IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER, Plaintiff, v. FEDERAL ELECTION COMMISSION, Defendants.	Civil Action No. 24-2585 (SLS)

MEMORANDUM IN SUPPORT OF LAST BEST PLACE PAC'S EXPEDITED MOTION TO INTERVENE AS DEFENDANT AND EMERGENCY REQUEST FOR A STAY

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INTRODUCTION

Less than a month ago, the Court ordered the Federal Election Commission to better explain why it dismissed a complaint by Campaign Legal Center (CLC) against Last Best Place PAC about a September 2023 television advertisement. Unfortunately, however, the FEC presently lacks the four-member quorum necessary to fulfill many of its core functions. *See* 52 U.S.C. §§ 30106(c), 30107(a)(6), (9). Accordingly, it can neither appeal the Court's order nor take a further vote on CLC's complaint, *see id.*, although two Commissioners last week issued a supplemental statement of reasons in what appears to be a good faith effort to comply with the Court's remand order. *See* Suppl. Statement of Reasons ("SSOR"), MUR 8216R, Fed. Election Comm'n (July 15, 2025), https://perma.cc/8J96-EUK7.

If the SSOR is not deemed to satisfy this Court's remand order, however, Last Best Place may face a private lawsuit by CLC for burdensome civil penalties in just a few days' time. *See* 52 U.S.C. § 30109(a)(8)(C), (d). Last Best Place will suffer that severe consequence not because the FEC's dismissal was indefensible—the Court recognized that it might well be appropriate if better explained, ECF No. 21 at 17—but simply because the FEC is procedurally restricted in how it may respond to the Court's order. And the deadline to appeal the Court's order—August 25, 2025—is rapidly approaching and there is little doubt the FEC will lack the necessary quorum to file an appeal at that time. *See* 52 U.S.C. § 30106(c). Last Best Place therefore moves to intervene so that it can protect its own interests, including by preserving the ability to pursue an appeal from the Court's judgment.

Last Best Place had no reason to intervene before now, as the FEC was capably defending its dismissal of CLC's complaint, and Last Best Place promptly seeks intervention now that the FEC is restricted in its ability to act. Last Best Place has an obvious interest in this matter, which

concerns a complaint that Last Best Place violated campaign finance law. And the FEC's lack of a quorum means it is now unable to adequately represent Last Best Place's interests. Targets of FEC complaints have been permitted to intervene in similar circumstances, and the Court should do the same here. *See Campaign Legal Ctr. v. FEC*, 334 F.R.D. 1, 6 (D.D.C. 2019) ("*CLC*").

Time is of the essence. While the deadline to appeal is August 25, *see* Fed. R. App. P. 4(a)(1)(B), the deadline for the FEC to comply with the Court's order is July 28. Last Best Place joins the FEC's request to stay that imminent deadline until the FEC regains a quorum or, at a minimum, for the 60-day extension of the July 28 deadline that CLC concedes is appropriate. *See* ECF No. 25. To the extent the Court does not grant the FEC's request, Last Best Place respectfully requests that the Court promptly stay its June 26 order at least until this expedited motion to intervene is resolved and, if intervention is granted, until the Court rules on Last Best Place's forthcoming motion for a stay of the judgment pending appeal. *See Dietz v. Bouldin*, 579 U.S. 40, 45 (2016); *Nken v. Holder*, 556 U.S. 418, 421 (2009).

BACKGROUND

I. The FEC dismissed CLC's complaint against Last Best Place.

Last Best Place is an independent expenditure–only political committee that was formed in 2023. In September 2023, it sponsored an ad, titled "Shady Sheehy," that referenced Tim Sheehy—then a prominent businessman in Montana—and criticized his failure to pay back a significant loan from the Paycheck Protection Program, a program created during the COVID-19 pandemic to help small businesses keep their employees on payroll. *See* Mem. Op. at 4–5, ECF No. 21. Last Best Place PAC dutifully reported these expenditures on its regular, year-end reports. *See* J. App'x, AR00029–30, ECF No. 20.

