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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

Utah Taxpayers Association, a Utah nonprofit corporation, Utah Taxpayers Legal Foundation, a Utah nonprofit corporation, Libertas Institute, a Utah nonprofit corporation, Plaintiffs, v. Spencer Cox, in his Official Capacity as Utah Lieutenant Governor, Sean D. Reyes, in his Official Capacity as Attorney General of the State of Utah, Defendants.	**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** Case No. 2:15-cv-00805-DAK Judge Dale A. Kimball

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and DUCivR-56, Defendants Utah Lieutenant Governor Spencer Cox and Utah Attorney General Sean D. Reyes, both named in this suit in their official capacities ("Defendants"), move for summary judgment on in this matter.

A. INTRODUCTION

At issue in this case is the constitutionality of several provisions of Chapter 11, Part 7 Title 20A of the Utah Code, which is where Utah's Election Code treats "Campaign Financial Reporting by Corporations." The statutory scheme was intended by the Utah legislature to curtail what they found to be specific problems in political campaign contributions and possible ill effects of finance on political campaigns and the myriad decisions to enact policy in law.

Plaintiffs' Complaint challenges for constitutionality the statutory amendment of House Bill 43, Campaign Finance Reporting by Corporation," 2013 Utah Laws 318 ("H.B. 43"), which passed in the 2013 of the General Session of the Utah Legislature, was signed into law by Governor Herbert that year, and modified sections of Chapter 11, "Campaign and Financial Reporting Provisions, of Title 20A, the Utah Election Code. Complaint, Doc. #2, ¶1 ("Complaint"); *see also* Exh. 1, H.B. 43, attached for the Court's convenience.

This matter comes before the Court on cross-motions for summary judgment with the parties stipulating the undisputed facts that they believe are the only necessary facts for this Court to make a final determination in this case as a matter of law. Defendants contend that this matter is not justiciable, and even if it were, Defendants are entitled to at least partial summary judgment on the merits. Plaintiffs contend otherwise, asserting they are entitled to summary judgment on the merits.

B. STANDARDS OF REVIEW

I. SUMMARY JUDGMENT

Summary judgment is appropriate "'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *University of Utah v. Shurtleff*, 252 F.Supp.2d 1264, 1274 (D. Utah 2003) (quoting Fed.R.Civ.P. 56(c); citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986)). "In reviewing the factual record, we construe all facts and make reasonable inferences in the light most favorable to the non-moving party." *Id*. (citing *Byers v. City of Albuquerque*, 150 F.3d 1271, 1274 (10th Cir.1998)). "A 'material fact' is one which could have an impact on the outcome of the lawsuit, while a 'genuine issue' of such a material fact exists if a rational [factfinder] . . . could find in favor of the non-moving party based on the evidence presented." *Chasteen v. UNISIA JECS Corp.*, 216 F.3d 1212, 1216 (10th Cir.2000).

Furthermore, the Court's Local Rules of Practice require a summary judgment motion to include several sections. DUCivR 56–1. Relevant here, the motion must include a section entitled "Statement of Elements and Undisputed Material Facts" that contains:

> (A) Each legal element required to prevail on the motion;
> (B) Citation to legal authority supporting each stated element (without argument);
> (C) Under each element, a concise statement of the material facts necessary to meet that element as to which the moving party contends no genuine issue exists. Only those facts that entitle the moving party to judgment as a matter of law should be included in this section. Each asserted fact must be presented in an individually numbered paragraph that cites with particularity the evidence in the record supporting each factual assertion (e.g., deposition transcript, affidavit, declaration, and other documents).

Id. 56–1(b)(2) (footnote omitted). The motion must also include "[a]n argument section explaining why under the applicable legal principles the asserted undisputed facts entitle the party to summary judgment." *Id*. 56–l(b)(3).

II. FACIAL VERSUS AS-APPLIED CHALLENGES

Because this is in part a facial challenge to a duly-enacted statute, this Court is instructed to be especially cautious in assessing Plaintiffs' claims. "Facial challenges are strong medicine. Article III of the Constitution ensures that federal courts are not roving commissions assigned to pass judgment on the validity of the nation's laws, but instead address only specific 'cases' and 'controversies.'" *Ward v. Utah*, 398 F.3d 1239, 1246 (10th Cir. 2005). (quotation marks and citation omitted). As the Supreme Court has observed, "facial challenges are best when infrequent. . . . Although passing on the validity of a law wholesale may be efficient in the abstract, any gain is often offset by losing the lessons taught by the particular, to which common law method normally looks." *Sabri v.United States*, 541 U.S. 600, 608-09 (2004) (internal citations omitted). "Because facial challenges push the judiciary towards the edge of its traditional purview and expertise, courts must be vigilant in applying the most exacting analysis to such claims." *Ward*, 398 F.3d at 1247 (citing *Broadrick v. Oklahoma*, 413 U.S. 601, 611-12 (1973)). The Supreme Court has been absolutely clear that to succeed in a facial attack "the challenger must establish that no set of circumstances exists under which the Act would be valid"—an onerous burden, making it "the most difficult challenge to mount successfully." *United States v. Salerno*, 481 U.S. 739, 745 (1987).

In sum, Plaintiffs' burden on the likelihood of success on their facial challenge is not show that the Act is unconstitutional under ***any*** set of circumstances. *See Salerno*, 481 U.S.

at 745. This standard is particularly vigorously applied in a pre-enforcement challenge, where a plaintiff faces a "heavy burden" to demonstrate that the law is unconstitutional "not in any one instance or hypothetical application—but 'in *all* of its applications.'" *See Dias v. City and County of Denver*, 567 F.3d 1169, 1180 (quoting *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 497 (1982)).

Unless Plaintiffs argue in their Motion to argue that the Act is unconstitutional under ***any*** set of circumstances, they do not meet their burden on a facial challenge and Defendants are entitled to summary judgment on Plaintiffs' facial challenges. Even on the provisions Defendants find may be constitutionally infirm, as described below, Defendants specifically do not waive and reserve the right to argue that Plaintiffs have not met their burden on a facial challenge in response to Plaintiffs' cross-motion for summary judgment.

