

Statement for the Record
House Committee on Financial Services
Hearing on “Investigating the Collapse of FTX, Part I”
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Chair Waters, Ranking Member McHenry, and members of the Committee, thank you for the opportunity to submit testimony regarding the investigation into the collapse of FTX and the allegations Mr. Samuel Bankman-Fried violated federal campaign finance laws.

Citizens for Responsibility and Ethics in Washington (CREW) is a non-profit, non-partisan organization committed to promoting ethical governance, ensuring the integrity of our government institutions, and protecting our democracy. We firmly believe that open and transparent government and campaigns are necessary to address the threats our democracy faces today. To advance this mission, CREW monitors reports filed pursuant to the Federal Election Campaign Act (FECA) and brings complaints and legal actions to protect its rights to receive the accurate and timely information to which the Act entitles it.

Earlier this month, CREW filed one such complaint with the Federal Election Commission (FEC) concerning Mr. Bankman-Fried’s apparent violations of law.¹ In particular, CREW alleged that, according to his own admissions during an interview, Mr. Bankman-Fried violated federal campaign finance laws that require disclosure of the true source of contributions by directing approximately \$37 million, and potentially much more, to influence the 2022 election through so-called “dark” channels. A “dark” contribution is a contribution that influences elections while evading disclosure laws, including those contained in the FECA. In his interview, Mr. Bankman-Fried asserted that he contributed approximately \$37 million each to Democrats and Republicans in the 2022 election cycle, but that he hid his Republican contributions by making use of dark money vehicles.

Dark money is a significant problem in our elections, as large or prohibited donors use various schemes to evade disclosure of millions of dollars used to impact elections and buy influence.² One common scheme is to use a conduit through which funds are routed, shielding the source from disclosure. While CREW regularly challenges such schemes when it discovers them, it is difficult to prove the full nature of the scheme because participants generally feign ignorance about the ultimate use of the funds. This feigned ignorance permits conduits to claim that they are not mere straw-donors but, rather, the true source of the reportable contribution.

¹ *In re Sam Bankman-Fried*, Dec. 7, 2022, <https://www.citizensforethics.org/wp-content/uploads/2022/12/SBF-FEC-Complaint-FINAL.pdf>

² See Anna Massoglia, *“Dark money” groups aligned with party leadership steer hundreds of millions of dollars into 2022 federal elections*, OpenSecrets, Nov. 4, 2022, <https://www.opensecrets.org/news/2022/11/dark-money-groups-aligned-with-party-leadership-steer-hundreds-of-millions-of-dollars-2022-federal-elections/>; *In which elections is Dark Money spent?*, OpenSecrets, <https://www.opensecrets.org/dark-money/top-elections>.

By declaring that he directed potentially tens of millions of dollars to influence federal elections while keeping those contributions “dark,” Mr. Bankman-Fried removed any doubt about his purposes and ability to ultimately direct funds to influence elections, as CREW alleged in its FEC complaint.

Shortly after CREW filed its complaint, the Department of Justice unsealed an indictment against Mr. Bankman-Fried that alleged that Mr. Bankman-Fried conspired to violate campaign finance laws by, in part, making conduit contributions.³ A subsequent press release clarified that Mr. Bankman-Fried allegedly “used billions of dollars of FTX customer funds ... to make ... millions of dollars in political contributions to federal political candidates and committees,” in advance of the 2022 election through his cryptocurrency hedge fund, Alameda Research. The indictment goes on to allege that he “conceal[ed] the fact that those contributions were paid for using funds from a corporation” and “evad[ed] contribution limits and reporting requirements” by “caus[ing] contributions to [be] reported in the names of co-conspirators rather than in the name of the true source of the funds.”⁴

During a press conference, U.S. Attorney Damian Williams expanded on the allegations, stating that Mr. Bankman-Fried orchestrated contributions to “both democrats and republicans” that were “disguised to look like they were coming from wealthy co-conspirators” but were in fact “funded by Alameda Research with stolen customer money.” U.S. Attorney Williams continued, “all of this dirty money was used in service of Bankman-Fried’s desire to buy bipartisan influence and impact the direction of public policy in Washington.”⁵

