ORAL ARGUMENT SCHEDULED FOR JANUARY 20, 2023

Nos. 22-5140, 22-5167

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CAMPAIGN LEGAL CENTER,
Plaintiff-Appellee,

v.

FEDERAL ELECTION COMMISSION,
Defendant.

HERITAGE ACTION FOR AMERICA,
Movant-Appellant.

On Appeal from the United States District Court
for the District of Columbia, No. 1:21-cv-406-TJK
Before the Honorable Timothy J. Kelly

BRIEF FOR PLAINTIFF-APPELLEE CAMPAIGN LEGAL CENTER

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

(A) Parties and Amici

Campaign Legal Center ("Campaign Legal") is the plaintiff in the district court and Appellee in this Court. Campaign Legal is a nonpartisan, nonprofit corporation that works to protect and strengthen the U.S. democratic process across all levels of government, including by supporting campaign finance reform through litigation, policy analysis, and public education.

The Federal Election Commission ("Commission") is the defendant in the district court but defaulted and has not appeared in the district court or in this Court.

Heritage Action for America ("Heritage Action") is a movant but not a party in the district court and is the Appellant in this Court.

Heritage Action and the Institute for Free Speech appeared as *amici curiae* in the district court. The Institute for Free Speech has appeared as *amicus curiae* in this Court.

(B) Rulings Under Review

In case No. 22-5140, Heritage Action noticed an appeal of the May 3, 2022 order of the U.S. District Court for the District of Columbia (Kelly, J.) declaring that the Commission failed to conform to the district court's March 25, 2022 order granting Campaign Legal's motion for default judgment against the Commission.

JA283. The May 3, 2022 order is not published in the federal reporter, but is reproduced at JA245.

In case No. 22-5167, Heritage Action noticed an appeal of the June 6, 2022 order and memorandum opinion of the U.S. District Court for the District of Columbia (Kelly, J.) denying Heritage Action's motion to intervene. JA314. The June 6, 2022 memorandum opinion is not published in the federal reporter but is reproduced at JA307 and is available at 2022 WL 1978727.

On June 10, 2022, the Court consolidated case Nos. 22-5140 and 22-5167.

(C) Related Cases

The case on review was previously before this Court pursuant to Heritage Action's motion for an abeyance and Campaign Legal's motion for summary affirmance, both of which were denied in an Order dated September 14, 2022. There are three related cases pending before the U.S. District Court for the District of Columbia: (1) Campaign Legal's citizen suit against Heritage Action under the Federal Election Campaign Act ("FECA"), *see Campaign Legal Ctr. v. Heritage Action*, No. 1:22-cv-1248-CJN (D.D.C); (2) Heritage Action's Administrative Procedure Act ("APA") lawsuit against the Commission, *Heritage Action v. FEC*, No. 1:22-cv-1422-CJN (D.D.C); and (3) Campaign Legal's citizen suit against 45Committee, Inc. under FECA, *see Campaign Legal Ctr. v. 45Committee, Inc.*, No. 1:22-cv-1115-APM (D.D.C.).

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Circuit Rule 26.1, Appellee Campaign Legal makes the following disclosure: Campaign Legal is a 501(c)(3) nonpartisan, nonprofit organization, that has no parent corporation, does not issue stock, and in which no publicly held corporation has any form of ownership interest.

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TABLE OF AUTHORITIES

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GLOSSARY OF ABBREVIATIONS

APA	Administrative Procedure Act
APA Suit	*Heritage Action v. FEC*, No. 1:22-cv-1422-CJN (D.D.C.)
Campaign Legal	Campaign Legal Center
Citizen Suit	*Campaign Legal Ctr. v. Heritage Action*, No. 1:22-cv-1248-CJN (D.D.C.)
Commission or FEC	Federal Election Commission
FECA	Federal Election Campaign Act
FOIA	Freedom of Information Act
Heritage Action	Heritage Action for America
New Models	*Citizens for Responsibility and Ethics in Washington v. FEC*, 993 F.3d 880 (D.C. Cir. 2021)
NRSC	*FEC v. National Republican Senatorial Commission*, 966 F.2d 1471 (D.C. Cir. 1992)
TRAC	*Telecommunications Research & Action Center v. FCC*, 750 F.2d 70 (D.C. Cir. 1984)

INTRODUCTION

This appeal involves the straightforward question of whether the district court abused its discretion in finding that non-party Heritage Action's post-judgment motion to intervene was untimely.

For more than four years, Campaign Legal has sought to hold Heritage Action accountable for violating federal campaign finance laws when it spent hundreds of thousands of dollars supporting congressional candidates in 2018 without disclosing the sources of its funding. After its administrative complaint sat before the Commission for more than two years without any action being taken, Campaign Legal filed suit seeking to compel the Commission to act, failing which Campaign Legal would be statutorily entitled to file a citizen suit against Heritage Action for violating FECA. The Commission failed to appear and defend the lawsuit. More than a year later, Campaign Legal won default judgment against the agency after the district court determined on the merits that the agency's years-long failure to act on the administrative complaint was unreasonable and thus contrary to law. Six weeks later, after the Commission failed to comply with the district court's order to act within 30 days, the suit was terminated and Campaign Legal exercised its right to file a citizen suit against Heritage Action.

All the while, Heritage Action sat on the sidelines. Five days after Campaign Legal filed its citizen suit, Heritage Action belatedly moved to intervene seeking to

reopen the merits of the settled judgment based on an unfounded theory about the Commission's procedure for dismissing administrative matters, which it could have raised at least a year earlier.

The district court did not abuse its discretion in denying the post-judgment motion, which Heritage Action filed more than 15 months from the outset of the case and *long* after it had become clear that Heritage Action's interests would not be protected by the absent Commission. The denial of the belated motion caused Heritage Action no prejudice: Heritage Action's status as a non-party to the judgment has enabled it to advance the arguments it seeks to make here in related ongoing litigation. But allowing intervention at this late date to reopen the issues settled by the district court would significantly prejudice Campaign Legal with further undue delay and duplicative litigation. The Court should affirm the denial of intervention and dismiss the merits appeal for lack of appellate jurisdiction.

But even if the Court did have jurisdiction, it should nevertheless remand to the district court for consideration in the first instance of whether Heritage Action can satisfy the remaining intervention factors, and, if necessary, Heritage Action's claim that the Commission did not fail to act contrary to law.

There is therefore no reason for the Court to reach Heritage Action's appeal of the merits, but even if the Court does so, it should affirm. The district court did not abuse its discretion in finding that the Commission failed to act on Campaign

Legal's administrative complaint within 120 days; that, on the merits, the agency's years-long failure to act was unreasonable and thus contrary to law; and that the Commission failed to conform with the district court's order to act on the complaint within 30 days.

Indeed, Heritage Action does not dispute that the Commission did not act on Campaign Legal's October 2018 administrative complaint for more than 900 days after it was filed. Neither does it address the relevant test for analyzing the agency's failure to act nor find fault with the district court's application of the same. Instead, Heritage Action erroneously asserts that the Commission—which cannot act without a majority vote by the Commissioners—automatically dismissed the administrative complaint in April 2021 when it deadlocked 3-3 on whether to initiate an enforcement investigation. But as the Commission itself has recently explained, it is the agency's official policy and decades-long practice to dismiss matters only through successful, majority votes to close the enforcement matter's file. The Court should therefore reject Heritage Action's accusations that the Commission "acted" in April 2021 by holding an unsuccessful vote, and then "concealed" from the courts that it had dismissed the matter; instead, the agency simply followed FECA's command that information relating to a pending enforcement action must remain confidential until the matter is in fact dismissed.

In sum, the Court should affirm the district court's denial of Heritage Action's post-judgment motion to intervene and dismiss the remainder of this appeal for lack of appellate jurisdiction.

JURISDICTIONAL STATEMENT

Campaign Legal disputes that the Court has jurisdiction over Heritage Action's appeal of the Court's merits ruling below. *See infra* p. 42.

STATEMENT OF THE CASE

I. Statutory and Regulatory Background

A. FECA's Contributor Reporting Requirements for Non-Political Committees Making Independent Expenditures

FECA regulates "federal political campaign financing, *inter alia*, by imposing limitations on contributions and requiring disclosure of persons contributing money for expenditures to influence federal elections." *CREW v. FEC*, 316 F. Supp. 3d 349, 367-68 (D.D.C. 2018). In enacting FECA, Congress "recognized the value of disclosure as a means of enabling the electorate to make informed decisions about candidates, to evaluate political messaging, to deter actual, or the appearance of, corruption, and to aid in enforcement of the ban on foreign contributions, which may result in undue influence on American politicians." *Id.* at 355.

FECA imposes event-driven disclosure requirements on individuals and entities other than political committees who spend non-trivial amounts on "independent expenditures"—communications expressly advocating the election or defeat of federal candidates. *See* 52 U.S.C. § 30104(c)(1)-(2). Such spending must be disclosed to the Commission in periodic public reports, *see* 52 U.S.C. § 30104(c)(2), (g), along with the contributions the spender received during the relevant reporting period and the identities of the spender's contributors. *See* 52 U.S.C. § 30104(c)(1), (c)(2), (c)(2)(C).

B. The Federal Election Commission

1. The Commission's Bipartisan Structure

The Commission administers FECA. *See* 52 U.S.C. § 30106. By structuring the Commission to have six Commissioners, no more than three of whom may be affiliated with the same political party, *id.* § 30106(a)(1), "Congress designed the Commission to ensure that every important action it takes is bipartisan," *Combat Veterans for Cong. Pol. Action Comm. v. FEC*, 795 F.3d 151, 153 (D.C. Cir. 2015). Thus, "[a]ll decisions of the Commission with respect to the exercise of its duties and powers under [FECA] shall be made by a majority vote . . . except that the affirmative vote of 4 members" is always required—regardless of vacancies or abstentions—for certain actions. 52 U.S.C. § 30106(c).

2. The Commission's Enforcement Process

Any person may file an administrative complaint with the Commission alleging a violation of FECA. 52 U.S.C. § 30109(a)(1). Absent waiver by the respondent, the Commission's handling of such complaints is confidential, 52 U.S.C. § 30109(a)(12), 11 C.F.R. § 111.21, until it "terminates its proceedings," 11 C.F.R. § 111.20.

During the initial stage of the enforcement process the Commission generally can take the following "actions" on an administrative complaint, but only if at least four members agree: "(1) Find 'reason to believe' a respondent has violated the Act;

(2) dismiss the matter; (3) dismiss the matter with admonishment; or (4) find 'no reason to believe' a respondent has violated the Act." *See* FEC, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,545 (Mar. 16, 2007). If the Commission "determines, by an affirmative vote of 4 of its members," that there is "reason to believe" a respondent violated FECA, the agency must notify the respondent and "make an investigation of such alleged violation." 52 U.S.C. § 30109(a)(2).

3. Termination of Commission Enforcement Proceedings

At any point, the Commission may terminate its enforcement proceedings with a "vote[] to close [the] enforcement file," 11 C.F.R. § 5.4(a)(4), which requires majority support to pass, *see* 52 U.S.C. § 30106(c); *see also Doe v. FEC*, 920 F.3d 866, 871 n.9 (D.C. Cir. 2019) ("When the Commission ended its investigation and closed the file, it 'terminate[d] its proceedings' within the meaning of 11 C.F.R. § 111.20(a)."). The Commission has had a "long-standing practice of terminating matters only through successful votes to close the file," and it has adhered to that policy and practice for "decades." FEC Opp. to Heritage Action Mot. for Summ. J. at 24, 30, *Heritage Action v. FEC*, No. 1:22-cv-1422-CJN (D.D.C. Aug. 26, 2022) ("APA Suit"), ECF 26 (describing this practice as "clearly the agency's 'official position'").

When the Commission "terminates its proceedings" it must "advise both complainant and respondent by letter," 11 C.F.R. § 111.9(b), and make public documents integral to its decision-making process, including certifications of Commission votes and Statements of Reasons by the Commissioners explaining the basis for their decisions, *see* FEC, Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702, 50,703 (Aug. 2, 2016). Because FECA requires a complainant to challenge the dismissal of its administrative complaint within 60 days, 52 U.S.C. § 30109(a)(8)(B), the Commission notifies the administrative parties of the termination of the matter within two days and releases the administrative file, including any Statements of Reasons, within 30 days of the closing of the file. FEC, Office of General Counsel Enforcement Manual at 107 (2013), https://www.fec.gov/resources/updates/agendas/2013/mtgdoc_13-21.pdf; FEC, Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702, 50,703 (Aug. 2, 2016); 11 C.F.R. §§ 5.4(a)(4), 111.20(a)).

