IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

FRESH VISION OP, INC.; JAMES G. MUIR; and CHENGNY THAO,

Plaintiffs,

v.

MARK SKOGLUND, in his official capacity as Executive Director, Kansas Governmental Ethics Commission; NICHOLAS HALE, in his official capacity as Chairman, Kansas Governmental Ethics Commission; BEAU JACKSON, in his official capacity as Member, Kansas Governmental Ethics Commission; JOHN SOLBACH, in his official capacity as Member, Kansas Governmental Ethics Commission; CHRIS BURGER, in his official capacity as Member, Kansas Governmental Ethics Commission; ANDREW HARRISON, in his official capacity as Member, Kansas Governmental Ethics Commission; EARL GLYNN, in his official capacity as Member, Kansas Governmental Ethics Commission; JEROME HELLMER, in his official capacity as Member, Kansas Governmental Ethics Commission; and TESS RAMIREZ, in her official capacity as Member, Kansas Governmental Ethics Commission,

Defendants.

Case No. 5:24-cv-04055

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Defendants—the Executive Director and members of the Kansas Governmental Ethics Commission (the "Commission"), all sued exclusively in their official capacities—submit this response to Plaintiffs' motion for a temporary restraining order ("TRO") and preliminary injunction (Doc. 2). For the reasons set forth below, both forms of relief should be denied.

I. – *Plaintiffs Expressly Disclaim Pursuit of a TRO*

Defendants are flummoxed by Plaintiffs' reference to a TRO in the caption of their motion. On page 2 of the motion, Plaintiffs explicitly state that they "seek only a preliminary injunction, *and not a TRO*, against these laws because no local elections are scheduled for this year, and, thus, Plaintiffs have no immediate intentions of engaging in express advocacy." (emphasis added). In light of this concession, Defendants will focus their response exclusively on Plaintiffs' motion for a preliminary injunction.

II. – *Preliminary Injunction Standard*

To obtain a preliminary injunction, Plaintiffs must establish that: (1) they are substantially likely to succeed on the merits; (2) they will suffer irreparable injury if the injunction is denied; (3) their threatened injury outweighs the injury the State will suffer from the injunction; and (4) the injunction is in the public interest. *Pryor v. Sch. Dist. No. 1*, 99 F.4th 1243, 1250 (10th Cir. 2024). A preliminary injunction is an extraordinary remedy and may be issued only if Plaintiffs' right to relief is "clear and unequivocal." *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005). Furthermore, because the preliminary injunction sought here would "alter the status quo" and provide Plaintiffs "all the relief [they] could recover at the conclusion of a full trial on the merits"—namely invalidating the challenged statutes and regulations—such an injunction is "disfavored" and requires "a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms." *O Centro Espirita Beneficiente Uniaio Do Vegetal v. Ashcroft*, 389 F.3d 973, 975-76 (10th Cir. 2004) (en banc).

A. – Plaintiffs Cannot Show Irreparable Harm.

Before turning to the merits, Defendants begin with irreparable harm because Plaintiffs' motion can be resolved on that factor alone. Plaintiffs cannot establish irreparable harm because (1) the challenged statutes are not *currently* injuring them nor will such statutes impose any conceivable harm on them, *if ever*, until *approximately one year from now*, and (2) Plaintiffs sat on their rights for nearly *three years* before commencing this action.

1. – The statute does not impose any current injury on Plaintiffs.

Plaintiffs ask the Court to enjoin the Kansas Campaign Finance Act's definition of "political committee," *see* K.S.A. 25-4143(*l*)(1), and various registration and reporting requirements, *see* K.S.A. 25-4145, 25-4148. (Mtn. at 1). The thrust of Plaintiffs' case is that, in early August 2021, shortly after Fresh Vision OP, Inc. began expending funds on express advocacy in support of an Overland Park mayoral candidate, the Commission notified the organization that it had to register as a "political committee." Disputing this requirement, and not wanting to submit to the disclosure and reporting mandates, Fresh Vision opted to go "dormant," suspending its operations for nearly three years. (Mtn. at 4). Now, Fresh Vision wants to return to the game and continue its "public advocacy and community education initiatives," an unspecified part of which, it readily acknowledges, will include express advocacy on behalf of one or more specific candidates for local offices when those races take place in 2025. (Mtn. at 2, 4).

