
ORAL ARGUMENT SCHEDULED FOR APRIL 20, 2026

No. 25-5188

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GIFFORDS
Plaintiff-Appellee,

v.

FEDERAL ELECTION COMMISSION,
Defendant-Appellee,

NATIONAL RIFLE ASSOCIATION OF AMERICA, et al.,
Appellants

On Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLEE THE FEDERAL ELECTION COMMISSION

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**APPELLEE FEDERAL ELECTION COMMISSION'S
CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

Pursuant to D.C. Circuit Rule 28(a)(1), defendant-appellee Federal Election Commission (“FEC” or “Commission”) submits its Certificate as to Parties, Rulings, and Related Cases.

(A) *Parties and Amici.* Giffords was the plaintiff in the district court and is an appellee in this Court. The Commission was the defendant in the district court and is an appellee in this Court. The National Rifle Association of America, the National Rifle Association of America Political Victory Fund, and the National Rifle Association Institute for Legislative Action (“NRA”), were non-party intervenors in the district court, and are appellants in this Court.

(B) *Rulings Under Review.* The NRA appeals the April 22, 2025 Memorandum Opinion and Order (JA542-56) entered by the U.S. District Court for the District of Columbia (Sullivan, J.) denying NRA’s Motion for Relief from Orders and Judgment under Federal Rule of Civil Procedure 60(b)(4). The Memorandum Opinion and Order is not published in the federal supplement, and is not yet available on Westlaw or a similar database.

(C) *Related Cases.* The appealed ruling has not previously been before this Court or any other court. There is one related case currently pending before the U.S. District Court for the District of Columbia: Appellee Giffords’s lawsuit under 52 U.S.C. § 30109(a)(8)(C) against Appellants National Rifle Association of

America Institute for Legislative Action and National Rifle Association of
America Political Victory Fund, *see* No. 1:21-cv-2887-LLA (D.D.C.).

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GLOSSARY

FECA.....Federal Election Campaign Act

FEC or Commission.....Federal Election Commission

JAJoint Appendix

INTRODUCTION

The FEC appears in this appeal to disavow and rebuke any allegations by non-party intervenor-appellant, the NRA, that the Commission acted improperly in this action that reached final judgment more than four years ago. In 2019, plaintiff-appellee Giffords sued the FEC for its alleged failure to act on a series of administrative complaints it filed with the agency. In 2021, the district court granted Giffords's motion for summary judgment, denied the Commission's dispositive motion, and determined that the Commission's alleged delay in handling Giffords's complaints was contrary to law. After remanding the matters back to the Commission, the district court held that the Commission failed to conform to its judgment in the time required under the statute, and Giffords subsequently pursued a private right of action against the NRA under the FECA provision authorizing citizen suits, 52 U.S.C. § 30109(a)(8)(C).

Having no role in the ongoing private lawsuit between Giffords and the NRA, the Commission is uniquely situated to comment on the NRA's efforts here to use Federal Rule of Civil Procedure 60(b)(4) to advance its baseless argument of "collusion" between the FEC and Giffords to facilitate the private lawsuit. In denying the NRA's Rule 60(b)(4) Motion for Relief from Judgment that is the subject of the instant appeal, the district court properly found no evidence that the FEC and Giffords engaged in "collusive" litigation. Indeed, it held that the

Commission kept the district court informed of the voting and status of all administrative proceedings relevant to Giffords's lawsuit. Any suggestion that the parties were not adverse or that the FEC did not provide relevant factual information and legal authorities to the district court is patently false and wholly unsupported by the record.

Furthermore, Rule 60(b)(4) applies to only parties or their legal representatives, and the NRA is a non-party intervenor. This Court has never endorsed the out-of-circuit authority that permits non-parties to invoke Rule 60(b)(4) in very limited circumstances. Even if such authority applied, it would be unavailing to the NRA, because it requires a showing of fraud or deception on the court, and the NRA's allegations of collusion are groundless. This case therefore falls short of the limited circumstances for allowing non-parties to file Rule 60(b)(4) motions.

COUNTERSTATEMENT OF JURISDICTION

On April 22, 2025, the district court issued a Memorandum Opinion and Order, ruling the NRA lacked standing to move under Rule 60(b)(4) as a non-party, and denying the NRA's motion for lack of jurisdiction. The district court had jurisdiction over the action under 52 U.S.C. § 30109(a)(8)(A) and 28 U.S.C. § 1331. The NRA timely appealed on May 22, 2025. (JA557.)

COUNTERSTATEMENT OF THE ISSUES

The issue presented for review is whether the district court correctly held that the NRA, as a non-party to the underlying action, lacks standing to invoke Federal Rule of Civil Procedure 60(b)(4).

STATUTES AND RULES

The relevant provisions are included in the Addendum to appellant's opening brief ("Br.").

COUNTERSTATEMENT OF THE CASE

I. STATUTORY AND REGULATORY BACKGROUND

A. The Commission

The Commission is an independent agency of the United States government with jurisdiction over the administration, interpretation, and civil enforcement of FECA. 52 U.S.C. §§ 30101-45; *see generally* 52 U.S.C. §§ 30106(b)(1), 30107(a), 30109. Congress provided for the Commission to "prepare written rules for the conduct of its activities," 52 U.S.C. § 30106(e), "formulate policy" under FECA, *see, e.g.*, 52 U.S.C. § 30106(b)(1), and make rules and issue advisory opinions, 52 U.S.C. §§ 30107(a)(7), (8); *id.* §§ 30108; 30111(a)(8); *see also* *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam). The Commission is further authorized to institute investigations of possible violations of FECA, 52 U.S.C. § 30109(a)(1)-(2), and to

initiate civil enforcement actions in the United States district courts. *Id.*

§§ 30106(b)(1), 30107(a)(6), 30107(e), 30109(a)(6).

