IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER Plaintiff, v. FEDERAL ELECTION COMMISSION Defendant.	Civil Action No. 1:26-cv-01559-ACR

PLAINTIFF'S OPPOSITION TO
REPUBLICAN NATIONAL COMMITTEE'S MOTION TO INTERVENE

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INTRODUCTION

Plaintiff Campaign Legal Center ("CLC") filed this case to challenge a 2024 advisory opinion issued by the Federal Election Commission ("FEC") that opened a massive and unjustifiable loophole in federal campaign finance law. *See* FEC Advisory Opinion 2024-01 (Texas Majority PAC) (dated Mar. 20, 2024), https://www.fec.gov/files/legal/aos/2024-01/2024-01.pdf. In that advisory opinion, the FEC blessed an interpretation of the Federal Election Campaign Act ("FECA" or the "Act") that unlawfully permits federal candidates to offload millions of dollars in valuable campaign spending to super PACs and other ostensibly "independent" outside groups for canvassing activities—even when payments for those activities are openly coordinated with, and made "for the purpose of influencing" the elections of, federal candidates. *See* 52 U.S.C. § 30101(9). Because Advisory Opinion 2024-01 flagrantly contravenes FECA's mandate to treat all "expenditures" coordinated with federal candidates as in-kind contributions to those candidates—and thereby to ensure that the resulting contributions are covered by the Act's limits, restrictions, and disclosure requirements—CLC brought this action under the Administrative Procedure Act ("APA") to challenge the opinion as contrary to FECA, arbitrary and capricious, and otherwise not in accordance with law. *See* 5 U.S.C. § 706(2).

Although the FEC has already appeared in the case and indicated that it plans to mount a vigorous defense, *see* FEC Resp. to Mot. to Intervene, ECF No. 20, the Republican National Committee ("RNC" or "movant") nevertheless seeks to intervene as a defendant. The RNC's motion should be denied.

For the reasons set forth in more detail below, the RNC is not entitled to either intervention as of right under Rule 24(a) or permissive intervention under Rule 24(b). Its motion is untimely in light of the disruption and prejudice its proposed intervention will cause; fails to assert any legally protected interest that may be compromised absent its intervention in this case; and, even assuming the RNC *could* show the requisite legally protected interest, the FEC shares its goal of defending the Advisory Opinion and thus more than adequately represents that interest.

The RNC claims that its intervention motion "will not prejudice anyone." RNC Mem. Supp. Mot. to Intervene at 1, ECF No. 11-1 ("RNC Mem."). Wrong. On the contrary, the RNC's arguments to date amply confirm its intent to derail this litigation with extraneous issues and needless briefing. It has already, *inter alia*, invoked constitutional concerns irrelevant to the disposition of this case, asserted specious claims about the FEC's litigating authority, and even asked this Court to "invit[e] briefing from the Justice Department" on a "quorum issue" expressly refuted by FECA and longstanding precedent. *See* RNC Mem. at 11 n.3. Without question, permitting the RNC to intervene at this stage will prejudice the existing parties, obfuscate the issues, and unduly complicate this litigation.

Intervention is also particularly unwarranted given that there are other, less disruptive avenues through which the RNC can present its arguments: namely, by seeking leave to participate as an *amicus curiae*, which plaintiff would not oppose. This Court, however, should deny the RNC's motion to intervene.

BACKGROUND

A. Statutory and Regulatory Background

1. FEC advisory opinions

The FEC administers the Federal Election Campaign Act, which regulates the financing of federal election campaigns. *See* 52 U.S.C. § 30101 *et seq*. The Commission is charged to "administer, seek to obtain compliance with, and formulate policy with respect to [the] Act." *Id.* § 30106(b)(l). Among its responsibilities, the Act authorizes the Commission "to render advisory opinions under section 30108 of this title" and to prescribe such regulations as are necessary to carry out the statute's purposes. *Id.* § 30107(a)(7)-(8).

