IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER,
Plaintiff,

v.

FEDERAL ELECTION COMMISSION,
Defendant,

REPUBLICAN NATIONAL COMMITTEE,
Proposed Intervenor-Defendant.

Case No. 1:26-cv-1559 (ACR)

REPLY IN SUPPORT OF MOTION OF REPUBLICAN NATIONAL COMMITTEE TO INTERVENE

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INTRODUCTION

Campaign Legal Center (CLC) principally contends that letting the RNC into this case will "unduly complicate this litigation" with "extraneous issues and needless briefing." Dkt. 21 (Opp.) at 2. But so far, the only litigant who has done that is CLC itself. Had CLC not opposed intervention, the RNC could have filed a short, straightforward motion with both parties' consent. This Court could then have granted permissive intervention without much trouble, as no one denies the RNC meets Rule 24(b)'s criteria. At that point, the RNC could have joined the FEC in defending the Advisory Opinion and this case would be on its way.

Instead, CLC chose to fight the RNC's intervention on every available ground, opposing not only permissive intervention for discretionary reasons, but going so far as to claim that the RNC cannot satisfy any of Rule 24(a)(2)'s four elements for intervention as of right. It has therefore forced the parties—and this Court—to address a variety of issues that could have been avoided.

Yet CLC's objections ultimately do not alter the straightforward application of Rule 24 here. On timeliness, CLC does not identify any prejudice from the timing of the RNC's motion, but instead invokes the ordinary burdens that arise any time a court allows another party into a case. On the RNC's legally protected interests—and the threat this lawsuit poses to them—CLC cannot evade the fact that vacatur of the Advisory Opinion will directly eliminate one of the RNC's legal rights and immediately prevent it from engaging in grassroots activities in upcoming elections. And on adequacy, CLC dismisses the concerns over the FEC's lack of litigating authority as "expressly refuted by FECA," Opp. 2, but the Commission's need to file a five-page (yet unpersuasive) brief on the issue speaks for itself. This Court should therefore grant the RNC intervention as of right. At a minimum, it should permit the RNC to intervene, as CLC's overblown claims of prejudice pale in comparison to the risks of letting the FEC litigate this case alone.

I. THE RNC MEETS RULE 24'S CRITERIA FOR INTERVENTION AS OF RIGHT.

A. The RNC's motion to intervene is timely.

On timeliness, CLC asks this Court to be the first to hold that an intervention motion filed before the defendant enters an appearance is untimely. Opp. 6-8. The Court should decline the invitation. In urging this Court to break new ground, CLC does not even acknowledge, much less address, the decisions in this Circuit concluding that an intervention motion is "certainly timely" where, as here, the movant sought "to intervene less than two months after the plaintiff[] filed the[] complaint and before the defendant filed an answer or was required to do so." *CLC v. FEC*, 334 F.R.D. 1, 6 (D.D.C. 2019) (cleaned up); *see* Dkt. 11-1 (Mot.) at 6 (collecting cases). Nor does it deny that the only way the RNC could have intervened sooner here was if it had somehow managed to find out about the complaint and intervene before CLC served the FEC and finished filing its notices of appearance. *Compare* Dkts. 7-10 *with* Dkt. 11.

Instead, CLC contends that the RNC's motion is "untimely" because "its intervention will cause" "prejudice and disruption" in the form of potential new "issues" and "other similarly situated prospective intervenors." Opp. 6-8. But those risks—presented by virtually *any* motion to intervene—have no bearing on the timeliness analysis. After all, "every motion to intervene will complicate or delay a case to some degree—three parties are more than two." *Kalbers v. DOJ*, 22 F.4th 816, 825 (9th Cir. 2021). But "[t]hat is not a sufficient reason to deny intervention." *Id.*

Instead, "'[t]he most important consideration in deciding whether a motion for intervention is untimely is whether *the delay in moving for intervention*'"—and not the intervention itself—"'will prejudice the existing parties.'" *Roane v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014) (emphasis added). After all, Rule 24 directs courts to "consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights" only in the context of "exercising its discretion" to grant permissive intervention. Fed. R. Civ. P. 24(b)(3). Whether the intervention "motion" is "timely" is a distinct inquiry. *Id.* 24(b)(2); *accord id.* 24(a). CLC's concerns therefore go only to permissive intervention, where they fall flat. *See infra* Part II.

