IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

WISCONSIN FAMILY ACTION,	)	
Plaintiff,	)	
v.	)	Civil Action No. 1:21-cv-01373 (WCG)
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

BRIEF OF *AMICUS CURIAE* CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON IN SUPPORT OF DEFENDANT FEDERAL ELECTION COMMISSION'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

STATEMENT OF INTEREST[1]

Citizens for Responsibility and Ethics in Washington ("CREW") is a nonpartisan, nonprofit corporation based in the District of Columbia and recognized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials, ensuring the integrity of those officials, protecting our political system against corruption, and reducing the influence of money in politics through a combined approach of research, advocacy, public education, and litigation. Specifically, CREW receives and relies on disclosures made pursuant to 52 U.S.C. § 30104(c), which information is necessary to and disseminated through CREW's speech to the public, including voters. The loss of information required to be reported under 52 U.S.C. § 30104(c), as plaintiff's proffered preliminary injunction would cause, irreparably injures CREW's constitutional rights to speak and to read.

Additionally, as the litigant in the matter that constitutes plaintiff's principal complaint, *Citizens for Responsibility & Ethics in Washington v. FEC*, 971 F.3d 340 (D.C. Cir. 2020) ("*CREW III*"), and as a party whose materials plaintiff cites and misconstrues, CREW can explain the scope of 52 U.S.C. § 30104(c) in light of the decision.

[1] This brief is filed with the consent of all parties. No counsel for a party authored this brief in whole or in part, and no counsel or party funded its preparation or submission.

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ARGUMENT

Wisconsin Family Action ("WFA") asks this Court for extraordinary relief: an injunction terminating the Federal Election Campaign Act's ("FECA") public disclosure of unambiguously campaign related contributions and expenditures; disclosure necessary to the "free functioning of our national institutions." *Buckley v. Valeo*, 424 U.S. 1, 66 (1976). But WFA does so based on wild mischaracterizations about the scope of the law after *CREW v. FEC*, 971 F.3d 340, 351 (D.C. Cir. 2020) ("*CREW III*"), and the Federal Election Commission's ("FEC") guidance after the invalidation of an FEC regulation that "sharply narrow[ed]" disclosure and "emptie[d]" the statute of "its intended operation," *CREW v. FEC*, 904 F.3d 1014, 1016-17 (D.C. Cir. 2018) ("*CREW II*"). WFA seeks to re-empty the statute of its operation, imposing a nullifying construction rejected by the D.C. Circuit, in conflict with the statute, and contrary to the Constitution. WFA's request should be denied.

WFA's request, moreover, would cause irreparable and unconstitutional injury to countless Americans, including amicus CREW. Indeed, no court has ever issued an extraordinary injunction like WFA seeks here: striking a nationwide viewpoint-neutral campaign-finance disclosure regime for the purpose of censoring speech a plaintiff disfavors.

WFA also fails to establish it has standing for the extraordinary relief it seeks. Taking its sworn statements at face value, WFA does not accept any funds reportable under the FECA, even if WFA engages in express electoral advocacy in the coming federal elections. Accordingly, WFA does not engage in any covered conduct and faces no credible risk of enforcement. Nonetheless, WFA's representations also appear at odds with the public record of its election-related activities, warranting this Court's investigation and potential sanction if wrongdoing is demonstrated.

I. The FECA Unambiguously Requires Disclosure of All Persons Making Contributions Over $200 Per Year to Express Electoral Advocacy Makers—No More and No Less

As "part of Congress' effort to achieve 'total disclosure' by reaching 'every kind of political activity'" and to ensure "the electorate" has "information 'as to where political campaign money comes from and how it is spent,'" *Buckley*, 424 U.S. at 66, 76 (quoted source omitted); *accord Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 477 (7th Cir. 2012), Congress created two disclosure regimes. For groups controlled by candidates or whose major purpose is to influence elections, termed political committees by the FECA, Congress required continuous and extensive reporting. 52 U.S.C. § 30104(a), (b). For those not meeting those benchmarks—which can still include groups spending over $100 million in elections, *see CREW III*, 971 F.3d at 345—Congress imposed a non-continuous reporting obligation when they engage in electoral advocacy. *See* 52 U.S.C. § 30104(c), (f). Relevant here, spending more than $250 on "independent expenditures"—advertisements expressly advocating voters "vote for," "elect," "defeat," etc. a named candidate—52 U.S.C. §§ 30101(18), 30104(c); 11 C.F.R. §§ 100.16, 100.22, triggers "unambiguous[] require[ments]" to disclose two "separate and complementary" categories of contributions. *CREW v. FEC*, 316 F. Supp. 3d 349, 410 (D.D.C. 2018) ("*CREW I*"), *stay denied* 139 S. Ct. 50 (Mem.) (2018).

First, 52 U.S.C. § 30104(c)(1) provides: "Every person (other than a political committee) who makes independent expenditures in an aggregate amount of value in excess of $250 during a calendar year shall file a statement containing the information required under subsection (b)(3)(A) for all contributions received by such person."

The referenced subsection (b)(3)(A) sets out the contribution disclosure obligation for political committees. By incorporation, subsection (c)(1) imposes the same obligation on those making independent expenditures to: "identi[fy] … each… person (other than a political

committee) who makes a contribution to the reporting [person], whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year … together with the date and amount of any such contribution." *See CREW III*, 971 F.3d at 343–44.

Second, 52 U.S.C. § 30104(c)(2)(C) requires those filed statements also "include … the identification of each person who made a contribution in excess of $200 to the person filing such statement which was made for the purpose of furthering an independent expenditure."

Both provisions require reporting of "contribution[s]." A "contribution" is a term of art in the FECA and is not synonymous to a "donation." *Cf.* Dkt. 6 at 16. Rather, a contribution is a transfer of "anything of value made by any person for the purpose of influencing any election for Federal office," 52 U.S.C. § 30101(8)(A); 11 C.F.R. § 100.52(a), over which the contributor "relinquishes control," 11 C.F.R. § 110.1(b)(6).[2]

In other words, those engaging in qualifying express advocacy "will be required to [1] identify all contributors who annually provide in the aggregate $200 in funds intended to influence elections," as well as "[2] identify all persons making contributions over $200 who request the money be used for independent expenditures." *FEC v. Mass. Citizens for Life, Inc. ("MCFL")*, 479 U.S. 238, 262 (1986) (discussing 52 U.S.C. § 30104(c)(1) and (c)(2)(C)).

