

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

REV. DAVID LEWICKI, and
VLADIMIR SHKLOVSKY,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civil Action No. 24-cv-2505-ABJ

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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INTRODUCTION

Plaintiffs Rev. David Lewicki and Vladimir Shklovsky (“Plaintiffs”), two Georgia voters, alerted the Federal Election Commission (“FEC” or “Commission”) to an apparent scheme to launder approximately \$5 million through various nonprofit 501(c)(4) entities to influence the 2020 federal Senate elections in Georgia while evading disclosure. That scheme included the conversion of approximately \$1 million from a still unknown source that passed through two recently created (c)(4) entities, with overlapping personnel and addresses, to a recently registered federal political committee, all done within a few days. Another \$475,000 followed the same path shortly after. The rest of the transactions were apparently structured to avoid obviously triggering reporting for any of the intermediaries, while still ensuring those funds influenced the same federal election.

Federal law requires entities like political committees to report the “true source” of contributions, even if those contributions pass through intermediaries. *United States v. Hsia*, 30 F. App’x 1, 1–2 (D.C. Cir. 2001). Nevertheless, and over the recommendation of the FEC’s Office of General Counsel (“OGC”) to pursue Plaintiffs’ claims, the six-member Commission deadlocked and then, a few days later, agreed to dismiss Plaintiffs’ complaint.

That dismissal, however, was contrary to law. Plaintiffs hereby seek partial summary judgment under Federal Rule of Civil Procedure 56 declaring as such based on two of the four errors Plaintiffs identified in their complaint.¹

First, the record shows there was no basis to terminate Plaintiffs’ complaint when on July 3 the Commission decided to reject OGC’s recommendation and to dismiss. Nothing in the record

¹ Pursuant to the Court’s March 19, 2026 minute order, Plaintiffs here seek summary judgment on only their claims 1 and 3, and reserve the right to seek judgment on their claims 2 and 4 if necessary.

at that time explained or justified the decision of three commissioners, half the six-member Commission, to reject the OGC's recommendation, or showed that any existing disagreement was intractable or would otherwise support terminating proceedings. The three commissioners' *post hoc* rationalization issued a month later cannot explain why the commissioners voted to close on July 3, and the D.C. Circuit has held that such *post hoc* rationalizations cannot support a dismissal. *See End Citizens United PAC ("ECU") v. FEC*, 69 F.4th 916, 924 (D.C. Cir. 2023). Nor does the Commission's delay of the implementation of its order until a *post hoc* rationalization can be drafted cure this error: such a statement simply cannot show why the Commission voted to close "at the time" *Id.* at 921; *accord Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971). "Foundational principle[s] of administrative law" limit courts to reviewing the record "before the agency at the time its decision was made," "neither more nor less," and those materials contain no explanation for the decision to close when the vote occurred. *ECU*, 69 F.4th at 921; *IMS, P.C. v. Alvarez*, 129 F.3d 618, 623 (D.C. Cir. 1997).

Second, even if the Court considers the *post hoc* rationalization, it reveals a dismissal contrary to law because it relied on "impermissible interpretations" of the law's ban on conduit contributions. *Orloski v. FEC*, 795 F.2d 156, 161 (D.C. Cir. 1986). Specifically, it reveals the three commissioners interpreted the ban to exclude conduit schemes carried out by reimbursement, rather than immediate advance, of contributions, and it reveals they interpreted the ban to only cover contributions made by an intermediary wholly controlled by the true source. The law, however, "unambiguously" applies to a donor "who solicits others to donate," not just forces them through control, "and either advances the money or ... reimburse[s] them for the gifts." *United States v. O'Donnell*, 608 F.3d 546, 555 (9th Cir. 2010). Rather, when one promises to give or "[g]ives money or anything of value" to another with any kind of "designation, instruction, or

encumbrance,” including a “suggestion,” or pursuant to any “solicit[ation],” “arrange[ment],” or “agree[ment],” resulting in “all or any part” of the funds being contributed to “influenc[e] any election for Federal office,” the contribution will be “in the name of another” unless that original source is disclosed by the reporting recipient, regardless of what “direction or control” the intermediary exercised. *See* 52 U.S.C. §§ 30101(8)(A), 30122; 11 C.F.R. §§ 110.4(2)(i), 110.6(b)(1), (d); *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015); *O’Donnell*, 608 F.3d at 551, 556.

Because the dismissal occurred in the face of no evident contemporaneous rationale, and because the *post hoc* rationale relied on impermissible interpretations of law, the Commission’s dismissal was contrary to law.

BACKGROUND

I. Legal Framework

A. Campaign Finance Reporting of True Sources and the Ban on Conduit Contributions

Congress enacted the Federal Election Campaign Act (“FECA”) in the wake of Watergate to bring “total disclosure” of “every kind of political activity” to ensure the public is “fully informed” about “[t]he sources of a candidate’s financial support.” *Buckley v. Valeo*, 424 U.S. 1, 67, 76 (1976); *SpeechNow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010) (en banc) (“[T]he public has an interest in knowing who is speaking about a candidate and who is funding that speech.”). The public has a right to know the “interests to which a candidate is most likely to be responsive,” including those for whom “post-election special favors [] may be given in return,” *Buckley*, 424 U.S. at 67; *see also Citizens United v. FEC*, 558 U.S. 310, 370 (2010) (disclosure alerts voters to whether “elected officials are ‘in the pocket’ of so-called moneyed interests”), and so the FECA

imposes several disclosure obligations to disclose those who contribute to influence federal elections.

In relevant part, the FECA requires entities that engage in “extensive” electioneering through either direct advocacy or financing other electioneering organizations to register as political committees and disclose the sources of their receipts. *FEC v. Mass. Right to Life*, 479 U.S. 238, 263 (1986); 52 U.S.C. §§ 30101(4), 30102, 30103, 30104(a)–(b). These groups can avoid disclosure, however, if their “major purpose” is seen as not influencing federal elections, *Buckley*, 424 U.S. at 79, which can be established by avoiding—or appearing to avoid—devoting most of their spending on federal electioneering. See *FEC, Political Committee Status, Supplemental Explanation and Justification*, 72 Fed. Reg. 5595, 5604, 5605 (Feb. 7, 2007) (discussing “Expenditure Path to Political Committee Status” and noting group spending “50-75%” of funds on campaign activity qualifies as political committee).

In addition, entities which do not need to register as political committees must report some funding sources, but only if they engage in direct election advocacy. See 52 U.S.C. § 30104(c) (relating to independent expenditures), *id.* at § 30104(f) (relating to electioneering communications); 11 C.F.R. §§ 104.20(c)(10), 109.10(e). Contributing to another, on the other hand, does not trigger a reporting obligation by the contributing entity unless the contributions in aggregate would subject the contributing entity to political committee reporting.

Nevertheless, in line with the purposes of disclosure, the law requires the reporting entity disclose the “true source” of its electioneering funds. *Hsia*, 30 F. App’x at 1–2. Specifically, the FECA provides that “[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly

accept a contribution made by one person in the name of another.” 52 U.S.C. § 30122; *accord* 11 C.F.R. § 110.4(b).

Thus, for example, “[g]iving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made” is prohibited. 11 C.F.R. § 110.4(b)(2)(i); *see also O’Donnell*, 608 F.3d at 549 (holding a conduit contribution “occurs when A solicits B to transmit funds to a campaign in B’s name, subject to A’s promise to advance or reimburse the funds to B”). A conduit contribution may be effected when funds are “earmarked or otherwise directed” by the source by means of any “designation, instruction, or encumbrance,” including a “suggestion,” or made pursuant to any “solicit[ation],” “arrange[ment],” or “agree[ment],” “direct or indirect, express or implied, oral or written,” that results in all or part of the funds to be transferred to another to influence federal elections. 11 C.F.R. § 110.6(a), (b)(1) (incorporated by reference in 11 C.F.R. § 110.4(b)(2)(i)); *Whittemore*, 776 F.3d at 1079; *O’Donnell*, 608 F.3d at 551, 556.

B. Administrative Exhaustion and the FEC’s Preliminary Adjudication of Private Complaints

The FECA affords a private cause of action to those injured by violations of the FECA, including failures to properly disclose true contributors. To protect respondents against frivolous suits, before pursuing their claims in court, the complainants must first present their allegations to the Commission for preliminary adjudication and administrative exhaustion. *See* 52 U.S.C. § 30109(a)(1); *see also Stockman v. FEC*, 138 F.3d 144, 153 (5th Cir. 1998) (dismissing action brought without first presenting claim to FEC and exhausting administrative procedures). The FEC then acts as “first arbiter” over the complainant’s claims, *CREW v. FEC*, 923 F.3d 1141, 1149

(D.C. Cir. 2019) (Pillard, J., dissenting), adjudicating the complaint’s merit subject to judicial review, *see generally* 52 U.S.C. § 30109.

To ensure that “every important action [the Commission] takes is bipartisan,” *Combat Veterans for Cong. Pol. Action Comm. v. FEC*, 795 F.3d 151, 153 (D.C. Cir. 2015), the law requires the affirmative vote of four commissioners to take up a complaint and start an agency investigation, 52 U.S.C. §§ 30106(c), 30107(6), 30109(a)(2) (commissioners vote on whether a complaint raises “a reason to believe” a violation may have occurred). A deadlock among the partisan-split six-member Commission can then prevent agency action. Conversely, the law also requires majority four-vote approval to dismiss a complaint, which prevents not only agency action but also, if upheld, private suit. 52 U.S.C. § 30106(c); *45Committee, Inc. v. FEC*, 118 F.4th 378, 382 (D.C. Cir. 2024) (“[A] deadlock will give rise to a dismissal only if a majority of Commissioners separately votes to dismiss the complaint.”); *see also* Commission Directive 10(E)(3), *available at* <https://perma.cc/8Q5X-QREN> (“Any principal or secondary motion that exercises a duty or power of the Commission under the Act ... shall require four votes for approval.”).

