

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

MARC KRUMAN
10434 Ludlow Ave.,
Huntington Woods, MI 48070,

ANDREW RAY
1401 7th St. NW, Unit 609
Washington, DC 20036,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION
1050 First St., NE
Washington, DC 20463,

Defendant.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

1. This is an action for injunctive and declaratory relief under the Federal Election Campaign Act of 1971 (“FECA” or “the Act”), 52 U.S.C. § 30109(a)(8)(A), challenging the Federal Election Commission’s (“FEC” or “Commission”) failure to act on an administrative complaint by Marc Kruman and Andrew Ray (collectively “Plaintiffs”) against Citizens for a Working America, Inc. (“CWA”), Joel Riter as President of CWA in both his official capacity as treasurer and his personal capacity, and Norman Cummings as Treasurer of CWA in both his official capacity as treasurer and in his personal capacity (collectively “Respondents”). On November 20, 2020, Plaintiffs filed a complaint against Respondents with the FEC. The complaint alleged that Respondents caused CWA, an ostensible tax-exempt social welfare organization, to qualify as a political committee under the FECA no later than 2018 when CWA devoted a majority of its spending to political activities. The complaint further alleges that, notwithstanding CWA’s qualification as a political committee, Respondents failed to register and file disclosures as required under the FECA.

2. Now, nearly a year after Plaintiffs filed the administrative complaint, the FEC has failed to act. The FEC's delay not only continues to deprive Plaintiffs and the public of the information to which they are entitled and which was due years ago, it jeopardizes the ability to remedy that deprivation. Indeed, it appears CWA may have dissolved in the interim, putting at risk its corporate records and potentially leaving its agents as the sole respondents.

JURISDICTION AND VENUE

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 52 U.S.C. § 30109(a)(8)(A) and 5 U.S.C. § 706. This Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 2201(a), and 2202. Venue lies in this district under 52 U.S.C. § 30109(a)(8)(A) and 28 U.S.C. § 1391(e).

PARTIES

4. Complainant Marc Kruman is and at all times relevant to the complaint has been a citizen of the United States and a registered voter in Michigan. As a registered voter, Mr. Kruman is entitled to receive information contained in disclosure reports required by the FECA. 52 U.S.C. § 30104; 11 C.F.R. §§ 104.1–22, 109.10. Mr. Kruman is harmed in exercising his right to vote when an individual, candidate, political committee, or other regulated entity fails to report campaign finance activity as required by the FECA. *See FEC v. Akins*, 524 U.S. 11, 20 (1998) (*quoting Buckley v. Valeo*, 424 U.S. 1, 66–67 (1976) (political committees must disclose contributors and disbursements to help voters understand who provides which candidates with financial support)).

5. Mr. Kruman saw communications in the 2018 congressional election referring to candidate Lena Epstein. As detailed below, CWA funded independent expenditures targeting Lena Epstein in the 2018 election through the super PAC Americans United for Values.

6. Further, at all times relevant to the complaint, Mr. Kruman has been a professor of history at Wayne State University and was named a Distinguished Service Professor. In his role as a professor, he is the founding Director of Wayne State University's Center for the Study of Citizenship. Campaign finance data reported to the FEC is helpful to Mr. Kruman's work. He has incorporated such information into his teaching. Among Mr. Kruman's students are potential voters. Further, in his role at the University, Mr. Kruman hosted a conference on Citizens United and Its Impact on American Voters. The attendees at the event included potential voters.

7. Additionally, beyond his role at the University, Mr. Kruman also shares information about a candidate's financial support, as required to be disclosed by the FECA, to others, including potential voters. Mr. Kruman expects to and intends to share such information again in the future.

8. In both his professional and personal roles, Mr. Kruman is harmed in his ability to share information with others, including voters, when an individual, candidate, political committee, or other regulated entity fails to report campaign finance activity as required by the FECA. *See Akins*, 524 U.S. at 21 (FECA protects the right to receive information that would allow "others to whom they would communicate it" to evaluate candidates for public office).

9. Mr. Kruman is further harmed when the FEC fails to properly administer the FECA's reporting requirements, limiting his ability to review and distribute campaign finance information.

10. Complainant Andrew Ray is and at all times relevant to the complaint has been a citizen of the United States. Since 2013, he has been a registered voter in Ohio. As a registered voter, Mr. Ray is entitled to receive information contained in disclosure reports required by the FECA. 52 U.S.C. § 30104; 11 C.F.R. §§ 104.1–.22, 109.10. Mr. Ray is harmed in exercising his

right to vote when an individual, candidate, political committee, or other regulated entity fails to report campaign finance activity as required by the FECA. *See Akins*, 524 U.S. at 20 (*quoting Buckley*, 424 U.S. at 66–67).

11. Mr. Ray has also distributed and intends to distribute information about a candidate’s financial support, as required to be disclosed by the FECA, to other potential voters. Mr. Ray is harmed in exercising his right to share information to other voters when an individual, candidate, political committee, or other regulated entity fails to report campaign finance activity as required by the FECA. *See Akins*, 524 U.S. at 21 (FECA protects the right to receive information that would allow “others to whom they would communicate it” to evaluate candidates for public office).

12. Mr. Ray is further harmed when the FEC fails to properly administer the FECA’s reporting requirements, limiting his ability to review and distribute campaign finance information.

13. Defendant FEC is the federal agency established by Congress to oversee the administration and civil enforcement of the FECA. *See* 52 U.S.C. § 30106(b)(1).

STATUTORY AND REGULATORY BACKGROUND

14. The FECA and the implementing FEC regulations require organizations that engage in extensive electioneering to register as political committees with the FEC and to make periodic reports which disclose, among other things, the source of funds received by the political committee. This is one of a number of disclosure requirements designed to ensure that the public and voters are fully apprised of election-related spending.

15. The FECA and FEC regulations define a “political committee” as “any committee, club, association, or other group of persons which receives contributions aggregating

in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year.” 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(a). An “expenditure” includes “any . . . payment, distribution, . . . deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. § 100.111(a). A “contribution” includes “any gift . . . or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

16. Under the FECA and applicable FEC regulations, political committees must file periodic reports with the FEC that, among other things: (1) identify all individuals contributing an aggregate of more than \$200 in a year to the organization, the amount each individual contributed, and the date of the contribution; (2) identify all political committees making a contribution to the organization, the amount each committee contributed, and the date of the contribution; (3) detail all of the organization’s outstanding debts and obligations; and (4) list all of the organization’s expenditures, including its independent expenditures and electioneering communications. 52 U.S.C. § 30104(a)(4), (b), (f)(2); 11 C.F.R. §§ 104.3, 104.4, 104.20(b), *see also* 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(a) (definition of a “political committee”).

17. Because political committees registered with the FEC are, by definition, federal campaign related, all funds donated to them are deemed made for the purpose of influencing a federal election and thus reportable. Thus, any funds “deposit[ed]” with or “gift[ed]” to a registered political committee are reportable “contribution[s]” to the committee, 52 U.S.C. § 30101(8)(A)(i), and “expenditure[s]” to the contributor, 52 U.S.C. § 30101(9)(A)(i).

18. The duty to file disclosures extends to both the political committee and to any person acting as the political committee’s treasurer. *See* 52 U.S.C. § 30102.

19. The duty to disclose information reportable under the FECA survives the dissolution of the corporate entity and may be fulfilled by a surviving corporate agent, including the political committee treasurer who bears personal responsibility for correcting any missed filings. *See* Conciliation Agreement, *In re Americans for Job Security*, MUR 6538R (Sept. 9, 2019), <https://bit.ly/3vguBxx> (respondent entity agreed to register as political committee and disclose donors notwithstanding entity’s “defunct status”).

20. Under the FECA, any person who believes there has been a violation of the Act may file a sworn complaint with the FEC. 52 U.S.C. § 30109(a)(1). Based on the complaint, the response from the person or entity alleged to have violated the Act, facts developed by the Office of General Counsel (“OGC”), and any OGC recommendation, the FEC decides whether there is “reason to believe” a violation of the FECA has occurred. 52 U.S.C. § 30109(a)(2).

21. A “reason to believe” exists where a complaint “credibly alleges” a violation of the FECA “may have occurred.” FEC, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (Mar. 16, 2007). If four commissioners find there is “reason to believe” a violation of the FECA has occurred, the FEC must notify the respondents of that finding and “shall make an investigation of such alleged violation.” 52 U.S.C. § 30109(a)(2).