The problem for Plaintiffs in seeking a preliminary injunction now is that, when one examines the text of the "political committee" statute, it becomes clear that this provision will not affect Plaintiffs for nearly a year, if ever. Kansas defines a "political committee" as follows:

> [A]ny combination of two or more individuals or any person other than an individual, a major purpose of which is to expressly advocate the nomination, election or defeat of a clearly identified candidate for state or local office or make contributions to or expenditures for the nomination, election or defeat of a clearly identified candidate for state or local office.

K.S.A. 25-4143(*l*)(1). The definition of a "political committee" requires the existence of "a clearly identified candidate." This, in turn, requires a "candidate." *See* K.S.A. 25-4143(b), (d) (definitions of "candidate" and "clearly identified candidate"). Taken together, these provisions reflect that an entity (or group of individuals) is *not* required to register as a "political committee," even assuming that they satisfy the other elements of the statute, until such time as they expressly advocate for a clearly identified candidate or make contributions or expenditures for such candidate. But the local elections that Fresh Vision plans to influence through express advocacy of candidates will not occur until at least the middle of 2025.

Kansas law dictates that an individual does not become a "candidate" until he/she (1) appoints a treasurer or candidate committee, (2) makes a public announcement of intention to seek nomination or election to office, (3) makes expenditures or accepts contributions for nomination or election to office; or (4) files a declaration or petition to become a candidate for office. K.S.A. 25-4143(b). While there are currently numerous candidates for *federal and state* office, Plaintiffs are only interested in supporting *local candidates*. Elections for local office occur in *odd years*, *see* K.S.A. 25-21a01, and the deadline for candidate nomination petitions in such elections is not until June 1 of such years. *See* K.S.A. 25-205 (candidate filing deadline). In short, there will be no local candidate for whom Plaintiffs can engage in express advocacy within the meaning of the campaign finance law for nearly a full year. *See* K.S.A. 25-4143(f)(1), (h)(1) (definitions of "contribution" and "expenditure" require a "clearly identified candidate"). That also means there will be no "candidate" within the meaning of either K.S.A. 25-4148 (setting forth reporting and disclosure requirements for "political committees") or K.S.A. 25-4150 (same, for persons or entities engaging in express advocacy that are not "political committees") until at least a year from now.

2. – Plaintiffs' delay counsels against the issuance of a preliminary injunction.

Moreover, Plaintiffs' delay of almost *three years* before seeking a preliminary injunction

weighs heavily against them. A party's "delay in seeking preliminary relief cuts against finding irreparable harm." *RoDa Drilling v. Siegal*, 552 F.3d 1203, 1210 (10th Cir. 2009) (cleaned up). As this Court recently noted, "delay is an important consideration in the assessment of irreparable harm for purposes of a preliminary injunction." *Alaska v. U.S. Dep't of Educ.*, No. 24-1057-DDC, 2024 WL 3104578, at *14 (D. Kan. June 24, 2024) (citations omitted).

The Commission notified Fresh Vision that it must register as a political committee on August 5, *2021*. (Doc. 1, Ex. 1; Doc 2, Ex. 1 at ¶ 9 and Ex. 2 at ¶ 9). Yet Plaintiffs waited until June 24, *2024*, to seek preliminary relief. Their only excuse for this *three-year* hiatus is that they allegedly "went dormant out of fear." (Mot. at 4). That explanation would justify *unlimited* delay. Plaintiffs sat on their rights for years and now are at no risk of any injury to their rights for nearly another year (if at all). There is no imminent "irreparable harm" here.

The questions presented in this suit entail not only complex First Amendment issues, but also important principles of federalism. It is unnecessary, and would be imprudent, to resolve them on the basis of truncated briefing and a highly abbreviated schedule, particularly considering Plaintiffs' dilatory pursuit of their rights and the absence of irreparable harm. For these reasons alone, the Court should deny Plaintiffs' motion.

B. – Plaintiffs are not likely to succeed on the merits.

Nor are Plaintiffs likely to succeed on the merits. Plaintiffs wage two constitutional attacks on Kansas' campaign finance laws. First, they raise a facial challenge to K.S.A. 25-4143(*l*)(1)'s definition of "political committee," arguing that the statute unconstitutionally encompasses within its reach entities with merely "*a* major purpose" of express advocacy rather than restricting itself to entities with "*the* major purpose" of express advocacy. Second, they claim that, if Fresh Vision is not a "political committee," then the statute governing independent expenditures, K.S.A. 25-4150, is also facially unconstitutional because it treats the annual expenditure of $100 or more for

express advocacy activities as a proxy for the "major purpose" test and cannot satisfy "exacting scrutiny." Both arguments fail.