III. PRESUMPTION OF CONSTITUTIONALITY

State statutes enjoy the presumption of constitutionality. *United States v. Monts*, 311 F.3d 993, 996 (10th Cir. 2002); *accord City of Herriman v. Bell*, 590 F.3d 1176 (10th Cir. 2010); *Heideman*, 348 F.3d 1190-91; *Hopkins v. Oklahoma Public Employees Retirement System*, 150 F.3d 1155, 1160 (10th Cir.1998). In situations such as this, plaintiffs always bear the heavy burden of rebutting the presumption of constitutionality and courts refrain from second guessing legislative policy makers in determining whether given provisions are or are not constitutional. *Hopkins*, 150 F.3d at 1160. One federal court in this circuit recently addressed the presumption of constitutionality and the consequent role of judicial review:

> Constitutionality is a binary determination: either a law is constitutional, or it is not. This Court will not express a qualitative opinion as to whether a law is "good" or "bad," "wise" or "unwise," "sound policy" or a "hastily-considered overreaction." Similarly, this Court will not assess what alternatives the

> legislature could have chosen, nor determine whether the enacted laws were the best alternative. Such decisions belong to the people acting through their legislature. Put another way, in determining whether a law is constitutional, this decision does not determine whether either law is "good," only whether it is constitutionally permissible.

Col. Outfitters Assoc., 24 F.Supp.3d at 1055-56.

C. STATEMENT OF ELEMENTS AND UNDISPUTED MATERIAL FACTS[1]

I. Plaintiffs' Suit is Not a Live "Case" or "Controversy" Under Article III of the United States Constitution Due Plaintiffs Lack of Standing and Because the Case is Not Ripe

The U.S. Constitution delegates certain powers to each branch of the federal government and places limits on those powers. Article III vests "[t]he judicial Power of the United States ... in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." U.S. Const. art. III, § 1. Federal courts exercising this authority are "confine[d] ... to deciding actual 'Cases' or 'Controversies.'" *Hollingsworth v. Perry*, 133 S.Ct. 2652, 2661 (2013) (quoting U.S. Const. art. III, § 2). "In our system of government, courts have no business deciding legal disputes or expounding on law in the absence of such a case or controversy." *Already, LLC v. Nike, Inc.*, 133 S.Ct. 721, 726 (2013) (quotation omitted). "As used in the Constitution, those words do not include every sort of dispute, but only those historically viewed as capable of resolution through the judicial process." *Hollingsworth*, 133 S.Ct. at 2659 (quotation omitted). As the Supreme Court has explained, "no principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Clapper v. Amnesty Int'l, USA*, 133 S.Ct. 1138, 1146 (2013) (brackets omitted). The narrow scope of Article III, "which is built on

[1] Stipulation of Undisputed Facts, Doc. # 37, attached for the Court's convenience at Exhibit 2.

separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." *Susan B. Anthony List v. Driehaus*, 134 S.Ct. 2334, 2341 189 L.Ed.2d 246 (2014); *see also Hollingsworth*, 133 S.Ct. at 2659 ("[The case-or-controversy requirement] is an essential limit on our power: It ensures that we act as judges, and do not engage in policymaking properly left to elected representatives." (emphasis in original)).

As pertains to this case, two related doctrines, standing and ripeness, keep federal courts within their constitutional bounds. Standing concerns whether a plaintiff's action qualifies as a case or controversy when it is filed; ripeness prevents courts from entangling themselves in abstract disagreements by avoiding premature adjudication.

A. Standing

Plaintiffs raise important issues of Utah statutory law but have not standing to maintain their suit because they face absolutely no credible threat of prosecution, as recognized in the Stipulations of Fact. Statement ¶ 32.

To have standing, a plaintiff must have a "personal stake in the outcome of the controversy." *Summers v. Earth Island Institute*, 555 U.S. 488, 493 (2009). At an "irreducible constitutional minimum," three elements must be met to establish standing: First, the plaintiff must have suffered an "injury in fact" which is both "concrete and particularized" and "actual or imminent." *Clapper*, 133 S.Ct. at 1147-48, citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). *See also Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 140 (2010); *Summers*, 555 U.S. at 492-93. The alleged injury may not be "conjectural" or "hypothetical." *Lujan*, 504 U.S. at 560. Second, there must be a causal connection between the injury and the

conduct being complained about by plaintiff. *Id*. And third, it must be "likely" that the injury will be redressed by a favorable decision from the court. *Id*.

This case turns on the injury-in-fact requirement. "An injury sufficient to satisfy Article III must be concrete and particularized and actual or imminent, not conjectural or hypothetical. An allegation of future injury may suffice if the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." *Susan B. Anthony List*, 134 S.Ct. at 2341 (quotations omitted).

"[A]n actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." *Id*. at 2342. Instead, "a plaintiff satisfies the injury-in-fact requirement where he alleges an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, *and* there exists *a credible threat of prosecution thereunder*." *Id*. (quotation omitted, emphasis added.) "[T]he mere presence on the statute books of an unconstitutional statute, in the absence of enforcement or *credible threat of enforcement*, does not entitle anyone to sue, even if they allege an inhibiting effect on constitutionally protected conduct prohibited by the statute." *Mink v. Suthers*, 482 F.3d 1244, 1253 (10th Cir.2007) (quotation omitted) (emphasis added). A credible threat is one that is "well-founded" and "not 'imaginary or wholly speculative.'" *Susan B. Anthony List*, 134 S.Ct. at 2343 (quotations and citations omitted). "In other words, to satisfy Article III, the plaintiff's expressive activities must be inhibited by an objectively justified fear of real consequences." *Winsness v. Yocom*, 433 F.3d 727, 732 (10th Cir.2006) (quotation omitted). "When a plaintiff challenges a criminal statute under which he has not been prosecuted, he must show a 'real and immediate threat' of his future prosecution under that statute to satisfy the injury in fact

requirement." *D.L.S. v. Utah*, 374 F.3d 971, 974 (10th Cir. 2004) (quoting *Faustin v. City and County of Denver, Colo.*, 268 F.3d 942, 948 (10th Cir. 2001)).

