

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF WYOMING

FREE SPEECH,

*Plaintiff,*

VS.

FEDERAL ELECTION COMMISSION,

*Defendant.*

CASE NO. 12-CV-127-SWS

OCTOBER 3, 2012  
8:28 A.M. - 9:05 A.M.

CASPER, WYOMING

---

TRANSCRIPT OF TELEPHONIC ORAL RULING  
ON PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION  
BEFORE THE HONORABLE SCOTT W. SKAVDAHL  
UNITED STATES DISTRICT JUDGE

---

**APPEARANCES:**

For Plaintiff:

**John B. Speight**  
4021 Snyder  
Cheyenne, Wyoming 82001

**Stephen R. Klein**  
WYOMING LIBERTY GROUP  
1902 Thomes Avenue, Suite 201  
Cheyenne, Wyoming 82001

**Benjamin T. Barr**  
10737 Hunting Lane  
Rockville, Maryland 20850

For Defendant:

**Erin R. Chlopak**  
**David B. Kolker**  
**Adav Noti**  
FEDERAL ELECTION COMMISSION  
999 E Street NW  
Washington, DC 20463

**Nicholas Vassallo**  
UNITED STATES ATTORNEY'S OFFICE  
P.O. Box 668  
Cheyenne, Wyoming 82003-0668

1 **APPEARANCES: (Page 2 of 2)**

2 Reported By:

**Jamie L. Hendrich, CSR-RPR-CRR**  
Official Federal Court Reporter  
U.S. District Courthouse  
111 South Wolcott, Room 217  
Casper, Wyoming 82601  
(307) 265-5280

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CITATION INDEX

1		
2	<b><i>Austin v. Michigan Chamber of Commerce,</i></b>	
3	494 U.S. 652, 1990 .....	6
4	<b><i>Awad v. Ziriax,</i></b> 670 F.3d 1111, at 1125,	
5	(10 <sup>th</sup> Cir. 2012) .....	15
6	<b><i>Buckley v. Valeo,</i></b> 424 U.S. 1, 1976 .....	7
7	<b><i>Citizens United v. FEC,</i></b>	
8	558 U.S. 310, 130 S.Ct.876, 2010 .....	6
9	<b><i>FEC v. Survival Education Fund, Incorporated,</i></b>	
10	65 F.3d 285, at 295 (2 <sup>d</sup> Cir. 1995) .....	19
11	<b><i>FEC v. Wisconsin Right to Life,</i></b>	
12	551 U.S. 449, 2007 .....	8
13	<b><i>McConnell v. Federal Election Commission,</i></b>	
14	540 U.S. 93, 2003 .....	6
15	<b><i>New Mexico Youth Organized v. Herrera,</i></b>	
16	611 F.3d 669, 676 (10 <sup>th</sup> Circuit 2010) .....	17
17	<b><i>The Real Truth About Abortion, Inc. v.</i></b>	
18	<b><i>Federal Election Commission,</i></b> 681 F.3d 544, 555	
19	(4 <sup>th</sup> Cir. 2012) .....	11
20	<b><i>Winter v. Natural Resource Defense Council,</i></b>	
21	555 U.S. 7 at 20, 2008 .....	15
22		
23		
24		
25		

1           **THE COURT:** Good morning, counsel.

2           **MR. BARR:** Good morning, Your Honor.

3           **MS. CHLOPAK:** Good morning.

4           **THE COURT:** Court is in session in the matter of Free  
5 Speech versus the Federal Election Commission, Case Number  
6 12-CV-127. I note the presence of Mr. Speight, Mr. Klein and  
7 Mr. Barr on behalf of plaintiffs -- plaintiff and the presence  
8 of Mr. Kolker, Ms. Chlopak and Mr. Noti on behalf of the  
9 defendant, Federal Election Commission.

10           This matter comes before the Court on plaintiff's  
11 motion for preliminary injunctive relief pursuant to Rule 65 of  
12 the Federal Rules of Civil Procedure. Plaintiff, based upon  
13 alleged infringement of its constitutional rights, seeks to  
14 have this Court enjoin defendant, the Federal Election  
15 Commission, from enforcement of various regulatory provisions  
16 and policies. The Court finds and orders as follows:

17           As to the background in this matter, Plaintiff Free  
18 Speech is an unincorporated, nonprofit association formed on  
19 February 21, 2012, and is comprised of three Wyoming residents.  
20 Free Speech's stated mission is to promote and protect free  
21 speech, limited government and constitutionally --  
22 constitutional accountability and to advocate positions on  
23 various political issues, including free speech, environmental  
24 policy, gun rights, land rights and control over personal  
25 healthcare. Its bylaws require that it operate independently

1 of political candidates, committees and political parties. See  
2 the *Complaint*, Paragraphs 1 and 10, and Exhibit A to Exhibit 1.  
3 Free Speech seeks to run various advertisements addressing  
4 political issues and seeks to engage in fundraising from other  
5 like-minded individuals to support its positions through public  
6 media.

7           On July 26, 2012, plaintiff filed this action,  
8 challenging certain FEC regulations that plaintiff alleges  
9 abridge its First Amendment freedoms. Specifically, plaintiff  
10 brings facial and "as applied" challenges against 11 C.F.R.,  
11 Section 100.22(b), alleging its definition of "express  
12 advocacy" is unconstitutionally vague and overly broad and  
13 triggers burdensome registration and reporting requirements  
14 which act as the functional equivalent of a prior restraint of  
15 political speech.

16           Plaintiff further challenges the constitutionality of  
17 the FEC's interpretation and enforcement process regarding  
18 political committee status, solicitation tests, the "major  
19 purpose" test and express advocacy determinations. See  
20 *Complaint*, Paragraph 2.

21           In order to understand and analyze the issues raised,  
22 it is helpful to lay out the applicable statutory and  
23 regulatory framework and evolution of law affecting political  
24 campaigns and elections. It is also helpful to identify, to  
25 the extent able, the perceived evils sought to be curtailed by

1 this set of campaign laws. The primary purpose of the Federal  
2 Election Campaign Act of 1971, hereinafter "The Act" or "FECA,"  
3 was to limit the actuality and appearance of corruption  
4 resulting from the giving of large sums of money and the  
5 spending of money in political campaigns for federal office.

6 Thus, under Title 2, United States Code, Section 441a,  
7 limitations are imposed upon the amount of contributions that  
8 can be made directly to candidates for federal office and the  
9 expenditures that a candidate may make in running for office.  
10 There were also concerns regarding independent expenditures  
11 which were not made by a candidate for federal office but  
12 nonetheless a person advocating for the election or defeat of a  
13 clearly identified candidate. These independent expenditures,  
14 in part, give rise to the issues before the Court in this case.

15 Prior to the United States Supreme Court's decision in  
16 *Citizens United versus Federal Election Commission*, 130 Supreme  
17 Court 876, 2010, the federal law prohibited corporations and  
18 unions from using treasury funds, money, to make independent  
19 expenditures for speech that was either defined as  
20 electioneering communication or for speech expressly advocating  
21 the election or defeat of a candidate. This preclusion on  
22 corporate expenditures for electioneering communications was  
23 upheld in *McConnell versus Federal Election Commission*, 540  
24 U.S. 93, 2003. However, in doing so, the Supreme Court relied  
25 upon its prior holding in *Austin versus Michigan Chamber of*

1 *Commerce*, 494 U.S. 652, 1990 Supreme Court decision which  
2 upheld the State of Michigan's direct restriction on the  
3 independent expenditures of funds by a corporation that  
4 supported or opposed any candidate for state office.

5           In *Citizens United*, the Supreme Court overruled its  
6 decision in *Austin* and held unconstitutional Title 2, United  
7 States Code, Section 441b's restrictions on corporate  
8 independent expenditures. In addition, the Court in *Citizens*  
9 *United* overruled that portion of *McConnell* which had upheld  
10 amendments to Section 316(b) of FECA, precluding corporations  
11 and unions from using their general treasury funds, money, to  
12 finance electioneering communications. See *Citizens United* at  
13 913; *McConnell* at 203 through 205.

14           Despite this conclusion on the preclusion of  
15 expenditures, it is equally if not more significant to the  
16 claims in this case to note what the Court in *Citizens United*  
17 found was constitutionally permissible. In *Citizens United*,  
18 there was also a challenge made to the disclaimer and  
19 disclosure requirements under Title 2, United States Code,  
20 Section 441d. In analyzing these disclaimer and disclosure  
21 requirements, the Court in *Citizens United* noted: "Disclaimer  
22 and disclosure requirements may burden the ability to speak,  
23 but they impose no ceiling on campaign-related activities,"  
24 citing *Buckley*, 424 U.S. at 64, and "do not prevent anyone from  
25 speaking," citing *McConnell*, *supra*, at 201. The Court has

1 subjected these requirements to "exacting scrutiny" which  
2 requires a "substantial relation" between the disclosure  
3 required and a "sufficiently important" governmental interest.  
4 *Buckley, supra*, at 64. The Court went on, in *Citizens United*,  
5 to conclude that the disclosure and disclaimer requirements  
6 were constitutional, reaffirming its analysis in *McConnell* as  
7 it pertained to the disclosure provisions. *Id.* at 915.

