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UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING

UNNAMED PLAINTIFF #1, UNNAMED PLAINTIFF #2, PILLAR OF LAW INSTITUTE, Plaintiffs, v. FEDERAL ELECTION COMMISSION Defendant.	)	C.A. No. 16-CV-135-S

MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

I. Introduction

Donald Trump, a Republican candidate for President, could contribute $10,000 or more to each delegate participating in the upcoming Republican National Convention. Such an act is perfectly legal under the Federal Election Campaign Act ("FECA") and thus not corrupting under federal law. But under the same law, a small non-profit corporation cannot associate with delegates to teach about delegate autonomy. Under the FECA, non-profits are not allowed to contribute educational books to delegates. This, by federal standards, would be corrupting. Similarly, non-

profits cannot provide legal aid to delegates facing an ill-tempered and litigious candidate or his supporters. This, too, is corrupting by federal standards. Moreover, a non-profit cannot offer opportunity scholarships to delegates facing financial hardships. This is also prohibited by the same law. These asymmetric restrictions are not only bizarre, but unconstitutional.

Americans face the most acrimonious election in decades and, perhaps, the most contested conventions since the passage of the FECA. At a moment when some convention delegates desire to discuss and debate their autonomy in the convention process, one federal election law, 52 U.S.C. § 30118, ensures delegates will stay out of the fray. Plaintiffs in this case ask this Court to restore their First Amendment rights, so that they might associate together to promote shared political beliefs without fear of investigation, fines, or imprisonment by the Federal Election Commission ("FEC") or Department of Justice, and to have access to resources to defend themselves against legal and extralegal threats from an ill-tempered candidate and his aggressive supporters.

II. Facts

The Pillar of Law Institute is a program of the Wyoming Liberty Group, which is a nonprofit corporation organized under Section 501(c)(3) of the Internal Revenue Code. Verified Complaint (Doc. No. 1) ¶11 (hereinafter "Compl."). Pillar focuses its efforts on public education, public interest litigation, and testimony about political freedoms guaranteed under the First Amendment. Pillar is particularly concerned about delegate autonomy in this electoral season. Delegate autonomy is the principle that political parties are private institutions entrusted to select their own leadership and members without outside interference. *See generally Democratic Party v. Wisconsin*, 450 U.S. 107 (1981). Pillar would like to provide books on this subject free of charge to delegates to the Republican National Convention. Compl. ¶42. Given the many threats of lawsuits in this election, Pillar would like to offer *pro bono* legal defense services to delegates at

the Republican National Convention. Compl. ¶¶23–27. Finally, Pillar would like to offer opportunity scholarships to delegates. Compl. ¶31. All of these activities are banned under 52 U.S.C. § 30118.[1]

Unnamed Plaintiffs are duly selected delegates to the Republican National Convention. Compl. ¶¶ 12–13. Both would like to accept the services and goods of the Pillar of Law Institute, but cannot due to the same ban. Unnamed Plaintiffs are particularly concerned about legal harassment given the presumptive Republican nominee's history of frivolous legal threats and litigation, and would like to have *pro bono* legal counsel available in these events. *See* Compl. ¶33.

Although federal law permits individuals to contribute unlimited sums of money to delegates, any charitable or educational efforts by non-profits to provide goods or services are entirely banned. Similarly, federal law permits corporations to provide specific types of legal aid to party and candidate committees, but never to delegates. Delegates cannot then associate with likeminded groups holding shared political beliefs—the very purpose of the First Amendment's protection of political association. *Buckley v. Valeo*, 424 U.S. 1, 14–15 (1976) ("Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution"). Plaintiffs ask this Court to preliminarily enjoin the enforcement of Section 30118 against their proposed activities given its baseless prohibition of these First Amendment activities.

III. 52 U.S.C. § 30118

It is important to plot a course through Section 30118 and FEC regulations to establish the censorship imposed upon the Plaintiffs. The FECA's definition of "election" includes "a

[1] Depending upon the circumstances of the Democratic National Convention and Pillar's funding, it would like to offer similar educational materials, aid, and books to Democratic delegates. Compl. ¶7 n.2.

convention or caucus of a political party which has authority to nominate a *candidate*." 52 U.S.C. § 30101(1)(B) (emphasis added); *see also* 11 CFR 100.3(e). However, the term "candidate" is limited to persons who "seek[] nomination for election, or election, *to Federal office*[.]" 52 U.S.C. § 30101(2) (emphasis added); *see also* 11 CFR 100.3. "The term 'Federal office' means the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress." 52 U.S.C. § 30101(3); *see also* 11 CFR 100.4. So, although an "election" includes a political party convention, its delegates are not "candidates" for purposes of the FECA.