1. To Defendants' knowledge, since the passage of H.B.43 only one entity has complied with the law's disclosure requirements. Statement ¶ 31.

2. Plaintiffs simply have not met the injury in fact requirement. They face no credible threat of prosecution due to the fact that in spite of Plaintiffs' Complaint which purports to detail their activity that arguably runs awry of the disclosure requirements of which they complain, the Defendants have unambiguously demonstrated via sworn stipulation—after disclosure by Plaintiffs—that since the passage of H.B.43 neither the Office of the Utah Lieutenant Governor nor the Office of the Utah Attorney General has ever conducted an investigation or enforcement action pursuant to Utah Code Ann. § 20A-11-701, *et seq*. generally, or specifically under Utah Code Ann. §§ 20A-11-101(5)(a); 20A-11-701(1)(a); 20A-11-703(2-3); Utah Code Ann. §§ 67-5-1(13) and 20A-11-703(3). Statement ¶ 32.

B. Ripeness

Ripeness, "aims to prevent courts from entangling themselves in abstract disagreements by avoiding premature adjudication." *Cellport Sys., Inc. v. Peiker Acustic GMBH & Co. KG*, 762 F.3d 1016, 1029 (10th Cir.2014) (quotation omitted); *see also Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967). "Even if all the relevant facts regarding a particular legal issue are known or knowable, a court does not have jurisdiction to resolve the issue unless that issue arises in a specific dispute having real-world consequences." Cellport Sys., 762 F.3d at 1029 (brackets and quotation omitted). "The doctrines of standing and ripeness originate from the same Article III limitation." *Susan B. Anthony List*, 134 S.Ct. at 2341 n. 5 (quotations omitted).

1. For the same reason that Plaintiffs have not injury in fact for standing, due to lack of credible fear of prosecution, their action is also not ripe.

2. "In evaluating ripeness the central focus is on whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1097 (10th Cir. 2006) (internal quotation marks omitted).

3. The Plaintiffs have detailed their activities regarding their political activities to the very offices they contend have enforcement power over non-compliance with the statutory system. *See generally* Complaint, Doc. #2.

4. To Defendants' knowledge, since the passage of H.B.43 only one entity has complied with the law's disclosure requirements. Statement ¶ 31.

5. Yet since the passage of H.B.43, neither the Office of the Utah Lieutenant Governor nor the Office of the Utah Attorney General has ever conducted an investigation or enforcement action pursuant to Utah Code Ann. § 20A-11-701, *et seq*. generally, or specifically under Utah Code Ann. §§ 20A-11-101(5)(a); 20A-11-701(1)(a); 20A-11-703(2-3); Utah Code Ann. §§ 67-5-1(13) and 20A-11-703(3). Statement ¶ 32.

II. The Definition of "Political Purposes" in Utah Code Ann. § 20A-11-101(40) is Not Unconstitutionally Vague

The Tenth Circuit has recently held in a First Amendment as-applied vagueness challenge: "There are two possible, and independent, reasons a statute may be impermissibly vague: 'First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement.'" *Faustin v. City and Cty. Of Denver*, 423 F.3d 1192, 1201-02

(10th Cir. 2005) (quoting *Hill*, 530 U.S. 703, 732 (2002)). Here, Plaintiffs complaint is that the statute's use of the phrase "influence" "indirectly" is unconstitutionally vague both facially and as-applied to them. Complaint ¶ 141.

1. Webster's Third New International Dictionary of the English Language Unabridged (1963), Webster's New International Dictionary of the English Language, Second Edition, Unabridged (1936) and The Compact Edition of the Oxford English Dictionary, Complete Text Reproduced Micrographically (1971) demonstrates that the plain meaning of the common terms readily provide people of ordinary intelligence what conduct the statutory provisions of which Plaintiffs complain prohibit and require.

2. Because the terms are so common and plain, as the reference material demonstrates, the statutory provisions do not authorize or encourage arbitrary or discriminatory enforcement.

III. The Definition of "Political Issues Expenditure" in Utah Code Ann. § 20A-11-101(39) is Not Unconstitutionally Vague

Plaintiffs' contention in Count 2 is that the *Buckley* court "grappled" with the definition of "expenditures" and found that it was "the ambiguity of the phrase that poses constitutional problems." Complaint ¶ 145 (quoting *Buckley*, 424 U.S. at 77).

1. Plaintiffs' argument fails as a matter of law because Tenth Circuit has unambiguously recognized that the *Buckley* Court did not struggle with the term "expenditures" let alone "political issues expenditures" but rather with the phrase "relative to" which is nowhere in Utah's statute or Plaintiffs' Count 2. *Free Speech v. Federal Election Com'n*, 720 F.3d 788, 793-94 (10th Cir. 2013); *accord McConnell v. Federal Election Com'n*, 540 U.S. 93, 190-92 (2003), overruled on other grounds *Citizens United v. Federal Election Com'n*, 558 U.S. 310

(2010); *Citizens United*, 558 U.S. at 439 (Stevens, Breyer, Ginsberg and Sotomayor, JJ. concurring in part and dissenting in part) (recognizing same point that the ambiguity with which the *Buckley* Court was concerned had to do with the terms "relative to").

2. The definition section identified by Plaintiffs has no ambiguity with respect to what "expenditure" means under subsection 101(39). That subsections details the that expenditures that are covered in five factually detailed subsections, Utah Code Ann. § 20A-11-101(39)(a)(1)-(v), and details those that are not covered in Utah Code Ann. § 20A-11-101(39)(b)(i), (ii).

3. Utah Code Ann. § 20A-11-101(39) is sufficiently detailed such that it provides a person of ordinary intelligence a reasonable opportunity to understand what conduct the statute prohibits, and its clarity could not authorize or even encourages arbitrary and discriminatory enforcement.

