

**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 REPLY IN SUPPORT OF ITS MOTION TO DISMISS

TABLE OF CONTENTS

GLOSSARY	ii
TABLE OF AUTHORITIES.....	iii
INTRODUCTION	1
ARGUMENT.....	2
I. Senate Majority PAC Confirms That It Lacks Standing.....	2
A. Senate Majority PAC Cannot Establish Competitive Injury	2
B. Senate Majority PAC Cannot Establish Informational Injury	5
C. Senate Majority PAC’s Asserted Injuries Are Not Redressable Or Cognizable	9
D. Senate Majority PAC Improperly Alleges Injuries Incurred By Third Parties	11
II. Senate Majority PAC Confirms the FEC Complied With FECA.....	12
A. The FEC’s Notification Letter Was A Cognizable Enforcement Step.....	12
B. The FEC Cannot Take The Next Enforcement Step Without Its Quorum.....	15
C. Senate Majority PAC’s Allegations Cannot Support A Plausible Contrary-To-Law Claim.....	20
III. Senate Majority PAC Confirms Contrary To Law Review Of FEC Non-Enforcement Violates Article II.....	22
CONCLUSION	23

GLOSSARY

APA	Administrative Procedure Act
FCC	Federal Communications Commission
FEC	Federal Election Commission
FECA	Federal Election Campaign Act
PAC	Political Action Committee

TABLE OF AUTHORITIES

	Page(s)
Cases	
* <i>AB PAC v. FEC</i> , 1:22-cv-2139, 2023 WL 4560803 (D.D.C. July 17, 2023).....	2, 3
<i>Agency for International Development v. Alliance for Open Society International, Inc.</i> , 591 U.S. 430 (2020).....	12
<i>Air Excursions LLC v. Yellen</i> , 66 F.4th 272 (D.C. Cir. 2023).....	12
<i>Animal Legal Defense Fund, Inc. v. Vilsack</i> , 111 F.4th 1219 (D.C. Cir. 2024).....	8
<i>Arizona v. Inter Tribal Council of Arizona, Inc.</i> , 570 U.S. 1 (2013).....	18
<i>AT&T Corp. v. Iowa Utilities Board</i> , 525 U.S. 366 (1999).....	10
<i>In re Barr Laboratories, Inc.</i> , 930 F.2d 72 (D.C. Cir. 1991).....	21
<i>Bost v. Illinois State Board of Elections</i> , 607 U.S. 71 (2026).....	3, 4
<i>Bronner on Behalf of American Studies Association v. Duggan</i> , 962 F.3d 596 (D.C. Cir. 2020).....	11
* <i>Campaign Legal Center v. 45Committee, Inc.</i> , 118 F.4th 378 (D.C. Cir. 2024).....	1, 13, 14
<i>Campaign Legal Center v. FEC</i> , 31 F.4th 781 (D.C. Cir. 2022).....	7
<i>Campaign Legal Center v. FEC</i> , No. 1:20-cv-1778 (D.D.C. Oct. 14, 2020).....	16, 17
<i>Campaign Legal Center v. Iowa Values</i> , 573 F. Supp. 3d 243 (D.D.C. 2021).....	16

City of Arlington v. FCC,
569 U.S. 290 (2013)..... 10

Common Cause v. FEC,
489 F. Supp. 738 (D.D.C. 1980)..... 21

CREW v. FEC,
22-cv-3281, 2023 WL 6141887 (D.D.C. Sep. 20, 2023)..... 8

CREW v. FEC,
892 F.3d 434 (D.C. Cir. 2018) 22, 23

CREW v. FEC,
993 F.3d 880 (D.C. Cir. 2021) 18, 23

Davis v. FEC,
554 U.S. 724 (2008)..... 2

End Citizens United PAC v. FEC,
1:21-cv-2128, 2022 WL 4289654 (D.D.C. Sept. 16, 2022) 4, 7

FEC v. Akins,
524 U.S. 11 (2008)..... 7

Giffords v. FEC,
19-1192, 2021 WL 4805478 (Sullivan, J.) 16

Gottlieb v. FEC,
143 F.3d 618 (D.C. Cir. 1998) 3, 4

Hayburn’s Case,
2 Dall. 409 (1792) 18

Helix Energy Solutions Group, Inc. v. Hewitt,
598 U.S. 39 (2023)..... 15

Level the Playing Field v. FEC,
232 F. Supp. 3d 130 (D.D.C. 2017) 14

Mashaghzadehfard v. Blinken,
1:23-cv-3164, 2024 WL 4198689 (D.D.C. Sept. 16, 2024) 20

Mashpee Wampanoag Tribal Council, Inc. v. Norton,
336 F.3d 1094 (D.C. Cir. 2003) 21

**McCutcheon v. FEC*,
 496 F. Supp. 3d 318 (D.D.C. 2020) 17, 18

Neguse v. ICE,
 813 F. Supp. 3d 45 (D.D.C. 2025) 8

**New Process Steel, L.P. v. NLRB*,
 560 U.S. 674 (2010) 19, 20

Pappas v. District of Columbia,
 513 F. Supp. 3d 64 (D.D.C. 2021) 7

Perot v. FEC,
 97 F.3d 553 (D.C. Cir. 1996) 13, 14

PSSI Global Services, LLC v. FCC,
 983 F.3d 1 (D.C. Cir. 2020) 2

Shays v. FEC,
 414 F.3d 76 (D.C. Cir. 2005) 4

Telecommunications Research and Action Center v. FCC,
 750 F.2d 70 (D.C. Cir. 1984) 21

