INTRODUCTION

The events of the past few months have revealed just how radically the policies, practices, and regulations of the Internal Revenue Service (IRS) governing tax-exempt § 501(c)(4) organizations depart from the Tax Code. This lawsuit, brought by Citizens for Responsibility and Ethics in Washington (CREW), challenges the continuing refusal of the IRS to reconcile a critical aspect of that regulatory picture with the underlying statute, specifically the IRS regulation permitting organizations granted tax-exempt status under § 501(c)(4) of the Tax Code to engage in political activities as long as they are “primarily engaged” in promoting social
welfare.

The enormous loophole this IRS regulation created has led to a massive increase in anonymous spending by § 501(c)(4) organizations, which spent more than $256 million in the 2012 election cycle.\(^1\) In no danger of losing their tax-exempt status as long as their annual expenditures promoting social welfare comprise more than 50 percent of their total yearly expenditures, § 501(c)(4) groups have been functioning as conduits for large political contributions from wealthy individuals and entities seeking to conceal their role in electoral politics and advance a particular political agenda. These activities literally have changed the political landscape and transformed the function and purpose of many § 501(c)(4) organizations into something almost unrecognizable from what Congress intended.

Most recently, the IRS has proposed changes to regulations governing § 501(c)(4) groups. But astonishingly, despite the long-identified mismatch between the IRS regulations and the Tax Code – and unfulfilled promises by the IRS to address this conflict made over the span of five decades – the IRS has left undisturbed its regulation requiring that § 501(c)(4) groups only be “primarily engaged” in the promotion of social welfare, rather than “exclusively” as the Tax Code mandates. Instead, the IRS has sought comments on whether it should, at some indefinite time in the future, consider changing that regulation as well. The IRS’s failure to close the loophole its unlawful regulation has created is completely without justification and, for purposes of this lawsuit, does not alter the need for the relief CREW seeks.

The IRS has moved to dismiss CREW’s lawsuit, arguing CREW fails to satisfy either the

constitutional or prudential prerequisites for standing. The government’s motion rests on a fundamental misconstruction of this lawsuit, the types of injuries CREW has suffered, and the requested relief. As a direct result of the challenged IRS regulation CREW seeks to change through its rulemaking petition, CREW has been denied information to which it is statutorily entitled. Without this information, CREW is harmed in carrying out activities central to its core mission, and has been forced to expend additional resources to seek information that would otherwise be available to it. These harms establish CREW’s standing to sue.

The IRS’s prudential standing argument suffers from similar flaws. CREW is not seeking an end-run around the enforcement scheme of the IRS and decisions the IRS has made about the tax status of any particular organization. Rather, CREW challenges the failure of the IRS to act on CREW’s rulemaking petition, a failure that has left in place a regulation in direct conflict with the Tax Code. Under well established Supreme Court and Circuit precedent, CREW satisfies the Article III and prudential requirements for standing.

STATUTORY AND REGULATORY BACKGROUND

In 1913, Congress for the first time provided a tax exemption for “any civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare.” Revenue Act of 1913, ch. 16, § II(G)(a), 39 Stat. 172. In the repeated recodifications of this provision over the years, Congress consistently limited the tax exemption to organizations “operated exclusively” for the promotion of social welfare. The current version of the Code provides a tax exemption for:

Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons
in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

26 U.S.C. § 501(c)(4)(A) (emphasis added). Organizations subject to this provision are known as “§ 501(c)(4) organizations.”

Treasury and IRS regulations promulgated initially to implement the statute limited the tax exemption for § 501(c)(4) organizations to those “operated exclusively for purposes beneficial to the community as a whole.” See, e.g., Treas. Reg. 65, Art. 519, T.D. 3640, 26 Treas. Dec. Int. Rev. 745, 897 (1924); Treas. Reg. 111, § 29.101(8)-1 (1943); Treas. Reg. § 39.101(8)-1 (1954). Congress recodified the statute in 1954, Internal Revenue Act of 1954, Pub. L. No. 83-591, ch. 736, 68A Stat. 163. Five years later, in 1959, the IRS promulgated new regulations identical in substance to the current regulation, under which a “civic league or organization may be exempt as an organization described in § 501(c)(4) if – (i) It is not organized for profit; and (ii) It is operated exclusively for the promotion of social welfare.” Treas. Reg. § 1.501(c)(4)-1(a)(1). But while this part of the regulation mirrors the statutory language, the regulation defining the phrase “promotion of social welfare” departs radically from the statute.

Specifically, under the IRS regulation,

[a]n organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

Treas. Reg. § 1.501(c)(4)-1(a)(2)(i) (emphasis added). In essence, this regulation substitutes the word “primarily” for the statutory term “exclusively.” At the same time, Treasury regulations
exclude from the definition of the “promotion of social welfare” “direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.” Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

IRS policy directives implementing these provisions provide that an organization may carry on lawful political activities and still be entitled to tax-exempt status under § 501(c)(4) as long as the organization is primarily engaged in activities that promote social welfare. Rev. Rul. 81-95, 1981-1 C.B. 332. The IRS has not further defined the “primary activity” standard its regulations establish. Instead, in a Revenue Ruling, the IRS stated only that all facts and circumstances are taken into account in determining the “primary activity” of a § 501(c)(4) organization. Rev. Rul. 68-45, 1968-1 C.B. 259.2

Recently disclosed internal IRS training materials assert § 501(c) organizations (other than § 501(c)(3) charities) “may generally make expenditures for political activities as long as such activities, in conjunction with any other non-qualifying activities, do not constitute the organization’s primary activity (51%).”3 This guidance mirrors the practice of groups seeking or claiming § 501(c)(4) status, which have interpreted the “primary activity” requirement to mean

2 But note, as discussed infra at 12-13, a recent notice of proposed rulemaking by the IRS proposes a departure from the “facts and circumstances” approach by providing guidance on those activities considered to be political or candidate-related and therefore not in furtherance of promoting social welfare.