A "contribution" is generally "any gift, subscription, loan, advance, 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) (emphasis added). Thus, money given to a convention delegate by an individual is not a "contribution" under the law. Importantly, although this definition of "contribution" broadly regulates donations to candidates for federal office, it also provides important exceptions for corporate contributions, including the allowance of unlimited *pro bono* legal and accounting services to candidates' committees, political committees and parties. 52 U.S.C. § 30101(8). But these exceptions only apply to candidates for federal office, not convention delegates. *See* 52 U.S.C. § 30101(2). Outside of these exceptions, contributions for in-kind services are the same as direct monetary contributions. 11 CFR 100.52(d)(1) ("[T]he term *anything of value* includes all in-kind contributions. Unless specifically exempted under 11 CFR part 100, subpart C, the provision of any goods or services without charge . . . is a contribution").

Having established the absence of convention delegates from most of the standard definitions within the FECA except for "election"—the legal basis for unlimited individual contributions to delegates—the broad corporate prohibition of 52 U.S.C. § 30118 comes into play:

> It is unlawful for . . . *any corporation* organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any *political office*, or in connection with any . . . *political convention* or caucus held to select candidates for any political office, or for any corporation whatever . . . to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, *or in connection with any primary election or political convention* or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, *or other person* knowingly to accept or receive any contribution prohibited by this section, *or any officer or any director of any corporation . . . to consent to any contribution or expenditure by the corporation*, . . . as the case may be, prohibited by this section.

52 U.S.C. § 30118(a) (emphasis added). Although this section's definition incorporates the general definition of "contribution," it also broadens it. As previously discussed, the exceptions in that provision do not apply to convention delegates. 52 U.S.C. § 30118(b)(2); 52 U.S.C. § 30101(2). Section 30118 prohibits contributing corporate money, or anything of value, "in connection with . . . any political convention." Section 30118's definition provides no exception for providing *pro bono* legal services to delegates, and this prohibition further extends to giving a penny of corporate funding to a convention delegate in the form of books, travel expenses or the like.

IV. Standard of Review

In the Tenth Circuit, the grant of preliminary injunctive relief is "within the sound discretion of the district court." *Seneca-Cayuga Tribe of Oklahoma v. State of Oklahoma,* 874 F.2d 709, 716 (10th Cir. 1989). In order to secure a preliminary injunction, a movant must demonstrate: "(1) a substantial likelihood of success on the merits; (2) irreparable injury will result if the injunction does not issue; (3) the threatened injury to the movant outweighs any damage the injunction may cause the opposing party; and (4) issuance of the injunction would not be adverse to the public interest." *Northern Natural Gas Co. v. L.D. Drilling, Inc.*, 697 F.3d 1259, 1266 (10th Cir. 2012) (quoting *Kansas Judicial Watch v. Stout*, 653 F.3d 1230, 1233 n.2 (10th Cir.2011)). In

First Amendment challenges, "the 'likelihood of success on the merits will often be the determinative factor' because of the seminal importance of the interests at stake." *Verlo v. Martinez*, 2016 WL 1395205 at *8 (10th Cir. April 8, 2016).

In the context of political speech and elections, there "are short timeframes in which speech can have influence." *Citizens United v. Fed. Elec. Comm'n* (*FEC*), 558 U.S. 310, 334 (2010). In judging the constitutionality of contribution limits, courts have routinely acknowledged that "while not subject to strict scrutiny, contribution limits still involve a 'significant interference with associational rights' and 'must be closely drawn to serve a sufficiently important interest.'" *Republican Party of New Mexico v. King*, 741 F.3d 1089, 1093 (10th Cir. 2013) (quoting *Davis v. FEC*, 554 U.S. 724, 740 n.7 (2008)). But this line of reasoning applies to direct monetary contributions to candidates where the expressive or associational element of writing a check is very small, thus triggering lower scrutiny. *See, e.g.*, *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 387 (2000). This is so because "contribution limits 'leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates.'" *Id.* at 387 (quoting *Buckley*, 424 U.S. at 22). However, where government maintains that giving out free books, helping a group, or offering *pro bono* legal services become "contributions," this rationale does not hold. Indeed, the "contributions" in this case are ordinary ways individuals associate and speak at the core of the First Amendment, thus triggering strict scrutiny. Even if strict scrutiny is not warranted, the Constitution still requires a fit "whose scope is 'in proportion to the interest served,' . . . [that is] narrowly tailored to achieve the desired objective." *McCutcheon v. FEC*, 134 S.Ct. 1434, 1456–57 (2014) (quoting *Board of Trustees of State Univ. of N. Y. v. Fox*, 492 U. S. 469, 480 (1989)).