Notwithstanding these "unambiguous terms," *CREW III*, 971 F.3d at 351, WFA's argument depends on two novel interpretations of the law that stand alone and are contrary to all existing federal authority. First, WFA argues, without support, that the FEC, the D.C. Circuit,

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[2] Accordingly, while the obligation to disclose contributors under subsection (c)(1) is the same for political committees and independent expenditure makers, the result is not. All donations to political committees are, "by definition," contributions. *Buckley*, 424 U.S. at 79. In contrast, because those subject to subsection (c)(1) reporting lack a major purpose of influencing federal elections and primarily engage in non-electoral activities, only their donations made or solicited with the requisite electioneering purpose are "contributions" reportable under subsection (c)(1).

and the U.S. District Court for the District of Columbia ("D.D.C.") have misinterpreted the FECA to "force WFA to publicly disclose … donors who give to WFA for reasons that have nothing to do with any candidate or … campaigns generally." Dkt. 6 at 1. Second, WFA asks this Court to interpret the FECA to impose a disclosure obligation so narrow as to nullify the statute: to cover only contributions "earmarked for specific independent expenditures." *Id.* at 26. Neither proposition has any basis in fact or law.

A. The FEC and Courts All Agree on the FECA's Unambiguous Contributor Disclosure Obligation

Neither the FEC, the D.C. Circuit, nor the D.D.C. interpret either 52 U.S.C. § 30104(c)(1) or (c)(2)(C) to require disclosure of "donors who give … for reasons having nothing to do any candidate or … campaigns generally." *Id.* at 1. The D.C. Circuit expressly recognized that 52 U.S.C. § 30104(c) only covered "'funds intended to influence elections,'" just as the Supreme Court has. *CREW III*, 971 F.3d at 353 (quoting *MCFL*, 479 U.S. at 262). The D.D.C. similarly interpreted the FECA to "not require disclosure of every non-trivial donor … but only those who contribute for political purposes to influence any federal election." *CREW I*, 316 F. Supp. 3d at 402; *see also id.* at 389 (holding subsection (c)(2)(C) contributors are a "subset of those contributors required to be identified in subsection (c)(1)"). The FEC's guidance on *CREW I* is in complete accord: subsection (c)(1) "requires disclosure of donors of over $200 annually making contributions earmarked for political purposes, which contributions are intended to influence elections." FEC provides guidance following U.S. District Court decision in *CREW v. FEC*, 316 F. Supp. 3d 349 (D.D.C. 2018), (Oct. 4, 2018), https://perma.cc/997Y-5HLL (quotation marks and citations omitted); *see also id.* (subsection (c)(2) contributors are a "subset of those contributors required to be identified in subsection (c)(1)" (quotation marks omitted)). At no

point did the FEC, the courts, or, to the extent it has any relevancy, CREW, indicate the FECA would require disclosure of donors neither intending nor solicited to fund electioneering.

Rather, reportable contributions are transfers like the following:

- $3 million dollars donated with the "inten[tion] 'to be used in some manner that would aid the election'" of a specific federal candidate, notwithstanding lack of discussion of "any particular manner or any particular or specific efforts or projects." *CREW I*, 316 F. Supp. 3d at 358; FEC, First General Counsel's Report 2, 12 MUR 6696R (Crossroads GPS) (Aug 24, 2018) ("FEC Crossroads Report"), https://perma.cc/AF3X-3B4M (concluding donation was contribution covered by subsection (c)(1)), *adopted unanimously by FEC*, Certification MUR 6696 (Crossroads GPS) (Aug. 28, 2018), https://perma.cc/E428-YZF8; *see also CREW III*, 971 F.3d at 346 (FEC's General Counsel stands as agency's controlling statement where majority of commissioners do not provide alternative explanation).

- Funds donated as part of a "matching challenge" to aid the election of a specific candidate. *CREW III*, 971 F.3d at 346; FEC Crossroads Report 2, 12.

- Funds donated in response to a solicitation including "example" independent expenditures. *CREW I*, 316 F. Supp. 3d at 408; FEC Crossroads Report 2, 12–13 (finding these contributions must be identified under subjection (c)(2)(C).

- Funds donated in response to solicitations asking donors to "support [the donee's] grassroots door-knocking army to re-elect Trump" and "defeat Biden and Kamala Harris." *See* Complaint, MUR 7892 (Mar. 30, 2021) *available at* https://perma.cc/9FQY-LJZA.

- Funds donated in response to a solicitation for funds to "help us communicate your views to hundreds of thousands of members of the *voting public*, letting them know why [then presidential candidate] Ronald Reagan and his anti-people politics *must* be stopped." *FEC v. Survival Educ. Fund, Inc.* (*"SEF")*, 65 F.3d 285, 295 (2d Cir. 1995).

- Funds donated in response to a solicitation stating then presidential candidate "John Kerry . . . is clearly unfit for command," and that donations "will help" group "set the record straight" in response to Kerry's candidacy. FEC, Political Committee Status, Supplemental Explanation & Justification, 72 Fed. Reg. 5596, 5604 (Feb. 7, 2007) ("Suppl. E&J") (*citing* Conciliation ¶¶ 18–21, MUR 5604 (SwiftBoat Vets) (Dec. 13, 2006), https://perma.cc/KF6F-XVAW).

- Funds donated in response to a solicitation stating "gifts from $2,000-$50,000 targeted specifically to help elect Cathy Wollard to Congress." Suppl. E&J, 72 Fed Reg. at 5604–05 (*citing* Conciliation ¶¶ 12–13, MUR 5753 (LCV 527 and LCV 527 II) (Dec. 13, 2006), https://perma.cc/LPK7-E7V6).

- Funds donated in response to a solicitation for help to "reduce support for" a presidential candidate's "re-election in 2004." Suppl. E&J, 72 Fed. Reg. 5605 (*citing* Conciliation ¶¶ 14–15, MUR 5754 (MoveOn.org Voter Fund) (Dec. 13, 2006), https://perma.cc/XU7U-KUNM).

Each of these transfers are given or solicited to influence a federal election: "earmarked for political purposes," *Buckley*, 424 U.S. at 80, even if not "earmarked for a specific or single political purpose," *CREW I*, 316 F. Supp. 3d at 376. Accordingly, assuming they exceed $200 that year, the sources of these contributions must be disclosed if the recipient spends over $250 on an explicit appeal to voters to vote for or defeat a federal candidate.