3 Exempt Organizations Determinations Unit 2, Student Guide, Training 29450-002 (Rev. 9-2009), at 7-19 (emphasis added), available at http://www.taxanalysts.com/www/freefiles.nsf/Files/EO%204.pdf$File/EO%204.pdf. See also Miriam Galston, When Statutory Regimes Collide: Will Citizens United and Wisconsin Right to Life Make Federal Tax Regulation of Campaign Activity Unconstitutional?, 132 U. Pa. J. Const. L. 867, 930 n.29 (2011) (“At least one official of the IRS has stated that a social welfare organization may be entitled to exemption even if 49% of its activities are not devoted to social welfare.”) (citing Judy Kindell on § 501(c)(4)-(6) Organizations and § 527, 11 Paul Streckfus EO Tax J. 42, 45 (2006)).
they can spend up to 49 percent of their total expenditures in a tax year on political campaign activities without such campaign activities constituting the “primary activity” of the organization.\textsuperscript{4} Significantly, such groups – like all groups organized under § 501(c)(4) – are not required to disclose publicly the names of their donors. 26 U.S.C. §§ 6104(b), (d)(3). By contrast, groups that qualify as political organizations under § 527 of the Tax Code are required to report publicly their expenditures and contributions. 26 U.S.C. § 527(j).\textsuperscript{5}

In addition, § 527 provides a tax exemption for political organizations, which are those “operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.” 26 U.S.C. § 527(e)(1). “Exempt function,” in turn, is defined as:

> influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.

\textit{Id.} at § 527(e)(2).

\textsuperscript{4} See, e.g., ABA Section on Taxation, Comments of the Individual Members of the Exempt Organizations Committee’s Task Force on Section 501(c)(4) and Politics, 37 (2004), available at \url{http://www.abanet.org/tax/pubpolicy/2004/040525exo.pdf} (“Many practitioners believe that ‘less than primary’ means less than 50% of an organization’s expenditures in a year.”). \textit{See also} Steven Rattner, Behind The I.R.S. Mess: A Campaign-Finance Scandal, \textit{New York Times}, May 16, 2013, available at \url{http://opinionator.blogs.nytimes.com/2013/05/16/behind-the-i-r-s-mess-a-campaign-finance-scandal/?hp} (noting “[s]ome groups have interpreted the [IRS] regulations as permitting them to spend as much as 49 percent of their funds directly advocating for or attacking the election of candidates, maintaining all the while the secrecy of their donors’ names.”).

\textsuperscript{5} Section 501(c)(4) of the Tax Code also exempts other organizations from the requirement to pay federal income tax, including charitable organizations (§ 501(c)(3)), labor unions (§ 501(c)(5)), and trade associations (§ 501(c)(6)).
Significantly, unlike § 501(c)(4) organizations, § 527 organizations must disclose their contributions and expenditures. *Id.* at §§ 527(a), (j)(2). When Congress first enacted § 527 in 1975, the Federal Election Campaign Act (FECA) imposed disclosure requirements on political committees and others making expenditures for the purpose of influencing a federal election. The Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976), narrowed the FECA’s disclosure requirements and limited those groups regulated by the statute. This ruling allowed many § 527 groups to engage in political activity without disclosing their donors, and led to an increase in the number of so-called “stealth PACs,” *i.e.*, groups operating as political organizations under § 527 in order to spend anonymous money on elections. As a Congressional Research Service (CRS) report explains, the lack of reporting requirements for these political organizations may have stemmed from Congress’ mistaken belief they were regulated by the FECA and required to report to the FEC. To address this problem, in 2000 Congress amended § 527 “to generally require that most organizations that do not report to the Federal Election Commission (FEC) report to the IRS and that the information be available to the public.” *Id.* at 18.

**FACTUAL BACKGROUND**

The discrepancy between the “operated exclusively” standard of the statute and the “primarily engaged” language of the regulations was controversial at the IRS both when the regulations were drafted and for five decades after they were promulgated in 1959. In 1962, the

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chief counsel for the IRS twice rejected recommendations to deny tax-exempt status under §501(c)(4) to organizations engaged in some amount of non-social welfare activity. In one case, the organization was conducting political activity, and although the chief counsel noted the difference between the statute and the regulations, he construed the regulations to “in effect deny exemption only to organizations that are primarily engaged in” political activity. G.C.M. (General Counsel Memo) 32394, 1962 WL 14007. In the other case, the chief counsel similarly noted the discrepancy and concluded, “a policy decision as to whether the language of the statute or the regulations controls should be reached before any significant ruling position is adopted.” G.C.M. 32395. The IRS initiated what it referred to as a “regulations project” in 1963, presumably on this issue, but took no further action on it. G.C.M. 38215, 1979 G.C.M. LEXIS 269, at *3-4, 22.

The IRS again revisited this question in the 1970s when, in response to a request for a revenue ruling, a proposed G.C.M. drafted in 1976 suggested a decision should be made as to whether the language of the statute or the regulation controls. Id. at *23. In response, the IRS’s Exempt Organizations Division studied the issue and concluded the IRS should recommend to the Department of the Treasury that “the ‘primary activities’ test be eliminated from the Regulations and an ‘exclusive’ test tolerating no more than an insubstantial amount of activities not in promotion of the social welfare be substituted.” Id. at *23-25. This issue spilled over into the § 501(c)(3) regulations from which the § 501(c)(4) regulations “were very significantly shaped”; decisions about § 501(c)(4) regulations were made “in conjunction with . . . decisions made with respect to the section 501(c)(3) Regulations.” G.C.M. 38215, 1979 G.C.M. LEXIS 209, at *26. A 1978 internal memorandum attached to a General Counsel Memorandum
describes the files underlying the 1959 regulatory drafting process for § 501(c)(3) organizations (and by implication § 501(c)(4) organizations) as “addressed to the fact that the statute says ‘exclusively’ and the Regulations say primarily.” *Id.* at *26.

Although the IRS considered this issue for the next several years, senior officials rejected the recommendation, leaving the regulations in conflict with the Tax Code. *Id.* at *8, 17-18, 25. The IRS refused to reconcile its regulations with § 501(c)(4) of the Tax Code despite the acknowledgment by one official that “it has long been recognized [the regulations] are an unduly broad interpretation of the statute.” *Id.* at *20.