On February 14, 2024, CLC and an individual filed an administrative complaint against Last Best Place, arguing that the Shady Sheehy ad was reportable as an independent expenditure

because it expressly advocated for the defeat of Mr. Sheehy in his campaign for U.S. Senator, but that Last Best Place failed to timely report it as such. *See id.* at AR0002, 0004. Counsel for Last Best Place explained in response that the ad was not reportable as an independent expenditure because it did not "direct voters to take any electoral action" but instead "brings awareness to and comment[s] on matters of public concern: specifically, how the Paycheck Protection Program benefitted wealthy corporations and the corrosive impact of wealth in politics." *Id.* at AR00023.

In July 2024, the FEC voted 2–4 to dismiss CLC's complaint. *Id.* at AR00079. The FEC explained that the ad was not express advocacy because (1) it did not contain words "which in context can have no other reasonable meaning than to urge the election or defeat of" a clearly identified candidate, 11 C.F.R. § 100.22(a), and (2) reasonable minds could differ as to whether the ad, in context, "encourages actions to elect or defeat" a clearly identified candidate, *id.* § 100.22(b)(2). J. App'x AR00087–88. The FEC weighed the fact that the ad aired nine months before the primary election, though it did not treat that fact as dispositive. J. App'x AR00088.

II. The Court rejects several of CLC's arguments but remands for a more complete statement of reasons.

CLC filed suit under 52 U.S.C. § 30109(a)(8) to challenge the FEC's dismissal of its complaint, alleging that it was arbitrary, capricious, and contrary to law in violation of FECA. *See* ECF No. 1 ¶¶ 84–86. After CLC and the FEC briefed cross-motions for summary judgment, this Court issued its memorandum opinion on June 26, 2025. Mem. Op. The Court held that the FEC did not rest its decision on an impermissible and unreasonable construction of the term "express advocacy" in 52 U.S.C. § 30101(17) or on an impermissible interpretation of its own regulations in 11 C.F.R. § 100.22(b). Mem. Op. 8–15. In doing so, the Court rejected CLC's contention that the FEC adopted a rigid "temporal requirement" in determining whether an advertisement

constitutes express advocacy and held instead that the FEC had appropriately considered the timing of the ad in dismissing CLC's complaint. *See id.* at 8–15.

The Court held, however, that the FEC's Statement of Reasons was insufficiently detailed to "allow the Court to evaluate its rationale for dismissal." *Id.* at 16. The Court recognized that the FEC may have been reasonably "persuaded" that the Shady Sheehy ad was not express advocacy. *Id.* at 17. But the Court faulted the agency for not directly saying so. *Id.* The Court therefore remanded to the FEC, noting it was "free to provide" an adequate explanation for its dismissal order on a second try. *Id.*

III. The FEC is unable to take certain critical actions because it lacks a quorum.

On April 30, 2025—after the completion of summary judgment briefing in this case—Commissioner Allen Dickerson resigned from the FEC, leaving the agency with only three members: one fewer than the four-member quorum required for the FEC to conduct official business. *See* 52 U.S.C. § 30106(a), (c); R. Sam Garrett, Cong. Rsch. Serv., R45160, *Federal Election Commission: Membership and Policymaking Quorum, In Brief* 3 (May 12, 2025), https://www.congress.gov/crs_external_products/R/PDF/R45160/R45160.19.pdf. Without a quorum, the FEC is unable either to appeal the Court's decision or to issue a new decision on CLC's complaint. 52 U.S.C. §§ 30106(c), 30107(a)(6), (9); *McCutcheon v. FEC*, 496 F. Supp. 3d 318, 325 (D.D.C. 2020).