In addition to the DOJ’s indictment, the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) recently sued Mr. Bankman-Fried, each alleging that he misappropriated funds to make campaign contributions. The SEC alleged, in part, that he “diverted customer assets to his privately-held crypto hedge fund, Alameda Research LLC ..., and then used those customer funds to make undisclosed ... large political donations.”⁶ The CFTC similarly alleged that Mr. Bankman-Fried and others “took hundreds of millions of dollars in poorly-documented ‘loans’ from Alameda that they used to make political donations.”⁷

These new allegations accord with CREW’s complaint and with Mr. Bankman-Fried’s public boasts, although at this time the extent of any overlap between the claims is unknown. It is possible that Mr. Bankman-Fried caused his corporations to make unlawful corporate contributions through straw donors, as the DOJ, SEC, and CFTC allege, and also personally

³ Indictment, ¶¶ 16–20, *United States v. Sam Bankman-Fried*, No. 22-cr-673 (S.D.N.Y. Dec. 9, 2022), available at <https://www.documentcloud.org/documents/23450583-sam-bankman-fried-indictment>.

⁴ *United States Attorney Announces Charges Against FTX Founder Samuel Bankman-Fried*, Dec. 13, 2022, <https://www.justice.gov/usao-sdny/pr/united-states-attorney-announces-charges-against-ftx-founder-samuel-bankman-fried>.

⁵ *Federal officials announcement indictment of Sam Bankman-Fried*, CNBC (Dec. 13, 2022), [cnbc.com/video/2022/12/13/federal-officials-announcement-indictment-of-sam-bankman-fried.html](https://www.cnbc.com/video/2022/12/13/federal-officials-announcement-indictment-of-sam-bankman-fried.html).

⁶ Complaint, ¶ 2, ¶ 68, *Securities and Exchange Commission v. Samuel Bankman-Fried*, No. 22-cv-10501 (S.D.N.Y. Dec. 13, 2022), available at <https://www.sec.gov/litigation/complaints/2022/comp-pr2022-219.pdf>.

⁷ Complaint ¶ 8, *CFTC v. Bankman-Fried, et al.*, No. 22-cv-10503 (S.D.N.Y. Dec. 13, 2022), available at <https://www.cftc.gov/media/7986/enfftxtradingcomplaint121322/download>.

made conduit contributions to evade disclosure, as CREW alleges. Regardless, the violations likely amount to tens-of-millions of dollars spent to influence elections without the American people's knowledge.

Mr. Bankman-Fried's alleged violations and his potential evasion of timely disclosure of tens-of-millions in campaign contributions demonstrate the urgent need for Congress to strengthen campaign finance laws.

First, the ability to use conduits to shield the true source of a contribution, as Mr. Bankman-Fried is alleged to have done, is facilitated by loopholes that permit the conduit to evade its own disclosure obligations. A contributor who uses a conduit may only be disclosed if that contributor directs the funds to the ultimate source, using the conduit as a mere pass-through. If the pass-through enjoys some minimal discretion, however, then the law may treat the conduit as the donor, rather than the original source.⁸ In the absence of any obligation on the conduit to report its donors, this creates an easy avenue to evade disclosure.

