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August 19, 2019

Via Certified Mail and Electronic Mail (UPLC@courts.ri.gov)

Thomas W. Madonna, Chair
Unauthorized Practice of Law Committee
c/o Rhode Island Supreme Court Clerk's Office
250 Benefit Street
Providence, RI 02903

Re: U.S. Senator Sheldon Whitehouse Unauthorized Practice of Law Complaint

Dear Chair Madonna:

Judicial Watch files this unauthorized practice of law complaint against Rhode Island bar member U.S. Senator Sheldon Whitehouse for filing a brief with the U.S. Supreme Court on behalf of four clients while maintaining inactive status. In addition, the brief Senator Whitehouse filed was unbecoming of the legal profession as it is nothing more than an attack on the federal judiciary and an open threat to the U.S. Supreme Court.[1]

According to the Rhode Island Judiciary website, Senator Whitehouse maintains inactive status.[2] As an inactive member of the Rhode Island bar, Senator Whitehouse cannot practice law in Rhode Island.[3] However, on August 12, 2019, Senator Whitehouse did just that. He filed an *amicus curiae* brief with the U.S. Supreme Court on behalf of Senators Mazie Hirono, Richard Blumenthal, Richard Durbin, and Kirsten Gillibrand. The filing of a brief – let alone all that is required to file a brief – on behalf of clients is indisputably the practice of law.[4]

To be clear, Senator Whitehouse may not have spoken to his clients, researched the law, or written the brief in Rhode Island. However, he provided a Providence, Rhode Island address to the Rhode Island Judiciary.[5] In addition, there is no dispute that Senator Whitehouse is a

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1 Senator Whitehouse's brief is attached as Exhibit A.

2 *See* Exhibit B.

3 Article IV, Rule 1(c) of the Rhode Island Supreme Court Rules on the Periodic Registration of Attorneys.

4 R.I. Gen. Laws §11-27-2.

5 *See* Exhibit B.

Rhode Island resident and spends a substantial amount of his time in Rhode Island. If Senator Whitehouse is practicing law in another jurisdiction, it is merely incidental or temporary. Under the rules, Senator Whitehouse was practicing law in Rhode Island.[6]

In addition, to Judicial Watch's knowledge, Senator Whitehouse is not authorized to practice law in another jurisdiction. Senator Whitehouse lists a Washington, D.C. address on the brief; yet, according to the District of Columbia Bar website, Senator Whitehouse is not a member of the DC Bar.[7] Therefore, if Senator Whitehouse claims he was not practicing law in Rhode Island but in Washington, D.C., he violated the "Unauthorized Practice of Law" rule of D.C.[8]

Besides practicing law without the proper authorization, Senator Whitehouse also violated the Rhode Island Rules of Professional Conduct by attacking the federal judiciary and openly threatening the U.S. Supreme Court. The brief concludes:

> The Supreme Court is not well. And the people know it. Perhaps the Court can heal itself before the public demands it to be "restructured in order to reduce the influence of politics." Particularly on the urgent issue of gun control, a nation desperately needs it to heal.[9]

In other words, if the U.S. Supreme Court does not rule the way Senator Whitehouse and his clients prefer, they will use their power as Senators to restructure the Court.

Such a threat violates the spirit if not the letter of Rhode Island's Rules of Professional Conduct. As the preamble explains:

- "A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others."

- "A lawyer should demonstrate respect for the legal system and for those who serve it, including judges."

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6 Article V, Rule 5.5 of the Rhode Island Rules of Professional Conduct.

7 https://join.dcbar.org/eweb/DynamicPage.aspx?Site=dcbar&WebCode=FindMember.

8 Rule 49(a) of the DC Court of Appeals Rules ("[N]o person may engage in the practice of law in the District of Columbia or in any manner hold out as authorized or competent to practice law in the District of Columbia unless enrolled as an active member of the D.C. Bar.").

9 Exhibit A at 18.

- "A lawyer should further the public's understanding of and confidence in the rule of law and the justice system."
- A lawyer should "maintain a professional, courteous and civil attitude toward all persons involved in the legal system."

