

No. 12-8078

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**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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FREE SPEECH,  
*Plaintiff-Appellant,*

v.

FEDERAL ELECTION COMMISSION,  
*Defendant-Appellee.*

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On Appeal from the United States District Court for the  
District of Wyoming (Judge Scott W. Skavdahl)

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**UNOPPOSED MOTION OF CAMPAIGN LEGAL CENTER AND  
DEMOCRACY 21 FOR LEAVE TO FILE BRIEF *AMICI CURIAE*  
SUPPORTING DEFENDANT-APPELLEE AND URGING AFFIRMANCE**

The Campaign Legal Center (CLC) and Democracy 21 respectfully move for leave to participate as *amici curiae* and to file the attached Brief *Amici Curiae* in Support of Defendant-Appellee and Urging Affirmance. Counsel for both appellant and appellee have consented to this motion; it is unopposed.

In support of this motion, *amici* state:

1. Plaintiff-appellant Free Speech (FS) is appealing the decision of the United States District Court for the District of Wyoming to deny its motion for a preliminary injunction to enjoin certain Federal Election Commission (FEC) regulations and policies. *See* Transcript of Telephonic Oral Ruling, *Free Speech v. FEC*, No. 12-cv-127 (Oct. 3, 2012). Specifically, FS sought to have enjoined the

FEC's definition of "expressly advocating," *see* 11 C.F.R. § 100.22(b), the FEC's policy for determining a group's "major purpose," and a draft advisory opinion addressing the question of when donations given in response to solicitations are deemed "contributions" under FECA. These regulations and policies collectively establish when a group such as FS must abide by the "political committee" requirements in the Federal Election Campaign Act (FECA).

2. The CLC is a non-profit, non-partisan organization created to represent the public perspective in administrative and legal proceedings interpreting and enforcing the campaign finance and other election laws throughout the nation. It participates in rulemaking and advisory opinion proceedings at the FEC to ensure that it is properly enforcing federal election laws, and files complaints with the Commission requesting that enforcement actions be taken against individuals or organizations which violate the law.

3. Democracy 21 is a non-profit, non-partisan policy organization that works to ensure the integrity of our democracy. It supports campaign finance and other political reforms, and conducts public education efforts to accomplish these goals, participates in litigation involving the constitutionality and interpretation of campaign finance laws and engages in efforts to help ensure that campaign finance laws are effectively and properly enforced and implemented.

4. The *amici* have substantial experience and expertise in the issues raised in this case. The *amici* participated in the litigation below, and filed an *amici* brief with the district court to oppose FS's motion for a preliminary injunction and to defend the constitutionality of the FEC regulations and policies.

5. The CLC and Democracy 21 have provided legal counsel to parties and *amici* in numerous campaign finance cases at the federal and state court levels, including representing intervening defendants in *McConnell v. FEC*, 540 U.S. 93 (2003). More recently, the CLC and Democracy 21 have participated as *amici curiae* in a number of Supreme Court cases, including *American Tradition Partnership v. Bullock*, No. 11-1179, 567 U.S. \_\_\_\_ (2012), *Citizens United v. FEC*, 558 U.S. 310, 130 S. Ct. 876 (2010) and *FEC v. Wisconsin Right to Life (WRTL)*, 551 U.S. 449 (2007). The *amici* also participated extensively in *Real Truth About Abortion (RTAA) v. FEC*, 681 F.3d 544 (4th Cir. 2012), *cert. denied*, No. 12-311 (Jan. 7, 2013), a case that addressed precisely the same legal arguments as those advanced by FS here.

6. *Amici* believe the attached Brief *Amici Curiae* in Support of Defendant-Appellee and Urging Affirmance will assist the Court in considering the issues presented in this case. This filing is timely because this motion and the attached memorandum are being filed within a week of the date that the principal brief of appellee FEC was filed pursuant to Fed. R. App. P. 29(e).

