

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

COLLEEN OLIVER and STEVE OLIVER,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Case No.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

Many Americans like to keep their giving private. For some donors, anonymity is sought out of modesty. For others, out of religious beliefs. For still others, they may fear repercussions if the causes they support become known. Thus, the First Amendment has long been recognized to permit anonymous association and donation for all these reasons, or for no reason whatsoever.

Colleen Oliver donates money to federal candidates. Because she doesn't want her donations to reflect on her husband Steve or his business, Colleen makes sure to keep her donations under \$200, the threshold over which direct donations to candidates are publicly disclosed. To her surprise, one such donation was disclosed anyway, simply because the candidate used a conduit platform to receive donations.

Steve, for his part, would also like to donate to federal candidates. But, because Steve does business with various local governments, he does not wish his small dollar donations to be disclosed, fearing that such disclosure could result in donation requests from other officials and

candidates, and cause potentially awkward relations with, or adverse treatment from, those to whom he wouldn't donate.

Both Mr. and Mrs. Oliver desire to make additional small donations to federal candidates through the platform of the candidates choosing, including conduit platforms. But they hold back, fearing the disclosure of conduit contributions.

The conduit reporting requirement, 52 U.S.C. § 30116(a)(8), is unconstitutional as applied to donations of up to \$200. So applied, this provision requires conduit committees to report the identity of each donor who donated via the conduit committee starting at a \$0 threshold. This is an unconstitutionally low threshold under the First Amendment. It burdens donors' rights of association and expression of political speech without advancing any important government interest. In contrast, Congress already exempts from disclosure donations of up to \$200 when given directly to a candidate. *Compare* 52 U.S.C. § 30116(a)(8) *with* 52 U.S.C. § 30104(b)(3)(A).

It defies comprehension why the identity of a donor who gives \$3 to a candidate through digital platforms like WinRed or ActBlue must be publicly reported to the FEC, while a donor who physically hands a \$175 check to a congressman at a fundraiser gets to keep his information private. The \$3 digital donor is treated worse not because of the amount, or concerns of transparency, but merely because of the mechanism of the donation.

Amending Section 30116(a)(8) so that conduit contributions of up to \$200 be treated the same as direct contributions in such amounts—that is, that they be exempted from disclosure—was the FEC's highest priority recommendation to the 118th U.S. Congress. The Commission clearly recognizes that small dollar internet donors should not be disclosed to it. Certain Commissioners – Lindenbaum, Dickerson and Trainor – have even written separately in support

of that change and identifying the problems caused many Americans by the FEC's disclosure of their personal information. But Congress does not appear to be in any hurry to conform its conduit reporting statute to the First Amendment's requirements.

The courts, however, are empowered to secure Plaintiffs' rights to free political speech and association. Following certification of the important questions raised by this case to the en banc Sixth Circuit, this Court should enjoin Defendant from applying the conduit reporting requirement to donations that do not exceed \$200 and require Defendant to remove Colleen's past small-dollar donation made via a conduit from its public reports.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 2201, and 2202, as well as 52 U.S.C. § 30110, under which the question of the constitutionality of 52 U.S.C. § 30116(a)(8), must be immediately certified to the United States Court of Appeals for the Sixth Circuit for consideration en banc.

2. Venue is proper in this Court under 52 U.S.C. § 30110 and 28 U.S.C. § 1391(e) because the Federal Election Commission is an entity of the United States and one or more Plaintiffs resides in this District.

PARTIES

3. Plaintiff Colleen Oliver is an individual, eligible to vote for the office of President, residing in Toledo, Ohio. She is married to Plaintiff Steve Oliver.

4. Plaintiff Steve Oliver is an individual, eligible to vote for the office of President, who resides in Toledo, Ohio. He is married to Plaintiff Colleen Oliver.

5. Defendant Federal Election Commission ("FEC") is an independent federal agency established by 52 U.S.C. § 30106. The FEC is charged with administering and enforcing FECA,

including the provisions challenged in this action. The FEC has exclusive jurisdiction with respect to the civil enforcement of FECA.

STATEMENT OF FACTS

The Regulatory Regime

6. Candidate committees must report to the FEC “the identification of each [] person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution[.]” 52 U.S.C. § 30104(b)(3).