TransUnion LLC v. Ramirez,
 594 U.S. 413 (2021) 5, 7

United States v. Texas,
 599 U.S. 670 (2023) 10, 22

Wertheimer v. FEC,
 268 F.3d 1070 (D.C. Cir. 2001) 6

Constitutional Provisions

U.S. Const. art. II, § 1, cl. 1 30

Statutes

52 U.S.C. § 30106 15

52 U.S.C. § 30108 17, 18

*52 U.S.C. § 30109 1, 13, 15, 17, 18

Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3
(1972)..... 10

FCC Materials

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) (DA 26-300),
<https://tinyurl.com/4c8vpffn> 4

FEC Materials

FEC, *Status of Enforcement—Fiscal Year 2026, First Quarter* (Jan 30,
2026), <https://tinyurl.com/59khytf8> 21

Other Authorities

Courtney Buble, *Election Commission Regains Quorum and Resumes Full
Duties*, Government Executive (Dec. 10, 2020),
<https://tinyurl.com/y4bsnee>..... 17

INTRODUCTION

Senate Majority PAC’s opposition clarifies the ambition of its suit. At each step, it asks this Court not to apply settled law, but to extend it.

Start with standing. The D.C. Circuit has never extended competitor standing to Super PACs. Senate Majority PAC asks this Court to do so. The law requires a direct competitive relationship for a legally cognizable advantage. Senate Majority PAC instead posits a generalized “market” for political speech. That is no limiting principle at all. Moreover, Senate Majority PAC’s alternative theory of informational injury—that it “might have” acted based on information that is already publicly available in the FCC’s political file—fares no better. And its asserted injuries are not redressable in any event.

The same pattern continues on the merits. The governing standard is straightforward: the FEC “acts” when it takes “some enforcement step recognized by the statute.” *Campaign Legal Ctr. v. 45Committee, Inc.*, 118 F.4th 378, 391 (D.C. Cir. 2024). The Commission did so here when it issued the statutorily required notification. Senate Majority PAC’s contrary theory—that only a vote counts as “action”—rewrites that standard.

More fundamentally, Senate Majority PAC’s theory depends on ignoring FECA’s express limits on the Commission’s authority. The statute provides that the Commission may proceed only “by an affirmative vote of 4 of its members.” 52 U.S.C. § 30109(a)(2). Senate Majority PAC for the first time concedes the Commission lacks a quorum and cannot act. But it asks the Court to treat that legal incapacity as unlawful delay and to permit private enforcement in its place. No precedent supports that result, and it cannot be

reconciled with the statutory scheme. At a minimum, the supposed unlawfulness of the delay was not plausibly alleged.

At bottom, Senate Majority PAC seeks to transform ordinary political disagreement—and an agency’s inability to take further action under governing law—into a judicially cognizable injury and a basis for private enforcement. Article III and FECA foreclose that effort. The Complaint should be dismissed.

ARGUMENT

I. SENATE MAJORITY PAC CONFIRMS THAT IT LACKS STANDING

Senate Majority PAC’s opposition confirms what the NRSC’s motion already demonstrated: it lacks Article III standing. Its asserted injury theories would require this Court to extend existing law at every turn. And, in any event, those asserted harms are not redressable nor are they even plausibly attributable to Senate Majority PAC.

A. Senate Majority PAC Cannot Establish Competitive Injury

The NRSC explained (at 11–14) that Senate Majority PAC’s unprecedented theory of competitor standing finds no foothold in controlling law. “No court has ever extended competitor standing to cover PACs.” *AB PAC v. FEC*, 1:22-cv-2139, 2023 WL 4560803, at *4 (D.D.C. July 17, 2023) (Kelly, J.). Senate Majority PAC’s response confirms this Court should not be the first.

Again, the D.C. Circuit has made clear that 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). That test may be met by “candidates who are competing against each other” “for the same congressional seat,” *Davis v. FEC*, 554

U.S. 724, 728, 738 (2008); see *Bost v. Illinois State Bd. of Elections*, 607 U.S. 71, 77–79 (2026), and, by extension, the political party committees that uniquely share candidates’ interests. But, as the NRSC already explained, that reasoning does not extend to Super PACs which, by law, are independent of candidates and political party committees and so cannot claim the same competitive stake. “Only another candidate could make such a claim.” *Gottlieb v. FEC*, 143 F.3d 618, 621 (D.C. Cir. 1998). That forecloses competitor standing here.

Senate Majority PAC tries (at 8–10) to avoid that conclusion by redefining the relevant “market” as all political communications. But that proves too much. If competition for airtime or voter attention were enough, any political committee could claim standing whenever another speaker spent more money or deployed additional resources. That is not the law. Competitor standing requires a direct competitive relationship for a cognizable legal advantage—not generalized participation in the “marketplace of ideas.” See *Gottlieb*, 143 F.3d at 621 (“AmeriPAC cannot claim standing as a ‘competitor’ of the Clinton campaign”); *AB PAC*, 2023 WL 4560803, at *5 (“rival [Super] PACs” do not “compete directly against each other in the same way candidates do”).