On July 15, two FEC Commissioners who had originally voted to dismiss CLC's complaint—Vice Chairman Trainor and Commissioner Lindenbaum—issued a supplemental statement of reasons (SSOR) in response to the Court's order. *See* SSOR. The SSOR provides additional reasoning as to why the majority concluded the Shady Sheehy ad did not constitute express advocacy. *See id.* at 1 n.6, 3–6. The SSOR also provides those Commissioners' view that

this Court's remedial order sought "a supplemental explanation of the original vote" but did "not require[] the Commission to reconsider its original vote or re-vote." *Id.* at 1 n.6. And it explains that given the FEC's lack of a quorum, the SSOR represents "the only action that the Commission can currently take to comply with the Court's remand order" because the Commission "cannot" presently take another vote on CLC's complaint. *Id.*

It is unclear to Last Best Place whether the SSOR satisfies the agency's obligation to "conform with" the Court's remand order. 52 U.S.C. § 30109(a)(8)(C). If it does not satisfy that obligation, then CLC will be entitled to file suit and seek fines against Last Best Place in just a few days. *See id.* § 30109(a)(8)(C), (d). And, absent the unexpected nomination and confirmation of two commissioners in the next four weeks, the FEC will not be able to file a timely notice of appeal in this matter. *See* SSOR at 1 n.6 (noting that "[w]ithout a quorum, the Commission cannot appeal the Court's decision").

LEGAL STANDARD

A party seeking intervention as of right under Rule 24(a) must satisfy five elements: (1) the intervenor has standing under Article III; (2) the intervenor's motion is timely; (3) the intervenor has a "legally protected" interest in the action; (4) the action threatens the intervenor's interest; and (5) no other party adequately protects the intervenor's interest. *Crossroads Grassroots Pol'y Strategies v. FEC*, 788 F.3d 312, 316 (D.C. Cir. 2015).

Alternatively, a party may permissively intervene under Rule 24(b) if (1) the intervenor's claim or defense and the main action have a question of law or fact in common, and that (2) intervention will not unduly delay or prejudice the adjudication of the original parties' rights. Fed.

R. Civ. P. 24(b). The Court "enjoys considerable discretion" to grant permissive intervention. *Env't Def. v. Leavitt*, 329 F. Supp. 2d 55, 66 (D.D.C. 2004).[1]

ARGUMENT

I. Last Best Place is entitled to intervene as of right.

A. The motion is timely in view of the FEC's loss of quorum.

Last Best Place timely seeks to intervene just a few weeks after the FEC's inability to defend Last Best Place's interests became clear. The Court issued its memorandum opinion on June 26, 2025. *See* Mem. Op. Until then, Last Best Place had little cause to intervene in this matter, because the FEC was capably representing Last Best Place's interests by defending the FEC's decision to dismiss the complaint. And while the FEC lost its quorum on April 30, Last Best Place had no need or reason to intervene immediately—summary judgment motions were fully briefed, and no further FEC action would be needed if the Court sided with the FEC. It was only this Court's June 26 Order, together with the Administration's continuing failure to appoint new FEC commissioners as FECA requires, 52 U.S.C. § 30106(a)(2)(D), that rendered Last Best Place exposed and inadequately defended by the FEC. Last Best Place promptly seeks intervention just weeks after that happened.

The fact that Last Best Place seeks intervention after the Court's summary judgment decision does not make its motion untimely. A "post-judgment motion to intervene is not untimely if the putative intervenor acts as soon as it is clear that the parties will not represent its interests." *Amarin Pharms. Ir. Ltd. v. Food & Drug Admin.*, 139 F. Supp. 3d 437, 444 (D.D.C.

[1] Rule 24 also requires a party seeking intervention to serve a "pleading that sets out the claim or defense for which intervention is sought." Fed. R. Civ. P. 24(c). While this case is already in the post-judgment phase, Last Best Place provided the attached proposed answer out of an abundance of caution. *See* Ex. A.

