ORAL ARGUMENT HAS NOT YET BEEN SCHEDULED

No. 23-5161

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

READY TO WIN,

Plaintiff-Appellant,

v.

FEDERAL ELECTION COMMISSION,

Defendant-Appellee.

On Appeal from the U.S. District Court for the District of Columbia
No. 1:22-cv-3292, Hon. Randolph D. Moss

PLAINTIFF-APPELLANT'S BRIEF

Dan Backer, Esq. (D.C. Bar No. 996641)
CHALMERS, ADAMS, BACKER & KAUFMAN LLC
441 N. Lee Street, Suite 300
Alexandria, VA 22314
(202) 210-5431
dbacker@ChalmersAdams.com

Attorney for Plaintiff-Appellant Ready to Win

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. *Parties and Amici*

Plaintiff-Appellant Ready to Win is the only plaintiff which appeared before the district court. At the time the case was filed, it was called Ready for Ron, *see Plaintiff Ready for Ron's Motion to Amend the Case Caption to Reflect Its Name Change to "Ready to Win"*, Dist. Ct. D.E. #32 (June 23, 2023).

Defendant-Appellee Federal Election Commission is the only defendant which appeared before the district court. No other plaintiffs, defendants, intervenors, other parties, or amici appeared at any time in the district court. No other appellants, appellees, intervenors, other parties, or amici are parties in this court.

B. *Rulings Under Review*

This appeal is from U.S. District Judge Randolph D. Moss' ruling denying Plaintiff Ready to Win's Motion for a Preliminary Injunction. *See Memorandum Opinion and Order*, 2023 WL 3539633, Dist. Ct. D.E. #30 (May 17, 2023), A-279.

C. *Related Cases*

The instant case was never previously before this Court or any court other than the U.S. District Court for the District of Columbia, *Ready to Win v. Federal Election Comm'n*, No. 22-3282 (RJM) (filed Oct. 27, 2022). No other related cases are currently pending before this Court or any other court of which counsel is aware.

DISCLOSURE STATEMENT

Plaintiff-Appellant Ready to Win ("RTW") is an unauthorized, unaffiliated, non-qualified hybrid political committee registered with the Federal Election Commission. Pursuant to D.C. Cir. R. 26.1(a), RTW hereby certifies it has no parent companies and no publicly held company has any ownership interest in it.

RTW seeks to encourage Florida Governor Ron DeSantis to become and remain a candidate for President of the United States, including by seeking the Republican Party's presidential nomination. RTW has not issued any shares or debt securities to the general public.

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JURISDICTIONAL STATEMENT

A. The district court had jurisdiction over this case pursuant to 28 U.S.C. § 1331, since the causes of action in the Complaint arose under the First Amendment and various federal statutes.[1]

B. This is an interlocutory appeal from the district court's denial of Plaintiff-Appellant Ready to Win's ("RTW") Motion for Preliminary Injunction, *see Memorandum Opinion and Order*, 2023 WL 3539633, D.E. #30 (May 17, 2023), A-279,[2] which the district court treated as a motion for summary judgment and a permanent injunction as to RTW's non-constitutional claims, A-291. This Court has jurisdiction pursuant to 28 U.S.C. § 1292(a)(1).

C. The district court entered its order on May 17, 2023. A-338. RTW filed its Notice of Appeal on July 14, 2023, A-346, within the timeframe established by Fed. R. App. P. 4(a)(1)(B)(ii).

D. This Court has jurisdiction over the district court's order since it denies preliminary injunctive relief as to the First Amendment aspects of RTW's claims and permanent injunctive relief with regard to their statutory aspects, A-291. 28 U.S.C. § 1292(a)(1).

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[1] Plaintiff-Appellant is no longer pursuing Count IV (inherent equitable powers).

[2] Citations to the Joint Appendix appear in the format "A-[X]," where [X] is the Appendix page number.

STATUTES AND REGULATIONS

Pertinent statutes and regulations are set forth in an addendum at the end of this brief.

STATEMENT OF ISSUES

1. Does the First Amendment allow the Government to prohibit a person from providing a signed political petition to a candidate (or potential candidate) on the grounds the signatories' contact information has commercial value?

2. Is a signed political petition a "contribution" for purposes of the Federal Election Campaign Act ("FECA")?

3. Should signatory contact information included within a signed political petition be deemed "conduit contributions" from the petition's signatories to the recipient candidate, rather than a contribution from the political committee which gathered those signatures?

4. Did the district court err by applying the FECA's contribution limits to RTW's petition to Governor DeSantis before he became a federal candidate?

5. In the event Plaintiff-Appellant Ready to Win ("RTW") is not entitled to a preliminary injunction, is the proper remedy dismissal of the complaint because RTW's claims fail as a matter of law?

STATEMENT OF THE CASE

This case is about Plaintiff-Appellant Ready to Win's ("RTW") fundamental First Amendment right to provide a signed political petition to Florida Governor Ron DeSantis encouraging him to become and remain a candidate for President. The district court erroneously allowed Defendant-Appellee Federal Election Commission ("FEC") to prohibit RTW from providing its petition to Governor DeSantis because it contained the signatories' self-provided contact information. This ruling unconstitutionally restricts pure political speech and association by both RTW and the petition's signatories, and misapplies the Federal Election Campaign Act's ("FECA") provisions concerning conduit contributions.

A. *Facts*

RTW is a "hybrid" political committee not authorized by Governor DeSantis or any other candidate. A-286.[3] Since May 2022, it has made over $1 million in independent expenditures through various mediums urging people to sign its petition to encourage Governor DeSantis to become and remain a candidate for President. A-279, A-286 to A-287. People may join the petition online, by phone, or by signing a petition sheet in person. A-189, A-192. Upon signing the petition, a signatory has

[3] As a hybrid committee, RTW has a traditional account which it may use to make contributions to federal candidates. RTW also has a separate, segregated "non-contribution" account which it may use only to fund independent expenditures. RTW may accept unlimited contributions to that account. *See Carey v. FEC*, 791 F. Supp. 2d 121, 126 (D.D.C. 2011), *see* A-284.

the opportunity to provide contact information including their address, phone number, and e-mail. A-189. They are notified providing such information constitutes a request to have it included within the petition and transmitted to Governor DeSantis. *Id*.

RTW filed a request for an advisory opinion from the FEC confirming it could provide its petition to Governor DeSantis and use funds from its non-contribution *Carey* account to subsidize the petition's costs. A-288. The Commission concluded the FECA barred RTW from doing so once Governor DeSantis either became a candidate or began "testing the waters" for a potential candidacy. A-288. It reasoned the signatories' contact information was an in-kind contribution, and the value of that information exceeded applicable contribution limits. *Id*. The Commission deadlocked on whether RTW could provide its petition to him before he began testing the waters. A-289.

B. ***Procedural History***

In response to the FEC's ruling, RTW filed a Complaint in the U.S. District Court for the District of Columbia on October 27, 2022. A-9. It contained the following counts relevant to this appeal, *see supra* note 2; *see also* A-289 to A-290:

- First Amendment (Count I), A-39 to A-41;
- Administrative Procedures Act challenge to the FEC's advisory opinion (Count II), A-41 to A-42;

- Declaratory Judgment concerning RTW's rights under the First Amendment and Federal Election Campaign Act (Counts III and V), A-42 to A-43, A-45 to A-47;

- Administrative Procedures Act challenge to applying the FEC's "testing the waters" regulation to RTW's draft petition before Governor DeSantis became a candidate (Count VI), A-47 to A-48.

When RTW filed its Complaint, Governor DeSantis had not yet become a federal candidate. Accordingly, RTW argued it could provide its petition, as well as any updates, to Governor DeSantis at a time of its choosing, including: (i) before he began "testing the waters" for a candidacy pursuant to 11 C.F.R. § 100.72; (ii) while he was testing the waters under 11 C.F.R. § 100.72; and (iii) even after he became a "candidate" under 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

RTW moved for a preliminary injunction prohibiting the FEC from commencing enforcement proceedings or imposing fines against it for providing its petition to Governor DeSantis or spending money from its non-contribution *Carey* account in connection with the petition. A-183; *see also* A-290 to A-291. After a hearing, *see* A-225, the district court permitted supplemental briefing. Over the course of the proceedings, RTW submitted two declarations with attached exhibits from its then-executive director, Gabriel Llanes. *See* A-187, A-340. The FEC failed to adduce any evidence in support of its advisory opinion.

C. ***Ruling Below***

The district court denied RTW's motion and ruled in the FEC's favor on all counts. A-338.[4] The court began by rejecting the notion this case is about a political petition. It held RTW may provide its political message to Governor DeSantis so long as it redacts the petition by stripping the signatories' contact information.[5] A-293. Accordingly, the only issue was whether RTW could provide a "contact list" containing only the signatories' contact information to Governor DeSantis. *Id*. Based on this fundamental alteration of RTW's intended communication, the district court easily held such a contact list falls within the FECA's definition of "contribution," A-294 (citing 52 U.S.C. § 30101(8)(A)(i)). It was unpersuaded by the fact Congress has, for decades, rejected the FEC's repeated recommendation to expand the definition of "contribution" to include payments made for the purpose of "drafting" someone to run for federal office. A-323 to A-326.

The court next held RTW is not a "conduit" for transmitting contact information from the petition's signatories to Governor DeSantis pursuant to 52

[4] The district court denied a preliminary injunction with regard to RTW's First Amendment arguments and denied both a permanent injunction and summary judgment with regard to its statutory arguments. A-291, A-338.

[5] The court did not address the inclusion of signatories who chose to identify themselves only by providing a phone number or e-mail address. Presumably, the petition would not be able to contain any individualized references to them at all.

U.S.C. § 30116(a)(8). It explained RTW could not be deemed a conduit since it undertook substantial efforts to compile contact information from numerous people into its petition. A-305 to A-306, A-308. The only case cited in support of this dubious conclusion, *FEC v. Christian Coalition*, 52 F. Supp. 2d 45 (D.D.C. 1999), *see* A-306, has nothing to do with conduit contributions and never cited § 30116(a)(8).