Section 30108 of the Act authorizes any person to request an advisory opinion from the FEC "concerning the application of [FECA], or a rule or regulation prescribed by the Commission, with respect to a specific transaction or activity by the person." 52 U.S.C. § 30108(a)(1). If the Commission issues a favorable advisory opinion in response to a request, the requestor, and any person involved in a transaction or activity "indistinguishable in all its material aspects from the transaction or activity" described in the request, may rely in good faith on the opinion and be protected from any sanction under the Act. 52 U.S.C. § 30108(c). Advisory opinions thus "have binding legal effect on the Commission." *FEC v. Nat'l Rifle Ass'n of Am.*, 254 F.3d 173, 185 (D.C. Cir. 2001).

2. FECA's regulation of coordinated expenditures as contributions subject to limits and disclosure requirements

Under the Act, a "contribution" is defined as a "gift . . . of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i). The statutory phrase "[a]nything of value" encompasses "all in-kind contributions," 11 C.F.R. § 100.52(d)(1), including expenditures that are coordinated with candidates or political parties. In turn, an "expenditure" under FECA is "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(9)(A).

Crucially, any "expenditure" that is "made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, *shall be considered to be a contribution to such candidate*." 52 U.S.C. § 30116(a)(7)(B)(i) (emphasis added). This is because coordinated expenditures function as "disguised contributions"—and failing to regulate them as such creates a risk of corruption and conceals the true sources of candidates' support. *Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976) (per curiam). Coordinated expenditures are thus covered by FECA's contribution limits, source restrictions, and disclosure requirements. *See* 52 U.S.C. §§ 30116(a), (c), (f), 30118, 30119, 30121, as well as its related disclosure requirements, *see id.* § 30104.

B. Procedural History

On January 12, 2024, Texas Majority PAC ("TMP"), a Texas-based state political committee, submitted an advisory opinion request with the FEC seeking guidance on the Act's application to a proposed paid canvassing operation that TMP intended to undertake in open coordination with federal candidates and campaigns. *See* Advisory Opinion Request 2024-01, Texas Majority PAC (dated Jan. 12, 2024), https://www.fec.gov/files/legal/aos/2024-01/202401R_1.pdf. Although TMP openly planned to coordinate with and "consult" federal candidates in connection with these paid canvassing activities, it posited that the resulting expenditures could not be regulated as coordinated expenditures—*i.e.*, in-kind contributions—under the Act. *See generally* Compl. ¶¶ 47-59.

The FEC ultimately assented to TMP's request—despite recognizing that expenses for canvassing "are expenditures," Advisory Opinion 2024-01 at 7, and notwithstanding FECA's express provision that all "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, *shall* be considered to be a contribution to such candidate," 52 U.S.C. § 30116(a)(7)(B)(i) (emphasis added).

As soon as it issued, Advisory Opinion 2024-01 unleashed a flood of coordinated spending for canvassing activities benefitting federal candidates and campaigns—with much of that money escaping FECA disclosure requirements. *See* Compl. ¶¶ 71-87. Accordingly, on May 6, 2026,[1] CLC—seeking to vindicate its informational interests and correct the FEC's fatal legal errors—filed this lawsuit under the APA, seeking a judicial declaration that Advisory Opinion 2024-01 contravenes FECA and is arbitrary, capricious, and contrary to law, and an injunction vacating and setting aside Advisory Opinion 2024-01. *See* Compl., ECF No. 1.