8           The case law has also drawn distinctions between  
9 campaign advocacy and issue advocacy. To that extent, in  
10 *Federal Election Commission versus Wisconsin Right to Life*,  
11 551 U.S. 449, the Supreme Court, in 2007, held that statutory  
12 restrictions on the use of corporate funds to advertisements  
13 that were "issue advocacy" advertisements as opposed to  
14 "express advocacy" were unconstitutional.

15           In reaching that conclusion, the Court noted that the  
16 speech at issue was not the "functional equivalent of express  
17 campaign speech." Thus, the interests held to justify  
18 restricting corporate campaign speech or its functional  
19 equivalent did not justify restricting the "issue advocacy"  
20 speech involved in *Wisconsin Right to Life*. In making this  
21 distinction, the Court noted that the dangers associated with  
22 advocacy or campaign speech or its functional equivalent does  
23 not exist with respect to issue advocacy. See *Wisconsin Right*  
24 *to Life*, at 470. It is behind this wall of precedent that the  
25 merit of plaintiff's claims must be measured. The definition



1 of these terms is important to the analysis of the issues  
2 presented.

3 Under the Federal Election Campaign Act of 1971,  
4 "independent expenditure" is defined as "an expenditure  
5 expressly advocating the election or defeat of a clearly  
6 identified candidate" and not made by or in coordination with a  
7 candidate or political party or committee. See Title 2, United  
8 States Code, Section 431(17).

9 An "expenditure" is defined as "any purchase, payment,  
10 distribution, loan, advance, deposit or gift of money or  
11 anything of value made by any person for the purposes of  
12 influencing any election for federal office." See Section  
13 431(9)(A)(i), Title 2.

14 Under 11 C.F.R, Section 100.22, "expressly advocating"  
15 is defined as any communication that (a) uses phrases such as  
16 "vote for the president," "reelect your congressman," "support  
17 the Democratic nominee," "cast your ballot for the Republican  
18 challenger for U.S. Senate in Georgia," "Smith for Congress,"  
19 "Bill McKay in '94," "vote pro-life" or "vote pro-choice"  
20 accompanied by a listing of clearly identified candidates  
21 described as pro-life or pro-choice, "vote against Old  
22 Hickory;" "defeat" accompanied by a picture of one or more  
23 candidates; "reject the incumbent" or communications of  
24 campaign slogans or individual words which in context can have  
25 no other reasonable meaning than to urge the election or defeat

1 of one or more clearly identified candidates such as posters,  
2 bumper stickers, advertisements, et cetera, which say, "Nixon's  
3 the one"; "Carter '76"; "Reagan/Bush" or "Mondale!"; or  
4 Subsection (b) of Section 100.22 which provides: "When taken  
5 as a whole and with limited reference to external events, such  
6 as the proximity to the election, could only be interpreted by  
7 a reasonable person as containing advocacy of the election or  
8 defeat of one or more clearly identified candidates because,  
9 one, the electoral portion of the communication is  
10 unmistakable, unambiguous and suggestive of only one meaning;  
11 and, two, reasonable minds could not differ as to whether it  
12 encourages actions to elect or defeat one or more clearly  
13 identified candidates or encourages some other kind of action.

14           A person or organization, other than a political  
15 committee, that finances independent expenditures aggregating  
16 more than \$250 a calendar year is required to file with the FEC  
17 a disclosure report that identifies, *inter alia*, the date and  
18 amount of each expenditure and anyone who contributed over \$200  
19 to further it. See United States Code, Section 434(c) of  
20 Title 2; and 11 C.F.R., Section 109.10(e).

21           The Act further defines a "political committee,"  
22 commonly known as a "PAC," as "any committee, club, association  
23 or other group of persons which receives contributions  
24 aggregating in excess of \$1,000 during a calendar year or which  
25 makes expenditures aggregating in excess of \$1,000 during a

1 calendar year." Title 2, United States Code, Section  
2 431(4)(A). The terms "expenditures" and "contributions" are,  
3 in turn, defined to encompass any spending or fundraising "for  
4 the purpose of influencing any election for federal office."  
5 See Sections 431(8)(A)(i) and 431(9)(A)(i).

6           In *Buckley versus Valeo*, 424 U.S. 1, 1976, the Supreme  
7 Court narrowed the statutory definition of a PAC, limiting its  
8 reach to "only encompass organizations that are under the  
9 control of a candidate or the 'major purpose' of which is the  
10 nomination or election of a candidate. An organization that is  
11 not controlled by a candidate must therefore register as a PAC  
12 if its contributions or expenditures exceed \$1,000 and its  
13 'major purpose' is the nomination or election of a federal  
14 candidate." See *The Real Truth About Abortion, Inc. versus*  
15 *Federal Election Commission*, 681 F.3d 544, 555, Fourth Circuit  
16 2012 decision, hereinafter "RTAA."

17           Political committees must comply with certain  
18 organizational and disclosure requirements. They must register  
19 with the FEC and file periodic reports for disclosure to the  
20 public of their total operating expenses and cash on hand as  
21 well as their receipts and disbursements with limited  
22 exceptions for most transactions below a 200-dollar threshold.  
23 See Title 2, United States Code, Sections 433 and 434. Each  
24 PAC must have a treasurer who maintains its records and a  
25 separately designated bank account. PACs also must disclose,

1 in their regularly scheduled reports, additional information  
2 about their independent expenditures, including the date,  
3 amount and candidates supported or opposed for each independent  
4 expenditure over \$200, Sections 434(b)(4)(H)(iii), (6)(B)(iii).  
5 Additionally, PACs must identify themselves through disclaimers  
6 on all of their public political advertising, on their website  
7 and in mass emails. 11 C.F.R, Section 110.11(a)(1).

8 In 2007, after considering and receiving public  
9 comments, the FEC decided not to promulgate a new definition of  
10 "political committee" but instead to continue its longstanding  
11 practice of determining each organization's major purpose  
12 through a case-by-case analysis of an organization's conduct.  
13 The published notice of this decision explained that while the  
14 "major purpose" test can be satisfied "through sufficiently  
15 extensive spending on federal campaign activity," 72 Federal  
16 Register 5595, 5601, a fact-intensive analysis of each  
17 organization's conduct, including public statements,  
18 fundraising appeals and spending on other activity, can be  
19 instructive in evaluating the organization's campaign  
20 activities compared to its activities unrelated to campaigns.  
21 *Id.* at 5601 through 602.

22 The Act defines "contribution" to include "any gift,  
23 subscription, loan, advance or deposit of money or anything of  
24 value made by any person for the purposes of influencing any  
25 election for federal office." 2 United States Code, Section

1 431(8)(A)(i). The Act requires "any person" who "solicits any  
2 contribution through any broadcasting station, newspaper,  
3 magazine, outdoor advertising facility, mailing or any other  
4 type of general public political advertising" to include a  
5 specified disclaimer in the solicitation. *Id.*, Section  
6 441d(a); and see also 11 C.F.R., Section 110.11(a)(3).

7           Plaintiff wishes to pay for advertisements in various  
8 media outlets that will bring to light a variety of public  
9 issues such as gun rights, land rights, environmental policy,  
10 healthcare and free speech, including their connection with  
11 public servants and candidates for public office. Free Speech  
12 plans to run these advertisements from the present to November  
13 and further speak about related issues as they arise between  
14 November as well. See the *Complaint*, at Paragraph 13.

15           Plaintiff seeks to finance and distribute these  
16 communications without registering as a political committee or  
17 complying with the disclaimer and disclosure obligations  
18 required for certain types of campaign-related communications.  
19 Free Speech also intends to solicit donations of funds to  
20 finance additional unidentified advertisements well beyond the  
21 2012 electoral cycle. Plaintiff represents it is not under the  
22 control of any federal candidate nor does it have, as its major  
23 purpose, the election or defeat of clearly identified  
24 candidates for federal office -- see *Complaint*, Paragraph 14 --  
25 and plaintiff insists it intends to engage solely in "issue

1 advocacy." Plaintiff's first cause of action alleges Section  
2 100.22(b) is unconstitutional on its face because it goes  
3 "beyond any proper construction of express advocacy and offers  
4 no clear guidance -- or guidelines for speakers to tailor their  
5 constitutionally protected conduct and speech, and it fails "to  
6 limit its application to expenditures for communications that  
7 in express terms advocate the election or defeat of a clearly  
8 identified candidate for federal office" in accordance with  
9 *Buckley*. See *Complaint*, Paragraphs 74 and 75.

10 Plaintiff alleges that Section 100.22(b) is  
11 unconstitutional as applied because the FEC "maintains a  
12 practice of applying a variety of *ad hoc*, case-by-case factors  
13 in each enforcement matter, advisory opinion and consideration  
14 of the regulation in question." See *Complaint* at Paragraph 76;  
15 and the FEC applies it to cover protected "issue advocacy"  
16 communications. *Complaint*, at Paragraph 77.

