No. 16-832

In the
Supreme Court of the United States

ALABAMA DEMOCRATIC CONFERENCE, *et al.*,
Petitioners,
v.
ATTORNEY GENERAL OF ALABAMA, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

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INTRODUCTION

In a word, this case lacks cert-worthiness because it is unusual. It is unusual, first of all, because of the Alabama campaign-finance law at issue. This law is unlike any other state campaign-finance law recently reviewed in the courts of appeals because it restricts only one kind of contribution—money transfers, not in-kind contributions—and applies to only one kind of political actor—political action committees, not individuals. It is also unusual because it is the relevant jurisdiction's only substantive campaign restriction; it was enacted to address an unusually well-documented public-corruption problem; and it achieved an unusually high level of support in the Legislature. (No legislator voted against it.)

But this case is also unusual for another reason: the group challenging this law, the Alabama Democratic Conference, is itself a rather unusual kind of campaign-finance plaintiff. The group calls itself a "hybrid" PAC in that it claims to both (a) spend money in coordination with candidates and (b) spend money "independently" of candidates. But this hybrid PAC is unusual in that it has refused to do *anything* more to address the State's corruption concerns than create "separate, segregated bank accounts" for these purposes. Pet. 10. The group is also unusual, as its name suggests, in its connection to the Alabama Democratic Party and in that it openly admits to coordinating its political spending with the candidates it supports.

These quirks ultimately doom the ADC's cert petition. They explain why there is no relevant circuit split here, let alone one on a "recurring . . . question of

national importance." Pet. 15. And they explain why Alabama's law does not violate the First Amendment, let alone in any way that "conflicts with this Court's precedents." *Id.* at 26.

As demonstrated in the pages that follow, Alabama's law banning PAC-to-PAC transfers is the only legal protection standing between Alabama voters and the reality or appearance of *quid pro quo* corruption. The Court should deny review and allow Alabama to continue enforcing its needed and popular law.

STATEMENT OF THE CASE

The ADC's petition does not tell the whole story about various matters in this case, including the scope of the PAC transfer law, the strength of the governmental interests supporting it, and the nature of the ADC's own political activities. This statement thus aims to set the record straight. In doing so, however, it provides only the facts necessary to understand why the Court should deny review. More detailed accounts of these facts appear in the respondents' briefs to the district court and court of appeals.

Enactment of the PAC transfer law

Since 1988, Alabama has relied principally on disclosure rules to promote the integrity of its elections. Political actors must publicly disclose their campaign-related financial activities. *See, e.g.*, ALA. CODE §§ 17-5-8(c), -12, -13. And no one can "make a contribution in the name of another." *Id.* § 17-5-15(a). But unlike in the federal system and many States, there are very few other campaign-finance rules, and individuals

and PACs have been able to raise, spend, and contribute as much as they wanted. Armed with information about the influence-seekers, the theory goes, voters can make up their own minds about how to vote.

By the mid-1990s, however, political operatives had exposed a massive loophole in this system. Call it the "PAC-to-PAC loophole." A donor wishing to disguise his or her contribution could "make a contribution to one PAC, which could then make a contribution to another PAC, which could then make a contribution to another PAC, and on and on until some PAC eventually delivered the money to the candidate." BIO App. 10a; *see also* doc. 7-4 at 50. Over time, operatives perfected this scheme in various ways. They would register scores of PACs in the name of a single person. *See* doc. 59 at 6. They would give the PACs names that were innocuous-sounding or even bizarre (e.g., "Children's PAC" or "Please PAC," "Watch PAC," "Your PAC," and "Step PAC"). *See* doc. 7-4 at 56; doc. 43-1 at 47:13–48:4. And they would split large contributions into smaller, discrete "chunks," each of which could be routed through its own series of PAC transfers on a staggered basis. BIO App. 10a. Taken together, these PAC-to-PAC transfers allowed operatives to "render contributions virtually anonymous." Edward A. Hosp, *Alabama Campaign Finance Law*, 68 ALA. LAW. 379, 382 (2007). In the words of one newspaper editorial, these tactics were "the closest thing yet to legalized money laundering." Doc. 7-5 at 50.

Problems like these do not crop up in many jurisdictions, presumably because many jurisdictions have adopted a more complicated approach to campaign-finance regulation. The "intricate" federal regulatory

scheme, for example, includes limits on contributions to candidates, limits on contributions to political committees, a prohibition on creating multiple "affiliated" political committees, a "broad[]" prohibition on earmarking, and prohibitions on contributions to political committees that are likely to donate to a candidate the contributor has already supported—all on top of certain "transfer restrictions" akin to the one at issue in this case. *McCutcheon v. FEC*, 572 U.S. ___, 134 S. Ct. 1434, 1446–47, 1459 (2014). But in a jurisdiction like Alabama, which aspires to a less fussy approach, PAC-to-PAC transfers posed a real threat to the system.

Two events in 2010 crystallized the corrosive effects of PAC-to-PAC transfers. First, that spring, was a federal public-corruption indictment. The defendants included a bipartisan group of four Alabama state senators. And the charges included a conspiracy to commit bribery in part by "concealing illicit payments through political action committees ('PACs')." BIO App. 7a. Although a jury later acquitted several of the defendants, one defendant pleaded guilty, admitting that he "attempted to conceal the true nature, source, and control of the payments made to members of the Alabama Legislature" by "disguising illicit payments through political action committees." *United States v. Gilley*, No. 2:10-cr-00186-MHT, (M.D. Ala. Apr. 22, 2011), Doc. 986 at 4; *United States v. McGregor, et al.*, No. 2:10-cr-00186-MHT (M.D. Ala. Mar. 16, 2012), Doc. 2433.

The other event from 2010 was the emergence of the "True Republican PAC" as a major player in that year's Republican gubernatorial primary election. The

True Republican PAC spent hundreds of thousands of dollars in attack ads against one of the leading candidates, all in apparent coordination with one of the other leading candidates. (The beneficiary candidate's fundraising consultant appeared on campaign-finance reports as an officer of several PACs that contributed to the True Republican PAC.) At the time, neither a reporter nor a longtime campaign-finance consultant could say for sure who was funding this PAC. Indeed, the campaign-finance consultant gave up her investigation "after tracing the funds through ten 'generations' of transfers without a definitive answer." BIO App. 14a; *see also id.* at 11a–17a.

Against this backdrop, the Legislature unanimously voted to close the PAC-to-PAC loophole at a December 2010 special session the Governor called in part for that exact purpose. Under the PAC transfer law, PACs may still give money to candidates. *See* ALA. CODE § 17-5-15(b). But otherwise, PACs may not "make a contribution, expenditure, or any other transfer *of funds*" to another PAC. *Id.* (emphasis added). Notably, PACs may still speak and spend as much as they see fit. They may still accept unlimited contributions from any individual donor and make unlimited contributions to any candidate. And, they may collaborate with other PACs in any way that does not involve "mak[ing] a contribution, expenditure, or any other transfer of funds." *Id.* What they simply cannot do is serve as conduits for laundered campaign contributions.

The Alabama Democratic Conference

To date, only one group has challenged the PAC transfer law and thereby sought to reopen the PAC-to-PAC loophole. That group, of course, is the ADC. Although the ADC's cert petition provides some hints of its activities, it does not tell the whole story. In particular, it does not tell the whole story about the ADC's relationship to Alabama candidates and officeholders. And it does not tell the whole story about the ADC's relationship to the Alabama Democratic Party.

