

No. 17-14194

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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CAROL WILDING, *et al.*,

Appellants/Plaintiffs,

vs.

DNC SERVICES CORPORATION, *et al.*,

Appellees/Defendants.

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Appeal from the United States District Court  
for the Southern District of Florida

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**PLAINTIFFS'/APPELLANTS' RESPONSE TO THIS COURT'S  
NOVEMBER 9, 2017 JURISDICTIONAL QUESTION**

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Counsel for Appellants/Plaintiffs

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT**

To the best of undersigned's knowledge, the following is a complete list of the trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have or may have an interest in the outcome of this case, including subsidiaries, conglomerates, affiliates, and parent corporations, including any publicly held company that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

1. Kimberly Alberts, Plaintiff/Appellant.
2. Connie Anderson, Plaintiff/Appellant.
3. Antonino Hernandez, P.A., trial and appellate counsel for Plaintiffs/Appellants.
4. Kayite Ashcraft, Plaintiff/Appellant.
5. Lester John Bates, Plaintiff/Appellant.
6. Beck & Lee P.A., trial and appellate counsel for Plaintiffs/Appellants.
7. Elizabeth Lee Beck, trial and appellate counsel for Plaintiffs/Appellants.
8. Jared H. Beck, trial and appellate counsel for Plaintiffs/Appellants.
9. Mark Bedard, Plaintiff/Appellant.

10. Nancy Berners-Lee, Plaintiff/Appellant.
11. Jen Betterley, Plaintiff/Appellant.
12. Harris Bierhoff, Plaintiff/Appellant.
13. Timothy Bingen, Plaintiff/Appellant.
14. Stephanie Birdsong, Plaintiff/Appellant.
15. Marianne Blair, Plaintiff/Appellant.
16. Richard Booker, Plaintiff/Appellant.
17. Barbara Bowen, Plaintiff/Appellant.
18. Richard Boylan, Plaintiff/Appellant.
19. Matthew Joseph Brady, Plaintiff/Appellant.
20. Kyle Braund, Plaintiff/Appellant.
21. Chris Bubb, Plaintiff/Appellant.
22. Tristan Burgener, Plaintiff/Appellant.
23. D.J. Buschini, Plaintiff/Appellant.
24. Bruce Busto, Plaintiff/Appellant.
25. Joseph Callan, Plaintiff/Appellant.

26. Mark R. Caramanica, counsel for Defendants/Appellees.
27. Patricia Cassidy, Plaintiff/Appellant.
28. Susan Catterall, Plaintiff/Appellant.
29. Vincent Cauchi, Plaintiff/Appellant.
30. Cynthia Chan, Plaintiff/Appellant.
31. Torsha Childs, Plaintiff/Appellant.
32. Karlie Cole, Plaintiff/Appellant.
33. Aimee Coleman, Plaintiff/Appellant.
34. Rosalie Consiglio, Plaintiff/Appellant.
35. Daniel Cooper, Plaintiff/Appellant.
36. Yalonda Dye Cooper, Plaintiff/Appellant.
37. Suzanne Cork, Plaintiff/Appellant.
38. Rhiannon Crandall, Plaintiff/Appellant.
39. William Crandall, Plaintiff/Appellant.
40. Sharon Crawford, Plaintiff/Appellant.
41. Phyllis Criddle, Plaintiff/Appellant.

42. John Crowe, Plaintiff/Appellant.
43. Cullin O'Brien Law P.A., trial and appellate counsel for Plaintiffs/Appellants.
44. Craig Richard Currier, Plaintiff/Appellant.
45. Catherine Cyko, Plaintiff/Appellant.
46. Heather Dade, Plaintiff/Appellant.
47. Alecia Davis, Plaintiff/Appellant.
48. Sherry Davis, Plaintiff/Appellant.
49. Tammy Deitch-Coulter, Plaintiff/Appellant.
50. DNC Services Corporation, Defendant/Appellee.
51. Kathleen Dodge, Plaintiff/Appellant.
52. Diane Emily Dreyfus, Plaintiff/Appellant.
53. Dan Ellis Dudley, Plaintiff/Appellant.
54. Amalie Duvall, Plaintiff/Appellant.
55. Marc. E. Elias, counsel for Defendants/Appellees.
56. Eliza Feero, Plaintiff/Appellant.