The court further claimed—without citation to any evidence—RTW's compilation of signatories' contact information was far more "onerous" than the administrative burdens of a conduit committee which solicits monetary contributions from large numbers of people and compiles them into a single large donation to a candidate. A-308 to A-309. The court did not address that such conduit committees are subject to comparable burdens to RTW since the FECA requires them to solicit, compile, and provide each contributor's name, address, occupation, and employer to the recipient candidate. 52 U.S.C. § 30102(b)(1)-(2); 11 C.F.R. §§ 102.8(a)-(b), 110.6(c)(1)(i), (iv)(A).

The district court's ruling was also based on the erroneous notion conduit committees which solicit monetary contributions "do not themselves bear the transaction costs associated with the separate payments, which the original contributor or the candidate must pay in any event." A-308. To the contrary, it is undisputed conduit committees—as distinct from for-profit corporations—may pay

all costs of soliciting, processing, compiling, and transferring monetary conduit contributions themselves. *See NewtWatch PAC*, FEC A.O. 1995-09, at 3 (Apr. 21, 1995); *NORPAC*, FEC A.O. 2019-15, at 4-6 (June 18, 2020); *cf. WE LEAD*, FEC A.O. 2003-23, at 5-6 (Nov. 7, 2003).

Finally, the district court held RTW does not have a First Amendment right to provide its purported "contact list" to Governor DeSantis. Rather, the FECA's contribution limits are subject only to intermediate scrutiny and constitutional as applied to this case. A-327.[6] The court held the signatories' contact information has too little "expressive value" to trigger full First Amendment protection. A-329. The fact it would be impossible for Governor DeSantis to respond to those signatories without their contact information did not impact this analysis. A-330. Accordingly, the court denied RTW's motion. A-338.

[6] The court also held the FECA's contribution limits applied to transfers to Governor DeSantis even before he became a candidate. A-316. It concluded Governor DeSantis' acceptance of RTW's signed petition would automatically either make him a candidate under 52 U.S.C. § 30101(2)(A) or trigger the FEC's "testing the waters" regulation, 11 C.F.R. § 100.72. *See* A-318 to A-320, A-322. It went on to hold this Court's ruling in *FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380 (D.C. Cir. 1981), did not bar the FEC from regulating activity to "draft" potential candidates. A-321 to A-322.

SUMMARY OF ARGUMENT

Both the First Amendment and the FECA allow RTW to provide its complete political petition, including signatories' self-provided contact information, to Governor DeSantis.

1. The district court erred by treating the petition as two distinct documents: (i) a political communication RTW was free to provide to Governor DeSantis along with *only* the names of the petition's signatories, and (ii) a contact list containing the addresses, phone numbers, and/or e-mail addresses signatories chose to provide. A speaker has the constitutional right to determine the substantive content of their intended communication, *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group*, 515 U.S. 557, 573 (1995), and the First Amendment extends to prosaic factual information, *44 Liquormart v. Rhode Island*, 517 U.S. 484, 513 (1996), including a person's contact information, *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 417, 419-20 (1971); *Ostergren v. Cuccinelli*, 615 F.3d 263, 271 n.8, 272 (4th Cir. 2010).

RTW allowed signatories to include contact information within the petition to more fully identify themselves and distinguish themselves from others with the same name rather than remaining effectively anonymous, *cf. McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 342 (1995). The inclusion of such information bolstered the petition's credibility and allowed signatures' authenticity to be confirmed. Most

importantly, it enabled Governor DeSantis to communicate and associate with the petition's signatories if he wished, *see FEC v. Akins*, 524 U.S. 11, 29 (1998).

2. RTW's petition constituted pure political speech and an important act of political association, *Eu v. San Francisco Democratic Cent. Comm.*, 489 U.S. 214, 224-25 (1989), subject to full First Amendment protection. The district court erred in denying such protection to signatories' contact information due to its supposedly minimal expressive value. *See United States v. Stevens*, 559 U.S. 460, 470 (2010). FECA's contribution limits are generally subject only to intermediate scrutiny and constitutionally valid because they typically don't apply to pure political expression. *Buckley v. Valeo*, 424 U.S. 1, 20, 25 (1976) (per curiam). As applied to the pure speech and association in RTW's petition, however, those limits should be subject to strict scrutiny and deemed invalid. Moreover, since the only reason the FECA's contribution limits apply to RTW's petition is because of the substantive political message it contains, they are an impermissible content-based restriction in the context of this case. *Reed v. Town of Gilbert*, 576 U.S. 155, 160, 164, 171-72 (2015).

3. Neither RTW's petition nor the signatory contact information contained within it is a "contribution" for purposes of the FECA's contribution limits. The FECA defines "contribution" in relevant part as "any gift" of "money or anything of value." 52 U.S.C. § 30101(8)(A)(i). Neither the petition, nor signatories' contact information, would be considered a "gift" in ordinary usage. *See* In re *McDonald for*

Congress, FEC A.O. 1976-86, at *1 (Oct. 6, 1976). Moreover, Congress has repeatedly refused to amend the definition of "contribution" to include payments made to "draft" someone to become a candidate. The constitutional avoidance canon, *Federal Election Comm'n v. Machinists Non-Partisan Political League*, 655 F.2d 380, 392 (D.C. Cir. 1981); major questions canon; and rule of lenity all counsel in favor of construing any ambiguity in the definition of "contribution" narrowly, rendering the FECA's contribution limits inapplicable here.

4. At the very least, RTW is a conduit committee. It notifies potential signatories that, by signing the petition and providing their contact information, they are asking RTW to add it to the petition and provide it to Governor DeSantis on their behalf. Accordingly, each individual signatory should be deemed the contributor of their own contact information. RTW is a mere intermediary soliciting, aggregating, and transferring such information as in-kind conduit contributions to Governor DeSantis pursuant to 52 U.S.C. § 30116(a)(8), and is not deemed the contributor, 11 C.F.R. § 110.6(d)(1). RTW's status as a conduit would be clear if it were soliciting monetary contributions. *See, e.g.*, *NORPAC*, FEC A.O. 2019-15, at 4-6 (June 18, 2020); *WE LEAD*, FEC A.O. 2003-23, at 5-6 (Nov. 7, 2003). RTW should not be worse off because it is collecting speech and not money.

5. RTW could provide its draft petition, including signatory contact information, to Governor DeSantis before he became a federal candidate. Under the

FECA's plain text, contribution limits apply only to payments to "candidates." 52 U.S.C. § 30116(a)(1)(A). The FECA does not limit transfers to a person who has not become a candidate under 52 U.S.C. § 30101(2); *see Machinists*, 655 F.2d at 386, 392, 396 (emphasizing the important distinction between "candidates" who are subject to FECA's restrictions and people who have not yet become "candidates," who are not). Accordingly, RTW was free to provide its petition to Governor DeSantis both before he began "testing the waters" for a potential candidacy, *see* 11 C.F.R. § 100.72, and while he was doing so. Moreover, because the FEC's "testing the waters" regulation limits only the provision of "funds" to a potential candidate, *id*, it did not bar RTW from providing its political petition to Governor DeSantis while he was considering a potential candidacy. Governor DeSantis would neither automatically become a candidate, nor trigger "testing the waters" status, simply by accepting a draft petition containing signatories' contact information.

6. If this Court concludes in the course of considering RTW's preliminary injunction motion its claims fail as a matter of law, it should remand and order dismissal of the case. *Ark. Dairy Coop. Ass'n v. U.S. Dep't of Agriculture*, 573 F.3d 815, 821 (D.C. Cir. 2009); *Wagner v. Taylor*, 836 F.2d 578 586 n.49 (D.C. Cir. 1987).

ARGUMENT

"[T]he practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process. . . ." *Citizens Against Rent Control / Coal. For Fair Hous. v. Berkeley*, 454 U.S. 290, 294 (1981). Americans have long joined together through draft petitions to persuade their preferred candidates to run for public office. General Wesley Clark explained he ran for the 2004 Democratic nomination for President because "he was responding to the call of some 60,000 people who signed an online draft petition."[7] Likewise, in 2015, "more than 210,000 people . . . signed [a SuperPAC's] petition, urging Biden to enter the [presidential] race."[8] Such petitions "involve[] the type of interactive communication concerning political change that is appropriately described as 'core political speech.'" *Meyer v. Grant*, 486 U.S. 414, 421 (1988).

The district court in this case nevertheless permitted the FEC to prohibit RTW from providing its signed political petition to Governor DeSantis to encourage him to become and remain a candidate for President, because the petition contains contact information voluntarily provided by its signatories. This holding flatly

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[7] Liz Marlantes, *Clark's Fast Political Learning Curve*, CHRISTIAN SCI. MONITOR (Dec. 12, 2003), https://www.csmonitor.com/2003/1212/p01s03-uspo.html.

[8] Fredreka Schouten, *Biden's Boosters Race to Lock Up Democratic Donors*, USA TODAY (Sept. 2, 2015), https://www.usatoday.com/story/news/politics/elections/2015/09/01/some-democratic-donors-open--biden-white-house-bid/71535676/.

violates RTW's rights—and those of the petition's quarter-million signatories—to engage in pure political expression and association; erroneously treats RTW's petition as a "contribution" under the Federal Election Campaign Act ("FECA"); and misapplies the FECA's provisions concerning conduit contributions, 52 U.S.C. § 30116(a)(8). This Court should reverse and order entry of a preliminary injunction on RTW's First Amendment claims and/or a permanent injunction on its statutory claims.[9]

I. THE DISTRICT COURT'S CONSTITUTIONAL AND STATUTORY ANALYSIS WAS FLAWED BECAUSE IT REFUSED TO TREAT RTW'S SIGNED POLITICAL PETITION AS A SINGLE INTEGRATED COMMUNICATION

The district court repeatedly refused to treat RTW's signed political petition as a single cohesive political communication. Rather, from the very outset, the district court conceptually ripped the document into two distinct pieces: (i) a petition containing a political message and signatories' names which RTW may provide to Governor DeSantis, and (ii) a completely separate contact list containing signatories' names and contact information, which the court concluded constitutes an illegally excessive in-kind "contribution" under the FECA. *See, e.g.*, A-280 ("[T]he Court

[9] This brief will focus only on the main issue of whether the First Amendment and/or the FECA permit RTW to provide its signed political petition, including signatories' contact information, to Governor DeSantis. To the extent RTW is permitted to do so, it likewise may make expenditures from its non-contribution *Carey* account to cover the associated costs. *See Carey*, 864 F. Supp. 2d 57.

agrees with the Commission that what [RTW] calls a petition is, in fact, a contact list . . . ."); A-293 ("RFR's framing of this case as one about its 'petition' is inaccurate. Rather, the dispute is about the contact list. Going forward, then, the Court will refer to the operative item as a 'contact list' . . . ."); A-297 ("[T]he information that the FEC seeks to restrict is not core political speech; it is contact information."); A-303 ("RFR can provide Governor DeSantis with its 'petition' without also providing him with its contact list."); A-328 ("[T]he contact list—as distinct from the petition—only indirectly or marginally implicates core First Amendment values.").

