IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DCCC, Plaintiff, v. FEDERAL ELECTION COMMISSION, Defendant, NRSC, Intervenor-Defendant.	Civil Action No. 1:24-cv-02935-RDM

DCCC'S RESPONSE TO DEFENDANT FEC'S AND INTERVENOR-DEFENDANT NRSC'S SUPPLEMENTAL MEMORANDA

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The supplemental briefs from FEC and NRSC fail to establish any procedural deficiency that prevents this Court from reaching DCCC's "very substantial arguments" on the merits. Tr.61:9-10. Neither disputes the simple fact that JFC disclosures provide less information than coordinated-expenditure disclosures, nor that they render a party committee's total ad spending on behalf of a candidate functionally unknowable. Both FEC and NRSC also essentially ignore that DCCC has pled an informational injury from the start and sought declaratory relief that will redress it—relief the Court can still grant, and that keeps this dispute live. Finally, there is no merit to NRSC's continued insistence that the D.C. Circuit has adopted a *per se* rule that agency deadlock never yields final agency action. What matters is what flows from such deadlock based on the facts and statutory regime at issue. Here, FEC closed out AOR 2024-13 based on its own rules—not any statutory fallback for instances of deadlock—and injured DCCC as a result. DCCC therefore satisfies the requirements for pursuing APA relief, which this Court should now grant.

ARGUMENT

I. FEC and NRSC fail to refute DCCC's informational standing.

DCCC's brief details why a JFC's reporting of advertising expenditures—as compared to a party's coordinated-expenditure reports—deprives DCCC of key information about how much a party committee spends on candidate advertising in a particular race. Under FECA, coordinated-expenditure disclosures provide this information directly; JFC disbursement reports do not report such information at all, nor do they allow someone to discern it with any accuracy. Neither FEC nor NRSC show otherwise, and their other attacks on DCCC's standing fail.

FEC's principal argument mischaracterizes DCCC's informational harm, which stems from the fact that it cannot tell how much a party committee spends in support of a given candidate. FEC responds that DCCC has no right under FECA to know how much party committees spend on "an ad-by-ad basis," whether deemed a JFC cost or coordinated expenditure. But that is a nonsequitur, as DCCC's informational injury has never turned specifically on *per ad* spending. As DCCC alleged, it seeks information showing "the allocation of their [rival party committees'] spending" in support of a particular candidate. Am. Compl. ¶ 89; *see also* Merz Decl. ¶ 13. Party coordinated-expenditure disclosures provide this information directly, showing not only how much a party committee pays per expenditure, but also the *aggregate* amount spent on behalf of that candidate. Ex. A. JFC Ad disclosures do not—they mask the party committee's actual spending while failing to identify the supported candidate (which is not obvious if the JFC has multiple candidate participants). Ex. C. And it is impossible to discern a party committee's specific share of expenses for a JFC Ad expenditure from any other public source. *See infra* at 3.

For its part, NRSC argues that because FECA does not require JFCs to disclose "how much each … participant committee is paying for each ad," DCCC "is not entitled to [that] information." NRSC Br. at 6 (first alteration in original); *see also* FEC Br. at 6 (similar). That does not *defeat* DCCC's standing—but rather *confirms* it. As DCCC has stressed from the beginning, the JFC Advertising scheme permits JFCs to obscure a party-committee participant's *share* of ad expenses even though such ads meet FECA's definition of "coordinated expenditure." Am. Compl. ¶¶ 23–29, 42–48. Had FEC likewise concluded that a party's share of a JFC Ad is a coordinated expenditure, as it should have, party committees *would* be required to report the same.

Neither FEC nor NRSC can identify any other available source for the information DCCC is missing. FEC suggests that the allocation formula on the "publicly accessible fundraising landing page" of a JFC Ad can substitute a proper disclosure. FEC Br. 7. But that is wrong for the many reasons DCCC has explained. DCCC Br. 3–5. FEC's *own website* confirms as much by explaining how such formulas can change. *Joint Fundraising with Other Candidates and Political Committees*, FEC, https://perma.cc/RAD7-9GRK. NRSC claims that DCCC can "calculate each participant's joint-fundraising [expenses] using the ratio of proceeds distributed to each of the [JFC]'s participants." NRSC Br. 7–8. That argument fails because proceeds are not necessarily distributed on a per event (or per ad expenditure) basis, and a JFC's reporting does not link any disbursement of proceeds to the event that prompted it. So DCCC *cannot* trace a rival committee's JFC receipts back to how much it contributed toward candidate advertising. *See* DCCC Br. 4–5 (explaining why a party's share of advertising expenses cannot be derived from JFC disbursement reports). And even then, JFCs typically do not disburse all proceeds until *after* the election. DCCC Br. 5 n.3. Thus, while NRSC otherwise vaunts the Supreme Court's recent decision, its "half a loaf" arguments here make a mockery of the Court's emphasis on the importance of coordinated expenditure disclosures *specifically*. *NRSC v. FEC*, 146 S. Ct. 2404, 2421 (2026).