The allegations here underscore the absence of any direct competition. The Complaint alleges Nevada Victory Committee was not eligible to purchase television broadcast advertising at the lowest unit charge. Compl., ¶¶ 3–4, 26–29. But the Complaint also acknowledges that the Nevada Victory Committee was an authorized committee of a candidate, while Senate Majority PAC is not. *Id.* ¶¶ 9, 19–20. Even accepting all the allegations as true, nothing in the Complaint suggests that Senate Majority PAC was

eligible for the same benefit. Nor could it. Under longstanding FCC guidance, the lowest unit charge is available only to “authorized committees” and “coordinated expenditures of political parties and legally qualified candidates.” 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) (DA 26-300), <https://tinyurl.com/4c8vpffn>. Senate Majority PAC thus concedes that it is not “eligible” for the benefit it claims was conferred on its supposed competitor the NRSC through the Nevada Victory Committee. *Cf. Gottlieb*, 143 F.3d at 621. That alone defeats competitor standing.

Nor does *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005), support Senate Majority PAC’s position. There, the D.C. Circuit awarded competitor standing to congressional *candidates* who were “defending [their own] concrete interests (e.g., retention of elected office).” *Id.* at 87. Far from bolstering Senate Majority PAC’s competitive-standing argument, the case explains that “candidates and parties” are engaged in a “genuine rivalry” that makes them “unlike” Super PACs. *Ibid.* (contrasting “candidate-plaintiff[s]” with “the *Gottlieb* [PAC] plaintiffs”). Senate Majority PAC’s preference to advocate for Democratic candidates is not equivalent to (for instance) the Democratic Senatorial Campaign Committee’s structural interest in competing with the NRSC to elect Democratic candidates, or a candidate’s own uniquely “personal stake” in the outcome of their election. *Bost*, 607 U.S. at 79.

Similarly, this Court’s decision in *End Citizens United PAC v. FEC*, 1:21-cv-2128, 2022 WL 4289654 (D.D.C. Sept. 16, 2022) (Leon, J.), stands, at most, for the proposition

that Super PACs compete with other Super PACs. (And it does not even hold that; the decision analyzed informational standing, not competitor standing.) It does not, in any sense, support Senate Majority PAC’s position that competitor standing can be acquired by mixing-and-matching entities that are asymmetrically situated. Because the NRSC and Nevada Victory Committee are not Super PACs, they do not compete in the same “market” with Senate Majority PAC. Any attempt to collapse that distinction threatens the entire body of competitor-standing caselaw.

B. Senate Majority PAC Cannot Establish Informational Injury

Senate Majority PAC’s alternative theory of informational injury fares no better. “An ‘asserted informational injury that causes no adverse effects cannot satisfy Article III.’” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 442 (2021) (quoting *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020) (Katsas, J., sitting by designation)). Senate Majority PAC’s opposition confirms that it has not alleged any concrete downstream consequences from the purported lack of information for three independent reasons.

First, the NRSC showed (at 15) that Senate Majority PAC’s asserted informational harm is entirely derivative of its failed competitor-standing theory and so fails because that theory does not satisfy Article III. Senate Majority PAC resists that conclusion, claiming (at 11–12) that the alleged lack of information undermines Senate Majority PAC’s “mission.” But in Senate Majority PAC’s own words, that “mission” is to “elect Democratic Senate candidates and defeat Republican Senate candidates.” Compl. ¶ 11.

That is just one-step-removed competitor standing and so fails for the reasons discussed above.

Second, NRSC showed (at 15–16) that Senate Majority PAC already has access to the information it seeks through the FCC’s online political file. Senate Majority PAC concedes (at 14) that the online political file already makes available to it the candidate supported in a political advertisement, the date and time an advertisement runs, and—critically—the rate charged for the advertisement.

Senate Majority PAC claims it is missing two additional pieces of information, but misses the mark with both. Senate Majority PAC says (at 14) the political file “do[es] not report the [lowest unit charge] discounts for what they truly are—an unlawful in-kind contribution.” But that is not *information*; that is a legal conclusion. Indeed, the D.C. Circuit has explicitly rejected informational standing on the theory that the FEC did not classify expenditures under a plaintiff’s preferred “legal determination.” *See Wertheimer v. FEC*, 268 F.3d 1070, 1075 (D.C. Cir. 2001) (rejecting argument “that the ‘fact’ of ‘coordination’ was being withheld” because that is a “legal conclusion,” not “facts” to which plaintiffs were entitled).

Senate Majority PAC also claims (at 14–15) that the political file does not disclose “what [Nevada Victory Committee] would be charged” if it did not qualify for the lowest unit charge. But the Complaint says nothing about the need for Senate Majority PAC to know this counterfactual *non-discounted* advertising rate. Instead, it says Senate Majority PAC needs to know “the *discounted* advertising rates.” Compl. ¶ 35 (emphasis added). “It is settled law in this circuit that a plaintiff may not raise new allegations” in its “opposition

to a motion to dismiss.” *Pappas v. D.C.*, 513 F. Supp. 3d 64, 80 n.5 (D.D.C. 2021) (Contreras, J.) (collecting cases). Because the Complaint does not plausibly allege that Senate Majority PAC is deprived of any information not “already available ‘from a different source,’” it “cannot establish injury.” *Campaign Legal Ctr. v. FEC*, 31 F.4th 781, 791 (D.C. Cir. 2022).