B. Enforcement and Judicial Review Under FECA

Any person may file an administrative complaint with the Commission alleging a FECA violation. 52 U.S.C. § 30109(a)(1). The FEC considers these allegations and determines whether there is “reason to believe” that the respondent violated FECA. *Id.* § 30109(a)(2). If the Commission so finds, it conducts “an investigation of such alleged violation” to determine whether there is “probable cause to believe” that a FECA violation has occurred. *Id.* § 30109(a)(2), (4). If probable cause is found, the Commission must attempt to reach a conciliation agreement with the respondent. *Id.* § 30109(a)(4)(A)(i). If unable to do so, the agency “may” institute a *de novo* civil enforcement action. *Id.* § 30109(a)(6)(A).

At each stage, the affirmative vote of at least four Commissioners, not merely a majority of the members serving at the time, is required for the agency to proceed. *Id.* § 30109(a)(2), (a)(4)(A)(i), (a)(6)(A); *see also id.* § 30106(c); § 30107(a)(6). This requirement ensures that when the Commission takes any of the core actions specified in the statute, it does so on a bipartisan or nonpartisan

basis; it also means that for these core actions, FECA has an implicit quorum requirement of four Commissioners.¹

Administrative complainants may challenge in federal court the FEC's handling of their complaints in two limited situations. *Id.* § 30109(a)(8)(A). First, after 120 days have elapsed since the complaint has been filed, a party who has filed an administrative complaint may bring a claim against the Commission alleging “a failure of the Commission to act on [the administrative] complaint.” *Id.*; *FEC v. Rose*, 806 F.2d 1081, 1092 (D.C. Cir. 1986). Second, an administrative complainant may file suit where the Commission decides to dismiss the administrative complaint. 52 U.S.C. § 30109(a)(8)(A). In either type of suit, the plaintiff must establish that the FEC has acted “contrary to law.” *Id.* § 30109(a)(8)(C). If a court finds a reviewable dismissal decision to be “contrary to law,” the court can “direct the Commission to conform” with its ruling “within 30 days.” *Id.* If the Commission fails to conform, the complainant may bring “a civil action to remedy the violation involved in the original [administrative] complaint.” *Id.*

¹ In 2023, the Commission revised its policies to require the Office of General Counsel to file under seal a copy of each Commission vote certification concerning the administrative complaint in any case where the Commission does not agree, by four or more affirmative votes, to defend an action under 52 U.S.C. § 30109(a)(8) alleging a failure of the Commission to act. Notice of Agency Procedure Regarding Litigation (Aug. 17, 2023), Federal Register, Vol. 88, No. 158.

C. District Court Proceedings

1. Giffords Sues the FEC for Failing to Act and the District Court Authorizes the Citizen Suit Against the NRA

In 2018, Giffords and the Campaign Legal Center filed four administrative complaints (Matters Under Review 7427, 7497, 7524, and 7553) against, *inter alia*, two entities associated with the NRA. On April 24, 2019, Giffords brought a lawsuit seeking declaratory and injunctive relief against the FEC for failing to act on the four administrative complaints, *see generally* JA024-052; *see also* JA558-59, alleging this failure to act was contrary to law under 52 U.S.C.

§ 30109(a)(8)(A). (JA043.) FECA and Commission regulations prohibit the Commission from publicly disclosing information pertaining to open enforcement matters. 52 U.S.C. § 30109(a)(12)(A); 11 C.F.R. § 111.21. Because this case involved open matters before the Commission, the district court conducted proceedings on Giffords's complaint partly under seal. (*See* Minute Order (June 21, 2019); FEC Unopposed Mot. for Protective Order (ECF No. 16).) Following discovery, the parties filed cross-motions for summary judgment, which were fully briefed as of January 17, 2020. (JA053-336.)

For much of 2019 and 2020, the Commission lost its quorum and therefore was unable to take any action on the pending administrative complaints. This period overlapped with the district court proceedings in this case, and the Commission regularly provided updates to the court regarding its quorum status.

(JA337-41, 479-85.) On February 19, 2021, the Commission, having regained its quorum, notified the court that it had considered all four matters in an executive session, and that a motion to find reason to believe that violations occurred in two of the four complaints had failed by a vote of 2-3, with one recusal, on February 9, 2021. It further notified the court that all four matters had been held over for consideration at the next executive session. (JA337-39.) On March 24, 2021, the Commission notified the court about a series of split votes, with one recusal, taking place on February 23, 2021: (a) a 3-2 vote to find reason to believe that some violations of the law occurred in all four matters, which fell short of the four-vote requirement for a reason to believe finding under 52 U.S.C. § 30109(a)(2); (b) a 2-3 vote on a motion to find that there was no reason to believe a violation occurred in two of the matters; and (c) a 2-3 vote on a motion to close the file on the matters. (JA340-41.) The Commission did not hold another reason-to-believe vote on the administrative matters after February 23, 2021.

On September 30, 2021, the court granted Giffords's cross-motion for summary judgment, denied the Commission's cross-motion to dismiss, or in the alternative, for summary judgment, and held that the Commission's delay in handling the administrative complaints was contrary to law. (Sept. 30, 2021 Order at 1 (JA373); Oct. 14, 2021 Mem. Opinion ("Op.") at 13, 31 (JA354, 372).) The court held that the Commission's treatment of Giffords's administrative complaints

was reasonable up until February 2021 – when the Commissioners divided regarding whether to find reason to believe a violation occurred or to close the file – but that the Commission’s failure to make a reason-to-believe determination after February 2021 was unreasonable. (JA361-63, 371-72.) The court remanded the matters to the Commission and directed the agency to conform with the ruling “by making the reason-to-believe determination set forth in 52 U.S.C. § 30109(a)(2)” within 30 days, or by November 1, 2021. (JA372-73.)