First, the ADC is essentially owned by the candidates it supports. For the five years preceding this lawsuit, almost *half* of the ADC's funding came not from individual donors or PACs but from Democratic candidates themselves. *See* doc. 9-5 at 2 (lines 141–43). Consistent with that fact, the ADC's chairman considers a candidate's contribution to the ADC's voter-mobilization efforts to be an "invest[ment]" in that candidate's own campaign. Doc. 43-4 at 118:13–14. "[Y]ou need to put some money in your campaign," the ADC chair says when soliciting candidates; "[t]his is your campaign. Not mine." *Id.* at 117:23–118:10. Ultimately, according to the chairman, the ADC tells candidates "what our [get-out-the-vote] plans are. And if they have something that they want to suggest to us, we listen to it. And if we like it, we'll do it." *Id.* at 224:8–14.

Second, as its name suggests, the ADC effectively acts a wing of the Alabama Democratic Party. The group has admitted as much, noting in the district court that it is "intertwined in a number of ways" with the Party. Doc. 10 at 3. In similar fashion, its chair-

man admits that his duties as ADC chair overlap substantially with his role as the Party's vice chairman for minority affairs. *See* doc. 43-4 at 97:10–12. (At deposition, the ADC chair in fact understood himself to be present in both capacities: "[a]s a representative of the Alabama Democratic Conference *and* as a representative of the [D]emocrats." Doc. 43-4 at 11:22–12:6 (emphasis added).) In any event, funding and membership patterns confirm this relationship. From 2005 to 2010, the ADC received over $80,000 directly from the Party itself, over and above the hundreds of thousands of dollars it received from Democratic candidates. *See* doc. 9-5 at 4 (lines 110–12). And as of February 2014, each of the ADC's sitting executive officers were also members of the State Democratic Executive Committee. *See* doc. 43-4 at 54:10–64:14.

Proceedings below

The ADC brought an as-applied First Amendment challenge to the PAC transfer law. Acknowledging the State's anticorruption interests, the group does not claim any right to receive PAC-transferred funds for making candidate contributions. But the group contends that the law is unconstitutional insofar as it prevents the ADC from receiving PAC-transferred funds to make putatively "independent" political expenditures. To this end, the ADC created two bank accounts and began referring to itself as a hybrid PAC. According to its chairman, one account would be used to receive contributions from individuals and businesses for the purpose of making direct candidate contributions. Doc. 9-1 at 4–5. The other, "independent expenditure" account would be used to receive funds "from any entity"—including, possibly, a chain of

PACs. *Id.* at 5. The purpose of this dual-account structure was to "ensure that no funds from other PACs . . . will be contributed to candidates." Doc. 1 at 14–15. But notably, the ADC admits that its two bank accounts would be controlled by the same people. *See* doc. 44-8 at 5, 9 (request for admission #8).

The State defended the ADC's challenge on numerous grounds. On one level, the State defended the law as valid in all of its applications, regardless of a PAC's publicly stated spending plans. PAC-to-PAC transfers, the argument ran, *inherently* obscure collusion between PACs and candidates. Thus, forbidding PAC-to-PAC transfers *inherently* cuts off an avenue for real or apparent *quid pro quo* corruption. This is especially true in a State like Alabama, which imposes few other campaign-finance rules.

But the State also defended the law on various grounds unique to the ADC. These arguments focused on the ADC's relationship to candidates and the Alabama Democratic Party, as discussed above. They also focused on the ADC's admission that the same people would be directing both the group's candidate contributions and its purported independent expenditures. Either way, according to these arguments, the State had a legitimate reason to fear that the ADC, in particular, might facilitate corruption if allowed to receive money laundered through PAC transfers.

As the district court had done, the court of appeals rejected the ADC's claim based on one of the State's ADC-specific arguments. Citing decisions from the Second and Fifth Circuits, the court held that "[a]n account set up for independent expenditures can pass muster under a state's interest in anti-corruption only

when it is truly independent from any coordination with a candidate." Pet. App. 22a. That is, "[t]here must be safeguards to be sure that the funds raised for making independent expenditures are really used only for that purpose." *Id.* Because the ADC had not identified "*any* organizational separation" or "*any* other internal controls" between its two accounts, the court believed that ADC's putative independent-expenditure account was still available to facilitate corrupt deal-making. *Id.* at 23a–24a (emphases added; quotation marks, citation omitted). Thus, the court held, the ADC's First Amendment challenge could not succeed.

REASONS FOR DENYING THE PETITION

The Court should not grant review in this case. In support of its petition, the ADC invokes some of the Court's familiar certiorari criteria. But it does so only by ignoring what this case is truly about. For example, contrary to statements in the petition, Alabama's PAC transfer law does not "completely ban[] *any* PAC-to-PAC donation." Pet. 25 (emphasis in original); *see also id.* at 3, 8, 28, 37, 38. The law in fact prevents only *financial transfers* between PACs. Similarly, contrary to statements in the petition, the ADC is not "primarily engage[d] in independent spending." Pet. 3; *see also id.* at 26–27. The group in fact is exclusively engaged in *coordinated* spending. Finally, contrary to statements in the petition, Alabama has not solely defended its law "as necessary to ensure its interest in an effective campaign-finance disclosure regime." Pet. 4; *see also id.* at i, 8, 27. The State has in fact powerfully demonstrated the law's role as an anticorruption device.

Once clarity is achieved on these points, the ADC's case for certiorari falls apart of its own force. As it turns out, there is no meaningful circuit split here; the case is a poor vehicle for addressing the questions presented; and the judgment below is in any event entirely correct.

I. The petition identifies no meaningful split in circuit-court authority.

Contrary to the ADC's assertions, this case does not implicate any meaningful split among the courts of appeals. The petition, of course, does not even claim a circuit split with respect to its second question presented, which asks whether Alabama's PAC transfer law is appropriately tailored to accomplish its goal. Although the ADC does claim a split with respect to its first question, that asserted split is irrelevant and at best overstated. It also concerns an issue that in the grand scheme of things turns out to be rather trivial.

A. The asserted split is irrelevant.

Most importantly, the ADC's asserted split is irrelevant because Alabama's PAC transfer law is not like the other campaign-finance regulations that have been challenged in recent years. The ADC's first question presented asks whether government may "ban or limit independent-spending donations to a political committee that segregates those donations in a separate bank account to be used only for independent spending." Pet. i. But this question ignores that Alabama's PAC transfer law does not truly "ban or limit" contributions to political committees. *Id.* Or at least it does not do so in any conventional way: Recall that

under the PAC transfer law, Alabama PACs may still accept unlimited contributions from any individual donor for any purpose. And under the PAC transfer law, Alabama PACs may still accept unlimited *in-kind* contributions from any PAC for any purpose. The only thing they cannot do is make "transfer[s] of funds" among themselves in ways that obscure the original source of the money. ALA. CODE § 17-5-15(b).

Understood in this light, the ADC's *amici* actually underscore the absence of any relevant split on this issue. According to them, only one State, Missouri, currently maintains a "ban on PAC-to-PAC transfers[] similar to the ban at issue in this case." Mo. PAC Br. 1; *see also* Cato Br. at 9–10. And these *amici* admit that the Eighth Circuit "has not yet adopted a position on this matter." Mo. PAC Br. 3. If these things are true, then there plainly is no need for this Court's intervention.