7. “Identification” is defined as: “(A) in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and (B) in the case of any other person, the full name and address of such person.” 52 U.S.C. § 30101(13).

8. However, conduit committees are subject to a different requirement, which lacks a minimum reporting threshold. “[A]ll contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.” 52 U.S.C. § 30116(a)(8).

9. The Commission regulation implementing the disclosure requirement in 52 U.S.C. 30116(a)(8) for earmarked contributions provides that “[t]he intermediary or conduit of the

earmarked contribution shall report the original source and the recipient candidate or authorized committee to the Commission . . . , and to the recipient candidate committee.” 11 C.F.R. § 110.6(c)(1)(i).

10. And in cases where a political committee receives and forwards earmarked contributions, “[t]he report to the Commission . . . shall be included in the conduit’s or intermediary’s report for the reporting period in which the earmarked contribution was received . . .” *Id.* § 110.6(c)(1)(ii). Itemized reporting of earmarked contributions must include, among other things, “the name and mailing address of each contributor and, for each earmarked contribution in excess of \$200, the contributor’s occupation and the name of his or her employer” *Id.* § 110.6(c)(1)(iv)(A). Thus, under the FEC’s existing reporting provision, all earmarked contributions must be individually itemized, including earmarked contributions of \$200 or less.

11. Regarding timing, “[t]he report to the recipient candidate or authorized committee shall be made when the earmarked contribution is forwarded to the recipient candidate or authorized committee pursuant to 11 C.F.R. § 102.8.” *Id.* § 110.6(c)(1)(iii). Candidate committees that receive earmarked contributions must “report each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed \$200 in any election cycle.” *Id.* § 110.6(c)(2)(i). In other words, while a conduit PAC’s report is not subject to the individual contributor itemization threshold (i.e., more than \$200 during an election cycle), a recipient committee’s report is.

WinRed and ActBlue

12. WinRed is an internet fundraising platform for conservative political candidates.

13. WinRed exercises no discretion over the timing, recipient, or monetary amount of earmarked contributions it receives from donors.

14. The process works as follows: (1) A political committee contracts to establish a contribution page on the WinRed website, which is hosted and maintained by WinRed's vendor, WinRed Technical Services, LLC; (2) Pursuant to an end-user agreement, the political committee creates a fundraising page in accordance with the committee's specifications; (3) When creating a customized contribution page, the political committee has full discretion to determine how to use the website to solicit donors, including the ability to fully customize the content or the website, and the full authority as to how to share the URL for the site with donors, if at all; (4) Contributions made via the political committee's page on the WinRed site result in a nearly instantaneous notification being sent to the recipient committee, as designated by the donors; and (5) Contributions made to the political committee are forwarded by WinRed to the recipient committees within 10 days (often instantaneously) in accordance with FEC rules and regulations.

15. Since January 1, 2023, WinRed has reported routing over \$622 million in earmarked contributions. The two FEC reports it filed for 2023 combined to exceed 10 million pages. Its latest FEC quarterly report (1st Quarter 2024) exceeded 4.5 million pages.

16. Since January 1, 2023, WinRed reported over 294,000 contributions valued at a penny (\$0.01) each.¹ WinRed routed more than 478,000 additional contributions valued at a nickel (\$0.05) or less (but exceeding a penny).²

¹ *Campaign Finance Data*, Federal Election Commission, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00694323&two_year_transaction_period=2024&min_amount=0&max_amount=.01

² *Campaign Finance Data*, Federal Election Commission, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00694323&two_year_transaction_period=2024&min_amount=.02&max_amount=.05

17. Also, since January 1, 2023, WinRed routed over 2.7 million contributions of \$1 or less.³ Over 21 million of WinRed's conduit contributions totaled \$200 or less.⁴ Accordingly, each of those donors who did not make any additional contribution that, when combined with these donations, exceeded \$200, would not have to be reported to the FEC by a political committee. However, because of the conduit reporting requirement, WinRed reported these \$200 and below donations to the FEC.