These two four-vote thresholds can lead to agency “deadlock.” *45Committee*, 118 F.4th at 382. Three commissioners may prevent the matter from moving forward at the agency but are insufficient in number to dismiss the case. In that situation, the “case remains open.” *Id.* One or more commissioners voting to proceed might then switch sides and vote to close “for any number of reasons, for example, in the interests of transparency of agency operations, closure for respondents, public accountability for the nay-saying commissioners, or in the hopes the complainant will sue the agency and obtain a judicial reversal.” *Statement of Commissioner Ellen L. Weintraub on the Opportunities Before the D.C. Circuit in the New Models Case to Re-Examine En Banc Its Precedents Regarding ‘Deadlock Deference’* 9 (Mar. 2, 2022), <https://perma.cc/3KED-EMRA>

(“Weintraub Statement”). Because the decisive commissioner will not have been among the set of commissioners gridlocking proceedings, and to enable that decisive commissioner’s reasoned decisionmaking in voting to close against her better judgment, her colleagues must inform her of the basis of their choice to block proceedings so that she may know if further discussions are futile and whether the disagreement might be subject to judicial reversal after dismissal.

If the Commission dismisses a complaint, a complainant may then seek judicial review of that dismissal to determine whether it was “contrary to law” and, if so, establish it exhausted its plausible claim before the agency and may pursue its own relief in court. 52 U.S.C. § 30109(a)(8)(A). Where dismissal follows the OGC’s recommendation, *see* 11 C.F.R. § 111.7, the OGC’s explanation, existing in the record at the time of the dismissal, explains it, *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 38 n.19 (1981). Where the dismissal is, on the other hand, against the OGC’s recommendation to find a reason-to-believe exists, the commissioners who rejected that recommendation must “state their reasons why” they rejected it, *DCCC v. FEC*, 831 F.2d 1131, 1132 (D.C. Cir. 1987). Where the Commission deadlocked on the OGC’s recommendation, and that deadlock motivated a subsequent majority to vote to close the case, courts review the justification of the deadlocking commissioners. *Id.* Notably, they do so even though those deadlocking commissioners are not the “decisionmakers”—i.e., the bipartisan majority that votes to close and caused the dismissal on review. *Cf. Alpha, Inc. v. Leavitt*, 460 F.3d 1, 6 (D.C. Cir. 2006) (courts review only the explanation of the “proper decisionmakers”). Courts do that on the assumption that the “dismissal [is] due to [the] deadlock.” *DCCC* F.3d at 1132; *accord id.* (noting agency “deadlock[s] and for that reason dismisses a complaint”).

Accordingly, to ensure courts are reviewing the deadlock that actually motivated the dismissal, courts look to the “contemporaneous statement” that existed “at the time when a deadlock

vote results in an order of dismissal.” *ECU*, 69 F.4th at 921. That is the statement that was “before [the majority that voted to close] at the time the decision [to close] was made.” *See James Madison Ltd. v. Ludwig*, 82 F.3d 1085, 1095 (D.C. Cir. 1996) (courts review the explanation that was “before the agency at the time the decision was made”). Courts do not review “post-hoc explanations” like the deadlocking commissioners’ statement of reasons issued after a different majority set of commissioners decides to close, *ECU*, 69 F.4th at 922, which may reflect the idiosyncratic views of the deadlocking commissioners but would not reflect the understanding of the “deadlock” which is the “reason” the Commission majority—a set of commissioners different from the deadlocking commissioners—voted to close and cause the dismissal that is on review, *DCCC*, 831 F.2d at 1132.

II. Factual Background

A. Unknown Respondents Used Conduit Contributions and Structured Transactions to Launder Approximately \$5 Million Spent to Influence the 2020 Georgia Senate Elections

In 2023, Plaintiffs filed a complaint with the FEC, with subsequent amendment, to alert the agency to a scheme to launder approximately \$5 million through transactions structured to hide the source of those funds while using them to influence the 2020 federal Senate elections in Georgia. AR0001; AR00123.

In particular, Plaintiffs alleged that an entity named American Coalition for Conservative Policies (“ACCP”) was founded as a tax-exempt 501(c)(4) nonprofit on March 23, 2020 by a political operative. AR00135. Another entity named Policies, Solutions and Action for America (“PSAA”) was founded as a tax-exempt 501(c)(4) nonprofit shortly thereafter, on May 6, 2020. AR000136. PSAA and ACCP share the same reported address. AR00136. PSAA and ACCP also share a treasurer, who is also a treasurer to a number of federal political committees. AR00136. Other officials associated with the two entities are lawyers at the same law firm. AR00144.

At some point between its founding and the end of calendar year 2020, and likely by July 16, ACCP received a \$5,000,000 contribution from a single source. AR00143. Besides a \$60,000 grant from a section 527-political organization affiliate, the \$5,000,000 contribution was ACCP's sole source of funding. AR000143.

In that same period, ACCP engaged in two transactions that amounted to the near entirety of its 2020 activities: contributing \$3.1 million to PSAA, and contributing \$1.8 million to another tax-exempt 501(c)(4) nonprofit named RightOn Issues, founded on July 2, 2020. AR000137, AR00143. The \$3.1 million contribution to PSAA represented that organization's sole 2020 receipt. AR00144. Although neither ACCP nor PSAA provided the date of this transfer, PSAA reported to the IRS in September that it had no assets as of July 13, 2020. AR00144.

Three days after it reportedly had no assets, PSAA made a \$1 million contribution to a federally registered political committee, Georgia United Victory. AR00145. Georgia United Victory reported only PSAA as the source of these funds, and reported the funds were a "contribution" meant to influence federal elections. AR00145. The transfer was the first contribution Georgia United Victory received and was accepted just fifteen days after the political committee formed. AR00145. Georgia United Victory used those funds to influence the 2020 federal Senate elections in Georgia. AR00145.

A little over a month later, PSAA made a second contribution to Georgia United Victory of \$475,000. AR00145. As with the initial sum, Georgia United Victory reported the sum was a contribution to influence federal elections, reported PSAA as the source, and used those funds to influence the 2020 federal Senate elections in Georgia. AR00145–46.

Together, PSAA's two contributions amounted to just under half of the funds PSAA spent in 2020: 48.57%. AR00146. PSAA's only other material 2020 activity was a \$1.5 million

transfer—just \$25,000 more than sent to the political committee—to RightOn Issues, the same organization that received \$1.8 million from PSAA’s patron, ACCP. AR00146. By transferring slightly more funds to RightOn Issues, a purportedly non-political non-profit, than it transferred to a registered federal political committee, PSAA could attempt to evade reporting obligations that would be triggered, and detected, if a majority of its reported 2020 activities were electioneering.

After completing these transfers, PSAA terminated. AR00146. It took no additional receipts and made only insignificant expenditures on overhead. AR00146. ACCP similarly terminated its existence after these transactions were complete. AR00218.

These transfers meant that within a few days, \$1 million of the original \$5 million ACCP received passed through PSAA to Georgia United Victory to influence the 2020 federal Senate elections in Georgia, with an additional \$475,000 following that same path within weeks. It did so without either ACCP or PSAA devoting most of their annual spending to direct and reported political committee contributions. Only PSAA was reported as the source.

As for the remaining \$3.5 million, nearly the entirety went to RightOn Issues over the course of 2020. AR00144, AR00146. RightOn Issues, a tax-exempt section 501(c)(4) entity that could not primarily engage in electioneering, nevertheless also made significant transfers to influence the 2020 federal Senate elections in Georgia.

On September 21, 2020, less than a month after PSAA’s last transfer, RightOn Issues transferred \$1 million to Georgia United Victory, the same registered political committee funded by PSAA. AR00147. Georgia United Victory reported RightOn Issues as the source of this contribution and reported it was intended to influence federal elections, and it used the funds to air electioneering to influence the 2020 federal Senate elections in Georgia. AR00147. When added to the

money passed through PSAA, Georgia United Victory had received \$2.475 million, amounting to almost half of the original \$5 million that ACCP received, within a short period of two months.

That was not the only political activity in which RightOn Issues engaged. On the same day of its Georgia United Victory contribution, RightOn Issues also made a \$200,000 contribution to another registered political committee, Georgia Action Fund. AR00147. Georgia Action Fund reported RightOn Issues was the source of these funds, that the funds were intended to influence federal elections, and used the funds to influence the 2020 federal Senate elections in Georgia. AR00147. The treasurer of Georgia Action Fund is also the custodian of records of RightOn Issues. AR00147–48.

Two days later, on September 23, 2020, RightOn Issues made an additional \$120,000 contribution to a federal political committee, RightOn Time. AR00148. That was the only contribution RightOn Time received in 2020. AR00148. RightOn Time reported RightOn Issues as the source of the funds, and reported they were intended to influence federal elections. AR00148. The treasurer of RightOn Time is also the treasurer of Georgia United Victory, the registered political committee that had received \$2.475 million from ACCP, PSAA, and RightOn Time. AR00148. RightOn Time spent those funds on “PAC GOTV mailing,” using an acronym for “get-out-the-vote,” likely to influence the 2020 Georgia Senate elections. AR00148–50.

