EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATE MAJORITY PAC Plaintiff, v. FEDERAL ELECTION COMMISSION Defendant, NRSC Intervenor-Defendant.	Civil Action No. 1:26-cv-337 (RJL)

NRSC'S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF ITS MOTION TO DISMISS

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GLOSSARY

FCC	Federal Communications Commission
FEC	Federal Election Commission
FECA	Federal Election Campaign Act
PAC	Political Action Committee
SMP	Senate Majority PAC

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INTRODUCTION

Senate Majority PAC—a Super PAC that lacks Article III standing—brings this misguided suit to try and compel the Federal Election Commission to violate the Federal Election Campaign Act. The merits of the suit turn on an exceptionally narrow question: whether the FEC's alleged "failure to act" on Senate Majority PAC's administrative complaint was "contrary to law."

The answer to that question is clearly "no." *First*, the FEC took a cognizable enforcement "act" within the meaning of FECA when it notified the respondents about Senate Majority PAC's administrative complaint. *See Campaign Legal Ctr. v. 45Committee, Inc.*, 118 F.4th 378, 391 (D.C. Cir. 2024) ("to 'act' on a pending complaint, in this context, means to take some enforcement step recognized by the statute"). Because that enforcement step is expressly identified in the statute, Senate Majority PAC has not plausibly alleged that the FEC "failed to act."

Second, the FEC's alleged enforcement delay comports with law and so cannot be contrary to it. To begin with, Senate Majority PAC's judicial Complaint asserts the FEC allowed a 120-day statutory period to lapse. But the Complaint is bereft of any factual content beyond the length of the alleged delay, and Circuit law is clear that time alone does not suffice. *See 45Committee*, 118 F.4th at 383 ("The Commission's failure to act within that 120-day period or any other timeframe is not per se contrary to law."); *FEC v. Rose*, 806 F.2d 1081, 1092 (D.C. Cir. 1986) (similar).

More fundamentally, FECA expressly bars the FEC from taking any further enforcement action. The next potential enforcement step is for the FEC to determine

whether "it has reason to believe that a person has committed" a statutory violation. *See* 52 U.S.C. § 30109(a)(2). But FECA is clear the Commission can only take that step "by an affirmative vote of 4 of its members." *Ibid.*; *see also* § 30106(c) ("the affirmative vote of 4 members of the Commission shall be required"). The FEC currently has only two commissioners, and it has had fewer than four commissioners for the entire pendency of Senate Majority PAC's administrative complaint. The President has nominated additional commissioners, but those nominees have not yet been confirmed by the Senate. Because the statute affirmatively prohibits the Commission from taking the next enforcement action until it has at least four commissioners, Senate Majority PAC fails to state a "contrary to law" claim for this reason too.

But this Court need not even reach these merits issues because Senate Majority PAC lacks Article III standing. Senate Majority PAC (a Super PAC) asserts that it competes with the NRSC (a national political party committee) and the Nevada Victory Committee (a now defunct joint fundraising committee). But the D.C. Circuit has *never* permitted a Super PAC to obtain competitor standing, and the entities to which Senate Majority PAC compares itself have fundamentally different interests. Senate Majority PAC asserts informational standing too, but that supposed injury is entirely derivative of its asserted (but non-existent) competitive injury, involves information that is already publicly available, and has no identifiable downstream consequences.

The asserted injuries also are not redressable. They are mostly backwards looking. And the administrative complaint, at bottom, asks the FEC to adopt an interpretation of the *Communications* Act that the Federal *Communications* Commission—*i.e.*, the federal

agency Congress actually charged with administering the statute—has squarely rejected for decades.

For all these reasons, the Court should dismiss the Complaint for lack of subject matter jurisdiction and failure to state a claim.

BACKGROUND

A. The FEC Enforcement Process

The Federal Election Commission is a six-member body charged with enforcing FECA. By law, "[n]o more than 3 members of the Commission . . . may be affiliated with the same political party." 52 U.S.C. § 30106(a)(1). Reflecting that bipartisan structure, "the affirmative vote of 4 members of the Commission shall be required," § 30106(c), for the Commission "to initiate," "defend," "or appeal any civil action," § 30107(a)(6), "to render advisory opinions," § 30107(a)(7), "to develop . . . rules," § 30107(a)(8), or "to conduct investigations," § 30107(a)(9).

As relevant here, the FEC's investigations and enforcement process begins when someone files an administrative complaint alleging someone else violated FECA. *See* 52 U.S.C. § 30109(a)(1). The statute identifies the first step the FEC must take after receiving a complaint: "Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation." *Ibid.* This step in the enforcement process does not require the affirmative vote of four commissioners, and the Commission has delegated this step to its General Counsel. *See* 11 C.F.R. § 111.5 ("the General Counsel . . . shall within five (5) days after receipt notify each respondent that the complaint has been filed"). Any person receiving the General

Counsel's notification "shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint." 52 U.S.C. § 30109(a)(1); *see also* 11 C.F.R. § 111.6 ("A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint").

"The next step is for the FEC to vote to determine whether there is reason to believe the subject of the complaint has violated the Act." *Perot v. FEC*, 97 F.3d 553, 558 (D.C. Cir. 1996), *overruled on other grounds by Campaign Legal Ctr. v. 45Committee, Inc.*, 118 F.4th 378 (D.C. Cir. 2024). This step requires four affirmative votes: "If the Commission, upon receiving a complaint, . . . determines, by an affirmative vote of 4 of its members, that it has reason to believe" a violation has been or will be committed, "[t]he Commission shall make an investigation of such alleged violation." 52 U.S.C. § 30109(a)(2). "Only after four commissioners make this discretionary decision 'shall' the Commission 'make an investigation.'" *CREW v. FEC*, 993 F.3d 880, 892 (D.C. Cir. 2021) (quoting 52 U.S.C. § 30109(a)(2)); *see also Campaign Legal Ctr. v. FEC*, 106 F.4th 1175, 1185 (D.C. Cir. 2024) (explaining "the FEC [was] short of the four votes needed to authorize an investigation" (citation omitted)).

"Following any investigation, the Commission votes on whether there is 'probable cause to believe' a violation has been or will be committed." *45Committee*, 118 F.4th at 382 (quoting 52 U.S.C. § 30109(a)(4)(A)(i)). This step, just like a reason to believe vote, requires a minimum of four affirmative votes. "If four or more Commissioners vote to find probable cause, the Commission may then pursue an escalating series of enforcement steps,

each of which [also] requires four votes to initiate." *Ibid.* (citing § 30109(a)(4)(A)(i), (a)(5)(C), (a)(6)(A)).

