

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
45COMMITTEE, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:22-cv-01749 (APM)
)	
FEDERAL ELECTION COMMISSION, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**BRIEF OF *AMICUS CURIAE* CITIZENS FOR RESPONSIBILITY AND ETHICS IN
WASHINGTON IN SUPPORT OF DEFENDANT FEDERAL ELECTION
COMMISSION'S MOTION TO DISMISS**

STATEMENT OF INTEREST¹

Citizens for Responsibility and Ethics in Washington (“CREW”) is a nonpartisan, nonprofit corporation based in the District of Columbia and recognized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials, ensuring the integrity of those officials, protecting our political system against corruption, and reducing the influence of money in politics through a combined approach of research, advocacy, public education, and litigation.

In order to carry out its mission, and to protect both it and the public’s right to receive information to which CREW and the public are entitled, CREW regularly files complaints with the Federal Election Commission (“FEC”) when it discovers violations of the Federal Election Campaign Act (“FECA”). Publicizing violations of the FECA and filing complaints with the FEC serve CREW’s mission of keeping the public, and voters in particular, informed about individuals and entities that violate campaign finance laws and deterring future violations of campaign finance laws. Where the FEC is unwilling or unable to pursue a CREW complaint, CREW regularly seeks relief from court and has brought a civil action under its own name against wrongdoers, as permitted by the Act, and publishes information that is disclosed as a result of such actions.

¹ This brief is filed with the consent of Defendant and without objection from Plaintiff. No counsel for a party authored this brief in whole or in part, and no counsel or party funded its preparation or submission.

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INTRODUCTION

The Federal Election Commission, the “front line of campaign finance law enforcement,” is “designed ... 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); *see also FEC v. DSCC*, 454 U.S. 27, 37 (1981) (FEC is “inherently bipartisan”). The six-member Commission may have no more than three commissioners from one party, and the FECA expressly requires “[a]ll decisions of the Commission ... shall be made by a majority vote.” 52 U.S.C. § 30106(c). That bipartisan structure not only protects respondents from meritless and partisan-motivated enforcement actions; it also protects the public and complainants from having their rights violated and from having “the integrity of our electoral system” undermined when meritorious actions are ignored for partisan benefit. *CLC v. Iowa Values*, No. 21-cv-389-RCL, 2021 WL 5416635, *1 (D.D.C. Nov. 19, 2021).

Plaintiff, however, invites this Court to gut Congress’s bipartisan plan by ignoring the statutory command that the Commission may only act by majority vote. Rather, Plaintiff would have the Court confer unbridled and unquestionable authority on a partisan-aligned non-majority bloc of commissioners to decide when to exercise the Commission’s powers. Plaintiff cloaks this power-grab in revisionist “tradition[n],” Compl. ¶ 27: that cases automatically closed whenever a non-majority gridlocks a vote to proceed. But Plaintiff’s theory is untraditional, to say the least.

In contrast to Plaintiff’s telling, neither the Commission nor the Courts have ever treated a vote that fails to garner the support of a majority of the Commission as an official act of the agency. Even when there is a deadlock on the merits of opening an investigation, both the agency and the Courts have always understood that the proceedings only terminate when there is a majority vote to do so. That well-settled practice permits the FEC to continue to negotiate and

reconsider the matter; a practice that at times results in an agreement notwithstanding the prior deadlock, and even successful enforcement against respondents.

In contrast, a majority vote to close terminates the case. That is far more than a ministerial act. After a deadlock, it reflects the considered judgment of a commissioner who, despite their expressed desire to pursue enforcement, concludes that disagreement is intractable and insurmountable, or that the violation is so unimportant as to not justify further contemplation. That judgment terminates the possibility of agency enforcement against potentially serious violations. It also starts the clock on a complainant's window to challenge the FEC in court; the first step for the complainant to bring their own suit against respondents under the FECA's citizen suit provisions.

For the entirety of the FECA's history, the vote to dismiss has been a serious judgment. But it has become paramount in the last few years. Recently, a divided panel of D.C. Circuit erroneously concluded that when a majority of the Commission votes to close a matter, a different, smaller set of partisan-aligned commissioners may unilaterally preclude judicial review of that decision, notwithstanding the statute's judicial review and citizen suit provisions, by claiming the dismissal was a result of "prosecutorial discretion." *See CREW v. FEC*, 892 F.3d 434, 441 (D.C. Cir. 2018) ("*CHGO I*"); *see also CLC v. FEC*, 952 F.3d 352, 363 (D.C. Cir. 2020) (Edwards, J., concurring) ("*CHGO I*" "cannot be squared with the law of the circuit"). In the wake of that decision, a commissioner voting to close the case, despite their own judgment that the case is meritorious, is not merely terminating the possibility of agency enforcement, but also likely terminating the possibility of any judicial resolution of their disagreement with their colleagues and depriving a complainant of their right to seek private relief of their own injuries.

That is a weighty decision, hardly a ministerial act. It is a decision the FECA places squarely in the hands of only a majority of Commissioners. The entire bipartisan structure of the FEC is designed to prevent the transfer of power to enforce or to excuse to a single political party. The Court should reject Plaintiff's request to transfer that power here.

BACKGROUND

A. Statutory Background and Congress's Safeguard Against Partisan Under-Enforcement

"Congress established the [FEC] at the front line of campaign finance law enforcement." *CREW v. FEC*, 923 F.3d 1141, 1143 (D.C. Cir. 2019) (mem) ("*CHGO II*") (Pillard, J., dissenting). "To avoid agency capture, [Congress] made the Commission partisan balanced, allowing no more than three of the six Commissioners to belong to the same political party," *id.*; *see also* 52 U.S.C. § 30106(a)(1), while requiring that "[a]ll decisions of the Commission ... shall be made by a majority vote" and prohibiting any delegation of a commissioner's "vote or any decisionmaking authority" to "any person," 52 U.S.C. § 30106(c).²

In enforcement matters, the Commission shares civil enforcement authority with civil litigants who exhaust their claims with the agency. *See* 52 U.S.C. § 30107(e) ("Except as provided in section 30109(a)(8)," which section provides for citizen suits after exhaustion, "the power of the Commission to initiate civil actions ... shall be the exclusive civil remedy for enforcement of the provisions of this Act."). The agency's six-member Commission sits as a "first arbiter" of both claims brought by the agency itself and private parties' claims. *CHGO II*, 923 F.3d at 1149 (Pillard, J., dissenting).

