No. 19-5161

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON AND NOAH BOOKBINDER,

Plaintiffs-Appellants,

v.

FEDERAL ELECTION COMMISSION,

Defendant-Appellee.

On Appeal from the United States District Court for the District of Columbia, No. 1:18-cv-00076 (RC)

BRIEF OF ELECTION LAW SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING EN BANC

MINSUK HAN
MATTHEW N. DRECUN
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
mhan@kellogghansen.com
mdrecun@kellogghansen.com

Counsel for Amici Curiae

June 30, 2021

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), *Amici* Professors Richard Briffault, Michael S. Kang, Jennifer Nou, Bertrall Ross, Douglas Spencer, Nicholas Stephanopoulos, Ciara Torres-Spelliscy, and Abby K. Wood certify as follows:

A. Parties and *Amici*. Petitioners are Appellants Citizens for Responsibility and Ethics in Washington, a non-profit corporation, and Noah Bookbinder. Appellee is the Federal Election Commission. There were no *amici curiae* in the district court. Campaign Legal Center appeared as *amicus curiae* in this Court in support of Appellants, and Randy Elf appeared as *amicus curiae* in support of Appellee. Petitioners have stated that they anticipate additional *amici* in support of their Petition for Rehearing En Banc (the "Petition").

B. Ruling Under Review. Petitioners sought review by the panel of the Decision of Judge Rudolph Contreras, ECF Dkt. Nos. 22 and 23, in *Citizens for Responsibility and Ethics in Washington v. FEC*, No. 18-00076 (RC) (Hon. Rudolph Contreras). The district court's opinion is available at 380 F. Supp. 3d 30 and is reprinted in the Joint Appendix at 139-61. The panel's Opinion is attached to the Petition and is available at 993 F.3d 880. The Petition seeks review of the panel's decision.

C. Related Cases. The case on review has not previously been before this Court or any other court. There are no related cases to the case on review.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES*

Page

CASES

* Authorities principally relied upon are marked with an asterisk.

STATUTES AND RULES

LEGISLATIVE MATERIALS

ADMINISTRATIVE MATERIALS

Fed. Election Comm'n:

OTHER MATERIALS

INTEREST OF *AMICI CURIAE*[1]

Amici—Professors Richard Briffault, Michael S. Kang, Jennifer Nou, Bertrall Ross, Douglas Spencer, Nicholas Stephanopoulos, Ciara Torres-Spelliscy, and Abby K. Wood—are leading scholars whose research and academic interests include campaign finance, election law and administration, and the Federal Election Commission ("FEC" or "Commission"). *Amici* have an interest in the proper interpretation and application of federal election law. *Amici* have a range of views about the appropriateness of the FEC's decision to dismiss Citizens for Responsibility and Ethics in Washington's ("CREW") administrative complaint at issue here. However, they share the view that the panel decision, holding that the district court lacked authority to review the controlling commissioners' statement of reasons, improperly insulates the agency's statutory interpretation from judicial scrutiny. Biographies of *amici* are summarized in the Appendix to this brief.

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* state that no counsel for a party authored this brief in whole or in part, and no party or person other than *amici* or their counsel made a monetary contribution to this brief's preparation or submission.

INTRODUCTION

Rehearing en banc is necessary to resolve a significant conflict in the rulings of this Court concerning its review of FEC decisions. The conflict began in 2018, when a divided panel ruled that the discussion of prosecutorial discretion by three of six commissioners in dismissing an administrative complaint rendered the dismissal unreviewable. *See CREW v. FEC*, 892 F.3d 434, 437-39 (D.C. Cir. 2018) ("*CHGO*"); *id.* at 443-53 (Pillard, J., dissenting). In 2020, notwithstanding *CHGO*, another panel reviewed an FEC dismissal of administrative complaints despite three commissioners citing prosecutorial discretion to justify the dismissal. *See Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 355 (D.C. Cir. 2020) (per curiam) ("*CLC*"). A concurring opinion in *CLC* explained why *CHGO* was "flatly at odds" with Supreme Court and circuit precedent. *Id.* at 358-63 (Edwards, J., concurring). Notwithstanding *CLC*, a divided panel here extended *CHGO*, holding that a passing reference to prosecutorial discretion by non-majority commissioners can immunize a thorough legal analysis of the Federal Election Campaign Act of 1971 ("FECA") from judicial review. *See CREW v. FEC*, 993 F.3d 880, 884-87 (D.C. Cir. 2021) ("*New Models*"); *id.* at 896-906 (Millett, J., dissenting).