In contrast, for example, a donor to the American Cancer Society "eager to fund the ongoing search for a cure" would not be disclosed, even if the group later ran independent expenditures. *Cf. Van Hollen, Jr. v. FEC*, 811 F.3d 486, 497 (D.C. Cir. 2016). Despite WFA's contention, the FEC and every court to consider the issue, including the D.C. Circuit, recognized "donors … who want to fund only the organization's administrative expenses or non-political activities, may do so without being identified" under 52 U.S.C. § 30104(c)(1). *CREW I*, 316 F. Supp. 3d at 400-01. WFA's contention otherwise is merely an attempt to create a strawman.

B. Disclosure is Not Limited to Those Funding Specific Independent Expenditures

In contrast to the unanimous interpretation of the judiciary, WFA demands one that limits disclosure to funds "earmarked for specific independent expenditures," Dkt. 6 at 26, effectively nullifying the statute. WFA's construction has no basis in law, precedent, or reason.

WFA relies on *Buckley*'s clarification of the definition of contribution in the FECA to cover funds "earmarked for political purposes." Dkt. 6 at 17 (quoting *Buckley*, 424 U.S. at 80). That interpretation, however, is identical to courts' and the FEC's interpretation of subsections (c)(1) and (c)(2)(C) to extend only to funds intended to influence elections. *See Section I.A. supra*. Funds may be earmarked for political purposes because they are designated to fund some

particular electoral activity, like independent expenditures, but also other regulated activity, like electioneering communications or partisan voter drives, or to pass on to federal candidates, parties, and political committees. *See, e.g.*, 52 U.S.C. § 30101(8)(A), (9)(B)(ii), § 30104(b), (f) (regulating all such activity as federal electioneering); *Buckley*, 424 U.S. at 80. Further, as is often the case, a donor may simply earmark funds to "aid the election" of a particular candidate or political party, *CREW I*, 316 F. Supp. 3d at 358, without any intention to fund a "specific independent expenditure," Dkt. 6 at 25. All such transfers meet *Buckley*'s clarification.

Moreover, the FECA, both at the time of *Buckley* and now, subjects those making independent expenditures to the same contributor disclosure obligation of political committees through explicit cross reference. *See* 2 U.S.C. § 434(e) (1976) (independent expenditure makers must file "a statement containing the information required by this section" pertaining to "Reports by Political Committees and Candidates"); *id.*, § 434(b)(2) (reports shall include the identification of "each person who has made one or more contributions" over $100 that year). Political committees are not limited to reporting contributions to fund their independent expenditures. *Buckley* took no issue with this coextensive contributor disclosure obligation.

Rather, when *Buckley* limited coverage to funds connected to independent expenditures, it did so expressly. Immediately after discussing contributions, *Buckley* explicitly interpreted a different trigger, "expenditure," to narrowly "reach only funds used for communications that expressly advocate." *See Buckley*, 424 U.S. at 78–80. *Buckley* did not impose that limit on "contribution."

Indeed, *Buckley* uses the plural, "political purpose<u>s</u>," indicating the "earmark[ing]" need not be aimed at any particular one qualifying purpose. *See, e.g.*, *Van Hollen*, 811 F.3d at 493 (equating "purpose of furthering electioneering communications" with "purpose of furthering an

independent expenditure"); *United States v. Hagler*, 700 F.3d 1091, 1097 (7th Cir. 2012) ("[T]he indefinite article 'an' generally implies the possibility of a larger number than just one."). "Rather than limit the term 'contribution' to donations earmarked to support [independent expenditures]," never mind a specific advertisement, "*Buckley* stated more broadly that the term covers any donation 'earmarked for political purposes.'" *CREW III*, 971 F.3d at 353 (quoted source omitted); *accord MCFL*, 479 U.S. at 262 (interpreting "contribution" as any "funds intended to influence elections"); *CREW I*, 316 F. Supp. 3d at 401 ("The Supreme Court did not restrict the definition of 'contribution' to the kind of independent expenditures.").

WFA's other cited authority, *SEF*, also does not support its strained interpretation. In that case, the Second Circuit construed a now repealed provision that required a disclaimer in an "an expenditure … that either 'expressly advocate[es] the election or defeat of a clearly identified candidate' or 'solicits any contribution.'" *SEF*, 65 F.3d at 293. The court construed the scope of that "solicitation" to touch only those for contributions "indicating that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office." *Id.* at 295. It then found that a solicitation for funds to communicate to "the voting public, letting them know why Ronald Reagan … *must* be stopped" met the court's definition of a solicitation for a contribution. *Id.* There was no indication in that solicitation that the funds will be used for a "specific independent expenditure," *cf.* Dkt. 6 at 26, or, for that matter, any independent expenditure at all.

Moreover, *SEF* expressly distinguished the solicitation provision from the disclosure imposed on those making independent expenditures. *SEF,* 65 F.3d at 295–96 (discussing § 30104's predecessor, § 434(e)). *SEF* recognized the disclosure triggered by making an independent expenditure was "far-reaching," and "broad[er]" than the "more limited disclosure

obligations" the court interpreted to apply to solicitations. *Id. SEF* thus expressly rejected WFA's cramped interpretation of subsection (c) disclosure.

The only support for WFA's preferred interpretation of subsections (c)(1) and (c)(2)(C) is the now-invalidated regulation, 11 C.F.R. § 109.10(e)(1)(vi), which previously limited disclosure only to contributions intended to further "the reported independent expenditure." Under that rule, almost no contributors were reported despite millions being spent on independent expenditures. *See, e.g.*, *CREW III*, 971 F.3d at 345 (group spent over $100 million on independent expenditures and made over $75 million in contributions but did not disclose single contribution). Yet this radical nullification was imposed without any justification. Rather than limiting disclosure "[i]n light of *Buckley*," Dkt. 6 at 5, the FEC's stated justification made no mention of *Buckley* or the Constitution. It consisted of twenty-nine words that "wholly fail[ed] to explain how subsection (c)(1) is implemented or provide justification for narrowing the disclosure requirement of subsection (c)(2)(C)." *CREW I*, 316 F. Supp. 3d at 411 n.48. It merely stated the rule "incorporates the changes set forth at 2 U.S.C. § 434(c)(1) and (2)" as amended by Congress in 1979. 45 Fed. Reg. 15080, 15087 (Mar. 7, 1980). The referenced statutory provisions are identical to those found in the current statute and like today required disclosure of "all contributions" over $200 annual to the express electoral advocacy maker, as well as contributions to further "an independent expenditure." Pub. L. 96-187, 93 Stat. 1339 (1980). It was those very provisions the Supreme Court interpreted six years later to require the disclosure of "all contributors who annually provide in the aggregate $200 in funds intended to influence elections." *MCFL*, 479 U.S. at 262. The FEC gave no reason in 1980 to read the statute differently. Nor did the administrative record provide any reason for it or show the change was anything but inadvertent. Similarly, WFA offers no reason to today.

