NOT SCHEDULED FOR ORAL ARGUMENT

NO. 25-5188

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GIFFORDS,

Plaintiff-Appellee,

v.

FEDERAL ELECTION COMMISSION,

Defendant-Appellee,

NATIONAL RIFLE ASSOCIATION OF AMERICA, et al.

Appellants.

On Appeal from the United States District Court
for the District of Columbia, No. 1:19-cv-01192-EGS

APPELLANT NRA'S RESPONSE IN OPPOSITION TO GIFFORDS'S MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY AFFIRMANCE

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), Appellants the National Rifle Association of America and the National Rifle Association Political Victory Fund submit their Certificate as to Parties, Rulings, and Related Cases.

A. Parties and Amici

The appellants in this Court and the movants in the district court are the National Rifle Association of America and the National Rifle Association of America Political Victory Fund (collectively, "NRA"). The appellee in this Court and plaintiff in the district court is Giffords. The appellee in this Court and defendant in the district court is the Federal Election Commission.

B. Rulings Under Review

The ruling under review is the April 22, 2025 memorandum opinion and order (Dkt. 112) denying the NRA's motion for relief from judgment (Dkt. 90), issued by District Judge Emmet G. Sullivan. The memorandum opinion and order is not published in the Federal Supplement 3d, and it is not yet available on Westlaw or any other database of which the NRA is aware.

C. Related Cases

This case has not previously been before this Court. Circuit Rule 28(a)(1)(C) defines "related cases" as "any case involving substantially the same parties and the same or similar issues." Under that definition, the case captioned as *Giffords v. NRA*,

No. 21-cv-02887 (AliKhan, J.) pending in the U.S. District Court of the District of Columbia is potentially a "related case." While there is some overlap in terms of parties (e.g., Giffords is a party there while the FEC is not) and the cases involve different issues (e.g., this appeal raises issues about the subject-matter jurisdiction of the district court in this case, which are distinct from the issues raised in *Giffords v. NRA*, No. 21-cv-02887 (AliKhan, J.)), the two cases appear to be "related cases" in the sense that the instant case serves as the predicate for the case captioned as *Giffords v. NRA*, No. 21-cv-02887.

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INTRODUCTION & BACKGROUND

Closely related to two decisions from this Court—*CLC v. 45Committee*, 118 F.4th 378 (D.C. Cir. 2024) & *CLC v. Heritage Action*, No. 23-7107, 2025 WL 222305 (D.C. Cir. Jan. 15, 2025)—this case involves a judgment and orders that, while clearly void for lack of subject matter jurisdiction, are nonetheless being weaponized against the Appellant NRA in a suit that remains pending in the U.S. District Court of the District of Columbia. *See Giffords v. NRA*, 21-cv-02887. Indeed, those orders and judgment currently serve as the predicate for separate litigation through which plaintiff-appellee Giffords seeks to impose *tens of millions* of dollars in penalties against the NRA based on allegations that the FEC—*i.e.*, the agency responsible for regulating this field in the first place—has already rejected.

This case stems from four complaints that Giffords filed with the FEC against the NRA alleging violations of FECA. The FEC considered Giffords's complaints, debated whether there was reason-to-believe FECA had been violated, and voted on that question for the final time on February 23, 2021. That vote was an impasse: it failed—not due to agency inaction—but because fewer than four Commissioners thought there was reason-to-believe a violation had occurred, and it takes four affirmative Commissioner votes to move past that stage of the FECA enforcement process. 52 U.S.C. § 30109(a)(2). And while Giffords could have brought a legal challenge as to that Commission outcome, it elected not to. ECF 90-1, at 27.

As that was playing out, Giffords filed this suit against the FEC, claiming it had "failed to act" on Giffords's complaints under FECA. The FEC can "act" on a complaint in various ways, including when—like here—it votes on whether to find reason-to-believe FECA had been violated. Indeed, Giffords's main premise when it sought summary judgment here was, it argued, that the FEC had failed to act under FECA because, at the time, it had not yet voted on whether there was reason to believe a violation had occurred. *See e.g.*, ECF 48, at 14, 19. That's why it's so meaningful that in February 2021—in the midst of this lawsuit alleging the FEC "failed to act"—the FEC "acted" by deadlocking on reason-to-believe votes on Giffords's complaints.