The en banc Court should resolve the conflict by rejecting the curtailment of judicial review in the present case and by revisiting *CHGO* or else confining its holding to its facts. Judicial review of FEC decisions not to enforce is a matter

of significant public importance. The views advanced in non-enforcement decisions—even if not endorsed by a bipartisan majority of commissioners—have consequences beyond any individual proceeding. They can alter future actions by the FEC's enforcement staff and shape the behavior of regulated parties. Under current circuit precedent, a non-majority bloc's interpretations of FECA may receive *Chevron* deference when adopted in subsequent actions. Freeing such interpretations from judicial review risks snowballing consequences, with one party dominating the FEC's decision-making through damaging "partisan gamesmanship." *CREW v. FEC*, 923 F.3d 1141, 1142 (D.C. Cir. 2019) (Griffith, J., concurring in the denial of rehearing en banc). In tension with this Court's precedent requiring commissioners to state the reasons for their decisions to facilitate judicial oversight, the panel decision shields extensive and influential legal analysis by non-majority blocs from oversight.

Moreover, the curtailment of judicial review threatens Congress's carefully crafted framework for the enforcement of campaign finance law. The FEC's design is "inherently bipartisan." *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 37 (1981) ("*DSCC*"). Decisions whether to pursue—or decline—enforcement are to be made by a majority of commissioners, requiring Democratic- and Republican-aligned commissioners to agree. Recognizing that this partisan-balanced design may lead to gridlock, Congress provided that "[a]ny

person aggrieved" by the Commission's non-enforcement decisions may obtain judicial review and, if the non-enforcement was contrary to law, may sue to remedy the FECA violation. 52 U.S.C. § 30109(a)(8)(A), (C). Yet the panel's unwarranted extension of *CHGO* allows non-majority commissioners to block both enforcement and judicial review—a result "contrary to Congress's intent." *CREW*, 923 F.3d at 1142-43 (Griffith, J., concurring in the denial of rehearing en banc). En banc review is necessary to correct this error.

ARGUMENT

I. THE PANEL DECISION IMMUNIZES AGENCY DECISIONS WITH SIGNIFICANT CONSEQUENCES FROM JUDICIAL REVIEW

Statements by non-majority commissioners controlling the FEC's disposition of an enforcement matter have significant consequences. They can influence judicial interpretations of FECA, future decisions within the agency, and the conduct of regulated parties. Without judicial review, non-majority blocs of commissioners can therefore have far-reaching influence based on views that are "contrary to law," 52 U.S.C. § 30109(a)(8)(C), and that lack the bipartisanship intrinsic to the FEC's design. It thus is critical that the Commission's interpretations of FECA are subject to judicial review and set aside if warranted, especially when a non-majority bloc provides a robust analysis setting forth the FEC's rationale. Otherwise, a non-majority bloc of commissioners can ensure that its tendentious

interpretation of FECA is unreviewable by simply adding a passing reference to "prosecutorial discretion" in its rationale.

First, the views of non-majority commissioners can influence judicial interpretations of FECA. This Court has held that *Chevron* deference is warranted for the legal interpretations of a non-majority bloc of commissioners voting against agency enforcement in a deadlock. *See In re Sealed Case*, 223 F.3d 775, 779-81 (D.C. Cir. 2000) (according deference to three commissioners about FECA's statutory definition of "contribution," now found at 52 U.S.C. § 30101(8)(A)); *cf. CLC*, 952 F.3d at 357-58 (concluding that "we 'must give deference to an agency's interpretation of its own precedents'" in the context of a deadlocked decision not to pursue enforcement) (citation omitted).

Whether or not the application of deference in the context of a deadlocked decision is warranted,[2] so long as it remains the law of this Circuit, the statutory interpretations of a controlling non-majority bloc of commissioners should be reviewable under the "contrary to law" standard. To be sure, a decision by commissioners resting *solely* on conventional discretionary grounds would contain nothing to which *Chevron* deference would attach. In this case, however, the non-

[2] Certain *amici* and others have criticized deference to non-majority blocs of commissioners. *See* Statement of Vice Chair Ann M. Ravel and Comm'r Ellen L. Weintraub on Judicial Review of Deadlocked Commission Votes (June 17, 2014), https://eqs.fec.gov/eqsdocsMUR/14044354045.pdf; Jennifer Nou, *Sub-Regulating Elections*, 2013 Sup. Ct. Rev. 135, 157-59.

majority controlling commissioners made legal rulings that "New Models's major purpose was not the nomination or election of federal candidates . . . , that [its] major purpose did not change . . . based upon its contributions . . . in one calendar year, and that [it] was [thus] not a political committee." JA104. If the panel decision stands, no court could determine whether those legal rulings were "contrary to law," yet later courts may be obligated to defer to the FEC's interpretation under *Chevron* where that rationale forms the basis for its decision.