The \$1.3 million contributions RightOn Issues made to federally registered political committees in 2020 are just slightly less than the \$1.5 million the group received from PSAA in 2020. AR00147–48. RightOn Issue also likely spent approximately \$2 million in 2020 on its own electioneering to influence the 2020 federal Senate elections in Georgia, which when added to its contributions, approximately equals the sums the group receive from both ACCP and PSAA.

AR00148–52. After spending about \$1.6 million in 2021, RightOn Issues shut down in 2022. AR00152.

In short, between July and September 2020, approximately \$2.795 million of the original \$5 million that ACCP received was deposited with federally registered political committees and spent to influence federal elections. \$1 million of that appears to have gone from ACCP to PSAA and to a political committee over the course of three days. The entities involved were also founded in a short span in 2020, two share a reported address and a treasurer and engaged in little activity other than making these transfers. The political committees reported the intermediate entities of PSAA and RightOn Issues as the sources, hiding both ACCP and ACCP’s still unknown donor(s). Nearly the entirety of the remaining funds were deposited with an ostensible non-political non-profit. That nonprofit likely spent those funds to influence the same election, but did not report that spending as electioneering, evading its own reporting obligations and allowing it to appear to be a non-political entity and transfers to it to be unrelated to electioneering. The transfers were also structured so that the intermediary entities could similarly falsely present themselves as non-political. By shuffling funds through various entities, each entity’s disclosed political committee contributions never exceeded half of their total spending: a result that would have triggered their own reporting obligations and been open to detection. The result of this scheme is that the original source or sources of ACCP’s contribution—a source or sources that would have been disclosed had they given directly to the political committees or spent it themselves—remains unknown to Plaintiffs and the public.

B. The FEC’s Adjudication of Plaintiffs’ Claims

Plaintiffs filed an initial complaint on February 6, 2023, AR00001, amending it on November 14, 2023 after ACCP’s theretofore hidden involvement was discovered. AR00123. The complaint alleged the facts above and made three claims involving various alleged unlawful conduit

schemes that each resulted in the unlawful withholding of the identity of the unknown original source or sources of the \$5 million ACCP received. AR00153–75.² The FEC designated the complaint as Matter Under Review (“MUR”) 8110. AR00051.

After receiving responses from the various involved entities, the OGC issued its report and recommendation on May 3, 2024, AR00233–77; *see also* AR00278–338 (errata), and recommended the Commission find reason to believe unknown respondent(s), PSAA, and RightOn Time knowingly made or permitted their name to be used to effect a contribution in the name of another. AR00276. The OGC concluded that the evidence indicated ACCP was part of the conduit scheme, AR00262–67, but did not recommend pursuing a claim directly against ACCP because the OGC believed the law does not make liable a pass-through entity that is not erroneously identified by a reporting entity as the source. *See* AR00266–67.

In support of its recommendations and relying on multiple agency precedents which opened investigations on similar allegations, the OGC recognized several indicia of a conduit scheme. In particular, it identified the short time period between the conduit organizations’ founding and the transfers at issue, AR00254, AR00259, AR00262–63, the short spans between receipt of funds and transfer, AR00254–55, AR00259–60, the lack of activity by these organizations other than the transfers, AR00255, AR00256–57, AR00260–61³, AR00263, the relatively large size of the transfers for organizations with no history, AR00255, AR00261, the comparable size of the donations and their eventual expenditure on influencing elections, AR00255, AR00259, AR00261,

² A fourth claim’s theory did not involve a conduit scheme but alleged each of the groups’ activities subjected them to political committee reporting. AR00175–86.

³ The OGC recognized that, in addition to making the transfers to the political committees, RightOn Issues spent funds to influence the federal Senate elections, but found those expenditures were all in late 2020 or early 2021, leaving a significant gap between its receipt of funds and the super pac contributions, and these other activities. AR00260.

AR00263–64, the absence of an online presence at the time of the transfers, AR00256, AR00262, AR00264, PSAA’s and RightOn Issues’s overlap in responses, counsel, and locations, AR00259, and the structuring of the transactions in a way that appears calculated to avoid triggering political committee status while still ensuring the funds were used to influence elections, AR00256, AR00262, AR00264–65. The OGC noted that the law does not require that a donor issue a “directive” to control the use of funds, but that rather a suggestion on how to use the funds was enough. AR00266–67 n.145 (noting “the Commission has repeatedly cited *United States v. Whittemore*,” 776 F.3d 1074, 1079 (9th Cir. 2015) to read “§ 30122 [to be] sufficiently broad to encompass situations involving something less than an explicit directive”). The OGC also concluded PSAA was likely deceptive in its September IRS filing which averred that PSAA would not engage in substantial efforts to influence elections despite PSAA having already contributed \$1.475 million to that effort. AR00257–58.⁴

The Commission met on June 25, 2024 to consider the OGC’s recommendations and split along partisan lines, three-to-three, on all of them. AR00339–41. The Commission also deadlocked on a motion to “[d]ismiss the complaints” and close the file. AR00341.

A few days later, Commissioner Sean Cooksey, who had voted against the OGC’s recommendations and for dismissal, *id.*, submitted a short one sentence motion to “close the file effective 30 days from the date of certification,” AR00342. It offered no explanation or justification. Two days later, on July 3, 2024, the commission voted unanimously to do so. AR00343. As at least four of the six commissioners agreed to close the file, the case was dismissed. *See* 52 U.S.C. § 30106(c).

⁴ The OGC recommended the FEC take no action at that time on the allegations that the entities were political committees but suggested revisiting the issues depending on the investigation. AR00269–70.

The record contains no evidence of discussions, deliberation, or justifications given at the time to reject the OGC’s recommendation, or to support the first failed vote to close or the second successful one.

Nearly one month after the majority decided to close the file, on July 29, 2024, the three commissioners who voted against the OGC’s recommendation signed a *post hoc* statement of reasons for that rejection. AR00344–51. In that statement, the three commissioners, in relevant part, claimed the complaint failed to allege a conduit scheme based on the absence of allegations related to two issues on which, they believed, the law depended. AR00347–51.

First, they interpreted the law to only apply to an intermediary’s immediate conversion of advanced funds and to not cover a reimbursement of funds that occur after the intermediary has made their contribution. AR00347 n. 20 (interpreting law to only apply when “*A* gives a contribution to *B* with the intention that *B* immediately transfer those funds to *C*, but *C*, whether unknowingly or corruptly, reports the donation as coming from *B*, rather than *A*”). Reviewing the Plaintiffs’ complaint and focusing only on its allegations regarding RightOn Issues, they said it was “[u]nknown’ when ACCP made its \$1.8 million contribution to RightOn Issues” and “there is no evidence ... whether ACCP gave that money before or after RightOn Issues made its contributions to the three Super PACs.” AR00349. “Nor is there any evidence,” the three commissioners went on, “that PSAA gave \$1,500,000 to RightOn Issues before RightOn Issues contributed to the Super PACS.” *Id.* The three commissioners concluded that the theory of the complaint “falls apart” in the face of these absences. *Id.*

Second, the three commissioners stated the law against conduits applies only where the intermediary operates under the “control” of the donor, AR00348, citing as their sole support an earlier statement by these same three commissioners, AR00348 n.27. They interpreted the law to

cover only “contributions [made] at the direction of another,” excluding those made by mutual agreement or at the voluntary choice to follow a donor’s suggestion. *Id.* Indeed, they interpreted the law to require not only that the transfer occur under the donor’s control, but that the intermediary entity be itself an entity wholly controlled of the donor. By doing so, their inference that RightOn Issues was a “clearly-independent entity” became decisive. AR00350. The possibility that it engaged in other transactions than those funded by ACCP, in the three commissioners’ view, meant “that it was not being used as a mere passthrough ... by a shadowy ‘true contributor.’” AR00349.

This statement was published and distributed to the parties on August 2, 2024. *See, e.g.*, AR00382–91. Nothing in the record suggests that this Statement was given to any of the non-signing commissioners before its publication.

C. The Explosion of Dark Money Conduits

A key part of FECA’s “total disclosure” of “[t]he sources of a candidate’s financial support,” *Buckley*, 424 U.S. at 67, 76, is the bar on conduit contributions, which “ensure[s] the complete and accurate disclosure of the contributors who finance federal elections.” *O’Donnell*, 608 F.3d at 553. Permitting donors to influence elections and potentially reap favors while hiding behind intermediaries would “undermine [that] transparency.” *Id.*

Unfortunately, in the fifty years since FECA’s enactment, donors have used this method to evade transparency. For example, in the 2024 election cycle alone, intermediaries that do not disclose their sources routed more than \$1.3 billion to political committees to influence federal elections. Anna Massoglia, *Dark Money Hit a Record High of \$1.9 Billion in 2024 Federal Races*, Brennan Center (May 7, 2025), <https://perma.cc/B5L9-Q24P>. That is a significant part of the more than \$1.9 billion spent in the 2024 election cycle, and more than \$4.3 billion since *Citizens United*,

that cannot be traced to original sources. *Id.* The use of intermediaries to hide the source of contributions to reporting groups is a growing trend, increasing from about \$6.7 million in 2010 (of \$144 million in unsourced funds spent), then jumping significantly to \$653.3 million in 2020 (of \$734.1 million in unsourced funds spent), *id.*, after the D.C. Circuit closed a loophole that had let groups directly spending on elections hide their immediate donors, *see CREW v. FEC*, 971 F.3d 340 (D.C. Cir. 2020).