Third, the NRSC showed (at 16–18) that Senate Majority PAC lacks an informational injury because the Complaint alleges only how Senate Majority PAC “*might*” use the information of which it has allegedly been deprived. Senate Majority PAC does not dispute that it failed to allege that it would actually use the information it claims to need. Instead, Senate Majority PAC spends pages and pages explaining why the information need not actually be used for anything—that some potential “relevance” is all that is needed. Opp’n 11–14. But that ignores an iron law of Article III: “No concrete harm, no standing.” *TransUnion*, 594 U.S. at 417. Vague allegations about what Senate Majority PAC might have done, or how it might have used information, do not come close to satisfying that requirement.

None of Senate Majority PAC’s cited cases are to the contrary. To a one, all use the language of concrete, rather than speculative or hypothetical, injuries. In *Campaign Legal Center v. FEC*, 31 F.4th 781 (D.C. Cir. 2022), the D.C. Circuit found informational injury where “there [wa]s no reason to doubt [claimants’] claim that the information *would help them*.” *Id.* at 783 (emphasis added). In *FEC v. Akins*, 524 U.S. 11 (2008), the Supreme Court found informational injury where “the information *would help*” voters. *Id.* at 21. Not “*might*”—*would*. Concreteness makes the difference. *See also End Citizens United*

PAC, 2022 WL 4289654, at *4 (explaining standing is available only where “the Commission’s action deprives the person of information to which it is entitled and on which *the person relies*” (emphasis added)); *CREW v. FEC*, 22-cv-3281, 2023 WL 6141887, at *6 (D.D.C. Sep. 20, 2023) (Cooper, J.) (finding informational injury where information “*would harm* [claimant’s] ability to advance its organizational mission” (emphasis added)).

Senate Majority PAC also relies (at 12–14) on misguided analogies to argue that being deprived of information need not actually have any downstream consequences—just some abstract setback to making “informed decisions.” But the cases it cites say nothing of the sort. In *Animal Legal Defense Fund, Inc. v. Vilsack*, 111 F.4th 1219 (D.C. Cir. 2024), the D.C. Circuit held that a plaintiff had adequately alleged an injury where she lacked sufficient information to determine whether a purchasing decision would violate her “sincerely held ethical beliefs.” *Id.* at 1229. The plaintiff there actually “rel[ie]d on the” withheld information and previously “was influenced to purchase” by its omission. *Id.* at 1226. Similarly, in *Neguse v. ICE*, 813 F. Supp. 3d 45 (D.D.C. 2025) (Cobb, J.), the court held that a restriction on congresspersons’ ability to visit ICE detention centers *had in fact* “harmed the requestors’ ability to engage in the political and policymaking process.” *Id.* at 74. Neither of these cases concerned plaintiffs that equivocated about whether they *might or might not* use the information.

That makes all the difference. Hypothetical scenarios do not establish standing. Were it otherwise, there would be no point in imposing standing requirements at all—particularly in the informational context. Any plaintiff in any imaginable case “might”

benefit from receiving some requested information or other. That bare possibility does not confer Article III standing. Thus, Senate Majority PAC lacks an informational injury.

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

The NRSC showed that Senate Majority PAC lacked a redressable injury for three independent reasons—each of which is confirmed by the opposition.

First, Senate Majority PAC has not alleged any facts to show that it faces a future injury, thereby defeating standing for the forward-looking relief it seeks. NRSC Mem. 18–20. Senate Majority PAC largely agrees. It concedes (at 15) that it did “not identify a specific Senate race where a future violation may occur” and that it has alleged only “past wrongs.” Senate Majority PAC’s bare assertion that the NRSC will violate the law *someday* and *somewhere* that will affect Senate Majority PAC does not clear the plausibility bar.

Second, Senate Majority PAC asks for relief the FEC cannot grant it: a formal determination interpreting the Communications Act, a statute administered by *the FCC*. NRSC Mem. 20–21. Senate Majority PAC argues (at 15) that it is alleging “an unlawful in-kind contribution in violation of FECA, which the FEC has jurisdiction to enforce.” But that is an unresponsive formalism. There is only an unlawful contribution *if* Nevada Victory Committee was not entitled to the lowest unit charge under the Communications Act. The very core of Senate Majority PAC’s legal theory thus turns on the proper interpretation of the “Communications Act of 1934,” Compl. ¶¶ 3–4, 14, which all agree the FEC lacks authority to administer. Senate Majority PAC similarly obfuscates in

arguing (at 15–16) that the Communications Act “incorporates FECA’s definitions of key terms,” and that “the underlying legal issue rests in substantial part on” FEC joint-fundraising-committee regulations. The cross-referenced term—“authorized committee”—is immaterial because “[t]he FCC’s rules do not recognize distinctions between types of committees for [lowest unit charge] purposes (e.g., principal campaign committee, joint fundraising committee).” FCC, Public Notice, *supra*. Senate Majority PAC also argues (at 15) that “the [lowest unit charge] statute” is “part of FECA.” (emphasis omitted). But the relevant FECA subsection “amended” “the *Communications Act of 1934*.” Pub. L. No. 92-225, § 103, 86 Stat. 3, 4 (1972) (emphasis added). Because “Congress expressly directed that [this provision] be inserted into the Communications Act of 1934,” it falls under the purview of the FCC—not the FEC. *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 377–78 & n.5 (1999); *see also City of Arlington v. FCC*, 569 U.S. 290, 293 (2013) (“Of course,” FCC administers “subsequently added portions of the [Communications] Act.”).