17 Plaintiff's second cause of action alleges that  
18 Section 100.22(b) is unconstitutional because the "heavy  
19 regulations and compliance requirements" associated with the  
20 FEC's arbitrary classification of some speech as express  
21 advocacy acts as the functional equivalent of a prior  
22 restraint. See *Complaint*, Paragraphs 81 and 82. Plaintiff's  
23 third cause of action alleges it cannot realistically raise  
24 funds or seek donations due to the cumbersome application of  
25 the FEC's unconstitutionally vague solicitation standards,

1 inhibiting it from "associating with like-minded individuals  
2 and speaking out to raise awareness of issues." *Complaint*, at  
3 Paragraph 87.

4           Finally, plaintiff's fourth cause of action alleges  
5 that the FEC's application of the "major purpose" test to  
6 determine political committee status is unconstitutional  
7 because it evaluates more than an organization's independent  
8 expenditures and founding documents. See *Complaint*, at  
9 Paragraph 103. By the present motion, plaintiff seeks a  
10 preliminary injunction enjoining the FEC from enforcing the  
11 challenged provisions and policies facially and as applied  
12 until a final hearing on the merits may be held.

13           The standard of review applicable to this matter  
14 requires that to obtain an extraordinary remedy of a  
15 preliminary injunction, plaintiff must show that four factors  
16 weigh in its favor: One, it is substantially likely to succeed  
17 on the merits; two, it will suffer irreparable injury if the  
18 injunction is denied; three, its threatened injury outweighs  
19 the injury the opposing party will suffer under the injunction;  
20 and, four, the injunction would not be adverse to the public  
21 interest. See *Awad, A-W-A-D, versus Ziriaux, Z-I-R-I-A-X*,  
22 670 F.3d 1111, at 1125, Tenth Circuit 2012, citing *Winter*  
23 *versus Natural Resource Defense Council*, 555 U.S. 7 at 20,  
24 2008. Preliminary injunctions that alter the status quo or  
25 afford the movant all the relief that it will recover at the

1 conclusion of a full trial on the merits are disfavored and  
2 must be more closely scrutinized. *Id.* In such instances, the  
3 moving party must make "a strong showing both with regard to  
4 the likelihood of success on the merits and with regard to the  
5 balance of harms." *Id.*

6 Plaintiff argues that because the FEC's regulatory  
7 structure acts as the functional equivalent of a prior  
8 restraint, it asserts that strict scrutiny is warranted to  
9 review of its claims. At the core of plaintiff's challenges,  
10 however, are rules and policies which implement only the  
11 disclosure requirements. The question before the Court is not  
12 whether plaintiff can make expenditures for the speech it  
13 proposes nor raise money without limitation but simply whether  
14 it must provide disclosure of its electoral advocacy.

15 Controlling precedent does not support an argument  
16 that strict scrutiny is applicable. As noted, "disclaimer and  
17 disclosure requirements may burden the ability to speak, but  
18 they impose no ceiling on campaign-related activities and do  
19 not prevent anyone from speaking. The Court has subjected  
20 these requirements to 'exacting scrutiny', which requires a  
21 'substantial relation' between the disclosure requirement and a  
22 'sufficiently important' governmental interest. See *Citizens*  
23 *United versus FEC*, 558 U.S. 310. See also *RTAA versus FEC*, 681  
24 F.3d 544. Similarly, the Tenth Circuit has noted that  
25 regulations requiring disclosure, as distinguished from



1 regulations that limit the amount of speech a group may  
2 undertake, are subject to the "exacting scrutiny." See  
3 *New Mexico Youth Organized versus Herrera*, 611 F.3d 669, 676,  
4 2010 Tenth Circuit decision.

5           The disclosure and organizational requirements for  
6 independent expenditures and political committees "are not as  
7 burdensome on speech as are limits imposed on campaign  
8 activities or limits imposed on contributions to the  
9 expenditures by campaigns." *RTAA*, 681 F.3d, at 548.  
10 Accordingly, an intermediate level of scrutiny known as  
11 "exacting scrutiny" is the appropriate standard to apply in  
12 reviewing provisions that impose disclosure requirements such  
13 as the regulation and policy at issue here. See *RTAA*, at 549.

14           In terms of the issue as to the constitutionality of  
15 11 C.F.R., Section 1000 -- or 100.22(b), "*Citizens United*  
16 supports the FEC's use of a functional equivalent test in  
17 defining 'express advocacy.' If mandatory disclosure  
18 requirements are permissible when applied to ads that merely  
19 mention a federal candidate, then applying the same burden to  
20 ads that go further and are the functional equivalent of  
21 express advocacy cannot automatically be impermissible." See  
22 *RTAA*, 681 F.3d 551-52.

23           "The language of Section 100.22(b) is consistent with  
24 the test for the functional equivalent of express advocacy that  
25 was adopted in *Wisconsin Right to Life*, a test that the

1 controlling opinion specifically stated was not impermissibly  
2 vague." *Id.*, at 552, citing *FEC versus Wisconsin Right to*  
3 *Life*, at 474, Footnote 7.

4 "Although it is true that the language of Section  
5 100.22(b) does not exactly mirror the functional equivalent  
6 definition in *Wisconsin Right to Life*, the difference between  
7 the two tests are not meaningful. Indeed, the test under  
8 Section 100.22(b) is likely narrower than the one articulated  
9 in *Wisconsin Right to Life* since it requires a communication to  
10 have an 'electoral portion' that is unmistakable and  
11 unambiguous." *RTAA*, at 552.

12 The fact that the FEC could not conclusively agree as  
13 to whether certain of plaintiff's proposed ads constituted  
14 express advocacy under its regulations and policies does not  
15 make Section 100.22(b) unconstitutionally vague. This fact  
16 proves little because cases that fall close to the line will  
17 inevitably arise when applying Section 100.22(b). This kind of  
18 difficulty is simply inherent in any kind of standards-based  
19 test. See *RTAA*, at 554. It also may reflect the inherent  
20 problem in an equal number of commissioners and the unfortunate  
21 political divide; but, in any event, that does not invalidate  
22 the process.

23 Turning to whether the disclosure requirements  
24 triggered by 100.22(b) act as a prior restraint. "In *Buckley*,  
25 the Supreme Court explained that disclosure could be justified

1 based on a governmental interest in providing the electorate  
2 with information about the sources of election-related  
3 spending." See *Citizens United* at 914. It "upheld a  
4 disclosure requirement for independent expenditures even though  
5 it invalidated a provision that imposed a ceiling on those  
6 expenditures." See *Citizens United* at 915.

7           In this case, plaintiff fails to demonstrate how any  
8 of the challenged provisions, none of which impose any  
9 restrictions or limitations on its speech, function as a prior  
10 restraint. The plaintiff appears to seek to expand the  
11 discussion in *Citizens United* as to the formation of a PAC and  
12 the burdens imposed upon going through that process, but this  
13 Court does not find that those same burdens are analogous in  
14 this case and thus do not act as a prior restraint or the  
15 equivalent of the same.

16           As to the constitutionality of the solicitation  
17 standard, in evaluating whether plaintiff's donation requests  
18 would constitute "solicitations" of contributions, the FEC  
19 employed the Second Circuit's test: Disclosure is required "if  
20 a communication contains solicitations clearly indicating that  
21 the contributions will be targeted to the election or defeat of  
22 a clearly identified candidate for federal office." *FEC versus*  
23 *Survival Education Fund, Incorporated*, 65 F.3d 285, at 295;  
24 Second Circuit 1995, "SEF" hereinafter. Draft B found two of  
25 plaintiff's proposed donation requests will solicit

1 contributions and two will not. *Complaint*, Exhibit C, at page  
2 17. Draft B of the opinion of the FEC reasonably applies -- of  
3 the advisory opinion, I should state, reasonably applies the  
4 *SEF* standard for solicitations in reaching this conclusion.

5           The Second Circuit, in *SEF*, recognized that the  
6 disclosure requirements for solicitations "serve important  
7 First Amendment values. Potential contributors are entitled to  
8 know that they are supporting independent critics of a  
9 candidate and not a group that may be in league with that  
10 candidate's opponent. Section 441d(a)(3) is thus 'a reasonable  
11 and minimally restrictive method,' *Buckley*, 424 U.S., at 82, of  
12 ensuring open electoral competition that does not unduly trench  
13 upon an individual's First Amendment rights." *SEF*, 65 F.3d at  
14 296.

15           I would add: Based upon *Citizens United's* analysis  
16 and the allowance of corporate contributions, the reporting  
17 requirements become even more significant because the corporate  
18 structure does not allow identification of the individual who  
19 is making the speech at issue.

20           The constitutionality -- as to the constitutionality  
21 of the "major purpose" test and "political committee status":  
22 "Following *Buckley*, the Commission adopted a policy of  
23 determining PAC status on a case-by-case basis. See Political  
24 Committee Status, 72 Federal Register 5595, 5596-97, this '2007  
25 Notice.' Under this approach, the Commission first considers a

1 group's political activities such as spending on a particular  
2 'electoral' or 'issue advocacy' campaign -- see *Id.* at 5601 --  
3 and then it evaluates an organization's 'major purpose' as  
4 revealed by that group's public statements, fundraising  
5 appeals, government filings and organizational documents." See  
6 *Id.*, *RTAA*, 681 F.3d at 555.