The Commission cannot publicly disclose the complaint or any investigation or votes related to it until it terminates its proceedings. *See* 11 C.F.R. §§ 111.20, 111.21; 52 U.S.C. § 30109(a)(12)(A). However, the respondent named in the complaint may disclose that information and may authorize others to disclose it. 11 C.F.R. § 111.21(a), (c); 52 U.S.C. § 30109(a)(12)(A).

B. FECA's Cause Of Action

FECA instructs the FEC "to conduct investigations and hearings expeditiously." 52 U.S.C. § 30107(a)(9). "[B]ut FECA 'does not create a deadline in which the FEC must act.'" *Jud. Watch, Inc. v. FEC*, 293 F. Supp. 2d 41, 48 (D.D.C. 2003) (Leon, J.) (quoting *Stockman v. FEC*, 138 F.3d 144, 152 (5th Cir. 1998)).

Instead, FECA provides that "[a]ny party aggrieved . . . by a failure of the Commission to act on [an administrative] complaint during the 120-day period beginning on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia." 52 U.S.C. § 30109(a)(8)(A). "[T]he court may declare that . . . the failure to act is contrary to law." § 30109(a)(8)(C).

Although FECA's cause of action "ripens after that 120-day period," "[t]he Commission's failure to act within that 120-day period or any other timeframe is not per se contrary to law." *45Committee*, 118 F.4th at 383; *see also Rose*, 806 F.2d at 1092 ("Mr. Rose, it will be recalled, contended that [FECA] required the Commission to act within 120 days or within an election cycle. We unequivocally rejected both contentions.").

Rather, courts in this District "analyze the lawfulness of the Commission's challenged inaction under a set of factors laid out in *Common Cause v. FEC*, 489 F. Supp. 738, 744 (D.D.C. 1980), and *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) (*TRAC*)." *45Committee*, 118 F.4th at 383; *see also Rose*, 806 F.2d at 1084 & n.6, 1091–92 & n.17.

C. Senate Majority PAC's Administrative Complaint

Senate Majority PAC filed its administrative complaint in August 2025.[1] Compl. ¶ 1. On August 28, the FEC sent a notification letter to the NRSC informing it that the FEC had "received a complaint" indicating it "may have violated the Federal Election Campaign Act of 1971." *See* Exhibit 1 at 1. The notification letter informed the NRSC of its right to respond under the statute and enclosed a copy of Senate Majority PAC's administrative complaint.

The FEC has been without the statutory quorum of four commissioners since April 2025. When the administrative complaint was filed in August, the FEC had only three confirmed commissioners. *See* FEC's Notice of Lack of Quorum ¶ 2 (April 6, 2026), Dkt. No. 8. Then, in September 2025, another FEC commissioner's term ended, and he also left the agency. *Ibid.*; *see also* Faith Wardwell, *Hobbled federal campaign finance enforcer loses another member*, Politico (Sept. 25, 2025), https://tinyurl.com/76mzm689. President Trump has since nominated two additional commissioners. *See* The White House,

[1] Senate Majority PAC alleges it filed its administrative complaint on August 13, 2025. Compl. ¶ 1. The as-filed copy enclosed with the FEC's notification letters is file-stamped August 21, 2025. Exhibit 1 at 3.

Nominations Sent to the Senate (Feb. 11, 2026), https://tinyurl.com/ydcsf4z3. But the Senate has not yet voted on those nominations. Thus, the Commission has been without a quorum for the entire time Senate Majority PAC's administrative complaint has been pending.

D. Senate Majority PAC's Judicial Complaint

On February 5, 2026, the Senate Majority PAC filed its judicial Complaint. The Complaint contains just one count, asserting that the FEC's alleged "failure to act on Plaintiff's administrative complaint is contrary to law under 52 U.S.C. § 30109(a)(8)(A)." Compl. ¶ 40.

The Complaint contains very little factual matter describing the FEC's alleged inaction. The Complaint says that 176 days elapsed after Senate Majority PAC filed its administrative complaint, that Senate Majority PAC is unaware of any FEC action during that time, and that the statute allows a lawsuit after 120 days. *See* Compl. ¶ 2 ("To SMP's knowledge, the Commission has not taken any action on SMP's complaint in the 176 days since SMP filed it. SMP therefore brings this action"); ¶ 39 ("Upon information and belief, the FEC has failed to act on Plaintiff's administrative complaint since SMP filed it 176 days ago, exceeding the 120-day statutory response period."). That's it. The Complaint says nothing about FECA's enforcement scheme, the initial enforcement steps the statute authorizes the FEC to take (and which the record shows it in fact took here), or why there has been no further action. The Complaint never mentions the word "quorum" and is likewise conspicuously silent about the fact that the FEC has been without one the entire time its administrative complaint has been pending.

Instead, the bulk of the Complaint seeks to color this Court's perception of the underlying merits of Senate Majority PAC's administrative complaint—something not at issue in this case. It alleges Nevada Victory Committee was not eligible to purchase television broadcast advertising from Sarkes Tarzian, the owner of television station KTVN Channel 2 in Reno, Nevada, at the lowest unit charge and so received a prohibited corporate in-kind contribution in the form of a discount offered outside the ordinary course of business. Compl. ¶¶ 3–4, 26.

There is just one problem with that theory: Nevada Victory Committee was entitled to purchase television advertising at the lowest unit charge because Nevada Victory Committee was a joint fundraising committee of the NRSC and Sam Brown for Nevada. Compl. ¶¶ 19–20.[2] The FCC, not the FEC, administers the lowest unit charge regime. *See* 47 U.S.C. §§ 151, 315; 47 C.F.R. §§ 73.1940–44. And the FCC has long held that joint fundraising committees authorized by a candidate committee *are* entitled to the lowest unit charge. *See, e.g.*, FCC, Public Notice, *FCC Media Bureau Provides Guidance on Entitlement to Lowest Unit Charge for Legally Qualified Candidates for Federal Office and All Authorized Committees* (Mar. 30, 2026), https://tinyurl.com/4c8vpffn. ("With another election season upon us, the FCC's Media Bureau takes this opportunity to remind broadcasters and the public about the FCC's lowest unit charge (LUC) requirements. . . . The FCC's rules do not recognize distinctions between types of committees for LUC

[2] The FEC approved Nevada Victory Committee's termination on December 10, 2024. *See* FEC, Nevada Victory Committee, Termination Report Approval (Dec. 10, 2024), https://tinyurl.com/6r79xnwp.

purposes (*e.g.*, principal campaign committee, joint fundraising committee) provided that the committee is an authorized committee of the candidate[.]"). The NRSC looks forward to the FEC addressing Senate Majority PAC's administrative complaint when its quorum is restored and vindicating the NRSC of any alleged wrongdoing.