Rather, as every jurist to consider the matter has found, the regulation's narrow constraint could not be squared with the "unambiguous terms" of the statute. *CREW III*, 971 F.3d at 350. First, as discussed above, there is no basis in the text to construe an obligation to disclose "all contributions"—explicitly incorporating the same obligation imposed on political committees—to cover only the non-existent few contributions that are earmarked to a specific independent expenditure. Second, the regulation rendered subsections (c)(1) and (c)(2)(C) redundant, in violation of a "cardinal rule" of construction. *Kungys v. United States*, 485 U.S. 759, 778 (1988). Third, the regulation stripped subsections (c)(1) and (c)(2)(C) of any meaning because a contribution cannot logically fund "a specific independent expenditure." Rather, a contributor must "relinquish control" of funds. 11 C.F.R. § 110.1(b)(6), but one funding a specific independent expenditure retains control and in fact "make[s]" the independent expenditure. *See* FEC, AO 2008-10 (Oct. 24, 2008), https://perma.cc/BYE5-VV7V (individual paying for specific independent expenditure is the expenditure's maker); *see also CREW I*, 316 F. Supp. 3d at 394 n.40 (noting "legitimate concern").

Both of WFA's proffered constructions—the strawman construction it attributes to the FEC and the nullifying construction it urges here—lack any basis in law, precedent, or reason. There is no risk WFA will be required to disclose donations "unambiguously unrelated to any campaign" or candidate. *Cf.* Dkt. 6 at 15–16. Nor does FECA's text support WFA's proposal to only disclose contributions "earmarked for specific independent expenditures." *Cf.* Dkt. 6 at 26.

II. Disclosure of Non-Trivial Contributions Intended to Influence Federal Elections to Those Doing So by Express Advocacy is Narrowly Tailored to Important, and Indeed Compelling, Interests

Putting aside WFA's erroneous statutory constructions, WFA's primary argument is that any disclosure beyond contributions earmarked to specific independent expenditures violates the

First Amendment. WFA is wrong. The disclosure actually imposed by the FECA is narrowly tailored—indeed precisely tailored—to important and indeed compelling interests.

Courts have universally found that disclosure is “the least restrictive means of curbing the evils of campaign ignorance and corruption.” *Buckley*, 424 U.S. at 68. It permits “citizens [to] see whether elected officials are ‘in the pocket’ of so-called moneyed interests,” *Citizens United v. FEC*, 558 U.S. 310, 370 (2010)(quoted source omitted), and “inform[s] the public about various candidates’ supporters.” *McConnell v. FEC*, 540 U.S. 93, 201 (2003). It lets the public know “who is speaking about a candidate and who is funding that speech.” *SpeechNow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010). It “provid[es] the electorate with information as to where political campaign money comes from and how it is spent.” *Madigan*, 697 F.3d at 477 (quoting *Buckley*, 424 U.S. at 66). These interests are at least “important,” *McConnell*, 540 U.S. at 201, and indeed “compelling,” *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1006 (9th Cir. 2010). The “free functioning of our national institutions” depends on them. *Buckley*, 424 U.S. at 66 (quoted source omitted).

These interests are not limited to the disclosure of funds directed towards express advocacy alone. *See MCFL*, 479 U.S. at 262. “[D]isclosure requirements [need not] be limited to speech that is the functional equivalent of express advocacy.” *Citizens United*, 558 U.S. at 369; *accord McConnell*, 540 U.S. at 193–94. Rather, “the wooden distinction between express advocacy and issue discussion does not apply in the disclosure context” and “disclosure requirements need not hew to it to survive First Amendment scrutiny.” *Madigan*, 697 F.3d. at 484; *Delaware Strong Families v. AG of Delaware*, 793 F.3d 304, 308 (3d Cir. 2015) (“The Supreme Court has consistently held that disclosure requirements are not limited to ‘express advocacy’ and that there is not a rigid barrier between express advocacy and so-called issue

advocacy." (quoted source omitted)); *Indep. Inst. v. FEC*, 216 F. Supp. 3d 176, 187 (D.D.C. 2016) ("The Supreme Court and every court of appeals to consider the question have already … closed the door to the [] argument that the constitutionality of a disclosure provision turns on the content of the advocacy accompanying an explicit reference to an electoral candidate."), *aff'd* 137 S. Ct. 1204 (2017).

The Constitution imposes no bar on disclosure as subsection (c)(1) and (c)(2)(C) are "narrowly tailored" to the interests that disclosure serves. *Cf. Am. for Prosperity Found. ("AFPF") v. Bonta*, 141 S. Ct. 2373, 2384 (2021) (narrow tailoring requires a "fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served, that employs not necessarily the least restrictive means but a means narrowly tailored to achieve the desired objective" (quoted source omitted)). Indeed, the subsections "provide *precisely* the information necessary to monitor" an express electoral advocacy maker's "spending activity and its receipt of contributions" to serve these interests. *MCFL*, 479 U.S. at 262 (emphasis added). The contributors disclosed are those who give to "influence federal elections." *Id.* By reason of that donative purpose, those contributors may have candidates "in [their] pocket," *Citizens United*, 558 U.S. at 370, and they are the "supporters" about which the public has a right to know. *McConnell*, 540 U.S. at 201. They are, by definition, "where political campaign money comes from." *Madigan*, 697 F.3d at 477; *see also Gaspee Project v. Medros*, 13 F.4th 79, 89 (1st Cir. 2021) (finding state contributor disclosure requirement for independent expenditures "narrowly tailored to enable 'the citizenry to make informed choices' at the polls about issues of public import" (quoting *Buckley*, 424 U.S. at 14-15)).