That should have ended this case; an administrative claimant like Giffords cannot maintain a "failure to act" suit where, like here, the FEC has acted on the underlying administrative complaints. But here, despite the FEC having acted on the complaints, the district court granted judgment for Giffords, which opened the door under FECA for Giffords to sue the NRA directly. ECF 88.

How could this happen? A bloc of FEC Commissioners took a series of maneuvers that intentionally withheld from courts the true status of enforcement matters with the intent of causing district courts to authorize administrative claimants to sue administrative respondents. *See* ECF 90-1, at 8-22. There is no doubt that this happened here, as one Commissioner behind the scheme publicly

admitted so and the FEC hasn't denied it. ECF 106, at 27. Meanwhile, evidence gathered by the NRA shows the FEC was anything but inactive toward Giffords's complaints. For example, after contested FOIA litigation, FEC disclosures show it was anything but inert as to Giffords's complaints during the period after the FEC's February 23, 2021, deadlocked reason-to-believe votes but before the district court here issued the orders and judgment leading to the citizen suit. ECF 90-1, at 25-30.

Likewise, the underlying litigation here was collusive between the FEC and Giffords—that being a key aspect of Giffords obtaining a judgment against the FEC and subsequent court authorization to sue the NRA. Indeed, it appears the FEC limited which arguments its counsel could raise here, which would explain why the FEC never asked the district court to dismiss this case despite the Commission's February 23, 2021 "acts" under FECA. ECF 90-1, at 18-30, 43-49.

With that in mind, the NRA sought to vacate the orders and judgment based on the well-settled legal principal that this case should have ended when the FEC deadlocked at the reason-to-believe stage. The district court's orders and judgment, which authorized Giffords's citizen suit against the NRA, are void for lack of subject matter jurisdiction because the FEC had acted on Giffords's complaints *before* that court issued the orders and judgment. *Every court* that considered this question has held that a deadlocked reason-to-believe vote is a significant "action" in a "failure to act" suit like here. *See CLC v. 45Committee*, 666 F. Supp. 3d 1, 4 (D.D.C. 2023);

Heritage Action v. FEC, 682 F. Supp. 3d 62, 77 (D.D.C. 2023); *CLC v. Iowa Values*, 691 F. Supp. 3d 94, 106 (D.D.C. 2023). And this Court affirmed the two cases that were appealed. *See 45Committee*, 118 F4th at 382; *Heritage Action*, No. 23-7107 (D.C. Cir. Jan. 15, 2025).

The district court nonetheless denied the NRA's motion for relief from judgment on procedural grounds—meaning it never addressed the subject matter jurisdiction challenge, despite binding authority requiring otherwise. That means the jurisdictional arguments the NRA has been raising for years remain unaddressed, while the jurisdictionally-flawed Orders and Judgment remain as the predicate for Giffords's ongoing litigation against the NRA.

Because that cannot be the law, the NRA appeals the denial of its motion for relief from judgment. Giffords, however, asks this Court, too, to ignore the jurisdictional problems raised below.

For example, Giffords seeks dismissal of this appeal based on the incredible notion that the district court's denial of the NRA's Rule 60 motion did not harm the NRA. It is well-settled, however, that an appeal of a Rule 60 motion is exclusive of an appeal of any underlying judgment, and the NRA clearly has been injured by the district court's denial of its Rule 60 motion. The NRA has standing to proceed with this appeal.

Giffords's motion for summary affirmance should likewise be denied. The NRA's appeal has significant merit, this case presents at least one novel issue (*i.e.*, whether a district court must consider its own subject matter jurisdiction when a non-party raises the issue), and the district court's failure to address factual issues cuts against summary affirmance where unaddressed factual issues must be viewed favorably to the nonmovant NRA.