CLC's own cases prove the point. *See* Opp. 6-8. In *CLC v. FEC*, 68 F.4th 607 (D.C. Cir. 2023), the D.C. Circuit affirmed the denial of a "post-judgment" intervention motion because the "delay … would prejudice Campaign Legal." *Id.* at 608. In *United States v. Google LLC*, 2025 WL 880552 (D.C. Cir. Mar. 21, 2025), it likewise held that an intervention motion was untimely because its "belated" nature would "prejudice[]" the parties. *Id.* at *4. And in *Roane*, it held that an intervention motion filed four years after the case began was still timely because the intervenor's "undue delay" did not prejudice any "existing party." 741 F.3d at 151-52. All these confirm that the only question at this stage is whether "any delay in seeking intervention unfairly disadvantaged the original parties.'" *Id.* at 151 (citation modified).

On that subject, CLC has nothing to say. Nor could it, as the "prejudice" it complains about would be the same if the RNC had filed its motion the day after CLC lodged its complaint. The RNC's motion is therefore unquestionably timely.

B. The RNC has a legally protected interest in this case.

CLC fares no better in contending that the RNC lacks a legally protected interest at stake in this case. CLC acknowledges that the RNC satisfies this element of Rule 24(a)(2) so long as it has standing, but claims the RNC cannot even "demonstrate Article III injury." Opp. 11; *see* Mot 7. But as CLC does not deny, the Advisory Opinion it seeks to eliminate currently provides the RNC with a valuable "legal right" in the form of a "legal reliance defense" allowing it collaborate with other groups about their door-to-door canvassing operations. *Unity08 v. FEC*, 596 F.3d 861, 864-65 (D.C. Cir. 2010); *see* Mot. 8-9. It just derides that right as a "deregulatory windfall." Opp. 10. Nor does CLC dispute that if the RNC's loss of that right is an "injury" that "suffices for standing purposes," then Article III's "causation and redressability" requirements are satisfied, as "the injury is directly traceable to [CLC's] challenge" and the RNC "can prevent the injury by defeating [that] challenge." *Crossroads Grassroots Pol'y Strategies v. FEC*, 788 F.3d 312, 316 (D.C. Cir. 2015); *see* Mot. 8. Instead, CLC offers three reasons why depriving the RNC of that legal right is not an "injury-in-fact." Opp. 11. Not one holds up.

1. CLC first contends the RNC has "no … 'right' to engage in activity that a federal statute clearly proscribes," by which it means its collaboration on grassroots activities protected by the Advisory Opinion. Opp. 10-11. But "[f]or standing purposes," this Court must "accept as valid the merits of [the RNC's] legal claims," so it must assume the Advisory Opinion is lawful under FECA. *FEC v. Ted Cruz for Senate*, 596 U.S. 289, 298 (2022); *see United States v. AT&T*, 642 F.2d 1285, 1291 (D.C. Cir. 1980) ("Intervention here is in essence a question of standing for MCI to participate in the case; a determination of the merits of MCI's claim is not appropriate at this threshold stage."). CLC's views on the merits are thus beside the point.

2. With that distraction gone, CLC cannot get around the fact that the D.C. Circuit has "generally found a sufficient injury in fact where a party benefits from agency action, the action is then challenged in court, and an unfavorable decision would remove the party's benefit." *Crossroads*, 788 F.3d at 317; *see* Mot. 7-9. Notably, CLC admits that in *Crossroads*, the Circuit held that the movant (Crossroads) had standing to defend an FEC action (a dismissal order) that "shield[ed] it from further litigation and liability" over alleged campaign-finance violations—the same benefit the Advisory Opinion provides to the RNC. 788 F.3d at 318; *see* Opp. 9. So CLC tries to distinguish the case on the theory that whereas Crossroads faced "the immediate prospect of resumed enforcement proceedings," here there is no certainty that the FEC would independently "seek to regulate the RNC directly and immediately if its Advisory Opinion were revoked." Opp. 10, 12 (internal citation omitted).