This is not how the First Amendment works. The Supreme Court did not parse Robert Cohen's jacket in the courthouse to conclude "the Draft" is constitutionally protected speech, while the word "Fuck" was not. *Cohen v. California*, 403 U.S. 15, 23-26 (1971). The Supreme Court did not review *Memoirs of a Woman of Pleasure* sentence-by-sentence to determine which passages enjoyed First Amendment protection and which sexually explicit scenes could be prohibited as obscene. *See A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Att'y Gen. of Mass.*, 383 U.S. 413, 419-20 (1966).

The district court, however, empowered the FEC to censor some of RTW's intended political communication to Governor DeSantis. The court justified this on the grounds RTW "never explains why 'John Doe – john.doe@website.com' or

'John Doe – (123) 867-5309' carry meaningful expressive value above and beyond John Doe." A-297; *see also id*. at A-329; A-330 ("Nor is the court persuaded that the message of RFR's petition would be altered or diluted if it would not provide its contact list along with its petition."). This encapsulates the fundamental error which pervades the entire district court opinion.

"[M]eaningful expressive value" is not a prerequisite for First Amendment protection of speech. Rather, even expression that lacks "a narrow, succinctly articulable message" is constitutionally protected. *Hurley*, 515 U.S. at 569. The First Amendment protects specific, prosaic, factual statements concerning the price of a good, *44 Liquormart v. Rhode Island*, 517 U.S. 484, 513 (1996), or the alcoholic content of beer, *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 481, 483 (1995). Omitting signatories' contact information ***quite literally*** "alter[s]" the communication RTW and the petition's signatories desired to send to Governor DeSantis. A-330.

In other contexts, many courts have held the First Amendment protects the right to include identifying information such as phone numbers and e-mail addresses in political communications. In *Ostergren v. Cuccinelli*, 615 F.3d 263, 271 n.8, 272 (4th Cir. 2010), the Fourth Circuit held the First Amendment protected a person's right to post land records containing unredacted social security numbers as a form of political protest. It explained the plaintiff had "freedom to decide how her

message should be communicated," and "partial redaction would diminish the documents' shock value and make [the plaintiff] less credible." *See also Sheehan v. Gregoire*, 272 F. Supp. 2d 1135, 1139, 1150 (W.D. Wash. 2003) (holding a statute prohibiting publication of a police officer's address, telephone number, birthday, or social security number "with the intent to harm or intimidate" prohibited "pure speech" in violation of the First Amendment); *cf. Org. for a Better Austin v. Keefe*, 402 U.S. 415, 417, 419-20 (1971) (overturning injunction prohibiting dissemination of pamphlets containing the name and phone number of a realtor along with a request to "call [him] at his home phone number" to protest his "blockbusting" business practices).[10]

The district court dismissed these cases, explaining they dealt with "restrictions on the *publication* of contact information, not the provision of an in-kind campaign contribution." A-329. The First Amendment, however, applies equally regardless of whether a communication is broadly published or provided to a single recipient. *Cox*, 379 U.S. at 563 (holding a telegram "by a citizen to a public

[10] *See, e.g.*, *Publius v. Boyer-Vine*, 237 F. Supp. 3d 997, 1004 (E.D. Cal. 2017) ("At its core, Plaintiffs' speech is a form of political protest. . . . [T]he legislators' home address and telephone number touch on matters of public concern in the context of Plaintiffs' speech."); *Brayshaw v. City of Tallahassee*, 709 F. Supp. 2d 1244, 1247, 1249 (N.D. Fla. 2010) (holding a statute prohibiting a person from maliciously disseminating a police officer's home address or telephone number violated the First Amendment).

official" is "a pure form of expression" subject to maximum First Amendment protection).

More broadly, under the First Amendment, it is up to the speaker—not a court or federal regulator—to decide what information is sufficiently important to include in a communication. "[T]he fundamental rule of protection under the First Amendment" is "that a speaker has the autonomy to choose the content of his own message." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Group*, 515 U.S. 557, 573 (1995). A speaker "has the right to tailor speech . . . not only to expressions of value, opinion, or endorsement, but equally to statements of fact . . . ." *Id*.

Here, RTW invited signatories to include their contact information when signing the petition as an integral part of the petition's substantive content. A-191 to A-192. Each signatory individually decided for themselves what information they wished RTW to provide to Governor DeSantis on their behalf. RTW adds a signatory's name and contact information to its petition to provide to Governor DeSantis, on the signatory's behalf, only at that signatory's express direction and request. *Id*. Thus, this case is not about a mere mailing list, but rather deliberately chosen political expression and association by the petition's signatories.

Perhaps most importantly, the district court cannot separate signatories' contact information from the underlying petition because the only reason the FECA applies to that contact information is ***precisely because of the substantive political***

message contained within the petition. The district court concluded the FECA's contribution limits apply to RTW's petition because the petition's text seeks to persuade Governor DeSantis to run for federal office. *See* A-294; *see also* A-283 n.2, A-323. If the petition's message had concerned a different topic, the FECA's contribution limits would be inapplicable. *See* 52 U.S.C. § 30101(8)(A)(i) (defining "contribution"); *cf. infra* Section II.C. Accordingly, the signatories' contact information cannot be cleaved from the underlying petition and parceled off into an independent communication of ostensibly negligible constitutional value.

RTW has repeatedly emphasized that signatories' contact information constitutes an integral, substantive part of its petition. Signatories who chose to provide contact information were able to identify themselves much more meaningfully and specifically than those who provided only a name, such as "John Smith." Without more, "John Smith" might as well be an "X." If RTW cannot include the contact information signatories chose to provide, they remain effectively anonymous, indistinguishable from everyone else in the country or world with the same name. The First Amendment, however, guarantees each speaker the right to decide whether to engage in political communications anonymously. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 342 (1995) ("[A]n author's decision to remain anonymous . . . is an aspect of the freedom of speech protected by the First Amendment.").

Indeed, the FECA itself expressly recognizes a person's contact information is necessary to identify them. 52 U.S.C. § 30101(13)(A) (defining "identification" to mean, "in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer"); *accord* 11 C.F.R. § 100.12. This Court's own rules likewise require attorneys to identify themselves in part by providing contact information. *See* D.C. Cir. R. 32(a)(1) (requiring an ECF filer to provide not only their name, but "street address, telephone number, and e-mail address"); *cf.* Fed. R. Civ. P. 26(a)(1)(A) (requiring each party to automatically disclose "the name and, if known, the address and telephone number of each individual likely to have discoverable information"). Almost every candidate nominating petition in the country similarly requires a person to provide more identifying information than a mere signature.

Contact information also bolsters the petition's credibility, allowing it to carry more weight than a hastily scribbled list of random names alone. Additionally, including contact information enables Governor DeSantis to confirm the authenticity of the petition's signatures. Should "C. Moore Bacon" appear on the petition, it would be difficult to tell whether the signature was legitimate or a prank without any accompanying contact information. *See* Emily Hall, *Romney Fundraising Organization: "C. Moore Bacon" is Real Deal*, WASH. POST (Sept. 18, 2013),

https://www.washingtonpost.com/blogs/in-the-loop/wp/2013/09/18/romney-fundraising-organization-c-moore-bacon-is-real-deal/.

Most importantly, including signatories' contact information enables Governor DeSantis, if he chooses, to respond to the petition's signatories, thereby associating with them and engaging in political expression with them. Political speech should not, and need not, be a one-way street. *See Lamont v. Postmaster General*, 381 U.S. 301, 305-06 (1965). Compelling RTW to omit signatories' contact information makes it effectively impossible for Governor DeSantis to respond to them. *FEC v. Akins*, 524 U.S. 11, 29 (1998) (recognizing "communications" as a fundamental component of the "constitutionally protected rights of association").

The district court rejected this argument on the grounds a person is not "anonymous" simply because "their name does not include the most convenient way to reach them." A-330; *see also* A-329. The court ignored the fact that, without the inclusion of any contact information whatsoever, there is no way the petition's recipient can determine who a signatory such as "Matt Brown" is, confirm whether he is real, and send him a response. This case is not about "the most convenient way to reach" someone, but rather a petition signatory's right to provide at least some meaningful way to engage in political expression and association with them.

Thus, the district court erred in refusing to consider RTW's signed political petition as a whole, and instead treating this case as if it were about a mailing list.

II. RTW HAS A FUNDAMENTAL FIRST AMENDMENT RIGHT TO PROVIDE ITS SIGNED POLITICAL PETITION TO GOVERNOR DESANTIS

RTW's fundamental First Amendment rights of freedom of speech and association entitle it to provide its complete, unredacted signed political petition to Governor DeSantis.

A. *RTW's Signed Petition is a Form of Pure Political Speech and Association Subject to Full First Amendment Protection*

There is no question a person has a fundamental First Amendment right to send a letter to Governor DeSantis, with their contact information, encouraging him to become and remain a presidential candidate. *Cox v. Louisiana*, 379 U.S. 559, 563-64 (1965) (declaring a "telegram by a citizen to a public official" is "a pure form of expression"). A person likewise has the fundamental right to join with others to send Governor DeSantis a joint letter—or petition—containing each signatory's contact information. *See Eu v. San Francisco Democratic Cent. Comm.*, 489 U.S. 214, 224-25 (1989) ("[I]mposing limitations 'on individuals wishing to band together to advance their views . . . while placing none on individuals acting alone, is clearly a restraint on the right of association.'" (quoting *Citizens Against Rent Cont.*, 454 U.S. at 296)).