The NRA respectfully requests that this Court deny Giffords's Motion, assign this appeal to a merits panel, and direct this matter proceed to "plenary briefing on the merits, oral argument, and the traditional collegiality of the decisional process[.]" *Sills v. Bureau of Prisons*, 761 F.2d 792, 792 (D.C. Cir. 1985).

ARGUMENT

I. The NRA is appealing the denial of its Rule 60 motion—*not the underlying judgment.*

The NRA's appeal is not procedurally barred for the simple reason that it is *not* appealing the underlying judgment; rather, the NRA is appealing the denial of its Rule 60(b)(4) motion. "[T]he appeal of a Rule 60(b) denial is independent of the appeal of the original petition" and "does not bring up the underlying judgment for review." *Banister v. Davis*, 590 U.S. 504, 520 (2020).

Meanwhile, Giffords's authorities do not even discuss appeals from a Rule 60(b) denial. Giffords's Mot. at 13-18. Rather, Giffords's cases speak to the irrelevant notion that a non-party may not directly appeal *an underlying judgment*.

But the NRA is not appealing the underlying judgment—it's appealing the denial of its Rule 60 motion. *See* NRA Statement of Issues on Appeal at 1 (June 26, 2025) (Appealing "[w]hether the district court erred by denying the NRA's motion for relief from judgment.").

Nor is there any question that the NRA may appeal an order *subsequent* to the judgment (*i.e.*, the district court's denial of the NRA's Rule 60 motion)— to which the NRA is bound. *See e.g., U.S. Catholic Conf. v. Abortion Rts. Mobilization*, 487 U.S. 72, 76 (1988) (allowing non-party to appeal civil contempt holding); *Hinckley v. Gilman, C. & S.R. Co.*, 94 U.S. 467, 469 (1876) (allowing non-party to appeal decree directing payment). Indeed, neither *U.S. Catholic Conference* nor *Hinckley* support Giffords here because the appellants there were bound by the decision they appealed just like the NRA is here.

There's no question the NRA is bound by the district court's denial of its Rule 60 motion. The jurisdictional arguments raised in the NRA's Rule 60 motion may only be raised here in *this* case. While the NRA diligently raised similar jurisdictional arguments in the citizen suit just weeks after the district court authorized that suit, those arguments languished there for nearly 3 years. *See Giffords v. NRA*, ECF 35.

Further, this Court recently held that those subject matter jurisdiction arguments could not be raised in a citizen suit. *See 45Committee*, 118 F.4th at 385-

389 (concluding that "FECA's judicial-review requirements—including the citizen-suit preconditions—are nonjurisdictional" and may be challenged in a citizen suit under Rule 12(b)(6) but *not* on jurisdictional grounds under Rule 12(b)(1)). As a result, the subject matter jurisdiction arguments raised by the NRA in the citizen suit were never addressed by that court, and this Court's decision in *45Committee* means they never will be. Thus, the only court that can address those arguments is the district court here, but it declined to do so (despite its obligation to confirm its own jurisdiction as explained below). So, the NRA *is* bound by the district court's denial of its Rule 60 motion, and *Broidy Cap. Mgmt. LLC v. Muzin* cuts against Giffords here because the appellant there could not appeal a motion to compel because that appellant—unlike the NRA here—was "not bound by the underlying order." 61 F.4th 984, 994 (D.C. Cir. 2023).

Giffords knows—and concedes—that the NRA is bound by the order being appealed here. Giffords's Mot. at 16, n. 3. Moreover, Giffords currently argues in the citizen suit that the court's grant of summary judgment to Giffords here precludes the NRA from bringing even its 12(b)(6) arguments there. *See Giffords v. NRA*, ECF 88, at 58-61 (claiming NRA is precluded from challenging the delay suit court's underlying decision). But Giffords can't have it both ways. A jurisdictional ruling here would dismiss the citizen suit, too, and that would serve the interests of judicial

economy where that suit remains in its infancy (and in the pleadings stage) after it was stayed pending this Court's decision in *45Committee*.