There is now a “cottage industry” of consultants helping donors influence federal elections while evading disclosure by laundering their funds through conduits. Theodore Schleifer & Steven Rich, *Wealthy Donors are Hiding Political Money in Secretive Nonprofits*, N.Y. Times (Apr. 3, 2026), <https://tinyurl.com/4uxh69sy>. Consultants can pitch big donors on, for example, plans for “federal elections support” while “minimiz[ing] all public reporting of entities and activities” using intermediaries. Annie Martin & Jason Garcia, *Operative pitched secretive political spending plan to FPL exec’s email alias, records reveal*, Orlando Sentinel (Jan. 24, 2022), <https://tinyurl.com/4btka87w> (showing original source’s funds would be divided and sent through intermediaries to ensure at least part of their funds influenced federal elections without triggering reporting obligations for the intermediaries). Consultants create groups for the “express purpose” of using them to launder donors’ contributions, solicit funds to impact a candidate’s “performance” and accept funds “for the reelection of” a specific candidate, while donors hide behind the group’s anodyne name. Matt Corley, *The inside story of how the FEC investigated a dark money group but failed to hold it accountable*, CREW (Mar. 16, 2026), <https://perma.cc/GT9V-FQUZ>.

These donors can thus evade public detection, letting them deceive voters about “who is speaking about a candidate,” *Citizens United*, 558 U.S. at 369, *cf.*, *e.g.*, Rebecca Heilweil, *A Palantir cofounder is backing a group attacking Alex Bores over his work with ... Palantir*, Fast

Company (Feb. 11, 2026), <https://tinyurl.com/5fbm2kb4>, while also letting them curry post-election favors or even carry out bribes undetected, *see* Deferred Prosecution Agreement ¶ E., *United States v. FirstEnergy Corp.*, (S.D. Oh. W.D. July 20, 2021), *available at* <https://tinyurl.com/45z5xma5> (“Central to FirstEnergy’s Corp.’s effort to influence the legislative process in Ohio was the use of 501(c)(4) corporate entities” as “FirstEnergy Corp. used the 501(c)(4) corporate form as a mechanism to conceal payments for the benefit of public officials and in return for official action.”); *Ohio corruption case HB6: Winks, nods, texts and more can prove bribery*, Ohio Politics Explained (Jan. 9, 2023) at 5:46–:50, <https://bit.ly/3HaD5wL> (501(c)(4) intermediaries are the “perfect animal for bribery”).

This cottage industry is aided by the FEC’s failure to reasonably interpret and apply the law. Rather, the “FEC has been gripped by disagreement and deadlock.” Committee on House Admin. Ranking Mem. Joseph D. Morelle (NY-25), *Staff Report on the Federal Election Commission at 50: The Deregulators are Winning* 1 (May 2025), *available at* <https://tinyurl.com/4k93y7jv>. For example, since *Citizens United*, the FEC’s OGC has made “two dozen recommendations” to investigate dark money matters, but “the FEC acted on only five” of those recommendations. *Id.* at iii. The Commission’s bipartisan structure has permitted commissioners to block the agency’s proceedings out of “loyalty” to their partisan allies. *See* Rick Hasen, *Quiet Part Out Loud Dep’t: Trey Trainor Says He “Fought for” Trump “Every Single Day Throughout the Biden Presidency” When He Was an FEC Commissioner*, Election Law Blog (Feb. 5, 2026) <https://tinyurl.com/jey7jwr7>. Commissioners have imposed unreasonable interpretations of law that lack bipartisan consensus, including on the bar on conduit contributions, and have “undermine[d]” the FECA’s promise of transparency. *See O’Donnell*, 608 F.3d at 553.

LEGAL STANDARD

The Court will grant summary judgment ‘if the movant shows that there is no genuine

dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *CREW v. FEC*, 209 F. Supp. 3d 77, 85 (D.D.C. 2016) (quoting Fed. R. Civ. P. 56(a)). “Under these circumstances, where summary judgment is sought regarding certain of the FEC’s dismissal decisions, this Court will grant summary judgment to the challenger only if the agency’s decisions are ‘contrary to law,’” *id.* (citing 52 U.S.C. § 30109(a)(8)(C)), “meaning either that ‘the FEC dismissed the complaint as a result of an impermissible interpretation of [FECA],’ or that ‘the FEC’s dismissal of the complaint, under a permissible interpretation of the statute, was arbitrary or capricious, or an abuse of discretion,’” *id.* (quoting *Orloski*, 795 F.2d at 161). In determining whether a dismissal is “arbitrary or capricious, or an abuse of discretion,” courts employ the same standard as under the Administrative Procedure Act (“APA”). *See id.* at 88.

ARGUMENT

I. This Court Has Jurisdiction

The action arises under the FECA, 52 U.S.C. § 30101 et seq. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and venue is appropriate under 28 U.S.C. § 1391(c). Plaintiffs have standing pursuant to *FEC v. Akins*, 524 U.S. 11 (1998), because they have been deprived of information to which they are entitled under the FECA, *id.* at 21; *accord Campaign Legal Center v. FEC*, 31 F.4th 781, 783 (D.C. Cir. 2022); *see also* Lewicki Decl. ¶¶ 5–14 (attached as Exhibit A); Shklovsky Decl. ¶¶ 4–13 (attached as Exhibit B). This action is timely as it was filed within sixty days of the FEC’s July 3 dismissal. *See* 52 U.S.C. § 30109(a)(8)(B); Compl., Doc #1 (D.D.C. Aug. 30, 2024) (ECF No. 1-1); AR00343.

II. The FEC’s July 3 Dismissal Was Contrary to Law Because It Lacked Any Contemporaneous Explanation Leaving the Dismissal Unexplained

“An agency action qualifies as arbitrary or capricious if it is not reasonable and reasonably explained.” *Ohio v. EPA*, 603 U.S. 279, 292 (2024); *Tourus Recs., Inc. v. DEA*, 259 F.3d 731, 737

(D.C. Cir. 2021) (A “fundamental ‘requirement of administrative law’ is that an agency ‘set forth its reasons’ for [its] decision[s]”). They must have and provide a justification to act “at the time [of their] decision,” *James Madison*, 82 F.3d at 1095, and may not rely on a *post hoc* rationalization. Here, the Commission decided to dismiss Plaintiffs’ complaint on July 3. The record reveals, however, no contemporaneous rationale for that vote; the only explanation in the record existing at the time argued for precisely the opposite. AR00233–77. By evidently conducting the equivalent of a coin-flip, the Commission failed in its fundamental duties and its dismissal is therefore contrary to law. A *post hoc* rationalization will not cure that failure, particularly one issuing from only a non-decisive subset of the commissioners responsible for the decision. Nor can the omission of a contemporaneous explanation be remedied by delaying a decision’s implementation until a *post hoc* rationalization can be manufactured. Nor does the potential relevancy of a *post hoc* rationalization at a different stage of proceedings cure the absence of a timely explanation here. Rather, the “foundational principle of administrative law” requiring “reasoned decision-making” and an “opportunity for self-correction” mandates that, when the Commission decides to terminate a matter, it has at that instant a reason for doing so. *ECU*, 69 F.4th at 920. The absence of any contemporaneous rationale in the record renders the vote contrary to law.

A. The Commission Dismissed Without Any Contemporaneous Justification

On July 3, the Commission voted to “close the file” on Plaintiffs’ complaint. AR00343. They did so despite the OGC recommendation to proceed with an investigation into the likely conduit scheme alleged in the complaint. AR00266–67. The only in-record indication of the basis of that vote is the three-to-three deadlock on the OGC’s recommendation that occurred a few days earlier. AR00339–41. There is no in-record explanation, however, as to why those three commissioners rejected the OGC’s recommendation, never mind one provided to the full Commission before the vote to close. There is no in-record evidence as to what the unanimous Commission

understood was the stalemate that proved so intractable that it warranted closing the file rather than further deliberation. Unlike in other matters, the Commissioners did not adopt the then-existing OGC’s justified recommendations, *DSCC*, 454 U.S. at 38 n.19, nor did they draft, revise, and approve an analysis at the time of the vote that could explain their actions, *see, e.g.*, Certification, MUR 8122 (Lafazan for Congress), Feb. 6, 2024, available at https://www.fec.gov/files/legal/murs/8122/8122_13.pdf (approving, before vote to close the file, “the Factual and Legal Analysis ... subject to the revisions circulated by Chairman Cooksey’s Office”). Rather, they dismissed without existent rationale—effectively flipping a coin. The Commission’s decision in the absence of a contemporaneous rationale “constitutes arbitrary and capricious agency action.” *Tourus Recs.*, 259 F.3d at 737; *accord Ohio*, 603 U.S. at 292. The dismissal was therefore “contrary to law.” *Orloski*, 795 F.2d at 161.

