No. _____

In The
Supreme Court of the United States

ANDREW NATHAN WORLEY,
PATRICIA WAYMAN, JOHN SCOLARO,

Petitioners,

v.

FLORIDA SECRETARY OF STATE, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Citizens United v. FEC*, 558 U.S. 310 (2010), this Court held that the First Amendment prohibits the federal government from requiring corporations that wish to speak about political candidates to do so through a political committee, because such requirements are subject to strict scrutiny, which they cannot survive. Under Florida law, unincorporated groups that wish to speak about ballot issues must do so through a political committee, the burdens of which are materially identical to those of operating a federal political committee. The questions presented are:

1) Did the Eleventh Circuit err in holding that the application of Florida's political-committee requirements to unincorporated ballot-issue speakers is subject to only intermediate scrutiny, rather than strict scrutiny?

2) Did the Eleventh Circuit further err in holding, based on the court's factually unsupported speculation about Petitioners' potential future activities, that Petitioners lacked standing to challenge Florida's political-committee requirement as applied to small groups?

PARTIES TO THE PROCEEDINGS

Petitioners, Appellants below, are three Florida residents: Andrew Nathan Worley, Patricia Wayman, and John Scolaro.

Respondents, Appellees below, are the Florida Secretary of State, Ken Detzner, and the members of the Florida Elections Commission, Tim Holladay, Brian M. Seymour, Alia Faraj-Johnson, Sean Hall, Patricia Hollarn, Leslie Scott Jean-Bart, and Barbra Stern, all of whom are sued in their official capacity.

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OPINIONS BELOW

The Eleventh Circuit's opinion (Pet'rs' App. 1-38) is reported at 717 F.3d 1238. The district court's unpublished opinion on the parties' cross-motions for summary judgment is reproduced in the appendix (Pet'rs' App. 41-57).

JURISDICTION

The Eleventh Circuit rendered its decision on June 14, 2013. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the U.S. Constitution, made applicable to the states through the Fourteenth Amendment, provides, in relevant part, that government "shall make no law . . . abridging the freedom of speech."

Relevant provisions of Florida's campaign-finance laws, Fla. Stat. §§ 106.011, *et seq.*, are reproduced in the appendix (Pet'rs' App. 60-175).

STATEMENT OF THE CASE

Despite this Court's recent efforts to bring clarity to the hopelessly complicated area of campaign-finance regulation, lower courts across the country are ignoring this Court's rulings and upholding laws that impose massive burdens on speech by ordinary Americans. These burdens fall hardest on political novices who are inspired to become active in the political debate but who do not have the experience, the time, or the money to comply with the host of regulations that their political speech will trigger. Telling such groups – which are often nothing more than loosely affiliated associations of like-minded people – that they may speak only if they decipher and comply with hundreds of pages of campaign-finance rules, regulations, and advisory opinions is, in practical effect, telling them that they may not speak at all.

The dangerous trend of lower courts upholding such regulations, in clear defiance of this Court's rulings, is illustrated most vividly by the spate of recent litigation involving laws that require groups that wish to speak out in elections, including even unincorporated grassroots groups, to do so through heavily regulated "political committees" or "PACs." This Court has long recognized that forcing groups to speak through a PAC is a severe burden. *See FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 251-56 (1986) (Brennan, J., joined by Marshall, Powell, and Scalia, JJ., plurality). Indeed, the burdens that PACs impose on speakers are so severe that this Court held

only three years ago that forcing even well-funded corporations and unions to speak through a PAC amounts to a "ban on speech." *Citizens United v. FEC*, 558 U.S. 310, 339 (2010).

Over the last three years, however, lower courts across the country – including the Fourth, Seventh, Ninth, and D.C. Circuits – have consistently refused to follow this Court's ruling in *Citizens United*, which demanded that PAC requirements be reviewed with strict scrutiny. In upholding Florida's political-committee requirements for ballot-issue speakers, the Eleventh Circuit became the latest federal appellate court to disregard *Citizens United*. Like the others, the Eleventh Circuit ignored the distinction that this Court has drawn between political-committee requirements and laws that require mere financial reporting. Thus, rather than reviewing Florida's political-committee requirements with the strict scrutiny demanded by *Citizens United*, the Eleventh Circuit applied only intermediate scrutiny. The result is that the Eleventh Circuit and others have upheld burdens on core political speech by ad hoc, grassroots groups that would be unconstitutional as applied to General Motors or the AFL-CIO. Undoubtedly, these rulings will silence thousands of ordinary Americans who, confronted with the requirement of establishing a heavily regulated PAC as a condition of speaking, will "decide[ ] that [their] contemplated political activity [is] simply not worth it." *Mass. Citizens for Life, Inc.*, 479 U.S. at 255 (plurality opinion).

Compounding this error, the Eleventh Circuit decided *sua sponte* that Petitioners – who had pledged only $600 to spend on 20 radio advertisements – lacked standing to challenge Florida's political-committee requirements as applied to small grassroots groups, based on the court's unsupported speculation that some unknown person might donate $1 million to Petitioners' cause, thus making them no longer a small group. This ruling creates a split with the Tenth Circuit, conflicts with both *Citizens United* and with this Court's ruling in *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007), and will deprive speakers throughout the Eleventh Circuit of the ability to vindicate their First Amendment rights through pre-enforcement, as-applied challenges.

I. The Petitioners and Their Speech.

Petitioners Nathan Worley, John Scolaro, and Patricia Wayman are Florida residents who, along with their friend Robin Stublen, wanted to speak out against proposed Amendment 4 to the Florida Constitution during the 2010 election. (Pet'rs' App. 176-77, 190-91, 183-84, 198-99.) Amendment 4, if enacted, would have required local governments to submit all changes to their comprehensive land-use plans to a referendum of the voters for approval. *See* Fla. Div. of Elections, *Referenda Required for Adoption & Amendment of Local Government Comprehensive Land Use Plans*, http://election.dos.state.fl.us/initiatives/initdetail.asp?account=37681&seqnum=2 (last visited Sept. 9, 2013). Petitioners considered Amendment 4 an affront

to property rights that would have a devastating effect on Florida's economy. (Pet'rs' App. 177, 184, 191, 199.) Accordingly, they wanted to urge their fellow Floridians to vote against the amendment on the November ballot. (Pet'rs' App. 177, 184, 191-92, 199.)

In order to make their speech as effective as possible, Petitioners wanted to associate with one another by pooling their money to purchase advertising time on a local talk-radio station. (Pet'rs' App. 177-78, 184-85, 192, 199-200.) In addition to allowing them to purchase more ads than they could individually, associating with one another would have allowed Petitioners Nathan Worley, Pat Wayman, and John Scolaro to take advantage of Robin Stublen's greater experience with radio advertising. (Pet'rs' App. 177-78, 184-85, 192, 199-200.) Collectively, Petitioners were prepared to spend at least $600 ($150 apiece) on their effort. (Pet'rs' App. 178, 184-85, 192, 200.) Based on price quotes Petitioners received from a local talk-radio station, this amount of money would have allowed them to run 30 advertisements of 30 seconds at $20 apiece. (Pet'rs' App. 200.) Petitioners also expressed interest in raising money from like-minded friends to fund additional radio ads. (Pet'rs' App. 3, 180-81, 187, 196.)

II. Florida's Campaign-Finance Laws.

Had Petitioners gone forward with their proposed advertisements, they would have been considered a "political committee." (Pet'rs' App. 3.) Under Florida

law, a political committee is any group of people that raises or spends more than $500 for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue that will appear on the ballot. Fla. Stat. § 106.011(1) (Pet'rs' App. 60-61).[1]

Political committees (commonly called PACs) are the most heavily regulated entity under Florida's campaign-finance laws. Among other things, every PAC is required to:

- register with the state within 10 days after it is organized, Fla. Stat. § 106.03(1)(a) (Pet'rs' App. 99);
- appoint a treasurer and establish a campaign depository, *id.* § 106.021(1) (Pet'rs' App. 86);
- deposit all funds within five days of receipt, *id.* § 106.05 (Pet'rs' App. 110-11);

[1] All citations to Florida Statutes (and accompanying citations to Petitioners' Appendix) are to the version of those statutes in effect at the time of this filing. The State of Florida recently passed a bill that made modifications to a number of its campaign-finance laws, which will go into effect on November 1, 2013. *See* S.B. 1382, 2013 Leg., Reg. Sess. (Fla. 2013). None of these changes are germane to the merits of this case, but some citations to statutory sections will change after that date. For the Court's convenience, Petitioners have included in their Appendix the new version of each statutory section immediately following the current version.

- make all expenditures by check drawn from the campaign account, *id.* § 106.11 (Pet'rs' App. 156-61);
- keep "detailed accounts" of receipts and expenditures, current to within no more than two days, *id.* § 106.06(1) (Pet'rs' App. 112);
- maintain records for at least two years after the date of the election to which the accounts refer, *id.* § 106.06(3) (Pet'rs' App. 113);
- file regular reports with the Division of Elections, itemizing every single contribution and expenditure, no matter how small, *id.* § 106.07(4)(a) (Pet'rs' App. 117-20); and
- submit to random audits by the Division of Elections, *id.* § 106.22(10) (Pet'rs' App. 170).

PACs also face numerous prohibitions on their activities. For example, PACs are prohibited from spending anonymous contributions or receiving cash contributions greater than $50, which effectively prohibits small groups of neighbors from "passing the hat" for donations. *See id.* § 106.09 (Pet'rs' App. 155-56).

Of the 24 states that hold ballot-issue elections, Florida is one of only four that has no minimum threshold for reporting contributions to, or expenditures

made by, a PAC.[2] All contributions and expenditures, regardless of size, must be individually reported. Fla. Stat. § 106.07(4)(a) (Pet'rs' App. 129-32). This means that if the PAC receives even one dollar from a contributor – or trivial in-kind contributions like posterboard and markers – it must record the value of that contribution and report it to the state along with the contributor's name and home address. *Id.* § 106.07(4)(a)1 (Pet'rs' App. 129). Similar reporting requirements apply to all expenditures, regardless of amount. *Id.* § 106.07(4)(a)6 (Pet'rs' App. 130).

Corporations, by contrast, are not required to form a PAC in order to speak in Florida elections. *Id.* § 106.011(1)(b)2 (Pet'rs' App. 61). Indeed, unlike unincorporated groups, a corporation may spend up to $5,000 advocating the passage or defeat of a ballot issue without filing even a single form with the Florida Division of Elections. *Id.* §§ 106.011(8), 106.071 (Pet'rs' App. 67, 137-38) (setting the $5,000 per person threshold and including corporations in the definition of "person"). Even after corporations pass the $5,000 threshold, they are not required to comply with the administrative requirements applicable to PACs, such as establishing a separate bank account, or making payments with funds drawn from that account.

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[2] The other three are Alaska, Alaska Stat. § 15.13.040(e)(5)(A); Michigan, Mich. Comp. Laws § 169.226(1)(e); and Ohio, Ohio Rev. Code. Ann. § 3517.10(B)(4)(b).

III. The Burden of Florida's Campaign-Finance Laws on Petitioners.

Petitioners had only a limited amount of time to devote to their political advocacy. (Pet'rs' App. 179, 186, 194.) Because they became interested in speaking close to the election, they did not believe that they had enough time to also learn and comply with the many regulations that apply to political committees, (Pet'rs' App. 179, 186, 194), which "[e]lection officials acknowledge [are] complex" and require "months of study" for "state officials newly working with the laws . . . to become comfortable with." (Pet'rs' App. 5-6.) Petitioner Patricia Wayman had previously reviewed the laws that apply to political committees. (Pet'rs' App. 193-94.) Despite having worked in a law office, she found the legal requirements confusing and did not believe that she could balance the time required to serve as a political-committee treasurer with her other responsibilities. (Pet'rs' App. 193-94.)

Petitioners were also afraid that, due to the complexity of Florida's campaign-finance laws, they might inadvertently violate those laws and subject themselves to civil liability. (Pet'rs' App. 181-82, 188, 196-97.) The Florida Elections Commission, the agency charged with enforcing Florida's campaign-finance laws, reports that, in all, "[t]here are almost 100 separate violations" possible under Florida's campaign-finance laws, (Pet'rs' App. 210), all of which are subject to civil penalties, (Pet'rs' App. 121-24, 171), and many to additional criminal penalties or even jail time. (Pet'rs' App. 121-24, 137-38, 144-46,

156, 166-67, 171-73.) And although the Division of Elections publishes an explanatory handbook for political committees, that 52-page handbook makes clear that it is "a quick reference guide only." (Pet'rs' App. 215.) For complete information, the handbook advises that political committees review "Chapters 97-106, Florida Statutes, the Constitution of the State of Florida, Division of Elections' opinions and rules, Attorney General opinions, county charters, city charters and ordinances, *and other sources . . . in their entirety*." (Pet'rs' App. 215) (emphasis added). At the time this case was submitted for summary judgment, the Division of Elections website listed 40 "adopted rules" and 520 advisory opinions (excluding those marked as rescinded or obsolete). (Pet'rs' App. 207.)

Petitioners' fears that they would have been subject to civil liability for an inadvertent violation of the law were compounded by the fact that, under Florida law, the Secretary of State or any other person may file a sworn complaint with the Florida Elections Commission alleging a violation of the campaign-finance laws. *See* Fla. Stat. § 106.26(1); *see also* Pet'rs' App. 181-82, 188, 196-97. The Florida Elections Commission estimates that 98% of the complaints it receives are "politically motivated." (Pet'rs' App. 220.) David Flagg, the investigations manager for the Florida Elections Commission and the Commission's Rule 30(b)(6) designee, testified that "many times" complaints are filed by individuals seeking "to punish their political opponent" or to "harass that person or otherwise divert their attention

from their campaign." (Pet'rs' App. 217-18.) Because of this, Petitioners would not have felt comfortable running their ads unless they hired a lawyer, which they could not afford to do. (Pet'rs' App. 181-82, 188, 196-97.)

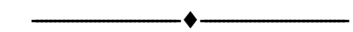
Amendment 4 was ultimately defeated in the November 2010 election. *See* Fla. Div. of Elections, *Referenda Required for Adoption & Amendment of Local Government Comprehensive Land Use Plans*, http://election.dos.state.fl.us/initiatives/initdetail.asp?account=37681&seqnum=2 (last visited Sept. 9, 2013). Because Petitioners are all politically active, they want to engage in similar political activity in the future, particularly if a proposal like Amendment 4 makes it onto the ballot again. (Pet'rs' App. 181, 188, 196.) If they do so, however, they will again be subject to the laws described above.

IV. Petitioners' Lawsuit and the Lower Courts' Rulings.

Petitioners filed their six-count complaint for declaratory and injunctive relief in September 2010. In October of that year, the district court entered an order denying in substantial part Petitioners' motion for preliminary injunction. *Worley v. Roberts*, 749 F. Supp. 2d 1321 (N.D. Fla. 2010). Following discovery, the parties filed cross-motions for summary judgment. Petitioners also filed a motion to strike certain inadmissible testimony by the Respondents' expert witness. The district court heard argument on

the motions on July 27, 2011. The following July, the district court issued a final decision disposing of all pending claims and denying as moot Petitioners' motion to strike.

In its merits opinion, the district court held that Florida's political-committee requirements did not violate the First Amendment as applied to ballot-issue speakers. (Pet'rs' App. 50-51.) The Court of Appeals affirmed that ruling on June 14, 2013, concluding that Florida's PAC requirements were "facially" constitutional as applied to speech about ballot issues. (Pet'rs' App. 25-27.) The appellate court expressed concern about the effect that Florida's PAC requirements would have on small grassroots groups, (Pet'rs' App. 33, n.8), but held *sua sponte* that Petitioners lacked standing to bring that claim. Despite the fact that Petitioners had pledged only $600 to run their ads and never had the opportunity to raise any additional funds during the 2010 election in which they had originally sought to speak, the court of appeals reasoned – on the basis of no evidence – that it was hypothetically possible that some presently unknown donor would contribute $1 million to Petitioners in a future election, thereby making them no longer a small group. (Pet'rs' App. 28.) This petition timely followed.



REASONS FOR GRANTING THE PETITION

The Eleventh Circuit is the latest in a string of federal appellate courts to ignore the plain language of this Court's ruling in *Citizens United v. FEC*, 558 U.S. 310 (2010). As explained in Section I, below, despite this Court's decades-long history of subjecting PAC requirements to strict scrutiny, the Eleventh Circuit and other federal courts have erroneously concluded that such requirements are subject only to an extremely lax form of "intermediate" scrutiny. The result is that unincorporated groups across the country are being silenced by laws that this Court has declared unconstitutionally burdensome for corporations and unions.

Further, as explained in Section II, the Eleventh Circuit's ruling that Petitioners lacked standing to challenge Florida's PAC requirements as they apply to small groups creates a circuit split with the Tenth Circuit, conflicts with this Court's rulings in *Citizens United* and *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007), and will make it much harder for speakers to bring pre-enforcement challenges to campaign-finance laws that burden core political speech. Both of these rulings warrant this Court's immediate review.[3]

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[3] *See* Sup. Ct. R. 10(a), (c) (identifying, as considerations governing review on a writ of certiorari, whether "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter" and whether "a United States court of

(Continued on following page)

I. Courts Across the Country Are Ignoring the Holding of *Citizens United v. FEC* That PAC Requirements Impose Severe Burdens on Speakers and Are Subject to Strict Scrutiny.

If corporate managers, shareholders, and employees cannot be forced to choose between speaking through a PAC or remaining silent, then unincorporated groups cannot be put to that same choice. No reasonable person, after all, could conclude that this Court's ruling in *Citizens United* was intended to give corporations and unions *greater* First Amendment protection than other, less formal organizations. Yet that is precisely what the Eleventh Circuit – along with the Fourth, Seventh, Ninth, and D.C. Circuits – has held.

These decisions are unanimously wrong. As explained below, *Citizens United* demands that PAC requirements be reviewed with strict scrutiny. Federal appellate courts, however, have consistently misapplied that ruling, and have instead reviewed PAC requirements with only intermediate scrutiny – and a particularly weak form of intermediate scrutiny at that. This open defiance of this Court's precedent threatens grassroots speakers throughout the country and demands that this Court intervene.

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appeals . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court.").

A. *Citizens United* required that Florida's PAC requirements be reviewed with strict scrutiny.

In *Citizens United v. FEC*, this Court considered the constitutionality of a federal campaign-finance law that prohibited corporations and unions from speaking in candidate elections unless they did so through a PAC. 558 U.S. 310. The Court found that the law functioned as a "ban on speech," notwithstanding the option for corporations to establish and speak through a PAC, because "PACs are burdensome alternatives" that are "expensive to administer and subject to extensive regulations." *Id.* at 337, 339. Accordingly, this Court subjected those burdens to strict scrutiny and held the federal regulatory scheme unconstitutional as applied to groups engaged in independent political speech. *Id.* at 340, 365.

The Petitioners in this case are in exactly the same position as the corporate directors, employees, and shareholders who were prohibited from speaking collectively before *Citizens United*. Indeed, the only salient difference between these two cases is that Petitioners are an ad hoc, unincorporated group with no experience navigating campaign-finance laws, whereas Citizens United was a nonprofit corporation that had successfully operated a PAC with "millions of dollars in assets" "for over a decade" before winning their challenge to the federal law requiring that they do so. *See id.* at 393, 419 & n.40 (Stevens, J., concurring in part and dissenting in part).

Not only are Petitioners in the same position as the speakers in *Citizens United*, Florida's PAC requirements are at least as burdensome as the federal PAC requirements held unconstitutional in that case. Under both Florida and federal law, PACs must "appoint a treasurer, forward donations to the treasurer promptly, keep detailed records of the identities of the persons making donations, preserve receipts for [two or three] years [respectively], and file an organization statement and report changes to this information within 10 days." *Id.* at 337-38. And, as this Court noted, "that is just the beginning," because, under both state and federal law, PACs must also file detailed reports with the state, "which are due at different times depending on the type of election that is about to occur." *Id.* at 338.

While these similarities alone should have been enough to trigger strict scrutiny under this Court's ruling in *Citizens United*, Florida's PAC regulations are, in other respects, far more burdensome than the federal PAC requirements held unconstitutional in that case. For example, while federal law does not require itemized reporting of contributions or expenditures of $200 or less, 2 U.S.C. § 434(b)(3)(A), Florida law requires disclosure of the names and addresses of *all* contributors and recipients of expenditures, regardless of the amount, including "in-kind" contributions. Fla. Stat. §§ 106.011(3)(a), 106.07(4)(a)5 (Pet'rs' App. 62, 118). Nevertheless, the Eleventh Circuit refused to apply strict scrutiny to Florida's PAC requirements. In doing so, as explained below, the

court joined a growing number of federal appellate courts that have openly defied this Court's ruling in *Citizens United*.

B. Circuit Courts are systematically avoiding the strict scrutiny required under *Citizens United* by ignoring the distinction this Court has drawn between PAC requirements and mere disclosure.

There can be no doubt that applying the full panoply of PAC burdens to independent ballot-issue advocates cannot survive strict scrutiny. To date, this Court has identified only one government interest sufficiently compelling to justify PAC burdens: the interest in preventing *quid pro quo* corruption of candidates. *Buckley v. Valeo*, 424 U.S. 1, 25-27 (1976). But this Court has also held that "independent expenditures . . . do not give rise to corruption or the appearance of corruption." *Citizens United*, 558 U.S. at 357.

Federal courts across the country, however, have sidestepped this conclusion and refused to apply strict scrutiny to PAC requirements on the grounds that these cases involve mere "disclosure" laws that are subject only to intermediate scrutiny. And they have done so even in cases, like this one, involving speech about ballot issues, which this Court has also specifically held presents no risk of political corruption. *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 790 (1978) ("The risk of corruption perceived in cases

involving candidate elections . . . simply is not present in a popular vote on a public issue.").

Even more remarkably, every one of these courts has cited *Citizens United* – which held that a nonprofit corporation *could not* be forced to speak through a PAC – to support its holding. In *Center for Individual Freedom v. Madigan*, for example, the Seventh Circuit described the law under review as requiring "groups and individuals that accept 'contributions,' make 'expenditures,' or sponsor 'electioneering communications' in excess of $3,000 to make regular financial disclosures to the State Board of Elections." 697 F.3d 464, 470 (7th Cir. 2012). That so-called "disclosure" law was, in fact, Illinois' definition of "political committee," *see id.* (citing 10 Ill. Comp. Stat. 5/9-1.8), which imposed burdens analogous to federal PAC requirements.

Similarly, in *Human Life of Washington Inc. v. Brumsickle*, the Ninth Circuit considered the constitutionality of Washington's "Public Disclosure Law." 624 F.3d 990, 994 (9th Cir. 2010). As the Ninth Circuit described that law, "designation as a 'political committee' triggers various disclosure requirements." *Id*. at 997. Those "disclosure requirements" include opening a separate bank account, appointing a treasurer, filing a statement of registration with the government, and filing "periodic reports on certain dates relative to the election at issue." *Id*. at 997-98. In other words, exactly the requirements that this Court identified in *Citizens United* as among the reasons

that federal PAC requirements are subject to strict scrutiny. 558 U.S. at 337-38.

The D.C. Circuit in *SpeechNow.org v. FEC* took this specious reasoning a step further and declared that the very federal PAC requirements at issue in *Citizens United* were mere disclosure laws, to be reviewed with only intermediate scrutiny. 599 F.3d 686, 696 (D.C. Cir. 2010) (en banc). That case involved a constitutional challenge to federal PAC requirements as applied to groups whose political activity was limited solely to independent expenditures supporting or opposing federal candidates. *Id*. at 689. Although the D.C. Circuit held that such groups could not be bound by the contribution limits that apply to federal political committees, it went on to uphold all of the administrative and reporting requirements for PACs that this Court in *Citizens United* identified as unconstitutionally burdensome. *Id*. at 698; *see also Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 548-49 (4th Cir. 2012) (holding that the FEC's "policy for applying the 'major purposes' test to organizations, which . . . would . . . determine whether Real Truth is a PAC, . . . implicat[e] disclosure and organizational requirements," and are therefore subject to only intermediate scrutiny).

The Eleventh Circuit has now followed suit. Despite the fact that Florida's PAC requirements are even more burdensome than the federal PAC requirements that this Court reviewed with strict scrutiny and held unconstitutional in *Citizens United*, the Eleventh Circuit characterized the law as merely

a "disclosure scheme" and reviewed it with intermediate scrutiny. (Pet'rs' App. 12-13.)

The fundamental error in all of these cases is that they ignore this Court's discussion in *Citizens United* of PAC burdens, which were reviewed with strict scrutiny, and instead focus exclusively on this Court's holding that federal electioneering-communication disclosures are subject to intermediate scrutiny. The differences between these two regulatory schemes, however, are extreme. Federal electioneering-communications disclosure is a one-time-only reporting requirement. Groups that are required to file electioneering-communications disclosures are not required to register with the government, appoint a treasurer, open a separate bank account, or comply with any of the other administrative burdens that come along with regulation as a PAC. *Compare* 2 U.S.C. §§ 432, 433, 434(a)-(b) (describing requirements for federal political-committee registration, administration, and disclosure), *with* 2 U.S.C. § 434(f) (describing disclosure requirements for groups making electioneering communications). A group that intends to speak only once need only file a single disclosure report, and never needs to file another unless it later decides to fund additional electioneering communications. 2 U.S.C. § 434(f)(4). Because of the limited nature of this type of disclosure, this Court in *Citizens United* held that it triggered only exacting scrutiny. 558 U.S. at 366-67.

PAC disclosure is different and, as this Court has long recognized, far more burdensome. *See Mass.*

Citizens for Life, Inc., 479 U.S. at 253-54 (plurality opinion). In addition to having to register with the government and comply with a host of administrative burdens, PACs are subject to *ongoing* reporting obligations. This means that, "[o]nce initiated, the requirement is potentially perpetual regardless of whether the association ever again makes an independent expenditure." *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 873 (8th Cir. 2012) (en banc). Even for reporting periods in which the PAC has no financial activity, the PAC is required to file a waiver indicating that they have engaged in no activity. Fla. Stat. § 106.07(7) (Pet'rs' App. 121). The only way to end this reporting requirement is to disband the committee. Fla. Stat. § 106.03(5) (Pet'rs' App. 103). But, "[o]f course, the association's constitutional right to speak through independent expenditures dissolves with the political fund. To speak again, the association must initiate the bureaucratic process again." *Swanson*, 692 F.3d at 873; *see also Citizens United*, 558 U.S. at 339 ("PACs, furthermore, must exist before they can speak. Given the onerous restrictions, a corporation may not be able to establish a PAC in time to make its views known regarding candidates and issues in a current campaign.").

Given these material differences between the two types of regulations this Court considered in *Citizens United*, the en banc Eighth Circuit rightly observed that "[a]llowing states to sidestep strict scrutiny by simply placing a 'disclosure' label on laws imposing the substantial and ongoing burdens typically reserved

for PACs risks transforming First Amendment jurisprudence into a legislative labeling exercise." *Swanson*, 692 F.3d at 875. Yet that is precisely what federal appellate courts have done.

In doing so, these courts have undermined First Amendment protection for grassroots groups across the country. As *Citizens United* demonstrated, PAC requirements cannot survive strict scrutiny as applied to independent political speakers. That is because such groups pose no danger of corruption or the appearance of corruption, which are the only interests that this Court has ever held sufficiently compelling in the realm of campaign-finance laws to satisfy strict scrutiny. *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 496-97 (1985) ("We held in *Buckley* and reaffirmed in *Citizens Against Rent Control* [*v. City of Berkeley*, 454 U.S. 290 (1981),] that preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances.").

Under intermediate scrutiny, however, these courts have relieved the government of the obligation of pointing to a compelling interest, and have upheld PAC requirements based on what they consider to be the government's "sufficiently important" "informational interest" in campaign-finance disclosure. *See, e.g.*, Pet'rs' App. 15-24.

Applying intermediate scrutiny has also relieved the government of the obligation of explaining how

the full panoply of PAC requirements is a "narrowly tailored" means of pursuing the government's interest. Instead, these courts have required only that the government demonstrate that there is a "substantial relation" between the government's asserted informational interest and the PAC requirements. In practice, courts have held that this "relation" is present as long as some component of the PAC requirements is related to disclosure. *See, e.g.*, Pet'rs' App. 29 (describing Florida's PAC requirements as a "disclosure scheme," the tailoring of which is "better left to the legislature").[4]

This Court should grant certiorari so that it can restore protection for independent political speakers by reaffirming that this Court meant exactly what it said in *Citizens United* when it declared that "PACs

[4] The notable exception is the en banc Eighth Circuit's decision in *Swanson*, which reversed a denial of a preliminary injunction against the continuous-reporting provision of Minnesota's "political fund" law. Under Minnesota's law, all corporations and other associations that spent more than $100 on political advocacy were required to do so through a "political fund," which was subject to regulations "virtually identical" to a political committee. 692 F.3d at 871-72. The Eighth Circuit did not find it necessary to resolve the question of the appropriate standard of review, concluding that the law failed even intermediate scrutiny because there was no "relevant correlation between [the state's] identified interests and ongoing reporting requirements." *Id.* at 875-77. The Eighth Circuit's apparent disagreement with other circuits about the manner in which intermediate scrutiny should be applied to PAC-type requirements is another factor arguing in favor of certiorari. *See* Sup. Ct. R. 10(a).

are burdensome alternatives" and that "[l]aws that burden political speech are 'subject to strict scrutiny.'" 558 U.S. at 337, 340 (quoting *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 464 (2007) (opinion of Roberts, C.J.)). Doing so would not deprive the government of the power to require some appropriately tailored form of disclosure, but it would mean that ordinary Americans would be free to join together spontaneously, speak to the public, and disband without the burdens of opening new bank accounts or complying with onerous administrative requirements, and without the fear of incurring civil penalties for even innocent mistakes.

II. The Eleventh Circuit's Standing Ruling Creates a Circuit Split with the Tenth Circuit, Conflicts with This Court's Holding in *FEC v. Wisconsin Right to Life, Inc.*, and Conflicts with This Court's Holding in *Citizens United* on the Distinction Between Facial and As-Applied Challenges.

In addition to holding that unincorporated groups that wish only to speak to the public about ballot issues may be forced to do so through a burdensome PAC, the Eleventh Circuit also held that Petitioners lacked standing to challenge the burdens that Florida's law imposes on small, ad hoc groups like themselves. This issue separately merits review by this Court for two reasons. First, the ruling creates a circuit split with the Tenth Circuit, which found standing under virtually identical facts in *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010). Second, the

ruling conflicts with this Court's holdings in *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007), and *Citizens United v. FEC*, 558 U.S. 310 (2010), on the capable-of-repetition exception to mootness and the pleading standards for as-applied challenges. If allowed to stand, this ruling poses a serious threat to the ability of First Amendment plaintiffs to bring pre-enforcement, as-applied challenges to campaign-finance laws, which will deprive speakers of a necessary means of finding out in advance whether their speech is legal or whether it may subject them to civil or even criminal penalties.