18. But while WinRed must report the name and address information of small-dollar donors whose donations it forwards to their intended recipients, that information is not subsequently included on the reports of the recipients of those same earmarked contributions, which simply reports small-dollar donations in bulk. A donor contributing five dollars to a federal candidate committee via WinRed will be itemized on WinRed's report but will not be reported by name on the recipient candidate committee's report.

19. ActBlue is WinRed's progressive counterpart, a hybrid PAC, and serves a similar role as a conduit committee for Democratic Party candidates. Since January 2023, ActBlue has reported over 47 million conduit contributions of \$200 or less.⁵ Had these donations been made directly to a political committee, and the donor did not make any additional contribution(s) that combined exceed \$200, these donations would not have been required to be reported to the FEC.

³ *Campaign Finance Data*, Federal Election Commission, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00694323&two_year_transaction_period=2024&min_amount=0&max_amount=1

⁴ *Campaign Finance Data*, Federal Election Commission, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00694323&two_year_transaction_period=2024&min_amount=0&max_amount=200

⁵ *Campaign Finance Data*, Federal Election Commission, https://www.fec.gov/data/receipts/?data_type=processed&committee_id=C00401224&two_year_transaction_period=2024&min_amount=0&max_amount=200

Steve and Colleen Oliver

20. Colleen Oliver has donated \$200 or less to a federal candidate this cycle. Consistent with her practice for past donations, Colleen chose to limit the amounts to below \$200 specifically so that her donations would remain anonymous.

21. Colleen desires to remain anonymous because she does not want her small dollar donations to reflect on her husband Steve's business.

22. However, unbeknownst to Colleen at the time of her donation, her chosen candidate routed donations through a conduit PAC—WinRed. As a result, Colleen's identity was publicly reported to the FEC.

23. Colleen is concerned that if information about her donation remains on the FEC website, it will adversely impact Steve's business.

24. Colleen desires to make additional small dollar donations in the future but is afraid to do so because such donations might be disclosed.

25. Steve Oliver intends to make donations of \$200 or less to federal candidates this cycle. He wants to donate under that limit specifically so that the donations would remain anonymous.

26. However, once Steve became aware, through his wife's donations, that donations under \$200 to his chosen candidates would still reveal his identity, he decided to withhold his donations.

27. Steve operates a business that bids for government contracts. He desires to keep his donations small and anonymous to avoid his political donations from interfering with his business.

28. Specifically, Steve is concerned that if his donations become known, he would receive increased pressure to donate to other candidates, and that he and his business may receive adverse treatment from potential clients should his donation patterns be publicly disclosed.

29. Thus, both Colleen and Steve have been chilled in their ability to express their political views through donations to their chosen political candidates. Rather than freely voicing support for candidates and policy through monetary donations, Colleen and Steve have been forced to choose between that and having their identities exposed and potentially subjecting themselves to discrimination and harassment.

The FEC Asks Congress to Adopt an Itemization Threshold for Conduit Contributions

30. On December 14, 2023, the FEC unanimously approved legislative recommendations to send to Congress for consideration.⁶

31. The very first priority listed under the section titled “Highest Priority Legislative Recommendations” concerned conduit contributions.

32. Specifically, the FEC recommended: “Congress should amend FECA’s reporting requirement for conduit contributions to establish an itemization threshold consistent with other FECA reporting requirements.”

33. The FEC contrasted Section 30104(b)(3)(A)’s \$200 reporting threshold with the lack of any threshold for conduit contributions in Section 30116(a)(8). According to the FEC, the distinction in the two statutes had “a significant impact on the total number of reported transactions disclosed by all FEC filers.” As an example, “[f]rom 2016 to 2020, the FEC saw the number of reported transactions increase by more than 400 percent” and “attributes more than eighty percent of the increase to conduit and intermediary reports.”

⁶ *Federal Election Commission Legislative Recommendations 2023*, Federal Election Commission, Dec. 14, 2023, <https://www.fec.gov/resources/cms-content/documents/legrec2023.pdf>

34. Thus, the FEC recommended that Congress amend 52 U.S.C. § 30116(a)(8) to strike the phrase “to the Commission” and add the following language:

“The intermediary or conduit shall report to the Commission the original source and the intended recipient of such contribution for each person who makes a contribution through the intermediary or conduit during the reporting period, whose contribution or contributions through the intermediary or conduit have an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution.”