The D.C. Circuit recently chastised the FEC for failing to include in-record evidence of its contemporaneous rationales when four commissioners decide to terminate a case. In *ECU*, the court considered an April 22, 2021 dismissal by a unanimous vote to close the file. 69 F.4th at 919. The Court, applying “well-established” three-decade old jurisprudence, recognized that courts reviewing FEC dismissals only consider explanations that exist “at the time when a deadlock vote results in an order of dismissal.” *Id.* at 918, 920 (quoting *Common Cause v. FEC*, 842 F.2d 436, 449 (D.C. Cir. 1988)). This, the court recognized, was in keeping with the “‘foundational principle of administrative law’ that judicial review of agency action is limited to ‘the grounds that the agency invoked when it took the action.’” *Id.* at 921–22 (quoting *DHS v. Regents of Univ. of Cal.*, 591 U.S. 1, 20 (2020)); *see also Citizens to Preserve Overton Park, Inc.*, 401 U.S. at 420 (courts review record “before the Secretary at the time he made his decision”); *James Madison Ltd.*, 82 F.3d at 1095 (same). Courts may “have before [them] neither more nor less information than did

the agency when it made its decision.” *Alvarez*, 129 F.3d at 623. Since the record showed no rationale before the Commission at the time of its vote other than the OGC’s recommendation to proceed, the Commission’s unexplained decision to reject that recommendation and dismiss was “contrary to law.” Order, *End Citizens United PAC v. FEC*, No. 21-cv-1665-TJK (D.D.C. Sept. 7, 2023) (attached as Exhibit C), *on remand from ECU*, 69 F.4th at 924.

The same situation presents itself here. The Commission decided to close the file by unanimous vote on July 3, 2024. AR00343. The record shows the only rationale existing and “before the agency,” *James Madison*, 82 F.3d at 1095, was the OGC’s recommendation to proceed with an investigation of the Plaintiffs’ conduit claims, AR00276–77. Though the Court may presume the dismissal is “due to [the] deadlock” on the OGC’s recommendation that preceded it, *DCCC*, 831 F.3d at 1132, the record contains no contemporaneous rationale presented to the Commission for that rejection. Accordingly, there was no opportunity for the Commission to “consider whether there could be a path forward that would garner four votes,” or consider whether the justification for the deadlock was likely to result in “judicial reversal.” Weintraub Statement 9, 11. Nor was there any “opportunity for self-correction,” *Common Cause*, 842 F.2d at 449, whereby the “decisionmakers,” *Alpharma*, 460 F.3d at 6—that is, the six member Commission voting to close the file, or at least the minimum four member subset required for the FEC to act, 52 U.S.C. § 30106(c)—could review the justification of a different set of commissioners and revise it to ensure it reflects their understanding of the disagreement for which their vote for dismissal “was due,” *DCCC*, 831 F.3d at 1132; *cf.* Certification, MUR 8122 (Lafazan for Congress) (considering and revising then existing OGC’s statement to ensure it accurately reflected decisionmakers’ contemporaneous decision).

B. *Post Hoc* Rationales Cannot Cure The FEC's Error

Here, as in *ECU*, the agency is likely to rely on a *post hoc* rationalization: one signed by the commissioners who voted against the OGC's recommendation, but created after the vote to close and never presented to the Commission at the time of its decision. *See* AR00344–51; *ECU*, 69 F.4th at 921. That Statement, however, like the statement in *ECU*, is “an impermissible *post hoc* rationalization,” that cannot explain an earlier decision to dismiss. 69 F.4th at 920. The fact that it may have issued from the three commissioners who blocked the reason to believe vote does not cure its untimeliness. *ECU*, 69 F.4th at 922. Nor can the explanation be considered as a “later ‘amplif[ication]’” of the deadlocked votes. *Id.* (quoting *AT&T Info. Sys. Inc. v. Gen. Serv. Admin.*, 810 F.2d 1233, 1236 (D.C. Cir. 1987)). A failed vote “is not itself a substitute for a statement explaining ‘why [the] complaint was dismissed in spite of the ... [OGC]’s contrary recommendation.’” *Id.* at 921 (quoting *DCCC*, 831 F.2d at 1135). Nor could they rely on past practice, as the *ECU* court noted that no case had “sustained over the complainant’s challenge a statement of reasons belatedly filed in derogation of *Common Cause*’s principles.” *Id.* at 923.

Rather, the statement could not defend the dismissal because the “decisionmak[ing]” majority lacked any “opportunity for self-correction” over this *post hoc* statement, issued nearly a month after the Commission had already decided to terminate Plaintiffs’ complaint. *Alpharma*, 460 F.3d at 6; *Common Cause*, 842 F.2d at 448. The statement might reflect the rationale before the Commission at the time of the vote, but it equally might not. That is no mere hypothetical. *Post hoc* statements of reasons have expressed rationale’s that have “come as some surprise” to the commissioners who voted to close the file. Statement of Chair Shana M. Broussard and Commissioners Steven T. Walther and Ellen L. Weintraub, *In re End Citizens United PAC v. FEC* (Oct. 15, 2021), <https://perma.cc/86YZ-VFXP> (invoking prudential considerations that could prevent judicial review under *CREW v. FEC*, 993 F.3d 880 (D.C. Cir. 2021)). This opportunity to

“surprise” fellow commissioners with the reason for their vote arises from the “rather apparent fiction” that permits a subset of FEC commissioners who are not the decisionmakers to create the explanation that is eventually the subject of review. *CREW v. FEC*, 892 F.3d 434, 437–38 (D.C. Cir. 2018). With all other agencies, the decision-making authority and the explaining authority is one-in-the-same, and legally required to be, *see Alparma*, 460 F.3d at 6, making it unlikely that a minimally untimely rationale would depart from the decisionmakers’ subjective process. That is not true of the FEC deadlocks, where the decision-making majority is typically *not* the same set as those whose rationale will be the subject of review, making the rule against *post hoc* explanations vital. Still, even with unified decision-making and explanation-authoring, courts reject decisionmakers *post hoc* explanations. *Regents*, 591 U.S. at 23.

Regardless, the potential inaccuracy of the statement aside, an “untimely explanation is no explanation at all.” *CREW v. FEC*, No. 22-cv-0035, 2025 WL 833075, *4 (D.D.C. Mar. 17, 2025). The record contains no evidence showing it, or any prior unamplified version, was presented to the Commission “at the time the decision [to close] was made.” *James Madison*, 82 F.3d at 1095. Accordingly, as this Court may have “before it neither more nor less information than did the agency when it made its decision,” *Alvarez*, 129 F.3d at 623, the statement cannot justify the decision.

That the statement here issued only one month after the vote to close rather than the two months in *ECU* is immaterial. *See* 69 F.4th at 916. Both statements occurred after the “decision” and thus are not cognizable. *James Madison*, 82 F.33d at 1095. While the statement in *ECU* also issued after the plaintiff in that case had sued to challenge the dismissal, which raised additional concerns that the statement reflected a “convenient litigating position,” 69 F.4th at 923, the court’s decision did not rest on that fact alone, *see id.* at 920 (citing rule that explanation must exist at the

time of the vote of dismissal); *id.* at 923 (noting absence of “reasoned decisionmaking” and opportunity for “self-correction”); *see also* Order and Op. 5 n.2, *CREW v. FEC*, No. 22-cv-0035 (D.D.C. Nov. 10, 2025) (attached as Exhibit D) (rejecting FEC’s attempt to cabin *ECU* to post-litigation statements). Rather, it followed longstanding precedent against *post hoc* explanations, *see id.* at 922, that limits review to the “record that was before the [decisionmaker] at the time [they] made [their] decision,” *Overton Park*, 401 U.S. at 420, *cited by ECU*, 69 F.4th at 922. Conditioning a statement’s relevancy on the timing of suit would merely incentivize a race-to-the-courtroom, wasting judicial resources without ensuring reasoned decisionmaking.

C. The Agency May Not Expand the Record by Delaying Implementation of its Decision

For the same reason the statement’s creation prior to litigation does not save it, the FEC’s attempt to game *ECU* by deciding to close a file but making that closure “effective 30 days from the date of certification,” AR00343, likewise fails; *see also* Sidney Shapiro & Kimberly Wehle, *The FEC’s Reluctance to Abide by Overton Park*, Yale J. on Reg.: Notice & Comment (Aug. 21, 2024), <https://perma.cc/N9DB-WFNN> (stating Commission’s practice of delaying implementation to draft post-hoc explanations “falls so far short of basic administrative law principle and directly applicable Supreme Court precedent”). The Commission voted to close the file on July 3. *Id.* The “time the decision was made” by the Commission was thus July 3. *James Madison*, 82 F.3d at 1095; *accord Overton Park*, 401 U.S. at 420. That is the time an “order of dismissal” existed, *ECU*, 69 F.4th 921 (D.C. Cir. 2023), even if the terms of that order put off its effect for thirty days. The vote to close the file is the “consummation of the agency’s decisionmaking process” from which “legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (internal quotation marks omitted); *see also CREW v. FEC*, No. 22-cv-3281, 2023 WL 6141887, at *7 (D.D.C. Sep. 20, 2023) (the vote to close the file “adversely affect[s]” legal rights). The delay of those

consequences does not alter the fact that those consequences will follow irrevocably from a successful vote to close, *see Doe, I v. FEC*, 920 F.3d 866, 871 n.9 (D.C. Cir. 2019) (the vote to “clos[e] the file” works to “terminate[] proceedings”).⁵ The APA itself contemplates that an agency may delay the effective date of an act without rendering the act non-final and outside the scope of judicial review. *See* 5 U.S.C. § 705; *see also Humane Soc’y of the U.S. v. U.S. Dep’t of Agric.*, 41 F.4th 564, 571 (D.C. Cir. 2022) (“[A] duly prescribed rule is law even if it sets a future effective date.”). It is enough that the agency has completed its decisionmaking. *N.R.D.C. v. Wheeler*, 955 F.3d 68, 78 (D.C. Cir. 2020) (agency action is final and subject to challenge “as long as the interim decision is not itself subject to further consideration by the agency”); *Nat’l Treasury Emps. Union v. FLRA*, 712 F.2d 669, 671–72, 674 (D.C. Cir. 1983) (delay of effective date did not render action non-final for purposes of review because agency action is final if “only implementation of that decision remains”).

