IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DOE 1, *et al.*, Plaintiffs, *v.* FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 17-cv-2694 (ABJ)

REPLY IN SUPPORT OF MOTION TO INTERVENE BY CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON AND ANNE WEISMANN

Citizens for Responsibility and Ethics in Washington and Anne Weismann (collectively "CREW") respectfully submit this reply in support of CREW's motion to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2). The arguments raised by plaintiffs and the Federal Election Commission ("FEC") in opposition to CREW's motion are premised almost entirely on misstatements regarding CREW's statutory rights as an administrative complainant under the Federal Election Campaign Act ("FECA") and as a requester under the Freedom of Information Act ("FOIA"). Pursuant to FECA, CREW filed an administrative complaint with the FEC to vindicate CREW's statutory right to know who made and illegally concealed a $1.71 million political contribution. And pursuant to FOIA, CREW has filed a request for the information the FEC relied upon in disposing of CREW's administrative complaint. This lawsuit would substantially impair CREW's rights in both respects. CREW's motion presents a textbook case for intervention, and should accordingly be granted.

ARGUMENT

I. CREW's Motion Is Timely.

Plaintiffs contend that intervention should be denied because "CREW knowingly waited nine days to meet and confer with the parties . . . and an additional six days to file." Pls.' Mem. in Opp. to Mot. to Intervene ("Pls.' Opp.") at 3. Plaintiffs' argument is frivolous. They do not cite a single case finding untimely an intervention motion filed fifteen days after the complaint. Nor could they. *See Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 734-35 (D.C. Cir. 2003) (holding that it was "not difficult at all" to conclude that intervention motion was timely when it was filed "less than two months after the plaintiffs filed their complaint and before the defendants filed an answer"). In fact, CREW's motion is all the more timely considering the circumstances: Plaintiffs filed their suit under seal, and the case was unsealed only three days before the Christmas holiday and before the statutory deadline for CREW to file suit pursuant to 52 U.S.C. § 30109(a)(8), challenging the FEC's unlawful failure to make public the sources of the illegal $1.71 million contribution. *See CREW v. FEC*, No. 17-cv-2770 (D.D.C. filed Dec. 22, 2017); *see also* Notice of Publ'n, ECF No. 20 (noting publication of redacted administrative file on Dec. 22, 2017). In addition, counsel for John Doe 1 hindered the filing of CREW's motion by failing to respond to CREW's multiple meet and confer requests under LCvR 7(m). Plaintiffs cannot plausibly contend, under these circumstances, that the filing was untimely, let alone unduly delayed.

Nor would CREW's intervention prejudice plaintiffs or the FEC, as plaintiffs contend. Pls.' Opp. at 2. The Court has already ordered plaintiffs' identities redacted pending resolution of this case, so plaintiffs cannot contend they are somehow harmed by any meager delay occasioned by CREW's participation. At most, if the Court grants CREW's motion, plaintiffs

might be required to respond to CREW's arguments. That hardly constitutes legal prejudice—rather, every opposing party must do so when intervention is granted. CREW's intervention will not require the Court to "revisit issues that have already been decided." *Roane v. Leonhart*, 741 F.3d 147, 152 (D.C. Cir. 2014) (holding no prejudice to warrant denying intervention where intervention would not reopen previously decided issues); *see also Crossroads Grassroots Political Strategies v. FEC*, 788 F.3d 312 (D.C. Cir. 2015) (authorizing intervention despite the parties' summary judgment briefing having closed ten months earlier). Moreover, the fact that this Court has accelerated its consideration of this case does not make CREW's motion untimely. Were plaintiffs correct, there could almost never be intervention as of right in motions for temporary restraining orders or preliminary injunctions—even though these are the very proceedings in which hurried motion practice heightens the possibility of prejudice to a third party's legal rights. Indeed, plaintiffs' argument would mean CREW had no opportunity to intervene because even if CREW had filed its intervention motion on the very day it learned this suit might impair its rights, briefing on CREW's motion would not close until after plaintiffs filed their reply in support of their merits motion. As it stands, the Court granted the FEC the opportunity to file a surreply only days ago, meaning there will be no significant delay in reaching the merits if the Court grants CREW's motion and provides CREW an opportunity to submit a brief on the merits. And plaintiffs yesterday filed a response to the surreply. ECF No. 40.

