IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DCCC, Plaintiff, v. FEDERAL ELECTION COMMISSION, Defendant.	Civil Action No. 24-cv-2935 **(Expedited Hearing Requested)**

PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65 and Local Civil Rule 65.1, Plaintiff DCCC respectfully files this motion for entry of a preliminary injunction against Defendant the Federal Election Commission ("FEC") setting aside the FEC's final order in Advisory Opinion Request 2024-13, in which the Commission deadlocked on the question whether certain spending on television advertisements constitutes contributions to candidates or party coordinated expenditures under the Federal Election Campaign Act of 1971, as amended. The FEC's final order leaves Plaintiff and other regulated parties without clarity as to whether their planned conduct could lead to civil and criminal penalties. In support of its motion and the requested relief, Plaintiff relies on the concurrently filed memorandum of points and authorities, its exhibits, the Complaint, and other documents filed in this action.

Plaintiff respectfully requests that the Court set an expedited briefing schedule and hearing on this motion as soon as practicable. As explained in the accompanying memorandum, expedition is essential because the agency action challenged by Plaintiff is irreparably harming Plaintiff during the very short time leading up to the November 5, 2024, general election. In addition, or alternatively, Plaintiff requests that the Court consolidate the expedited preliminary injunction

hearing with a trial on the merits pursuant to Rule 65(a)(2) because this action, as set forth in more detail below, presents legal issues that are ripe for resolution under the Administrative Procedure Act's familiar rubric, and final resolution by this Court is warranted as soon as practicable.

Pursuant to Local Civil Rule 7(m), undersigned counsel states that counsel for Plaintiff conferred with counsel for Defendant. Plaintiff's counsel asked for Defendant's counsel for its position on this motion but did not receive a response by the time of filing.

Dated: October 17, 2024

Respectfully submitted,

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DCCC, Plaintiff, v. FEDERAL ELECTION COMMISSION, Defendant.	Civil Action No. _____ **(Expedited Hearing Requested)**

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

With only weeks left before election day, the Federal Election Commission ("FEC") has abandoned its duty to ensure the even-handed and fair administration of our nation's campaign finance laws. The National Republican Senatorial Committee ("NRSC") is rapidly expanding its use of a novel tactic that, in its view, permits it to entirely circumvent the limits that Congress has placed on contributions and coordinated spending between political parties and the candidates they support. The result is that the Republican Party is now spending *tens of millions of dollars* on television advertisements that are coordinated with Republican candidates, well beyond the limits for contributions and coordinated party expenditures set forth in the Federal Election Campaign Act of 1971, as amended ("FECA"). The FEC—the agency charged with interpreting how federal campaign finance law applies in situations like this one—has failed in its duty to render an advisory opinion as to whether such spending is permissible, creating a legal vacuum that the NRSC is exploiting to unfair advantage while leaving Plaintiff DCCC chilled from engaging in similar spending on behalf of its candidates.

The FEC's failure has left the DCCC between a rock and a hard place during the most critical weeks of campaigning. It may adhere to federal law as it understands it, but that leaves it unable to respond in kind while the Republicans put tens of millions of dollars into unlawful television advertisements. Alternatively, it may mimic the Republicans' newfound tactic, but at the risk of exposing itself to future enforcement by the FEC, which can be precipitated by a third-party complaint from *anyone*. Further compounding this chill is the Department of Justice's independent authority to prosecute campaign finance laws, even where the FEC takes a different view of the law.

The underlying dispute is straightforward. Under FECA, when a party committee (like DCCC) makes an expenditure in "cooperation, consultation, or concert" with "a candidate" for office, such an expenditure "shall be considered to be a contribution to such a candidate." 52 U.S.C. § 30116(a)(7)(B)(i). Congress has placed strict limits on such contributions and coordinated party expenditures, including those made for the production and placement of television advertisements for a candidate.

Republicans, however, say they have found a workaround. Relying on the FEC's joint fundraising regulations, Republican party committees contend they may pay for unlimited television advertising on behalf of Republican candidates without treating those costs as a contribution or party coordinated expenditure, even though these advertisements are both coordinated with candidates and are focused almost entirely on advocating for their election ("***JFC-advertising***"). The advertisements at issue are materially indistinguishable from ordinary political advertisements seen on television during election season. For example, the NRSC paid for an ad that nearly exclusively advocates for the election of Tim Sheehy—a Republican candidate for Senate in Montana—to the tune of millions of dollars through the Sheehy Victory Committee, a joint fundraising vehicle. *See Call to Duty*, Sheehy Victory Committee, https://host2.adimpact.com/admo/#/viewer/7c415fe7-0615-4bbe-8bfd-87beb0a47ebd. Though it looks and sounds like a normal political ad, Republicans argue that having the candidate say "donate now" at the tail end of the advertisement while a link to a donation page fleetingly appears, transforms the *entire* 30-second ad spot into a fundraising solicitation for the Sheehy Victory Committee. According to the Republicans, it is not a political advertisement at all—merely a routine fundraising appeal.

There is no statutory basis for the Republicans' conclusion that simply having a candidate say "donate now" during an advertisement permits political parties to spend *unlimited sums* subsidizing candidate advertisements through joint fundraising committees. *See* 52 U.S.C. § 30116(a)(7)(B)(i). The question was presented to the FEC, but it failed to resolve it one way or the other, leaving those who seek to comply with campaign finance laws—like DCCC—to languish. Under FECA, the FEC is charged with issuing advisory opinions regarding the application of campaign finance laws (including contribution limits) upon request and to grant safe harbor protection for anyone who acts in accordance with such opinions. In this case, one of two things is true: either the television advertising scheme adopted by the NRSC violates FECA or it does not. Plaintiff should be able to mirror NRSC's conduct without fear of prosecution or onerous civil penalties, lest one political party be given a clear advantage in its ability to fund candidate advertisements in the final critical weeks before a major national election. DCCC should not be forced to *guess* at the correct answer, when doing so incorrectly could result in onerous FEC sanctions or DOJ prosecution. This scenario is precisely the kind that FEC's advisory opinion process was enacted to resolve. *See* 52 U.S.C. § 30108(c). Yet, when asked to do so at the most critical time, the FEC unlawfully failed to provide clarity, deadlocking in a 3-3 vote on the issue. The FEC's failure is contrary to law and arbitrary and capricious in violation of the Administrative Procedure Act.

With election day imminent, and Republicans pouring tens of millions of dollars into these unlawful ads, DCCC requests expedited relief. This Court should do what the FEC unlawfully failed to do and promptly issue an order declaring whether or not this new coordinated expenditure tactic violates FECA, setting aside the FEC's order denying an advisory opinion on the issue. Doing so will provide regulated parties like DCCC the substantial certainty they need to conduct

their campaign activities and compete in this election and those that follow. Without this relief, DCCC and other regulated entities that are continuing to follow the law as it has long been understood in this area are being severely and irreparably harmed as their competitors wantonly flout the law to their material advantage during this critical part of the campaign cycle.