² The Act also states that four votes are necessary to carry out certain duties, 52 U.S.C. § 30106(c), including to "conduct investigations and hearings," 52 U.S.C. § 30107(a)(9). When the Commission has its full slate of six members and all are present and voting, there is no distinction between the requirement for a majority vote and the need for vote of four members.

Under the FECA, any person who believes there has been a violation of the Act may file a sworn complaint with the FEC. 52 U.S.C. § 30109(a)(1). Based on the complaint, the response from the person or entity alleged to have violated the Act, facts developed by the Office of General Counsel (“OGC”), and any OGC recommendation, the FEC then votes on whether there is “reason to believe” a violation of the FECA has occurred. 52 U.S.C. § 30109(a)(2). A “reason to believe” exists where a complaint “credibly alleges” a violation of the FECA “may have occurred.” FEC, *Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12545, 12545 (Mar. 16, 2007).

If four commissioners find there is “reason to believe” a violation of the FECA may have occurred, the FEC must notify the respondents of that finding and “shall make an investigation of such alleged violation.” 52 U.S.C. § 30109(a)(2). The investigation “shall not be made public,” though the respondent may waive such confidentiality. *Id.* § 30109(a)(12)(A). Upon the basis of that investigation, the OGC recommends whether to find there is a “probable cause” to believe a violation occurred. *Id.* § 30109(a)(3). If four commissioners vote to find probable cause exists, the Commission “shall attempt” to conciliate with the respondent, *id.* § 30109(a)(4), failing which the Commission may institute a civil action in federal court, *id.* § 30109(a)(6). If the FEC chooses to enforce, then the private party may not bring their own suit.

The majority vote requirement and the FEC’s balance, however, “created a risk of partisan reluctance to apply the law,” *CHGO II*, 923 F.3d at 1143–44 (Pillard, J., dissenting), and “partisan gamesmanship,” *id.* at 1142 (Griffith, J., concurring); *see also CREW v. AAN*, 410 F. Supp. 3d 1, 6 (D.D.C. 2019) (“partisan deadlocks were likely to result” from Commission’s structure). A partisan bloc of commissioners could abdicate enforcement, protecting partisan allies from enforcement and censoring the public’s access to information needed for the “free

functioning of our national institutions,” *Buckley v. Valeo*, 424 U.S. 1,66 (1976), regardless of the merits of the complaint. Indeed—in contrast to the risk of baseless partisan enforcement actions, which would at least be policed by the judiciary once the FEC filed suit, 52 U.S.C. § 30109(a)(6)—in the absence of judicial review of nonenforcement and the right to bring private suits, there would be no check on partisan gridlock which could empower political allies to act with impunity.

Accordingly, the Act requires that “*all* actions of the Commission occur on a bipartisan basis.” *CHGO II*, 923 F.3d at 1142 (Griffith, J., concurring) (emphasis added); *accord* 52 U.S.C. § 30106(c). The Commission may dismiss a claim after affirmatively finding there is “no reason to believe” a violation occurred, or it may “otherwise terminate” a matter for discretionary reasons, but only by a majority vote. 11 C.F.R. § 111.9(b) (requiring “the Commission” to act); *see also* 52 U.S.C. § 30109(a) (noting “the Commission” may “vote to dismiss”); *id.* § 30106(c) (“All decisions of the Commission... shall be made by a majority vote”); *CHGO II*, 923 F.3d at 1149 (“at least four Commissioners” must concur to exercise “enforcement discretion”); 11 C.F.R. § 5.4(a)(4) (agency files published within 30 days of notice that “the Commission has voted to close [the] enforcement file”); FEC, *Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12545, 12546 (Mar. 16, 2007) (“As with other actions taken by the Commission, dismissal of a matter requires the vote of at least four Commissioners.”).

Further, though “agency enforcement decisions ‘have traditionally been committed to agency discretion,’” *FEC v. Akins*, 524 U.S. 11, 26 (1998) (quoting *Heckler v. Cheney*, 470 U.S. 821, 832 (1985)), in the FECA, Congress “explicitly indicate[d] [] the contrary” would be true for the FEC, *id.* Rather, when the FEC is “unable or unwilling” to pursue a private party’s

complaint, or otherwise “shirks its responsibility to decide,” *DCCC v. FEC*, 831 F.2d 1131, 1134, 1135 n.5 (D.C. Cir. 1987), “Congress provided for judicial review of non-enforcement, and citizen suits to press plausible claims the Commission abandons.” *CHGO II*, 923 F.3d at 1143–44 (Pillard, J., dissenting); *see also* 52 U.S.C. § 30108(a)(8)(C). Before a citizen can bring the private complaint, however, they must establish in court that the FEC’s failure was “contrary to law,” *CHGO II*, 923 F.3d at 1143–44 (Pillard, J., dissenting), rather than the result of the complaint’s lack of merit. A complainant may do that in one of two ways: by challenging a dismissal if one has occurred, or by challenging the failure to act if the FEC has neither dismissed nor enforced.

First, where a majority of the FEC dismisses a complaint, “[a]ny party aggrieved by [that] order of the Commission ... or may file a petition in the United States District Court for the District of Columbia.” 52 U.S.C. § 30109(8)(A). In such a case, the complainant must show the dismissal was the “result of an impermissible interpretation of the Act” by the FEC, or that “under a permissible interpretation of the statute, was arbitrary or capricious, or an abuse of discretion.” *Orloski v. FEC*, 795 F.2d 156, 161 (D.C. Cir. 1986). If the complainant establishes that, it shows the FEC’s dismissal did not demonstrate a lack of merit in the complaint, and thus that the complainant has exhausted their attempts to obtain an administrative remedy and may bring their plausible claim in court directly against the violator.