The court held a status conference on November 1, 2021. (JA374-86.) The Commission informed the court that in an executive session held on October 26, 2021: (1) a motion to close the four administrative matters failed 2-3, with one recusal; (2) the Commissioners did not take another reason-to-believe vote; and (3) the two Commissioners who had previously voted to find no reason to believe a violation had occurred and to close the files had submitted their statement of reasons to the administrative file. (Nov. 1, 2021 Hearing Transcript at 6:6-16 (ECF No. 90-9).)

Following the conference, the court entered an order finding that the Commission had failed to conform to the September 30, 2021 Order by failing to make a reason-to-believe determination on the four administrative complaints underlying the lawsuit. (JA387 (Order).) The district court authorized Giffords to

file a private lawsuit against the NRA pursuant to 52 U.S.C. § 30109(a)(8)(C). (JA387, 421 (Final J.).)

2. Giffords’s Citizen Suit Against the NRA and the NRA’s FOIA Action Against the Commission

On November 2, 2021, Giffords brought its private suit against the NRA and other administrative respondents (the “Citizen Suit”). (*Giffords v. NRA*, Case No. 21-cv-02887 (LLA), (Citizen Suit ECF Nos. 1 (Compl.), 81 (Amended Compl.)).) The NRA and other defendants moved to dismiss the Amended Complaint, and that motion remains pending. (Citizen Suit ECF No. 85.)

After Giffords brought the Citizen Suit, the NRA submitted a request under the Freedom of Information Act (“FOIA”) for records from the Commission concerning Giffords’s administrative complaints. (ECF No. 90-1 at 18-19 (summarizing FOIA action).) After denying the request for certain unredacted materials and communications, *id.* at 18, the NRA sued the Commission on April 12, 2022. *National Rifle Association of America et al. v. Federal Election Commission*, 1:22-cv-01017 (Compl. for Declaratory and Injunctive Relief (ECF No. 1).) The Commission subsequently produced to the NRA Commissioner vote certifications, statements of reasons, and other categories of documents integral to the administrative matters, as well as an index of withheld documents. (FOIA ECF No. 23 at 1-2.) In August 2023, the parties jointly agreed to dismiss the FOIA action, with prejudice, under Fed. R. Civ. P. 41(a). (JA640-44.)

3. The NRA Intervenes in the Lawsuit and Files the Rule 60(b) motion

On November 12, 2021, the NRA moved to intervene in this lawsuit under Fed. R. Civ. P. 24(b) to unseal the record. (Motion to Intervene for the Ltd. Purpose of Unsealing the Jud. Rec .and Memorandum in Support, JA389-90.) The NRA alleged that it did not seek to intervene as a party, *id.* at JA405 n.7, rather, it wished to unseal the record because of its pertinence to defending the Citizen Suit. (*Id.* at JA395, 401-02, 407-08.) The district court granted the motion to intervene for the “purpose of unsealing the judicial record,” and subsequently unsealed the record. (Minute Orders (12/13/2021).)

More than two years after the district court entered final judgment in favor of Giffords, in January 2024, the NRA moved under Rule 60(b)(4) for relief from the court’s orders that the Commission acted contrary to law and that it failed to conform. (JA423-25 (referring to these rulings as the “Orders and Judgment” (ECF No. 90)).) In its motion, the NRA asserted that the Orders and Judgment rested on the “false premise” that the Commission “failed to act” on Giffords’s administrative complaints because the Commission entered a series of deadlocked votes in February 2021. (Mem. of Points and Authorities in Support of Motion for Relief from Orders And Judgment, JA426—478 ECF No. 90-1.) (*See also* JA457-66.) The NRA argued that the case became moot and necessitated vacatur when

the Commission voted in February 2021, and thus prior to the district court entering the Orders and Judgment. (JA457-68.)

The NRA primarily relied on three district court cases to argue that the February 2021 votes mooted the case: (1) *Campaign Legal Center v. 45Committee, Inc.*, 666 F. Supp. 3d 1 (D.D.C. 2023) (“45Committee”); (2) *Heritage Action for America v. FEC*, 682 F. Supp. 3d 62 (D.D.C. 2023) (“Heritage Action”), aff’d on other grounds, *Campaign Legal Center v. Heritage Action for America*, No. 23-7107, 2025 WL 222305 (D.C. Cir. Jan. 15, 2025); and (3) *Campaign Legal Center v. Iowa Values*, 691 F. Supp. 3d 94 (D.D.C. 2023) (“Iowa Values”). (JA457-66.)

The NRA further contended that Giffords and the Commission were not adverse and instead sought to allow Giffords’s Citizen Suit to proceed against the NRA, as revealed by the Commission’s alleged failure to argue the significance of the February 2021 votes. (JA468-74.)

Although a non-party in the action, the NRA asserted it could move under Rule 60(b)(4) because it challenged the Court’s subject matter jurisdiction. (JA475-77.) The NRA pointed to the Second Circuit’s decision allowing such a motion in *Grace v. Bank Leumi Trust Co. of N.Y.*, 443 F.3d 180 (2d Cir. 2006) (the “Grace Exception”) and this Court’s decision in *Agudas Chasidei Chabad of United States v. Russian Federation*, 19 F.4th 472 (D.C. Cir. 2021) (“Chabad II”), aff’g, No. 1:05-cv-1548, 2020 WL 13611456 (“Chabad I”) (D.D.C. Nov. 6, 2020),

which recognized, but did not apply, the exception. (JA475.) The NRA argued the *Grace* Exception applied here because it was “strongly affected” by the Orders and Judgment that were the result of the FEC’s “deception.” (JA475-76.)