A. The Eleventh Circuit's standing ruling creates a circuit split with the Tenth Circuit.

The facts in this case are virtually identical to those in *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010), in which the Tenth Circuit reached precisely the opposite conclusion as the court below. *Sampson* concerned a group of neighbors who were opposed to a local ballot issue that, if enacted, would have resulted in the annexation of their neighborhood into the adjacent town of Parker, Colorado. *Id.* at 1251. The neighbors banded together, printed up yard signs, and sent around postcards opposing the annexation. In total, the group made in-kind contributions of $782.02 to support their effort ($182.02 more than Petitioners intended to spend on their initial advertising purchase). *Id*. at 1254. The principal proponents of the annexation responded by filing a

campaign-finance complaint against the neighbors for failure to register as an "issue committee." *Id.* at 1251.[5] The annexation opponents responded by filing a First Amendment challenge to that requirement.

The Tenth Circuit held that Colorado's PAC requirements violated the First Amendment as applied to the annexation opponents. *Id.* at 1261.[6] In doing so, that court made clear that it was not purporting to identify a line below which regulation was unconstitutional, but that it was holding "only that Plaintiffs' contributions and expenditures are well below the line." *Sampson*, 625 F.3d at 1261.

In contrast with the Tenth Circuit, the Eleventh Circuit below refused to consider whether Florida's PAC requirements could constitutionally apply to a group that spent as little as $600 on political speech. Although the Eleventh Circuit stated that it had "concerns about the burdens that the lack of these minimums place on truly small grassroots groups with little experience and little money," (Pet'rs' App. 33, n.8), it nonetheless concluded that an as-applied

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[5] Such complaints are not uncommon. The Florida Elections Commission itself testified that 98% of the complaints it receives are similarly politically motivated. (Pet'rs' App. 220.)

[6] Unlike the Fourth, Seventh, Ninth, Eleventh, and D.C. Circuits, the Tenth Circuit did not purport to resolve the appropriate standard of review for such claims, but instead held that, even under intermediate scrutiny, Colorado's PAC requirements – which are substantively identical to Florida's – could not constitutionally be applied to a small grassroots group. *Sampson*, 625 F.3d at 1261.

ruling was inappropriate because the election in which Petitioners had sought to participate was long past, and, the court hypothesized, Petitioners might receive a $1 million contribution in a future election from some unknown benefactor and therefore cease to be a small group. (Pet'rs' App. 28.)

The Eleventh Circuit's ruling – based entirely on an implausible hypothetical of the court's own invention – conflicts directly with *Sampson*. The plaintiffs in *Sampson* were in exactly the same position as Petitioners in this case. By the time the Tenth Circuit held that Colorado's issue-committee requirements could not constitutionally apply to the *Sampson* plaintiffs, the election they wished to participate in had been over for more than two years. Because the election was over, their as-applied challenge remained live under the exception to mootness for cases that are capable of repetition yet evading review.[7] And it was certainly possible that, in a future election, some as-yet-unidentified neighbor might wish to contribute $1 million to support their cause.

The Tenth Circuit did not pause to consider this possibility because to do so would eviscerate the exception to mootness for as-applied challenges that are capable of repetition yet evading review. Although

[7] This was so well-established that the *Sampson* defendants conceded it in the district court, *Sampson v. Coffman*, No. 06-cv-01858-RPM, 2008 U.S. Dist. LEXIS 70583, at *35 (D. Colo. Sept. 18, 2008), and the Tenth Circuit did not even feel the need to address the matter.

federal courts certainly have an independent obligation to ensure that they have jurisdiction to hear the cases before them, that is not, as the Eleventh Circuit apparently believed, an excuse to avoid ruling on claims based on absurd hypotheticals that are not supported by anything in the record. It will always be possible for a court to imagine some hypothetical set of facts that could fall outside the scope of whatever as-applied ruling any particular set of plaintiffs might seek. But as the Tenth Circuit's ruling demonstrates, that is not an appropriate role for a federal court.

The Eleventh Circuit's ruling sets a dangerous precedent by which lower courts can avoid ruling on difficult First Amendment questions by conjuring up completely imaginary facts in order to defeat standing. This is an unfair burden to impose on First Amendment plaintiffs, many of whom – like Petitioners in this case – will already have spent years in litigation by the time they are informed that their claim is being dismissed because they failed to anticipate and rebut whatever implausible hypothetical scenario a court might dream up.

This circuit split must not be allowed to deepen. As-applied constitutional challenges to campaign-finance laws are common, and such challenges are almost invariably kept live by the capable-of-repetition exception to mootness.[8] It is vital that such challenges

[8] *See, e.g., Citizens United*, 558 U.S. 310; *Wis. Right to Life, Inc.*, 551 U.S. 449.

remain available to plaintiffs, not merely for their benefit, but for the benefit of the public at large. Indeed, it is the public at large that is the primary beneficiary of such challenges; they enjoy the benefits of expanded protection for their First Amendment rights, while the plaintiffs have, by that time, lost forever the opportunity to engage in the electoral speech that triggered the litigation. *Cf. Citizens United*, 558 U.S. at 334 ("Today, Citizens United finally learns, two years after the fact, whether it could have spoken during the 2008 Presidential primary – long after the opportunity to persuade primary voters has passed."); *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 163 (1969) (Harlan, J., concurring) ("[T]iming is of the essence in politics. It is almost impossible to predict the political future; and when an event occurs, it is often necessary to have one's voice heard promptly, if it is to be considered at all.").

B. The Eleventh Circuit's standing ruling conflicts with this Court's precedent and will make it dramatically harder for speakers to bring pre-enforcement challenges to campaign-finance laws.

In addition to conflicting with the approach the Tenth Circuit took to a virtually identical as-applied challenge, the Eleventh Circuit's ruling conflicts with this Court's decisions in *Wisconsin Right to Life* and *Citizens United*. As a result, the decision substantially weakens the exception to mootness for cases that

are capable of repetition but evading review and undermines this Court's recent efforts to bring clarity to the significance of the facial/as-applied distinction.

With regard to the capable-of-repetition exception to mootness, this Court's ruling in *Wisconsin Right to Life* should have controlled. In that case, the Federal Election Commission argued that a challenge to the federal prohibition on corporate-funded electioneering communications should have been dismissed as moot because the plaintiffs could not demonstrate that their future electioneering communications would have all "the characteristics that the district court deemed legally relevant." 551 U.S. at 463. This Court rejected that argument, holding that to "[r]equir[e] repetition of every 'legally relevant' characteristic of an as-applied challenge . . . down to the last detail" would make the capable-of-repetition exception to mootness "unavailable for virtually all as-applied challenges." *Id.*

Additionally, much like the Tenth Circuit's ruling in *Sampson*, *Wisconsin Right to Life* is instructive for what this Court did not do. Although it would have been trivial for this Court to imagine hypothetical advertisements that would have fallen outside the scope of the as-applied ruling crafted in that case, this Court instead evaluated the case that was actually before it and crafted an as-applied ruling that granted the plaintiffs the relief they were entitled to. *Id.* at 456-57.

The Eleventh Circuit's contrary holding ignores this Court's ruling, which was based on a recognition

that people need answers to these important questions of constitutional law. Those answers should not be denied simply because they relate to events that are too short in duration to last through the years necessary to litigate a case to completion – let alone because those litigants failed to anticipate and rebut every implausible hypothetical that an appellate court might dream up three years into their case.

The Eleventh Circuit's refusal to rule on Petitioners' as-applied claim on the grounds that Petitioners' future activities were too indefinite also conflicts with this Court's ruling in *Citizens United v. FEC*, which held that the facial/as-applied distinction "goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint." 558 U.S. at 331. To the extent that the remedy sought by a plaintiff has any relationship to standing, this Court's long-established precedent requires only that a plaintiff demonstrate that the remedy the plaintiff seeks is "likely" to redress the plaintiff's injury. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). In this case, it was clearly "likely" that an as-applied ruling would have provided Petitioners with the relief they sought. But rather than ask whether it was *likely* that an as-applied ruling would redress Petitioners' injury, the Eleventh Circuit held that Petitioners were not entitled to any relief on the grounds that it was *imaginable* that an as-applied ruling might not redress Petitioners' injury. That ruling cannot be squared with this Court's ruling in *Citizens United* – which sought to prevent lower courts from kicking

meritorious claims out of court based on hyper-technical pleading standards – and will only further complicate the already abstruse distinction between facial and as-applied claims.

CONCLUSION

Under the First Amendment, political participation is not a game reserved for well-funded groups and political insiders – it is the right of every American and every group of Americans, no matter how modest their resources or political goals. The decision of the Eleventh Circuit will, along with the decisions of the Fourth, Seventh, Ninth, and D.C. Circuit's, do serious damage to this right. Accordingly, for the reasons stated above, the petition for writ of certiorari should be granted.

Respectfully submitted,

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[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 12-14074

D.C. Docket No. 4:10-cv-00423-RH-CAS

ANDREW NATHAN WORLEY,
PAT WAYMAN, et al.,

Plaintiffs-Appellants,

versus

FLORIDA SECRETARY OF STATE,
JORGE L. CRUZ-BUSTILLO, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Florida

(June 14, 2013)

Before MARTIN and ANDERSON, Circuit Judges, and VINSON,* District Judge.

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* Honorable C. Roger Vinson, United States District Judge for the Northern District of Florida, sitting by designation.

MARTIN, Circuit Judge:

This lawsuit challenges certain Florida election laws requiring groups who spend money to influence elections to form "political committees" which must disclose how much they spend and whose money they are spending. This action also seeks to invalidate the requirement that a political committee's ads include an announcement identifying the sponsor of the ad. *See generally* Fla. Stat. § 106.011 *et seq.* (2012) (the Florida Campaign Financing statutes).

The District Court upheld the Florida statutes and that ruling is the subject of this appeal. Specifically, the District Court found no constitutional impediment to the Florida Campaign Financing statutes as they apply to a ballot issue election. In so holding, the District Court validated Florida's registration, bookkeeping, and reporting requirements together with advertising disclaimer requirements placed on groups who spend money to influence ballot issue elections.

Because we are reviewing the District Court's ruling on cross motions for summary judgment, we review it *de novo*. *Owen v. I. C. Sys., Inc.,* 629 F.3d 1263, 1270 (11th Cir. 2011). We have carefully studied the constitutional issues as well as the record in this case, and for the reasons that follow, we affirm the District Court's ruling.

I. BACKGROUND

Andrew Nathan Worley, Pat Wayman, and John Scolaro (Challengers) wanted to join Robin Stublen – one of the original plaintiffs in the suit below – to oppose a collection of statutes known as "Amendment 4" in Florida's 2010 general election. Challengers say they wanted to enhance their speech by pooling their money to buy radio ads. They planned to have each member of their group contribute $150 so they would have at least $600 to spend on thirty-second radio ads setting out five reasons to oppose Amendment 4. They also wanted to "pass the hat" to raise and spend more money if possible.

It is true, as Challengers say, that even if they had raised and spent only their own $600, they would have met the definition of a "political committee" – or PAC – under Florida law. *See* Fla. Stat. § 106.011(1)(a) (defining a "political committee" to include two or more individuals who accept contributions of – or spend – more than $500 in a year to expressly advocate the election or defeat of a candidate or the passage or defeat of a ballot issue). It is also true that once Challengers became a PAC under the statutes, there were a number of requirements they had to meet. First and foremost, Florida PACs must disclose their donors who seek to influence Florida elections. *See generally id.* § 106.07 (describing reporting requirements).

The regulations also oblige a Florida PAC to:

- register with the state within 10 days after it is organized or, if it is organized

within ten days of an election, register immediately, *id.* § 106.03(1)(a);

- appoint a treasurer and establish a campaign depository, *id.* § 106.021(1)(a);
- deposit all funds within five business days of receipt, *id.* § 106.05;
- make all expenditures by check drawn from the campaign account, *id.* § 106.11(1)(a);
- keep "detailed accounts" of receipts and expenditures, current to within no more than two days, *id.* § 106.06(1);
- maintain records for at least two years after the date of the election to which the accounts refer, *id.* § 106.06(3);
- file regular reports with the Division of Elections, itemizing every contribution and expenditure, small or large, *id.* § 106.07(4)(a);[1] and
- submit to random audits by the Division of Elections, *id.* § 106.22(10).

[1] Twenty-four states have ballot issue elections. *Ballot Initiative Primer,* CitizensinCharge.org, http://www.citizensincharge.org/learn/primer (last visited May 30, 2013). Four, including Florida, have no minimum threshold for reporting contributions to, or expenditures by, PACs. Alaska Stat. Ann. § 15.13.040(b)(2) (2012); Mich. Comp. Laws Ann. § 169.226(e) (2012); and Ohio Rev. Code Ann. § 3517.10(b)(4)(b) (2012).

Florida PACs may not accept anonymous contributions in any amount or take cash contributions over fifty dollars. *Id.* §§ 106.07(4)(A), 106.09. But there is no limit on how much a Florida PAC can raise or spend. The information PACs are required to disclose is available to the public on the website of the Florida Division of Elections. *See About Campaign Finance Database,* Florida Division of Elections, http://election.dos.state.fl.us/campaign-finance/cam-finance-data.shtml (last visited May 30, 2013).

Challengers also want to invalidate the requirement that Florida speakers, including PACs, who spend money on an election identify themselves in their political ads. *See* Fla. Stat. § 106.143(1)(c)-(d). As with the disclosure requirements, Challengers would also be governed by this provision. This means they would have to include a short disclaimer in each of their radio ads.

Challengers brought this action to vindicate their view that these regulations are unduly burdensome and had chilled their speech, ultimately causing them to abandon their efforts. First, Challengers say they did not have time to "learn and comply with the many regulations," and they were rendered "unable to speak." For example, Challenger Pat Wayman, "[d]espite having worked in a law office . . . found the legal requirements confusing and did not believe that she could balance the time required to serve as a political-committee treasurer with her other responsibilities." Election officials acknowledge that the laws were complex, and that state officials newly

working with the laws need months of study to become comfortable with them.

Second, Challengers did not want to identify themselves in their radio ads. Rather, they wanted to use all of their airtime for their message alone, so it could be evaluated solely on the basis of its content. They calculated that a disclaimer would take at least six seconds to read, thus forcing them to shorten their political message by twenty percent. Alternatively, they would have to buy fewer, longer ads to accommodate the time needed for the disclaimer.

Shortly before the 2010 election, Challengers brought this action protesting Florida's campaign finance disclosure and disclaimer scheme both facially and as applied to them – a small, grassroots group spending in a ballot issue election. They rely upon the Supreme Court's ruling in *Citizens United v. Federal Election Commission,* 558 U.S. 310, 130 S. Ct. 876 (2010), to support their argument that the Florida scheme unconstitutionally burdens their freedom of speech.[2]

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[2] Though the 2010 election has long passed, Challengers are politically active and say they intend to engage in similar political activity in the future. The parties do not dispute that this case is ripe for adjudication. *See Sosna v. Iowa,* 419 U.S. 393, 401-02, 95 S. Ct. 553, 558-59 (1975) (explaining that a case remains ripe where the alleged harm is "capable of repetition, yet evading review" because there was insufficient time to litigate the original challenge and because there is a reasonable

(Continued on following page)

The District Court granted summary judgment to Florida with respect to the disclosure and disclaimer requirements. However, the District Court found Florida's ban on contributions received in the last five days before an election to be unconstitutional, thus vindicating Challengers' position in that regard. *See* Fla. Stat. § 106.08(4). The State did not appeal that ruling.

II. FLORIDA'S DISCLOSURE SCHEME

Challengers argue that the District Court was wrong to examine Florida's PAC regulations under exacting scrutiny, rather than strict scrutiny. Challengers also contest the District Court's ruling that

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expectation that the same party will be harmed in the same way again) (quotation marks omitted).

Also, Challengers continue to say that the Florida Campaign Financing statutes are defective both facially and as applied. However, the record before us is not sufficient to establish the nature and scope of Challengers' activity. As the District Court remarked, "we're not [necessarily] talking about the $600 they wanted to spend last time" because Challengers simply argued, with little specificity, that "they want to do this again." Neither is the record developed about how much money Challengers plan to or will raise by soliciting contributions. At oral argument, their counsel would not limit the extent of Challengers' proposed election spending, at one point admitting that "well, if someone gave them a million dollars, they would be happy to spend that."

Based on the record now before us, we have analyzed this case as a facial challenge to the Florida Campaign Financing statutes made by groups spending to influence ballot issue elections as opposed to candidate elections.

these regulations are constitutional in the context of a ballot issue election, arguing that the government lacks an "informational interest"[3] in requiring disclosure for ballot initiatives.

A. What Level of Scrutiny?

The Supreme Court has held that "[l]aws that burden political speech are subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Citizens United,* 558 U.S. at 340, 130 S. Ct. at 898 (quotation marks omitted). "At the same time, [the Supreme Court has] subjected strictures on campaign-related speech that [it] found less onerous to a lower level of scrutiny and upheld those restrictions." *Arizona Free Enter. Club's Freedom Club PAC v. Bennett,* ___ U.S. ___, ___, 131 S. Ct. 2806, 2817 (2011). On this subject, *Citizens United* offered the following guidance: "Disclaimer and disclosure requirements may burden the ability to speak, but they 'impose no ceiling on campaign-related activities,' and 'do not prevent anyone from speaking.' The Court has subjected these requirements to 'exacting scrutiny,' which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental

[3] As the Supreme Court has done, we will refer to a state's interest in providing information to the electorate as the state's "informational interest." *See, e.g., Citizens United,* 558 U.S. at 369, 130 S. Ct. at 915.

interest." 558 U.S. at 366-67, 130 S. Ct. at 914 (citations omitted); *see also Doe v. Reed,* ___ U.S. ___, ___, 130 S. Ct. 2811, 2818 (2010) (listing "precedents considering First Amendment challenges to disclosure requirements" analyzed under "exacting scrutiny").

Challengers draw their argument from *Citizens United,* stating that the PAC regulations "put [them] in the same position that corporate shareholders and managers were in before *Citizens United*[:] . . . If Plaintiffs wish to speak collectively, they must either speak through a heavily regulated PAC, or not at all." Based on this, they say Florida's PAC regulations must be reviewed under strict scrutiny. It is true that in *Citizens United,* the Supreme Court used strict scrutiny when it struck down a law that prohibited corporations from spending money from their corporate treasury to independently advocate for or against a candidate. The Court characterized this prohibition, 2 U.S.C. § 441b (2006), as a ban on speech even though corporations could, under the law, establish and speak through a PAC. *Citizens United,* 558 U.S. at 337-40, 130 S. Ct. at 897-99. In support of their argument here, Challengers say that the Supreme Court found the rules they considered in *Citizens United* to be a "ban" on speech for two *independent* reasons: 1) because the corporation could not itself speak, and 2) because PACs were overregulated, burdensome alternatives. *See id.* at 337-39, 130 S. Ct. at 897-98. With this reading in mind, Challengers urge that the *Citizens United* decision means "federal PAC requirements" – and by extension the "materially

identical" regulations in this case – "must be reviewed with strict scrutiny."

Challengers' attempt to analogize the corporate expenditure ban in *Citizens United* to Florida PAC regulations misses the mark in at least four ways. First, Part IV of the *Citizens United* decision made clear that disclosure and disclaimer regimes are subject to "exacting scrutiny," even where those regimes have costs that potentially "decrease[ ] both the quantity and effectiveness of the group's speech." 558 U.S. at 366, 368, 130 S. Ct. at 914-15.

Citizens United echoed *Buckley v. Valeo,* where the Supreme Court distinguished between limits on political spending, which "necessarily reduce[ ] the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached" and disclosure regulations, which "impose no ceiling on campaign-related activities." *Buckley v. Valeo,* 424 U.S. 1, 19, 64, 96 S. Ct. 612, 634, 656 (1976) (per curiam). Although the Court recognized that disclosure carries with it "significant encroachments on First Amendment rights," disclosure requirements are examined under exacting scrutiny because they "appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption . . . " *Id.* at 64, 68, 96 S. Ct. at 656, 658.

Challengers minimize Part IV of *Citizens United* by arguing that it is a "separate discussion[ ] of disclosure" relating only to federal electioneering

communication disclosure, rather than the "uniquely burdensome" PAC disclosure. But what the Supreme Court said in Part IV is not so easily set aside. The Court's description of PAC requirements as burdensome does nothing to alter its holding in Part IV that disclosure schemes are subject to exacting scrutiny. *Citizens United,* 558 U.S. at 366-67, 130 S. Ct. at 914; *see also Real Truth About Abortion, Inc. v. FEC,* 681 F.3d 544, 549 (4th Cir. 2012) ("[A]fter *Citizens United,* it remains the law that provisions imposing disclosure obligations are reviewed under . . . 'exacting scrutiny.' ").

Second, *Citizens United* found the "prohibition on corporate independent expenditures" to be an outright ban on speech, but made no such finding about federal PAC requirements. 558 U.S. at 339, 130 S. Ct. at 898. More to the point, the Court analyzed the prohibition on political contributions by corporations (2 U.S.C. § 441b) under strict scrutiny because it entirely prevented a corporation from speaking *as a corporation,* and the only justification given for the ban was that it was "corporate speech." *Id.* at 337-43, 130 S. Ct. at 897-900. In this context, strict scrutiny applied "notwithstanding the fact that a PAC created by a corporation can still speak" because "[a] PAC is a separate association from the corporation." *Id.* at 337, 130 S. Ct. at 897. "So the PAC exemption from § 441b's [corporate treasury] expenditure ban, § 441b(b)(2), *[still did] not allow corporations to speak*." *Id.* (emphasis added). It is true, of course, that *Citizens United* discussed PAC regulations as

"burdensome alternatives." *Id.* But nowhere did *Citizens United* hold that PAC regulations themselves constitute a ban on speech or that they should be subject to strict scrutiny. *Cf. SpeechNow.org v. FEC,* 599 F.3d 686, 696-98 (D.C. Cir. 2010) (en banc) (upholding the federal PAC requirements under exacting scrutiny in the wake of *Citizens United*), *cert. denied, Keating v. FEC,* ___ U.S. ___, 131 S. Ct. 553 (2010).

In contrast with the corporations in *Citizens United,* Challengers are free to speak themselves. It is only when they wish to speak collectively to influence elections that the Florida PAC regulations apply. Challengers reject this assurance, and assert that this is the same argument made and rejected in *Citizens United*. But that is not so. *Citizens United* rejected the argument that an individual corporation, owned by corporate shareholders and managed by corporate managers, could be confined to speaking through a PAC or through its individual shareholders or managers. 558 U.S. at 337, 130 S. Ct. at 897. *Citizens United* did not reject laws that require individuals spending collectively for the purpose of influencing an election to comply with PAC regulations. *See SpeechNow.org,* 599 F.3d at 696-98.

Third, Challengers' position is in conflict with cases from every one of our sister Circuits who have considered the question, all of whom have applied exacting scrutiny to disclosure schemes. *See Nat'l Org. for Marriage, Inc. v. McKee (McKee II),* 669 F.3d 34, 37-40 (1st Cir. 2012), *cert. denied,* ___ U.S. ___, 133 S. Ct. 163 (2012); *Nat'l Org. for Marriage v.*

McKee (McKee I), 649 F.3d 34, 41-44, 55 (1st Cir. 2011), *cert. denied,* ___ U.S. ___, 132 S. Ct. 1635 (2012); *Real Truth,* 681 F.3d at 549; *Ctr. for Individual Freedom v. Madigan,* 697 F.3d 464, 471-72, 476-77 (7th Cir. 2012); *Minn. Citizens Concerned for Life, Inc. v. Swanson,* 692 F.3d 864, 875 (8th Cir. 2012) (en banc); *Human Life of Wash. Inc. v. Brumsickle,* 624 F.3d 990, 997-99, 1005 (9th Cir. 2010), *cert. denied,* ___ U.S. ___, 131 S. Ct. 1477 (2011); *Sampson v. Buescher,* 625 F.3d 1247, 1249-50, 1261 (10th Cir. 2010); *SpeechNow.org,* 599 F.3d at 696.

It is worth noting from among these cases, that *SpeechNow.org v. Federal Election Commission* presented facts very similar to those we consider here. In that case, five people wanted to get together and spend on an election but argued that "the additional burden that would be imposed on SpeechNow [.org] if it were required to comply with the organizational and reporting requirements applicable to political committees [was] too much for the First Amendment to bear." *SpeechNow.org,* 599 F.3d at 697. SpeechNow.org was prepared to comply with reporting requirements for individuals making independent expenditures under 2 U.S.C. § 434(c), 434(g)(1)-(2), but argued against the §§ 431 and 432 burdens (on groups), such as "designating a treasurer and retaining records." *Id.* at 697-98. Writing for the en banc court, Judge Sentelle examined and rejected that argument under exacting scrutiny. *See id.* at 697-98.

Finally, to the extent Challengers seek to rely on the Eighth Circuit's opinion in *Minnesota Citizens*

Concerned for Life, Inc. v. Swanson, it offers them little if any help. In *Minnesota Citizens,* the Eighth Circuit examined a law requiring every association wishing to make any independent election expenditures to "create and register its own independent expenditure political fund." 692 F.3d at 868. It is true that the Eighth Circuit questioned whether exacting scrutiny applied to laws "which subject associations that engage in minimal speech to . . . regulations that accompany status as a PAC." *Id.* at 875 (quotation marks and alterations omitted). But in the end, the *Minnesota Citizens* Court applied exacting scrutiny to examine Minnesota's political fund rules. *Id.* at 874-77.[4]

After considering each of Challengers' arguments, we conclude that Florida's PAC regulations are subject to "exacting scrutiny," so they must be substantially related to a sufficiently important government interest. *Citizens United,* 558 U.S. at 366-67, 130 S. Ct. at 914.

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[4] *But see Minn. Citizens,* 692 F.3d at 880-87 (Melloy, J., concurring and dissenting, joined by Murphy, Bye and Smith, JJ.) (arguing that the "exacting scrutiny" applied by the majority required more from the government than a proper exacting scrutiny analysis).

B. Sufficiently Important Government Interest?

As the Supreme Court explained in *Buckley,*

> disclosure provides the electorate with information as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

424 U.S. at 66-67, 96 S. Ct. at 657 (quotation marks and footnote omitted).

In *Citizens United,* the Court upheld disclosure and disclaimer requirements based, in part, on the "governmental interest in providing information to the electorate." 558 U.S. at 368, 130 S. Ct. at 914. The Court explained that "the public has an interest in knowing who is speaking about a candidate." *Id.* at 369, 130 S. Ct. at 915. Indeed, it endorsed disclosure as a matter of sound public policy: "The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed

decisions and give proper weight to different speakers and messages." *Id.* at 371, 130 S. Ct. at 916.

Challengers argue here that the public's right to know who is speaking about a candidate does not extend to ballot issues. In support, Challengers say that corruption and political favoritism are notably absent in the context of ballot issue elections. *See First Nat'l Bank of Boston v. Bellotti,* 435 U.S. 765, 790, 98 S. Ct. 1407, 1423 (1978) ("The risk of corruption perceived in cases involving candidate elections . . . *simply is not present* in a popular vote on a public issue.") (emphasis added) (citations omitted). Against this background, Challengers tell us there is "only one interest compelling enough to justify PAC requirements: the prevention of '*quid pro quo* corruption' of political candidates." Challengers' crucial point is that voters have an interest in knowing "who is speaking *about a candidate*." *See Citizens United,* 558 U.S. at 369, 130 S. Ct. at 915 (emphasis added).

Finally, Challengers argue that the Supreme Court has never relied on the public's right to know where there is no risk of corruption, despite having been invited to do so. In support, Challengers point to *Doe v. Reed,* in which the State of Washington defended its law that allowed the names and addresses of those who had signed a petition to challenge a state law by referendum to be made public. 130 S. Ct. at 2815. Washington said making public those who signed the petitions would combat fraud; ferret out invalid signatures; and promote transparency and accountability. *Id.* at 2819. The Supreme Court

neither recognized nor invalidated Washington's informational interest in this context. Rather, the Court observed that Washington had a sufficient "interest in preserving the integrity of the electoral process," such that it did not need to "address the State's 'informational' interest." *Id.*

In any event, Challengers' attempt to delink the Supreme Court's acceptance of a state's informational interest from ballot issues creates problems for them. First, their argument that there can be no informational interest in the absence of a fear of *quid pro quo* corruption, i.e., in a ballot issue election, was rejected in *Citizens United*. Central to the holding of *Citizens United* was the Supreme Court's conclusion that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." 558 U.S. at 357, 130 S. Ct. at 909. Thus, when the Court upheld disclosure requirements even where a corporation was making only independent expenditures, it sanctioned disclosure where it found no corruption or appearance of corruption. To the extent the Court held that "the informational interest alone is sufficient to justify" disclosure, *id.* at 369, 130 S. Ct. at 915-16, it cannot be true that, as Challengers assert, there is no sufficient or valid interest in providing information to voters in the absence of corruption.

Second, Challengers' argument is not consistent with two cases, directly on point, in which the Supreme Court explicitly endorsed disclosure schemes as constitutional, if not beneficial, in ballot issue

elections. In *First National Bank of Boston v. Bellotti,* the Court struck down a Massachusetts statute that banned spending by banks and corporations in referendum elections on issues that did not directly affect their property. 435 U.S. at 767-68, 98 S. Ct. at 1411. It is true that *Bellotti* held that such limits were not warranted in a ballot issue election lacking fear of *quid pro quo* corruption. *See id.* at 789-90, 98 S. Ct. at 1423. But the Court also explained that "[c]orporate advertising, unlike some methods of participation in political campaigns, is likely to be highly visible. Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected." *Id.* at 792 n.32, 98 S. Ct. at 1424 n.32. The *Bellotti* ruling would not allow Massachusetts, in service of providing *better* information, to cut back on speech by banning it from a certain source: corporations. "[F]ar from inviting greater restriction of speech," explained the Court, "the direct participation of the people in a referendum, if anything, increases the need for the widest possible dissemination of information from diverse and antagonistic sources." *Id.* at 792 n.29, 98 S. Ct. at 1424 n.29 (quotation marks omitted). And the companion to this broader participation is the idea that disclosure and disclaimer rules lead to more speech and more information disseminated to the public. Thus the Supreme Court has taught that disclosure rules do promote a legitimate government interest, whether in the ballot issue or candidate election context.

Indeed, in *Citizens Against Rent Control/ Coalition for Fair Housing v. City of Berkeley, California,* the Supreme Court again endorsed broad disclosure rules in the context of a ballot issue election. 454 U.S. 290, 298-300, 102 S. Ct. 434, 438-39 (1981). The Court noted that Berkeley voters would know "the identity of those whose money supports or opposes a given ballot measure since contributors must make their identities known under [another section] of the ordinance." *Id.* at 298, 102 S. Ct. at 438. What the Court objected to was "*restricting contributions*" in the absence of *quid pro quo* corruption. *Id.* at 297, 102 S. Ct. at 438 (emphasis added) (quotation marks omitted). The Court held that the contribution limits imposed by Berkeley were unnecessary because "[t]he integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed . . . [and] if it is thought wise, legislation can outlaw anonymous contributions." *Id.* at 299-300, 102 S. Ct. at 439. *Citizens Against Rent Control* clearly recognizes the informational interest Florida advances before us.