D. ARGUMENT

Defendants are entitled to a grant of summary judgment because Plaintiffs lack standing and their claims are not ripe. Moreover, on the merits the undisputed facts demonstrate that Defendants are entitled to summary judgment on Plaintiffs Counts 1 and 2 because the provisions Plaintiffs identify there are not unconstitutionally vague. This Court should grant summary judgment to Defendants because after notification of all of Plaintiffs alleged activities, Defendants never conducted an investigation or enforcement action pursuant to Utah Code Ann. § 20A-11-701, *et seq*. generally, or specifically under Utah Code Ann. §§ 20A-11-101(5)(a); 20A-11-701(1)(a); 20A-11-703(2-3); Utah Code Ann. §§ 67-5-1(13) and 20A-11-703(3).

Statement ¶ 32. Therefore, Plaintiffs face not credible threat of prosecution sufficient for standing and this matter is not ripe for adjudication.

I. PLAINTIFFS' CLAIMS ARE NOT JUSTICIABLE AS THEY PLAINTIFFS LACK STANDING AND THEIR CLAIMS ARE NOT RIPE

A. Standing

Article III limits a federal court's jurisdiction to cases and controversies. U.S. Const. art. III, § 2, cl. 1. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006) ("No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.") (internal quotation marks omitted). "One element of the 'case-or-controversy requirement' [is that plaintiffs] 'must establish they have standing to sue.'" *Raines v. Byrd*, 521 U.S. 811, 818 (1997). To have standing, a plaintiff must have a "personal stake in the outcome of the controversy." *Summers*, 555 U.S. at 493. At an "irreducible constitutional minimum," three elements must be met to establish standing: First, the plaintiff must have suffered an "injury in fact" which is both "concrete and particularized" and "actual or imminent." *Clapper*, 133 S.Ct. at 1147-48, citing *Lujan*, 504 U.S. at 560. *See also Monsanto*, 561 U.S. at 140; *Summers*, 555 U.S. at 492-93. The alleged injury may not be "conjectural" or "hypothetical." *Lujan*, 504 U.S. at 560. Second, there must be a causal connection between the injury and the conduct being complained about by plaintiff. *Id*. And third, it must be "likely" that the injury will be redressed by a favorable decision from the court. *Id*.

i. Plaintiffs Lack Standing Because There Is No Credible Threat of Prosecution.

The Tenth Circuit Court of Appeals has unambiguously held that "[t]he mere presence on the statute books of an unconstitutional statute, in the absence of enforcement or the credible threat of enforcement, does not entitle any to sue, even if they allege an inhibiting effect on constitutionally protected conduct prohibited by the statute." *Winsness v. Yocom*, 433 F.3d 727, 732 (10th Cir. 2006)

Plaintiffs ask this Court to assume that they have standing because Utah has a statute on the books that requires some disclosure requirements with respect to political action and issues activities. But under well-established precedent, the simple existence of a possibly unconstitutional statute is not sufficient to establish standing. Here, Plaintiffs have not been charged, cited, warned, or investigated. This is the case in spite of the fact that they themselves have intimated that they may very well have run awry of Utah statutory disclosure requirements. And yet even with this disclosure in their Complaint, the Defendants unambiguously affirmed that they since the passage of H.B.43 neither the Office of the Utah Lieutenant Governor nor the Office of the Utah Attorney General has ever conducted an investigation or enforcement action pursuant to Utah Code Ann. § 20A-11-701, et seq. generally, or specifically under Utah Code Ann. §§ 20A-11-101(5)(a); 20A-11-701(1)(a); 20A-11-703(2-3); Utah Code Ann. §§ 67-5-1(13) and 20A-11-703(3). Statement ¶ 32.

On this point, the Tenth Circuit Court has previously noted: "Allegations of possible future injury do not satisfy the injury in fact requirement." *Mink*, 482 F.3d at 1253 (quoting *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1087-88 (10th Cir. 2006)). "When a plaintiff challenges a criminal statute under which he has not been prosecuted, he must show a

'real and immediate threat' of his future prosecution under that statute to satisfy the injury in fact requirement." *D.L.S. v. Utah*, 374 F.3d 971, 974 (10th Cir. 2004) (quoting *Faustin v. City and County of Denver, Colo.*, 268 F.3d 942, 948 (10th Cir. 2001)). In turn, a "credible threat" of prosecution arises from an "objectively justified fear of real consequences." *D.L.S.*, 374 F.3d at 975; *Initiative & Referendum Inst.*, 450 F.3d at 1082; *Bronson v. Swensen*, 500 F.3d 1099, 1107 (10th Cir. 2007).

The "credible threat" test is an analysis of the "likelihood of enforcement." *Bronson*, 500 F.3d at 1108. For example, this Court found no credible threat of prosecution in another Utah County case in which an unmarried adult brought a §1983 claim for fear of prosecution under Utah's anti-sodomy statute for engaging in sexual activity with his girlfriend. *D.L.S.*, 374 F.3d 971. Except for one instance involving completely distinct circumstances, there was a complete lack of history of prosecution in Utah County under the challenged anti-sodomy statute. *Id*. at 974. The Utah County Attorney filed an affidavit attesting that to his knowledge Utah County had never charged anyone under the challenged statute. *Id*. Based on those circumstances this Court found it unlikely the plaintiff would be prosecuted under the statute and upheld the District Court's granting of Defendants' Motion to Dismiss for lack of standing. *Id*. at 976. By pointing to only a single instance in which someone had been prosecuted under the statute, the Court held that plaintiff failed to show a "credible threat" of prosecution. *Id*. at 974.