STANDARD OF REVIEW

The Court should dismiss the Complaint for lack of subject matter jurisdiction and failure to state a claim. "In response to a motion to dismiss a complaint for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), the plaintiff must prove by a preponderance of the evidence that the Court has jurisdiction." *Nat'l Ass'n for Home Care & Hospice, Inc. v. Burwell*, 77 F. Supp. 3d 103, 107 (D.D.C. 2015) (Cooper, J.). To survive a Rule 12(b)(6) motion to dismiss, meanwhile, the "complaint 'must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Cureton v. Duke*, 272 F. Supp. 3d 56, 61 (D.D.C. 2017) (Leon, J.) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

The Court "assume[s] the truth of all material factual allegations in the complaint." *Am. Nat'l Ins. Co. v. FDIC*, 642 F.3d 1137, 1139 (D.C. Cir. 2011). But the court will "not assume the truth of legal conclusions," *Williams v. Lew*, 819 F.3d 466, 472 (D.C. Cir. 2016) (citing *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015)), nor "accept 'threadbare recitals of a cause of action's elements, supported by mere conclusory statements,'" *ibid.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009)).

"In ruling on a Rule 12(b)(6) motion to dismiss, the Court may consider any documents either attached to or incorporated in the complaint without converting the

motion to dismiss into one for summary judgment. This includes documents that are referred to in the complaint and central to the plaintiff's claim even if they are produced, not by the plaintiff in the complaint, but by the defendant in a motion to dismiss." *Cureton*, 272 F. Supp. 3d at 61 (cleaned up). "In addition, the Court may consider 'matters of which it may take judicial notice.'" *Ibid.* (quoting *EEOC v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997)).

ARGUMENT

I. THE COURT SHOULD DISMISS BECAUSE SENATE MAJORITY PAC LACKS STANDING

To establish Article III standing, "[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). "The party invoking federal jurisdiction bears the burden of establishing these elements." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

The D.C. Circuit and this Court have specifically held that section 30109(a)(8)(A) "does not confer standing; it confers a right to sue upon parties who otherwise already have standing." *Common Cause v. FEC*, 108 F.3d 413, 419 (D.C. Cir. 1997); *see Judicial Watch*, 293 F. Supp. 2d at 48 ("complainants to the FEC cannot establish standing merely by asserting that the FEC failed to process its complaint in accordance with law" (cleaned up)); *accord Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009) ("deprivation of a procedural right . . . is insufficient to create Article III standing"). Neither standing theory advanced by Senate Majority PAC can overcome this hurdle.

A. Senate Majority PAC Cannot Establish Competitive Injury

Senate Majority PAC asserts an unprecedented theory of competitor standing: that "the FEC's [supposed] failure to investigate and penalize" the NRSC hampers Senate Majority PAC's "mission of electing Democratic senators." Compl. ¶¶ 33–34. But no court has ever extended competitor standing to PACs, and Senate Majority PAC does not directly compete with the NRSC or the Nevada Victory Committee.

The doctrine of competitor standing "recognizes that economic actors suffer constitutional injury in fact when agencies lift regulatory restrictions on their competitors or otherwise allow increased competition." *Advanced Energy United, Inc. v. FERC*, 82 F.4th 1095, 1107–08 (D.C. Cir. 2023) (citation omitted). The party asserting competitor standing "must be a '*direct* and *current* competitor' . . . in the relevant market." *PSSI Glob. Servs., LLC v. FCC*, 983 F.3d 1, 11 (D.C. Cir. 2020). Courts have extended the doctrine to political candidates and political parties. *See Shays v. FEC*, 414 F.3d 76, 83–89, 92 (D.C. Cir. 2005) (political candidates); *Nat. L. Party of U.S. v. FEC*, 111 F. Supp. 2d 33, 45–46 (D.D.C. 2000) (Huvelle, J.) (political parties). But, as Judge Kelly recently explained, "[n]o court has ever extended competitor standing to cover PACs." *AB PAC v. FEC*, No. CV 22-2139 (TJK), 2023 WL 4560803, at *4 (D.D.C. July 17, 2023); *see also id.* at *5 ("No court has ever extended the political competitor-standing doctrine beyond political candidates and parties in that way").

There are good reasons for treating political candidates and political parties differently than PACs. "Candidates are not common competitors in the economic marketplace," *Bost v. Illinois State Bd. of Elections*, 146 S. Ct. 513, 519 (2026), nor are

they "'mere bystanders' in their own elections," *id.* at 520 (quoting *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 110 (2025)). Even compared to other political participants, "a candidate's interest differs in kind." *Ibid.* Candidates "seek to represent the people," *id.* at 519, and "to claim the right to voice the will of the people," *id.* at 520. "They have an obvious personal stake in how the result is determined and regarded." *Ibid.* There may be no better example of a true competitive interest than "candidates who are competing against each other" "for the same congressional seat." *See Davis v. FEC*, 554 U.S. 724, 728, 738 (2008).

Political parties share candidates' unique competitive interests. "We have a constitutional tradition of political parties and their candidates engaging in joint First Amendment activity; we also have a practical identity of interests between the two entities during an election." *Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 630 (1996) (Kennedy, J., joined by Rehnquist, C.J., and Scalia, J., concurring in the judgment and dissenting in part); *FEC v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 448 (2001) ("Parties . . . have an especially strong working relationship with their candidates"). "A [political] party's success or failure depends in large part on whether its candidates get elected." *Id*. at 469 (Thomas, J., joined by Scalia and Kennedy, JJ., dissenting). "Because of this unity of interest, it is natural for a party and its candidate to work together and consult with one another during the course of the election." *Ibid.* In the standing context, courts have recognized that the exceptionally tight alignment between political parties and their candidates justifies extending competitor standing for political candidates to the political parties that support them.

PACs stand on fundamentally different political footing. Super PACs are independent expenditure-only political committees. *See* FEC, *Political Action Committees*, https://tinyurl.com/pmjv2vjb (last visited April 7, 2026). "By definition, an independent expenditure is political speech presented to the electorate that is *not* coordinated with a candidate." *Citizens United v. FEC*, 558 U.S. 310, 360 (2010) (emphasis added) (citing *Buckley v. Valeo*, 424 U.S. 1, 46 (1976)). Because Super PACs, by law, are prohibited from coordinating their expenditures with a candidate, they do not compete with candidates. Therefore, Super PACs cannot obtain competitor standing on this basis. *See, e.g.*, *Gottlieb v. FEC*, 143 F.3d 618, 621 (D.C. Cir. 1998) ("AmeriPAC cannot claim standing as a 'competitor' of the Clinton campaign. . . . Only another candidate could make such a claim."); *AB PAC*, 2023 WL 4560803, at *5 (holding PAC "does not directly compete with" candidate (cleaned up)).