57. Erik Michael Ferragut, Plaintiff/Appellant.
58. Elizabeth Figueroa, Plaintiff/Appellant.
59. Diana Flores, Plaintiff/Appellant.
60. William Scott Franz, Plaintiff/Appellant.
61. Susan Frisbie, Plaintiff/Appellant.
62. Elisabeth C. Frost, counsel for Defendants/Appellees.
63. Erik Furreboe, Plaintiff/Appellant.
64. Lisa Gale, Plaintiff/Appellant.
65. Laura Genna, Plaintiff/Appellant.
66. Ryan Ghan, Plaintiff/Appellant.
67. Joseph Gleason, Plaintiff/Appellant.
68. Jeffrey Goldberg, Plaintiff/Appellant.
69. Estrella Gonzalez, Plaintiff/Appellant.
70. Jose Alberto Gonzalez, Plaintiff/Appellant.
71. Prabu Gopalakrishnan, Plaintiff/Appellant.
72. Luke Grim, Plaintiff/Appellant.

73. Lucille Grooms, Plaintiff/Appellant.
74. Anthony Grudin, Plaintiff/Appellant.
75. Lauren Hale, Plaintiff/Appellant.
76. Julie Hampton, Plaintiff/Appellant.
77. Zachary James Haney, Plaintiff/Appellant.
78. Gayle Ann Harrod, Plaintiff/Appellant.
79. Jarath Hemphill, Plaintiff/Appellant.
80. Antonino Hernandez, trial and appellate counsel for Plaintiffs/Appellants.
81. Kirsten Hoffman, Plaintiff/Appellant.
82. Rebecca Hohm, Plaintiff/Appellant.
83. Kim Marie Houle, Plaintiff/Appellant.
84. Stephen Houseknecht, Plaintiff/Appellant.
85. Lewis Humiston, Plaintiff/Appellant.
86. United States Magistrate Judge Patrick M. Hunt.
87. Kirsten Hurst, Plaintiff/Appellant.

88. Benjamin Ilarraza, Plaintiff/Appellant.
89. Bakh Inamov, Plaintiff/Appellant.
90. Danielle Ingrassia, Plaintiff/Appellant.
91. Carolyn Jacobson, Plaintiff/Appellant.
92. Tukoi Jarrett, Plaintiff/Appellant.
93. Timo Johann, Plaintiff/Appellant.
94. Tamara Johnston, Plaintiff/Appellant.
95. Heather Jordan, Plaintiff/Appellant.
96. Rana Kangas-Kent, Plaintiff/Appellant.
97. Brandy Kincaid, Plaintiff/Appellant.
98. Amber Rae Knowlton, Plaintiff/Appellant.
99. Theda Larson-Wright, Plaintiff/Appellant.
100. Peggy Lew, Plaintiff/Appellant.
101. Melissa Liang, Plaintiff/Appellant.
102. Sarah Lopez, Plaintiff/Appellant.
103. Ruthzee Louijeune, counsel for Defendants/Appellees.



104. Edwin Lugo, Plaintiff/Appellant.
105. John Lynch, Plaintiff/Appellant.
106. Sean Lynch, Plaintiff/Appellant.
107. Christine Maiurano, Plaintiff/Appellant.
108. Melissa Marcotte, Plaintiff/Appellant.
109. Raymond Maxwell, Plaintiff/Appellant.
110. Lisa Anne Meneely, Plaintiff/Appellant.
111. David Meuli, Plaintiff/Appellant.
112. Greta Mickey, Plaintiff/Appellant.
113. Carl Miller, Plaintiff/Appellant.
114. Teri Monaco, Plaintiff/Appellant.
115. Angela Monson, Plaintiff/Appellant.
116. Brittany R. Musick, Plaintiff/Appellant.
117. Cullin O'Brien, trial and appellate counsel for Plaintiff/Appellant
118. Daniel O'Meara, Plaintiff/Appellant.
119. Andrew Orrino, Plaintiff/Appellant.