This Court also found no credible threat of prosecution in a case nine years ago in which the plaintiffs were also challenging Utah's bigamy statute. *Bronson*, 500 F.3d 1099. In *Bronson*, a husband and wife, along with the husband's purported fiancée, brought suit challenging both Utah's criminal and civil prohibitions of polygamy because the husband had been denied a

license for the polygamous marriage to his fiancée. *Id*. at 1103. Because the plaintiffs were never charged, prosecuted, or directly threatened with prosecution under Utah's bigamy statute, this Court found no credible threat of prosecution and upheld the District Court's dismissal of the case for lack of standing. *Id*. at 1109, 1113. Bronson attempted to establish an "objective fear" of prosecution based on two recent State prosecutions under the bigamy statute. *See id*. at 1109 (citing *State v. Green*, 99 P.3d 820 (Utah 2004), *State v. Holm*, 137 P.3d 726 (Utah 2006)). But as this Court pointed out, the defendants in Green and Holm had committed independent crimes in connection with forming their polygamous relationships. *Id*. Moreover, the Court noted that the alleged credibility of plaintiffs' fear of prosecution "is contradicted by their repeated admission that 'Utah's criminal law against polygamy is not being enforced.'" *Id*. And the Tenth Circuit also recently held the same in two cases of note, *Brown v. Buhman*, --F.3d--, 2016 WL 2848510, *12-15 (10th Cir. 2016) and *Colorado Outfitters Assoc. v. Hickenlooper*, --F.3d--, 2016 WL 1105363, *3 (10th Cir. 2016).

By contrast, a credible threat did exist in the cases of *Steffel v. Thompson*, 415 U.S. 452 (1974), and *Doctor John's, Inc. v. City of Roy*, 465 F.3d 1150 (10th Cir. 2006). In *Steffel*, the Supreme Court held that a Vietnam War protestor had a credible threat of prosecution when he was warned to stop hand-billing, and was threatened with arrest and prosecution after his companion had been arrested and arraigned. *Steffel*, 415 U.S. at 455-56. In *Doctor John's*, an adult bookstore owner was found to have a credible threat of prosecution under a city ordinance when he received a letter from the city warning him that if he did not comply with the ordinance, the city would take "appropriate legal action." 465 F.3d at 1156. Thus these cases present

instances where the injury-in-fact is "concrete," "particularized," and "imminent." *Lujan*, 504 U.S. at 560.

The present case is distinctly dissimilar from *Steffel* and *Doctor John's*, and is quite similar to *D.L.S.*, *Bronson* and *Brown*. Plaintiffs never received and indeed have not alleged an actual threat of prosecution or arrest despite their openness about their activities. They were never warned that if they do not cease to engage in their activities that legal action would be taken against them. They were not threatened with legal action. They allege that they have "fear" but they have not alleged nor have they been warned, charged otherwise threatened with legal action or even notification stating that their practices run awry of the sections of the Utah Code about which they complain.

As such, Plaintiffs have not alleged nor do the stipulated facts indicate any "credible threat of prosecution" sufficient for purposes of standing is present in this case. In fact, based on the undisputed facts of paragraphs 31 and 32, the exact opposite is the case. Such a stipulation, based on knowledge as alleged by Plaintiffs, and then followed by an affirmative statement that neither Defendant with enforcing authority has taken any consequent action is more solid evidence than after the fact affidavits over which courts in the previously cited cases had some pause but nevertheless found sufficient as evidence for a lack of prosecution threat. Consequently, Defendants are entitled to summary judgment on the grounds that Plaintiffs lack standing to maintain this matter.

B. Ripeness

Plaintiffs' case also suffers from a lack of ripeness. "The ripeness doctrine 'is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to

exercise jurisdiction.'" *Southern Utah Wilderness Society v. Palma*, 707 F.3d 1143, 1157 (10th Cir. 2013) (quoting *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 58 n. 18 (1993)). As it involves jurisdiction in the first instance, this Court reaches the ripeness question even when it is not addressed in the district court below. *Id*. at 1158. "The ripeness doctrine prevents courts 'from entangling themselves in abstract disagreement over administrative policies, and also … protect[s] the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" *Los Alamos Study Group v. U.S. Dept. Of Energy*, et al., 692 F.3d 1057, 1064 (10th Cir. 2012) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148-49 (1967) overruled on other grounds by *Califano v. Sanders*, 430 U.S. 99 (1977)). "In evaluating ripeness the central focus is on whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *Initiative & Referendum Inst.*, 450 F.3d at 1097 (internal quotation marks omitted). For the same reason Plaintiffs lack a credible threat of prosecution, this matter is not ripe, and this Court should refrain from entangling itself in an abstract disagreement before an actual case or controversy presents itself.

II. If This Court Finds Plaintiffs' Claims Justiciable, Defendants are Nonetheless Entitled to Summary Judgment on the Merits for Claims 1 and 2

If the Court finds this case justiciable, Defendants are nonetheless entitled to summary judgment on Plaintiffs' Counts 1 and 2 because they are not unconstitutionally vague. Out of duty of candor, Defendants must concede constitutional infirmities in the statutory scheme on the grounds advanced in Plaintiffs' Counts 3, 4, 5 and 6. Nonetheless, Defendants will address each Count here and respond to arguments advanced by Plaintiffs in their moving papers in the cross-opposition briefs they Court has scheduled.

A. The Definition of "Political Purposes" in Utah Code Ann. § 20A-11-101(40) is Not Unconstitutionally Vague

The Tenth Circuit has recently held in a First Amendment as-applied vagueness challenge: "There are two possible, and independent, reasons a statute may be impermissibly vague: 'First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement.'" *Faustin v. City and Cty. Of Denver*, 423 F.3d 1192, 1201-02 (10th Cir. 2005) (quoting *Hill*, 530 U.S. 703, 732 (2002)).