Of course, while the scope of disclosure is in fact precisely tailored to the interests served, close cases of fact will always arise. But the existence of "close cases" on the facts does not mean the definition is unconstitutionally vague. *United States v. Williams*, 553 U.S. 285, 305–06 (2008). Rather, so long as the statute "provide[s] a person of ordinary intelligence fair notice of what is prohibited," it passes First Amendment muster. *Id.* at 304.

Nevertheless, WFA argues any disclosure beyond contributions intended to fund a specific independent expenditure is "mismatch[ed]" to interests in disclosure. Dkt. 6 at 10. History has disproven WFA.

First, WFA argues that any disclosure here cannot serve anti-corruption interests, because "no threat of corruption arises where … political expenditures are made independently of any candidate or campaign." Dkt. 6 at 15 (citing *Citizens United*, 558 U.S. at 360; *Wis. Right to Life PAC v. Barland*, 664 F.3d 139, 153 (7th Cir. 2001); *SpeechNow.org*, 599 F.3d at 692–94). WFA misreads these cases. Rather than boldly claim that independent expenditures can *never* lead to corruption, *see Citizens United*, 588 U.S. at 361 (recognizing "elected officials [could] succumb to improper influences from independent expenditures"); *cf. McCutcheon v. FEC*, 572 U.S. 185, 214 (2014) (recognizing even independent expenditures have "value" to a candidate), these cases stand for the point that such risk could not justify "[a]n outright ban on corporate political speech," *id.*; *Barland*, 664 F.3d at 153 (discussing what would "justify restrictions on independent expenditures"). Other measures, like disclosure, are the constitutionally permissible remedies. *SpeechNow.org*, 599 F.3d at 434–35 (upholding disclosure obligations to independent-expenditure-only group); *cf. Wis. Right to Life, Inc. v. Barland*, 751 F.3d 804, 836 (7th Cir. 2014) (stating *Citizens United* "relax[ed] the express-advocacy limitation" in considering

"disclosure requirements at issue there," including the "less burdensome disclosure rule for independent expenditures").

History has shown independent expenditures can be quite corrupting. In just the last few years, one public official, a nonprofit 501(c)(4), and a corporation were indicted in a bribery scheme that involved contributions from the company to the 501(c)(4), which used the money for independent advocacy for public officials' elections. DOJ, Ohio House Speaker, former of Ohio Republican Party, 3 other individuals & 501(c)(4) entity charged in federal public corruption racketeering conspiracy involving $60 million (July 21, 2020), https://perma.cc/R4HB-228L. Another official and individual were indicted on a bribery scheme that involved payments to an independent national political organization to air independent expenditures. DOJ, Tennessee State Senator Brian Kelsey and Nashville Social Club Owner Indicted in Campaign Finance Conspiracy (Oct. 25, 2021), https://perma.cc/5FCH-H6D7. A foreign national was convicted for funding an independent expenditure only group "in an effort to buy influence" with elected officials. DOJ, Mexican Businessman Jose Susumo Azano Matsura Sentenced for Trying to Buy Himself a Mayor (Oct. 27, 2017), https://perma.cc/3DLW-A4JT. Individuals in North Carolina were indicted in a bribery scheme involving contributions "through an independent expenditure committee, [given] in exchange for special official action favorable to" the contributor. Indictment ¶¶ 14, 16(a), 38, 53–61, 65, 86, *United States v. Lindberg*, No. 5:19-CR-22-FDW-DSC (W.D.N.C. May 18, 2019). Of course, it is "notoriously difficult to ferret out" criminal corruption, *Libertarian Nat'l Comm., Inc. v. FEC*, 924 F.3d 533, 544 (D.C. Cir. 2019), so these examples are but a small window into the corruption independent expenditures can and do cause.

Putting aside corruption, disclosure also combats "campaign ignorance" and "defin[es] … the candidate's constituencies," *Buckley*, 424 U.S. at 68, 81, "enables the electorate to make informed decisions and give proper weight to different speakers and messages," *Citizens United*, 558 U.S. at 371, and permits "citizens … to hold corporations and elected officials accountable for their positions and supporters," *id.* at 370. WFA argues disclosure here cannot serve these purposes because disclosure could apply to donations "unambiguously unrelated to any campaign" donations. Dkt. 6 at 15–16. WFA's argument, however, rests on its baseless misreading of the FEC's guidance and the *CREW* cases. *See Section I supra*. Further, disclosure can extend beyond the "unambiguously campaign related," *id.* at 15, to cover anything that "reasonabl[y]" fits the interests in disclosure, *AFPF*, 141 S. Ct. at 2384. Of course, here, the disclosure is "precisely" fit to those interests. *MCFL*, 479 U.S. at 262.

Nonetheless, WFA argues that disclosure here would not serve an informational interest because it could "mis-designat[e]" a contributor "as supporting a candidate because donors may not favor every (or any) candidate supported by WFA's independent expenditures." Dkt. 6 at 19. Yet that is true of donors to political parties or political committees. Disclosure of contributors is still narrowly tailored, especially when the alternative is complete ignorance. Moreover, WFA's belief that voters are better off "being kept in ignorance" is not constitutionally cognizable, *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 769 (1976), particularly where the stated goal is to censor disfavored criticism, *see* Dkt. 6 at 24 (stating goal of this suit is to terminate criticism WFA does not deem "civil"). The "best means" of addressing any confusion "is to open the channels of communication rather than close them." *Va. State Bd. of Pharmacy*, 425 U.S. at 769. "[M]ore speech, not less, is the governing rule." *Citizens United*,

558 U.S. at 361. If WFA or its donors are concerned about being mis-designated, their remedy is more speech: to declare which candidates their contributors supported.

Finally, WFA argues that the possibility of harassment renders the FECA unconstitutional, but WFA's arguments are unavailing. First, the possibility of harassment does not doom a law that otherwise satisfies exacting scrutiny. Rather, it is a reason disclosure laws are subject to exacting scrutiny. *See Buckley*, 424 U.S. at 68; *see AFPF*, 141 S. Ct. at 2389 (noting single group's harassment would not invalidate law "narrowly tailored to an important government interest"). Second, even if WFA and its donors were likely to face significant levels of harassment or retaliation, which it has not shown, *see* Dkt. 20 at 23–27, that would at most support an as-applied exception to disclosure similar to that received by the Socialist Workers Party, though WFA has not requested this, *see Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87 (1982) (narrow carve out for minor political party with little chance of impacting elections that was historical object of harassment by government officials and private parties). It would not, however, support the facial relief WFA seeks here that would blind the public and censor speech about the contributors supporting their candidates through independent expenditures. *See* Dkt. 6 at 26.