But that imminence argument is difficult to reconcile with *Crossroads* itself. There, the FEC similarly insisted that Crossroads faced "mere speculative harms" because "there is no guarantee it would ultimately file a civil enforcement suit against Crossroads even if the district court were to invalidate the order," but could instead "vote to dismiss the enforcement proceedings again on other grounds." 788 F.3d at 318. The D.C. Circuit rejected that theory, explaining that whatever "enforcement route the Commission" takes, "invalidating the dismissal order would extinguish the current barrier to enforcement and would limit the Commission's discretion in the future." *Id.* at 719. So "[w]hatever the ultimate outcome, Crossroads has a concrete stake in the favorable agency action currently in place." *Id.* The same is true here. Indeed, the reason CLC brought this suit was to "extinguish the current barrier to enforcement and … limit the Commission's discretion in the future." *Id.*; *see* Opp. 5 (explaining that it is "seeking to … correct the FEC's fatal legal errors"). And that means the RNC has "a concrete stake in the [Advisory Opinion] currently in place." *Crossroads*, 788 F.3d at 318.

In any event, there is nothing speculative about the fact that if the Advisory Opinion is vacated, the RNC will immediately cease its collaboration with other groups on door-to-door canvassing. Mot. 9; Ambrosini Decl. ¶¶ 17-19. That decision by the RNC "to forgo the exercise of a First Amendment right"—one this Court "must assume it has"—for fear of prosecution is alone a cognizable injury, whatever enforcement actions the FEC may or may not bring. *Cruz*, 596 U.S. at 298; *see, e.g.*, *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988) (finding standing because "the alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution"). And while CLC may believe the RNC lacks "'a constitutional right'" to collaborate with others on "canvassing," that is irrelevant for purposes of Article III. Opp. 11.

All this makes the case here far removed from the two D.C. Circuit decisions CLC invokes for its imminence argument. *See* Opp. 12. Start with *Deutsche Bank National Trust Co. v. FDIC*, 717 F.3d 189 (D.C. Cir. 2013). There, holders of notes from a failed bank sought to intervene as a defendant in a lawsuit between Deutsche Bank and the failed bank's receiver (the FDIC). 717 F.3d at 190-91. The D.C. Circuit found the noteholders' "claim of injury too attenuated" to establish standing because "the district court would need to reach a particular legal conclusion—that the receiver retained the underlying liability at issue—before [their] interest would be at stake." *Crossroads*, 788 F.3d at 317-18 (citing *Deutsche Bank*, 717 F.3d at 193). Here, by contrast, "there is no threshold legal determination that might obviate [the RNC's] interest in upholding" the Advisory Opinion. *Id.* at 318.

Similarly, in *Yocha Dehe v. Department of the Interior*, 3 F.4th 427 (D.C. Cir. 2021), a tribe sought to intervene to defend an "Indian Lands Opinion" from the Interior Department that prevented another tribe "from ultimately developing a casino" that "would compete with" the movant tribe's gaming facility in the same area. *Id.* at 429. The D.C. Circuit concluded that the challenged opinion was "too many steps removed from" the movant's "claimed threat of future harm from [the rival] casino project for that harm to be imminent." *Id.* at 431. Even if the tribe's competitor succeeded in its challenge, it would still have to satisfy "several requirements"—ones it had "yet to complete"—before it could "lawfully operate" the contemplated casino, including negotiation and approval of a gaming compact with California. *Id.* Here, by contrast, vacatur of the Advisory Opinion would directly eliminate one of the RNC's legal rights and cause it to immediately cease grassroots voter engagement. There is nothing "remote" about those harms. *Id.*

3. Perhaps recognizing as much, CLC tries to distinguish *Crossroads* on another ground—particularity. CLC claims that while the dismissal order there was "specific" to Crossroads, the Advisory Opinion here "extends the same safe-harbor protections" to others, making the RNC's injury "widely shared rather than particularized." Opp. 9.

That distinction fails. Nothing in *Crossroads* suggests the outcome would have been any different had the FEC provided Crossroads protection in the form of an advisory opinion rather than a dismissal order. To the contrary, the D.C. Circuit precedents *Crossroads* applied—*Military Toxics Project v. EPA*, 146 F.3d 948 (D.C. Cir. 1998), and *Fund for Animals, Inc. v. Norton*, 322 F.3d 728 (D.C. Cir. 2003)—involved challenges to agency "rule[s]" rather than adjudications. *Crossroads*, 788 F.3d at 317; *see* Mot. 9. In *Military Toxics Project*, for instance, the Circuit held that a trade association had standing to intervene to defend an EPA rule because its "members produce military munitions and operate military firing ranges regulated under" the rule and "benefit from the EPA's … interpretation (under which most military munitions at firing ranges are not solid waste)." 146 F.3d at 954. And in *Fund for Animals*, the Circuit allowed a Mongolian agency to intervene to defend a U.S. agency's "regulations" that "benefit[ted]" "the country" of "Mongolia," which "would suffer concrete injury if" the challengers were to succeed. 322 F.3d at 733. By definition, an injury that is shared by an entire *industry* or *country* is not "unique to the prospective intervenor." Opp. 9. The RNC discussed each of these cases in its motion, but CLC ignores them entirely. Mot. 9.