Attacking the federal judiciary and openly threatening the U.S. Supreme Court is unbecoming for a member of the legal profession as well as a sitting U.S. Senator. Senator Whitehouse's assertion, without basis, that the Court does not rule on the merits of cases but rather on partisan beliefs undermines confidence in the legal system. It is one thing for a politician to make such a claim on the campaign trail, it is another for a lawyer to make such a charge as part of a legal proceeding. In doing so, Senator Whitehouse has violated the rules of professional conduct.

The misconduct of Senator Whitehouse noted above appears obvious on its face. Senator Whitehouse either violated Rhode Island's or D.C.'s rules, or both. Senator Whitehouse's filing of a brief on behalf of clients without an active law license anywhere in the country is inexcusable. Senator Whitehouse's attack on the federal judiciary and open threat to the U.S. Supreme Court raises substantial questions about his character and fitness to practice law. His actions warrant a full investigation by the Unauthorized Practice of Law Committee.

Respectfully submitted,

Thomas J. Fitton
President

Enclosures

cc: Clerk, Supreme Court of the United States
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Washington, DC 20543

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No. 18-280

In The Supreme Court of the United States

NEW YORK STATE RIFLE & PISTOL ASSOCIATION, INC., ET AL.,

Petitioners,

v.

CITY OF NEW YORK, NEW YORK, ET AL.

Respondents.

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

BRIEF OF SENATORS SHELDON WHITEHOUSE, MAZIE HIRONO, RICHARD BLUMENTHAL, RICHARD DURBIN, AND KIRSTEN GILLIBRAND AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTEREST OF *AMICI CURIAE*[1]

Amici curiae are U.S. Senators Sheldon Whitehouse of Rhode Island, Mazie Hirono of Hawaii, Richard Blumenthal of Connecticut, Richard Durbin of Illinois, and Kirsten Gillibrand of New York. *Amici* share with the Court a strong interest in the preservation of the separation of powers that sustains our constitutional form of government. This brief centers on the practical, political, and historical context of this case.

SUMMARY OF ARGUMENT

The judiciary was not intended to settle hypothetical disagreements. The Framers designed Article III courts to adjudicate actual controversies brought by plaintiffs who suffer real-world harm. This reflects the Framers' intent that the judiciary "may truly be said to have neither force nor will but merely judgment." The Federalist No. 78, 464 (C. Rossiter ed. 2003) (A. Hamilton) (capitalization altered).

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[1] The parties have consented to the filing of this brief. Under Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

The rationale for this long-settled principle is simple: "this Court is not a legislature." *Obergefell v. Hodges*, 135 S. Ct. 2584, 2611 (2015) (Roberts, C.J., dissenting). "It can be tempting for judges to confuse [their] own preferences with the requirements of the law," *id.* at 2612, and to legislate political outcomes from the bench. But a judge "is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness." Benjamin N. Cardozo, *The Nature of the Judicial Process* 141 (Yale Univ. Press 1921). Accordingly, justiciability doctrines, such as standing and mootness, have evolved to serve as an "apolitical limitation on judicial power," confining the courts to their constitutionally prescribed lane. John G. Roberts, Jr., *Article III Limits on Statutory Standing*, 42 Duke L.J. 1219, 1230 (1993). In short, courts do not undertake political "projects." Or at least they should not.

Yet this is precisely—and explicitly—what petitioners ask the Court to do in this case, in the wake of a multimillion-dollar advertising campaign to shape this Court's composition, no less, and an industrial-strength influence campaign aimed at this Court. Indeed, petitioners and their allies have made perfectly clear that they seek a partner in a "project" to expand the Second Amendment and thwart gun-safety regulations. Particularly in an environment where a growing majority of Americans believes this Court is "motivated mainly by politics," rather than

by adherence to the law,[2] the Court should resist petitioners' invitation.

ARGUMENT

I. The Court Should Reject Petitioners' Efforts To Re-Enlist It In A Political "Project."

Parties and lawyers seeking to shape the law through affirmative litigation might once have been reticent to openly promote their political agenda in this Court. No longer.