BACKGROUND

A. FECA's rules and regulations establish that coordinated efforts between campaigns and parties to air television ads are subject to contribution and coordinated party expenditure limits.

FECA imposes various limits on the amount of money that a person or committee can contribute to candidates, as well as disclosure requirements for candidates, donors, and political committees. *See generally* 52 U.S.C. § 30101 *et seq.* The FEC has over time promulgated regulations "to implement" these provisions of law, 11 C.F.R. § 100.1; *see also* 52 U.S.C. § 30107(a)(8) (granting FEC rulemaking authority). As relevant to this case, FECA defines what constitutes a "contribution" to a candidate; prescribes strict limits on certain contributions; and makes clear that a coordinated expenditure—such as a television ad—between a committee and a candidate on the candidate's behalf constitutes a "contribution" that counts towards the relevant FECA limit. The agency has also issued rules governing joint fundraising committees ("JFC") established between candidates and party committees, which are relevant here because they are the Republicans' chosen vehicle for evading FECA's contribution limits.

Definition of "contribution" and contribution limits. Under FECA, a "contribution" is a "gift . . . of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i). FECA creates specific contribution limits that restrict how much money individuals and committees may give to candidates for federal office. In the 2024 election cycle, for example, DCCC may contribute up to $5,000 per election to a candidate, with the primary and general elections treated as separate elections. *See* 52 U.S.C. §

30116(a). FECA specifies that the national committee of a political party—such as the Democratic National Committee ("DNC") and Republican National Committee—and a state committee of a political party are each afforded a separate limit for coordinated party expenditures for each U.S. House race. *Id.* § 30116(d). Although DCCC is not afforded a coordinated party spending limit in a U.S. House race by operation of law, the DNC and each Democratic state party may permissibly assign some or all of their authority in a given district to DCCC. 11 C.F.R. § 109.33(a). As relevant here, the coordinated party expenditure limit per party committee is $61,800 for congressional nominees in states that have more than one U.S. Representative. For congressional nominees in states that have only one U.S. Representative, the coordinated party expenditure limit is $123,600. *Id*.; *see also* 89 Fed. Reg. 5534 (July 29, 2024) (publishing coordinated party expenditure limits for 2024 election). Candidates for federal office and their committees are prohibited from knowingly accepting or making any contributions that exceed these federal limits. *See* 52 U.S.C. § 30116(f).

Coordinated expenditures. Under FECA, any expenditure "made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate." 52 U.S.C. § 30116(a)(7)(B)(i). In other words, when a person or committee coordinates with a candidate to create and air a television ad that expressly advocates for the candidate, such coordinated effort is a "contribution" to the candidate subject to the relevant limits. *Id.*

The FEC has promulgated a regulation for determining when a communication paid for by a national party committee is made "in cooperation, consultation or concert" with a candidate and thus becomes a "coordinated communication" under FECA. *See* 11 C.F.R. § 109.37. To be a "coordinated communication" under the FEC's rule, a communication must meet a three-part test.

In relevant part, the test is met if (1) the communication is "paid for by a political party committee or its agent"; (2) the communication is a "public communication" that "expressly advocates the election or defeat of a clearly identified candidate" or "refers to a clearly identified House . . . candidate and is publicly distributed or otherwise publicly disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the clearly identified candidate's general election;" and (3) a candidate or their agent is "materially involved" in decisions regarding the "content" of the communication, the "means or mode" or "specific media outlet used" for the communication, or the "timing or frequency" of the communication. *Id.* § 109.37(a), 109.21(d). A coordinated communication paid for by a national party committee must be treated as a contribution or a coordinated party expenditure, subject to the applicable contribution limits described above. *Id.* § 109.37(b).

Joint fundraising committee rules. Federal law and FEC regulations separately allow political committees, including a national party committee and a candidate committee, to coordinate their activities for the specific purpose of jointly raising contributions for multiple entities, subject to a set of procedures that "govern all joint fundraising activity." 52 U.S.C. § 30102(e)(3)(A)(ii); 11 C.F.R. § 102.17(a)(1)(i), (2). Such committees are known as "joint fundraising committees." To form a joint fundraising committee, the participating committees must establish a separate political committee (or select a participating committee in the effort) to serve as a joint fundraising representative and enter into a written agreement that "state[s] a formula for the allocation of fundraising proceeds." 11 C.F.R. § 102.17(c)(1). A joint fundraising committee has a specific and limited purpose—to "collect contributions, pay fundraising costs from gross proceeds and from funds advanced by participants, and disburse net proceeds to each participant." *Id.* § 102.17(b)(1).

To avoid having expenditures made by a joint fundraising committee qualify as a contribution to any of its participants, each participant in a joint fundraising committee must cover expenses proportional to their percentage of allocated receipts associated with a particular fundraising effort. *Id.* § 102.17(c)(7). And a participant "may only pay expenses on behalf of another participant subject to the contribution limits." *Id.* § 102.17(c)(7)(i)(B). For example, a party committee and a candidate who agree to create a joint fundraising committee may agree to split the committee's fundraising proceeds according to a 90/10 allocation. In that scenario, the party committee would receive 90% of the proceeds from joint fundraising, and it would pay for 90% of the associated expenses, and the candidate would receive 10% of the proceeds and pay for 10% of the expenses.[1] Similarly, participants in a joint fundraising committee may *advance* fundraising costs to the committee, but those too must "be in proportion to the allocation formula agreed upon." *Id.* § 102.17(b)(3)(ii). If a participant advances "more than its proportionate share," then such an advance constitutes a contribution to the remaining participants. *Id.*

B. Republicans are spending tens of millions of dollars on coordinated television advertisements without regard to contribution limits.