4. The Effect of Commission Deadlocks

Because a majority vote to close the enforcement file is required for any Commission decision, including the decision to terminate a matter, votes to find "reason to believe" that fail to gain support from at least four Commissioners do not "immediately terminate an administrative enforcement proceeding." FEC Opp'n to Heritage Action MSJ at 23-24, APA Suit ECF 26; *see also* 52 U.S.C. § 30109(a)(2)

(requiring four votes for reason to believe but stating nothing about termination or dismissal); *id.* § 30109(a)(2) (referencing a "vote to dismiss" distinct from a vote to find "reason to believe"). Instead, after a deadlocked vote, an administrative matter remains pending before the Commission for further deliberation until bipartisan consensus either to proceed (through an investigation and subsequent probable cause determination) or terminate (through a vote to close the file) is achieved. *See* FEC Opp'n to Heritage Action Mot. for Disc. at 22-23, APA Suit (D.D.C. Sept. 16, 2022), ECF 30. Indeed, "the Commission has often held one reason-to-believe or probable-cause-to-believe vote that does not pass, only to determine in a later vote that there was in fact reason to believe or probable cause to believe on the same claim." FEC Opp'n to Heritage Action MSJ at 27, APA Suit ECF 26; *see also* FEC Opp'n to Heritage Action Mot. for Disc. at 23, APA Suit ECF 30 (identifying at least "98 matters that had some additional majority votes after a deadlock before a close-the-file vote just since December 2020").

5. Challenges to Commission Delay

Under FECA, any administrative complainant "aggrieved . . . by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed" may seek review in United States District Court for the District of Columbia. 52 U.S.C. § 30109(a)(8)(A). The district court hearing the suit "may declare that . . . the failure to act is contrary to law" and "direct the

Commission to conform with such declaration within 30 days." 52 U.S.C. § 30109(a)(8)(C).

Although section 30109(a)(8)(A) "does not impose a deadline for final action" on the Commission, its "120 day period is jurisdictional." *Citizens for Percy '84 v. FEC*, No. 84-cv-2653, 1984 WL 6601 at *2 (D.D.C. Nov. 19, 1984). It thus "allows the Commission a maximum period of 120 days, beginning from the date the complaint is filed, in which to conduct its investigation without judicial intrusion." *In re Carter-Mondale Reelection Committee, Inc.*, 642 F.2d 538, 543 (D.C. Cir. 1980).

Once the Commission fails to act on an administrative complaint for 120 days and a complainant files suit to remedy the delay, the issue on the merits before the district court is whether "the failure of [the Commission] to take final action as of the time this suit was filed" was contrary to law. *Citizens for Percy '84*, 1984 WL 6601 at *2; *see also Common Cause v. FEC*, 489 F. Supp. 738, 744 (D.D.C. 1980) (explaining that "the Court must determine whether the Commission has acted 'expeditiously'"). The inquiry into the agency's failure to act is conducted under "the factors set forth in *Common Cause v. FEC*, 489 F. Supp. 738, 744 (D.D.C. 1980), and *Telecommunications Research & Action Center v. FCC* (*TRAC*), 750 F.2d 70, 80 (D.C. Cir. 1984)." *FEC v. Rose*, 806 F.2d 1081, 1084 (D.C. Cir. 1986).

If the Commission's failure to act is declared contrary to law, and the Commission fails to conform within 30 days as ordered by the district court, "the complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint." 52 U.S.C. § 30109(a)(8)(C). Congress created this private right of action ("citizen suit") to "legislate[] a fix" for the fact "that partisan deadlocks were likely to result" from the "six-member Commission be[ing] split down party lines." *Citizens for Responsibility and Ethics in Washington v. Am. Action Network*, 410 F. Supp. 3d 1, 6 (D.D.C. 2019), *reconsidered on other grounds*, No. 18-cv-945-CRC, 2022 WL 612655 (D.D.C. Mar. 2, 2022).

II. Factual Background

Defendant Heritage Action is a 501(c)(4) organization, JA19, and qualifies as a "person []other than a political committee," subject to FECA's contributor-reporting requirements for non-political committees making independent expenditures. JA20; *see also* 52 U.S.C. § 30104(c)(1), (c)(2), (c)(2)(C).

In September 2018, Heritage Action spent hundreds of thousands of dollars on independent expenditures supporting twelve candidates for the U.S. House of Representatives. JA14. On October 12, 2018, Heritage Action reported these independent expenditures to the Commission, but failed to disclose its received contributions and donors from the relevant reporting period. *Id.*

III. Procedural History

A. The October 2018 Administrative Complaint

On October 16, 2018, four days after Heritage Action failed to disclose its contributors, Campaign Legal filed an administrative complaint with the Commission alleging that Heritage Action violated FECA. JA17. The Commission did not act on the complaint within 120 days. JA145, JA198.

B. The February 2021 Failure-to-Act Suit

Two years after the jurisdictional 120-day period elapsed, the Commission had yet to act on Campaign Legal's complaint. On February 16, 2021, Campaign Legal sued the Commission under 52 U.S.C. § 30109(a)(8)(A), alleging the agency's failure to act was contrary to law. JA06.

Three months later, on May 10, 2021, the Clerk entered default against the Commission due to its failure to answer the complaint or otherwise appear in this lawsuit. JA03, JA121. Two weeks later, Campaign Legal moved for default judgment. JA122. Another 10 months passed. On March 25, 2022, after finding that Campaign Legal's allegations against Heritage Action were credible and outlined a legitimate threat to the health of the electoral process, the district court entered default judgment against the Commission. JA198-99. The Court found that the Commission's failure to act was contrary to law; ordered "that, pursuant to 52 U.S.C. § 30109(a)(8)(C), the FEC conform to this Court's Order within 30 days by acting

on CLC's administrative complaint"; and ordered that the court "shall retain jurisdiction over this matter until the FEC takes final agency action with respect to CLC's administrative complaint." JA200.

One month later, on April 25, 2022—the same day as the Commission's deadline to conform, *see* JA201—Heritage Action appeared in the action for the first time seeking leave to file an *amicus curiae* brief. JA04, ECF 17. Attached to the brief was a Freedom of Information Act ("FOIA") request filed by Heritage Action with the Commission on March 25—the same day the district court entered default judgment. JA234, JA198-200. The request sought "[a]ny vote certifications reflecting votes" held on the administrative complaint, as well as any Statements of Reasons issued by Commissioners. JA325.[1] Heritage Action's *amicus* brief argued that if the FOIA request produced records showing the agency had deadlocked on whether to find "reason to believe," at any point during the pendency of the administrative complaint, it would allegedly demonstrate that the agency had taken "action terminating the complaint." ECF 22 at 3.[2] The district court granted Heritage Action leave to appear as *amicus* but noted that Heritage Action "is not a party to

[1] FECA prohibits the Commission from making public any information about a pending enforcement matter absent the respondent's consent. 52 U.S.C. § 30109(a)(12). Heritage Action waived its right to confidentiality under § 30109(a)(12) on March 31, 2022. Notice of Consent, MUR 7516 (Heritage Acton) (Mar. 31, 2022), https://www.fec.gov/files/legal/murs/7516/7516_08.pdf.

[2] Citations to documents in the record below that are not included in the Joint Appendix are designated by ECF number.

this case," and that the court "has already decided the issue the brief addresses—whether the FEC acted 'contrary to law' under FECA—and no motion to reconsider that determination is pending." *Id.* JA04.

More than a week later, on May 3, 2022, "with no other word from Heritage Action," JA308, the district court declared that the Commission had failed to conform with the court's March 25 default judgment order. JA245. The court terminated the suit the next day. JA04. On May 5, Campaign Legal filed a citizen suit against Heritage Action. *See Campaign Legal Ctr. v. Heritage Action*, No. 1:22-cv-1248 (D.D.C. May 5, 2022) ("Citizen Suit").

Five days later, on May 10, 2022, Heritage Action emailed Commission litigation counsel asking if the agency intended to file an appeal. JA261. A few hours later, Heritage Action moved to intervene for purposes of seeking reconsideration of, or appealing, the May 3 Order. JA04; ECF 24. Three days later, the Commission concluded its response to Heritage Action's FOIA request and produced three heavily redacted pages of vote certifications, which did not reveal the nature or result of any votes. JA272-75. Heritage Action appealed the agency's redactions and on June 2, the Commission produced three partially redacted pages of vote certifications indicating that on April 6, 2021, the agency deadlocked 3-3 on whether to find reason to believe Heritage Action violated the act, whether to dismiss the matter under *Heckler v. Chaney*, and whether to close the file. JA298-302. The production also

indicated that on January 11, 2022, the Commission again deadlocked 3-3 on whether to close the file. JA302.

C. The Intervention Motion

After a status conference at which Heritage Action claimed a motion for reconsideration was its preferred course, the district court denied the motion to intervene as untimely. JA306. The court concluded that there was "no reason to depart from what usually happens when a party moves to intervene after passing on a clear opportunity for pre-judgment intervention." JA309 (internal quotation marks and citations omitted). In particular, the court found that Heritage Action failed to intervene "as soon as it became clear that its interests would no longer be protected by the parties in this case." JA309-10. The district court further found that Heritage Action's primary purpose for intervening—reconsideration of settled issues in the case—also weighed against the timeliness of its motion. JA310-11. Moreover, the court found that Heritage Action had not shown a clear need for intervention. JA311-12. Finally, the district court found that allowing post-judgment intervention would prejudice Campaign Legal with further unjustified delay. JA312-13.

Two days later, Heritage Action noticed its appeal of the denial of intervention, JA314, which was docketed as Case No. 22-5167 and consolidated with its earlier appeal (No. 22-5140) of the district court's May 3, 2022 Order, JA283.

SUMMARY OF ARGUMENT

The district court did not abuse its discretion in denying Heritage Action's post-judgment motion to intervene as untimely because Heritage Action waited to move until long after it had become clear that its interests were unprotected. Heritage Action contends that it only understood that the Commission would not represent its interest in not being sued for campaign finance violations once it became clear the Commission would not appeal the final judgment below. But this assertion is contradicted by Heritage Action's contention that the Commission would be incapable of representing Heritage Action's interests, even had it appeared. Regardless, the district court did not abuse its discretion in finding that Heritage Action passed up multiple opportunities for intervention before the case terminated, including soon after Campaign Legal filed suit, when the Commission defaulted by failing to appear and defend the suit, when default judgment was entered, and when the Commission failed to appear and comply with the district court's order to act.

The district court also did not abuse its discretion in finding that Heritage Action failed to show it would suffer any prejudice from being denied post-judgment intervention. Rather than identifying any actual prejudice, Heritage Action merely complains of the predictable results of its own dilatoriness. Nor did the district court abuse its discretion in concluding that allowing Heritage Action to intervene would impose substantial prejudice on Campaign Legal through further undue delay.

Because the district court did not abuse its discretion in denying intervention, the Court should affirm the ruling below and dismiss the appeal for lack of jurisdiction. Even if this Court were to reverse the district court with respect to the timeliness of Heritage Action's motion, it should remand for consideration of the remaining intervention factors, and, if necessary, for consideration of Heritage Action's claim that the Commission did not fail to act contrary to law. Both analyses require a district court to exercise its discretion in applying a fact-sensitive, multi-factored test, which is then reviewed on appeal for abuse of discretion.

If the Court does reach Heritage Action's appeal of the district court's ruling that the Commission failed to act and failed to conform, the Court should affirm. Heritage Action's appeal of the merits concedes that the Commission failed to act during the jurisdictional time-period set forth by statute and does not address, much less dispute, the district court's application of the relevant test for whether that failure to act was contrary to law. Further, Heritage Action's sole argument on appeal—that any administrative complaint before the Commission is automatically dismissed when the Commission deadlocks on whether to proceed to enforcement—lacks any basis in FECA's text, Commission regulations and practice, judicial precedent, or the administrative record in this matter. The Court should reject Heritage Action's baseless automatic-dismissal theory and affirm the merits below.