Second, to prevent against the possibility that a private party’s claim is simply ignored, is stymied in partisan gridlock, or the Commission is otherwise unable to act, “[a]ny party aggrieved ... by a failure of the Commission to act on [their] complaint during the 120-day period beginning on the date the complaint is filed” may seek judicial review. 52 U.S.C. § 30109(8)(A). Though the FECA “does not impose specific constraints upon the Commission to complete *final*

action” it provided for review to ensure “the Commission would fulfill its statutory obligations so that [the FECA] would not become a dead letter.” *DSCC v. FEC*, No. 95-0349(JHG), 1996 WL 34301203, at *7 (D.D.C. Apr. 17, 1996); accord *CLC v. FEC*, No. 20-cv-0809-ABJ, 2021 WL 5178968, at *7 (D.D.C. Nov. 8, 2021) (FEC’s completion of “some action” insufficient to defeat failure to act claim; FEC must keep acting expeditiously); *Citizens for Percy ’84 v. FEC*, No. 84-2653, 1984 WL 6601, at *4 (D.D.C. Nov. 19, 1984) (FEC failed to act, notwithstanding prior vote to find reason to believe, because it was followed by no further action). Accordingly, the statute requires courts to “determine whether the Commission has acted ‘expeditiously.’” *Common Cause v. FEC*, 489 F. Supp. 738, 744 (D.D.C. 1980); accord *DSCC*, 1996 WL 34301203, at *4 (FEC must conduct investigations “expeditiously” pursuant to 52 U.S.C. § 30107(a)(9)). To do that, the FEC provides to the complainant’s counsel, under a protective order, a declaration attesting to the FEC’s progress, which information the parties convey to the Court as appropriate, see, e.g., *CREW v. FEC*, 16-cv-2255-CRC (D.D.C. June 14, 2017), or the Court may permit discovery, see, e.g., *Giffords v. FEC*, 19-cv-1192-EGS (D.D.C. Oct. 9, 2019), permitting the Court to appropriately adjudicate the failure to act claim notwithstanding the FECA’s confidentiality provision, 52 U.S.C. § 30109(a)(12)(A). Accordingly, the statute’s remedy for the FEC’s failure to act on a matter expeditiously is to permit a private suit by the complainant.

The need for delay litigation, and not simply litigation after dismissals, is plain: “so long as a party is unable to obtain ... information” to which they are legally entitled, “it does not matter whether the information is out of reach because the FEC denied the party’s administrative complaint or because the FEC has yet to act.” *CREW v. FEC*, 19-cv-2753-RCL (D.D.C. Feb. 5, 2021) (quoting *Akins*, 524 U.S. at 21 (“The ‘injury in fact plaintiffs have suffered consists of

their inability to obtain information.”). Until a bipartisan majority of the Commission or a court of law determines a complaint lacks legal merit, any delay in resolving that complaint continues to deprive the complainant and the public a remedy to a plausible injury. Accordingly, where a private plaintiff is unable to obtain a legally correct decision by a bipartisan majority of the Commission on the merits of their complaint, the law provides that they have exhausted their administrative remedies and may seek relief directly in civil court.

B. Attempts to Gut Congress’s Intended Safeguard Against Partisan Under Enforcement

Until recently, these provisions ensured private parties could seek judicial review and protected their right to bring their own plausible claim in civil court against a respondent. *See, e.g., AAN*, 410 F. Supp. 3d at 6–7. Starting in 2018, however, steps have been taken to gut Congress’s provisions for private enforcement of the FECA.

The opportunity arose when a divided panel of the D.C. Circuit erroneously granted a minority of the Commission the unilateral power to preclude judicial review of FEC dismissals. *See CHGO I*, 892 F.3d at 441. Before that decision, the FECA’s provision for review of dismissals permitted review of all FEC dismissals, regardless of the reasons given. *See Akins*, 524 U.S. at 25 (ordering review of FEC dismissals that are “discretionary agency [nonenforcement] decisions”); *DCCC*, 831 F.2d at 1133–34 (the FECA did not “confine the judicial check to cases which ... the Commission acts on the merits”). That included cases where a majority of the Commission voted to close the file due to gridlock on a reason-to-believe or probable-cause vote. *See DCCC*, 831 F.2d at 1134. In those cases, the court would look-through the majority vote-to-close to the analysis provided by the blocking commissioners, recognizing that the commissioner casting the decisive vote—the vote that turns a split into a majority—did not agree with their colleagues’ view on the underlying merits, but chose to dismiss to submit

their colleagues' interpretations of law to judicial review. *See Common Cause v. FEC*, 842 F.2d 436, 449 (D.C. Cir. 1988) (“Requiring a statement of reasons by the declining-to-go-ahead Commissioners at the time when a deadlock vote results in an order of dismissal” is “necessary to allow meaningful judicial review” of “[w]hether the[ir] disagreement ... arises from a dispute about what the governing legal principle is or about how an agreed upon principle should be applied to particular facts”). In such a case, however, courts recognized the statement of the blocking commissioners does not reflect the agency's—i.e., the majority's—view of the law, merely the interpretation that has led to an intractable and insurmountable disagreement. The statement is “not law.” *Id.* at 449 & 449 n.32 (statements joined by less than a majority of commissioners “would not be binding legal precedent or authority”).

A recent divided panel decision of the D.C. Circuit, however, erroneously created a carve out from this review. It gave “a non-majority of the commissioners enforcement discretion” over whether dismissals approved by the majority would be subject to judicial review. *CHGO II*, 923 F.3d at 1150 (Pillard, J., dissenting). That decision has left commissioners faithfully executing the law in a dilemma—if they vote to dismiss to submit to judicial review their fellow commissioners' rationale for blocking an investigation, those fellow commissioners can subsequently and unilaterally claim prosecutorial discretion to terminate any judicial review. That would block not only FEC enforcement, but terminate private Americans' ability to seek relief for deprivation of their legal rights as well. Understandably, that has left commissioners hesitant to close cases and grant their colleagues unilateral power to determine who can be held accountable.

Though the divided D.C. Circuit decision effectively repealed Congress's plan to submit dismissals to judicial review, it left in place Congress's plan to permit private suits where the

FEC fails to act on the complaint. Nonetheless, groups like Plaintiff are working to close that last remaining door to enforcement through revisionist history that would make a failed deadlocked vote the equivalent of a majority vote to terminate—a vote that is now unreviewable under current doctrine.