II. The NRA has Article III standing for this appeal.

The NRA has appellate standing because it's been injured as a result of the district court's denial of its Rule 60 motion, and that injury would be redressed by a favorable appellate ruling from this Court.

To establish standing, an appellant must show "injury caused by the [order on appeal,] rather than injury caused by the underlying facts." *NRDC v. Pena*, 147 F.3d 1012, 1018 (D.C. Cir. 1998). The district court's order injured the NRA in two ways.

First, and as a direct result of the district court's denial of the NRA's Rule 60 motion, the NRA continues to be forced to defend itself against Giffords's citizen suit. See *Giffords v. NRA*. That constitutes sufficient injury for Article III standing.

Indeed, while Giffords relies on *Am. Soc'y for Prevention of Cruelty to Animals v. Feld Ent., Inc.*, 659 F.3d 13 (D.C. Cir. 2011), *FDA v. All. for Hippocratic Med.*, 602 U.S. 367 (2024), and *Diamond v. Charles*, 476 U.S. 54 (1986) for the notion that "unrecovered litigation costs" are not sufficient Article III injuries, those cases are inapplicable because the movants there each claimed appellate standing based on *self-inflicted* litigation costs. *See American Society*, 659 F.3d at 25 ("an organization's diversion of resources to litigation . . . is considered a 'self-inflicted' budgetary choice"); *FDA*, 602 U.S. at 370 ("an organization . . . cannot spend its

way into standing simply by expending money[.]"); *Diamond*, 476 U.S. at 70 (rejecting self-inflicted litigation costs).

The NRA's litigation costs in Giffords's citizen suit are not self-inflicted. While the district court's jurisdictionally-flawed underlying decisions opened the door for Giffords to sue the NRA, the relief sought below by the NRA—*i.e.*, vacatur of the orders and judgment as void for lack of jurisdiction—would end Giffords's suit against the NRA. So, the district court's denial of the NRA's Rule 60 motion means the NRA remains an unwilling participant in that litigation. Thus, the NRA continues to incur litigation costs there, *see* **Exhibit A**, Declaration of Matthew H. Bower, and those costs and burdens certainly satisfy the injury part of Article III standing. *See e.g.*, *Raytheon Co. v. Ashborn Agencies, Ltd.*, 372 F.3d 451 (D.C. Cir. 2004) ("[the defendant] having to incur these costs and burdens [of litigating] certainly satisfies the injury requirement of Article III."); *Sea-Land Serv., Inc. v. Dep't of Transp.*, 137 F.3d 640, 648 (D.C. Cir. 1998) ("The concrete cost of an additional proceeding is a cognizable Article III injury.").

Like the appellants in *Raytheon* and *Sea-Land*, the NRA did not *manufacture* its defense costs in Giffords's citizen suit—those costs were thrust on the NRA. And had the district court granted the NRA's motion, the citizen suit would have stopped and the NRA's corresponding defense costs would have ceased. An order from this

Court righting the district court's error would stop the citizen suit and the NRA's corresponding injury.

Second, the fact that Giffords seeks a judgment against the NRA in the citizen suit, which is based on the orders and judgment for which the NRA sought vacatur below, is also a sufficient Article III injury.

While the NRA vehemently denies Giffords's citizen-suit claims that it engaged in some scheme to violate FECA, the reality is Giffords is asking that court to "[a]ssess" a "civil penalty against [the NRA] in accordance with 11 C.F.R. § 111.24, to be paid to the United States, for each violation [the NRA is] found to have committed." *Giffords v. NRA*, Amended Complaint, ECF 81, at 47. By law, that court could assess a civil penalty not to exceed "an amount equal to any contribution or expenditure involved in the violation." 11 C.F.R. § 111.24(a)(1). Giffords's amended complaint alleges the NRA "made up to $35 million" in violations, ECF 81, at 1, so Giffords seeks a civil penalty of up to $35 million against the NRA.