LEGAL STANDARDS

This Court reviews a "District Court's denial of intervention for untimeliness under the abuse of discretion standard." *United States v. British Am. Tobacco Australia Servs., Ltd.*, 437 F.3d 1235, 1238 (D.C. Cir. 2006) (citing *NAACP v. New York*, 413 U.S. 345, 366 (1973) ("[Timeliness under Rule 24] is to be determined by the [district] court in the exercise of its sound discretion; unless that discretion is abused, the court's ruling will not be disturbed on review.")).

To determine whether the Commission's failure to act was contrary to law, district courts apply the *Common Cause* and *TRAC* factors. *FEC v. Rose*, 806 F.2d 1081, 1091 (D.C. Cir. 1986). This is a fact-specific test, the application of which this Court reviews for "abuse of discretion." *Id*.

ARGUMENT

I. The District Court Did Not Abuse Its Discretion by Finding That Heritage Action's Attempt to Intervene After Judgment Was Untimely

Intervention requires a "timely motion." Fed. R. Civ. P. 24(a)-(b). In deciding whether a motion to intervene is timely, a district court must examine "all the circumstances, especially weighing the factors of time elapsed since the inception of the suit, 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." *Karsner v. Lothian*, 532 F.3d 876, 886 (D.C. Cir. 2008) (citations omitted). In addition, this Court has warned of the "evils of permitting post-judgment intervention," *Paisley v. C.I.A.*, 724 F.2d 201, 203 (D.C. Cir. 1984), and has adopted a presumption that "[a] motion for 'intervention after judgment will usually be denied where a clear opportunity for pre-judgment intervention was not taken,'" *Associated Builders & Contractors, Inc. v. Herman*, 166 F.3d 1248, 1257 (D.C. Cir. 1999).

Weighing these factors, the district court acted well within its discretion to deny intervention. First, Heritage Action waited until after judgment and more than fifteen months from the outset of the case to intervene, which was long after it had become clear that its interests were unprotected. Second, Heritage Action has not shown a clear need to intervene here given that its failure to intervene pre-judgment enabled it to collaterally attack the judgment below in the ongoing citizen suit.

Finally, Heritage Action's sandbagging tactics have prejudiced Campaign Legal with undue delay and duplicative litigation. The Court should affirm.

A. Heritage Action's Delay in Intervening Was Unjustified

1. Heritage Action Passed Up Clear Opportunities for Pre-Judgment Intervention

The district court did not abuse its discretion by finding that Heritage Action's failure to take clear opportunities to intervene before judgment weighed against its timeliness. In evaluating the timing factor, courts may consider not only how long the motion was filed after "the inception of the suit," *Karsner*, 532 F.3d at 886, but also when the prospective intervenor "knew or should have known that any of its rights would be directly affected by the litigation," *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003), whether the motion was filed "as soon as it became clear" that the movant's "interests would no longer be protected by the parties in the case," *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 142 S. Ct. 1002, 1012 (2022) (citation omitted), and whether the motion was filed after judgment, *see Associated Builders*, 166 F.3d at 1257. Measured by any or all of these standards, Heritage Action's dilatoriness was unjustified.

First, as the district court observed, "Heritage Action did not move to intervene until more than a year after CLC filed suit." JA309. Notably, Heritage Action does not claim it was unaware of the filing of this case, and its 15-month delay in moving to intervene is substantially longer than delays courts in this Circuit

have declined to excuse. *See, e.g.*, *Defs. of Wildlife v. Salazar*, No. 12-cv-1833 (ABJ), 2013 WL 12316848, at *2 (D.D.C. July 17, 2013) (denying motion due to "nearly eight month[]" delay).

Second, Heritage Action knew or should have known that its rights would be directly affected by this litigation from the day it was filed. Citing FECA, Campaign Legal's February 16, 2021 complaint states that if the district court were to grant Campaign Legal its requested relief, "FECA [would] authorize[] [Campaign Legal] to commence a civil action against Heritage Action to enforce federal campaign finance laws. *See* [52 U.S.C.] § 30109(a)(8)(C)." JA006-07. In a similar suit, this Court found the intervening respondents had protectable interests just two months after the complaint was filed because the suit could result in their being "subject to enforcement proceedings before a federal agency" and "exposure to civil liability." *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 317 (D.C. Cir. 2015).

As a result, Heritage Action's rights were, in the words of the district court, "obviously implicated" by this lawsuit. JA311. Indeed, when it moved to intervene after judgment was entered, Heritage Action itself asserted that it had an interest in the case in part because "the Plaintiff seeks potential direct regulation of Heritage Action under FECA." Mot. to Intervene at 9, ECF 24-1. But that was as true at the inception of the suit as it was fifteen months later. Heritage Action's failure to take

steps to protect these interests until after an adverse judgment was entered against the Commission rendered its motion untimely.

Third, Heritage Action moved to intervene long after it became clear that its interests would not be protected by the Commission. In fact, Heritage Action itself contends that the Commission could *never* protect its interests in this suit. In its motion to intervene below, Heritage Action states that "the FEC cannot adequately represent Heritage Action's interests, either for purposes of seeking reconsideration or on appeal," in part because "the Commission is a regulatory agency in a position to regulate and sanction Heritage Action—a dynamic that precludes a finding of adequate representation under Rule 24(a)." ECF 24-1 at 17-18; *see also id.* at 19 (arguing that the Commission "is actively opposed to Heritage Action's interests" and "ill-suited to represent Heritage Action's interests because Heritage Action remains subject to FEC regulation"); *cf. Crossroads*, 788 F. 3d at 321 (describing the Commission as a "doubtful friend to represent [a respondent's] interests").

In any event, even if the Commission could have protected Heritage Action's interests, the agency never appeared in the case. Accordingly, as the district court found, "both the clerk's entry of default and CLC's motion for default judgment made clear by May 2021"—a full year before Heritage Action moved to intervene—"that no party would be protecting Heritage Action's interests." JA310 (citing

Campaign Legal Ctr., 334 F.R.D. at 6 ("[T]here can be no question that a defaulting defendant [FEC] will not adequately represent [the respondents'] interests.")).

Campaign Legal's subsequent motion for default judgment was pending before the district court for ten months. Even if that motion, somehow, did not place Heritage Action on notice that its interests were unprotected, "[a]t the very least," the district court found, this would have been clear when the court entered default judgment in March 2022. JA310. Yet Heritage Action still chose to wait to seek intervention until after the case terminated more than a month and a half later, JA310, notwithstanding the district court's earlier warning that its appearance as *amicus* would not afford Heritage Acton the relief it sought to protect its asserted interests. JA04.

Under these circumstances, the district court did not abuse its discretion in finding "no reason to depart from what usually happens when a party moves to intervene after passing on a 'clear opportunity for pre-judgment intervention.'" JA309 (quoting *Associated Builders*, 166 F.3d at 1257).

2. Heritage Action Failed to Justify Its Delay

The district court also did not abuse its discretion in rejecting Heritage Action's primary justification for its delay: quoting *Cameron*, Heritage Action argued that, "'[h]ere, the most important circumstance relating to timeliness is that [Heritage Action] sought to intervene as soon as it became clear' that the

Commission would not appeal the Court's May 3[, 2022] order." ECF 24-1 at 10 (quoting *Cameron*, 142 S. Ct. at 1012) (second alteration in original). According to Heritage Action, the need for intervention was not apparent from the Commission's failure to appear and defend the lawsuit, but only became clear when the agency failed to respond to an email from Heritage Action inquiring whether the agency planned to appeal, which Heritage Action sent just hours before moving to intervene. *See* ECF 24-1 at 10, 14; JA262.

But the district court correctly found that Heritage Action's reliance on *Cameron* was misplaced: in *Cameron*, the intervenor's need to protect its interests became clear only after the government decided it "would not *continue* to defend" that case. 142 S. Ct. at 1012 (emphasis added). In contrast, the government's failure *ever* to appear in this case made clear that it would not defend Heritage Action's interests "long before appeal was even an option," and so "whether the Commission would appeal that order does not really matter here." JA310.

On appeal, Heritage Action has wisely abandoned this argument, but now claims that the district court erred by applying *Cameron* at all, despite urging the court to do so in the first place. *See* Appellants' Brief at 39-40 ("Br."). Relying on out-of-circuit precedent pre-dating *Cameron*, Heritage Action asserts that the district court should have ignored *Cameron* in lieu of measuring the timing of the motion from an alleged "change of circumstances." Br. at 40. This argument fails on its own

terms, *see infra* pp. 29-33, but as a threshold matter, this Court should reject Heritage Action's attempt to bait-and-switch the district court, which correctly applied *Cameron*'s standard

Heritage Action makes several other meritless assertions in support of intervention. First, Heritage Action's claim that there "was still a chance" that the Commission might appear in the case after defaulting in May 2021, *see* Br. at 45, does not demonstrate that the district court abused its discretion. At issue is when it became "clear" Heritage Action's interests would go unprotected, *Cameron*, 142 S. Ct. at 1012, and, as discussed *supra* pp. 24-25, the district court did not abuse its discretion in applying this standard. *See also* JA310.

Second, the basic facts of this case belie Heritage Action's assertion that it was unclear whether the agency would appear after defaulting because "the government is sometimes slow to respond to a complaint in light of bureaucratic realities." Br. at 45-46 (cleaned up). Under FECA, four of the agency's six members must vote to authorize the defense of a suit challenging its failure to act. *See supra* pp. 7-8. As Heritage Action acknowledges, the agency has failed to appear in numerous lawsuits like this one because it lacks the votes to defend its inaction. *See* Br. at 12. In fact, Heritage Action admits being aware of media reports dating back to February 2019, *see* Br. at 47—a full year before this case was filed—that certain Commissioners were voting against "allow[ing] FEC lawyers to defend the

government when the FEC has been sued for not enforcing the law" due to their "frustrat[ion] by the FEC's lack of enforcement of the law." *See* Nihal Krishan, *Elections Commission Chief Uses the "Nuclear Option" To Rescue the Agency From Gridlock*, Mother Jones (Feb. 20, 2019), https://bit.ly/3EE3y68; *see also* Br. at 10-11 (citing a June 8, 2021 *New York Times* article reporting the same). Yet Heritage Action responded to the Commission's May 2021 default by taking no action and instead waiting another year to move for intervention. *Cf. NAACP*, 413 U.S. at 366-67 (denying intervention in part because movant should have known of the need to intervene sooner "because of an informative February article in the *New York Times*").

Third, the Court should reject Heritage Action's claim that it "was reasonable to presume" the Commission would conform to the March 25 Order, Br. at 46, because Heritage Action itself did not so presume: In April 2022, Heritage Action asserted that "it became clear that the FEC would likely never appear to defend this case" when the district court entered default judgment on March 25. *Amicus Curiae* Brief at 1, ECF 17-3. And Heritage Action's presumption that the Commission would *not* conform was certainly reasonable, given that by the end of 2021, the Commission had failed to conform in three analogous cases in this District. *See* Order, *Campaign Legal Ctr. v. FEC*, No. 20-cv-1778-RCL (D.D.C. Feb. 11, 2021), ECF 24 ("Defendant [FEC] has failed to conform to this Court's Order entered on

October 14, 2020."); *See* Order *Giffords v. FEC*, No. 19-cv-1192-EGS (D.D.C. Nov. 1, 2021), ECF 75 ("Defendant FEC has failed to conform to this Court's Order entered September 30, 2021"); Order, *Campaign Legal Ctr. v. FEC*, No. 20-cv-809-ABJ (D.D.C. Apr. 21, 2022), ECF 32 (granting order "declaring that the FEC had failed to comply with its November 8[, 2021] Order").[3]

Finally, even assuming *arguendo* that it was unclear if the Commission would appear up until default judgment was entered on March 25, it is inexcusable that Heritage Action waited another 46 days, until after the case closed, to move to intervene. *Contra* Br. 47. The March 25 Order gave the Commission thirty days to conform failing which Campaign Legal was automatically entitled to sue Heritage Action. JA199 (citing 52 U.S.C. § 30109(a)(8)(C)). Heritage Action was clearly aware of the resulting threat to its interests because it sought leave to file an *amicus* brief on the deadline for the Commission to conform requesting an abeyance to forestall the citizen suit. JA04; ECF 17.