In its original and supplemental responses to the NRA’s motion, the Commission took no position on the merits of the NRA’s motion, but contested any insinuation of impropriety by agency counsel or collusion between the FEC and Giffords, as well as the NRA’s arguments regarding the significance of the controlling Commissioners’ statement of reasons issued prior to the end of Commission’s consideration of a matter. The Commission also brought to the district court’s attention the actual language of the D.C. Circuit’s recently published appellate decision in *45Committee* regarding deadlocked votes and termination of Commission proceedings. JA479-85; ECF No. 103 at 2 (citing *Campaign Legal Ctr. v. 45Committee, Inc.*, 118 F.4th 378, 382 (D.C. Cir. 2024)). The Commission reiterated that it timely notified the court of all relevant administrative actions, including Commissioners’ statement of reasons, through the November 1, 2021 status conference. (JA483.) The Commission also disputed any insinuation of fault in not bringing *45Committee*, *Heritage Action*, and *Iowa Values* to the district court’s attention, because each decision arose more than a year after the district court issued a final judgment. (JA484.)

D. The District Court Denies Rule 60(b)(4) Relief

On April 22, 2025, the district court held that the NRA lacked standing to move under Rule 60(b)(4) and denied the NRA's motion. (JA552-56.) The court found that Rule 60(b)'s text limits relief to parties and their legal representatives, and that even assuming the D.C. Circuit would endorse the *Grace* Exception outlined in *Chabad II*, it would not apply here. (JA552-54 & n.6.) The court explained that *Chabad II* prohibits the *Grace* Exception in cases where, *inter alia*, there was no fraud or deception on the court. JA554 (citing *Chabad II*, 19 F.4th at 477). Here, the court explained that the Commission kept the court informed of all relevant actions concerning the administrative complaints, there was no evidence of "collusion," and the Orders and Judgment did not bind the NRA, other than having to defend itself in the Citizen Suit. (JA554-55). This final factor diverged from *Grace*, where a judgment "effectively bound the movant" to a settlement agreement. (JA554-55.) Furthermore, any analysis of its own jurisdiction concluded where the movant could not invoke Rule 60(b)(4). JA555-56 (citing *Agudas Chasidei Chabad of U.S. v. Russian Fed'n*, 110 F.4th 242, 247 (D.C. Cir. 2024) ("*Chabad III*"), cert. denied, No. 24-909, 2026 WL 135737 (S. Ct. Jan. 20, 2026)).

E. Proceedings on Appeal

The NRA timely appealed the district court's order. (JA557.) Giffords moved to dismiss the appeal and for summary affirmance. The Court denied the motion and referred the motion for full briefing. In its brief, the NRA argues that it has standing to appeal the denial of the Rule 60(b)(4) motion, and that courts must assume standing when necessary to address jurisdictional flaws. As it did in the district court, the NRA argues that the *Grace* Exception applies in the D.C. Circuit, and reiterates its allegations that Giffords and the Commission secretly colluded with each other and were therefore not adverse.

SUMMARY OF ARGUMENT

The NRA mounts a series of unfounded allegations of secret collusion between the FEC and Giffords, faulting the Commission for purportedly failing to raise legal arguments or bring factual information to the attention of the district court, and falsely accusing the Commission of teaming up with Giffords in an effort to achieve the filing of the Citizen Suit. The record below clearly contravenes this contention. The Commission informed the district court of all relevant Commission activity regarding the administrative matters well before the district court issued the Orders and Judgment. The district court deemed the Commission's actions concerning the administrative matters to be contrary to law, and the Commission is not aligned with either party in the Citizen Suit. Rule

60(b)(4) is not available to non-parties, and there is no basis for the Court to apply the *Grace* Exception in this case. The Commission otherwise takes no position on Giffords's arguments in opposition to the Rule 60(b)(4) motion or the merits of the Citizen Suit.

STANDARD OF REVIEW

Rule 60(b)(4) states that a court may relieve a party or its legal representative from a final judgment if the judgment is void. Fed. R. Civ. P. 60(b)(4). Under Rule 60(b)(4), a judgment is not void simply because it is erroneous. *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010). Where a movant raises a jurisdictional defect, courts usually reserve relief “only for the exceptional case in which the court that rendered judgment lacked even an ‘arguable basis’ for jurisdiction.” *Id.* at 271; *Micula v. Gov’t of Romania*, 101 F.4th 47, 51-52 (D.C. Cir. 2024).

Although Rule 60(b) motions are generally committed to the discretion of a district court, and are subject to review for abuse of discretion, ““there is no question of discretion on the part of the court when a motion is under Rule 60(b)(4); if the judgment is void, relief is mandatory.”” *Bell Helicopter Textron, Inc. v. Islamic Republic of Iran*, 734 F.3d 1175, 1179 (D.C. Cir. 2013) (quoting *Combs v. Nick Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987)). Rule 60(b)(4) decisions are thus subject to *de novo* review. *Micula*, 101 F.4th at 51; *Lee*

Mem'l Hosp. v. Becerra, 10 F.4th 859, 863 (D.C. Cir. 2021) (reviewing de novo the denial of Rule 60(b)(4) relief).

ARGUMENT

I. THE COMMISSION DID NOT COLLUDE WITH GIFFORDS

A. The NRA Misinterprets D.C. Circuit Precedent on “Deadlock Dismissals” of Administrative Complaints

At the crux of the NRA’s position that the district court erred in not assessing its own jurisdiction is that the district court believed the “false legal premise” that the Commission failed to act on Giffords’s administrative complaints. (Appellants’ Br. (“Br.”) at 27, 30-36.) According to the NRA, the Commission’s votes on February 23, 2021 mooted the case and rendered the subsequent Orders and Judgment void seven months in advance. (*Id.* at 27, 31.) The February 2021 votes were deadlocked, meaning “no bloc of four Commissioners vote[d] to find either reason to believe or *no* reason to believe.” *45Committee*, 118 F.4th at 382; *see also* 52 U.S.C. § 30109(a)(2) (requiring an affirmative vote of four or more Commissioners to find that there is reason-to-believe a violation of the Federal Election Campaign Act has occurred or will occur). As it did in the district court, the NRA offers the three district court decisions in *45Committee*, *Heritage Action*, and *Iowa Values* as well as this Court’s affirmances of *45Committee* and *Heritage Action* as what they argue is definitive proof that the February 2021 votes were the equivalent of a dismissal or

termination of proceedings sufficient to defeat a § 30109(a)(8) lawsuit. (Br. at 24, 31-32.)