Third, the NRSC showed (at 21–22) that Senate Majority PAC lacks standing to bring claims alleging that the FEC has failed “to take enforcement actions against [alleged] violators of federal law.” *United States v. Texas*, 599 U.S. 670, 685 (2023). Senate Majority PAC’s only response is that it has suffered an injury. Opp’n 16–17. But that is not enough. The Supreme Court “has *also* stressed that the alleged injury must be legally and judicially cognizable,” *Texas*, 599 U.S. at 676 (emphasis added) (quotations omitted), and suits like this one that call for “more prosecutions” by “the Executive Branch” are not cognizable, *id.* at 676–77.

D. Senate Majority PAC Improperly Alleges Injuries Incurred By Third Parties

In its motion to dismiss, the NRSC pointed out (at 17 n.4) that Senate Majority PAC had not actually spent any funds on federal election activity in the 2024 and 2026 election cycles and so was asserting standing based on purported competitive and informational harms incurred by separate legal entities. Instead of identifying an allegation in the complaint or a judicially noticeable document setting the record straight, Senate Majority PAC simply recites the maxim that this Court must “take [its] allegation[s] as true for purposes of this motion.” Opp’n at 8 n.3. So be it.

The Complaint defines Senate Majority PAC, “[a]s used in th[e] Complaint,” as “a single legal entity” and “all of the filing organizations that it operates.” Compl. ¶ 10. It names only two of those organizations—“SMP” and “WinSenate.” *Ibid.* Thus, Senate Majority PAC’s standing turns entirely on the purported injuries of a group of “organizations” that are largely unnamed and that are not parties to this case. The Complaint offers *zero* allegations about the legal relationship between Senate Majority PAC and these “organizations” on whose behalf it has sued.

That does not give rise to a plausible showing of standing. “[P]laintiffs must demonstrate Article III standing by asserting their ‘own legal rights and interests’ rather than resting ‘claims to relief on the legal rights or interests of third parties.’” *Bronner on Behalf of Am. Stud. Ass’n v. Duggan*, 962 F.3d 596, 607 (D.C. Cir. 2020) (alteration accepted). That is true even where organizations are “affiliated” and “share similar names, logos, and brands” because “it is long settled as a matter of American corporate law that

separately incorporated organizations are separate legal units with distinct legal rights and obligations.” *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 591 U.S. 430, 435–38 (2020). Yet Senate Majority PAC does not allege that the “filing organizations” it operates are *part of* its “single legal entity,” *see* Compl. ¶ 10, nor does it “ask this Court to pierce the corporate veil” or “invoke any other relevant exception” that would allow Senate Majority PAC to assert the legal right of other organizations, *All. for Open Soc’y Int’l*, 591 U.S. at 435–36.

Without any allegations explaining the legal relationship between Senate Majority PAC and the organizations that actually incurred the relevant injuries, Senate Majority PAC has failed to show “‘more than a sheer possibility’ that [it] has standing to sue” and thus flunks “[t]he plausibility standard.” *Air Excursions LLC v. Yellen*, 66 F.4th 272, 278 (D.C. Cir. 2023).

II. SENATE MAJORITY PAC CONFIRMS THE FEC COMPLIED WITH FECA

Even setting aside Senate Majority PAC’s failure to establish Article III standing, its claim fails on the merits. Its own arguments confirm that the FEC complied with FECA at each step of the statutory scheme.

A. The FEC’s Notification Letter Was A Cognizable Enforcement Step

The NRSC’s motion explained (at 22–24) that the FEC has not “failed to act” as the Complaint alleges, because it took the first enforcement step when it issued a notification letter to the NRSC. Senate Majority PAC resists that conclusion, but its counterarguments

all rest on a premise the D.C. Circuit has rejected: that only the Commission's votes or merits-based enforcement decisions qualify as "action" under FECA.

The D.C. Circuit has squarely defined what it means for the FEC to "act" on an administrative complaint: it means "to take some enforcement step recognized by the statute." *45Committee*, 118 F.4th at 391. And a "failure to act" means only a failure "to take some cognizable enforcement step under the statute." *Ibid.* That definition is dispositive here. It turns entirely on whether the agency has taken a statutorily recognized step—not on whether it has taken a particular step (such as a vote), and not on whether the step reflects substantive engagement with the merits.

The FEC indisputably took a statutorily recognized step. FECA expressly requires that "[w]ithin 5 days after receipt of a complaint, the Commission shall notify, in writing" the respondent. 52 U.S.C. § 30109(a)(1). The notification letter that the NRSC received from the Commission is thus not incidental—it is integral to FECA's enforcement scheme. And under *45Committee*'s rule, it is more than enough. An action exists whenever the FEC takes any enforcement step recognized by the statute.