1. Facial Challenges Are Disfavored

It is important to note at the outset that facial challenges are highly disfavored. As is true here, they "often rest on speculation about the law's coverage and its future enforcement," and "'threaten to short-circuit the democratic process' by preventing duly enacted laws from being implemented in constitutional ways." *Moody v. NetChoice, LLC*, 2024 WL 3237685, at *8 (U.S. July 1, 2024) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450-51 (2008)). It is "the 'most difficult challenge to mount successfully,' because it requires a [plaintiff] to 'establish that no set of circumstances exists under which the Act would be valid.'" *United States v. Rahimi*, 2024 WL 3074728, at *6 (U.S. June 21, 2024) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). "That means that to prevail, the Government need only demonstrate that [the law] is constitutional in *some* of its applications." *Id.* (emphasis added).

2. "Major Purpose" Test

This dispute over a definite article ("the") versus an indefinite article ("a") has its roots in *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam). There, the Supreme Court, construing the scope of the term "political committee" in the Federal Election Campaign Act of 1971 ("FECA"), held that, in order to avoid offending the First Amendment by unduly burdening political expression and thereby survive "exacting scrutiny," the statute could not cover "groups engaged purely in issue discussion," but must be restricted to speech which is 'unambiguously campaign related.'" *N.M. Youth Organized v. Herrera*, 611 F.3d 669, 676 (10th Cir. 2010) (quoting *Buckley*, 424 U.S. at 79-81). *Buckley* and its progeny have identified two categories of speech that meet this criteria: (1) "speech that expressly advocates or is the functional equivalent of express advocacy for the election or defeat of a specific candidate," and (2) all expenditures by political committees. *Id.* In

addition, *Buckley* narrowly construed the term "political committee" in FECA to "only encompass those organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." *Id.* at 677 (quoting *Buckley*, 424 U.S. at 79).

Plaintiffs insist that Fresh Vision is not, and never will be, under the control of a candidate. Plaintiffs thus argue that Fresh Vision can only be subject to political committee reporting requirements if it meets *Buckley*'s "major purpose" test. While acknowledging that Fresh Vision has, and will continue to, engage in express advocacy, Plaintiffs claim that express advocacy is not Fresh Vision's "major purpose." (Mtn. at 4). As a result, Plaintiffs aver, Fresh Vision is exempt from any disclosure obligations applicable to political committees. Plaintiffs misconstrue the law.

As a threshold matter, Plaintiffs are mistaken when they argue that the Tenth Circuit has already addressed this issue. (Mtn. at 6) (citing *Colo. Right to Life Comm., Inc. v. Coffman*, 498 F.3d 1137, 1156 (10th Cir. 2007) ("*CRLC*")). *CRLC*, which analyzed whether a "political committee" label could be attached to an entity that *engaged in no express advocacy and made no in-kind candidate contributions*, 498 F.3d at 1141, merely stated that a statute which treats an organization's annual expenditure of $200 or more for express advocacy activities as a proxy for *Buckley*'s "major purpose" test is problematic (although not facially invalid) because it could include "groups whose 'incidental purpose' may be to engage in express advocacy." *Id.* at 1156. This perfectly logical point in no way suggests that the Tenth Circuit reads *Buckley* as having a formulaic requirement that organizations are only political committees if express advocacy activity is their *one and only* "major purpose." In fact, in that same opinion, the court described Colorado's "issue committee" definition as encompassing *Buckley*'s "major purpose" test despite its use of the term "*a* major purpose." *Id.* at 1155 (emphasis added); *see also Colo. Right to Life Comm., Inc. v. Davidson*, 395 F.Supp.2d 1001, 1021 (D. Colo. 2005) ("*Buckley* establishes that regulation should be tied to groups controlled by candidates or which have *a* 'major purpose' of electing

candidates.") (emphasis added).[1]

CRLC makes a passing observation that the Supreme Court has "suggested" two methods for determining an organization's "major purpose," one of which is to compare the entity's express advocacy spending with its overall spending and assess if the former represented a preponderance of the latter. 498 F.3d at 1152 (citing *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 252, 262 (1986) ("*MCFL*")). But there is no indication that the Tenth Circuit intended that to be any sort of conclusive, bright-line test. In fact, the quoted passage from *MCFL* merely noted that an entity could be treated as a political committee for federal campaign law purposes if its express advocacy spending "become[s] so extensive that the organization's major purpose may be regarded as campaign activity." 479 U.S. at 262. That language is hardly inconsistent with the reasoning of the majority of circuits (described below), which have eschewed any kind of rigidity in the analysis. *Cf.* K.A.R. 19-21-3 (listing various factors to assess "political committee" status).