As Justice Brennan explained:

> Petitioning involves a bundle of related First Amendment rights: the right to express ideas, the right to be exposed to ideas expressed by

> others, . . . and the right to associate with others in the expression of opinion.
>
> The petition is especially suited for the exercise of all these rights: It serves as a vehicle of communication; as a classic means of individual affiliation with ideas or opinions; and as a peaceful yet effective method of amplifying the views of the individual signers. Indeed, the petition is a traditionally favored method of political expression and participation.

Brown v. Glines, 444 U.S. 348, 363 (1980) (Brennan, J., dissenting); *see also Meyer v. Grant*, 486 U.S. 414, 421 (1988) ("[T]he circulation of a petition involves the type of interactive communication concerning political change that is appropriately described as 'core political speech.'"). Petitions allow individuals to "make their views known, when, individually, their voices would be faint or lost." *Citizens Against Rent Cont.*, 454 U.S. at 294; *see also District of Columbia v. Heller*, 554 U.S. 570, 645 (2008) (Stevens, J., dissenting) ("[I]f they are to be effective, petitions must involve groups of individuals acting in concert.").

RTW's independent expenditures to solicit and gather signatures for the petition do not strip away its First Amendment protection. *Buckley*, 424 U.S. at 16 (rejecting the notion that "the dependence of a communication on the expenditure of money operates itself to introduce a nonspeech element"). Prohibiting RTW from submitting its signed petition to Governor DeSantis "heavily burdens core First Amendment expression." *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 614 (1996) (plurality op.). It likewise interferes with Governor DeSantis' First

Amendment right to receive signatories' voluntarily provided contact information in order to communicate with them. *See Va. State Bd. of Pharmacy v. Va. Citizens Cons. Council*, 425 U.S. 748, 757 (1976) (acknowledging the "First Amendment right to receive information and ideas" (quotation marks omitted)).

The district court rejected RTW's constitutional challenge in large part because it believed signatories' contact information had little expressive value. A-329. The Court erred in deciding for itself the value of the signatories' desired speech and according reduced First Amendment protections for ostensibly low-value speech. *United States v. Stevens*, 559 U.S. 460, 470 (2010), held that establishing a sliding-scale of First Amendment protections based on "the value of the speech" at issue would be "startling and dangerous." A court cannot strip a speaker of First Amendment protection because their "speech is not worth it." *Id*.

The Court has consistently applied First Amendment protection to highly specific, purely informational statements. *See, e.g.*, *Liquormart*, 517 U.S. at 513 (price); *Rubin*, 514 U.S. at 481, 483 (alcoholic content). Moreover, as explained above, the signatories' contact information was not "low-value" speech. Rather, such information allowed signatories to identify themselves with specificity, distinguish themselves from others with the same name, convey the sincerity of their support, and invite a response from Governor DeSantis. The district court erred in declining

to apply strict scrutiny to the FEC's application of contribution limits to RTW's political petition containing signatories' contact information.

B. *The FECA's Contribution Limits are Unconstitutional As Applied to Pure Political Speech and Association Like RTW's Petition.*

Although the FECA's contribution limits are facially constitutional, they are unconstitutional when applied as a backdoor restraint upon pure political expression such as RTW's petition. When *Buckley v. Valeo*, 424 U.S. 1, 20, 25 (1976) (per curiam), rejected a facial challenge to contribution limits, it did not view them as applying to actual political speech. Rather, the Court held contribution limits are generally subject only to intermediate scrutiny and constitutionally permissible because they typically "entail[] only a marginal restriction upon the contributor's ability to engage in free communication." *Id*. *Buckley* explained that, with a contribution, the "expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate." *Id*. at 21. The Court further emphasized contribution limits "involve[] little direct restraint on . . . political communication" because they do "not in any way infringe the contributor's freedom to discuss candidates and issues." *Id*. The Court has never allowed contribution limits to be applied to prohibit citizens' pure political speech.

As applied to RTW's petition, the FECA's contribution limits would impose much more than "a marginal restriction upon the contributor's ability to engage in free communication." *Id*. at 20–21. Providing contact information from the petition's signatories to Governor DeSantis is not an "undifferentiated, symbolic act," but rather direct, express political speech and association at the heart of the First Amendment. *Id*. at 21. Accordingly, the FECA's contribution limits unconstitutionally imposes a "direct restraint" on the ability of RTW and the petition's signatories "to engage in free communication" with Governor DeSantis. *Id*. at 28. Indeed, *Buckley* itself recognized freedom of association "is diluted if it does not include the right to pool money through contributions." *Buckley*, 424 U.S. at 65-66. Here, the petition's signatories do not seek to "pool money," but rather join together to amplify their voices through collective speech.

The district court rejected this analysis, applying the same intermediate ("closely drawn") scrutiny the Court typically applies to contribution limits. A-327. It did so by ignoring the vital expressive and associational aspects of RTW's petition, including its signatories' self-provided contact information. *Cf. Buckley*, 424 U.S. at 20-21. Thus, the FECA's contribution limits should be subject to strict scrutiny insofar as they apply to RTW's petition, and held unconstitutional as applied.

C. *As Applied to RTW's Signed Petition, the FECA's Contribution Limits are Unconstitutional Content-Based Discrimination*

The FECA's contribution limits, as applied to RTW's petition to Governor DeSantis, are also unconstitutional content-based restrictions on political expression and association subject to strict scrutiny. Content-based restrictions on speech are subject to strict scrutiny. *Barr v. Am. Ass'n of Political Consultants*, 140 S. Ct. 2335, 2346 (2020). Strict scrutiny applies to such restrictions even if they were enacted for unrelated innocuous purposes, *Simon & Schuster, Inc. v. Members of the N.Y. State Crime Victims Bd.*, 502 U.S. 105, 117 (1991), and "do[] not discriminate among viewpoints within that subject matter," *Austin v. Reagan Nat'l Adver. of Austin, LLC*, 142 S. Ct. 1464, 1472 (2022) (quotation marks omitted). In *Reed v. Town of Gilbert*, 576 U.S. 155, 160 (2015), the Court applied strict scrutiny to an ordinance subjecting temporary signs to special prohibitions if they were "designed to influence the outcome of an election." The Court recognized the applicability of those restrictions "depend[ed] entirely on the communicative content of the sign." *Id*. at 164. Accordingly, the ordinance was a "content-based regulation of speech," *id*., subject to strict scrutiny, *id*. at 171, and unconstitutional, *id*. at 172.

The same is true here. As the district court acknowledged, the FEC contends the FECA's contribution limits apply to RTW's petition only due to its substantive content: the petition's text seeks to persuade Governor DeSantis to run for President. A-294 (holding the signatories' contact information is a "contribution" because RTF

"freely acknowledges that its goal is to convince Governor DeSantis to run for President, [and] to remain a candidate throughout the election cycle"); *see also* A-283 n.2, A-323.

If the petition concerned virtually any other issue in the world—urging Governor DeSantis to resign and become the Walt Disney Corporation's next CEO, for example—the FECA's contribution limits would be inapplicable. *See* 52 U.S.C. § 30101(8)(A)(i) (defining "contribution" as "any gift . . . of money or anything of value . . . for the purpose of influencing any election for Federal office"). Accordingly, as applied in this case, the FECA's contribution limits are content-based restrictions on political expression triggering strict scrutiny under the First Amendment. Such a content-based restriction is an impermissibly overbroad method of preventing quid pro quo corruption and is therefore unconstitutional.

The district court rejected this, declaring, "All regulation of campaign contributions is content based in the sense that it targets only contributions made for the purpose of influencing elections for Federal office . . . ." A-330. But this case goes beyond such generalizations. Rather, the FEC is imposing the FECA's contribution limits here only because the petition's text encourages Governor DeSantis to become and remain a candidate. In this unique setting, the FECA's contribution limits raise much more serious First Amendment issues than with regard to monetary or conventional in-kind contributions.

D. *Prohibiting RTW From Providing Its Signed Political Petition to Governor DeSantis Does Not Further an Important or Compelling Governmental Interest.*

The FEC does not have a compelling, or even a strong, interest in prohibiting RTW from providing its petition to Governor DeSantis. ***First***, neither the FECA nor any other provision of federal law would prohibit RTW from giving Governor DeSantis the petition, including signatories' contact information, if its text concerned virtually any issue other than encouraging him to run for President. The under-inclusiveness of the FECA's contribution limits as applied here undermines the notion they are actually furthering an important anti-corruption interest. *See Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786, 805 (2011) (holding laws "affect[ing] First Amendment rights . . . must be pursued by means that are neither seriously underinclusive nor seriously overinclusive"); *see, e.g.*, *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150, 169 (2002).

Second, the FEC argued to the district court that, rather than providing the signed petition to Governor DeSantis, RTW should post the petition—including signatories' contact information—on the Internet. A-243 to A-244. The FEC offers no serious explanation as to how the purported risk of quid pro quo corruption would be reduced by notifying Governor DeSantis the information is on a particular webpage rather than e-mailing it to him directly. *See Buckley*, 424 U.S. at 45 (invalidating easily circumvented restrictions on independent expenditures in

substantial part because they did not "sufficiently relate[] to the elimination" of "actual or apparent quid pro quo arrangements"). The district court stated only that, even though such information is uniquely valuable to Governor DeSantis, *see* A-308, *see also* A-304, providing it to him by posting it on the Internet avoids potential corruption because that does not involve a "direct[] exchange," A-337. Moreover, the FEC's suggestion would both violate the privacy rights of the petitions' signatories and expose them to harassment and violence by progressive extremists. *Am. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2388 (2021).

Finally, in *McCutcheon v. FEC*, 572 U.S. 185, 213-14 (2014), the Supreme Court held aggregate contribution limits were unconstitutional in part because the Court found it "hard to believe that a rational actor would engage in . . . machinations" by spending $500,000 "to add just $26,000 to [a candidate's] campaign coffers." The same is true here. RTW has spent well over a million dollars over the course of more than a year to compile a petition with approximately a quarter-million unauthenticated signatories. Many signatories provided either no contact information at all, or inaccurate or (now) outdated information. Although these signatories ostensibly support Governor DeSantis, there is no indication in the petition whether any are willing or able to contribute money to him.

Even if the contact information for these signatories were valued at $1.00 per person—a figure twenty times higher than the district court discussed, *see* A-333—

more than three-quarters of RTW's spending would have been wasted. A "rational actor" seeking to directly aid Governor DeSantis would have been much more likely to solicit monetary conduit contributions rather than petition signatures—which also would have enabled it to provide the contributors' contact information to Governor DeSantis. *See* 11 C.F.R. § 102.8(b)(1), 110.6(c)(1)(iii)-(iv)(A). Thus, compiling a petition is an extremely unwieldy, risky, and unlikely mechanism through which to attempt corruption.