Contrary to plaintiffs' contention, CREW easily satisfies the timeliness requirement for intervention as of right.

II. CREW Has Legally Protected Interests Potentially Impaired by this Case.

CREW has at least three legally protected interests potentially impaired by this case. *See* Fed. R. Civ. P. 24(a)(2). As CREW explained in its motion, federal law grants it a statutory right to know the source of the $1.71 million contribution. Moreover, the Court's decision here will affect CREW's lawsuit challenging the FEC's decision not to enforce against plaintiffs, and the outcome of this case will affect CREW's FOIA request and any subsequent FOIA litigation. *See* Mot. at 5-10. Thus, CREW clearly has a legal interest potentially affected by this case, and plaintiffs' and the FEC's contentions to the contrary are misplaced.

A. FECA Grants CREW a Statutory Right to Know Plaintiffs' Identities.

FECA grants CREW a statutory right to know who financed and illegally concealed the $1.71 million contribution. Mot. at 5-6. CREW, therefore, has a legally protected interest in this case, where plaintiffs' sole purpose is to permanently hide their identities as part of that concealment scheme. Plaintiffs contend that CREW lacks a legally protected interest because (1) plaintiffs say they were not respondents to CREW's administrative complaint, and (2) the question of whether the FEC acted contrary to law in failing to investigate the plaintiffs will not be determined in this case. *See* Pls.' Opp. at 4-5. Both arguments lack merit.

First, CREW's legal interest in the plaintiffs' identities does not hinge on whether the plaintiffs are named respondents in an FEC administrative action or whether the FEC found reason to believe the plaintiffs violated the law. FECA provides CREW the right to know the true source of any and all contributions that meet the statutory reporting threshold, 52 U.S.C. § 30104(b)(3)(A), as well as the identity of anyone who acted as a conduit.[1] Thus, the mere fact

[1] *See Instructions for FEC Form 3X and Related Schedules* at 11 (revised May, 2016), https://www.fec.gov/resources/cms-content/documents/fecfrm3xi.pdf (any political committee receiving an earmarked contribution through conduit entities must "report each conduit through

that the plaintiffs made or passed on a reportable contribution—a fact plaintiffs do not deny—creates CREW's legally enforceable interest in knowing the identities of the plaintiffs. By means of this proceeding, however, plaintiffs seek a judicial order preventing CREW from ever learning their identities, not only impairing but indeed eliminating CREW's legal rights.

Second, CREW's administrative complaint, which sought to vindicate CREW's legal right to know the origins of the illegal $1.71 million contribution that American Conservative Union provided to Now or Never PAC, designated the "true source" of those funds as an "unknown respondent." Compl. ¶ 12, MUR 6920 (American Conservative Union *et al.*) (Feb. 27, 2017), https://www.fec.gov/files/legal/murs/6920/17044434345.pdf. There turned out to be *multiple* unknown respondents, only one of which the FEC apparently investigated. *See* Global Conciliation Agreement ¶¶ 6-9, MUR 6920 (American Conservative Union *et al.*) (Nov. 3, 2017), http://eqs.fec.gov/eqsdocsMUR/17044434756.pdf (noting that investigated respondent received funds at issue "from another source"). Because the plain text of CREW's administrative complaint and the facts discovered by the FEC staff identify plaintiffs as "unknown respondents"—together with the other unknown sources of the $1.71 million—the FEC's enforcement failures cannot somehow remove plaintiffs from the explicit purview of that complaint.