22. The FECA further provides that the complainant may sue the FEC 120 days after filing the complaint if the FEC “fail[s] to act” on the complaint. 52 U.S.C. § 30109(a)(8)(A). The FEC has a legal duty to take final action on a complaint expeditiously. 52 U.S.C. § 30107(a)(9). A court that finds the FEC has failed to act expeditiously may declare the failure contrary to law and order the FEC to conform with that declaration within thirty days. 52 U.S.C. § 30109(a)(8)(C). If the FEC continues to fail to act and does not conform with the declaration

within thirty days, “the complainant may bring, in the name of such complainant, a civil action [against the respondent(s)] to remedy the violation involved in the original complaint.” *Id.*

FACTUAL BACKGROUND

23. On November 20, 2020, Plaintiffs filed an administrative complaint with the FEC against CWA, Joel Riter as President of CWA in both his official capacity as treasurer and his personal capacity, and Norman Cummings as Treasurer of CWA in both his official capacity as treasurer and in his personal capacity. The FEC confirmed receipt of the complaint on November 25, 2020. The matter was given MUR number 7859. A copy of the administrative complaint is attached as Exhibit 1.

Plaintiffs’ Allegations Against Respondents

24. Plaintiffs’ administrative complaint alleges that, no later than 2018, CWA devoted more than half its annual spending to political activities by gifting, depositing, or distributing \$5,464,500 to independent-expenditure only political committees registered with the FEC, known as super PACs. Plaintiffs further alleged that this was not the first time CWA devoted more than half of its annual spending to political activities.

25. Specifically, Plaintiffs alleged that, based on CWA’s 2017 Form 990 tax return, CWA reported spending \$8,208,425 between October 1, 2017 and September 30, 2018. During that time, six super PACs reported to the FEC receiving gifts, deposits, or distributions from CWA. CWA reportedly gifted, deposited, or distributed \$3,270,000 to Hometown Freedom Action Network, \$1,075,000 to The Palmetto PAC, \$200,500 to A Better Georgia PAC, \$254,000 to Americans United for Values, \$130,000 to 35th PAC, and \$535,000 to Hardworking Americans Committee. Each super PAC reported these gifts, deposits, or distributions were “contributions”—that is, disbursements intended to influence federal elections.

26. Each super PAC that received these gifts, deposits, or distributions from CWA engaged in extensive political activity to influence the 2018 elections. For example, Americans United for Values spent more than \$296,000 on independent expenditures opposing Walter Jones in the Republican House primary in North Carolina's 3rd district, opposing Melanie Leneghan in the Republican House primary in Ohio's 12th district, opposing Lena Epstein in the Republican House primary in Michigan's 11th district, and supporting Michael Kowall in the Republican House primary in Michigan's 11th district.

27. Indeed, CWA's contributions to Americans United for Values appears to have been specifically targeted at funding the super PAC's ads opposing Ms. Leneghan in the Republican House primary in Ohio's 12th district. CWA gave Americans United for Values \$240,000 on May 2, 2018. That same day, Americans United for Values paid \$235,000 to Strategic Media Placement for "television placement and production" opposing Ms. Leneghan.

28. Between October 1, 2017 and September 30, 2018, the time period covered by CWA's 2017 tax return, CWA's \$5,464,500 in gifts, deposits, or distributions to federally-registered super PACs accounted for 66.5% of CWA's total spending of \$8,208,425.

29. In addition to the super PAC distributions, CWA gave \$930,000 to the Republican Attorneys General Association, a political organization registered with the IRS under Section 527. Including the money it gave to the Republican Attorneys General Association, CWA admitted spending \$6,394,500 on political activity, accounting for 77.9% of the group's total spending, during its 2017 tax year.

30. Since CWA's fiscal year ended on September 30, 2018, it is unknown exactly how much CWA spent overall or on political activity in calendar year 2018. CWA spent at least an additional \$72,500 on political activity before the end of the year, however, by making

additional gifts, deposits, or distributions to political committees after the end of its fiscal year and before the 2018 election. On October 29, 2018, CWA gifted, deposited, or distributed \$20,000 to American Jobs and Growth PAC, a federally-registered super PAC. American Jobs and Growth PAC reported CWA's gift, deposit, or distribution was a "contribution." Following the transfer from CWA, American Jobs and Growth PAC made independent expenditures in Virginia's 2nd congressional district and Pennsylvania's 7th congressional district. On October 31, 2018, CWA gifted, deposited, or distributed an additional \$40,000 to The Palmetto PAC, as well as \$12,500 to the South Carolina Republican Party. Both groups reported CWA's gifts, deposits, or disbursements were "contributions" and thus were disbursements made for the purpose of influencing federal elections. These gifts, deposits, or distributions bring CWA's total transfers to federally registered super PACs and political committees to at least \$5,537,000 in 2017 and 2018 (a sum not including the \$930,000 CWA gifted, deposited, or distributed to the 527 Republican Attorneys General Association discussed above).

31. The high percentage of political spending by CWA extends beyond its 2017 tax year, and it is not the first time that political activity has accounted for more than a majority of CWA's spending. Between its 2011 tax year, when CWA first reported engaging in federal political activity, and the close of its 2017 tax year, CWA spent \$18,575,129 overall, including at least \$8,997,075 that has been reported to the FEC as either independent expenditures in federal elections or contributions to federally-registered super PACs. That means at least 48.4% of CWA's total spending in that time period has been dedicated to federal election activity, even without allocating overhead costs attributable to CWA's political expenses. Allocating such expense would likely cause CWA's total political spending to exceed more than 50% of its total spending.

32. On its 2011 tax return, filed under penalty of perjury, CWA reported spending a total of \$1,086,555 between October 1, 2011 to September 30, 2012. CWA also acknowledged spending \$803,060 on direct and indirect political campaign activities, which it described as “independent expenditures of \$640,060 and contributions to an IE-only PAC in the amount of \$163,000.” CWA’s political spending during that tax year thus amounted to 73.9% of its total spending.

33. Specifically, during that 2011-2012 period CWA paid \$475,000 for an independent expenditure supporting Mitt Romney in the 2012 Republican presidential primary and \$165,060 for an independent expenditure opposing Scottie Mayfield in the Republican primary in Tennessee’s 3rd congressional district. Citizens for a Working America PAC, a federally-registered super PAC, reported receiving a \$163,000 contribution from CWA on January 11, 2012, the same day the super PAC received \$292,000 from another nonprofit, New Models. On the same day the super PAC received the contributions from the two non-disclosing groups, it paid \$455,000 for an independent expenditure supporting Romney in the 2012 Republican presidential primary.

34. On its 2012 tax return, filed under penalty of perjury, CWA reported spending a total of \$4,201,348 between October 1, 2012 and September 30, 2013. CWA also acknowledged spending \$1,699,991 on direct and indirect political campaign activities, which it described as “independent expenditures of \$914,991 and contributions to various PACs in the amount of \$785,000.” CWA’s political spending during that year thus amounted to 40.5% of its total spending.

35. Specifically, during that 2012-2013 period CWA paid \$750,058 for an independent expenditure opposing David Crooks in the general election in Indiana’s 8th

congressional district and \$164,933 for an independent expenditure opposing Jeff Landry in the general election in Louisiana's 3d congressional district. CWA also made gifts, deposits, or distributions to three federally-registered super PACs: \$100,000 to the Louisiana Prosperity Fund, \$600,000 to Fund for Freedom Committee, Inc., and \$85,000 to Arkansas Horizon, which the recipients reported were "contributions" and thus were disbursements made for the purpose of influencing federal elections. Fund for Freedom Committee, Inc. even reported CWA was a "political committee."

36. On its 2016 tax return, filed under penalty of perjury, CWA reported spending a total of \$1,221,269 between October 1, 2016 and September 30, 2017. CWA also acknowledged spending \$494,000 on direct and indirect political campaign activities, which it described as "contributions to section 527 independent expenditure only committees and disseminated advertisements addressing issues in furtherance of its mission statement, which also advocated for or against candidates for public office." CWA failed, however, to report an additional \$60,000 it gifted, deposited, or distributed to another federally-registered super PAC, Arizona Grassroots Action PAC, during its tax year, which increases its political spending to \$554,000. Arizona Grassroots Action PAC reported CWA's gifts, deposits, or distributions were "contributions" and thus were disbursements intended to influence federal elections. CWA's federal political spending during that year thus amounted to at least 45.4% of its total spending, again without allocating overhead expenses.

37. Joel Riter has served as President of CWA since 2014. In that capacity, Mr. Riter controlled and continues to control CWA. Further, Mr. Riter had and continues to have the authority and responsibility at CWA to sign filings with the FEC on behalf of CWA.

38. For purposes of the FECA, therefore, since 2014, Mr. Riter was, is, and continues

to be the treasurer of CWA.

39. Norman Cummings served as Treasurer of CWA in and around 2012 to 2013. In that capacity, Mr. Cummings had the authority and responsibility at CWA to sign filings with the FEC on behalf of CWA.

40. For purposes of the FECA, therefore, in and around 2012 and 2013, Mr. Cummings was the treasurer of CWA.

41. Under the FECA, treasurers of political committees like CWA are responsible for registering them with the FEC and filing disclosure reports as required.