In support of their position, Plaintiffs rely almost exclusively on one Fourth Circuit case, *North Carolina Right to Life, Inc. v. Leake*, 525 F.3d 274 (4th Cir. 2008) ("*NCRL II*"). They fail to mention, however, that at least three other circuits, as well as the dissenting judge in *NCRL II*, have rejected their theory. *See Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 486-491 (7th Cir. 2012) ("*CIF*"); *Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 58-59 (1st Cir. 2011); *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1008-1012 (9th Cir. 2010); *NCRL II*, 525 F.3d at 326-332 (Michael, J., dissenting). Defendants respectfully submit that those cases are far more compelling than the Fourth Circuit majority in *NCRL II*.

[1] The Tenth Circuit's *N.M. Youth Organized* decision is of the same ilk. The plaintiff there was also an organization that "does not engage in express advocacy for the election or defeat of candidates for public office." 611 F.3d at 671. Unsurprisingly, the court simply held that, because the entity had never undertaken express advocacy activities, it could not possibly be treated as a political committee. *Id.* at 678.

As here, the plaintiffs in *CIF*, *Nat'l Org. for Marriage*, and *Human Life* argued that *Buckley* holds that "the First Amendment imposes a bright-line prohibition against applying disclosure requirements to a group whose single 'major purpose' is other than the nomination or election of candidates." *CIF*, 697 F.3d at 487; *Nat'l Org. for Marriage*, 649 F.3d at 58; *Human Life*, 624 F.3d at 1009. Not one of those courts embraced this capacious argument. They explained that the Supreme Court was merely issuing a limiting construction for FECA and "has never applied a 'major purpose' test to a state's regulation of political committees." *CIF*, 697 F.3d at 487-88; *Nat'l Org. for Marriage*, 649 F.3d at 59; *accord CRLC*, 498 F.3d at 1153 ("The 'major purpose' test is a judicial construct that limits the reach of the statutory triggers in FECA for political committee status."). They also noted that Plaintiffs' interpretation of *Buckley* would "yield perverse results" by disproportionately regulating small groups. *CIF*, 697 F.3d at 488-89; *National Org. for Marriage*, 649 F.3d at 59. Under Plaintiffs' reasoning, a small group whose sole purpose is electing a candidate would have to register as a political committee even if it only spent a few thousand dollars supporting that purpose. *Id.* Yet a "mega-group that spends $1,500,000 to defeat the same candidate, but spends far more on non-campaign-related activities, would not have to register because the defeat of that candidate could not be considered the mega-group's major purpose." *CIF*, 697 F.3d at 489 (citations and alterations omitted). This is nonsensical and would greatly diminish the government's unequivocal interests in facilitating and regulating disclosures.

Plaintiffs' theory would likewise allow groups whose only major purpose *truly is* to engage in express advocacy to circumvent disclosure. *Id.* For example, an entity whose sole purpose is to get a candidate elected could bypass disclosure obligations merely by spending additional funds on non-electioneering activities or merging with a different organization. *Id.*

At the end of the day, in the context of disclosure laws, the semantical distinction between "a" and "the" as to an organization's "major purpose" is just not that significant. "The key word

providing guidance to both speakers and regulators in 'the major purpose' test or 'a major purpose' test is the word 'major,' not the article before it. *NCRL II*, 525 F.3d at 328 (Michael, J., dissenting).

> "Major" means "notable or conspicuous in effect or scope: considerable, principal." *Webster's Third New Int'l Dictionary* 1363 (2002). Thus, regardless of whether a regulator is identifying "a major purpose" or "the major purpose" of an organization, the regulator considers the same evidence to determine whether electoral advocacy constitutes a considerable or principal portion of the organization's total activities.