Third, the FEC's decision not to investigate or enforce against plaintiffs says nothing about whether FECA requires plaintiffs to be reported as sources or conduits of the

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which the earmarked contribution passed, including the name and address of the conduit, and whether the contribution was passed on in cash, by the contributor's check, or by the conduit's check"). FEC forms have the force of law. *See* 52 U.S.C. § 30107(a)(8). And this information must include the true source. *See* 52 U.S.C. § 30104(b)(3)(A) (requiring identification of each person contributing in excess of $200); *id.* § 30122 (prohibiting contributing in the name of another).

contribution—the decision means merely that they were not investigated or fined. In other words, the FEC's decision to reject its own lawyers' recommendations and not even investigate plaintiffs hardly constitutes a determination that FECA did not require reporting of plaintiffs' contribution. To the contrary, even the two Commissioners who voted against accepting the Office of General Counsel's recommendation to investigate plaintiffs appear to acknowledge that an investigation might have generated "direct evidence" that plaintiffs were required to be disclosed as conduits. See Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioner Lee E. Goodman at 2-4 (Dec. 20, 2017), http://eqs.fec.gov/eqsdocsMUR/17044435563.pdf. The dismissal, therefore, has no bearing on CREW's legally protected interest in plaintiffs' identity, which plaintiffs seek to conceal through this lawsuit, and their contention that this action is "wholly unrelated to [CREW's] complaint," Pls.' Opp. at 7, is flatly false. In any event, the propriety of CREW's intervention motion does not turn on whether the Court will *directly* decide every aspect of CREW's stated legal interest. It suffices that CREW has a legal interest "*relating to* . . . the subject of [this] action," Fed. R. Civ. P. 24(a)(2) (emphasis added), *i.e.*, learning plaintiffs' identities as uncovered due to CREW's administrative complaint.

Finally, plaintiffs draw a meaningless distinction—that this lawsuit merely impairs CREW's ability to "assert, not protect, an interest in the disclosure of [their] identities," and that CREW can assert its interest in its separate lawsuit against the FEC (also assigned to this Court). Pls.' Opp. at 9. This distinction between "asserting" a right and "protecting" it makes no sense. When a lawsuit damages a third party's ability to *assert* an interest, intervention is warranted to allow that interest to be *protected*. *See Crossroads*, 788 F.3d at 318 ("[I]t is enough that a plaintiff seeks relief, which, if granted, would injure the prospective intervenor."). CREW

should be permitted to intervene as of right precisely to protect its legal interest in the disclosure of plaintiffs' identities.

B. FECA Grants CREW a Right to Challenge the FEC's Failure to Provide CREW with Contributor Information Required by Law.

CREW has a statutory right to challenge the FEC's unlawful failure to provide the relief that CREW's administrative complaint sought: Disclosure of the true source of the $1.71 million contribution. *See* 52 U.S.C. § 30109(a)(8); Mot. at 7-9. CREW needs the information at issue in this case to effectively vindicate that statutory right. *Id*. at 8-9.

Plaintiffs and the FEC counter that CREW needed the information only to *decide whether* to sue the FEC under § 30109(a)(8). *See* Pls.' Opp. at 10; FEC Opp. at 5.[2] According to the existing parties, now that CREW has filed such a suit, CREW no longer needs the information at all. *See* Pls.' Opp. at 10; FEC Opp. at 5.[3]