This sort of contingent liability clearly constitutes an Article III injury. *See, e.g.*, *Clinton v. City of New York*, 524 U.S. 417, 430-431 (1998) (holding that New York's potential loss of funding due to President's line item veto—though akin to a speculative litigation outcome—was nonetheless a "contingent liability" constituting "an immediate, concrete injury" for Article III standing"); *In re*

TransCare Corp., 592 B.R. 272, 285 (Bankr. S.D.N.Y. 2018) (contingent liability constitutes a concrete injury-in-fact).

The district court's denial of the NRA's Rule 60 motion allows Giffords's citizen suit to continue *notwithstanding* the jurisdictional flaws in the court below here, the decisions of which serve as *the* predicate for Giffords's attempt to seek a $35 million contingent liability from the NRA. Had the district court granted the NRA's Rule 60 motion, then that contingent liability would no longer exist. But it didn't, and the continuing existence of that contingent liability constitutes an injury for Article III standing. Giffords's motion must be denied.

III. This court should deny Giffords's Motion for Summary Affirmance.

"A party seeking summary disposition bears the heavy burden of establishing that the merits of his case are so clear that expedited action is justified." *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). Before summarily affirming a district court's ruling, "this court must conclude that no benefit will be gained from further briefing and argument of the issues presented." *Id*. at 297-98. Giffords has not met that burden.

A. The district court erred by not confirming its own subject matter jurisdiction, thereby creating an impression that precludes summary affirmance.

The NRA sought to vacate the district court's orders and judgment on the grounds that it lacked jurisdiction over the case when it authorized Giffords to file

its citizen suit against the NRA. Specifically, the orders and judgment are based on the false premise that the FEC had "failed to act" on Giffords's complaints, which we now know is untrue. As this Court confirmed just months ago, a failed reason-to-believe vote like the vote held by the FEC here on February 23, 2021, constitutes an "act" in a "failure to act" suit. That means, *inter alia*, this case became moot in February 2021 when those votes were taken because the district court could no longer grant effectual relief, which meant it lacked subject matter jurisdiction to issue the orders and judgment. *See generally 45Committee*, 118 F.4th 378. *See Spencer v. Kemna*, 523 U.S. 1, 7–8, 18 (1998) ("[M]ootness, however it may have come about, simply deprives us of our power to act; there is nothing for us to remedy, even if we were disposed to do so.").

And while the NRA sought relief below both on mootness grounds and because there was no controversy before that court where, *inter alia*, Plaintiff Giffords and Defendant FEC were aligned on the dispositive legal question before that court, *see* ECF 90-1, at 43-47, the district court did not even need to consider whether a non-party has standing to pursue relief under Rule 60(b)(4). *See Jakks Pac., Inc. v. Accasvek, LLC*, 270 F. Supp. 3d 191, 196 n.4 (D.D.C. 2017), *aff'd per curiam*, 727 Fed. Appx. 704 (D.C. Cir. 2018), *cert. denied*, 139 S. Ct. 596 (2018) (emphasis added) ("A court has an independent obligation to confirm that it has

subject-matter jurisdiction; it is *irrelevant* whether a party or a non-party first alerts the court to potential jurisdictional defects.").

The district court, however, declined to address the NRA's jurisdictional challenge, concluding instead it need not confirm its jurisdiction when questioned by a non-party. Op. at 14-15. But the district court misapplied the one case it interpreted to permit courts to ignore jurisdictional defects, *see id*. (citing *Agudas Chasidei Chabad v. Russian Fed'n*, 19 F.4th 472, 477 (D.C. Cir. 2021) ("*Chabad II*"), and otherwise failed to abide by binding authorities requiring courts to address jurisdictional problems when they arise. This is reversible error.

For starters, the district court misinterpreted *Chabad*. While the court below acknowledged that "the district court in *Chabad* addressed the non-party's jurisdictional arguments even after concluding that it could not seek vacatur under Rule 60(b)"—it nonetheless refused to address the jurisdictional problems raised by the NRA because, according to the court, the D.C. Circuit later held that it wasn't necessary to do so. But that is not what happened in *Chabad*.