V. Argument

The Pillar of Law Institute seeks to do what the FECA permits individuals to do—provide contributions to delegates. Pillar also asks that it be allowed to do what other corporations may do in limited instances—provide in-kind contributions in the form of books and *pro bono* legal services. And the Unnamed Plaintiffs simply wish to associate with Pillar for these purposes. In this instance, it is a group of ordinary Americans in the non-profit corporate form who would join together to offer educational and charitable services and goods to delegates. Because the law so broadly defines a contribution ("anything of value"), Pillar is prohibited from engaging in any of its aforementioned activities and the delegate plaintiffs are barred from associating with Pillar in these capacities.

Because political "[s]peech is an essential mechanism of democracy," and "the means to hold officials accountable to the people," it follows that "political speech must prevail against laws that would suppress it, whether by design or inadvertence." *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 871 (8th Cir. 2012) (quoting *Citizens United*, 558 U.S. at 339). Similarly, political speech and association do not lose protection simply because they arise out of the corporate form. *Id.*

In *FEC v. Massachusetts Citizens for Life*, the Supreme Court's ruling created the "MCFL exemption" to a federal ban on corporate independent expenditures—speech expressly advocating the election or defeat of a candidate. 479 U.S. 238 (1986). The Court reasoned that non-profits formed to disseminate political ideas did not implicate any government interest in preventing corruption. *Id.* at 259. Thus, so long as non-profit corporations met three criteria—(1) they were formed for the express purpose of promoting political ideals; (2) they lack shareholders; and (3)

they were not established by corporations or labor unions—they could produce independent expenditures. *Id.* at 263–64; *see* 11 CFR 114.10 (regulations implementing the MCFL exemption).

Unlike cases focusing on independent speech, challenges to corporate contribution bans have usually failed in the context of candidates. In *FEC v. Beaumont*, the Supreme Court considered the constitutionality of the federal prohibition of direct corporate political contributions. 539 U.S. 146 (2003). Because corporations might amass "war chests" of funding and because corporations could be used to circumvent individual contribution limits to candidates, the Court upheld the direct corporate ban. It did not, however, consider the constitutionality of the ban as applied to the private affairs of delegates and conventions. In *Citizens United*, the Supreme Court held that egalitarian concerns about leveling the playing field or protecting against unfair advantages in the political marketplace are illegitimate government interests. 558 U.S. at 359–60. Thus, the "war chests" or anti-distortion rationale for campaign finance laws found in *Beaumont* are now invalid. Indeed, only the prevention of *quid pro quo* corruption may serve as a valid government interest. *See McCutcheon*, 134 S.Ct. at 1462. Moreover, because there are no limits on individual contributions to convention delegates, the anti-circumvention rationale could not validly apply to prohibit corporate contributions to convention delegates.

The law at issue here—52 U.S.C. § 30118—operates in a wholly different manner than any other provision found in the FECA. In every other instance, the FECA regulates federal elections by placing limits on what individuals may give to candidates and some committees, includes a complementary corporate contribution ban, and also bans foreigners and federal contractors from making contributions. These interests share a common, sensible parity: to prevent corruption and the circumvention of campaign finance limits. Preventing the influence of foreign money in the American political process has also been a bedrock interest of proper campaign finance reform.

See Bluman v. FEC, 800 F.Supp.2d 281, 287 (D.D.C. 2011). And preventing corporate circumvention of individual contribution limits remains a proper interest. *See, e.g.*, *U.S. v. Danielczyk*, 683 F.3d 611, 618 (4th Cir. 2012). These interests are not implicated here.