7           In deciding not to adopt a statutory definition of a  
8 PAC, the FEC explained that "applying the 'major purpose'  
9 doctrine requires the flexibility of a case-by-case analysis of  
10 an organization's conduct that is incompatible with a  
11 one-size-fits-all rule." 72 Federal Register at 5601. The  
12 2007 notice also "explained the framework for establishing  
13 political committee status under FECA and discussed several  
14 recently resolved administrative matters that provide  
15 considerable guidance to all organizations regarding political  
16 committee status." 72 Federal Register, at 5595-96.

17           "Although *Buckley* did create the 'major purpose' test,  
18 it did not mandate a particular methodology for determining an  
19 organization's major purpose, and thus the Commission was free  
20 to administer FECA political committee regulations either  
21 through categorical rules or through individualized  
22 adjudications." See *RTAA*, 681 F.3d, at 556.

23           "The necessity of a contextual inquiry is supported by  
24 judicial decisions applying the 'major purpose' test which have  
25 used the same fact-intensive analysis that the Commission has

1 adopted." *RTAA* at 557. The Commission, in its policy, adopted  
2 a sensible approach to determining whether an organization  
3 qualifies for PAC status; and, more importantly, the  
4 Commission's multi-factor 'major purpose' test is consistent  
5 with Supreme Court precedent and does not unlawfully deter  
6 protected speech. Accordingly, we find the policy  
7 constitutional." That's *RTAA* at 558.

8           This Court similarly finds the policy constitutional  
9 in this matter; and because the Court finds the plaintiff has  
10 failed to establish a substantial likelihood of success on the  
11 merits of its actions, the plaintiff is not entitled to a  
12 preliminary injunction in this matter and will therefore deny  
13 the requested preliminary injunction.

14           I will direct a minute order be entered, incorporating  
15 by reference this Court's oral ruling which has been  
16 transcribed or placed on transcript by the court reporter.

17           Are there any questions regarding the matter at this  
18 point in time, Mr. Barr?

19           **MR. BARR:** There are no questions on plaintiff's end.

20           **THE COURT:** All right. Mr. Kolker or Ms. Chlopak?

21           **MS. CHLOPAK:** No. No questions here, Your Honor.

22           **THE COURT:** Very well.

23           **MR. VASSALLO:** Your Honor, this is Nick Vassallo. I  
24 just wanted to note for the record that I had joined the call a  
25 few minutes before you came on the line.

1           **THE COURT:** Very well, Mr. Vassallo. So noted.

2           Thank you all. Have a good day.

3           **MR. BARR:** Thank you.

4           **MS. CHLOPAK:** Thank you.

5           **THE COURT:** Court will stand in recess.

6           **(The proceedings conclude at 9:05 a.m.)**

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**REPORTER CERTIFICATE**

I, JAMIE L. HENDRICH, Official Federal Court Reporter  
in the United States District Court for the District of  
Wyoming, certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

10.17.12  
**Date**

/S/  
**JAMIE L. HENDRICH, CSR-RPR-CRR**  
Official Federal Court Reporter



**A**

**ability** 7:22 16:17  
**able** 5:25  
**Abortion** 3:13 11:14  
**above-entitled** 24:5  
**abridge** 5:9  
**accompanied** 9:20,22  
**account** 11:25  
**accountability** 4:22  
**act** 5:14 6:2,2 9:3  
 10:21 12:22 13:1  
 18:24 19:14  
**action** 5:7 10:13 14:1  
 14:17,23 15:4  
**actions** 10:12 22:11  
**activities** 7:23 12:20  
 12:20 16:18 17:8  
 21:1  
**activity** 12:15,18  
**acts** 14:21 16:7  
**actuality** 6:3  
**ad** 14:12  
**Adav** 1:20  
**add** 20:15  
**addition** 7:8  
**additional** 12:1 13:20  
**Additionally** 12:5  
**addressing** 5:3  
**adjudications** 21:22  
**administer** 21:20  
**administrative** 21:14  
**adopt** 21:7  
**adopted** 17:25 20:22  
 22:1,1  
**ads** 17:18,20 18:13  
**advance** 9:10 12:23  
**adverse** 15:20  
**advertisements** 5:3  
 8:12,13 10:2 13:7,12  
 13:20  
**advertising** 12:6 13:3  
 13:4  
**advisory** 14:13 20:3  
**advocacy** 5:12,19 8:9  
 8:9,13,14,19,22,23  
 10:7 14:1,3,15,21  
 16:14 17:17,21,24  
 18:14 21:2  
**advocate** 4:22 14:7  
**advocating** 6:12,20  
 9:5,14  
**afford** 15:25  
**aggregating** 10:15,24  
 10:25  
**agree** 18:12  
**alia** 10:17  
**alleged** 4:13  
**alleges** 5:8 14:1,10,17

14:23 15:4  
**alleging** 5:11  
**allow** 20:18  
**allowance** 20:16  
**alter** 15:24  
**Amendment** 5:9 20:7  
 20:13  
**amendments** 7:10  
**amount** 6:7 10:18 12:3  
 17:1  
**analogous** 19:13  
**analysis** 8:6 9:1 12:12  
 12:16 20:15 21:9,25  
**analyze** 5:21  
**analyzing** 7:20  
**appeals** 12:18 21:5  
**appearance** 6:3  
**APPEARANCES** 1:11  
 2:1  
**appears** 19:10  
**applicable** 5:22 15:13  
 16:16  
**application** 14:6,24  
 15:5  
**applied** 5:10 14:11  
 15:11 17:18  
**applies** 14:15 20:2,3  
**apply** 17:11  
**applying** 14:12 17:19  
 18:17 21:8,24  
**approach** 20:25 22:2  
**appropriate** 17:11  
**arbitrary** 14:20  
**argues** 16:6 **argument**  
 16:15 **articulated** 18:8  
**asserts** 16:8  
**associated** 8:21 14:19  
**associating** 15:1  
**association** 4:18 10:22  
**ATTORNEY'S** 1:23  
**Austin** 3:2 6:25 7:6  
**automatically** 17:21  
**Avenue** 1:15  
**Awad** 3:3 15:21  
**awareness** 15:2  
**A-W-A-D** 15:21  
**a.m** 1:5,5 23:6

**B**

**b** 1:12,19 10:4 12:4  
 19:24 20:2  
**background** 4:17  
**balance** 16:5  
**ballot** 9:17  
**bank** 11:25  
**Barr** 1:17 4:2,7 22:18  
 22:19 23:3

**based** 4:12 19:1 20:15  
**basis** 20:23  
**behalf** 4:7,8  
**Benjamin** 1:17  
**beyond** 13:20 14:3  
**Bill** 9:19  
**Box** 1:23  
**bring** 13:8  
**brings** 5:10  
**broad** 5:12  
**broadcasting** 13:2  
**Buckley** 3:5 7:24 8:4  
 11:6 14:9 18:24  
 20:11,22 21:17  
**bumper** 10:2  
**burden** 7:22 16:17  
 17:19  
**burdens** 19:12,13  
**burdensome** 5:13 17:7  
**bylaws** 4:25

**C**

**C** 20:1  
**calendar** 10:16,24 11:1  
**call** 22:24  
**campaign** 6:1,2 8:9,17  
 8:18,22 9:3,24 12:15  
 12:19 17:7 21:2  
**campaigns** 5:24 6:5  
 12:20 17:9  
**campaign-related**  
 7:23 13:18 16:18  
**candidate** 6:9,11,13,21  
 7:4 9:6,7 11:9,10,11  
 11:14 13:22 14:8  
 17:19 19:22 20:9  
**candidates** 5:1 6:8  
 9:20,23 10:1,8,13  
 12:3 13:11,24  
**candidate's** 20:10  
**Carter** 10:3  
**case** 1:4 4:5 6:14 7:16  
 8:8 19:7,14  
**cases** 18:16  
**case-by-case** 12:12  
 14:12 20:23 21:9  
**cash** 11:20  
**Casper** 1:6 2:4  
**cast** 9:17  
**categorical** 21:21  
**cause** 14:1,17,23 15:4  
**ceiling** 7:23 16:18 19:5  
**certain** 5:8 11:17 13:18  
 18:13  
**CERTIFICATE** 24:1  
**certify** 24:4  
**cetera** 10:2  
**challenge** 7:18