Nor do rival Super PACs compete directly with each other. In *AB PAC*, the eponymous Super PAC claimed that "even if it does not compete with Trump, it has competitor standing because it competes with PACs that support Trump." 2023 WL 4560803, at *5. While acknowledging that "AB PAC and its rival [Super] PACs are competitors in some sense," Judge Kelly nevertheless rejected AB PAC's claim to competitor standing because "rival [Super] PACs" do not "compete directly against each other in the same way candidates do." *Ibid.*; *see also Air Excursions LLC v. Yellen*, 66 F.4th 272, 280 (D.C. Cir. 2023) ("The plaintiff must also show that it is in fact 'a *direct* . . . competitor'").

Senate Majority PAC's claim to competitor standing is an even greater stretch than the claim Judge Kelly rejected in *AB PAC*. Senate Majority PAC is "an FEC-registered independent expenditure–only committee, colloquially known as a 'Super PAC.'" Compl. ¶ 9. Senate Majority PAC asserts that it competes with "the NRSC" and "the Nevada Victory Committee." Compl. ¶¶ 33–34. But the NRSC and the Nevada Victory Committee are not rival Super PACs. The NRSC is a national party committee. *See* 52 U.S.C. § 30101(14); *McConnell v. FEC*, 540 U.S. 93, 133 n.38 (2003) (identifying the NRSC as a national party committee). And the Nevada Victory Committee was a joint fundraising committee comprised of the NRSC and Sam Brown for Nevada. *See* 52 U.S.C. § 30102(e)(3)(ii); Compl. ¶¶ 3, 22 (identifying Nevada Victory Committee as a joint fundraising committee). If rival Super PACs do not compete directly against each other, *see AB PAC*, 2023 WL 4560803, at *5, a fortiori Super PACs do not compete directly against political party committees or joint fundraising committees comprised of political party committees and candidates. *See also Gottlieb*, 143 F.3d at 618; *PSSI*, 983 F.3d at 11 (rejecting "competitor standing" where petitioner did not "directly . . . compete with" regulated parties).

At bottom, Senate Majority PAC asserts a theory of competitor standing no court has endorsed. This Court should not be the first.

B. Senate Majority PAC Cannot Establish Informational Injury

Senate Majority PAC asserts it is injured because it did not know about "the discounted advertising rates at issue in SMP's complaint." Compl. ¶ 35. But Senate Majority PAC has not plausibly alleged "that the alleged information deficit hindered" its

activities, *TransUnion LLC v. Ramirez*, 594 U.S. 413, 442 (2021), and the Supreme Court has made clear "[a]n 'asserted informational injury that causes no adverse effects cannot satisfy Article III,'" *ibid.* (quoting *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020) (Katsas, J., sitting by designation)).

Senate Majority PAC says that "[i]f the discounted advertising rates at issue in SMP's complaint had been reported as in-kind contributions, it would have aided SMP in attempting to negotiate a discount of its own." Compl. ¶ 35. But that hypothetical only shows Senate Majority PAC's asserted informational injury is entirely derivative of its supposed competitive injury, which does not exist. *Supra*.

Furthermore, Senate Majority PAC already has access to the information it seeks through the FCC's online political file for television station KTVN. That file, by law, must contain "a complete record" of each "request to purchase broadcast time" "made by or on behalf of a legally qualified candidate for public office." 47 U.S.C. § 315(e)(1). This record must state, among other things, "the name of the candidate to which the communication refers," "the date and time on which the communication is aired," and "the rate charged for the broadcast time." § 315(e)(2).

KTVN's online FCC political file contains this information and more. It chronicles every KTVN airtime purchase made by the Nevada Victory Committee in the 2024 election cycle, providing the gross amounts paid, the programs and timeslots where the advertisements were run, and the per-unit rates during each of these programs. *See* FCC,

Political Files, KTVN, https://tinyurl.com/64byxaau (last visited April 7, 2026).[3] It is black-letter law that "a plaintiff cannot establish injury based on information that is already available 'from a different source.'" *Campaign Legal Ctr. v. FEC*, 31 F.4th 781, 791 (D.C. Cir. 2022) (quoting *Wertheimer v. FEC*, 268 F.3d 1070, 1075 (D.C. Cir. 2001)). And there likewise can be no "downstream consequences" affecting Senate Majority PAC's negotiations when the political file already showed exactly what Nevada Victory Committee was paying. *See TransUnion*, 594 U.S. at 442.

Senate Majority PAC attempts to identify one other downstream consequence, but it "rests on gross speculation and is far too fanciful to merit treatment as an 'injury in fact.'" *Gottlieb*, 143 F.3d at 621. According to the Complaint, "[h]ad SMP known" about the lowest unit charge Nevada Victory Committee allegedly received, "SMP *might* have publicized the special discounts in SMP's own political communications," and "it *might* have affected SMP's decision whether to purchase advertising time." Compl. ¶ 35 (emphases added). But Article III does not permit "standing theories that require guesswork." *Murthy v. Missouri*, 603 U.S. 43, 57 (2024) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 413 (2013)); *cf. Lujan*, 504 U.S. at 564 ("'some day' intentions . . . do

[3] Senate Majority PAC incorporated KTVN's online political file by citing it in its administrative complaint. *See Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007) ("[W]hen ruling on Rule 12(b)(6) motions to dismiss," courts "must consider the complaint in its entirety," which includes, "in particular, documents incorporated into the complaint by reference."). In addition, the contents of the FCC's online political files are judicially noticeable as government records. *See Pharm. Rsch. & Mfrs. of Am. v. HHS*, 43 F. Supp. 3d 28, 33 (D.D.C. 2014) (Contreras, J.) ("Courts in this jurisdiction have frequently taken judicial notice of information posted on official public websites of government agencies.").

not support a finding of the 'actual or imminent' injury that our cases require"). Much less guesswork about the plaintiff's own conduct. Senate Majority PAC's equivocations about what it might have done are fatal.

Other allegations in the Complaint provide additional "reason to doubt [Senate Majority PAC's] claim that the information would help them." *Campaign Legal Center*, 31 F.4th at 783 (citation omitted). Senate Majority PAC says it "made over $350 million in disbursements in" "the 2023–2024 election cycle," and that "[m]any of SMP's expenditures are for television advertising." Compl. ¶¶ 11–12.[4] Tellingly, Senate Majority PAC does not allege that any of its past expenditures were made opposite the Nevada Victory Committee or even in the Nevada race for U.S. Senator. And even if Senate Majority PAC had made such allegations, that involvement would still be insufficient to show injury that is "actual or imminent, not 'conjectural' or 'hypothetical,'" *Lujan*, 504 U.S. at 560, because Senate Majority PAC does not allege that it needs the information to make decisions in some future election contest. Nor would such allegations even be plausible as Nevada Victory Committee—the entity that allegedly purchased television advertising at discounted rates without disclosure, *see* Compl. ¶ 24—no longer exists.