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[2] Plaintiffs also speculate that CREW might lack "standing" to bring suit against the FEC under 52 U.S.C. § 30109(a)(8) because the FEC reached a negotiated conciliation agreement with certain respondents in the administrative enforcement action. *See* Pls.' Opp. at 5-6. But the FEC did not reach an agreement with all respondents: The only entities with whom the FEC settled were the recipient of the illegal funds and two of the entities that served as unlawful conduits for that money. *See* Global Conciliation Agreement ¶¶ 6-9, MUR 6920 (American Conservative Union *et al.*) (Nov. 3, 2017), http://eqs.fec.gov/eqsdocsMUR/17044434756.pdf. The FEC reached no agreement with—indeed, did not even open an investigation into—the administrative respondent who was the true source of the illegal $1.71 million contribution. *Compare id*. ¶ 6 (noting that respondents in conciliation agreement received funds "from another source"), *with* Compl. ¶ 12, MUR 6920 (American Conservative Union *et al.*) (Feb. 27, 2015), https://www.fec.gov/files/legal/murs/6920/17044434345.pdf (naming "true source" of funds as administrative respondent); *see also Common Cause v. FEC*, 729 F. Supp. 148, 151 (D.D.C. 1990) (hearing challenge to dismissed claim even where FEC had entered conciliation agreement with defendant with respect to other claims); *Common Cause v. FEC*, 489 F. Supp. 738 (D.D.C. 1980) (considering complainant's challenge to FEC's inaction as to parties with whom FEC did not pursue conciliation agreement even where FEC had reached conciliation agreement with other respondents).

[3] CREW notes that the FEC waited until December 19—three days before the expiration of CREW's 60-day statutory deadline to file suit—to make even the redacted case file of MUR 6920 available. CREW was therefore forced to protect its rights by filing suit under

Plaintiffs and the FEC seem to assume that the purpose of filing a lawsuit is to file a lawsuit, and that once the case is docketed, the plaintiff's rights have been vindicated. But the purpose of bringing suit is to obtain relief from a court, which requires the plaintiff to show that the facts entitle the plaintiff to relief under the applicable legal standard. As explained in CREW's opening motion, the standard this Court applies under § 30109 will require CREW to show that the FEC acted contrary to law in failing to require reporting of the full path that the $1.71 million illegally took from its original source through plaintiffs to the recipients. *See CREW v. FEC*, 209 F. Supp. 3d 77, 88 (D.D.C. 2016) (discussing standard). This will mean showing that the record before the FEC did not support the conclusions of the controlling FEC Commissioners. *Id*. ("[T]he FEC's decisions are reversible if the Court determines that the agency entirely failed to consider an important aspect of the relevant problem or has offered an explanation for its decision that runs counter to the evidence before it." (internal quotation marks and alterations omitted)). But if plaintiffs prevail here, that record will remain forever incomplete, with plaintiffs' identities redacted. Thus, a victory by plaintiffs would mean that CREW would have to litigate the lawfulness of the FEC's failure to trace the $1.71 million back to its source without knowing through whose hands the money passed—even though this fact would be known to CREW's litigation opponent, the FEC. This would be manifestly prejudicial to CREW. *Cf. FTC v. Sysco Corp.*, 308 F.R.D. 19, 22 (D.D.C. 2015) ("[R]esolving conflicts in a court of law is not a game of 'blind man's bluff,' but 'a fair contest with the basic issues and facts

§ 30109(a)(8) without having had a full and fair opportunity to review that file. *See Jordan v. FEC*, 68 F.3d 518, 519 (D.C. Cir. 1995) (holding that FECA's time-limit to filing suit is jurisdictional). CREW's complaint is subject to amendment as of right, *see* Fed. R. Civ. P. 15(a)(1), and CREW may well exercise that right, particularly in light of any information gained as a result of this suit.

disclosed to the fullest practicable extent.'" (quoting *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682-683 (1958))).

The FEC responds that plaintiffs' victory here would not impair CREW's lawsuit against the FEC because such a result "would not preclude the Court [in CREW's suit against the FEC] from allowing CREW to have access to the administrative record containing plaintiffs' names pursuant to a protective order." FEC Opp. at 6. But the FEC of course cannot guarantee what orders this Court will enter in that (or any) suit. The possibility that CREW might prevail on a contested motion in a separate case to obtain access to the material subject to a protective order cannot negate CREW's interest in protecting its rights through this case. *See Crossroads*, 788 F.3d at 318-19 (rejecting FEC's argument that intervention should be denied because intervenor would be able to assert its arguments in subsequent administrative and judicial proceedings).