Under FECA, when a party committee coordinates with a candidate committee to develop a television advertisement, and then pays to place that advertisement on television to promote the candidate, the party has made a coordinated expenditure which amounts to a contribution. That is obvious from FECA's plain text. *See* 52 U.S.C. § 30116(a)(7)(B)(i) ("[E]xpenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate,

[1] A joint fundraising "notice" must be included with "every solicitation for contributions." *Id.* § 102.17(c)(2). This notice must identify the participating committees, provide the allocation formula, and inform contributors that they may choose to designate their contributions for a particular committee. *Id.*

his authorized political committees, or their agents, shall be considered to be a contribution to such candidate."). Even though such coordinated expenditures are clearly subject to FECA's contribution and coordinated party expenditure limits, several Republican candidates have coordinated with a party committee to outsource multi-million-dollar television ad campaigns to joint fundraising committees. *See* Ally Mutnick, et al., *Senate Republicans to save millions of dollars on ads – thanks to the FEC*, Politico (Oct. 10, 2024), https://www.politico.com/news/2024/10/10/fec-joint-fundraising-committee-ads-00183356. The NRSC is spending "millions of dollars" on such advertisements across the country—far exceeding the contribution limits. *Id.*

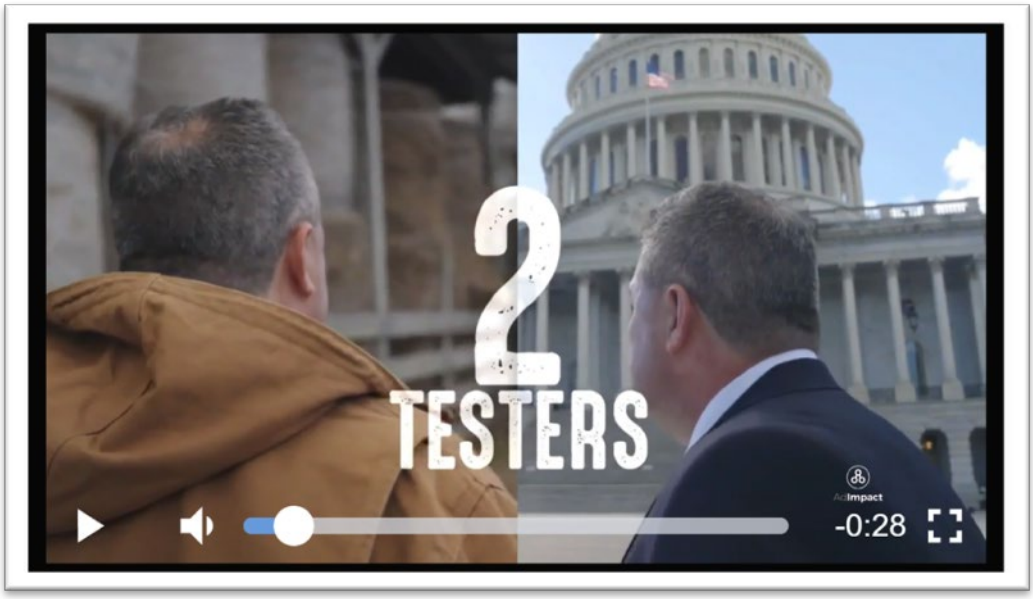
The Republicans claim that these ads are not candidate ads at all, but rather merely fundraising solicitations geared at raising money for the joint fundraising committees paying for the advertisements. *See id.*; *see also* NRSC Comment on AOR 2024-13 (Sept. 30, 2024), Ex. B at 14 (characterizing ads as creating "a JFC that engages in joint fundraising through television advertisements"); NRCC Comment on Advisory Opinion Request 2024-13 (Oct. 1, 2024), Ex. B at 39 (describing candidate advertisements as no more than "routine [joint fundraising committee] solicitations"). But simply watching one of these ads undercuts that brazen claim.

Each ad follows a simple formula. Nearly the entire ad attacks a Democratic candidate or promotes a Republican candidate—just like any other candidate ad. Then, in the waning seconds of the ad, the Republican candidate says "donate now" while a QR code fleetingly appears and links to a donation page for a joint fundraising committee established between the Republican Committee and the candidate. According to the Republicans, this cursory appeal for a donation transforms the entirety of an otherwise ordinary candidate advertisement—the cost of which would indisputably constitute a "coordinated expenditure" subject to FECA limits—into a fundraising appeal for the joint fundraising committee, which can be paid for subject to the committees' pre-

arranged fundraising allocation formula under which party committees typically bear the largest share of the costs. *See* 11 C.F.R. § 102.17(c)(7).

In July of this year, just four months before the election, Republicans began "testing the idea" for their joint-fundraising-committee television campaign advertisements in Montana. The first Montana ad "is narrated entirely by [the Republican Senate candidate Tim] Sheehy and follows the formula described above. He begins by discussing his military service and ends the ad by saying the phrase 'join my team, give now.'" Mutnick, et al., *supra*. In the final four seconds a "QR code that leads to a fundraising page briefly appears[.]" *Id.*; *see also Call to Duty*, Sheehy Victory Committee, https://host2.adimpact.com/admo/#/viewer/7c415fe7-0615-4bbe-8bfd-87beb0a47ebd. The ad makes no mention of the NRSC, failing to comply with the FEC's joint fundraising disclosure rules. *See supra* n.1. Instead, viewers with the cat-like reflexes needed to hastily grab their phones and open the QR code are taken to a donation page for the "Sheehy Victory Fund"—a joint fundraising committee established by the NRSC and Sheehy. *See Secure Win Red, Sheehy Victory Committee*, https://secure.winred.com/sheehy-victory-committee/donate-today?qr=true.

Another ad on behalf of Sheehy follows the same formula. The ad spends 26 seconds showing an actor hired to portray Senator Jon Tester—Montana's incumbent Democratic Senator—in a negative manner. *See Two Faced Tester*, Sheehy Victory Committee, host2.adimpact.com/admo/viewer/1dbec44e-ba10-4146-bef9-a2ef8b817084.



Id. at 0:02.

Only in the final few seconds of the ad does candidate Sheehy appear above a QR code on screen to say "I'm Tim Sheehy, and I approve this message. Join my team. Give today."

Id. at 0:27. The QR Code in the ad links to the same donation page for the Sheehy Victory Committee. Both of these ads appear as ordinary candidate ads: one touting Sheehy and another criticizing Senator Tester. But neither is paid for by Sheehy. Instead, the Sheehy Victory

Committee—a joint fundraising committee created by the NRSC—has spent $2.8 million to air these ads on behalf of Sheehy in Montana. *See* Mutnick, et al., *supra*; *Sheehy Victory Committee Summary*, Open Secrets, https://www.opensecrets.org/jfc/summary.php?id=C00845792&cycle=2024.

Republicans have since expanded this tactic beyond Montana. In mid-September, the NRSC began "running similar fundraising campaign ads in Maryland and Arizona, with joint fundraising committees spending nearly $3 million so far on TV in the former and $500,000 in the latter." Mutnick, et al., *supra*. These advertisements follow the same playbook as the Montana ads. *See Law of the Land*, Hogan Victory Fund, host2.adimpact.com/admo/viewer/e530892d-80ad-422e-92e5-4c1f033f98c1; *Chose Wrong*, Kari Lake Victory Committee, host2.adimpact.com/admo/viewer/0e9a24b0-20ca-4335-8237-b4b0f27f4d8b; *More Debt for Us*, Kari Lake Victory Committee, https://host2.adimpact.com/admo/viewer/3021cbbc-3543-47ea-9bf6-2da865b36e59; *Wrong on the Border*, Kari Lake Victory Fund, host2.adimpact.com/admo/viewer/48179a76-828e-4ffe-84c9-bb6b9592a34f.