First, the NRA accuses the FEC of colluding with Giffords because the agency did not previously argue in the district court that the failed reason-to-believe votes in February 2021 rendered the case moot. (Br. at 27-28, 30-36.) Yet the NRA's mootness argument is based entirely on cases decided *after* this case was closed. In offering the D.C. Circuit's affirmances of *45Committee* (in 2024) and *Heritage Action* (in 2025), the NRA recommits to a theory that the Commission should have, in 2021, had the clairvoyance to anticipate future legal decisions *and* their subsequent appeals in this Court when making recommendations or formulating arguments before the district court. (*Id.* at 31-33.) To parse this even further: The district court denied the Commission's dispositive motion against Giffords in 2021; the Commission did not close the administrative files until 2022, (JA482); the district court cases that the NRA principally relies upon were not decided until 2023; the NRA did not file its Rule 60(b)(4) motion until January 2024; and the D.C. Circuit did not decide *45Committee* until October 2024. The D.C. Circuit did not rule on *Heritage Action* until 2025.

Indeed, even in 2023, courts in this District remained divided as to whether a deadlocked reason-to-believe vote was the equivalent of a dismissal for purposes

of judicial review under 52 U.S.C. § 30109(a)(8)(C). *Compare Heritage Action*, 682 F. Supp. 3d at 74 (deadlocked vote results in dismissal) *with Citizens for Responsibility and Ethics in Washington v. FEC*, No. 22-cv-3281, 2023 WL 6141887, at *11 (D.D.C. Sept. 20, 2023) (deadlocked vote does not result in dismissal). And when the Commission previously argued that a failure-to-act case was moot where the Commission had not only held a reason-to-believe vote but also found reason to believe a violation had occurred, that argument was rejected by the court. *See Democratic Senatorial Campaign Comm. v. FEC*, No. CIV. A. 95-0349 (JHG), 1996 WL 34301203, at *9 (D.D.C. Apr. 17, 1996). *Cf. All. for Democracy v. FEC*, 335 F. Supp. 2d 39, 42, 43 (D.D.C. 2004) (holding failure-to-act lawsuit was moot because the Commission had “completed its final action:” “The conciliation agreement and closing of the administrative file mark[ed] the end of the enforcement process under [52 U.S.C, § 30109(a)] and foreclose[d] any possible relief under [*id.* § 30109(a)(8)] based on the FEC’s failure to act”); *Common Cause v. FEC*, 489 F. Supp. 738, 744 (D.D.C. 1980) (“Were the Court not now presented with executed conciliation agreements . . . , the Court would undoubtedly find the conduct of the investigation contrary to law.”). The district court did not lend credence to the NRA’s argument, and neither should this Court.

As to the substance of the NRA’s position, it suffers from its own “false legal premise.” (Br. at 23.) Although the NRA asserts that a split reason-to-

believe vote, taken prior to the conformance period, constitutes an automatic dismissal under 52 U.S.C. § 30109(a)(8)(A), *45Committee* stated:

Because a reason-to-believe vote resulting in a deadlock will give rise to a dismissal only if a majority of Commissioners separately votes to dismiss the complaint, the phrase we sometimes use—“deadlock dismissal,”—is perhaps a convenient shorthand but should not be misunderstood to mean a deadlocked vote constitutes or automatically occasions a dismissal.

118 F.4th 378 at 382 (internal citations omitted). Importantly, *45Committee* explained that if the FEC “does not dismiss the complaint after a failed reason-to-believe vote, the case remains open. In that circumstance, the Commission may hold further reason-to-believe votes, and there may be no public disclosure of those votes or any other actions taken by the Commission with respect to the complaint.” *Id.* Here, the Commission did not dismiss Giffords’s administrative complaints until August 2022.

Additionally, the February 2021 votes were not taken during the conformance period. Like this case, in *45Committee*, the Commission held a deadlocked reason-to-believe vote before the district court held that the Commission’s delay was contrary to law. *Id.* at 383-84. Unlike this case, however, in *45Committee*, the Commission had a *subsequent* reason-to-believe vote during the conformance period. *Id.* at 385 (“In light of that December 2021 reason-to-believe vote, the district court dismissed the citizen suit.”). The D.C. Circuit characterized the vote taken during the conformance period as the reason

for precluding a citizen suit. *Id.* (“That court learned of the Commission’s December 2021 reason-to-believe vote, and held that the Commission, by holding that vote, *had* taken action to conform”). The *45Committee* Court did not appear to consider the *pre*-conformance period vote and the conformance period vote in tandem, it considered only the pertinence of the second vote. *Id.* at 390 (“The issue we face is whether the Commission’s holding the failed reason-to-believe vote constituted conformance.”) (emphasis added). To the extent the NRA seeks to extend the holding in *45Committee* on deadlocked, reason-to-believe votes taken during the conformance period to deadlocked votes taken at any point during administrative proceedings, *45Committee* does not square with that reading. The Court is thus left with the NRA’s argument that the Commission colluded with Giffords by failing to assert the NRA’s preferred interpretation of *45Committee*. This does not hold, and it should not support a ruling the Commission was not adverse to Giffords or engaged in collusive litigation.