120. Perkins Coie LLP, counsel for Defendants/Appellees.
121. Steve Philipp, Plaintiff/Appellant.
122. Susan Phillips, Plaintiff/Appellant.
123. Jane Ellen Plattner, Plaintiff/Appellant.
124. Alette Prichett, Plaintiff/Appellant.
125. Kenneth Puckett, Plaintiff/Appellant.
126. David Pulaski, Plaintiff/Appellant.
127. David Pyles, Plaintiff/Appellant.
128. Valerie Elyse Rasch, Plaintiff/Appellant.
129. Michael Reed, Plaintiff/Appellant.
130. Susan Reed, Plaintiff/Appellant.
131. Daniel Reynolds, Plaintiff/Appellant.
132. Stanley Rifken, Plaintiff/Appellant.
133. Diane Robinson, Plaintiff/Appellant.
134. Rachel Roderick, Plaintiff/Appellant.
135. Jeff Rogers, Plaintiff/Appellant.

136. Dominic Ronzani, Plaintiff/Appellant.
137. Susan Lynne Roppel, Plaintiff/Appellant.
138. Andrew Rousseau, Plaintiff/Appellant.
139. Deborah Wasserman Schultz, Defendant/Appellee.
140. Lisa Settle, Plaintiff/Appellant.
141. Julianna Seymour, Plaintiff/Appellant.
142. Matthew Shaw, Plaintiff/Appellant.
143. Zeke Shaw, Plaintiff/Appellant.
144. James Simon, Plaintiff/Appellant.
145. Susan Singer, Plaintiff/Appellant.
146. Erika Sitzer, Plaintiff/Appellant.
147. Brenda Lee Smith, Plaintiff/Appellant.
148. Elesha Snyder, Plaintiff/Appellant.
149. Erich Sparks, Plaintiff/Appellant.
150. Bruce Spiva, counsel for Defendants/Appellees.
151. Marlowe St. Cloud Primack, Plaintiff/Appellant.

152. Alaina Talboy, Plaintiff/Appellant.
153. Felicia Michelle Taylor, Plaintiff/Appellant.
154. Brett Teegardin, Plaintiff/Appellant.
155. Thomas & Locicero PL, counsel for Defendants/Appellees.
156. George Thomas, Plaintiff/Appellant.
157. Gregg Thomas, counsel for Defendants/Appellees.
158. Laura Michelle Vaughn, Plaintiff/Appellant.
159. Carlos Villamar, Plaintiff/Appellant.
160. Beverly Virues, trial and appellate counsel for Plaintiff/Appellant.
161. Rick Washik, Plaintiff/Appellant.
162. Duffy Robert Weiss, Plaintiff/Appellant.
163. Mary Jasmine Welch, Plaintiff/Appellant.
164. Rebecca White-Hayes, Plaintiff/Appellant.
165. Carol Wilding, Plaintiff/Appellant.
166. Catherine Willott, Plaintiff/Appellant.
167. AnnMarie Wilson, Plaintiff/Appellant.

168. Graham Wilson, counsel for Defendants/Appellees.
169. Gregory Witkowski, Plaintiff/Appellant.
170. Emma Young, Plaintiff/Appellant.
171. United States District Court Judge William J. Zloch.

**RESPONSE TO JURISDICTIONAL QUESTION**

Plaintiffs/Appellants (“Plaintiffs”) respectfully file this response to this Court’s November 9, 2017 jurisdictional question as follows:

**I. The First Amended Complaint Establishes “Minimal Diversity” Under CAFA, 28 U.S.C. § 1332(d)**

1. The Class Action Fairness Act (“CAFA”) confers jurisdiction over a class action when the matter in controversy exceeds \$5 million and “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

2. In *Lowery v. Alabama Power Co.* 483 F.3d 1184 (11th Cir. 2007), this Court observed that CAFA, pursuant to 28 U.S.C. § 1332(d), imposes a “‘minimal diversity’ requirement under which, for purposes of establishing jurisdiction, only one member of the plaintiff class—named or unnamed—must be diverse from any one defendant.” *Id.* at 1193 n.24.