Section 30118 remains a curious outlier. It is only in the context of delegates and national conventions that the Congress determined unlimited individual contributions to delegates were non-corrupting, but, somehow, corporate contributions were corrupting. In 1979, the Senate contemplated amending the FECA to link individual contribution limits to delegates. *See* S.1757, 96th Cong. § 118 (1979). This amendment remains indefinitely postponed. The statutory scheme embodied in 52 U.S.C. § 30116—regulating individual contributions—makes sense because of the shared parity of the governmental interest. If Congress wished to prevent corruption by imposing individual limits, it could then sensibly follow to provide corporate bans to prevent the circumvention of those limits. But the regulatory scheme devised in 52 U.S.C. § 30118 simply does not add up. To make matters worse, Congress has already decided that some corporate giving of in-kind contributions to political party committees and candidate committees is entirely permissible. By a series of Advisory Opinions, the FEC has even allowed car manufacturers and dealers to provide free use of expensive automobiles to convention committees. FEC Advisory Opinion ("AO") 1996-17; FEC AO 1988-25. But delegates are a step further removed from the political process and remain shut out of these allowances such that providing them a free copy of a book is considered a danger to the Republic.

Although the anti-corruption rationale may provide a basis to uphold contribution limits, the asymmetrical speech regulations in this case pose significant constitutional dangers. The risk is that government is using campaign finance laws—designed to combat corruption—to manipulate the marketplace of ideas by imposing absurdly unequal speech burdens across different

classes of speakers. The Supreme Court recognized this danger in *Davis*. 554 U.S. 724. There, the Supreme Court invalidated the "Millionaire's Amendment" in the FECA, which allowed an opponent of a self-funding candidate to accept up to three times the contribution limit from respective donors after the self-funding candidate contributed a certain amount of funds to his own campaign. *Id.* at 729–30. At the same time, the self-funding candidate would remain subject to the same contribution limits from other contributors. *Id.* If money above the contribution limit was corrupting in the first instance, it had to be corrupting in the second instance. Thus, under the Millionaire's Amendment, Congress was not actually regulating corruption, but manipulating the political playing field.[2]

In the present case, because Congress determined that it is not corrupting for individuals to give unlimited amounts of money to delegates, it lacks a constitutional basis to entirely ban contributions from corporations. Because of this special determination, if money given to delegates corrupts, it must corrupt both individually and in the corporate form. But if money does not corrupt delegates when it comes from individuals, and Congress has elected not to regulate it, it cannot corrupt them when it comes from corporations. *See, e.g.*, *City of Ladue v. Gilleo*, 512 U.S. 43, 52–53 (1994) (under-inclusiveness "diminish[es] the credibility of the government's rationale for restricting speech"); *Florida Star v. B.J. F.*, 491 U.S. 524, 541–542 (Scalia, J., concurring) ("[A] law cannot be regarded as protecting an interest of the highest order, and thus as justifying a

[2] In other contexts, asymmetry is equally problematic in signaling government's favor of certain speakers or ideas over others. In *R.A.V. v. City of St. Paul*, the Supreme Court reasoned that St. Paul's Bias Motivated Crime Ordinance was invalid under the First Amendment because it asymmetrically punished some speakers, but left others untouched. 505 U.S. 377 (1992). At the core of the Court's reasoning was that any government interest in preventing hate speech had to be achieved in a uniform manner, lest government have the "authority to license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensberry rules." *Id.* at 392.

restriction upon truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited" (internal quotation marks and citation omitted)); *McCutcheon*, 134 S.Ct. at 1452 ("If there is no corruption concern in giving nine candidates up to $5,200 each, it is difficult to understand how a tenth candidate can be regarded as corruptible if given $1,801, and all others corruptible if given a dime"). Going even further, Congress has already determined that corporate giving of particular in-kind contributions directly to candidate and political party committees is permissible. *See* 52 U.S.C. § 30101(8)(B)(viii), (xiii). Banning non-profits from offering the same assistance to delegates is simply unsupportable.

What makes this case different from prior corporate contribution challenges rests in the fact that in the remainder of federal election law, there is parity between an individual contribution limit and a related corporate ban. It is only in this narrow pocket of the FECA that Congress decided unlimited contributions by individuals were permissible, thus triggering Plaintiffs' constitutional concern about the asymmetrical effect. It is as though Congress designed a regulatory regime where it decided that knitting was safe, permitted individuals to knit, but banned knitting groups. This Court may afford relief here under two alternative scenarios. First, it may decide that Congress acted improperly, as in *Davis*, and lacks a proper basis to support a corporate contribution ban to delegates while allowing unlimited individual contributions. Second, it may decide that Plaintiffs' proposed activities should not be captured under the FECA's expansive definition of "contribution" and employ a narrowing construction of the statute, as in *Buckley*, to reach that result. 424 U.S. at 40–44.