On July 27, 2011, two non-partisan, non-profit organizations, Democracy 21 and the Campaign Legal Center, submitted to the IRS a petition for rulemaking on campaign activities by § 501(c)(4) organizations. The petition asked the IRS to act promptly to address the growing problem of large scale spending of secret contributions in federal elections by § 501(c)(4) organizations, by issuing new regulations that conform with the Tax Code and court rulings interpreting the Tax Code. *See* Complaint, ¶ 28. The petitioners noted the urgency behind their request, given the then-upcoming 2012 elections. *Id.* The two petitioners supplemented their petition by letter dated March 22, 2012, providing information about more recent spending on political activities by § 501(c)(4) organizations. *Id.*, ¶ 29. The IRS never acted on this petition. Instead, by letter dated July 17, 2012, then-Director of the IRS’s Exempt Organizations Division Lois G. Lerner advised Democracy 21 and the Campaign Legal Center that “[t]he IRS is aware of the current public interest in this issue.” *Id.*, ¶ 30. Ms. Lerner represented the IRS “will consider proposed changes in this area as we work with the IRS Office of Chief Counsel and the Treasury Department’s Office of Tax Policy to identify tax issues that should be addressed
through regulations and other published guidance.” Complaint, ¶ 30.

The IRS, however, failed to take any action on this issue and, accordingly, CREW filed a rulemaking petition with the IRS on April 9, 2013. *Id.*, ¶ 31. CREW’s petition incorporated by reference the July 2011 petition, and noted its petition was submitted to update the IRS on the significant impact of the political activities of § 501(c)(4) organizations during the 2012 election cycle as a direct result of the loophole the IRS’s regulations created. *Id.*

That update included the fact that, according to the Center for Responsive Politics (CRP), spending by § 501(c)(4) organizations in the 2012 election cycle, based on reporting to the FEC, totaled nearly $255 million (a number that by the most recent count now exceeds $256 million).⁸ Reported spending by groups organized under § 501(c)(4) on political activities during the 2010 elections totaled more than $92.2 million.⁹ Complaint, ¶ 32.

CREW’s rulemaking petition also advised the IRS that four § 501(c)(4) organizations dominated outside spending in the 2012 election cycle: Crossroads GPS, founded by Karl Rove; Americans for Prosperity, founded by the Koch brothers; Americans for Tax Reform, founded by Grover Norquist; and the American Future Fund, founded by Nick Ryan, a longtime political advisor to former Republican Iowa Congressman Jim Nussle. *Id.*, ¶ 33. As set forth in the petition, according to CRP, in the 2012 election cycle, Crossroads GPS spent $70,968,744 in

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⁹ This number has been revised from what CREW submitted in its rulemaking petition to include inadvertently omitted spending by certain § 501(c)(4) organizations the CRP classified as “partially disclosing,” because they are associated with § 527 groups. Other numbers cited here reflect any updates in CRP’s numbers since CREW filed its rulemaking petition.
independent expenditures; Americans for Prosperity spent $33,542,051 in independent expenditures; American Future Fund spent $24,599,533 in independent expenditures; and Americans for Tax Reform spent $15,794,552 in independent expenditures. *Id.*, ¶ 34.

CREW’s petition provided the IRS with further spending information on specific 2012 Senate and House races. In the Virginia Senate race, for example, § 501(c)(4) organizations spent approximately $15 million, or nearly 29 percent of all outside spending. Similarly, in the 2012 Nevada Senate race, § 501(c)(4) organizations spent over $12 million, or more than 43 percent of all outside spending. *Id.*, ¶ 35. CREW’s petition also included the fact that in the 2012 Wisconsin senatorial race, § 501(c)(4) organizations spent over $9 million, more than 20 percent of all outside spending. Likewise, in the 2012 Ohio Senate race, spending by § 501(c)(4) organizations totaled over $8 million, more than 22 percent of all outside spending. Complaint, ¶ 36.

This pattern also was reflected in 2012 spending data from House races. In the Ohio 6th Congressional District race, § 501(c)(4) organizations spent over $3 million, or nearly 44 percent of all outside spending. In the Pennsylvania 12th Congressional District race, § 501(c)(4) organizations spent nearly $3 million, or close to 30 percent of all outside spending. And in the Colorado 3rd Congressional District race, spending by § 501(c)(4) organizations totaled over $1.6 million, close to 70 percent of all outside spending. *Id.*, ¶ 37.

CREW’s petition for rulemaking also highlighted the impact of spending by a specific § 501(c)(4) organization, the American Action Network (“AAN”), on two specific races in 2012. These included the 13th Congressional District race of Illinois race, where the influx of money from AAN likely resulted in the defeat of Democratic nominee Dr. David Gill, *id.*, ¶ 38, and the
2012 10th Congressional District race in California, where AAN spent more than $2.5 million to defeat the Democratic candidate Jose Hernandez. Complaint, ¶ 40.

By letter dated April 30, 2013, David L. Fish, Manager, of the IRS’s Exempt Organizations, responded to CREW’s petition for rulemaking. The substance of the IRS’s letter, which is virtually identical to its response to the petition from Democracy 21 and the Campaign Legal Center, states as follows:

The IRS is aware of the current public interest in this issue. These regulations have been in place since 1959. We will consider proposed changes in this area as we work with the IRS Office of Chief Counsel and the Treasury Department’s Office of Tax Policy to identify tax issues that should be addressed through regulations and other published guidance.

Complaint, ¶ 43.

Most recently, on November 26, 2013, the IRS published in the Federal Register a notice of proposed rulemaking on candidate-related political activities for tax-exempt social welfare organizations. Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities, 78 Fed. Reg. 71535 (proposed Nov. 29, 2013). Responding to “the lack of a clear and concise definition of political campaign intervention,” id. at 71536, the proposed regulations attempt to provide a bright line between exempt social welfare activities and non-exempt political activities.

With respect to the “primarily engaged” standard set forth in the IRS’s § 501(c)(4) regulations, the proposal acknowledged outstanding requests for guidance on the meaning of “primarily,” but stated the IRS is merely “considering whether the current section 501(c)(4) regulations should be modified . . . and, if the ‘primarily’ standard is retained, whether the standard should be defined with more precision or revised to mirror the standard under the
The failure of the IRS to reconcile its “primarily engaged” regulation with the Tax Code has directly harmed CREW, a non-profit, non-partisan organization working to advance reforms in the areas of campaign finance, lobbying, ethics, and transparency, and to ensure campaign finance laws are properly interpreted, enforced, and implemented. Complaint, ¶ 5. A core component of CREW’s work is examining and exposing the special interests that have influenced our elections and elected officials. Id., ¶ 6. Much of that work focuses on “pay to play” schemes, in which CREW looks for correlations between donations to or spending in support of the campaign of a member of Congress or candidate and that member’s subsequent congressional activities, including pushing issues and legislation that serve the interests of the member’s donors and financial supporters. Id., ¶ 8. Information that an individual or corporation made a large dollar contribution may be very revealing about the influences that

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10 Under Treas. Reg. 1.501(c)(3)-1(b)(iii), a § 501(c)(3) organization can engage in activities that do not serve its primary purpose only if those activities are “insubstantial.”
donor has brought to bear on the member post-election. Id.