Senate Majority PAC's attempt (at 17) to sever "notification" from "action" misreads the statute. Section 30109(a)(1) is not an ancillary provision—it appears in the same enforcement section that governs voting, investigation, conciliation, and civil enforcement. And *45Committee* makes clear this section defines the Commission's "stepwise enforcement scheme," within which an "action" is any step the statute recognizes. 118 F.4th at 381–82; *see also id.* at 391 ("'action' denotes a step in FECA's enforcement scheme"). *Perot v. FEC*, 97 F.3d 553 (D.C. Cir. 1996) confirms the point. It

treats notification as the first step—respondents “had to be notified within five days”—and identifies a reason-to-believe vote as “[t]he next step.” *Id.* at 558. Nothing in that sequence marks notification as something other than action; to the contrary, it situates notification at the beginning of the enforcement process.

Senate Majority PAC’s contention (at 17) that notification is merely “ministerial” finds no footing in FECA or the case law. The test is not whether a step is substantive or ministerial; it is whether the step is “recognized by the statute.” *45Committee*, 118 F.4th at 391. Congress treated notification as legally significant. It mandated the step, imposed a firm timeline, and conditioned subsequent Commission action on it. Courts, likewise, treat failures to provide notice as “contrary to law.” *See, e.g., Level the Playing Field v. FEC*, 232 F. Supp. 3d 130, 143 (D.D.C. 2017) (Chutkan, J.). This shows notification is part of the enforcement process, not something outside it.

Senate Majority PAC overreads (at 17) *45Committee* as treating a “vote” as the minimum necessary action. The decision does not say that. It holds that a vote is sufficient—not that it is required. *See* 118 F.4th at 391 (“holding a reason-to-believe vote is *such a step*” (emphasis added)). The governing standard remains broader: “to take *some* enforcement step recognized by the statute.” *Ibid.* (emphasis added). Senate Majority PAC’s argument would rewrite that standard—replacing “some” enforcement step with a requirement that the Commission take a particular one.

Finally, Senate Majority PAC argues (at 18) that treating notification as action would “swallow” FECA’s failure-to-act provision. But that is a policy objection, not a textual one, and “even the most formidable policy arguments cannot overcome a clear

textual directive.” *Helix Energy Sols. Grp., Inc. v. Hewitt*, 598 U.S. 39, 59 (2023) (cleaned up). FECA draws the line at whether the Commission has taken *any* step identified in the statutory enforcement sequence, not whether it has progressed far enough to satisfy Senate Majority PAC.

Here, the FEC took the first step Congress required. Under controlling precedent, that is sufficient to defeat a claim premised on a total failure “to act.” In any event, even if Senate Majority PAC could establish a failure to act, its claim would independently fail for the reasons that follow.

B. The FEC Cannot Take The Next Enforcement Step Without Its Quorum

The NRSC’s motion explained (at 26–29) that the FEC has never had a quorum during the pendency of the administrative complaint and thus has never been legally capable of proceeding. Senate Majority PAC now acknowledges (at 20) that the FEC lacks a quorum and therefore “cannot” act further on its administrative complaint. That concession should end the case. Under FECA, the Commission may proceed to the next enforcement step only “by an affirmative vote of 4 of its members.” 52 U.S.C. § 30109(a)(2); *see also* § 30106(c). Where fewer than four commissioners are in office, the agency is not delaying action—it is legally disabled from acting.

Senate Majority PAC’s response is to invert that straightforward statutory reality. It advances (at 24–25) a novel and unsupported theory that FECA’s citizen-suit provision operates as a “backstop” whenever the Commission is unable to act—including when it lacks a quorum. But Senate Majority PAC does not cite a shred of legal authority or legislative history for this theory, because there is none. Every case Senate Majority PAC

invokes involves circumstances in which the Commission retained at least *some* period during which it was legally capable of acting. None addresses a situation—like this one—where the FEC has been without a quorum for the *entire pendency* of the complaint and thus has never been statutorily capable of proceeding.

Start with *Iowa Values*. There, “the FEC *had* a quorum during the pendency of plaintiff’s complaint” and therefore “was ‘statutorily capable of acting on the complaint’” for a meaningful period, but did not. *Campaign Legal Ctr. v. Iowa Values*, 573 F. Supp. 3d 243, 254 (D.D.C. 2021) (Lamberth, J.). The same was true in *Giffords*, where the Commission lost its quorum, regained it, and then lost it again—creating a window during which the agency could act but did not. *Giffords v. FEC*, 19-1192, 2021 WL 4805478, at *6–7 (Sullivan, J.). Critically, the court in *Giffords* acknowledged that, “[p]er statute, the Commission was incapable of addressing Plaintiff’s complaints while it was without a quorum.” *Id.* at *7. Furthermore, the concern there was not the mere existence of a quorum gap, but that the Commission had “allow[ed] a matter to languish” when it could act. *Ibid.* Here, by contrast, the FEC has never possessed a quorum since Senate Majority PAC filed its complaint. Nor has the agency “allowed” anything to languish; it has been statutorily incapable of proceeding the entire time.