The facts of *Heritage Action* are also distinguishable from the instant case. In that case, the Commission deadlocked on whether there was a reason to believe a violation of the law had occurred and on whether to close the administrative file. The district court held that the Commission’s alleged failure to act on the administrative complaint was contrary to law and ordered the Commission to act on the complaint within thirty days. The Commission subsequently took a series

of reason-to-believe votes that deadlocked during this conformance period. The district court held that a deadlocked reason-to-believe vote – again, during the conformance period – triggered immediate disclosure of the FEC’s administrative record. *Heritage Action*, 682 F. Supp. 3d at 73-76 (“Because a deadlocked reason-to-believe vote is equivalent to a dismissal (or termination), such a vote requires prompt disclosure.”)² The *45Committee* Court briefly commented on *Heritage Action* in noting that “[o]ne district court in this circuit has held unlawful the Commission’s practice of not disclosing failed reason-to-believe votes absent a subsequent dismissal, but that question is not before us in this appeal.”

45Committee, 118 F.4th at 382-83 (citing *Heritage Action*, 682 F. Supp. 3d at 73-76). In an unpublished order, a panel from this Court affirmed the district court’s decision on alternative grounds. *Heritage Action*, 2025 WL 222305, at *1; *see also Iowa Values*, 691 F. Supp. 3d at 105-08 (D.D.C. 2023).³

² A later district court ruling in a different § 30109(a)(8) case cast doubt on holding deadlocked votes as tantamount to a dismissal. *See Citizens for Responsibility and Ethics in Washington*, 2023 WL 6141887, at *11 (“First, [*Heritage Action*] reasoned that, because the Commission cannot investigate without four votes, the necessary effect of deadlock must be dismissal But experience has shown that the Commission routinely changes course after an initial reason-to-believe vote either because Commissioners are convinced by their colleagues or based on later negotiations to narrow their charges.”).

³ The NRA also points to the district court decision in *Iowa Values*, which also addressed the significance of a vote taken after a district court had found the Commission acted contrary to law as endorsing its deadlock-dismissal argument. 691 F. Supp. 3d at 106. Unlike *Heritage Action* or *45Committee*, *Iowa Values* did

B. The Commission Consistently Updated the Court on Relevant Administrative Proceedings

Throughout the litigation, the Commission routinely updated the district court on the status of the administrative matters, including the votes held by the Commission on those matters. This pattern of routine disclosure of all relevant Commission actions undermines any claim of collusion by the NRA. The Commission informed the district court of the February 23, 2021 votes in March 2021. (JA340-41.) The district court accordingly had notice of these votes, the last Commission votes on the administrative matters, when it denied the Commission's motion for summary judgment and held the Commission acted contrary to law in September 2021, and when it ruled the Commission failed to conform in November 2021. (JA373, 387, 420-21.) The district court also noted the Commission's votes when denying the NRA's Rule 60(b) motion, determining there was "no evidence" of collusion between the Commission and Giffords. (JA554.)

The NRA alleges that the Commission's providing notice of these votes to the district court is insufficient for failure to explain "*what the votes meant, from a legal perspective.*" (Br. at 46.) But as explained above, NRA's own "legal

not come before the D.C. Circuit. *See Campaign Legal Ctr. v. Iowa Values*, 710 F. Supp. 3d 35, 57 (D.D.C. 2024) (denying Iowa Values' motion to certify interlocutory appeal).

perspective” finds no purchase in this Court’s holding in *45Committee*. The NRA’s collusion claim, in its distilled form, is a desire that the Commission raise an argument on the NRA’s behalf. That claim is unavailing in challenging the Commission’s consistent updates provided to the district court on Giffords’s administrative matters.

And while the NRA faults the Commission for its alleged “belated” disclosure that Commissioners were in the process of drafting their statement of reasons after the February 2021 votes and prior to the district court’s summary judgment ruling, statements of reasons themselves are not “action” on the administrative complaint—much less the mere drafting of them. *See, e.g.*, 52 U.S.C. § 30109(a)(1)-(11) (describing the statutory actions of the Commission and its general counsel regarding administrative complaint); 11 C.F.R. §§ 111.5-111.7, 111.9 (same); *c.f.*, FEC, *Statement of Policy Regarding Comm’n Action in Matters at the Initial Stage in the Enf’t Process*, 72 Fed. Reg. 12545 (Mar. 16, 2007); Sept. 30, 2021 Order (ECF No. 71) (ordering the Commission to “mak[e] the reason-to-believe determination as set forth in 52 U.S.C. § 30109(a)(2)”). Rather, they are an explanation of the rationale for the votes that the Commission did take, of which the Commission had already informed the court prior to its September 2021 order. *Common Cause v. FEC*, 842 F.2d 436, 438, 448-51 (D.C. Cir. 1988); *Democratic Cong. Campaign Comm. v. FEC*, 831 F.2d 1131, 1132, 1135 (D.C. Cir. 1987).

Even assuming *arguendo* that statements of reasons were somehow relevant, the Commission promptly notified the district court at the November 1, 2021 status conference that certain Commissioners' statement of reasons was issued on October 26, 2021. The district court therefore had all relevant information before it when deciding whether the Commission had conformed to its September 2021 Order. (Nov. 1, 2021 Hearing Transcript at 6:6-16; Nov. 1, 2021 Order (ECF No. 75) (finding that the Commission failed to conform).)

C. The NRA Raises Speculative and Unfounded Arguments About the Commission's Defense in the Lawsuit

The NRA also speculates that the Commission prevented agency counsel from arguing that the February 2021 reason-to-believe votes mooted Giffords's lawsuit, thereby "colluding" with Giffords. (Br. at 44-45; *id.* at 47-48.) The NRA bases this speculation on privileged portions of the Commission's vote authorization to defend the lawsuit the NRA obtained in the FOIA suit against the FEC. (*Id.* at 48 ("redacted vote certification authorizing what appears to be a limited defense."))