42. Mr. Riter, as treasurer of numerous registered super PACs, is personally aware of his responsibilities as treasurer and aware of the possibility of personal liability for his failure to carry out his duties as treasurer.

43. Mr. Cummings, as former political director for a national political party, and as chairman and treasurer of registered super PACs, is personally aware of his responsibilities as treasurer and aware of the possibility of personal liability for his failure to carry out his duties as treasurer.

44. By failing to register CWA as a political committee and by failing to file disclosure reports as required by the FECA, both Mr. Riter and Mr. Cummings personally violated the FECA. Further, based on their knowledge of their obligations, Mr. Riter's and Mr. Cumming's violations were knowing and willful, or reckless, or they intentionally deprived themselves of the operative facts giving rise to the violation.

Plaintiffs' FEC Complaint and the FEC's Pattern of Delay

45. Plaintiffs' FEC complaint detailed the allegations described in paragraphs 24 to 44 above, as well as additional allegations, in greater detail and with reference to supporting

documentation.

46. On November 25, 2020, the FEC sent Plaintiffs an acknowledgement letter confirming receipt of the administrative complaint.

47. As of the date of this filing, the FEC has not reached or made public a final decision on MUR 7859, near a year after the filing of the administrative complaint.

48. Certain FEC remedies for violations of the FECA are subject to a five-year statute of limitations under 28 U.S.C. § 2462. Assuming there is no basis for tolling, the statute of limitations could begin to limit the remedies available on Plaintiffs' allegations starting on October 24, 2022.

49. Significant delays in acting on a pending complaint are not uncommon at the FEC, leading one FEC commissioner to express concern that “[e]ffective enforcement of the law is undermined by pervasive delays.” *In the Matter of American Conservative Union, et al.*, Statement of Reasons of Comm’r Ellen L. Weintraub, MUR 6920 (Dec. 19, 2017), <http://bit.ly/2CDnumJ>.

50. The pervasive delays also often serve as a cause for other FEC commissioners to halt enforcement actions. For example, one May 23, 2011 complaint filed with the FEC alleged that the Commission on Hope, Growth and Opportunity (“CHGO”) violated the FECA by spending more than \$2.3 million to broadcast television ads in 12 elections for seats in the House of Representatives. Despite the nature and extent of the spending, CHGO failed to file disclosures as required by the FECA and failed to register as a political committee, which the complaint alleged constituted violations of the FECA. *In the Matter of The Commission on Hope Growth and Opportunity*, Complaint, MUR 6471 (May 23, 2011), <http://bit.ly/2qHA6aL>; Amended Complaint, MUR 6471 (Apr. 26, 2012), <https://bit.ly/2wBbjFD>. The complaint

languished before the FEC, with months and even years passing between actions. *See* Summary, MUR 6471, <http://bit.ly/2o52aBt>. Finally, in November 2015, more than four years after the complaint was filed, three controlling commissioners voted to dismiss the case and close the file without finding reason to believe that there was a violation of the FECA, in part because the “statute of limitations [had] effectively expired.” *Id.*; Statement of Reasons of Vice Chairman Matthew S. Petersen, and Comm’rs Caroline C. Hunter and Lee E. Goodman, MURs 6391 and 6471 (Nov. 6, 2015), <http://bit.ly/2D8LW0m>.

51. Similarly, a February 27, 2015 complaint against American Conservative Union, Now or Never PAC, James C. Thomas III, and Unknown Respondent alleged legal violations stemming from a failure to disclose the true source of a \$1.71 million contribution to Now or Never PAC. *In the Matter of American Conservative Union, et al.*, Complaint, MUR 6920 (Feb. 27, 2015), <http://bit.ly/2D6UHI7>. OGC investigated the allegations and recommended finding reason to believe the respondents violated the FECA. *Id.*; First General Counsel’s Report (Jan. 20, 2016), <http://bit.ly/2swd1sQ>. That report, however, sat before the commissioners for almost two years, and by the time the FEC was willing to move forward on the matter it was “just about out of time” with regard to the statute of limitations. *Id.*; Statement of Reasons of Comm’r Ellen L. Weintraub (Dec. 19, 2017).

52. While the FEC eventually found reason to believe that certain respondents violated the FECA, resulting in a \$350,000 fine, the controlling commissioners ultimately declined to pursue investigation and enforcement against other unknown respondents who were either the true source of the contribution or also acted as a conduit, justifying this decision in large part due to the impending statute of limitations. *Id.*; Statement of Reasons of Vice Chair Caroline C. Hunter and Comm’r Lee E. Goodman (Dec. 20, 2017), <http://bit.ly/2CTqQ8q>. The

decision not to pursue further investigation constituted “an egregious example of someone using a web of organizations to hide the true source of a \$1.7 million contribution to a super PAC — and getting away with it.” *Id.*; Statement of Reasons of Comm’r Ellen L. Weintraub (Dec. 19, 2017).

53. In another example, one complaint “languished within the Office of General Counsel” for “three years, two months, and nineteen days” before a report was prepared for the Commission to consider. *In re Independent Women’s Voice*, Statement of Reasons of Vice Chair Allen Dickerson and Comm’rs Sean J. Cooksey and James E. “Trey” Trainor III, MUR 7181 (Mar. 18, 2021), <https://bit.ly/3BQCr3q>. Even then, it took an additional year for the Commission to vote on the matter. *Id.*, Certification, MUR 7181 (Feb. 9, 2021), <https://bit.ly/2Xkc8DQ>.

54. Another complaint filed *in 2017* still had not been resolved, despite a recommendation from the FEC’s Office of General Counsel that has been pending for over *1,603* days, as of August 5, 2021. FEC, Status of Enforcement – Fiscal Year 2021, Third Quarter (04/01/21-06/30/21), Table 7 (Aug. 5, 2021) [hereinafter “FEC, 3Q Report”], <https://bit.ly/3azty2o>. The Commission had held over consideration of that matter twenty-nine times and apparently had not even scheduled it for consideration since June 25, 2020. *Id.*

55. Lack of enforcement due to extreme delay is widespread at the FEC. In an August 5, 2021 report, the FEC stated that, of the 198 cases on the enforcement docket as of that date, 94 of those cases are potentially at risk of expiration of the statute of limitations. FEC, 3Q Report, at Table 1, Table 5.

56. An FEC commissioner (at the time the Chair) testified to Congress that a sufficient number of commissioners capable of blocking agency action are intentionally delaying

action on complaints in order to avoid enforcement of the FECA. *See* Chair Ellen L. Weintraub's Supplemental Responses to Questions From the Committee on House Administration (May 1, 2019), <https://bit.ly/2Wv4Pqi>. By running out the clock and then citing the age of the complaint as a basis to exercise prosecutorial discretion to dismiss, these commissioners immunize their actions from judicial review under current case law—to the frustration of Congress's intent—while aiding and abetting violations of the law.

57. On information and belief, a bloc of commissioners—enough to block agency action—are delaying agency action on Plaintiffs' administrative complaint in MUR 7859 for the purpose of aiding and abetting the Respondents' violations of the law and evading judicial review of their illegal actions.

58. Even when not used for illegal purposes, such delays commonly impact the FEC's ability to carry out its enforcement function, as documents may be destroyed or lost and witness memories may fade. Also, the organization at issue may shut down or cease operations, making it more difficult to access documents and witnesses. In addition, the running of the five-year statute of limitations constrains the FEC's enforcement, as after the statute has run, it can no longer issue fines.

59. These delays also hamper Plaintiffs' ability to access the information that they are entitled to under the statute. Furthermore, to the extent evidence is lost or degraded during a multi-year delay at the FEC, the delay undermines Plaintiffs' ability to litigate under the FECA should Plaintiffs file a suit alleging that an FEC final action is contrary to law, or if Plaintiffs bring a civil action in their own names as permitted by the FECA.

60. Further, the FEC's delay cannot be explained by the recent lack of quorum at the agency. Although the FEC lacked a full quorum at the time Plaintiffs' complaint was filed, the

Commission was fully re-staffed on or around December 18, 2020. Accordingly, the FEC has had a full Commission to review and act on Plaintiffs' complaint for more than 120 days, and indeed for more than ten months. Nonetheless, on information and belief, the FEC has still not acted on Plaintiffs' complaint.

CAUSE OF ACTION

(FEC Inaction Contrary to Law)

61. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

62. The FEC received Plaintiffs' administrative complaint against Respondents on November 20, 2020, nearly one year ago.

63. Plaintiffs' administrative complaint credibly alleged violations of FECA and FEC regulations by Respondents. In addition, the FEC has all the information required to take final agency action with respect to Plaintiffs' complaint, and no additional agency resources are required.

64. The FEC has failed to act in a timely manner on the administrative complaint. To date, the FEC has not reached a resolution of the matter or disclosed taking any action on the administrative complaint.