Challengers argue that the ballot issue case more on point is *McIntyre v. Ohio Elections Commission,* 514 U.S. 334, 115 S. Ct. 1511 (1995). In her case, and in contrast to ours, Mrs. McIntyre represented only herself in handing out handbills she had composed, and which opposed a school tax referendum. *Id.* at 337, 115 S. Ct. at 1514. She was fined for violating an Ohio statute which outlawed the distribution of

anonymous campaign literature. *Id.* at 338, 115 S. Ct. at 1514. However, the Supreme Court invalidated the law requiring that political handbills contain an author disclaimer when the handbills were about "ballot issues that present[ed] neither a substantial risk of libel nor any potential appearance of corrupt advantage." *Id.* at 351-52, 115 S. Ct. at 1521. But the Court also discussed campaign *finance* disclosures, making it clear that "[t]hough such mandatory reporting [of the amount and use of money spent] undeniably impedes protected First Amendment activity, the intrusion is a far cry from compelled self-identification on all election-related writings." *Id.* at 355, 115 S. Ct. at 1523. The Court contrasted the impact of disclosure rules requiring a name on a handbill with those requiring disclosure of an "expenditure." It recognized that disclosure of expenditures is "less specific, less personal, and less provocative." *Id.* Thus, we do not find *McIntyre* to be as helpful to Challengers' case as they suggest.

Third, the weight of persuasive Circuit precedent cuts against the distinction between candidate elections and ballot issue elections which Challengers ask us to adopt. *See, e.g., Ctr. for Individual Freedom,* 697 F.3d at 480-85; *Family PAC v. McKenna,* 685 F.3d 800, 803-814 (9th Cir. 2012); *McKee II,* 669 F.3d at 39-41; *McKee I,* 649 F.3d at 41-44, 55-61; *Human Life,* 624 F.3d at 1002-1019; *cf. SpeechNow.org,* 599 F.3d at 696 (where the D.C. Circuit did not consider a ballot issue election but nevertheless interpreted *Buckley* as having "upheld . . . disclosure requirements . . . based on a governmental interest in 'provid[ing] the elec-

torate with information' about the sources of political campaign funds, *not just the interest in deterring corruption and enforcing anti-corruption measures*" (emphasis added)). The First and the Ninth Circuits have even described the informational interest as "compelling" in the ballot issue context. *McKee II,* 669 F.3d at 40; *McKee I,* 649 F.3d at 57; *Human Life,* 624 F.3d at 1005-06.

Our sister Circuits have offered thoughtful explanations for why disclosure advances government interests in the ballot issue context. For example, the Seventh Circuit explained its belief that:

> Educating voters is at least as important, if not more so, in the context of initiatives and referenda as in candidate elections. In direct democracy, where citizens are responsible for taking positions on some of the day's most contentious and technical issues, voters act as legislators, while interest groups and individuals advocating a measure's defeat or passage act as lobbyists.

Ctr. for Individual Freedom, 697 F.3d at 480 (quotation marks and alterations omitted). The Ninth Circuit suggested that disclosure may be more useful in the context of ballot initiatives because:

> Disclosure also gives voters insight into the actual policy ramifications of a ballot measure. Knowing which interested parties back or oppose a ballot measure is critical, especially when one considers that ballot-measure language is typically confusing, and

> the long-term policy ramifications of the ballot measure are often unknown. At least by knowing who backs or opposes a given initiative, voters will have a pretty good idea of who stands to benefit from the legislation. In addition, mandating disclosure of the financiers of a ballot initiative may prevent the wolf from masquerading in sheep's clothing.

Family PAC, 685 F.3d at 808 (quotation marks and citations omitted).

Nevertheless, Challengers urge us to adopt the Tenth Circuit's contrary reasoning in *Sampson v. Buescher*. In *Sampson,* the Tenth Circuit recognized that with respect to "financial-disclosure requirement[s] in the ballot-issue context," the Supreme Court "has spoken favorably of such requirements." 625 F.3d at 1257. However, the *Sampson* Court expressed its own view that "[i]t is not obvious that there is" a "public interest in knowing who is spending and receiving money to support or oppose a ballot issue" because candidate elections are "ad hominem affairs" that require voters to "evaluate a human being," whereas ballot issue elections simply present a "choice [of] whether to approve or disapprove of discrete governmental action." *Id.* at 1256-57. This distinction led the Tenth Circuit to suggest that nondisclosure would actually be a *net positive* because it would "require the debate to actually be about the merits of the proposition on the ballot," not the people funding it. *Id.* at 1257.

In the same way the Supreme Court in *Citizens United* rejected the idea that the messenger distorts

the message, *see* 558 U.S. at 349-51, 130 S. Ct. at 904-905, we reject the notion that knowing who the messenger is distorts the message. The premise of the antidistortion argument rejected in *Citizens United* is that corporations use the corporate form to accumulate wealth, which allows them to promote ideas "that have little or no correlation to the public's support." *Id.* at 348, 130 S. Ct. at 903 (citation omitted). The Court disposed of this argument, saying that "[p]olitical speech is indispensable to decisionmaking in a democracy," whether "the speech comes from a corporation" or "an individual." *Id.* at 349, 130 S. Ct. at 904 (citation omitted). *Citizens United* does not command states to enact disclosure laws, but it does suggest that First Amendment analysis must be wary of the argument that *less* speech is *more*. The Circuits recognizing a sufficient informational interest in the ballot issue context have the better arguments.

Finally, we note that even in *Sampson,* the Tenth Circuit did not invalidate a law that required disclosures in the ballot issue context. Instead it held the law unconstitutional as applied to those plaintiffs because "the governmental interest in imposing . . . regulations is minimal, if not nonexistent, in light of the small size of the contributions." *Sampson,* 625 F.3d at 1261. Thus, even *Sampson* does not, in the end, call into question that there *could be* a "sufficiently important" informational interest in requiring disclosure in the ballot issue context.

Our reading of Supreme Court and persuasive Circuit precedent compels us to conclude that promoting an informed electorate in a ballot issue election is a sufficiently important governmental interest to justify the Florida PAC regulations we consider here.

C. Substantially Related to the Government Interest?

"Though possibly less rigorous than strict scrutiny, exacting scrutiny is more than a rubber stamp." *Minn. Citizens,* 692 F.3d at 876 (citations omitted). Exacting scrutiny requires that Florida's interest in promoting an informed electorate be "substantially related" to its PAC regulations. *See Citizens United,* 558 U.S. at 366-67, 130 S. Ct. at 914. Applying this standard, Florida must justify the burden its PAC regulations place on even small groups raising $500 or more by requiring that they register as political committees; meet ongoing reporting deadlines; and track and report all contributions, no matter how small.

Challengers argue that the law is not properly tailored because it "imposes no minimum threshold on disclosure [and] requires the disclosure of a vast amount of unnecessary information," which is burdensome, especially for grassroots groups. Challengers read precedent from our sister Circuits to favor a finding that Florida's extensive reporting obligations fail exacting scrutiny. Challengers say the facts of their case are most analogous to those in *Sampson,* where the Tenth Circuit found that similar PAC

requirements imposed on a group that raised just $782.02 failed exacting scrutiny. Challengers also urge us to adopt the reasoning of *Minnesota Citizens* to find that "ongoing reporting requirements" along with "[o]ther requirements, such as requiring a treasurer, segregated funds, and record-keeping" are "unrelated" to a professed informational interest or at best "tangentially related" to that interest. 692 F.3d at 875 n.9.

But neither *Sampson* nor *Minnesota Citizens* is helpful to us given the nature of this challenge. As we mentioned in footnote 2, *supra,* we are not equipped to evaluate this case as an "as applied" challenge because the record does not tell us enough about what Challengers are doing. While Challengers have emphasized that they are merely a grassroots group of four people who want to spend a modest amount of money in a ballot issue election, they also emphasize their desire to solicit contributions. We know little if anything about how much money they intend to raise or how many people they wish to solicit. We will not speculate about their future success as fundraisers. Based on the record we do have, we consider this challenge to the Florida PAC regulations to be a facial challenge. This means that Challengers cannot prevail unless they can prove "that no set of circumstances exists under which the [regulations] would be valid." *United States v. Salerno,* 481 U.S. 739, 745, 107 S. Ct. 2095, 2100 (1987). They have not carried that burden here.

First, the District Court got it right when it said that the organizational requirements in Florida's PAC

regulations do not generally impose an undue burden on PACs. We agree with the District Court that these regulations "require little more if anything than a prudent person or group would do in these circumstances anyway." Certainly a group wanting to raise and spend money to influence an election likely would: "put someone in charge of the money" and decide where to keep it, *see* Fla. Stat. § 106.021(1)(a) (requiring that Florida PACs appoint a treasurer and open a separate bank account); avoid loss or commingling of funds by depositing money into that account promptly, *see id.* § 106.05 (requiring Florida PACs to deposit all funds within five business days of receipt); keep good records, *see id.* § 106.06(1), (3) (requiring Florida PACs to keep updated records); and, to promote good recordkeeping, disburse funds by check rather than cash, *see id.* § 106.11(1)(a) (requiring Florida PACs to disburse funds by check). *See SpeechNow.org,* 599 F.3d at 696-98 (holding that similar organizational requirements in the federal PAC regulations were not unconstitutionally burdensome).

In much the same way, the reporting and registration requirements are not unduly burdensome. Registration involves submitting a "statement of organization," *see* Fla. Stat. § 106.03(1)(a), which requires filling out four pages of basic information. Florida PACs must file periodic reports, *see id.* § 106.07(3), but reporting requirements are allowed under our Constitution, and if there is something to report, it would make sense that Challengers would

be tracking contributions anyway. Florida PACs may be subjected to random audits, *see id.* § 106.22(10), but this again is a small burden – especially where the PAC already tracks the money it gets in and gives out. Finally, the ongoing reporting requirements are not especially burdensome given that Florida law allows PACs to terminate more easily than federal PAC requirements allow. *Compare* Fla. Stat. § 106.03(2)(j) (requiring a Florida PAC to state how it will dispose of its residual funds if it terminates) *and id.* § 106.03(5) (requiring a Florida PAC that "disbands or determines it will no longer receive contributions or make expenditures" to "notify the agency or officer with whom such committee is required to [register]"), *with* 11 C.F.R. §§ 102.3(a)(1), 116.7 (allowing a committee to terminate only upon filing a written notice with the Federal Election Commission (FEC) or other agency specified under 11 C.F.R. § 105, and only if the PAC settles "outstanding debts and obligations") *and id.* at § 102.4 (outlining the FEC termination process).

Second, Florida's PAC regulations advance the government's informational interest even as they apply to small groups in Florida and require the tracking of any and all donations. Albeit in *dicta,* in *Let's Help Florida v. McCrary,* the Fifth Circuit endorsed Florida's then-existing PAC regulations as a suitable alternative to contribution limits insofar as they helped to inform the electorate about spending

in campaigns. 621 F.2d 195, 200-01 (5th Cir. 1980).[5] And at least one court has remarked that "[i]t is far from clear . . . that even a zero-dollar disclosure threshold would succumb to exacting scrutiny." *Family PAC,* 685 F.3d at 809 n.7.

Challengers' pleas on behalf of a few people pooling a small amount of money ring a bit hollow to the extent that they refuse to foreclose their option for raising big money. Now Challengers present themselves as intending to spend only $600. However, as we noted above, they also acknowledged at oral argument that if they received a $1 million donation, they would happily spend it. Challengers argue that the government may only regulate "established" groups. However, requiring registration by groups who start with as little as $500 also advances the government's informational interests. Indeed, we know that federal PAC requirements kick in once a group has raised $1000 during a calendar year to influence elections and that these requirements have not been held unconstitutional. *See* 2 U.S.C. § 431(4)(a) (2012); *Buckley,* 424 U.S. at 79-80, 96 S. Ct. at 663-64; *cf. SpeechNow.org,* 599 F.3d at 696-98 (concerning a PAC formed by just five individuals).

Florida also advances its informational interest through a first-dollar disclosure threshold because

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[5] In *Bonner v. City of Prichard,* we adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981. 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

knowing the source of even small donations is informative in the aggregate and prevents evasion of disclosure. As the First Circuit explained in *National Organization for Marriage, Inc. v. McKee (McKee II),* "[t]he issue is . . . not whether voters clamor for information about each 'Hank Jones' who gave $100 to support an initiative. Rather, the issue is whether the cumulative effect of disclosure ensures that the electorate will have access to information regarding the driving forces backing and opposing each bill." 669 F.3d at 41 (quotation marks omitted). To reiterate, we recognize that the government's informational interest may not be greatly advanced by disclosing a single, small contribution. However, disclosure of a plethora of small contributions could certainly inform voters about the breadth of support for a group or a cause. As Florida also points out, the first-dollar threshold prevents a big donor from thwarting the State's informational interest entirely by making a number of small donations.

Finally, Supreme Court and Circuit precedent has "consistently upheld organizational and reporting requirements against facial challenges," *SpeechNow.org,* 599 F.3d at 696, in part because crafting such disclosure schemes is better left to the legislature. While we hold that the disclosure scheme survives exacting scrutiny, we nevertheless find the discussion in *National Organization for Marriage v. McKee (McKee I)* assessing disclosure thresholds to be instructive:

[Plaintiffs] argue[ ] that Maine lacks a "sufficiently important" interest in the $100 threshold at which the reporting requirement adheres, and, alternatively, that the threshold lacks a "substantial relation" to a sufficiently important governmental interest. [Plaintiffs'] argument operates from a mistaken premise; we do not review reporting thresholds under the "exacting scrutiny" framework. In *Buckley,* facing a similar challenge to a $10 threshold for a recordkeeping provision and a $100 reporting threshold, the Supreme Court noted that the choice of where to set such monetary thresholds "is necessarily a judgmental decision, best left in the context of this complex legislation to congressional discretion." The Court concluded that, although there was no evidence in the record that Congress "had focused carefully on the appropriate level at which to require recording and disclosure," and despite the fact that the low thresholds might "discourage participation by some citizens in the political process," it could not say that "the limits designated are wholly without rationality." The Court thus upheld [the Federal Election Campaign Act's] recordkeeping and reporting thresholds.

Following *Buckley,* we have granted "judicial deference to plausible legislative judgments" as to the appropriate location of a reporting threshold, and have upheld such legislative determinations unless they are "'wholly without rationality.'"

649 F.3d at 60 (citations omitted); *see also Family PAC,* 685 F.3d at 811 ("[D]isclosure thresholds . . . are inherently inexact; courts therefore owe substantial deference to legislative judgments fixing these amounts."). With this in mind, we cannot say that the PAC regulations are too broad to be substantially related to Florida's informational interests.

Third, Challengers' arguments that *Sampson* and *Minnesota Citizens* dictate an outcome in their favor make little sense given the nature of their appeal. In *Sampson,* the Tenth Circuit held that application of Colorado PAC requirements to a group of individuals who reported "nonmonetary contributions (signs, a banner, postcards, and postage) totaling $782.02" for a ballot issue election was unconstitutional.[6] 625 F.3d at 1252. The law in that case imposed registration requirements on groups raising or spending over $200 and required disclosure for all donations over $20. *Id.* at 1249. But in any event, the Tenth Circuit did not facially strike down that law, explaining that "[w]e do not attempt to draw a bright line below which a

[6] After the plaintiffs in *Sampson* received a complaint from the Colorado Secretary of State, they raised cash in the amount of $1,426, and paid $1,178.82 of that amount for attorney fees. 625 F.3d at 1260 & n.5. The ballot issue they opposed was a proposal to annex the neighborhood of Parker North into the Town of Parker. *Id*. at 1251. The annexation measure was defeated by a vote of 351 to 21 prior to the Tenth Circuit's ruling in *Sampson, id.,* and there was no indication that the *Sampson* plaintiffs intended to involve themselves in any future ballot issues. *See generally id.* at 1251-54.

ballot-issue committee cannot be required to report contributions and expenditures. The case before us is quite unlike ones involving the expenditure of tens of millions of dollars. . . ." *Id.* at 1261.

Here, Challengers openly acknowledge they seek to raise *more* money in the future. This fact distinguishes them from the *Sampson* plaintiffs, who never expressed a desire to continue soliciting contributions. *See generally id.* at 1251-54. Thus, our ruling in favor of Florida does not conflict with *Sampson,* and we need not reach the question of whether the statute is constitutional as applied to four individuals raising only $600.

Neither is *Minnesota Citizens* of assistance to Challengers. *Minnesota Citizens* limited its holding to ongoing reporting requirements for associations spending to influence elections that did not otherwise qualify as PACs under Minnesota law. *See* 692 F.3d at 877. The Eighth Circuit left no question that groups "whose major purpose is to influence the nomination or election of a candidate or to promote or defeat a ballot question," like Challengers here, would have to comply with the state political fund disclosure requirements challenged in *Minnesota Citizens*. *Id.* at 877 n.11 (quotation marks omitted).[7]

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[7] The law in *Minnesota Citizens* was flawed in part because "Minnesota ha[d] not stated any plausible reason why *continued* reporting from *nearly all associations,* regardless of the association's

(Continued on following page)

Challengers are free to petition the legislature to reset the reporting requirements for Florida's PAC regulations, but we decline to do so here. Challengers' facial challenge cannot succeed because Florida has adequately demonstrated that existing PAC regulations are substantially related to a sufficiently important government interest.[8]

III. FLORIDA'S ADVERTISING DISCLAIMER REQUIREMENT

Challengers also contest the District Court's finding that Florida's advertising disclaimer requirement

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major purpose, [was] necessary to accomplish [its] interests." 692 F.3d at 877 (second emphasis added).

It is worth noting that this lack of a "major purpose" requirement for regulation was also the way in which the *Minnesota Citizens* Court distinguished that case from *SpeechNow.org*. *Id.* at 875 n.10. But in Florida, in contrast to Minnesota, for all elections, including ballot issue elections, "[c]orporations regulated by chapter 607 or chapter 617 or other business entities formed for purposes other than to support or oppose issues or candidates" are, in fact "not considered political committees." Fla. Stat. § 106.011(1)(b). In other words, there is no *Minnesota Citizens* problem with a lack of a "major purpose" test because the law does not "impose[ ] . . . requirements on *all* associations, regardless of the association's purpose." 692 F.3d at 875 n.10.

[8] While we decline to address Florida's failure to set minimum thresholds on disclosure, we do have concerns about the burdens that the lack of these minimums place on truly small grassroots groups with little experience and little money. However, because this appeal is properly viewed as a facial challenge, the issue need not be decided here.

is constitutional in ballot issue elections. Challengers reference *McIntyre,* in which the Supreme Court explained that "an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment." 514 U.S. at 342, 115 S. Ct. at 1516. In *Citizens United,* however, the Supreme Court expressly rejected the argument that a broadcast advertisement disclaimer requirement was unconstitutional because it "decrease[d] both the quantity and effectiveness of the group's speech by forcing it to devote four seconds of each advertisement to the spoken disclaimer." 558 U.S. at 368, 130 S. Ct. at 915. The Court noted, among other things, that it had explained in *Bellotti* that "[i]dentification of the source of advertising may be required as a means of disclosure." *Id.* (quoting *Bellotti,* 435 U.S. at 792 n.32, 98 S. Ct. at 1424 n.32).

Nonetheless, Challengers argue that *McIntyre* remains good law, and dictates the demise of Florida's disclaimer requirement. Specifically, Challengers argue that under *McIntyre,* Florida's "simple interest in providing voters with additional relevant information," 514 U.S. at 348, 115 S. Ct. at 1520, is not a sufficient interest to burden speech significantly. Indeed, Challengers argue that the burden on their speech is greater than that placed on the pamphleteer in *McIntyre,* as they will probably have to decrease a thirty-second message by six seconds, resulting in a twenty percent loss in content.

Challengers say, too, that the District Court's distinguishing of *McIntyre* conflicted with First Amendment principles. First, Challengers argue that the District Court drew a distinction between handbills and radio ads, which was wrong because courts "must decline to draw, and then redraw, constitutional lines based on the particular media or technology used to disseminate political speech." *Citizens United,* 558 U.S. at 326, 130 S. Ct. at 891. Second, Challengers argue that the District Court's finding that their collaborative speech did not fall within the scope of *McIntyre*'s holding was also error because the First Amendment applies with equal force to groups and individuals. Third, Challengers object to the District Court's holding that *McIntyre* did not apply to them because they have no right to receive anonymous contributions to fund radio ads. Specifically, Challengers object to this holding because they argue that the Supreme Court has never found a state informational interest in the ballot issue context that could thwart anonymous contributions.

Each of Challengers' arguments fails in light of *Citizens United, Bellotti, Citizens Against Rent Control,* and *McIntyre* itself. First, Florida's disclaimer requirement is materially indistinguishable from the disclaimer requirement upheld in *Citizens United*. The only differences in the disclaimer requirements before us and those addressed by the Supreme Court in *Citizens United* are that we have a ballot issue election before us, and Challengers claim it will take them six seconds to read the disclaimer as opposed to

the four seconds recited in *Citizens United*. *See Citizens United,* 558 U.S. at 366, 130 S. Ct. at 914. *Citizens United* upheld that disclaimer requirement without any mention of *McIntyre*. *Id.* at 366-71, 130 S. Ct. at 914-16. As we have discussed at length, Challengers' proposed distinction between ballot issue elections and candidate elections is not supported by precedent and does not compel a departure from *Citizens United* here.

Second, a disclaimer requirement was endorsed in the ballot issue context, albeit in *dicta,* in *Bellotti*, 435 U.S. at 792 n.32, 98 S. Ct. at 1424 n.32 ("Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected."). *McIntyre* did not purport to overrule *Bellotti*. 514 U.S. at 353-54, 115 S. Ct. at 1522-23.

Third, *McIntyre* was a narrow decision that expressly disavowed application to other forms of media. *McIntyre* limited its holding to "only written communications and, particularly, leaflets of the kind Mrs. McIntyre distributed." 514 U.S. at 338 n.3, 115 S. Ct. at 1514 n.3; *see also Reed,* 130 S. Ct. at 2831 n.4 (Stevens, J., concurring in part and concurring in the judgment) (explaining the limitations of *McIntyre*). Indeed *McIntyre* declined to address the constitutionality of the radio provision of the Ohio statute. 514 U.S. at 338 n.3, 115 S. Ct. at 1514 n.3. As Justice Ginsburg wrote in concurrence:

> In for a calf is not always in for a cow. The Court's decision finds unnecessary, over-intrusive, and inconsistent with American ideals the State's imposition of a fine on an individual leafleteer who, within her local community, spoke her mind, but sometimes not her name. We do not thereby hold that the State may not in other, larger circumstances require the speaker to disclose its interest by disclosing its identity.

Id. at 358, 115 S. Ct. at 1524 (Ginsburg, J., concurring). *McIntyre* simply did not speak to disclaimers required for radio ads.

Fourth, the fact that the advertising disclaimer requirement here applies to groups that spend money in elections is important. *See McIntyre,* 514 U.S. at 355, 115 S. Ct. at 1523 (describing campaign finance disclosure requirements as being less burdensome than other speech regulations). *Citizens Against Rent Control,* which *McIntyre* did not purport to overrule, explained, albeit in *dicta,* that "if it is thought wise, legislation can outlaw anonymous contributions." 454 U.S. at 300, 102 S. Ct. at 439. A disclaimer naming the PAC that purchased the ad prevents anonymous election spending. Challengers argue that even if this is true, the *disclaimer* does not actually advance any interest in *disclosure* because all funders have to do is disclaim the name of the PAC, not a list of individual contributors. But we reject that argument given that Florida PACs have to disclose their contributors in a public forum. Indeed, that is what Challengers are complaining about.

Therefore, we agree with the District Court that Florida's advertising disclaimer requirement is constitutional.

IV. CONCLUSION

For each of these reasons, the opinion of the District Court is

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

ANDREW NATHAN WORLEY,
PAT WAYMAN, and
JOHN SCOLARO,

VS

CASE NO.
4:10cv423-RH/CAS

KENNETH W. DETZNER, in his official capacity as Florida Secretary of State; JORGE L. CRUIZ-BUSTILLO, in his official capacity as Chair of the Florida Elections Commission; WILLIAM H. HOLLIMON, in his official capacity as Vice Chair of the Florida Elections Commission; and ALIA S. FARAJ-JOHNSON, E. LEON JACOBS, JR., JULIE B. KANE, GREGORY KING, JOSE LUIS RODRIGUEZ, THOMAS E. ROSSIN, and BRIAN M. SEYMOUR, in their official capacities as members of the Florida Election Commission,

JUDGMENT

This action was resolved by summary judgment with Judge Robert L. Hinkle presiding. The plaintiffs prevailed in part, and the defendants prevailed in part, as follows:

The defendants must not enforce against the plaintiffs any provision of Florida law preventing the plaintiffs from spending – in connection with an election – a contribution received in the last five days before the election, on the ground that the contribution was received in the last five days before the election, but this injunction applies only if, before the contribution is spent, the plaintiffs have fully disclosed the contribution in a filing properly made with the Division of Elections. This injunction binds the defendants and their officers, agents, servants, employees, and attorneys – and others in active concert or participation with any of them – who receive actual notice of this injunction by personal service or otherwise. The court reserves jurisdiction to enforce the injunction.

The plaintiffs' other claims are dismissed with prejudice.

JESSICA J. LYUBLANOVITS
CLERK OF COURT

July 3, 2012	s/ David L. Thomas
DATE	Deputy Clerk: David Thomas

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

ANDREW NATHAN WORLEY
et al.,

Plaintiffs,

v.

CASE NO.
4:10cv423-RH/CAS

KENNETH W. DETZNER,
in his official capacity as
Florida Secretary of State, et al.,

Defendants.
/

ORDER GRANTING SUMMARY JUDGMENT

This case presents a challenge to Florida campaign-finance statutes as they apply to a ballot issue – a popular vote on a proposal to amend the state constitution. The statutes set no limit on the amount a person may spend or contribute to advocate the passage or defeat of a ballot issue. But the statutes require contributions and expenditures to be reported, impose bookkeeping requirements, require that advertisements disclose their source, and prohibit spending – on a ballot issue – contributions received in the last five days before the vote. This order upholds all of these provisions but the last.

I

The plaintiffs are Andrew Nathan Worley, Pat Wayman, and John Scolaro. The defendants are the Florida Secretary of State and the members of the Florida Elections Commission, all in their official capacities.

The plaintiffs and Robin Stublen – who originally was a plaintiff but dropped out – joined together to oppose a ballot initiative, Proposed Amendment 4 on the November 2, 2010, general-election ballot. The initiative would have required amendments to a local government's comprehensive plan to be approved in a public referendum. The three plaintiffs and Mr. Stublen wished to contribute $150 each, for a total of $600, to purchase air time for a radio advertisement they wrote opposing Amendment 4. They proposed to run the advertisement 30 times; the air time cost $20 for a 30-second slot.

The four also wished, however, to accept contributions – including anonymous and cash contributions – and to use the funds to run the advertisement more often. They did not wish to identify themselves in the advertisement because they wished to use all of the purchased air time to convey the substance of the message and wished for the message to be evaluated based on its content, not based on its sponsors' identities.

The plaintiffs asserted, and the defendants seemed to concede, that even if the plaintiffs did no more than spend their initial $600, they would

become a "political committee" under Florida law. *See* § 106.011(1)(a), Fla. Stat. (defining a "political committee" to include a combination of two or more individuals who accept contributions of – or spend – more than $500 in a year to expressly advocate the election or defeat of a candidate or the passage or defeat of a ballot issue).

The plaintiffs asserted, and the defendants seemed to concede, that this in turn would require the plaintiffs to comply with all the political-committee regulations. *See* § 106.021(1) (appoint a treasurer and establish a campaign depository); § 106.03(1)(a) (register with the Division of Elections); § 106.05 (deposit all funds within five business days of receipt); § 106.06(1) (keep detailed accounts current within two days); § 106.06(3) (maintain records for two years); § 106.07(4)(a) (file periodic reports of all contributions and expenditures); § 106.11 (disburse funds only by check); § 106.22(10) (submit to random audits by the Division of Elections).

The plaintiffs asserted, and the defendants seemed to concede, that Florida law prohibited the plaintiffs from accepting anonymous contributions of any size or cash contributions of more than $50. *See* § 106.09.

The plaintiffs asserted, and the defendants seemed to concede, that Florida law required the plaintiffs to include in any advertisement a statement identifying themselves or their committee. *See* § 106.143(1)(c)-(d).

Finally, the plaintiffs asserted, and the defendants seemed to concede, that Florida law prohibited the plaintiffs from paying for advertisements advocating the passage or defeat of a ballot issue with contributions received during the last five days before the vote. *See* § 106.08(4).

The plaintiffs filed this action challenging the requirement to disclose contributions, challenging the attendant ban on anonymous contributions and on cash contributions of more than $50, challenging the requirement to register as a political committee, challenging the requirement to include in a radio advertisement a statement of its source and thus banning anonymous advertisements, and challenging the ban on spending on a ballot issue contributions received in the last five days before the vote. The plaintiffs moved for a preliminary injunction. The motion was granted in one respect only: the defendants were enjoined from enforcing the ban on spending a contribution received in the last five days before an election if, prior to the expenditure, the contribution was reported.

The Amendment 4 election has passed; the proposal was defeated. The plaintiffs say, though, that they intend to support or oppose future ballot amendments. The plaintiffs are politically active, and ballot issues in Florida are commonplace. The dispute between the plaintiffs and the defendants presents a live controversy.

The parties have filed cross-motions for summary judgment. They agree the case should be resolved on summary judgment. They disagree only on which side should win. This order grants summary judgment for the plaintiffs coextensive with the preliminary injunction and otherwise grants summary judgment for the defendants.

II

The plaintiffs say they wish to accept contributions from others who agree with their position on a ballot issue. The plaintiffs wish to be able to "pass the hat" to accept anonymous contributions – including cash – at public gatherings. But Florida law requires public disclosure of all contributions, no matter how small. This prevents anonymous contributions.

The Supreme Court has repeatedly said that contributor-disclosure requirements are valid. *See Citizens United v. Fed. Election Comm'n,* 130 S. Ct. 876, 915-16 (2010) (collecting cases); *McConnell v. Fed. Election Comm'n,* 540 U.S. 93, 195-96 (2003) (contributions over $1,000); *Buckley v. Valeo,* 424 U.S. 1, 63-68 (1976) (contributions over $100). And the Supreme Court has said this not only in cases involving candidate elections but also in cases involving ballot issues like the one involved here. *See Citizens Against Rent Control/Coal. for Fair Hous. v. City of Berkeley, Cal.,* 454 U.S. 290, 299-300 (1981) ("[T]he integrity of the political system will be adequately protected if contributors are identified in a public

filing revealing the amounts contributed; if it is thought wise, legislation can outlaw anonymous contributions."); *First Nat'l Bank of Boston v. Bellotti,* 435 U.S. 765, 792 n.32 (1978) ("Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected."). *See also Let's Help Fla. v. McCrary,* 621 F.2d 195, 200-01 (5th Cir. 1980) (stating in dictum that the same Florida disclosure requirement at issue here is constitutional).

The plaintiffs say none of these are square *holdings* applicable to ballot issues. But when the Supreme Court has repeatedly said that requirements like these are constitutional, and the pre-*Bonner* Fifth Circuit has said these very requirements are constitutional, a district court in this circuit would properly reach a different result only on a much more persuasive showing than the plaintiffs have mustered here.