Second, non-majority blocs of commissioners have used deadlocked "decisions" as legal precedent within the agency, thereby reinforcing those decisions' influence on judicial interpretations of FECA. This Court has held that the legal rationale embodied in the statement of a non-majority following a deadlock is *not* binding legal precedent for future cases. *See Common Cause v. FEC*, 842 F.2d 436, 449 n.32 (D.C. Cir. 1988). Nonetheless, the commissioners have treated such statements as authoritative. Indeed, the commissioners who issued the statement at issue in this case have already relied on the same legal reasoning CREW challenges—and that the panel declined to review—in other enforcement matters as a basis for non-enforcement. *See, e.g.*, Statement of Reasons of Chair Caroline C. Hunter and Comm'r Matthew S. Petersen at 8 n.47, MURs 6969, 7031 & 7034 (Children of Israel et al.) (Sept. 13, 2018), https://eqs.fec.gov/eqsdocsMUR/6969_2.pdf.

A non-majority bloc of commissioners has repeatedly chastised the Commission's Office of General Counsel ("OGC") for declining to follow the legal conclusions expressed in the bloc's statements of reasons following a deadlock. For example, the Commission deadlocked on whether there was reason to believe that the group American Future Fund ("AFF") was a "political committee" under FECA. *See* Statement of Reasons of Comm'rs Caroline C. Hunter and Matthew S. Petersen at 2-3, MUR 6402 (American Future Fund) (Dec. 23, 2014), https://eqs.fec.gov/eqsdocsMUR/14044364910.pdf. The two commissioners voting against enforcement concluded that AFF's "major purpose" was not to elect candidates, based on the analysis of AFF's lifetime spending, similar to the New Models Statement, *id.* at 16-22—an approach that at least one court has found improper, *see CREW v. FEC*, 209 F. Supp. 3d 77, 94 (D.D.C. 2016). The commissioners faulted OGC for determining an organization's "major purpose" based on spending in a calendar year. In so doing, the bloc cited only prior deadlocked FEC decisions about lifetime spending issued by commissioners of their same political party. American Future Fund at 25 n.165, 26 n.170.

Third, deadlocked decisions by the non-majority will influence the conduct of regulated parties until a majority can issue an authoritative decision. Even non-binding statements offer specific information about the views of particular commissioners, *see* Sharon B. Jacobs, *Administrative Dissents*, 59 Wm. & Mary

L. Rev. 541, 578, 584 (2017), from which regulated parties may seek guidance. Regulated parties also have often followed non-binding FEC opinions issued after deadlock. In 2010, for example, the FEC deadlocked on an advisory opinion request by Google about whether political ads on a Google landing page could be posted without disclaimers. *See* FEC, Opinion Letter on Google Advisory Opinion Request, Advisory Op. No. 2010-19, at 2 (Oct. 8, 2010), https://www.fec.gov/files/legal/aos/2010-19/AO-2010-19.pdf; Pichaya P. Winichakul, Note, *The Missing Structural Debate: Reforming Disclosure of Online Political Communications*, 93 N.Y.U. L. Rev. 1387, 1409 (2018). Over the next three years, other parties cited the deadlocked Google advisory opinion in seeking advisory opinions on their own ads, and the FEC deadlocked on each request—effectively allowing the non-majority view that disclaimers were not required to prevail. *See*, *e.g.*, Winichakul, 93 N.Y.U. L. Rev. at 1409-10; FEC, Closeout Opinion Letter on Facebook Advisory Opinion Request, Advisory Op. No. 2011-09 (June 15, 2011), https://www.fec.gov/files/legal/aos/2011-09/AO-2011-09.pdf.

Reliance by regulated parties on a non-majority bloc's potentially incorrect legal interpretation has in turn dissuaded the FEC from pursuing later enforcement actions, citing notice concerns. The FEC has declined to initiate enforcement investigations—and this Court has approved such decisions—on the basis that "past Commission decisions . . . may be confusing" to regulated parties, resulting

in a perceived lack of "adequate notice" to regulated parties "that their conduct could potentially violate" FECA. *E.g.*, *CLC*, 952 F.3d at 357; *see also*, *e.g.*, Statement of Reasons of Vice Chair Caroline C. Hunter and Comm'r Lee E. Goodman at 2, MUR 6920 (American Conservative Union et al.) (Dec. 20, 2017), https://eqs.fec.gov/eqsdocsMUR/6920_3.pdf.