Similarly, under an as-applied Fourteenth Amendment vagueness inquiry, the Tenth Circuit has held:

> "To satisfy due process, 'a penal statute [must] define the criminal offense [1] with sufficient definiteness that ordinary people can understand what conduct is prohibited and [2] in a manner that does not encourage arbitrary and discriminatory enforcement.'" *Skilling v. United States*, 130 S.Ct. 2896, 2927–28 (2010) (quoting *Kolender v. Lawson*, 461 U.S. 352, 357 (1983)). For an as-applied vagueness challenge, we must tether our analysis to the factual context in which the ordinance was applied. *See United States v. Franklin–El*, 554 F.3d 903, 910 (10th Cir.2009) ("Because this is an as-applied challenge, we consider this statute in light of the charged conduct.").
>
> "*We are thus relegated, at best, to the words of the ordinance itself*." *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971) . . . . In evaluating the adequate notice element, we must determine whether a reasonable person in [Plaintiffs'] position would have "'fair notice from the language' of the [ordinance] 'that the particular conduct which he engaged in was punishable.'" *United States v. Baldwin*, 745 F.3d 1027, 1031 (10th Cir.2014) (quoting *Parker v. Levy*, 417 U.S. 733, 755 (1974)); *see also United States v. Harris*, 705 F.3d 929, 932 (9th Cir.2012) ("In an as-applied challenge, a statute is unconstitutionally vague if it fails to put a defendant on notice that his conduct was criminal. For statutes involving criminal sanctions the requirement for clarity is enhanced." (quotations and alterations omitted)).

Galbreath v. City of Oklahoma City, 568 Fed.Appx. 534, (10th Cir. 2014) (emphasis added) (brackets in original, parallel citations to Supreme Court reporters omitted).

The tests under the First and Fourteenth Amendment for as-applied vagueness are thus identical in all material ways, as they must: 1) provide persons of ordinary intelligence to understand what is prohibited; and 2) be sufficiently definite so as to not encourage arbitrary enforcement. *See Faustin*, 423 F.3d at 1201-02; *Skilling v. United States*, 130 S.Ct. at 2927–28. As Plaintiffs have also brought facial challenges to Utah's statutory scheme, their burden to prove a facial violation is the same, but with the added burden that they prove that the application of the statute would be impermissibly "vague in all applications." *Dias v. City and County of Denver*, 567 F.3d 1169, 1178 (10th Cir. 2009) (Fourteenth Amendment Due Process facial challenge); *United States v. Gaudreau*, 860 F.2d 357, 361 (10th Cir. 1988) (First Amendment Facial Challenge) (quoting *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 497 (1982).[2]

The First Count of Plaintiffs' Complaint challenges Utah Code Ann. § 20A-11-101(40) as void for vagueness. That provision provides:

> (40) "Political purposes" means an act done with the intent or in a way to influence or tend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any:
> (a) candidate or a person seeking a municipal or county office at any caucus, political convention, or election; or
> (b) judge standing for retention at any election.

Id.

[2] *Gaudreau* suggested that the facial analysis under a First Amendment ***vagueness*** inquiry also included a test which asked if the statute's supposed vagueness "threatens to chill constitutionally protected conduct, especially conduct protected by the First Amendment." 860 F.2d at 360. But the Tenth Circuit and subsequent Supreme Court cases make clear that this test is reserved for ***overbreadth*** challenges. *See Bushco v. Shurtleff*, 729 F.3d 1294 (10th Cir. 2013) ("Under First Amendment overbreadth doctrine, 'a statute is facially invalid if it prohibits a substantial amount of protected speech.'" *United States v. Williams*, 553 U.S. 285, 292 (2008)). In some cases, issues of facial vagueness will not be logically separable from issues of overbreadth. *See Jordan v. Pugh*, 435 F.3d 820, 827-829 (10th Cir. 2005). And Defendants must address here the matters as Plaintiffs have pleaded them.

Plaintiffs contend that the "term 'indirectly influencing' is inherently vague to the point of constitutional infirmity, and there is not available narrowing construction to rescue this definition[.]" Complaint ¶ 141. Plaintiffs are incorrect as a matter of law.

The Supreme Court in *Grayned v. City of Rockford* noted: "Condemned to the use of words, we can never expect mathematical certainty from our language." 408 U.S. 104, 110 (1972). The Supreme Court rejected a facial vagueness challenge to an ordinance that implicated First Amendment rights and prohibited certain demonstrations "adjacent" to schools that "disturb[ ] or tend[ ] to disturb the peace or good order of such school session or class thereof," finding that it was "clear what the ordinance as a whole prohibits," even though the statute at issue did not specify the prohibited quantum of disturbance. *Id*. at 109–11 ("Although the prohibited quantum of disturbance is not specified in the ordinance, it is apparent from the statute's announced purpose that the measure is whether normal school activity has been or is about to be disrupted.").

Numerous statutes have withstood facial vagueness challenges even though they contained arguably ambiguous language. *See, e.g.*, *Hill*, 530 U.S. at 732 (rejecting vagueness challenge to ordinance making it a crime to "approach" another person, without that person's "consent," to engage in "oral protest, education, or counseling" within specified distance of health-care facility); *Boos v. Barry*, 485 U.S. 312, 332 (1988) (rejecting vagueness challenge to ordinance interpreted as regulating conduct near foreign embassies "when the police reasonably believe that a threat to the security or peace of the embassy is present"); *Cameron v. Johnson*, 390 U.S. 611, 616 (1968) (rejecting vagueness challenge to ordinance prohibiting protests that "unreasonably interfere" with access to public buildings); *Kovacs v. Cooper*, 336 U.S. 77, 79

(1949) (rejecting vagueness challenge to sound ordinance forbidding "loud and raucous" sound amplification).

Here, Plaintiffs complaint is that the statute's use of the phrase "influence" "indirectly" is unconstitutionally vague both facially and as-applied to them. Complaint ¶ 141. "When interpreting a statute, we first look to the language." *Richardson v. United States*, 526 U.S. 813, 818 (1999). "'When terms are used in a statute are undefined, we give them their ordinary meaning.'" *Jones v. United States*, 529 U.S. 848, 855 (2000) (quoting *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995)). Here, the words "influence" and "indirectly" are used to clarify and narrow the term "political purposes" in a definitional section. Utah Code Ann. § 20A-11-101(40). "In absence of an indication to the contrary, words in a statute are assumed to bear their 'ordinary, contemporary, common meaning.'" *Walters v. Metropolitan Educational Enterprises, Inc.*, 519 U.S. 202, 207 (1997) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388 (1993)). There is no indication to the contrary in the statute itself.

