

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CAMPAIGN LEGAL CENTER,

Plaintiff,

V.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 26-1559 (ACR)

RESPONSE TO MOTION TO INTERVENE

**DEFENDANT FEDERAL ELECTION COMMISSION'S RESPONSE
TO MOTION TO INTERVENE**

The Federal Election Commission (“FEC” or “Commission”) files this Response to the RNC’s Motion to Intervene to correct the legal arguments made in the RNC’s Memorandum in Support of the Motion (“Motion”) regarding the FEC’s statutory authority to defend itself in this lawsuit. (*See* ECF Nos. 11, 11-1.) The Commission continues not to oppose intervention in this case. However, the Motion mischaracterizes the FEC’s non-opposition to intervention, the Federal Election Campaign Act (“FECA”), and legal precedent. Contrary to the RNC’s assertions, the FEC is authorized to appear and defend itself in this Administrative Procedure Act (“APA”) action. Moreover, the FEC’s litigation authority, independent of the Department of Justice, is established by FECA, and it authorizes the Commission to represent itself here. The Court should decline to adopt the RNC’s flawed interpretation of the FEC’s authority in deciding whether to permit intervention.¹

¹ As the RNC's Motion concedes, the Court does not need to decide or even consider this issue in determining whether to allow intervention. *See* Motion at 12; Fed. R. Civ. P. 24(a), (b). It is not unusual for the FEC to not oppose intervention of political party committees in APA cases. *See, e.g.,* ECF No. 14, *DCCC v. FEC*, 24-cv-2935 (D.D.C.) (unopposed motion for NRSC to intervene).

A. The FEC's Non-Opposition to the RNC's Motion to Intervene is Limited in Scope

As a preliminary matter, while the FEC does not oppose the RNC's intervention, its non-opposition is limited only to the intervention itself, and it disclaims any agreement with the RNC's flawed arguments that the FEC lacks the authority to defend itself in this case. (*See* ECF No. 11-1, Motion at 1, 5, 11-12.) On June 29, 2026, counsel for the RNC emailed counsel for the Commission stating that the RNC intended to file a Rule 24 motion to intervene and requested the FEC's position on intervention. (*See* ECF No. 11-3, Ex. B, June 29, 2026, Email from G. Mueller to S. Crossland.) The RNC did not inform FEC counsel that it intended to argue that the Commission lacked the authority to defend itself in this lawsuit. (*See id.*) Absent further detail from the RNC, FEC counsel agreed not to oppose the Motion but advised that "it would be incorrect to suggest that the agency will not be appearing in this case," notwithstanding the agency's current lack of a quorum of four Commissioners. (*Id.*) Thus, the agreement not to oppose the Motion was limited to the intervention. (*Id.*) The RNC's arguments are mistaken, and the FEC did not, and does not, endorse them in agreeing not to oppose the Motion.

B. The FEC Has Litigation Authority in this APA Case

The FEC is an agency of the United States government with exclusive civil jurisdiction to administer, interpret, and enforce FECA. *See generally* 52 U.S.C. §§ 30106(b)(1), 30107(a), and 30109. Pursuant to FECA and established precedent, the FEC has the authority to mount a "robust defense" in this APA suit challenging a Commission advisory opinion and will do so. (*Contra* Mot. at 1; *see generally* ECF No. 1, Pl.'s Complaint for Declaratory and Injunctive Relief ("Compl."))

FECA does not impose specific voting requirements to approve general appearances and defenses by “attorneys employed in [the Commission’s] office,” who are expressly authorized to “appear in and defend against any action instituted under [FECA].” *See* 52 USC § 30106(f)(4).

Certain litigation actions require the “affirmative vote of 4 Commissioners.”² *Id.* § 30106(c).

These include actions:

to initiate (through civil actions for injunctive, declaratory, or other appropriate relief), defend (in the case of any civil action brought under section 30109(a)(8) of this title) or appeal any civil action in the name of the Commission to enforce the provisions of this Act and chapter 95 and chapter 96 of title 26, through its general counsel[.]

Id. § 30107(a)(6).

However, the express prescription of a four-vote requirement for these actions, which includes the defense of contrary-to-law and delay cases brought under 52 U.S.C. § 30109(a)(8), excludes other litigation actions from that requirement.³ *See id.* The general authorization under

² The affirmative vote of four Commissioners is also required for other actions, including the issuance of advisory opinions. 52 U.S.C. §§ 30106(c), 30107(a)(7). The advisory opinion that precipitated this lawsuit was issued on March 20, 2024, pursuant to the affirmative vote of four Commissioners. *See* Advisory Opinion 2024-01 (Texas Majority PAC), Mar. 20, 2024, <https://www.fec.gov/files/legal/aos/2024-01/2024-01.pdf>. The Commission lost its quorum of four Commissioners on May 1, 2025.