Nothing in the record reveals the July 3 vote was tentative or preliminary: there is no evidence the Commission revisited the issue after the July 25 statements issued or even after the July 3 unanimous vote to close. Nothing in the law would even permit them to if they wanted. *See Doe I*, 920 F.3d at 871 n.9 (the vote to close “terminates proceedings”). Even if they could, the FECA’s majority vote requirement would mean that the commissioners who could have prevented dismissal before a vote to close simply by withholding their vote until an accurate contemporaneous statement existed could not, after a vote to close, alone reverse course. Nor would it matter if they could. “[A]ny agency action is always subject to displacement . . .” *Wheeler*, 955 F.3d at 80. “If

⁵ It’s unclear if the FEC can extend this deadline. *See Spannaus v. FEC*, 990 F.2d 643, 644 (D.C. Cir. 1993) (FECA’s 60-day clock to challenge dismissal runs from vote to close the file, not from notice to complainant); *CREW v. FEC*, 799 F. Supp. 2d 78, 83 (D.D.C. 2011) (the vote to dismiss “trigger[ed] Plaintiffs’ 60-day clock in which to appeal the dismissal”).

the mere possibility of displacement rendered a governing agency [action] non-final for purposes of judicial review, no [action] would ever count as final.” *Id.* If the legal consequences will flow without additional actions from the decisionmakers, then the act is final. *Id.* at 78; *see also Sackett v. EPA*, 566 U.S. 120, 127 (2012) (“The mere possibility that an agency might reconsider ... does not suffice to make an otherwise final agency action nonfinal”); *Nat’l Env’t Dev. Ass’n v. Clean Air Project v. EPA*, 752 F.3d 999, 1006 (D.C. Cir. 2014) (“An agency action may be final even if the agency’s position is ‘subject to change’ in the future.”).

Permitting an agency to defend its decisions with *post hoc* rationalizations so long as they occur in whatever time that agency declares permissible would contravene the central purpose behind the rule. “[T]o review more than the information before the [decisionmaker] at the time [they] made [their] decision risks [courts] requiring administrators to be prescient or allowing them to take advantage of post hoc rationalizations.” *Walter O. Boswell Mem. Hosp. v. Heckler*, 749 F.2d 788, 792 (D.C. Cir. 1984). For the commissioners who vote to close but did not reject the OGC’s recommendation, they are left guessing about the rationale that will eventually be crafted and presented for review. They lose any “opportunity for self-correction” that might ensure the statement reflects their actual understanding and cannot engage in “reasoned decisionmaking.” *ECU*, 69 F.4th at 920. For the other commissioners, they may take “convenient litigating positions,” *id.* at 923, without needing to persuade their colleagues that they support terminating proceedings, and may address any changes in law that occur between the vote and the statement.

D. “Contrary to Law” Review is Limited to Contemporaneous Explanations Regardless of What “Conform[ity]” Review May Permit

Lastly, the decisions of a pair of district courts regarding the timeliness of statements in answering a distinctly different question about the FEC’s actions on remand provide no reason to depart from “well-established circuit precedent.” *ECU*, 69 F.4th at 918. As the two courts

recognized, “the two modes of review”—review of a dismissal to determine if is contrary to law and the review of the agency’s actions on remand to determine if they are in conformance with a court’s order—“differ in meaningful ways.” *Campaign Legal Cntr. v. FEC*, No. 19-cv-2336, 2025 WL 315143, at *7 (D.D.C. Jan. 28, 2025), *appeal filed* Feb. 12, 2025; Order and Op. 9, *CREW v. FEC*, 22-cv-0035 (D.D.C. Nov. 10, 2025) (attached as Ex. D).

In one case, the FEC dismissed a complaint based on a “flawed and overly broad interpretation of the internet exemption.” *Campaign Legal Cntr.*, 2025 WL 315143, at *2. The district court deemed the dismissal contrary to law and ordered the Commission on remand to “sketch the bounds of the internet exemption and more fully analyze the facts before it” within thirty days. *Id.* On remand, a majority of four commissioners voted against proceeding with the OGC’s recommendation and then, joined by one more commissioner, voted to close the file effective in thirty days. *Id.* Statements of reasons issued within those thirty days—one signed by three of the “no” voting commissioners and a second by the fourth “no” voting commissioner. *Id.* Those statements justified the dismissal on remand on grounds other than the internet exemption. *Id.*

Considering whether the agency’s actions on remand conformed with the court’s order, the court concluded conformity required the commissioners only “not repeat the previously identified shortcomings.” *Id.* at *3. Because the record lacked any indication that the dismissal was “based on any misapprehension of the internet exemption,” the court concluded the agency had conformed. *Id.* at *5.

Considering the plaintiffs’ perfunctorily asserted new error in the timeliness of the statement, the court concluded the statements, which at least there issued from the majority that voted to close, likely “reflect[ed] the Commissioners’ real-time thinking” for purposes of conformity review only, and “in *this* context, [] qualify as a contemporaneous rationale.” *Id.* (emphasis added).

The second case at least considered a decision on remand due to a failure to issue a contemporaneous explanation, *see* Order and Op. 3–4, *CREW*, 22-cv-0035 (noting statement issued “four months after [the Commission’s] two votes”), but there the court found that the actions on remand conformed because it concluded its initial order was “ambiguous,” *id.* at p. 5. The court noted the “postural similarity” between the case before it and the earlier *Campaign Legal Center* case and so followed it. *Id.* Deciding conformance only required the Commission not “buck[] [the court’s] March [contrary to law] ruling,” the court noted its earlier order “did not define precisely ‘just how “contemporaneous” a “contemporaneous” statement must be.’” *Id.* at 8–9 (quoting *CREW*, 2032 WL 614887, at *12). Accordingly, it concluded that a *post-hoc* statement that was still earlier than the previous *post hoc* statement conformed with the court’s prior order. *Id.* The court noted, however, that it did not “‘perform the kind of top-to-bottom’ analysis necessary to determine whether, as a matter of law and in all cases, a statement issued” before a dismissal purportedly becomes effective “is consistent with *ECU*, *Regents*, and fundamental principles of administrative law.” *Id.* at 8 (quoting *Campaign Legal Center*, 2025 WL 315143, at *6–7).

This case calls on this Court to perform that “top-to-bottom” analysis avoided by the prior two courts. *Id.* The “foundational principle[s] of administrative law” applied in *ECU*, 69 F.4th at 921, and in decades of precedent before that case and to a myriad of other federal agencies is clear: courts review only those materials “before the agency at the time [of its] decision.” *Overton Park*, 401 U.S. at 420; *James Madison*, 82 F.3d at 1095; *Walter O. Boswell Mem. Hosp.*, 749 F.2d at 792. The Commission here decided on July 3 when a majority voted to close the file. *See* 52 U.S.C. § 30106(c). There is no in-record evidence of anything before the Commission at that time that could have led it to conclude the basis of the reason-to-believe deadlock supported rejecting the OGC’s recommendation to the contrary. Rather, the FEC has failed to satisfy the “fundamental

‘requirement of administrative law’ ... [to] ‘set forth its reasons’ for [its] decision.” *Tourus Recs.*, 259 F.3d at 737. That alone renders the dismissal arbitrary and capricious, *id.*; *Ohio*, 603 U.S. at 292, and thus contrary to law, *Orloski*, 795 F.2d at 161.

III. Three Commissioners Misinterpreted the FECA’s Conduit Standard

Leaving aside the untimeliness of the three commissioners’ explanation, it still fails to demonstrate the dismissal was not contrary to law. In relevant part, the statement shows the three commissioners relied on an “impermissible interpretation” of the FECA’s bar on conduit contributions. *Orloski*, 795 F.2d at 161. That law provides that “[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.” 52 U.S.C. § 30122. FEC regulations proscribe the same, and provide helpful examples such as “[g]iving money or anything of value, all or part of which was provided [] by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time [of] the contribution” or “[m]aking a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.” 11 C.F.R. § 110.4(b). Despite their absence in law, the three commissioners imposed two additional requirements: (1) that the transfer from the source to the intermediary occur immediately before the transfer from the intermediary to the recipient, AR00347 & n.20, AR00349,⁶ and (2) that the conduit operate under the “control” of the source, AR0348 & n.27. The law, however, does not limit disclosure to only those true sources that pre-pay their conduits or who control their intermediaries. The three commissioners’

⁶ The three commissioners did not discuss PSAA’s political committee contributions which could have only come after ACCP’s support.

interpretation otherwise was “impermissible,” and the dismissal that flowed from it was therefore contrary to law. *Orloski*, 795 F.2d at 161.