Until fairly recently, the universal consensus was that deadlocks result in nothing. For example, as late as August 28, 2020, a Republican commissioner of the FEC admitted that “[w]ithout four votes to close the file, the matter remains in limbo.” Statement of Chair of Chair James E. “Trey” Trainor III on the Dangers of Procedural Disfunction (Aug. 28, 2020), <https://perma.cc/W8QV-R7QP>. On April 1, 2021, the Republican commissioners proposed to change those rules to grant themselves unilateral power over enforcement—at least acknowledging their proposal was a change from the status quo—by providing that if there are “not four affirmative votes to” proceed (i.e., when the three voted against enforcement), then “the file will be closed unless the Commission votes to keep the file open.” FEC, Agenda Item 21-21-A, <https://perma.cc/Z7ZA-YMBZ>. That proposal failed. FEC, Certification (Agenda Item 21-21-a) (Apr. 22, 2021), <https://perma.cc/E8CP-DPRH>. Republican FEC Commissioner and Chair Allen Dickerson’s former employer, an entity that strongly disfavors FEC enforcement, acknowledged that in the absence of the rule change, the status quo remained: “[n]either the FECA nor the Commission’s regulations specify that a matter terminates when commissioners tie 3-3 on whether reason exists to believe the respondent violated the Act.” Institute for Free Speech *Amicus Curiae* Brief at 4, *CLC v. FEC*, 20-cv-809-ABJ (D.D.C. Aug. 16, 2021).

A few months later, however, litigants discovered some newfound “histor[y]” to argue that a deadlocked reason-to-believe vote *automatically* closed a case, with votes to close the file being a mandatory “ministerial” act over which commissioners may exercise no judgment or

discretion. *See* Mot. to Dismiss of Def. Josh Hawley for Senate at 13, *Giffords v. NRA*, 21-cv-2887-EGS (D.D.C. Jan. 21, 2022); *see also* *Amicus Curiae* Brief of 45Committee at 2, *CLC v. FEC*, No. 20-cv-0809 (D.D.C. Jan. 7, 2022) (claiming “a split vote on whether to initiate enforcement ... in practical terms, results in an agency ‘action’ terminating the complaint”). That claim has now been taken up and repeated by Mr. Dickerson who now claims a vote to dismiss is a mere ministerial and meaningless act acknowledging a termination that already occurred. *See* Statement of Reasons of Chairman Allen J. Dickerson at 1 (MUR 7422 Greitens for Missouri) (May 13, 2022), <https://perma.cc/EMG9-XT37>. And the claim has now been taken up by Plaintiff here.

The implications of this revisionist history are readily apparent: it would work a wholesale transfer of the enforcement powers of the FEC to a partisan non-majority of commissioners, contrary to the FECA’s express terms. *See* 52 U.S.C. § 30106(c). In violation of the Commission’s “inherently bipartisan” nature, *DSCC*, 454 U.S. at 37, a partisan bloc of commissioners could unilaterally prevent enforcement of any provision, for whatever reason, and do so without any accountability to the courts or the American people.

ARGUMENT

Plaintiff’s claim here rests on an erroneous assertion: that “if fewer than four Commissioners decide to vote to find reason to believe a violation of law occurred based on the administrative complaint, it terminates the matter.” Compl. ¶ 30. Based on that, it claims that the Commission’s majority vote to close the file “is a purely ministerial and legally insignificant act.” *Id.* Plaintiff is wrong. Though the FECA requires four affirmative votes to proceed with an investigation, it also requires a majority of the Commission to take any step, including to dismiss the case. *See* 52 U.S.C. § 30106(c).

Longstanding and universally recognized practice at both the FEC and in the courts has recognized that a dismissal occurs only when a majority of the Commission votes to dismiss, and that vote “involves judgment, planning, [and] policy decisions.” *Swan v. Clinton*, 100 F.3d 973, 977 (D.C. Cir. 1996). It is not a ministerial vote so “plainly prescribed as to be free from doubt and equivalent to a positive command.” *Consol. Edison Co. of N.Y. Inc. v. Ashcroft*, 286 F.3d 600, 605 (D.C. Cir. 2002). Rather, it is a vote that reflects the considered judgment that contemplation and negotiation among the Commission is at an end; that disagreement is so intractable and insurmountable that a commissioner who believes an investigation is warranted nevertheless has concluded that any hope of enforcement has been extinguished. Indeed, in the wake of the erroneous *CHGO I* decision, that vote not only terminates administrative enforcement or a meritorious complaint, but precludes even private enforcement that Congress created as a failsafe for agency inaction.

History and practice show a deadlock does not automatically necessitate such a result. The Commission—and indeed the same set of commissioners—often reconsiders matters that have deadlocked, in some cases even pursuing enforcement over previously deadlocked claims. In short, in contrast to the revisionist “tradition[n]” Plaintiff posits, Compl. ¶ 27, the history and practice of the FEC, universally recognized in the courts, has been to treat only a majority vote of the Commission to terminate a case as a dismissal.

A. A Deadlocked Reason-to-Believe or Probable-Cause Vote Has Never Automatically Dismissed a Case – A Separate Majority Vote to Terminate Has Always Been Needed

Plaintiff erroneously suggests that, historically, a reason-to-believe vote or a probable cause vote that garners fewer than four votes automatically closed a pending matter. Rather, the FEC has always required an affirmative vote of a majority of the Commission to terminate a case, *see* 11 C.F.R. § 111.9(b) (the “Commission” terminates, not a non-majority of

commissioners), and it is only the vote that wins majority support that constitutes “a[n] *official* Commission decision.” *Common Cause*, 842 F.2d at 449 n.32.³

For example, in *Common Cause v. FEC*, the authority on which Plaintiff principally relies for their automatic closure supposition, the court referred to a “deadlock dismissal” in Matter Under Review 1252. *See* 842 F.2d at 438, 448 (referring to complaint against NCCC and AEP). In that case, plaintiffs challenged a “3-3 deadlock among the Commissioners that resulted in a dismissal.” *Id.* at 438. The plaintiffs filed their lawsuit on August 1, 1983. *Id.* at 439. Just as today, the FECA then required that any lawsuit challenging a dismissal be filed “no later than 60 days after such dismissal.” 2 U.S.C. § 437g(a)(9)(B)(i) (1983).⁴ The deadlock the plaintiff challenged, however, occurred on September 3, 1980, *see* Certification, MUR 1252 (Am. for An Effective Presidency) (Sept. 17, 1980), *available at* page 982-84, <https://perma.cc/Y58V-GE4W>, well outside the statute’s 60-day window for suit. Nonetheless, even though the challenged deadlock occurred in 1980, the suit was timely because majority vote to dismiss that terminated the FEC’s proceedings and started the clock on the complainant’s opportunity to sue occurred in 1983. *See* Certification, MUR 1252/1299 (Am. for An Effective Presidency) (May 24, 1983), *available at* page 28-29, <https://perma.cc/56RH-ULU7>. In other words, the deadlock did not automatically dismiss either the case or the claims against the two respondents. Rather, the

³ *New Models* is not to the contrary. There, the Court found that the FECA’s express four-vote threshold requirement for starting investigations did not apply to votes to terminate cases. *CREW v. FEC*, 993 F.3d 880, 891 (D.C. Cir. 2021) (“*New Models*”) (discussing 52 U.S.C. § 30107(a)(6) and stating “[a] decision to initiate enforcement, but not to decline enforcement, requires the votes of four commissioners”). But the Court did not address the baseline requirement that “all decisions of the Commission” occur by “a majority vote.” 52 U.S.C. § 30106(c). Where the full slate of six members is present and voting, the requirement for four votes and the requirement for a majority vote are one and the same.