Plaintiffs' counterargument is even more attenuated. Plaintiffs claim that CREW would be able to piece together "the context" of documents containing plaintiffs' names even with those names redacted. Pls.' Opp. at 10. Plaintiffs provide no explanation for how this divination would be conducted. For example, consider the FEC General Counsel's report that apparently recommended investigating plaintiffs:[4]

> [Full line redacted].[17]
> [Redacted] acting as a trustee of [full line redacted].[18]
> [Redacted] funded GI LLC, wiring it $2.5 million only seven weeks after the LLC's formation.[19]
> [Full line redacted].[20]
> . . . .
> [17] In an August 24, 2017 telephone conversation with OGC, [rest of footnote redacted].
> . . . .
> [20] [Full footnote redacted].

[4] Third General Counsel's Report, at 4-5, MUR 6920 (American Conservative Union *et al.*) (Sep. 15, 2017), http://eqs.fec.gov/eqsdocsMUR/17044435484.pdf.

It is impossible to determine from such documents what facts were before the FEC when it made its decision.

In any event, as noted above, in a lawsuit challenging the FEC's failure to act on the administrative record before it, CREW would be inherently prejudiced by having to guess "the context" of that record. For example, perhaps John Doe 1 is a candidate who benefitted from the illegal $1.71 million, or a family member or friend of that candidate, or a lobbyist with interests to advance. John Doe 2 may have made other reportable contributions which, if combined with this contribution, could establish that the trust is a political committee itself subject to its own reporting obligations. Either may have a known relationship with a third party, providing reason to believe they acted as conduits for the third party's contribution. CREW has a right to use any such facts that might be revealed by knowing plaintiffs' identities to bolster its case that the FEC acted contrary to law when it refused to investigate plaintiffs and the sources of the funds they concealed. *See CREW*, 209 F. Supp. 3d at 82-84, 93-95 (engaging in detailed analysis of administrative respondents' activities in assessing claim under § 30109); *see also* Second General Counsel's Report at 2, MUR 6920 (July 5, 2017), http://eqs.fec.gov/eqsdocsMUR/17044434484.pdf (relying in part on the identity of PAC's treasurer to prove conduit contribution).

Plaintiffs' reliance on *Pharmaceutical Research & Manufacturers of America v. FTC*, 790 F.3d 198 (D.C. Cir. 2015), is entirely misplaced. That case was a challenge to an agency action where the agency withheld from the plaintiff certain documents as required by law. The Court found no prejudice to the plaintiff because the agency "did not rely on these [withheld] filings" in taking the action at issue but instead "used them only as a general source of background." *Id*. at 210-11. Moreover, the redacted identities had no relevance to the plaintiff's

legally protected interest to participate in a rulemaking proceeding. *Id.* Here, in contrast, the redacted documents—to the extent CREW can discern their contents—seem to indicate that the FEC not only engaged in particularized consideration of the information at issue, but even took a formal vote on it. *See* Certification, MUR 6920 (American Conservative Union *et al.*) (Sep. 21, 2017), https://www.fec.gov/files/legal/murs/6920/17044434647.pdf.[5] Therefore, CREW would be prejudiced by being forced to challenge that vote without using the information at issue here.

C. CREW's FOIA Rights Support Intervention in this Suit.

As CREW explained in its motion, Mot. at 9-10, CREW's intervention here is consistent with cases granting a FOIA requester intervention in reverse FOIA suits. Once CREW became aware of this lawsuit, it promptly filed a FOIA request, which the FEC has denied solely on the grounds that this Court has ordered plaintiffs' identities redacted pending the outcome of this suit. *See* Ex. 1 (FOIA Denial). CREW has now administratively appealed that denial. *See* Ex. 2 (Administrative Appeal). Absent intervention in this case, should plaintiffs prevail, CREW's only recourse would be a collateral attack through a suit challenging its FOIA denial.