Republicans have also begun running these kinds of ads in Wisconsin, Michigan, and Nebraska. *See, e.g.*, *Conflict of Interest*, WI Victory JFC/Hovde, host2.adimpact.com/admo/viewer/11285890-8d49-4fda-b7d3-ee14f8b2fddc; *More Work To Do*, Michigan Victory Committee/Rogers, host2.adimpact.com/admo/viewer/5e808a7f-a743-47c1-a6fe-de9b5169b4c2; *Radical Too*, Fischer Victory Fund, host2.adimpact.com/admo/viewer/263839c3-6342-494e-8994-70813391f0ef. Each follows the same approach above—an ordinary political advertisement, funded by a joint fundraising committee, with a cursory request to donate at the tail end of the advertisement. And none provide the necessary notice disclosing the members of each respective joint fundraising committee, or the allocation of the (token) amount of funds raised by the ads.

The pure artifice of the Republicans' tactic is well illustrated by Dave McCormick, a Republican candidate in Pennsylvania. Until recently, McCormick was running the following television ad about his views on abortion with funds paid by McCormick for PA Senate—the candidate's campaign committee. *See Difference*, McCormick for PA Senate, https://host2.adimpact.com/admo/viewer/ca8dffc9-6f17-446f-b13a-ec14d261c44f. The ad ends with McCormick stating he "approves this message." *Id.*

Id. at 0:30. Just recently, however, McCormick has started running the *identical* advertisement, with the *identical* message about abortion, but with funds now paid from the PA Victory Fund—a joint fundraising committee. *See Difference,* PA Victory Fund, https://mms.tveyes.com/PlaybackPortal.aspx?SavedEditID=4cb3b4db-8487-4518-8704-f90a4d413455. The only difference in the ad itself is that it now closes with a voiceover of McCormick stating "give today" while a QR code briefly appears on screen. *Id.*

Id. at 0:29. Republicans claim that by slapping on this QR code, what plainly began airing as a candidate advertisement transforms—presto chango—into a fundraising appeal, the cost of which need never count as a contribution.

The notion that any of these advertisements are bona fide fundraising appeals—when only the nimblest viewers could even hope to open their smartphones in time to scan the fleeting QR code that appears—is undercut by simply viewing the ads. Moreover, to even recoup the costs of these advertisements, it would require implausibly large numbers of viewers donating the legal maximum to a joint fundraising committee. In reality, these fundraising efforts likely *lose* money in order to subsidize candidate advertising. *See* Ex. B at 72. And the Republican claim that ordinary viewers see these 30-second television spots as fundraising appeals—rather than candidate ads—does not pass the smell test.

Republicans are now rapidly expanding their use of this unlawful strategy, including by setting up new joint fundraising committees for races in Pennsylvania and Nevada. *See* Mutnick, et al., *supra*.

C. The FEC fails to issue an advisory opinion condemning JFC-advertising or, alternatively, granting safe harbor protection.

The Republicans' rapid uptick in JFC-advertising drew immediate notice and scrutiny, and on September 18, 2024, DSCC—the national party committee established for the purpose of supporting Democratic candidates for U.S. Senate, *see* 52 U.S.C. § 30101(14)—submitted a request for an official advisory opinion ("AO") from the FEC under 52 U.S.C. § 30108.

The FEC's AO process is intended to help political actors navigate campaign finance laws. Recognizing that "participants in the political process" must be "allow[ed] . . . to operate with substantial certainty regarding their legal obligations," FECA "permits people to request advisory opinions from the FEC regarding whether a 'specific [proposed] transaction or activity by the person' is legally permissible" under the law or the FEC's regulations. *E.g.*, *Ready for Ron v. FEC*, No. CV 22-3282-RDM, 2023 WL 3539633, at *3 (D.D.C. May 17, 2023) (quoting 52 U.S.C. § 30108(a)(1)). FECA must "render a written advisory opinion relating to such transaction or activity" within 60 days of receiving the request. 52 U.S.C. § 30108(a)(1), (d). During the "60-day period before any election" for federal office, however, the FEC "shall render a written advisory opinion relating to [any] request" submitted by a candidate or authorized committee "no later than 20 days" after receipt of the request. *Id.* § 30108(a)(2). The FEC is required to make such requests public and to accept public comments on them. *Id.* § 30108(d). A vote of at least four members of the FEC is required to issue a formal advisory opinion. *Id.* § 30106(c).

When an advisory opinion does issue, the party who requested the opinion as well as any person involved in an identical transaction or activity to that described in the request, may rely in good faith on the opinion and will be protected from any sanction under FECA that might otherwise attach to the transaction or activity, including civil enforcement by FEC or criminal prosecution by the DOJ. 52 U.S.C. § 30108(c). However, under FEC regulations, when four

commissioners are unable to agree on an advisory opinion, the FEC will issue a response simply stating that it was "unable to approve an advisory opinion by the required affirmative vote of 4 members" and close the request. 11 C.F.R. § 112.4(a). As a result, "[o]nly a favorable advisory opinion provides this safe harbor." *Ready for Ron*, 2023 WL 3539633, at *3 (citing *Unity08 v. FEC*, 596 F.3d 861, 865 (D.C. Cir. 2010)).

DSCC sought an AO regarding whether it could establish joint fundraising committees mirroring Republican candidates' use of such committees to fund television advertisements that skirt FECA's contribution limits. *See* Ex. A. With the November 5 election fast approaching, DSCC requested that the FEC issue an expedited AO as soon as possible. *See* 52 U.S.C. § 30108(a)(2); Ex. A at 1. Expedited consideration would either provide entities who wish to engage in JFC-advertising "safe harbor" to mirror the tactic employed by Republicans or, alternatively, confirm that such a tactic is not lawful.

DSCC's AO request specified that the two proposed joint fundraising committees would be established pursuant to the procedures in 11 C.F.R. § 102.17, and further proposed a specific allocation formula for the proposed committees—*i.e.*, the first two thirds of fundraising proceeds would be allocated to DSCC, while the last third would be allocated to the participating campaign, "subject to contribution limits and contributors' ability to designate their contribution for a particular participant." Ex. A at 2. DSCC further explained that the proposed advertisements would be funded by the joint fundraising committees but would almost entirely advocate for a single candidate, containing only a short fundraising solicitation for the fundraising committee itself at the very end of the advertisement accompanied by a QR code that would link to a webpage with the disclaimers required by 11 C.F.R. § 102.17(c)(2).