Confident that a Court majority assures their success, petitioners laid their cards on the table: "The project this Court began in *Heller* and *McDonald* cannot end with those precedents," petitioners submit. Pet'rs' Reply at 2. Petitioners identify no legal question on which the circuit courts of appeal disagree. They do not suggest the court below "so far departed from the accepted and usual course of judicial proceedings" to require this Court to exercise its supervisory power. Indeed, they do not suggest this withdrawn municipal regulation presents any "important question[s] of federal law that . . . should be . . . settled by this Court." Rules of the Supreme Court of the United States, Rule 10 (2017). They

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[2] Quinnipiac Poll (May 22 2019), https://poll.qu.edu/national/release-detail?ReleaseID=2623 [hereinafter *Quinnipiac Poll*].

simply want a majority's help with their political "project."

To stem the growing public belief that its decisions are "motivated mainly by politics," the Court should decline invitations like this to engage in "projects." *See Quinnipiac Poll*, *supra* note 2 (showing fifty-five percent of Americans believe the Court is "motivated mainly by politics").

Petitioners' effort did not emerge from a vacuum. The lead petitioner's parent organization, the National Rifle Association (NRA), promoted the confirmation (and perhaps selection) of nominees to this Court who, it believed, would "break the tie" in Second Amendment cases.[3] During last year's confirmation proceedings, the NRA spent $1.2 million on television advertisements declaring exactly that: "Four liberal justices oppose your right to self-defense," the NRA claimed, "four justices support your right to self-defense. President Trump chose Brett Kavanaugh to break the tie. Your right to self-defense depends on this vote." *Id.; see* Laila Robbins, *Conservatives Bankrolled and Dominated Kavanaugh Confirmation Media Campaign*, The Hill (Oct. 19, 2018).

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[3] TV Commercial from the NRA Institute for Legislative Action, *Confirm Brett Kavanaugh* (last airing Aug. 19, 2018), https://www.ispot.tv/ad/dB8Q/nra-institute-for-legislative-action-confirm-brett-kavanaugh?autoplay=1.

NRA spokespersons were similarly blunt: "The NRA strongly supports Judge Brett Kavanaugh's confirmation to the U.S. Supreme Court because he will protect our constitutional right to keep and bear arms," said Chris W. Cox, the NRA's top lobbyist. Press Release, NRA-ILA, *NRA-ILA Launches Major Advertising Campaign Urging Confirmation of Judge Brett Kavanaugh* (Aug. 7, 2018). "It's critical that all pro-Second Amendment voters urge their senators to confirm Judge Kavanaugh."

Once it secured victory in that confirmation campaign, the NRA continued its "project" in Senate races, stating in one campaign: "The Supreme Court is divided. Liberal Justices oppose your rights. [This Senator] voted against your gun rights by voting against Brett Kavanaugh." Press Release, NRA-ILA, *NRA Launches Seven-Figure Ad Campaign in Indiana* (Oct. 10, 2018).[4]

The Federalist Society for Law and Public Policy Studies published an article this spring describing what recent changes to the Court's composition mean for this very case. That article observed that this Court had not accepted any Second Amendment cases for briefing and argument since its decision in *McDonald v. City of Chicago*, 561 U.S. 742 (2010). Ken Klukowski, *Commentary: Second Amendment*

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[4] *See also* Center for Responsive Politics, *Montana Senate Race: Outside Spending*, Open Secrets, https://www.opensecrets.org/races/outside-spending?cycle=2018&id=MTS1.

Returns to Supreme Court in New York State Rifle, The Federalist Society (Mar. 12, 2019). "Some pundits had speculated that Justice Kennedy had been the reason that four Justices had not voted for any Second Amendment cases since *McDonald* was decided in 2010." *Id.* And "[d]ictum in Justice Antonin Scalia's *Heller* opinion emphasizing that *Heller* should not be read to cast doubt on certain 'presumptively lawful' restrictions on firearms . . . looked to some like Justice Kennedy's price of admission to join the principal opinion." *Id.* But with Justice Kennedy retired, and after a multimillion-dollar campaign asserting his replacement would "break the tie," that calculation changed. After "reject[ing] multiple certworthy cases since 2010," the article continued, the Court, "with Justice Brett Kavanaugh now sitting in Justice Kennedy's seat[,] has suddenly granted review in this case." *Id.* That is "seen as evidence that this theory regarding Kennedy is correct, *that the logjam has been cleared*, and that the current case may be only the first of several over the coming years." *Id.* (emphasis added).