Plaintiffs object that CREW cannot rely upon FOIA cases permitting intervention because "any alleged injury is not yet sufficiently concrete or imminent because a final order preventing disclosure under FOIA has not yet been issued. . . . [and] CREW . . . must first exhaust its administrative remedies before seeking judicial review." Pls.' Opp. at 8-9. This misses the point. First, CREW is not raising its FOIA claim *here*; rather, CREW is contending that its ability to engage in FOIA litigation will be harmed should plaintiffs prevail in this suit, and thus CREW's FOIA dispute provides an additional legally protected interest at stake in this

[5] Plaintiffs' argument that CREW has already used the redacted documents to file suit under § 30109, Pls.' Opp. at 8 & n.1, is meritless for the reasons explained *supra* n.3.

suit. It does not matter that the FOIA litigation itself is not yet ripe. Second, plaintiffs are wrong to suggest that the *issue* is not yet ripe: The sole basis upon which CREW's FOIA request was denied was this Court's temporary order precluding the FEC from releasing plaintiffs' identities, *see* Ex. 1; and an administrative appeal of the FOIA denial has no chance of reversal until this Court's order is lifted, *see Armstrong v. Bush*, 807 F. Supp. 816, 819 (D.D.C. 1992) (applying futility exception to administrative exhaustion requirement in FOIA case). Plaintiffs contend that CREW's rights under FOIA will not be impaired because issue preclusion would not prevent CREW from contending that FOIA requires the release of plaintiffs' identities even if plaintiffs prevail in concealing them through this lawsuit. *See* Pls.' Opp. at 11. But plaintiffs' contention is legally questionable, *see GTE Sylvania, Inc. v. Consumers Union, Inc.*, 445 U.S. 375, 386-87 (1980) (holding agency's withholding of documents did not violate FOIA, despite documents being agency records not exempted from disclosure, because agency was complying with court order proscribing disclosure), and even if CREW would not be *precluded* from challenging the Court's order, it hardly bears saying that this Court is going to consider *its own order* persuasive should plaintiffs prevail here and should CREW file a related FOIA case, *see Crossroads*, 788 F.3d at 320; *see also Roane*, 741 F.3d at 151 (holding possibility of "unfavorable precedent that would make it more difficult for [intervenor] to succeed on similar claims if he brought them in a separate lawsuit of his own . . . is sufficient to support intervention under our caselaw"). Finally, even if CREW could raise these arguments *de novo* in a separate suit, "questions of 'convenience' are clearly relevant," and judicial resources are preserved by allowing intervention

because "[CREW's] involvement [here] may lessen the need for future litigation to protect [its] interests." *In re Brewer*, 863 F.3d 861, 873 (D.C. Cir. 2017).[6]

CREW has an interest based upon its FOIA dispute, and this Court should grant intervention just as courts do for FOIA requesters in reverse FOIA suits.

III. The FEC's Own Actions in this Case Confirm that the FEC Cannot Be Assumed to Represent CREW's Interests.

In its motion, CREW noted the general rule in this Circuit that a government agency cannot be presumed to adequately represent the interests of a private intervenor so as to defeat intervention under the final prong of the Rule 24(a) test. Mot. at 10-12. In response, the plaintiffs assert that "[t]his case . . . presents an unusual situation in which the proposed intervenor and existing federal agency party have – and will continue to have – identically aligned interests"—an alignment that plaintiffs claim is demonstrated by "the Commission advocat[ing] for CREW's exact position" on the merits of the case. *See* Pls.' Opp. at 12; *see also id*. ("The FEC and CREW have taken identical positions seeking the release of unredacted investigative records for MUR 6920."). The FEC makes similar arguments. *See* FEC Opp. at 9 ("[T]he record in this case belies any claim that the Commission has failed to present a defense any less full-throated or different from CREW's intended defense."). The problem with these claims regarding the FEC's supposed actions to advance CREW's interests is that the FEC has done no such thing. Instead, the FEC seems to have (1) voluntarily granted plaintiffs the temporary restraining order they sought, *see* Dec. 18, 2017 Minute Order; (2) refused to acknowledge that CREW has *any* existing statutory rights to the information at issue, FEC Opp.