For these reasons, this Court should subject the FECA's contribution limits to strict scrutiny as applied to RTW's petition and invalidate them on the grounds they are an overbroad means of preventing actual or apparent quid pro quo corruption.

III. THE DISTRICT COURT ERRED BY TREATING RTW'S SIGNED POLITICAL PETITION AS A "CONTRIBUTION" UNDER THE FEDERAL ELECTION CAMPAIGN ACT

This Court need not reach the constitutional issues in this case if it concludes RTW's signed political petition does not constitute a "contribution" under the FECA. The FECA defines "contribution" as "any gift, subscription, loan, advance, or deposit" of either "money or anything of value" which a person makes to influence a federal election. 52 U.S.C. § 30101(8)(A)(i). The term includes the provision of "any goods or services without charge or at a charge that is less than the usual and normal charge . . . ." 11 C.F.R. § 100.52(d)(1). The FEC has defined the term to include "membership lists" and "mailing lists." A-282 (quoting *id.*).

A. ***A Petition is Not a "Contribution" Under the FECA's Plain Meaning***

The district court held RTW's provision of a "contact list to Governor DeSantis without compensation" constitutes a "contribution" under this definition because it would be a "gift" of "[some]thing of value." A-294 to A-296. Regardless of whether the petition has "value," it does not constitute a "contribution" because it cannot be deemed a "gift." An undefined statutory term such as "gift" must be given its "ordinary, contemporary, common meaning." *Walters v. Metro. Educ. Enters., Inc.*, 519 U.S. 202, 207 (1997); *see Nat'l Grain & Feed Ass'n v. OSHA*, 845 F.2d 345, 346 (D.C. Cir. 1988) (defining statutory term based on its "plain meaning" and "ordinary usage"). Even the FEC has recognized the term "gift" cannot be stretched to its outermost limits, but rather must be construed reasonably, in accordance with customary practice. In re *McDonald for Congress*, FEC A.O. 1976-86, at *1 (Oct. 6, 1976); *cf. Hon. Cecil Heftel*, FEC A.O. 1977-51, at 2 (Nov. 16, 1977) (concluding a Member of Congress' "receipt of macadamia nuts from corporations, trade associations, [or] individuals" does not constitute a "contribution").

In ordinary parlance, a signed political petition would not be deemed a "gift" to the recipient. Rather, it is a collective communication from the petition's signatories to the recipient. Even if one focuses solely on the signatory contact information contained within the petition, it would not be considered a "gift." When a person is mailed a greeting card, for example, they would not consider the return

address to be a "gift." Likewise, when public schools distribute rosters containing students' contact information to parents without charge, or employers disseminate internal phone directories to their employees, no one seriously considers the contact information contained within to be a "gift." Political petitions from constituents to federal officeholders through online mechanisms such as Change.org are not deemed to contain "gifts," either, regardless of how valuable any included contact information may be. More broadly, information in general fits uncomfortably, if at all, within the ordinary meaning of "gift."

B. *Canons of Statutory Construction Require "Contribution" to Be Construed Narrowly*

The FEC has expressly admitted the definition of "contribution" is ambiguous in this context. A-223. Accordingly, the FECA should be construed narrowly, as excluding signed political petitions, to avoid unnecessarily raising serious constitutional questions. *See Nat'l Labor Rel. Bd. v. Catholic Bishop of Chicago*, 440 U.S. 490, 507 (1979). This Court has repeatedly construed vague and ambiguous terms in the FECA narrowly to avoid unnecessarily raising First Amendment questions. *See, e.g.*, *Federal Election Comm'n v. Machinists Non-Partisan Political League*, 655 F.2d 380, 392 (D.C. Cir. 1981) (construing the term "political committee" narrowly under the constitutional avoidance principle because "[i]n this delicate first amendment area, there is no imperative to stretch the statutory language"); *Chamber of Commerce v. FEC*, 69 F.3d 600 (D.C. Cir. 1995)

(invalidating FEC's interpretation of the statutory term "member" in part on constitutional avoidance grounds). The constitutional avoidance canon even "trumps" *Chevron* deference to administrative agencies. *Nat'l Mining Ass'n v. Kempthorne*, 512 U.S. 702, 711 (D.C. Cir. 2008); *see, e.g.*, *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 572 (1988) (holding when an agency's interpretation of a statute "rais[es] . . . serious constitutional concerns," a court must reject it in favor of an alternate "construction that obviates deciding" the constitutional issue).

The major questions canon likewise counsels against interpreting the FECA as restricting people's freedom to provide signed political petitions to potential or actual federal candidates. *W. Va. v. EPA*, 142 S. Ct. 2587, 2614 (2022). It is "'highly unlikely that Congress would leave' to '[the agency's] discretion' the decision" of whether a group may provide a political petition to a public figure. *Id*. at 2613 (quoting *MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218 (1994)). Prohibiting political petitions is the type of unusual, sweeping power for which this Court must "hesitate before concluding that Congress meant to confer such authority." *Id*. at 2608 (quotation marks omitted).

Finally, any doubts concerning the applicability of the FECA's contribution limits should be resolved in RTW's favor under the rule of lenity, since those limits may be enforced both civilly and criminally. *Leocal v. Ashcroft*, 543 U.S. 1, 11 n.8

(2004) ("Because we must interpret the statute consistently, whether we encounter its application in a criminal or noncriminal context, the rule of lenity applies."); *see, e.g.*, *Yates*, 135 S. Ct. at 1088 (invoking rule of lenity in support of construing the term "tangible object" narrowly); *Cleveland v. United States*, 531 U.S. 12, 25 (2000) (construing the term "property" narrowly under the rule of lenity). Here, the rule of lenity counsels strongly in favor of excluding RTW's petition from the scope of the term "gift."

C. *The FECA's Legislative History Counsels Against Construing "Contribution" to Include Draft Petitions.*

In *Machinists*, 655 F.2d at 386, this Court held draft activities are at "the very heart of the organism which the first amendment was intended to nurture and protect: political expression and association concerning federal elections and officeholding." *Id*. at 388; *see also id*. at 390 (holding draft committees' activities involve "centrally important first amendment associational and advocacy interests"). Congress has repeatedly rejected the FEC's requests to expand the definition of "contribution" to include funds provided to influence a person's decision to run for federal office. *See, e.g.*, FEC, *Legislative Recommendations*—1987, *reprinted in* House Subcomm. on Elections, House Admin. Comm., *Hearings on Campaign Finance*, 100th Cong., 1st Sess., at 869 (1987) (suggesting Congress amend the definitions of "contribution" and "expenditure" to include "funds contributed by persons 'for the purpose of influencing a clearly identified individual to seek nomination for election or election

to federal office'"). The FEC unsuccessfully repeated this suggestion over the next several years,[11] and as late as 2001, *see* FEC, *Priority Legislative Recommendations*, at 5 (2001), https://www.fec.gov/resources/cms-content/documents/legrec2001.pdf.

As the district court outlined, Congress repeatedly considered legislation throughout the 1990s to redefine the terms "contribution" and "expenditure" in FECA to include payments or disbursements "for the purpose of drafting a clearly identified individual as a candidate for Federal office or encouraging a clearly identified individual to become a candidate for Federal office." A-325 (citing rejected bills). In the course of drafting the Bipartisan Campaign Reform Act ("BCRA"), Pub. L. No. 107-155 (Mar. 27, 2002), Congress expressly considered—but declined to enact—Rep. Steny Hoyer's proposal to amend the definition of "contribution" to include "any gift . . . of money or anything of value made by any person for the purpose of influencing any clearly identified individual to seek nomination or election to Federal office." H.R. 1818, 106th Cong., 1st Sess., § 106(a)(1) (May 14, 1999).

The Supreme Court has cautioned against interpreting statutes to reflect proposals or amendments Congress failed to adopt. *See, e.g.*, *West Virginia v. EPA*,

[11] https://www.fec.gov/resources/cms-content/documents/legrec1988.pdf; https://www.fec.gov/resources/cms-content/documents/legrec1989.pdf; https://www.fec.gov/resources/cms-content/documents/legrec1990.pdf; https://www.fec.gov/resources/cms-content/documents/legrec1991.pdf.

142 S. Ct. 2587, 2614 (2022) (refusing to construe federal statute as authorizing a particular program because Congress "has consistently rejected proposals to amend the Clean Air Act to create such a program"); *City of Maui v. Haw. Wildlife Fund*, 140 S. Ct. 1462, 1472 (2020) ("Congress did not accept these requests for general EPA authority over groundwater."); *NLRB v. Burns Int'l Sec. Servs.*, 406 U.S. 272, 281 (1972) (resolving dispute over a federal statute's collective bargaining requirements based partly on the fact "Congress has consistently declined to interfere with free collective bargaining"). Thus, this Court should not stretch the statutory definition of "contribution" to extend to RTW's petition encouraging Governor DeSantis to become and remain a presidential candidate.

IV. AT MOST, RTW IS A CONDUIT THROUGH WHICH ITS PETITION'S SIGNATORIES HAVE CHOSEN TO PROVIDE THEIR CONTACT INFORMATION TO GOVERNOR DESANTIS.

Even if this Court views the signatories' contact information as comprising a wholly separate "contact list," the FECA allows RTW to forward that information to Governor DeSantis as conduit contributions from each of the petition's signatories themselves. The FECA provides, "[A]ll contributions made by a person, either directly or indirectly, on behalf of a particular candidate, ***including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate***, shall be treated as contributions from such person to

such candidate." 52 U.S.C. § 30116(a)(8) (emphasis added); *accord* 11 C.F.R. § 110.6(a).

Pursuant to § 30116(a)(8), each signatory is the true contributor of his or her contact information. RTW includes a person's name and contact information in its petition only at that person's express request and direction. A-189. At most, RTW is a conduit through which each petition signatory makes a *de minimis* in-kind contribution of his or her contact information to Governor DeSantis. 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(a).