Under the proposed arrangement, any contributions received through the fundraising solicitations in the advertisements would be divided according to the allocation formula for the joint fundraising committees, as would expenses for the advertisement. Thus, in effect, only a third of the cost of the advertisements would be paid by the relevant candidate's committee, even though the entire advertisement (save four seconds) advocates for the candidate. In all other respects, as DSCC's AO request explained, the advertisements would be "indistinguishable to the viewer from a standard campaign advertisement" run by candidates.

Based on this proposal, DSCC requested an AO from the FEC as to (1) whether the proposed joint fundraising committees could lawfully "finance the entire costs of the proposed television advertising, allocating the costs according to the Allocation Formula," and in the alternative, (2) whether the proposed joint fundraising committees could fund "the portion of the television advertising that includes a solicitation for the Joint Fundraising Committee, calculated on a time/space basis" (i.e., divided based on the time dedicated to the particular candidate vs. the few seconds allocated for the fundraising solicitation). Ex. A at 3.

The FEC accepted the AO request for review pursuant to 52 U.S.C. § 30108 and FEC regulations, *see* 11 C.F.R. § 112.1, assigned the request AO No. 2024-13, and posted the request on the FEC's website for public comment on September 18, 2024. *See* Ex. B at 143. On October 3, ahead of the FEC's October 10 meeting on DSCC's request, the General Counsel for the FEC released two draft advisory opinions and invited public opinion on both drafts. The first draft ("Draft A") concluded that the proposed joint fundraising committees could "pay the entire cost of the proposed television advertising, allocating the costs according to the allocation formula in the joint fundraising agreement, because the advertising would be joint fundraising activity containing a solicitation." *See* Ex. B at 58. In other words, Draft A approved of the Republicans'

JFC-advertising tactic. The second draft ("Draft B") concluded that the proposed joint fundraising committees could "pay for only the portion of the proposed advertisements that solicit contributions for the joint fundraising committee, with the cost of that portion allocated among the committee's participants according to their agreed allocation formula." Ex. B at 85. In other words, Draft B disapproved of the JFC-advertising tactic, making clear that only the few seconds of actual solicitation counted as a fundraising expense.

On the merits, DSCC argued to the FEC that its candidates were worried that allowing the joint fundraising committee to "finance the full cost of the advertising runs contrary to" FECA and the FEC's "joint fundraising regulations, which prohibit joint fundraising in a manner that allows one participant to subsidize the costs of another participant." Ex. A at 6. Multiple nonpartisan groups agreed that joint fundraising committees are not permitted to finance television advertisements in such a manner and would be subject to enforcement action if they did so. *See* Ex. B. at 78–87, 98–105. These groups instead argued that the proposed television advertisements could only be allowed on a time/space allocation basis and also must include the entire disclaimer required by 11 C.F.R. § 102.17(c)(2).

Notably, eight Republican groups argued that the arrangements are lawful under 11 C.F.R. § 102.17 and 52 U.S.C. § 30116. These groups include the NRCC (DCCC's Republican counterpart), which filed a comment stating that DSCC's proposal was lawful and that in the scenario proposed by the AO, the joint fundraising committee "must finance the entire cost of any joint fundraising solicitation—including the proposed television advertising." Ex. B at 37.

On October 10, 2024, the FEC held a contentious hearing on DSCC's Request. The FEC did not approve either draft AO and instead deadlocked 3-3 (along partisan lines) in votes on each. *See* AOR 2024-13 Certification, Ex. B. at 140. The three Republican members of the FEC voted

in favor of Draft A, which would have approved of the JFC-advertising tactic being employed by the Republicans. In voting against Draft A, Commissioner Lindenbaum emphasized that "slapping a solicitation on an ad doesn't make it a solicitation" and the FEC "has said that as a group a number of different times." FEC, Open Meeting, October 10, 2024, at 44:58-45:10, available at https://youtu.be/UG0Gj4TnFAY?t=2688.

In a letter to DSCC following the hearing, the FEC confirmed that it had closed the matter. *See* Ex. C ("The purpose of this letter is to inform you that the Commission has concluded its consideration of your advisory opinion request without issuing an advisory opinion."). The FEC's case file for DSCC's AOR makes clear that this is its "Final Opinion" on the issue. Ex. B at 141; *see also* FEC, *AO 2024-13*, https://www.fec.gov/data/legal/advisory-opinions/2024-13/ (calling the October 10 closeout letter the FEC's "Final Opinion").

D. If JFC-advertising is legal, Plaintiff wishes to engage in it, but it is chilled from doing so by the prospect of enforcement by the FEC and the DOJ.

The FEC's failure to render an opinion as to the legality of JFC-advertising leaves Plaintiff without clarity as to whether it can engage in the same tactics without fear of onerous criminal and civil penalties. DCCC, naturally, wishes to support its own preferred candidates to the same extent and in the same manner as its Republican counterparts. Declaration of Julie Merz, Ex. D ("Merz Decl.") ¶¶ 6-7. But the FEC has failed to provide the necessary guidance on the issue. Indeed, if Republicans are right, Plaintiff is entitled to a safe harbor through an advisory opinion. *See* 52 U.S.C. § 30108(c); *supra* Background § C. With a safe harbor, DCCC would spend significant sums to provide JFC-advertising on behalf of its candidates beyond the limitations imposed by FECA. Merz Decl. ¶¶ 7, 9. But because of the legally doubtful nature of such spending, DCCC cannot spend funds in a manner that may violate the applicable FECA limits. *Id.* ¶ 9. Such a course of action, without safe harbor protection, could lead to onerous FEC enforcement proceedings and

sanctions under 52 U.S.C. § 30109 and *felony prosecutions* from the DOJ. *See* 52 U.S.C. § 30109(a)(5)(B), (C), (D). The FEC's failure to render an AO on this issue, and the prospect of enforcement from either the FEC or DOJ, chills DCCC from speaking in support of the candidates it represents. The result is that Plaintiff is left to languish at a competitive disadvantage in the legal vacuum created by the FEC's failure to properly apply FECA. Merz Decl. ¶¶ 8-9.

Election day is now a mere three weeks away. Every additional day that passes without clarity as to whether JFC-advertising is subject to contribution limits prejudices DCCC's ability to support its candidates, placing it at an ever-greater disadvantage as Republicans plow ahead unchecked by a "paralyzed" FEC that refuses to issue an AO on this issue. *See* Mutnick, et al., *supra*. At bottom, Plaintiff has a right to know what federal law demands of it.

STANDARD OF REVIEW

To obtain a preliminary injunction, Plaintiff must show: (1) likelihood of success on the merits; (2) likelihood of "suffer[ing] irreparable harm in the absence of preliminary relief;" (3) "the balance of equities tips in [their] favor;" and (4) "the injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When such relief is sought against the government, these last two factors effectively merge. *Pursuing Am. Greatness v. Fed. Elec. Comm'n*, 831 F.3d 500, 511 (D.C. Cir. 2016).