The same flaw undermines Senate Majority PAC’s reliance on a pair of unpublished orders in *Campaign Legal Center v. FEC*. In that case too, the court’s “contrary-to-law” finding rested on the Commission’s ability to act during a period when a quorum existed. *See* Order at n.1, *Campaign Legal Ctr. v. FEC*, No. 1:20-cv-1778 (D.D.C. Oct. 14, 2020) (Lamberth, J.), ECF No. 14 (explaining the FEC “had a quorum during the pendency of

[the matter]” and thus was “statutorily capable of acting”). And its later order was issued after a quorum was restored. *Compare* Order, *Campaign Legal Ctr. v. FEC*, No. 1:20-cv-1778 (D.D.C. Feb. 11, 2021) (Lamberth, J.), ECF No. 24 *with* Courtney Buble, *Election Commission Regains Quorum and Resumes Full Duties*, Government Executive (Dec. 10, 2020), <https://tinyurl.com/y4bsnnee>. Senate Majority PAC identifies no decision—because there is none—holding that agency inaction is unlawful where the agency is wholly barred from acting during the relevant period.

That distinction is dispositive. Section 30109(a)(8) allows a complainant to file suit after 120 days, but it provides only that a court “may declare” the Commission’s inaction contrary to law. 52 U.S.C. § 30109(a)(8)(A), (C). The timeline to bring suit and the declaration of unlawfulness are not the same thing. As the NRSC’s motion explained (at 25), the passage of time permits suit; it does not establish a violation. Whether inaction is “contrary to law” necessarily turns on whether the Commission could have acted in the first place. Where Congress has made clear that the Commission cannot proceed without four votes, the absence of further action is not unlawful—it is the direct consequence of the statute.

Indeed, Judge Bates recognized that when he held “the FEC was legally barred from rendering [a] requested advisory opinion ... for want of a quorum.” *McCutcheon v. FEC*, 496 F. Supp. 3d 318, 329 (D.D.C. 2020) (Bates, J.). As the NRSC already explained (at 28–29), that decision is squarely on point because advisory opinions are subject to the very same four-vote requirement at issue here. Senate Majority PAC contends (at 25) “there is no right of action under Section 30108 to seek judicial review of the agency’s delay.” But

that is a distinction without a difference because FEC advisory opinion delay is reviewable “under the Administrative Procedure Act.” *McCutcheon*, 496 F. Supp. 3d at 328; *see also* *CREW v FEC*, 993 F.3d 880, 892 (D.C. Cir. 2021) (“‘contrary to law’ review under FECA simply mirrors ‘not in accordance with law’ review under the APA”).¹ If anything, *McCutcheon* presented a closer case: FECA imposes a statutory deadline for advisory opinions, *see* 52 U.S.C. § 30108(a)(1), while imposing no comparable deadline on enforcement votes.

Senate Majority PAC argues (at 23) that the “lack of quorum does not insulate agency inaction from judicial review.” But the NRSC expressly argued the FEC’s lack of a quorum requires dismissal on “[t]he merits”—*i.e.*, because “FECA expressly bars the FEC from taking any further enforcement action.” NRSC Mem. 1–2. The argument has nothing to do with justiciability. The FEC’s inaction is being judicially reviewed, and it is lawful. For the same reason, Senate Majority PAC is mistaken to invoke *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013). That decision recognized that judicial review of inaction may be available under the APA but expressly did “not resolve” “whether a court can compel agency action that the agency itself, for lack of the statutorily required quorum, is incapable of taking.” *Id.* at 19 n.10. Here, that separate question is

¹ Senate Majority PAC argues (at 23) that the inability to seek a judicial advisory opinion under § 30108 distinguishes *McCutcheon*. But that simply elides that the question in this predicate contrary-to-law action is the same as it was in *McCutcheon*: whether the FEC’s alleged delay was contrary to law. The ability to bring a follow-on citizen suit under § 30109 but not under § 30108 is immaterial and merely reflects the longstanding prohibition against judicial advisory opinions. *See Hayburn’s Case*, 2 Dall. 409 (1792).

dispositive: because the Commission lacks statutory authority to proceed, its alleged inaction cannot be “contrary to law.”

Senate Majority PAC’s policy-laden “backstop” theory also cannot withstand its own premises. It emphasizes (at 23) that “nothing has been done” and that “there seems to be no prospect of anything being done anytime soon.” But Senate Majority PAC elsewhere concedes why that is so: “without a quorum, the FEC cannot expend resources investigating a complaint.” Opp’n 20; *see id.* at 23 (“SMP does not argue that the FEC could have or should have acted without a quorum—*the law forbids it.*” (emphasis added)) Those propositions cannot be reconciled. If the Commission cannot lawfully act, its inaction cannot simultaneously be unlawful. FECA does not transform a legal prohibition into a legal violation.

To be sure, Senate Majority PAC and other complainants may find the Commission’s inability to act frustrating. But that frustration is with Congress’s design, not the Commission’s compliance with it. Commissioner nominations sufficient to restore a quorum are pending before the Senate. Senate Majority PAC cannot bypass that process—and the four-vote safeguard Congress imposed on enforcement decisions—by recasting lawful incapacity as unlawful delay.

Indeed, the Supreme Court rejected similar policy talk in *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010). There, as the NRSC already explained (at 28–29), the Supreme Court enforced the NLRB’s statutory quorum requirement despite pleas that the agency had been incapacitated. Although the Court was “not insensitive to the Board’s understandable desire to keep its doors open despite vacancies” nor “unaware of the costs

that delay imposes,” it held that the statutory quorum requirement “must be given practical effect rather than swept aside in the face of admittedly difficult circumstances.” 560 U.S. at 688. Senate Majority PAC has no answer.