CREW urges Congress to take actions to eliminate this loophole. For example, the reforms in the For the People Act, which CREW endorsed, included a disclosure obligation on certain entities that make significant "covered transfers."⁹ In addition, Congress can clarify that a group can qualify as a political committee, and thus be required to report its donors, if it devotes a significant amount of its spending to contributions to other political committees, even if it does not otherwise directly make campaign ads.¹⁰ Congress should also consider imposing a one-time disclosure obligation on those making contributions, similar to what it imposes on those making independent expenditures.¹¹ This change would require a significant contribution maker to

⁸ For example, in one investigation prompted by a CREW complaint, the FEC discovered a donor made a contribution to a dark money group with the instructions, "Please note this is an Anonymous donation for the reelection of Rob Portman." General Counsel's Brief 16, MUR 7465 (Freedom Vote), Sept. 20, 2021, https://www.fec.gov/files/legal/murs/7465/7465_27.pdf. The recipient replied that it, a "501(c)(4)" did not "accept contributions earmarked to support or oppose candidates for public office." *Id.* Nevertheless, the recipient then spent the funds opposing Sen. Portman's electoral opponent, including through contributions to other entities, *id.*, and the donor was never reported as the true source of the funds, likely because the fiction of discretion permitted it to evade conduit rules. The FEC also failed to pursue any further enforcement against any of the parties involved. See Certification, MUR 7465 (Freedom Vote), Nov. 9, 2021, https://www.fec.gov/files/legal/murs/7465/7465_33.pdf.

⁹ For the People Act, H.R. 1, 117th Cong. § 4111 (2021).

¹⁰ Currently, the Republican Commissioners of the FEC are blocking enforcement of political committee disclosure provisions in this type of case. See, e.g., Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioner Lee E. Goodman 18–19, MUR 6872 (New Models), Dec. 20, 2017, <https://www.fec.gov/files/legal/murs/6872/17044435569.pdf> (concluding that making a contribution to a political committee cannot satisfy the FECA's statutory test for political committee status).

¹¹ See 52 U.S.C. § 30104(c). Those wishing to evade disclosure have noted this disparity in the law. For example, one consultant advised a client that "it would be strategic for a [nonprofit] who wishes to make Independent Expenditures to do so via a Super PAC." Jayson Garcia and Anne Martin, [Operative pitched secretive political spending plan to FBL exec's email alias, records reveal](https://www.orlandosentinel.com/politics/os-ne-florida-power-and-light-matrix-dark-money-20211217-v64274eytjeb5hnstdognvqds4-story.html), Orlando Sentinel, Dec. 17, 2021, <https://www.orlandosentinel.com/politics/os-ne-florida-power-and-light-matrix-dark-money-20211217-v64274eytjeb5hnstdognvqds4-story.html>. In other words, by making a contribution to a different organization to fund independent expenditures, the organization could evade the law's contributor reporting obligations that would be triggered by making the independent expenditure itself.

disclose any contributions it received within a specific time period. Each of these reforms would substantially narrow the loopholes Mr. Bankman-Fried was allegedly able to exploit.

Second, Congress should bring the scope of civil enforcement of campaign finance laws in line with criminal enforcement by reinstating the civil prohibition of conspiracy to violate campaign finance laws. As noted above, the Department of Justice alleges Mr. Bankman-Fried conspired to violate campaign finance laws by relying on the general prohibition on criminal conspiracy. Until 2018, a Federal Election Commission regulation similarly proscribed “knowingly help[ing] or assist[ing] any person in making a contribution in the name of another.” 11 C.F.R. § 110.4(b)(1)(iii). In 2018, however, a federal court enjoined the FEC from enforcing that provision as exceeding the scope of the statutory prohibition on conduit contributions. *See FEC v. Swallow*, 304 F. Supp. 3d 1113 (D. Utah 2018).

Without this prohibition on the books, those who conspire to evade disclosure, including those who don’t personally handle the conduit contributions, can avoid responsibility if their conduct does not rise to the heightened standards for criminal prosecution. For example, in one investigation prompted by a CREW complaint, the FEC discovered a political consultant was “the architect of the transaction” that hid the source of over \$1.7 million in contributions using conduits.¹² This individual, however, was not held responsible, and is free to design additional “transactions.”

This limitation has also impacted the claims CREW is able to bring to the FEC. For example, CREW recently alleged that a number of political consultants orchestrated a conspiracy to evade campaign finance disclosure rules.¹³ While the law clearly imposes civil liability on the conduit and recipient entities, as well as on the unknown donors who evaded disclosure, the consultants alleged to be at the center of the scheme are not clearly covered because of the court order enjoining the FEC’s regulation.