2015) (citing *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 395–96 (1977)). And where "the potential inadequacy of representation c[omes] into existence only at the appellate stage," a "post-judgment motion to intervene in order to prosecute an appeal is timely (if filed within the time period for appeal)." *Smoke v. Norton*, 252 F.3d 468, 471 (D.C. Cir. 2001) (quoting *Dimond v. District of Columbia.*, 792 F.2d 179, 193 (D.C. Cir. 1986)); *see also Humane Soc'y Int'l v. U.S. Fish & Wildlife Serv.*, No. 16-CV-720 (TJK), 2021 WL 4739036, at *3 (D.D.C. Oct. 12, 2021) (concluding post-judgment motion to intervene where was timely when made "within the period for appeal"). Thus, "courts often grant post-judgment motions to intervene where no existing party chooses to appeal the judgment of the trial court." *Acree v. Republic of Iraq*, 370 F.3d 41, 50 (D.C. Cir. 2004) (citing 7C Wright & Miller, Fed. Prac. & Proc. Civ. § 1916 (3d ed.)), *abrogated on other grounds by Republic of Iraq v. Beaty*, 556 U.S. 848 (2009).[2]

Timeliness under Rule 24 must "be judged in consideration of all the circumstances, especially weighing the factors of time elapsed since the inception of the suit, the purpose for which intervention is sought, the need for intervention as a means of preserving the applicant's rights, and the probability of prejudice to those already parties in the case." *Humane Soc'y Int'l*, 2021 WL 4739036, at *3 (quoting *Karsner v. Lothian*, 532 F.3d 876, 886 (D.C. Cir. 2008)). Here, the "circumstances" make clear that Last Best Place was reasonable in waiting to see if the Court's summary judgment order would moot any need to intervene. *Id.* The "purpose" of intervening and

[2] In a pair of unrelated cases—both captioned, like this one, "Campaign Legal Center v. FEC"—courts in this circuit have denied post-judgment intervention motions where the FEC completely failed to defend itself in court even before judgment was entered but the intervenor sought intervention only after judgment. *See Campaign Legal Ctr. v. FEC*, 68 F.4th 607, 609 (D.C. Cir. 2023); *Campaign Legal Ctr. v. FEC*, No. CV 20-0809 (ABJ), 2022 WL 2111560, at *2 (D.D.C. May 13, 2022). This case is unlike those cases because here, the FEC capably defended itself in court through the entry of judgment, and Last Best Place moves to intervene at the first step where the agency's inability to act poses a risk of prejudice.

the "need for intervention as a means of preserving [Last Best Place's] rights" is correspondingly clear. *Id.* Absent intervention, no party will appeal, and if the agency is deemed unable to comply with the Court's remand order, CLC would be permitted to bring "a civil action" directly against Last Best Place. 52 U.S.C. § 30109(a)(8)(C).

The relative prejudice to the parties therefore starkly favors intervention. The FEC's lack of a quorum means it cannot appeal the Court's remand order and is constrained in how it may comply with it, meaning that CLC may imminently be permitted to seek burdensome fines and penalties against Last Best Place. *See* 52 U.S.C. § 30109(d). That outcome is fundamentally unfair to Last Best Place, which prevailed before the FEC on grounds that the Court agreed might well be defensible with further explanation. Mem. Op. at 17. Last Best Place should not suffer because the Administration's failure to appoint FEC commissioners has placed the agency in a straitjacket that may prevent it from doing as the Court ordered and will prevent it from appealing the Court's order.

In contrast, CLC will suffer no harm from intervention—it will merely have to engage in the same ordinary proceedings that would have ensued had the FEC not lost its quorum. CLC cannot claim "unfair prejudice[] simply because an appeal" will be brought by an intervenor "rather than by . . . the original" party. *United Airlines*, 432 U.S. at 394; *see also CLC*, 334 F.R.D. at 6 (explaining the loss of default judgment was not "prejudice" in this context). And, because the FEC would have been entitled to appeal the Court's order, CLC cannot claim any unfair delay—the appeal in this matter will occur as it would have in due course.

Finally, Last Best Place should not be penalized for declining to seek intervention the very moment the FEC lost its quorum on April 30, 2025. The FEC's lack of a quorum was initially harmless to Last Best Place—summary judgment motions were fully briefed and awaiting the

Court's resolution. *See* ECF Nos. 11, 19. And it was not immediately apparent that the FEC would remain without a quorum for months. Seeking to intervene then would have needlessly wasted party and court resources and distracted from the resolution of the pending motions. *See Smoke*, 252 F.3d at 471. Instead, Last Best Place reasonably chose to wait until the FEC's lack of a quorum actively impaired its ability to defend Last Best Place's interests and promptly sought intervention once that occurred.