ARGUMENT

I. Plaintiff is likely to succeed on the merits.

DCCC is likely to succeed in demonstrating that the FEC's final order refusing to issue an AO on JFC-advertising is arbitrary and capricious and "not in accordance with law." 5 U.S.C. § 706(2). Specifically, Plaintiff is likely to show that the challenged FEC order refusing an AO fails to properly interpret and enforce the coordinated expenditure law and the contribution and coordinated expenditure limits set forth in FECA. The Court should therefore grant immediate

relief that clarifies that FECA applies to JFC-advertising and vacates and "set[s] aside" the FEC's final order that unlawfully refused an advisory opinion. *See Long Island Power Auth. v. FERC*, 27 F.4th 705, 717 (D.C. Cir. 2022) (explaining that "[v]acatur is the normal remedy under the APA, which provides that a reviewing court 'shall . . . set aside' unlawful agency action" (quoting 5 U.S.C. § 706(2))).

A. Plaintiff is likely to show that the FEC has failed to give effect to the coordinated expenditure law in violation of the APA.

Plaintiff is likely to succeed in demonstrating that the FEC's failure to render an AO concerning the legality of JFC-advertising was arbitrary and capricious and the resulting final order that disregards the text and intent of FECA is contrary to law. To make this determination, this Court must assess whether the proposed JFC-advertising scheme is lawful under FECA, a question of law that this Court reviews de novo, as it is a legal question upon which "the FEC failed to issue an opinion." *See, e.g.*, *Ready for Ron*, 2023 WL 3539633, at *18 (Moss, J.) (discussing applicable standard of review when FEC "fail[s] to issue an advisory opinion for want of a majority," concluding "de novo" review of the merits is appropriate (*Id.* at *17)); *see also Hisp. Leadership Fund, Inc. v. Fed. Election Comm'n*, 897 F. Supp. 2d 407, 424 (E.D. Va. 2012) (declining to defer to FEC's interpretation when construing FECA in "pre-enforcement challenge" where FEC deadlocked on different group's request for advisory opinion on legality of certain advertisements). The answer must be no: the proposed JFC advertisements are coordinated expenditures that are subject to FECA's limits.

Under FECA, when a party committee makes an expenditure in "cooperation, consultation, or concert" with "a candidate" for office, such an expenditure "shall be considered to be a contribution to such a candidate." 52 U.S.C. § 30116(a)(7)(B)(i). Congress has placed strict limits on such contributions and coordinated party expenditures, including those made for the production

and placement of television advertisements for a candidate. Under the plain text of FECA, *any* payment made by a national party committee in concert with a candidate to place television advertisements to promote a candidate is a contribution to that candidate, subject to the relevant limits. Indeed, the U.S. Supreme Court has repeatedly emphasized that "[e]xpenditures coordinated with a candidate . . . are contributions under the Act." *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 438 (2001). And there is an "obvious" reason why such "coordinated expenditures" count towards FECA's limits: "Without a coordination rule, politicians could evade contribution limits and other restrictions" on donations to candidates by simply coordinating their expenditures with the candidate. *Shays v. FEC*, 414 F.3d 76, 97 (D.C. Cir. 2005). FECA's definition of "coordination" is thus designed to "prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions." *Buckley v. Valeo*, 424 U.S. 1, 47 (1976) (per curiam). That is *precisely* what Republicans are now doing on behalf of their candidates.

There is little question here that JFC-advertising falls squarely within FECA's definition of "coordinated expenditures." The payment for such advertising is an expenditure, and is necessarily coordinated between candidate and committee. Indeed, even Republicans do not dispute that the party committee and the campaign engage in coordinating conduct to produce and distribute JFC-advertising. *See, e.g.*, Ex. B at 119. The logical conclusion is that a committee's costs associated with such advertisements must be counted toward the contribution limits. As the examples above show, JFC-advertising consists almost entirely of candidate advocacy with only a brief plea to "donate now." *See supra* Background § B. Such advertisements are "indistinguishable" from candidate advertisements and involve plain "coordination," yet are paid for almost exclusively by national party committees. Ex. B at 47. As a result, tolerating such a

tactic would seem to effectively override FECA's limits by permitting candidates to outsource their *entire* television advertising campaign budget to national party committees, all without treating even a penny of such spending as a contribution. *See supra* Background § B. In other words, the JFC-advertising scheme plainly "creates a loophole that effectively vitiates the plain language of FECA." *Campaign Legal Ctr. v. FEC*, 466 F. Supp. 3d 141, 158 (D.D.C. 2020), *on reconsideration in part,* 507 F. Supp. 3d 79 (D.D.C. 2020), *rev'd and remanded on other grounds,* 31 F.4th 781 (D.C. Cir. 2022).

The JFC-advertising scheme cannot be rationalized by pointing to agency rules—if the practice is impermissible under the coordination and contribution provisions of FECA, no agency regulation could "trump the plain meaning of a statute." *E.g.*, *Atl. City Elec. Co. v. FERC*, 295 F.3d 1, 11 (D.C. Cir. 2002); *accord Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2254 (2024). And in any event, the FEC's regulations do *not* condone this practice as the Republicans claim. Although 11 C.F.R. § 102.17 permits two or more committees spending funds to jointly raise contributions, even that regulation only permits fundraising expenses to be excepted from FECA's limits where solicitation is actually taking place. *Id.* § 102.17(c)(7)(i)(A). Thus, at most, only the portions of the advertisements that directly solicit funds could fall within the so-called solicitation exception. To interpret FECA otherwise would lead to absurd results, permitting committees and persons to contribute unlimited sums to any candidate for nearly any purpose, provided that a transparently pretextual fundraising appeal is somehow involved.

The APA requires this Court to "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," and further provides that "the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the

terms of an agency action." 5 U.S.C. § 706(2). And the FEC's deadlocked decision is subject to *de novo* review by this Court. *See Ready for Ron*, 2023 WL 3539633, at *18. Here, because Plaintiff will be able to demonstrate that FEC deadlocked in the face of its obligation to provide an AO on this issue and instead issued a final order that disregards FECA's plain terms, it is likely to succeed in demonstrating that the FEC acted arbitrarily and capriciously and contrary to law in violation of the APA.[2] Indeed, tolerating JFC-advertising would undermine a fundamental purpose of FECA, which is to prevent unlimited contributions to federal candidates. The FEC's failure to uphold FECA—if left undisturbed—means federal candidates no longer need to finance their own television advertisements, which are typically massive line items in campaign budgets. Ex. B at 71; *see also* Merz Decl. ¶ 8. Plaintiff is likely to succeed on its APA claim.