Nonetheless, Heritage Action claims that the district court should not have faulted it for waiting until after judgment to move to intervene because "there is

[3] Heritage Action ignores these analogous precedents while citing one case involving the Commission, *see* Br. at 46, that is distinguishable because the agency initially failed to appear only because it lacked a quorum. *See* FEC's Response to Order to Show Cause at 2-3, *Campaign Legal Ctr. v. FEC*, No. 20-cv-588-BAH (D.D.C. July 20, 2020), ECF No. 19. Here, the Commission has had a quorum since Campaign Legal filed its suit on February 16, 2021. *See* Br. at 15, ¶ 2.

nothing talismanic about the entry of judgment *per se*." Br. at 47. And Heritage Action claims that it "did what it could" at that time by filing an amicus brief, which purportedly demonstrates it "did not ignore the litigation or h[o]ld back from participation to gain tactical advantage," Br. at 44 (citing *Day v. Apoliona*, 505 F.3d 963, 966 (9th Cir. 2007)). But, unlike the movant in *Day*, Heritage Action has never explained why it thought participating as *amicus* after default judgment was entered would be sufficient to protect its interests in seeking reconsideration or appeal. *Cf.* 505 F.3d at 965-966; JA04. And unlike in *Day*, Heritage Action did not even appear as *amicus*, much less intervene, until after default judgment was entered, at which point it appeared solely for the purpose of "interject[ing] new issues into the litigation." 505 F.3d at 966. This is precisely the type of intervention *Day* found inappropriate. *Id*. The Court should reject Heritage Action's assertion that its belated appearance as *amicus* excuses its failure to intervene.

3. The FEC's May 6, 2022 FOIA Response Cannot Justify Heritage Action's Untimely Motion

Unable to justify its failure to intervene as soon it was clear no party would protect its interests, Heritage Action falls back on claiming its motion was timely as measured from an alleged "change in circumstances." Br. at 40. That change in circumstances, Heritage Action asserts, was an email the Commission's FOIA Service Center sent to Heritage Action on May 6, 2022 stating that it "ha[d] conducted a search and located documents responsive to your [March 25, 2022

FOIA] request," and that three pages of responsive records would be provided in the future. Br. at 41; JA259. Without this email, Heritage Action claims, it "could not have defended the agency's alleged failure to act," and had Heritage Action intervened sooner, it would have been a mere "superfluous spectator." Br. at 41 (citations omitted). The Court should reject this claim.

First, as the district court pointed out, "there is no reason to believe that Heritage Action *could not* have brought the voting records it has now to the Court before it entered judgment." JA311. Heritage Action did not receive confirmation that responsive records existed until May 6, 2022 because did not file "a FOIA request until *after* the Court granted default judgment" on March 25, 2022. JA310 (emphasis in original). Not only that, but instead of resorting to a FOIA request, Heritage Action could have timely intervened in the case and sought records from the Commission through discovery. Heritage Action claims that it needed the Commission records it sought before intervening, but parties to civil litigation rarely have all the evidence they need before a suit is filed and so they seek such evidence in discovery. Further, the Commission has, in other cases, disclosed evidence relating to an ongoing enforcement matter under seal that it cannot disclose via FOIA. *See, e.g.*, FEC's Unopposed Mot. for Protective Order, *Giffords v. FEC*, No. 19-cv-1192-EGS (D.D.C. June 20, 2019) (seeking protective order against public

disclosure of agency's confidential enforcement information offered in defense of delay suit).

In response, Heritage Action implausibly claims that until the district court's default judgment order it had no reason to suspect it was necessary to discover if the agency had deadlocked on whether to proceed with enforcement. Br. at 43. But deadlocked enforcement votes are neither new nor rare; indeed, the risk of deadlock is inherent in the agency's structure. *See Citizens for Responsibility & Ethics in Washington*, 410 F. Supp. 3d at 6 ("[W]hen Congress mandated that the six-member Commission be split down party lines, it anticipated that partisan deadlocks were likely to result."). Here, the Commission's failure to appear accurately signaled an enforcement deadlock—unsurprisingly given that FECA requires at least four Commissioners to authorize the defense of the suit, 52 U.S.C. §§ 30106(c), 30107(a)(6), just as FECA requires four Commissioners to agree to pursue enforcement action, *id.* § 30109(a)(2). Further, Heritage Action itself relies on media reports from February 2019 and June 2021 (just one month after the agency's default) that the Commission lacked the votes to defend inaction arising out of deadlocks in court. *See* Br. at 10-11, 47. Yet Heritage Action did not file its FOIA request, nor intervene and seek discovery against the Commission, when it failed to appear. Instead, Heritage Action waited more than a year—until after default

judgment was entered—to seek voting records that existed when the Commission defaulted. JA311.

Finally, Heritage Action's contention that its post-judgment intervention was justified based on newly obtained "proof" of the Commission's deadlock, *see* Br. at 41, 51, fails because Heritage Action did not have such proof when it moved to intervene on May 10. The May 6 FOIA response relied on by Heritage Action acknowledged the existence of responsive documents, but the Commission did not produce unredacted copies of the responsive documents until June 2. JA247, JA298-302. The May 6 FOIA response did not impliedly confirm the nature or result of any agency vote given that Heritage Action's FOIA request broadly sought "[a]ny vote certifications reflecting votes . . . on the complaint," not just votes on whether to move forward with enforcement. JA235, JA248. Thus, when Heritage Action moved to intervene, it did not know whether the responsive documents reflected deadlocked enforcement votes or other types of votes, such as on whether to defend the lawsuit or merely to send a letter to the respondent. *See, e.g.*, MUR 6798 (David Vitter for U.S. Senate).[4] Instead, it had the same "evidence" of a potential deadlock when it moved to intervene on May 10 that had existed since April 2021: the Commission's failure to appear and defend itself. That Heritage Action lacked the "proof" it

[4] Certification, MUR 6798 (David Vitter for U.S. Senate, et al.) (Dec. 5, 2017) (4-1 vote to send letter to respondents), https://www.fec.gov/files/legal/murs/6798/19044463470.pdf.

purported to rely on when it moved to intervene undermines its claim that the Commission's May 6 email constituted a "change in circumstances" justifying its motion.

* * *

In sum, the district court did not abuse its discretion by finding that Heritage Action's choice to move for intervention after judgment and long after it was clear no party would be protecting its interests weighed against the motion's timeliness.

B. Heritage Action Will Not Be Prejudiced if It Cannot Intervene After Judgment in this Case

The district court also did not abuse its discretion in finding that Heritage Action did not demonstrate a clear "need to intervene," which weighed against finding the motion timely. JA311-12; *see also Smuck v. Hobson*, 408 F.2d 175, 181 (D.C. Cir. 1969) (intervenors must make a "strong" showing to overcome presumption against post-judgment intervention). The district court found that, as a non-party Heritage Action is not precluded from "rais[ing] its arguments in some later litigation," which, though not dispositive, is relevant to the "degree of harm it will suffer without intervention." JA312 (citing *Love v. Vilsack*, 304 F.R.D. 85, 91 (D.D.C. 2014), *summarily aff'd*, No. 14-5185, 2014 WL 6725758 (D.C. Cir. Nov. 18, 2014)). Indeed, the purported harm asserted by Heritage Action—that its ability to raise its merits arguments would be "irretrievably lost" absent intervention, Br. at 37-38—is belied by the fact that Heritage Action is advancing the arguments it seeks

to make here in a pending motion to dismiss the citizen suit. *See* Def.'s Mem. of Points and Authorities in Supp't of Mot. to Dismiss at 27, *Campaign Legal v. Heritage Action*, No. 22-cv-1248-CJN (July 8, 2022), Citizen Suit ECF 20-1 (arguing the district court there should redecide the merits of this case and find that the Commission did not fail to act, while stressing that "Judge Kelly's ruling is 'not preclusive' because Heritage Action was not a party to the default judgment in that case.").

Given these circumstances, it is hard to understand Heritage Action's choice not to intervene before judgment as anything other than "a strategic choice to instead participate in [a] parallel . . . litigation" that should "weigh[] against intervention." *Love*, 304 F.R.D. at 91; *see also Moten v. Bricklayers, Masons & Plasterers, Int'l Union of Am.*, 543 F.2d 224, 228 (D.C. Cir. 1976) (affirming denial of intervention where movant's "decision not to seek intervention much earlier may have been an informed, tactical one"). Having made and benefited from this strategic choice, Heritage Action should not now be heard to complain, as it does, that it will suffer a "significant injury" if it must bear the costs of its choice. Br. at 36. Heritage Action complains that it is "more burdensome" for it to litigate the merits of this case before the citizen suit court. But this contention is belied by the fact that Heritage Action sought to hold this appeal in abeyance while it litigated that suit. *See* Mot. for Abeyance, No. 22-5140 (D.C. Cir. June 23, 2022). Heritage Action also complains

that there "is no guarantee" that the citizen-suit court will "see things Heritage Action's way," Br. at 37, but cites no authority stating that intervention must be allowed if the intervenor is not guaranteed success in advancing its interests elsewhere. In any event, Heritage Action cannot complain of alleged prejudice that is wholly the result of its own actions.

At bottom, Heritage Action's allegations of prejudice amount to a claim that it will be harmed unless it can require Campaign Legal to convince two district courts *three* different times that the Commission's failure to act was contrary to law. Instead of avoiding prejudice to Heritage Action, that result would prejudice Campaign Legal.

C. Intervention Would Prejudice Campaign Legal and the Public

Finally, the district court did not abuse its discretion in finding that Heritage Action's "delay in moving for intervention will prejudice" Campaign Legal. JA312. Allowing Heritage Action to intervene belatedly—either for its preferred aim of moving for reconsideration or solely to appeal—would "unduly disrupt[] [this] litigation, to the unfair detriment of" Campaign Legal and the public. *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014).

1. Heritage Action's "Preferred Aim" of Seeking Reconsideration Would Prejudice Campaign Legal

a. Undue Delay

The district court correctly found that Heritage Action's "preferred aim" of seeking reconsideration "would mean further delay on the adjudication of claims that have been pending since [Campaign Legal] first filed in its administrative complaint in 2018 and are now the subject of the new lawsuit." JA311-12. And further delay would exacerbate the harms already arising from what the district court described as the "legitimate 'threat[] to the health of our electoral process'" posed by Heritage Action's alleged campaign finance violations. JA199 (citation omitted).

This Court has repeatedly explained that intervention prejudices the existing parties where it would require "revisit[ing] issues that ha[ve] already been decided." *Amador Cnty., Cal. v. U.S. Dep't of the Interior*, 772 F.3d 901, 905 (D.C. Cir. 2014); *see also Roane*, 741 F.3d at 152 (identifying "discovery" and "seek[ing] to revisit issues that had already been decided" as sources of prejudice in evaluating timeliness) (citing *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1294 (D.C. Cir. 1980) (explaining that an intervention motion would have been untimely if made for the purpose of "presenting evidence or argument")); *Love*, 304 F.R.D. at 91 (finding prejudice where intervention would "serve only to delay further the conclusion of [a] long-running case"); *Est. of Doe v. Islamic Republic of Iran*, No. CV 08-540 (JDB), 2013 WL 12453353, at *2 (D.D.C. July 22, 2013) (denying post-

judgment intervention that would "excessively delay[] proceedings and lead[] to duplicative factual work"). The district court was thus well within its discretion to conclude that prejudicial delay would result because Heritage Action "is looking to reopen this Court's finding[s]" with a reconsideration motion, which "would likely require factfinding and argument." JA312.

Heritage Action admits (as it must) that its preferred aim of seeking reconsideration would reopen and revisit the case's settled issues. Br. at 28-29. And it does not deny (nor could it) that this purpose would require further argument before the district court. *See* Br. at 29. Given that a motion for reconsideration asserting any theory would require additional argument, Heritage Action's claim that it seeks only to raise a jurisdictional argument is beside the point. *See, e.g.*, JA311 ("[T]he Circuit has rejected the idea, advanced by Heritage Action, that seeking to make a jurisdictional argument should be a sort of thumb on the scale for intervention.").

But in any event, because Heritage Action's arguments actually go to the *merits* of this case, *see supra* pp. 10-12, the district court was correct that factfinding would likely be necessary, significantly adding to the delay. Indeed, Heritage Action has not attempted to justify its alleged need to seek reconsideration on any intervening case law or other legal authority, but instead points to alleged "newly-discovered evidence." Br. at 41. To the extent Heritage Action seeks to reopen this

case and move for judgment based on purported new evidence, Campaign Legal would be entitled to probe that evidence and take its own discovery. *See, e.g.*, Fed. R. Civ. P. 56(d).