Moreover, there is strong bipartisan support for this reform. In 2021, the FEC unanimously recommended that Congress amend 52 U.S.C. § 30122 to clarify that the law prohibits directing, helping, or assisting another in making a conduit contribution.¹⁴ Just this month, the FEC unanimously reaffirmed its support for that reform, and further recommended amending the provision barring foreign contributions to similarly bar aiding and abetting such contributions.¹⁵ Congressional Republicans, in the American Confidence in Elections Act, have also proposed legislation expanding liability for conduit contributions to co-conspirators.¹⁶

Congress should consider going further. Specifically, it should impose a general civil liability for conspiring to violate any provision of the campaign finance laws. It makes little sense to hold

¹² Mem. Re Circulation of Discovery Documents, MUR 6920 (American Conservative Union), Aug. 4, 2017, <https://eqs.fec.gov/eqsdocsMUR/17044435462.pdf>.

¹³ *See In re Grow United, Inc., et al.*, Oct. 26, 2022, <https://www.citizensforethics.org/wp-content/uploads/2022/10/Florida-Dark-Money-FEC-Complaint.pdf>.

¹⁴ Legislative Recommendations of the Federal Election Commission 2021, pp. 10–11 (May 6, 2021), <https://www.fec.gov/resources/cms-content/documents/legrec2021.pdf>

¹⁵ *See* Draft Legislative Recommendations of the Federal Election Commission 2022, pp 4, 13–14 (Dec. 8, 2022), www.fec.gov/resources/cms-content/documents/mtgdoc-22-58-A.pdf

¹⁶ American Confidence in Elections Act, H.R. 8528, 117th Cong. § 354 (2022)

civily liable one who conspires with others to make conduit contributions or foreign national contributions, but not one who, for example, conspires to make contributions from other illegal sources,¹⁷ or to evade other transparency provisions.

Reinstating a civil prohibition on conspiring to violate the campaign finance laws, including the bans on conduit and foreign national contributions, would ensure those like Mr. Bankman-Fried are not able to evade responsibility simply because they orchestrated conduit contributions by-and-through others.

Lastly, Mr. Bankman-Fried's willingness to brazenly violate the campaign finance laws is the result of the FEC's general lax enforcement and courts' erroneously gutting the FECA's citizen suit provisions.¹⁸ The FEC's failure to vigorously enforce the law while blocking private litigants' ability to protect their own rights has bred a culture of impunity in which Mr. Bankman-Fried felt so comfortable violating the law that he openly bragged about it. Congress recently considered a number of reforms to reinvigorate the FEC in the For the People Act, each of which has merit and would help reduce the culture of impunity in which Mr. Bankman-Fried acted.¹⁹

When the investigations are complete, Mr. Bankman-Fried may well be revealed to be one of the most prolific violators of our campaign finance laws: someone who deprived the American people of their right to know those who support or oppose candidates, to exercise their educated franchise based on that information, and to engage in knowledgeable and effective speech to critique those candidates and those donors. Congress must take action. CREW specifically urges this committee and Congress to close the loopholes Mr. Bankman-Fried abused to evade disclosure, to reinstate the full scope of liability for violating our campaign finance laws, and to restore vigorous enforcement by the Federal Election Commission and American citizens' ability to protect themselves from others like Mr. Bankman-Fried.

If CREW can provide any additional insight into questions regarding Mr. Bankman-Fried or transparency into financing our elections, we are always happy to assist.

¹⁷ See 52 U.S.C. § 30119(a).

¹⁸ See *Citizens for Responsibility and Ethics in Washington v. FEC*, 993 F.3d 880 (D.C. Cir. 2021) (“*New Models*”), *en banc reh’g denied*, No. 19-5161, 2022 WL 17578942 (D.C. Cir. 2022).

¹⁹ H.R.1. §§ 6001–6011.