It is also a bit stunning for CLC to claim that the RNC lacks standing because its injury is "widely shared." Opp. 9. If anyone before this Court lacks standing based on the "generalized" nature of its asserted injury, Opp. 10, it is CLC, whose purported "informational" harm is shared with the entire American populace. Compl. ¶ 21; *see id.* ¶ 87 (alleging that "CLC and the public are entitled to receive th[e] information" "the Advisory Opinion keeps hidden"). But as CLC knows, the mere "fact that an injury may be suffered by a large number of people does not of itself make that injury a nonjusticiable generalized grievance." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 n.7 (2016) (giving "victims' injuries from a mass tort" as an example). Otherwise, CLC could not have even attempted to bring this lawsuit. So, if the RNC lacks standing to defend the Advisory Opinion merely because others are injured as well, then CLC lacks standing to challenge it.

Simply put, the fact that other regulated entities may benefit from the Advisory Opinion does not deprive the RNC of a concrete and particularized stake in its continued validity.

C. This action may harm the RNC's ability to protect its interests.

Turning to the third element, CLC barely engages with the fact that the outcome of this litigation "may as a practical matter impair or impede" the RNC's "ability to protect its interest[s]." Fed. R. Civ. P. 24(a)(2); *see* Mot. 10. CLC does not, and cannot, deny that "a judicial pronouncement" that the Advisory Opinion is "contrary to law would make the task of reestablishing the status quo more difficult and burdensome." *Crossroads*, 788 F.3d at 320 (cleaned up). Instead, it asserts, without elaboration, that adjudicating the Advisory Opinion's legality "in the RNC's absence will in no way impair its ability to press its constitutional theories elsewhere." Opp. 11. But it "'is not enough to deny intervention under 24(a)(2) because applicants may vindicate their interests in some later, albeit more burdensome, litigation.'" *Fund for Animals*, 322 F.3d at 735. And even if the RNC could "reverse an unfavorable ruling" later, its loss of First Amendment freedoms "during any interim period would be substantial and likely irreparable." *Id.*; *see* Mot. 10. CLC ignores these harms.

D. The existing parties do not adequately represent the RNC's interests.

Finally, CLC, as the party "opposing intervention," fails to carry its "burden … to show that representation for the absentee will be adequate." *AT&T*, 642 F.2d at 1293; *see* Mot. 10. Each of CLC's three arguments on this issue fall flat.

1. CLC first tries to stack the deck by insisting that a "'presumption of adequate representation'" applies when "'both the intervenor and existing party have the same ultimate objective.'" Opp. 12-13. But its only support for this supposed presumption are three decisions from courts in this District—none of which involved "government entities" representing the interests of "private parties." *Crossroads*, 788 F.3d at 321.[1] In that context, there is a presumption of *inadequate* representation: The D.C. Circuit "look[s] skeptically on government entities serving as adequate advocates for private parties." *Id.* (collecting cases); *see, e.g.*, *Dimond v. District of Columbia*, 792 F.2d 179, 193 (D.C. Cir. 1986) ("[N]o presumption exists that the District [of Columbia] will adequately represent [a private party's] interests.").

More generally, CLC's presumption is hard to square with precedent from both the D.C. Circuit and the Supreme Court, both of which treat the adequacy prong "as presenting proposed intervenors with only a minimal challenge" and cast doubt on any "presumption of adequate representation." *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 195-96 (2022); *see* Mot. 10. And in all events, the FEC's lack of a quorum and its status as RNC's regulator would provide the "'special circumstances'" CLC says are necessary to displace any presumption here. Opp. 15.

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[1] *See HRH Servs. LLC v. Travelers Indem. Co.*, 2024 WL 4699925, at *9-10 (D.D.C. Nov. 6, 2024) (restaurant operators adequately represented their landlord's interests in insurance dispute); *Cobell v. Jewell*, 2016 WL 10704595, at *2 (D.D.C. Mar. 30, 2016) (class representatives adequately represented private foundation); *Atl. Refinishing & Restoration, Inc. v. Travelers Cas. & Sur. Co. of Am.*, 272 F.R.D. 26, 30 (D.D.C. 2010) (surety did not adequately represent subcontractor).