ARGUMENT

I. The RNC Fails to Satisfy the Requirements of Rule 24(a) for Intervention as of Right.

A party seeking to intervene as of right under Federal Rule of Civil Procedure 24(a) must satisfy four requirements: "(1) the application to intervene must be timely; (2) the applicant must demonstrate a legally protected interest in the action; (3) the action must threaten to impair that interest; and (4) no party to the action can be an adequate representative of the applicant's interests." *Karsner v. Lothian*, 532 F.3d 876, 885 (D.C. Cir. 2008) (citation omitted). A movant that seeks to intervene as a defendant must also demonstrate that it has constitutional standing. *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 316 (D.C. Cir. 2015). "To establish standing under Article III, a prospective intervenor—like any party—must show: (1) injury-in-fact, (2) causation, and (3) redressability." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 732-33 (D.C. Cir. 2003). Movants bear the burden of establishing these elements. *See*

[1] Notwithstanding the RNC's unjustified charge that plaintiff "waited to sue" to somehow capitalize on the Commission's current lack of quorum, RNC Mem. at 1, CLC notes that President Trump announced the nominations of two new FEC Commissioners on February 11, 2026, three months before this lawsuit was filed, *see* https://www.whitehouse.gov/presidential-actions/2026/02/nominations-sent-to-the-senate-b65f/; as soon as the Senate confirms those nominees, the Commission will regain its quorum, which in any case is not necessary for the FEC's defense here.

United States v. Philip Morris USA Inc., 566 F.3d 1095, 1146 (D.C. Cir. 2009); *Jones v. Prince George's Cnty., Md.*, 348 F.3d 1014, 1017 (D.C. Cir. 2003).

Failure to satisfy any one of these prerequisites is fatal. Because the RNC has failed to timely assert any immediate, legally protected interest that will be impaired absent intervention in this case—and because the FEC more than adequately protects whatever interests the RNC conceivably could have in defending Advisory Opinion 2024-01—the motion to intervene as of right should be denied.

A. The RNC's motion is untimely in view of the prejudice and disruption its intervention will cause.

Intervention requires a "timely motion." Fed. R. Civ. P. 24(a)-(b). The D.C. Circuit has instructed that, in determining whether a motion to intervene is timely, courts must consider "all the circumstances," *Karsner*, 532 F.3d at 886 (citation omitted), including not only the "time elapsed since the inception of the suit," but also "the purpose for which intervention is sought, the need for intervention as a means of preserving the applicant's rights, and the probability of prejudice to those already parties in the case," *CLC v. FEC*, 68 F.4th 607, 610 (D.C. Cir. 2023). The probability of prejudice is "[t]he most important consideration in deciding whether a motion for intervention is untimely." *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014) (citation omitted). That is because "the requirement of timeliness is aimed primarily at preventing potential intervenors from unduly disrupting litigation, to the unfair detriment of the existing parties." *Id.* (citation omitted).

While the RNC's motion to intervene here was indeed filed "before any entry of appearance by the FEC," RNC Mem. at 6, it does not follow that "no party will be prejudiced by intervention," *id.* The FEC has now answered, there are no pending Rule 12 motions, and the case may now proceed expeditiously to the merits—which involve a straightforward question of law that can be resolved with minimal burden to the Court. The RNC, however, is promising to derail the case with tangential issues, a number of them foreclosed by statute or precedent. *Compare, e.g.*, RNC Proposed Answer at 20, ECF No. 11-7 (asserting affirmative defense that CLC's "claims are barred because 52 U.S.C. § 30109 provides for the exclusive method of judicial review of the Commission's action or inaction at issue in this case"), *with Unity08 v. FEC*, 596 F.3d 861, 866 (D.C. Cir. 2010) (rejecting Commission's argument that "FECA implicitly precludes direct judicial review of Commission advisory opinions").

In particular, the RNC's baseless claims about the FEC's supposed lack of litigating authority here, RNC Mem. at 11-12—an idea that both FECA and longstanding precedent repudiate[2]—confirm that allowing intervention will prejudice the existing parties and "unduly disrupt" this litigation. So too do the RNC's demands for unnecessary briefing on whether the Department of Justice should be permitted to commandeer the FEC's defense. RNC Mem. at 11 n.3.