CREW is hindered in carrying out this core programmatic activity when those individuals and entities that attempt to influence elections and elected officials are able to keep their identities hidden. Complaint, ¶ 7. Without the information about who is funding the political activities of § 501(c)(4) organizations, CREW lacks information critical to advancing its ongoing mission of educating the public to ensure the public continues to have a vital voice in government decisions. Id.

Not only is CREW deprived of information critical to carrying out its mission by § 501(c)(4) organizations funneling large sums of money into elections, but CREW’s resources also are drained. Id., ¶ 10. CREW must spend additional time and money attempting to ascertain the source of contributions through other means, such as pouring through FEC filings, Form 990 tax returns filed by other tax-exempt groups with the IRS, and corporate annual reports. Id. These materials at best provide only an extremely small fraction of the information sought, and are no substitute for the disclosures required of tax-exempt organizations engaged in political activities. Complaint, ¶ 10.

ARGUMENT

I. STANDARD OF REVIEW.


The reviewing court must accept all factual allegations in the complaint as true, giving the plaintiff “the benefit of all favorable inferences that can be drawn from the alleged facts.” *CREW v. Cheney*, 593 F. Supp. 2d 194, 209-10 (D.D.C. 2009) (citing *Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993)). Further, in resolving a motion to dismiss on standing grounds the reviewing court “‘presum[es] that general allegations embrace those specific facts that are necessary to support the claim.’” *Lujan*, 504 U.S. at 561 (quoting *Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 889 (1990)).

Here, the IRS has moved to dismiss CREW’s complaint under Rule 12(b)(1) on the ground CREW lacks standing to sue. In resolving this motion, the Court must accept the factual allegations in CREW’s complaint both as to the nature of CREW’s harm, and the cause of that harm. While the IRS characterizes those allegations as “vague,” “summary,” and “conclusory,”¹¹ as discussed below, they are more than adequate to establish CREW’s standing to sue.

II. **PLAINTIFF HAS STANDING TO MAINTAIN THIS SUIT.**

To invoke the Court’s jurisdiction under Article III of the Constitution, a plaintiff must demonstrate as an “irreducible constitutional minimum,” *Lujan*, 504 U.S. at 560, an injury in fact

¹¹ Points and Authorities in Support of The United States’ Motion to Dismiss (D’s Mem) at 3. While the IRS denotes its motion as made by the United States, the named parties here include only the U.S. Department of the Treasury’s Internal Revenue Service and Acting IRS Commissioner Daniel I. Werfel, in his official capacity.
fairly traceable” to the challenged act and “likely to be redressed by the requested relief.” *Allen v. Wright*, 468 U.S. 737, 751 (1984). Here the IRS alleges CREW satisfies none of these requirements, an argument grounded in a fundamental misconception of the nature of CREW’s claims and the harm it has suffered.

**A. Plaintiff Has Suffered Concrete, Particularized Harms That Satisfy the Injury In Fact Requirement.**

The injury in fact element of Article III standing “requires ‘an invasion of a concrete and particularized legally protected interest.’” *Shays v. FEC*, 414 F.3d 76, 83 (D.C. Cir. 2005) (*Shays I*) (quoting *McConnell v. FEC*, 540 U.S. 93, 227 (2003)). The Supreme Court, in *FEC v. Akins*, 524 U.S. 11 (1998), recognized a plaintiff satisfies this requirement by a showing it was deprived of information the law requires be disclosed, or “informational injury.” The plaintiffs there – a group of voters seeking information about the political activities of a tax-exempt organization (AIPAC) – challenged the decision of the FEC that the organization was not a “political committee” and therefore had no obligation to disclose its members, contributions to the organization, and its expenditures. *Id.* at 16. The Supreme Court concluded the plaintiffs had suffered an informational injury sufficient to satisfy Article III’s injury in fact requirement, specifically an “inability to obtain information – lists of AIPAC donors . . . and campaign-related contributions and expenditures – that in [plaintiffs’] view of the law, the statute require[d] that AIPAC make public.” *Id.* at 21. That the informational injury was “widely shared,” there by a group of voters, did not alter the Court’s conclusion it was sufficiently “concrete and specific” to support standing. *Id.* at 24-25. *See also Shays v. FEC*, 528 F.3d 914, 923 (D.C. Cir. 2008) (*Shays II*).

The D.C. Circuit has characterized this informational standing as based on a claim the
plaintiff “‘did not get what the statute entitled [it] to receive.’” *ASPCA*, 659 F.3d at 23 (quoting *Zivotofsky v. Sec’y of State*, 444 F.3d 614, 618 (D.C. Cir. 2006) (citations omitted)). Further, “[t]o establish such an injury, a plaintiff must espouse a view of the law under which the defendant (or an entity it regulates) is obligated to disclose certain information that the plaintiff has a right to obtain.” *ASPCA*, 659 F.3d at 23. *See also Ethyl Corp. v. EPA*, 306 F.3d 1144, 1148 (D.C. Cir. 2002).

Here, as in *Akins*, CREW has suffered an informational injury as a result of the FEC’s refusal to change its regulation requiring § 501(c)(4) organizations to be only “primarily engaged” in promoting social welfare. As a direct result of this regulation, § 501(c)(4) organizations are able to engage in significant political activities as tax-exempt § 501(c)(4) organizations without a requirement to disclose the sources of their funds. Yet the funding sources are the precise information CREW seeks, as they enable CREW to ferret out “pay to play” schemes by drawing a link between political expenditures on behalf of members of Congress and legislative action taken by these grateful members. Just like the plaintiffs in *Akins* and *Shays II*, CREW seeks information that “‘would help [it] (and others to whom [CREW] would communicate it) to evaluate candidates for public office . . . and to evaluate the role that [outside groups’] financial assistance might play in a specific election.’” *Shays II*, 528 F.2d at 923 (quoting *Akins*, 524 U.S. 21).