Finally, the Court should reject Heritage Action's attempt to justify its untimely intervention by pointing to the ramifications of its own untimeliness. *See* Br. at 29-30. The district court's entry of default judgment and denial of Heritage Action's improper attempt to seek an abeyance as a non-party are direct results of Heritage Action's delay, not reasons to excuse it. And neither mitigates the additional delay to Campaign Legal that reconsideration would cause.

b. Duplicative Litigation of the Merits

The delay described above is enough to establish prejudice, but Heritage Action's intervention would prejudice Campaign Legal in an additional way: it would allow Heritage Action to sidestep collateral estoppel and require Campaign Legal to litigate whether the Commission's failure to act was contrary to law before two different district courts, three different times. *Cf. Gupta v. Mercedes-Benz USA, LLC*, No. 20-cv-9295-GW-JEMX, 2020 WL 7423111, at *6 (C.D. Cal. Dec. 10, 2020) ("The need for duplicative litigation would prejudice Plaintiff and violate principles of judicial economy, requiring two courts in different jurisdictions to address largely-overlapping facts and risk conflicting verdicts.").

Campaign Legal has already been required to respond to not only Heritage Action's untimely intervention and merits appeal here, but also its collateral attack in the citizen suit, as well as motions to both stay the citizen suit pending this appeal and to hold this appeal in abeyance pending resolution of the citizen suit. *See* Motion to Stay, Citizen Suit, ECF 10 *withdrawn* June 10, 2022, ECF 17; Mot. for Abeyance, No. 22-5140 (D.C. Cir. June 23, 2022). Denying intervention would remedy this ongoing prejudice to Campaign Legal and avoid the further prejudice of requiring Campaign Legal to litigate the merits of this case for a third time in opposition to a motion for reconsideration below or on appeal solely because Heritage Action "inexcusably neglect[ed] to try to enter the proceedings before judgment, at a time when notice of their arguments would have enabled the district court to" address the issues before appeal. *Mass. Sch. of Law at Andover, Inc. v. United States*, 118 F.3d 776, 783 n.5 (D.C. Cir. 1997) (citing *NAACP*, 413 U.S. at 366-68).

2. Heritage Action's Secondary Purpose of Solely Seeking Appeal Will Also Cause Prejudice

Because Heritage Action represented to the district court that its "preferred aim" was to seek reconsideration if allowed to intervene, the district court did not have occasion to evaluate whether Campaign Legal would suffer prejudice "if Heritage Action had sought intervention *solely* to take the FEC's place in pursuing *an appeal*." Br. at 28. As such, Heritage Action's claim that the district court "did not deny" that no prejudice would result is misleading. *Id.* On the contrary,

Campaign Legal would suffer prejudice in at least two ways if intervention were allowed only for appeal.

a. Delay

First, as with a motion for reconsideration, an appeal by Heritage Action would cause prejudicial delay. This Court has explained that additional argument and proceedings on already decided issues resulting from untimely intervention can cause prejudice by unduly delaying the conclusion of a case. *See, e.g.*, *Amador Cnty., Cal.*, 772 F.3d at 905; *Roane*, 741 F.3d at 152; *AT*&T, 642 F.2d at 1294. Indeed, just two months ago, this Court *summarily affirmed* the denial of a post-judgment motion to intervene effectively identical to that here, except that the movant sought *only* to appeal. *Campaign Legal Ctr. v. FEC*, No. CV 20-0809 (ABJ), 2022 WL 2111560, at *5 (D.D.C. May 13, 2022), *summarily aff'd*, No. 22-5164, 2022 WL 4280689 (D.C. Cir. Sept. 14, 2022) ("A motion for intervention after judgment will usually be denied where a clear opportunity for pre-judgment intervention was not taken." (citation omitted)). Despite the movant's appeal-only plan, the district court found that intervention would "seriously prejudice[]" Campaign Legal with further delay and a lack of "finality" given that its administrative complaint had been pending since 2018. *Campaign Legal Ctr.*, 2022 WL 2111560, at *5. The same is true here.

Heritage Action proves too much by contending that no existing party could *ever* be prejudiced by a post-judgment intervenor's appeal, *see* Br. at 26-28, even if

the intervenor could have "intervened at the outset of th[e] case," *id.* at 28. That sweeping position is directly at odds with this Circuit's presumption against post-judgment intervention where the movant passed up chances to join sooner, *see Associated Builders*, 166 F.3d at 1257, which is precisely what happened here.

b. Sandbagging

Second, allowing Heritage Action to intervene to introduce new argument and new evidence for the first time on appeal—after waiting on the sidelines for 15 months and informing the district court it planned to seek reconsideration before appeal—would sanction impermissible sandbagging. *See, e.g.*, *In re Sealed Case*, 552 F.3d 841, 852 (D.C. Cir. 2009) (explaining that a party must typically raise issues before the trial court first "to prevent one party from sandbagging another by raising new claims on appeal"); *see also United States v. Bonadio*, No. 3:13 CV 591 JBA, 2014 WL 3747303, at *3 (D. Conn. July 17, 2014) ("Plaintiff is quite correct that it will suffer prejudice if this new evidence is permitted, without plaintiff having had a prior opportunity to analyze or oppose it, this would be in, in plaintiff's words, 'classic sandbagging.'"). Heritage Action's automatic-dismissal theory—which was not raised below and has been disclaimed by the FEC—is the *only* argument it seeks to advance in its post-intervention appeal. *See* Br. at 50. This distinguishes *Cameron*, where the Court found a lack of prejudice because the intervenor's new argument

"was not the only argument advanced" and would not necessarily have been entertained by the appellate court. 142 S. Ct. at 1013.

* * *

The district court did not abuse its discretion by denying Heritage Action's post-judgment motion to intervene as untimely.

II. The Court Should Dismiss Heritage Action's Purported Merits Appeal

A. The Court Lacks Appellate Jurisdiction Because Heritage Action Is Not a Party

"The rule that only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment, is well settled." *Marino v. Ortiz*, 484 U.S. 301, 304 (1988) (per curiam) (citations omitted). Because the district court correctly denied its motion to intervene, Heritage Action is not entitled to an appeal of the merits judgment below, and the appeal docketed as No. 22-5140 should be dismissed for lack of appellate jurisdiction. *See Defs. of Wildlife v. Perciasepe*, 714 F.3d 1317, 1328 (D.C. Cir. 2013) ("Because a party *unsuccessfully* appealing a denial of intervention is not a 'party,' it may not obtain review of any district court holding other than the denial of intervention.").

B. This Case Should Be Remanded if the Court Determines That Heritage Action's Intervention Motion Was Timely

As demonstrated above, the district court did not abuse its discretion by concluding that Heritage Action's motion to intervene was untimely. But if this

Court disagrees, it should decline Heritage Action's invitation to prematurely evaluate, in the first instance, whether Heritage Action can satisfy the remainder of Rule 24's intervention test and, if necessary, Heritage Action's arguments on the merits. Instead, the Court should remand those tasks to the district court and hold Heritage Action to its representation that its preferred aim was to move for reconsideration before appeal.

This Court has said that "we *must* remand to allow the district court the opportunity to weigh the factors" of a fact-specific test requiring the district court to exercise its discretion. *Gordon v. Holder*, 632 F.3d 722, 725 (D.C. Cir. 2011) (emphasis added). Otherwise, the Court is "unable to proceed" to review for abuse of discretion unless the district court has had a chance to exercise that discretion in the first place. *Id.* Rule 24 requires a district court to exercise its discretion in weighing a series of factors. *See NAACP*, 413 U.S. at 366 (reviewing Rule 24 ruling for abuse of discretion). Accordingly, when this Court has reversed a district court's denial of intervention for untimeliness, it has then remanded to the district court "for it to address in the first instance the other requirements for intervention as of right." *Smoke v. Norton*, 252 F.3d 468, 471 (D.C. Cir. 2001). Heritage Action provides no reason why this Court should rule differently here, where the district court did not address any of the intervention factors other than timeliness, *see* JA309-13, including whether Heritage Action had standing, *see* ECF 30 at 27.

Similarly, the issue of whether the Commission's delay was contrary to law under the *Common Cause*/*TRAC* factors is also a fact-specific test, the application of which this Court reviews for "abuse of discretion." *FEC v. Rose*, 806 F.2d 1081, 1091 (D.C. Cir. 1986). Indeed, *Common Cause*/*TRAC* requires a district court to evaluate eleven distinct factors. *See, e.g.*, *Campaign Legal Ctr. v. FEC*, No. CV 20-0809 (ABJ), 2021 WL 5178968, at *5-6 (D.D.C. Nov. 8, 2021). Even assuming the Commission "acted" on April 6, 2021, as Heritage Action incorrectly claims, the district court must have the opportunity to exercise its discretion in weighing whether the agency's preceding 904-day delay was contrary to law given the circumstances before this Court exercises "abuse of discretion" review.

III. The Court Should Affirm the District Court's Merits Ruling

If this Court does reach the merits, it should affirm. The district court did not abuse its discretion in finding that the Commission failed to act on Campaign Legal's administrative complaint within 120 days, that the agency's failure to act was contrary to law, and that the Commission failed to conform with the district court's order to act on the complaint within 30 days. JA198-200, JA245-46.

A. The District Court Did Not Abuse its Discretion by Concluding that the FEC's Failure to Act Was Contrary to Law

As explained above, in a failure-to-act suit against the Commission, the district court has jurisdiction if the Commission failed to act within 120 days of the filing of the administrative complaint. *See supra* pp. 10-12. On the merits, the district

court must then consider whether the agency's failure to take final action as of the time of the filing of suit was contrary to law by applying the *Common Cause* and *TRAC* factors. *Id.*

Heritage Action does not dispute that the Commission failed to act on Campaign Legal's administrative complaint within 120 days of its filing on October 16, 2018. Nor does Heritage Action dispute that the Commission failed to take any action whatsoever on Campaign Legal's administrative complaint during the more than 850 days it was pending before this suit was filed. JA06. Further, Heritage Action does not dispute that the district court correctly applied the *Common Cause* and *TRAC* factors in determining that the Commission's failure to act on the complaint by the time Campaign Legal filed suit was contrary to law. Indeed, Heritage Action makes no effort to demonstrate that the Commission's April 2021 deadlocked votes somehow rendered the agency's undisputed delay in acting on the administrative complaint lawful under *Common Cause* and *TRAC*. As such, Heritage Action has forfeited any claim that the district court abused its discretion in applying the relevant test, or that the April 2021 votes render the Commission's failure to act reasonable. *See Fox v. Government of District of Columbia*, 794 F.3d 25, 29 (D.C. Cir. 2015).

Nonetheless, Heritage Action erroneously contends that "there was no 'failure to act' in the first place" because the administrative complaint was allegedly

terminated in April 2021 when the Commission's deadlocked vote on whether to find reason to believe in April 2021. *See* Br. at 51, 53-54. For reasons discussed below, the agency's deadlocked votes did not dismiss the complaint, which could only be accomplished by a majority vote to close the file. *See supra* pp.8-10; *infra* pp. 47-54. Instead of showing that the Commission dismissed the administrative complaint, the voting records relied on by Heritage Action merely show that two months after Campaign Legal filed suit, the Commission held a series of votes that neither initiated an investigation nor terminated the complaint, *see supra* pp. 15-16; JA301-02; *see also* Certification, FEC MUR 7516 (Heritage Action) (Apr. 7, 2022), https://www.fec.gov/files/legal/murs/7516/7516_17.pdf (showing the FEC continued to hold votes on the merits of the administrative complaint a year after the purported "deadlock dismissal," but failed to obtain the four votes necessary to act).