A. Plaintiffs are Likely to Succeed on the Merits

The first prong of Pillar's delegate autonomy project centers around providing free books to delegates. However, these books constitute "anything of value," and giving them to delegates

without charge would constitute prohibited corporate contributions. *See* 52 U.S.C. § 30118; *see also* 11 CFR 114.1(a)(1). In the FEC's treatment of this issue through advisory opinions, it has consistently held that goods or services provided at no charge or at less than the usual and normal charge for such goods or services constitute prohibited corporate contributions. 11 CFR 100.52(d)(1); 11 CFR 100.111(e)(1); *see also* FEC AO 2004-06 (MeetUp). There is no inquiry into whether a good or service actually promotes or opposes a candidate for federal office. Only where a corporation makes services or goods available for free or discounted prices to society at large has the FEC permitted such activity.

In FEC Advisory Opinion 1996-2, CompuServe planned to create a "nonpartisan online election headquarters." *Id.* at 1. In doing so, it offered to provide free accounts for all federal and statewide elective offices. CompuServe did this on a partial basis elsewhere by giving featured accounts to notable journalists or public figures. All this contributed to the company's goodwill and prestige, furthering its business interests. *Id.* at 2. It also provided a means for voters to get information from candidates directly in an era when Internet communications were nascent. But, ultimately, the FEC decided that the "proposed gift to Federal candidates of valuable services which enable them to communicate with voters and advocate their candidacies would constitute in-kind contributions to those candidates and would be prohibited by [52 U.S.C. 30118]." *Id.* at 4. Because CompuServe could not show it offered these gifts to society at large in the ordinary course of business, its free candidate accounts were banned.

Pillar has no plans, and no budget, to offer its educational books on delegate autonomy to the world at large. Rather, its intended audience is among the 2,472 delegates who will be attending the Republican National Convention. An important principle of First Amendment jurisprudence is that speakers enjoy the autonomy to select their message and audience. *See Hurley v. Irish-*

American Gay, Lesbian, and Bisexual Group of Boston, 515 U.S. 557 (1995). Section 30118's reach to prohibiting non-profits from distributing free books "restricts access to the most effective, fundamental, and perhaps economical avenue of political discourse. . . ." *Meyer v. Grant*, 486 U.S. 414, 423 (1988). That the law may permit non-profits to distribute books for free—just so long as they provide them to 318 million Americans—does not relieve its burden on First Amendment expression. *Id.*[3]

Unlike most cases involving restrictions on contributions, distributing books is expressive speech and association that is far removed from direct monetary contributions. As a nation contemplates its political future and as members of a private association, the Republican National Committee, decide how it will be governed, Pillar's expressive outreach is of great concern. While Section 30118 restricts the distribution of free books to delegates as part of an effort to to combat corruption, individuals are free to contribute unlimited sums under Section 30101. This disparity illustrates the the delegate contribution ban serves no genuine interest in protecting against corruption and must be stricken. The FEC's disparate interpretation that permits the distribution of free books with a purported commercial motivation but bans distribution of books when the purpose is the spread of ideas turns normal First Amendment jurisprudence on its head. *See, e.g.*, *Board of Trustees of State University of New York v. Fox*, 492 U.S. 469, 477 (1989) ("commercial speech [enjoys] a limited measure of protection, commensurate with its subordinate position in the

[3] In Advisory Opinion 1987-08 the FEC did approve distribution of a free book to convention delegates, but only on the rationale that the publisher was a national magazine whose book distribution efforts were promoting its local business interests. As a non-profit corporation Pillar has no business interests and is not seeking to distribute books to promote commercial interests, but to promote ideas.

scale of First Amendment values . . . ."); *Meyer*, 486 U.S. at 425 (First Amendment protection at its zenith for political speech and association).

