***En Banc* Oral Argument Scheduled: Nov. 30, 2018**

No. 18-5227

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

LIBERTARIAN NATIONAL COMMITTEE, INC.,

Plaintiff,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

On certified questions from the United States District Court
for the District of Columbia, No. 1:16-cv-121 (BAH)

Amicus Curiae Brief of the Institute for Free Speech in Support of Plaintiff

Allen Dickerson (D.C. Cir. No. 54137)
Zac Morgan
Institute for Free Speech
124 S. West Street, Suite 201
Alexandria, Virginia 22314
Telephone: 703.894.6800
Facsimile: 703.894.6811
adickerson@ifs.org
zmorgan@ifs.org

Counsel for Amicus Curiae

September 12, 2018

CERTIFICATES AS TO PARTIES, RULINGS UNDER REVIEW, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), *Amicus Curiae* Institute for Free Speech submits its Certificate as to Parties, Rulings, and Related Cases.

A. Parties and *Amici*[1]

Plaintiff is the Libertarian National Committee, Inc., and Defendant is the Federal Election Commission.[2] No person filed as *amicus curiae* before the district court.

B. Rulings Under Review

Under 52 U.S.C. § 30110, this Court sitting en banc considers the constitutional question at issue in the first instance. Chief Judge Beryl Howell of the United States District Court for the District of Columbia certified the constitutional question and findings of fact on July 19, 2018. Joint Appendix 147-253. That court also denied the Federal Commission's motion to dismiss for lack of jurisdiction. *Libertarian Nat'l Comm. v. Fed. Election Comm'n*, No. 16-121 (ECF No. 36).

[1] The Institute reaffirms its previous filing, stating that it has no parent company, and no publicly-held company has a 10 percent or greater ownership interest in it.

[2] Because there has been no merits determination concerning Plaintiff's claims, this case does not present a true appeal. Consequently, this brief will refer to the Libertarian National Committee as "Plaintiff" and the Federal Election Commission as the "Defendant."

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONS, STATUTES, RULES, AND REGULATIONS

OTHER AUTHORITIES

GLOSSARY

FEC.....Federal Election Commission

WRTL.....Wisconsin Right to Life

STATUTES AND REGULATIONS

The pertinent statutes and regulations at issue are:

The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act. The district court immediately shall certify all questions of constitutionality of this Act to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

52 U.S.C. § 30110.

* * *

(a) Dollar limits on contributions.

(1) …no person shall make contributions…

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $ 25,000, or, in the case of contributions made to any of the accounts described in paragraph (9), exceed 300 percent of the amount otherwise applicable under this subparagraph with respect to such calendar year;

52 U.S.C. § 30116(a)(1)(B).

STATEMENT OF IDENTITY, INTEREST IN CASE, AND SOURCE OF AUTHORITY TO FILE [3]

Founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission, the Institute for Free Speech is a nonpartisan, nonprofit organization that works to protect and defend the political rights to free speech, assembly, press, and petition. As part of that mission, the Institute has had extensive interactions with the Federal Election Commission and is familiar with its history and authority. Additionally, the Institute has represented clients in two suits against the Commission under the 52 U.S.C. § 30110 procedure, *SpeechNow.org v. Fed. Election Comm'n*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*) and *Holmes v. Fed. Election Comm'n*, 875 F.3d 1153 (D.C. Cir. 2017) (*en banc*).

The Institute certifies that its brief will be of unique help to the Court, as it will address the scope of the Commission's capacity to respond to a ruling from this Court, and the effect such response will have on future litigation under the § 30110 procedure.

Counsel for both Parties have consented to the Institute's participation as *amicus curiae*.

[3] No other party's counsel authored this brief in whole or in part, nor did any person contribute money that was intended to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4).

INTRODUCTION

Congress has required this Court, sitting *en banc*, to hear constitutional challenges to the Federal Election Campaign Act in the first instance. This is an unusual role for an appellate court to play, and highlights Congress's insistence that constitutional questions relating to that Act be heard swiftly and resolved clearly. It also, quite reasonably, raises questions of judicial economy.