Even were the Court to consider the effect of the April 2021 votes under the *Common Cause* and *TRAC* factors, those votes would not render the Commission's failure to act lawful. Courts have repeatedly held that merely taking "some action" on an administrative complaint does not render the Commission's delay in taking *final* action reasonable under *Common Cause* and *TRAC*. *Campaign Legal Ctr. v. FEC*, No. 1:20-cv-0809-ABJ, 2021 WL 5178968 at *7 (D.D.C. Nov. 8, 2021). Indeed, courts have held that even a *successful* Commission vote to find reason to believe can be insufficient to render the agency's delay in taking final action lawful

where the agency has otherwise failed to act expeditiously. *See, e.g.*, *Democratic Senatorial Campaign Comm.*, No. Civ.A. 95-0349 (JHG), 1996 WL 34301203 (D.D.C. Apr. 17, 1996), at *4, *9 (finding the FEC's two-year failure to act contrary to law even though the agency voted to find reason to believe six months after the delay suit was filed); *Citizens for Percy '84*, 1984 WL 6601, at *4 (finding the FEC's delay contrary to law even though the agency voted to find reason to believe two months after the delay suit was filed). Here, the Commission waited more than two years—and almost two months after Campaign Legal filed suit—to vote on the complaint, and then merely deadlocked in those votes, leaving the complaint unresolved. As such, it was not an abuse of discretion for the district court to find the Commission's failure to act contrary to law, notwithstanding the agency's April 2021 deadlocked votes.

B. Heritage Action's Automatic-Dismissal Theory Has No Basis in Law or Fact

Heritage Action's unfounded automatic-dismissal theory conflicts with FECA's text, agency policy and practice, and judicial precedent. As the agency itself has recently and repeatedly reaffirmed—including in litigation against Heritage Action—an administrative matter is not terminated until there is a successful vote to close the enforcement file. *See supra* pp. 8-10. Indeed, the Commission's official position in ongoing related litigation against Heritage Action is that the agency's April 6, 2021 votes did *not* terminate Campaign Legal's administrative complaint

because the agency's vote to close the file "did not succeed." FEC Opp'n to Heritage Action Mot. for Summ. J. at 5, APA Suit ECF 26.

Notably, Heritage Action does not point to any provision of FECA supporting its automatic-dismissal theory, and, indeed, there is none. Instead, FECA specifically precludes the Commission from acting absent a majority vote. 52 U.S.C. § 3010(6)(c). And, FECA specifically contemplates the existence of a distinct "vote to dismiss" a complaint, 52 U.S.C. § 30109(a)(1), separate from a vote to find reason-to-believe, *id.* § 30109(a)(2). Both provisions preclude Heritage Action's theory that the Commission "acted" to dismiss the complaint by 3-3 vote on reason-to-believe. Br. at 51. Finally, Congress has demonstrated that when it intends a particular consequence to occur by operation of law, it includes that consequence in the text of the statute. *See, e.g.*, 52 U.S.C. § 30109(a)(8)(C) (imposing deadline for FEC to conform and specifying consequence for inaction: "*failing which* the complainant may bring . . . a civil action to remedy the violation"). But although FECA specifies that four Commissioner votes are required for the agency to find "reason to believe," it does not state that the agency's failure to find reason to believe constitutes a dismissal or obviates the need for a vote to dismiss. *See id.* 30109(a)(2).

Commission regulations similarly do not provide any support for Heritage Action's automatic dismissal theory, as they specifically reference a "vote to close . . . enforcement file[s]." 11 C.F.R. § 5.4(a)(4). Moreover, agency regulations require

the Commission to quickly inform the administrative parties and the public of a dismissal to facilitate judicial review. *See supra* p. 9. But here, the Commission did not notify the parties of any dismissal after the deadlocked April 2021 votes. Instead, the Commission did so *fourteen months later*, right after successfully voting to close the file in June 2022. *See* Heritage Action Mem. in Support of Mot. to Dismiss at 22 n.4, Citizen Suit ECF 20-1. Further, although Heritage Action points to a Statement of Reason entered by the three Commissioners who voted against finding "reason to believe" as evidence the matter was dismissed in April 2021, the Statement was not issued until more than a year later, on May 13, 2022. *See* Br. at 15-16; MUR 7516 Summary (Heritage Action), https://www.fec.gov/data/legal/matter-under-review/7516/. Heritage Action offers no explanation for why these Commissioners would wait more than a year after purportedly dismissing the complaint to issue their Statement of Reasons, but the timing is noteworthy: the Statement was issued six weeks after the district court entered default judgment, JA198-200, ten days after the court declared the Commission had failed to conform, JA245-46, five days after Campaign Legal filed its citizen suit against Heritage Action, and the same day that Heritage Action's first FOIA request to the agency failed to turn up any such Statements related to the administrative complaint, JA271.

The Commission's formal statement of enforcement policy further rebuts Defendant's automatic-dismissal theory. That policy states that four Commissioner

votes are required for agency "action" and makes no mention of automatic dismissal due to enforcement deadlock. *See* 72 Fed. Reg. at 12,545-46. Not only that, but immediately after the April 2021 deadlock in this matter, the Commission *rejected* the dissenting Commissioners' proposal to amend the agency's policy to adopt an automatic-dismissal approach. *See* Draft Statement of Policy Regarding Closing the File at the Initial Stage in the Enforcement Process at 1 (Apr. 1, 2021), https://www.fec.gov/resources/cms-content/documents/mtgdoc-21-21-A.pdf (proposing that upon a failed reason-to-believe vote the "file will be closed unless the Commission votes to keep the file open"); Certification, Agenda Doc. No. 21-21-A (Apr. 22, 2021), https://www.fec.gov/resources/cms-content/documents/Vote-Draft-Statement-of-Policy-Initial-Stage-in-the-Enforcement-Process-4-22-21.pdf (noting proposal was not adopted).

The automatic-dismissal theory is also belied by the Commission's votes on the administrative complaint in this matter. The Commission held at least seven votes on the administrative complaint *after* Heritage Action contends the matter was automatically terminated. *See* JA300-02; Certification, MUR 7516 (Heritage Action) (Apr. 7, 2022). Heritage Action offers no explanation why the Commission would continue to hold votes on the complaint for more than a year after it was purportedly dismissed.

Moreover, numerous courts have recognized that the Commission dismisses matters by holding a distinct vote to close the file. *See, e.g.*, *Citizens for Responsibility and Ethics in Washington v. FEC*, 971 F.3d 340, 346 (D.C. Cir. 2020); *Doe v. FEC*, 920 F.3d 866, 871 n.9 (D.C. Cir. 2019); *Citizens for Responsibility and Ethics in Washington v. FEC*, 892 F.3d 434, 441 n.13 (D.C. Cir. 2018); *Citizens for Responsibility and Ethics in Washington v. FEC*, 236 F. Supp. 3d 378, 388 (D.D.C. 2017). And this Court has treated the date the Commission closed the file—not the date of any previous reason-to-believe votes—as "the date of the dismissal" that triggers section 30109(a)(8)(B)'s jurisdictional 60-day deadline for a complainant to sue the agency to challenge the dismissal. *See Citizens for Responsibility and Ethics in Washington*, 892 F.3d at 436 (finding that the FEC dismissed in 2015, when the agency closed the file, rather than September 2014, when the first reason-to-believe vote failed);[5] *Jordan v. FEC*, 68 F.3d 518, 519 (D.C. Cir. 1995); *Spannaus v, FEC*, 990 F.2d 643, 644 (D.C. Cir. 1993) (per curiam).

Against this weight of authority, Heritage Action does not point to any caselaw holding that a failed reason-to-believe vote automatically dismisses a

[5] *See also* Am. Certification, MURs 6391 & 6471 (Comm'n on Hope, Growth and Opportunity ("CHGO")) (Sept. 16, 2014) https://eqs.fec.gov/eqsdocsMUR/15044380338.pdf (reflecting multiple failed 3-3 reason-to-believe votes); Certification, MURs 6391 & 6471 (CHGO) (Oct. 1, 2015) ttps://www.fec.gov/files/legal/murs/6391/15044380175.pdf (reflecting a failed 3-3 reason to believe vote, and a successful 5-1 vote to close the file) h.

complaint without a majority of the Commission also voting to close the file, and Appellee is aware of no such case. Heritage Action cites only *dicta* linking a deadlocked reason-to-believe vote with a vote to dismiss a complaint by closing the file in contexts where one followed the other and the distinction made no difference. *See, e.g.*, Br. at 6-8, 51-52.

For example, Heritage Action selectively quotes this Court's opinion in *Citizens for Responsibility and Ethics in Washington v. FEC*, 993 F.3d 880 (D.C. Cir. 2021) ("*New Models*") for the proposition that "'the "result[]' of 'the failure to get four votes to proceed with an enforcement action' here was a ''deadlock dismissal[].'"" Br. at 52 (quoting *New Models*, 993 F.3d at 891). But *New Models* merely acknowledges "the *possibility* of 'deadlock dismissals'—namely dismissals *resulting from* the failure to get four votes to proceed with an enforcement action." 993 F.3d at 891 (emphasis added). *New Models* does not suggest—nor even contemplate—that such a dismissal is "automatic" upon the failure to get four votes to enforce, merely that it is a *possible result* when the Commission deadlocks. On the contrary, the *New Models* court acknowledged that agency dismissals are distinct actions, *see id*. at 883, and that "the Commission must make decisions by majority vote," *id.* at 891.[6]

[6] The administrative record in *New Models* confirms that the deadlocked reason-to-believe vote and the dismissal by vote to close the file were two separate

The remaining cases on which Heritage Action relies are similarly inapposite. In *FEC v. National Republican Senatorial Commission*, this Court merely affirmed that when the Commission dismisses a complaint after deadlocking, that *dismissal* "like any other, is judicially reviewable." 966 F.2d 1471, 1476 (D.C. Cir. 1992) ("*NRSC*"); *see id.* (referring to "situations in which the Commission deadlocks *and* dismisses") (emphasis added); *cf.* Br. at 8 (citing *NRSC*). And the court in *Public Citizen, Inc v. FERC*, held that a deadlock, on its own, does not constitute action and thus is not judicially reviewable. *See* 839 F.3d 1165, 1169-70 (D.C. Cir. 2015); *id.* at 1170 (holding that FERC "neither reached a collective decision nor engaged in an 'action' of any kind" when it deadlocked over the fairness of rates); *see also id.* at 1171 (noting that "the deadlock does not reflect an agency decision that fully resolved the issue or completed the process . . . In fact, it did quite the opposite, leaving FERC mired in indecision and impasse.").

The legal fiction that the views of the Commission are represented by the Commissioners "who voted against enforcement," *New Models*, 993 F.3d at 883 n.3 merely allows the Court to review the agency's decision to dismiss after an intractable Commission deadlock or deadlocks. *See NRSC*, 966 F.2d at 1476

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actions. *See* Certification, MUR 6872 (New Models) (Nov. 14. 2017), https://www.fec.gov/files/legal/murs/6872/17044432619.pdf.

(describing this mechanism as adopted by the court "to make judicial review a meaningful exercise"). But it does not transform the deadlock itself into a dismissal.

* * *

In sum, the district court did not abuse its discretion by entering default judgment against the Commission. The administrative records relied on by Heritage Action merely confirm the Commission's continued inaction during the pendency of this suit, and thus support rather than undermine the district court's determinations below. Furthermore, Heritage Action's automatic-dismissal theory has no basis in law or fact. If this Court reaches the merits, it should affirm.

CONCLUSION

For the foregoing reasons, the district court's ruling should be affirmed.

Date: November 30, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit of Fed. R. App. P. 32(a)(7) because, excluding the portions of the brief exempted by Fed. R. App. P. 32(f) and D.C. Cir. Rule 32(e)(1), this document contains 12,189 words.

2. This document complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) and (a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman typeface.

/s/ *Molly E. Danahy*
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CERTIFICATE OF SERVICE

The undersigned certifies that I filed the foregoing document using this Court's CM/ECF system, which effected service on all parties, on November 30, 2022.

/s/ *Molly E. Danahy*
Molly E. Danahy

STATUTORY ADDENDUM

CLC incorporates by reference the statutory addendum contained in Heritage Action's opening brief. *See* Heritage Action Br. at 61. In addition, CLC provides the following statutes and regulations pursuant to D.C. Cir. Rule 28(a)(5).

Statutes and Regulations: Page

52 U.S.C. § 30104
Reporting requirements

(a) Receipts and disbursements by treasurers of political committees; filing requirements

(1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. The treasurer shall sign each such report.

