792, 793-94 (D.C. Cir. 1985))).

Furthermore, just as this Court "may affirm the district court on grounds different from those relied upon by the district court," *Jenkins v. Wash. Convention Ctr.*, 236 F.3d 6, 8, n.3 (D.C. Cir. 2001), it may also summarily affirm on different grounds, *see, e.g.*, *Hunt v. U.S. Dep't of Veterans Affairs*, 739 F.3d 706, 707 (D.C. Cir. 2014) (per curiam) (summarily affirming lower court decision "upon grounds different from those set forth in the district court's published opinion"); *Jackson v. U.S. Attorney's Office*, No. 07-5071, 2007 WL 4699453, at *1 (D.C. Cir. Aug. 8, 2007) (per curiam) (same); *accord* D.C. Cir. Rule 36(c)(2)(F) (stating that an order of the Court will be published if "it reverses a published agency or district court decision, or affirms a decision of the district court upon grounds different from those set forth in the district court's published opinion").

II. THE JUDGMENT BELOW SHOULD BE SUMMARILY AFFIRMED BECAUSE RECENT PRECEDENT OF THIS COURT FORECLOSES APPELLANTS' CLAIMS AS A MATTER OF LAW

A. The Commissioners Who Did Not Vote to Find Reason to Believe That Section 30122 Was Violated in the Underlying Administrative Matters Based Their Decision Upon the Agency's Prosecutorial Discretion

As the district court found, the challenged dismissal was based upon an exercise of the Commission's prosecutorial discretion. The district court explained

that the controlling dismissal "decision was not a direct 'result' of the Commission's 'interpretation of the Act,' but an exercise of the Commission's 'considerable prosecutorial discretion.'" (Add. 10 (quoting *Nader v. FEC*, 823 F. Supp. 2d 53, 65 (D.D.C. 2011)).) The Commissioners themselves explicitly concluded that the administrative matters "should be dismissed in an exercise of the Commission's prosecutorial discretion." (Add. 24-25, 36.) Importantly, the controlling Commissioners "did *not* dismiss the complaints because [they] decided that the announced standard [of 52 U.S.C. § 30122] did not apply, but reasoned that '[r]espondents were not provided adequate notice that their conduct could potentially violat[e] section 30122.'" Add. 11 (quoting Add. 33); *compare CREW*, 892 F.3d at 441 & nn. 9 & 11 (explaining that the presumption against the reviewability of enforcement decisions applied only to agency enforcement decisions that are "committed to agency discretion" and that "[t]he interpretation an agency gives to a statute is not committed to the agency's unreviewable discretion").

Accordingly, the majority of the district court's analysis in the opinion below (issued prior to this Court's decision in *CREW*) is devoted to explaining its conclusion that "there was a rational basis for the Commission's exercise of its prosecutorial discretion." (Add. 1; Add. 7-19.) The district court analyzed the controlling Commissioners' reasons, including their "concerns of fair notice and

due process in a post-*Citizens United* context, confusing Commission precedent, and the obligation to protect First Amendment speech," and concluded that there was a rational basis for the dismissal. (Add. 11-12; *see also* Add. 24, 28-36 (explaining the controlling Commissioners' analysis of the section 30122 issue and their reasons for exercising prosecutorial discretion).) The dismissals here were based on prosecutorial discretion.

B. *CREW* Resolves This Case

The decision below should be summarily affirmed because, as in *CREW*, the controlling Commissioners in this case "exercised the agency's prerogative not to proceed with enforcement." *CREW*, 892 F.3d at 438. Because "an agency's exercise of its prosecutorial discretion cannot be subjected to judicial scrutiny," *id.* at 439, the votes of the controlling Commissioners not to find reason to believe are prosecutorial choices that are not subject to judicial review.