Notwithstanding the defects in the NRA's mootness argument under D.C. Circuit precedent as explained above, absent evidence to the contrary, the Court must presume an agency acts in good faith. *Comcast Corp. v. FCC*, 526 F.3d 763, 769 n.2 (D.C. Cir. 2008). But the Court need not rest on general presumptions of

good faith, because the district court’s record establishes the Commission’s sound conduct during the years-long litigation between the FEC and Giffords. *See* Section I.B, *supra*. The district court correctly found “no evidence” of bad faith on the part of the Commission during the lawsuit, and declined to lend credence to these allegations of collusion by the FEC. (JA554.)⁴

The NRA further argues that a former FEC Commissioner publicly stated their approval of Giffords’s citizen suit against the NRA. (Br. at 50.) To the extent the NRA seeks to use the personal views of a single, and now former FEC Commissioner to reveal a scheme by the Commission to coordinate with Giffords to generate a citizen suit, this argument fails. (Br. at 50.) The views of a single Commissioner do not represent the views of the Commission as a whole.⁵ 52 U.S.C. § 30106 (requiring four votes for agency action); 11 C.F.R. § 2.3 (“Statements of views or expressions of opinions made by Commissioners or FEC

⁴ Additionally, if the NRA wanted to raise an argument concerning the content of FEC’s production in the FOIA action, it could have done so then rather than attempt to litigate that here. In fact, when the parties stipulated to dismiss the FOIA Action, the NRA “release[d] and hereby discharge[d] the Defendant and its officers, employees, and agents from any and all claims and causes of action that Plaintiffs assert or could have asserted by reason of, or with respect to, or in connection with, or which arise out of the specific FOIA requests on which this action is based.” (FOIA ECF No. 34 ¶ 3.)

⁵ The former Commissioner left the Commission in January 2025. Another Commissioner of the same party said in her 2022 confirmation hearing, after the events at issue in this lawsuit, that she would vote to defend the Commission in similar cases.

employees at meetings are not intended to represent final determinations or beliefs.”); *see Common Cause v. FEC*, 676 F. Supp. 286, 289 n.3 (D.D.C. 1996) (finding transcript of single Commissioner’s statement unreliable because “collegial interchanges . . . do not reflect the considered reasons for the Commission’s decisions.”)

D. The Commission and Giffords Were Adverse Throughout This Litigation

The NRA also argues that Giffords and the FEC were aligned as to the key legal question before the Court and the ultimate outcome. (Br. at 47-48.) They were not. However, assuming, *arguendo*, that contention, it would be insufficient to hold, as the NRA contends, that there is no Article III case or controversy. The Supreme Court has held parties remain adverse even where they agree on the fundamental question in the case, *United States v. Windsor*, 570 U.S. 744, 761 (2013), which they did not here. The parties before a court need not disagree about everything to be adverse enough to capture federal court jurisdiction. *Pope v. United States*, 323 U.S. 1, 11-12 (1944) (“When a plaintiff brings suit to enforce a legal obligation it is not any the less a case or controversy upon which a court possessing the federal judicial power may rightly give judgment, because the plaintiff’s claim is uncontested or incontestable For in any case the court is called on to sanction, by its judgment, an alleged obligation in a proceeding in

which the existence, validity and extent of the obligation, the existence of the data, and the correctness of the computation may be put in issue.”); *See also Bank Markazi v. Peterson*, 578 U.S. 212, 230 (2016) (holding “[I]t is not any less a case or controversy upon which a court possessing the federal judicial power may rightly give judgment” when the arguments before the court are uncontested or uncontestable); *Patchak v. Zinke*, 583 U.S. 244 (2018).

The Court need not decide the case on these formalistic decisions because Commission was always plainly adverse with Giffords in the § 30109(a)(8) lawsuit brought by Giffords. In determining whether a case seeking declaratory relief has become moot, “the question . . . is whether the facts alleged, under all the circumstances, show that there is substantial controversy, between parties having adverse legal interests, *of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.*” *Conyers v. Regan*, 765 F.2d 1124, 1128 (D.C. Cir. 1985). To have adverse interests means that a judgment that benefits the interests of the plaintiff necessarily negatively affects a concrete interest of a defendant. *Cortes v. Nat’l Lab. Rels. Bd.*, 145 F.4th 57, 61 (D.C. Cir. 2025).

This action satisfies both preconditions. This case began when Giffords sued the FEC to obtain a declaration that the Commission’s alleged failure to act on their administrative complaints was contrary to law under 52 U.S.C.

§ 30109(a)(8)(A). Giffords sought a declaration that the Commission acted contrary to law, and the Commission sought a dismissal of Giffords's lawsuit. Giffords and the Commission were adverse for the entirety of the former's lawsuit. Throughout, the Commission sought to avoid the outcome pursued and attained by Giffords: the Citizen Suit, flowing from the district court's denial of the FEC's dispositive motion and subsequent determination that the FEC acted contrary to law. *See ASARCO Inc. v. Kadish*, 490 U.S. 605, 606 (1989) ("Moreover, the requisites for a case or controversy are met, since the parties remain adverse, and the judgment below altered tangible legal rights."). The Commission no longer has a role to play in the Citizen Suit between Giffords and the NRA, but that does not retroactively dislodge the adversarial path taken to trigger that dispute.

The parties held opposing positions throughout the lawsuit. In their cross motions for summary judgment, the Commission argued that Giffords had not made a showing of arbitrary and capricious delay as to the administrative matters, and that the Commission acted reasonably in considering those matters. (JA077-90.) The Commission further asserted that Giffords had presented a series of factually and legally complex complaints that necessitated significant agency resources. (JA087-89.) Giffords argued that its complaints did not raise novel legal issues, and that the Commission was not "excused" for failing to vote on the complaints because of constraints on agency resources. (JA156-62.) The

Commission notified the court of all subsequent Commission votes on the administrative complaints up until the Court issued its order that the Commission acted contrary to law and its subsequent order that the Commission failed to conform, a result the FEC's briefing shows it clearly sought to avoid.