⁴ *Common Cause* was notified of the dismissal on June 28, 1983. *See* Letter from Kenneth A. Gross, Associate General Counsel, to Michael L. Burack and Roger M. Whitten, Counsel for Common Cause, Re: MUR 1252/1299 (NCCC) (June 28, 1983), *available at* page 3, <https://perma.cc/QW7K-PT47>. At the time, precedent indicated that the “sixty-day review period commences on the date the complainant actually receives notice of the decision to dismiss.” *Common Cause v. FEC*, 630 F. Supp. 508, 508 (D.D.C. 1985). The D.C. Circuit eventually reversed that rule in 1993, clarifying that “the 60-day review period runs from the ‘date of dismissal.’” *Spannaus v. FEC*, 990 F.2d 643, 644 (D.C. Cir. 1993) (quoting 2 U.S.C. § 437g(a)(8)(B)).

dismissal did not occur until there was a majority vote to close the file. Before that point, the case was still pending at the FEC.

More recent authority accords. For example, Plaintiff's other authority for "deadlock dismissal[s]," *New Models*, 993 F.3d at 891, itself considered a case where the deadlock and the vote to close occurred the same day. *See* Certification, MUR 6872 (*New Models*) (Nov. 14, 2017), <https://perma.cc/6M5J-XHC6>. But *New Models* relied entirely on *CHGO I*, *New Models*, 993 F.3d. at 885, and in *CHGO I*, the court addressed a case in which the underlying deadlock occurred well outside the 60-day window for review, *see* *CREW v. FEC*, 236 F. Supp. 3d 378, 387 (D.D.C. 2017) (noting "[i]n September 2014, ... [t]he Commission deadlocked with respect to the alleged failure to register as a political committee"); Amended Certification, MUR 6391 & 6471 (*CHGO*) (Sept. 16, 2014), <https://perma.cc/7S4Q-W6SA>. The dismissal, however, occurred on October 1, 2015 by a 5-1 vote, *see* *CHGO I*, 892 F.3d at 436; *CREW*, 236 F. Supp. 3d at 388 ("Facing deadlock, the Commission voted 5-1 to close the file."); Certification, MUR 6391 & 6471 (*CHGO*) (Oct. 1, 2015), <https://perma.cc/FRR7-9K5V>. *CREW* challenged that dismissal on November 23, 2015, *see* Complaint, No. 15-cv-2038 (D.D.C. Nov. 23, 2015), within sixty days of the October 1 dismissal, but well past 60-days after the 2014 deadlock.

The D.C. Circuit recognized that the dismissal occurred "in 2015," not in 2014 when the deadlock occurred. *CHGO I*, 892 F.3d at 436. It also recognized that the dismissal was the majority vote "to close the file" that gave rise to the possibility of judicial review, not the earlier deadlock. *Id.* at 441 n.13.

Indeed, if Plaintiff were correct here that a deadlock automatically causes a dismissal, then *CREW*'s claims against *CHGO* were dismissed in September 2014 when the Commission first deadlocked at the reason-to-believe vote, and the sixty-day window closed before *CREW*

sued. If that were the case, the courts lacked subject matter jurisdiction in *CHGO I*, and that would mean *CHGO I* is an invalid decision lacking any precedential weight and must be vacated. *See Jordan v. FEC*, 68 F.3d 518, 518 (D.C. Cir. 1995) (failure to sue within 60-day window from dismissal “deprived [the] court of jurisdiction”); *see also B&B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 164 (2015) (Stevens, J., dissenting) (“A court not ‘legally constituted’ lacked jurisdiction to enter a legally binding judgment, and thus any such judgment could have no preclusive effect.” (citing 2 H. Black, *Law of Judgments* § 516, p. 614 (1891)); *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 510 (2006) (“If the limitation conditions subject-matter jurisdiction, ... then ... [it] would require erasure of the judgment....”). Plaintiff, however, is not correct.

DCCC, 831 F.2d 1131, similarly accords with the well understood rule that a dismissal occurs when a majority votes to close the file, not when there’s a deadlock. That case concerned MUR 2116. *See id.* at 1132 (considering *DCCC* complaint against the NRCC filed December 1985); Complaint, MUR 2116 (NRCC) (Dec. 20, 1985), *available at pages 139–47*, <https://perma.cc/VR8N-USDC>. In that matter, the FEC deadlocked 3-2 on the vote to find reason to believe, but then voted 6-0 to “[c]lose the file” on the same day. *Id.* at Certification, MUR 2116 (NRCC) (June 5, 1986), *available at page 14*. There was no automatic “deadlock dismissal,” *cf.* Compl. ¶ 25, but rather a dismissal resulting from a majority vote of the Commission.

Plaintiff’s remaining authority, *FEC v. NRSC*, 966 F.2d 1471 (D.C. Cir. 1992), is consistent with this rule. The case concerned MUR 2282, *see id.* at 1476, in which the Commission deadlocked 3-3 on a probable cause vote, *see* Certification ¶ 1, MUR 2282 (NRSC) (July 26, 1988), *available at page 557*, <https://perma.cc/5LWL-VEGX>, and then approved a conciliation agreement on other claims, *see id.* ¶ 7. But the case only terminated when the

Commission voted 4-0 later that year to “[c]lose the file.” Certification, MUR 2282 (NRSC) (Dec. 23, 1988), *available at* page 568, <https://perma.cc/BEQ7-4PMH>, and notified the complainant shortly thereafter, *see* Letter from Lawrence M. Noble to Roger M. Witten, Re: MUR 2282 (NRSC) (Dec. 29, 1988), *available at* page 565, <https://perma.cc/EKU2-5ZNT>. The complainant filed suit on February 27, 1989, *Common Cause v. FEC*, 729 F. Supp. 148, 151 (D.D.C. 1990), within 60 days of the notification. No party or court suggested the complaint was untimely because the termination occurred at the time of the July deadlock, rather than the December vote to close the matter.