B. Last Best Place has a significant protectable interest at risk of impairment.

Last Best Place's interests here are significant and unambiguous—it prevailed before the FEC when the agency had a full quorum, yet it may now be forced to defend a private complaint due to the agency's loss of a quorum. *See* 52 U.S.C. § 30109(a)(8)(C). CLC's complaint, if upheld, could result in significant penalties. *See id.* § 30109(d). The D.C. Circuit has held that organizations targeted by such an administrative complaint process have a significantly protectable interest in preserving a favorable disposition at the agency level. *See Crossroads*, 788 F.3d at 316-20; *see also CLC*, 334 F.R.D. at 6; *cf. Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (recognizing the beneficiary of agency action has a significantly protectable interest in lawsuit seeking to reverse agency).

Last Best Place successfully persuaded the FEC to dismiss MUR 8216. J. App'x AR00082. Accordingly, it "currently claims a significant benefit from the FEC's dismissal order" because "[a]s long as [the order] is in place, [the organization] faces no further exposure to enforcement proceedings before the FEC related to the complaint, nor is it exposed to civil liability via private lawsuit." *Crossroads*, 788 F.3d at 316. But the Court's remand order exposes Last Best Place to "further enforcement proceedings before the FEC" that—because the FEC lacks a quorum—may result in the FEC being unable to conform its decision as instructed by the Court. *Id.* at 316. Last

Best Place therefore faces the imminent "loss [of] that favorable action," which is "*a fortiori* . . . an interest relating to the property or transaction which is the subject of the action." *Id.* at 318, 320 (citation omitted); *see also CLC*, 334 F.R.D. at 6 (reaching similar conclusion).

The risk of impairment here is also straightforward. The Court has entered an "adverse judgment" that—if not reversed on appeal—will "impair [Last Best Place's] defense in a new proceeding because a judicial pronouncement that the FEC's dismissal was contrary to law would make the 'task of reestablishing the status quo . . . [more] difficult and burdensome." *Crossroads*, 788 F.3d at 320 (quoting *Fund For Animals*, 322 F.3d at 735); *see also CLC*, 334 F.R.D. at 6 (similar). Indeed, because the FEC cannot vote, if the SSOR is deemed inadequate compliance with the remand order, then it would not just be "more difficult and burdensome" for Last Best Place to reestablish the favorable ruling it obtained from the agency—it would be impossible. Only if permitted to intervene can Last Best Place preserve its interests by appealing the Court's judgment. Accordingly, "as a practical matter," Fed. R. Civ. P. 24(a)(2), denying intervention would significantly impair Last Best Place's clear interest in MUR 8216, *see Forest Cnty. Potawatomi Cmty. v. United States*, 317 F.R.D. 6, 10–11 (D.D.C. 2016) (explaining courts look to the "practical consequences" of denying intervention when weighing impairment).

C. The FEC cannot adequately represent Last Best Place's interests.

The FEC can no longer adequately represent Last Best Place's interests in this matter because it is no longer capable of fully acting in this matter. *See* 52 U.S.C. § 30106(c). While the agency has made a good faith effort to comply with the Court's remand order, *see generally* SSOR, it is unclear whether that effort will suffice. Moreover, the agency concedes that it cannot presently appeal the Court's remand order—only Last Best Place, if permitted intervention, can pursue an appeal. As another court of this District held in a similar case where the FEC lacked a quorum,

"there can be no question" that FEC "will not adequately represent [Last Best Place's] interests." *CLC*, 334 F.R.D. at 6.

Further, the D.C. Circuit has consistently held that the inadequate representation element is satisfied whenever the existing parties forego an appeal the intervenor wishes to take—regardless of the precise reason. *See supra* at 6–7 (collecting cases); *see also Smoke*, 252 F.3d at 471 (collecting cases); *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1294 (D.C. Cir. 1980); *Nuesse v. Camp*, 385 F.2d 694, 704 n.10 (D.C. Cir. 1967) (collecting cases); *Wolpe v. Poretsky*, 144 F.2d 505, 507 (D.C. Cir. 1944). This case falls squarely within that longstanding authority.