65. Sufficient time has elapsed to allow the FEC to conduct an investigation of MUR 7859. The FEC's failure to act on the administrative complaint is unreasonable and contrary to law under 52 U.S.C. § 30109(a)(8), and the Court may compel the FEC to act.

66. Any party aggrieved by the failure of the FEC to act on an administrative complaint may petition the Court for a declaration that the failure is unlawful and for an order that the FEC conform with this declaration within thirty (30) days. 52 U.S.C. § 30109(a)(8).

67. Action by the FEC on MUR 7859 may result in the FEC compelling Respondents to disclose the source of the contributions to CWA. If the FEC determines that any of the Respondents acted knowingly and willfully, it may make a referral to the Department of Justice for investigation into possible criminal penalties.

68. Plaintiffs have been harmed by the FEC's failure to act on the administrative complaint. The FEC's failure to act has allowed Respondents to continue to keep confidential information that, under the FECA, they were required to disclose. This failure to disclose information to which Plaintiffs are entitled injures Plaintiffs by depriving them of information to which they are entitled by law, which deprivation further adversely effects the Plaintiffs' ability to exercise an educated vote and their ability to communicate that information to others.

69. Thorough investigation of administrative complaints and timely action by the FEC in making a final determination is in the public interest, and the FEC should rule on Plaintiffs' administrative complaint without further delay.

70. Further, if the FEC proves unwilling or incapable of further action on Plaintiffs' complaint, Plaintiffs have the right to bring a civil action in their own name to remedy the violations alleged in that complaint, as permitted by the FECA after the Court declares that FEC's failure to act is contrary to law.

REQUESTED RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- (1) Declare that the FEC's failure to act on Plaintiffs' Complaint (MUR 7859) is contrary to law;
- (2) Order the FEC to act on the Complaint in conformity with this Court's declaration within thirty (30) days, pursuant to 52 U.S.C. § 30109(a)(8)(C); and
- (3) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Stuart McPhail

Stuart McPhail

(D.C. Bar No. 1032529)

Adam J. Rappaport

(D.C. Bar No. 479866)

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Exhibit 1

FEDERAL ELECTION COMMISSION

In the matter of:

Citizens for a Working America Inc.
Joel Riter, President, Citizens for a Working America Inc.,
in his official capacity as treasurer and in his personal capacity
Norman Cummings, Treasurer, Citizens for a Working America Inc.,
in his official capacity as treasurer and in his personal capacity

MUR _____

COMPLAINT

1. Complainants Marc Kruman and Andrew Ray bring this complaint before the Federal Election Commission (“FEC” or “Commission”) seeking an immediate investigation and enforcement action against Citizens for a Working America Inc. (“CWA”), Joel Riter, and Norman Cummings for direct and serious violations of the Federal Election Campaign Act (“FECA”).

2. CWA is ostensibly a tax-exempt social welfare organization established in Delaware in 2009. No later than 2018, however, CWA qualified as a political committee, spending the majority of its money on political activity. Between October 1, 2017 and September 30, 2018 – CWA’s fiscal year which covered much of the 2018 election cycle – about 66.5% of CWA’s spending was political. That spending consisted of \$5,464,500 the group gave to six federally-registered super PACs. The 2018 election was not the first time CWA spent significant money to influence elections. For instance, during its 2011 fiscal year, which covered much of the 2012 election cycle, about 73.9% of CWA’s spending was political, consisting of \$640,060 spent on independent expenditures in federal elections and \$163,000 given to a federally-registered super PAC.

3. In conducting its political activity, CWA was obligated by the FECA to register as a political committee and file disclosure reports. Despite its heavy political spending, CWA never registered as a political committee with the FEC and failed and continues to fail to file reports disclosing its contributors. For purposes of the FECA, beginning in 2014, Mr. Riter was and remains treasurer of CWA and is personally responsible for causing CWA to comply with the FECA. For purposes of the FECA, prior to 2014, Mr. Cummings was treasurer of CWA and was personally responsible for causing CWA to comply with the FECA. Consequently, CWA, Mr. Riter, and Mr. Cummings violated the FECA. The FEC should investigate these allegations and take appropriate action to enforce the FECA.

Complainants

4. Complainant Marc Kruman is and at all times relevant to the complaint has been a citizen of the United States and a registered voter in Michigan. As a registered voter, Mr. Kruman is entitled to receive information contained in disclosure reports required by the FECA. 52 U.S.C. § 30104; 11 C.F.R. §§ 104.1–22, 109.10. Mr. Kruman is harmed in exercising his right to vote when an individual, candidate, political committee, or other regulated entity fails to report campaign finance activity as required by the FECA. *See FEC v. Akins*, 524 U.S. 11, 19 (1998) (*quoting Buckley v. Valeo*, 424 U.S. 1, 66–67 (1976) (political committees must disclose contributors and disbursements to help voters understand who provides which candidates with financial support)).

5. Mr. Kruman saw communications in the 2018 congressional election referring to candidate Lena Epstein. As detailed below, CWA funded independent expenditures targeting Lena Epstein in the 2018 election through the super PAC Americans United for Values.

6. Further, at all times relevant to the complaint, Mr. Kruman has been a professor of history at Wayne State University and was recently named a Distinguished Service Professor. In his role as a professor, he is the founding Director of Wayne State University's Center for the Study of Citizenship. Campaign finance data reported to the FEC is helpful to Mr. Kruman's work. He has incorporated such information into his teaching. Among Mr. Kruman's students are potential voters. Further, in his role at the University, Mr. Kruman hosted a conference on Citizens United and Its Impact on American Voters. The attendees at the event included potential voters.

7. Additionally, beyond his role at the University, Mr. Kruman also shares information about a candidate's financial support, as required to be disclosed by the FECA, to others, including potential voters. Mr. Kruman expects to and intends to share such information again in the future.

8. In both his professional and personal roles, Mr. Kruman is harmed in his ability to share information with others, including voters, when an individual, candidate, political committee, or other regulated entity fails to report campaign finance activity as required by the FECA. *See Akins*, 524 U.S. at 21 (FECA protects the right to receive information that would allow "others to whom they would communicate it" to evaluate candidates for public office).

9. Mr. Kruman is further harmed when the FEC fails to properly administer the FECA's reporting requirements, limiting his ability to review and distribute campaign finance information.

10. Complainant Andrew Ray is and at all times relevant to the complaint has been a citizen of the United States. Since 2013, he has been a registered voter in Ohio. As a registered voter, Mr. Ray is entitled to receive information contained in disclosure reports required by the

FECA. 52 U.S.C. § 30104; 11 C.F.R. §§ 104.1–.22, 109.10. Mr. Ray is harmed in exercising his right to vote when an individual, candidate, political committee, or other regulated entity fails to report campaign finance activity as required by the FECA. *See Akins*, 524 U.S. 11, 20 (1998) (*quoting Buckley*, 424 U.S. 1, 66–67 (1976) (political committees must disclose contributors and disbursements to help voters understand who provides which candidates with financial support)).

11. Mr. Ray has also distributed and intends to distribute information about a candidate’s financial support, as required to be disclosed by the FECA, to other potential voters. Mr. Ray is harmed in exercising his right to share information to other voters when an individual, candidate, political committee, or other regulated entity fails to report campaign finance activity as required by the FECA. *See Akins*, 524 U.S. at 21 (FECA protects the right to receive information that would allow “others to whom they would communicate it” to evaluate candidates for public office).

12. Mr. Ray is further harmed when the FEC fails to properly administer the FECA’s reporting requirements, limiting his ability to review and distribute campaign finance information.

Respondents

13. CWA is a tax-exempt organization established in 2009, organized under section 501(c)(4) of the Internal Revenue Code, and based in Washington, DC. CWA 2017 Form 990, <https://bit.ly/2DMW0NG>. The organization has no employees. *Id.*

14. As of the filing of this complaint, CWA was not a registered political committee.

15. Since October 2014, Joel Riter has been and continues to be the president of CWA. *Id.*; CWA 2013 Form 990, <https://bit.ly/2Ps8EHm>; CWA 2014 Form 990, <https://bit.ly/38nrGau>; CWA 2015 Form 990, <https://bit.ly/38qZseS>; CWA 2016 Form 990,

<https://bit.ly/319Pg7B>. Mr. Riter is also the most recent signatory on behalf of CWA when it filed independent expenditure reports with the FEC and was listed as the group's treasurer on advertising agreement forms filed with the Federal Communications Commission during the 2018 election. CWA, FEC Form 5, Report of Independent Expenditure Made and Contributions Received, Oct. 12, 2016, <https://bit.ly/2YmO8f6>; Citizens for a Working America, Agreement Form for Non-Candidate/Issue Advertisements, NAB Form PB-18 Issues, Oct. 31, 2018, <https://bit.ly/35HScsG>. He is also listed as the treasurer of 22 independent expenditure-only committees currently registered with the FEC, including one called Citizens for a Working America PAC. Committees, Most Recent Treasurer search, "Riter, Joel," Federal Election Commission, <https://bit.ly/2DQrfHI>. Mr. Riter is named as a respondent in both his official and personal capacities.

