

FEDERAL ELECTION COMMISSION

In the matter of:

Citizens for a Working America Inc.

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Joel Riter, President, Citizens for a Working America Inc.,

in his official capacity as treasurer and in his personal capacity

Norman Cummings, Treasurer, Citizens for a Working America Inc.,

in his official capacity as treasurer and in his personal capacity

COMPLAINT

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

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

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

Complainants

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

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

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

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

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

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

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

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

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

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

#### Respondents

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

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

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

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

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

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

#### Factual Allegations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35. Other than the omission of the money it provided to Arizona Grassroots Action PAC, CWA’s political spending, as reported to the IRS during its 2016 tax year, matched what was reported to the FEC. CWA made gifts, deposits, or distributions to four other federally-registered super PACs: \$101,000 to the Hometown Freedom Action Network, \$33,000 to Grow NC Strong Inc., \$60,000 to the American Freedom Builders Action Network, and \$300,000 to the Ohio Freedom Fund. Hometown Freedom Action Network, FEC Form 3X, 2016 Pre-General Report, Oct. 27, 2016, <https://bit.ly/2Pd0OTb>; Hometown Freedom Action Network, FEC Form 3X, 2016 Post-General Report, Dec. 8, 2016, <https://bit.ly/2PB2a8W>; Grow NC Strong Inc., FEC

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

#### Count I

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Count II

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

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

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

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

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

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

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

### Count III

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

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

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

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

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

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

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

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

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

Count IV

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

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

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

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

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

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

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

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

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

#### Conclusion

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



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ON BEHALF OF COMPLAINANTS  
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*Counsel for Complainants*

### Verification

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

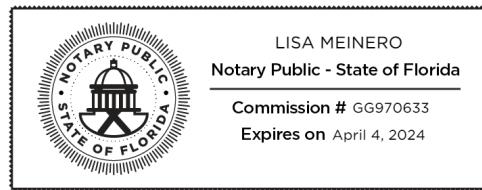
Marc Kruman

Marc Kruman

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



Notary Public Lisa Meinero 11/04/2020



Notarized online using audio-video communication

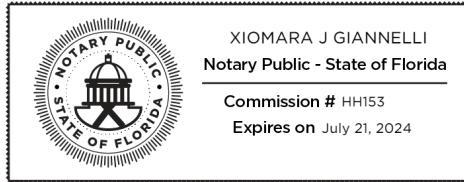
Andrew Ray hereby verifies that the statements made in the attached Complaint, except those contained in paragraphs 4 through 9, are, upon information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.

Andrew Ray  
Andrew Ray

STATE OF FLORIDA  
Seminole County

Sworn to and subscribed before me this 4th day of November 2020  
via physical presence OR  online notarization by Andrew Ray.

Xiomara Giannelli  
Notary Public



Notarized online using audio-video communication