The IRS contests CREW’s standing under the informational harm doctrine upheld in *Akins*, arguing CREW has failed to demonstrate a deprivation of information to which a statute grants CREW a specific interest. D’s Mem. at 9. But the IRS ignores a critical provision of the Tax Code, § 527, which requires tax-exempt groups expressly authorized to engage in activities
intended to influence elections to disclose their donors.\textsuperscript{12} Congress added the disclosure requirements of § 527 precisely because groups engaged in political activities were taking advantage of the gaps in FECA’s coverage to create “stealth PACs.” CRS Report at 18. The “expansion of these groups pose[d] a real and significant threat to the integrity and the fairness of our elections system”; requiring disclosure of their donors was viewed as “simple fairness, basic facts, respecting the public’ right to know.” 146 Cong. Rec. S4660 (2000) (Statement of Sen. Lieberman). Here, too, many § 501(c)(4) groups are engaged in political activities, taking advantage of the loophole the IRS’s “primarily engaged” regulation creates, thereby engaging in the same kind of “stealth” activities decried by Congress when it added the disclosure requirements to § 527 of the Tax Code.

The Supreme Court also has recognized the value of statutorily mandated disclosure in the election context when it highlighted the interests served by the FECA’s disclosure requirements:

First, disclosure provides the electorate with information ‘as to where political campaign money comes from and how it is spent by the candidate’ in order to aid the voters in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and

\textsuperscript{12} While CREW did not cite explicitly to § 527 in its complaint, its complaint clearly conforms with the pleading requirements of Rule 8(a)(2) of the Federal Rules of Civil Procedure, which require only a “short and plain statement of the claim showing that the pleader is entitled to relief.” The Supreme Court has interpreted this to establish a “plausibility standard” requiring a claim to have “facial plausibility” in the face of a motion to dismiss. \textit{Ashcroft v. Iqbal}, 556 U.S. 662, 678 (2009). Where there are “well-pleded factual allegations,” the court comfortably can “assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” \textit{Id.} at 679. Applying this standard here, the well-pleded factual allegations in CREW’s complaint suffice for this Court to rule on both the plaintiff’s standing and the merits of its claims.
campaign speeches. The sources of a candidate’s financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate’s most generous supporters is better able to detect any post-election special favors that may be given in return. And, as we recognized in Burroughs v. United States, 290 U.S. at 548, Congress could reasonably conclude that full disclosure during an election campaign tends ‘to prevent the corrupt use of money to affect elections.’ In enacting these requirements it may have been mindful of Mr. Justice Brandeis’ advice: ‘Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.’

Third, and not least significant, recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations described above.

Buckley v. Valeo, 424 U.S. 1, 66-68 (1976) (citations and footnotes omitted). Given that the Tax Code exempts § 501(c)(4) groups from disclosing their donors, CREW and the public are deprived of these benefits with respect to the activities these groups fund. As a necessary consequence, when § 501(c)(4) organizations fund political activities in support of or opposition to any particular candidate for public office, CREW and the public are deprived of information

13 The Supreme Court reiterated the importance of disclosure requirements in McConnell v. FEC, which involved the electioneering communications disclosure provision of the Bipartisan Campaign Reform Act (BCRA). As in Buckley, the Court concluded BCRA’s disclosure provisions served the important interests of “providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions.” 540 U.S. at 196.
that “allows voters to place each candidate in the political spectrum more precisely,” and “alert[s] the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.” Buckley, 424 U.S. at 66.

In sum, or the § 501(c)(4) groups currently engaged in substantial political activities, § 527 provides a vehicle to continue those activities while retaining their tax-exempt status. Without question § 527 imposes a duty to disclose the identities of contributors and, as its legislative history makes clear, the provision was enacted explicitly to fill in the informational gaps necessary to protect “the integrity and the fairness of our elections system.” 146 Cong. Rec. S4660. Here, CREW has asserted a concrete injury flowing from its inability to access information § 527 requires of tax-exempt groups engaged in political activities, specifically the source of those groups’ funds.

Further, CREW has offered a “fairly detailed description of how the information . . . would prove useful to it.” Ethyl Corp., 306 F.3d at 1148. CREW seeks disclosure of information critical to CREW’s evaluation of candidates for public office and the role and influence of outside groups on their election campaigns. See Shays II, 528 F.3d at 923 (cited in Nader v. FEC, 725 F.3d 226, 229 (D.C. Cir. 2013)). As alleged in CREW’s complaint – allegations this Court must accept as true at this stage of the pleading – CREW “is hindered in carrying out its core programmatic activities when those individuals and entities that attempt to influence elections and elected officials are able to keep their identities hidden.” Complaint, ¶ 7. For example, in examining “pay to play” schemes, knowing which individuals and corporations made large contributions to, and expenditures in support of, candidates “may be very revealing about the influences that donor has brought to bear on the member post-election.” Id., ¶ 8.
Without this information, “CREW is stymied in fulfilling its central mission.” *Id.* This deprivation of information to which CREW is entitled under § 527 establishes an injury in fact sufficient for CREW’s standing to sue under Article III.14

CREW’s standing to sue is further buttressed by the procedural harm it has suffered from the IRS’s refusal to act on CREW’s rulemaking petition. This lawsuit, brought in part under § 706 of the Administrative Procedure Act, challenges the failure of the IRS to act on CREW’s petition to initiate a rulemaking proceeding to conform the agency’s regulations governing § 501(c)(4) organizations with the Tax Code. Complaint, ¶¶ 3, 53-55. CREW, as “a litigant to whom Congress has ‘accorded a procedural right to protect [its] concrete interests’ . . . here, the right to challenge agency action unlawfully withheld . . . ‘can assert that right’” when it has suffered an injury in fact. *Massachusetts v. EPA*, 549 U.S. 497, 517 (2007) (citation omitted).