In any event, Alabama's law is readily distinguishable from the laws at issue in the cases the ADC has cited. *Cf.* Pet. 16–22. Consider the cases on the ADC's preferred side of its asserted split. For example, the ADC's "leading case" (Pet. 16), from the D.C. Circuit, examined federal regulations that forced "covered non-profits [to] pay for a large percentage of [their] election-related activities out of [funds subject to source and amount limitations]." *Emily's List v. FEC*, 581 F.3d 1, 4 (D.C. Cir. 2009). That case thus did not concern contribution limits at all; it dealt with what the court described as *"spending* restrictions"—a different and categorically more pernicious kind of campaign-finance regulation. *Id.* at 15 n.14 (emphasis

added). The Tenth and Fourth Circuit cases also involved provisions that apply more broadly than the one at issue in this case. The Tenth Circuit examined "a provision which prevent[ed] individuals from making contributions"—financial or otherwise—"to political committees in excess of $5,000." *Republican Party of N.M. v. King*, 741 F.3d 1089, 1091–92 (10th Cir. 2013) (citing N.M. STAT. ANN. § 1-19-34.7(A)(1)). And the Fourth Circuit examined "a $4,000 limit on the amount any 'individual, political committee, or other entity' can 'contribute to any candidate or other political committee' in any given election cycle." *N.C. Right to Life, Inc. v. Leake* (*NCRL III*), 525 F.3d 274, 291 (4th Cir. 2008) (quoting N.C. GEN. STAT. § 163–278.13). Again, this latter provision limited *all* types of contributions, cash *and* in-kind.

Alabama's law is also different from the laws at issue in cases on the other side of the ADC's supposed split. *Cf.* Pet. 23–26. The Second Circuit, for example, upheld a provision barring PACs from "'accept[ing] contributions totaling more than $2,000.00 from a single source, political committee or political party in any two-year general election cycle.'" *Vt. Right to Life Comm., Inc. v. Sorrell*, 758 F.3d 118, 139 (2d Cir. 2014) (quoting VT. STAT. ANN. tit. 17, § 2805(a))). And the Fifth Circuit upheld a flat ban on *all* contributions made by corporations—including an "in-kind donation of an email mailing list." *Catholic Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 442 (5th Cir. 2014) (citing TEX. ELEC. CODE § 253.037(a)).

The ADC's cited cases thus involve state laws that greatly differ in scope and purpose from Alabama's PAC transfer law. And that fact should be sufficient

to deny review. On the merits, this Court has treated even more trivial differences as case-dispositive. *Compare Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377 (2000) (upholding a traditional candidate-contribution limit of $1,075) *with Randall v. Sorrell*, 548 U.S. 230 (2006) (invalidating a traditional candidate-contribution limit of $200 to $400). The Court should evaluate (and disregard) the ADC's proffered circuit split in that same spirit.

B. The asserted split is exaggerated or nonexistent.

The foregoing analysis explains why this case does not implicate the ADC's alleged split at all. But there is no pressing need for review even if the Court disagrees on this threshold point. That is because, at a minimum, the ADC is at best overstating the extent of any circuit-court disagreement about the validity of contribution limits as applied to hybrid PACs' independent-spending accounts. In truth, there is no split on this issue.

It is not correct, for example, to say that "the D.C. Circuit has . . . squarely addressed the question presented." Pet. 16. As noted above, *Emily's List* did not involve contribution limits; it involved unique federal regulations that were "best considered spending restrictions." 581 F.3d at 15 n.14. The ADC's first question presented did arise in *Carey v. FEC*. *See* 791 F. Supp. 2d 121 (D.D.C. 2011). But that decision was issued by a *district court*, not a court of appeals. And it was issued in the context of a preliminary-injunction motion, *see id.* at 125, making it hardly a reliable indicator of what the D.C. Circuit has or has not

"squarely addressed," Pet. 16. The ADC also ignores that *another* district judge in the D.C. Circuit has come out the other way on this issue. *See Stop This Insanity, Inc. Emp. Leadership Fund v. FEC*, 902 F. Supp. 2d 23, 41 (D.D.C. 2012) (noting that "*Emily's List* . . . did not address the potential anti-corruption interests implicated by contribution limits on hybrid PACs that engage in both direct contributions and express advocacy.").

Nor is it correct to say that "the Fourth Circuit has addressed this issue." Pet. 16. In *NCRL III*, that circuit did examine a true contribution limit, as opposed to a restriction on PAC money transfers. *See* 525 F.3d at 291. But the court did not analyze that limit as applied to a hybrid PAC: As the majority explained, the relevant group "*only* ma[de] independent expenditures." *Id.* (emphasis added). Perhaps this is why the ADC admits that *NCRL III* may be only "in substantial tension" with the decision below. Pet. 21. Regardless, on the face of its opinion, the Fourth Circuit did not purport to answer the ADC's first question presented.

Finally, it is not correct to say that the Tenth Circuit's decision is in "direct conflict" with the decision below. Pet. 20. The cited Tenth Circuit decision merely "affirm[ed] [a] district court's grant of a preliminary injunction," concluding that the plaintiffs were merely "likely to prevail on the merits of their challenge." *King*, 741 F.3d at 1103. This means that a future Tenth Circuit panel is free to reach a different result on the precise issue the ADC proposes for review here.

So, where do things actually stand on the ADC's first question presented? On one hand, *no* appeals court cited by the ADC—not the D.C. Circuit, not the Fourth Circuit, and not the Tenth Circuit—has definitively held that the mere creation of separate bank accounts is sufficient to defeat a contribution limit as applied to a hybrid PAC's independent-spending activities. On the other hand, the Second, Fifth, and Eleventh Circuits—that is, the only three circuits to finally address the issue—have all held that hybrid PACs must install at least some additional "safeguards to be sure that the funds raised for making independent expenditures are really used only for that purpose." Pet. App. 22a; *see also Catholic Leadership Coal.*, 764 F.3d at 441–45; *Vt. Right to Life Comm.*, 758 F.3d at 139–45. This is not a circuit split at all. Or at the very least, it is not the kind of entrenched circuit split that cries out for this Court's review.

C. The asserted split is inconsequential.

There is one final point about the ADC's asserted circuit split. Suppose that, notwithstanding the foregoing analysis, the circuits were in disagreement just as the ADC posits with respect to its first question presented. What difference would that make?

The answer is not very much. All of the courts in the asserted split agree that hybrid PACs may exist; no one seriously contends that a politically active group "suddenly forfeit[s] its First Amendment rights when it decides also to make direct contributions to parties or candidates." *Emily's List*, 581 F.3d at 12. Instead, the difference here is one of degree. One court apparently would hold that the mere use of separate

bank accounts is sufficient. *See King*, 741 F.3d at 1097. Another would require the decisionmakers for those separate accounts to be "functionally distinct." *Vt. Right to Life*, 758 F.3d at 142. For its part, the decision below held only that a hybrid PAC must simply "do more" than establish separate accounts. Pet. App. 22a. As the Fifth Circuit put it, "the premise underlying all of the[se] decisions . . . is that the state is permitted to undertake some reasonable measures to ensure that any contribution limitations are not circumvented. The courts examining the issue simply disagree as to what those measures may be." *Catholic Leadership Coal.*, 764 F.3d at 444.