To be sure, the plaintiffs say the law has changed, and they cite *Citizens United* as confirmation. *Citizens United* did overrule prior Supreme Court authorities, but not the authorities upholding disclosure requirements. To the contrary, *Citizens United* upheld the disclosure requirements at issue there and gave not the slightest hint that its prior decisions on this subject had lost their force. *See Citizens United,* 130 S. Ct. at 915-16. The plaintiffs' invitation to ignore the Supreme Court's repeated statements on the ground that more recent decisions have implicitly

undercut them is unfounded on the merits and in any event brings to mind the Eleventh Circuit's disapproval of just such an approach:

> The problem with [the dissent's] approach is that the Supreme Court has repeatedly told us not to take it. The Court has instructed us: "If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decision." *Rodriguez de Quijas v. Shearson/Am. Express, Inc.,* 490 U.S. 477, 484, 109 S. Ct. 1917, 1921-22, 104 L.Ed.2d 526 (1989); *see also Tenet v. Doe,* 544 U.S. 1, 125 S. Ct. 1230, 1237, 161 L.Ed.2d 82 (2005) (quoting *Shearson/Am. Express, Inc.,* 490 U.S. at 484, 109 S. Ct. at 1921-22); *Am. Trucking Ass'ns, Inc. v. Smith,* 496 U.S. 167, 180, 110 S. Ct. 2323, 2332, 110 L.Ed.2d 148 (1990) (plurality op.) (same); *Agostini v. Felton,* 521 U.S. 203, 237, 117 S. Ct. 1997, 2017, 138 L.Ed.2d 391 (1997) ("We do not acknowledge, and we do not hold, that other courts should conclude our more recent cases have, by implication, overruled an earlier precedent."); *Hohn v. United States,* 524 U.S. 236, 252-53, 118 S. Ct. 1969, 1978, 141 L.Ed.2d 242 (1998) ("Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality.").

United States v. Rodriguez, 406 F.3d 1261, 1277-78 (11th Cir. 2005).

The plaintiffs also insist that even if a group may be required to disclose substantial contributions, there is no reason to require disclosure of small ones, with the attendant prohibition on anonymous contributions, no matter how small. It is true that many jurisdictions set a minimum level below which contributions need not be disclosed. But today a contributor and in turn the party who receives it can transfer information and thus make disclosures much more easily than ever before; doing so often will require only a few key strokes. And in an era when thousands, indeed millions, of small contributions can be made online or through text messages, the disclosure requirement serves an additional purpose beyond just identifying the contributor. Disclosing small contributions makes it much more difficult for a contributor to evade the reporting requirement by making multiple small contributions and makes it much more difficult for a party receiving contributions to claim incorrectly that they were so small that there was no obligation to report. The Supreme Court has recognized that preventing such evasions is a legitimate goal that can support a requirement to disclose contributions as low as $10: "recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations. . . . " *Buckley v. Valeo,* 424 U.S. 1, 67-68.

The challenged disclosure requirements are constitutional.

III

The plaintiffs next challenge the requirement that they register as a "political committee" and comply with the regulatory burdens that attend that status. They rely primarily on *Citizens United*. There the Supreme Court struck down a federal statute that prohibited a corporation or union from spending its treasury funds to advocate the election or defeat of a candidate. The Court said that allowing a corporation or union to speak through a political action committee did not save the statute, first because speech by a PAC was not speech by the corporation or union itself, and second because PACs are "burdensome alternatives; they are expensive to administer and subject to extensive regulations." 130 S. Ct. at 897.

The plaintiffs assert that a "political committee" under Florida law is not materially different from a PAC under the federal provisions at issue in *Citizens United*. Even if that were so, *Citizens United* would not resolve the question of whether Florida can regulate the plaintiffs as a political committee. *Citizens United* involved an outright ban on election-related speech by a single speaker. The only purported justification for the ban was that the speaker was a corporation. The Court rejected the proposition that, for this purpose, a corporation had no right to speak, and it held that the ability to speak through a PAC did not save the otherwise-unconstitutional ban on direct speaking by the corporation.

Here, in contrast, Florida law does not prohibit a plaintiff from speaking. Each plaintiff is free to speak as much as the plaintiff chooses and need not register as a political committee in order to do so. It is only the plaintiffs' decision to act jointly – and to pool their funds – that triggers the application of the Florida political-committee provisions. The law has long recognized, in many contexts including this one, that there is a difference between individual and joint action.

Still, political-committee regulation imposes a burden and is subject to exacting scrutiny. At some point a burden on the exercise of First Amendment rights becomes more than the Amendment will allow. But the burden here is not great.

Indeed, the most burdensome regulations require little if anything more than a prudent person or group would do in these circumstances anyway. Thus a prudent group that chose to accept contributions from others for a specific purpose would put someone in charge of the money, would not intermingle the contributions with personal funds and – to avoid intermingling – would set up a separate bank account, would promptly deposit contributions into the account, would keep good records, and – to promote good recordkeeping – would disburse funds by check. And so Florida law requires a political committee to appoint a treasurer and establish a campaign depository, Florida Statutes § 106.021(1); deposit all funds within five days of receipt, *id.* § 106.05; keep detailed accounts current within two days and maintain the

records for two years, *id.* § 106.06(1) & (3); and disburse funds only by check, *id.* § 106.11. These requirements do not impose an unconstitutional burden.

The other political-committee requirements impose only a modest burden. The political committee must register with the Division of Elections, *id.* § 106.03(1)(a), a process that requires only filling out a short form and sending it in. The political committee must file periodic reports of contributions and expenditures, § 106.07(4)(a) – that is, must make the disclosures that, as set out above, the Supreme Court has repeatedly said may constitutionally be required. And the political committee must submit to random audits, *id.* § 106.22(10), a process the plaintiffs might never actually undergo and that, if they operate as modest an operation as they say they will, is likely to impose very little burden at all. All of these provisions are well tailored to the legitimate goal of requiring disclosures and ensuring that they are made.

The plaintiffs have not shown that any of the political-committee regulations will impose on them an unconstitutional burden.

IV

The plaintiffs next challenge the provision requiring their proposed radio advertisements to include a statement of their identity – sometimes referred to as a disclaimer. The plaintiffs assert a right to speak anonymously. They wish to devote

their limited air time to their message, not to identifying themselves, and they wish for the message to be evaluated on its content, not based on the plaintiffs' identities.

The Supreme Court has recognized an *individual's* right to speak anonymously *in a handbill* on an issue that will be on a public ballot. In *McIntyre v. Ohio Elections Commission,* 514 U.S. 334 (1995), the Court struck down a fine imposed on a woman who, acting independently of anyone else, circulated anonymous handbills opposing a ballot measure, thus violating a state ban on anonymous campaign literature. The Court said that the two interests invoked by the state were not sufficient to save the fine. First, the state's interest in providing the electorate accurate information on the source of an assertion – thus allowing recipients to better evaluate the assertion – was no different than the state's interest in providing the electorate other relevant information that a speaker was free to include or leave out of the speaker's materials. *Id.* at 348-49. Second, the state's interest in deterring false or defamatory statements could be served in other ways, without banning anonymous speech that was neither false nor defamatory. *Id.* at 349-51.

McIntyre differs from this case in two respects. First, *McIntyre* involved handbills. This case involves radio advertisements. The *McIntyre* opinion noted the distinction, indicating that the statute at issue there banned not only anonymous handbills but also

anonymous radio and television advertisements, and continuing:

> No question concerning [the radio and television] provision is raised in this case. Our opinion, therefore, discusses only written communications and, particularly, leaflets of the kind Mrs. McIntyre distributed. *Cf. Turner Broad. Sys., Inc. v. FCC,* 512 U.S. 622, 637-638 (1994) (discussing application of First Amendment principles to regulation of television and radio).

Id. at 338 n.3.

Second, *McIntyre* involved an individual who acted alone. The plaintiffs in this case have explicitly chosen to speak as a group. Indeed, the decision to do so is what gives them standing to bring the bulk of their challenges to the Florida statutes. The plaintiffs' assertion apparently is that *McIntyre* recognized a right to anonymous speech and that it applies not just to an individual but to a group, no matter how large.

The Supreme Court has never said that an individual has a First Amendment right to run an anonymous radio advertisement addressing a ballot issue. But even if a person had such a right, that would not help the plaintiffs. Under repeated decisions of the Supreme Court, an individual has no right to receive an anonymous contribution to fund a radio advertisement addressing a ballot issue, nor a right to make an anonymous contribution to fund

someone else's radio advertisement. *See, e.g., Citizens Against Rent Control/Coal. for Fair Hous. v. City of Berkeley, Cal.,* 454 U.S. 290, 299-300 (1981); *First Nat'l Bank of Boston v. Bellotti,* 435 U.S. 765, 792 n.32 (1978); *see also Citizens United,* 130 S. Ct. at 913-14 (upholding a disclosure requirement for advertisements relating to a candidate election).

The Supreme Court has not expanded *McIntyre* beyond its context, despite repeated opportunities to do so. Instead, the Supreme Court has continued to uphold disclosure and disclaimer requirements that are inconsistent with any right of a group to run anonymous radio or television advertisements. As one of the justices who joined the *McIntyre* opinion noted, "In for a calf is not always in for a cow." 514 U.S. at 358 (Ginsburg, J., concurring).

There is no right to make or receive anonymous contributions or to run anonymous advertisements spending them. The plaintiffs' challenge to the disclaimer requirement is unfounded.

V

Finally, the plaintiffs challenge the limitation on spending contributions received in the last five days before the election. *See* § 106.08(4), Fla. Stat. The limitation is timed to coincide with the requirement for disclosing contributions. A political committee's last required disclosure is five days before the election. The state's asserted justification for the limitation on spending funds received later is that it is

necessary to prevent a committee or contributor from circumventing the requirement to disclose contributions. Without the limitation, a contributor could wait until after the last required disclosure, and then pour money into the campaign, without anyone knowing until after the election, when the knowledge could not affect the election's outcome. Or so the theory goes.

The state attempts to minimize the impact of the limitation, noting that an advocate can still spend funds in the five days before the election, so long as the funds were raised earlier, and can still spend funds raised in the five days before the election, just not on that election. But the ability to raise and spend funds in the last five days before an election is not insignificant. Indeed, at least before the advent of early voting and the expansion of absentee voting, the last five days before the election were perhaps the most crucial in many election cycles.

The state's justification for the limitation does not survive exacting scrutiny in another respect as well. The last required disclosure is five days before the election, but that does not prevent a political committee from filing another disclosure during the last five days. If a committee receives a contribution during the weekend before the election and files a disclosure on Monday morning, there is no adequate justification for preventing the committee from spending the money on Monday afternoon, before Tuesday's election. In the days of electronic filing and Internet access to public records, any assertion that a five-day lag time is needed to provide meaningful

public access has too little weight to justify a ban on core First Amendment speech.

The ban on spending fully-disclosed contributions received in the five days before an election is unconstitutional.

VI

For these reasons,

IT IS ORDERED:

1. The summary-judgment motions, ECF Nos. 39 and 40, are GRANTED IN PART and DENIED IN PART.

2. Summary judgment is granted for the plaintiffs on their challenge to the prohibition on spending in the five days before an election contributions that have been fully disclosed. The defendants must not enforce against the plaintiffs any provision of Florida law preventing the plaintiffs from spending – in connection with an election – a contribution received in the last five days before the election, on the ground that the contribution was received in the last five days before the election, but this injunction applies only if, before the contribution is spent, the plaintiffs have fully disclosed the contribution in a filing properly made with the Division of Elections. This injunction binds the defendants and their officers, agents, servants, employees, and attorneys – and others in active concert or participation with any of them – who receive actual notice of this injunction by

personal service or otherwise. The court reserves jurisdiction to enforce the injunction.

3. Summary judgment is granted for the defendants on all other claims.

4. The clerk must enter judgment accordingly.

5. The clerk must close the file.

SO ORDERED on July 2, 2012.

s/ Robert L. Hinkle
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

ANDREW NATHAN WORLEY
et al.,

Plaintiffs,

v.

CASE NO.
4:10cv423-RH/CAS

KENNETH W. DETZNER,
in his official capacity as
Florida Secretary of State, et al.,

Defendants.
/

ORDER DENYING AS MOOT THE MOTION TO STRIKE PARTS OF DR. SMITH'S TESTIMONY

The plaintiff's motion, ECF No. 48, to strike parts of the testimony of Dr. Daniel Smith is DENIED AS MOOT.

SO ORDERED on July 2, 2012.

s/ Robert L. Hinkle
United States District Judge

USCS Const. Amend. 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.011. Definitions [Effective until November 1, 2013.]

As used in this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(1) (a) "Political committee" means:

1. A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of $500 during a single calendar year:

a. Accepts contributions for the purpose of making contributions to any candidate, political committee, committee of continuous existence, affiliated party committee, or political party;

b. Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;

c. Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or

d. Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, committee of continuous existence, affiliated party committee, or political party;

2. The sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors.

(b) Notwithstanding paragraph (a), the following entities are not considered political committees for purposes of this chapter:

1. Organizations which are certified by the Department of State as committees of continuous existence pursuant to s. 106.04, national political parties, the state and county executive committees of political parties, and affiliated party committees regulated by chapter 103.

2. Corporations regulated by chapter 607 or chapter 617 or other business entities formed for purposes other than to support or oppose issues or candidates, if their political activities are limited to contributions to candidates, political parties, affiliated party committees, or political committees or expenditures in support of or opposition to an issue from corporate or business funds and if no contributions are received by such corporations or business entities.

3. Electioneering communications organizations as defined in subsection (19).

(2) "Committee of continuous existence" means any group, organization, association, or other such entity which is certified pursuant to the provisions of s. 106.04.

(3) "Contribution" means:

(a) A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication.

(b) A transfer of funds between political committees, between committees of continuous existence, between electioneering communications organizations, or between any combination of these groups.

(c) The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.

(d) The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes any interest earned on such account or certificate.

Notwithstanding the foregoing meanings of "contribution," the term may not be construed to include services, including, but not limited to, legal and accounting services, provided without compensation by individuals volunteering a portion or all of

their time on behalf of a candidate or political committee or editorial endorsements.

(4) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication. However, "expenditure" does not include a purchase, payment, distribution, loan, advance, or gift of money or anything of value made for the purpose of influencing the results of an election when made by an organization, in existence prior to the time during which a candidate qualifies or an issue is placed on the ballot for that election, for the purpose of printing or distributing such organization's newsletter, containing a statement by such organization in support of or opposition to a candidate or issue, which newsletter is distributed only to members of such organization.

(b) As used in this chapter, an "expenditure" for an electioneering communication is made when the earliest of the following occurs:

1. A person enters into a contract for applicable goods or services;

2. A person makes payment, in whole or in part, for the production or public dissemination of applicable goods or services; or

3. The electioneering communication is publicly disseminated.

(5) (a) "Independent expenditure" means an expenditure by a person for the purpose of expressly advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee. An expenditure for such purpose by a person having a contract with the candidate, political committee, or agent of such candidate or committee in a given election period shall not be deemed an independent expenditure.

(b) An expenditure for the purpose of expressly advocating the election or defeat of a candidate which is made by the national, state, or county executive committee of a political party, including any subordinate committee of the political party, an affiliated party committee, a political committee, a committee of continuous existence, or any other person shall not be considered an independent expenditure if the committee or person:

1. Communicates with the candidate, the candidate's campaign, or an agent of the candidate acting on behalf of the candidate, including any pollster, media consultant, advertising agency, vendor, advisor, or staff member, concerning the preparation of, use of, or payment for, the specific expenditure or advertising campaign at issue; or

2. Makes a payment in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to any general or particular understanding with the candidate, the candidate's campaign, a political committee supporting the candidate, or an agent of the candidate relating to the specific expenditure or advertising campaign at issue; or

3. Makes a payment for the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign material prepared by the candidate, the candidate's campaign, or an agent of the candidate, including any pollster, media consultant, advertising agency, vendor, advisor, or staff member; or

4. Makes a payment based on information about the candidate's plans, projects, or needs communicated to a member of the committee or person by the candidate or an agent of the candidate, provided the committee or person uses the information in any way, in whole or in part, either directly or indirectly, to design, prepare, or pay for the specific expenditure or advertising campaign at issue; or

5. After the last day of the qualifying period prescribed for the candidate, consults about the candidate's plans, projects, or needs in connection with the candidate's pursuit of election to office and the information is used in any way to plan, create, design, or prepare an independent expenditure or advertising campaign, with:

a. Any officer, director, employee, or agent of a national, state, or county executive committee of a political party or an affiliated party committee that has made or intends to make expenditures in connection with or contributions to the candidate; or

b. Any person whose professional services have been retained by a national, state, or county executive committee of a political party or an affiliated party committee that has made or intends to make expenditures in connection with or contributions to the candidate; or

6. After the last day of the qualifying period prescribed for the candidate, retains the professional services of any person also providing those services to the candidate in connection with the candidate's pursuit of election to office; or

7. Arranges, coordinates, or directs the expenditure, in any way, with the candidate or an agent of the candidate.

(6) "Election" means any primary election, special primary election, general election, special election, or municipal election held in this state for the purpose of nominating or electing candidates to public office, choosing delegates to the national nominating conventions of political parties, or submitting an issue to the electors for their approval or rejection.

(7) "Issue" means any proposition which is required by the State Constitution, by law or resolution of the Legislature, or by the charter, ordinance, or resolution of any political subdivision of this state to be submitted to the electors for their approval or rejection at an election, or any proposition for which a petition is circulated in order to have such proposition placed on the ballot at any election.

(8) "Person" means an individual or a corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity. The term includes a political party, affiliated party committee, political committee, or committee of continuous existence.

(9) "Campaign treasurer" means an individual appointed by a candidate or political committee as provided in this chapter.

(10) "Public office" means any state, county, municipal, or school or other district office or position which is filled by vote of the electors.

(11) "Campaign fund raiser" means any affair held to raise funds to be used in a campaign for public office.

(12) "Division" means the Division of Elections of the Department of State.

(13) "Communications media" means broadcasting stations, newspapers, magazines, outdoor

advertising facilities, printers, direct mail, advertising agencies, the Internet, and telephone companies; but with respect to telephones, an expenditure shall be deemed to be an expenditure for the use of communications media only if made for the costs of telephones, paid telephonists, or automatic telephone equipment to be used by a candidate or a political committee to communicate with potential voters but excluding any costs of telephones incurred by a volunteer for use of telephones by such volunteer; however, with respect to the Internet, an expenditure shall be deemed an expenditure for use of communications media only if made for the cost of creating or disseminating a message on a computer information system accessible by more than one person but excluding internal communications of a campaign or of any group.

(14) "Filing officer" means the person before whom a candidate qualifies, the agency or officer with whom a political committee or an electioneering communications organization registers, or the agency by whom a committee of continuous existence is certified.

(15) "Unopposed candidate" means a candidate for nomination or election to an office who, after the last day on which any person, including a write-in candidate, may qualify, is without opposition in the election at which the office is to be filled or who is without such opposition after such date as a result of any primary election or of withdrawal by other candidates seeking the same office. A candidate is not an

unopposed candidate if there is a vacancy to be filled under s. 100.111(3), if there is a legal proceeding pending regarding the right to a ballot position for the office sought by the candidate, or if the candidate is seeking retention as a justice or judge.

(16) "Candidate" means any person to whom any one or more of the following apply:

(a) Any person who seeks to qualify for nomination or election by means of the petitioning process.

(b) Any person who seeks to qualify for election as a write-in candidate.

(c) Any person who receives contributions or makes expenditures, or consents for any other person to receive contributions or make expenditures, with a view to bring about his or her nomination or election to, or retention in, public office.

(d) Any person who appoints a treasurer and designates a primary depository.

(e) Any person who files qualification papers and subscribes to a candidate's oath as required by law.

However, this definition does not include any candidate for a political party executive committee. Expenditures related to potential candidate polls as provided in s. 106.17 are not contributions or expenditures for purposes of this subsection.

(17) "Political advertisement" means a paid expression in any communications media prescribed in subsection (13), whether radio, television, newspaper, magazine, periodical, campaign literature, direct mail, or display or by means other than the spoken word in direct conversation, which expressly advocates the election or defeat of a candidate or the approval or rejection of an issue. However, political advertisement does not include:

(a) A statement by an organization, in existence prior to the time during which a candidate qualifies or an issue is placed on the ballot for that election, in support of or opposition to a candidate or issue, in that organization's newsletter, which newsletter is distributed only to the members of that organization.

(b) Editorial endorsements by any newspaper, radio or television station, or other recognized news medium.

(18)(a) "Electioneering communication" means any communication that is publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone and that:

1. Refers to or depicts a clearly identified candidate for office without expressly advocating the election or defeat of a candidate but that is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate;

2. Is made within 30 days before a primary or special primary election or 60 days before any other election for the office sought by the candidate; and

3. Is targeted to the relevant electorate in the geographic area the candidate would represent if elected.

(b) The term "electioneering communication" does not include:

1. A communication disseminated through a means of communication other than a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, telephone, or statement or depiction by an organization, in existence prior to the time during which a candidate named or depicted qualifies for that election, made in that organization's newsletter, which newsletter is distributed only to members of that organization.

2. A communication in a news story, commentary, or editorial distributed through the facilities of any radio station, television station, cable television system, or satellite system, unless the facilities are owned or controlled by any political party, political committee, or candidate. A news story distributed through the facilities owned or controlled by any political party, political committee, or candidate may nevertheless be exempt if it represents a bona fide news account communicated through a licensed broadcasting facility and the communication is part of

a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the area.

3. A communication that constitutes a public debate or forum that includes at least two opposing candidates for an office or one advocate and one opponent of an issue, or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum, provided that:

a. The staging organization is either:

(I) A charitable organization that does not make other electioneering communications and does not otherwise support or oppose any political candidate or political party; or

(II) A newspaper, radio station, television station, or other recognized news medium; and

b. The staging organization does not structure the debate to promote or advance one candidate or issue position over another.

(c) For purposes of this chapter, an expenditure made for, or in furtherance of, an electioneering communication shall not be considered a contribution to or on behalf of any candidate.

(d) For purposes of this chapter, an electioneering communication shall not constitute an independent expenditure nor be subject to the limitations applicable to independent expenditures.

(19) "Electioneering communications organization" means any group, other than a political party, affiliated party committee, political committee, or committee of continuous existence, whose election-related activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications and whose activities would not otherwise require the group to register as a political party, political committee, or committee of continuous existence under this chapter.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.011. Definitions [Effective November 1, 2013.]

As used in this chapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(1) "Campaign fund raiser" means an affair held to raise funds to be used in a campaign for public office.

(2) "Campaign treasurer" means an individual appointed by a candidate or political committee as provided in this chapter.

(3) "Candidate" means a person to whom any of the following applies:

(a) A person who seeks to qualify for nomination or election by means of the petitioning process.

(b) A person who seeks to qualify for election as a write-in candidate.

(c) A person who receives contributions or makes expenditures, or consents for any other person to receive contributions or make expenditures, with a view to bring about his or her nomination or election to, or retention in, public office.

(d) A person who appoints a treasurer and designates a primary depository.

(e) A person who files qualification papers and subscribes to a candidates oath as required by law.

However, this definition does not include any candidate for a political party executive committee. Expenditures related to potential candidate polls as provided in s. 106.17 are not contributions or expenditures for purposes of this subsection.

(4) "Communications media" means broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mail, advertising agencies, the Internet, and telephone companies; but with respect to telephones, an expenditure is deemed to be an expenditure for the use of communications media only if made for the costs of telephones, paid telephonists, or automatic telephone equipment to be used by a candidate or a political committee to communicate with potential voters but excluding the

costs of telephones incurred by a volunteer for use of telephones by such volunteer; however, with respect to the Internet, an expenditure is deemed an expenditure for use of communications media only if made for the cost of creating or disseminating a message on a computer information system accessible by more than one person but excluding internal communications of a campaign or of any group.

(5) "Contribution" means:

(a) A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication.

(b) A transfer of funds between political committees, between committees of continuous existence, between electioneering communications organizations, or between any combination of these groups.

(c) The payment, by a person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.

(d) The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing

account or certificate of deposit, and the term includes any interest earned on such account or certificate.

Notwithstanding the foregoing meanings of "contribution," the term may not be construed to include services, including, but not limited to, legal and accounting services, provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or editorial endorsements.

(6) "Division" means the Division of Elections of the Department of State.

(7) "Election" means a primary election, special primary election, general election, special election, or municipal election held in this state for the purpose of nominating or electing candidates to public office, choosing delegates to the national nominating conventions of political parties, selecting a member of a political party executive committee, or submitting an issue to the electors for their approval or rejection.

(8) (a) "Electioneering communication" means communication that is publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone and that:

1. Refers to or depicts a clearly identified candidate for office without expressly advocating the election or defeat of a candidate but that is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate;

2. Is made within 30 days before a primary or special primary election or 60 days before any other election for the office sought by the candidate; and

3. Is targeted to the relevant electorate in the geographic area the candidate would represent if elected.

(b) The term "electioneering communication" does not include:

1. A communication disseminated through a means of communication other than a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, telephone, or statement or depiction by an organization, in existence before the time during which a candidate named or depicted qualifies for that election, made in that organization's newsletter, which newsletter is distributed only to members of that organization.

2. A communication in a news story, commentary, or editorial distributed through the facilities of a radio station, television station, cable television system, or satellite system, unless the facilities are owned or controlled by a political party, political committee, or candidate. A news story distributed through the facilities owned or controlled by a political party, political committee, or candidate may nevertheless be exempt if it represents a bona fide news account communicated through a licensed broadcasting facility and the communication is part of

a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the area.

3. A communication that constitutes a public debate or forum that includes at least two opposing candidates for an office or one advocate and one opponent of an issue, or that solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum, provided that:

a. The staging organization is either:

(I) A charitable organization that does not make other electioneering communications and does not otherwise support or oppose any political candidate or political party; or

(II) A newspaper, radio station, television station, or other recognized news medium; and

b. The staging organization does not structure the debate to promote or advance one candidate or issue position over another.

(c) For purposes of this chapter, an expenditure made for, or in furtherance of, an electioneering communication shall not be considered a contribution to or on behalf of any candidate.

(d) For purposes of this chapter, an electioneering communication does not constitute an independent expenditure and is not subject to the limitations applicable to independent expenditures.

(9) "Electioneering communications organization" means any group, other than a political party, affiliated party committee, or political committee, whose election-related activities are limited to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications and whose activities would not otherwise require the group to register as a political party or political committee under this chapter.

(10)(a) "Expenditure" means a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication. However, "expenditure" does not include a purchase, payment, distribution, loan, advance, or gift of money or anything of value made for the purpose of influencing the results of an election when made by an organization, in existence before the time during which a candidate qualifies or an issue is placed on the ballot for that election, for the purpose of printing or distributing such organization's newsletter, containing a statement by such organization in support of or opposition to a candidate or issue, which newsletter is distributed only to members of such organization.

(b) As used in this chapter, an "expenditure" for an electioneering communication is made when the earliest of the following occurs:

1. A person enters into a contract for applicable goods or services;

2. A person makes payment, in whole or in part, for the production or public dissemination of applicable goods or services; or

3. The electioneering communication is publicly disseminated.

(11) "Filing officer" means the person before whom a candidate qualities or the agency or officer with whom a political committee or an electioneering communications organization registers.

(12)(a) "Independent expenditure" means an expenditure by a person for the purpose of expressly advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee. An expenditure for such purpose by a person having a contract with the candidate, political committee, or agent of such candidate or committee in a given election period is not an independent expenditure.

(b) An expenditure for the purpose of expressly advocating the election or defeat of a candidate which is made by the national, state, or county executive committee of a political party, including any

subordinate committee of the political party, an affiliated party committee, a political committee, or any other person is not considered an independent expenditure if the committee or person:

1. Communicates with the candidate, the candidate's campaign, or an agent of the candidate acting on behalf of the candidate, including a pollster, media consultant, advertising agency, vendor, advisor, or staff member, concerning the preparation of, use of, or payment for, the specific expenditure or advertising campaign at issue;

2. Makes a payment in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to a general or particular understanding with the candidate, the candidate's campaign, a political committee supporting the candidate, or an agent of the candidate relating to the specific expenditure or advertising campaign at issue;

3. Makes a payment for the dissemination, distribution, or republication, in whole or in part, of any broadcast or a written, graphic, or other form of campaign material prepared by the candidate, the candidate's campaign, or an agent of the candidate, including a pollster, media consultant, advertising agency, vendor, advisor, or staff member;

4. Makes a payment based on information about the candidate's plans, projects, or needs communicated to a member of the committee or person by the candidate or an agent of the candidate, provided the committee or person uses the information in any

way, in whole or in part, either directly or indirectly, to design, prepare, or pay for the specific expenditure or advertising campaign at issue;

5. After the last day of the qualifying period prescribed for the candidate, consults about the candidate's plans, projects, or needs in connection with the candidate's pursuit of election to office and the information is used in any way to plan, create, design, or prepare an independent expenditure or advertising campaign, with:

a. An officer, director, employee, or agent of a national, state, or county executive committee of a political party or an affiliated party committee that has made or intends to make expenditures in connection with or contributions to the candidate;

b. A person whose professional services have been retained by a national, state, or county executive committee of a political party or an affiliated party committee that has made or intends to make expenditures in connection with or contributions to the candidate;

6. After the last day of the qualifying period prescribed for the candidate, retains the professional services of a person also providing those services to the candidate in connection with the candidate's pursuit of election to office; or

7. Arranges, coordinates, or directs the expenditure, in any way, with the candidate or an agent of the candidate.

(13) "Issue" means a proposition that is required by the State Constitution, by law or resolution of the Legislature, or by the charter, ordinance, or resolution of a political subdivision of this state to be submitted to the electors for their approval or rejection at an election, or a proposition for which a petition is circulated in order to have such proposition placed on the ballot at an election.

(14) "Person" means an individual or a corporation, association, firm, partnership, joint venture, joint stock company, club, organization, estate, trust, business trust, syndicate, or other combination of individuals having collective capacity. The term includes a political party, affiliated party committee, political committee.

(15) "Political advertisement" means a paid expression in a communications media prescribed in subsection (4), whether radio, television, newspaper, magazine, periodical, campaign literature, direct mail, or display or by means other than the spoken word in direct conversation, which expressly advocates the election or defeat of a candidate or the approval or rejection of an issue. However, political advertisement does not include:

(a) A statement by an organization, in existence before the time during which a candidate qualifies or an issue is placed on the ballot for that election, in support of or opposition to a candidate or

issue, in that organizations newsletter, which newsletter is distributed only to the members of that organization.

(b) Editorial endorsements by a newspaper, a radio or television station, or any other recognized news medium.

(16)(a) "Political committee" means:

1. A combination of two or more individuals, or a person other than an individual, that, in an aggregate amount in excess of $ 500 during a single calendar year:

a. Accepts contributions for the purpose of making contributions to any candidate, political committee, affiliated party committee, or political party;

b. Accepts contributions for the purpose of expressly advocating the election or defeat of a candidate or the passage or defeat of an issue;

c. Makes expenditures that expressly advocate the election or defeat of a candidate or the passage or defeat of an issue; or

d. Makes contributions to a common fund, other than a joint checking account between spouses, from which contributions are made to any candidate, political committee, affiliated party committee, or political party;

2. The sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors.

(b) Notwithstanding paragraph (a), the following entities are not considered political committees for purposes of this chapter:

1. National political parties, the state and county executive committees of political parties, and affiliated party committees regulated by chapter 103.