This Court held in *FEC v. National Republican Senatorial Committee* that the controlling commissioners in a deadlocked decision must issue a statement of reasons "to make judicial review a meaningful exercise." 966 F.2d 1471, 1476 (D.C. Cir. 1992). The panel decision here, however, allows any non-majority bloc to convert that well-intentioned requirement into a means by which to influence judicial opinions, the agency's actions, and the behavior of regulated parties—all without judicial oversight. If allowed to stand, the panel decision will thereby permit non-majority blocs to create *de facto* legal regimes based on potentially incorrect interpretations of FECA.

II. THE PANEL'S DECISION UNDERMINES CONGRESS'S BIPARTISAN CAMPAIGN FINANCE ENFORCEMENT FRAMEWORK

The panel decision unduly empowers non-majority blocs, contrary to Congress's bipartisan framework for the enforcement of campaign finance laws. The FEC is "inherently bipartisan in that no more than three of its six voting members may be of the same political party." *DSCC*, 454 U.S. at 37. Because enforcement decisions require four votes, "all actions by the Commission [must]

occur on a bipartisan basis." *CREW*, 923 F.3d at 1142 (Griffith, J., concurring in the denial of rehearing en banc). This includes votes to dismiss an administrative complaint based on the exercise of prosecutorial discretion. *See* FEC, *Guidebook for Complainants and Respondents on the FEC Enforcement Process* 12 (May 2012), http://fec.gov/em/respondent_guide.pdf. In the absence of bipartisan agreement, deadlock results and the proposed action does not proceed.

Because the FEC is designed to deadlock in the absence of bipartisan agreement, there is a risk of political impasse. To ensure proper enforcement of FECA, Congress enacted an "unusual" judicial review provision allowing "[a]ny party aggrieved" by the Commission's non-enforcement decisions to obtain judicial review and, if the non-enforcement was contrary to law, to sue to remedy the FECA violation. *Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995); 52 U.S.C. § 30109(a)(8)(A), (C). This judicial review provision is "an institutional check on political deadlock," *CREW*, 923 F.3d at 1150 (Pillard, J., dissenting from denial of rehearing en banc), ensuring that the Commission cannot "'shirk its responsibility,'" *Democratic Cong. Campaign Comm. v. FEC*, 831 F.2d 1131, 1134 (D.C. Cir. 1987) (quoting 125 Cong. Rec. 36,754 (1979)).

The panel decision upends this carefully crafted structure by allowing one party to dictate the FEC's decision-making. The risk of partisan misuse is at its height in a deadlock: "Whereas a majority vote in the election setting connotes

agreement between parties, a deadlock suggests the converse: a vote split along party lines." Nou, 2013 Sup. Ct. Rev. at 158. Yet the panel decision "empowers any partisan bloc of the Commission to cut off investigation and stymie review of even the most serious violations of federal campaign finance law by uttering 'magic words' of enforcement discretion." *CREW*, 923 F.3d at 1144 (Pillard, J., dissenting from denial of rehearing en banc). Under this regime, motivated partisan blocs can freely interpret FECA in ways that are both legally wrong and without bipartisan support. This cannot be correct. "If [*CHGO*] can be read to suggest that 'when three Commissioners invoke "prosecutorial discretion" they foreclose both the FEC enforcement action and our review of the decision not to proceed, this certainly seems contrary to Congress's intent.'" *CLC*, 952 F.3d at 362 (Edwards, J., concurring) (quoting *CREW*, 923 F.3d at 1142-43 (Griffith, J., concurring in the denial of rehearing en banc)) (brackets omitted).

Deadlocks "have become the increasingly likely outcome at the Commission" over the last decade. Trevor Potter, *A Dereliction of Duty: How the FEC Commissioners' Deadlocks Result in a Failed Agency and What Can Be Done*, 27 Geo. Mason L. Rev. 483, 486 (2020). FEC deadlocks on enforcement matters increased from 4.2% in 2006 to 37.5% in 2016, while the FEC's collection of penalties fell from $5.5 million to below $600,000. *See* Daniel I. Weiner, *Fixing the FEC: An Agenda for Reform*, Brennan Ctr. for Justice, at 3 (2019),

https://www.brennancenter.org/sites/default/files/2019-08/Report_Fixing_FEC.pdf.