These distinctions may entail inconveniences for affected organizations like the ADC. But they do not seriously threaten such groups' core First Amendment rights. At least they do not so seriously threaten the groups' rights as to require intervention now, before the issue can be further explored in the lower courts.

II. This case is not a good vehicle for answering the questions presented.

Even if the Court desires to clarify whether the mere use of separate bank accounts sanitizes a hybrid PAC's professed independent-spending efforts, it should wait for a better case to do so. In particular, it should wait for a case where the complaining PAC is in fact a true hybrid PAC. And it should wait for a case where the background regulatory regime is more representative of most jurisdictions. This case also presents additional unanswered legal questions that will frustrate the Court's review.

A. The ADC is not a true hybrid PAC.

First, the ADC is not a true hybrid PAC because in no sense are its "independent" expenditures truly independent. As noted above, the ADC admits to coordinating its putative independent political activities with the candidates who provide almost half of its funding. *See supra* p. 6. As also noted above, the ADC effectively acts as a wing of the Alabama Democratic Party. *See supra* p. 6–7. In the federal system, therefore, the ADC's communications might well be deemed coordinated with candidates as a matter of law. *Cf.* 11 C.F.R. § 109.21. And the group might also be deemed an "affiliate" of the Alabama Democratic Party as a matter of law. *Cf.* 11 C.F.R. § 100.5(g).

These facts readily distinguish the ADC from groups like the Catholic Leadership Coalition of Texas or New Mexico Turn Around who challenged traditional contribution limits as applied to their independent-expenditure accounts. *See Catholic Leadership Coal.*, 764 F.3d at 418; *King*, 741 F.3d at 1091. Whereas these latter groups could conceivably enjoy a First Amendment right to rely only on separate bank accounts, candidate-coordinating and party-imitating groups like the ADC do not. After all, this Court has recognized that expenditures coordinated with a candidate are the functional equivalent of "'disguised contributions'" to those candidates. *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 443 (2001) (quoting *Buckley v. Valeo*, 424 U.S. 1, 47 (1976) (per curiam)). And even after this Court's decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), government may restrict contributions to political parties and

their affiliates "regardless of how those funds are ultimately used." *Republican Nat'l Comm. v. FEC*, 698 F. Supp. 2d 150, 159 (D.D.C.) (three-judge court) (quotation marks, citations omitted), *aff'd*, 561 U.S. 1040 (2010). Either way, the ADC's unique arrangement will frustrate the Court's ability to reach the ADC's proposed first question.

B. Alabama's regulation of campaign finances is atypical.

This case is also a bad vehicle for reaching the second question the ADC has proposed. That question asks whether the PAC transfer law is appropriately tailored to accomplish legitimate state interests. But such a question cannot be answered without reference to a jurisdiction's other campaign-finance regulations. In this instance, Alabama's campaign-finance regime is sufficiently atypical that any decision on the merits will provide very little precedential value.

As the Eleventh Circuit explained below, a chief consideration in the tailoring analysis is the "'impact'" a challenged regulation has on "'political dialogue.'" Pet. App. 26a (quoting *Randall*, 548 U.S. at 247). But it is difficult to assess this question in a vacuum. Consider this Court's decision in *McCutcheon v. FEC*. There, the Court noted that the federal aggregate contribution limits were "layered on top" of other rules, thus creating a "'prophylaxis-upon-prophylaxis approach'" to regulation that the Court has found particularly offensive to First Amendment values. *See* 134 S. Ct. at 1458 (quoting *FEC v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 479 (2007) (opinion of Roberts, C.J.)).

The Court also looked to other existing campaign-finance rules as a benchmark for determining better-tailored alternatives to achieving the relevant governmental interests. *See id.* at 1458–59.

Employing a similar analysis here would not be particularly useful from a national perspective. This is because Alabama is one of only a handful of States that has chosen not to impose candidate contribution limits and the complex web of rules necessary to avoid circumvention of such limits. Indeed, one of the ADC's *amici* has noted that "Alabama is joined by nine other states which have declined to impose limits on PAC contributions to candidates." Ctr. for Competitive Politics Br. 6 n.4. Of course, most other jurisdictions, including the federal government, have adopted a more complex approach to regulating campaign finances. The Court would be wise to concentrate its efforts on cases that are more representative of the Nation as a whole.

C. Additional, unanswered legal questions complicate this case.

Beyond these case-specific vehicle problems, there are broader legal reasons that make this case more complicated than it might seem at first blush.

For example, this Court has never decided whether its reasoning in *Citizens United* forbids not just "ban[s] on corporate speech" but also *contribution limits* as applied to groups that make only independent expenditures. 558 U.S. at 337. Should it grant cert, the Court will have to resolve this antecedent legal question *before* it can decide whether the First

Amendment prohibits contribution limits as applied to hybrid PACs' independent-spending accounts.

Should it grant cert, the Court will also have to probe the distinction between spending that is independent and spending that is coordinated with candidates. As the Tenth Circuit explained, this Court "has long upheld provisions which designate coordinated expenditures as indirect contributions." *King*, 741 F.3d at 1103. But the Court has not provided much guidance on what, exactly, constitutes "coordination" such that a State may permissibly regulate it. For example, in a 2010 Alabama primary election held just prior to passage of the PAC transfer law, a longtime campaign-finance consultant perceived coordination when a rival campaign's consultant appeared on disclosure reports as an officer for several of the PACs that funneled money to the shadowy "True Republican PAC." *See* BIO App. at 15a. Does that count?

Both of these questions have ramifications that extend far beyond the confines of this case. The best course for the Court, therefore, would be to avoid such a thicket by denying cert in this case and awaiting cases that better present these issues.

III. The judgment below is correct.

Finally, the Court should deny review for lack of any error in the judgment below. For multiple reasons, the PAC transfer law appropriately serves Alabama's anticorruption interests under the "relatively complaisant" and "less rigorous" standard of "closely drawn" scrutiny. *FEC v. Beaumont*, 539 U.S. 146, 161 (2003); *McConnell v. FEC*, 540 U.S. 93, 137 (2003),

overruled on other grounds by Citizens United, 558 U.S. at 336–66.

As an initial matter, the ADC is wrong to argue (contrary to its admission below) that the PAC transfer law must satisfy strict scrutiny. *Cf.* doc. 37 at 10 ("The Act's complete ban on transfers between PACs . . . is subject to 'closely drawn' scrutiny."). The ADC bases this argument on its erroneous view that the law forces it to forgo fundraising from "moderate income people like teachers" and instead rely only on the benevolence of "wealthy individuals and businesses." Pet. 32. This is hyperbole, of course; teachers can still give unlimited amounts to the ADC and the teachers' association can even assist the ADC in their solicitation. But the argument is also flawed more fundamentally. The "degree of scrutiny," this Court has explained, "turns on the *nature of the activity regulated*." *Beaumont*, 539 U.S. at 162 (emphasis added). Because the activity regulated here is simply the act of funneling political money, the reasons for applying closely drawn scrutiny apply with full, if not greater, force: "[R]estrictions on political contributions have been treated as merely 'marginal' speech restrictions . . . because contributions lie closer to the edges than to the core of political expression." *Id.* at 161 (citing *Colo. Republican*, 533 U.S. at 440).