(2) If the political committee is the principal campaign committee of a candidate for the House of Representatives or for the Senate--

(A) in any calendar year during which there is1 regularly scheduled election for which such candidate is seeking election, or nomination for election, the treasurer shall file the following reports:

(i) a pre-election report, which shall be filed no later than the 12th day before (or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, or delivered to an overnight delivery service with an on-line tracking system, if posted or delivered no later than the 15th day before) any election in which such candidate is seeking election, or nomination for election, and which shall be complete as of the 20th day before such election;

(ii) a post-general election report, which shall be filed no later than the 30th day after any general election in which such candidate has sought election, and which shall be complete as of the 20th day after such general election; and

(iii) additional quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter: except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year; and

(B) in any other calendar year the treasurer shall file quarterly reports, which shall be filed not later than the 15th day after the last day of each calendar quarter, and which shall be complete as of the last day of each calendar quarter, except that the report for the quarter ending December 31 shall be filed not later than January 31 of the following calendar year.

(3) If the committee is the principal campaign committee of a candidate for the office of President--

(A) in any calendar year during which a general election is held to fill such office--

(i) the treasurer shall file monthly reports if such committee has on January 1 of such year, received contributions aggregating $100,000 or made expenditures aggregating $100,000 or anticipates receiving contributions aggregating $100,000 or more or making expenditures aggregating $100,000 or more during such year: such monthly reports shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month, except that, in lieu of filing the report otherwise due in November and December, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year;

(ii) the treasurer of the other principal campaign committees of a candidate for the office of President shall file a pre-election report or reports in accordance with paragraph (2)(A)(i), a post-general election report in accordance with paragraph (2)(A)(ii), and quarterly reports in accordance with paragraph (2)(A)(iii); and

(iii) if at any time during the election year a committee filing under paragraph (3)(A)(ii) receives contributions in excess of $100,000 or makes expenditures in excess of $100,000, the treasurer shall begin filing monthly reports under paragraph (3)(A)(i) at the next reporting period; and

(B) in any other calendar year, the treasurer shall file either--

(i) monthly reports, which shall be filed no later than the 20th day after the last day of each month and shall be complete as of the last day of the month; or

(ii) quarterly reports, which shall be filed no later than the 15th day after the last day of each calendar quarter and which shall be complete as of the last day of each calendar quarter.

(4) All political committees other than authorized committees of a candidate shall file either--

(A)

(i) quarterly reports, in a calendar year in which a regularly scheduled general election is held, which shall be filed no later than the 15th day after the last day of each calendar quarter: except that the report for the quarter ending on December 31 of such calendar year shall be filed no later than January 31 of the following calendar year;

(ii) a pre-election report, which shall be filed no later than the 12th day before (or posted by any of the following: registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, or delivered to an overnight delivery service with an on-line tracking system, if posted or delivered no later than the 15th day before) any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election, and which shall be complete as of the 20th day before the election;

(iii) a post-general election report, which shall be filed no later than the 30th day after the general election and which shall be complete as of the 20th day after such general election; and

(iv) in any other calendar year, a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year; or

(B) monthly reports in all calendar years which shall be filed no later than the 20th day after the last day of the month and shall be complete as of the last day of the month, except that, in lieu of filing the reports otherwise due in November and December of any year in which a regularly scheduled general election is held, a pre-general election report shall be filed in accordance with paragraph (2)(A)(i), a post-general election report shall be filed in accordance with paragraph (2)(A)(ii), and a year end report shall be filed no later than January 31 of the following calendar year.

Notwithstanding the preceding sentence, a national committee of a political party shall file the reports required under subparagraph (B).

(5) If a designation, report, or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii) or subsection (g)(1)) is sent by registered mail, certified mail, priority mail having a delivery confirmation, or express mail having a delivery confirmation, the United States postmark shall be considered the date of filing the designation, report or statement. If a designation, report or statement filed pursuant to this Act (other than under paragraph (2)(A)(i) or (4)(A)(ii), or subsection

(g)(1)) is sent by an overnight delivery service with an on-line tracking system, the date on the proof of delivery to the delivery service shall be considered the date of filing of the designation, report, or statement.

(6)(A) The principal campaign committee of a candidate shall notify the Secretary or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution.

(B) Notification of expenditure from personal funds

(i) Definition of expenditure from personal funds

In this subparagraph, the term “expenditure from personal funds” means--

(I) an expenditure made by a candidate using personal funds; and

(II) a contribution or loan made by a candidate using personal funds or a loan secured using such funds to the candidate's authorized committee.

(ii) Declaration of intent

Not later than the date that is 15 days after the date on which an individual becomes a candidate for the office of Senator, the candidate shall file a declaration stating the total amount of expenditures from personal funds that the candidate intends to make, or to obligate to make, with respect to the election that will exceed the State-by-State competitive and fair campaign formula with--

(I) the Commission; and

(II) each candidate in the same election.

(iii) Initial notification

Not later than 24 hours after a candidate described in clause (ii) makes or obligates to make an aggregate amount of expenditures from personal funds in excess of 2 times the threshold amount in connection with any election, the candidate shall file a notification with--

(I) the Commission; and

(II) each candidate in the same election.

(iv) Additional notification

After a candidate files an initial notification under clause (iii), the candidate shall file an additional notification each time expenditures from personal funds are made or obligated to be made in an aggregate amount that exceed2 $10,000 with--

(I) the Commission; and

(II) each candidate in the same election.

Such notification shall be filed not later than 24 hours after the expenditure is made.

(v) Contents

A notification under clause (iii) or (iv) shall include--

(I) the name of the candidate and the office sought by the candidate;

(II) the date and amount of each expenditure; and

(III) the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification.

(C) Notification of disposal of excess contributions

In the next regularly scheduled report after the date of the election for which a candidate seeks nomination for election to, or election to, Federal office, the candidate or the candidate's authorized committee shall submit to the Commission a report indicating the source and amount of any excess contributions (as determined under paragraph (1) of section 30116(i) of this title) and the manner in which the candidate or the candidate's authorized committee used such funds.

(D) Enforcement

For provisions providing for the enforcement of the reporting requirements under this paragraph, see section 30109 of this title.

(E) The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

(7) The reports required to be filed by this subsection shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward.

(8) The requirement for a political committee to file a quarterly report under paragraph (2)(A)(iii) or paragraph (4)(A)(i) shall be waived if such committee is required to file a pre-election report under paragraph (2)(A)(i), or paragraph (4)(A)(ii) during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(9) The Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and political committees filing under paragraph (4)(A) which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall require no more than one pre-election report for each election and one post-election report for the election which fills the vacancy. The Commission may waive any reporting obligation of committees required to file for special elections if any report required by paragraph (2) or (4) is required to be filed within 10 days of a report required under this subsection. The Commission shall establish the reporting dates within 5 days of the setting of such election and shall publish such dates and notify the principal campaign committees of all candidates in such election of the reporting dates.

(10) The treasurer of a committee supporting a candidate for the office of Vice President (other than the nominee of a political party) shall file reports in accordance with paragraph (3).

(11)(A) The Commission shall promulgate a regulation under which a person required to file a designation, statement, or report under this Act--

> (i) is required to maintain and file a designation, statement, or report for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or expenditures in excess of a threshold amount determined by the Commission; and
>
> (ii) may maintain and file a designation, statement, or report in electronic form or an alternative form if not required to do so under the regulation promulgated under clause (i).

(B) The Commission shall make a designation, statement, report, or notification that is filed with the Commission under this Act available for inspection by the public in the offices of the Commission and accessible to the public on the Internet not later than 48 hours (or not later than 24 hours in the case of a designation, statement, report, or notification filed electronically) after receipt by the Commission.

(C) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying designations, statements, and reports covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(D) As used in this paragraph, the term "report" means, with respect to the Commission, a report, designation, or statement required by this Act to be filed with the Commission.

(12) Software for filing of reports

(A) In general

The Commission shall--

(i) promulgate standards to be used by vendors to develop software that--

(I) permits candidates to easily record information concerning receipts and disbursements required to be reported under this Act at the time of the receipt or disbursement;

(II) allows the information recorded under subclause (I) to be transmitted immediately to the Commission; and

(III) allows the Commission to post the information on the Internet immediately upon receipt; and

(ii) make a copy of software that meets the standards promulgated under clause (i) available to each person required to file a designation, statement, or report in electronic form under this Act.

(B) Additional information

To the extent feasible, the Commission shall require vendors to include in the software developed under the standards under subparagraph (A) the ability for any person to file any designation, statement, or report required under this Act in electronic form.

(C) Required use

Notwithstanding any provision of this Act relating to times for filing reports, each candidate for Federal office (or that candidate's authorized committee) shall use software that meets the standards promulgated under this paragraph once such software is made available to such candidate.

(D) Required posting

The Commission shall, as soon as practicable, post on the Internet any information received under this paragraph.

(b) Contents of reports

Each report under this section shall disclose--

(1) the amount of cash on hand at the beginning of the reporting period;

(2) for the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), the total amount of all receipts, and the total amount of all receipts in the following categories:

(A) contributions from persons other than political committees;

(B) for an authorized committee, contributions from the candidate;

(C) contributions from political party committees;

(D) contributions from other political committees;

(E) for an authorized committee, transfers from other authorized committees of the same candidate;

(F) transfers from affiliated committees and, where the reporting committee is a political party committee, transfers from other political party committees, regardless of whether such committees are affiliated;

(G) for an authorized committee, loans made by or guaranteed by the candidate;

(H) all other loans;

(I) rebates, refunds, and other offsets to operating expenditures;

(J) dividends, interest, and other forms of receipts; and

(K) for an authorized committee of a candidate for the office of President, Federal funds received under chapter 95 and chapter 96 of Title 26;

(3) the identification of each--

(A) person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution;

(B) political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution;

(C) authorized committee which makes a transfer to the reporting committee;

(D) affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(E) person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and the date and amount or value of such loan;

(F) person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of such receipt; and

(G) person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such receipt;

(4) for the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), the total amount of all disbursements, and all disbursements in the following categories:

(A) expenditures made to meet candidate or committee operating expenses;

(B) for authorized committees, transfers to other committees authorized by the same candidate;

(C) transfers to affiliated committees and, where the reporting committee is a political party committee, transfers to other political party committees, regardless of whether they are affiliated;

(D) for an authorized committee, repayment of loans made by or guaranteed by the candidate;

(E) repayment of all other loans;

(F) contribution refunds and other offsets to contributions;

(G) for an authorized committee, any other disbursements;

(H) for any political committee other than an authorized committee--

(i) contributions made to other political committees;

(ii) loans made by the reporting committees;

(iii) independent expenditures;

(iv) expenditures made under section 30116(d) of this title; and

(v) any other disbursements; and

(I) for an authorized committee of a candidate for the office of President, disbursements not subject to the limitation of section 30116(b) of this title;

(5) the name and address of each--

(A) person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure;

(B) authorized committee to which a transfer is made by the reporting committee;

(C) affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfers;

(D) person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment; and

(E) person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution was reported under paragraph (3)(A) of this subsection, together with the date and amount of such disbursement;

(6)(A) for an authorized committee, the name and address of each person who has received any disbursement not disclosed under paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), together with the date and amount of any such disbursement;

(B) for any other political committee, the name and address of each--

(i) political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of any such contribution;

(ii) person who has received a loan from the reporting committee during the reporting period, together with the date and amount of such loan;

(iii) person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office), in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate, and a certification, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee;

(iv) person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under section 30116(d) of this title, together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made; and

(v) person who has received any disbursement not otherwise disclosed in this paragraph or paragraph (5) in an aggregate amount or value in excess of $200 within the calendar year (or election cycle, in the case of an authorized committee of a

candidate for Federal office), from the reporting committee within the reporting period, together with the date, amount, and purpose of any such disbursement;

(7) the total sum of all contributions to such political committee, together with the total contributions less offsets to contributions and the total sum of all operating expenditures made by such political committee, together with total operating expenditures less offsets to operating expenditures, for both the reporting period and the calendar year (or election cycle, in the case of an authorized committee of a candidate for Federal office); and

(8) the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefor.

(c) Statements by other than political committees; filing; contents; indices of expenditures

(1) Every person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year shall file a statement containing the information required under subsection (b)(3)(A) for all contributions received by such person.