Moreover, granting the RNC's motion would create "the potential for additional, follow-on third parties to intervene," which Circuit precedent recognizes is "an aspect of the prejudice inquiry." *United States v. Google LLC*, No. 25-5016, 2025 WL 880552, at *4 n.1 (D.C. Cir. Mar. 21, 2025) (citing *Deutsche Bank Nat'l Tr. Co. v. FDIC*, 717 F.3d 189, 192 (D.C. Cir. 2013)). As detailed below, the RNC has no concrete and particularized interest in this litigation; it is not the subject of any relevant FEC complaint or investigation, but rather just one of potentially thousands upon thousands of entities that could choose to engage in the coordinated canvassing activities regulated by the challenged Advisory Opinion. *See infra* at 8-12. Allowing

[2] *See* 52 U.S.C § 30106(f) (providing that "the Commission is authorized to appear in and defend against any action instituted under this Act, either (A) by attorneys employed in its office, or (B) by counsel whom it may appoint"); FEC Resp. to Mot. to Intervene, ECF No. 20.

the RNC's intervention could thus open these proceedings to an array of other similarly situated prospective intervenors who, like the RNC, have chosen to engage in the activities regulated by Advisory Opinion 2024-01 and could claim the same interest in defending them. *See Deutsche Bank*, 717 F.3d at 192-93 (noting that prospective intervenors were "swimming up river" in pressing intervention arguments that would have "widespread effect" by potentially entitling numerous others to intervene). That outcome would be highly prejudicial and is not warranted here, especially as the RNC can present its arguments through less disruptive means: by seeking leave to file an *amicus* brief.

B. The RNC has failed to demonstrate a legally protected interest that will be impaired absent intervention.

The RNC lacks a "legally protectable interest" to warrant intervention as a matter of right. *Karsner*, 532 F.3d at 885 (quoting *SEC v. Prudential Sec. Inc.*, 136 F.3d 153, 156 (D.C. Cir. 1998)). "In determining whether a movant's interests will be impaired by an action, the courts in this circuit look to the 'practical consequences' to movant of denying intervention." *Schoenborn v. Wash. Metro. Area Transit Auth.*, 247 F.R.D. 5, 7 (D.D.C. 2007) (quoting *Am. Horse Prot. Ass'n, Inc. v. Veneman*, 200 F.R.D. 153, 158 (D.D.C.2001)). The RNC has not shown that the relief sought here will concretely "impair or impede" its ability to protect its claimed interests. *See* Fed. R. Civ. P. 24(a)(2); *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1292 (D.C. Cir. 1980) ("[I]ntervention aims to protect interests which are 'of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.'").

The RNC relies heavily on *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312 (D.C. Cir. 2015), to support its motion to intervene, asserting that "[t]his case is materially indistinguishable from *Crossroads*." *See* RNC Mem. at 8. But the RNC's characterization of

Crossroads as effectively furnishing an automatic right of intervention to FECA-regulated parties in any suit challenging FEC action cannot withstand scrutiny. To be sure, the *Crossroads* decision often does support intervention by administrative respondents in cases seeking review of FEC enforcement decisions under 52 U.S.C. § 30109(a)(8). But this is not an enforcement appeal, nor does it implicate the would-be intervenor's own allegedly unlawful conduct under FECA.

In *Crossroads*, the administrative respondent moved to intervene immediately after the complainant filed suit challenging the FEC's dismissal of an administrative complaint alleging violations of FECA. 788 F.3d at 385. Because the FEC had already dismissed the administrative complaint, the respondent in *Crossroads* would not face any civil liability for its alleged campaign finance violations unless the plaintiff was successful in showing that the FEC's dismissal was contrary to law. *Id*. The Court therefore concluded that "the injury is directly traceable to [complainant's] challenge" to the dismissal order. *Id.* The intervenor in *Crossroad*s thus sought to preserve a status quo in which it faced "no exposure to further enforcement proceedings" and was not "exposed to civil liability via private lawsuit." 788 F.3d at 385, 387.