Webster's defines "influence" as: "1: to affect or alter the conduct, thought or character of by indirect or intangible means; . . . 2: to have an effect on the condition or development of[.]" WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED ("Webster's Third) 1160 (1963). An earlier edition of Webster's defines "influence" similarly as: "To alter or move in respect to character, conduct, or the like; to sway; affect; to have an effect on the condition or development of[.]" WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE, SECOND EDITION, UNABRIDGED (Webster's Second) 1267 (1936). The Oxford English Dictionary defines "influence" as: "To exert influence on; a. to affect the mind or

action of[.]" THE COMPACT EDITION OF THE OXFORD ENGLISH DICTIONARY, COMPLETE TEXT REPRODUCED MICROGRAPHICALLY ("OED") 1431 (1971).

Webster's Third defines "indirectly" as "deviating from a direct line or course: not proceeding straight from one point to another : proceeding obliquely or circuitously : roundabout[.]" *Id*. at 1151. Webster's Second, older account is consistent with the later definition: "Not leading to an aim or result by the plainest course or method by obvious means; roundabout." Webster's Second at 1266-67. The OED's definition is also in accord: "Not in a straight line or with a straight course" and "By means of indirect action, means, connection, agency, or instrumentality." OED at 1418.

Given these common definitions, to "influence indirectly" has a common meaning, which is readily apparent: to influence the action or mind of another through means that are not direct, but are roundabout. "The statute's structure clarifies any ambiguity inherent in its literal language." *Castillo v. United States*, 530 U.S. 12, 124 (2000). "Over and over we have stressed that in expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy." United States *Nat'l Bank of Ore. v. Indep. Ins. Agents of America, Inc.*, 508 U.S. 429, 454 (1993) (internal quotation marks, brackets and citation omitted).

Given that the balance of the provision reads "any person to refrain from voting or to vote for or against any . . . candidate" "seeking office" or "judge[,]" facing "retention" election. Utah Code Ann. § 20A-11-101(40). The issue raised in Count 1 of the Complaint is not whether the *applications of this definition may be unconstitutional*, but whether *the definition itself is vague* such that a person of ordinary intelligence would not know that their conduct could be covered

by the definition and whether the definition would encourage arbitrary enforcement. As the definition itself gives no guidance on enforcement, which is found in other provisions of Chapter 11 of Title 20A, the only issue is whether a person of ordinary intelligence would understand the conduct covered by the definition. The plain, simple wording of the statutory definition gives ample guidance to citizens of the conduct covered by the definition, and Defendants are therefore entitled to summary judgment on Count 1.

B. The Definition of "Political Issues Expenditure" in Utah Code Ann. § 20A-11-101(39) is Not Unconstitutionally Vague

Plaintiffs assert that the Chapter 11's definition of "Political Issues Expenditure" is unconstitutionally vague under the First and Fourteenth Amendments. Complaint ¶146. Utah Code Ann. § 20A-11-101(39) provides:

> (a) "Political issues expenditure" means any of the following when made by a political issues committee or on behalf of a political issues committee by an agent of the reporting entity:
> (i) any payment from political issues contributions made for the purpose of influencing the approval or the defeat of:
> (A) a ballot proposition; or
> (B) an incorporation petition or incorporation election;
> (ii) a purchase, payment, distribution, loan, advance, deposit, or gift of money made for the express purpose of influencing the approval or the defeat of:
> (A) a ballot proposition; or
> (B) an incorporation petition or incorporation election;
> (iii) an express, legally enforceable contract, promise, or agreement to make any political issues expenditure;
> (iv) compensation paid by a reporting entity for personal services rendered by a person without charge to a political issues committee; or
> (v) goods or services provided to or for the benefit of another reporting entity at less than fair market value.
> (b) "Political issues expenditure" does not include:
> (i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political issues committee; or

(ii) money lent to a political issues committee by a financial institution in the ordinary course of business.

Id.

Defendants detailed the standards for as-applied and facial vagueness challenges under the First and Fourteenth Amendments to the Constitution above and will not repeat them here as they are identically applicable.

Plaintiffs' contention in Count 2 is that the *Buckley* court "grappled" with the definition of "expenditures" and found that it was "the ambiguity of the phrase that poses constitutional problems." Complaint ¶ 145 (quoting *Buckley*, 424 U.S. at 77). The problem with this contention is that it both misstates what the Court found in *Buckley*, and what the Court has made of the vagueness issue addressed in *Buckley* subsequently, which had little to do with the word "expenditure" and everything to do with the phrase "relative to a clearly identified candidate." The Tenth Circuit has unambiguously recognized that the Buckley Court did not struggle with the term "expenditures" let alone "political issues expenditures":

> In *Buckley*, the Supreme Court addressed the constitutionality of an expenditure limit which provided that "[n]o person may make any expenditure ... relative to a clearly identified candidate during a calendar year which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds $1000." *Buckley*, 424 U.S. at 39. Troubled by the vagueness of the phrase "relative to a clearly identified candidate," the Supreme Court construed the phrase "relative to" to "apply only to expenditures for communications that *in express terms* advocate the election or defeat of a clearly identified candidate for federal office." *Id*. at 44 (emphasis added). The Court explained in a footnote that "[t]his construction would restrict the application of [the spending limit] to communications containing express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' 'reject.'" *Id*. at 44 n. 52. Consistent with this guidance, subsection (a) of the FEC's definition of "expressly advocating" later codified these types of "magic words" to signal express advocacy.

Free Speech v. Federal Election Com'n, 720 F.3d 788, 793-94 (10th Cir. 2013); *accord McConnell v. Federal Election Com'n*, 540 U.S. 93, 190-92 (2003), overruled on other grounds *Citizens United v. Federal Election Com'n*, 558 U.S. 310 (2010); *Citizens United*, 558 U.S. at 439 (Stevens, Breyer, Ginsberg and Sotomayor, JJ. concurring in part and dissenting in part) (recognizing same point that the ambiguity with which the *Buckley* Court was concerned had to do with the terms "relative to").