[4] Senate Majority PAC's judicially noticeable FEC reports tell a different story. These say Senate Majority PAC spent "$0.00" on "total federal election activity" in the 2024 and 2026 election cycles, including "$0.00" on "independent expenditures" and "coordinated expenditures." FEC, *SMP Financial Summary* (2023-2024), https://tinyurl.com/nhjk3s8j (capitalization altered); *see* FEC, *SMP Financial Summary* (2025-2026), https://tinyurl.com/bdz6ar3h (same). The Complaint tries to paper over this obvious problem by defining "Senate Majority PAC" to include spending by separate legal entities. *See* Compl. ¶¶ 1, 10. But those entities (which are not even all named) are not parties to this case and their relationship with Senate Majority PAC is unclear at best.

Senate Majority PAC's injury is thus even more conjectural than the environmental plaintiffs in *Lujan* who, although they could not describe any concrete plans to visit African wildlife in service of their asserted esthetic interests, at least could allege that such wildlife was not extinct. *See* 504 U.S. at 563–64.

In short, Senate Majority PAC's asserted informational injury is entirely meritless. It cannot show any "adverse effects" or "downstream consequences" from allegedly failing to receive the information, *TransUnion*, 594 U.S. at 442 (citation omitted); *see also Nader v. FEC*, 725 F.3d 226, 229 (D.C. Cir. 2013) ("It is not enough . . . to assert that disclosure is required by law."), which in all events was publicly available all along in the FCC's online political file for KTVN. Because there is no informational injury, the Complaint must be dismissed.

C. Senate Majority PAC's Asserted Injuries Are Not Redressable Or Cognizable

Senate Majority PAC flunks redressability in addition to injury in fact. "To determine whether an injury is redressable," courts "consider the relationship between the judicial relief requested and the injury suffered." *Murthy*, 603 U.S. at 73 (citation omitted). Here, the relief Senate Majority PAC seeks would not redress either of its asserted injuries.

Start with the backwards-looking aspects of Senate Majority PAC's asserted injuries. Senate Majority PAC claims it was harmed from "the sale of television advertising time . . . in advance of the 2024 election." Compl. ¶¶ 3, 31. It says it "has been" (*i.e.*, in the past) "required to spend more money," Compl. ¶ 34, and that absent

Nevada Victory Committee's alleged failure to disclose, "it might have" (again, in the past) behaved differently, Compl. ¶ 35.

Senate Majority PAC's requested relief would not redress past injuries. Even if this Court declares that the FEC's failure to investigate violations was unlawful and even if the FEC conforms to that declaration, *see* Compl., Requested Relief ¶¶ 1–2, that could not change the outcome of the 2024 election, allow Senate Majority PAC to recoup any money, or change how Senate Majority PAC "might have" behaved based on information it believes it should have received two years ago (and which was already available to it in the FCC's political files). "[P]ast injury . . . does not justify forward looking . . . relief." *Doe 1 v. Apple Inc.*, 96 F.4th 403, 413 (D.C. Cir. 2024); *see also Nader*, 725 F.3d at 229 ("Even if the FEC were to afford Nader the relief he seeks, that outcome would not reverse the ballot-access harms that Nader alleges he suffered in 2004, or compensate him for them."); *Bowles v. Whitmer*, 120 F.4th 1304, 1311 (6th Cir. 2024) ("forward-looking preventative remedies will do nothing to redress an already-occurred injury").

Senate Majority PAC speculates about possible future injuries, but those are too abstract to be redressable. Senate Majority PAC says it has "every reason to expect . . . unlawful behavior in future elections," Compl. ¶ 5, but alleges no actual factual matter that could help it clear the plausibility bar. For example, Senate Majority PAC expresses a generalized concern about "the 2026 and future elections," Compl. ¶¶ 32, 36, but does not identify any specific race where it faces a "likelihood of substantial and immediate [competitive or informational] injury." *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983); *Jones v. USSS*, 143 F.4th 489, 495 (D.C. Cir. 2025) (finding implausible allegations

of "future injury" based on generalized claim of "future encounters" and one "past harm"). Without concrete allegations of a "threatened injury" or "future violation" in a specific future election, Senate Majority PAC has nothing but a "generalized interest in deterrence [that] is insufficient for purposes of Article III" redressability. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 108 (1998); *accord Lujan*, 504 U.S. at 568 (finding no redressability where plaintiffs "challenge[d] a more generalized level of . . . action," rather than "specifically identifiable . . . violations of law").

There are other problems with redressability. "The basis for [Senate Majority PAC]'s complaint is Sarkes Tarzian's sale of television advertising time to the Nevada Victory Committee at a discounted rate known as the 'lowest unit charge.'" Compl. ¶ 3. Senate Majority PAC believes Nevada Victory Committee was not eligible for the lowest unit charge and wants the Commission to say so. *See* Compl. ¶¶ 3, 30. But the FEC "has no jurisdiction to make a formal determination as to whether [a committee] was entitled to the lowest unit charge for advertisements pursuant to the Communications Act" because "such determinations are within the jurisdiction of the Federal Communications Commission." FEC, MUR 5834 (Darcy Burner for Congress) (June 28, 2007), Factual & Legal Analysis, at 5–6 , https://tinyurl.com/mtucbz48.[5]

[5] *See also*, Statement of Chairman Michael E. Toner and Commissioners Hans A. von Spakovsky and David Mason, Advisory Op. Request 2006-31 (Bob Casey for Pennsylvania Committee), at 1 (Oct. 24, 2006), https://tinyurl.com/4p46aecn ("The Commission's statutory jurisdiction does not extend to the Communications Act."); Statement for the Record of Vice Chairman Robert D. Lenhard and Commissioners Steven T. Walther and Ellen L. Weintraub, Advisory Op. Request 2006-31 (Bob Casey for Pennsylvania Committee), at 2 (Oct. 25, 2006), https://tinyurl.com/yvt44hvn ("We must note that the Commission does not have jurisdiction over the Communications Act.").

The FCC—the agency whose opinion actually matters—has long held that all committees authorized by a candidate committee *are* entitled to the lowest unit charge. *See* FCC, Public Notice, *supra*. Congress directed the FCC, not the FEC, to administer the Communications Act. *See* 47 U.S.C. § 151 ("a commission to be known as the 'Federal Communications Commission' . . . shall execute and enforce the [Communications Act]"). This Court "would be hard-pressed to locate that power in one agency where it had been specifically and expressly delegated by Congress to a different agency." *Bayou Lawn & Landscape Servs. v. Sec'y of Lab.*, 713 F.3d 1080, 1085 (11th Cir. 2013); *see Union Pac. R.R. Co. v. STB*, 863 F.3d 816, 823 (8th Cir. 2017) (expedience "does not allow one agency to assume the authority expressly delegated to another"). Because "the [Federal Election] Commission has no authority" to address the issue at the center of the Senate Majority PAC's administrative complaint, an order from this Court directing "further administrative proceedings" cannot redress its injuries. *CREW v. FEC*, 475 F.3d 337, 339–40 (D.C. Cir. 2007) (holding asserted informational injury not redressable where "the Commission has no authority to order anyone to report anything").