A. This Court Owes No Deference to the Three Commissioners’ Interpretation of Law

This Court reviews the relevant laws *de novo*. Although courts previously deferred to interpretations of statutes by an agency’s decisionmakers under the *Chevron* framework, the Supreme Court recently overruled that framework. *Loper Bright Enter. v. Raimondo*, 603 U.S. 369, 412 (2024) (*overruling Chevron, U.S.A., Inc. v. N.R.D.C.*, 467 U.S. 837 (1984)). The effect of that decision on the deference courts give to an agency’s decisionmakers on their interpretation of the agency’s regulations is unsettled. *See, e.g., Blue Cross & Blue Shield of Mass. v. Kennedy*, 808 F. Supp. 3d 139, 146 n.4 (D.D.C. 2025) (“[T]he D.C. Circuit has not directly addressed whether *Loper Bright* ... preserves *Kisor* [*v. Wilkie*, 588 U.S. 558 (2019)] deference.”). Nevertheless, the Court need not resolve that issue here and owes the three commissioners no deference under the *Kisor* framework, even assuming it remains good law.

First, the three commissioners’ statement lacks the “force of law” required for agency pronouncements warranting deference. *United States v. Mead Corp.*, 533 U.S. 218, 226–27 (2001). “[A] court may defer to only an agency’s authoritative and considered judgments,” not “ad hoc statements or post hoc rationalizations.” *Kisor*, 588 U.S. at 584; *see also id.* at 576 (citing *Mead*, 533 U.S. at 229–31). As discussed above, the three commissioners’ statement, created a month after the relevant decision, is a *post hoc* rationalization that cannot warrant deference. Further, even it was timely, the statement of a non-majority of the Commission is “not law.” *Common Cause*, 842 F.2d at 449 & n.32 (statements by less than a majority “would not be binding legal precedent or authority for future cases” because “[t]he statute clearly requires that for any *official* Commission decision there must be at least a 4-2 majority vote”). “To ignore this requirement

would be to undermine the carefully balanced bipartisan structure which Congress has erected.”
Id.

Second, the regulation is not “genuinely ambiguous” on these issues after a court applies “all the standard tools of interpretation,” including case law. *Kisor*, 588 U.S. at 573. The rules “unambiguously” apply to a donor “who *solicits* others to donate,” not just forces them through control, “and either advances the money *or ... reimburse[s]* them for the gifts.” *O’Donnell*, 608 F.3d at 555 (emphasis added).

Third, even if the regulation were sufficiently ambiguous, a “regulation that does not implement the statute to its full extent does not erase the statutory requirement.” *McConnell v. FEC*, 540 U.S. 93, 322 (2003) (Kennedy, J., concurring in part and dissenting in part); *see also Cmty. Television of S. Cal. v. Gottfried*, 459 U.S. 498, 516 (1983) (agency cannot “simply ‘close its eyes’ to the existence of the statute”); *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 11 (D.C. Cir. 2002) (agency may not “rely on one of its own regulations to trump the plain meaning of a statute”). As long as the statute, interpreted *de novo* by this Court, is not limited in the manner the three commissioners interpret, the dismissal is contrary to law.

Accordingly, the Court interprets both 52 U.S.C. § 30122 and 11 C.F.R. § 110.4 without deference to three commissioners’ interpretation. To the extent it finds the law or the regulation do not bear the limits the three commissioners imposed on them, it may declare the dismissal that flowed from them contrary to law.

B. The Three Commissioners’ Conduit Analysis is Contrary to Law

In dismissing Plaintiffs’ complaint, the three commissioners imposed two atextual limits on the conduit contribution bar: that sources immediately pre-pay their conduits, AR00347 n.20, AR00349, and that the conduit be under the control of the source, AR00348 & n.27. That interpretation contravenes case law interpreting the provision; it is based, if on anything at all, on a

misreading of case law that demonstrates the opposite; and it would, if implemented, undermine the FECA.

1. The Law Recognizes That Conduits Occur Through Reimbursement and Through Independent Actors

The FECA's ban on conduit contributions is "broad," *United States v. O'Donnell*, 608 F.3d 546, 552 (9th Cir. 2010): it bars any person from "mak[ing] a contribution in the name of another." 52 U.S.C. § 30122. That language covers anyone who "make[s]" a contribution through another, *id.*, regardless of the timing of the transactions or the control exerted, as courts have recognized.

In *O'Donnell*, the court squarely rejected the argument that the bar on conduit contributions applied only to advances. 608 F.3d at 550. Rather, it found that "[w]hen a defendant arranges to have an intermediary deliver a gift and promises reimbursement," the conduit contribution statute is violated "at the moment the contribution arrives" at the recipient. *Id.* at 551 (interpreting 2 U.S.C. § 441f, recodified at 52 U.S.C. § 30122). It held that the bar on conduit contributions "unambiguously applies to a defendant who solicits others to donate to a candidate for federal office in their own names and either advances the money or promises to—and does—reimburse them for the gifts." *Id.* at 555. The D.C. Circuit reached a similar conclusion in upholding convictions for false reporting where the true source of contributions reimbursed intermediaries but was not being reported as the source. *United States v. Kanchanalak*, 192 F.3d 1037, 1044 (D.C. Cir. 1999) (finding a person "make[s] a contribution" if they reimburse the intermediary); *United States v. Hsia*, 176 F.3d 517, 523 (D.C. Cir. 1999) (reinstating conduit contribution charge where donor reimbursed intermediaries); *see also United States v. Trie*, 23 F. Supp. 2d 55, 58 (D.D.C. 1998) (denying motion to dismiss charge related to conduit contributions performed through reimbursements). No court, for that matter, suggested a conduit scheme could succeed if the actors had waited a period of time between the contribution and advance or reimbursement.

The FEC, when acting as required through its majority, has similarly applied the ban on conduit contributions to non-immediate reimbursements, both before and after the decision here. *See, e.g.*, Certification, Pre-MUR 669 (Calspan) Feb. 3, 2025, https://www.fec.gov/files/legal/murs/8363/8363_10.pdf (unanimously adopting OGC’s recommendation); First General Counsel’s Report 2–3, Pre-MUR 669 (Calspan), Dec. 20, 2024, https://www.fec.gov/files/legal/murs/8363/8363_09.pdf (recommending finding violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4 over corporation’s reimbursement of contributions); Certification, Pre-MUR 640 (Aspen Lodging), Nov. 17, 2022, https://www.fec.gov/files/legal/murs/8092/8092_08.pdf (unanimously adopting OGC’s recommendation); First General Counsel’s Report, Pre-MUR 640 (Aspen Lodging), Sept. 30, 2022, https://www.fec.gov/files/legal/murs/8092/8092_07.pdf (recommending finding violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4 over corporation’s reimbursement of contributions, some occurring a year earlier). Similarly, the FEC has never required a conduit to “immediately” follow an initial contribution, *cf.* AR00347 n.20, but recognized conduits can occur over a time-span comparable to the transfers here, *see* Conciliation ¶ IV.6, MURs 7005 and 7056 (TransGas), Aug. 11, 2017, <https://www.fec.gov/files/legal/murs/7005/17044424178.pdf> (intermediary’s conduit contribution occurred two months after advance).

Similarly, courts have interpreted the ban on conduit contributions to apply even where a source does not control the intermediary. In *O’Donnell*, for example, the court recognized a conduit contribution may occur if the source “solicits” an intermediary to “transmit funds in the [intermediary’s] name.” 608 F.3d at 549. In that case, the true source solicited multiple individuals, some his employees but others were relatives, to make conduit contributions. *Id.* at 548. There was no indication the source controlled all of these individuals or that they had no free will to decline his solicitation. Rather, it was enough that the source “arrang[ed] for his money to finance the

donation.” *Id.* at 550; *see id.* at 556 (source’s “agree[ment]” to transmit funds to another to be used to make contributions in the intermediary’s name violated statute). Similarly in *Hsia*, an intermediary solicited other intermediaries to participate in a scheme and solicited a corporate source and two clients. *Hsia*, 176 F.3d at 521. There was no evidence the sources controlled any intermediary—indeed they were not even the catalysts of the scheme—yet the D.C. Circuit recognized the acts constituted an unlawful “conduit contribution scheme.” *Id.* Indeed, far from requiring control over the intermediary, courts have found conduit contributions where the source exercises no control over the funds but merely “suggest[ed]” their use to influence federal elections. *United States v. Whittemore*, 776 F.3d 1074, 1079 (9th Cir. 2025) (defendant’s “unconditional gift” constituted conduit contribution when contribution made at “suggestion of the giftor”).

The absence of any need for control is reflected in the FECA’s and FEC regulations’ treatment of contributions. The law defines a contribution as “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A). The “true source” of a contribution is the person who “initiate[s] or instigate[s] or ha[s] some significant participation in the plan or scheme to make a contribution.” FEC, *Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions*, 54 Fed. Reg. 34098, 34105 (Aug. 17, 1989).

In providing for a limit on the amount of candidate contributions, the law recognizes that “[a]ll contributions made by a person, either directly or indirectly ..., including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate” are contributions from the source. 52 U.S.C. § 30116(a)(8); *accord Buckley*, 424 U.S. at 23 n.24 (“Funds provided to a candidate or political party or campaign committee either directly

or indirectly through an intermediary constitute a contribution. In addition, dollars given to another person or organization that are earmarked for political purposes are contributions under the Act.”). FEC regulations further provide that earmarking means “a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure” being spent as earmarked. 11 C.F.R. § 110.4(b)(1); *see also* *CREW*, 971 F.3d at 354–55 (funds may be “earmarked for political purposes” even if not “earmarked to support a particular” use). Notably, and directly contravening the three commissioners’ requirement for control, the regulations provide that “[i]f a conduit or intermediary exercises any direction or control over the choice of the recipient,” that does not substitute the conduit as the source. *Id.* § 110.6(d)(2), *incorporated by reference* 11 C.F.R. § 110.4(b)(2)(i). Rather, an intermediary’s control, even over the transfer itself or the choice of recipient, simply causes the contribution to be “by both the original contributor and the conduit or intermediary,” and requires the recipient to report both. *Id.* Similarly, a political committee must report the source of contributions it receives, even if the political committee has independence from those donors and control over the ultimate use of their funds. 52 U.S.C. § 30104(b)(3)(A). Those donors made a reportable contribution by transferring funds for the purpose of influencing federal elections notwithstanding the recipient’s control over their ultimate use.