The district court here misread *Chabad II*, mistakenly concluding that "the D.C. Circuit ended its analysis [of the *Chabad* district court's opinion] after concluding that the non-party was not a proper Rule 60(b) movant, *Chabad II*, 19 F.4th at 477 (*dismissing appeal for lack of jurisdiction*[.]")," Op. at 14 (emphases added).

In *Chabad II*, this Court did *not*—as the district court claims—"dismiss[] [the Rule 60] appeal for lack of jurisdiction." Op. at 14. Rather, this Court *affirmed* the district court's judgment in appeal no. 20-7080. *Chabad II*, 19 F.4th at 477. And the district court's judgment in appeal no. 20-7080 *examined* and *concluded* it had jurisdiction. *See* Order Denying Rule 60 Motion, at 3 (attached as **Exhibit B**) (incorporating court's analysis of non-party movant's jurisdictional challenge from corresponding order resolving non-party's companion motion); Order Denying Companion Motion, at 2-5 (attached as **Exhibit C**) (considering non-party's jurisdictional challenge). Therefore, *Chabad II* never held a district court may ignore a jurisdictional challenge merely because it was raised by a non-party.

Nor does the district court's reliance on what it described as "*Chabad III*" allow it to ignore jurisdictional challenges raised by nonparties. The portion of *Chabad III* quoted by the district court, *see* Op. at 14 ("The D.C. Circuit doubled down [in *Chabad III*]. . . that 'regardless of the district court's jurisdiction . . . . [a non-party] could not invoke Rule 60(b)[.]"), does not support its conclusion. There, the *Chabad* court merely held that a jurisdictional challenge does not, in itself, grant Rule 60 standing. *Chabad III*, 110 F.4th at 247. It *did not* hold that a court may ignore jurisdictional issues raised by a non-party. And for good reason: ample case law mandates that district courts *must*, *sua sponte*, confirm their own jurisdiction even when it is improperly challenged. *See NetworkIP, LLC v. F.C.C.*, 548 F.3d 116, 120

(D.C. Cir. 2008) ("[S]ubject matter jurisdiction may not be waived…."); *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) ("Courts have an independent obligation to determine whether subject-matter jurisdiction exists[.]") (citations omitted); *Jakks*, 270 F. Supp. 3d at 196 n.4 ("it is irrelevant whether a party *or a non-party* first alerts the court to potential jurisdictional defects.").

The district court clearly erred by refusing to consider its own jurisdiction. And if the district court were correct that it could ignore a jurisdictional challenge raised by a non-party, that would be a departure from binding authority and a new rule. *See* 5 C. Wright & A. Miller, Fed. Prac. & Proc. § 1393 (3d ed.) ("a question of subject matter jurisdiction may be presented by any interested party at any time throughout the course of the lawsuit . . . the defense may be interposed as a motion for relief from a final judgment under Rule 60(b)(4) or presented for the first time on appeal."). This Court has never held a district court may ignore jurisdictional challenges, and that precludes summary affirmance here. *Am. Petroleum Inst. v. EPA*, 72 F.3d 907, 914 (D.C. Cir. 1996) (summary affirmance inappropriate where issues of first impression are before the court).

B. The district court's refusal to apply the *Grace* exception is based on legal and factual errors, thereby precluding summary affirmance.

1. The D.C. Circuit has not established a blanket rule against applying the *Grace* exception.

The NRA is a proper movant under Rule 60(b)(4), and the court erred when it held otherwise. While Rule 60(b) authorizes a court to "relieve a party or its legal

representative" from a judgment or order, Fed. R. Civ. P. 60(b), "several circuit courts have permitted a non-party to bring a Rule 60(b) motion or a direct appeal when its interests are strongly affected." *Grace v. Bank Leumi Tr. Co. of NY*, 443 F.3d 180, 188-89 (2d Cir. 2006) (permitting non-parties to seek relief from a judgment under Rule 60(b)(4) where "there is a strong possibility that the predicate judgment [resulted from processes] devoid of due process protections and marred by serious procedural shortcomings"); *see also Binker v. Com. of Pa.*, 977 F.2d 738, 745 (3d Cir. 1992); *Southerland v. Irons*, 628 F.2d 978, 980 (6th Cir. 1980) (per curiam).