2. With that out the way, CLC has little to say about the fact that the FEC's lack of quorum means the Commission cannot lawfully defend against this challenge. Mot. 11-12. Apart from briefly noting that the FEC's lawyers contend otherwise, CLC just insists that 52 U.S.C. § 30106(f)(4) "unreservedly" gives the Commission "litigating authority here." Opp. 7, 13; *see* Dkt. 20 (FEC Resp.) at 3. That theory suffers from two flaws, and the FEC cannot rehabilitate it.

a. To start, § 30106(f)(4) has no bearing on this lawsuit. That provision states that "the Commission is authorized to appear in and defend against any action instituted *under this Act*"—*i.e.*, FECA—"either (A) by attorneys employed in its office, or (B) by counsel whom it may appoint." 52 U.S.C. § 30106(f)(4) (emphasis added). But this case is not an "'action instituted under FECA,'" such as a constitutional challenge under 52 U.S.C. § 30110. FEC Resp. 3 (brackets omitted); *see, e.g.*, *Nat'l Republican Senatorial Comm'n v. FEC*, 712 F. Supp. 3d 1017, 1020 (S.D. Ohio 2024). Rather, as CLC repeatedly notes, it "brought this action under the Administrative Procedure Act ('APA')." Opp. 1; *accord* Opp. 5, 11, 13-14. Section 30106(f)(4) therefore does not apply to this case on its own terms.

b. In any event, § 30106(f)(4) does not empower a quorum-less FEC to defend against lawsuits more generally. CLC does not dispute that another FECA provision requires a "majority vote" by the Commissioners for "[a]ll decisions of the Commission with respect to the exercise of its duties and powers under the provisions of this Act." 52 U.S.C. § 30106(c). Nor does it deny that an agency's ability to mount a defense in court is generally deemed one of its "powers." *See* Mot. 11. And it does not claim that the FEC did, or could, vote to exercise that power to defend against this suit, as it only has two Commissioners right now and thus lacks a quorum necessary to hold any votes. Instead, CLC appears to contend that § 30106(f)(4) somehow displaces § 30106(c)'s majority-vote requirement.

In doing so, CLC faces an uphill climb. "Basic principles of statutory interpretation require" this Court to "construe" two statutory provisions "in harmony, not set them at cross-purposes." *Jones v. Hendrix*, 599 U.S. 465, 478 (2023). So if this Court *can* reconcile § 30106(c) with § 30106(f)(4), it *must*. And here, it is easy to make peace between them. Far from supplanting FECA's majority-voting requirement in the context of defensive litigation, § 30106(f) just establishes attorney-staffing rules. Captioned "counsel for defense of actions," it provides in full:

> Notwithstanding the provisions of paragraph (2), the Commission is authorized to appear in and defend against any action instituted under this Act, either (A) by attorneys employed in its office, or (B) by counsel whom it may appoint, on a temporary basis as may be necessary for such purpose, without regard to the provisions of title 5 governing appointments in the competitive service, and whose compensation it may fix without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title. The compensation of counsel so appointed on a temporary basis shall be paid out of any funds otherwise available to pay the compensation of employees of the Commission.

52 U.S.C. § 30106(f)(4). In other words, § 30106(f)(4) displaces § 30106(f)(2)'s directive that "the staff director"—"[w]ith the approval of the Commission"—"may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent" of GS-15 positions. *Id.* § 30106(f)(2).

Section 30106(f)(4) does not, however, displace § 30106(c)'s command that "the Commission" can "exercise" its "duties and powers" only through a "majority vote." *Id.* § 30106(c). Instead, § 30106(f)(4) just adds that *when* "the Commission" votes "to appear in and defend against any action instituted under this Act," it can use either the FEC's own "attorneys" or outside "counsel" without regard to the default compensation rules. *Id.* § 30106(f)(4). If anything, § 30106(f)(4) confirms that the FEC's ability to "defend against" FECA lawsuits is an "authorit[y]" (i.e., power) of "the Commission," *id.*, and therefore requires a "majority vote." *Id.* § 30106(c); *see* Mot. 11.

c. Perhaps realizing the problem, the FEC—but not CLC—makes the additional argument that "not every exercise of duties by staff at the agency" requires "a 'decision[] of the