Unlike the enforcement dismissal at issue in *Crossroads*, the challenged FEC Advisory Opinion extends the same safe-harbor protections to countless other FECA-regulated parties—including the many federal candidates, committees, and outside groups undertaking the coordinated canvassing it permits—so the RNC's claimed interest in preserving that safe harbor is widely shared rather than particularized. In *Crossroads*, by contrast, the respondent to a specific FEC enforcement complaint sought to participate in a challenge to that complaint's dismissal, making the potential consequences of an adverse ruling in the case both immediate and unique to the prospective intervenor. 788 F.3d at 385. According to the RNC's capacious interpretation of *Crossroads*, however, any or all general members of the regulated community engaged in coordinated canvassing under the Advisory Opinion would theoretically be entitled to intervention as of right in this lawsuit. *Cf. United States v. Google LLC*, No. 20-cv-3010-APM, 2025 WL 372072, at *9 (D.D.C. Jan. 27, 2025) (observing, in denying Apple Inc.'s motion to intervene in an antitrust suit, that "[i]f Apple is entitled to intervene, 'there is no apparent reason why' other counterparties . . . 'could be denied a similar opportunity'" because Apple's "interests are not unique") (quoting *Deutsche Bank*, 717 F.3d at 192), *aff'd*, No. 25-5016, 2025 WL 880552 (D.C. Cir. Mar. 21, 2025).

Even as the RNC purports to acknowledge the key differences between this case and *Crossroads*, it argues that such distinctions are "beside the point." RNC Mem. at 9. But the RNC's supposed interest in preserving Advisory Opinion 2024-01 is not remotely akin to that of an administrative respondent facing the immediate prospect of resumed enforcement proceedings as a result of a lawsuit under 52 U.S.C. § 30109(a)(8). Unlike *Crossroads*, this case does not arise from an enforcement complaint against the prospective intervenor movant, the would-be intervenor faces no immediate or even conceivably imminent "legally protected" injury as a result of the lawsuit, and the movant's asserted interests are not unique but widely shared.

No doubt many of the federally regulated campaign spenders now exploiting the loophole opened by Advisory Opinion 2024-01 would prefer to safeguard their deregulatory windfall. But that does not automatically give each of them a legally protected interest sufficient to justify intervention as of right in this lawsuit. *Cf. Athens Lumber Co. v. FEC*, 690 F.2d 1364, 1366 (11th Cir. 1982) ("[Movant's] alleged interest is shared with all unions and all citizens concerned about the ramifications of direct corporate expenditures. Because this interest is so generalized it will not support a claim for intervention of right."). For one thing, there can be no "legally protected" interest in or "right" to engage in activity that a federal statute clearly proscribes—*i.e.*, making expenditures in open coordination with federal candidates or parties without complying with FECA's source and amount limits or disclosure requirements. *See* 52 U.S.C. § 30116(a)(7)(B)(i); *see also id.* § 30108(c)(2) (extending safe-harbor protections only to those "who act[] in good faith in accordance with the provisions and findings" of FEC advisory opinions). Indeed, it appears the real locus of the RNC's grievance may be the statutory coordination provisions themselves. *See* RNC Mem. at 13 (noting RNC's belief "that it has a constitutional right" to engage in unrestricted coordinated canvassing). But the RNC's implied constitutional arguments are irrelevant to the legal questions presented in this lawsuit: whether Advisory Opinion 2024-01 comports with FECA or satisfies APA requirements. And resolving those questions in the RNC's absence will in no way impair its ability to press its constitutional theories elsewhere.

Because the RNC has failed to establish any particularized or "legally protected interest" warranting its intervention here, it cannot demonstrate Article III injury or meet the analogous requirements of Rule 24(a). The "irreducible constitutional minimum" of standing comprises three elements: (1) injury-in-fact, (2) causation, and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). To demonstrate a cognizable "injury in fact," the putative intervenor must have suffered "an invasion of a legally protected interest" that is: "(a) concrete and particularized[;]" and "(b) actual or imminent, not conjectural or hypothetical[.]" *Id.* Where standing is rooted in future injury, a party "must demonstrate a realistic danger of sustaining a direct injury" to establish redressability. *United Transp. Union v. ICC*, 891 F.2d 908, 913 (D.C. Cir. 1989). For standing purposes, courts also "may reject as overly speculative those links which are predictions of future events (especially future actions to be taken by third parties."