With the proper standard of scrutiny in clear view, it is easy to see why the PAC transfer law is valid. Under this level of scrutiny, the law is valid if it (1) serves a "sufficiently important interest" and (2) avoids "unnecessary abridgement of associational freedoms." *McCutcheon*, 134 S. Ct. at 1444 (quotation

marks, citation omitted). As briefly described below, Alabama's law passes both tests with flying colors.

A. The PAC transfer law serves Alabama's anticorruption interests.

There is no need to belabor the ways the PAC transfer law assists Alabama in preventing real or apparent *quid pro quo* corruption. As noted above, the law certainly does this with respect to groups like the ADC, who act as a branch of a political party and who in fact coordinate their spending with candidates. As the Eleventh Circuit found below, moreover, the law also plays this role more generally, with respect to any group that refuses to meaningfully separate its direct-candidate-contribution and putative independent-spending activities. *See* Pet. App. at 16a–24a. Critics of this position have observed that neither one of these activities "by itself is corrupting." *King*, 741 F.3d at 1101; *see also* Mo. PAC Br. at 12–13. But this ignores a crucial reality—that a PAC's direct candidate contributions can include not just cash payments but also coordinated spending with candidates. It is logically impossible to allow the same person to control both that coordinated spending and the PAC's supposedly non-coordinated spending. As the Eleventh Circuit put it below: "How could a person simply 'forget,' for example, everything she knows about coordinated spending efforts or contributions to candidates when turning her focus to the independent expenditure-only account?" Pet. App. 23a.

A final thing to add on this point is that the PAC transfer law prevents actual or apparent corruption in all of its applications. Below, the State offered ample

evidence of this fact in the form of numerous newspaper articles, a federal indictment, and the testimony of an experienced campaign finance consultant. This evidence powerfully demonstrated the *inherent* capacity of PAC transfers to conceal "disguised contributions" from PACs to candidates. *Colo. Republican*, 533 U.S. at 446 (quotation marks, citation omitted). And none of this evidence turned on whether a PAC publicly disavowed an intent to make direct candidate contributions. The potential of corruption inherent in PAC-to-PAC transfers stems from the *delivery* of money—not what the ultimate recipient does with it. *Cf.* Cato Br. at 7 (acknowledging the propriety of "anti-coordination laws").

B. The PAC transfer law does not unnecessarily abridge First Amendment activity.

With respect to the tailoring analysis, it first bears noting that the ADC's arguments become a moot point to whatever extent the PAC transfer law uniquely serves Alabama's anticorruption interests as applied to the ADC. If the law serves such an interest *as to* the ADC, then it follows that the law is properly tailored *as to* the ADC, and the Court need not undertake any general tailoring analysis.

Having said that, the PAC transfer law is valid even if the Court undertakes a more comprehensive tailoring analysis. Here, the selection of *Buckley*'s "closely drawn" scrutiny standard weighs heavily in the law's favor. As compared to strict scrutiny, this "less rigorous standard" "shows proper deference to [legislatures'] ability to weigh competing constitu-

tional interests in an area in which [they] enjoy particular expertise." *McConnell*, 540 U.S. at 137. Accordingly, the basic requirement is "'a fit that is not necessarily perfect, but reasonable'"— a fit "'that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served.'" *McCutcheon*, 134 S. Ct. at 1456 (quoting *Bd. of Trustees of State Univ. of N.Y. v. Fox,* 492 U.S. 469, 480 (1989)). For the PAC transfer law, meeting that requirement is not a problem.

First, the ADC's complaints about tailoring do not square with *Buckley*'s rejection of an overbreadth challenge to the basic federal campaign contribution limit (at the time, of $1,000 per candidate). In bringing that particular attack, "[t]he challengers argued that the base limit was fatally overbroad because most large donors do not seek improper influence over legislators' actions." *Id.* at 1445. "Although the Court accepted that premise, it nevertheless rejected the overbreadth challenge for two reasons." *Id.* "First, it was too 'difficult to isolate suspect contributions' based on a contributor's subjective intent." *Id.* (quoting *Buckley*, 424 U.S. at 30). "Second, 'Congress was justified in concluding that the interest in safeguarding against the appearance of impropriety requires that the *opportunity* for abuse inherent in the process of raising large monetary contributions be eliminated.'" *Id.* (quoting *Buckley*, 424 U.S. at 30 (emphasis added)).

In addition, the ADC's tailoring complaints ignore just how narrow the PAC transfer law really is. The law in fact restricts an even "narrow[er] slice of

speech" than did the personal-solicitation *ban* for judicial candidates that the Court recently upheld. *Williams-Yulee v. Fla. Bar*, 575 U.S. ___, 135 S. Ct. 1656, 1670 (2015). To reiterate, the PAC transfer law does not limit the amount of independent expenditures PACs can make. It does not limit the amount of contributions PACs can make to candidates. Nor does it in any way disturb PACs' ability to receive contributions from individuals and corporations. Indeed, the law still allows unbridled coordination between PACs to influence elections through independent expenditures—so long as those PACs do not engage in the transactions that previously derailed the system. Given this modest and singular contribution to Alabama law, no one can accuse the State of taking the "'prophylaxis-upon-prophylaxis approach'" the Court has condemned in other contexts. *McCutcheon*, 134 S. Ct. at 1458 (quoting *Wisc. Right to Life*, 551 U.S. at 479 (opinion of Roberts, C.J.)).

Failing to consider these points, the ADC instead takes two divergent tacks in its petition. On one hand, it suggests that Alabama's other campaign-finance laws are sufficient to address the problem of PAC transfers. On the other hand, it argues that the law is not broad or complex enough to address that problem. Neither tack, however, is persuasive.

For one thing, existing laws alone will not do the trick. *Cf.* Pet. at 37–38. That is certainly the case for Alabama's enhanced disclosure and disclaimer laws—even if they do mean that "Alabama now requires more frequent campaign-finance reporting than all states other than Florida." Pet. 9. As demonstrated above, PAC-to-PAC transfers *inherently* undermine

disclosure rules. Thus, under Alabama's new system of electronic (and more frequent) reporting, an experienced campaign finance consultant trying to learn who funded the True Republican PAC might not need to use two staffers over two days before giving up the project. *Cf.* BIO App. at 11a. But the new reporting measures will not change the ultimate futility of her task.

The same is true for Alabama's law making it unlawful to make a contribution "in the name of another person." ALA. CODE § 17-5-15(a); *cf.* Pet. at 34. Like provisions forbidding earmarking, this "false-name" statute "reach[es] only the most clumsy attempts to pass contributions through to candidates." *Colo. Republican*, 533 U.S. at 462. There is thus no reason "[t]o treat [it] as the outer limit of acceptable tailoring." *Id.*

The ADC's other line of tailoring arguments, that the law is not complex enough, fails to persuade as well. *Cf.* Pet. at 33–36. At the risk of oversimplification, Alabama's existing campaign-finance regime can be summarized as follows:

- Publicly disclose all campaign spending and contributions.
- Do not give a campaign contribution in the name of another.
- Do not transfer funds among PACs.

In place of these straightforward rules, the ADC proposes a maze of regulations. It proposes rules against creating multiple "affiliated" PACs. *See* Pet. at 33–34. It proposes rules against "earmarking" of contributions. *See id.* at 34. It proposes rules against contributing in the name of another (a provision, of course, that Alabama already has on the books). *See id.* at 34.