7. Pursuant to Fed. R. App. P. 29(c)(5), *amici* affirm that no party's counsel authored the brief in whole or in part, and no person – other than the *amici* – contributed money that was intended to fund the brief.

8. Pursuant to Fed. R. App. P. 29(a) and Local Rule 27.3(C), counsel for appellant FS and appellee FEC were contacted about their consent to the filing of the attached memorandum. All parties have consented to the *amici*'s participation.

Wherefore, *amici* respectfully request that the Court grant leave to file the attached Brief *Amici Curiae* in Support of Defendant-Appellee and Urging Affirmance.

/s/ J. Gerald Hebert  
J. Gerald Hebert  
Tara Malloy  
Paul S. Ryan  
THE CAMPAIGN LEGAL CENTER  
215 E Street, NE  
Washington, DC 20002  
Tel.: (202) 736-2200  
ghebert@campaignlegalcenter.org

Donald J. Simon  
SONOSKY, CHAMBERS, SACHSE  
ENDRESON & PERRY, LLP  
1425 K Street, NW, Suite 600  
Washington, D.C. 20005  
Tel.: (202) 682-0240

Fred Wertheimer,  
DEMOCRACY 21  
2000 Massachusetts Avenue, NW  
Washington, D.C. 20036  
Tel.: (202) 429-2008

Larry B. Jones  
SIMPSON, KEPLER & EDWARDS,  
LLC  
*The Cody, Wyoming Division of*  
BURG SIMPSON ELDREDGE HERSH  
& JARDINE, P.C.  
1135 14<sup>th</sup> Street, P.O. Box 490  
Cody, WY 82414  
Tel.: (307) 527-7891

Counsel for *Amici Curiae*

**Dated: February 11, 2013**

**CERTIFICATE OF DIGITAL SUBMISSION**

I certify that no privacy redactions were required for this brief and that the digital ECF version of the foregoing is an exact copy of the written document filed with the Clerk of the Court. I further certify that the digital submission has been scanned for viruses with the most recent version of Microsoft Security Essentials, a commercial virus scanning program, and according to the program, the submission is virus-free.

/s/ J. Gerald Hebert  
J. Gerald Hebert  
THE CAMPAIGN LEGAL CENTER  
215 E Street, NE  
Washington, DC 20002  
Tel.: (202) 736-2200  
ghebert@campaignlegalcenter.org

**Dated: February 11, 2013**

**CERTIFICATE OF SERVICE**

I certify that on February 11, 2013, I electronically filed a copy of the foregoing document using the CM/ECF system, and that a true and correct copy of such filing was served by electronic filing or by email on the following counsel of record at the listed e-mail addresses:

John B. Speight,  
jbspeight@gmail.com  
4021 Snyder Avenue  
Cheyenne, WY 82001

Stephen R. Klein,  
stephen.klein@wyliberty.org  
WYOMING LIBERTY GROUP  
1902 Thomes Avenue, Suite 201  
Cheyenne, WY 82001

Benjamin T. Barr,  
benjamin.barr@gmail.com  
10737 Hunting Lane  
Rockville, MD 20850

*Counsel for Plaintiff-Appellant*

Anthony Herman,  
aherman@fec.gov  
David B Kolker,  
dkolker@fec.gov  
Lisa Stevenson,  
lstevenson@fec.gov  
Adav Noti,  
anoti@fec.gov  
Erin R Chlopak,  
echlopak@fec.gov  
FEDERAL ELECTION  
COMMISSION  
999 E Street, NW  
Washington, DC 20463-0000

Nicholas Vassallo,  
nick.vassallo@usdoj.gov  
US ATTORNEY'S OFFICE  
P O Box 668  
Cheyenne, WY 82003-0668

*Counsel for Defendant-Appellee*

/s/ J. Gerald Hebert  
J. Gerald Hebert  
THE CAMPAIGN LEGAL CENTER  
215 E Street, NE  
Washington, DC 20002  
Tel.: (202) 736-2200  
ghebert@campaignlegalcenter.org

**Dated: February 11, 2013**