II. THE NRA DOES NOT FIT WITHIN THE EXCEPTION UNDER RULE 60(b)(4) BECAUSE THERE WAS NO COLLUSION

A. Text of Rule 60(b)(4) Precludes Non-Parties

The NRA is not a party to this litigation. The Commission disputes the NRA's assertion that as a non-party, they are entitled to use Rule 60 or any exception to the Rule to advance its arguments that the Commission lacked adversity or secretly colluded with Giffords. Indeed, the NRA conceded its limited role in this litigation in its motion to intervene. (JA405 n.7.) The court's order permitting intervention did so on narrow grounds, for the "purpose of unsealing the judicial record." (Minute Order (12/13/2021).) The district court correctly recognized the NRA's non-party status when denying the NRA's Rule 60(b)(4) motion. (JA552.) Explaining that Rule 60(b) "explicitly limits relief to parties and their legal representatives," the district court concluded that the NRA "lacks standing to bring a Rule 60(b) motion in this case." (*Id.*)

The plain language of the Rule makes clear that it is only available to parties. "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following

reasons: (4) *the judgment is void[.]*” Fed. R. Civ. P. 60(b)(4) (emphasis added). These are the only “proper persons” to seek relief under the rule. *Chabad II*, 19 F.4th at 475, 477. More broadly, case law interpreting Rule 60(b)(4) reflects that the rule is of limited utility, even to those who may invoke it. Federal Courts interpret Rule 60(b)(4) as being available only in rare instances. *United Student Aid Funds, Inc.*, 559 U.S. at 271. Those rare instances are where a judgment is premised either on a “certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard.” *Id.*; *United States v. Philip Morris USA Inc.*, 840 F.3d 844, 850 (D.C. Cir. 2016).

B. The Grace Exception Has Not Been Endorsed in the D.C. Circuit, and in Any Event, it Would Not Apply Here

Acknowledging the uphill climb that even parties have to invoke Rule 60(b)(4), the NRA seeks recourse in the exception recognized by the Second Circuit in *Grace v. Bank Leumi Trust Co. of N.Y.*, arguing that it can invoke Rule 60(b) because Giffords’s citizen suit against the NRA was a result of the FEC’s “collusive litigation.” (Br. at 43-51.) In *Grace*, the Second Circuit allowed a non-party to move under Rule 60(b)(4) where the “plaintiffs enter[ed] into a settlement agreement with a judgment-proof, *pro se* defendant with the intent . . . to collect from” that non-party. 443 F.3d at 188. As the district court in *Chabad I* explained, *Grace* “involved a fraud perpetuated upon the court to saddle a third party with a

judgment debt,” and the plaintiff “colluded with a judgment-proof defendant to manufacture a lawsuit.” 2020 WL 13611456, at *11.

This Court has never applied the *Grace* Exception, and it has constructed it in such a way that renders the “exceedingly narrow” exception for non-parties inapplicable to this case. *Grace*, 443 F.3d at 189. In *Chabad II*, the Court held that the *Grace* Exception did not apply where there was no fraud or deception on the court. 19 F.4th at 477; *see also* JA553. Years later in *Chabad III*, the Court referred to the denial of Rule 60(b)(4) relief only on “party or its legal representative” grounds, it did not revisit its earlier holding on the *Grace* Exception. 110 F.4th at 247.

The NRA maintains that, unlike the movant in *Chabad*, it may avail itself of the *Grace* Exception as a movant that is “strongly affected” by the Orders and Judgment, which created the Citizen Suit and only transpired because of the Commission’s failure to argue the significance of the February 2021 reason-to-believe votes. (Br. at 45-46.) The NRA asserts it has been prejudiced by having to defend the Citizen Suit, and maintains that *Chabad II* left open the possibility of applying *Grace* in the future. (*Id.* at 45-47.)

These allegations, particularly, the NRA’s collusion claim repackaged as a post-judgment motion, fall short of the scenario in *Grace*. The exception does not apply to the NRA because there was no fraud or deception on the court. (JA554

(“There is no evidence establishing that Giffords and the FEC engaged in ‘collusive litigation,’ giving rise to a finding of fraud on the Court.”.) The Commission consistently updated the district court of all relevant administrative proceedings in this case. Having exceeded the narrow contours of *Grace*, the NRA does not qualify for the *Grace* Exception, to the extent that the exception is even available in this Court. *Chabad II*, 19 F.4th at 477.

The NRA is not bound by the Orders and Judgment so that it may not contest the ultimate issue of liability. *See Grace*, 443 F.3d at 188 (finding non-party movants “sufficiently connected and identified with” an underlying settlement agreement). True, the Orders and Judgment settled liability of the Commission regarding acting on Giffords’s administrative complaints, but that is distinct from the legal issues at stake in the Citizen Suit. The NRA may still defend that suit on the merits, as it is currently doing. The Commission takes no position on the merits of that suit, other than to state those merits remain undecided. But the Commission disputes in full any NRA effort to raise allegations of collusion by way of Rule 60(b)(4).

CONCLUSION

The NRA’s arguments that the Commission secretly colluded with Giffords and deceived the district court are without merit. The NRA also asks the Court to take an exceptional remedy, transcend its plain terms, and impose upon it an out-

of-circuit exception in an inapposite fact pattern. This is not the scenario the *Chabad* Court envisioned for applying *Grace*, and the Court should not do so here.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the brief contains 7,579 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(i).

The brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because the brief uses the proportionally spaced typeface Microsoft Word 14-point Times New Roman.

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of February 2026, I electronically filed the Brief for the Federal Election Commission with the Clerk of the United States Court of Appeals for the D.C. Circuit by using the Court's CM/ECF system, thereby serving all persons required to be served.

I further certify that I also will cause the requisite number of paper copies of the brief to be filed with the Clerk.

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