3. CAFA jurisdiction applies to the case at bar and Plaintiffs have satisfied the jurisdictional requirements of 28 U.S.C. § 1332(d)(2)(A). As established by the allegations of the operative First Amended Complaint, the amount in controversy exceeds \$5 million dollars and the citizenship of at least one member of the three proposed plaintiff classes defined therein is diverse from any

one defendant. (Doc. 8, pp. 5-20).<sup>1</sup> Given each of the three proposed class definitions, there must be at least one class member who is diverse from either of the two Defendants.

**II. Plaintiffs Are Concurrently Filing a Motion to Amend the First Amended Complaint Pursuant To 28 U.S.C. § 1653**

4. Concurrent with this response, Plaintiffs are filing a motion pursuant to 28 U.S.C. § 1653 to amend the First Amended Complaint to clarify the citizenship of the named members of the three proposed classes and further demonstrate diversity jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A).

5. Plaintiffs submit that amending the allegations as such is appropriate to correct any technical deficiencies in the allegations of citizenship as to the named Plaintiffs.<sup>2</sup> Pursuant to Defendants' Position Regarding The Court's Jurisdictional Question Of October 11, 2017 filed with this Court on October 30,

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<sup>1</sup> The three proposed classes are: (1) all donors to the Democratic National Committee from January 1, 2015 through the date of the action; (2) all donors to the Bernie Sanders campaign from January 1, 2015 through the date of the action; and (3) all registered members of the Democratic Party. (Doc 8, p. 29).

<sup>2</sup> In Plaintiffs' response to this Court's initial jurisdictional question, Plaintiffs explained why they believe there is CAFA jurisdiction irrespective of whether there are any pleading deficiencies with respect to the named Plaintiffs' citizenships.

2017 (“Defendants’ Position”), it is Plaintiffs’ understanding that Defendants would not oppose the motion to amend.

**III. The District Court’s Final Order of Dismissal Is a Final Appealable Order that Did not Permit Plaintiffs to Amend the Complaint**

6. Finally, Defendants incorrectly contend that the District Court “put Plaintiffs on notice that they failed to plead citizenship and permitted them the opportunity to amend[.]” Defendants’ Position at 1. Nowhere did the District Court’s order, which was titled “Final Order Of Dismissal” (Doc. 62), permit Plaintiffs to file an amended complaint. The fact that dismissal was “without prejudice,” (Doc. 62, pg. 28), does not affect the finality of the order or whether order grants leave to amend. *Grayson v. K Mart Corp.*, 79 F.3d 1086, 1094 n.7 (11th Cir. 1996) (“A dismissal ‘without prejudice’ refers to the fact that the dismissal is not on the merits, not whether the dismissal is final and appealable.”); *see also Dependable Component Supply, Inc. v. Carrefour Informatique Tremblant, Inc.*, 572 Fed. App. 796, 800 n.3 (11th Cir. July 18, 2014) (disagreeing that a “final order of dismissal” contained an implied right of the plaintiff to file an amended complaint).



DATED: November 24, 2017

Respectfully submitted,

/s/Cullin O'Brien

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### **CERTIFICATE OF COMPLIANCE**

**Type-Volume.** This document complies with the word limit of FRAP 26(d)(2) because, excluding the parts of the document exempted by FRAP 27(a)(2)(B) and applicable rules, this document contains 617 words according to Microsoft Word word processing software. **Typeface and Type-Style.** This document complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6).

/s/Cullin O'Brien  
Cullin O'Brien

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 24, 2017, a true and correct copy of the foregoing has been sent via ECF portal to attorneys for Defendants/Appellants.

/s/Cullin O'Brien  
Cullin O'Brien