Compounding these redressability problems is the unusual nature of Senate Majority PAC's suit. "[F]ederal courts have not traditionally entertained lawsuits" alleging inadequate law enforcement. *United States v. Texas*, 599 U.S. 670, 681 (2023). The Supreme "Court has long held 'that a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution.'" *Id.* at 674 (quoting *Linda R.S. v. Richard D.*, 410 U. S. 614, 619 (1973)); *see also, e.g.*, *Nader*, 725 F.3d at 230 (FEC complainant lacked standing "to force the FEC

to 'get the bad guys'"). Yet that is exactly Senate Majority PAC's basis for standing. It expressly faults the FEC for purportedly failing "to take enforcement actions against [alleged] violators of federal law." *Texas*, 599 U.S. at 684; *see* Compl. ¶ 5 (alleging injury "if enforcement action is not taken against" defendants). "[T]he federal courts are not the proper forum to resolve [such a] dispute," *Texas*, 599 U.S. at 685, and this Court should "decline" Senate Majority PAC's invitation "to start the Federal Judiciary down that uncharted path," *id.* at 681.

II. THE COURT SHOULD DISMISS BECAUSE THE FEC COMPLIED WITH FECA

Senate Majority PAC asserts the FEC "failed to act on [its] administrative complaint since [it] filed it 176 days ago" and that this failure is "contrary to law." Compl. ¶¶ 39–40. In fact, the Commission acted on Senate Majority PAC's administrative complaint by issuing a notification letter to the NRSC. And Senate Majority PAC has not plausibly alleged that FEC inaction is contrary to law because it asserts no factual matter beyond the length of the delay and because FECA requires the Commission to refrain from further enforcement until more commissioners are confirmed.

A. The FEC Has Taken Action On Senate Majority PAC's Administrative Complaint By Issuing A Notification Letter

The Complaint asserts the FEC "failed to act" on Senate Majority PAC's administrative complaint. Compl. ¶ 39. That is wrong.

The D.C. Circuit has made clear what constitutes an "act" under FECA. "[T]o 'act' on a pending complaint, in this context, means to take some enforcement step recognized by the statute." *45Committee*, 118 F.4th at 391; *see also ibid.* ("in the provisions

specifically discussing Commission enforcement, 'action' denotes a step in FECA's enforcement scheme"). "Moreover, a failure by the Commission to act at all on a pending complaint means a failure to take some cognizable enforcement step under the statute in response to the complaint." *Ibid.*

Issuing a notification letter to the object of an administrative complaint is an enforcement step recognized by the statute. FECA expressly provides that "Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation." 52 U.S.C. § 30109(a)(1); *see also* 11 C.F.R. § 111.5 (entitled "initial complaint processing; notification" and directing the General Counsel to notify each respondent within five days). That step is clearly identified in the text of FECA and thus is cognizable.

Indeed, the D.C. Circuit has long identified the written notification requirement as the first step in the FECA enforcement scheme. In *Perot v. FEC*, the D.C. Circuit acknowledged that the respondent identified in an administrative complaint "had to be notified within five days" and described the FEC vote on reason to believe that would follow as "[t]he next step" in the enforcement process. *See* 97 F.3d at 558. Similarly, courts in this District have sanctioned the FEC for failing to observe the statutory notification requirement, again confirming the requirement is judicially cognizable. *See, e.g., Level the Playing Field v. FEC*, 232 F. Supp. 3d 130, 143 (D.D.C. 2017) (Chutkan, J.) (holding "the FEC's failure to notify the ten other respondents" about an administrative complaint was "contrary to law").

The Commission made the statutorily required notification here. On August 28, 2025, the FEC sent a letter to the NRSC notifying it that the agency had "received a complaint" alleging it "may have violated the Federal Election Campaign Act of 1971" and informing the NRSC of its statutory right to respond. Exhibit 1 at 1.[6] Because that letter is an enforcement step that is expressly recognized by FECA, the Commission has not "failed to act" on Senate Majority PAC's administrative complaint. Therefore, Senate Majority PAC has failed to state a claim, and the Complaint must be dismissed.

B. The FEC's Alleged Delay Complied With Law

Senate Majority PAC's complaint must be dismissed for the independent reason that it has not plausibly alleged that the FEC's alleged failure to act on its administrative complaint was "contrary to law." Compl. ¶ 40.

1. Delay Alone Is Insufficient

The sole factual matter alleged in the Complaint is that 176 days elapsed after Senate Majority PAC filed its administrative complaint. *See* Compl. ¶ 2 ("To SMP's knowledge, the Commission has not taken any action on SMP's complaint in the 176 days since SMP filed it. SMP therefore brings this action"); ¶ 39 ("Upon information and belief, the FEC has failed to act on Plaintiff's administrative complaint since SMP filed it 176 days ago,

[6] The Court may take judicial notice of these facts in ruling on a motion to dismiss because they are matters of public record found in government documents and are "central to the plaintiff's claim." *Cureton*, 272 F. Supp. 3d at 61; *see Johnson v. Comm'n on Presidential Debates*, 202 F. Supp. 3d 159, 167, 178 (D.D.C. 2016) (Collyer, J.) (dismissing after taking judicial notice of FEC documents), *aff'd*, 869 F.3d 976 (D.C. Cir. 2017).

exceeding the 120-day statutory response period."). That is not sufficient factual content to state a plausible claim for relief.

To be sure, FECA authorizes a *lawsuit* after a 120-day delay. But FECA "does not create a deadline in which the FEC must *act*." *Judicial Watch*, 293 F. Supp. 2d at 48 (emphasis added) (quoting *Stockman v. FEC*, 138 F.3d 144, 152 (5th Cir. 1998)). "The Commission's failure to act within that 120-day period or any other timeframe is not per se contrary to law." *45Committee*, 118 F.4th at 383; *see also Rose*, 806 F.2d at 1092 ("Mr. Rose, it will be recalled, contended that [FECA] required the Commission to act within 120 days or within an election cycle. We unequivocally rejected both contentions."). Therefore, Senate Majority PAC's allegation that a delay occurred—even if it were not flatly contradicted by the record showing that the FEC issued a notification letter—on its own says nothing about whether the alleged delay was unlawful.

That is why, as the D.C. Circuit has explained, courts in this Circuit "review a[n] [FEC] failure to act by considering the factors laid out in *Common Cause* and *TRAC*." *45Committee*, 118 F.4th at 391; *accord Rose*, 806 F.2d at 1084 n.6 (similar); *see generally Common Cause*, 489 F. Supp. 738; *TRAC*, 750 F.2d 70. If delay alone were enough, the *Common Cause* and *TRAC* factors would be irrelevant.