Courts have universally recognized that a dismissal occurs only when there is a majority vote to close the file. *See Jordan*, 68 F.3d at 519 (“The Commission voted to dismiss Jordan’s complaint on July 24, 1991”) *and* Certification, MUR 3178 (Handgun Control PAC) (July 24, 1991), *available at* page 195, <https://perma.cc/G952-TAXW> (5-0 vote to “[c]lose the file”); *Spannaus*, 990 F.2d at 644 (“[T]he date of dismissal was January 9, 1991”) *and* Certification, MUR 2163 (Am. Jewish Comm.) (Jan. 9, 1991), *available at* page 618, <https://perma.cc/92CJ-6UD2> (6-0 vote to “[c]lose the file”); *CREW v. FEC*, 799 F. Supp. 2d 78, 83 (D.D.C. 2011) (“[T]he FEC voted to dismiss MUR 5908 on June 29, 2010, thereby triggering Plaintiffs’ 60-day clock in which to appeal the dismissal”) *and* Certification, MUR 5908 (Peace Through Strength PAC) (June 29, 2010), <https://perma.cc/VZ5R-NWNU> (5-0 vote to [c]lose the file”).

The majority vote to “clos[e] the file” is what “terminat[e] [the FEC’s] proceedings.” *Doe, 1 v. FEC*, 920 F.3d 866, 871 n.9 (D.C. Cir. 2019). Until then, it is still pending with the FEC and awaiting action.

The fact that a deadlock can motivate a decisive vote to close the file, notwithstanding a commissioner’s previous vote to pursue an investigation, is unsurprising. *But see* FEC, Thirty

Year Report (Sept. 2005), <https://perma.cc/NK3N-UZLT> (“The vast majority of tie votes do not result in the closure of the enforcement matter; instead, the matter is usually continued with the terms of the case revised and with a consensus achieved.”). Yet that does not mean the deadlock is itself a dismissal. *Cf. CREW*, 236 F. Supp. 3d at 388 (“Facing deadlock, the Commission voted 5-1 to close the file.”). The statute still requires any action, including dismissal, garner a majority vote. 52 U.S.C. § 30106(c). Plaintiff cites no case in which the mere deadlock itself, absent a majority vote, terminated a case.

B. The Commission Can and Does Engage in Further Actions After a Deadlock: It Need Not Dismiss

Plaintiff contends that, even if a majority vote to terminate a case is a necessity, it is a “legally insignificant” ministerial one that is mandatory once the Commission has deadlocked. Compl. ¶ 30. But, as with their supposition that deadlocks automatically dismiss cases, they are wrong that a deadlock necessitates one action—a dismissal. Rather the Commission has a long history of considering and acting on cases even after a deadlock, including enforcement.

For example, in MUR 6920, the Commission deadlocked 3-3 on all claims when it first considered the case. *See* Certification, MUR 6920 (ACU) (Dec. 6, 2016), <https://perma.cc/T982-YLDF>. It then voted 3-0 on a subset of those claims, *id.*, failing to garner the four votes needed to proceed, 52 U.S.C. § 30106(c). Nevertheless, as there was no majority vote to close the file, the same commissioners reconsidered the issue a month later, and voted 6-0 to find reason to believe on the same set of claims that it had deadlocked on one month earlier. *See* Certification, MUR 6920 (ACU) (Jan. 24, 2017), <https://perma.cc/SST6-2TR2>. The difference, it appears, was the Factual and Legal Analysis—the justification for the vote the FEC issues to the respondents—was changed between the two votes. *Compare* Certification No. 4, MUR 6920 (ACU) (Jan. 24, 2017) *with* Certification No. 1. d., MUR 6920 (ACU) (Dec. 6, 2016). Clearly

the deadlock did not prevent the commissioners from negotiating the matter and coming to agreement on the legal analysis. Eventually, the Commission approved a conciliation with the respondents and closed the file by a 5-0 vote, *see* Certification, MUR 6920 (ACU) (Oct. 24, 2017), <https://perma.cc/T9YE-H587>, imposing a \$350,000 fine on the respondents, *see* Conciliation ¶ VII.1., MUR 6920 (ACU) (Oct. 31, 2017).

The Commission’s practice in MUR 6920 is not unique. For example, in MUR 4012, the Commission failed to garner four votes to find probable cause. *See* Certification, MUR 4012 (Freedom’s Heritage Forum) (Feb. 10, 1998), <https://perma.cc/P8U9-ARLV>. Nonetheless, it then voted 4-1 to find probable cause on a similar set of charges, *see id.* (omitting finding respondents “knowingly and willfully” violated statute). Eventually, the Commission authorized a civil suit against the respondents, Certification, MUR 4012 (Freedom’s Heritage Forum) (May 27, 1998), <https://perma.cc/X7F5-NYGZ>, leading an a civil judgment against them, Agreed Order, *FEC v. Freedom’s Heritage Found.*, No. 3:98-cv-00549-CRS-JDM (W.D. Ky. Aug. 12, 2003).

Such post-deadlock proceedings are quite common:

- *See* Amended Certification, MUR 7613 (Zekelman Indus.) (Apr. 6, 2022), <https://perma.cc/9SHU-NJJ5> (5-1 vote to enter into conciliation agreement), Certification, MUR 7613 (Zekelman Indus.) (July 15, 2021), <https://perma.cc/SZ5Y-9RB7> (3-3 deadlocks on reason to believe);
- Certification, MUR 7465 (Freedom Vote) (Nov. 9, 2021), <https://perma.cc/JY74-52GU> (4-1 vote to close the file after investigation); Certification, MUR 7465 (Freedom Vote) (July 25, 2019), <https://perma.cc/L2FL-PCM5> (initial 2-2 deadlock on reason to believe, followed by 4-0 vote to find reason to believe and open investigation);
- Certification, MUR 7577 (Ander PAC) (Sept. 8, 2021), <https://perma.cc/TT6X-LMX6> (6-0 vote to accept conciliation agreement); Certification, MUR 7577 (Ander PAC) (Feb. 25, 2021), <https://perma.cc/EG6G-R3WA> (series of 3-3 deadlocks on reason to believe votes, followed for 4-2 vote to find reason to believe);