It proposes rules against contributing both to a candidate and a PAC supporting that same candidate. *See id.* at 35. And it proposes rules for the "close[]" regulation of intermediary or conduit PACs. *See id.* at 36. It proposes each of these things all while acknowledging that the "federal system [*also*] has adopted narrowly drawn specific transfer restrictions." Pet. 36 n.21 (citing *McCutcheon*, 134 S. Ct. at 1459).

There is no reason to believe that adopting these proposals will eliminate the State's corruption concerns. But the problem, more fundamentally, is that adopting these rules themselves is far more offensive to First Amendment values than the straightforward system Alabama has chosen. In the words of one of the ADC's preferred appeals-court decisions, "it is no unfounded fear that one day the regulation of elections may resemble the Internal Revenue Code, and that impossible complexity may take root in the very area where freedom from intrusive governmental oversight should matter most." *NCRL III*, 525 F.3d at 296. Nothing in the First Amendment binds Alabama to the "maze of rules, sub-rules, and cross-references" the ADC is now proposing. *Id.* And that is certainly the case under the less rigorous standard of scrutiny that is applicable in this context.

* * *

Even after this Court's decisions in *Citizens United* and *McCutcheon*, governments may take a wide array of steps to protect the integrity of their elections. They may altogether ban corporations and unions from contributing to candidates. *See Beaumont*, 539 U.S. at 149. They may prohibit nonprofit advocacy corporations from soliciting contributions from members of

the general public. *See Citizens United*, 558 U.S. at 358–59 (citing *FEC v. Nat'l Right to Work Comm.*, 459 U.S. 197 (1982)). They may limit contributions to, from, and among PACs and may impose rules against earmarking contributions, proliferation of PACs, and certain kinds of fund transfers. *See McCutcheon*, 134 S. Ct. at 1446–47. And they may ban corporate and union contributions to political parties and limit all contributions to political parties and their affiliates. *See Republican Nat'l Comm.*, 698 F. Supp. 2d at 153.

In light of these holdings, there should be no question about the PAC transfer law's validity, especially as applied to the ADC.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

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March 1, 2017

Counsel for Respondents

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

[FILED 2011 Aug-01]

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
v.	)	Crim. No. 2:10 cr 186-MHT
MILTON E. MCGREGOR, RONALD E. GILLEY, THOMAS E. COKER, ROBERT B. GEDDIE, JR., JARROD D. MASSEY, LARRY P. MEANS, JAMES E. PREUITT, QUINTON T. ROSS JR., HARRI ANNE H. SMITH, JARRELL W. WALKER JR., and JOSEPH R. CROSBY,	)	[18 U.S.C. §§ 371, 666(a)(1)(B), 666(a)(2), 1341, 1343, 1346, 1951, 1956(a)(1)(B)(i), 1001(a)(2), 1512(c)(2), and 2]
	)	**INDICTMENT**
Defendants.	)	

The Grand Jury charges that:

Introduction

At all times relevant to this Indictment, unless otherwise stated:

* * *

Relevant Individuals

Gambling Facility Operators and Employees

4. MILTON E. MCGREGOR owned a controlling interest in Macon County Greyhound Park, Inc., also known as Victoryland, in Macon County, Alabama, and Jefferson County Racing Association, in Jefferson County, Alabama, as well as ownership interests in other entertainment and gaming facilities in Alabama, which offered or sought to offer "electronic bingo" gambling machines to the public.

5. RONALD E. GILLEY owned a controlling interest in the Country Crossing real estate, entertainment, and gambling development in Houston County, Alabama, which sought to offer "electronic bingo" gambling machines to the public. MCGREGOR provided financial backing to GILLEY for the construction and operation of Country Crossing, in exchange for a percentage of the business's gross receipts.

6. JARRELL W. WALKER JR. was an employee and spokesman for GILLEY and GILLEY's Country Crossing enterprise.

Lobbyists

7. THOMAS E. COKER was a registered lobbyist operating a lobbying and consulting business in Montgomery, Alabama. MCGREGOR was one of COKER's largest clients.

8. ROBERT B. GEDDIE JR. was a registered lobbyist and a partner in a lobbying and consulting business in Montgomery, Alabama. During the 2009 and 2010 legislative sessions, GEDDIE worked as a lobbyist for MCGREGOR.

9. JARROD D. MASSEY was a registered lobbyist operating a lobbying and consulting business in Montgomery, Alabama. MASSEY's largest client was GILLEY.

10. Lobbyist A was a registered lobbyist who worked for MASSEY.

Alabama Legislators and Staff

11. Senator LARRY P. MEANS was serving his third term in the Alabama Senate, representing the 10th District, which included Cherokee and Etowah Counties. MEANS was a candidate for reelection in the 2010 Senate election cycle.

12. Senator JAMES E. PREUITT was serving his fifth term in the Alabama Senate, representing the 11th District. PREUITT also owned an automobile and truck dealership in Talladega, Alabama. PREUITT was a candidate for reelection in the 2010 Senate election cycle.

13. Senator QUINTON T. ROSS JR. was serving his second term in the Alabama Senate, representing

the 26th District, which includes Montgomery, Alabama. ROSS was a candidate for reelection in the 2010 Senate election cycle.

14. Senator HARRI ANNE H. SMITH was serving her third term in the Alabama Senate, representing the 29th District, which includes part of Houston County, in which GILLEY's Country Crossing was located. SMITH was a candidate for reelection in the 2010 Senate election cycle.

* * *

21. In January 2010, at the commencement of the 2010 Alabama legislative session, various members of the Legislature introduced several pieces of legislation that, if enacted, would be favorable to the business interests of the operators of gambling enterprises, including MCGREGOR and GILLEY. This legislation primarily distilled to two measures: (1) proposed amendments to the Constitution of Alabama that would authorize the operation of electronic bingo gambling machines in Alabama, and (2) proposed general legislation that would preclude law enforcement officials from interfering with the operations of electronic bingo gambling establishments until a public referendum was held on the Constitutional Amendment.

* * *

COUNT ONE
(Conspiracy, 18 U.S.C. § 371)

27. The allegations contained in Paragraphs 1 through 26 of this Indictment are realleged as though fully set forth herein.

28. From in or about February 2009 through in or about August 2010, in the Middle District of Alabama and elsewhere, defendants

MILTON E. MCGREGOR,
RONALD E. GILLEY,
THOMAS E. COKER,
ROBERT B. GEDDIE JR.,
JARROD D. MASSEY,
LARRY P. MEANS,
JAMES E. PREUITT,
QUINTON T. ROSS JR.,
HARRI ANNE H. SMITH,
JARRELL W. WALKER JR.
and
JOSEPH R. CROSBY,

along with co-conspirator Lobbyist A, and other persons known and unknown to the Grand Jury, did knowingly and willfully combine, conspire, confederate, and agree with each other and with other persons known and unknown to the Grand Jury to commit federal programs bribery, in that:

A. the defendants and others known and unknown to the Grand Jury corruptly gave, offered, and agreed to give money and other things of value to Alabama State legislators and legislative staff, as agents of the State of Alabama, with intent to influence and reward them in connection with pro-gambling legislation, which was any business, transaction, and series of transactions of Alabama involving anything of value of $5,000 or more, in violation of Title 18, United States Code, Section 666(a)(2); and

B. Alabama State legislators and legislative staff, as agents of the State of Alabama, corruptly solicited, demanded, accepted and agreed to accept money and things of value from defendants and others, intending to be influenced and rewarded in connection with pro-gambling legislation, which was any business, transaction, and series of transactions of Alabama involving anything of value of $5,000 or more, in violation of Title 18, United States Code, Section 666(a)(1)(B).