(2) Statements required to be filed by this subsection shall be filed in accordance with subsection (a)(2), and shall include--

(A) the information required by subsection (b)(6)(B)(iii), indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved;

(B) under penalty of perjury, a certification whether or not such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate; and

(C) the identification of each person who made a contribution in excess of $200 to the person filing such statement which was made for the purpose of furthering an independent expenditure.

(3) The Commission shall be responsible for expeditiously preparing indices which set forth, on a candidate-by-candidate basis, all independent expenditures separately, including those reported under subsection (b)(6)(B)(iii), made by or for each

candidate, as reported under this subsection, and for periodically publishing such indices on a timely pre-election basis.

(d) Filing by facsimile device or electronic mail

(1) Any person who is required to file a statement under subsection (c) or (g) of this section, except statements required to be filed electronically pursuant to subsection (a)(11)(A)(i) may file the statement by facsimile device or electronic mail, in accordance with such regulations as the Commission may promulgate.

(2) The Commission shall make a document which is filed electronically with the Commission pursuant to this paragraph accessible to the public on the Internet not later than 24 hours after the document is received by the Commission.

(3) In promulgating a regulation under this paragraph, the Commission shall provide methods (other than requiring a signature on the document being filed) for verifying the documents covered by the regulation. Any document verified under any of the methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(e) Political committees

(1) National and congressional political committees

The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

(2) Other political committees to which section 30125 of this title applies

(A) In general

In addition to any other reporting requirements applicable under this Act, a political committee (not described in paragraph (1)) to which section 30125(b)(1) of this title applies shall report all receipts and disbursements made for activities described in section 30101(20)(A) of this title, unless the aggregate amount of such receipts and disbursements during the calendar year is less than $5,000.

(B) Specific disclosure by State and local parties of certain non-Federal amounts permitted to be spent on Federal election activity

Each report by a political committee under subparagraph (A) of receipts and disbursements made for activities described in section 30101(20)(A) of this title shall include a disclosure of all receipts and disbursements described in section 30125(b)(2)(A) and (B) of this title.

(3) Itemization

If a political committee has receipts or disbursements to which this subsection applies from or to any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for such person in the same manner as required in paragraphs (3)(A), (5), and (6) of subsection (b).

(4) Reporting periods

Reports required to be filed under this subsection shall be filed for the same time periods required for political committees under subsection (a)(4)(B).

(f) Disclosure of electioneering communications

(1) Statement required

Every person who makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of $10,000 during any calendar year shall, within 24 hours of each disclosure date, file with the Commission a statement containing the information described in paragraph (2).

(2) Contents of statement

Each statement required to be filed under this subsection shall be made under penalty of perjury and shall contain the following information:

(A) The identification of the person making the disbursement, of any person sharing or exercising direction or control over the activities of such person, and of the custodian of the books and accounts of the person making the disbursement.

(B) The principal place of business of the person making the disbursement, if not an individual.

(C) The amount of each disbursement of more than $200 during the period covered by the statement and the identification of the person to whom the disbursement was made.

(D) The elections to which the electioneering communications pertain and the names (if known) of the candidates identified or to be identified.

(E) If the disbursements were paid out of a segregated bank account which consists of funds contributed solely by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 1101(a)(20) of Title 8) directly to this account for electioneering communications, the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more

to that account during the period beginning on the first day of the preceding calendar year and ending on the disclosure date. Nothing in this subparagraph is to be construed as a prohibition on the use of funds in such a segregated account for a purpose other than electioneering communications.

(F) If the disbursements were paid out of funds not described in subparagraph (E), the names and addresses of all contributors who contributed an aggregate amount of $1,000 or more to the person making the disbursement during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

(3) Electioneering communication

For purposes of this subsection--

(A) In general

(i) The term "electioneering communication" means any broadcast, cable, or satellite communication which--

(I) refers to a clearly identified candidate for Federal office;

(II) is made within--

(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and

(III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

(ii) If clause (i) is held to be constitutionally insufficient by final judicial decision to support the regulation provided herein, then the term "electioneering communication" means any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate. Nothing in this subparagraph shall be construed to affect the interpretation or application of section 100.22(b) of title 11, Code of Federal Regulations.

(B) Exceptions

The term "electioneering communication" does not include--

(i) a communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate;

(ii) a communication which constitutes an expenditure or an independent expenditure under this Act;

(iii) a communication which constitutes a candidate debate or forum conducted pursuant to regulations adopted by the Commission, or which solely promotes such a debate or forum and is made by or on behalf of the person sponsoring the debate or forum; or

(iv) any other communication exempted under such regulations as the Commission may promulgate (consistent with the requirements of this paragraph) to ensure the appropriate implementation of this paragraph, except that under any such regulation a communication may not be exempted if it meets the requirements of this paragraph and is described in section 30101(20)(A)(iii) of this title.

(C) Targeting to relevant electorate

For purposes of this paragraph, a communication which refers to a clearly identified candidate for Federal office is "targeted to the relevant electorate" if the communication can be received by 50,000 or more persons--

(i) in the district the candidate seeks to represent, in the case of a candidate for Representative in, or Delegate or Resident Commissioner to, the Congress; or

(ii) in the State the candidate seeks to represent, in the case of a candidate for Senator.

(4) Disclosure date

For purposes of this subsection, the term "disclosure date" means--

(A) the first date during any calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000; and

(B) any other date during such calendar year by which a person has made disbursements for the direct costs of producing or airing electioneering communications aggregating in excess of $10,000 since the most recent disclosure date for such calendar year.

(5) Contracts to disburse

For purposes of this subsection, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

(6) Coordination with other requirements

Any requirement to report under this subsection shall be in addition to any other reporting requirement under this Act.

(7) Coordination with Title 26

Nothing in this subsection may be construed to establish, modify, or otherwise affect the definition of political activities or electioneering activities (including the definition of participating in, intervening in, or influencing or attempting to influence a political campaign on behalf of or in opposition to any candidate for public office) for purposes of Title 26.

(g) Time for reporting certain expenditures

(1) Expenditures aggregating $1,000

(A) Initial report

A person (including a political committee) that makes or contracts to make independent expenditures aggregating $1,000 or more after the 20th day, but more than 24 hours, before the date of an election shall file a report describing the expenditures within 24 hours.

(B) Additional reports

After a person files a report under subparagraph (A), the person shall file an additional report within 24 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $1,000 with respect to the same election as that to which the initial report relates.

(2) Expenditures aggregating $10,000

(A) Initial report

A person (including a political committee) that makes or contracts to make independent expenditures aggregating $10,000 or more at any time up to and

including the 20th day before the date of an election shall file a report describing the expenditures within 48 hours.

(B) Additional reports

After a person files a report under subparagraph (A), the person shall file an additional report within 48 hours after each time the person makes or contracts to make independent expenditures aggregating an additional $10,000 with respect to the same election as that to which the initial report relates.

(3) Place of filing; contents

A report under this subsection--

(A) shall be filed with the Commission; and

(B) shall contain the information required by subsection (b)(6)(B)(iii), including the name of each candidate whom an expenditure is intended to support or oppose.

(4) Time of filing for expenditures aggregating $1,000

Notwithstanding subsection (a)(5), the time at which the statement under paragraph (1) is received by the Commission or any other recipient to whom the notification is required to be sent shall be considered the time of filing of the statement with the recipient.

(h) Reports from Inaugural Committees

The Federal Election Commission shall make any report filed by an Inaugural Committee under section 510 of Title 36 accessible to the public at the offices of the Commission and on the Internet not later than 48 hours after the report is received by the Commission.

(i) Disclosure of bundled contributions

(1) Required disclosure

Each committee described in paragraph (6) shall include in the first report required to be filed under this section after each covered period (as defined in paragraph (2)) a separate schedule setting forth the name, address, and employer of each person reasonably known by the committee to be a person described in paragraph (7) who provided 2 or more bundled contributions to the committee in an aggregate amount greater than the applicable threshold (as defined in paragraph (3)) during the covered period, and the aggregate amount of the bundled contributions provided by each such person during the covered period.

(2) Covered period

In this subsection, a "covered period" means, with respect to a committee--

(A) the period beginning January 1 and ending June 30 of each year;

(B) the period beginning July 1 and ending December 31 of each year; and

(C) any reporting period applicable to the committee under this section during which any person described in paragraph (7) provided 2 or more bundled contributions to the committee in an aggregate amount greater than the applicable threshold.

(3) Applicable threshold

(A) In general

In this subsection, the "applicable threshold" is $15,000, except that in determining whether the amount of bundled contributions provided to a committee by a person described in paragraph (7) exceeds the applicable threshold, there shall be excluded any contribution made to the committee by the person or the person's spouse.

(B) Indexing

In any calendar year after 2007, section 30116(c)(1)(B) of this title shall apply to the amount applicable under subparagraph (A) in the same manner as such section applies to the limitations established under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h) of such section, except that for purposes of applying such section to the amount applicable under subparagraph (A), the "base period" shall be 2006.

(4) Public availability

The Commission shall ensure that, to the greatest extent practicable--

(A) information required to be disclosed under this subsection is publicly available through the Commission website in a manner that is searchable, sortable, and downloadable; and

(B) the Commission's public database containing information disclosed under this subsection is linked electronically to the websites maintained by the Secretary of the Senate and the Clerk of the House of Representatives containing information filed pursuant to the Lobbying Disclosure Act of 1995.

(5) Regulations

Not later than 6 months after September 14, 2007, the Commission shall promulgate regulations to implement this subsection. Under such regulations, the Commission--

(A) may, notwithstanding paragraphs (1) and (2), provide for quarterly filing of the schedule described in paragraph (1) by a committee which files reports under this section more frequently than on a quarterly basis;

(B) shall provide guidance to committees with respect to whether a person is reasonably known by a committee to be a person described in paragraph (7), which shall include a requirement that committees consult the websites maintained by the Secretary of the Senate and the Clerk of the House of Representatives containing information filed pursuant to the Lobbying Disclosure Act of 1995;

(C) may not exempt the activity of a person described in paragraph (7) from disclosure under this subsection on the grounds that the person is authorized to engage in fundraising for the committee or any other similar grounds; and

(D) shall provide for the broadest possible disclosure of activities described in this subsection by persons described in paragraph (7) that is consistent with this subsection.

(6) Committees described

A committee described in this paragraph is an authorized committee of a candidate, a leadership PAC, or a political party committee.

(7) Persons described

A person described in this paragraph is any person, who, at the time a contribution is forwarded to a committee as described in paragraph (8)(A)(i) or is received by a committee as described in paragraph (8)(A)(ii), is--

(A) a current registrant under section 4(a) of the Lobbying Disclosure Act of 1995;

(B) an individual who is listed on a current registration filed under section 4(b)(6) of such Act or a current report under section 5(b)(2)(C) of such Act; or

(C) a political committee established or controlled by such a registrant or individual.

(8) Definitions

For purposes of this subsection, the following definitions apply:

(A) Bundled contribution

The term “bundled contribution” means, with respect to a committee described in paragraph (6) and a person described in paragraph (7), a contribution (subject to the applicable threshold) which is--

(i) forwarded from the contributor or contributors to the committee by the person; or

(ii) received by the committee from a contributor or contributors, but credited by the committee or candidate involved (or, in the case of a leadership PAC, by the individual referred to in subparagraph (B) involved) to the person through records, designations, or other means of recognizing that a certain amount of money has been raised by the person.

(B) Leadership PAC

The term "leadership PAC" means, with respect to a candidate for election to Federal office or an individual holding Federal office, a political committee that is directly or indirectly established, financed, maintained or controlled by the candidate or the individual but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that such term does not include a political committee of a political party.

11 C.F.R. § 111.21
Confidentiality

(a) Except as provided in 11 CFR 111.20, no complaint filed with the Commission, nor any notification sent by the Commission, nor any investigation conducted by the Commission, nor any findings made by the Commission shall be made public by the Commission or by any person or entity without the written consent of the respondent with respect to whom the complaint was filed, the notification sent, the investigation conducted, or the finding made.

(b) Except as provided in 11 CFR 111.20(b), no action by the Commission or by any person, and no information derived in connection with conciliation efforts pursuant to 11 CFR 111.18, may be made public by the Commission except upon a written request by respondent and approval thereof by the Commission.

(c) Nothing in these regulations shall be construed to prevent the introduction of evidence in the courts of the United States which could properly be introduced pursuant to the Federal Rules of Evidence or Federal Rules of Civil Procedure.