In sum, the disclosure obligation actually imposed by subsections (c)(1) and (c)(2)(C), the disclosure of "all contributors" over $200 to WFA "who give to influence elections," *MCFL*, 479 U.S. at 262, is narrowly tailored to important, and indeed compelling, interests.

III. The Relief WFA Seeks Irreparably and Unconstitutionally Harms CREW and Countless Americans

WFA claims nullifying contributor disclosure for independent expenditures "will not cause any harm." Dkt. 6 at 25. That is far from the truth. The relief WFA seeks here deprives CREW of its statutory and constitutional rights to receive information and to speak, and deprives

countless Americans of those same rights. Indeed, no court has issued the relief WFA seeks here: a universal injunction against a viewpoint-neutral public dissemination of campaign finance information, particularly one sought for the purpose of censoring disfavored speech.

CREW uses information reported under subsections (c)(1) and (c)(2)(C) to produce speech alerting the public, including voters, about potential corruption. For example, CREW recently released a report on groups supporting the campaign of Kelly Loeffler based in part on subsection (c)(1) and (c)(2)(C) disclosure reports. Matt Corley, Millions funneled through dark money group appear to have boosted Kelly Loeffler, Nov. 3, 2020, https://perma.cc/YBZ8-QREE. CREW also filed a FEC complaint and issued an accompanying statement based in part on subsection (c)(1) and (c)(2)(C) reporting. Matt Corley, CREW complaints target network responsible for at least $36 million in dark money, Nov. 20, 2020, https://perma.cc/SN7B-TLCM.[3] Loss of disclosure injures CREW's "efforts to defend and implement campaign finance reform" to combat corruption. *Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 356 (D.C. Cir. 2020).

Beyond combating corruption, knowing the financial patrons behind a message is as informative as encyclopedic knowledge about it, permitting an audience to effectively judge the message's propriety. *See, e.g.*, Arthur Lupia, Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections, 88 Am. Pol. Sci. Rev. 63 (Mar. 1994). The usefulness of that information has only multiplied in the days of misinformation campaigns, ghost candidates, and fake front groups. *See, e.g.*, Report of the Senate Comm. on Intelligence, U.S. Senate, on Russian Active Measures Campaigns and Interference in the 2016

[3] For its part, WFA's financial activities have also generated considerable press attention. *See, e.g.*, Monica Davey and Nicholas Confessore, Wisconsin Governor at Center of a Vast Fund-Raising Case, *New York Times*, June 19, 2014, https://perma.cc/9EAS-P22W; John Doe prosecutors accuse Scott Walker of running, *Wisconsin State Journal*, June 20, 2014, https://perma.cc/3KVQ-QYQZ.

U.S. Election Vol. II (Nov. 10, 2020), https://perma.cc/HCT8-FPAC; Jason Garcia and Annie Martin, Florida Power & Light execs worked closely with consultants behind 'ghost' candidate scheme, records reveal, *Orlando Sentinel*, Dec. 2, 2021, https://perma.cc/PQJ4-MHRA; Amanda Garret, Part 4: Householder directs dirty campaign to save bailout as millions flow, *Cincinnati Enquirer*, Aug. 4, 2020, https://perma.cc/F8LA-M5JX. Speech about financial patrons is necessary to combat these abuses and permit reasoned decision-making, and that has made it a target for censorship.

A reduction in the information reported under subjections (c)(1) and (c)(2)(C) "necessarily reduces the quantity of expression," including CREW's, *Buckley*, 424 U.S. at 19, by depriving speakers of the "facts" that are "the beginning point for much of the speech that is most essential to advance human knowledge and to conduct human affairs," *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 570 (2011). That is a restraint even greater than a loss of funding. A speaker can always spend less, but they can't speak about what they don't know. The relief WFA seeks further deprives CREW and the public of their free speech rights "in receiving information." *Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n of Cal.*, 475 U.S. 1, 8 (1986) (recognizing component of free speech is readers' rights to receive information).

These do not appear to be unintended consequences of WFA's relief. Indeed, WFA admits its primary goal here is to shield itself, its donors, and its supported candidates from scrutiny. Dkt. 6 at 9–10. In other words, WFA seeks to prevent any speech critical of WFA, its donors, and its supported candidates that they might disfavor by means of a prior restraint against any such speech: preventing it from occurring by depriving it of the information it needs. But "it is the chief purpose of the guaranty" of the First Amendment "to prevent previous restraints upon publication." *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 713 (1931); *Neb. Press Ass'n v.*

Stuart, 427 U.S. 539, 559 (1976) (prior restraints are "the most serious and least tolerable infringement on First Amendment rights"). Any government action taken, including an injunction by this Court, *see Neb. Press Ass'n*, 427 U.S. at 556, premised on a party's express desires to suppress a disfavored speech, is "presumed to be unconstitutional," *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819, 828 (1995). Indeed, even when speech is a result of the government's "own creation," the government may not act to suppress it. *Id.* at 829. Rather, "the government violates the First Amendment when it denies access to a speaker" to a benefit, even if gratuitously given, "solely to suppress the point of view he espouses." *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1986); *cf. Espinoza v. Mont. Dep't of Revenue.*, 140 S. Ct. 2246, 2261–62 (2020) (court order invalidating entire program unconstitutional when purpose is to exclude beneficiaries based on First Amendment protected activity); *Sorrell*, 564 U.S. at 567–68 (law suppressing speech arising from "information … generated in compliance with a legal mandate" violated First Amendment); *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32, 36 (1984) (even in "unique" area of discovery over which courts enjoy "substantial latitude," court could only limit information obtained by "legislative grace" if restraint furthered "an important or substantial governmental interest unrelated to the suppression of expression"). The relief WFA seeks would have the intended effect of suppressing the viewpoint that its patrons' matter, while leaving dark money groups like it unencumbered.