35. Several FEC Commissioners wrote statements in support of the legislative recommendation to create an itemization threshold for conduit contributions.

36. Commissioner Dickerson wrote a letter in support on behalf of himself and Commissioner Trainor. They pointed out the significant burden that current law placed on donors and argued that the proposed amendment was constitutional based on Supreme Court precedent.⁷ The Commissioners proposed a “temporary Directive” while awaiting amendment of the statute in the form of allowing the Commission to relieve donors of the disclosure requirement so long as a bipartisan majority found a demonstrated need.

37. Commissioner Lindenbaum also wrote a statement specifically “urging Congress to amend the Federal Election Campaign Act to eliminate the public disclosure of contributors’ street names and street numbers.”⁸ Although Lindenbaum stated she did not support the proposed “temporary Directive” because of the administrative burdens it would cause, she nonetheless supported amendment to Section 30116(a)(8). Commissioner Lindenbaum proposed that personal donor information still be disclosed to the Commission, to serve transparency interests,

⁷ *Statement of Commissioner Allen J. Dickerson on Proposed Directive Concerning Requests to Withhold, Redact, or Modify Contributors’ Identifying Information*, available at: <https://www.fec.gov/resources/cms-content/documents/Statement-on-Proposed-Directive-to-Withhold-Redact-or-Modify-Contributors-Information.pdf>

⁸ *Statement of Commissioner Dara Lindenbaum Urging Congress to Amend the Federal Election Campaign Act to Eliminate the Public Disclosure of Contributors’ Street Names and Street Number*, available at: <https://www.fec.gov/resources/cms-content/documents/Statement-Urging-Amend-FECA-to-Eliminate-Disclosure-of-Contributors-Street-Nam.pdf>

but that the Commission not be required to release the information publicly, in order to serve concerns of individual personal safety.

38. Just after the FEC released its recommendations, the second session of the 118th United States Congress began on January 3, 2024. As of the date of this filing, no bill has been introduced in either the House or the Senate that proposes the FEC's suggested amendment to 52 U.S.C. § 30116(a)(8).

39. The FEC continues to apply Section 30116(a)(8) as requiring the public disclosure of donor's personal identifying information.

COUNT ONE
RIGHT TO FREE SPEECH AND ASSOCIATION
U.S. CONST. AMEND. I

40. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 39 of the Complaint as though fully set forth below.

41. Title 52 U.S.C. § 30116(a)(8) violates the First Amendment right to engage in political speech and association as applied to Plaintiffs by mandating the reporting and disclosure of the identities and personal information of donors who donate up to \$200 to a federal candidate's campaign through a conduit.

42. As applied to such donations, 52 U.S.C. § 30116(a)(8) does not survive any form of heightened First Amendment scrutiny. It does not further the governmental interest in preventing corruption or the appearance of corruption, nor is its disclosure requirement narrowly tailored, nor does it have a substantial relation to any sufficiently important governmental interest.

43. Accordingly, 52 U.S.C. § 30116(a)(8), as applied to contributions of \$200 or less that are earmarked or otherwise directed through an intermediary or conduit to a candidate, violates Plaintiffs' First Amendment rights to free speech and association. Plaintiffs are thus entitled to

declaratory and injunctive relief against Section 30116(a)(8)'s application to their conduit donations of \$200 or less.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that judgment be entered in its favor and against Defendant as follows:

- a. A declaration that disclosure of contributor names and addresses pursuant to 52 U.S.C. § 30116(a)(8) of conduit donations not exceeding \$200 violates the First Amendment;
- b. Consistent with such declaration, permanent injunctive relief barring Defendant from requiring fundraising platforms subject to 52 U.S.C. § 30116(a)(8) to disclose Plaintiffs' names and addresses when reporting conduit contributions not exceeding \$200 to the FEC;
- c. An Order that Defendant remove Plaintiffs' past small-dollar conduit donations from its public reports;
- d. Costs of suit;
- e. Attorney fees and costs pursuant to 28 U.S.C. § 2412 or any other applicable authority; and,
- f. Any other further relief as the Court may deem just and proper.

Dated: July 11, 2024

Respectfully submitted,

/s/ Charles Miller

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