The statute’s logic is straightforward: when the conditions for Commission action are unmet, the absence of action follows as a matter of law. Because Senate Majority PAC’s theory of “failure to act” depends on ignoring that basic point, it fails as a matter of law.

C. Senate Majority PAC’s Allegations Cannot Support A Plausible Contrary-To-Law Claim

The NRSC’s motion explained (at 24–26) that the Complaint alleges only that 176 days elapsed after Senate Majority PAC filed its administrative complaint and that, under binding Circuit precedent, delay alone cannot state a plausible claim. Senate Majority PAC’s response only confirms the fundamental defect in its Complaint.

Instead of identifying facts in its Complaint plausibly showing that the FEC’s inaction was contrary to law, Senate Majority PAC offers an extended *Common Cause/TRAC* merits discussion—an effort that comes too late. At the pleading stage, the question is not whether Senate Majority PAC can now articulate reasons the Commission’s inaction might be unreasonable; it is whether the Complaint alleged facts that plausibly make it so. *See, e.g., Mashaghzadehfard v. Blinken*, 1:23-cv-3164, 2024 WL 4198689, at *4 (D.D.C. Sept. 16, 2024) (Leon, J.) (“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)).

There are none here. Senate Majority PAC’s *brief* contends (at 19) the FEC’s “debilitating lack of quorum” means it cannot act “expeditiously.” But the *Complaint* never even acknowledges that the FEC lacked a quorum—an omission that alone defeats any plausible claim of unreasonable delay. In any event, the quorum context forecloses Senate Majority PAC’s merits argument as well. Senate Majority PAC concedes (at 20) that “without a quorum, the FEC cannot expend resources investigating a complaint.” And it acknowledges (at 23) that “the law forbids” the FEC taking a vote “without a quorum.” Given that, any alleged “delay” cannot be unreasonable. *See TRAC v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) (“the time agencies take to make decisions must be governed by a ‘rule of reason’”); *Common Cause v. FEC*, 489 F. Supp. 738, 744 (D.D.C. 1980) (Parker, J) (“Factors the Court may consider ... include ... the resources available to the agency”).

Nor could Senate Majority PAC plausibly obtain relief even on its own terms. A judicial order here would merely put it “at the head of the queue.” *In re Barr Lab’ys, Inc.*, 930 F.2d 72, 75 (D.C. Cir. 1991). According to the FEC’s most recent enforcement report, more than 150 administrative complaints are currently pending before the agency. FEC, *Status of Enforcement—Fiscal Year 2026, First Quarter* at 2 (Jan 30, 2026), <https://tinyurl.com/59khytf8>. Nothing in the *Complaint*—indeed, nothing in Senate Majority PAC’s *brief*—explains why it should be permitted to jump the queue. That is dispositive. Where a judicial order “simply moves all others back one space and produces no net gain,” relief shall not issue. *Barr Lab’ys*, 930 F.2d at 75; *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1100 (D.C. Cir. 2003) (explaining this *TRAC* factor was dispositive “even though all the other factors” favored relief).

Senate Majority PAC’s approach would invert Rule 12(b)(6). It would allow a plaintiff to plead delay alone, survive dismissal, and only then litigate *Common Cause/TRAC* on the merits. That is not the law. Because Senate Majority PAC failed to plead facts plausibly showing that the Commission’s inaction was contrary to law, its Complaint must be dismissed for this reason too.

III. SENATE MAJORITY PAC CONFIRMS CONTRARY TO LAW REVIEW OF FEC NON-ENFORCEMENT VIOLATES ARTICLE II

The NRSC explained (at 30–31) that “the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case.” *Texas*, 599 U.S. at 679; see *CREW v. FEC*, 892 F.3d 434, 438 (D.C. Cir. 2018) (“the Federal Election Commission in particular ha[s] unreviewable prosecutorial discretion” (citation omitted)). Senate Majority PAC’s response only confirms that its effort to leapfrog the FEC’s enforcement discretion violates Article II.

Senate Majority PAC argues (at 26) Article II is not implicated because the FEC “did not make any choice at all.” But that purported distinction does not resolve the constitutional problem. However characterized, the Commission has *not* initiated enforcement—and the relief Senate Majority PAC seeks would authorize private enforcement in its place. Allowing a private party to proceed when the FEC lacks a quorum would deprive the agency of its constitutional prerogative to exercise its enforcement judgment once it regains its quorum. That result squarely conflicts with the D.C. Circuit’s rejection of “the idea” that the FEC somehow “triggers FECA’s ‘citizen-suit’ provision”

when it “decline[s] an enforcement action.” *CREW*, 892 F.3d at 439–40; *see CREW*, 993 F.3d at 895 (explaining this FECA concept is “grounded in Article II of the Constitution”).

The NRSC also preserves its separate position that a follow-on citizen suit would independently violate Article II because Congress may not assign core law-execution authority outside the Executive Branch. *See* NRSC Mem. 31. Senate Majority PAC responds in exclusive reliance on two nonbinding cases from other courts in this Circuit—ignoring the controlling caselaw to the contrary.

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)
Jeremy J. Broggi (D.C. Bar No. 1191522)
Boyd Garriott (D.C. Bar No. 1617468)
WILEY REIN LLP
2050 M Street, NW
Washington, DC 20036
(202) 719-7000
jbroggi@wiley.law

Dated: May 29, 2026

Counsel for NRSC