Finally, the FEC has also recognized independent entities can become involved as intermediaries in conduit schemes. In MUR 6920, the FEC signed a conciliation agreement with the American Conservative Union over its participation as an intermediary in a conduit contribution, notwithstanding the group’s self-description as the “oldest and largest conservative grassroots organization in the United States” that engaged in significant activities other than the transfer. Conciliation ¶ IV.2, MUR 6920 (ACU) Nov. 3, 2017,

<https://www.fec.gov/files/legal/murs/6920/17044434756.pdf>. The Commission recognized there was no need to demonstrate any source exercised control over ACU or its transfer of funds.

The ban on conduit contributions covers both non-immediate advances and reimbursements, and applies regardless of whether the intermediary is under the control of the source.

2. The Three Commissioners' Cited Support, to the Extent Any Exists, Rejects Their Interpretation

In rejecting this settled precedent, the three commissioners unpersuasively cite their own idiosyncratic and non-authoritative opinions, and case law that undermines their position.

First, with respect to their interpretation of the law to only prohibit immediate advances, the three commissioners cite a single prior statement by the same three commissioners. *See* AR00347 n.20, AR00349 (citing Statement of Reasons of Vice Chairman Cooksey and Comm'rs Dickerson and Trainor 2, MUR 7464 (LZP), July 7, 2023, *available at* https://www.fec.gov/files/legal/murs/7464/7464_90.pdf (“MUR 7464 Statement”). The statement of three commissioners, however, is “not law.” *Common Cause*, 842 F.2d at 449. Further, to the extent that cited statement relies on case law, it errs. *See* AR00347 n.20 (citing *O'Donnell*, 608 F.3d 546; *United States v. Boender*, 649 F.3d 650 (7th Cir. 2011); *Whittemore*, 776 F.3d 1074); MUR 7464 Statement 2 (same). *O'Donnell*, discussed above, dealt with a scheme involving both advances and reimbursements and did not address the time between the transactions. 608 F.3d at 550, 549 (a conduit contribution “occurs when *A* solicits *B* to transmit funds to a campaign in *B*'s name, subject to *A*'s promise to advance or reimburse the funds to *B*”). *Whittemore* involved a scheme to convert a “gift[]” into contributions, “most,” but not all, “within one day of receiving the money,” 776 F.3d at 1077. The decision did not discuss reimbursements and did not suggest that only the single-day turnaround contributions were unlawful, nor impose any other time constraint. *Boender* also involved a reimbursement scheme, 649 F.3d at 653, and did not address the

time between the contributions and reimbursements. None of these authorities limit the conduit ban to situations in which “*A* gives a contribution to *B* with the intention that *B* immediately transfer the funds to *C*.” AR00347 n.20.

Second, with respect to the issue of control, the three commissioners cite only a single source for this new rule: another prior statement signed by only these same three commissioners. AR00358–59 & n.27 (citing Statement of Reasons of Chairman Cooksey and Comm’rs Dickerson and Trainor at 10, MUR 8082 (“Unknown Respondents”), Apr. 8, 2024, *available at* https://www.fec.gov/files/legal/murs/8082/8082_70.pdf (“8082 Statement”), which is no more sufficient authority than the other cited three-commissioner statement. *Common Cause*, 842 F.2d at 449. Worse still, this statement itself cites nothing for its reinterpretation of the law. *See* 8082 Statement 10 (stating, without cited authority, “[u]nder 52 U.S.C. § 30122, there must be reason to believe the Contributing Corporations made their contributions at the direction of another”). *Ipsa dixit* of a non-majority of commissioners does not provide a basis to reject statutory and regulatory text, case law, and past practice. *Cf. Ctr. for Biological Diversity v. EPA*, 141 F.4th 153, 200 (D.C. Cir. 2025) (Katsas, J., concurring in part) (an agency’s “own ipse dixit . . . is no substitute for reasoned decision-making.)

Reading between the lines, it appears the three commissioners lifted this interpretation of law from the response of one of the accused in that earlier MUR. *See id.* (quoting a response as arguing the complaint failed because it did not allege conspirators “direct[ed] and control[ed] the funds through the organization to one or more ultimate recipients”). Arguments of counsel are no more law than minority-endorsed statements, but the argument is not even well founded. Rather, the respondent relied on footnote 2 of *O’Donnell*. *See* Response of Richard Alexander and Sean Jason Anderson, MUR 8082 (Unknown Respondents) Jan. 17, 2023,

https://www.fec.gov/files/legal/murs/8082/8082_47.pdf.⁷ Yet that footnote was quoting 11 C.F.R. § 110.6(d), which provides that when an intermediary exercises “direction or control,” they become a contributor *with* the original source. *O’Donnell*, 608 F.3d at 550 n.2. The *O’Donnell* court cited that provision in noting that it wasn’t deciding whether a “intermediary should *also* be understood to have made a contribution,” *id.* (emphasis added), having decided that the original source violated 52 U.S.C. § 30122 regardless of the intermediary’s independence.

The three commissioners’ inability to cite any authority in support of their reinterpretation of the conduit contribution ban underscores the fact that their interpretation is “impermissible.” *Orlowski*, 795 F.2d at 161.

3. Limiting the Conduit Ban to Advances to Controlled Entities Would Contradict its Purpose

The *O’Donnell* court recognized the plain purpose behind the conduit ban: “to ensure the complete and accurate disclosure of the contributors who finance federal elections.” *O’Donnell*, 608 F.3d at 553. The conduit contribution ban, enacted as part of the original FECA, *see* 2 U.S.C. § 440 (1970), is a vital plank in Congress’s design for “total disclosure” of “every kind of political activity.” *Buckley*, 424 U.S. at 76. The public has a right to know the “interests to which a candidate is most likely to be responsive,” including those for whom “post-election special favors [] may be

⁷ To extent the response relies on administrative authority, it cites materials not adopted by a majority of the Commission, *see* Statement of Reasons of Vice-Chair Dickerson and Comm’rs Cooksey & Trainor, MUR 7754 (Pacific Atlantic Action Coalition); First General Counsel’s Report, MUR 6485 (W Spann LLC) <https://www.fec.gov/files/legal/murs/6485/16044390492.pdf>. *but see* Certification, MUR 6485 (W Spann), Feb. 23, 2016 (rejecting recommendation 3-3) <https://www.fec.gov/files/legal/murs/6485/16044390516.pdf>, or are inapposite, First General Counsel’s Report 6, MUR 7965 (Iho Araise LLC) https://www.fec.gov/files/legal/murs/7965/7965_12.pdf (recognizing an intermediary who “merely transmitted the campaign gift” is not the “relevant contributor” for reporting purposes, but not otherwise addressing effect of independence of conduit).

given in return.” *Id.*; *see also Citizens United*, 558 U.S. at 370 (disclosure alerts voters to whether “elected officials are ‘in the pocket’ of so-called moneyed interests”).

These purposes would be undermined if the source of funds were hidden from the public—but only the public, *see McConnell*, 540 U.S. at 129 (“While the public may not [be] fully informed about the sponsorship” of spending, “candidates and officeholders often [are]”))—simply because they used reimbursements or solicited independent agents to carry out their scheme. Elected officials will be “responsive” to a source, *Buckley*, 424 U.S. at 67, as long as they “finance[d] the donation,” *O’Donnell*, 508 F.3d at 550, regardless of whether that financing came in the form of an early advance or a delayed reimbursement. And an official may reward a donor with “post-election favors,” *Buckley*, 424 U.S. at 67, even if the donor uses independent intermediaries to transfer their funds. Nor, for that matter, does a donor’s structuring a gift such that marginally less than half goes to influence elections eliminate the public’s interest in it. The public has a right to know the “sources of a candidate’s financial support” even if that source pairs every \$1 of that support with \$1.01 in non-electioneering grants, or one who is willing to see 51% diverted as the cost of (secretly) doing business. *Buckley*, 424 U.S. at 67. In each case, the donor will have transferred the funds, “all or part of which” will have gone through the intermediary to finance the electioneering, 11 C.F.R § 110.4(b)(2)(i), and will have done so for the purpose of influencing a Federal election. In each case, the original source will have “ma[d]e a contribution” requiring their identity to be disclosed. 52 U.S.C. § 30122. The substitution of another’s name, even someone also responsible, is prohibited.

CONCLUSION

The Commission dismissed Plaintiffs’ complaint with no apparent basis for doing so. The attempt by three commissioners to defend that choice with a *post hoc* rationalization fails. The statement is untimely and therefore not cognizable, and it is based on an impermissible

interpretation of law even if it were. Accordingly, Plaintiffs respectfully request that the Court enter summary judgment in their favor on claims 1 and 3 of the Complaint and declare that the dismissal was contrary to law.

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Respectfully submitted,

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