The applicability of the FECA's conduit contribution provisions would be clear if RTW were soliciting monetary contributions to Governor DeSantis rather than petition signatures and contact information. *See ActBlue*, FEC A.O. 2014-19, at 6 (Jan. 15, 2015) ("ActBlue may act as a conduit or intermediary for contributions earmarked for prospective candidates . . . ."). All funds RTW spent to solicit monetary contributions from individual contributors to Governor DeSantis would be independent expenditures—not contributions to Governor DeSantis. *See FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 496 (1985); *see, e.g.*, *WE LEAD*, FEC A.O. 2003-23, at 5-6 (Nov. 7, 2003) ("If WE LEAD's solicitations in this earmarking program were made independent of any candidate . . . by virtue of this independence the direct costs of solicitation incurred by WE LEAD would

constitute independent expenditures."); *see also UBAAPAC*, FEC A.O. 2011-14, at 2 (Sept. 22, 2011); A-307.

Moreover, RTW could aggregate contributions to Governor DeSantis from an unlimited number of people and give him a check potentially totaling millions of dollars. Such payment would not be deemed an illegal excessive contribution by RTW. See 11 C.F.R. § 110.6(d)(1) ("A conduit's or intermediary's contribution limits are not affected by the forwarding of an earmarked contribution . . . ."); A.O. 2014-19, at 4 ("Contributions that [a conduit committee] transfers . . . to the designated candidates . . . would be attributed to the persons who contributed [those funds], and not to [the conduit committee]."). Rather, that check would reflect a series of conduit contributions from each person who provided funds to RTW to give to Governor DeSantis on their behalf. *See, e.g.*, *ActBlue*, FEC A.O. 2006-30, at 6 (Nov. 9, 2006) ("[T]he earmarked contributions would be contributions from the original contributor to the Prospective Candidate . . . ."). RTW would merely be the conduit transmitting the check to Governor DeSantis. 52 U.S.C. § 30116(a)(8). Indeed, RTW would be legally required to provide Governor DeSantis not only the funds provided by each contributor, 11 C.F.R. § 102.8(c), but their name, address, occupation, and employer, as well, 52 U.S.C. § 30102(b)(1)-(2); 11 C.F.R. §§ 102.8(a)-(b), 110.6(c)(1)(i), (iv)(A); *see, e.g.*, *ActBlue*, FEC A.O. 2006-30, at 6-7 (Nov. 9, 2006)

(discussing ActBlue's legal obligation to forward the names and addresses of each person who made a conduit contribution through ActBlue to the recipient candidate).

The FEC's advisory opinion in this case establishes a perverse pay-to-play system where a political committee may spend unlimited amounts of money to solicit, collect, and aggregate millions of dollars from an unlimited number of people (subject to each donor's base contribution limit) to give to a candidate. *See WE LEAD*, FEC A.O. 2003-23, at 5-6 (Nov. 7, 2003) (allowing political committee to make independent expenditures to solicit monetary conduit contributions for a candidate); *Democracy Engine*, FEC A.O. 2022-03, at 4-6 (June 27, 2022) (allowing a corporation's separate segregated fund to make independent expenditures to solicit monetary conduit contributions for a candidate). Yet such a committee may not solicit, collect, and aggregate contact information from the same number of people in a petition encouraging a person to become or remain a candidate. It is absurd for monetary conduit contributions from a potential or actual candidate's supporters to receive greater protection than contact information from those supporters.

The FEC erroneously concluded RTW is not a conduit because it "expend[ed] considerable resources to "collect[] and compil[e] . . . information from tens of thousands . . . of individuals nationwide." A-305. The district court agreed, "By conducting an expensive campaign of nationwide outreach and compiling the fruits of that outreach in a single, useable contact list of motivated supporters, [RTW]

created a 'thing of value' beyond that which is attributable to the 'contribution' of each individual petition signatory." A-305 to A-306; *see also* A-306 ("It has taken [RTW] nearly a year of work, over $1 million, and considerable initiative to identify and to solicit hundreds of thousands of signatories of its petition and to amalgamate their contact information into a contact list.").

As the court itself recognizes, however, RTW's solicitations of petition signatures are constitutionally protected independent expenditures and may not be limited or restricted. *See* A-307 (citing *WE LEAD*, FEC A.O. 2003-23, at 6). Thus, the only thing that ostensibly prevented the district court from deeming RTW to be a "conduit" is the fact RTW "compiled" the signatures and contact information it received into a single list. ***That is exactly what conduits committees do***. They take large numbers of small contributions—whether monetary or in-kind—from large numbers of people, compile them, and make large, aggregated transfers to a candidate on behalf of the original contributors (including each contributor's identifying information).

The district court rejected this argument, holding soliciting monetary contributions is materially different than soliciting contact information. A-307. ***First***, without any citation to any evidence, the court simply assumed compiling monetary contributions from a large number of people requires only "de minimis" "logistical or administrative effort." A-308. Compiling contact information, in contrast,

"require[s] considerable labor" and "onerous . . . organizational effort." *Id*. Nothing in the conduit statute, however, suggests an intermediary's status as a conduit depends on how much administrative effort is involved, *see* 52 U.S.C. § 30116(a)(8).

Moreover, this analysis completely ignores the fact that conduits which collect monetary contributions must also collect, compile, and report to the candidate each contributor's name, address, occupation, and employer. 11 C.F.R. § 110.6(c)(1)(i), (iv)(A). Thus, even from the district court's legally erroneous perspective, acting as a conduit for monetary contributions is at least as burdensome as RTW's efforts.

Second, the district court stated, "conduits do not themselves bear the transaction costs associated with the separate payments, which the original contributor or the candidate must pay in any event." A-308. ***This assertion is flatly wrong and the FEC cannot contend otherwise***. To be sure, if a corporation wishes to provide contribution processing services, it may do so only as part of a commercial, for-profit activity and must charge either the contributor, *see Repledge*, FEC A.O. 2015-08, at 5 (Nov. 9, 2015) (citing authorities); *ReCellular*, FEC A.O. 2010-21, at 1, 4 (Oct. 8, 2010), *cited by* A-308, A-314, or the candidate, *see Atlatl, Inc.*, FEC A.O. 2007-04, at 3-4 (Apr. 20, 2007), for the processing costs.

In contrast, the FECA allows political committees to act as conduits and pay such administrative, processing, or other such costs themselves, rather than passing those expenses along to someone else. *See NewtWatch PAC*, FEC A.O. 1995-09, at 3

(Apr. 21, 1995) (concluding expenses a conduit committee incurs in processing online financial transactions "are operating expenditures of the committee"); *NORPAC*, FEC A.O. 2019-15, at 4-6 (June 18, 2020) (holding that, because a conduit committee is responsible for paying any administrative or processing expenses it incurs in connection with earmarked conduit contributions, a contributor's payment of such expenses counts as a contribution to that committee). A committee's payment of such costs are independent expenditures, which may not be constitutionally limited. *Cf. WE LEAD*, FEC A.O. 2003-23, at 5-6 (Nov. 7, 2003); *KFC Corp.*, FEC A.O. 1984-45, at 2 (Oct. 5, 1984) (treating administrative costs associated with processing contributions as part of the solicitation costs).

The district court materially erred in concluding conduit committees may pay for solicitations for monetary contributions, but not the administrative and processing costs associated with them. Indeed, publicly available FEC reports from conduit committees would confirm most conduit committees absorb the administrative and processing fees associated with monetary conduit contributions, rather than either charging contributors or attempting to withhold such costs from recipient candidates.

Third, the district court held aggregating together numerous small contributions into one or more large checks adds less value than aggregating together numerous people's contact information into a petition or mailing list. *See* A-308 to

A-310; *see also* A-305 ("[T]he whole of RFR's contact list amounts to more than the sum of its parts."). Regardless of whether these dubious and vague assertions are accurate, nothing in the text of 52 U.S.C. § 30116(a)(8) suggests they are relevant to determining a political committee's status as a conduit.

The only judicial precedent the district court cited to establish RTW is not a conduit is *FEC v. Christian Coalition*, 52 F. Supp. 2d 45 (D.D.C. 1999). *Christian Coalition* is completely inapplicable, however, since it did involve any alleged conduit contributions. Rather, that court concluded the Christian Coalition had made a "contribution" to federal candidate Oliver North by giving him a mailing list. The Coalition created that list by cross-referencing a list of delegates to the Virginia Republican Convention who supported a particular candidate for lieutenant governor against the organization's own mailing list. Unlike RTW's petition, not a single person on the cross-checked list the Coalition provided to North had provided their contact information to the Coalition for the express purpose of being included on that list or given to North. In short, the Coalition had neither acted as a conduit nor even attempted to argue it had acted as a conduit. Neither the words "conduit" or "intermediary," nor any citation to § 30116(a)(8), appears anywhere in the opinion. The whole reason RTW is a conduit is precisely because it did ***not*** simply provide Governor DeSantis with pre-existing lists, but rather invited like-minded people to

sign a petition and provide their contact information to give to Governor DeSantis on their behalf.

Thus, at most, RTW is facilitating a series of in-kind contributions of contact information from each petition signatory to Governor DeSantis. The district court's willingness to extend broad protections for conduit committees soliciting monetary contributions, while flatly barring a committee soliciting signatures and contact information for a political petition from acting as a conduit, *see* A-310, gets both campaign finance law and the First Amendment exactly backwards. If RTW had spent its funds persuading hundreds of thousands of people throughout the nation to each download an identical form on its website encouraging Governor DeSantis to run for President, fill it out with their signature and contact information, and mail it to him, neither the First Amendment nor FECA would empower the FEC to prohibit it. The FEC may not bar this political expression simply because RTW made the independent expenditures necessary to enable people to exercise their right of political association, *see Citizens Against Rent Cont.*, 454 U.S. at 294, by compiling these signatures and contact information together into a petition.

V. THE FECA'S CONTRIBUTION LIMITS DO NOT APPLY TO SIGNED DRAFT PETITIONS FOR PEOPLE WHO HAVE NOT YET BECOME FEDERAL CANDIDATES

The district court denied RTW's request for summary judgment and a permanent injunction on its non-constitutional, statutory claims, including its

argument the FECA did not prohibit it from providing its signed petition to Governor DeSantis before he became a "candidate." A-291. Although Governor DeSantis is now a presidential candidate, this issue is capable of repetition, yet evading review. There is a reasonable expectation RTW may seek to provide a similar petition to draft a qualified conservative to run for office in the next election cycle and will again be subject to the challenged contribution limits as they apply to transfers to people who are not yet candidates. *See Holmes v. FEC*, 823 F.3d 69, 71 n.3 (D.C. Cir. 2016); *see also Davis v. FEC*, 554 U.S. 724, 735-36 (2008). Thus, this Court may reach the merits of this issue and should conclude the FECA's contribution limits are inapplicable to a draft petition containing signatories' contact information provided to someone who has not yet become a federal candidate.