2. Corporations regulated by chapter 607 or chapter 617 or other business entities formed for purposes other than to support or oppose issues or candidates, if their political activities are limited to contributions to candidates, political parties, affiliated party committees, or political committees or expenditures in support of or opposition to an issue from corporate or business funds and if no contributions are received by such corporations or business entities.

3. Electioneering communications organizations as defined in subsection (9).

(17) "Public office" means a state, county, municipal, or school or other district office or position that is filled by vote of the electors.

(18) "Unopposed candidate" means a candidate for nomination or election to an office who, after the last day on which a person, including a write-in candidate, may qualify, is without opposition in the election at which the office is to be filled or who is

without such opposition after such date as a result of a primary election or of withdrawal by other candidates seeking the same office. A candidate is not an unopposed candidate if there is a vacancy to be filled under s. 100.111(3), if there is a legal proceeding pending regarding the right to a ballot position for the office sought by the candidate, or if the candidate is seeking retention as a justice or judge.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.021. Campaign treasurers; deputies; primary and secondary depositories [Effective until November 1, 2013.]

(1) (a) Each candidate for nomination or election to office and each political committee shall appoint a campaign treasurer. Each person who seeks to qualify for nomination or election to, or retention in, office shall appoint a campaign treasurer and designate a primary campaign depository prior to qualifying for office. Any person who seeks to qualify for election or nomination to any office by means of the petitioning process shall appoint a treasurer and designate a primary depository on or before the date he or she obtains the petitions. Each candidate shall at the same time he or she designates a campaign depository and appoints a treasurer also designate the office for which he or she is a candidate. If the candidate is running for an office which will be

grouped on the ballot with two or more similar offices to be filled at the same election, the candidate must indicate for which group or district office he or she is running. Nothing in this subsection shall prohibit a candidate, at a later date, from changing the designation of the office for which he or she is a candidate. However, if a candidate changes the designated office for which he or she is a candidate, the candidate must notify all contributors in writing of the intent to seek a different office and offer to return pro rata, upon their request, those contributions given in support of the original office sought. This notification shall be given within 15 days after the filing of the change of designation and shall include a standard form developed by the Division of Elections for requesting the return of contributions. The notice requirement shall not apply to any change in a numerical designation resulting solely from redistricting. If, within 30 days after being notified by the candidate of the intent to seek a different office, the contributor notifies the candidate in writing that the contributor wishes his or her contribution to be returned, the candidate shall return the contribution, on a pro rata basis, calculated as of the date the change of designation is filed. Any contributions not requested to be returned within the 30-day period may be used by the candidate for the newly designated office. No person shall accept any contribution or make any expenditure with a view to bringing about his or her nomination, election, or retention in public office, or authorize another to accept such contributions or make such expenditure on the person's behalf, unless such

person has appointed a campaign treasurer and designated a primary campaign depository. A candidate for an office voted upon statewide may appoint not more than 15 deputy campaign treasurers, and any other candidate or political committee may appoint not more than 3 deputy campaign treasurers. The names and addresses of the campaign treasurer and deputy campaign treasurers so appointed shall be filed with the officer before whom such candidate is required to qualify or with whom such political committee is required to register pursuant to s. 106.03.

(b) Except as provided in paragraph (d), each candidate and each political committee shall also designate one primary campaign depository for the purpose of depositing all contributions received, and disbursing all expenditures made, by the candidate or political committee. The candidate or political committee may also designate one secondary depository in each county in which an election is held in which the candidate or committee participates. Secondary depositories shall be for the sole purpose of depositing contributions and forwarding the deposits to the primary campaign depository. Any bank, savings and loan association, or credit union authorized to transact business in this state may be designated as a campaign depository. The candidate or political committee shall file the name and address of each primary and secondary depository so designated at the same time that, and with the same officer with whom, the candidate or committee files the name of

his, her, or its campaign treasurer pursuant to paragraph (a). In addition, the campaign treasurer or a deputy campaign treasurer may deposit any funds which are in the primary campaign depository and which are not then currently needed for the disbursement of expenditures into a separate interest-bearing account in any bank, savings and loan association, or credit union authorized to transact business in this state. The separate interest-bearing account shall be designated "(name of candidate or committee) separate interest-bearing campaign account." In lieu thereof, the campaign treasurer or deputy campaign treasurer may purchase a certificate of deposit with such unneeded funds in such bank, savings and loan association, or credit union. The separate interest-bearing account or certificate of deposit shall be separate from any personal or other account or certificate of deposit. Any withdrawal of the principal or earned interest or any part thereof shall only be made from the separate interest-bearing account or certificate of deposit for the purpose of transferring funds to the primary account and shall be reported as a contribution.

(c) Any campaign treasurer or deputy treasurer appointed pursuant to this section shall, before such appointment may become effective, have accepted appointment to such position in writing and filed such acceptance with the officer before whom the candidate is required to qualify or with the officer with whom the political committee is required to file reports. An individual may be appointed and serve as

campaign treasurer of a candidate and a political committee or two or more candidates and political committees. A candidate may appoint herself or himself as campaign treasurer.

(d) Any political committee which deposits all contributions received in a national depository from which the political committee receives funds to contribute to state and local candidates shall not be required to designate a campaign depository in the state.

(2) A candidate or political committee may remove his, her, or its campaign treasurer or any deputy treasurer. In case of the death, resignation, or removal of a campaign treasurer before compliance with all obligations of a campaign treasurer under this chapter, the candidate or political committee shall appoint a successor and certify the name and address of the successor in the manner provided in the case of an original appointment. No resignation shall be effective until it has been submitted to the candidate or committee in writing and a copy thereof has been filed with the officer before whom the candidate is required to qualify or the officer with whom the political committee is required to file reports. No treasurer or deputy treasurer shall be deemed removed by a candidate or political committee until written notice of such removal has been given to such treasurer or deputy treasurer and has been filed with the officer before whom such candidate is required to qualify or with the officer with whom such committee is required to file reports.

(3) No contribution or expenditure, including contributions or expenditures of a candidate or of the candidate's family, shall be directly or indirectly made or received in furtherance of the candidacy of any person for nomination or election to political office in the state or on behalf of any political committee except through the duly appointed campaign treasurer of the candidate or political committee, subject to the following exceptions:

(a) Independent expenditures;

(b) Reimbursements to a candidate or any other individual for expenses incurred in connection with the campaign or activities of the political committee by a check drawn upon the campaign account and reported pursuant to s. 106.07(4). The full name of each person to whom the candidate or other individual made payment for which reimbursement was made by check drawn upon the campaign account shall be reported pursuant to s. 106.07(4), together with the purpose of such payment;

(c) Expenditures made indirectly through a treasurer for goods or services, such as communications media placement or procurement services, campaign signs, insurance, or other expenditures that include multiple integral components as part of the expenditure and reported pursuant to s. 106.07(4)(a)13.; or

(d) Expenditures made directly by any political committee, affiliated party committee, or political party regulated by chapter 103 for obtaining time,

space, or services in or by any communications medium for the purpose of jointly endorsing three or more candidates, and any such expenditure shall not be considered a contribution or expenditure to or on behalf of any such candidates for the purposes of this chapter.

(4) A deputy campaign treasurer may exercise any of the powers and duties of a campaign treasurer as set forth in this chapter when specifically authorized to do so by the campaign treasurer and the candidate, in the case of a candidate, or the campaign treasurer and chair of the political committee, in the case of a political committee.

(5) For purposes of appointing a campaign treasurer and designating a campaign depository, candidates for the offices of Governor and Lieutenant Governor on the same ticket shall be considered a single candidate.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.021. Campaign treasurers; deputies; primary and secondary depositories [Effective November 1, 2013.]

(1) (a) Each candidate for nomination or election to office and each political committee shall appoint a campaign treasurer. Each person who seeks to qualify for nomination or election to, or retention

in, office shall appoint a campaign treasurer and designate a primary campaign depository before qualifying for office. Any person who seeks to qualify for election or nomination to any office by means of the petitioning process shall appoint a treasurer and designate a primary depository on or before the date he or she obtains the petitions. At the same time a candidate designates a campaign depository and appoints a treasurer, the candidate shall also designate the office for which he or she is a candidate. If the candidate is running for an office that will be grouped on the ballot with two or more similar offices to be filled at the same election, the candidate must indicate for which group or district office he or she is running. This subsection does not prohibit a candidate, at a later date, from changing the designation of the office for which he or she is a candidate. However, if a candidate changes the designated office for which he or she is a candidate, the candidate must notify all contributors in writing of the intent to seek a different office and offer to return pro rata, upon their request, those contributions given in support of the original office sought. This notification shall be given within 15 days after the filing of the change of designation and shall include a standard form developed by the Division of Elections for requesting the return of contributions. The notice requirement does not apply to any change in a numerical designation resulting solely from redistricting. If, within 30 days after being notified by the candidate of the intent to seek a different office, the contributor notifies the candidate in writing that the contributor wishes his

or her contribution to be returned, the candidate shall return the contribution, on a pro rata basis, calculated as of the date the change of designation is filed. Up to a maximum of the contribution limits specified in s. 106.08, a candidate who runs for an office other than the office originally designated may use any contribution that a donor does not request be returned within the 30-day period for the newly designated office, provided the candidate disposes of any amount exceeding the contribution limit pursuant to the options in s. 106.11(5)(b) and (c) or s. 106.141(4)(a)1., s. 106.141(4)(a)2., or s. 106.141(4)(a)4.; notwithstanding, the full amount of the contribution for the original office shall count toward the contribution limits specified in s. 106.08 for the newly designated office. A person may not accept any contribution or make any expenditure with a view to bringing about his or her nomination, election, or retention in public office, or authorize another to accept such contributions or make such expenditure on the person's behalf, unless such person has appointed a campaign treasurer and designated a primary campaign depository. A candidate for an office voted upon statewide may appoint not more than 15 deputy campaign treasurers, and any other candidate or political committee may appoint not more than 3 deputy campaign treasurers. The names and addresses of the campaign treasurer and deputy campaign treasurers so appointed shall be filed with the officer before whom such candidate is required to qualify or with whom such political committee is required to register pursuant to s. 106.03.

(b) Except as provided in paragraph (d), each candidate and each political committee shall also designate one primary campaign depository for the purpose of depositing all contributions received, and disbursing all expenditures made, by the candidate or political committee. The candidate or political committee may also designate one secondary depository in each county in which an election is held in which the candidate or committee participates. Secondary depositories shall be for the sole purpose of depositing contributions and forwarding the deposits to the primary campaign depository. Any bank, savings and loan association, or credit union authorized to transact business in this state may be designated as a campaign depository. The candidate or political committee shall file the name and address of each primary and secondary depository so designated at the same time that, and with the same officer with whom, the candidate or committee files the name of his, her, or its campaign treasurer pursuant to paragraph (a). In addition, the campaign treasurer or a deputy campaign treasurer may deposit any funds which are in the primary campaign depository and which are not then currently needed for the disbursement of expenditures into a separate interest-bearing account in any bank, savings and loan association, or credit union authorized to transact business in this state. The separate interest-bearing account shall be designated "(name of candidate or committee) separate interest-bearing campaign account." In lieu thereof, the campaign treasurer or deputy campaign treasurer may purchase a certificate

of deposit with such unneeded funds in such bank, savings and loan association, or credit union. The separate interest-bearing account or certificate of deposit shall be separate from any personal or other account or certificate of deposit. Any withdrawal of the principal or earned interest or any part thereof shall only be made from the separate interest-bearing account or certificate of deposit for the purpose of transferring funds to the primary account and shall be reported as a contribution.

(c) Any campaign treasurer or deputy treasurer appointed pursuant to this section shall, before such appointment may become effective, have accepted appointment to such position in writing and filed such acceptance with the officer before whom the candidate is required to qualify or with the officer with whom the political committee is required to file reports. An individual may be appointed and serve as campaign treasurer of a candidate and a political committee or two or more candidates and political committees. A candidate may appoint herself or himself as campaign treasurer.

(d) Any political committee which deposits all contributions received in a national depository from which the political committee receives funds to contribute to state and local candidates shall not be required to designate a campaign depository in the state.

(2) A candidate or political committee may remove his, her, or its campaign treasurer or any

deputy treasurer. In case of the death, resignation, or removal of a campaign treasurer before compliance with all obligations of a campaign treasurer under this chapter, the candidate or political committee shall appoint a successor and certify the name and address of the successor in the manner provided in the case of an original appointment. No resignation shall be effective until it has been submitted to the candidate or committee in writing and a copy thereof has been filed with the officer before whom the candidate is required to qualify or the officer with whom the political committee is required to file reports. No treasurer or deputy treasurer shall be deemed removed by a candidate or political committee until written notice of such removal has been given to such treasurer or deputy treasurer and has been filed with the officer before whom such candidate is required to qualify or with the officer with whom such committee is required to file reports.

(3) No contribution or expenditure, including contributions or expenditures of a candidate or of the candidate's family, shall be directly or indirectly made or received in furtherance of the candidacy of any person for nomination or election to political office in the state or on behalf of any political committee except through the duly appointed campaign treasurer of the candidate or political committee, subject to the following exceptions:

(a) Independent expenditures;

(b) Reimbursements to a candidate or any other individual for expenses incurred in connection with the campaign or activities of the political committee by a check drawn upon the campaign account and reported pursuant to s. 106.07(4). The full name of each person to whom the candidate or other individual made payment for which reimbursement was made by check drawn upon the campaign account shall be reported pursuant to s. 106.07(4), together with the purpose of such payment;

(c) Expenditures made indirectly through a treasurer for goods or services, such as communications media placement or procurement services, campaign signs, insurance, or other expenditures that include multiple integral components as part of the expenditure and reported pursuant to s. 106.07(4)(a)13.; or

(d) Expenditures made directly by any affiliated party committee, or political party regulated by chapter 103 for obtaining time, space, or services in or by any communications medium for the purpose of jointly endorsing three or more candidates, and any such expenditure shall not be considered a contribution or expenditure to or on behalf of any such candidates for the purposes of this chapter.

(4) A deputy campaign treasurer may exercise any of the powers and duties of a campaign treasurer as set forth in this chapter when specifically authorized to do so by the campaign treasurer and the candidate, in the case of a candidate, or the

campaign treasurer and chair of the political committee, in the case of a political committee.

(5) For purposes of appointing a campaign treasurer and designating a campaign depository, candidates for the offices of Governor and Lieutenant Governor on the same ticket shall be considered a single candidate.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.03. Registration of political committees and electioneering communications organizations [Effective until November 1, 2013.]

(1) (a) Each political committee that receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $ 500 or that seeks the signatures of registered electors in support of an initiative shall file a statement of organization as provided in subsection (3) within 10 days after its organization. If a political committee is organized within 10 days of any election, it shall immediately file the statement of organization required by this section.

(b) 1. Each group shall file a statement of organization as an electioneering communications organization within 24 hours after the date on which it makes expenditures for an electioneering communication in excess of $ 5,000, if such expenditures

are made within the timeframes specified in s. 106.011(18)(a)2. If the group makes expenditures for an electioneering communication in excess of $ 5,000 before the timeframes specified in s. 106.011(18)(a)2., it shall file the statement of organization within 24 hours after the 30th day before a primary or special primary election, or within 24 hours after the 60th day before any other election, whichever is applicable.

2. a. In a statewide, legislative, or multi-county election, an electioneering communications organization shall file a statement of organization with the Division of Elections.

b. In a countywide election or any election held on less than a countywide basis, except as described in sub-subparagraph c., an electioneering communications organization shall file a statement of organization with the supervisor of elections of the county in which the election is being held.

c. In a municipal election, an electioneering communications organization shall file a statement of organization with the officer before whom municipal candidates qualify.

d. Any electioneering communications organization that would be required to file a statement of organization in two or more locations need only file a statement of organization with the Division of Elections.

(2) The statement of organization shall include:

(a) The name, mailing address, and street address of the committee or electioneering communications organization;

(b) The names, street addresses, and relationships of affiliated or connected organizations;

(c) The area, scope, or jurisdiction of the committee or electioneering communications organization;

(d) The name, mailing address, street address, and position of the custodian of books and accounts;

(e) The name, mailing address, street address, and position of other principal officers, including the treasurer and deputy treasurer, if any;

(f) The name, address, office sought, and party affiliation of:

1. Each candidate whom the committee is supporting;

2. Any other individual, if any, whom the committee is supporting for nomination for election, or election, to any public office whatever;

(g) Any issue or issues the committee is supporting or opposing;

(h) If the committee is supporting the entire ticket of any party, a statement to that effect and the name of the party;

(i) A statement of whether the committee is a continuing one;

(j) Plans for the disposition of residual funds which will be made in the event of dissolution;

(k) A listing of all banks, safe-deposit boxes, or other depositories used for committee or electioneering communications organization funds;

(l) A statement of the reports required to be filed by the committee or the electioneering communications organization with federal officials, if any, and the names, addresses, and positions of such officials; and

(m) A statement of whether the electioneering communications organization was formed as a newly created organization during the current calendar quarter or was formed from an organization existing prior to the current calendar quarter. For purposes of this subsection, calendar quarters end the last day of March, June, September, and December.

(3) (a) A political committee which is organized to support or oppose statewide, legislative, or multicounty candidates or issues to be voted upon on a statewide or multicounty basis shall file a statement of organization with the Division of Elections.

(b) Except as provided in paragraph (c), a political committee which is organized to support or oppose candidates or issues to be voted on in a countywide election or candidates or issues in any election held on less than a countywide basis shall file a statement of organization with the supervisor of elections of the county in which such election is being held.

(c) A political committee which is organized to support or oppose only candidates for municipal office or issues to be voted on in a municipal election shall file a statement of organization with the officer before whom municipal candidates qualify.

(d) Any political committee which would be required under this subsection to file a statement of organization in two or more locations need file only with the Division of Elections.

(4) Any change in information previously submitted in a statement of organization shall be reported to the agency or officer with whom such committee or electioneering communications organization is required to register within 10 days following the change.

(5) Any committee which, after having filed one or more statements of organization, disbands or determines it will no longer receive contributions or make expenditures during the calendar year in an aggregate amount exceeding $ 500 shall so notify the agency or officer with whom such committee is required to file the statement of organization.

(6) If the filing officer finds that a political committee has filed its statement of organization consistent with the requirements of subsection (2), it shall notify the committee in writing that it has been registered as a political committee. If the filing officer finds that a political committee's statement of organization does not meet the requirements of subsection (2), it shall notify the committee of such finding and shall state in writing the reasons for rejection of the statement of organization.

(7) The Division of Elections shall adopt rules to prescribe the manner in which committees and electioneering communications organizations may be dissolved and have their registration canceled. Such rules shall, at a minimum, provide for:

(a) Notice which shall contain the facts and conduct which warrant the intended action, including but not limited to failure to file reports and limited activity.

(b) Adequate opportunity to respond.

(c) Appeal of the decision to the Florida Elections Commission. Such appeals shall be exempt from the confidentiality provisions of s. 106.25.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.03. Registration of political committees and electioneering communications organizations [Effective November 1, 2013.]

(1) (a) Each political committee that receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding $ 500 or that seeks the signatures of registered electors in support of an initiative shall file a statement of organization as provided in subsection (3) within 10 days after its organization. If a political committee is organized within 10 days of any election, it shall immediately file the statement of organization required by this section.

(b) 1. Each group shall file a statement of organization as an electioneering communications organization within 24 hours after the date on which it makes expenditures for an electioneering communication in excess of $ 5,000, if such expenditures are made within the timeframes specified in s. 106.011(8)(a)2. If the group makes expenditures for an electioneering communication in excess of $ 5,000 before the timeframes specified in s. 106.011(8)(a)2, it shall file the statement of organization within 24 hours after the 30th day before a primary or special primary election, or within 24 hours after the 60th day before any other election, whichever is applicable.

2. a. In a statewide legislative, or multicounty election, an electioneering communications organization shall file a statement of organization with the Division of Elections.

b. In a countywide election or any election held on less than a countywide basis, except as described in sub-subparagraph c., an electioneering communications organization shall file a statement of organization with the supervisor of elections of the county in which the election is being held.

c. In a municipal election, an electioneering communications organization shall file a statement of organization with the officer before whom municipal candidates qualify.

d. Any electioneering communications organization that would be required to file a statement of organization in two or more locations need only file a statement of organization with the Division of Elections.

(2) The statement of organization shall include:

(a) The name, mailing address, and street address of the committee or electioneering communications organization;

(b) The names, street addresses, and relationships of affiliated or connected organizations, including any affiliated sponsors;

(c) The area, scope, or jurisdiction of the committee or electioneering communications organization;

(d) The name, mailing address, street address, and position of the custodian of books and accounts;

(e) The name, mailing address, street address, and position of other principal officers, including the treasurer and deputy treasurer, if any;

(f) The name, address, office sought, and party affiliation of:

1. Each candidate whom the committee is supporting;

2. Any other individual, if any, whom the committee is supporting for nomination for election, or election, to any public office whatever,

(g) Any issue or issues the committee is supporting or opposing;

(h) If the committee is supporting the entire ticket of any party, a statement to that effect and the name of the party;

(i) A statement of whether the committee is a continuing one;

(j) Plans for the disposition of residual funds which will be made in the event of dissolution;

(k) A listing of all banks, safe-deposit boxes, or other depositories used for committee or electioneering communications organization funds;

(l) A statement of the reports required to be filed by the committee or the electioneering communications organization with federal officials, if any, and the names, addresses, and positions of such officials; and

(m) A statement of whether the electioneering communications organization was formed as a newly created organization during the current calendar quarter or was formed from an organization existing prior to the current calendar quarter. For purposes of this subsection, calendar quarters end the last day of March, June, September, and December.

(3) (a) A political committee which is organized to support or oppose statewide, legislative, or multicounty candidates or issues to be voted upon on a statewide or multicounty basis shall file a statement of organization with the Division of Elections.

(b) Except as provided in paragraph (c), a political committee which is organized to support or oppose candidates or issues to be voted on in a countywide election or candidates or issues in any election held on less than a countywide basis shall file a statement of organization with the supervisor of elections of the county in which such election is being held.

(c) A political committee which is organized to support or oppose only candidates for municipal office or issues to be voted on in a municipal election shall file a statement of organization with the officer before whom municipal candidates qualify.

(d) Any political committee which would be required under this subsection to file a statement of organization in two or more locations need file only with the Division of Elections.

(4) Any change in information previously submitted in a statement of organization shall be reported to the agency or officer with whom such committee or electioneering communications organization is required to register within 10 days following the change.

(5) Any committee which, after having filed one or more statements of organization, disbands or determines it will no longer receive contributions or make expenditures during the calendar year in an aggregate amount exceeding $ 500 shall so notify the agency or officer with whom such committee is required to file the statement of organization.

(6) If the filing officer finds that a political committee has filed its statement of organization consistent with the requirements of subsection (2), it shall notify the committee in writing that it has been registered as a political committee. If the filing officer finds that a political committee's statement of organization does not meet the requirements of subsection (2), it shall notify the committee of such finding and

shall state in writing the reasons for rejection of the statement of organization.

(7) The Division of Elections shall adopt rules to prescribe the manner in which committees and electioneering communications organizations may be dissolved and have their registration canceled. Such rules shall, at a minimum, provide for:

(a) Notice which shall contain the facts and conduct which warrant the intended action, including but not limited to failure to file reports and limited activity.

(b) Adequate opportunity to respond.

(c) Appeal of the decision to the Florida Elections Commission. Such appeals shall be exempt from the confidentiality provisions of s. 106.25.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.05. Deposit of contributions; statement of campaign treasurer [Effective until November 1, 2013.]

All funds received by the campaign treasurer of any candidate or political committee shall, prior to the end of the 5th business day following the receipt thereof, Saturdays, Sundays, and legal holidays excluded, be deposited in a campaign depository designated pursuant to s. 106.021, in an account

designated "(name of candidate or committee) Campaign Account." Except for contributions to political committees made by payroll deduction, all deposits shall be accompanied by a bank deposit slip containing the name of each contributor and the amount contributed by each. If a contribution is deposited in a secondary campaign depository, the depository shall forward the full amount of the deposit, along with a copy of the deposit slip accompanying the deposit, to the primary campaign depository prior to the end of the 1st business day following the deposit.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.05. Deposit of contributions; statement of campaign treasurer, [Effective November 1, 2013]

All funds received by the campaign treasurer of any candidate or political committee shall, prior to the end of the 5th business day following the receipt thereof, Saturdays, Sundays, and legal holidays excluded, be deposited in a campaign depository designated pursuant to s. 106.021, in an account that contains the name of the candidate or committee. Except for contributions to political committees made by payroll deduction, all deposits shall be accompanied by a bank deposit slip containing the name of each contributor and the amount contributed by each. If a contribution is deposited in a secondary campaign

depository, the depository shall forward the full amount of the deposit, along with a copy of the deposit slip accompanying the deposit, to the primary campaign depository prior to the end of the 1st business day following the deposit.

Fla. Stat. § 106.06. Treasurer to keep records; inspections

(1) The campaign treasurer of each candidate and the campaign treasurer of each political committee shall keep detailed accounts, current within not more than 2 days after the date of receiving a contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be set forth in a statement filed under this chapter. The campaign treasurer shall also keep detailed accounts of all deposits made in any separate interest-bearing account or certificate of deposit and of all withdrawals made therefrom to the primary depository and of all interest earned thereon.

(2) Accounts, including separate interest-bearing accounts and certificates of deposit, kept by the campaign treasurer of a candidate or political committee may be inspected under reasonable circumstances before, during, or after the election to which the accounts refer by any authorized representative of the Division of Elections or the Florida Elections Commission. The right of inspection may be

enforced by appropriate writ issued by any court of competent jurisdiction. The campaign treasurer of a political committee supporting a candidate may be joined with the campaign treasurer of the candidate as respondent in such a proceeding.

(3) Accounts kept by a campaign treasurer of a candidate shall be preserved by the campaign treasurer for a number of years equal to the term of office of the office to which the candidate seeks election. Accounts kept by a campaign treasurer of a political committee shall be preserved by such treasurer for at least 2 years after the date of the election to which the accounts refer.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.07. Reports; certification and filing [Effective until November 1, 2013.]

(1) Each campaign treasurer designated by a candidate or political committee pursuant to s. 106.021 shall file regular reports of all contributions received, and all expenditures made, by or on behalf of such candidate or political committee. Except for the third calendar quarter immediately preceding a general election, reports shall be filed on the 10th day following the end of each calendar quarter from the time the campaign treasurer is appointed, except that, if the 10th day following the end of a calendar quarter occurs on a Saturday,

Sunday, or legal holiday, the report shall be filed on the next following day which is not a Saturday, Sunday, or legal holiday. Quarterly reports shall include all contributions received and expenditures made during the calendar quarter which have not otherwise been reported pursuant to this section.

(a) Except as provided in paragraph (b), the reports shall also be filed on the 32nd, 18th, and 4th days immediately preceding the primary and on the 46th, 32nd, 18th, and 4th days immediately preceding the election, for a candidate who is opposed in seeking nomination or election to any office, for a political committee, or for a committee of continuous existence.

(b) Any statewide candidate who has requested to receive contributions pursuant to the Florida Election Campaign Financing Act or any statewide candidate in a race with a candidate who has requested to receive contributions pursuant to the act shall also file reports on the 4th, 11th, 18th, 25th, and 32nd days prior to the primary election, and on the 4th, 11th, 18th, 25th, 32nd, 39th, 46th, and 53rd days prior to the general election.

(c) Following the last day of qualifying for office, any unopposed candidate need only file a report within 90 days after the date such candidate became unopposed. Such report shall contain all previously unreported contributions and expenditures as required by this section and shall reflect disposition of funds as required by s. 106.141.

(d) 1. When a special election is called to fill a vacancy in office, all political committees making contributions or expenditures to influence the results of such special election or the preceding special primary election shall file campaign treasurers' reports with the filing officer on the dates set by the Department of State pursuant to s. 100.111.

2. When an election is called for an issue to appear on the ballot at a time when no candidates are scheduled to appear on the ballot, all political committees making contributions or expenditures in support of or in opposition to such issue, shall file reports on the 18th and 4th days prior to such election.

(e) The filing officer shall provide each candidate with a schedule designating the beginning and end of reporting periods as well as the corresponding designated due dates.

(2) (a) 1. All reports required of a candidate by this section shall be filed with the officer before whom the candidate is required by law to qualify. All candidates who file with the Department of State shall file their reports pursuant to s. 106.0705. Except as provided in s. 106.0705, reports shall be filed not later than 5 p.m. of the day designated; however, any report postmarked by the United States Postal Service no later than midnight of the day designated shall be deemed to have been filed in a timely manner. Any report received by the filing officer within 5 days after the designated due date that was delivered

by the United States Postal Service shall be deemed timely filed unless it has a postmark that indicates that the report was mailed after the designated due date. A certificate of mailing obtained from and dated by the United States Postal Service at the time of mailing, or a receipt from an established courier company, which bears a date on or before the date on which the report is due, shall be proof of mailing in a timely manner. Reports shall contain information of all previously unreported contributions received and expenditures made as of the preceding Friday, except that the report filed on the Friday immediately preceding the election shall contain information of all previously unreported contributions received and expenditures made as of the day preceding that designated due date All such reports shall be open to public inspection.

2. This subsection does not prohibit the governing body of a political subdivision, by ordinance or resolution, from imposing upon its own officers and candidates electronic filing requirements not in conflict with s. 106.0705. Expenditure of public funds for such purpose is deemed to be for a valid public purpose.

(b) 1. Any report that is deemed to be incomplete by the officer with whom the candidate qualities shall be accepted on a conditional basis. The campaign treasurer shall be notified by certified mail or by another method using a common carrier that provides a proof of delivery of the notice as to why the report is incomplete and within 7 days after receipt of

such notice must file an addendum to the report providing all information necessary to complete the report in compliance with this section. Failure to file a complete report after such notice constitutes a violation of this chapter.

2. Notice is deemed complete upon proof of delivery of a written notice to the mailing or street address of the campaign treasurer or registered agent of record with the filing officer.

(3) Reports required of a political committee shall be filed with the agency or officer before whom such committee registers pursuant to s. 106.03(3) and shall be subject to the same filing conditions as established for candidates' reports. Incomplete reports by political committees shall be treated in the manner provided for incomplete reports by candidates in subsection (2).

(4) (a) Each report required by this section must contain:

1. The full name, address, and occupation, if any of each person who has made one or more contributions to or for such committee or candidate within the reporting periods together with the amount and date of such contributions. For corporations, the report must provide as clear a description as practicable of the principal type of business conducted by the corporation. However, if the contribution is $ 100 or less or is from a relative, as defined in s. 112.312, provided that the relationship is reported,

the occupation of the contributor or the principal type of business need not be listed.

2. The name and address of each political committee from which the reporting committee or the candidate received, or to which the reporting committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers.