In *Chabad II*, the D.C. Circuit recognized the "exception in *Grace*," but declined to apply it to the facts of that case. 19 F.4th at 477 (unlike *Grace* where the parties had "attempt[ed] to use the judgment as a predicate for a fraudulent conveyance action against the [non-party movant]," there was no such predicate judgment or resulting strong effect on the non-party movants in *Chabad*).

Here, while it acknowledged that the D.C. Circuit has not outright rejected the *Grace* exception, the district court nonetheless fashioned its own analysis for why it believed the *Grace* exception should be universally rejected. This was reversible error.

For example, the district court reasoned that *Ratner v. Bakery & Confectionery Workers Int'l Union of Am.* 394 F.2d 780, 782 (D.C. Cir. 1968), which

previously concluded that Rule 60(b) was available only to a "party," somehow foreclosed the NRA's motion. Op. at 11. But the D.C. Circuit *refused* to issue a blanket rejection of *Grace* when it could have just a few years ago in *Chabad II*. And while the district court acknowledged the distinction between *Ratner* and *Chabad*, as well as the fact that "this Circuit has not expressly rejected the *Grace* exception," Op. at 12-13, it nevertheless found *Ratner* to be dispositive despite it predating *Grace* by nearly forty years.

Further, the district court's reliance on *McKeever v. Barr*, 920 F.3d 842, 847 (D.C. Cir. 2019) was likewise misplaced. Op. at 13. First, *McKeever* dealt with an entirely different set of rules: the Federal Rules of *Criminal* Procedure. Second, in *McKeever* the D.C. Circuit refused to create an *ad hoc* exception, which doesn't matter here because the NRA seeks a generally applicable ruling (i.e., *not* an *ad hoc* ruling) that whenever parties to a lawsuit collude to injure a non-party—as happened in *Grace* and here—the non-party may attack the judgment as void under the Federal Rules of *Civil* Procedure.

In sum, the district court's conclusion that the NRA could not invoke Rule 60(b) is based on a series of legal errors. The D.C. Circuit has not laid down a blanket rule against the *Grace* exception. This would essentially change the law of the D.C. Circuit, picking one side in a circuit split despite the fact that the D.C. Circuit already declined to adopt such a blanket rule. *See Chabad II*, 19 F.4th at 477 (declining to

apply *Grace* after review of facts). This error, combined with the fact that other circuits permit non-party Rule 60 practice in similar cases, counsels reversal. Thus, Giffords has not satisfied its heavy burden for summary affirmance, and its motion should be denied.

2. The district court erred by not making factual findings on the NRA's evidence.

The NRA is a proper Rule 60 movant under *Grace* because it is "strongly affected" by the orders and judgment, which serve as the predicate for Giffords's citizen suit against the NRA. The Orders and Judgment were entered as a result of the FEC's failure to alert the district court of the fact that the Commission had indeed "acted" before that court issued the orders and judgment. Indeed, while the district court's underlying ruling that the FEC failed to act was based on the *appearance* of the FEC's failure to take *any* action on Giffords's complaints during the seven months between the February 23, 2021 deadlocked reason-to-believe votes and the district court's September 30, 2021 Memorandum Opinion, subsequent FEC disclosures show the Commission *had* acted at that time. Moreover, the FEC failed to inform the district court of the dispositive legal significance of its February 23, 2021 deadlocked reason-to-believe votes because it never told the court that those votes were "acts" under FECA such that the FEC could not have violated section 30109(a)(8).

The district court gave three bare-bones reasons for refusing to apply the *Grace* exception. First, it said "the record indicates that the FEC kept the Court, and the Plaintiff, informed[.]" Op. at 13. Second, it suggested a lack of evidence that Giffords and the FEC engaged in "collusive litigation" *Id*. Third, it held "the Court's Orders and Judgment in this case have no effect on the NRA." *Id*. at 13-14. The district court is wrong on all three fronts. More to the point, it ignored all of the evidence that the NRA provided, thus hindering appellate review. *See Pullman-Standard v. Swint*, 456 U.S. 273, 291 (1982) ("[F]actfinding is the basic responsibility of district courts[.]").