The FECA limits contributions to a "candidate" or their authorized political committee. 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1). It defines "candidate" as someone who "seeks nomination for election, or election, to Federal office," as evidenced by having received, spent, or authorized the receipt or expenditure of more than $5,000 for the purpose of running for federal office. 52 U.S.C. § 30101(2); *accord* 11 C.F.R. § 100.3(a). A person who has not satisfied those requirements is not a "candidate" for purposes of the FECA. By its plain terms, the FECA's contribution limit does not apply to donations, transfers, or other

interactions to attempt to draft a person who has not yet qualified as a "candidate." *Unity08 v. FEC*, 596 F.3d 861, 867-68 (D.C. Cir. 2010).

In *Machinists*, this Court held a draft effort, by definition, is inherently aimed at a person who is not yet "a 'candidate' for office, as Congress uses that term in FECA." 655 F.2d at 392; *see also id*. at 394 (noting a draft committee's "contributions and expenditures do not relate to an identifiable 'candidate'"). The opinion repeatedly distinguishes "activities [to] support an existing 'candidate,'" to which the FECA applies, from "attempts to convince" a person "he would make a good 'candidate' or should become a 'candidate.'" *Id*. at 396. Accordingly, the district court's claim *Machinists* "does not speak to the definition of 'candidate,'" A-322, is demonstrably incorrect. To the contrary, this Court's holding suggests the FECA does not prohibit a political committee from presenting a draft petition to persuade someone to become a candidate.

The district court, however, concluded the FEC's "testing the waters" regulation, 11 C.F.R. § 100.72, prohibited RTW from providing its petition to Governor DeSantis even before he became a federal candidate. *See* A-319. This regulation applies FECA's contribution limits to people who have not yet become candidates but are "testing the waters" for a potential candidacy. The FEC may not use this regulation to bar RTW from providing a draft petition to a potential candidate, however. The FECA's plain text limits contributions only to a

"candidate," 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1), which is defined as someone "***seek[ing]*** nomination . . . or election to federal office," 52 U.S.C. § 30101(2) (emphasis added). The FEC's "testing the waters" regulation, in contrast, impermissibly extends such limits to anyone who is ***considering whether*** to seek such nomination or election. As discussed earlier, *see* Section III.C, Congress has repeatedly refused to expand the FECA's definition of "contribution" to apply to draft efforts.

The FECA's unambiguous text does not empower the FEC to regulate contributions to non-candidates simply because they are considering the possibility of running for office. *See, e.g.*, *Air Transp. Ass'n of Am., Inc. v. USDA*, 37 F.4th 667, 671-72 (D.C. Cir. 2022) (holding that, where Congress authorized an agency to "collect fees to fund a reserve" through 2002, the agency lacked authority to continue collecting those fees in later years); *see also Chevron, U.S.A., Inc. v. Nat'l Resources Def. Council*, 467 U.S. 837, 843 (1984) (holding if Congress has "directly addressed the precise question at issue," the agency and court must "give effect to the unambiguously expressed intent of Congress"). Even if this regulation may help prevent circumvention of the FECA's contribution limits, *see* A-320, "neither courts nor federal agencies can rewrite a statute's plain text to correspond to its supposed purposes." *Landstar Exp. Am., Inc. v. Fed. Maritime Comm'n*, 569 F.3d 493, 498 (D.C. Cir. 2009); *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 135 (2015).

Additionally, contribution limits are already prophylactic protections against the possibility of corruption, since "few if any contributions to candidates will involve *quid pro quo* corruption." *Citizens United v. FEC*, 558 U.S. 310, 357 (2010). Prohibiting a political committee from providing a draft petition to someone who is not yet a candidate, in order to prevent the possibility of an impermissible *quid pro quo* in the event the person becomes a candidate and goes on to win election, is an impermissible "prophylaxis-upon-prophylaxis." *McCutcheon v. FEC*, 572 U.S. 185, 221 (2014).

An alternate, narrower basis exists for holding § 100.72 does not bar RTW from providing draft petitions with signatories' contact information to potential candidates. The plain text of the FEC's "testing the waters" regulation applies only to "funds" a person receives "for the purpose of determining whether [he or she] should become a candidate." 11 C.F.R. § 100.72(a). The statutory definition of "contribution," in contrast, expressly distinguishes between "money" and "anything of value." 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a). Contrary to the regulation's plain text, the FEC subsequently concluded the term "funds" includes non-monetary, in-kind goods and services. *See* In re *Reubin Askew*, FEC A.O. 1981-32, at *5 (Oct. 2, 1981); *Republican Majority Fund*, FEC A.O. 1985-40, at 3 (Jan. 24, 1985). If this Court construes § 100.72 according to its plain meaning, however,

it would not preclude RTW from providing a draft petition to someone who has not yet become a candidate because that does not constitute the provision of "funds."

The district court concluded all of this analysis was beside the point because, without the "testing the waters" regulation, Governor DeSantis' acceptance of RTW's draft petition would automatically render him a candidate under the FECA, subjecting him to contribution limits. A-318; A-319 ("There is therefore no scenario in which Governor DeSantis could accept the contact list without triggering FECA's limitations."); A-322; *see also* A-326. Interpreting the FECA and/or FEC regulations to prohibit a group from providing a draft petition to someone who has not yet become a federal candidate in this Catch-22 manner would substantially interfere with a longstanding, traditional form of political expression and association. *See Citizens Against Rent Control*, 454 U.S. at 294. A person should be able to accept and consider a petition encouraging them to run for office—even if it contains signatories' contact information to allow that person to respond—without thereby being deemed a candidate for that office. Accordingly, if the FEC's "testing the waters" regulation is either invalid or inapplicable to RTW's petition, the FECA itself would not bar RTW from providing that petition to someone who has not yet become a candidate. Insofar as 11 C.F.R. § 100.72 purports to apply to RTW's provision of a draft petition to someone who is not a "candidate," it is arbitrary, capricious, in excess of the FEC's statutory authority, and invalid.

VI. IF THIS COURT CONCLUDES PLAINTIFF'S CLAIMS FAIL AS A MATTER OF LAW, IT SHOULD ORDER THE DISTRICT COURT TO DISMISS THIS CASE.

This case involves pure questions of law:

- whether a signed political petition containing signatories' contact information constitutes a "contribution" under the FECA;
- if so, whether such a petition should be deemed a series of conduit contributions from its signatories, rather than a single large contribution from the political committee which compiled it;
- whether the FECA's contribution limits are constitutional as applied to a signed political petition containing signatories' contact information;
- whether the FEC may compel RTW to redact signatories' contact information from its political petition;
- whether the FECA allows the FEC to regulate draft petitions to individuals who are not yet federal candidates; and
- whether receiving a draft petition containing contact information from a sufficient number of signatories automatically makes a person a candidate.

All of these issues turn on pure constitutional and statutory interpretation, as well as legislative facts about the world in general. No facts adduced in discovery would affect the district court's resolution of these issues. Accordingly, based on the district court's legal conclusions in assessing RTW's likelihood of success on the merits, it erred in failing to dismiss RTW's complaint. Should this Court agree with the district court that RTW has not presented valid constitutional or statutory claims, it should remand this case with an order for dismissal.

The U.S. Supreme Court has held, when a court denies a preliminary injunction, "[a]djudicating of the merits is most appropriate if the injunction rests on a question of law and it is plain that the plaintiff cannot prevail." *Munaf v. Green*, 553 U.S. 674, 691 (2008); *see also City & Cnty. of Denver v. N.Y. Trust Co.*, 229 U.S. 123, 136 (1913) (holding a court may "direct a final decree dismissing" a case when "there is any insuperable objection, in point of jurisdiction ***or merits***, to the maintenance" of the suit) (emphasis added). This Court expressly embraces this principle, declaring a case "may be dismissed in its entirety" when "inquiry pertaining to a ruling respecting [a] preliminary injunction reveals that the case is entirely without merit," in order to prevent "a waste of judicial resources." *Wagner v. Taylor*, 836 F.2d 578 586 n.49 (D.C. Cir. 1987); *Morris v. District of Columbia*, 38 F. Supp. 3d 57, 62-63 (D.D.C. 2014). Dismissal may be granted even over an opposing party's objection. *See Melinta Therapeutics, LLC v. U.S. FDA*, No. 22-2190 (RC), 2022 U.S. Dist. LEXIS 184535, at *2 n.2 (D.D.C. Oct. 7, 2022). Such relief is consistent with Federal Rule of Civil Procedure 1, which requires "the just, speedy, and inexpensive determination of every action and proceeding." *See also* Fed. R. Civ. P. 11(b)(1) (prohibiting litigants from "caus[ing] unnecessary delay, or needlessly increas[ing] the cost of litigation").

In *Ark. Dairy Coop. Ass'n v. U.S. Dep't of Agriculture*, 573 F.3d 815, 821 (D.C. Cir. 2009), the district court denied the plaintiffs' motion for a preliminary

injunction, and they took an interlocutory appeal. This Court held the plaintiffs had "no likelihood of success on the merits" and affirmed the denial of a preliminary injunction. *Id*. at 833. It went on to declare "there is an 'insuperable objection'" to several of the plaintiffs' claims as a matter of law. *Id*. It concluded "those claims in [the] complaint must be dismissed for failure to state a claim" and ordered the district court to dismiss them. *Id*.; *see also Distaff, Inc. v. Springfield Contracting Corp.*, 984 F.2d 108, 110 (4th Cir. 1993).[12]

Neither the FEC nor the district court has identified even a single potential fact which may arise in discovery which they contend would affect their analysis and entitle RTW to relief on its First Amendment claim. If this Court, regrettably, determines RTW's claims fail as a matter of law, the proper remedy is not simply affirming the district court, but rather remanding for entry of an order dismissing the complaint as a whole. Dismissal would resolve the unnecessarily complicated bifurcated procedural posture in which this case currently stands, promoting judicial economy and facilitating a petition for certiorari to the U.S. Supreme Court.