Iowaska Church of Healing v. Werfel, 105 F.4th 402, 413 (D.C. Cir. 2024) (cleaned up) (quoting *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015)).

Here, however, the RNC claims future injuries that depend in part on the independent action of a third party—the FEC, which movant asserts "'could seek to regulate [the RNC] directly and immediately' if its Advisory Opinion were 'revoked,'" RNC Mem. at 13 (citing *Crossroads*, 788 F.3d at 321). But the RNC fails to demonstrate that those purported harms are remotely imminent. *See Deutsche Bank*, 717 F.3d at 193 ("[W]here a threshold legal interpretation must come out a specific way before a party's interests are even at risk, it seems unlikely that the prospect of harm is actual or imminent."). Even under this Circuit's relatively complaisant interpretation of Rule 24(a), establishing entitlement to intervention as of right requires more than the rote application of *Crossroads*. *Cf. Yocha Dehe v. U.S. Dep't of the Interior*, 3 F.4th 427, 431 (D.C. Cir. 2021) ("[C]ontrary to [movant's] characterization of *Crossroads*'s holding, not every 'party seeking to uphold a favorable ruling . . . suffer[s] a concrete injury in fact.'" (citing *Crossroads*, 788 F.3d at 318)).

C. The FEC more than adequately protects the RNC's interests.

Even assuming the RNC has a legally protected interest for purposes of Rule 24(a), its motion should be denied because the FEC more than adequately protects that supposed interest here. Because the FEC and the RNC share the "same ultimate objective" in this matter—defending the lawfulness of FEC Advisory Opinion 2024-01—the adequacy of representation is presumed. *Atl. Refinishing & Restoration, Inc. v. Travelers Cas. & Sur. Co. of Am.*, 272 F.R.D. 26, 30 (D.D.C. 2010). *See also Cobell v. Jewell*, No. 96-cv-01285-TFH, 2016 WL 10704595, at *2 (D.D.C. Mar. 30, 2016) (noting that although a prospective intervenor's burden of establishing inadequate representation may be "minimal," "a presumption of adequate representation exists if both the intervenor and existing party have the same ultimate objective"). Where objectives are aligned, the prospective intervenor "then bears the burden to 'rebut this presumption by demonstrating special circumstances that make the representation inadequate.'" *HRH Servs. LLC v. Travelers Indem. Co.*, No. 23-cv-02300-JDB, 2024 WL 4699925, at *9 (D.D.C. Nov. 6, 2024) (citation omitted).

Here, as movant itself acknowledges, "[b]oth the RNC and the Commission aim to preserve the Advisory Opinion," and both "'agree' that the Advisory Opinion is 'lawful.'" RNC Mem. at 7 n.1, 12. But the RNC nevertheless speculates that the agency's defense may fall short, offering a range of untenable arguments in support of this charge. First, the RNC concocts a theory about the FEC's supposed lack of litigating authority, RNC Mem. at 11-12, that both the statute and the agency unreservedly refute, *see* 52 U.S.C § 30106(f) (providing that "the Commission is authorized to appear in and defend against any action instituted under this Act, either (A) by attorneys employed in its office, or (B) by counsel whom it may appoint"); FEC Resp. to Mot. to Intervene at 2 ("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.").