- Certification, MURs 7058, 7228, 7233 (Hunter for Congress) (July 15, 2021), <https://perma.cc/QXS7-U59L> (deadlock on reason to believe votes, then 6-0 vote to enter into pre-probable cause conciliation);
- Certification, MURs 7324, 7332 & 7366 (A360 Media, LLC) (Apr. 8, 2021), <https://perma.cc/PC8M-RAFK> (approving pre-probable cause conciliation agreement); Certification, MURs 7324, 7332, 7364, & 7366 (A360 Media, LLC) (Mar. 11, 2021), <https://perma.cc/4QZ7-AL2C> (deadlocked 3-3 on reason to believe claims, then voted 6-0 to find reason to believe);
- Certification, MUR 7350, 7351, 7357, 7382 (Cambridge Analytica LLC) (July 24, 2019), <https://perma.cc/Q3ZL-A3X9> (4-0 vote to find reason to believe); Certification, MUR 7350, 7351, 7357, 7382 (Cambridge Analytica LLC) (Apr. 11, 2019), <https://perma.cc/C94L-HTHA> (failed 2-0 vote to find reason to believe);
- Certification, MUR 6623 (Scalise for Congress) (July 31, 2012), <https://perma.cc/V88W-D6DV> (deadlocked 3-3 vote on claims, followed by 5-1 vote to find reason to believe on same claims without a finding of knowing and willful violation by one respondent);
- Certification, MUR 6078, 6090, 6108, 6139, 6142, & 6214 (Obama for America) (Dec. 7, 2012), <https://perma.cc/R5QT-TRPS> (6-0 vote to enter conciliation with respondents); Certification, MUR 6078, 6090, 6108, 6139, 6142, & 6214 (Obama for America) (Mar. 20, 2012), <https://perma.cc/54S9-BX7K> (deadlocked 3-3 reason to believe vote followed by 6-0 reason to believe vote on same claim); Certification, MUR 6078, 6090, 6108, 6139, 6142, & 6214 (Obama for America) (Aug. 24, 2010), <https://perma.cc/45M4-KGZY> (deadlocked 3-1 reason to believe vote followed by majority 4-0 reason to believe vote on same claims);
- Certification, MUR 5642 (Soros) (Apr. 18, 2006), <https://perma.cc/WS6C-GDTC> (deadlocking 3-3 reason-to-believe vote, followed by 5-1 reason to believe vote on lesser included claim to prior vote);
- Certification, MUR 5754 (MoveOn PAC) (Sept. 28, 2004), <https://perma.cc/UJH7-678F> (affirmative 5-1 vote to find reason to believe against MoveOn PAC); Certification, MUR 5754 (MoveOn PAC) (Sept. 14, 2004), <https://perma.cc/27G6-Y7L9> (deadlocked 3-2 reason to believe vote against MoveOn PAC).

In fact, a review of closed MURs released since the FEC regained its quorum in December 2020 shows that at least 98 matters exhibited post-deadlock majority votes other than a vote to close the file.⁵

Conversely, a majority of the Commission may vote to close the file for reasons other than the deadlock on the merits. For example, in MUR 5712, the Commission deadlocked on a vote to find probable cause. *See* Amended Certification, MUR 5712, 5799 (McCain) (Mar. 18, 2009), <https://perma.cc/U3E3-2PZ7>. A majority of the Commission, however, then decided to exercise prosecutorial discretion to dismiss the case, and followed that up with a 6-0 vote to close the file. *Id.* Similarly, in MUR 7181, the Commission initially deadlocked 3-3 on a vote to

⁵ *See* MUR 7958 (Steve C. Watkins); MUR 7949 (Crown Prod. & Serv., Inc.); MUR 7948 (Grassroots Victory PAC); MUR 7927 (Kennedy for Mass.); MUR 7922 (Bryan Williams); MUR 7920 (Oklahomans For Truth); MUR 7916 (Rebuilding Am. Now); MUR 7896 (Integrity NJ); MUR 7895 (DNC Serv. Corp.); MUR 7890 (Serv. Tire Truck Cntr.); MUR 7878 (Crystal Run Health); MUR 7877 (Tenn. Dem. Party); MUR 7876 (Lauren Boebert for Congress); MUR 7843 (Marathon Petroleum Co.); MUR 7835 (WMTW-TV); MUR 7803 (Collins for Sen.); MUR 7801 (Louis DeJoy); MUR 7793 (Louis DeJoy); MUR 7769 (Jill Stein for Pres.); MUR 7763 (Casper for Colo.); MUR 7748 (To Elect Jenny Marshall); MUR 7747 (Rev. Ruben Diaz for Congress); MUR 7712 (Tom Steyer 2020); MUR 7696 (Texas for Sen. John Cornyn, Inc.); MUR 7695 (Jeff Coleman for Congress Inc.); MUR 7682 (Honor Bound PAC); MUR 7679 (Jeff Coleman for Congress, Inc.); MUR 7651 (Troy Nehls); MUR 7648 (Troy Nehls); MUR 7640 (Christine O'Donnell); MUR 7635 (Joaquin Castro); MUR 7632 (Susan B. Anthony List); MUR 7626 (Justice Democrats PAC); MUR 7623 (Make America Great Again); MUR 7613 (Zekelman Indus., Inc.); MUR 7603 (Wyoming Republican Party, Inc.); MUR 7601 (Kansas Democratic Party); MUR 7592 (Justice Democrats PAC); MUR 7580 (Justice Democrats PAC); MUR 7577 (Ander PAC); MUR 7575 (Justice Democrats PAC); MUR 7572 (Hawaii Democratic Party); MUR 7567 (Howard Schultz); MUR 7535 (Leah for Senate); MUR 7522 (Citizens for Waters); MUR 7510 (Katie Arrington for Congress); MUR 7479 (Keeping Am. in Republican Control PAC); MUR 7465 (Freedom Vote, Inc.); MUR 7449 (DNC Serv. Corp.); MUR 7401 (Citizens for Trump); MUR 7382 (Thom Tillis Cmmt.); MUR 7366 (A360 Media, LLC); MUR 7357 (John Bolton Super PAC); MUR 7354 (Friends of Chris McDaniel); MUR 7351 (Cambridge Analytica LLC); MUR 7350 (Cambridge Analytica LLC); MUR 7344 (Conservative Leadership for Az.); MUR 7343 (Highway 31); MUR 7332 (A360 Media, LLC); MUR 7324 (A360 Media, LLC); MUR 7291 (DNC Serv. Corp.); MUR 7284 (AB PAC); MUR 7274 (Internet Research Agency); MUR 7271 (Dem. Nat'l Cmmt.); MUR 7268 (Donald J. Trump); MUR 7243 (Citgo Petro. Corp.); MUR 7233 (Duncan D. Hunter); MUR 7228 (Duncan D. Hunter); MUR 7226 (Michael Fleck); MUR 7207 (H. Russell Taub); MUR 7196 (Jesse Benton); MUR 7194 (Unknown Respondent); MUR 7191 (Freedom for All Americans); MUR 7181 (Independent Women's Voice); MUR 7180 (GEO Corrections Holdings, Inc.); MUR 7165 (Jesse Benton); MUR 7153 (Hillary for America); MUR 7147 (Make American Number 1); MUR 7140 (Americans for Sensible Solutions PAC); MUR 7062 (Ro for Congress, Inc.); MUR 7058 (Duncan D. Hunter); MUR 6983 (John R. Kasich); MUR 6955 (John R. Kasich); MUR 6929 (Scott Walker); MUR 6197 (Scott Walker); MUR 6828 (Cal Voters for Honest Government); MUR 6800 (Ron Paul 2012 Presidential Campaign Cmmt.); MUR 7422 (Greitens for Missouri); MUR 7310 (Mark Takai for Congress); MUR 6850 (Friends of Mike Lee); MUR 7970 (Washington State Dem Central Cmmt.); MUR 7971 (Indiana Dem. Congressional Cmmt.); MUR 7972 (ProgressNow AZ); MUR 8013 (Kristine Schanbacher for Congress); MUR 7824 (Letlow for Congress); MUR 7879 (NRA Victory Fund, Inc.); MUR 7900 (Mensah Real Estate Property); MUR 7320 (Libertarian Party of Miami-Dade).