Congress did not create the 52 U.S.C. § 30110 procedure in a vacuum. The Federal Election Campaign Act also created the Federal Election Commission ("FEC" or "Commission"), an agency empowered with a range of administrative tools. Those powers are available, and have been used, to implement judicial opinions and provide guidance to American political actors. In response to an opinion by this Court in the instant case, these tools can be applied to limit the need for extensive, burdensome follow-up litigation under the § 30110 process.

But, of course, there is no guarantee that the FEC will do so—and some indication that it will not. Consequently, the Constitution and the needs of judicial economy counsel in the same direction. This Court should issue a clear ruling for the Plaintiff, one that does not rely upon a regulatory response by the Commission or invite wasteful follow-up litigation.

ARGUMENT

I. The Federal Election Commission is able to respond to a decision of this Court.

"Unique among federal administrative agencies," the FEC exists to enforce statutes whose "sole purpose is the regulation of core constitutionally protected activity." *Am. Fed'n of Labor-Congress of Indus. Orgs. v. Fed. Election Comm'n*, 333 F.3d 168, 170 (D.C. Cir. 2003). Perhaps unsurprisingly, those statutes are sometimes found to be unconstitutional. *E.g. Mass. Citizens for Life, Inc. v. Fed. Election Comm'n*, 479 U.S. 238 (1986); *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449 (2007); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010); *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185 (2014); *SpeechNow.org v. Fed. Election Comm'n*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*).

When this happens, the FEC can call upon its administrative powers to implement the Court's ruling and clarify the scope of newly-permissible activities. In ideal circumstances, it has done so pursuant to formal rulemaking and advisory opinions.

a. The Commission can apply this Court's rulings via the issuance of revised regulations after notice-and-comment rulemaking.

For example, there is the Commission's response to *Federal Election Commission v. Wisconsin Right to Life, Inc.* ("*WRTL II*"),[4] where the Supreme Court heard an as-applied challenge to a statutory provision now codified at 52 U.S.C. 30118(b)(2). 551 U.S. 449 (2007). That law made "it a federal crime for any corporation to broadcast, shortly before an election, any communication that names a federal candidate for elected office and is targeted to the electorate." *WRTL II*, 551 U.S. at 455-456.[5] The Court ruled for the Plaintiff, and in a controlling opinion by Chief Justice Roberts, described the type of advertisements that could be run by corporations, notwithstanding the statutory ban. *Id*. at 469-470.[6]

---

[4] The first iteration of the case asked whether an as-applied remedy was foreclosed by *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003), which upheld the corporate ban as a facial matter. *Wis. Right to Life, Inc. v. Fed. Election Comm'n*, 546 U.S. 410, 411-412 (*per curiam*) ("In upholding [the statute] against a facial challenge, we did not purport to resolve future as-applied challenges").

[5] The provision was later facially invalided in the *Citizens United* decision. 558 U.S. at 365.

[6] The Chief Justice was joined by Justice Alito. Three justices would have struck the statute facially, presaging the Court's ultimate decision in *Citizens United*. *WRTL II*, 551 U.S. at 483-504 (Scalia, J., concurring op., joined by Kennedy and Thomas, JJ.). Four other justices would have upheld the ban entirely. *Id*. at 504-536 (Souter, J., dissenting, joined by Stevens, Ginsburg, and Breyer, JJ.). Therefore, the Chief Justice's narrow opinion is the controlling one. *Marks v. United States*, 430 U.S. 188, 193 (1977) ("When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments

The Commission responded to the *WRTL II* decision by conducting a rulemaking and issuing revised regulations pursuant to that decision. 72 Fed. Reg. 72899, 72899 (Dec. 26, 2007) ("The Commission is revising 11 CFR parts 104 and 114 to implement the recent U.S. Supreme Court decision in *FEC v. Wisconsin Right to Life, Inc.*"). There, the Commission chose to "track[] the *WRTL II* decision's language" and reasoning, 72 Fed. Reg. at 72902, and updated other regulations to deal with the new reality of corporate-sponsored electioneering communications, including rules concerning donor reporting for those advertisements. 72 Fed. Reg. at 72911.[7] The Commission could act in a similar fashion here.[8]

By contrast, in recent years, the FEC has had difficulty promulgating new regulations. Following the *Citizens United* decision, it took five years and a few fits and starts before the Commission promulgated rules implementing that decision. 79 Fed. Reg. 62797, 62798 (Oct. 21, 2014) (noting that two rounds of comments

---

on the narrowest grounds….'") (quoting *Gregg v. Ga.*, 428 U.S. 153, 169 n.15 (1976)).

[7] The corporate electioneering communications disclosure regulations born of that rulemaking were recently upheld by a panel of this Court. *Van Hollen v. Fed. Election Comm'n*, 811 F.3d 486 (D.C. Cir. 2016).

[8] Moreover, challenges to post-opinion regulations promulgated by the Commission would not be subject to § 30110. *Holmes v. Fed. Election Comm'n*, 823 F.3d 69, 75-76 (D.C. Cir. 2016) ("Plaintiffs' Fifth Amendment claim is…clearly a challenge to the regulations, and therefore outside the scope of § 30110…[as] the issue plaintiffs raise…is a result of regulations, not the Act").

occurred in 2011 and 2012, and the "Commission held a public hearing on March 7, 2012"); 80 Fed. Reg. 12079, 12079 (Mar. 6, 2015) (setting effective date for those regulations as January 27, 2015); Ron Jacobs, *Back to the Future: FEC issues regulations for* Citizens United, Political Law Briefing (Mar. 11, 2015) ("Interestingly, the FEC never changed its rules to implement the Court's decision. Pick up the Code of Federal Regulations from 2011, 2012, 2013, or 2014 and you will find very clear statements that corporations may not make independent expenditures or electioneering communications").[9]

A similar fate has befallen an ongoing effort to determine which forms of paid-for online advertising may be excluded from statutory disclaimer requirements. Four notice-and-comment periods on that question have come and gone without any subsequent Commission action. 83 Fed. Reg. 12864 (Mar. 26, 2018); 82 Fed. Reg. 46937 (Oct. 10, 2017); 81 Fed. Reg. 71647 (Oct. 18, 2016); 76 Fed. Reg. 63567 (Oct. 13, 2011).

b. The Commission can also use its advisory opinion process to clarify the application of this Court's rulings.

The Commission is empowered to issue advisory opinions upon request. 52 U.S.C. § 30108. These opinions, however, are not merely advisory. So long as the requestor complies in "good faith" with the written opinion, they are immune from

[9] https://www.politicallawbriefing.com/2015/03/back-to-the-future-fec-issues-regulations-for-citizens-united/

civil or criminal penalties for their conduct. 52 U.S.C. § 30108(c)(2). And this shield applies beyond the requestor: "any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered" are also protected. 52 U.S.C. § 30108(c)(1)(B).

The FEC took this approach in the immediate aftermath of *SpeechNow.org v. Federal Election Commission*. That case, which came to this Court under the § 30110 procedure, found that the federal contribution limits were unconstitutional as applied to "independent expenditure-only organizations." 599 F.3d at 696.[10]

Shortly after that decision, an organization named Commonsense Ten filed an advisory opinion request with the Commission, asking simply whether it could "solicit[] and accept[] unlimited contributions from individuals, political committees, corporations, and labor organizations for the purpose of making independent expenditures, as well as registering and reporting with the Commission as a nonconnected political committee." Advisory Opinion 2010-11

[10] This decision created so-called "Super PACs." Alex Altman, *Meet the Man Who Invented the Super PAC*, Time Magazine, May 13, 2015 ("David Keating…was the architect of a federal lawsuit that ended in a landmark 2010 court ruling…The case, *SpeechNow.org v. FEC*, scrapped annual limits on individual contributions to campaign advocacy groups, ushering in the era of super PACs"), *available at*: http://time.com/3856427/super-pac-david-keating/.