Similarly, the RNC suggests that the Commission's current partisan composition renders its capability to represent the RNC's putative interests in this litigation inherently suspect, *see* RNC Mem. at 12; however, even if the partisan affiliations of current FEC commissioners constituted a valid reason to question the Commission's ability or willingness to defend its own action, the RNC elides the fact that one of those two sitting FEC commissioners provided the fourth vote *in favor* of granting Advisory Opinion 2024-01, which this lawsuit challenges. *See* Certification, FEC Advisory Opinion 2024-01 (Mar. 20, 2024), https://www.fec.gov/files/

legal/aos/2024-01/202401V_1.pdf; https://www.fec.gov/about/leadership-and-structure. In raising the specter of unfair partisanship, the RNC also conspicuously fails to mention that Texas Majority PAC, which submitted the original advisory opinion request precipitating this suit, is aligned with the Democratic party. Given that the FEC and RNC share the same fundamental goals in this litigation, insinuations about the FEC's stated plans to mount a robust defense are not sufficient to show inadequate representation—especially where those claims are based in part on an erroneous account of the agency's litigating authority. *See Seminole Nation of Okla. v. Norton*, 206 F.R.D. 1, 10 (D.D.C. 2001) (denying motion to intervene when "the only potential for inadequacy in the representation of the [defendant] is the risk that the [defendant] will not vigorously defend itself against Plaintiff's APA claim," but there was "no indication in the record that any such risk exists").

The RNC next cites its own presumption that the FEC may resist injecting broad and irrelevant constitutional issues into a case about permissible statutory interpretation under the APA. *See* RNC Mem. at 11-13. But it is "immaterial" that the RNC might present slightly different arguments in defense of Advisory Opinion 2024-01; "the relevant inquiry under Rule 24 is whether [the proposed intervenor's] interest is adequately represented, not whether its preferred arguments are articulated." *Las Americas Immigrant Advoc. Ctr. v. U.S. Dep't of Homeland Sec.*, 348 F.R.D. 397, 403 (D.D.C. 2025). Prospective intervenors must show more than a "mere difference of opinion concerning the tactics with which litigation should be handled." *Jones*, 348 F.3d at 1020 (quoting 7C Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1909, at 344 (2d ed. 1986)); *see id.* (noting that "[i]f disagreement with an existing party over trial strategy qualified as inadequate representation, the requirement of Rule 24 would have no meaning") (quoting *Butler, Fitzgerald & Potter v. Sequa*

Corp., 250 F.3d 171, 181 (2d Cir. 2001)). "[T]he mere fact that there is a slight difference in interests between the applicant and the supposed representative does not necessarily show inadequacy, if they both seek the same outcome." *Nuesse v. Camp*, 385 F.2d 694, 703 (D.C. Cir. 1967).

Finally, in attempting to satisfy this element of Rule 24(a)(2), the RNC once again places undue weight on the *Crossroads* decision, asserting in conclusory fashion that the FEC "can no more 'adequately represent [the RNC's] interests' than it could" the administrative respondent in *Crossroads*. RNC Mem. at 13 (citing 788 F.3d at 321). But for the reasons already explained above, the gravamen of *Crossroads* was that the subject of a live enforcement complaint should not have to trust that the very agency charged with investigating his alleged violations would as vigorously represent his interests in preventing that investigation from being reopened. *See* 788 F.3d at 321. The RNC's claimed interests here are qualitatively distinct from those at stake for the administrative respondent in *Crossroads*.

None of the RNC's arguments demonstrates that the FEC's representation will be inadequate. Conjecture and faulty characterizations of the FEC's authority do not amount to the "special circumstances" needed to rebut the presumption of adequate representation. Because the RNC admittedly shares with the Commission the "same ultimate objective" in defending this case, its asserted interest in defending Advisory Opinion 2024-01 "is not sufficiently different from the FEC's that its interest will not be adequately represented by the FEC." *Doe 1 v. FEC*, No. 17-cv-2694-ABJ, 2018 WL 2561043, at *5 (D.D.C. Jan. 31, 2018).

II. The Court Should Also Deny Permissive Intervention Under Rule 24(b).

A party seeking permissive intervention "may" be permitted to intervene if it is "given a conditional right to intervene by a federal statute" or has "a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. Proc. 24(b)(1). "Courts have 'wide latitude' in exercising their discretion to allow or deny permissive intervention." *D.C. v. Potomac Elec. Power Co. (PEPCO)*, 826 F. Supp. 2d 227, 236 (D.D.C. 2011) (citation omitted). "Before allowing a nonparty to permissively intervene," however, "the Court 'must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.'" *United States v. Facebook, Inc.*, 456 F. Supp. 3d 105, 109 (D.D.C. 2020). *See* Fed. R. Civ. Proc. 24(b)(3).