Commission.'" FEC Resp. 4 (brackets omitted). As an initial matter, because CLC does not make this argument, it is irrelevant. As the only party "opposing intervention," *CLC* bears "the burden … to show" that the FEC's "representation" of the RNC's interests "will be adequate," rendering *the Commission's* theory beside the point. *AT&T*, 642 F.2d at 1293; *see, e.g.*, *Yazdanpanahderav v. U.S. Dep't of State*, 2024 WL 3010874, at *3 (D.D.C. June 14, 2024) (Reyes, J.) (plaintiffs "forfeited" a "counterargument" by not including it in their opposition).

In any event, the FEC misses the mark. It identifies nothing in the Act authorizing "staff at the agency" to "exercise" the FEC's "duties" when it "lack[s] a quorum" to oversee them. FEC Resp. 4. While it asserts that its exercise of authority under § 30107(a)(2), (a)(5), and (a)(9) do "not requir[e] a vote," *id.*, § 30106(c) says the exact opposite about § 30107(a)(9) and nothing either way about (a)(2) or (a)(5). *See* 52 U.S.C. § 30106(c) ("the affirmative vote of 4 members of the Commission shall be required in order for the Commission to take any action in accordance with paragraph (6), (7), (8), or (9) of section 30107(a)"). Indeed, the FEC's interpretation would appear to permit significant agency action without Commission authorization, a result difficult to reconcile with FECA's structure. *Id.* § 30107(a)(9).

With no textual basis for its theory, the FEC pivots to practicality, lamenting that adhering to the majority-vote requirement "would unworkably propel *all* agency action, no matter how minor, to the Commission level." FEC Resp. 4. But even if § 30106(c) incorporates the background rule of "*de minimis non curat lex* (the law does not take account of trifles)," the choice whether to defend against a suit is no trifle. *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 233 (2014). Attorneys, after all, typically do not decide whether to immediately settle a case or mount a robust defense without consulting their clients first. Yet here, the FEC's attorneys have no client to ask.

Proving the point, § 30106(c) specifically requires "the affirmative vote of 4 members … for the Commission" to "defend" itself against lawsuits challenging its dismissal of, or failure to act on, administrative complaints. 52 U.S.C. § 30106(c); *see id.* § 30107(a)(6). Faced with this provision, the FEC suggests this Court should draw a negative inference from that requirement—namely, that Congress did not demand a majority vote for the defense of "other litigation." FEC Resp. 3. But § 30106(c)'s "four or more votes" requirement for certain FEC actions is a distinct—and "higher"—threshold than its "'majority vote'" requirement, which can be met by "as few as three" votes "given that four Commissioners can make up a quorum." *CLC v. 45Committee, Inc.*, 118 F.4th 378, 381 (D.C. Cir. 2024). Section 30106(c)'s demand for four votes for "the defense of contrary-to-law and delay cases brought under 52 U.S.C. § 30109(a)(8)" therefore at most establishes that the defense of "other litigation" requires only a bare majority vote. FEC Resp. 3. But everyone agrees that there has been *no* vote to authorize the FEC's defense against this challenge.

Driving the point home, if this Court were to vacate the Advisory Opinion, the decision to appeal that ruling would require a Commission vote. The situation in *Center for Individual Freedom v. Van Hollen*, 694 F.3d 108 (D.C. Cir. 2012), is a case in point. After the district court in that APA challenge held an FEC regulation was unlawful, the FEC chose to "not appeal[] the judgment," leaving the intervenors in the district court to seek review in the D.C. Circuit. *Id.* at 110. And the reason an FEC appeal never occurred was not a unilateral choice by agency staff, but a 3-3 vote by the Commission on whether to appeal. As the three Commissioners who voted to appeal explained, their three "colleagues voted against appeal," so § 30106(c) prevented the

FEC proceeding further. FEC Statement on *Van Hollen v. FEC* at 1 n.2 (2012), https://tinyurl.com/25cn5bn2. There is no reason why a decision to defend an FEC initiative should be treated any differently than a decision to appeal the invalidation of one.[2]