This commentary is of particular note because it was published by an organization that has such a prominent role in the Republican Party's efforts to shape the federal judiciary in favor of donor interests. The Federalist Society's Executive Vice President, Leonard Leo, has been linked to a million-dollar contribution to the NRA's lobbying arm, and to a $250 million network largely funded by anonymous donors to promote right-wing causes and judicial nominees.

See Robert O'Harrow & Shawn Boburg, *A Conservative Activist's Behind-the-Scenes Campaign to Remake the Nation's Courts*, Wash. Post (May 21, 2019). The Society counts over eighty-six percent of Trump administration nominees to the circuit courts of appeal and to this Court as active members. It is not yet clear who the powerful funders are behind Leonard Leo and the Federalist Society judicial selection effort, nor what took place as the Federalist Society was "insourced" into the Trump administration's judicial selection process.[5] But massive political spending and secrecy are rarely a salubrious combination.[6]

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[5] Federalist Society member and former White House Counsel Donald McGahn told the group: "Our opponents of judicial nominees frequently claim the president has outsourced his selection of judges. That is completely false. I've been a member of the Federalist Society since law school—still am. So, frankly, it seems like it's been insourced." Nolan D. McCaskill, *Trump Releases Updated Short List of Potential Supreme Court Nominees*, Politico (Nov. 11, 2017).

[6] Thanks to delays in the required financial disclosures, the full extent of the Federalist Society/Leonard Leo/NRA influence and political spending network on recent appointments and confirmations is not yet fully known. *See, e.g.*, Andrew Perez, *Conservative Legal Interests Funneled $2.7 Million to NRA, Freedom Partners Around Gorsuch Fight*, MapLight (Jan. 7, 2019)

The influence effort directed at this Court has been industrialized. In this particular "project" to rewrite and expand the Second Amendment, petitioners are flanked by an army of nearly sixty *amici*. As usual, the true identities and funding sources of most of these *amici* are impossible to ascertain. *Amicus* groups claim status as "social-welfare" organizations to keep their donor lists private,[7] and this Court's Rule 37.6 is ineffective at adding any meaningful transparency.[8] Were there such transparency, this *amicus* army would likely be revealed as more akin to marionettes controlled by a puppetmaster than to a groundswell of support rallying to a cause. There are some early signals:

- At least 8 *amici* purport to represent gun organizations which, like petitioner, are affiliates of the NRA.

(documenting through tax records political spending behind the Justice Gorsuch nomination).

[7] *See Bullock v. Internal Revenue Serv.*, No. 4:18-cv-00103-BMM, 2019 WL 3423485 (D. Mont. July 30, 2019) (invalidating a 2018 Internal Revenue Service rule that permitted 501(c)(4) "social-welfare" organizations to keep their donor lists private).

[8] In purportedly striking a "balance" between transparency interests and organizations' associational rights, Rule 37.6 reveals an unusual understanding of the word "balance." Letter from Scott S. Harris, Clerk of the Supreme Court of the United States, to Sen. Sheldon Whitehouse (Feb. 27, 2019) (on file with Sen. Whitehouse).

- At least 32 *amici* filing briefs in support of petitioners do not disclose their organizational donors, which prevents this Court, other parties, and the public from knowing whether parties in this case have funded *amici*'s effort.
- At least 6 *amici* report receiving funding from foundations and other often anonymously funded sources connected to Leonard Leo's network that regularly fund ideological litigants and *amici* before this Court.

Out in the real world, Americans are murdered each day with firearms in classrooms or movie theaters or churches or city streets, and a generation of preschoolers is being trained in active-shooter survival drills. In the cloistered confines of this Court, and notwithstanding the public imperatives of these massacres, the NRA and its allies brashly presume, in word and deed, that they have a friendly audience for their "project."

II. Ignoring Neutral Justiciability Principles To Reach Desired Outcomes Damages This Court's Legitimacy.

Petitioners ask this Court to reach the merits despite intervening changes in state and municipal law that give them all the relief they supposedly seek here. Most litigants would celebrate such victory. But petitioners soldier on, tellingly complaining that New York City's new regulation would "frustrate this Court's review" of their Second Amendment arguments. Pet'rs' Letter at 3 (Apr. 19, 2019). As respondents correctly note, "none of this hand-waving

alters the basic fact that this case should be dismissed for lack of any continuing case or controversy." Suggestion of Mootness 13. Petitioners' insistence to the contrary betrays their true motive: the "project."