Finally, the FCC political files supplied by NRSC do no more than further illustrate the problem. *Contra* NRSC Br. 6–7. At most, these FCC reports provide notice of how much a *JFC* spends on airtime, before the October quarterly reporting deadline. But just like FEC reports, these forms contain no information about a party committee's (or any participant's) share of that expense. *See* Ex. F. In other words, the obfuscation caused by parties engaging in *de facto* coordinated expenditures through JFC Advertising carries over to these reports too. Further, FCC reports reflect only the cost of airtime—they do not show even a *JFC's* spending on production or other costs, never mind a party committee's share of the same. *See id.*

II. FEC and NRSC fail to establish mootness and redress remains available.

Both NRSC (at 2–5) and FEC (at 2–5) misunderstand Article III mootness. Such mootness does not turn on proceedings before the agency, but rather "when the complained-of injury ceases or no longer can be redressed." *Gjoci v. Dep't of State*, No. 1:21-CV-00294-RCL, 2021 WL 3912143, at *8 (D.D.C. Sep. 1, 2021), *aff'd*, No. 21-5256, 2024 WL 3159878 (D.C. Cir. June 25, 2024). There is no question DCCC complained of its informational injury, *see* Am. Compl. ¶¶ 89–

90, 96, and requested relief to redress it, *id.*, Prayer for Relief ¶ A (seeking declaration that JFC Ads are contributions or expenditures subject to FECA). That this informational harm was not the "core claim" raised by DCCC (FEC Br. 3) is irrelevant so long as some injury remains redressable. *E.g.*, *Ctr. for Food Safety v. Salazar*, 900 F. Supp. 2d 1, 5 (D.D.C. 2012). And, tellingly, neither FEC nor NRSC disputes that the declaratory relief sought by DCCC would yield redress by requiring NRSC (and others) to report JFC Ads as coordinated expenditures.

III. FEC and NRSC identify no other barriers to relief.

Unable to dispute the basics of mootness, NRSC pivots to suggesting DCCC brought an "excessive-contributions" claim but not a "disclosure" claim (at 4–5). That also misunderstands federal jurisdiction, importing a distinction from the *administrative complaint* process into an Article III court. DCCC brought an *APA claim*, plain and simple, which requires it to show how it is "suffer[ing] a legal wrong because of . . . agency action." *Air Courier Conf. of Am. v. Am. Postal Workers Union AFL-CIO*, 498 U.S. 517, 523 (1991) (quoting 5 U.S.C. § 702). *AB PAC v. FEC* is therefore irrelevant—it held a PAC lacked informational injury to compel FEC to pursue an excess contribution enforcement case against candidate Trump because his receipt of excess contributions was unrelated to the PAC's informational deficit. *See* No. CV 22-2139 (TJK), 2023 WL 4560803, at *5 (D.D.C. July 17, 2023). That is not true here—DCCC's informational injury turns entirely on whether a party's share of JFC Ads are treated as coordinated expenditures under FECA. That DCCC's excessive-contribution theory turned on the same question is immaterial.

Both FEC (at 9–10) and NRSC (at 2–3) also exaggerate the legal significance of the agency record. FEC merely cites cases discussing disputes over the *contents* of the agency record—none hold that a court's subsequent resolution of an APA claim is somehow bound to the universe of that record, particularly when it comes to a question of law. Indeed, FEC's first case *refutes* its argument, explaining that the "Court is not limited to the administrative record in determining whether it has subject matter jurisdiction over Plaintiffs' claims." *Amica Ctr. for Immigrant Rts. v. DOJ*, No. CV 25-298 (RDM), 2025 WL 1852762, at *10 (D.D.C. July 6, 2025), *appeal docketed*, No. 25-5254 (D.C. Cir. July 16, 2025). NRSC adopts a flavor of this argument by insisting DCCC had an obligation to exhaust its legal theories before FEC, even though its claim requires only a straightforward application of FECA's text. But it does not point to "any statute [that] requires issue exhaustion" here, where the underlying agency proceeding was neither adversarial nor a rulemaking. *Sims v. Apfel*, 530 U.S. 103, 108 (2000); *see also L. Xia v. Tillerson*, 865 F.3d 643, 658 (D.C. Cir. 2017). Its argument boils down to the assertion that the Commissioners were free to ignore their own organic statute in resolving AOR 2024-13, a theory which, if anything, supports vacatur so FEC may reconsider the matter in view of the Court's authoritative resolution of straightforward statutory interpretation issue presented here. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391–96 (2024). None of FEC these exhaustion or agency record-based arguments offer a basis for avoiding the "straightforward question of statutory interpretation" this case presents and which the APA charges this Court with resolving. *Centro de Trabajadores Unidos v. Bessent*, 167 F.4th 1218, 1230 (D.C. Cir. 2026).

Finally, NRSC continues to push an imaginary D.C. Circuit rule that deadlocked agency votes can *never* yield final agency action. *But see Common Cause v. FEC*, 842 F.2d 436, 448–51 (D.C. Cir. 1988). In reality, the Court must apply the *Bennett* factors to determine whether a deadlock yields final agency action based on the facts and relevant statutory scheme. Here, FEC acted pursuant to its own rules to close out AOR 2024-13; no statute supplied an alternative disposition as a matter of law, as in NRSC's cases. FEC's choice to close out AOR 2024-13—notwithstanding § 30108(a), and due to the vote of 3 commissioners to adopt an AOR treating JFC Ads as solicitations rather than coordinated expenditures—satisfies *Bennett*.

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Respectfully submitted,

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