Id. at 328-29 (Michael, J., dissenting). This approach avoids the potential gamesmanship with the concept Plaintiffs advocate, ensures that only entities with a principal purpose of express advocacy are subject to political committee reporting, and safeguards the important interests of the State and general public in robust disclosure of expenditures deployed for express advocacy. *See Citizens United*, 558 U.S. 310, 366 (2010) ("exacting scrutiny" requires showing a "substantial relation between the disclosure requirement and a sufficiently important governmental interest"); *Wyo. Gun Owners v. Gray*, 83 F.4th 1224, 1244-46 (10th Cir. 2023) (describing government's interests in disclosure of express advocacy contributions and expenditures).

Critically as well, Kansas' definition of "political committee" is drawn far more narrowly than the FECA text that triggered constitutional concerns. The only groups falling within the ambit of Kansas' definition are those that have "a major purpose . . . to expressly advocate [for] the nomination, election or defeat of a clearly identified candidate . . . or make contributions to or expenditures for the nomination, election or defeat of a clearly identified candidate[.]" K.S.A. 25-4143(*l*)(1). By contrast, "FECA's definition of contribution and expenditure," which were at the heart of its "political committee" definition, "applie[d] to anything of value given or received '*for the purpose of . . . influencing' an election*," *CIF*, 697 F.3d at 487 (emphasis added), which could have reached mere *issue advocacy* or more. *Buckley* thus had to limit the scope of FECA in order to solve vagueness and overbreadth concerns. There is no such worry in Kansas because this State already confines its regulation to unambiguous, express advocacy. Kansas law simply does not

compel organizations primarily engaged in issue advocacy to comply with political committee disclosure laws in the event they have an "incidental purpose" in express advocacy as well.

In summary, *Buckley*'s "major purpose" discussion does not prohibit states from requiring groups with "a major purpose" of express advocacy to comply with political committee disclosure laws. This Court should reject Plaintiffs' argument to the contrary.[2]

3. Kansas' Independent Expenditure Law

In addition to attacking Kansas' "major purpose" test used in defining "political committee" status, Plaintiffs also claim that the statute governing independent expenditures, K.S.A. 25-4150, is facially unconstitutional because, they theorize, it effectively requires any entity spending $100 or more on express advocacy to be regulated like a political committee. That is, they aver that an annual expenditures of $100 on express advocacy acts as a proxy for the "major purpose" test. (Mot. at 8-10). Plaintiffs are incorrect.

By its terms, K.S.A. 25-4150 does *not* apply to political committees. Under the statute, "every person, *other than* a candidate, candidate committee, party committee or political committee" who makes or receives express advocacy expenditures or contributions of $100 or more within a calendar year must file a disclosure statement. But they are not onerous. The implementing regulations merely require the reporting of independent expenditures on a form issued by the Commission, *see* K.A.R. 19-21-5, and the Commission has created a succinct one-page form for the disclosures. *See* http://ethics.ks.gov/CFAForms/Independent%20Expend%20City.pdf (form

[2] In the (hopefully unlikely) event that this Court adopts the rigid test for political committee status advocated by Plaintiffs and adopted by the Fourth Circuit majority, the Court should not *facially* invalidate Kansas' statute. Plaintiffs come nowhere close to showing that *every* application of K.S.A. 25-4143(*l*)(1) will be unconstitutional. For example, any group whose sole "major purpose" is express advocacy would also have express advocacy as "a major purpose."

used in connection with independent expenditures for local offices); Ex. A at ¶7 and Att. 1.[3] This form is filed for the timeframe during which the express advocacy expenditures occurred, and no form need be filed if no such expenditures occurred during a relevant period. Ex. A at ¶9. The form is filed only after the $100 calendar year threshold is met. *Id.* Importantly, this one-page form is *not* the broader disclosure form that is used in connection with political committees. *See* http://ethics.ks.gov/CFAForms/PACForms.htm (form to be completed by political committees); Ex. A at ¶¶10-11 and Att. 3. All of this is to say that Plaintiffs misconstrue Kansas law in claiming that merely spending $100 on express advocacy triggers political committee-type regulation and disclosure requirements. (Mtn. at 8).