The panel decision encourages further deadlocks, because non-majority commissioners can block any enforcement action from proceeding and then "insulate [that] decision from the judicial review that FECA provides." *CREW*, 923 F.3d at 1145 (Pillard, J., dissenting from denial of rehearing en banc). Thus, the panel decision "undercuts the design Congress devised to avoid both partisan domination and partisan deadlock in the Commission's enforcement process." *Id.* at 1144.

Such deadlocks necessarily result in the under-enforcement of campaign finance law—here, the disclosure requirement for political committees. Thus, potentially erroneous legal conclusions by a non-majority, if left unchecked by the courts, can allow substantial contributions of money into federal elections without the disclosure necessary to "enable[ ] the electorate to make informed decisions and give proper weight to different speakers and messages." *Citizens United v. FEC*, 558 U.S. 310, 369, 371 (2010).

CONCLUSION

For the reasons set forth above, *amici* respectfully request that the en banc Court grant rehearing.

Respectfully submitted,

/s/ Minsuk Han

MINSUK HAN
MATTHEW N. DRECUN
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
mhan@kellogghansen.com
mdrecun@kellogghansen.com

June 30, 2021

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 29(b)(4), 29(a)(4)(G), and 32(g)(1), the undersigned hereby certifies that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(i).

1. Exclusive of the exempted portions of the brief, as provided in Federal Rule of Appellate Procedure 32(f), the brief contains 2,599 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font. As permitted by Federal Rule of Appellate Procedure 32(g)(1), the undersigned has relied upon the word-count feature of this word processing system in preparing this certificate.

/s/ Minsuk Han

MINSUK HAN
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900

Counsel for Amici Curiae

June 30, 2021

CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of June 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Minsuk Han
MINSUK HAN

APPENDIX

Richard Briffault is Joseph P. Chamberlain Professor of Legislation at Columbia Law School. Professor Briffault's academic interests include campaign finance regulation, government ethics, law of the political process, legislation, and state and local government law. Since joining the Columbia Law School faculty in 1983, he has combined public and government service with teaching, research, and scholarship. The news media often turns to him for his expert insight into and analysis of issues central to democracy and the political process such as campaign finance reform, government ethics, gerrymandering, and fair elections. He sits on the advisory boards of the Law School's Center for the Advancement of Public Integrity and the Public Interest/Public Service Fellows Program. Professor Briffault has written more than 75 law review and journal articles as well as books and monographs. Before becoming an academic, Professor Briffault served as a clerk to Judge Shirley M. Hufstedler of the U.S. Court of Appeals for the Ninth Circuit and an assistant counsel to New York Governor Hugh L. Carey. From 2014 to 2020, Professor Briffault served as chair of the New York City Conflicts of Interest Board. He is the reporter for the American Law Institute's Project on Principles of Government Ethics and vice-chair of the Citizens Union of the City of New York.

Michael S. Kang is the William G. and Virginia K. Karnes Research Professor at Northwestern Pritzker School of Law and a nationally recognized expert on campaign finance, voting rights, redistricting, judicial elections, and corporate governance. His research has been published widely in leading law journals and featured in the New York Times, the Washington Post, and Forbes, among others. His recent work focuses on partisan gerrymandering; the influence of party and campaign finance on elected judges; the de-regulation of campaign finance after *Citizens United v. FEC*, 558 U.S. 310 (2010); and so-called "sore loser laws" that restrict losing primary candidates from running in the general election. Professor Kang received his BA and JD from the University of Chicago, where he served as technical editor of the Law Review and graduated Order of the Coif. He also received a PhD in government from Harvard University and an MA from the University of Illinois. At the University of Chicago, Professor Kang studied constitutional law with then-lecturer Barack Obama, and, after law school, he clerked for Judge Kanne of the U.S. Court of Appeals for the Seventh Circuit.

Jennifer Nou is Professor of Law at the University of Chicago Law School. Professor Nou's main research interests are in administrative law, executive branch dynamics, election administration, and constitutional separation-of-powers. Prior

to joining the faculty, she was a Public Law Fellow at the Law School and also worked as a policy analyst and special assistant at the Office of Information and Regulatory Affairs. She is a graduate of Yale College and Yale Law School, and received an MPhil in Politics from Oxford University as a Marshall Scholar. After law school, she was a law clerk to Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit and then to Justice Stephen Breyer of the U.S. Supreme Court. She is currently a public member of the Administrative Conference of the United States.