("Commonsense Ten") at 2 (italics removed).[11] Relying on this *en banc* Court's decision in *SpeechNow.org*, as well as the *Citizens United* decision, the FEC concluded that "there is no basis to limit the contributions" to Super PACs such as Commonsense Ten.[12] *Id*. at 3. Moreover, the FEC determined that in the absence of new registration forms for independent expenditure-only political committees, a cover letter "clarifying that [the Super PAC] intends to accept unlimited contributions for the purpose of making independent expenditures" would suffice. *Id*. at 3, n.4. This quickly became the practice for organizations seeking to take advantage of their constitutional rights.[13]

Of course, the Commission is not always able to issue binding advisory opinions. Although the FEC "shall render a written advisory opinion" no "later than 60 days after the Commission receives…a complete written request concerning the application" of the law, there is no statutory requirement that the Commission answer the question. 52 U.S.C. § 30108(a)(1); Advisory Opinion 2012-11 ("Free

[11] http://saos.fec.gov/aodocs/AO%202010-11.pdf

[12] The FEC's approach has been consistently upheld by courts reviewing similar state laws. *See, e.g., N.Y. Progress & Protection PAC v. Walsh*, 733 F.3d 483, 488 (2nd Cir. 2013) ("Few contested legal questions are answered so consistently by so many courts and judges.").

[13] To this day, the Commission provides a template for such letters on its Web site. https://www.fec.gov/resources/cms-content/documents/ie_only_letter.pdf

Speech") at 1 ("The Commission could not approve a response by the required four affirmative votes about the remaining advertisements and donation requests, or about Free Speech's status as a political committee").[14]

Indeed, given the Commission's failure to act on its Internet ad disclaimer rulemaking, mentioned above, members of the regulated community unsuccessfully sought to have their rights sorted out via advisory opinions. An advisory opinion by Google was answered with a "vague and limited response," that made it "impossible for regulated entities to determine whether their advertising programs are materially indistinguishable from Google's, and therefore covered by the opinion." Statement for the Record by Commissioner Caroline C. Hunter, Advisory Opinion 2010-19 ("Google") at 1 (citation and quotation marks omitted).[15] This "no rationale approach," *id*., was at least an answer—something the Commission was unable to give in response to follow-up requests by different parties. Advisory Opinion 2011-09 ("Facebook") at 1 ("The purpose of this letter is to inform you that the Commission has concluded its consideration of your advisory opinion request

[14] http://saos.fec.gov/aodocs/AO%202012-11.pdf

[15] https://www.fec.gov/files/legal/aos/2010-19/1158399.pdf

without issuing an advisory opinion");[16] Advisory Opinion 2013-18 ("Revolution Messaging") (stating similar).[17]

c. In the enforcement context, however, the Commission's members have consistently disapproved of enforcement action that would contradict judicial rulings.

The Commission has the capacity to settle outstanding questions arising from judicial decisions, and in the past, it has done so. But it is also possible that the bipartisan FEC will be unable to produce a regulation or agree on advisory opinions.[18]

But there is an upshot: investigations into wrongdoing, and any enforcement, must be initiated by a vote of at least four of the six statutory commissioners.[19] 52

[16] http://saos.fec.gov/aodocs/AO%202011-09.pdf

[17] http://saos.fec.gov/aodocs/2013-18.pdf

[18] Given its extraordinarily sensitive mission, serious concerns would be raised if the Commission were seen to be controlled by a single political party. In that sense, regulatory gridlock at the FEC is the result of good-faith disagreement among the Commissioners and reflects considered Congressional policy. Luke Wachob, *Bipartisanship works for the FEC*, Washington Examiner (Oct. 19, 2014), https://www.washingtonexaminer.com/bipartisanship-works-for-the-fec.