Falling back, the FEC claims that "defending actions in court is generally non-discretionary." FEC Resp. 4. But it cites nothing saying so, and it is no secret that the federal government will sometimes choose not to defend "regulations" against "APA challenges" or even statutes against "constitutional claims." *Id.* at 4 & n.4; *see, e.g.*, *Nat'l Republican Senatorial Comm'n v. FEC*, No. 24-621, 2026 WL 1868932, at *3 (U.S. June 30, 2026) (declining to "defend the constitutionality of … FECA's limits on political parties' coordinated expenditures"); *Franciscan All., Inc. v. Azar*, 414 F. Supp. 3d 928, 935 (N.D. Tex. 2019) (declining to defend HHS rule against APA challenge). And whatever else can be said about those decisions, they are not "minor" ones. FEC Resp. 4. Yet under the FEC's theory, "staff at the agency" would be free to make them without ever raising the issue "to the Commission level." *Id.* Nothing in FECA supports that result.

d. In all events, CLC cannot credibly deny that there is at least a *risk* that the Commission may lack the authority to mount a defense here. While CLC dismisses this concern as "baseless," the appearance—and length—of a brief by the FEC devoted to the issue alone confirms that the RNC's fears are at least serious ones. Opp. 7; *see* FEC Resp. 1-5. And that is enough to show that the FEC's representation "'may be inadequate.'" *Fund for Animals*, 322 F.3d at 737.

[2] While FECA specifically requires four Commissioner votes to "appeal any civil action in the name of the Commission to enforce the provisions of this Act," that provision did not apply to the APA lawsuit against the FEC in *Van Hollen*. 52 U.S.C. § 30107(a)(6); *see id.* § 30106(c).

This Court can therefore grant the RNC's motion to intervene without ever having to decide whether the FEC actually has litigating authority in the absence of a quorum.[3]

3. Finally, CLC has no good response to the fact that the Commission would remain an inadequate representative of the RNC's interests even if it had a quorum. Mot. 12-13. CLC does not even mention, much less grapple with, D.C. Circuit precedent establishing that "governmental entities" "often" "do not adequately represent the interests of aspiring intervenors," in part because they are "'charged by law with representing the public interest,'" whereas private parties seek "'to protect'" their own, "'more narrow'" interests. *Fund for Animals*, 322 F.3d at 736-37 (collecting cases); *see also Crossroads*, 788 F.3d at 321. Nor does it deny that such a divergence of interest exists here: For one, all agree that the Commission does not share the RNC's interest in getting Republicans elected. Mot. 12; *see* Opp. 14 (denying any "unfair partisanship" at the FEC).

More fundamentally, the FEC, as the RNC's *regulator*, cannot adequately represent the interests of *the regulated*. Mot. 13. Again, *Crossroads* is right on point. Here, as in *Crossroads*, the FEC and the movant "disagree about the extent of the Commission's regulatory power." 788 F.3d at 321. And here, as in *Crossroads*, that disagreement is "understandable" because the merits involve "the authority of the FEC—an agency that could seek to regulate [the RNC] directly and immediately after its [Advisory Opinion] is revoked." *Id.* CLC again tries to distinguish *Crossroads*, insisting the FEC was not an adequate representative there because Crossroads—the "subject of a live enforcement complaint"—"should not have to trust that the very agency charged with investigating his alleged violations would as vigorously represent his interests in preventing that

[3] For that reason, CLC's umbrage over the RNC's suggestion to invite briefing from the Justice Department is misplaced. *See* Opp. 2, 7, 17. If this Court grants the motion, there is no need to get the Justice Department involved. But if it is inclined to deny the motion, it should least invite briefing to ensure that the Advisory Opinion receives a lawful defense. *See* Mot. 11 n.3.

investigation from being reopened." Opp. 15. But that is not what the D.C. Circuit said. Nor could it, as the FEC had "dismissed the complaint against Crossroads," meaning it had decided not to investigate. 788 F.3d at 315. The lack of adequacy here is thus even more apparent than in it was in *Crossroads*: If CLC succeeds in this case, the FEC not only "could"—but *would have to*—"regulate" any RNC collaboration on grassroots voter engagement "directly and immediately after its [Advisory Opinion] is revoked." *Id.* at 318.

Given all this, it is "not hard to imagine how the interests of the [RNC] and those of the [FEC] might diverge during the course of litigation." *Fund For Animals*, 322 F.3d at 736. For instance, even if the Commission could "mount a vigorous defense" of the Advisory Opinion before this Court, that would be no guarantee that it would be able to—or even choose to—appeal a loss to the D.C. Circuit. Opp. 1; *see supra* at 13-14. And even if it did, that would not ensure that the Solicitor General would decide to seek Supreme Court review from a loss in the D.C. Circuit. *See FEC v. NRA Pol. Victory Fund*, 513 U.S. 88, 98 (1994). For all these reasons, the RNC "should not need to rely on a doubtful friend to represent its interests." *Crossroads*, 788 F.3d at 321.