Bertrall Ross is Professor of Law at the University of Virginia School of Law. He teaches and writes in the areas of constitutional law, constitutional theory, election law, administrative law, and statutory interpretation. His research is driven by a concern about democratic responsiveness and accountability, as well as the inclusion of marginalized communities in administrative and political processes. His past scholarship has been published in several books and journals. Prior to joining the Virginia faculty, he taught at the University of California, Berkeley School of Law. Professor Ross is currently serving on the Administrative Conference of the United States and the Presidential Commission on the Supreme Court of the United States. He earned his undergraduate degree in international affairs and history from the University of Colorado, Boulder; his graduate degrees from the London School of Economics and Princeton University's School of Public and International Affairs; and his law degree from Yale Law School. After law school, he clerked for Judge Dorothy Nelson of the U.S. Court of Appeals for the Ninth Circuit and Judge Myron Thompson of the U.S. District Court for the Middle District of Alabama.

Douglas Spencer is Professor of Law and Public Policy at the University of Connecticut. His research interests include the empirical study of public law, campaign finance, voting rights, and election administration. He teaches Constitutional Law, Election Law, and the Introduction to Public Policy course in the Master of Public Administration program. Professor Spencer's research has been published in various leading legal journals and featured in many media outlets. Professor Spencer was a clerk at the Lawyers' Committee for Civil Rights in San Francisco and worked at the U.S. Department of the Interior. Professor Spencer holds a Ph.D. in Jurisprudence and Social Policy from the University of California, Berkeley, a J.D. from Berkeley Law, an M.P.P. from U.C. Berkeley's Goldman School of Public Policy, and a B.A. degree in Philosophy from Columbia University.

Nicholas Stephanopoulos is Kirkland & Ellis Professor of Law at Harvard Law School. His research and teaching interests include election law, constitutional law, administrative law, legislation, and comparative law. His work is particularly focused on the intersection of democratic theory, empirical political science, and the American electoral system. His academic articles have appeared in leading legal journals, and he has also written for a number of popular publications. He has been involved in several litigation efforts as well, including two partisan gerrymandering cases based on his scholarship and decided by the Supreme Court. Before joining the Harvard Law School faculty, Professor Stephanopoulos was a Professor of Law at the University of Chicago Law School. Before entering private practice, he clerked for Judge Raymond C. Fisher of the U.S. Court of Appeals for the Ninth Circuit. A graduate of Yale Law School, Professor Stephanopoulos also holds an M.Phil. in European Studies from Cambridge University and an A.B. in Government from Harvard College.

Ciara Torres-Spelliscy is Professor of Law at Stetson University College of Law. She teaches courses in Election Law, Corporate Governance, Business Entities, and Constitutional Law. Prior to joining Stetson's faculty, Professor Torres-Spelliscy was counsel in the Democracy Program of the Brennan Center for Justice at NYU School of Law where she provided guidance on the issues of money in politics and the judiciary to state and federal lawmakers. She also served as an associate at Arnold & Porter LLP and a staffer for Senator Richard Durbin. Professor Torres-Spelliscy has testified before Congress and state and local legislative bodies as an expert on campaign finance reform. She has also helped draft legislation and Supreme Court briefs. She is the editor of the 2010 edition of the Brennan Center's campaign finance treatise, "Writing Reform: A Guide to Drafting State and Local Campaign Finance Laws." She researches and speaks publicly on campaign finance law as well as judicial selection. She has spoken at symposia and other events at 49 universities around the nation. In 2016, she spoke at the Federal Election Commission at a forum on dark money and foreign money in U.S. elections. Professor Torres-Spelliscy is a graduate of Harvard University and the Columbia School of Law.

Abby K. Wood is Professor of Law, Political Science, and Public Policy at the University of Southern California. She has also taught at the University of Chicago. Her main research interests are in campaign finance, administrative law, and government transparency. Her research has been published or is forthcoming at leading journals in law, political science, and public administration. Prior to joining the faculty, Professor Wood worked as a law clerk for Judge John T. Noonan, Jr. of the U.S. Court of Appeals for the Ninth Circuit. She currently

serves as a commissioner on California's Fair Political Practices Commission, as well as the Commission's Digital Transparency Task Force. From 2015 to 2018, Professor Wood served on the Federal Bipartisan Campaign Finance Task Force. A graduate of Harvard Law School, Professor Wood also holds a Ph.D. in Political Science from the University of California, Berkeley, and an M.A.L.D. from the Fletcher School of Law and Diplomacy. She joins the brief in her personal capacity.