16. According to CWA's tax filings, Mr. Cummings was CWA's treasurer from 2009 to October 2013. CWA 2010 Form 990, <https://bit.ly/36jHB7S>; CWA 2011 Form 990, <https://bit.ly/2roacu9>; CWA 2012 Form 990, <https://bit.ly/2Putaaag>; CWA 2013 Form 990. In that role, Mr. Cummings signed CWA's filings with the IRS, CWA 2011 Form 990, CWA 2012 Form 990, and with the FEC, FEC Form 5, Report of Independent Expenditures Made and Contributions Received, Jan. 31, 2012, <https://bit.ly/2E7Lssw>; Citizens for a Working America Inc., FEC Form 5, Report of Independent Expenditures Made and Contributions Received, Oct. 15, 2012, <https://bit.ly/36nSntK>. Mr. Cummings previously served as a political director and chief of staff for the Republican National Committee. C-SPAN, Norm Cummings, <https://cs.pn/2vx99JX>. Mr. Cummings was identified as chairman of Citizens for Working America PAC in 2014. *See* Letter from David Langdon, Treasurer of Citizens for Working America PAC, to Tara Aviel, Access Media Services, Apr. 16, 2014, <https://bit.ly/312rfiu>. In

2017, Mr. Cummings was also identified as treasurer for the Palmetto PAC, a federally registered super PAC. The Palmetto PAC, FEC Form 1, Statement of Organization, July 12, 2017, <https://bit.ly/2ScqBv5>. Mr. Cummings is named as a respondent in both his official and personal capacities.

Factual Allegations

17. According to CWA's 2017 Form 990 tax return, filed under penalty of perjury, the organization spent a total of \$8,208,425 between October 1, 2017 and September 30, 2018, its 2017 fiscal year. CWA 2017 Form 990, Part I, Line 18.

18. CWA further reported gifting, depositing, or distributing \$5,464,500 to independent expenditure-only political action committees, also known as super PACs, registered with the FEC. *Id.*, Schedule C, Part 1-C, Line 5. Specifically, CWA reported gifting, depositing, or distributing to six super PACs: \$3,270,000 to Hometown Freedom Action Network; \$1,075,000 to The Palmetto PAC; \$200,500 to A Better Georgia PAC; \$254,000 to Americans United for Values; \$130,000 to 35th PAC; and \$535,000 to Hardworking Americans Committee. *Id.*; Hometown Freedom Action Network, FEC Form 1, Statement of Organization, Amended, Aug. 14, 2015, <https://bit.ly/2OTT0pi>; The Palmetto PAC, FEC Form 1, Statement of Organization, Amended, Mar. 12, 2018, <https://bit.ly/2RnSEZu>; A Better Georgia PAC, FEC Form 1, Statement of Organization, May 29, 2018, <https://bit.ly/2rhbYgg>; Americans United for Values, FEC Form 1, Statement of Organization, Jan. 18, 2016, <https://bit.ly/34W9CSH>; 35th PAC, FEC Form 1, Statement of Organization, Amended, Nov. 8, 2019, <https://bit.ly/2LmyCeb>; Hardworking Americans Committee, FEC Form 1, Statement of Organization, Amended, Apr. 17, 2018, <https://bit.ly/2DQ6SdJ>.¹

¹ On its Form 2017 Form 990, CWA named "Hometown Freedom Action" as the recipient of its gift, deposit, or distribution. CWA 2017 Form 990, Schedule C, Part 1-C, Line 5. The name of the super PAC, however, that

19. Each of these super PACs reported CWA's gifts, deposits, or distributions as "contributions"—that is, disbursements intended to influence federal elections. Hometown Freedom Action Network, FEC Form 3X, 2018 October Quarterly Report, Oct. 15, 2018, <https://bit.ly/2NPugEW>; Hometown Freedom Action Network, FEC Form 3X, 2018 July Quarterly Report, July 15, 2018, <https://bit.ly/2Rfxk87>; Hometown Freedom Action Network, FEC Form 3X, 2018 April Quarterly Report, Apr. 15, 2018, <https://bit.ly/36jJn8F>; Hometown Freedom Network, FEC Form 3X, 2017 Year-End Report, Jan. 30, 2018, <https://bit.ly/2Ril4Uk>; The Palmetto PAC, FEC Form 3X, 2018 July Quarterly Report, July 12, 2018, <https://bit.ly/37iQnUD>; A Better Georgia PAC, FEC Form 3X, 2018 October Quarterly Report, Oct. 15, 2018, <https://bit.ly/2Yqn2nA>; Americans United for Values, FEC Form 3X, 2017 Year-End Report, Jan. 30, 2018, <https://bit.ly/2sNzcuU>; Americans United for Values, FEC Form 3X, 2018 July Quarterly Report, July 15, 2018, <https://bit.ly/2PoVg6I>; 35th PAC, FEC Form 3X, 2018 July Quarterly Report, July 6, 2018, <https://bit.ly/2sRUKqO>; 35th PAC, 2018 April Quarterly Report, Amended, July 6, 2018, <https://bit.ly/2uro4oA>; Hardworking Americans Committee, FEC Form 3X, 2018 July Quarterly Report, Amended, Sept. 26, 2018, <https://bit.ly/34a2bpP>.

20. Each of the super PACs that received gifts, deposits, or distributions from CWA engaged in extensive political activity influencing elections in 2018. For example, Americans United for Values spent more than \$296,000 on independent expenditures opposing Walter Jones in the Republican House primary in North Carolina's 3rd district, opposing Melanie Leneghan in

reported receiving the gift, deposit, or distribution is Hometown Freedom Action Network. Hometown Freedom Action Network, FEC Form 3X, 2018 October Quarterly Report, Oct. 15, 2018, <https://bit.ly/2Yn6UmA>. Likewise, CWA named "Hardworking Americans PAC" as the recipient of its gift, deposit, or distribution, while the name of the super PAC that reported receiving the gift, deposit, or distribution is Hardworking Americans Committee. CWA 2017 Form 990, Schedule C, Part 1-C, Line 5; Hardworking Americans Committee, FEC Form 3X, 2018 July Quarterly Report, Sept. 26, 2018, <https://bit.ly/2PaYgn2>.

the Republican House primary in Ohio's 12th district, opposing Lena Epstein in the Republican House primary in Michigan's 11th district, and supporting Michael Kowall in the Republican House primary in Michigan's 11th district. Americans United for Values, Independent Expenditures, Oct. 1, 2017-Sept. 30, 2018, <https://bit.ly/30vkCXp>. 35th PAC and Americans United for Values made independent expenditures during both the 2018 election and CWA's 2017 tax year. 35th PAC spent more than \$1.5 million on independent expenditures benefitting Patrick Morrisey and opposing Evan Jenkins in the West Virginia Senate race. 35th PAC, Independent Expenditures, Oct. 1, 2017-Sept. 30, 2018, <https://bit.ly/36khgXx>. The other federally registered super PACs also reported using received funds for extensive political activity. A Better Georgia PAC, FEC Form 3X, 2018 October Quarterly Report, Oct. 15, 2018, <https://bit.ly/2Yqn2nA>; Hometown Freedom Action Network, Disbursements, 2017-2018, <https://bit.ly/2OZkCcC>; Hometown Freedom Action Network, FEC Form 3X, 2017 Mid-Year Report, July 25, 2017, <https://bit.ly/34zadIW>; The Palmetto PAC, Disbursements, 2017-2018, <https://bit.ly/2DUeZtw>; Hardworking Americans Committee, FEC Form 3X, 2018 July Quarterly Report, Amended, Sept. 26, 2018, <https://bit.ly/2uqBSzC>.

21. One of CWA's contributions to Americans United for Values appears to have been specifically targeted to funding the super PAC's ads opposing Ms. Leneghan in the Republican House primary in Ohio's 12th district. CWA gave Americans United for Values \$240,000 on May 2, 2018. Americans United for Values, FEC Form 3X, 2018 July Quarterly Report, July 15, 2018, <https://bit.ly/2PoVg6I>. That same day, Americans United for Values paid \$235,000 to Strategic Media Placement for "television placement and production" opposing Ms. Leneghan. *Id.*

22. Between October 1, 2017 and September 30, 2018, the time period covered by

CWA's 2017 tax return, CWA's \$5,464,500 in gifts, deposits, or distributions to federally-registered super PACs accounted for 66.5% of CWA's total spending of \$8,208,425. CWA, 2017 Form 990, Schedule C, Part I.