II. AT A MINIMUM, THIS COURT SHOULD ALLOW THE RNC TO INTERVENE.

In all events, CLC does not seriously dispute that the RNC meets the requirements for permissive intervention under Rule 24(b)—it (1) has filed a "timely motion" and (2) has a "defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B); *see* Mot. 13-14. Instead, CLC urges this Court to deny permissive intervention as a matter of "discretion," claiming that the RNC's participation will "prejudice the rights of the existing parties" by (1) introducing new issues and (2) inviting other third parties to seek to intervene. Opp. 16-17; *see* Opp. 7-8; *supra* Part I.A. Wrong on both counts.

First, CLC's concern that the RNC's intervention will "burden the litigation with extraneous issues and unnecessary complexities" falls flat. Opp. 17; *see* Opp. 7. Evidently, CLC is upset that the RNC enumerated specific affirmative defenses in its proposed answer rather than following the FEC in lumping them into two generic categories: (1) a lack of "subject-matter jurisdiction" and (2) a "fail[ure] to state a claim." Dkt. 19 at 18; *see* Dkt. 11-7 at 20; Opp. 7. It is difficult to see how providing CLC *greater notice* of anticipated defenses could constitute prejudice.[4]

That leaves CLC's objection to the RNC calling into question the FEC's litigating authority due to its lack of a quorum. Opp. 7, 17. But the way to avoid that issue is to *allow* the RNC to intervene, not *deny* its request. If this Court grants the RNC's motion, it can let the quorum issue lie, as there will then be at least one defendant with unquestionable authority to mount a defense of the Advisory Opinion. *See* FEC Resp. 1 n.1. Denying the motion, by contrast, will either require this Court to conclusively resolve the quorum issue or leave a cloud hanging over this litigation going forward. It is therefore CLC that seeks to "needlessly complicate this case." Opp. 17.

Second, CLC warns that granting the RNC's motion would risk "'the potential for additional, follow-on third parties to intervene.'" Opp. 7. But CLC offers no reason to suspect a flood of new litigants will suddenly appear here. For instance, neither it nor the FEC has represented that it has "already been contacted by two third parties who are currently contemplating intervention." *United States v. Google LLC*, 2025 WL 372072, at *9 (D.D.C. Jan. 27, 2025), *aff'd*, 2025 WL 880552. And even if others come out of the woodwork later, this Court could deny their motions because of their untimeliness or because the RNC adequately represents their interests.

[4] On that subject, while FECA does not "implicitly preclude" review of APA suits challenging an "unfavorable" advisory opinion that "deprives the plaintiff of a legal right" in light of the "First Amendment" interests at stake, the same cannot be said for suits seeking to eliminate a *favorable* advisory opinion protecting others. *Unity08*, 596 F.3d at 865-66; *see* 52 U.S.C. § 30109(a)(8).

See Berger, 597 U.S. at 199 (if "a cascade of motions" occurs, "it may be that the interests of existing parties will come to overlap fully with the interests of any remaining proposed intervenor"); *see, e.g.*, *Chiles v. Thornburgh*, 865 F.2d 1197, 1215 (11th Cir. 1989) (denying intervention because prior intervenor would adequately represent movant's interests).

In all events, the risks to "'the just and equitable adjudication of the legal question presented,'" Opp. 16, from denying the RNC's motion far outweigh any burdens from granting permissive intervention. The RNC—and the Court—should not have to entrust the Advisory Opinion's defense solely to an agency that may lack the authority to defend it, that may not raise all the arguments to support it, or that may not appeal a decision vacating it. Only granting intervention—as opposed to obtaining "leave to participate as an *amicus curiae*"—would protect the RNC from those risks. Opp. 2; *see, e.g.*, *Elrod v. Reno*, 239 F.3d 372, 378 (D.C. Cir. 2001) (declining to consider an amicus's argument "rejected by the actual parties to this case" as "not properly before us").

CONCLUSION

This Court should grant the RNC's motion to intervene.

Dated: July 27, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2026, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and distribution to all registered participants of the CM/ECF System.

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