The second prong of Pillar's delegate autonomy project is to provide *pro bono* legal counsel to delegates to the Republican National Convention who may be threatened with spurious litigation or otherwise harassed. Understanding that corporations can play helpful roles in elections, Congress permitted them to provide *pro bono* legal services in narrow circumstances. Under the FECA, free legal services may be rendered to the political committee of a political party if the person paying for the services is the regular employer of the person rendering the services and the efforts do not "directly further" the election of a candidate to federal office. 52 U.S.C. § 30101(8)(B)(viii)(I). Similarly, legal services offered for free to candidate committees or any political committee are permissible if the person paying for the services is the regular employer of the person rendering the services and only if those services are for compliance with the FECA. 52 U.S.C. § 30101(8)(B)(viii)(II). These two instances where corporate in-kind contributions of legal services are allowed are presumptively non-corrupting. However, any non-profit corporate entity wishing to provide counsel to convention delegates for compliance with the FECA, to protect their constitutional liberties, or protect against spurious lawsuits are banned from doing so. This, by federal standards, is corrupting.[4]

[4] Pillar brings the present case as a *pro bono* representative of the Unnamed Plaintiffs. Thankfully, the FEC has never, as far as counsel knows, pursued actions against representation in constitutional challenges as political contributions, and state agencies that have attempted to bring such actions have failed. *See, e.g.*, *Institute for Justice v. State of Washington*, No. 13-2-10152-7 (Wash. Superior Ct., Feb. 20, 2015). However, the FEC has ruled that *pro bono* corporate-funded legal representation is prohibited, even in constitutional cases. *See* FEC AO 2006-22 ("Andrius R. Kontrimas, Esquire").

The asymmetrical bans in 52 U.S.C. 30101(8)(B) jump off the page. Congress may only restrict First Amendment rights in campaign finance when its efforts are aimed to prevent *quid pro quo* corruption. Under current law, corporate-funded lawyers could advise the Republican Party, for free, on political law, arms treaties, gift laws, or the like so long as certain conditions were met. Likewise, corporate-funded lawyers could advise a Democrat candidate committee about compliance with the FECA, but not about political law, arms treaties, or gift laws. And the connected political committee of a corporation could also receive the aid of corporate-funded lawyers. But if the organization in question is unfortunate enough to be a charitable, non-profit corporation wishing to educate delegates—themselves a step further removed from the electoral process—then no legal services may be donated. Indeed, barring this Court's intervention, it is conceivable that the Unnamed Plaintiffs could find themselves at the convention facing corporate-funded lawyers operating on behalf of the RNC while they, themselves, are prohibited from accepting corporate-assisted legal representation.

The legislative developments that created the FECA as it is read today illustrate a gradual liberalization of this rule and an understanding that corporate donated legal services are not corrupting. In the Congressional Record of the 1979 amendments to the FECA, testimony explained the unfair ways that the legal services exception operated. This included the adverse effect of federal election law on state and local party committees. *See* 125 CONG. REC. 23,814 (1979). Thus, the 1979 amendments recognized the disparate treatment of the law for party committees and extended the exception such that corporations could provide *pro bono* legal aid to state and local party committees. *See* S.REP. NO. 96-319, at 4 (1979). Plaintiffs do not have the budget or luxury to timely petition Congress such that non-profit *pro bono* legal services may be given to delegates. They simply request that their First Amendment rights of association be given

the same respect and protection as those of political parties, candidates, and committees. Since there is no risk of corruption for corporations to provide *pro bono* services to those classes, there can be no risk of corruption for corporations to provide these services to delegates.

Besides the constitutional problems addressed, the FEC has selectively allowed corporations to contribute *pro bono* legal services in self-defined circumstances through a series of its own advisory opinions. For example, in AO 2003-15 ("Majette"), the FEC determined that corporate funds raised to cover litigation costs in a case challenging Georgia's open primary system were not "in connection" with a federal election and were thus permissible. Likewise, in AO 1996-39 ("Heintz"), the Commission determined that corporate funds could be received to defend against litigation related to a pre-election challenge pertaining to ballots. *See also* FEC AO 1983-37 ("Massachusetts Democratic State Committee"); 1982-35 ("Hopfman"). Similarly, here, because the corporate funding would provide legal defense to delegates unrelated to the support or opposition of a candidate, it should be protected under this line of reasoning.

Finally, Pillar would like to offer a small set of delegate opportunity scholarships, which the Unnamed Plaintiffs wish to accept. The difficulty of delegate fundraising is apparent; some have turned to innovative techniques to make participation in national conventions affordable. Natalie Andrews, *Delegates Turn to GoFundMe to Pay Way to Conventions*, WALL STREET J., Apr. 27, 2016, *available at* http://www.wsj.com/articles/delegates-turn-to-gofundme-to-pay-way-to-conventions-1461781747. Although wealthy individuals can contribute as much as they want to individual delegates, non-profit corporations are barred from doing the same. Pillar's opportunity scholarships would provide a $500 grant to individual delegates. Because providing an opportunity scholarship, or travel stipend, is "anything of value," it is prohibited under Section 30118.