**challenged** 15:11 19:8  
**challenger** 9:18  
**challenges** 5:10,16  
 16:9  
**challenging** 5:8  
**Chamber** 3:2 6:25  
**Cheyenne** 1:13,16,24  
**Chlopak** 1:19 4:3,8  
 22:20,21 23:4  
**Cir** 3:4,8,14  
**Circuit** 3:12 11:15  
 15:22 16:24 17:4  
 19:24 20:5  
**Circuit's** 19:19  
**CITATION** 3:1  
**citing** 7:24,25 15:22  
 18:2  
**Citizens** 3:6 6:16 7:5,8  
 7:12,16,17,21 8:4  
 16:22 17:15 19:3,6,11  
 20:15  
**Civil** 4:12  
**claims** 7:16 8:25 16:9  
**classification** 14:20  
**clear** 14:4  
**clearly** 6:13 9:5,20  
 10:1,8,12 13:23 14:7  
 19:20,22  
**close** 18:16  
**closely** 16:2 **club**  
 10:22  
**Code** 6:6 7:7,19 9:8  
 10:19 11:1,23 12:25  
**comes** 4:10  
**comments** 12:9  
**Commerce** 3:2 7:1  
**Commission** 1:6,20  
 3:10,14 4:5,9,15 6:16  
 6:23 8:10 11:15  
 20:22,25 21:19,25  
 22:1  
**commissioners** 18:20  
**Commission's** 22:4  
**committee** 5:18 9:7  
 10:15,21,22 12:10  
 13:16 15:6 20:21,24  
 21:13,16,20  
**committees** 5:1 11:17  
 17:6  
**commonly** 10:22  
**communication** 6:20  
 9:15 10:9 18:9 19:20  
**communications** 6:22  
 7:12 9:23 13:16,18  
 14:6,16  
**compared** 12:20  
**competition** 20:12  
**Complaint** 5:2,20

13:14,24 14:9,14,16  
14:22 15:2,8 20:1  
**compliance** 14:19  
**comply** 11:17  
**complying** 13:17  
**comprised** 4:19  
**concerns** 6:10  
**conclude** 8:5 23:6  
**conclusion** 7:14 8:15  
16:1 20:4  
**conclusively** 18:12  
**conduct** 12:12,17 14:5  
21:10  
**Congress** 9:18  
**congressman** 9:16  
**connection** 13:10  
**considerable** 21:15  
**consideration** 14:13  
**considering** 12:8  
**considers** 20:25  
**consistent** 17:23 22:4  
**constitute** 19:18  
**constituted** 18:13  
**constitutional** 4:13,22  
8:6 22:7,8  
**constitutionality** 5:16  
17:14 19:16 20:20,20  
**constitutionally** 4:21  
7:17 14:5  
**construction** 14:3  
**containing** 10:7  
**contains** 19:20  
**context** 9:24  
**contextual** 21:23  
**continue** 12:10  
**contributed** 10:18  
**contribution** 12:22  
13:2  
**contributions** 6:7  
10:23 11:2,12 17:8  
19:18,21 20:1,16  
**contributors** 20:7  
**control** 4:24 11:9  
13:22  
**controlled** 11:11  
**controlling** 16:15 18:1  
**coordination** 9:6  
**core** 16:9  
**corporate** 6:22 7:7  
8:12,18 20:16,17  
**corporation** 7:3  
**corporations** 6:17 7:10  
**correct** 24:4  
**corruption** 6:3  
**Council** 3:15 15:23  
**counsel** 4:1  
**court** 1:1 2:2 4:1,4,4  
4:10,14,16 6:14,17,24

7:1,5,8,16,21,25 8:4  
8:11,15,21 11:7 16:11  
16:19 18:25 19:13  
22:5,8,9,16,20,22  
23:1,5,5 24:2,3,7  
**Courthouse** 2:3  
**Court's** 6:15 22:15  
**cover** 14:15  
**create** 21:17  
**critics** 20:8  
**CSR-RPR-CRR** 2:2  
24:6  
**cumbersome** 14:24  
**curtailed** 5:25  
**cycle** 13:21  
**C.F.R** 5:10 9:14 10:20  
12:7 13:6 17:15

---

### D

**dangers** 8:21  
**date** 10:17 12:2 24:6  
**David** 1:19  
**day** 23:2  
**DC** 1:21  
**decided** 12:9  
**deciding** 21:7  
**decision** 6:15 7:1,6  
11:16 12:13 17:4  
**decisions** 21:24  
**defeat** 6:12,21 9:5,22  
9:25 10:8,12 13:23  
14:7 19:21  
**defendant** 1:7,19 4:9  
4:14  
**Defense** 3:15 15:23  
**defined** 6:19 9:4,9,15  
11:3  
**defines** 10:21 12:22  
**defining** 17:17  
**definition** 5:11 8:25  
11:7 12:9 18:6 21:7  
**Democratic** 9:17  
**demonstrate** 19:7  
**denied** 15:18  
**deny** 22:12  
**deposit** 9:10 12:23  
**described** 9:21  
**designated** 11:25  
**Despite** 7:14  
**deter** 22:5  
**determinations** 5:19  
**determine** 15:6  
**determining** 12:11  
20:23 21:18 22:2  
**differ** 10:11  
**difference** 18:6  
**difficulty** 18:18  
**direct** 7:2 22:14

**directly** 6:8  
**disbursements** 11:21  
**disclaimer** 7:18,20,21  
8:5 13:5,17 16:16  
**disclaimers** 12:5  
**disclose** 11:25  
**disclosure** 7:19,20,22  
8:2,5,7 10:17 11:18  
11:19 13:17 16:11,14  
16:17,21,25 17:5,12  
17:17 18:23,25 19:4  
19:19 20:6  
**discussed** 21:13  
**discussion** 19:11  
**disfavored** 16:1  
**distinction** 8:21  
**distinctions** 8:8  
**distinguished** 16:25  
**distribute** 13:15  
**distribution** 9:10  
**District** 1:1,1,10 2:3  
24:3,3  
**divide** 18:21  
**doctrine** 21:9  
**documents** 15:8 21:5  
**doing** 6:24  
**donation** 19:17,25  
**donations** 13:19 14:24  
**Draft** 19:24 20:2  
**drawn** 8:8  
**due** 14:24

---

### E

**E** 1:21  
**Education** 3:7 19:23  
**either** 6:19 21:20  
**elect** 10:12  
**election** 1:6,20 3:10,14  
4:5,9,14 6:2,12,16,21  
6:23 8:10 9:3,5,12,25  
10:6,7 11:4,10,13,15  
12:25 13:23 14:7  
19:21  
**electioneering** 6:20,22  
7:12  
**elections** 5:24  
**election-related** 19:2  
**electoral** 10:9 13:21  
16:14 18:10 20:12  
21:2  
**electorate** 19:1  
**emails** 12:7 **employed**  
19:19 **encompass**  
11:3,8 **encourages**  
10:12,13 **enforcement**  
4:15  
5:17 14:13  
**enforcing** 15:10

**engage** 5:4 13:25  
**enjoin** 4:14  
**enjoining** 15:10  
**ensuring** 20:12  
**entered** 22:14  
**entitled** 20:7 22:11  
**environmental** 4:23  
13:9 **equal**  
18:20  
**equally** 7:15  
**equivalent** 5:14 8:16  
8:19,22 14:21 16:7  
17:16,20,24 18:5  
19:15  
**Erin** 1:19  
**establish** 22:10  
**establishing** 21:12  
**et** 10:2  
**evaluates** 15:7 21:3  
**evaluating** 12:19  
19:17  
**event** 18:21  
**events** 10:5  
**evils** 5:25  
**evolution** 5:23  
**exacting** 8:1 16:20  
17:2,11  
**exactly** 18:5  
**exceed** 11:12  
**exceptions** 11:22  
**excess** 10:24,25  
**Exhibit** 5:2,2 20:1  
**exist** 8:23  
**expand** 19:10  
**expenditure** 9:4,4,9  
10:18 12:4  
**expenditures** 6:9,10  
6:13,19,22 7:3,8,15  
10:15,25 11:2,12 12:2  
14:6 15:8 16:12 17:6  
17:9 19:4,6  
**expenses** 11:20  
**explained** 12:13 18:25  
21:8,12  
**express** 5:11,19 8:14  
8:16 14:3,7,20 17:17  
17:21,24 18:14  
**expressly** 6:20 9:5,14  
**extensive** 12:15  
**extent** 5:25 8:9  
**external** 10:5  
**extraordinary** 15:14

---

### F

**face** 14:2  
**facial** 5:10  
**facially** 15:11  
**facility** 13:3

**fact** 18:12,15  
**factors** 14:12 15:15  
**fact-intensive** 12:16  
 21:25  
**failed** 22:10  
**fails** 14:5 19:7  
**fall** 18:16  
**favor** 15:16  
**February** 4:19  
**FEC** 3:6,7,9 5:8 10:16  
 11:19 12:9 14:11,15  
 15:10 16:23,23 18:2  
 18:12 19:18,22 20:2  
 21:8  
**FECA** 6:2 7:10 21:13,20  
**FEC's** 5:17 14:20,25  
 15:5 16:6 17:16  
**federal** 1:6,20 2:2 3:10  
 3:14 4:5,9,12,14 6:1  
 6:5,8,11,16,17,23  
 8:10 9:3,12 11:4,13  
 11:15 12:15,15,25  
 13:22,24 14:8 17:19  
 19:22 20:24 21:11,16  
 24:2,7  
**file** 10:16 11:19  
**filed** 5:7  
**filings** 21:5  
**final** 15:12  
**Finally** 15:4  
**finance** 7:12 13:15,20  
**finances** 10:15  
**find** 19:13 22:6  
**finds** 4:16 22:8,9  
**first** 5:9 14:1 20:7,13  
 20:25  
**flexibility** 21:9  
**Following** 20:22  
**follows** 4:16  
**Footnote** 18:3  
**foregoing** 24:4  
**formation** 19:11  
**formed** 4:18  
**found** 7:17 19:24  
**founding** 15:8  
**four** 15:15,20  
**fourth** 11:15 15:4  
**framework** 5:23 21:12  
**free** 1:3 4:4,17,20,20  
 4:23 5:3 13:10,11,19  
 21:19  
**freedoms** 5:9  
**full** 16:1  
**function** 19:9  
**functional** 5:14 8:16  
 8:18,22 14:21 16:7  
 17:16,20,24 18:5  
**Fund** 3:7 19:23