D. Last Best Place has Article III standing.

Finally, Last Best Place has Article III standing because it "has a concrete stake in the favorable agency action currently in place" that is sufficient to supply standing. *Crossroads*, 788 F.3d at 316–19. As *Crossroads* explains, "the favorable FEC ruling provides [Last Best Place]—as most favorable agency actions would—with a significant benefit, similar to a favorable civil judgment, and precludes exposure to civil liability." *Id.* at 317. Last Best Place faces imminent risk of losing that favorable ruling because the FEC may be deemed to have not complied with the Court's remand order and cannot appeal it. Without the benefit of the FEC's dismissal order or compliance on remand, Last Best Place will be "exposed to civil liability via private lawsuit." *Id.* at 318. "Losing the favorable order would [therefore] be a significant injury in fact." *Id.*; *see also id.* at 316 (explaining that the "lose [of] that beneficial ruling" constitutes a "concrete injury" for purposes of Article III); *cf. Mil. Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998) (concluding intervenor had standing where it was "directly subject to the challenged Rule").

Traceability and redressability are also satisfied here. Because losing the FEC's favorable dismissal order constitutes an injury, it "rationally follows the injury is directly traceable to

[CLC's] challenge to the FEC order." *Crossroads*, 788 F.3d at 316. Permitting Last Best Place to intervene gives the organization an opportunity to "prevent the injury by defeating [CLC's] challenge" on appeal, or by seeking a stay that will permit the FEC to eventually comply with the Court's remedial order. *Id.*

II. Alternatively, Last Best Place should be granted permissive intervention.

In the alternative, Last Best Place respectfully requests that the Court exercise its discretion to permit it to intervene under Rule 24(b). Courts have broad discretion to grant a motion for permissive intervention when the proposed intervenor "has a claim or defense that shares with the main action a common question of law or fact," Fed. R. Civ. P. 24(b)(1)(B), and intervention will not "unduly delay or prejudice the adjudication of the original parties' rights," Fed. R. Civ. P. 24(b)(3).

Last Best Place's proposed defenses, set forth in the attached proposed Answer, "share[] a common question of law with the main action: the legality of the FEC's dismissal order." *CLC*, 334 F.R.D. at 6. For the reasons set forth above, the motion is timely given the FEC's lack of quorum. And intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. CLC "brought this suit anticipating that it would be defended." *Id*. To the extent CLC suggests it faces prejudice simply because Last Best Place will earnestly defend its conduct in this action, that argument fails. Simply having to contend with an intervenor's legal arguments and defenses is not "prejudice" within the context of Rule 24. *See United Airlines*, 432 U.S. at 394; *cf. CLC*, 334 F.R.D. at 6. And allowing Last Best Place PAC to intervene to participate in the appellate stage when the FEC is unable to do so will not prejudice the existing parties. *See Dimond*, 792 F.2d at 193.

At bottom, CLC would be "hard pressed" to explain why Last Best Place should not be permitted to intervene in this case, *CLC*, 334 F.R.D. at 6, given the organization's "concrete stake in the favorable agency action currently in place." *Crossroads*, 788 F.3d at 316–19. Last Best Place seeks only to defend and preserve the FEC's disposition of MUR 8216, with the agency incapacitated and unable to fully do so. The Court should therefore exercise its discretion to grant permissive intervention.

III. The Court should briefly stay its June 26 order and judgment pending resolution of this motion and, if intervention is granted, a motion to stay pending appeal.

Finally, to enable the orderly resolution of this motion given the FEC's impending July 28 deadline to take conforming action, the Court should exercise its inherent authority to stay the June 26 Order until the FEC regains a quorum, as the agency has requested. *See* ECF No. 25.