The definition section identified by Plaintiffs has no ambiguity with respect to what "expenditure" means under subsection 101(39). That subsections details that expenditures are covered by the act in five detailed subsections, Utah Code Ann. § 20A-11-101(39)(a)(1)-(v), and details those that are not in Utah Code Ann. § 20A-11-101(39)(b)(i), (ii).

Consequently, Plaintiffs have advanced no credible argument that either facially or as-applied that that it provides a person of ordinary intelligence a reasonable opportunity to understand what conduct the statute prohibits, and its clarity could not authorize or even encourages arbitrary and discriminatory enforcement.

C. Utah Code Ann. §§ 20A-11-701, 702 Likely Fail the "Major Purpose" Test

The merits of Counts 3 through 6 likely favor Plaintiffs, though because Plaintiffs lack standing and their claims are not ripe, the Court ought not reach the merits of their claims. Nonetheless, counsel addresses the merits in case the Court finds this matter justiciable and because counsel is duty bound by his position in the Utah Attorney General's Office to raise every colorable defense to Utah law. Counsel additionally reserves the right to address erroneous arguments Plaintiffs may possibly make in their cross-motion for summary judgment.

While Count 3 styles itself in the complaint as a vagueness and overbreadth challenge, Plaintiffs' Count 3 essentially asserts that that Utah Code Ann. §§ 20A-11-701, 702 are constitutionally infirm because they fail the so-called "Major-Purpose" test under which government can impose status-oriented regulatory regimes on "organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate" or ballot issue. *Buckley*, 424 U.S. at 70. Organizations not meeting this test but engaged in political activity may be subject to event related disclosure regimes whose requirements must be "less restrictive than imposing the full panoply of [status related] regulations." *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986*); accord Nat'l Right to Work Legal Defense and Ed. Found., Inc. v. Herbert*, 581 F.Supp.2d 1132, 1158-54 (D. Utah 2008).

D. Utah Code Ann. §§ 20A-11-701(3), 702(3) are Likely not Sufficiently Tailored to Survive Exacting Scrutiny because they Require Corporations to Attribute a Prorated Share of Advocacy Expenditures to Donors who Did Not Earmark their Donations and Whom the Law Does not Require to have Knowledge Regarding How the Money Might be Used to Make Expenditures

Count 4 alleges that the prorating system in Utah Code Ann. §§ 20A-11-701(3), 702(3) cannot survive "exacting scrutiny", Buckley, 424 U.S. at 64, in which a state must show "a substantial relation between the disclosure requirement and" the State's interest in such information. Because subsections 701(3) and 702(3) require corporations to attribute a prorated portion to donors who do not earmark their donations, Defendants must concede that substantial relation test cannot be met under the current statutory regime.

E. Utah Code Ann. §§ 20A-11-701(4), 702(4) Likely Impermissibly Compel Speech

Utah Code Ann. §§ 20A-11-701(4) and 702(4) require a regulated corporation to warn donors "that: (a) the corporation may use the money to make an expenditure [even a political issues expenditure]; and (b) the person's name and address may be disclosed on the corporation's financial statement." *Id*. Donors as all Americans have a First Amendment right to make a "decision of both what to say and what *not* to say." *Riley v. Nat'l Fed. of the Blind*, 487 U.S. 781, 7696-97 (1988) (emphasis in original). Applicable levels of scrutiny require that laws restricting charitable solicitations "be narrowly tailored to serve a compelling interest." *Williams-Yulee v. Fla. Bar*, 135 S.Ct. 1656, 1664-65 (2015) (citation omitted). In candor, counsel must concede that the disclosure requirement does not appear to satisfy the narrowly tailored for a compelling interest test.

F. Utah Code Ann. §§ 20A-11-701, 702 Likely Do Not Pass Equal Protection Scrutiny

Utah Code Ann. §§ 20A-11-701 and 702 imposes upon corporations contributor reporting, a prorationing reporting system, and an extra reporting period that it does not impose on unions. The only interest that could arguably justify such discrimination is the anti-distortion interest of "preventing 'the corrosive and distorting effects of immense aggregations of wealth." Citizens United 558 U.S. at 348 (quoting Austin, 494 U.S. at 660). But the Citizens United Court expressly overruled Austin, id. at 365, and rejected the anti-distortion interest stating that "differential treatment cannot be squared with the First Amendment." Id. at 353. The discrimination between the reporting system, given the Citizen United decision, cannot be "justified by reference to some upright government purpose, *Secsys, LLC v. Virgil*, 666 F.3d 678,

686 (10th Cir. 2012), as the State would be required to prove that the statutory classification is "closely drawn to a sufficiently important governmental interest." *Riddle v. Hickenlooper*, 742 F.3d 922, 928 (10th Cir. 2014). Regardless of what Utah might think are the merits of making such a distinction, that possibility has been foreclosed by Citizens United. Utah maintains for the record its interest in making the decision, but realizes that this Court is bound by Supreme Court precedent and only that Court might revisit the issue.

CONCLUSION

For the reasons set forth above, this Court should grant summary judgment on the justiciability of this matter because Plaintiffs lack standing and this matter is not ripe. This Court should therefore enter judgment for Defendants on those grounds. Should this Court find the matter justiciable, this Court should grant summary judgment to Defendants on Counts One and Two identified in Plaintiffs' Complaint.

Respectfully requested this 31st day of May, 2016.

OFFICE OF THE UTAH ATTORNEY GENERAL

/s/Parker Douglas
PARKER DOUGLAS
Chief Federal Deputy Attorney General
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I caused to be e-mailed a true and accurate copy of the foregoing, **DEFENDANTS' INITIAL DISCLOSURES REGARDING CLAIMS RAISED IN THE PLAINTIFFS' COMPLAINT** on the 31st of May 2016 to the following.

Allen Dickerson
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/s/ Parker Douglas