B. Plaintiff has standing.

This Court has subject-matter jurisdiction to hear this suit. Plaintiff is suffering at least three ongoing, concrete, and particularized injuries that are traceable to the FEC's action and redressable through Plaintiff's requested relief. *Hisp. Leadership Fund*, 897 F. Supp. 2d at 424-25 (holding organization had standing in pre-enforcement challenge against FEC where committee sought to publish advertisements on which FEC had deadlocked on in response to different group's AO request); *see also Ready for Ron*, 2023 WL 3539633, at *3 & n.3 (similar).

[2] It is well established that agency action is arbitrary and capricious if the agency did not "articulate a satisfactory explanation for its action." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009). Agency action is also "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, or offered an explanation for its decision that runs counter to the evidence before the agency." *Nat'l Lifeline Ass'n v. FCC*, 921 F.3d 1102, 1110–11 (D.C. Cir. 2019) (cleaned up) (citing *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016)).

1. Plaintiff is suffering numerous ongoing injuries.

First, Plaintiff is suffering a competitive injury. The FEC has turned a blind eye to the potential violations of campaign finance law to the tune of millions of dollars. *See supra* Background § C. This acquiescence has permitted Republicans to pour tens of millions of dollars into competitive elections that they should not be allowed to under FECA's coordination laws and the relevant limits. *See supra* Background § B. In turn, Plaintiff and similarly situated organizations are now placed at a stark disadvantage that, absent relief from this Court, could only be ameliorated by diving headfirst into spending that could result in severe penalties, including even criminal sanction. *See generally* 52 U.S.C. § 30109. That is no true choice at all, and Plaintiff should not be forced to compete in the ongoing election on such uneven terms.

"[C]ourts have routinely recognized this type of injury—i.e., illegal structuring of a competitive environment—as sufficient to support Article III standing." *Shays*, 414 F.3d at 85 (collecting cases). "[L]ongstanding precedent establishes that when a statute 'reflect[s] a legislative purpose to protect a competitive interest, [an] injured competitor has standing to require compliance with that provision.'" *Id.* (quoting *Hardin v. Ky. Utils. Co.,* 390 U.S. 1, 6 (1968)). FECA's contribution limits and coordinated expenditure definition reflect just such a purpose, yet the FEC has abandoned its effort to enforce them in an evenhanded manner when it comes to JFC-advertising. *See* Merz Decl. ¶¶ 7-8. DCCC must now respond to these "additional tactics" employed by the Republicans, which "fundamentally alter the environment" in which it competes, supplying an injury-in-fact. *Shays*, 414 F.3d at 86. Simply put, Plaintiff is "suffer[ing] [an] injury to a statutorily protected interest" in competing under lawful and evenly applied campaign finance rules. *Id.* (finding standing to challenge FEC rule); *see also Nat. L. Party of U.S. v. FEC*, 111 F. Supp. 2d 33, 44 (D.D.C. 2000) (recognizing that a political party's "inability to compete on an

equal footing . . . has been recognized in many contexts as an injury in fact sufficient to support constitutional standing").

Second, the DCCC is injured because the FEC's inaction has left it in legal limbo with respect to the JFC-advertising in which it would like to engage if permitted by FECA. Merz Decl. ¶¶ 7-9. Indeed, multiple courts have recognized that the FEC's "*non-issuance of an [advisory] opinion* creates a justiciable controversy for Article III purposes" precisely because it deprives Plaintiff of the ability to "operate with substantial certainty" regarding its legal obligations while running or participating in an electoral campaign. *Ready for Ron*, 2023 WL 3539633, at *3 & n.3 (emphasis added); *accord Hisp. Leadership Fund*, 897 F. Supp. at 425 (holding plaintiff had standing, dispute was ripe, and declaratory judgment was appropriate where plaintiff wished to engage in arguably proscribed advertising on which FEC had deadlocked in different group's AO request). The basis for this is that parties, like DCCC, who could have relied upon such an advisory opinion as a safe harbor have been "deprive[d] . . . of a legal right" that "it would have enjoyed if [the requestor] had obtained a favorable resolution in the advisory opinion process." *Ready for Ron*, 2023 WL 3539633, at *3 & n.3 (quoting *Unity08 v. FEC*, 596 F.3d 681, 865 (D.C. Cir. 2010)). The FEC and/or the DOJ may now enforce "at any time." *Chamber of Com. of the U.S. v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995); *Hisp. Leadership Fund*, 897 F. Supp. at 425. Plaintiff is sincerely wary of responding to the Republicans' JFC-advertising efforts in kind in order to level the playing field—even while feeling compelled to do so out of competitive interest. Merz Decl. ¶ 9.

Third, the DCCC is suffering an informational injury. The Republican advertisements are being paid for by joint fundraising committees that allocate their costs based on the total amount of funds raised. But, because the DCCC is in the dark as to how much each advertisement raises,

it does not know how much each committee is paying for each advertisement. If the Republican advertisements were being properly reported according to FECA's requirements, the specific amount each committee paid as a contribution or coordinated party expenditure would be disclosed. *See* 52 U.S.C. § 30104.

"The Supreme Court has long recognized that FECA creates an informational right—the right to know who is spending money to influence elections, how much they are spending, and when they are spending it." *Campaign Legal Ctr. v. FEC*, 520 F. Supp. 3d 38, 45 (D.D.C. 2021) (citing *FEC v. Akins*, 524 U.S. 11, 24 (1998)). "The law is settled that a denial of access to information qualifies as an injury in fact where a statute (on the claimants' reading) requires that the information be publicly disclosed and there is no reason to doubt their claim that the information would help them." *Id.* (quoting *Campaign Legal Ctr. & Democracy 21 v. FEC*, 952 F.3d 352, 356 (D.C. Cir. 2020)). Here, access to the withheld information would assist Plaintiff in evaluating the campaign strategy of rival candidates. It is thus plainly "related to [Plaintiff's] informed participation in the political process." *Nader v. FEC*, 725 F.3d 226, 230 (D.C. Cir. 2013). That suffices to show an informational injury. *FEC v. Akins*, 524 U.S. 11, 15-18 (1998); *Shays v. FEC*, 528 F.3d 914, 923 (D.C. Cir. 2008).

2. Plaintiff's injuries are traceable to and redressable by relief against the FEC.

Each of the injuries above is traceable to: (1) the FEC's failure to issue an AO and make clear whether JFC-advertising is lawful; (2) the FEC's failure to grant safe harbor protections; and (3) the FEC's enforcement authority. Had the FEC issued an AO, Plaintiff would have authoritative guidance about how to structure its conduct—one way or another. And if the FEC had approved of JFC-advertising—Plaintiff could have at least "relie[d] upon" the agency's opinion to avoid "any sanction provided" by FECA. 52 U.S.C. § 30108(c). Thus, Plaintiff's

inability to operate with substantial certainty regarding its campaign activities is also traceable to FEC's authority to enforce FECA's coordinated expenditure law and contribution limits through civil actions respectively. *Cf. LaRoque v. Holder*, 650 F.3d 777, 789 (D.C. Cir. 2011) (candidate injury traceable to official's enforcement policies).