Unsurprisingly, when the D.C. Circuit and district courts apply these factors, they often find that FEC delays far beyond the statutory period (and thus much longer than this one) are "substantially justified." *Rose*, 806 F.2d at 1091; *see id.* at 1091 n.17 ("the fact that the investigation took approximately two years does not, standing alone, violate a rule of reason"); *In re Nat'l Cong. Club*, No. 84-5701, 1984 WL 148396, at *1 (D.C. Cir. Oct.

24, 1984) (vacating district court order which "incorrectly applied a 'presumption' that the Commission has acted 'contrary to law' whenever it fails to resolve a complaint within the two-year period between elections"); *cf. In re Barr Lab'ys, Inc.*, 930 F.2d 72, 74–76 (D.C. Cir. 1991) (dismissing case under *TRAC* factors where petitioner failed to offer "basis for reordering agency priorities" even after agency "violated [a] 180-day deadline"); *Mashaghzadehfard v. Blinken*, 2024 WL 4198689, at *4 (D.D.C. Sept. 16, 2024) (Leon, J.) ("The majority view in this District is that application of the *TRAC* factors is appropriate at the motion-to-dismiss stage when the facts alleged do not support a plausible claim of unreasonable delay." (cleaned up)). Senate Majority PAC's failure to allege any factual content beyond the supposed existence of a 176-day delay therefore fails to state a claim that the FEC acted contrary to law.

2. The FEC Must Wait For The Statutory Quorum

The FEC's conduct is lawful regardless because FECA *requires* the FEC to wait for at least two additional commissioners before it takes further enforcement action. After the FEC receives a response to its notification letter, "the Commission votes on whether there is 'reason to believe' the complaint's allegations." *45Committee*, 118 F.4th at 382 (quoting 52 U.S.C. § 30109(a)(2)). The Commission cannot do that in this case because it currently has only two commissioners.

The statute is clear. The Commission may only determine "reason to believe" "by an affirmative vote of 4 of its members." 52 U.S.C. § 30109(a)(2); *see also* § 30106(c) ("the affirmative vote of 4 members of the Commission shall be required in order for the Commission to take any action in accordance with paragraph . . . (9) . . . of section

30107(a)"); *End Citizens United PAC v. FEC*, 69 F.4th 916, 918 (D.C. Cir. 2023) ("If at least four Commissioners determine there is 'reason to believe' the allegations, then the Commission 'shall' conduct an investigation"); *Campaign Legal Center*, 106 F.4th at 1185 ("the FEC [was] short of the four votes needed to authorize an investigation"); *CREW*, 993 F.3d at 892 ("Only after four commissioners make this discretionary decision 'shall' the Commission 'make an investigation.'"). If the agency has fewer than four confirmed commissioners—as it did here—the agency is statutorily prohibited from determining reason to believe.

Indeed, the FEC has not had four commissioners at any point while Senate Majority PAC's administrative complaint has been pending. The FEC lost its quorum in April 2025. FEC's Notice of Lack of Quorum ¶ 2 ("On April 30, 2025, former Commissioner Allen Dickerson resigned from the FEC upon the expiration of his term. This resignation left the Commission with only three Commissioners" (footnote omitted)). Senate Majority PAC filed its administrative complaint in August 2025. Compl. ¶ 1. Since then, the Commission lost another commissioner leaving the agency with just two commissioners. FEC's Notice of Lack of Quorum ¶ 2.[7] Although President Trump nominated two new commissioners in February which, if confirmed, would bring the total to four, the Senate has not yet voted on his nominations. That means that for the entire time that Senate Majority PAC's

[7] Furthermore, most of the Federal Government, including the FEC's enforcement activity, was shut down during what was the longest lapse in federal appropriations in U.S. history. *See* FEC, Plan for Agency Operations in the Absence of the Fiscal Year 2026 Appropriation, at 1 (Sept. 30, 2025), https://tinyurl.com/yc474u2n ("Virtually all core agency functions, including . . . enforcement" "will cease during a lapse").

administrative complaint has been pending, the FEC has been statutorily prohibited from taking further enforcement action.

Other courts in this District have recognized that the FEC does not act contrary to law when it refuses to vote because it lacks the requisite number of commissioners. In *McCutcheon v. FEC*, 496 F. Supp. 3d 318 (D.D.C. 2020) (Bates, J.), the FEC had only three commissioners and so did not issue a requested advisory opinion (an action which, just like finding reason to believe, requires four votes). The district court held that the FEC's conduct was lawful:

> Although the FEC is required to render an advisory opinion in response to a complete request within sixty days of receipt under 52 U.S.C. § 30108, it is prohibited from issuing an advisory opinion without the affirmative votes of four Commissioners approving such issuance under 52 U.S.C. § 30106. There is nothing in the statute to suggest, nor have plaintiffs identified any authority to support, the proposition that the FEC is authorized to circumvent the four-vote requirement necessary to render an advisory opinion. . . . A fortiori, then, the Commission's conduct was compelled by law and could not have been arbitrary, capricious, or an abuse of discretion. If anything, the FEC would abuse its discretion by rendering an advisory opinion without the requisite four-vote approval, and the Court would certainly not compel it to do so here.

Id. at 333–34.

So too in this case. Even if the Commission had not issued the notification letter and even if the Commission were required to determine reason to believe within 120 days under 52 U.S.C. § 30109(a)(8)(A)—and, to be clear, neither of those necessary antecedents to Senate Majority PAC's argument is true—the Commission would still be prohibited from finding reason to believe without the affirmative votes of four commissioners under 52 U.S.C. § 30109(a)(2). *See also New Process Steel, L.P. v. NLRB*, 560 U.S. 674, 688

(2010) ("We are not insensitive to the Board's understandable desire to keep its doors open despite vacancies. But . . . Congress' decision . . . to provide for a Board quorum of three, must be given practical effect rather than swept aside in the face of admittedly difficult circumstances.").

The FEC's rules also impose a four-commissioner requirement. FEC Directive 10 states that "[w]hen the Commission has fewer than four Members . . . the Commission may not act on any matter except" those enumerated. *See* FEC, Directive 10, § L (June 8, 1978 amended Dec. 20, 2007), https://tinyurl.com/ysuur6b3. Consistent with FECA's text, a reason to believe vote is not on the list of permissible actions the FEC may take without at least four commissioners. *See ibid.* Accordingly, if the Commission were to vote on reason to believe with fewer than four members, that action would violate not only the text of the statute but also the FEC's rules. *See, e.g.*, *Paul v. FAA*, 168 F.4th 672, 674, 681 (D.C. Cir. 2026) ("internal agency rules are enforceable against agencies"; "we hold that the agency arbitrarily and capriciously departed from its own procedures"). That is an independent reason the FEC could not take further enforcement action.