[19] At present, there are four sitting commissioners. Consequently, the Commission must act unanimously if it wishes to initiate investigations or enforcement actions. Efforts to seat new commissioners to fill vacancies have occasioned heavy opposition. *E.g.* Josh Israel and Aaron Mehta, *Held up for 15 months, FEC nominee laments process*, The Hill (Oct. 17, 2010), http://thehill.com/homenews/campaign/123031-withdrawn-fec-nominee-laments-broken-confirmation-process-;

U.S.C. § 30109(a)(2).[20] Thus, the FEC's structure also allows commissioners to block enforcement in circumstances where there is a good faith basis to believe that a regulation or statute has been invalidated by the courts.

Commissioners have explained their reliance upon federal case law when declining to find, in the Commission's parlance, that there is "reason to believe" a violation of federal law has occurred—even in circumstances that are not directly foreclosed by a court's decision. *E.g.* Statement of Reasons of Vice Chairman Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Petersen, Matter Under Review 6211 ("Krikorian for Congress") at 1-2, Jan. 24, 2011 ("In light of last year's Supreme Court decision in *Citizens United v. Federal Election Commission*…the continuing viability of the Commission's facilitation regulation is at best suspect" as support not to find reason to believe)[21]; Statement

---

People for the American Way, *et al.*, "Letter: Senators Must Scrutinize FEC Nominee Trey Trainor" (letter from ten reform organizations arguing that "Mr. Trainor's record raises significant concerns about his ability and willingness to fulfill the responsibilities of an FEC commissioner"), http://www.pfaw.org/blog-posts/letter-senators-must-scrutinize-fec-nominee-trey-trainor/.

[20] "If the Commission, upon receiving a complaint under paragraph (1) or on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, determines, by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of this Act."

[21] http://eqs.fec.gov/eqsdocsMUR/11044284605.pdf

of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn, Matter Under Review 5625 ("Aristotle") at 8-9, Mar. 14, 2010 (relying on the Second Circuit's decision in *Federal Election Commission v. Political Contributions Data*, 943 F.2d 190 (2d Cir. 1991) as support not to find reason to believe)[22]; MURs 5712, 5799 ("McCain"), Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 5, n.13, Mar. 5, 2010 ("These sorts of arguments have been rejected by the courts, most recently in *FEC v. Emily's List*, when the D.C. Circuit unanimously held that the Commission's regulations were beyond the reach of the statute itself")[23]; Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn, Matter Under Review 5541 ("The November Fund, *et al*."), Jan. 22, 2009 ("The theories advanced in support of enforcement failed to fully incorporate important principles in recent judicial decisions that should assist the Commission in its thinking on this issue, including the Government's losses before the U.S. Supreme Court in *FEC v.*

[22] http://eqs.fec.gov/eqsdocsMUR/10044264158.pdf

[23] http://eqs.fec.gov/eqsdocsMUR/10044262366.pdf

Wisconsin Right to Life and *FEC v. Davis* [*sic*][24], and the Fourth Circuit's persuasive decision in *North Carolina Right to Life, Inc. v. Leake*")[25].

Amicus expects current and future commissioners will apply this Court's ruling and bar enforcement where the facts of a case are clearly implicated by judicial reasoning. If so, this will decrease the pressure on recipient organizations to seek declaratory judgments regarding future bequests, resulting in a reduced use of § 30110.[26]

II. A clear rule exempting uncoordinated bequests from the federal contribution limits would vindicate the Constitution and preserve judicial economy.

Congress has tasked this Court with a special responsibility: to ensure that constitutional challenges to the Federal Election Campaign Act are resolved promptly and decisively. *See Clark v. Valeo*, 559 F.2d 642, 661 (D.C. Cir. 1977) (*en banc*) (Tamm, J., concurring) ("Senator Buckley proposed [§ 30110] as a measure to provide for expeditious review of fundamental constitutional objections he had raised to the core of the law"). Indeed, "section [30110] vests exclusive jurisdiction

[24] *Davis v. Fed. Election Comm'n*, 554 U.S. 724 (2008).