At minimum, the Court should stay the July 28 deadline pending resolution of this intervention motion and, if intervention is granted, Last Best Place's forthcoming motion for a stay of judgment pending appeal. The Court has "inherent powers" to grant stays as appropriate to "achieve the orderly and expeditious disposition of cases." *Dietz*, 579 U.S. at 45 (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–631 (1962)). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). In weighing whether to stay a case, the Court must "'weigh competing interests and maintain an even balance,' ... between the court's interests in judicial economy and any possible hardship to the parties." *Belize Soc. Dev. Ltd. v. Gov't of Belize*, 668 F.3d 724, 727 (D.C. Cir. 2012) (quoting *Landis*, 299 U.S. at 254–55, 259); *see also Ctr. for Biological Diversity v. Ross*, 419 F. Supp. 3d 16, 20 (D.D.C. 2019) (explaining that a stay turns on (1) harm to the nonmoving

party if a stay does issue; (2) the moving party's need for a stay; and (3) whether a stay would promote efficient use of the court's resources).

These factors all weigh in favor of the stay requested by the FEC, or at least a brief stay of the Court's judgment until this motion to intervene and—if intervention is granted—a follow-on motion for a stay pending appeal are decided. As already explained, absent a stay, the FEC faces a July 28 deadline to take conforming action that—if the SSOR is held inadequate—it cannot possibly take. As a result, in just a few days, CLC may be permitted to sue Last Best Place directly, despite having so far failed to convince either the FEC or this Court that its administrative complaint was correct on the merits. Last Best Place should not have to defend a civil lawsuit simply because the FEC's hands are tied for reasons beyond its control, before Last Best Place has a chance to step into the FEC's shoes and defend the dismissal.

In contrast, CLC will suffer no prejudice from a stay. If the FEC had a quorum, it would itself be able to comply with the Court's order—requiring further challenge by CLC before a claim against Last Best Place could be brought—or to appeal that order and seek a stay pending appeal. Issuing a temporary stay will therefore place CLC in no worse of a position than it would be in the ordinary course. CLC cannot claim prejudice simply because it stands to lose an unexpected windfall in the form of the FEC's inability to act. *Cf. CLC*, 3 F.R.D. at 6. And in response to the FEC's motion, the CLC has consented to a 60-day pause of the July 28 deadline that would permit this Court to resolve this motion as well as briefing on a motion to stay pending appeal.

A brief stay will also benefit judicial efficiency and promote an "orderly" resolution of the matter. *Dietz*, 579 U.S. at 45. Absent a stay, the FEC's inability to comply with the June 26 Order is likely to spawn an entirely new lawsuit on the matter before the end of the month. *See* 52 U.S.C. § 30109(a)(8)(C). But if Last Best Place is then permitted to intervene and appeal this case, the

Court's June 26 order will also likely be appealed in that same timeframe. *See* Fed. R. App. P. 4(a)(1)(B). Without a short stay, the Court therefore faces the prospect of two separate proceedings concerning CLC's administrative complaint, with the attendant risk of conflicting judgments and findings. *Cf. Campaign Legal Ctr. v. Correct the Rec.*, No. CV 23-75 (JEB), 2023 WL 2838131, at *5 (D.D.C. Apr. 7, 2023) (staying CLC's private suit against FEC complaint target when the same court's remand order was under review by the D.C. Circuit). Staying the June 26 order—either to the extent requested by the FEC, or alternatively pending this motion and in due course a motion to stay pending appeal—will ensure orderly direct review and avoid duplicative, unnecessary proceedings.

CONCLUSION

For the reasons above, the Court should grant Last Best Place intervention as of right under Rule 24(a) or, alternatively, grant intervention permissively under Rule 24(b).

It should further stay its June 26 order and final judgment in this matter until the FEC regains a quorum. Alternatively, it should at minimum stay the June 26 order and final judgment pending resolution of this motion and, if the motion is granted, the adjudication of a forthcoming motion to stay the judgment pending appeal.

Dated: July 23, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on Plaintiff and Defendant via CM/ECF.

Dated: July 23, 2025.

/s/ *David R. Fox*
David R. Fox

Counsel for Proposed Intervenor Last Best Place PAC