In short, Senate Majority PAC fails to state a contrary to law claim because it alleges only the lapse of 120 days, which is legally insufficient. In addition, the claim fails because the FEC was not authorized to vote on reason to believe without four confirmed commissioners. For both these reasons, the Commission has acted in accordance with law, not contrary to it, and the Complaint must be dismissed.

III. THE COURT SHOULD DISMISS BECAUSE CONTRARY TO LAW REVIEW OF FEC NON-ENFORCEMENT VIOLATES ARTICLE II

The Complaint should be dismissed because Article II specifies that "[t]he executive Power shall be vested in a President," who must "take Care that the Laws be faithfully executed." Art. II, § 1, cl. 1; *id.* § 3. Under the Constitution, "[t]he entire 'executive Power' belongs to the President alone." *Seila Law LLC v. CFPB*, 591 U.S. 197, 213 (2020).

First, judicial review of FEC nonenforcement violates the separation of powers. "Civil enforcement actions are presumptively committed to the agency's discretion, consistent with the Article II power to take care of faithful execution of the laws." *CREW*, 993 F.3d at 888; *see Texas*, 599 U.S. at 679 ("the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case"); *Buckley v. Valeo*, 424 U.S. 1, 138 (1976) ("The Commission's enforcement power, . . . is authority" the Constitution confers on "the President"). Under both Article II and the Administrative Procedure Act, an action that is committed to the agency's discretion—"as the [FEC's] enforcement decisions are," *CREW v. FEC*, 892 F.3d 434, 441 (D.C. Cir. 2018)—cannot be judicially reviewed. *See also CREW*, 993 F.3d at 888 ("The APA codifies these [Article II] limits by recognizing that matters committed to agency discretion are not subject to judicial review"); *ICC v. Bhd. of Locomotive Eng'rs*, 482 U.S. 270, 283 (1987) ("it is entirely clear that the refusal to prosecute cannot be the subject of judicial review"); *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute

discretion"). Because the Complaint, at bottom, seeks to review the FEC's prosecutorial decisionmaking, it is noncognizable and should be dismissed.

Second, the Complaint announces that Senate Majority PAC intends to use this action to obtain authorization to file a citizen suit against the NRSC and the other agency respondents. Compl. ¶ 6 (citing 52 U.S.C. § 30109(a)(8)(C)). But Article II requires that responsibility for enforcing federal law must remain solely within the Executive Branch. *Seila Law*, 591 U.S. at 213–14; *Buckley*, 424 U.S. at 138–41. As the NRSC has elsewhere explained, Congress cannot deputize private citizens to enforce FECA through civil litigation. *See* NRSC & NRCC Amici Curiae Br. 18–21, *End Citizens United PAC v. FEC*, No. 22-5277 (D.C. Cir. Jan. 2, 2025) (en banc), Doc. #2092317. Because that is what Senate Majority PAC ultimately seeks to do, the Complaint must be dismissed for this additional reason too.

CONCLUSION

The Court should dismiss.

Respectfully submitted,

By: /s/ Jeremy J. Broggi
Michael E. Toner (D.C. Bar No. 439707)
Brandis L. Zehr (D.C. Bar No. 996202)
Stephen J. Obermeier (D.C. Bar No. 979667)
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Counsel for NRSC

Dated: April 7, 2026

EXHIBIT 1

FEDERAL ELECTION COMMISSION
WASHINGTON, DC

August 28, 2025

kbroghamer@nrsc.org
Kristi Broghamer, Treasurer
NRSC
425 2nd Street, NE
Washington, DC 20002

RE: MUR 8396

Dear Ms. Broghamer:

The Federal Election Commission (FEC) received a complaint that indicates NRSC and you in your official capacity as may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 8396. Please refer to this number in all future correspondence.

The Act affords you the opportunity to demonstrate in writing that no action should be taken against NRSC and you in your official capacity in this matter. If you wish to file a response, you may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Where appropriate, statements should be submitted under oath by persons with relevant knowledge. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share any information you provide with other law enforcement agencies, including the Department of Justice.[1] While the matter remains open, it will remain confidential as set forth above. After the matter is closed, certain documents from the file will be made available to the public on the Commission's website. To learn more about the agency's disclosure policy, please see 81 Fed. Reg. 51, 702 (Aug. 2, 2016), https://www.fec.gov/resources/cms-content/documents/notice2016-06.pdf.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission. Please note that you have a legal obligation to preserve all documents,

[1] The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

records, and materials relating to the subject matter of the complaint until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

Please be advised that processing paper correspondence may be delayed. Accordingly, we strongly encourage you to file all correspondence via email. Any correspondence sent to the Commission, such as a response, must be addressed to **one** of the following (note, if submitting via email this Office will provide an electronic receipt by email):

U.S Postal Service	**Delivery Service**	**Email**
Federal Election Commission Office of Complaints Examination & Legal Administration Attn: Kathryn Ross, Paralegal 1050 First Street, NE Washington, DC 20463	*(FedEx, UPS, DHL)* Federal Election Commission Office of Complaints Examinati & Legal Administration Attn: Kathryn Ross, Paralega 1050 First Street, NE Washington, DC 20002	cela@fec.gov

If you have any questions, please contact Kathryn Ross at cela@fec.gov. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Wanda D. Brown

Wanda D. Brown
Assistant General Counsel
Complaints Examination &
Legal Administration

Enclosures:
1. Complaint
2. Procedures
3. Designation of Counsel

BEFORE THE
FEDERAL ELECTION COMMISSION

SMP
1032 15th Street NW, Suite 247
Washington, DC 20005

Complainant,

v.

MUR 8396

Nevada Victory Committee
502 Monroe Street
Newport, KY 41071

NRSC
425 2nd Street NE
Washington, DC 20002

Sam Brown for Nevada
P.O. Box 750844
Las Vegas, NV 89136

Sarkes Tarzian, Inc. d/b/a KTVN Channel 2
4925 Energy Way
Reno, NV 89502

Respondents.

COMPLAINT

Complainant files this complaint under 52 U.S.C. § 30109(a)(1) against Nevada Victory Committee (the "***Nevada Victory Committee***"), the National Republican Senatorial Committee ("***NRSC***"), Sam Brown for Nevada (collectively, "***Campaign Respondents***"), and Sarkes Tarzian, Inc., doing business as KTVN Channel 2 ("***Sarkes Tarzian***") (together with Campaign Respondents, "***Respondents***"), for violating the Federal Election Campaign Act of 1971, as amended ("***FECA***") and Federal Election Commission ("***FEC***" or "***Commission***") regulations that prohibit corporate contributions.