3. Each loan for campaign purposes to or from any person or political committee within the reporting period, together with the full names, addresses, and occupations, and principal places of business, if any, of the lender and endorsers, if any, and the date and amount of such loans.

4. A statement of each contribution, rebate, refund, or other receipt not otherwise listed under subparagraphs 1. through 3.

5. The total sums of all loans, in-kind contributions, and other receipts by or for such committee or candidate during the reporting period. The reporting forms shall be designed to elicit separate totals for in-kind contributions, loans, and other receipts.

6. The full name and address of each person to whom expenditures have been made by or on behalf of the committee or candidate within the reporting period; the amount, date, and purpose of each such expenditure; and the name and address of and office sought by, each candidate on whose behalf such expenditure was made. However, expenditures

made from the petty cash fund provided by s. 106.12 need not be reported individually.

7. The full name and address of each person to whom an expenditure for personal services, salary, or reimbursement for authorized expenses as provided in s. 106.021(3) has been made and which is not otherwise reported, including the amount, date, and purpose of such expenditure. However, expenditures made from the petty cash fund provided for in s. 106.12 need not be reported individually. Receipts for reimbursement for authorized expenditures shall be retained by the treasurer along with the records for the campaign account.

8. The total amount withdrawn and the total amount spent for petty cash purposes pursuant to this chapter during the reporting period.

9. The total sum of expenditures made by such committee or candidate during the reporting period.

10. The amount and nature of debts and obligations owed by or to the committee or candidate, which relate to the conduct of any political campaign.

11. Transaction information for each credit card purchase. Receipts for each credit card purchase shall be retained by the treasurer with the records for the campaign account.

12. The amount and nature of any separate interest-bearing accounts or certificates of deposit

and identification of the financial institution in which such accounts or certificates of deposit are located.

13. The primary purposes of an expenditure made indirectly through a campaign treasurer pursuant to s. 106.021(3) for goods and services such as communications media placement or procurement services, campaign signs, insurance, and other expenditures that include multiple components as part of the expenditure. The primary purpose of an expenditure shall be that purpose, including integral and directly related components, that comprises 80 percent of such expenditure.

(b) The filing officer shall make available to any candidate or committee a reporting form which the candidate or committee may use to indicate contributions received by the candidate or committee but returned to the contributor before deposit.

(5) The candidate and his or her campaign treasurer, in the case of a candidate, or the political committee chair and campaign treasurer of the committee, in the case of a political committee, shall certify as to the correctness of each report; and each person so certifying shall bear the responsibility for the accuracy and veracity of each report. Any campaign treasurer, candidate, or political committee chair who willfully certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) The records maintained by the campaign depository with respect to any campaign account regulated by this chapter are subject to inspection by an agent of the Division of Elections or the Florida Elections Commission at any time during normal banking hours, and such depository shall furnish certified copies of any of such records to the Division of Elections or Florida Elections Commission upon request.

(7) Notwithstanding any other provisions of this chapter, in any reporting period during, which a candidate, political committee, or committee of continuous existence has not received funds, made any contributions, or expended any reportable funds, the filing of the required report for that period is waived. However, the next report filed must specify that the report covers the entire period between the last submitted report and the report being filed, and any candidate, political committee, or committee of continuous existence not reporting by virtue of this subsection on dates prescribed elsewhere in this chapter shall notify the filing officer in writing on the prescribed reporting date that no report is being filed on that date.

(8) (a) Any candidate or political committee failing to file a report on the designated due date is subject to a fine as provided in paragraph (b) for each late day, and, in the case of a candidate, such fine shall be paid only from personal funds of the candidate. The fine shall be assessed by the filing officer and the moneys collected shall be deposited:

1. In the General Revenue Fund, in the case of a candidate for state office or a political committee that registers with the Division of Elections; or

2. In the general revenue fund of the political subdivision, in the case of a candidate for an office of a political subdivision or a political committee that registers with an officer of a political subdivision.

No separate fine shall be assessed for failure to file a copy of any report required by this section.

(b) Upon determining that a report is late, the filing officer shall immediately notify the candidate or chair of the political committee as to the failure to file a report by the designated due date and that a fine is being assessed for each late day. The fine shall be $ 50 per day for the first 3 days late and, thereafter, $ 500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. However, for the reports immediately preceding each special primary election, special election, primary election, and general election, the fine shall be $ 500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. For reports required under s. 106.141(7), the fine is $ 50 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. Upon receipt of the report,

the filing officer shall determine the amount of the fine which is due and shall notify the candidate or chair or registered agent of the political committee. The filing officer shall determine the amount of the fine due based upon the earliest of the following:

1. When the report is actually received by such officer.

2. When the report is postmarked.

3. When the certificate of mailing is dated.

4. When the receipt from an established courier company is dated.

5. When the electronic receipt issued pursuant to s. 106.0705 or other electronic filing system authorized in this section is dated.

Such fine shall be paid to the filing officer within 20 days after receipt of the notice of payment due, unless appeal is made, to the Florida Elections Commission pursuant to paragraph (c). Notice is deemed complete upon proof of delivery of written notice to the mailing or street address on record with the filing officer. In the case of a candidate, such fine shall not be an allowable campaign expenditure and shall be paid only from personal funds of the candidate. An officer or member of a political committee shall not be personally liable for such fine.

(c) Any candidate or chair of a political committee may appeal or dispute the fine, based

upon, but not limited to, unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the Florida Elections Commission, which shall have the authority to waive the fine in whole or in part. The Florida Elections Commission must consider the mitigating and aggravating circumstances contained in s. 106.265(2) when determining the amount of a fine, if any, to be waived. Any such request shall be made within 20 days after receipt of the notice of payment due. In such case, the candidate or chair of the political committee shall, within the 20-day period, notify the filing officer in writing of his or her intention to bring the matter before the commission.

(d) The appropriate filing officer shall notify the Florida Elections Commission of the repeated late filing by a candidate or political committee, the failure of a candidate or political committee to file a report after notice, or the failure to pay the fine imposed. The commission shall investigate only those alleged late filing violations specifically identified by the filing officer and as set forth in the notification. Any other alleged violations must be separately stated and reported by the division to the commission under s. 106.25(2).

(9) The Department of State may prescribe by rule the requirements for filing campaign treasurers' reports as set forth in this chapter.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.07. Reports; certification and filing [Effective November 1, 2013.]

(1) Each campaign treasurer designated by a candidate or political committee pursuant to s. 106.021 shall file regular reports of all contributions received, and all expenditures made, by or on behalf of such candidate or political committee. Except as provided in paragraphs (a) and (b), reports shall be filed on the 10th day following the end of each calendar month from the time the campaign treasurer is appointed, except that, if the 10th day following the end of a calendar month occurs on a Saturday, Sunday, or legal holiday, the report shall be filed on the next following day that is not a Saturday, Sunday, or legal holiday. Monthly reports shall include all contributions received and expenditures made during the calendar month which have not otherwise been reported pursuant to this section.

(a) A statewide candidate or a political committee required to file reports with the division must file reports:

1. On the 60th day immediately preceding the primary election, and each week thereafter, with the last weekly report being filed on the 4th day immediately preceding the general election.

2. On the 10th day immediately preceding the general election, and each day thereafter,

with the last daily report being filed the 5th day immediately preceding the general election.

(b) Any other candidate or a political committee required to file reports with a filing officer other than the division must file reports on the 60th day immediately preceding the primary election, and biweekly on each Friday thereafter through and including the 4th day immediately preceding the general election, with additional reports due on the 25th and 11th days before the primary election and the general election.

(c) Following the last clay of qualifying for office, any unopposed candidate need only file a report within 90 days after the date such candidate became unopposed. Such report shall contain all previously unreported contributions, and expenditures as required by this section and shall reflect disposition of funds as required by s. 106.141.

(d) 1. When a special election is called to fill a vacancy in office, all political committees making contributions or expenditures to influence the results of such special election or the preceding special primary election shall file campaign treasurers' reports with the filing officer on the dates set by the Department of State pursuant to s. 100.111.

2. When an election is called for an issue to appear on the ballot at a time when no candidates are scheduled to appear on the ballot, all political committees making contributions or expenditures in support of or in opposition to such issue shall

file reports on the 18th and 4th days before such election.

(e) The filing officer shall provide each candidate with a schedule designating the beginning and end of reporting periods as well as the corresponding designated due dates.

(2) (a) 1. All reports required of a candidate by this section shall be filed with the officer before whom the candidate is required by law to qualify. All candidates who file with the Department of State shall file their reports pursuant to s. 106.0705. Except as provided in s. 106.0705, reports shall be filed not later than 5 p.m. of the day designated; however, any report postmarked by the United States Postal Service no later than midnight of the day designated is deemed to have been filed in a timely manner. Any report received by the filing officer within 5 days after the designated due date that was delivered by the United States Postal Service is deemed timely filed unless it has a postmark that indicates that the report was mailed after the designated due date. A certificate of mailing obtained from and dated by the United States Postal Service at the time of mailing, or a receipt from an established courier company, which bears a date on or before the date on which the report is due, suffices as proof of mailing in a timely manner. Reports other than daily reports must contain information on all previously unreported contributions received and expenditures made as of the preceding Friday, except that the report filed on the Friday immediately preceding the election must

contain information on all previously unreported contributions received and expenditures made as of the day preceding that designated due date; daily reports must contain information on all previously unreported contributions received as of the preceding day. All such reports are open to public inspection.

2. This subsection does not prohibit the governing body of a political subdivision, by ordinance or resolution, from imposing upon its own officers and candidates electronic filing requirements not in conflict with s. 106.0705. Expenditure of public funds for such purpose is deemed to be for a valid public purpose.

(b) 1. Any report that is deemed to be incomplete by the officer with whom the candidate qualifies must be accepted on a conditional basis. The campaign treasurer shall be notified by certified mail or by another method using a common carrier that provides a proof of delivery of the notice as to why the report is incomplete and within 7 days after receipt of such notice must file an addendum to the report providing all information necessary to complete the report in compliance with this section. Failure to file a complete report after such notice constitutes a violation of this chapter.

2. Notice is deemed complete upon proof of delivery of a written notice to the mailing or street address of the campaign treasurer or registered agent of record with the filing officer.

(3) Reports required of a political committee shall be filed with the agency or officer before whom such committee registers pursuant to s. 106.03(3) and shall be subject to the same filing conditions as established for candidates' reports. Incomplete reports by political committees shall be treated in the manner provided for incomplete reports by candidates in subsection (2).

(4) (a) Except for daily reports, to which only the contributions provisions below apply, and except as provided in paragraph (b), each report required by this section must contain:

1. The full name, address, and occupation, if any of each person who has made one or more contributions to or for such committee or candidate within the reporting period, together with the amount and date of such contributions. For corporations, the report must provide as clear a description as practicable of the principal type of business conducted by the corporation. However, if the contribution is $ 100 or less or is from a relative, as defined in s. 112.312, provided that the relationship is reported, the occupation of the contributor or the principal type of business need not be listed.

2. The name and address of each political committee from which the reporting committee or the candidate received, or to which the reporting committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers.

3. Each loan for campaign purposes to or from any person or political committee within the reporting period, together with the full names, addresses, and occupations, and principal places of business, if any, of the lender and endorsers, if any, and the date and amount of such loans.

4. A statement of each contribution, rebate, refund, or other receipt not otherwise listed under subparagraphs 1. through 3.

5. The total sums of all loans, in-kind contributions, and other receipts by or for such committee or candidate during the reporting period. The reporting forms shall be designed to elicit separate totals for in-kind contributions, loans, and other receipts.

6. The full name and address of each person to whom expenditures have been made by or on behalf of the committee or candidate within the reporting period; the amount, date, and purpose of each such expenditure; and the name and address of and office sought by each candidate on whose behalf such expenditure was made. However, expenditures made from the petty cash fund provided by s. 106.12 need not be reported individually.

7. The full name and address of each person to whom an expenditure for personal services, salary, or reimbursement for authorized expenses as provided in s. 106.021(3) has been made and which is not otherwise reported, including the amount, date,

and purpose of such expenditure. However, expenditures made from the petty cash fund provided for in s. 106.12 need not be reported individually. Receipts for reimbursement for authorized expenditures shall be retained by the treasurer along with the records for the campaign account.

8. The total amount withdrawn and the total amount spent for petty cash purposes pursuant to this chapter during the reporting period.

9. The total sum of expenditures made by such committee or candidate during the reporting period.

10. The amount and nature of debts and obligations owed by or to the committee or candidate, which relate to the conduct of any political campaign.

11. Transaction information for each credit card purchase. Receipts for each credit card purchase shall be retained by the treasurer with the records for the campaign account.

12. The amount and nature of any separate interest-bearing accounts or certificates of deposit and identification of the financial institution in which such accounts or certificates of deposit are located.

13. The primary purposes of an expenditure made indirectly through a campaign treasurer pursuant to s. 106.021(3) for goods and services such as communications media placement or procurement services, campaign signs, insurance, and other expenditures that include multiple components as part

of the expenditure. The primary purpose of an expenditure shall be that purpose, including integral and directly related components, that comprises 80 percent of such expenditure.

(b) Multiple uniform contributions from the same person, aggregating no more than $ 250 per calendar year, collected by an organization that is the affiliated sponsor of a political committee, may be reported by the political committee in an aggregate amount listing the number of contributors together with the amount contributed by each and the total amount contributed during the reporting period. The identity of each person making such uniform contribution must be reported to the filing officer as provided in subparagraph (a)1. by July 1 of each calendar year, or, in a general election year, no later than the 60th day immediately preceding the primary election.

(c) The filing officer shall make available to any candidate or committee a reporting form which the candidate or committee may use to indicate contributions received by the candidate or committee but returned to the contributor before deposit.

(5) The candidate and his or her campaign treasurer, in the case of a candidate, or the political committee chair and campaign treasurer of the committee, in the case of a political committee, shall certify as to the correctness each report; and each person so certifying shall bear the responsibility for the accuracy and veracity of each report. Any campaign treasurer, candidate, or political committee

chair who willfully certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) The records maintained by the campaign depository with respect to any campaign account regulated by this chapter are subject to inspection by an agent of the Division of Elections or the Florida Elections Commission at any time during normal banking hours, and such depository shall furnish certified copies of any of such records to the Division of Elections or Florida Elections Commission upon request.

(7) Notwithstanding any other provisions of this chapter, in any reporting period during which a candidate or political committee has not received funds, made any contributions or expended any reportable funds, the filing of the required report for that period is waived. However, the next report filed must specify that the report covers the entire period between the last submitted report and the report being filed, and any candidate or political committee not reporting by virtue of this subsection on dates prescribed elsewhere in this chapter shall notify the filing officer in writing on the prescribed reporting date that no report is being filed on that date.

(8) (a) Any candidate or political committee failing to file a report on the designated due date is subject to a fine as provided in paragraph (b) for each

late day, and, in the case of a candidate, such fine shall be paid only from personal funds of the candidate. The fine shall be assessed by the filing officer and the moneys collected shall be deposited:

1. In the General Revenue Fund, in the case of a candidate for state office or a political committee that registers with the Division of Elections; or

2. In the general revenue fund of the political subdivision, in the case of a candidate for an office of a political subdivision or a political committee that registers with an officer of a political subdivision.

No separate fine shall be assessed for failure to file a copy of any report required by this section.

(b) Upon determining that a report is late, the filing officer shall immediately notify the candidate or chair of the political committee as to the failure to file a report by the designated due date and that a fine is being assessed for each late day. The fine is $ 50 per day for the first 3 days late and, thereafter, $ 500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. However, for the reports immediately preceding each special primary election, special election, primary election and general election, the fine is $ 500 per day for each late day, not to exceed 25 percent of the total receipts or expenditures, whichever is greater, for the period covered by the late report. For reports required under s. 106.141(8), the fine is $ 50 per day for each late day, not to exceed 25 percent of

the total receipts or expenditures, whichever is greater, for the period covered by the late report. Upon receipt of the report, the filing officer shall determine the amount of the fine which is due and shall notify the candidate or chair or registered agent of the political committee. The filing officer shall determine the amount of the fine due based upon the earliest of the following:

1. When the report is actually received by such officer.

2. When the report is postmarked.

3. When the certificate of mailing is dated.

4. When the receipt from an established courier company is dated.

5. When the electronic receipt issued pursuant to s. 106.0705 or other electronic filing system authorized in this section is dated.

Such fine shall be paid to the filing officer within 20 days after receipt of the notice of payment due, unless appeal is made to the Florida Elections Commission pursuant to paragraph (c). Notice is deemed complete upon proof of delivery of written notice to the mailing or street address on record with the filing officer. In the case of a candidate, such fine is not be an allowable campaign expenditure and shall be paid only from personal funds of the candidate. An officer or member of a political committee shall not be personally liable for such fine.

(c) Any candidate or chair of a political committee may appeal or dispute the fine, based upon, but not limited to, unusual circumstances surrounding the failure to file on the designated due date, and may request and shall be entitled to a hearing before the Florida Elections Commission, which shall have the authority to waive the fine in whole or in part. The Florida Elections Commission must consider the mitigating and aggravating circumstances contained in s. 106.265(2) when determining the amount of a fine, if any, to be waived. Any such request shall be made within 20 days after receipt of the notice of payment due. In such case, the candidate or chair of the political committee shall, within the 20-day period, notify the filing officer in writing of his or her intention to bring the matter before the commission.

(d) The appropriate filing officer shall notify the Florida Elections Commission of the repeated late filing by a candidate or political committee, the failure of a candidate or political committee to file a report after notice, or the failure to pay the fine imposed. The commission shall investigate only those alleged late filing violations specifically identified by the filing officer and as set forth in the notification. Any other alleged violations must be separately stated and reported by the division to the commission under s. 106.25(2).

(9) The Department of State may prescribe by rule the requirements for filing campaign treasurers' reports as set forth in this chapter.

Fla. Stat. § 106.071. Independent expenditures; electioneering communications; reports; disclaimers

(1) Each person who makes an independent expenditure with respect to any candidate or issue, and each individual who makes an expenditure for an electioneering communication which is not otherwise reported pursuant to this chapter, which expenditure, in the aggregate, is in the amount of $ 5,000 or more, shall file periodic reports of such expenditures in the same manner, at the same time, subject to the same penalties, and with the same officer as a political committee supporting or opposing such candidate or issue. The report shall contain the full name and address of the person making the expenditure; the full name and address of each person to whom and for whom each such expenditure has been made; the amount, date, and purpose of each such expenditure; a description of the services or goods obtained by each such expenditure; the issue to which the expenditure relates; and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made.

(2) Any political advertisement paid for by an independent expenditure shall prominently state "Paid political advertisement paid for by (Name and address of person paying for advertisement) independently of any (candidate or committee)."

(3) Subsection (2) does not apply to novelty items having a retail value of $ 10 or less which support; but do not oppose, a candidate or issue.

(4) Any person who fails to include the disclaimer prescribed in subsection (2) in any political advertisement that is required to contain such disclaimer commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.08. Contributions; limitations on [Effective until November 1, 2013.]

(1) (a) Except for political parties or affiliated party committees, no person, political committee, or committee of continuous existence may, in any election, make contributions in excess of $ 500 to any candidate for election to or retention in office or to any political committee supporting or opposing one or more candidates. Candidates for the offices of Governor and Lieutenant Governor on the same ticket are considered a single candidate for the purpose of this section.

(b) 1. The contribution limits provided in this subsection do not apply to contributions made by a state or county executive committee of a political party or affiliated party committee regulated by chapter 103 or to amounts contributed by a candidate to his or her own campaign.

2. Notwithstanding the limits provided in this subsection, an unemancipated child under the

age of 18 years of age may not make a contribution in excess of $ 100 to any candidate or to any political committee supporting one or more candidates.

(c) The contribution limits of this subsection apply to each election. For purposes of this subsection, the primary election and general election are separate elections so long as the candidate is not an unopposed candidate as defined in s. 106.011(15). However, for the purpose of contribution limits with respect to candidates for retention as a justice or judge, there is only one election, which is the general election.

(2) (a) A candidate may not accept contributions from national, state. or county executive committees of a political party, including any subordinate committee of such political party or affiliated party committees, which contributions in the aggregate exceed $ 50,000.

(b) A candidate for statewide office may not accept contributions from national, state, or county executive committees of a political party, including any subordinate committee of the political party, or affiliated party committees, which contributions in the aggregate exceed $ 250,000. Polling services, research services, costs for campaign staff, professional consulting services, and telephone calls are not contributions to be counted toward the contribution limits of paragraph (a) or this paragraph. Any item not expressly identified in this paragraph as nonallocable is a contribution in an amount equal to

the fair market value of the item and must be counted as allocable toward the contribution limits of paragraph (a) or this paragraph. Nonallocable, in-kind contributions must be reported by the candidate under s. 106.07 and by the political party or affiliated party committee under s. 106.29.

(3) (a) Any contribution received by a candidate with opposition in an election or by the campaign treasure or a deputy campaign treasurer of such a candidate on the day of that election or less than 5 days prior to the day of that election must be returned by him or her to the person or committee contributing it and may not be used or expended by or on behalf of the candidate.

(b) Any contribution received by a candidate or by the campaign treasurer or a deputy campaign treasurer of a candidate after the date at which the candidate withdraws his or her candidacy, or after the date the candidate is defeated, becomes unopposed, or is elected to office must be returned to the person or committee contributing it and may not be used or expended by or on behalf of the candidate.

(4) Any contribution received by the chair, campaign treasurer, or deputy campaign treasurer of a political committee supporting or opposing a candidate with opposition in all election or supporting or opposing an issue on the ballot in an election on the day of that election or less than 5 days prior to the day of that election may not be obligated or expended by the committee until after the date of the election.

(5) (a) A person may not make any contribution through or in the name of another, directly or indirectly, in any election.

(b) Candidates, political committees, affiliated party committees, and political parties may not solicit contributions from any religious, charitable, civic, or other causes or organizations established primarily for the public good.

(c) Candidates, political committees, affiliated party committees, and political parties may not make contributions, in exchange for political support, to any religious, charitable, civic, or other cause or organization established primarily for the public good. It is not a violation of this paragraph for:

1. A candidate, political committee, affiliated party committee, or political party executive committee to make gifts of money in lieu of flowers in memory of a deceased person;

2. A candidate to continue membership in, or make regular donations from personal or business funds to, religious, political party, affiliated party committee, civic, or charitable groups of which the candidate is a member or to which the candidate has been a regular donor for more than 6 months; or

3. A candidate to purchase, with campaign funds, tickets, admission to events, or advertisements from religious, civic, political party, affiliated party committee, or charitable groups.

(6) (a) A political party or affiliated party committee may not accept any contribution that has been specifically designated for the partial or exclusive use of a particular candidate. Any contribution so designated must be returned to the contributor and may not be used or expended by or on behalf of the candidate. Funds contributed to an affiliated party committee shall not be deemed as designated for the partial or exclusive use of a leader as defined in s. 103.092.

(b) 1. A political party or affiliated party committee may not accept any in-kind contribution that fails to provide a direct benefit to the political party or affiliated party committee. A "direct benefit" includes, but is not limited to, fundraising or furthering the objectives of the political party or affiliated party committee.

2. a. An in-kind contribution to a state political party may be accepted only by the chairperson of the state political party or by the chairperson's designee or designees whose names are on file with the division in a form acceptable to the division prior to the date of the written notice required in sub-subparagraph b. An in-kind contribution to a county political party may be accepted only by the chairperson of the county political party or by the county chairperson's designee or designees whose names are on file with the supervisor of elections of the respective county prior to the date of the written notice required in sub-subparagraph b. An in-kind contribution to an affiliated party committee may be

accepted only by the leader of the affiliated party committee as defined in s. 103.092 or by the leader's designee or designees whose names are on file with the division in a form acceptable to the division prior to the date of the written notice required in sub-subparagraph b.

b. A person making, an in-kind contribution to a state or county political party or affiliated party committee must provide prior written notice of the contribution to a person described in sub-subparagraph a. The prior written notice must be signed and dated and may be provided by an electronic or facsimile message. However, prior written notice is not required for an in-kind contribution that consists of food and beverage in an aggregate amount not exceeding $ 1,500 which is consumed at a single sitting or event if such in-kind contribution is accepted in advance by a person specified in sub-subparagraph a.

c. A person described in sub-subparagraph a. may accept an in-kind contribution requiring prior written notice only in a writing that is dated before the in-kind contribution is made. Failure to obtain the required written acceptance of an in-kind contribution to a state or county political party or affiliated party committee constitutes a refusal of the contribution.

d. A copy of each prior written acceptance required under sub-subparagraph c. must be filed at the time the regular reports of contributions

and expenditures required under s. 106.29 are filed by the state executive committee, county executive committee, and affiliated party committee. A state executive committee and an affiliated party committee must file with the division. A county executive committee must file with the county's supervisor of elections.

e. An in-kind contribution may not be given to a state or county political party or affiliated party committee unless the in-kind contribution is made as provided in this subparagraph.

(7) (a) Any person who knowingly and willfully makes or accepts no more than one contribution in violation of subsection (1) or subsection (5), or any person who knowingly and willfully fails or refuses to return any contribution as required in subsection (3), commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If any corporation, partnership, or other business entity or any political party, affiliated party committee, political committee, committee of continuous existence, or electioneering communications organization is convicted of knowingly and willfully violating any provision punishable under this paragraph, it shall be fined not less than $ 1,000 and not more than $ 10,000. If it is a domestic entity, it may be ordered dissolved by a court of competent jurisdiction; if it is a foreign or nonresident business entity, its right to do business in this state may be forfeited. Any officer, partner, agent, attorney, or other representative of a corporation, partnership, or other business entity, or

of a political party, affiliated party committee, political committee, committee of continuous existence, electioneering communications organization, or organization exempt from taxation under s. 527 or s. 501(c) of the Internal Revenue Code, who aids, abets, advises, or participates in a violation of any provision punishable under this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who knowingly and willfully makes or accepts two or more contributions in violation of subsection (1) or subsection (5) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If any corporation, partnership, or other business entity or any political party, affiliated party committee, political committee, committee of continuous existence, or electioneering communications organization is convicted of knowingly and willfully violating any provision punishable under this paragraph, it shall be fined not less than $ 10,000 and not more than $ 50,000. If it is a domestic entity, it may be ordered dissolved by a court of competent jurisdiction; if it is a foreign or nonresident business entity, its right to do business in this state may be forfeited. Any officer, partner, agent, attorney or other representative of a corporation, partnership, or other business entity, or of a political committee, committee of continuous existence, political party, affiliated party committee, or electioneering communications organization, or organization exempt from taxation under s. 527 or s. 501(c)(4) of the Internal Revenue Code, who aids,

abets, advises, or participates in a violation of any provision punishable under this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) Except when otherwise provided in subsection (7), any person who knowingly and willfully violates any provision of this section shall, in addition to any other penalty prescribed by this chapter, pay to the state a sum equal to twice the amount contributed in violation of this chapter. Each campaign treasurer shall pay all amounts contributed in violation of this section to the state for deposit in the General Revenue Fund.

(9) This section does not apply to the transfer of funds between a primary campaign depository and a savings account or certificate of deposit or to any interest earned on such account or certificate.

(10) Contributions to a political committee or committee of continuous existence may be received by an affiliated organization and transferred to the bank account of the political committee or committee of continuous existence via check written from the affiliated organization if such contributions are specifically identified as intended to be contributed to the political committee or committee of continuous existence. All contributions received in this manner shall be reported pursuant to s. 106.07 by the political committee or committee of continuous existence as having been made by the original contributor.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.08. Contributions; limitations on [Effective November 1, 2013.]

(1) (a) Except for political parties or affiliated party committees, no person or political committee may, in any election, make contributions in excess of the following amounts:

1. To a candidate for statewide office or for retention as a justice of the Supreme Court, $ 3,000. Candidates for the offices of Governor and Lieutenant Governor on the same ticket are considered a single candidate for the purpose of this section.

2. To a candidate for retention as a judge of a district court of appeal; a candidate for legislative office; a candidate for multicounty office; a candidate for countywide office or in any election conducted on less than a countywide basis; or a candidate for county court judge or circuit judge, $ 1,000.

(b) The contribution limits provided in this subsection do not apply to contributions made by a state or county executive committee of a political party or affiliated party committee regulated by chapter 103 or to amounts contributed by a candidate to his or her own campaign.

(c) The contribution limits of this subsection apply to each election. For purposes of this subsection, the primary election and general election

are separate elections so long as the candidate is not an unopposed candidate as defined in *s.* 106.011. However, for the purpose of contribution limits with respect to candidates for retention as a justice or judge, there is only one election, which is the general election.

(2) (a) A candidate may not accept contributions from a county executive committee of a political party whose contributions in the aggregate exceed $ 50,000, or from the national or state executive committees of a political party, including any subordinate committee of such political party or affiliated party committees, whose contributions in the aggregate exceed $ 50,000.

(b) A candidate for statewide office may not accept contributions from national, state, or county executive committees of a political party, including any subordinate committee of the political party, or affiliated party committees, which contributions in the aggregate exceed $ 250,000. Polling services, research services, costs for campaign staff, professional consulting services, and telephone calls are not contributions to be counted toward the contribution limits of paragraph (a) or this paragraph. Any item not expressly identified in this paragraph as nonallocable is a contribution in an amount equal to the fair market value of the item and must be counted as allocable toward the contribution limits of paragraph (a) or this paragraph. Nonallocable, in-kind contributions must be reported by the candidate

under *s*. 106.07 and by the political party or affiliated party committee under s. 106.29.

(3) (a) Any contribution received by a candidate with opposition in an election or by the campaign treasurer or a deputy campaign treasurer of such a candidate on the day of that election or less than 5 days before to the day of that election must be returned by him or her to the person or committee contributing it and may not be used or expended by or on behalf of the candidate.

(b) Any contribution received by a candidate or by the campaign treasurer or a deputy campaign treasurer of a candidate after the date at which the candidate withdraws his or her candidacy, or after the date the candidate is defeated, becomes unopposed, or is elected to office must be returned to the person or committee contributing it and may not be used or expended by or on behalf of the candidate.

(4) Any contribution received by the chair, campaign treasurer, or deputy campaign treasurer of a political committee supporting or opposing a candidate with opposition in an election or supporting or opposing an issue on the ballot in an election on the day of that election or less than 5 days before the day of that election may not be obligated or expended by the committee until after the date of the election.

(5) (a) A person may not make any contribution through or in the name of another, directly or indirectly, in any election.

(b) Candidates, political committees, affiliated party committees, and political parties may not solicit contributions from any religious, charitable, civic, or other causes or organizations established primarily for the public good.

(c) Candidates, political committees, affiliated party committees, and political parties may not make contributions, in exchange for political support, to any religious, charitable, civic, or other cause or organization established primarily for the public good. It is not a violation of this paragraph for:

1. A candidate, political committee, affiliated party committee, or political party executive committee to make gifts of money in lieu of flowers in memory of a deceased person;

2. A candidate to continue membership in, or make regular donations from personal or business funds to, religious, political party, affiliated party committee, civic, or charitable groups of which the candidate is a member or to which the candidate has been a regular donor for more than 6 months; or

3. A candidate to purchase, with campaign funds, tickets, admission to events, or advertisements from religious, civic, political party, affiliated party committee, or charitable groups.