**fundraising** 5:4 11:3  
 12:18 21:4  
**funds** 6:18 7:3,11 8:12  
 13:19 14:24  
**further** 5:16 10:19,21  
 13:13 17:20  
**F.3d** 3:3,8,12,14 11:15  
 15:22 16:24 17:3,9,22  
 19:23 20:13 21:6,22

---

### G

**general** 7:11 13:4  
**Georgia** 9:18  
**gift** 9:10 12:22  
**give** 6:14  
**giving** 6:4  
**go** 17:20  
**goes** 14:2  
**going** 19:12  
**good** 4:1,2,3 23:2  
**government** 4:21 21:5  
**governmental** 8:3  
 16:22 19:1  
**group** 1:15 10:23 17:1  
 20:9  
**group's** 21:1,4  
**guidance** 14:4 21:15  
**guidelines** 14:4  
**gun** 4:24 13:9

---

### H

**hand** 11:20  
**harms** 16:5  
**healthcare** 4:25 13:10  
**hearing** 15:12  
**heavy** 14:18  
**held** 7:6 8:11,17 15:12  
**helpful** 5:22,24  
**Hendrich** 2:2 24:2,6  
**hereinafter** 6:2 11:16  
 19:24  
**Herrera** 3:12 17:3  
**Hickory** 9:22  
**hoc** 14:12  
**holding** 6:25  
**Honor** 4:2 22:21,23  
**HONORABLE** 1:9  
**Hunting** 1:17

---

### I

**Id** 8:7 12:21 13:5 16:2  
 16:5 18:2 21:2,6  
**identification** 20:18  
**identified** 6:13 9:6,20  
 10:1,8,13 13:23 14:8  
 19:22  
**identifies** 10:17  
**identify** 5:24 12:5

**iii** 12:4  
**impermissible** 17:21  
**impermissibly** 18:1  
**implement** 16:10  
**important** 8:3 9:1  
 16:22 20:6  
**importantly** 22:3  
**impose** 7:23 16:18  
 17:12 19:8  
**imposed** 6:7 17:7,8  
 19:5,12  
**include** 12:22 13:4  
**including** 4:23 12:2,17  
 13:10  
**incompatible** 21:10  
**Incorporated** 3:7  
 19:23  
**incorporating** 22:14  
**incumbent** 9:23  
**independent** 6:10,13  
 6:18 7:3,8 9:4 10:15  
 12:2,3 15:7 17:6 19:4  
 20:8

**independently** 4:25  
**INDEX** 3:1  
**indicating** 19:20  
**individual** 9:24 20:18  
**individualized** 21:21  
**individuals** 5:5 15:1  
**individual's** 20:13  
**inevitably** 18:17  
**influencing** 9:12 11:4  
 12:24  
**information** 12:1 19:2  
**infringement** 4:13  
**inherent** 18:18,19  
**inhibiting** 15:1  
**injunction** 1:9 15:10  
 15:15,18,19,20 22:12  
 22:13  
**injunctions** 15:24  
**injunctive** 4:11  
**injury** 15:17,18,19  
**inquiry** 21:23  
**insists** 13:25  
**instances** 16:2  
**instructive** 12:19  
**intends** 13:19,25  
**inter** 10:17  
**interest** 8:3 15:21  
 16:22 19:1  
**interests** 8:17  
**intermediate** 17:10  
**interpretation** 5:17  
**interpreted** 10:6  
**invalidate** 18:21  
**invalidated** 19:5  
**involved** 8:20

**irreparable** 15:17  
**issue** 8:9,13,16,19,23  
 13:25 14:15 17:13,14  
 20:19 21:2  
**issues** 4:23 5:4,21 6:14  
 9:1 13:9,13 15:2

---

### J

**Jamie** 2:2 24:2,6  
**John** 1:12  
**joined** 22:24  
**JUDGE** 1:10  
**judicial** 21:24  
**July** 5:7  
**justified** 18:25  
**justify** 8:17,19

---

### K

**kind** 10:13 18:17,18  
**Klein** 1:14 4:6  
**know** 20:8  
**known** 10:22 17:10  
**Kolker** 1:19 4:8 22:20

---

### L

**L** 2:2 24:2,6  
**land** 4:24 13:9 **Lane**  
 1:17  
**language** 17:23 18:4  
**large** 6:4  
**law** 5:23 6:17 8:8  
**laws** 6:1  
**lay** 5:22  
**league** 20:9  
**level** 17:10  
**LIBERTY** 1:15  
**Life** 3:9 8:10,20,24  
 17:25 18:3,6,9  
**light** 13:8  
**likelihood** 16:4 22:10  
**like-minded** 5:5 15:1  
**limit** 6:3 14:6 17:1  
**limitation** 16:13  
**limitations** 6:7 19:9  
**limited** 4:21 10:5 11:21  
**limiting** 11:7  
**limits** 17:7,8  
**line** 18:16 22:25  
**listing** 9:20  
**little** 18:16  
**loan** 9:10 12:23  
**longstanding** 12:10

---

### M

**magazine** 13:3  
**mailing** 13:3  
**maintains** 11:24 14:11  
**major** 5:18 11:9,13

12:11,14 13:22 15:5  
20:21 21:3,8,17,19,24  
22:4  
**making** 8:20 20:19  
**mandate** 21:18  
**mandatory** 17:17  
**Maryland** 1:18  
**mass** 12:7  
**matter** 4:4,10,17 14:13  
15:13 22:9,12,17 24:5  
**matters** 21:14  
**McConnell** 3:10 6:23  
7:9,13,25 8:6  
**McKay** 9:19  
**meaning** 9:25 10:10  
**meaningful** 18:7  
**measured** 8:25  
**media** 5:6 13:8  
**mention** 17:19  
**merely** 17:18  
**merit** 8:25  
**merits** 15:12,17 16:1,4  
22:11  
**method** 20:11  
**methodology** 21:18  
**Mexico** 3:12 17:3  
**Michigan** 3:2 6:25  
**Michigan's** 7:2  
**minds** 10:11  
**minimally** 20:11  
**minute** 22:14  
**minutes** 22:25  
**mirror** 18:5  
**mission** 4:20  
**Mondale** 10:3  
**money** 6:4,5,18 7:11  
9:10 12:23 16:13  
**morning** 4:1,2,3  
**motion** 1:9 4:11 15:9  
**movant** 15:25  
**moving** 16:3  
**multi-factor** 22:4

---

### N

**narrowed** 11:7  
**narrower** 18:8  
**Natural** 3:15 15:23  
**necessity** 21:23  
**new** 3:12 12:9 17:3  
**newspaper** 13:2  
**Nicholas** 1:22  
**Nick** 22:23  
**Nixon's** 10:2  
**nomination** 11:10,13  
**nominee** 9:17  
**nonprofit** 4:18  
**note** 4:6 7:16 22:24  
**noted** 7:21 8:15,21

16:16,24 23:1  
**Noti** 1:20 4:8  
**notice** 12:13 20:25  
21:12  
**November** 13:12,14  
**number** 4:5 18:20  
**NW** 1:21

---

### O

**obligations** 13:17  
**obtain** 15:14  
**OCTOBER** 1:5  
**offers** 14:3  
**office** 1:23 6:5,8,9,11  
7:4 9:12 11:4 12:25  
13:11,24 14:8 19:22  
**Official** 2:2 24:2,7  
**Old** 9:21  
**one-size-fits-all** 21:11  
**open** 20:12  
**operate** 4:25  
**operating** 11:20  
**opinion** 14:13 18:1  
20:2,3  
**opponent** 20:10  
**opposed** 7:4 8:13 12:3  
**opposing** 15:19  
**oral** 1:8 22:15  
**order** 5:21 22:14  
**orders** 4:16  
**organization** 10:14  
11:10 22:2  
**organizational** 11:18  
17:5 21:5  
**organizations** 11:8  
21:15  
**organization's** 12:11  
12:12,17,19 15:7 21:3  
21:10,19  
**Organized** 3:12 17:3  
**outdoor** 13:3 **outlets**  
13:8 **outweighs**  
15:18 **overly** 5:12  
**overruled** 7:5,9