23. In addition to the super PAC distributions, CWA gave \$930,000 to the Republican Attorneys General Association, a political organization registered with the IRS under Section 527. CWA, 2017 Form 990, Schedule C, Part I; Republican Attorneys General Association, Form 8872, 2018 Third Quarter Report, Amended, Oct. 22, 2018, <https://bit.ly/3eHmVw0>. Including the money it gave to the Republican Attorneys General Association, CWA admitted spending \$6,394,500 on political activity, accounting for 77.9% of the group's total spending, during its 2017 tax year. *Id.*

24. Since CWA's fiscal year ended on September 30, 2018, it is unknown exactly how much CWA spent overall or on political activity in calendar year 2018. CWA spent at least an additional \$72,500 on political activity before the end of the year, however, by making additional gifts, deposits, or distributions to political committees after the end of its fiscal year and before the 2018 election. On October 29, 2018, CWA gifted, deposited, or distributed \$20,000 to American Jobs and Growth PAC, a federally-registered super PAC. Americans Jobs and Growth PAC, FEC Form 1, Statement of Organization, Oct. 26, 2017, <https://bit.ly/2trjSol>; American Jobs and Growth PAC, FEC Form 3X, 2018 Post-General Report, Dec. 6, 2018, <https://bit.ly/2sw99Ze>. American Jobs and Growth PAC reported CWA's gift, deposit, or distribution was a "contribution." *Id.* Following the transfer from CWA, American Jobs and Growth PAC made independent expenditures in Virginia's 2nd congressional district and Pennsylvania's 7th congressional district. *Id.* On October 31, 2018, CWA gifted, deposited, or distributed an additional \$40,000 to The Palmetto PAC, as well as \$12,500 to the South Carolina

Republican Party. The Palmetto PAC, FEC Form 3X, 2018 Post-General Report, Dec. 5, 2018, <https://bit.ly/36E3Qpe>; South Carolina Republican Party, FEC Form 3X, 2018 Post-General Report, Dec. 6, 2018, <https://bit.ly/2ElodLO>. Both groups reported CWA's gifts, deposits, or disbursements were "contributions" and thus were disbursements made for the purpose of influencing federal elections. *Id.* These gifts, deposits, or distributions bring CWA's total transfers to federally registered super PACs and political committees to at least \$5,537,000 in 2017 and 2018.

25. The high percentage of political spending by CWA extends beyond its 2017 tax year and it is not the first time that political activity has accounted for more than a majority of CWA's spending. Between its 2011 tax year, when CWA first reported engaging in federal political activity, and the close of its 2017 tax year, CWA spent \$18,575,129 overall, including at least \$8,997,075 that has been reported to the FEC as either independent expenditures in federal elections or contributions to federally-registered super PACs, meaning at least 48.4% of CWA's total spending in that time period has been dedicated to federal election activity.

26. On its 2011 tax return, filed under penalty of perjury, CWA reported spending a total of \$1,086,555 between October 1, 2011 to September 30, 2012. CWA 2011 Form 990, Part I, Line 18. CWA also acknowledged spending \$803,060 on direct and indirect political campaign activities, which it described as "independent expenditures of \$640,060 and contributions to an IE-only PAC in the amount of \$163,000." CWA 2011 Form 990, Schedule C, Part I-A, Line 1. CWA's political spending during that tax year thus amounted to 73.9% of its total spending.

27. CWA's political spending, as reported to the IRS during its 2011 tax year, matched what was reported to the FEC. During that period, CWA paid \$475,000 for an independent expenditure supporting Mitt Romney in the 2012 Republican presidential primary

and \$165,060 for an independent expenditure opposing Scottie Mayfield in the Republican primary in Tennessee's 3rd congressional district. Citizens for a Working America Inc., FEC Form 5, Report of Independent Expenditures Made and Contributions Received, Jan. 31, 2012, <https://bit.ly/2E7Lssw>; Citizens for a Working America Inc., FEC Form 5, Report of Independent Expenditures Made and Contributions Received, Oct. 15, 2012, <https://bit.ly/36nSntK>. Citizens for a Working America PAC reported receiving a \$163,000 contribution from CWA on January 11, 2012, the same day the super PAC received \$292,000 from another nonprofit, New Models. Citizens for a Working America PAC, FEC Form 3X, 2012 April Quarterly Report, Apr. 13, 2012, <https://bit.ly/2qBlpqy>; MUR #6872, New Models, <https://bit.ly/34xtlY4>. On the same day the super PAC received the contributions from the two non-disclosing groups, it paid \$455,000 for an independent expenditure supporting Romney in the 2012 Republican presidential primary. *Id.*

28. On its 2012 tax return, filed under penalty of perjury, CWA reported spending a total of \$4,201,348 between October 1, 2012 and September 30, 2013. CWA 2012 Form 990, Part I, Line 18. CWA also acknowledged spending \$1,699,991 on direct and indirect political campaign activities, which it described as “independent expenditures of \$914,991 and contributions to various PACs in the amount of \$785,000.” CWA 2012 Form 990, Schedule C, Part I-A, Line 1. CWA's political spending during that year thus amounted to 40.5% of its total spending.

29. CWA's political spending, as reported to the IRS during its 2012 tax year, matched what was reported to the FEC. During that period, CWA paid \$750,058 for an independent expenditure opposing David Crooks in the general election in Indiana's 8th congressional district and \$164,933 for an independent expenditure opposing Jeff Landry in the

general election in Louisiana's 3rd congressional district. Citizens for a Working America Inc., FEC Form 5, Report of Independent Expenditures Made and Contributions Received, Jan. 30, 2013, <https://bit.ly/36fpsYW>. CWA also made gifts, deposits, or distributions to three federally-registered super PACs: \$100,000 to the Louisiana Prosperity Fund, \$600,000 to Fund for Freedom Committee, Inc., and \$85,000 to Arkansas Horizon, which the recipients reported were "contributions" and thus were disbursements made for the purpose of influencing federal elections. Louisiana Prosperity Fund, FEC Form 3X, 2012 Post-General Report, Dec. 5, 2012, <https://bit.ly/2schMb8>; Fund for Freedom Committee, Inc., FEC Form 3X, Termination Report, Nov. 28, 2012, <https://bit.ly/36ouzwU>; Arkansas Horizon, FEC Form 3X, 2013 Year-End Report, Jan. 31, 2014, <https://bit.ly/2LHk1Kt>. Fund for Freedom Committee, Inc. even reported CWA was a "political committee." Fund for Freedom Committee, Inc., FEC Form 3X, Termination Report, Nov. 28, 2012, <https://bit.ly/36ouzwU>.

30. On its 2013 tax return, filed under penalty of perjury, CWA reported spending a total of \$308,805 between October 1, 2013 and September 30, 2014. CWA 2013 Form 990, Part I, Line 18. CWA did not report any political activity during its 2013 tax year. *Id.*

31. On its 2014 tax return, filed under penalty of perjury, CWA reported spending a total of \$992,523 between October 1, 2014 and September 30, 2015. CWA 2014 Form 990, Part I, Line 18. CWA did not report any political activity during its 2014 tax year. *Id.*

32. On its 2015 tax return, filed under penalty of perjury, CWA reported spending a total of \$2,556,204 between October 1, 2015 and September 30, 2016. CWA 2015 Form 990, Part I, Line 18. CWA also acknowledged spending \$568,817 on direct and indirect political campaign activities, which it described as "contributions to section 527 independent expenditure only committees and disseminated advertisements addressing issues in furtherance of its mission

statement, which also advocated for or against candidates for public office.” CWA 2015 Form 990, Schedule C, Part 1-A and Part IV. Specifically, CWA reported spending \$238,192 directly on political advertising and gifting, depositing, or distributing \$330,625 to super PACs. *Id.* CWA’s political spending during that year thus amounted to 22.3% of its total spending

33. CWA reported similar, but slightly different information to the FEC about its political activity during that time period. Specifically, CWA reported spending \$144,899 on independent expenditures supporting then-Sen. John McCain in the Arizona Republican Senate primary, which consisted of expenditures for direct mail and phone banking. Citizens for a Working America Inc., FEC Form 5, Report of Independent Expenditures Made and Contributions Received, Oct. 12, 2016, <https://bit.ly/344Gasl>. It is unclear whether the additional \$93,293 CWA reported to the IRS as direct political spending was spent in federal races, though CWA reportedly spent “about \$90,000” for an ad campaign in January 2016 that praised McCain for “keeping Arizona safe” but did not use express advocacy language and was not reported to the FEC as independent expenditures. Eli Yokley, New Ad Cast McCain as Tough on Terrorism, Roll Call, Jan. 11, 2016, <https://bit.ly/2RFvJZG>; A Secure Arizona, “Protect,” YouTube, Jan. 11, 2016, <https://bit.ly/36o5L0Y>.² CWA also made gifts, deposits, or distributions to three federally-registered super PACs: \$20,625 to Security is Strength PAC, \$175,000 to Arizona Grassroots Action PAC, and \$135,000 to Fighting for Ohio Fund. Security is Strength PAC, FEC Form 3X, 2016 October Quarterly Report, Oct. 27, 2016, <https://bit.ly/2P8Z90R>; Arizona Grassroots Action PAC, FEC Form 3X, 2016 October Quarterly Report, Oct. 15, 2016, <https://bit.ly/2E7pG8i>; Fighting for Ohio Fund, FEC Form 3X, 2016 October Quarterly Report, Amended, Oct. 27, 2016, <https://bit.ly/2Gcptld>. As with its other disbursements, each recipient

² Though the advertisement was reported in the press as being run by a “pro-McCain group” called “A Secure Arizona,” the disclaimer on the ad posted to YouTube says it was “Paid for by Citizens for a Working America.”

super PAC reported CWA's gifts, deposits, or distributions were "contributions." *Id.* CWA's federal political spending during that year thus amounted to at least 18.6% of its total spending.