Curiously, the FEC recently permitted DePauw University, also a 501(c)(3) organization, to provide a stipend to an intern student volunteering with the Hillary for America committee. *See* FEC AO 2015-14. Based on its self-created formula, the FEC determined that because DePauw was offering the stipend for *bona fide* educational activities where students could use the funds at any entity, the stipend did not result in a prohibited corporate contribution to the Hillary for America Campaign. *Id.* at 3–4. The Commission made this determination despite Section 30118's unequivocal prohibition against corporate contributions in connection with an election. Because the Pillar of Law Institute is, like DePauw University, a 501(c)(3) educational organization, and because, like DePauw, it is offering a stipend to partially offset delegate expenses while teaching them about a public policy issue, its activities should be deemed likewise non-corrupting or be deemed outside the definition of "contribution."

Congress has already decided that unlimited individual contributions to delegates do not corrupt. When given the opportunity to impose individual contribution limits on delegates in 1979, it declined. It also realized that limited, corporate in-kind contributions to candidates and political party committees are not corrupting. Thus, while individual contributions to delegates remain unlimited, so too must corporate contributions to delegates. Notably, this rationale does not apply to other areas of the FECA. Outside of delegates, FECA imposes a $2,700 per person contribution limit for federal candidates per election. *See* 52 U.S.C. § 30116. As explained in *Beaumont*, Congress saw a need for this limit to prevent corruption, as it is well within its power to do so. 539 U.S. at 155. The corporate contribution ban in federal elections served as a necessary corollary to an individual limit. Where Congress has made a finding of corruption in a given act—individual contributions—it may then act to prevent circumvention of the law through corporate contributions. But if there is no concern about corruption in the first place, such as in individuals

contributing to delegates, there cannot be a concern in the corporate example. *See McCutcheon*, 134 S.Ct. at 1452 ("And if there is no risk that additional candidates will be corrupted by donations of up to $5,200, then the Government must defend the aggregate limits by demonstrating that they prevent circumvention of the base limits"). Invalidating the law here brings simple constitutional parity to delegates and allows them to associate freely just like delegates may do with individuals. It also brings about a social good and equity—allowing broader sources of funding for delegates to participate in this nation's political future.

B. Irreparable Harm

Pillar has refrained from launching its delegate autonomy project and Unnamed Plaintiffs have refrained from associating with Pillar on these activities. As the Supreme Court has explained, the "'loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Verlo*, 2016 WL 1395205 at *8 (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). By foregoing the delegate autonomy project, Pillar and Unnamed Plaintiffs have been irreparably harmed, and this harm will continue so long as the law is allowed to be enforced to its current lengths. When granted injunctive relief by this Court, Plaintiffs intend to associate and promote delegate autonomy as detailed in this memorandum and their Verified Complaint.

C. Balance of Hardships

Where serious First Amendment concerns have been raised, the balance of equities tips in the movant's favor. *Verlo*, 2016 WL 1395205 at *9. Here, Plaintiffs seek to enjoy the same First Amendment rights enjoyed by similarly situated actors, but which are denied through Section 30118. Until relief is granted, Plaintiffs will remain muzzled and unable to associate about a pressing issue of public concern—the governance, values, and leadership of the Republican Party.

D. Public Interest

It is "always in the public interest to protect constitutional rights." *Id.* Providing relief here would allow Plaintiffs the timely ability to engage one another and the American public about delegate autonomy, associate freely, and otherwise enjoy the same constitutional protection afforded to most other civic-minded speakers.

VI. Conclusion

For the reasons discussed herein, this Court should grant Plaintiffs request to preliminarily enjoin the enforcement of Section 30118.

Respectfully submitted,

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June 3, 2016

CERTIFICATE OF SERVICE

I, Benjamin Barr, hereby certify that on this 3rd day of June, 2016, the foregoing Memorandum of Law in Support of Motion for Preliminary Injunction was electronically served on Defendant's counsel via electronic mail pursuant to consent under Fed. R. Civ. P. 5(b)(2)(E).

/s/ Benjamin Barr