---

### P

**PAC** 10:22 11:7,11,24  
19:11 20:23 21:8  
22:3  
**PACs** 11:25 12:5  
**page** 2:1 20:1  
**Paragraph** 5:20 13:14  
13:24 14:14,16 15:3,9  
**Paragraphs** 5:2 14:9  
14:22  
**part** 6:14  
**particular** 21:1,18

**parties** 5:1  
**party** 9:7 15:19 16:3  
**pay** 13:7  
**payment** 9:9  
**perceived** 5:25  
**periodic** 11:19  
**permissible** 7:17 17:18  
**person** 6:12 9:11 10:7  
10:14 12:24 13:1  
**personal** 4:24  
**persons** 10:23  
**pertained** 8:7  
**phrases** 9:15  
**picture** 9:22  
**placed** 22:16  
**plaintiff** 1:4,12 4:7,12  
4:17 5:7,8,9,16 13:7  
13:15,21,25 14:10  
15:9,15 16:6,12 19:7  
19:10 22:9,11  
**plaintiffs** 4:7  
**plaintiff's** 1:9 4:10  
8:25 14:1,17,22 15:4  
16:9 18:13 19:17,25  
22:19  
**plans** 13:12  
**point** 22:18  
**policies** 4:16 15:11  
16:10 18:14  
**policy** 4:24 13:9 17:13  
20:22 22:1,6,8  
**political** 4:23 5:1,1,4  
5:15,18,23 6:5 9:7  
10:14,21 11:17 12:6  
12:10 13:4,16 15:6  
17:6 18:21 20:21,23  
21:1,13,15,20  
**portion** 7:9 10:9 18:10  
**positions** 4:22 5:5  
**posters** 10:1  
**Potential** 20:7  
**practice** 12:11 14:12  
**precedent** 8:24 16:15  
22:5  
**precluding** 7:10  
**preclusion** 6:21 7:14  
**preliminary** 1:9 4:11  
15:10,15,24 22:12,13  
**presence** 4:6,7  
**present** 13:12 15:9  
**presented** 9:2  
**president** 9:16  
**prevent** 7:24 16:19  
**primary** 6:1  
**prior** 5:14 6:15,25  
14:21 16:7 18:24  
19:9,14  
**problem** 18:20

**Procedure** 4:12  
**proceedings** 23:6 24:5  
**process** 5:17 18:22  
19:12  
**prohibited** 6:17  
**promote** 4:20  
**promulgate** 12:9  
**proper** 14:3  
**proposed** 18:13 19:25  
**proposes** 16:13  
**protect** 4:20  
**protected** 14:5,15 22:6  
**proves** 18:16  
**provide** 16:14 21:14  
**provides** 10:4  
**providing** 19:1  
**provision** 19:5  
**provisions** 4:15 8:7  
15:11 17:12 19:8  
**proximity** 10:6  
**pro-choice** 9:19,21  
**pro-life** 9:19,21  
**public** 5:5 11:20 12:6,8  
12:17 13:4,8,11,11  
15:20 21:4  
**published** 12:13  
**purchase** 9:9  
**purpose** 5:19 6:1 11:4  
11:9,13 12:11,14  
13:23 15:5 20:21  
21:3,8,17,19,24 22:4  
**purposes** 9:11 12:24  
**pursuant** 4:11  
**P.O** 1:23

---

### Q

**qualifies** 22:3  
**question** 14:14 16:11  
**questions** 22:17,19,21  
**quo** 15:24

---

### R

**R** 1:14,19  
**raise** 14:23 15:2 16:13  
**raised** 5:21  
**reach** 11:8  
**reaching** 8:15 20:4  
**reaffirming** 8:6  
**Reagan/Bush** 10:3  
**Real** 3:13 11:14  
**realistically** 14:23  
**reasonable** 9:25 10:7  
10:11 20:10  
**reasonably** 20:2,3  
**receipts** 11:21  
**receives** 10:23  
**receiving** 12:8  
**recess** 23:5

**recognized** 20:5  
**record** 22:24 24:5  
**records** 11:24  
**recover** 15:25  
**reelect** 9:16  
**reference** 10:5 22:15  
**reflect** 18:19  
**regard** 16:3,4  
**regarding** 5:17 6:10  
 21:15 22:17  
**register** 11:11,18  
 12:16 20:24 21:11,16  
**registering** 13:16  
**registration** 5:13  
**regularly** 12:1  
**regulation** 14:14 17:13  
**regulations** 5:8 14:19  
 16:25 17:1 18:14  
 21:20  
**regulatory** 4:15 5:23  
 16:6  
**reject** 9:23  
**related** 13:13  
**relation** 8:2 16:21  
**relied** 6:24  
**relief** 4:11 15:25  
**remedy** 15:14  
**report** 10:17  
**Reported** 2:2  
**reporter** 2:2 22:16  
 24:1,2,7  
**reporting** 5:13 20:16  
**reports** 11:19 12:1  
**represents** 13:21  
**Republican** 9:17  
**requested** 22:13  
**requests** 19:17,25  
**require** 4:25  
**required** 8:3 10:16  
 13:18 19:19  
**requirement** 16:21  
 19:4  
**requirements** 5:13  
 7:19,21,22 8:1,5  
 11:18 14:19 16:11,17  
 16:20 17:5,12,18  
 18:23 20:6,17  
**requires** 8:2 13:1  
 15:14 16:20 18:9  
 21:9  
**requiring** 16:25  
**residents** 4:19  
**resolved** 21:14  
**Resource** 3:15 15:23  
**respect** 8:23  
**restraint** 5:14 14:22  
 16:8 18:24 19:10,14  
**restricting** 8:18,19

**restriction** 7:2  
**restrictions** 7:7 8:12  
 19:9  
**restrictive** 20:11  
**resulting** 6:4  
**revealed** 21:4  
**review** 15:13 16:9  
**reviewing** 17:12 **right**  
 3:9 8:10,20,23  
 17:25 18:2,6,9 22:20  
**rights** 4:13,24,24 13:9  
 13:9 20:13  
**rise** 6:14  
**Rockville** 1:18  
**Room** 2:3  
**RTAA** 11:16 16:23 17:9  
 17:13,22 18:11,19  
 21:6,22 22:1,7  
**rule** 4:11 21:11  
**rules** 4:12 16:10 21:21  
**ruling** 1:8 22:15  
**run** 5:3 13:12  
**running** 6:9

---

### S

---

**S** 24:6  
**satisfied** 12:14  
**scheduled** 12:1  
**SCOTT** 1:9  
**scrutinized** 16:2  
**scrutiny** 8:1 16:8,16,20  
 17:2,10,11  
**second** 14:17 19:19,24  
 20:5  
**Section** 5:11 6:6 7:7,10  
 7:20 9:8,12,14 10:4  
 10:19,20 11:1 12:7,25  
 13:5,6 14:1,10,18  
 17:15,23 18:4,8,15,17  
 20:10  
**Sections** 11:5,23 12:4  
**see** 5:1,19 7:12 8:23  
 9:7,12 10:19 11:5,14  
 11:23 13:6,14,24 14:9  
 14:14,22 15:8,21  
 16:22,23 17:2,13,21  
 18:19 19:3,6 20:23  
 21:2,5,22  
**seek** 14:24 19:10  
**seeks** 4:13 5:3,4 13:15  
 15:9  
**SEF** 19:24 20:4,5,13  
**Senate** 9:18  
**sensible** 22:2  
**separately** 11:25  
**servants** 13:11  
**serve** 20:6  
**session** 4:4

**set** 6:1 **show**  
 15:15  
**showing** 16:3  
**significant** 7:15 20:17  
**similarly** 16:24 22:8  
**simply** 16:13 18:18  
**SKAVDAHL** 1:9  
**slogans** 9:24  
**Smith** 9:18  
**Snyder** 1:13  
**solely** 13:25  
**solicit** 13:19 19:25  
**solicitation** 5:18 13:5  
 14:25 19:16  
**solicitations** 19:18,20  
 20:4,6  
**solicits** 13:1  
**sought** 5:25  
**sources** 19:2  
**South** 2:3  
**speak** 7:22 13:13 16:17  
**speakers** 14:4  
**speaking** 7:25 15:2  
 16:19  
**specifically** 5:9 18:1  
**specified** 13:5  
**speech** 1:3 4:5,18,21  
 4:23 5:3,15 6:19,20  
 8:16,17,18,20,22  
 13:10,11,19 14:5,20  
 16:12 17:1,7 19:9  
 20:19 22:6  
**Speech's** 4:20  
**Speight** 1:12 4:6  
**spending** 6:5 11:3  
 12:15,18 19:3 21:1  
**stand** 23:5  
**standard** 15:13 17:11  
 19:17 20:4  
**standards** 14:25  
**standards-based**  
 18:18  
**state** 7:2,4 20:3  
**stated** 4:20 18:1  
**statements** 12:17 21:4  
**States** 1:1,10,23 6:6,15  
 7:7,19 9:8 10:19 11:1  
 11:23 12:25 24:3  
**station** 13:2 **status**  
 5:18 15:6,24  
 20:21,23,24 21:13,16  
 22:3  
**statutory** 5:22 8:11  
 11:7 21:7  
**Stephen** 1:14  
**stickers** 10:2  
**Street** 1:21  
**strict** 16:8,16