Plaintiff's various injuries will be redressed by a preliminary injunction that vacates and sets aside the FEC's October 10 final order as contrary to FECA. *See* 5 U.S.C. § 706(2). Doing so will provide clarity to Plaintiff and likely discourage others from exploiting the legal vacuum the FEC has created. The Court may also "compel" the Commission to act in accordance with the clear meaning of FECA. *Id.* § 706(1). By establishing clear rules of the road for the remainder of this election season, these remedies will offer Plaintiff at least "partial relief" which "is sufficient for redressability." *Swan v. Clinton*, 100 F.3d 973, 980 (D.C. Cir. 1996). And entering permanent relief—either through a consolidated trial on the merits under Rule 65(a)(2) or summary judgment at a later date—will further redress Plaintiff's harms. *See* Compl. at 17 (Prayer for Relief).

II. The equitable factors weigh in favor of granting relief.

A. DCCC will suffer irreparable harm absent relief.

DCCC has suffered and will continue to suffer irreparable injury absent the requested relief. The FEC's failure to fulfill its statutory duties has created an uneven playing field where parties gain or lose competitive advantage based on whether they are willing to violate the law. At present, Republicans are engaging in JFC-advertising practices that DCCC and its candidates cannot in good faith engage in given the legal uncertainty around such practices. Merz Decl. ¶¶ 7-9. This loss of an opportunity to compete on even terms is irreparable harm. "Courts routinely recognize that organizations suffer irreparable harm when a defendant's conduct causes them to lose opportunities to conduct election-related activities[.]" *League of Women Voters of Mo. v.*

Ashcroft, 336 F. Supp. 3d 998, 1005 (W.D. Mo. 2018) (collecting cases). These election-related opportunities includes activities such as voter outreach through campaign advertisements. Here, DCCC has very limited time to even the playing field by either engaging in the JFC-advertising described herein, or by ensuring that Republicans cannot engage in the conduct if it is unlawful. Any delay only further harms DCCC. The election is less than a month away, and once it occurs "there can be no do-over and no redress." *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014).

DCCC is also suffering irreparable harm because its ability to communicate its messages to voters has been chilled by the FEC's failure to render an AO under FECA, coupled with the real prospect of future enforcement. Merz Decl. ¶ 9; *see, e.g.*, *Protect Democracy Project, Inc. v. United States Dep't of Just.*, 498 F. Supp. 3d 132, 142 (D.D.C. 2020) (holding that plaintiff was suffering irreparable harm due to obstacles to communicate desired message, a harm which was "time sensitive due to the impending election, in which voting [wa]s already underway"); *cf. Pursuing Am.'s Greatness v. Fed. Election Comm'n*, 831 F.3d 500, 511 (D.C. Cir. 2016) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (It is well established that "loss of First Amendment freedoms, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'"). Here, DCCC must self-censor because the FEC failed to fulfill its statutory duty to provide clarity as to whether JFC-advertising is lawful or not. The Commission's nondecision is debilitating, as is its choice to withhold safe harbor protection. This outcome leaves DCCC in an impossible position: suffer severe competitive harm by sitting on its hands due to the legal uncertainty while Republicans reach voters through tens of millions of dollars in JFC-advertising, or engage in the same legally-dubious tactic but without any safe harbor protections and at risk of sanctions and potential criminal penalties. Such a conundrum undoubtedly constitutes irreparable harm. *Cf.*

Media Matters for Am. v. Paxton, -- F. Supp. 3d --, 2024 WL 1773197, at *19 (D.D.C. April 12, 2024) (holding that because defendants "caused Plaintiffs to self-censor," they satisfied irreparable harm).

Finally, DCCC's informational injury is irreparable because it is being deprived of information that would assist it in evaluating the campaign strategy of rival candidates and parties. *See* Merz Decl. ¶¶ 4-6; Ex. B at 55, 139; *see also* 52 U.S.C. § 30104. Failure to receive that vital information in a timely fashion is the definition of irreparable harm, especially with an election mere weeks away. "[T]he non-disclosure of information to which a plaintiff is entitled, under certain circumstances itself constitutes an irreparable harm; specifically, where the information is highly relevant to an ongoing and highly public matter." *Elec. Priv. Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity*, 266 F. Supp. 3d 297, 319 (D.D.C.), *aff'd on other grounds*, 878 F.3d 371 (D.C. Cir. 2017); *see also Elec. Priv. Info. Ctr. v. Dep't of Just.*, 416 F. Supp. 2d 30, 41 (D.D.C. 2006) (finding irreparable harm where absent a preliminary injunction, the plaintiff "will also be precluded . . . from obtaining in a timely fashion information vital to the current and ongoing debate surrounding the legality of the Administration's warrantless surveillance program").

B. The public interest and balance of equities tip in Plaintiff's favor.

The remaining equitable factors, which merge here, both favor Plaintiff. *See Ramirez v. U.S. Immigr. & Customs Enf't*, 568 F. Supp. 3d 10, 34 (D.D.C. 2021). The public has a strong interest in "fair elections" where participants compete for votes on even terms. *Lair v. Bullock*, 697 F.3d 1200, 1215 (9th Cir. 2012). Plaintiff's requested relief seeks to restore an even playing field by setting aside the FEC's unlawful final order that has caused it harm.

The public also "has an interest in having its government follow the law." *Ramirez*, 568 F. Supp. 3d at 34. Any order vacating and setting aside the FEC's October 10 final order because it is contrary to FECA will serve the public interest by ensuring that "administrative agencies comply with their obligations under the APA," *id.* at 35 (quoting *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015)), and by restoring a proper application of FECA.

If the requested relief is granted, one of two things will result: FEC will have to either (1) uphold the coordinated expenditure law and relevant FECA limits, or (2) refrain from enforcing or seeking to prosecute any complaint against DCCC for engaging in JFC-advertising. As to the balance of the equities, then, Plaintiff's harms far outweigh any burdens placed on the FEC. Indeed, there is no harm to the FEC at all because it has "no interest in acting unlawfully." *Id.* at 34. Accordingly, the Court should find for Plaintiff on the remaining preliminary injunction factors.

CONCLUSION

For the reasons above, the Court should grant a preliminary injunction that vacates and sets aside the FEC's October 10 final order as arbitrary and capricious and contrary to FECA. A proposed order to that effect is attached to this motion.

Dated: October 17, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2024, I caused a true and correct copy of the foregoing document to be served upon all counsel of record registered with the Court's ECF system, by electronic service via the Court's ECF transmission facilities.

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