find reason to believe. Certification, MUR 7181 (Independent Women’s Voices) (Feb. 9, 2021), <https://perma.cc/8AR8-TDCM>. Nonetheless, a majority then voted to dismiss the matter as an exercise of prosecutorial discretion, and the Commission then unanimously voted to close the file. *Id.* The subsequent votes to exercise prosecutorial discretion would have been improper and invalid if the deadlock on the reason-to-believe votes mandated immediate termination of the case without any further consideration, as Plaintiff contends here.

Nor does the potential drafting of a statement of reasons have any impact on the effect of a deadlock. *Cf.* Compl. ¶ 50. Neither the FEC nor any court has ever considered the existence of a drafted statement of reasons as a having any legal effect prior to a dismissal. Indeed, a draft statement of reasons *must exist before* the vote to close the file to be properly part of the administrative record that a court can review. *See, Environmental Def. Fund, Inc. v. Costle*, 657 F.2d 275, 284 (D.C. Cir. 1981) (the administrative record consisted of materials “before the agency at the time the decision was made”). The law requires the commissioners supporting dismissal to draft such a statement and to submit it to the consideration to the Commission before the Commission would vote to dismiss. Post-hoc statements issued by fewer than the majority of the commissioners who voted to close the file would be a “rational[e] offered by [some]one other than the proper decisionmakers,” *Loc. 814, Int’l Bhd. of Teamsters v. NLRB*, 546 F.2d 989, 992 (D.C. Cir. 1976), designed with an eye solely to securing a benefit in litigation, *cf. CHGO I*, 892 F.3d at 438 n.5 (“An agency cannot *sua sponte* update the administrative record when an action is pending.”).

In sum, although a deadlock can motivate a majority of the commissioners to vote to dismiss a case, it does not always do so. Whether the Commission dismisses is not up to the half who voted against proceeding, and thus their views about whether the case is over or not are

irrelevant. Rather, it is up to the considered judgment of the decisive commissioner—a commissioner who has already voted for the case to proceed but who must now decide whether to continue to push and persuade their colleagues or wait for a change in the law or circumstances that may alter their vote, or decide whether to close the file and turn the matter over to the complainant to seek judicial review and, potentially, to bring their own civil action. That decision, like “all [other] decisions of the Commission with respect to the exercise of its duties and powers,” cannot be delegated to any person, including to the commissioner’s colleagues. *See* 52 U.S.C. § 30106(c).

CONCLUSION

Plaintiff’s suit rests on an erroneous premise—that any potential deadlock on a reason-to-believe vote automatically and necessarily terminated the agency proceedings against them. Not so. A termination, like any FEC action, requires a majority vote. A deadlock, by definition, means there is no majority. A deadlock means only that the matter remains pending, a subject for renegotiation or reconsideration, and agency enforcement remains a possibility. Only when a majority of commissioners make the considered judgment that disagreement is intractable and insurmountable would they exercise their vote to close the case. That decision is all the weightier in light of the recent erroneous D.C. Circuit precedent that delegated the majority’s exercise of unreviewable discretion to a non-majority, depriving a private complainant with a meritorious claim of not only an administrative remedy, but also the right to seek redress for their injuries in court. The statute requires such a weighty decision to be made by a majority of the bipartisan agency. This court should decline Plaintiff’s invitation to ignore the statute, upend Congress’s careful bipartisan structure for the FEC, and permit a partisan minority to usurp enforcement of federal campaign finance law.

Dated: August 29, 2022

Respectfully submitted,

/s/ Stuart McPhail

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Local Rule of the District of Columbia 7(o)(5), Citizens for Responsibility and Ethics in Washington (“CREW”) submits its corporate disclosure statement.

- a) CREW has no parent company, and no publicly-held company has a ten percent or greater ownership interest in CREW.
- b) CREW is a non-profit, non-partisan corporation organized under section 501(c)(3) of the Internal Revenue Code. Through a combined approach of research, advocacy, public education, and litigation, CREW seeks to protect the rights of citizens to be informed about the activities of government officials and to ensure the integrity of those officials. Among its principal activities, CREW files complaints with the Federal Election Commission to ensure enforcement of federal campaign finance laws and to ensure its and voters’ access to information about campaign financing to which CREW and voters are legally entitled. CREW disseminates, through its website and other media, information it learns in the process of those complaints to the wider public.

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2022, I electronically filed the foregoing document with the Clerk of Court for the United States District Court for the District of Columbia by using the appellate CM/ECF system, thereby serving all persons required to be served.

/s/ Stuart McPhail
Stuart C. McPhail