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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

WYOMING GUN OWNERS, a
Wyoming nonprofit corporation,

Plaintiff,

v.

EDWARD BUCHANAN, in his official
capacity as Wyoming's Secretary of
State; KAREN WHEELER, in her
individual and official capacities as
Wyoming's Deputy Secretary of State;
KAI SCHON, in his individual and
official capacities as Election Division
Director for the Wyoming Secretary of
State; and BRIDGET HILL, in her
official capacity as Wyoming Attorney
General.

Defendants.

Civil Action No. 21-CV-108-S

**RESPONSE TO SUPPLEMENTAL
AUTHORITY IN RE CROSS
MOTIONS FOR SUMMARY
JUDGMENT**

RESPONSE TO SUPPLEMENTAL AUTHORITY

During oral argument on March 9, 2022, defense counsel for the first time cited *Gaspee Project v. Mederos*, No. 20-1944, 2021 U.S. App. LEXIS 27581 (1st Cir. Sep. 14, 2021) in support of Defendants' position that Wyoming's electioneering communications regime passes exacting scrutiny. Plaintiff WyGO now submits this response.

First, *Gaspee*, constitutes out-of-circuit authority, which does not grapple with important Tenth Circuit precedents such as *Independence Institute v. Williams*, 812 F.3d 787 (10th Cir. 2016) or *Citizens United v. Gessler*, 773 F.3d 200 (10th Cir. 2014). In addition, the opinion is from the First Circuit and relies heavily on Ninth Circuit authority, both of which are circuits that are less protective of First Amendment associational rights in the campaign finance context than the Tenth Circuit. This Court should follow binding Tenth Circuit precedent.

Second, *Gaspee* was a facial challenge only, not as-applied.

Third, Rhode Island's disclosure regime is distinguishable from Wyoming's in ways that are material to the narrow-tailoring analysis. Unlike Wyoming's regime, Rhode Island has greater protections for donors because it applies only to those who contribute \$1000 or more and allows for donors to opt-out of having their monies used for independent expenditures or electioneering communications.¹ *Gaspee* at *19. Wyoming's disclosure regime can apply to aggregated amounts of as low as \$100 and does not include any opt-out provisions.

¹ Similarly, New Mexico's regime contains higher dollar thresholds and opt-out provisions, both of which are absent in Wyoming's regime. *Rio Grande Found. v. Oliver*, 2020 U.S. Dist. LEXIS 191571, at *40-41 (D.N.M. Oct. 14, 2020).

Fourth, this Court should not follow *Gaspee* because rests on faulty assumptions. In particular, the First Circuit failed to follow *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2388 (2021), when it held that disclosure regimes do not burden political speech rights at all. *See Gaspee* at *11. On the contrary, the Supreme Court has recognized that disclosure regimes do burden such rights. *AFPF*, 141 S. Ct. at 2388 (“Our cases have said that disclosure requirements can chill association even if there is no disclosure to the general public.”) (cleaned up). It is doubtful that the Tenth Circuit would follow the First Circuit’s analysis. A petition for certiorari is currently pending.

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Respectfully submitted,

s/Endel Kolde

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ⁱ Admitted in Washington State. Not admitted to practice in the District of Columbia. Currently supervised by D.C.-licensed attorneys.