(6) (a) A political party or affiliated party committee may not accept any contribution that has been specifically designated for the partial or exclusive use of a particular candidate. Any contribution so

designated must be returned to the contributor and may not be used or expended by or on behalf of the candidate. Funds contributed to an affiliated party committee may not be designated for the partial or exclusive use of a leader as defined in *s.* 103.092.

(b) 1. A political party or affiliated party committee may not accept any in-kind contribution that fails to provide a direct benefit to the political party or affiliated party committee. A "direct benefit" includes, but is not limited to, fundraising or furthering the objectives of the political party or affiliated party committee.

2. a. An in-kind contribution to a state political party may be accepted only by the chairperson of the state political party or by the chairperson's designee or designees whose names are on file with the division in a form acceptable to the division before the date of the written notice required in sub-subparagraph b. An in-kind contribution to a county political party may be accepted only by the chairperson of the county political party or by the county chairperson's designee or designees whose names are on file with the supervisor of elections of the respective county before the date of the written notice required in sub-subparagraph b. An in-kind contribution to an affiliated party committee may be accepted only by the leader of the affiliated party committee as defined in *s.* 103.092 or by the leader's designee or designees whose names are on file with the division in a form acceptable to the division before the date of the written notice required in sub-subparagraph b.

b. A person making an in-kind contribution to a state or county political party or affiliated party committee must provide prior written notice of the contribution to a person described in sub-subparagraph a. The prior written notice must be signed and dated and may be provided by an electronic or facsimile message. However, prior written notice is not required for an in-kind contribution that consists of food and beverage in an aggregate amount not exceeding $ 1,500 which is consumed at a single sitting or event if such in-kind contribution is accepted in advance by a person specified in sub-subparagraph a.

c. A person described in sub-subparagraph a. may accept an in-kind contribution requiring prior written notice only in a writing that is dated before the in-kind contribution is made. Failure to obtain the required written acceptance of an in-kind contribution to a state or county political party or affiliated party committee constitutes a refusal of the contribution.

d. A copy of each prior written acceptance required under sub-subparagraph c. must be filed at the time the regular reports of contributions and expenditures required under *s.* 106.29 are filed by the state executive committee, county executive committee, and affiliated party committee. A state executive committee and an affiliated party committee must file with the division. A county executive committee must file with the county's supervisor of elections.

e. An in-kind contribution may not be given to a state or county political party or affiliated party committee unless the in-kind contribution is made as provided in this subparagraph.

(7) (a) Any person who knowingly and willfully makes or accepts no more than one contribution in violation of subsection (1) or subsection (5), or any person who knowingly and willfully fails or refuses to return any contribution as required in subsection (3), commits a misdemeanor of the first degree, punishable as provided in *s.* 775.082 or s. 775.083. If any corporation, partnership, or other business entity or any political party, affiliated party committee, political committee, or electioneering communications organization is convicted of knowingly and willfully violating any provision punishable under this paragraph, it shall be fined not less than $ 1,000 and not more than $ 10,000. If it is a domestic entity, it may be ordered dissolved by a court of competent jurisdiction; if it is a foreign or nonresident business entity, its right to do business in this state may be forfeited. Any officer, partner, agent, attorney, or other representative of a corporation, partnership, or other business entity, or of a political party, affiliated party committee, political committee, electioneering communications organization, or organization exempt from taxation under s. 527 or s. 501(c)(4) of the Internal Revenue Code, who aids, abets, advises, or participates in a violation of any provision punishable under this paragraph commits a misdemeanor of the first degree, punishable as provided in *s.* 775.082 or s. 775.083.

(b) Any person who knowingly and willfully makes or accepts two or more contributions in violation of subsection (1) or subsection (5) commits a felony of the third degree, punishable as provided in *s.* 775.082, s. 775.083, or s. 775.084. If any corporation, partnership, or other business entity or any political party, affiliated party committee, political committee, or electioneering communications organization is convicted of knowingly and willfully violating any provision punishable under this paragraph, it shall be fined not less than $ 10,000 and not more than $ 50,000. If it is a domestic entity, it may be ordered dissolved by a court of competent jurisdiction; if it is a foreign or nonresident business entity, its right to do business in this state may be forfeited. Any officer, partner, agent, attorney, or other representative of a corporation, partnership, or other business entity, or of a political committee, political party, affiliated party committee, or electioneering communications organization, or organization exempt from taxation under s. 527 or *s.* 501(c)(4) of the Internal Revenue Code, who aids, abets, advises, or participates in a violation of any provision punishable under this paragraph commits a felony of the third degree, punishable as provided in *s.* 775.082, s. 775.083, or s. 775.084.

(8) Except when otherwise provided in subsection (7), any person who knowingly and willfully violates any provision of this section shall, in addition to any other penalty prescribed by this chapter, pay to the state a sum equal to twice the amount contributed in violation of this chapter. Each campaign

treasurer shall pay all amounts contributed in violation of this section to the state for deposit in the General Revenue Fund.

(9) This section does not apply to the transfer of funds between a primary campaign depository and a savings account or certificate of deposit or to any interest earned on such account or certificate.

(10) Contributions to a political committee may be received by an affiliated organization and transferred to the bank account of the political committee via check written from the affiliated organization if such contributions are specifically identified as intended to be contributed to the political committee. All contributions received in this manner shall be reported pursuant to *s.* 106.07 by the political committee as having been made by the original contributor.

Fla. Stat. § 106.09. Cash contributions and contribution by cashier's checks

(1) (a) A person may not make an aggregate cash contribution or contribution by means of a cashier's check to the same candidate or committee in excess of $ 50 per election.

(b) A person may not accept an aggregate cash contribution or contribution by means of a cashier's check from the same contributor in excess of $ 50 per election.

(2) (a) Any person who makes or accepts a contribution in violation of subsection (1) commits a misdemeanor of the first degree, punishable as provided in *s.* 775.082 or s. 775.083.

(b) Any person who knowingly and willfully makes or accepts a contribution in excess of $ 5,000 in violation of subsection (1) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.11. Expenses of and expenditures by candidates and political committees [Effective until November 1, 2013.]

Each candidate and each political committee which designates a primary campaign depository pursuant to *s.* 106.021(1) shall make expenditures from funds on deposit in such primary campaign depository only in the following manner, with the exception of expenditures made from petty cash funds provided by s. 106.12:

(1) (a) The campaign treasurer or deputy campaign treasurer of a candidate or political committee shall make expenditures from funds on deposit in the primary campaign depository only by means of a bank check drawn upon the campaign account of the candidate or political committee. The campaign account shall be separate from any personal or other

account and shall be used only for the purpose of depositing contributions and making expenditures for the candidate or political committee.

(b) The checks for such account shall contain, as a minimum, the following information:

1. The statement " (name of candidate or political committee) Campaign Account."

2. The account number and the name of the bank.

3. The exact amount of the expenditure.

4. The signature of the campaign treasurer or deputy treasurer.

5. The exact purpose for which the expenditure is authorized.

6. The name of the payee.

(2) (a) For purposes of this section, debit cards are considered bank checks, if:

1. Debit cards are obtained from the same bank that has been designated as the candidate's or political committee's primary campaign depository.

2. Debit cards are issued in the name of the treasurer, deputy treasurer, or authorized user and state " (name of candidate or political committee) Campaign Account."

3. No more than three debit cards are requested and issued.

4. The person using the debit card does not receive cash as part of, or independent of, any transaction for goods or services.

5. All receipts for debit card transactions contain:

a. The last four digits of the debit card number.

b. The exact amount of the expenditure.

c. The name of the payee.

d. The signature of the campaign treasurer, deputy treasurer, or authorized user.

e. The exact purpose for which the expenditure is authorized.

Any information required by this subparagraph but not included on the debit card transaction receipt may be handwritten on, or attached to, the receipt by the authorized user before submission to the treasurer.

(b) Debit cards are not subject to the requirements of paragraph (1)(b).

(3) The campaign treasurer, deputy treasurer, or authorized user who signs the check shall be responsible for the completeness and accuracy of the

information on such check and for insuring that such expenditure is an authorized expenditure.

(4) No candidate, campaign manager, treasurer, deputy treasurer, or political committee or any officer or agent thereof, or any person acting on behalf of any of the foregoing, shall authorize any expenses, nor shall any campaign treasurer or deputy treasurer sign a check drawn on the primary campaign account for any purpose, unless there are sufficient funds on deposit in the primary depository account of the candidate or political committee to pay the full amount of the authorized expense, to honor all other checks drawn on such account, which checks are outstanding, and to meet all expenses previously authorized but not yet paid. However, an expense may be incurred for the purchase of goods or services if there are sufficient funds on deposit in the primary depository account to pay the full amount of the incurred expense, to honor all checks drawn on such account, which checks are outstanding, and to meet all other expenses previously authorized but not yet paid, provided that payment for such goods or services is made upon final delivery and acceptance of the goods or services; and an expenditure from petty cash pursuant to the provisions of *s.* 106.12 may be authorized, if there is a sufficient amount of money in the petty cash fund to pay for such expenditure. Payment for credit card purchases shall be made pursuant to s. 106.125. Any expense incurred or authorized in excess of such funds on deposit shall, in addition to other penalties provided by law, constitute

a violation of this chapter. As used in this subsection, the term "sufficient funds on deposit in the primary depository account of the candidate or political committee" means that the funds at issue have been delivered for deposit to the financial institution at which such account is maintained. The term shall not be construed to mean that such funds are available for withdrawal in accordance with the deposit rules or the funds availability policies of such financial institution.

(5) A candidate who withdraws his or her candidacy, becomes an unopposed candidate, or is eliminated as a candidate or elected to office may expend funds from the campaign account to:

(a) Purchase "thank you" advertising for up to 75 days after he or she withdraws, becomes unopposed, or is eliminated or elected.

(b) Pay for items which were obligated before he or she withdrew, became unopposed, or was eliminated or elected.

(c) Pay for expenditures necessary to close down the campaign office and to prepare final campaign reports.

(d) Dispose of surplus funds as provided in *s.* 106.141.

(6) A candidate who makes a loan to his or her campaign and reports the loan as required by s. 106.07 may be reimbursed for the loan at any time

the campaign account has sufficient funds to repay the loan and satisfy its other obligations.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.11 Expenses of and expenditures by candidates and political committees [Effective November 1, 2013.]

Each candidate and each political committee which designates a primary campaign depository pursuant to *s*. 106.021(1) shall make expenditures from funds on deposit in such primary campaign depository only in the following manner, with the exception of expenditures made from petty cash funds provided by s. 106.12:

(1) (a) The campaign treasurer or deputy campaign treasurer of a candidate or political committee shall make expenditures from funds on deposit in the primary campaign depository only by means of a bank check drawn upon the campaign account of the candidate or political committee. The campaign account shall be separate from any personal or other account and shall be used only for the purpose of depositing contributions and making expenditures for the candidate or political committee.

(b) The checks for such account shall contain, as a minimum, the following information:

1. The name of the campaign account of the candidate or political committee.

2. The account number and the name of the bank.

3. The exact amount of the expenditure.

4. The signature of the campaign treasurer or deputy treasurer.

5. The exact purpose for which the expenditure is authorized.

6. The name of the payee.

(2) (a) For purposes of this section, debit cards are considered bank checks, if:

1. Debit cards are obtained from the same bank that has been designated as the candidate's or political committee's primary campaign depository.

2. Debit cards are issued in the name of the treasurer, deputy treasurer, or authorized user and contain the name of the campaign account of the candidate or political committee.

3. No more than three debit cards are requested and issued.

4. The person using the debit card does not receive cash as part of, or independent of, any transaction for goods or services.

5. All receipts for debit card transactions contain:

a. The last four digits of the debit card number.

b. The exact amount of the expenditure.

c. The name of the payee.

d. The signature of the campaign treasurer, deputy treasurer, or authorized user.

e. The exact purpose for which the expenditure is authorized.

Any information required by this subparagraph but not included on the debit card transaction receipt may be handwritten on, or attached to, the receipt by the authorized user before submission to the treasurer.

(b) Debit cards are not subject to the requirements of paragraph (1)(b).

(3) The campaign treasurer, deputy treasurer, or authorized user who signs the check shall be responsible for the completeness and accuracy of the information on such check and for insuring that such expenditure is an authorized expenditure.

(4) No candidate, campaign manager, treasurer, deputy treasurer, or political committee or any officer or agent thereof, or any person acting on behalf of any of the foregoing, shall authorize any

expenses, nor shall any campaign treasurer or deputy treasurer sign a check drawn on the primary campaign account for any purpose, unless there are sufficient funds on deposit in the primary depository account of the candidate or political committee to pay the full amount of the authorized expense, to honor all other checks drawn on such account, which checks are outstanding, and to meet all expenses previously authorized but not yet paid. However, an expense may be incurred for the purchase of goods or services if there are sufficient funds on deposit in the primary depository account to pay the full amount of the incurred expense, to honor all checks drawn on such account, which checks are outstanding, and to meet all other expenses previously authorized but not yet paid, provided that payment for such goods or services is made upon final delivery and acceptance of the goods or services; and an expenditure from petty cash pursuant to the provisions of *s.* 106.12 may be authorized, if there is a sufficient amount of money in the petty cash fund to pay for such expenditure. Payment for credit card purchases shall be made pursuant to s. 106.125. Any expense incurred or authorized in excess of such funds on deposit shall, in addition to other penalties provided by law, constitute a violation of this chapter. As used in this subsection, the term "sufficient funds on deposit in the primary depository account of the candidate or political committee" means that the funds at issue have been delivered for deposit to the financial institution at which such account is maintained. The term shall not be construed to mean that such funds are available

for withdrawal in accordance with the deposit rules or the funds availability policies of such financial institution.

(5) A candidate who withdraws his or her candidacy, becomes an unopposed candidate, or is eliminated as a candidate or elected to office may expend funds from the campaign account to:

(a) Purchase "thank you" advertising for up to 75 days after he or she withdraws, becomes unopposed, or is eliminated or elected.

(b) Pay for items which were obligated before he or she withdrew, became unopposed, or was eliminated or elected.

(c) Pay for expenditures necessary to close down the campaign office and to prepare final campaign reports.

(d) Dispose of surplus funds as provided in *s.* 106.141.

(6) A candidate who makes a loan to his or her campaign and reports the loan as required by s. 106.07 may be reimbursed for the loan at any time the campaign account has sufficient funds to repay the loan and satisfy its other obligations.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.19. Violations by candidates, persons connected with campaigns, and political committees [Effective until November 1, 2013.]

(1) Any candidate; campaign manager, campaign treasurer, or deputy treasurer of any candidate; committee chair, vice chair, campaign treasurer, deputy treasurer, or other officer of any political committee; agent or person acting on behalf of any candidate or political committee; or other person who knowingly and willfully:

(a) Accepts a contribution in excess of the limits prescribed by *s.* 106.08;

(b) Fails to report any contribution required to be reported by this chapter;

(c) Falsely reports or deliberately fails to include any information required by this chapter; or

(d) Makes or authorizes any expenditure in violation of s. 106.11(4) or any other expenditure prohibited by this chapter;

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any candidate, campaign treasurer, or deputy treasurer; any chair, vice chair, or other officer of any political committee; any agent or person acting on behalf of any candidate or political committee; or any other person who violates paragraph (1)(a),

paragraph (1)(b), or paragraph (1)(d) shall be subject to a civil penalty equal to three times the amount involved in the illegal act. Such penalty may be in addition to the penalties provided by subsection (1) and shall be paid into the General Revenue Fund of this state.

(3) A political committee sponsoring a constitutional amendment proposed by initiative which submits a petition form gathered by a paid petition circulator which does not provide the name and address of the paid petition circulator on the form is subject to the civil penalties prescribed in *s.* 106.265.

(4) Except as otherwise expressly stated, the failure by a candidate to comply with the requirements of this chapter has no effect upon whether the candidate has qualified for the office the candidate is seeking.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.19. Violations by candidates, persons connected with campaigns, and political committees [Effective November 1, 2013.]

(1) Any candidate; campaign manager, campaign treasurer, or deputy treasurer of any candidate; committee chair, vice chair, campaign treasurer, deputy treasurer, or other officer of any political committee; agent or person acting on behalf of any candidate or

political committee; or other person who knowingly and willfully:

(a) Accepts a contribution in excess of the limits prescribed by *s.* 106.08;

(b) Fails to report any contribution required to be reported by this chapter;

(c) Falsely reports or deliberately fails to include any information required by this chapter; or

(d) Makes or authorizes any expenditure in violation of s. 106.11(4) or any other expenditure prohibited by this chapter;

is guilty of a misdemeanor of the first degree, punishable as provided in *s.* 775.082 or s. 775.083.

(2) Any candidate, campaign treasurer, or deputy treasurer; any chair, vice chair, or other officer of any political committee; any agent or person acting on behalf of any candidate or political committee; or any other person who violates paragraph (1)(a), paragraph (1)(b), or paragraph (1)(d) shall be subject to a civil penalty equal to three times the amount involved in the illegal act. Such penalty may be in addition to the penalties provided by subsection (1) and shall be paid into the General Revenue Fund of this state.

(3) A political committee sponsoring a constitutional amendment proposed by initiative which submits a petition form gathered by a paid petition circulator which does not provide the name and

address of the paid petition circulator on the form is subject to the civil penalties prescribed in *s.* 106.26*5*.

(4) Except as otherwise expressly stated, the failure by a candidate to comply with the requirements of this chapter has no effect upon whether the candidate has qualified for the office the candidate is seeking.

Fla. Stat. § 106.22. Duties of the Division of Elections

It is the duty of the Division of Elections to:

(1) Prescribe forms for statements and other information required to be filed by this chapter. Such forms shall be furnished by the Department of State or office of the supervisor of elections to persons required to file such statements and information with such agency.

(2) Prepare and publish manuals or brochures setting forth recommended uniform methods of bookkeeping and reporting, and including appropriate portions of the election code, for use by persons required by this chapter to file statements.

(3) Develop a filing, coding, and cross-indexing system consonant with the purposes of this chapter.

(4) Preserve statements and other information required to be filed with the division pursuant to

this chapter for a period of 10 years from date of receipt.

(5) Prepare and publish such reports as it may deem appropriate.

(6) Make, from time to time, audits and field investigations with respect to reports and statements filed under the provisions of this chapter and with respect to alleged failures to file any report or statement required under the provisions of this chapter. The division shall conduct a postelection audit of the campaign accounts of all candidates receiving contributions from the Election Campaign Financing Trust Fund.

(7) Report to the Florida Elections Commission any failure to file a report or information required by this chapter or any apparent violation of this chapter.

(8) Employ such personnel or contract for such services as are necessary to adequately carry out the intent of this chapter.

(9) Prescribe rules and regulations to carry out the provisions of this chapter. Such rules shall be prescribed pursuant to chapter 120.

(10) Conduct random audits with respect to reports and statements filed under this chapter and with respect to alleged failure to file any reports and statements required under this chapter.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.265. Civil Penalties [Effective until November 1, 2013.]

(1) The commission or, in cases referred to the Division of Administrative Hearings pursuant to s. 106.25(5), the administrative law judge is authorized upon the finding of a violation of this chapter or chapter 104 to impose civil penalties in the form of fines not to exceed $ 1,000 per count, or, if applicable, to impose a civil penalty as provided in s. 104.271 or s. 106.19.

(2) In determining the amount of such civil penalties, the commission or administrative law judge shall consider, among other mitigating and aggravating circumstances:

(a) The gravity of the act or omission;

(b) Any previous history of similar acts or omissions;

(c) The appropriateness of such penalty to the financial resources of the person, political committee, committee of continuous existence, affiliated party committee, electioneering communications organization, or political party; and

(d) Whether the person, political committee, committee of continuous existence, affiliated party committee, electioneering communications organization, or political party has shown good faith in attempting

to comply with the provisions of this chapter or chapter 104.

(3) If any person, political committee, committee of continuous existence, affiliated party committee, electioneering communications organization, or political party fails or refuses to pay to the commission any civil penalties assessed pursuant to the provisions of this section, the commission shall be responsible for collecting the civil penalties resulting from such action.

(4) Any civil penalty collected pursuant to the provisions of this section shall be deposited into the General Revenue Fund.

(5) Any fine assessed pursuant to this chapter shall be deposited into the General Revenue Fund.

(6) In any case in which the commission determines that a person has filed a complaint against another person with a malicious intent to injure the reputation of the person complained against by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of this chapter or chapter 104, the complainant shall be liable for costs and reasonable attorney's fees incurred in the defense of the person complained against, including the costs and reasonable attorney's fees incurred in proving entitlement to and the amount of costs and fees. If the complainant fails to pay such costs and fees voluntarily within 30 days following such finding

by the commission, the commission shall forward such information to the Department of Legal Affairs, which shall bring a civil action in a court of competent jurisdiction to recover the amount of such costs and fees awarded by the commission.

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Fla. Stat. § 106.265. Civil Penalties [Effective November 1, 2013.]

(1) The commission or, in cases referred to the Division of Administrative Hearings pursuant to s. 106.25(5), the administrative law judge is authorized upon the finding of a violation of this chapter or chapter 104 to impose civil penalties in the form of fines not to exceed $ 1,000 per count, or, if applicable, to impose a civil penalty as provided in s. 104.271 or s. 106.19.

(2) In determining the amount of such civil penalties, the commission or administrative law judge shall consider, among other mitigating and aggravating circumstances:

(a) The gravity of the act or omission;

(b) Any previous history of similar acts or omissions;

(c) The appropriateness of such penalty to the financial resources of the person, political

committee, affiliated party committee, electioneering communications organization, or political party; and

(d) Whether the person, political committee, affiliated party committee, electioneering communications organization, or political party has shown good faith in attempting to comply with the provisions of this chapter or chapter 104.

(3) If any person, political committee, affiliated party committee, electioneering communications organization, or political party fails or refuses to pay to the commission any civil penalties assessed pursuant to the provisions of this section, the commission shall be responsible for collecting the civil penalties resulting from such action.

(4) Any civil penalty collected pursuant to the provisions of this section shall be deposited into the General Revenue Fund.

(5) Any fine assessed pursuant to this chapter shall be deposited into the General Revenue Fund.

(6) In any case in which the commission determines that a person has filed a complaint against another person with a malicious intent to injure the reputation of the person complained against by filing the complaint with knowledge that the complaint contains one or more false allegations or with reckless disregard for whether the complaint contains false allegations of fact material to a violation of this chapter or chapter 104, the complainant shall be liable for costs and reasonable attorney's fees incurred in the

defense of the person complained against, including the costs and reasonable attorney's fees incurred in proving entitlement to and the amount of costs and fees. If the complainant fails to pay such costs and fees voluntarily within 30 days following such finding by the commission, the commission shall forward such information to the Department of Legal Affairs, which shall bring a civil action in a court of competent jurisdiction to recover the amount of such costs and fees awarded by the commission.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

ANDREW NATHAN WORLEY, et al.
Plaintiffs,

v.

KURT S. BROWNING, et al.
Defendants.

Civil Action No. 4:10-cv-00423-RH/WCS

DECLARATION OF ANDREW NATHAN WORLEY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Andrew Nathan Worley, declare under penalty of perjury that the following is true:

1. I am a citizen of the United States, a resident of the State of Florida, and over the age of 18 years. I am also one of the Plaintiffs in the above-referenced action. I make this declaration in support of Plaintiffs' Motion for Summary Judgment; it is based on my personal knowledge of the facts stated herein.

2. I am a concerned citizen who tries to stay up to date on political developments and issues in the State of Florida. I am also a member of a political group in Venice, Florida, called the Venice 912 group.

3. Through following Florida politics and my involvement with the Venice 912 group, I became extremely concerned about proposed Amendment 4 to the Florida Constitution, which came up for a vote on

November 2, 2010. Amendment 4, had it passed, would have required municipalities to hold a public referendum on any changes to the local comprehensive land-use plan.

4. I thought that Amendment 4 was not only an affront to property rights, but that it would devastate Florida's economy if it passed. I was particularly concerned about what Amendment 4 would do to jobs in the State of Florida. I work in the construction industry, and I thought that if Amendment 4 passed, it was going to put a lot of good people out of work. To help ensure that this did not happen, I wanted to urge the public to vote against Amendment 4.

5. I was not involved in the effort to get Amendment 4 on the ballot, or in any of the legal efforts to have it removed from the ballot. My interest in Amendment 4 was limited to independently urging the public to vote against it.

6. By myself, I knew I could only reach a limited number of people. I knew that my speech would be able to reach a wider audience and influence more people if I joined with other people. Through my involvement with the Venice 912 group and Freedom Works, I had come to know the other Plaintiffs in this lawsuit and former-Plaintiff Robin Stublen, who all share my opposition to Amendment 4. I wanted to pool my money with the other Plaintiffs' and Robin's so that we could run an advertisement expressly advocating the defeat of Amendment 4.

7. We decided that we wanted to run ads advocating the defeat of proposed Amendment 4 on a local talk-radio station. Doing so would have let us reach a lot of people, and would also have allowed us to take advantage of Robin Stublen's previous experience with local radio. The total cost of the ads we wanted to run was $600 dollars. The other Plaintiffs, Robin, and I were each prepared to contribute $150 to fund the ads. We wrote a 30-second-long script for the ads and wanted to run them shortly before the election, when people were paying attention to the issue.

8. I have no experience with campaign-finance laws, but I understand that under Florida law, if the other Plaintiffs and I had gone forward with our plan, we would have been considered a "political committee," because we would have spent more than $500 to expressly advocate the defeat of a ballot issue. I also understand that this means that before we could have run our ad we would have had to register our "political committee" with the state, appoint a treasurer, establish a separate bank account, deposit all of our "contributions" into that account, and then pay for the ad with a check drawn from that account.

9. I also understand that if we had been considered a political committee, we would have had to comply with a lot of additional regulations that govern things like how we handle and account for money, and that require us to make regular disclosures of our activity to the state.

10. While I know Robin and the other Plaintiffs socially, the four of us were not a formal "group." We did not have any membership dues or meetings. We just shared a common interest in defeating Amendment 4 and wanted to pool our money to buy ads to do that.

11. We ultimately did not run our ads because we did not want to have to register as a political committee. We were all volunteering our time and money to this effort. I have a fulltime job and had only a limited amount of time to devote to this effort. Because we became interested in speaking close to the election, we did not feel that we had enough time to also learn and comply with all the laws that apply to political committees, and we were afraid that we would accidentally break the law.

12. I also just did not want our group to be called a political committee. I think that when people hear "political committee," they think it sounds like a group that gives money to politicians. I think that assumption would have made people who would otherwise want to contribute to our effort less likely to do so.

13. I also did not like the fact that Florida law would have required us to file disclosure reports, and that the state puts that information up on the Internet. I have the right to talk about political issues anonymously. I wanted people to judge the arguments in our ad based on their merit, not based on who we are. Additionally, I wanted to ask other people to

contribute to our effort so that we could buy more advertising time, and I would not want them to be dissuaded by the fact that their names, address, and occupation would be disclosed.

14. On that note, I also understand that Florida law would have required us to include a disclaimer in our advertisement that said the ad was a paid political advertisement, provided the name and address of the person paying for the ad, and stating that the ad was independent of any candidate or committee.

15. The script for our ad did not contain the disclaimer required by Florida law. Because we are not a formal group and did not have a name, I am not even sure how the disclaimer requirement would have applied to our ad. But even if we included the disclaimer, that would have meant giving up some of the time we had to convey our message.

16. I did not want to choose between making our argument against Amendment 4 and including a disclaimer that was totally irrelevant to the merit of our argument. I wanted to be able to devote 100% of our ad to *our* message. I also did not like that Florida's disclaimer requirement would have forced us to give up our right to speak anonymously.

17. Finally, I understand that Florida law prohibits political committees from spending any money raised in the last five days before the election until after the election has passed. This would have been a serious problem for us. If other people had wanted to give us money to buy additional advertising time in

the last five days before the election, we would have wanted to be able to do so. We were only going to get one shot at defeating Amendment 4, and any money we were not allowed to spend until after the election day is money that wouldn't have been worth spending at all.

18. Although we wanted to run our advertisement, we felt unable to due to the burdensomeness of Florida's campaign-finance laws and our confusion about how to comply with them. Additionally, we believed (and continue to believe) that these laws violate our First Amendment rights.

19. The other Plaintiffs, Robin, and I are all politically active people, and we want to be able to speak out on other ballot issues in the future, particularly if an issue like Amendment 4 comes up again. But we will not do so if it means having to comply with confusing and burdensome campaign-finance laws.

20. None of us wants to run the risk of being prosecuted for failing to obey the law. I understand that under Florida law, any person can file a campaign finance complaint against us, Given how controversial ballot issues can be, and how complicated the campaign-finance laws are, I am worried that one of our political opponents would file a complaint against us if we get involved in the debate about a ballot issue. I understand that these sort of politically motivated complaints are very common. As long as the campaign-finance laws cover our speech, I wouldn't

feel comfortable joining with others to run political ads unless we hired a lawyer, which we cannot afford to do and shouldn't have to do.

21. If the campaign-finance laws that regulate speech about ballot issues had been enjoined before the 2010 election, we would definitely have gone forward with our advertisements. If these laws are repealed or struck down, we will pool our money with others to run similar ads in the future. As long as they remain in place, however, we will not do so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 10, 2011.

/s/ Andrew Nathan Worley
Andrew Nathan Worley

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

ANDREW NATHAN WORLEY, et al.
Plaintiffs,

v.

KURT S. BROWNING, et al.
Defendants.

Civil Action No. 4:10-cv-00423-RH/WCS

DECLARATION OF JOHN SCOLARO IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, John Scolaro, declare under penalty of perjury that the following is true:

1. I am a citizen of the United States, a resident of the State of Florida, and over the age of 18 years. I am also one of the Plaintiffs in the above-referenced action. I make this declaration in support of Plaintiffs' Motion for Summary Judgment; it is based on my personal knowledge of the facts stated herein.

2. I am a concerned citizen who tries to stay up to date on political developments and issues in the State of Florida. I am also a member of a political group in Venice, Florida, called the Venice 912 group.

3. In following political issues, I became extremely concerned about proposed Amendment 4 to the Florida Constitution, which came up for a vote on November 2, 2010. Amendment 4, had it passed,

would have required municipalities to hold a public referendum on any changes to the local comprehensive land-use plan.

4. I not only considered Amendment 4 an affront to property rights, I thought it would devastate Florida's economy if it passed. To help ensure that this did not happen statewide, I wanted to urge the public to vote against Amendment 4.

5. I was not involved in the effort to get Amendment 4 on the ballot, or in any of the legal efforts to have it removed from the ballot. My interest in Amendment 4 was limited to independently urging the public to vote against it.

6. By myself, I knew I could only reach a limited number of people. I knew that my speech would be able to reach a wider audience and influence more people if I joined with other people. Through my involvement with the Venice 912 group I had come to know the other Plaintiffs in this lawsuit and former-Plaintiff Robin Stublen, who all shared my opposition to Amendment 4. I wanted to pool my money with the other Plaintiffs' and Robin's so that we could run an advertisement expressly advocating the defeat of Amendment 4.