[25] http://eqs.fec.gov/eqsdocsMUR/29044223819.pdf

[26] Indeed, even if a complainant decides to sue the Commission because it declines to act on a complaint regarding a bequest, such litigation will proceed in district court. *See Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 2018 U.S. Dist. LEXIS 130774, No. 16-259 (D.D.C. Aug. 3, 2018) (finding that FEC dismissal of complaint was improper).

in the *en banc* courts of appeals." *Wagner v. Fed. Election Comm'n*, 717 F.3d 1007, 1014 (D.C. Cir. 2013). Because of this exclusivity, concerns regarding judicial economy hang in the background of every opinion issued under § 30110.

If this Court rules narrowly, grounding its decision in caveats, minutiae, and subjective factors, it may not fully address the constitutional controversy. The decision may not address logical questions arising from its reasoning. Such a ruling will cry out for additional clarification, and the best way to get a definitive answer will be more litigation through the § 30110 process. A narrow ruling will also make it more difficult for the FEC to respond using the administrative powers described above.

Therefore, this Court should fashion a broad, bright-line rule that cleanly clarifies the circumstances where contribution limits will not apply to bequests. Such a remedy is easily articulated. The Court should find that contribution limits are inappropriate where a bequest is made without any prior coordination with the recipient committee, and where that committee seeks to receive it only after the contributors' death. That ruling will be easily applicable to, and easily cognizable by, a wide array of actors, obviating the need for future § 30110 litigation on the subject. [27] The FEC should have little difficulty applying this standard via regulation

[27] Moreover, in the unlikely event that a bequest that sounds within such an opinion is challenged as unlawful, a broad ruling will provide ammunition for commissioners

or advisory opinion, but if it finds itself unable to, the harm to the regulated community will be minimal—because that community will know its rights.

CONCLUSION

For the foregoing reasons, the likely impact of this Court's decision on the FEC's functions, and its effect on the broader rights of American political speakers, both mitigate in favor of a clearly defined remedy that categorically protects uncoordinated bequests.

/s/ Allen Dickerson
Allen Dickerson (D.C. Cir. No. 54137)
Zac Morgan
Institute for Free Speech
124 S. West Street, Suite 201
Alexandria, Virginia 22314
Telephone: 703.894.6800
Facsimile: 703.894.6811
adickerson@ifs.org
zmorgan@ifs.org

Counsel for Amicus Curiae

September 12, 2018

to estop enforcement actions sought under a theory that conflicts with the plain meaning of the holding.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation set forth in Rule 32(a)(7)(B)Iii) of the Federal Rules of Appellate Procedure because it contains 3,415 words, according to a word count by Microsoft Word 2016, excluding the parts of the brief exempted by Circuit Rule 32(e)(1).

This brief complies with the typeface requirements of Rule 32(a)(5) because it has been prepared in a proportionally-spaced typeface—Times New Roman—using 14-point font.

/s/ Allen Dickerson
Allen Dickerson (D.C. Cir. No. 54137)
Zac Morgan
Institute for Free Speech
124 S. West Street, Suite 201
Alexandria, Virginia 22314
Telephone: 703.894.6800
Facsimile: 703.894.6811
adickerson@ifs.org
zmorgan@ifs.org

Counsel for Amicus Curiae

September 12, 2018

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be filed with the Clerk of this Court via the appellate CM/ECF system. Counsel for all parties in the instant matter are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Allen Dickerson
Allen Dickerson (D.C. Cir. No. 54137)
Zac Morgan
Institute for Free Speech
124 S. West Street, Suite 201
Alexandria, Virginia 22314
Telephone: 703.894.6800
Facsimile: 703.894.6811
adickerson@ifs.org

September 12, 2018

Counsel for Amicus Curiae