[6] The FEC does not dispute that FOIA grants CREW an interest, but rather asserts that it can adequately protect CREW's interest. *See* FEC Opp. at 7. For the same reasons the FEC cannot generally adequately protect CREW's interest, it cannot do so with respect to CREW's FOIA interest. *See infra* Part III.

at 5, 7; and (3) represented to the Court that CREW does not require the information to prosecute its suit against the FEC under § 30109, *id*. at 5-6. As CREW noted in its motion, *see* Mot. at 11, these FEC positions are not surprising, given that CREW intends to use the information at issue to help demonstrate that the FEC's actions in MUR 6920 were contrary to law. But they amply demonstrate why the D.C. Circuit, in reversing a court in this District for denying a motion to intervene as of right in a suit against the FEC under the adequacy-of-representation prong, noted that "a doubtful friend is worse than a certain enemy." *Crossroads*, 788 F.3d at 314; *see also In re Brewer*, 863 F.3d at 873 ("[I]ntervenors need not prove that representation *is* inadequate but need show merely that it *may* be." (internal quotation marks and alterations omitted)); *100Reporters LLC v. U.S. Dep't of Justice*, 307 F.R.D. 269, 280 (D.D.C. 2014) (possibility that government agency could "change its strategy during the course of litigation" demonstrates inadequacy of representation, even if interests and strategy currently align).

Finally, the FEC contends that it has a practice of changing its position when it loses district court cases, rather than appealing those decisions, and that when the FEC's Commissioners deadlock on whether to appeal, it is by Congress's design. FEC Opp. at 9-10. This illustrates precisely why the FEC cannot adequately protect CREW's interest. As an intervenor, CREW will have the right to appeal an adverse decision should one occur, rather than having to merely hope that the FEC will deviate from its uniform practice of the last decade and neither accept the adverse decision nor deadlock. The FEC's acknowledgement of its practice vitiates its suggestion that it can adequately represent CREW's interest in this litigation.

CONCLUSION

For the foregoing reasons, CREW's motion to intervene should be granted.

Respectfully submitted,

Stuart C. McPhail (D.C. Bar No. 1032529)
Adam J. Rappaport (D.C. Bar No. 479866)
Citizens for Responsibility and Ethics in Washington
455 Massachusetts Avenue NW
Washington, DC 20001
(202) 408-5565
smcphail@citizensforethics.org
arappaport@citizensforethics.org

/s/ Adav Noti
Adav Noti (D.C. Bar No. 490714)
Mark P. Gaber (D.C. Bar No. 988077)
Campaign Legal Center
1411 K Street NW, Suite 1400
Washington, DC 20005
(202) 736-2200
anoti@campaignlegalcenter.org
mgaber@campaignlegalcenter.org
Counsel to Citizens for Responsibility and Ethics in Washington and Anne Weismann

January 24, 2018

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2018, I caused the foregoing Reply in Support of Motion to Intervene by Citizens for Responsibility and Ethics in Washington and Anne Weismann, including attachments, to be served on the following through the Court's electronic case filing system:

William W. Taylor , III, Esq., wtaylor@zuckerman.com
Dermot W. Lynch, Esq., dlynch@zuckerman.com
Adam L. Fotiades, Esq., afotiades@zuckerman.com
Kathleen C. Neace, Esq., kneace@velaw.com
Kevin Deeley, Esq., kdeeley@fec.gov
Charles Kitcher, Esq., ckitcher@fec.gov
Gregory John Mueller, Esq., gmueller@fec.gov
Haven G. Ward, Esq., hward@fec.gov

/s/ Adav Noti
Adav Noti (D.C. Bar No. 490714)
Campaign Legal Center
1411 K Street NW, Suite 1400
Washington, DC 20005
(202) 736-2200
anoti@campaignlegalcenter.org
Counsel to Citizens for Responsibility and Ethics in Washington and Anne Weismann

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