The concept of agency discretion regarding the pursuit of enforcement matters is grounded in precedent and the recognition that "'an agency decision not to enforce often involves a complicated balancing of a number of factors which are peculiarly within its expertise. . . . The agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities.'" *CREW*, 892 F.3d at 439 & n.7 (quoting *Heckler*, 470 U.S. at 831-32). Such factors include "'whether agency resources are best spent on this violation or

another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall policies, and, indeed, whether the agency has enough resources to undertake the action at all.'" *Id.* (quoting *Heckler*, 470 U.S. at 831-32).

Here, the controlling Commissioners' dismissal decision was based upon a balancing of factors informing their judgment about whether or not to proceed with enforcement. Although Campaign Legal Center below "rel[ied] heavily on the argument that '[a]pplication of section 30122 to corporate straw donors is . . . mandated by the plain language of the statute,'" as the district court correctly explained, the controlling Commissioners "did not say otherwise." (Add. 11.)[2] Rather, these Commissioners found that the potential use of closely held corporations and corporate LLCs as illegal straw donors was an issue of first impression in the post-*Citizens United* context and determined that the administrative respondents were not provided adequate notice that their conduct could violate FECA. (Add. 23-25, 31-36.) They also found that the concern of fair

[2] The Commission's continued enforcement of section 30122, *see, e.g.*, *Doe 1 v. FEC*, 302 F. Supp. 3d 160, 163-64 (D.D.C. 2018) (summarizing the FEC's October 2017 conciliation with respondents on an administrative complaint involving alleged violations of section 30122 and respondents' agreement to a $350,000 penalty), *appeal docketed*, No. 18-5099 (D.C. Cir. Apr. 12, 2018), precludes any contention that "'the agency has "consciously and expressly adopted a general policy" that is so extreme as to amount to an abdication of its statutory responsibilities,'" *CREW*, 892 F.3d at 440 n.9 (quoting *Heckler*, 470 U.S. at 833 n.4) (finding that FEC did not abdicate with regard to alleged violations).

notice to regulated actors "is particularly acute where First Amendment rights are at stake." (Add. 36.) The district court sustained the challenged exercise of prosecutorial discretion as "'an able attempt to balance the competing values that lie at the heart of campaign finance law.'" (Add. 18 (quoting *Van Hollen, Jr. v. FEC*, 811 F.3d 486, 501 (D.C. Cir. 2016)); *see also* Add. 17 (explaining that the FEC is "'[u]nique among federal administrative agencies'" in that its "'sole purpose [is] the regulation of core constitutionally protected activity'" (quoting *AFL-CIO v. FEC*, 333 F.3d 168, 170 (D.C. Cir. 2003))).) The factors the Commissioners considered — the novelty of the issue and the notice, due process, and First Amendment concerns they articulated — are not questions of interpretation of FECA but judgments regarding the agency's use of resources and priorities. *Accord CREW*, 892 F.3d at 441-42 (rejecting "'the notion of carving reviewable legal rulings out from the middle of non-reviewable actions'" (quoting *Crowley Caribbean Transport, Inc. v. Pena*, 37 F.3d 671, 676 (D.C. Cir. 1994)).

Under *CREW*, Campaign Legal Center is "not entitled to have the court evaluate for abuse of discretion the individual considerations the controlling Commissioners gave in support of their vote not to initiate enforcement proceedings." 892 F.3d at 441. Because Campaign Legal Center presents no claims that survive the mandate in *CREW* prohibiting review of FEC prosecutorial discretion dismissals, the district court judgment should be summarily affirmed on

the basis that the Commission's exercise of such discretion in connection with the underlying administrative matters is unreviewable.

CONCLUSION

This Court should summarily affirm the district court's decision in favor of the Commission.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Fed. R. App. R. 27(d)(1)(E)(2) because the brief contains 4,087 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

The brief also 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 the brief uses the proportionally spaced typeface Microsoft Word 14-point Times New Roman.

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September, 2018, I electronically filed the Federal Election Commission's Motion for Summary Affirmance with the Clerk of the United States Court of Appeals for the D.C. Circuit by using the Court's CM/ECF system, which will serve all counsel of record.

I further certify that I also will cause the requisite number of paper copies of the brief to be filed with the Clerk.

/s/ Tanya Senanayake
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