To be clear, CREW is not basing its standing merely on the fact it submitted a rulemaking petition, as the IRS suggests. See D’s Mem. at 6-7. This is not a case where CREW is merely an “interested party” attempting to base its standing on a “[m]ere interest as an advocacy group.” *Gettman v. DEA*, 290 F.3d 430, 433 (D.C. Cir. 2002) (cited in D’s Mem. at 6).15 Rather, as in *Massachusetts v. EPA*, CREW has demonstrated that the failure of the IRS to

14 The IRS erroneously contends CREW is relying on FECA’s disclosure requirements, which it claims are insufficient to support CREW’s standing because the disclosure they require is not based on the groups’ tax or tax-exempt status. D’s Mem. at 9. CREW cited to the FECA and its disclosure provisions to explain the background to § 527 and the origin of that disclosure provision, not to support a claim the disclosure to which CREW is entitled flows from FECA. Nor is CREW relying on 26 U.S.C. § 6104 for the source of its right to donor information, as the IRS claims (D’s Mem. at 10). That provision was included only as part of the statutory background section of CREW’s complaint.

15 The other cases the IRS cites also are inapt. For example, *Hydro Investors, Inc. v. FERC*, 351 F.3d 1192 (D.C. Cir. 2003) (cited in D’s Mem. at 6), involved a petition for review
act on its rulemaking petition, thereby denying CREW a procedural right to which it is entitled, has resulted in concrete informational harm to CREW. This injury falls well within the category of cases seeking to enforce procedural rights where “the procedures in question are designed to protect some threatened concrete interest of [the plaintiff] that is the ultimate basis of [the plaintiff’s] standing.” *Lujan*, 504 U.S. at 573 & n.8 (individual can enforce procedural rights “so long as the procedures in question are designed to protect some threatened concrete interest of his that is the ultimate basis of his standing”).

CREW has suffered additional injury as the IRS’s refusal to grant its rulemaking petition has impeded CREW in carrying out its core activities. An organization’s standing may be based on allegations its “activities have been impeded.” *Abigail Alliance for Better Access to Developmental Drugs v. Von Eschenbach*, 469 F.3d 129, 133 (D.C. Cir. 2006). For standing purposes, there must be more than a mere “conflict between a defendant’s conduct and an organization’s mission.” *Nat’l Treasury Employees Union v. United States*, 101 F.3d 1423, 1429

of an order where the plaintiff was found to lack standing because it failed to establish a key fact in the harm alleged, specifically that its joint venture interests – which formed the basis of its alleged standing – had value. *Id.* at 1195. In *Fund Democracy, LLC v. SEC*, 278 F.3d 21 (D.C. Cir. 2002) (cited in D’s Mem. at 6), the court confirmed a principle CREW does not challenge, namely that “the mere violation of a procedural requirement does not authorize all persons to sue to enforce the requirement”; rather, there must be “a distinct risk to a particularized interest of the plaintiff.” *Id.* at 27. At bottom, these cases stand for the proposition that simply being an “interested person” does not, without more, confer standing. Here, by contrast, CREW’s standing flows from the refusal of the IRS to act on CREW’s rulemaking petition, and the resulting concrete harms to CREW.

As an academic matter, it is far from clear whether and to what extent the procedural rights standing rule announced in *Lujan* and later in *Massachusetts v. EPA* is analytically distinct from the right to information recognized in *Akins*. But whether analyzed under a “procedural right plus concrete harm” doctrine or as an informational harm, it is clear CREW has suffered an injury in fact within the meaning of Article III.
(D.C. Cir. 1996). Rather, there must be a “direct conflict between the government’s conduct and
the mission of the organization making “the organization’s activities more difficult.” Id. at 1430
(emphasis in original).

Here, as set forth in CREW’s complaint, the failure of the IRS to grant CREW’s
rulemaking petition and eliminate the conflict between its regulation and § 501(c)(4) of the Tax
Code has deprived CREW “of information critical to advancing its ongoing mission,”
Complaint, ¶ 7, and made it more difficult, and frequently impossible, for CREW to ascertain the
source of contributions funding the political activities of § 501(c)(4) organizations. Id., ¶ 10. As
a result, CREW’s activities have been directly and significantly impeded, specifically its ability
to research and issue “pay to play” reports detailing the political influence of specific campaign
spending. Id., ¶¶ 8-9. Further underscoring the resulting harm to CREW is the fact that without
this information, CREW has had to expend additional resources attempting to ascertain the
sources of contributions through other means, such as FEC filings, Form 990 tax returns, and
corporate annual reports. Id., ¶ 10. These alternative sources, however, provide only an
“extremely small fraction of the information” CREW has been denied, “and are no substitute for
the disclosures required of tax-exempt organizations engaged in political activities.” Complaint,
¶ 10.

B. Plaintiff’s Injuries Are Directly Traceable To The Failure Of
The IRS To Grant CREW’s Rulemaking Petition.

The causation requirement of Article III requires a plaintiff to demonstrate its injury is
“fairly traceable” to the challenged conduct. Allen v. Wright, 468 U.S. at 751. In determining
whether the causation requirement for standing is met, “the proper comparison is between what
the agency did and what the plaintiffs allege the agency should have done under the statute.”
Animal Legal Defense Fund, Inc. v. Glickman, 154 F.3d 426, 441 (D.C. Cir. 1998). Here, the IRS claims CREW does not meet this requirement because CREW’s injuries were caused by the activities of third parties not before the Court, specifically organizations claiming tax-exempt status under § 501(c)(4). D’s Mem. at 12. The government’s theory rests on a misconstruction of CREW’s claims and the harm it has suffered. CREW is challenging the IRS’s refusal to act on its rulemaking petition and reconcile the agency’s regulations with the Tax Code, which CREW alleges the “exclusivity” language of 26 U.S.C. § 501(c)(4) compels, and which has resulted in harm to CREW.

Nor, contrary to the characterizations of the IRS, is CREW complaining about the participation of § 501(c)(4) groups in political campaigns. See D’s Mem. at 12. Further, CREW is not alleging an injury resulting from these group’s participation in political activities. See id. Rather, CREW is challenging the failure of the IRS – the defendant in this action – to act on CREW’s rulemaking petition, which seeks to reconcile IRS regulations with the Tax Code’s requirement that § 501(c)(4) groups be operated “exclusively” for the promotion of social welfare. If the IRS had granted CREW’s petition, organizations would have been able to engage in a significant level of political activity and retain their tax-exempt status by becoming or affiliating with organizations granted tax-exempt status under § 527 of the Tax Code, with its concomitant requirement to disclose the sources of their funds. In this way, CREW would have had access to the information it seeks, the denial of which forms the basis of its injury in fact.