Contrary to Plaintiffs' contention (Mtn. at 8-11), Kansas' independent expenditure law need not reference any "major purpose" standard because the law is *not aimed at political committees*. Rather, its focus is limited to persons receiving "contributions" or making "expenditures" of $100 or more within a calendar year for the purpose of advocating for the nomination, election, or defeat of a clearly identified candidate for office in Kansas. K.S.A. 25-4143(f), (h), 25-4150. Plaintiffs' citations to *CRLC* and *New Mexico Youth Organized*, therefore, are inapposite as both of those cases dealt with *political committees* and the applicability (or non-applicability) of the unique state regulation of the same to the plaintiff entities. The organizations in those cases each had policies against engaging in express advocacy, yet fit within the definition of a political committee due to the peculiarities of the states' campaign finance laws. *CRLC*, 498 F.3d at 1141, 1151-56; *N.M. Youth Organized*, 611 F.3d at 671, 677. The relevant statutes characterized a group as a *political committee* if it spent above a threshold on certain campaign-related expenditures,

[3] Admittedly, K.A.R. 19-21-5 references another regulation, K.A.R. 19-29-2, which may cause an entity to think more extensive disclosures are necessary. But that is not how the Commission enforces K.S.A. 25-4150, nor is it (for as long as anyone now at the Commission remembers) how the Commission interprets or enforces the regulation. *See* Ex. A at ¶8 and Att. 2.

regardless of whether express advocacy was a "major purpose" of the entity. The dollar amount thus actually was a proxy for the "major purpose" test in those cases.

Kansas, on the other hand, does *not* treat an entity as a political committee simply because it spends $100 on express advocacy, let alone other campaign-related activities. Unless the various factors in K.A.R. 19-21-3 indicate that a *major purpose* of the organization is to engage in express advocacy, the only thing Kansas requires persons meeting the $100 threshold on express advocacy expenditures to file is a one-page, event-driven form cataloguing such expenditures, and even then, only for and at the conclusion of the relevant reporting period. This law is much more akin to the benign Section 6(1) provision that a district court upheld in *Colorado Right to Life Committee, Inc. v. Davidson*, 395 F.Supp.2d 1001, 1015-19 (D. Colo. 2005), and which was not appealed.

In sum, Plaintiffs labor under a misapprehension as to what K.S.A. 25-4150 requires and how it (via its implementing regulations and Commission forms/practices) is enforced. Plaintiffs wrongly assert that simply spending $100 on express advocacy triggers political committee disclosure requirements. The reason the Commission believed Fresh Vison was required to register as a political committee in 2021 was *not* that it spent $100 on express advocacy. The reason was that the Commission felt, under the facts then known to it, that Fresh Vision had a major purpose to advocate for the election of a candidate in the Overland Park mayoral race.[4]

[4] Fresh Vision denies that its "major purpose," or even one of its "major purposes," is to support or oppose the election of local candidates. But the evidence presented at a March 2022 Commission hearing suggested that Fresh Vision spent most of the money it raised on express advocacy. According to the organizations' officers, Fresh Vision raised roughly $2000, but then spent that money on website development—which included support for the mayoral candidate—and money on mailers, one of which supported the candidate. Ex. A at ¶¶15-22. Although one officer claimed that only 15% of Fresh Vision's money was spent on express advocacy and another claimed less than 50% of its activities were spent on express advocacy due to its 501(c)(4) status, the facts suggested that it spent *the majority* of its money on express advocacy. As such, Fresh Vision likely was properly characterized as a political committee even under Plaintiffs' "major purpose" argument.

Kansas' $100 disclosure threshold on independent expenditures satisfies exacting scrutiny. To meet this standard and avoid First Amendment concerns, there must be a "substantial relation between the disclosure requirement and a sufficiently important governmental interest." *Citizens United*, 558 U.S. at 366. That is, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *N.M. Organized Youth*, 611 F.3d at 677 (quoting *Doe v. Reed*, 561 U.S. 186, 196 (2010)). The regulation also must be narrowly tailored. *Wyo. Gun Owners*, 83 F.4th at 1243-44 (citing *Ams. For Prosperity Found. v. Bonta*, 594 U.S. 595 (2021)). But narrow tailoring does *not* require that the State's disclosure requirements be the "least restrictive means," *Ams. For Prosperity Found.*, 594 U.S. at 609, and this standard is not especially burdensome. The State need only show that the fit is "reasonable" and that the "scope is in proportion to the interest served." *Id.* The fact that there may be other, even better, ways to regulate the disclosure is not dispositive. *Id.* Kansas unequivocally passes this test.