The judiciary was not intended to settle hypothetical disagreements. Rather, the Framers designed Article III courts to adjudicate actual cases and controversies brought by plaintiffs who suffer a real-world harm. As the first Chief Justice recognized, this limitation was inherent in the Constitution's separation of powers:

> The lines of Separation drawn by the Constitution between the three Departments of Government, their being in certain Respects checks on each other, and our being judges of a court in the last Resort, are Considerations which afford strong arguments against the Propriety of our extrajudicially deciding the questions alluded to [by President Washington's request for an advisory opinion].

Letter from the Justices of the Supreme Court to George Washington (Aug. 8, 1793).

Before Ratification, Hamilton and the Federalists relied on these constraints to alleviate Anti-Federalist fears of an all-powerful judiciary. Limiting the judiciary to real cases that arose properly through litigation was one means to assure that the "general liberty of the People can never be endangered," Hamilton argued. The Federalist No. 78, 464 (C.

Rossiter ed. 2003) (A. Hamilton). This limitation allowed supporters of this new model of government to assure the public that the judiciary "may truly be said to have neither force nor will but merely judgment." *Id.* (capitalization altered).

These principles have guided the judiciary into the modern era. Cardozo observed that a judge "is not a knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness." Benjamin N. Cardozo, *The Nature of the Judicial Process* 141 (1921). And the Chief Justice recently echoed that sentiment, cautioning that "[t]his Court is not a legislature." *Obergefell v. Hodges*, 135 S. Ct. 2584, 2611 (2015) (Roberts, C.J., dissenting). "It can be tempting for judges to confuse [their] own preferences with the requirements of the law," *id.* at 2612, to legislate from the bench. To stave off that temptation, justiciability doctrines like standing and mootness function as an "apolitical limitation on judicial power," ensuring that courts do not exceed their constitutionally prescribed powers. John G. Jr. Roberts, *Article III Limits on Statutory Standing*, 42 Duke L.J. 1219, 1230 (1993). In short, courts do not undertake political "projects."

Recent patterns raise legitimate questions about whether these limits remain. From October Term 2005 through October Term 2017, this Court issued 78 5-4 (or 5-3) opinions in which justices appointed by Republican presidents provided all five votes in the majority. In 73 of these 5-4 decisions, the cases concerned interests important to the big funders, corporate influencers, and political base of the Republican Party. And in each of these 73 cases,

those partisan interests prevailed. *See* Sheldon Whitehouse, *A Right-Wing Rout: What the "Roberts Five" Decisions Tell Us About the Integrity of Today's Supreme Court*, American Constitution Society (Apr. 24, 2019).

With bare partisan majorities, the Court has influenced sensitive areas like voting rights, partisan gerrymandering, dark money, union power, regulation of pollution, corporate liability, and access to federal court, particularly regarding civil rights and discrimination in the workplace.[9] Every single time, the corporate and Republican political interests prevailed.

The pattern of outcomes is striking; and so is the frequency with which these 5-4 majorities disregarded "conservative" judicial principles like judicial restraint, originalism, stare decisis, and even federalism. *See* Whitehouse, *supra* at 12, at Appendix. *Compare, e.g.*, *Confirmation Hearing on the Nomination of Hon. Clarence Thomas to Be an*

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[9] *See, e.g.*, *Shelby Cty. v. Holder*, 570 U.S. 529 (2013) (voting rights); *League of Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006) (gerrymandering); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010) (dark money); *Janus v. Am. Fed'n of State, Cty., & Mun. Emps.*, 138 S. Ct. 2448 (2018) (union power); *Entergy v. Riverkeeper*, 556 U.S. 208 (2009) (regulation of pollution); *Rent-A-Center v. Jackson*, 561 U.S. 63 (2010) (corporate liability and access to courts); *Ricci v. Destefano*, 557 U.S. 557 (2009) (workplace discrimination); *Epic Sys. v. Lewis*, 138 S. Ct. 1612 (2018) (corporate liability and access to courts).