* * *

31. It was further a purpose of the conspiracy for lobbyists, including COKER, GEDDIE, MASSEY, and Lobbyist A, along with SMITH, to assist MCGREGOR and GILLEY by corruptly providing and offering to provide payments and campaign contributions, among other things of value, to members of the Alabama Legislature, including MEANS, PREUITT, ROSS, SMITH, Legislator 1, Legislator 2, and Legislator 3, in a manner that would conceal the true nature, source, and control of the money and the fact that it was being provided by MCGREGOR and GILLEY, with the assistance of lobbyists and SMITH, to the legislators in return for their favorable votes on and support of pro-gambling legislation.

* * *

36. It was a further part of the conspiracy that MCGREGOR, GILLEY, and lobbyists and other individuals working for them, including GEDDIE, COKER, MASSEY, WALKER, and Lobbyist A, would and did disguise payments made to legislators from

whom they sought support by concealing illicit payments through political action committees ("PACs") and using conduit contributors.

* * *

142. On or about March 11, 2010, SMITH arranged with GILLEY to funnel $400,000 into her reelection campaign, using a PAC, thereby hiding GILLEY as the source of the funds.

* * *

146. On or about March 24, 2010, SMITH asked GILLEY about his promised campaign contributions, and GILLEY assured her that he would "get those checks busted up, the way they need to be." As the conversation ended, GILLEY instructed SMITH to put pressure on other legislators to vote in favor of the pro-gambling bill: "Stay tough on 'em now. . . . We gotta have 'em right now . . . . Lean on everyone of 'em you can." SMITH reassured GILLEY: "I will."

147. Later that same day, on or about March 24, 2010, SMITH and GILLEY continued their discussion of how GILLEY's contribution to SMITH would be concealed by running it through various PACs. When GILLEY asked SMITH if she was comfortable using a PAC with a name associated with a different political party than SMITH's, SMITH consented, explaining, "'Cause what we're gonna do is put it through another . . . . Like, what we'll do, it will go to that one, and then we're gonna move it to a different one."

* * *

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

[FILED 2014 Apr-25]

THE ALABAMA DEMOCRATIC CONFERENCE, an Alabama political action committee, et al.,	)	
Plaintiffs,	)	Civil Action No.
v.	)	5:11-cv-02449-JEO
LUTHER STRANGE, in his official capacity as Attorney General of Alabama, et al.,	)	
Defendants.	)	

DECLARATION OF ASHLEY NEWMAN

Ashley Newman declares the following:

1. For the past seventeen years, I have been a campaign-finance compliance consultant in Alabama. Since August 2010, I have owned my own campaign-finance compliance firm, Newman and Associates LLC, in Montgomery, Alabama. Prior to that, from October 1997 to August 2010, I offered my consulting services as an employee of the Montgomery accounting firm Wilson, Price, Barranco, Blankenship, & Billingsley, PC. I thus have provided campaign-finance compliance consulting services both before and

after the passage of Ala. Act 2010-765, the Alabama law at issue in this litigation.

2. At my firm, and before that at Wilson, Price, my job is and has been to "handle the money" for my clients, who are typically candidates for the Alabama Legislature or an Alabama statewide office. This includes keeping records of a candidate's receipts and expenses and filing the required campaign disclosure reports with the Alabama Secretary of State or other appropriate agency. As such, I often serve as treasurer of my client's principal campaign committee or as my client's "designated filing agent" for purposes of filing campaign disclosure reports.

3. On occasion, my clients have asked me to perform other campaign-finance-related tasks. For example, they have asked me to investigate the source of a contribution they received. They have also asked me to investigate the sources of an opponent's campaign finances for use in their campaign's messaging operations. Based on my experience in general, and these inquiries in particular, I am familiar with the prevailing methods of financing political campaigns in Alabama—including, before passage of Act No. 2010-765, the transfer of funds among political action committees known as "PAC-to-PAC transfers."

4. Based on my knowledge and experience in the field of campaign finance, I have observed that PAC-to-PAC transfers can be used to obfuscate the true source of a campaign contribution and provide ill-intentioned donors and candidates an opportunity to covertly exchange campaign contributions for political favors. As I explain further below, the opportunity for

covert deal-making between donors and candidates is available even if a PAC represents that it will not coordinate with candidates its expenditure of the PAC-transferred funds.

5. Based on my knowledge and experience in the field of campaign finance before Act No. 2010-765 became law, the basic steps involved in concealing a campaign contribution through PAC-to-PAC transfers were straightforward: An individual or interest group could make a contribution to one PAC, which could then make a contribution to another PAC, which could then make a contribution to another PAC, and on and on until some PAC eventually delivered the money to the candidate. By then, there would be no way to effectively trace the contribution from the original contributor to the ultimate recipient. Based on my knowledge and experience in the field of campaign finance, because there have never been limits on the number of PACs any one person can create, a single campaign operative could control all of the PACs in the contribution chain and carry out the scheme simply by moving credits from one ledger to another. No actual money had to change hands.

6. From this basic model, more sophisticated schemes were possible. Reviewing public disclosure reports filed prior to passage of Act 2010-765, I observed that some donors would break up large contributions into smaller, discrete "chunks" of funds and then run these smaller amounts through their own series of PAC-to-PAC transfers. In addition, I observed situations where donors appeared to stagger the timing of their donations to exploit the periodic nature of

disclosure deadlines and further conceal or obscure the source of the funds. By "exploiting the periodic nature of disclosure deadlines," I mean that donors would wait until just after a disclosure deadline to deliver their contribution so as to maximize the time before the public could learn of the contribution. Based on the tactics described in this declaration, I agree that PAC-to-PAC transfers can be used to obscure and conceal the source of contributions.

7. An example from the 2010 Alabama state elections illustrates these points. In 2010, one of my clients was Byrne for Alabama, Inc., Bradley Byrne's campaign for the Republican gubernatorial nomination. At some point, a PAC named the "True Republican PAC" began running attack ads in opposition to Mr. Byrne's candidacy, and the Byrne campaign asked me to determine who was financing these ads. Although I could confidently speculate about the original source of True Republican PAC's funding (based on my knowledge of who would be motivated to attack Mr. Byrne), I could not complete my assignment with absolute certainty using the campaign disclosure reports on file in the Alabama Secretary of State's office. That was because virtually all of True Republican PAC's funds had been transferred through multiple PACs in a confusing manner on different dates. Indeed, two Byrne campaign employees and I spent over two work days trying to ascertain the original source of True Republican PAC's contributions, but we could not definitively do so.