**strong** 16:3  
**structure** 16:7 20:18  
**subject** 17:2  
**subjected** 8:1 16:19  
**subscription** 12:23  
**Subsection** 10:4  
**substantial** 8:2 16:21  
 22:10 **substantially**  
 15:16 **succeed** 15:16  
**success** 16:4 22:10  
**suffer** 15:17,19  
**sufficiently** 8:3 12:14  
 16:22  
**suggestive** 10:10  
**Suite** 1:15  
**sums** 6:4  
**support** 5:5 9:16 16:15  
**supported** 7:4 12:3  
 21:23  
**supporting** 20:8  
**supports** 17:16  
**supra** 7:25 8:4  
**Supreme** 6:15,16,24  
 7:1,5 8:11 11:6 18:25  
 22:5  
**Survival** 3:7 19:23  
**S.Ct.876** 3:6

---

### T

---

**T** 1:17  
**tailor** 14:4  
**taken** 10:4  
**targeted** 19:21  
**TELEPHONIC** 1:8  
**Tenth** 15:22 16:24 17:4  
**terms** 9:1 11:2 14:7  
 17:14  
**test** 5:19 12:14 15:5  
 17:16,24,25 18:7,19  
 19:19 20:21 21:17,24  
 22:4  
**tests** 5:18 18:7  
**Thank** 23:2,3,4  
**third** 14:23  
**Thomes** 1:15  
**threatened** 15:18  
**three** 4:19 15:18  
**threshold** 11:22  
**time** 22:18  
**Title** 6:6 7:6,19 9:7,13  
 10:20 11:1,23  
**total** 11:20  
**transactions** 11:22  
**transcribed** 22:16  
**transcript** 1:8 22:16  
 24:4  
**treasurer** 11:24

**treasury** 6:18 7:11  
**trench** 20:12  
**trial** 16:1  
**triggered** 18:24  
**triggers** 5:13  
**true** 18:4  
**Truth** 3:13 11:14  
**turn** 11:3  
**Turning** 18:23  
**two** 10:11 15:17 18:7  
 19:24 20:1  
**type** 13:4  
**types** 13:18

---

**U**

---

**unambiguous** 10:10  
 18:11  
**unconstitutional** 7:6  
 8:14 14:2,11,18 15:6  
**unconstitutionally**  
 5:12 14:25 18:15  
**understand** 5:21  
**undertake** 17:2  
**unduly** 20:12  
**unfortunate** 18:20  
**unidentified** 13:20  
**unincorporated** 4:18  
**unions** 6:18 7:11  
**United** 1:1,10,23 3:6  
 6:6,15,16 7:5,6,9,12  
 7:16,17,19,21 8:4 9:7  
 10:19 11:1,23 12:25  
 16:23 17:15 19:3,6,11  
 24:3  
**United's** 20:15  
**unlawfully** 22:5  
**unmistakable** 10:10  
 18:10  
**unrelated** 12:20  
**upheld** 6:23 7:2,9 19:3  
**urge** 9:25  
**use** 8:12 17:16  
**uses** 9:15  
**U.S** 2:3 3:2,5,6,9,11,16  
 6:24 7:1,24 8:11 9:18  
 11:6 15:23 16:23  
 20:11

---

**V**

---

**v** 3:2,3,5,6,7,9,10,12,13  
 3:15  
**vague** 5:12 14:25 18:2  
 18:15  
**Valeo** 3:5 11:6  
**value** 9:11 12:24  
**values** 20:7  
**variety** 13:8 14:12  
**various** 4:15,23 5:3

13:7  
**Vassallo** 1:22 22:23,23  
 23:1  
**versus** 4:5 6:16,23,25  
 8:10 11:6,14 15:21,23  
 16:23,23 17:3 18:2  
 19:22  
**vote** 9:16,19,19,21  
**VS** 1:5

---

**W**

---

**W** 1:9  
**wall** 8:24  
**wanted** 22:24  
**warranted** 16:8  
**Washington** 1:21  
**website** 12:6  
**weigh** 15:16  
**went** 8:4  
**Winter** 3:15 15:22  
**Wisconsin** 3:9 8:10,20  
 8:23 17:25 18:2,6,9  
**wishes** 13:7  
**Wolcott** 2:3  
**words** 9:24  
**Wyoming** 1:1,6,13,15  
 1:16,24 2:4 4:19 24:4

---

**Y**

---

**year** 10:16,24 11:1  
**Youth** 3:12 17:3

---

**Z**

---

**Zirix** 3:3 15:21  
**Z-I-R-I-A-X** 15:21

---

**\$**

---

**\$1,000** 10:24,25 11:12  
**\$200** 10:18 12:4  
**\$250** 10:16

---

**1**

---

**1** 3:5 5:2,2 11:6  
**10** 5:2  
**10th** 3:4,12  
**10.17.12** 24:6  
**100.22** 9:14 10:4  
**100.22(b)** 5:11 14:2  
 14:10,18 17:15,23  
 18:5,8,15,17,24  
**1000** 17:15  
**103** 15:9  
**10737** 1:17  
**109.10(e)** 10:20  
**11** 3:14 5:10 9:14  
 10:20 12:7 13:6  
 17:15  
**110.11(a)(1)** 12:7  
**110.11(a)(3)** 13:6

**111** 2:3  
**1111** 3:3 15:22  
**1125** 3:3 15:22  
**12-CV-127** 4:6  
**12-CV-127-SWS** 1:4  
**13** 13:14  
**130** 3:6 6:16  
**14** 13:24  
**15** 3:4,16  
**17** 3:12 20:2  
**19** 3:8  
**1902** 1:15  
**1971** 6:2 9:3  
**1976** 3:5 11:6  
**1990** 3:2 7:1  
**1995** 3:8 19:24

---

**2**

---

**2** 2:1,1 5:20 6:6 7:6,19  
 9:7,13 10:20 11:1,23  
 12:25  
**2d** 3:8  
**20** 3:16 15:23  
**200-dollar** 11:22  
**2003** 3:11 6:24  
**2007** 3:9 8:11 12:8  
 20:24 21:12  
**2008** 3:16 15:24  
**201** 1:15 7:25  
**2010** 3:6,12 6:17 17:4  
**2012** 1:5 3:4,14 4:19  
 5:7 11:16 13:21  
 15:22  
**203** 7:13  
**20463** 1:21  
**205** 7:13  
**20850** 1:18  
**21** 4:19  
**217** 2:3  
**26** 5:7  
**265-5280** 2:4  
**285** 3:8 19:23  
**295** 3:8 19:23  
**296** 20:14

---

**3**

---

**3** 1:5  
**307** 2:4  
**310** 3:6 16:23  
**316(b)** 7:10

---

**4**

---

**4th** 3:14  
**4021** 1:13  
**424** 3:5 7:24 11:6  
 20:11  
**431(17)** 9:8  
**431(4)(A)** 11:2

**431(8)(A)(i)** 11:5 13:1  
**431(9)(A)(i)** 9:13 11:5  
**433** 11:23  
**434** 11:23  
**434(b)(4)(H)(iii)** 12:4  
**434(c)** 10:19  
**441a** 6:6  
**441b's** 7:7  
**441d** 7:20  
**441d(a)** 13:6  
**441d(a)(3)** 20:10  
**449** 3:9 8:11  
**470** 8:24  
**474** 18:3  
**494** 3:2 7:1

---

**5**

---

**540** 3:11 6:23  
**544** 3:14 11:15 16:24  
**548** 17:9  
**549** 17:13  
**551** 3:9 8:11  
**551-52** 17:22  
**552** 18:2,11  
**554** 18:19  
**555** 3:14,16 11:15  
 15:23 21:6  
**556** 21:22  
**557** 22:1  
**558** 3:6 16:23 22:7  
**5595** 12:16 20:24  
**5595-96** 21:16  
**5596-97** 20:24  
**5601** 12:16,21 21:2,11

---

**6**

---

**6** 3:2,6,11 12:4  
**602** 12:21  
**611** 3:12 17:3  
**64** 7:24 8:4  
**65** 3:8 4:11 19:23  
 20:13  
**652** 3:2 7:1  
**668** 1:23  
**669** 3:12 17:3  
**670** 3:3 15:22  
**676** 3:12 17:3  
**681** 3:14 11:15 16:23  
 17:9,22 21:6,22

---

**7**

---

**7** 3:5,16 15:23 18:3  
**72** 12:15 20:24 21:11  
 21:16  
**74** 14:9  
**75** 14:9  
**76** 10:3 14:14  
**77** 14:16

---

**8**

---

**8** 3:9**8:28** 1:5**81** 14:22**82** 14:22 20:11**82001** 1:13,16**82003-0668** 1:24**82601** 2:4**87** 15:3**876** 6:17

---

**9**

---

**9:05** 1:5 23:6**913** 7:13**914** 19:3**915** 8:7 19:6**93** 3:11 6:24**94** 9:19**999** 1:21