In arguing to the contrary, the IRS attempts to inject uncertainty in this outcome by suggesting these groups also could forego tax-exempt status altogether in order to participate in political activities. See D’s Mem. at 13. It is hardly a matter of speculation, however, that at
least some of the tens of thousands of existing § 501(c)(4) organizations will establish or affiliate with political organizations under § 527(f) of the Tax Code if they are required to engage exclusively in the promotion of social welfare. Indeed, defendants’ own explicit guidance on how to set up separate § 527 organizations for the purpose of engaging in political activities highlights the likelihood of this outcome.

That at least some organizations barred from political activity will establish § 527 groups for that purpose is underscored by groups already doing just that. Groups organized under § 501(c)(3) of the Tax Code unquestionably are not permitted to engage in any political activity. As a result, certain organizations have established three-way associations that include a § 501(c)(3), § 501(c)(4), and a § 527 group. For example, Planned Parenthood operates as a § 501(c)(3) under the name Planned Parenthood Federation of America, as a § 501(c)(4) under the name Planned Parenthood Action Fund, and as two § 527 groups, Planned Parenthood Votes (a super PAC that spent $6.4 million in 2012) and Planned Parenthood Action Fund PAC.

Numerous other examples abound where § 501(c)(4) organizations have associated with § 527 organizations in order to engage in political activities. One of the most prominent is Crossroads GPS, a § 501(c)(4) group that, according to its IRS Form 990s, has associated with


American Crossroads, a § 527 group.\textsuperscript{19} Similarly, FreedomWorks, another prominent § 501(c)(4) organization, identifies FreedomWorks for America and FreedomWorks PAC as associated § 527 groups on its Form 990s.\textsuperscript{20} Another § 501(c)(4) organization, Priorities USA,\textsuperscript{21} is affiliated with a § 527 organization, Priorities USA Action.\textsuperscript{22}

Further illustrating the likelihood, if not certainty, that many § 501(c)(4) organizations will look to § 527 of the Tax Code as a vehicle to retain tax-exempt status while still engaging in significant political activities is the example of one group whose § 501(c)(4) status was revoked by the IRS for engaging in excessive political activity, Emerge America. In October 2011, the IRS revoked Emerge America’s tax status based on a finding the group’s activities “d[id] not primarily promote social welfare” because it provided training programs that primarily benefitted the Democratic Party and Democratic candidates for office.\textsuperscript{23} In response to the revocation, Emerge America reincorporated under § 527 of the Tax Code, making it subject to

\begin{itemize}
\item \textsuperscript{21} See Priorities USA’s website, http://www.prioritiesusa.org/about.
\item \textsuperscript{23} See Letter from Holly Paz, Acting Director, Exempt Organizations Rulings and Agreements, IRS, to Emerge America, Oct. 21, 2011, \textit{available at} http://media.salon.com/2013/05/IRS-Letter-11.2.11.pdf.
\end{itemize}
the requirement it report its donors.24 As these examples illustrate, it is a certainty that many §
501(c)(4) groups engaging in significant political activities would seek to retain their tax-exempt
status by establishing or affiliating with tax-exempt groups under § 527.

Nevertheless, the IRS claims standing is precluded here by the Supreme Court’s decision in
instant case, however, presents radically different facts than were before the Supreme Court in
Simon.

The plaintiffs in Simon alleged they were denied hospital services that otherwise would
have been available to them as indigents but for the challenged Revenue Ruling, which the
plaintiffs characterized as “encouraging” hospitals to deny them services by extending tax
benefits to hospitals even if they refused to serve the indigent population. 426 U.S. at 33. The
Supreme Court held it was “purely speculative” whether the denial of services resulted from this
“encouragement,” or instead from decisions the hospitals made “without regard to the tax
implications.” Id. at 42-43. As the Court pointed out, “it is just as plausible” the hospitals
would have “elect[ed] to forgo favorable tax treatment to avoid the undetermined financial drain
of an increase in the level of uncompensated services.” Id. at 43. To otherwise conclude the
harm was caused directly by the challenged Revenue Ruling required an “inference that these
hospitals, or some of them, are so financially dependent upon the favorable tax treatment
afforded charitable organizations” that they would have agreed to treat the plaintiffs if that were
a condition of receiving favorable tax treatment, a speculation the Court declined to make. 426

24 See, e.g., Joan Walsh, Meet The Group The IRS Actually Denied: Democrats!,
Salon.com (May 15, 2013), available at http://www.salon.com/2013/05/15/meet_the
_group_the_irs_actually_revoked_democrats/.
U.S. at 43.

By contrast here, as discussed, it is a certainty that at least some, if not many, § 501(c)(4) groups would create or associate with § 527 tax-exempt organizations in order to continue significant involvement in political activities. Further, unlike the evidence before the Court in Simon that for private hospitals, “private philanthropy account[ed] for only 4%” of their revenues, 426 U.S. at 43, here all § 501(c)(4) organizations, by definition, derive the overwhelming majority of their income from donations. While the Simon Court construed the evidence before it as “support[ing] the commonsense proposition that the dependence upon special tax benefits may vary from hospital to hospital,” id., the commonsense proposition here is that virtually all § 501(c)(4) organizations are dependent on the special tax benefits they derive from § 501(c)(4). This, in turn, provides a comfortable level of certainty most, or at least many, of these groups would not forego favorable tax treatment in order to participate in political activities.

Further, Simon is distinguishable for the additional reason that there, the plaintiffs’ claimed injury and standing to sue were based on the actions of a few hospitals that allegedly had refused to provide services to indigents. As a result, to find that the plaintiffs had standing, the court had to assume those specific hospitals would have elected to treat the plaintiffs rather than give up their favorable tax treatment. Here, by contrast, CREW has been harmed by the failure of all § 501(c)(4) organizations engaged in political activities to disclose their donors, meaning that accepting CREW’s alleged harm does not require the Court to engage in any guesswork about the choices a few select § 501(c)(4) organizations would make. See Clapper v. Dir. of Nat’l Intelligence v. Amnesty Internat’l USA, 133 S. Ct. 1138, 1150 (2013) (“In the past,
we have been reluctant to endorse standing theories that require guesswork as to how independent decisionmakers will exercise their judgment.”).