WFA complains its opponents are insufficiently "civil." Dkt. 6 at 9. When a "person responds" to speech, however, "by saying something derogatory about the first person, … nobody's free speech rights are violated." Tr. 28:10– 15 (Alito, J.), *Houston Cmty. College Sys. v. Wilson*, No. 20-804 (U.S. Nov. 2, 2021). Some of WFA's critics' speech may be "offensive," *Cohen v. California*, 403 U.S. 15, 25 (1975), or "hurtful," *Snyder v. Phelps*, 562 U.S. 443, 454,

456 (2011), or even "aggressive," *McCullen v. Coakley*, 573 U.S. 464, 472 (2014). But their speech is still constitutionally protected. *Tinker v. Johnson*, 491 U.S. 397, 408 (1989); *John Doe No. 1. v. Reed*, 561 U.S. 186, 228 (2010) (Scalia, J., concurring) ("[H]arsh criticism … is a price our people have traditionally been willing to pay for self-governance."); *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) ("[D]ebate on public issues should be uninhibited, robust, and wide-open, and [] it may well include vehement, caustic, and sometimes unpleasantly sharp attacks."); *cf. Footit v. Van De Hay*, No. 04-C-459, 2005 WL 1563334, at *4 (E.D. Wis. 2005) ("As long as the criticism is not defamatory … the law affords no protection to the person targeted."). Even if WFA and its donors would feel more free to speak in the absence of critics, "[t]he concept that the government may restrict some speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." *Citizens United*, 558 U.S. at 349–50 (quoting *Buckley*, 424 U.S. at 48–49).

On the other hand, the violence and true threats WFA fears are not protected. But "[t]here are laws against threats and intimidation." *John Doe No. 1*, 561 U.S. at 228 (Scalia, J., concurring). A third party's "violence or threats or other unprivileged retaliatory conduct" do not justify "suppress[ing]" free speech. *Zamecnik v. Indian Prairie Sch. Dist. No. 204*, 636 F.3d 874, 879 (7th Cir. 2011); *Ovadal v. City of Madison*, 416 F.3d 531, 537 (7th Cir. 2005) ("The police must permit the speech and control the crowd; there is no heckler's veto." (quoted source omitted)); *see also AFPF*, 141 S. Ct. at 2384 (restraint must be narrowly tailored to combatting harm). So too here; any regrettable actions of third parties cannot suffice to suppress the speech CREW and other Americans are constitutionally entitled to receive and constitutionally entitled to create.

In short, the relief WFA seeks would cause irreparable and unconstitutional harm to CREW and to countless other Americans who rely on information the FECA requires to be disclosed by express electoral advocates. Accordingly, even if WFA's claim had merit, which it does not, the relief of censorship is not warranted.

IV. WFA's Submissions Do Not Establish Standing, and Appear to be Contradicted by the Public Record

To establish standing, a plaintiff "must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006). "'[S]tanding is not dispensed in gross': A plaintiff's remedy must be tailored to address the plaintiff's particular injury." *Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018) (quoting *Cuno*, 547 U.S. at 353). Standing must exist separately for each form of relief sought, *see Town of Chester v. Laroe Estates, Inc.*, 137 S. Ct. 1645, 1650 (2017), including a preliminary injunction, *Speech First, Inc. v. Killen*, 968 F.3d 628, 632 (7th Cir. 2020). "[P]laintiffs lack standing to seek—and the district court therefore lacks authority to grant—relief that benefits third parties." *McKenzie v. City of Chicago*, 118 F.3d 552, 555 (7th Cir. 1997).

Here, based on WFA's sworn submissions, WFA risks no injury from enforcement of 52 U.S.C. § 30104(c)(1) or (c)(2)(C). On the other hand, those submissions appear to be contradicted by the public record. The Court should inquire into these contradictions to satisfy for itself that no perjurious misrepresentation has been made.

A. WFA's Sworn Submissions Do Not Establish Standing

WFA bases its standing here on the "chill" created by the "real potential for enforcement" of 52 U.S.C. § 30104(c)(1) and (c)(2)(C) against it to "force WFA to publicly disclose all [of its] donors." Dkt. 6 at 1. In support, WFA submits sworn testimony of its President stating WFA's

electioneering "has always related to state and local offices, not at the federal level," but that it intends to support federal candidates in the next election cycle, Dkt. 4, ¶¶ 6–7, that "[d]onations received by WFA are not designated to be used for any specific purpose and, similarly, … WFA donors have never indicated that their contributions are intended to support a specific candidate or political party," *id.*, ¶ 9; and that WFA "does not pass on money donated to it to other organizations" and "WFA has no intention of ever changing this practice," *id.*, ¶ 10.

Taken at face value, these statements would show that WFA does not accept any reportable contributions under subsections (c)(1) or (c)(2)(C). As discussed above, only funds provided to WFA "intended to influence elections" need be disclosed. *MCFL*, 479 U.S. at 262. If WFA neither accepts nor solicits any funds intended to support or oppose any candidate or party's electoral chances or otherwise influence elections, *see, e.g.*, *supra* pp. 5-6, then it does not accept "contributions" under the FECA. Thus, if WFA's sworn statements are true, WFA does not appear to engage in "a course of conduct … proscribed by [the] statute" and thus faces no "credible threat of [enforcement]." *Babbit v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979). Even if that is not enough to assuage WFA's donors' concerns and even if WFA believes the statute would be unconstitutional if it received reportable contributions, the "chilling effect associated with a potentially unconstitutional law being on the books is insufficient to justify federal intervention in a pre-enforcement suit." *Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 538 (2021) (rule applies to chill of "the freedom of speech").

Accordingly, WFA's sworn submissions, taken at face value, do not establish its standing to seek a preliminary injunction or, for that matter, to bring this suit.

B. WFA's Sworn Statements Appear to Contradict the Public Record

WFA stands on sworn statements that it has never engaged in electioneering "at the federal level," Dkt. 4, ¶ 6, that WFA "does not pass on money donated to it to other

organizations” *id.*, ¶ 10, and that WFA accepts no funds “intended to support a specific candidate or political party,” *id.*, ¶ 9. Each of these representations appear to be contradicted by the public record, including numerous records filed by WFA.