8. Consider the contribution report True Republican PAC filed on May, 26, 2010, within 5-10 days before the June 1, 2010 Alabama primary election.[1] *See* Ex. 1 (True Republican PAC's 2010 primary 10-5day report). According to this report, 21 PACs contributed $877,441.00 to True Republican PAC during this reporting period through 37 separate contributions; no individual donors are listed. *See id.* at 2-6. Also according to the report, over half of the PACs identified as contributors to True Republican PAC reported just one of three addresses. The address listed for Mainstream PAC, First Decade PAC, and BIZ PAC is P.O. Box 230035 in Montgomery. *See, e.g., id.* at 2. The address listed for Fund for Alabama's Children and Education, Environ-mental Campaign Fund, Penny PAC, and Arbor Committee PAC is 3326 Bankhead Avenue in Montgomery. *See, e.g., id.* at 3, 5. And the address listed for STA PAC, TEC PAC, JEFFCO PAC, and TOC PAC is 1751 Indian Creek Drive in Birmingham. *See, e.g., id.* at 4. I reviewed these PACs' filings on the Alabama Secretary of State's website and discovered that the same person controlled each of the PACs that listed a common address.

9. Now consider trying to trace the contributions True Republican PAC received from Deserve Victory

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[1] Prior to 2011, PACs had to file disclosure reports annually, 45 days before an election, and within 10-5 days before an election. I retrieved this report, and each of the campaign reports referenced in this declaration, from the Alabama Secretary of State's online searchable database. *See* http://arc-sos.state.al.us/CGI/ELCNAME.MBR/INPUT.

PAC, just one of True Republican's 21 contributor PACs:

- According to its May 26, 2010 contribution report, ***True Republican PAC*** received separate contributions from Deserve Victory PAC of $10,000 and $5,000 on April 19, 2010, and $4,000 on May 11, 2010, for a total of $19,000. *See* Ex. 1 at 2, 3, 5.
- ***Deserve Victory PAC*** did not receive any contributions within 45 days of the 2010 primary. See Ex. 2 at 1 (summary form from Deserve Victory's 2010 primary 10-5-day report). On its report filed 45 days before the 2010 primary, Deserve Victory reported receiving the following contributions: (1) $5,000 from TAG PAC on February 10, 2010; (2) $5,000 from MWL Architects on February 22, 2010; (3) $50,000 from TOC PAC on March 3, 2010; and (4) $20,000 from Merit PAC on April 2, 2010. *See* Ex. 3 at 2 (Deserve Victory's 2010 primary 45-day report).
- According to the Alabama Secretary of State's online filing sys-tem, ***Merit PAC***, the source of Deserve Victory's $20,000 contribution on April 2, 2010, has filed only one report in the course of its existence—a 45-day report in advance of the 2010 primary election. On that report, Merit PAC reported receiving just two contributions: (1) $50,000 from TOC PAC on March 15, 2010 and (2) $15,000 from TAG PAC on April 9, 2010. *See* Ex. 4 at 2 (Merit PAC's 2010 primary 45-day report).

- ***TOC PAC***—the source of Merit PAC's $50,000 contribution on March 15, 2010, and Deserve Victory PAC's $50,000 contribution on March 3, 2010—received contributions almost exclusively from PACs prior to the 2010 primary election. For example, its report filed April 16, 2010 lists over $137,000 in contributions from the following PACs: Secure PAC, Alabama Voice of Teachers, Green PAC, and Jefferson PAC. *See* Ex. 5 at 2 (TOC PAC's 2010 primary 45-day report).

I could go on, but the point should be clear: PAC-to-PAC transfers make it impossible to determine the source of the transferred money or who is responsible for the actions a PAC takes. Indeed, the example in this paragraph merely scratches the surface of the problem and vastly understates the difficulty in identifying the true source of a contribution. I later learned from news accounts that the head of the Alabama Education Association eventually admitted that his association had used PAC-to-PAC transfers to covertly finance the True Republican PAC. *See, e.g.*, Ex. 6 at 1 (Editorial, *Cleaning Up Campaigns*, Birmingham News, July 25, 2010). But before the election, that fact was far from obvious. When I tried to trace the source of True Republican PAC's funds during the 2010 Alabama primary campaign, I gave up after tracing the funds through ten "generations" of transfers without a definitive answer.

10. PAC-to-PAC transfers also impeded members of the public who are not fulltime campaign-finance compliance consultants from identifying the true

source of campaign funds. Numerous people have contacted me because of my knowledge and experience in campaign finance and asked me to help identify the source of various candidates' funding. During the 2010 primary election, for example, a reporter for a state newspaper contacted me with similar questions regarding True Republican PAC's finances. He wanted to write an article about the attack ads against my client, Bradley Byrne, but could not determine the source of the funds being used to finance the advertisements.

11. The True Republican PAC example from the 2010 Alabama gubernatorial primary highlights the ease with which PAC-to-PAC transfers can be used as a tool to conceal efforts between a PAC and a candidate to work together. For example, Claire H. Austin was an officer of the Deserve Victory PAC as well as TAG PAC in 2010. *See* Ex. 7 at 1 (summary form from Deserve Victory annual report dated January 25, 2010); Ex. 8 at 1 (summary form from TAG PAC annual report dated January 25, 2010). She thus conceivably played some role in delivering political contributions to the True Republican PAC through PAC-to-PAC transfers before the 2010 Alabama primary election. At the same time, however, her company, Alabama Strategy Group LLC, was employed as a fundraiser for gubernatorial candidate Tim James, one of Bradley Byrne's opponents in that election. *See* Ex. 9 at 1 (Articles of Organization for Alabama Strategy Group LLC, identifying Claire Austin as "Member/Organizer"); Ex. 10 at 10, 11, 22, 30 (Tim James 's 2010 primary 45-day expenditure report, disclosing $4,986.34 in expenditures to Alabama Strategy Group

LLC). Based on my knowledge and experience in the field of campaign finance, it is thus highly likely that True Republican PAC coordinated its attack ads against Bradley Byrne with his opponent Tim James. Assuming so, donors to the True Republican PAC—whomever they were—were able to effectively deliver campaign contributions to Tim James without anyone knowing about it. Thus, PAC-to-PAC transfers can be used to conceal and obscure the actual source of the funds and the relationship between donors and candidates.

12. PAC-to-PAC transfers can conceal cooperative arrangements be-tween a PAC and a candidate even if a PAC represents that it will not coordinate with candidates. The Alabama Secretary of State's website shows that True Republican PAC filed five disclosure reports over the course of its existence in 2010. In none of those reports does True Republican PAC report making an expenditure to a candidate or any other entity that is obviously related to a candidate. Indeed, those reports show that True Republican PAC made expenditures to only two entities, all for purposes of advertising. One is Media Strategies and Research, a firm based in Denver, Colorado. The other is WIN 98.5 FM, a radio station in Demopolis, Alabama. *See* Ex. 1 at 7; Ex. 11 at 5 (True Republican PAC's 2010 primary 45-day report); Ex. 12 at 3 (True Republican PAC's 2010 primary runoff 10-5 day report); Ex. 13 at 2 (True Re-publican PAC's 2010 general election 45-day report); and Ex. 14 (True Republican PAC's termination report dated Sept. 20, 2010). I do not know whether True Republican PAC claimed to be an "independent-expenditure-only" PAC, but there

are no rules or other reasons that would prevent it from doing so.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 22, 2014 in Montgomery, Alabama.

[signature]
Ashley Newman

SWORN TO and subscribed before me on this the 22nd day of April, 2014.

[signature]
Notary Public
(SEAL) My Commission Expires: 9/8/2015