C. Plaintiff’s Injuries Are Redressable Through The Relief It Seeks.

In arguing CREW has not met the redressability requirements of Article III, the IRS blurs the line between causation and redressability. The Supreme Court in *Allen v. Wright* explained the difference between the two requirements as follows:

To the extent there is a difference, it is that the former [“fairly traceable” component of standing] examines the causal connection between the assertedly unlawful conduct and the alleged injury, whereas the latter [redressability component] examines the causal connection between the alleged injury and the judicial relief requested.

468 U.S. at 753 n.19. Where a litigant’s standing is based on the denial of a procedural right, the litigant “can assert that right without meeting all the normal standards for redressability and immediacy.” *Lujan*, 504 U.S. at 573 n.7. In such cases, the redressability requirement is relaxed; a “litigant has standing if there is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant.” *Massachusetts v. EPA*, 549 U.S. at 518. Further, a litigant seeking to vindicate a procedural right “never has to prove that if he had received the procedure the substantive result would have been altered.” Instead, “[a]ll that is necessary is to show that the procedural step was connected to the substantive result.” *Sugar Cane Growers Cooperative of Fla. v. Veneman*, 289 F.3d 89, 94-95 (D.C. Cir. 2002) (cited in *Massachusetts v. EPA*, 549 U.S. at 518).

Applying these standards here, CREW easily satisfies the more relaxed redressability requirements for plaintiffs like CREW basing their standing on a denial of a procedural right, here the right to a rulemaking proceeding addressing the conflict between the IRS’s current
regulations governing § 501(c)(4) organizations and the Tax Code itself. This conflict, acknowledged at least internally by the IRS over the course of five decades, is so blatant as to make it at least a possibility – and CREW submits a near certainty – any reasoned rulemaking procedure will result in the IRS reconsidering its regulations. The IRS offers no compelling argument to the contrary, insisting instead the redressability of CREW’s claims must be evaluated from the perspective of how independent, third parties not before the Court likely will act. D’s Mem. at 14. But the relief CREW seeks – the proper measure of redressability under *Allen v. Wright* runs against the IRS, specifically that the IRS be compelled to “initiate a rulemaking procedure to harmonize the IRS regulations with the clear and unambiguous statutory language.” Complaint, Prayer For Relief, ¶ 3. Further, there is at least a “possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant,” *Massachusetts v. EPA*, 549 U.S. at 518, which is all the Constitution requires here.

III. PLAINTIFF SATISFIES THE PRUDENTIAL REQUIREMENTS FOR STANDING.

Finally, the IRS makes the misguided and nearly incomprehensible argument that plaintiff lacks prudential standing because Congress has vested exclusive enforcement authority of the Tax Code with the executive branch under the supervision of the Secretary of the Treasury. D’s Mem. at 15. The leaps of logic necessary to sustain this claim simply cannot be made. No single aspect of this suit seeks to “limit others’ ability to claim a tax exemption,” *id.*, nor is plaintiff’s suit properly characterized as an enforcement matter under the Tax Code. *Id.*

Rather, CREW seeks to enforce its rights under the Administrative Procedure Act to compel the IRS to act on CREW’s rulemaking petition. This is not a matter of tax enforcement,
nor does this suit seek to impact the ability of any specific entity to claim a tax exemption or to have the Secretary enforce the Tax Code against a particular entity. To the contrary, CREW’s petition seeks relief from a fundamental flaw in the IRS’s regulation of all § 501(c)(4) groups, which involves a matter of statutory construction, not the exercise of discretion by the IRS.

Indeed, were the Court to refrain from hearing this matter under principles of prudential standing, the defendants would be free to contravene an express statutory requirement, here the requirement that § 501(c)(4) organizations be organized exclusively to promote social welfare, subject to no restraint. As such, this case raises issues clearly fit for judicial review. Under these circumstances, plaintiff satisfies the prudential requirements for standing.25

CONCLUSION

For five decades the IRS has known about the problems with its regulation implementing § 501(c)(4) of the Tax Code, yet has refused to address those problems despite multiple requests for a regulatory fix. The agency’s intransigence is most vividly revealed in its recent rulemaking proposal, which addresses the tax-exempt status of § 501(c)(4) organizations vis-a-vis political activities, yet leaves undisturbed the most critical regulation of all, allowing these groups to be “primarily engaged” in promoting social welfare. As a result of the IRS’s refusal to align its regulation with the Tax Code, individuals and entities seeking to influence our elections have

25 Any argument by the IRS that this lawsuit is moot in light of its recent notice of proposed rulemaking cannot succeed. As discussed supra, the proposed regulations offer no relief from the IRS regulation authorizing § 501(c)(4) groups to be only “primarily engaged” in promoting social welfare. Instead, they solicit comments as to whether the IRS should address this problem through another regulatory action in the future. Thus, with no promise of redress through the pending regulatory process, this lawsuit presents the only actual avenue for relief by compelling the IRS, through a rulemaking procedure, to comply with Congress’ mandate that § 501(c)(4) organizations be operated “exclusively” for the promotion of social welfare.
discovered the great utility of the IRS created loophole, which allows them to make large anonymous donations to § 501(c)(4) organizations to fund political activities, while keeping their roles concealed.

This lawsuit seeks to remedy at least part of the problem, by compelling the IRS to reexamine its “primarily engaged” regulation through a rulemaking procedure. Left untouched, § 501(c)(4) groups will continue to be misused to essentially launder political funds in a manner directly contrary to the role Congress mandated. CREW has been injured by the IRS’s refusal to change its regulation, which has resulted in informational and procedural harm to CREW and stymied its efforts to carry out activities essential to its mission. It is therefore time for this Court to require the IRS to face the problem its unlawful regulation has created. Accordingly, defendants’ motion to dismiss should be denied. Further, pursuant to LCvR 7(f), plaintiff respectfully requests this matter be scheduled for oral argument.

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Respectfully submitted,

/s/ Anne L. Weismann
ANNE L. WEISMANN
D.C. Bar No. 298190
MELANIE SLOAN
D.C. Bar No. 434584
Citizens for Responsibility and Ethics in Washington
1400 Eye Street, N.W., Suite 450
Washington, D.C. 20005
Phone: (202) 408-5565
Facsimile: (202) 588-5020
aweismann@citizensforethics.org
Attorneys for Plaintiff