³ The legislative history of the 1976 amendments adding the four-vote requirement for defense of (a)(8) actions notes that Congress was concerned with circumscribing the FEC’s *enforcement* power:

[E]lection campaigns are the central expression of this country’s democratic ideal. It is therefore essential in this sensitive area that the system of administration and enforcement enacted into law does not provide room for partisan misuse or for administrative action which does not comport with the intent of the enabling statute. . . . H.R. 12406 provides that the Commission shall initiate investigations, bring judicial actions, and take other steps of comparable importance only upon the affirmative vote of four of its six voting members. The four-vote requirement serves to assure that *enforcement actions as to which the Congress has no continuing voice, will be the product of a mature and considered judgment*

section 30106(f)(4) for FEC counsel to “appear in and defend” FECA cases is broader than the defense of (a)(8) cases, and therefore includes, *inter alia*, the authorization to defend against APA challenges.⁴ *See* 52 U.S.C. § 30106(f)(4); *id.* § 30107(a)(6).

The FEC has consistently exercised its authority to defend APA actions without a Commission vote, including when it has lacked a quorum. *See generally, e.g., Ready to Win v. FEC*, 1:22-cv-03282-RDM (D.D.C.); *Unity08 v. FEC*, 1:07-cv-00053-RWR (D.D.C.); *McCutcheon v. FEC*, 1:20-cv-02485-JDB (D.D.C.) (defending in the absence of a quorum); *DCCC*, 24-cv-2935 (same). Moreover, although there is a general voting requirement for “[a]ll decisions of the Commission with respect to the exercise of its duties and powers,” *see* 52 U.S.C. § 30106(c), not every exercise of duties by staff at the agency, once they are duly appointed, is a “decision[] of the Commission.” *See id.* Such a requirement would unworkably propel *all* agency action, no matter how minor, to the Commission level, contradicting the objectives established by Congress. *See id.* § 30107(a)(2), (a)(5), (a)(9) (not requiring a vote per § 30107(c)). Furthermore, defending actions in court is generally non-discretionary. *See* Fed. R. Civ. P. 55(a) (requiring the clerk to enter default if a party fails to defend a suit).

Lastly, the proposed intervenor’s argument that the Department of Justice (“DOJ”) should “take over defense of the advisory opinion” (Motion at 11 n.3) is inconsistent with FECA and the agency’s ability to defend its own advisory opinions. As the legislative history of the

H.R. Rep. No. 94-917, at 3 (1976) (emphasis added).

⁴ Other non-(a)(8) litigation that the Commission routinely defends without a vote by Commissioners includes, *e.g.*, constitutional claims, challenges to regulations, FOIA actions, and administrative fine cases. *See, e.g., NRSC v. FEC*, 1:22-cv-00639-DRC (S.D. Ohio) (constitutional claim); *LNC v. FEC*, 1:16-cv-00121-BAH (D.D.C.) (constitutional claim); *Shays v. FEC*, 1:02-cv-01984-CKK (D.D.C.) (challenging regulations); *CREW v. FEC*, 1:25-cv-04116-ACR (D.D.C.) (FOIA action); *CREW v. FEC*, 12-5004 (D.C. Cir.) (FOIA action); *Combat Veterans for Congress PAC v. FEC*, 1:11-cv-02168-CKK (D.D.C.) (administrative fine case).

1974 and 1976 amendments to FECA that established the Commission explains, the FEC’s litigation authority is not subject to direct or indirect control by the Department of Justice. *See FEC v. NRA Pol. Victory Fund*, 513 U.S. 88, 94-96 (1994) (citing FECA’s legislative history in recognizing that the FEC is statutorily empowered to litigate in the district and circuit courts); *see also, e.g.*, 122 Cong. Rec. 7288, 7289 (Mar. 22, 1976) (statement of Sen. Howard Cannon) (explaining that the amendments would grant “exclusive civil enforcement of the act to the Commission to avoid confusion and overlapping with the Department of Justice, but at the same time, retain the jurisdiction of the Department of Justice for the criminal prosecution of any violations . . . ”); 120 Cong. Rec. 7939 (Aug. 8, 1974) (statement of Rep. Marvin Esch) (“establishing a truly independent” Commission empowered to go to court “without going through the Justice Department”).

Here, four Commissioners affirmatively voted to issue the advisory opinion at issue in this case. (*See generally* ECF No. 1, Compl.) Pursuant to FECA’s authorization of FEC attorneys to “appear in and defend” suits other than those brought under 52 U.S.C. § 30109(a)(8) and consistent with precedent, Commission attorneys are empowered to defend the agency here. 52 U.S.C. § 30106(f)(4).

CONCLUSION

FECA authorizes the FEC to defend itself against this APA claim, and it will do so here. Accordingly, the Court should not adopt the RNC’s flawed arguments regarding the FEC’s statutory authority in deciding the Motion to Intervene.

Respectfully submitted,

Lisa J. Stevenson (D.C. Bar No. 457628)
Deputy General Counsel – Law
lstevenson@fec.gov

Shaina Ward (D.C. Bar No. 1002801)
Attorney
sward@fec.gov

James D. McGinley (D.C. Bar No. 1017536)
Associate General Counsel
jmcginley@fec.gov

Greg Mueller (D.C. Bar No. 462840)
Attorney
gmueller@fec.gov

/s/ Sophia H. Golvach
Sophia H. Golvach (D.C. Bar No.
1656365)
Attorney
sgolvach@fec.gov

COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, DC 20463
(202) 694-1650

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