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[12] The FEC has argued this Court lacks jurisdiction to consider this issue, without engaging with any of the cases in which this Court exercised jurisdiction to order dismissal of cases on interlocutory appeal. *See Federal Election Commission's Partial Motion to Dismiss*, D.C. Cir. Doc #2014480, at 2 (Aug. 28, 2023). A motion panel of this Court carried that motion with this case. *See* Order, D.C. Cir. Doc. #2024570 (Oct. 31, 2023) (per curiam). In the event this Court concludes RTW's claims are meritless, RTW seeks the relief the U.S. Supreme Court authorized in *N.Y. Trust Co.*, 229 U.S. at 136, and *Munaf*, 553 U.S. at 691, and this Court applied in case such as *Ark. Dairy Coop. Ass'n*, 573 F.3d at 821.

Although the FEC believes RTW's claims are meritless, it has needlessly drawn out these proceedings by refusing to file a motion to dismiss to allow the district court to resolve this case expeditiously. Rather, the FEC has fought vociferously to ***prevent the district court from entering final judgment in its favor***. *See, e.g.*, *Federal Election Commission's Opposition to Plaintiff's Motion for Entry of Judgment*, D.E. #36 (July 19, 2023). The FEC's only dubious explanation is that it wishes to "develop a factual record" concerning RTW's First Amendment claims. *Federal Election Commission's Partial Motion to Dismiss*, D.C. Cir. Doc #2014480, at 2 (Aug. 28, 2023).

Such a "factual record" would be completely superfluous, however, if RTW has failed to state valid First Amendment and statutory claims, or those claims otherwise fail as a matter of law. RTW's activities are a matter of public record through its detailed FEC filings, online advertisements, and other public solicitations for petition signatures. Subjecting RTW to the costs and burdens of a futile year-long, intrusive fishing expedition in discovery would violate Rules 1 and 11, punish RTW for bringing this case, and deter future litigants from pursuing other constitutional challenges. Accordingly, this Court should reaffirm that when a plaintiff seeking a preliminary injunction has failed to state a valid claim as a matter of law, the proper remedy is not merely denial of the preliminary injunction, but dismissal of the claim or complaint.

CONCLUSION

The district court's ruling was based exclusively on RTW's likelihood of success on the merits regarding its claims for a preliminary injunction and actual success on the merits regarding its claims for a permanent injunction. A-337 to A-338. In the event this Court concludes one or more of RTW's claims are meritorious, it easily satisfies the remaining requirements for injunctive relief. RTW's inability to engage in political speech by providing its signed political petition to Governor DeSantis is irreparable harm. *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) ("It has long been established that the loss of constitutional freedoms, 'for even minimal periods of time unquestionably constitutes irreparable injury.'" (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality op.))); *Davis v. District of Columbia*, 721 F.3d 638, 653 (D.C. Cir. 2013). Moreover, "numerous courts have held that the inability to recover monetary damages because of sovereign immunity renders the harm suffered irreparable." *Odebrecht Constr. v. Sec'y Fla. DOT*, 715 F.3d 1268, 1289 (11th Cir. 2013).

The balance of hardships favors RTW since the FEC lacks any valid interest in either enforcing an unconstitutional law or prohibiting conduct which does not actually violate the FECA. *See Pursuing Am. Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016). And "there is no public interest in the perpetuation of unlawful

agency action." *Texas v. Biden*, 10 F.4th 538, 560 (5th Cir. 2021) (per curiam) (alteration omitted); *see also Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013).

For these reasons, in light of this case's unusually complex procedural posture, Plaintiff-Appellant Ready to Win respectfully requests this Court either:

A. REVERSE the District Court's ruling and ORDER entry of:

1. a PRELIMINARY INJUNCTION prohibiting the FEC from violating RTW's First Amendment rights, and/or

2. a PERMANENT INJUNCTION prohibiting the FEC from applying the FECA to signed political petitions – either in general, or those addressed to people who have not yet become federal candidates – as a matter of statutory interpretation, or

B. REMAND this case and ORDER the district court to DISMISS it.

Respectfully submitted,

/s/ Dan Backer

Dan Backer, Esq. (D.C. Bar No. 996641)
CHALMERS, ADAMS, BACKER
& KAUFMAN LLC
441 N. Lee Street, Suite 300
Alexandria, VA 22314
(202) 210-5431
dbacker@ChalmersAdams.com

Attorney for Plaintiff-Appellant
Ready to Win

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B)(i) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 12,903 words.

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Respectfully submitted,

/s/ Dan Backer

Dan Backer, Esq. (D.C. Bar No. 996641)
Attorney for Plaintiff-Appellant
Ready to Win

Dated December 18, 2023

ADDENDUM

ADDENDUM OF PERTINENT STATUTES AND REGULATIONS

Table of Contents

PERTINENT STATUTES AND REGULATIONS

First Amendment

U.S. Const., amend. I

> Congress shall make no law . . . abridging the freedom of speech . . . .

Definition of "Candidate"

52 U.S.C. § 30101(2)(A) – Definitions

> (2) The term "candidate" means an individual who seeks nomination for election, or election, to Federal office, and for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election—
>
> > (A) if such individual has received contributions aggregating in excess of $5,000 or has made expenditures aggregating in excess of $5,000;
> >
> > * * *

11 C.F.R. § 100.3(a)(1) – Candidate (52 U.S.C. 30101(2))

> (a) Definition. Candidate means an individual who seeks nomination for election, or election, to federal office. An individual becomes a candidate for Federal office whenever any of the following events occur:
>
> > (1) The individual has received contributions aggregating in excess of $ 5,000 or made expenditures aggregating in excess of $ 5,000.
> >
> > * * *

Definition of "Contribution"

52 U.S.C. § 30101(8)(A)(i) – Definitions

(8)(A) The term 'contribution' includes—

(i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office . . . .

11 C.F.R. § 100.52(a), (d)(1) – Gift, subscription, loan, advance or deposit of money

(a) A gift, subscription, loan . . ., advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution.

* * *

(d)(1) For purposes of this section, the term anything of value includes all in-kind contributions. . . . [T]he provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is a contribution. Examples of such goods or services include, but are not limited to: Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee.

* * *

Definition of "Identification"

52 U.S.C. § 30101(13)(A) – Definitions

(13) The term "identification" means—

(A) in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer;

* * *

11 C.F.R. § 100.12 – Identification (52 U.S.C. 30101(13))

Identification means, in the case of an individual, his or her full name, including: first name, middle name or initial, if available, and last name; mailing address; occupation; and the name of his or her employer; and, in the case of any other person, the person's full name and address.

Contribution Limits

52 U.S.C. § 30116(a)(1)(A) – Limitations on contributions and expenditures

(a) Dollar limits on contributions.

(1) Except as provided in subsection (i) and section 315A, no person shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $2,000;[1]

* * *

[1] As of February 2, 2023, this limit has been increased to $3,300 due to inflation. *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 88 Fed. Reg. 7088, 7090 (Feb. 2, 2023).

11 C.F.R. § 110.1(b)(1) – Contributions by persons other than multicandidate political committees (52 U.S.C. 30116(a)(1))

* * *

(b) Contributions to candidates; designations; and redesignations.

(1) No person shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office that, in the aggregate, exceed $ 2,000.

(i) The contribution limitation in the introductory text of paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17.

* * *

Conduit Provisions

52 U.S.C. § 30102(b)(1)-(2)

* * *

(b) Account of contributions; segregated funds.

(1) Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receiving such contribution, forward to the treasurer such contribution, and if the amount of the contribution is in excess of $ 50 the name and address of the person making the contribution and the date of receipt.

(2) Every person who receives a contribution for a political committee which is not an authorized committee shall—

(A) if the amount of the contribution is $ 50 or less, forward to the treasurer such contribution no later than 30 days after receiving the contribution; and

(B) if the amount of the contribution is in excess of $ 50, forward to the treasurer such contribution, the name and address of the person making the contribution, and the date of receipt of the contribution, no later than 10 days after receiving the contribution.

* * *

52 U.S.C. § 30116(a)(8) – Limitations on contributions and expenditures

(a)(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

11 C.F.R. §§ 102.8 – Receipt of contributions (52 U.S.C. 30102(b))

(a) Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receipt, forward such contribution to the treasurer. If the amount of the contribution is in excess of $50, such person shall also forward to the treasurer the name and address of the contributor and the date of receipt of the contribution. If the amount of the contribution is in excess of $200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution.

(b)

(1) Every person who receives a contribution of $50 or less for a political committee which is not an authorized committee shall forward such contribution to the treasurer of the political committee no later than 30 days after receipt.

(2) Every person who receives a contribution in excess of $50 for a political committee which is not an authorized committee shall, no later than 10 days after receipt of the contribution, forward to the treasurer of the political committee: the contribution; the name and address of the contributor; and the date of receipt of the contribution. If the amount of the contribution is in excess of $200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution.

(c) The provisions of 11 CFR 102.8 concerning receipt of contributions for political committees shall also apply to earmarked contributions transmitted by an intermediary or conduit.

11 C.F.R. 110.6(a), (c)(1)(i), (c)(1)(iv)(A), (d)(1) – Earmarked contributions (52 U.S.C. 30116(a)(8))

(a) General. All contributions by a person made on behalf of or to a candidate, including contributions which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate.

* * *

(c) Reporting of earmarked contributions —

(1) Reports by conduits and intermediaries

(i) The intermediary or conduit of the earmarked contribution shall report the original source and the recipient candidate or authorized committee to the Commission and to the recipient candidate or authorized committee.

* * *

(iv) The report by the conduit or intermediary shall contain the following information:

(A) The name and mailing address of each contributor and, for each earmarked contribution in excess of $ 200, the contributor's occupation and the name of his or her employer;

* * *

(d) Direction or control.

(1) A conduit's or intermediary's contribution limits are not affected by the forwarding of an earmarked contribution except where the conduit or intermediary exercises any direction or control over the choice of the recipient candidate.

* * *

Testing the Waters Provision

11 C.F.R. § 100.72(a) – Testing the waters.

(a) General exemption. Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such funds received. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act. Such contributions must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received.