Associate Justice of the Supreme Court of the United States: Hearing Before S. Comm. on the Judiciary, 102d Cong. (1991) ("[Y]ou cannot simply, because you have the votes, begin to change rules, to change precedent."), *with Gamble v. United States*, 139 S. Ct. 1960 (2019) (Thomas, J., concurring) ("When faced with a demonstrably erroneous precedent, my rule is simple: We should not follow it."). In fact, in 55 percent of the 73 cases, the 5-4 majority disregarded principles of stare decisis, judicial restraint, originalism, textualism, or limitations on appellate fact-finding. *See* Whitehouse, *supra* at 12, at Appendix.

As scholars, journalists, and commentators have observed, this Court has employed a number of methods to circumvent justiciability limits in decisions that moved the law. Professor Barry Friedman, for example, has described "stealth overruling," when the Court, without explicitly overruling an existing precedent, "fail[s] to extend a precedent to the conclusion mandated by its rationale," or "reduces precedent to nothing."[10] Others have documented members of this Court affirmatively *inviting* challenges to long-established

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[10] Barry Friedman, *The Wages of Stealth Overruling (with Particular Attention to* Miranda v. Arizona*)*, 99 Geo. L.J. 1, 3 (2010) (describing how the Court has significantly reduced the precedential force of *Miranda* without incurring public scrutiny and criticism).

precedent,[11] or leaving "time bombs" in opinions by including "subtle dicta or analysis not necessary to decide [a case] with an eye toward influencing how the Court will decide a future case," Hasen, *supra* note 11, at 781. Obviously, the Court is not standing back in dispassionate form and "calling balls and strikes" when it is laying the groundwork for future policy

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[11] *See, e.g.*, Adam Liptak, *With Subtle Signals, Supreme Court Justices Request the Cases They Want to Hear*, N.Y. Times (July 6, 2015) (describing Justice Alito's dicta, in *Knox v. SEIU*, 567 U.S. 298 (2012), and *Harris v. Quinn*, 573 U.S. 616 (2014), inviting the eventual challenge to overturn *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977)—another "project" the Court completed last year in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018), which, in turn, contains additional invitations); Richard L. Hasen, *Anticipatory Overrulings, Invitations, Time Bombs, and Inadvertence: How Supreme Court Justices Move the Law*, 61 Emory L.J. 779, 786 (2012) (Hasen describes, among others, an invitation by Justice Alito "to reconsider the holding in *McConnell v. Federal Election Comm'n*, that § 203 [of the Bipartisan Campaign Reform Act of 2002] is facially constitutional," *Fed. Election Comm'n v. Wisconsin Right to Life*, 551 U.S. 449, 482-83 (2007) (Alito, J., concurring). Sure enough, the Court reversed that holding three years later, in *Citizens United v. FEC*, 558 U.S. 310 (2010), after changing the question p, resented to do so. As Justice Stevens observed, "five Justices were unhappy with the limited nature of the case before [them], so they changed the case to give themselves an opportunity to change the law," *id.* at 398 (Stevens, J., dissenting). Balls and strikes, indeed.).

changes or soliciting opportunities to change policy. That should be unacceptable in the context of separated powers.

The Court and the country have witnessed an accompanying explosion of strategic "faux" litigation—cases fabricated to bring issues before the Court when litigants presume it will give them policy victories. For example, we have seen flocks of "freedom-based public interest law" organizations that exist only to change public policy through litigation, and which often do not disclose their funders.[12] We have seen behavioral signals, like litigants who rush to *lose* cases in lower courts "as quickly as practicable and without argument, so that [they] can expeditiously take their claims to the Supreme Court" (ordinarily, in litigation, litigants seek to win).[13] Almost invariably, and as we have

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[12] *See* Timothy L. Foden, *The Battle for Public Interest Law: Exploring the Orwellian Nature of the Freedom Based Public Interest Movement*, 4 Conn. Pub. Int. L.J. 210, 232-33 (2005).