First, while the district court concluded the FEC had kept the court and the parties "informed," the court missed the premise of the NRA's argument and didn't address the grounds for which the NRA sought relief. The NRA's key premise is that there was insufficient adversity between the parties because the FEC never raised the dispositive fact that its deadlocked reason-to-believe vote was an act under FECA requiring dismissal. *See* ECF 90-1, at 43-49. A cursory keeping the court informed of factual developments is one thing, but *explaining the legal significance of those developments is quite another*. The latter never happened, and when the NRA raised this issue below, the FEC never addressed why it failed to raise the significance of those votes, which would have led to dismissal of this suit against the FEC. Incredibly, that alone constitutes even *more* evidence of collusive litigation

below. *See id.*; ECF 106, at 23-25. The district court, however, never addressed the evidence before it and the fact that the purportedly "adverse" parties refused to litigate dispositive arguments remains totally unaddressed to date. That is an abuse of discretion.

Second, the district court erred by refusing to acknowledge the evidence of collusive litigation. Op. at 13. The court failed to acknowledge that FEC Commissioner Weintraub—the architect behind the FEC scheme that misled the district court into authorizing the citizen suit against the NRA—publicly bragged that she "quite consciously and intentionally cast votes" that put Giffords's citizen suit against the NRA, among others, "on their current paths." *See* ECFs 90-6 (Weintraub tweets); 90-7 (Weintraub's statement). And the court didn't acknowledge that the FEC—the only entity that could explain Weintraub's statements—never responded to the NRA's argument that Weintraub's statements were evidence of collusion. This, too, is an abuse of discretion.

Third, while the district court brushed off the effect of its orders on the NRA, saying they "have no effect on the NRA other than the end-result of it having to defend itself in a citizen suit," Op. at 14, Giffords's citizen suit seeking a $35 million dollar contingent liability against the NRA, which is premised on the void orders and judgment, seriously affects the NRA. *Infra* Section II.

The district court also erred by ignoring: (1) evidence the FEC prepared a statement of reasons after the February 2021 deadlocked vote, which further shows it "meaningfully engaged" with Giffords's complaints during the 7 months between the deadlock and the court's issuance of the judgment and order authorizing the citizen suit—*see* ECF 90-1, at 26-30; 42-43; (2) evidence the FEC instructed its lawyers to not raise dispositive legal issues that would have resulted in the case's dismissal—*see id*. at 17-21; and (3) evidence the FEC has remained silent as to its role in causing this to happen—*see id*. at 43-49; ECF 106, at 23-25.

As a result, this Court is left to wonder why the district court did, or did not, find that evidence persuasive. Essentially, the district court ducked appellate review by issuing an opinion devoid of factual analysis. Under this Court's long-standing precedents, the district court's order should be vacated and the case should be remanded for factual findings sufficient to facilitate appellate review. *See Abdelhady v. George Washington Univ.*, 89 F.4th 955, 958 (D.C. Cir. 2024) (remanding for court to provide "a 'full explanation' for its decision, detailed enough to permit 'review of the district court's exercise of its discretion.'"); *Weisberg v. Webster*, 749 F.2d 864, 873–74 (D.C. Cir. 1984) (remanding for a decision "adequately explained by specific findings.").

Certainly, then, summary affirmance would be inappropriate here since the Court is obligated to view the record—and the inferences to be drawn therefrom—

in the light most favorable to the NRA as the non-moving party. *Taxpayers*, 819 F.2d at 297 (quotation omitted). Giffords's motion must be denied.

CONCLUSION

The NRA respectfully requests that the Court deny Giffords's Motion to Dismiss and for Summary Affirmance, and that it proceed to the merits of these appellate proceedings.

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Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This response complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because it contains 5,197 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This filing complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared using Microsoft Office Word in Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I certify that on July 28, 2025, I electronically filed this brief with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system, thereby serving all persons required to be served.

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