34. On its 2016 tax return, filed under penalty of perjury, CWA reported spending a total of \$1,221,269 between October 1, 2016 and September 30, 2017. CWA 2015 Form 990, Part I, Line 18. CWA also acknowledged spending \$494,000 on direct and indirect political campaign activities, which it described as "contributions to section 527 independent expenditure only committees and disseminated advertisements addressing issues in furtherance of its mission statement, which also advocated for or against candidates for public office." CWA 2015 Form 990, Schedule C, Part I-A and Part IV. CWA failed, however, to report an additional \$60,000 it gifted, deposited, or distributed to Arizona Grassroots Action PAC during its tax year, which increases its political spending to \$554,000. Arizona Grassroots Action PAC, FEC Form 3X, 2016 Post-General Report, Dec. 8, 2016, <https://bit.ly/36k3Mef>. Arizona Grassroots Action PAC reported CWA's gifts, deposits, or distributions were "contributions" and thus were disbursements intended to influence federal elections. *Id.* CWA's federal political spending during that year thus amounted to 45.4% of its total spending.

35. Other than the omission of the money it provided to Arizona Grassroots Action PAC, CWA's political spending, as reported to the IRS during its 2016 tax year, matched what was reported to the FEC. CWA made gifts, deposits, or distributions to four other federally-registered super PACs: \$101,000 to the Hometown Freedom Action Network, \$33,000 to Grow NC Strong Inc., \$60,000 to the American Freedom Builders Action Network, and \$300,000 to the Ohio Freedom Fund. Hometown Freedom Action Network, FEC Form 3X, 2016 Pre-General Report, Oct. 27, 2016, <https://bit.ly/2Pd00Tb>; Hometown Freedom Action Network, FEC Form 3X, 2016 Post-General Report, Dec. 8, 2016, <https://bit.ly/2PB2a8W>; Grow NC Strong Inc., FEC

Form 3X, 2016 Post-General Report, Amended, June 12, 2017, <https://bit.ly/2P9MYkw>;
American Freedom Builders Action Network, FEC Form 3X, 2016 Post-General Report, Amended, Dec. 8, 2016, <https://bit.ly/347Df2b>; Ohio Freedom Fund, FEC Form 3X, 2016 Year-End Report, Jan. 31, 2017, <https://bit.ly/2LIWN6B>. Once again, all recipients reported CWA's gifts, deposits, or distributions were "contributions" under the FECA and thus were disbursements intended to influence federal elections. *Id.*

Count I

36. CWA became a political committee starting in 2011 and certainly no later than 2018, and continues to be one, but failed and continues to fail to register as one with the FEC.

37. The FECA and FEC regulations define a "political committee" as "any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year." 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(a). An "expenditure" includes "any . . . payment, distribution, . . . deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. § 100.111(a). A "contribution" includes "any gift . . . or deposit of money or anything of value made by any person for the purpose of furthering any election for Federal office." 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.52(a).

38. CWA made expenditures aggregating in excess of \$1,000 in 2011, 2012, 2013, 2016, 2017, and again in 2018, and, on information and belief, accepted contributions in excess of \$1,000 in 2011, 2012, 2013, 2016, 2017, and again in 2018.

39. CWA spent \$475,000 in 2011 on an independent expenditure supporting Mitt Romney in the presidential election.

40. CWA spent \$165,060 in 2012 for an independent expenditure opposing Scottie Mayfield in his primary election, \$750,058 for an independent expenditure opposing David Crooks in the general election, and \$164,933 for an independent expenditure opposing Jeff Landry in the general election. In addition, that year CWA also gifted, deposited, or distributed, \$163,000 to Citizens for a Working America PAC, which is a federally registered super PAC, as well as \$100,000 to the Louisiana Prosperity Fund and \$600,000 to Fund for Freedom Committee, Inc., which are also federally-registered super PACs. Each recipient reported that CWA's gifts, deposits, or distributions were for the purpose of influencing federal elections.

41. PACs registered with the FEC are, "by definition, campaign related." *Buckley*, 424 U.S. at 79. Further, the PACs reported the transfers from CWA as "contributions," meaning they were provided "for the purpose of influencing [an] election for Federal office," 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.25(a). CWA's gifts, deposits, or distributions to these super PACs are transfers made for the purpose of influencing an election for federal office, and therefore are expenditures.

42. In 2013, CWA gifted, deposited, or distributed \$85,000 to Arkansas Horizon, which is a federally registered super PAC. Arkansas Horizon reported that CWA's gift, deposit, or distribution was for the purpose of influencing a federal election.

43. CWA spent \$144,899 in 2016 on independent expenditures supporting then-Sen. John McCain in his primary election.

44. In 2016, CWA also gifted, deposited, or distributed \$20,625 to Security is Strength PAC, \$235,000 to Arizona Grassroots Action PAC, \$135,000 to Fighting for Ohio Fund, \$101,000 to the Hometown Freedom Action Network, \$33,000 to Grow NC Strong Inc., \$60,000 to the American Freedom Builders Action Network, and \$300,000 to the Ohio Freedom

Fund, which are all federally-registered super PACs. Each recipient reported that CWA's gifts, deposits, or distributions were for the purpose of influencing federal elections.

45. In 2017, CWA gifted, deposited, or distributed \$180,000 to the Hometown Freedom Action Network and \$12,500 to Americans United for Values, which are both federally registered super PACs. Each recipient reported that CWA's gifts, deposits, or distributions were for the purpose of influencing federal elections.

46. In 2018, CWA gifted, deposited, or distributed \$3,090,000 to Hometown Freedom Action Network, \$1,115,000 to The Palmetto PAC, \$200,500 to A Better Georgia PAC, \$241,500 to Americans United for Values, \$130,000 to 35th PAC, \$535,000 to Hardworking Americans Committee, and \$20,000 to American Jobs and Growth PAC, which are all federally registered super PACs. CWA also gifted, deposited, or distributed \$12,500 with the South Carolina Republican Party, a political party committee. Each recipient reported that CWA's gifts, deposits, or distributions were for the purpose of influencing federal elections.

47. Further, in order to finance these expenditures, on information and belief, CWA accepted contributions in excess of \$1,000 in or around 2011, 2012, 2013, 2016, 2017, and 2018.

48. In addition, only organizations whose "major purpose" is the nomination or election of federal candidates can be "political committees." *Buckley*, 424 U.S. at 79. The FEC conducts a fact-intensive, case-by-case analysis of an organization to determine if its major purpose is the nomination or election of federal candidates. FEC, Political Committee Status, Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5601 (Feb. 7, 2007) ("Supplemental E&J"). An organization can exhibit a qualifying major purpose through its organizational planning documents, *id.*, or through sufficiently extensive spending on federal campaign activity. *See FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986);

Supplemental E&J, 72 Fed. Reg. at 5601. Independent expenditures, electioneering communications, and gifts, deposits, or distributions to political committees are qualifying federal campaign activity. Further, under the FECA, an organization's political committee status is determined by viewing the activities and spending of the organization in the relevant "calendar year." 52 U.S.C. § 30101(4)(A). Accordingly, an organization's major purpose must be evaluated on the same time frame. It is not proper to determine major purpose by looking at the lifetime activities of the organization, as the purpose of an organization can change over time. *See CREW v. FEC*, 209 F. Supp. 3d 77, 94 (D.D.C. 2016).

49. Between October 1, 2011 and September 30, 2012, CWA's independent expenditures and gifts, deposits, or distributions to super PACs amounted to 73.9% of the organization's spending that year. That spending is sufficiently "extensive" to conclude the organization's major purpose starting in 2011 was to elect or nominate federal candidates. Supplemental E&J, 72 Fed. Reg. at 5605 (noting group devoting at least "50-75%" of spending to campaign activity in a calendar year qualified as political committee).

50. In addition, CWA devoted 66.5% of its spending between October 1, 2017 and September 30, 2018 to political expenditures. CWA's \$5,464,500 in gifts, deposits, or distributions to federally registered political action committees were made for the purpose of influencing elections. Accordingly, CWA's major purpose in 2018 was the election of candidates for office.