Disclosure regulations survive "exacting scrutiny' so long as they [are] construed to reach only that speech which is 'unambiguously campaigned [sic] related." *N.M. Youth Organized*, 611 F.3d at 676 (citing *Buckley*, 424 U.S. at 79-81). "[S]peech that expressly advocates . . . for the election or defeat of a specific candidate *is unambiguously related to the campaign of a candidate and thus properly subject to regulation regardless of its origin*." *Id.* (emphasis added). This is the exact (and only) type of speech that K.S.A. 25-4150 addresses.

Kansas' limited independent disclosure law serves both informational and anticorruption interests. This disclosure law "provid[es] the electorate with information about the sources of election-related spending to help citizens make informed choices in the political marketplace." *Wyo. Gun Owners*, 83 F.4th at 1244-45 (quoting *Citizens United*, 558 U.S. at 366). Indeed, courts have long held that disclosure requirements in the election space serve particularly important interests, and entities have no right to keep express advocacy contributions hidden from the public.

Wyo. Gun Owners, 83 F.4th at 1245 (providing numerous reasons why disclosure laws are important). Moreover, with respect to Plaintiffs specifically, the fact that Fresh Vision is only concerned with supporting or opposing local candidates further validates Kansas' interests with respect to that organization because "[s]maller elections can be influenced by less expensive communications." *Id.* at 1246 (quoting *Indep. Inst. v. Williams*, 812 F.3d 787, 797 (10th Cir. 2016)).

Plaintiffs do not dispute that requiring disclosure of expenditures and contributions totaling $100 or more in a calendar year is substantially related to important government interests. Nor do they claim that Fresh Vision is unable to segregate contributions made for express advocacy purposes from other contributions. Instead, Plaintiffs argue that Kansas' independent expenditure law is not narrowly tailored based on their misreading of its requirements. (Mtn. at 11-14).

As discussed previously, Plaintiffs are simply incorrect when they argue that spending at least $100 on express advocacy automatically subjects an entity to "the full panoply of regulations that accompany status as a political committee." (Mtn. at 14). Kansas' independent expenditure law only requires the filing of a one-page form identifying the relevant expenditures made during each reporting period. The form asks for no more information than what is necessary for the State to effectuate its important interests. In fact, limiting the disclosure obligation to express advocacy activities is arguably *narrower* than what the First Amendment permits. *See Citizens United*, 558 U.S. at 369 (rejecting argument that "disclosure requirements must be limited to speech that is the functional equivalent of express advocacy"); *id.* at 366 ("disclosure requirements may burden the ability to speak, but they impose no ceiling on campaign-related activities and do not prevent anyone from speaking."). Plus, the disclosure requirement is not recurring. It is merely a one-time report made during the period in which the expenditure occurs, something courts recognize as being less burdensome. *See Iowa Right to Life Comm., Inc. v. Tooker*, 717 F.3d 576, 588, 596 (8th Cir. 2013) (recognizing that a "one-time, event-driven report" is not burdensome, but that

supplemental reports of redundant information are problematic); *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 873 (8th Cir. 2012) (finding independent expenditure disclosure law likely unconstitutional due to its "ongoing reporting requirement," but noting that a disclosure "requiring reporting whenever money is spent" would be less onerous). Nor does Kansas employ vague language that might invite intrusive and burdensome disclosures, as occurred, for example, in the Wyoming campaign finance law. *See Wyo. Gun Owners*, 83 F.4th at 1247-48 (recognizing that only requiring the disclosure of contributions earmarked for electioneering purpose would be sufficiently tailored). In sum, Kansas' limited-in-scope, one-time, event-driven independent expenditure reporting requirements are neatly and narrowly tailored to the State's substantial government interests.

C. – Balancing of Harms and Public Interest

The balance of harms also weighs in favor of the State. Plaintiffs would suffer no constitutional violation if the injunction is denied, but Kansas and its citizenry would be deprived of important campaign finance disclosures and would endure their own injury of having important, duly enacted laws enjoined. *See Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). This factor, too, militates against an injunction.

III. – Conclusion

For the foregoing reasons, the Court should deny Plaintiffs' motion for a TRO and preliminary injunction and reject the constitutional attacks on Kansas' campaign finance laws.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 9, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to the e-mail addresses on the Court's electronic mail notice list.

/s/ Bradley J. Schlozman