First, despite Ms. Appling’s sworn statement that WFA has never engaged in electioneering “at the federal level,” *id.*, ¶6, WFA has in fact filed sworn statements with the FEC stating that it spent $2,910.36 on independent expenditures to support the presidential election of Donald Trump and to oppose Joe Biden, FEC Form 5, WFA (Jan. 15, 2021), (“WFA Year End 2020 Form 5”), https://perma.cc/ND97-WPMX; FEC Form 5, WFA (Oct. 15, 2020) (“WFA Oct. 2020 Form 5”), https://perma.cc/38VB-XDN6, and spent $75,877.81 on independent expenditures in 2012 to support the presidential election of Mitt Romney, the senatorial election of Tommy Thompson, and the senatorial campaign of Reid Ribble, and to oppose the candidacies of Barack Obama and Tammy Baldwin, FEC Form 5, Wisconsin Family Action, Inc. (Feb. 1, 2013), (“WFA 2012 Form 5”), https://perma.cc/4NH5-EV8N.

Plaintiff appears to have made these filings. The filings were not made by WFA’s associated federal political action committee, WFA PAC. *Compare* WFA Year End 2020 Form 5 (filer listed as “Wisconsin Family Action, Inc.” with FEC ID C90013947) *and* WFA Oct. 2020 Form 5 (same) *and* WFA 2012 Form 5 (same) *with* FEC Form 3X, Wisconsin Family Action Federal PAC (Jan. 11, 2021), https://perma.cc/J9ZZ-BWY4 (filer listed as “Wisconsin Family Action Federal PAC,” FEC ID C00506089, and reporting only $10 in disbursements that year). Further, the mailing address on the 2020 FEC filings matches the principal office address for WFA on the Wisconsin Department of Financial Institutions website. *See* Wisconsin Department of Financial Institutions Corporate Results for Wisconsin Family Action, https://perma.cc/YVP3-PQKG. Similarly, the address on the 2012 FEC filing is the address listed on WFA’s 2012 tax

filings for the individual who possesses WFA's books. Form 990, Wisconsin Family Action 2012, Part VI, Sec. C, line 20, https://bit.ly/3rSDsG6 ("WFA 2012 990"). The signatories on the 2020 and 2012 FEC filings, Leslie Harrison and Judith Brant respectively, are listed on WFA's corresponding tax filings as WFA's custodian of records. *Id.*; Form 990, Wisconsin Family Action 2019, Part VI, Sec. C, line 20, https://bit.ly/3Gw1Yki ("WFA 2019 990"). WFA also lists Leslie Harrison as a current employee, WFA, Meet Our Team, https://perma.cc/5BEN-PMG6 (last visited Dec. 10, 2021), and listed Judith Brant as an employee in 2012, Wayback Machine, https://bit.ly/3IAg1XU (archive of WFA's "Meet Our Team" website from March 20, 2015); *see also* Michelle Stocker, Wisconsin's not-so-super Super PACS, *The Capital Times,* Jan. 11, 2014, https://perma.cc/XL9H-S273 (quoting Judith Brant as employee of WFA).

Accordingly, the public record indicates that, contrary to Ms. Appling's sworn testimony, WFA has already spent tens of thousands of dollars influencing federal elections through express campaign advocacy.

Second, contrary to Ms. Appling's sworn statement that WFA "does not pass on money donated to it to other organizations," WFA's own tax filings show that in 2018 it gave $140,000—a third of WFA's spending that year—to Wisconsin Right to Life. Form 990, WFA 2018, Sched. I, Part II, https://bit.ly/31UBWbt. WFA also gave $60,000 to Wisconsin Family Council, Inc. ("WFC") in 2019. WFA 2019 990, Sched. I, Part II. It also gave WFC $12,000 in 2015, Form 990, WFA 2015, Sched. I, Part II, https://bit.ly/3dKAxHh, and $22,500 in 2014, Form 990, WFA 2014, Sched. I, Part II, https://bit.ly/3GWQvLu .

Third, and most importantly, Ms. Appling's sworn statement that WFA does not accept any funds "intended to support a specific candidate or political party," Dkt. 4, ¶ 9, also appears false. Even ignoring WFA's state-focused contributions, *but see* Dkt. 21 at 5, WFA itself

reported receiving $1,790 in qualifying federal "contributions" on its 2020 Year End report of independent expenditures. WFA Year End 2020 Form 5. WFA also reported receiving $9,992.55 in qualifying federal "contributions" on its 2012 report. WFA 2012 Form 5. Thus, by WFA's own sworn admission, it has previously accepted funds intended to influence federal elections. Additionally, the group Standing for Wisconsin Families reported giving WFA $53,039.29 on October 1, 2020 to design, print, and mail independent expenditures to support Donald Trump. SWF Form 3X, pages 8-17, https://perma.cc/L5M9-3MVJ. WFA also appears to have solicited donations to fund its work to "elect GOOD people" to make desirable "appointments to the US Supreme Court," *see* Archive of Political Emails, https://perma.cc/G67P-FD37 (last visited Jan. 13, 2022), and to defeat "liberals" in their attempts to "flip" Wisconsin and elect the next President, Archive of Political Emails, https://perma.cc/DP6P-XBL9 (last visited Jan. 14, 2022).

The inconsistencies between WFA's sworn submissions submitted to this Court to establish jurisdiction and evidence in the public record demands explanation. If the Court determines the inconsistencies are inexplicable and that misrepresentations were willful, the Court should consider pursuing appropriate sanctions against WFA and its counsel, including referral to disciplinary bodies and criminal prosecution.

CONCLUSION

WFA misconstrues what the FEC and the D.C. Circuit have said about 52 U.S.C. § 30104(c)(1) and (c)(2)(C), misstates what all other courts have said about the provisions, and misinterprets the constitutional standards applicable to disclosure regimes. Those misconceptions demonstrate it is unlikely to succeed on the merits of its claim. Its claims also fail because WFA's relief would cause irreparable and unconstitutional harm to countless Americans, including CREW. It further fails to establish any standing to pursue these claims based on at least highly questionable averments. The Court should decline WFA's request for a preliminary

injunction, dismiss WFA's case, and pursue any sanctions warranted if the Court determines willful misrepresentations have been made.

Dated this 21st day of January, 2022.

STAFFORD ROSENBAUM LLP

By /s/ Jeffrey A. Mandell
Jeffrey A. Mandell
Douglas M. Poland
Rachel E. Snyder
Carly Gerads
222 West Washington Avenue
Suite 900
Madison, WI 5370-1784
Email: jmandell@staffordlaw.com
dpoland@staffordlaw.com
rsnyder@staffordlaw.com
cgerads@staffordlaw.com
608.256.0226

Attorneys for Citizens for Responsibility and Ethics in Washington