51. Finally, CWA's combined spending on political activity, in the form of independent expenditures and gifts, deposits, or distributions to federally-registered super PACs, from October 1, 2011 to September 30, 2018, the time period covering the 2012 election cycle through the 2018 election cycle, accounts for at least 48.4% of CWA's total spending in that time

period. That sum does not include overhead and other administrative costs CWA incurred that are attributable to its election spending. Whether or not such amounts are added to CWA's independent expenditures and disbursements to super PACs, the significant portion of spending CWA devoted to political activity demonstrates its major purpose from 2011 to 2018, and into the future, was and continues to be electing federal candidates.

52. CWA met both the statutory and major purpose tests for political committee status in 2011 and 2012. Accordingly, CWA became a political committee in 2011 or 2012.

53. CWA met both the statutory and major purpose tests for political committee status in 2018. Accordingly, if not already a political committee, CWA became a political committee in 2018.

54. CWA has never terminated its political committee status with the FEC.

55. FECA and FEC regulations require all political committees to register with the FEC within 10 days of becoming a political committee. 52 U.S.C. § 30103(a); 11 C.F.R. § 102.1(d).

56. CWA is not, and has never been, registered, and continues to fail to register, as a political committee with the FEC.

57. By failing and continuing to fail to register as a political committee, CWA violated and continues to violate 52 U.S.C. § 30103(a) and 11 C.F.R. § 102.1(d).

Count II

58. As a political committee, CWA was and is required to file periodic reports with the FEC that, among other things: (1) identify all individuals who contributed an aggregate of more than \$200 in a year to CWA, the amount each individual contributed, and the date of the contribution; (2) identify all political committees that made a contribution to CWA, the amount

each committee contributed, and the date of the contribution; (3) detail CWA's outstanding debts and obligations; and (4) list all of CWA's expenditures. 52 U.S.C. § 30104(a)(4), (b); 11 C.F.R. §§ 104.1(a), 104.8.

59. A political committee is also under a continuous obligation to report any information the committee was previously required to report, but which it did not. FEC, Filing Amendments, <https://bit.ly/2EbVUKU> (“The committee must file an amended report if it: [d]iscovers that an earlier report contained erroneous information, [or] [d]oes not obtain all of the required information concerning a particular transaction”); *see also* FEC, AO 1999-33 at 3 (MediaOne PAC) (Jan. 28, 2000) (political committee “must amend” prior erroneous reports that omitted contributor information).

60. CWA became a political committee in 2011, and no later than 2018. CWA has not terminated its political committee status with the FEC.

61. Accordingly, starting in 2011 and no later than 2018, and continuing through today and into the future, the FECA obligated and continues to obligate CWA to file the required disclosure reports.

62. CWA failed to file any of these reports with the FEC and continues to fail to file these reports with the FEC.

63. By failing and continuing to fail to file these reports, CWA violated and continues to violate 52 U.S.C. § 30104(a)(4), (b), and 11 C.F.R. §§ 104.1(a), 104.8.

Count III

64. Joel Riter has served as President of CWA since 2014. In that capacity, Mr. Riter controlled and continues to control CWA. Further, Mr. Riter had and continues to have the authority and responsibility at CWA to sign filings with the FEC on behalf of CWA. CWA, FEC

Form 5, Report of Independent Expenditure Made and Contributions Received, Oct. 12, 2016,
<https://bit.ly/2YmO8f6>.

65. For purposes of the FECA, therefore, since 2014, Mr. Riter was, is, and continues to be the treasurer of CWA. *See* 52 U.S.C. § 30102(a), (c).

66. Under the FECA, treasurers of political committees like CWA are responsible for registering them with the FEC and filing disclosure reports as required. 52 U.S.C. § 30104(a); FEC, Treasurer's liability, <https://www.fec.gov/updates/treasurers-liability/>.

67. A political committee treasurer is personally liable for a failure by the political committee to file required reports. *Id.*; FEC, Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 5 (Jan. 3, 2005).

68. Mr. Riter, as treasurer of numerous registered super PACs, is personally aware of his responsibilities as treasurer and aware of the possibility of personal liability for his failure to carry out his duties as treasurer.

69. By failing to cause CWA to register with the FEC, Mr. Riter personally violated and continues to violate 52 U.S.C. § 30103(a) and 11 C.F.R. § 102.1(d).

70. By failing to cause CWA to file disclosure reports as required by the FECA, Mr. Riter personally violated and continues to violate 52 U.S.C. § 30104(a)(4), 52 U.S.C. § 30104(b), and 11 C.F.R. §§ 104.1(a), 104.8.

71. On information and belief, given Mr. Riter's knowledge of his legal obligations, Mr. Riter's violations of the FECA were knowing and willful, or he recklessly failed to fulfill duties specifically imposed on treasurers by the Act, or he has intentionally deprived himself of the operative facts giving rise to the violation.

Count IV

72. Norman Cummings served as Treasurer of CWA in and around 2012 to 2013. In that capacity, Mr. Cummings had the authority and responsibility at CWA to sign filings with the FEC on behalf of CWA. Citizens for a Working America Inc., FEC Form 5, Report of Independent Expenditures Made and Contributions Received, Jan. 31, 2012, <https://bit.ly/2E7Lssw>; Citizens for a Working America Inc., FEC Form 5, Report of Independent Expenditures Made and Contributions Received, Oct. 15, 2012, <https://bit.ly/36nSntK>.

73. For purposes of the FECA, therefore, in and around 2012 and 2013, Mr. Cummings was the treasurer of CWA. *See* 52 U.S.C. § 30102(a), (c).

74. Under the FECA, treasurers of political committees like CWA are responsible for registering them with the FEC and filing disclosure reports as required. 52 U.S.C. § 30104(a); FEC, Treasurer's liability, <https://www.fec.gov/updates/treasurers-liability/>.

75. A political committee treasurer is personally liable for a failure by the political committee to file required reports. *Id.*; FEC, Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 5 (Jan. 3, 2005).

76. Mr. Cummings, as former political director for a national political party, and as chairman and treasurer of registered super PACs, is personally aware of his responsibilities as treasurer and aware of the possibility of personal liability for his failure to carry out his duties as treasurer.

77. By failing to cause CWA to register with the FEC, Mr. Cummings personally violated and continues to violate 52 U.S.C. § 30103(a) and 11 C.F.R. § 102.1(d).

78. By failing to cause CWA to file disclosure reports as required by the FECA, Mr.

Cummings personally violated and continues to violate 52 U.S.C. § 30104(a)(4), (b), and 11 C.F.R. §§ 104.1(a), 104.8.

79. On information and belief, given Mr. Cumming's knowledge of his legal obligations, Mr. Cummings's violations of the FECA were knowing and willful, or he recklessly failed to fulfill duties specifically imposed on treasurers by the Act, or he has intentionally deprived himself of the operative facts giving rise to the violation.

Conclusion

WHEREFORE, complainants Marc Kruman and Andrew Ray request that the FEC conduct an investigation into these allegations; declare the respondents to have violated the FECA and applicable FEC regulations; and order respondents to correct these violations by providing to the complainants and filing with the FEC disclosure reports for CWA required of political committees that, among other things, identify and make public each person who made contributions aggregating more than \$200. In addition, the complainants request that the FEC impose sanctions appropriate to these violations, and take such further action as may be appropriate, including referring this matter to the Department of Justice for criminal prosecution.



ON BEHALF OF COMPLAINANTS
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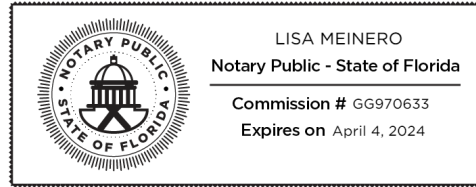
Verification

Marc Kruman hereby verifies that the statements made in the attached Complaint, except those contained in paragraphs 10, 11, and 12, are, upon information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.

Marc Kruman
Marc Kruman

Sworn to and subscribed before me this 4th day of November 2020

Lisa Meinero
Notary Public Lisa Meinero 11/04/2020



Notarized online using audio-video communication

Andrew Ray hereby verifies that the statements made in the attached Complaint, except those contained in paragraphs 4 through 9, are, upon information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.

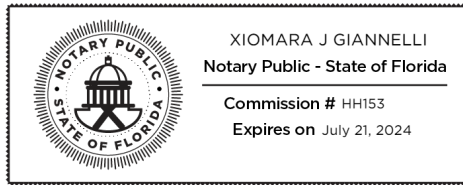
Andrew Ray
Andrew Ray

STATE OF FLORIDA
Seminole County

Sworn to and subscribed before me this 4th day of November 2020

via physical presence OR online notarization by Andrew Ray .

Xiomara J. Giannelli
Notary Public



Notarized online using audio-video communication