In exercising its discretion to grant or deny intervention under Rule 24(b), the Court may consider the nature and extent of the prospective intervenor's interests, the adequacy of representation by existing parties, and "whether parties seeking intervention will significantly contribute to . . . the just and equitable adjudication of the legal question presented." *Aristotle Int'l, Inc. v. NGP Software, Inc.*, 714 F. Supp. 2d 1, 18 (D.D.C. 2010) (citation omitted). All of these factors weigh against granting permissive intervention here. For the reasons already discussed above, the RNC lacks any interest that may be compromised absent its intervention in this case, and the FEC more than adequately represents whatever interests movant does claim to possess.

The RNC's request for permissive intervention under Rule 24(b) should therefore be denied for largely the same reasons as its motion to intervene as of right. Granting permissive intervention here is unnecessary to vindicate the RNC's interests in defending Advisory Opinion 2024-01—the FEC is more than capable of representing those putative interests, assuming they exist at all. *See supra* at 12-15. Nor is party status a prerequisite for the RNC to "aid the Court by providing the perspective of a regulated party," RNC Mem. at 14—an *amicus* brief would accomplish the asserted goal just as effectively, and plaintiff would not oppose the RNC's involvement in that capacity. Permitting the RNC to intervene, however, will only obfuscate the issues, prejudice the rights of the existing parties, and needlessly complicate this case.

Neither does invoking the supposed "uncertainty surrounding [the FEC's] present ability to mount a full defense," RNC Mem. at 14, remotely justify permissive intervention—insofar as any such "uncertainty" exists, it is entirely a figment of the RNC's own creation, and both FECA and the FEC reject it. *See supra* at 13. That the RNC hopes to burden the litigation with extraneous issues and unnecessary complexities is readily apparent from its self-serving efforts to subvert the FEC's authority to defend this suit. Its motion not only calls on the Department of Justice to "take over the defense of the Advisory Opinion" based on an erroneous understanding of the FEC's litigating powers, RNC Mem. at 11 n.3, but also attempts to enlist this Court in "inviting briefing from the Justice Department on the quorum issue," *id.* The Court should decline that request.

Nor is intervention necessary to ensure a "just and equitable" presentation on the legal questions here or otherwise to elucidate relevant issues. The RNC suggests that its participation will be "helpful" because it can share its "'experience and expertise' in the area of door-to-door canvassing—and the 'impact' the loss of the Advisory Opinion will 'have upon [its] operations.'" RNC Mem. at 12 (citing *Nat. Res. Def. Council v. Costle*, 561 F.2d 904, 912-13 (D.C. Cir. 1977)). But again, it is not clear what arguments prospective intervenor hopes to make as a party that it could not present just as effectively as an *amicus curiae*. Instead, what it evidently hopes to gain is the right to file dispositive motions, sidetrack the litigation with irrelevant briefing, and otherwise delay resolution on the merits. Far from "'significantly contribut[ing]' to the 'just and equitable adjudication of the legal question presented'" here, the RNC's intervention would merely "overcomplicate the case with peripheral issues." *Scotts*

Valley Band of Pomo Indians v. Burgum, No. 1:25-cv-00958-TNM, 2025 WL 1178598, at *10 (D.D.C. Apr. 23, 2025) (citing *Ctr. Bio. Diversity v. EPA*, 274 F.R.D. 305, 313 (D.D.C. 2011)). The motion should be denied.

CONCLUSION

For the foregoing reasons, the Court should deny the RNC's motion to intervene.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2026, I caused a true and correct copy of the foregoing document to be served upon all counsel of record registered with the Court's ECF system, by electronic service via the Court's ECF transmission facilities.

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