7. We decided that we wanted to run ads advocating the defeat of proposed Amendment 4 on a local talk-radio station. Doing so would have let us reach a lot of people, and would also have allowed us to take advantage of Robin Stublen's previous experience with local radio. The total cost of the ads we wanted

to run was $600 dollars. The other Plaintiffs, Robin, and I were each prepared to contribute $150 to fund the ads. We wrote a 30-second-long script for the ads and wanted to run them shortly before the election, when people were paying attention to the issue.

8. I have no experience with campaign-finance laws, but I understand that under Florida law, if the other Plaintiffs and I had gone forward with our plan, we would have been considered a "political committee," because we would have spent more than $500 to expressly advocate the defeat of a ballot issue. I also understand that this means that before we could have run our ad we would have had to register our "political committee" with the state, appoint a treasurer, establish a separate bank account, deposit all of our "contributions" into that account, and then pay for the ad with a check drawn from that account.

9. I also understand that if we had been considered a political committee, we would have had to comply with a lot of additional regulations that govern things like how we handle and account for money, and that require us to make regular disclosures of our activity to the state.

10. While I know Robin and the other Plaintiffs socially, the four of us were not a formal "group." We did not have any membership dues or meetings. We just shared a common interest in defeating Amendment 4 and wanted to pool our money to buy ads to do that.

11. We ultimately did not run our ads because we did not want to have to register as a political committee. We were all volunteering our time and money to this effort. I have a wife and kids and only a limited amount of time to devote to this effort. Because we became interested in speaking close to the election, we did not feel that we had enough time to also learn and comply with all the laws that apply to political committees, and we were afraid that we would accidentally break the law.

12. I also just did not want our group to be called a political committee. I think that when people hear "political committee," they think it sounds like a group that gives money to politicians. I think that assumption would have made people who would otherwise want to contribute to our effort less likely to do so.

13. I also did not like the fact that Florida law would have required us to file disclosure reports, and that the state puts that information up on the Internet. I have the right to talk about political issues anonymously. I wanted people to judge the arguments in our ad based on their merit, not based on who we are. Additionally, I wanted to ask other people to contribute to our effort so that we could buy more advertising time, and I would not want them to be dissuaded by the fact that their names, address, and occupation would be disclosed.

14. On that note, I also understand that Florida law would have required us to include a disclaimer in

our advertisement that said the ad was a paid political advertisement, provided the name and address of the person paying for the ad, and stating that the ad was independent of any candidate or committee.

15. The script for our ad did not contain the disclaimer required by Florida law. Because we are not a formal group and did not have a name, I am not even sure how the disclaimer requirement would have applied to our ad. But even if we included the disclaimer, that would have meant giving up some of the time we had to convey our message.

16. I did not want to choose between making our argument against Amendment 4 and including a disclaimer that was totally irrelevant to the merit of our argument. I wanted to be able to devote 100% of our ad to *our* message. I also did not like that Florida's disclaimer requirement would have forced us to give up our right to speak anonymously.

17. Finally, I understand that Florida law prohibits political committees from spending any money raised in the last five days before the election until after the election has passed. This would have been a serious problem for us. If other people had wanted to give us money to buy additional advertising time in the last five days before the election, we would have wanted to be able to do so. We were only going to get one shot at defeating Amendment 4, and any money we were not allowed to spend until after the election day is money that wouldn't have been worth spending at all.

18. Although we wanted to run our advertisement, we felt unable to due to the burdensomeness of Florida's campaign-finance laws and our confusion about how to comply with them. Additionally, we believed (and continue to believe) that these laws violate our First Amendment rights.

19. The other Plaintiffs, Robin, and I are all politically active people, and we want to be able to speak out on other ballot issues in the future, particularly if an issue like Amendment 4 comes up again. But we will not do so if it means having to comply with confusing and burdensome campaign-finance laws.

20. None of us wants to run the risk of being prosecuted for failing to obey the law. I understand that under Florida law, any person can file a campaign finance complaint against us. Given how controversial ballot issues can be, and how complicated the campaign-finance laws are, I am worried that one of our political opponents would file a complaint against us if we get involved in the debate about a ballot issue. I understand that these sort of politically motivated complaints are very common. As long as the campaign-finance laws cover our speech, I wouldn't feel, comfortable joining with others to run political ads unless we hired a lawyer, which we cannot afford to do and shouldn't have to do.

21. If the campaign-finance laws that regulate speech about ballot issues had been enjoined before the 2010 election, we would definitely have gone

forward with our advertisements, If these laws are repealed Or struck down, we will pool our money with others to run similar ads in the future. As long as they remain in place, however, we will not do so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 9, 2011.

/s/ John Scolaro
John Scolaro

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

ANDREW NATHAN WORLEY, et al.
Plaintiffs,

v.

KURT S. BROWNING, et al.
Defendants.

Civil Action No. 4:10-cv-00423-RH/WCS

DECLARATION OF PAT WAYMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Pat Wayman, declare under penalty of perjury that the following is true:

1. I am a citizen of the United States, a resident of the State of Florida, and over the age of 18 years. I am also one of the Plaintiffs in the above-referenced action. I make this declaration in support of Plaintiffs' Motion for Summary Judgment; it is based on my personal knowledge of the facts stated herein.

2. I am the founder of a political group in Venice, Florida, called the Venice 912 group. The Venice 912 group is not a political committee and does not advocate the defeat or election of candidates or the passage or defeat of ballot issues. It is just a group of concerned citizens that meets to discuss political issues and ways that we can improve the direction of this country. As part of this, I try to stay up to date on

political developments and issues in the State of Florida.

3. In following political issues, I became extremely concerned about proposed Amendment 4 to the Florida Constitution, which came up for a vote on November 2, 2010. Amendment 4, had it passed, would have required municipalities to hold a public referendum on any changes to the local comprehensive land-use plan. I thought this would cause confusion at the polls through impossible-to-understand ballot issues. I also thought this would improperly put the decisions of (for example) the north part of a county into the hands of other, disinterested county residents in the south, east, and west sections of the county. I think these issues should be handled by our elected representatives, rather than through referenda.

4. I not only considered Amendment 4 an affront to property rights, I thought it would devastate Florida's economy if it passed. I knew that a proposal similar to Amendment 4 had already been tried in St. Pete Beach, causing additional law suits, increased city expenses, and frustration for new businesses. To help ensure that this did not happen statewide, I wanted to urge the public to vote against Amendment 4.

5. I was not involved in the effort to get Amendment 4 on the ballot, or in any of the legal efforts to have it removed from the ballot. My interest in

Amendment 4 was limited to independently urging the public to vote against it.

6. By myself, I knew I could only reach a limited number of people. I knew that my speech would be able to reach a wider audience and influence more people if I joined with other people. Through my involvement with the Tea Party movement and other groups, I had come to know the other Plaintiffs in this lawsuit and former-Plaintiff Robin Stublen, who all shared my opposition to Amendment 4. I wanted to pool my money with the other Plaintiffs' and Robin's so that we could run an advertisement expressly advocating the defeat of Amendment 4.

7. We decided that we wanted to run ads advocating the defeat of proposed Amendment 4 on a local talk-radio station. Doing so would have let us reach a lot of people, and would also have allowed us to take advantage of Robin Stublen's previous experience with local radio. The total cost of the ads we wanted to run was $600 dollars. The other Plaintiffs, Robin, and I were each prepared to contribute $150 to fund the ads. We wrote a 30-second-long script for the ads and wanted to run them shortly before the election, when people were paying attention to the issue.

8. I understand that under Florida law, if the other Plaintiffs and I had gone forward with our plan, we would have been considered a "political committee," because we would have spent more than $500 to expressly advocate the defeat of a ballot issue. I also understand that this means that before we could

have run our ad we would have had to register our "political committee" with the state, appoint a treasurer, establish a separate bank account, deposit all of our "contributions" into that account, and then pay for the ad with a check drawn from that account.

9. I also understand that if we had been considered a political committee, we would have had to comply with a lot of additional regulations that govern things like how we handle and account for money, and that require us to make regular disclosures of our activity to the state.

10. I first became aware of campaign-finance laws through my work with the Tea Party movement. Some of the members of the Venice 912 group that I run wanted to raise money to make political contributions. I reviewed the laws to see what would be required. Even though I used to work in a law office, I found the laws extremely confusing. I also didn't think I could balance the time required to learn the laws and serve as a political-committee treasurer with all of my other responsibilities. I later attended a training session on campaign-finance laws for political activists in Washington, D.C. And hearing everything that was involved with these laws, I became even more convinced that it was too much for a small group like our. For these reason, the Venice 912 group specifically avoid engaging in any activity that might make our group subject to the campaign-finance laws. Because we don't spend money on our activities, this has limited what the Venice 912 group can do, but it

is the only way that I can run things given my limited amount of time and expertise with these laws.

11. While I know Robin and the other Plaintiffs socially, the four of us were not a formal "group." We did not have any membership dues or meetings. We just shared a common interest in defeating Amendment 4 and wanted to pool our money to buy ads to do that.

12. We ultimately did not run our ads because we did not want to have to register as a political committee. We were all volunteering our time and money to this effort. I had to balance this project with my job, keeping in touch with my family, volunteering in my community, and my leadership of the Venice 912 group (which includes keeping our members informed, maintaining our website, keeping up with the bills in Congress, coordinating with other Tea Party-movement groups, and working to get out the vote). Because we became interested in speaking close to the election, we did not feel that we had enough time to also learn and comply with all the laws that apply to political committees, and we were afraid that we would accidentally break the law.

13. I also just did not want our group to be called a political committee. I think that when people hear "political committee," they think it sounds like a group that gives money to politicians. I think that assumption would have made people who would otherwise want to contribute to our effort less likely to do so.

14. I also did not like the fact that Florida law would have required us to file disclosure reports, and that the state puts that information up on the Internet. I have the right to talk about political issues anonymously. I wanted people to judge the arguments in our ad based on their merit, not based on who we are. Additionally, I wanted to ask other people to contribute to our effort so that we could buy more advertising time, and I would not want them to be dissuaded by the fact that their names, address, and occupation would be disclosed.

15. On that note, I also understand that Florida law would have required us to include a disclaimer in our advertisement that said the ad was a paid political advertisement, provided the name and address of the person paying for the ad, and stating that the ad was independent of any candidate or committee.

16. The script for our ad did not contain the disclaimer required by Florida law. Because we are not a formal group and did not have a name, I am not even sure how the disclaimer requirement would have applied to our ad. But even if we included the disclaimer, that would have meant giving up some of the time we had to convey our message.

17. I did not want to choose between making our argument against Amendment 4 and including a disclaimer that was totally irrelevant to the merit of our argument. I wanted to be able to devote 100% of our ad to *our* message. I also did not like that

Florida's disclaimer requirement would have forced us to give up our right to speak anonymously.

18. Finally, I understand that Florida law prohibits political committees from spending any money raised in the last five days before the election until after the election has passed. This would have been a serious problem for us. If other people had wanted to give us money to buy additional advertising time in the last five days before the election, we would have wanted to be able to do so. We were only going to get one shot at defeating Amendment 4, and any money we were not allowed to spend until after the election day is money that wouldn't have been worth spending at all.

19. Although we wanted to run our advertisement, we felt unable to due to the burdensomeness of Florida's campaign-finance laws and our confusion about how to comply with them. Additionally, we believed (and continue to believe) that these laws violate our First Amendment rights.

20. The other Plaintiffs, Robin, and I are all politically active people, and we want to be able to speak out on other ballot issues in the future, particularly if an issue like Amendment 4 comes up again. But we will not do so if it means having to comply with confusing and burdensome campaign-finance laws.

21. None of us wants to run the risk of being prosecuted for failing to obey the law. I understand that under Florida law, any person can file a campaign

finance complaint against us. Given how controversial ballot issues can be, and how complicated the campaign-finance laws are, I am worried that one of our political opponents would file a complaint against us if we get involved in the debate about a ballot issue. I understand that these sort of politically motivated complaints are very common, As long as the campaign-finance laws cover our speech, I wouldn't feel comfortable joining with others to run political ads unless we hired a lawyer, which we cannot afford to do and shouldn't have to do.

22. If the campaign-finance laws that regulate speech about ballot issues had been enjoined before the 2010 election, we would definitely have gone forward with our advertisements. If these laws are repealed or struck down, we will pool our money with others to run similar ads in the future. As long as they remain in place, however, we will not do so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 10, 2011.

/s/ Pat Wayman
Pat Wayman

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

ANDREW NATHAN WORLEY, et al.
Plaintiffs,

v.

KURT S. BROWNING, et al.
Defendants.

Civil Action No. 4:10-cv-00423-RH/WCS

DECLARATION OF ROBIN STUBLEN IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Robin Stublen, declare under penalty of perjury that the following is true:

1. I am a citizen of the United States, a resident of the State of Florida, and over the age of 18 years. I am also a former plaintiff in the above-referenced action. I make this declaration in support of Plaintiffs' Motion for Summary Judgment; it is based on my personal knowledge of the facts stated herein.

2. I am a longtime political activist. I stay up to date on political issues and try to make a positive difference where I can by, for example, starting a local Tea Party group in my town of Punta Gorda.

3. In following political issues, I became extremely concerned about proposed Amendment 4 to the Florida Constitution, which came up for a vote on November 2, 2010. Amendment 4, had it passed,

would have required municipalities to hold a public referendum on any changes to the local comprehensive land-use plan.

4. I not only considered Amendment 4 an affront to property rights, I thought it would devastate Florida's economy if it passed. To help ensure that this did not happen statewide, I wanted to urge the public to vote against Amendment 4.

5. I was not involved in the effort to get Amendment 4 on the ballot, or in any of the legal efforts to have it removed from the ballot. My interest in Amendment 4 was limited to independently urging the public to vote against it.

6. By myself, I knew I could only reach a limited number of people. I knew that my speech would be able to reach a wider audience and influence more people if I joined with other people. Through my political activities, I had come to know the Plaintiffs in this lawsuit, who all shared my opposition to Amendment 4. I wanted to pool my money with the Plaintiffs' so that we could run an advertisement expressly advocating the defeat of Amendment 4.

7. I have some experience with local radio, and I believed that running ads on a local talk-radio station would be the most effective way for us to get our message out to the public. Running ads in the newspaper is expensive, and it only gives you one shot at influencing a reader. Local radio ads are a lot less expensive and they give you the chance to get your message out there multiple times.

8. The Plaintiffs and I were each prepared to contribute $150 (a total of $600) so that we could run radio ads. Based on price quotes I received from a local radio station, this amount of money would have allowed us to run a 30-second advertisement 30 times.

9. Working together, the Plaintiffs and I had written a script for our advertisement. The script, attached as Exhibit A, provided what we viewed as the top five reasons why Amendment 4 would have been bad for Florida and expressly urged the public to vote against it. As we wrote it, the ad took approximately 30 seconds to read aloud.

10. I understand that under Florida law, if the other Plaintiffs and I had gone forward with our plan, we would have been considered a "political committee," because we would have spent more than $500 to expressly advocate the defeat of a ballot issue. I also understand that this means that before we could have run our ad we would have had to register our "political committee" with the state, appoint a treasurer, establish a separate bank account, deposit all of our "contributions" into that account, and then pay for the ad with a check drawn from that account.

11. I also understand that if we had been considered a political committee, we would have had to comply with a lot of additional regulations that govern things like how we handle and account for money, and that require us to make regular disclosures of our activity to the state.

12. I have seen the effect that these laws and regulations have on small groups that want to talk about local issues that will appear on the ballot. For example, I know people who have wanted to oppose local sales-tax initiatives, but have not done so because of all the red tape involved with starting a political committee. I did not want to have to deal with all that. The Plaintiffs and I were not a formal "group." We did not have any membership dues or meetings. We just shared a common interest in defeating Amendment 4 and wanted to pool our money to buy ads to do that.

13. We ultimately did not run our ads because we did not want to have to register as a political committee. We were all volunteering our time and money to this effort. I have a fulltime job in the pest-control industry and the fall is a busy time of year. I only had a limited amount of time to devote to this effort, and it was just too much trouble to also have to deal with all of the campaign-finance regulations or to worry about accidentally breaking the law.

14. I also just did not want our group to be called a political committee. I think that when people hear "political committee," they think it sounds like a group that gives money to politicians. I think that assumption would have made people who would otherwise want to contribute to our effort less likely to do so.

15. I also did not like the fact that Florida law would have required us to file disclosure reports, and

that the state puts that information up on the Internet. I have the right to talk about political issues anonymously. I wanted people to judge the arguments in our ad based on their merit, not based on who we are. Additionally, I wanted to ask other people to contribute to our effort so that we could buy more advertising time, and I would not want them to be dissuaded by the fact that their names, address, and occupation would be disclosed.

16. On that note, I also understand that Florida law would have required us to include a disclaimer in our advertisement that said the ad was a paid political advertisement, provided the name and address of the person paying for the ad, and stating that the ad was independent of any candidate or committee.

17. The script for our ad did not contain the disclaimer required by Florida law. Because we are not a formal group and did not have a name, I am not even sure how the disclaimer requirement would have applied to our ad. But even if we included the disclaimer, that would have meant giving up six or seven seconds of the time we had to convey our message.

18. Radio advertising is commonly sold in blocks of 30 seconds. If we had to devote six or seven seconds of our 30-second advertisement to a disclaimer, that would mean cutting out some of our argument. We wrote an alternative script that included the required disclaimer, but we had to leave out two of our five points to fit within 30 seconds. Specifically, as shown in Exhibit A, we would not have had enough time to

say that Amendment 4 would "remove political accountability from land-use decisions," or that it would "put hundreds of thousands of jobs at risk."

19. I did not want to choose between making our argument against Amendment 4 and including a disclaimer that was totally irrelevant to the merit of our argument. I wanted to be able to devote 100% of our ad to *our* message. If we had run our ad with the disclaimer, only 80% of our ad (or less) would have been devoted to the message we wanted to convey. I also did not like that Florida's disclaimer requirement would have forced us to give up our right to speak anonymously.

20. Finally, I understand that Florida law prohibits political committees from spending any money raised in the last five days before the election until after the election has passed. This would have been a serious problem for us. If other people had wanted to give us money to buy additional advertising time in the last five days before the election, we would have wanted to be able to do so. We were only going to get one shot at defeating Amendment 4, and any money we were not allowed to spend until after the election day is money that wouldn't have been worth spending at all.

21. Although we wanted to run our advertisement, we ultimately did not do so due to the burdensomeness of Florida's campaign-finance laws and our confusion about how to comply with them. Additionally,

we believed (and continue to believe) that these laws violate our First Amendment rights.

22. The Plaintiffs and I are all politically active people, and we want to be able to speak out on other ballot issues in the future, particularly if an issue like Amendment 4 comes up again. But we will not do so if it means having to comply with confusing and burdensome campaign-finance laws.

23. None of us wants to run the risk of being prosecuted for failing to obey the law. I understand that under Florida law, any person can file a campaign finance complaint against us. Given how controversial ballot issues can be, and how complicated the campaign-finance laws are, I am worried that one of our political opponents would file a complaint against us if we get involved in the debate about a ballot issue. I understand that these sort of politically motivated complaints are very common. As long as the campaign-finance laws cover our speech, I wouldn't feel comfortable joining with others to run political ads unless we hired a lawyer, which we cannot afford to do and shouldn't have to do.

24. If the campaign-finance laws that regulate speech about ballot issues had been enjoined before the 2010 election, we would definitely have gone forward with our advertisements. If these laws are repealed or struck down, we will pool our money with others to run similar ads in the future. As long as they remain in place, however, we will not do so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 7, 2011.

/s/ Robin Stublen
Robin Stublen

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

ANDREW NATHAN WORLEY, et al.
Plaintiffs,

v.

KURT S. BROWNING, et al.
Defendants.

Civil Action No. 4:10-cv-00423-RH/WCS

DECLARATION OF PAUL SHERMAN IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Paul Sherman, declare under penalty of perjury that the following is true:

1. My name is Paul Sherman. I am a citizen of the United States and a resident of Arlington, Virginia. I am over eighteen years of age and fully competent to make this declaration, which I make based on my personal knowledge.

2. I am a staff attorney with the Institute for Justice, which represents Plaintiffs Andrew Nathan Worley, et al. in the above-captioned action.

3. I submit this declaration in support of Plaintiffs' Motion for Summary Judgment.

4. On May 11, 2011, I accessed a version of the Constitution of the State of Florida available on the Division of Elections' website. *See* Fla. Div. of

Elections, *Florida Laws and Procedure,* https://doe.dos.state.fl.us/rules/index.shtml (last visited May 11, 2011). That page provided a link to the Florida Constitution. Following that link brought me to an online version of the Florida Constitution. Using my web browser's print-preview function, I saw that a print-out of this version of the Constitution would span 94 pages.

5. On April 16, 2011, I accessed the Division of Elections' website and accessed both their list of adopted rules and their list of advisory opinions. I counted all of the rules and found there to be 40 of them. I also counted all of the advisory opinions, not including those marked "obsolete" or "rescinded," and found there to be 520 of them.

* * *

Declaration of Paul Sherman in Support of Plaintiffs' Motion for Summary Judgment

EXHIBIT 5

Common Violations & Appeals

The Commission has jurisdiction over violations of Chapters 104 and 106 of the Florida Statutes. Section 106.25(3), Florida Statutes, provides that "[f]or the purposes of commission jurisdiction, a violation shall mean the willful performance of an act prohibited by this chapter or chapter 104 or the willful failure to perform an act required by this chapter or chapter 104." Section 106.265, Florida Statutes, authorizes the Commission to impose a fine not to exceed $1,000 per violation. There are also several enhanced penalty provisions in Chapter 106, Florida Statutes.

This page contains information on the following:

- common violations in ***Chapter 104*** and ***Chapter 106***,
- the appeal of ***automatic fines***,
- the appeals associated with the ***dissolution or decertification of committees***, and
- the ***appeal of fines by members of county canvassing boards***.

Common Violations in Chapter 104

There are over 60 separate violations in Chapter 104, Florida Statutes. Those violations include the following:

- Prohibiting a person from falsely swearing an oath in connection with or arising out of voting or elections.
  §104.011, F.S.
- Prohibiting any official from refusing or neglecting to perform his duty as prescribed in the Florida Election Code.
  §104.051(2), F.S.
- Prohibiting a person from giving or promising anything of value to a person intending to buy that person's vote.
  §104.061, F.S.
- Prohibiting a candidate from giving, paying, expending, or contributing any money or other thing of value to any other candidate.
  §104.071, F.S.
- Prohibiting a person who knows that he is not a qualified elector from voting in any election.
  §106.16, F.S.
- Prohibiting a person from voting or attempting to vote both in person and by absentee ballot in any election.
  §104.17 and 104.18, F.S.
- Prohibiting a person from knowingly signing a petition or petitions for a candidate, a

minor political party, or an issue more than one time.
§104.185, F.S.

- Prohibiting a candidate from falsely and maliciously charging that an opposing candidate violated a provision of the Florida Election Code.
§104.271(1), F.S.
- Prohibiting a candidate from making false factual statements with malice about an opposing candidate.
§104.271(2), F.S.
- Prohibiting a person from aiding, abetting, or advising another person to violate the Election Code.
§104.091, F.S.

Common Violations in Chapter 106

There are almost 100 separate violations in Chapter 106, Florida Statutes. The most common violations are as follows:

- Prohibiting a candidate or political committee from accepting contributions or making expenditures prior to appointing a campaign treasurer and designating a campaign depository.
§106.021(3), F.S.
- Failure of a political committee to file a statement of organization.
§106.03(1), F.S.

- Failure of the treasurer of a candidate or political committee to file regular reports of all contributions received, and all expenditures made, by or on behalf of the candidate or political committee.
§106.07(1), F.S.

- Prohibiting a campaign treasurer, candidate, or political committee chair from certifying a campaign treasurer's report as true, correct, and complete when it is not.
§106.07(5), F.S.

- Failure of a person who makes independent expenditures of $500 or more to file periodic reports of the expenditures.
§106.08(1)(a), F.S.

- Prohibiting a person, political committee, or committee of continuous existence from making contributions to a candidate or political committee in excess of $500 for each election.
§106.08(1)(a), F.S.

- Prohibiting a candidate from accepting contributions from national, state, and county executive committees and their subordinate committees in excess of $50,000 prior to the general election, of which no more than $25,000 may be accepted within 28 days of a General Election. (There are larger limits for candidates for statewide office.)
§106.08(2), F.S.

- Failure of a person to prominently mark all political advertisements with a proper political disclaimer.
§106.143, F.S.

- Prohibiting a person or organization from accepting a contribution in excess of $500 for each election.
§106.19(1)(a), F.S.
- Prohibiting the expenditure of campaign funds that have already been obligated. §106.11(4), F.S.

Appeal of Automatic Fines

The Commission hears appeals from candidates, committees, or political parties regarding fines automatically imposed for the late-filing of its campaign treasurer's reports. Section 106.04(8), Florida Statutes, provides that a committee of continuous existence that fails to timely file its campaign treasurer's report on the designated due date is subject to an automatic fine. Section 106.07(8)(a), Florida Statutes, provides that a candidate or political committee that fails to timely file is also subject to an automatic fine. Finally, Section 106.29(3), Florida Statutes, provides that a state or county executive committee of a political party is automatically fined for each day its report is late. Rule 2B-1.005, Florida

Amount of the Fines

A committee of continuous existence is charged $500 per day for each late day, not to exceed 25% of the total receipts or expenditures, whichever is greater. Candidates and political committees are charged $50 for the first three days late and, thereafter, $500 per

day for each day late, not to exceed 25% of the total receipts and expenditures, whichever is greater. However, for the reports immediately preceding each primary and general election, the fine is $500 per day. A county executive committee is charged $50 per day and a state executive committee is charged $1,000 per day for each day its report is late, not to exceed 25% of total receipts and expenditures, whichever is greater. However, if executive committees fail to file a report on the Friday immediately preceding the general election, the fine is $500 per day for county executive committees and $10,000 per day for state executive committees. The candidate or committee may appeal or dispute the fine and request a hearing before the Commission.

Appeal of Dissolution or Decertification of Committees

The Commission hears appeals of dissolution of a political committee by its filing officer and decertification of a committee of continuous existence by the Division of Elections. The committee must provide the Commission with documentation supporting its claim. The Commission's determination after hearing is final agency action.

Appeal of Fines by Members of County Canvassing Boards

The Commission also hears appeals from members of county canvassing boards for late certification of

election results. Section 102.112, Florida Statutes, directs county canvassing boards to file election returns with the Department by 5 p.m. on the 7th day after the election. Members of the county canvassing board may appeal such fines to the Commission. The Commission's determination after hearing is final agency action.

Please direct all public records requests to the clerk of the Commmission at (850) 922-4539.

Declaration of Paul Sherman in Support of Plaintiffs' Motion for Summary Judgment

EXHIBIT 9

Political Committee Handbook

June 2010

Florida Department of State
Division of Elections
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250
850.245.6240
www.elections.myflorida.com

* * *

[1] **Chapter 1**

Explanation

The information contained in this publication is intended as a quick reference guide only and is current upon publication. Chapters 97-106, Florida Statutes, the Constitution of the State of Florida, Division of Elections' opinions and rules, Attorney General opinions, county charters, city charters and ordinances, and other sources should be reviewed in their entirety for complete information regarding campaign financing.

* * *

Declaration of Paul Sherman in Support of Plaintiffs' Motion for Summary Judgment

EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

ANDREW NATHAN WORLEY, et al.,

Plaintiffs

vs.

DAWN K. ROBERTS, et al.,

Defendants.
_____/

Civil Action No. 4:10-cv-00423-RH/WCS

DEPOSITION OF
DAVID FLAGG

Taken on Behalf of the Plaintiffs

DATE TAKEN: April 18, 2011
TIME: 1:38 p.m. – 2:24 p.m.
PLACE: 215 South Monroe Street
Suite 702
Tallahassee, Florida

* * *

[15] Q How long would you say on average an easy investigation takes? You can give me a range. That's also fine.

A Oh, I've seen some of them done in three weeks, up to seven months.

Q And this is for –

[16] A For an easy investigation, yeah.

Q How long can a hard investigation take?

A Well, I've seen hard ones done in four months, five months, and I've seen hard ones take, oh, from start to finish, the investigation and basically through the legal process until it's closed, done, like over six years. I mean, you know, they'll be taking it to higher and higher courts to, you know, just keep swinging.

Q Sure. Now, what about just the investigation phase of a hard case?

A Just the investigation phase of them, I don't know, I think we've probably over the years have had maybe, I don't know, a few that have, oh, two and a half years. It's certainly something that doesn't make me happy, but there's – there's just a lot of things.

And many times you have to understand that, with the political process being what it is, when we get cases sometimes and for political reasons, believe it or not, that while – when you look at the complaint on its face, they're substantially things there that make it legally sufficient; however, the person that's filed the complaint really doesn't have much interest in the law. They're trying to use it for a mechanism to, you know, harass that person or otherwise divert their attention from their campaign.

[17] What is frustrating sometimes to an office such as us is they will be filing a complaint sometimes about activities that occurred, you know, 27 and a half months ago or sometimes 60 months ago, of which most of this is going to slide through the things of the statute of limitation. But then you'll have other stuff you'll be backing up and say, okay, this is within 23 months. It just makes the statute of limitations, you know, and so you want – you know, I mean – and then you'll have – many times you'll have a bunch of elderly people involved in it as potential witnesses, and, you know, with a fluid society today, people move away. You have some of these elderly people, they die and stuff like that, and it's really unfortunate because many times the issues that they have presented to us, they're pretty serious, but for whatever reason – sometimes politically, you know, someone's up for reelection. They wait like right to this moment when, you know, like someone's getting ready to announce they're running and they're going to file a complaint with us and the complaint is not bound by the confidentiality. So many times what they'll do is, before they even stick it in the mail to us, they have gone to several media outlets passing out copies of the complaint. So really many times they're not really that interested in the election [18] law. They're using it for a mechanism sometimes to punish their political opponent and stuff like that –

Q And how would –

A – so that can really set us back sometimes.

You get a case that has some complex issues in it that are important, but a lot of stuff it's very dated and sometimes, you know, trying to get ahold of records, that even though a treasurer is required to retain – the keeper of the records of the campaign to keep the records for a specific period of time, many times they don't. And we operate – we only get our jurisdiction – you know, the key goes into our jurisdiction to turn the engine on with a sworn – legally-sufficient, sworn complaint, that we can't just be looking at the newspaper and see, jeez, you know, this doesn't look right. Let's check in. We can't do that.

So here we are. We're waiting. We get this complaint, and, you know, you see a lot of the stuff here that's a real serious problem. You can't look at it. You know, it's already gone, the statute of limitations. Or there's some things that there are records that would have been helpful that, had the treasurer took the responsibility serious and retained those records as they're directed to do so and they [19] haven't, then you'll say, well, go after the treasurer. Well, we can't do that. We need the sworn complaint, and the trouble is very rarely do they file a complaint against the treasurer. So, you know, you're left with that, so –

Q Yeah. So, you know, a moment ago you were talking about sometimes you'll see people file these complaints just to sort of stick it to their political opponent.

A Very much.

Q How often would you say you see that?

A Oh, there's very few concerned citizens. You know, a hundred complaints come in, you know, 98 of them are politically motivated as they usually say, but, you know, we don't get into that per se. I mean, we just – when it comes into my in box, we assume that it's politically motivated, you know, and that's fine.

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