[13] Plaintiffs' Notice of Motion, Motion for Judgment on the Pleadings, and Memorandum of Points & Authorities in Support of Motion for Judgment on the Pleadings, *Friedrichs v. California Teachers Ass'n*, No. 8:13-cv-676-JLS-CW (C.D. Cal. July 9, 2013), ECF No. 81; Brief of Appellants, *Friedrichs v. California Teachers Ass'n*, No. 13-57095 (9th Cir. July 1, 2014), ECF No. 18-1, at 3 ("It is . . . Appellants' intention to pursue their claims before the Supreme Court. Because *this* Court's authority to grant

seen in this case, such plaintiffs are accompanied by throngs of professional *amici*, whose common funding sources and connections to the organizations behind the supposed party-in-interest are obscured by ineffective disclosure rules. *See* Mary Bottari, *Behind Janus: Documents Reveal Decade-Long Plot to Kill Public-Sector Unions*, In These Times (Feb. 22, 2019) (detailing through exhaustive investigative reporting how DonorsTrust, Donors Capital Fund, and the Bradley Foundation collectively bankrolled at least 15 *amicus* briefs in *Janus* and funded both organizations representing the plaintiff—information never disclosed in the litigation).

These systematic, industrialized efforts often seek to end-run standing, case-or-controversy, and other separation-of-powers guardrails; often obscure the real party-in-interest; and align with a larger and even more ominous pattern—a pattern of persistent efforts by large anonymous forces to influence the Court. The anonymous funding of the Federalist Society's "insourced" judicial selection effort; the anonymous funding of the Judicial Crisis Network's judicial confirmation campaigns (two $17+ million

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that relief is foreclosed by binding precedent, Appellants respectfully request that the Court affirm the district court's entry of judgment on the pleadings in favor of Appellees (public-teachers unions and public-school superintendents) as quickly as practicable and without argument, so that Appellants can expeditiously take their claims to the Supreme Court.").

dollar donations, maybe by the same donor, with unknown business before the Court);[14] the anonymous funding of the strategic litigation shops that bring so many cases behind "plaintiffs of convenience"; the anonymous funding of the *amicus* armada, as many as fifteen at a clip—none of it is healthy, and it all bodes very poorly for the Court if it turns out that these anonymous donor interests are also the beneficiaries of the 73-decision run of 5-4 victories we described, *supra* at 12.

This backdrop no doubt encourages petitioners' brazen confidence that this Court will be a partner in their "project."

Today, fifty-five percent of Americans believe the Supreme Court is "mainly motivated by politics" (up five percent from last year); fifty-nine percent believe the Court is "too influenced by politics"; and a majority now believes the "Supreme Court should be restructured in order to reduce the influence of politics." *Quinnipiac Poll*, *supra* note 2. To have the public believe that the Court's pattern of outcomes is the stuff of chance (or "the requirements of the law," *Obergefell*, 135 S. Ct. at 2612 (Roberts, C.J.,

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[14] *See* Anna Massoglia & Andrew Perez, *Secretive Conservative Legal Group Funded by $17 Million Mystery Donor Before Kavanaugh Fight*, OpenSecrets (May 17, 2019); Margaret Sessa-Hawkins & Andrew Perez, *Dark Money Group Received Massive Donation in Fight Against Obama's Supreme Court Nominee*, MapLight (Oct. 24, 2017) (reporting a "single $17.9 million contribution from a mystery donor").

dissenting)) is to treat the "intelligent man on the street," *Gill v. Whitford*, No. 16-1161, Oral Arg. Tr. at 37:18-38:11 (Oct. 3, 2017), as a fool.

The Supreme Court is not well. And the people know it. Perhaps the Court can heal itself before the public demands it be "restructured in order to reduce the influence of politics." Particularly on the urgent issue of gun control, a nation desperately needs it to heal.

CONCLUSION

For the foregoing reasons, the Court should vacate and remand with instructions to dismiss.

Respectfully submitted,

Sen. Sheldon Whitehouse
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August 12, 2019

Exhibit B

RHODE ISLAND JUDICIARY

ATTORNEY SEARCH

WHITEHOUSE, SHELDON 170 WESTMINSTER STREET SUITE 200 PROVIDENCE, RI 02903 4014535294	DATE ADMITTED **1983-11-16** CURRENT STATUS **Inactive**

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