IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
CINCINNATI DIVISION

NATIONAL REPUBLICAN SENATORIAL COMMITTEE, *et al.*, *Plaintiffs*, v. FEDERAL ELECTION COMMISSION, *et al.*, *Defendant.*	No. 1:22-cv-639 Hon. Douglas R. Cole

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FOR IMPROPER VENUE OR, IN THE ALTERNATIVE, TRANSFER

INTRODUCTION AND SUMMARY OF ARGUMENT

There is no dispute that this District is a proper venue under the general federal venue statute: the Federal Election Commission (FEC) is "an agency of the United States," "no real property is involved" in this action, and at least one plaintiff "resides" in this District. 28 U.S.C. § 1391(e)(1)(C). The FEC nonetheless insists that this case must be heard in the District of Columbia—and, in fact, asserts that it has the right *as a defendant* to select the forum for First Amendment challenges to the federal campaign finance laws it enforces nationwide. The FEC even goes so far as to intimate that this Court is not up to the task of adjudicating this case because it either is not sufficiently "well-versed" in the governing law or faces unsubstantiated "public concerns" about its involvement. ECF 10 (Mot.) 13 n.4, 16.[1]

Congress, however, has conveyed no right on the FEC to shop for its preferred forum. Unsurprisingly, neither of the FEC's arguments for its remarkable position holds up to scrutiny. *First*, a statutory judicial review provision, 52 U.S.C. § 30110, authorizes Plaintiffs to bring this constitutional challenge in "the appropriate district court"—but the FEC posits that this provision somehow requires *dismissal* of the Complaint. The FEC theorizes that the phrase "the appropriate district court" ousts the general venue statute from operation. Yet that phrase merely *incorporates*, rather than *invalidates*, the general venue rules. And even the FEC concedes that federal courts have applied § 1391's venue rules in prior § 30110 cases. *Second*, the FEC urges the Court to transfer this case to the D.C. District Court under 28 U.S.C. § 1404(a), but never comes close to making the strong showing necessary to disturb Plaintiffs' choice of forum. This Court should promptly deny the FEC's motion so that it can "immediately . . . certify" the constitutional questions presented here to the en banc Sixth Circuit. 52 U.S.C. § 30110.

[1] Plaintiffs use the ECF pagination when citing the FEC's filing.

BACKGROUND

The Federal Election Campaign Act (FECA) imposes coordinated party expenditure limits that apply, and are enforced by the FEC, in connection with all federal elections nationwide. *See* 52 U.S.C. § 30116(d). Plaintiffs—the National Republican Senatorial Committee (NRSC), the National Republican Congressional Committee (NRCC), Senator J.D. Vance, and former Representative Steven Chabot—filed their constitutional challenge to those limits in this District late last year. *See* ECF 1 (Compl.).

Both Senator Vance and former Representative Chabot are eligible voters who reside in this District, and Senator Vance's campaign committee is predominantly located in Cincinnati. *See id.* ¶ 12; Chabot for Congress: About Steve, https://bit.ly/3Wt6h7M (last visited Jan. 30, 2023); JD Vance for Senate Inc. FEC Form 1, Statement of Organization, Filing 1521965, https://bit.ly/3wjTXMv (last visited Jan. 30, 2023). Moreover, former Representative Chabot served as the U.S. Congressman for Ohio's First Congressional District, located primarily within this judicial District, from 1995 to 2009, and then again from 2011 to 2023. *See* Compl. ¶ 16; About Steve, *supra*. And both the NRSC and the NRCC have long made (including in the last election cycle) campaign expenditures targeting voters in this District, which covers 48 of Ohio's 88 counties and three of the State's largest urban areas (Cincinnati, Columbus, and Dayton), in support of Senator Vance, former Representative Chabot, and other federal candidates. Compl. ¶¶ 13-14, 29, 35.

In support of their challenge, Plaintiffs invoked FECA's special judicial review provision, 52 U.S.C. § 30110, which provides:

> The [FEC], the national committee of any political party, or any individual eligible to vote in any election for the office of President may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act. The district court immediately shall certify all questions of constitutionality of this Act to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

52 U.S.C. § 30110; *see* Compl. ¶¶ 11-12. The FEC acknowledges that the NRSC and the NRCC are "the national committee[s] of a[] political party" for purposes of § 30110. Mot. 5. Accordingly, the FEC accepts that these Plaintiffs—as well as Senator Vance and former Representative Chabot as "individual[s] eligible to vote" for "President"—may invoke § 30110 and its expedited judicial review procedures. Mot. 8.

ARGUMENT

The Court should deny the FEC's motion. Venue is proper in this District, and the FEC has failed to make the strong showing necessary to overcome Plaintiffs' choice of venue.

I. Venue Is Proper In This District.

There is no dispute that this case satisfies § 1391(e)(1)(C)'s general venue rule: the FEC is "an agency of the United States," "no real property is involved in the action," and two Plaintiffs "reside[]" in this District. 28 U.S.C. § 1391(e)(1)(C); *see also Sidney Coal Co. v. SSA*, 427 F.3d 336, 343-44 (6th Cir. 2005) (§ 1391(e)'s residency requirement is satisfied as long as "at least one plaintiff resides in the district in which the action has been brought"). The FEC, however, contends that § 30110's mention of "the appropriate district court" requires dismissal of this case because it was not brought in the District of Columbia. Mot. 11 n.2. The FEC's premise is incorrect, and its conclusion does not follow.

A. Section 30110 Does Not Displace Section 1391(e).

1. The FEC concedes that Plaintiffs are appropriate parties to invoke § 30110, but claims that § 30110 designates this District as an improper venue for this suit. Under the FEC's construction, § 30110's reference to "the appropriate district court" renders it a specialized venue provision that supplants the general venue statute in § 1391. Mot. 11 n.2. That construction, however, is fatally flawed: the phrase "the appropriate district court" *incorporates* rather than *invalidates* otherwise applicable venue rules. Indeed, that is how courts regularly use the phrase.

See, e.g., *Illinois v. City of Milwaukee*, 406 U.S. 91, 108 & n.10 (1972), *disapproved on other grounds in later proceedings sub nom. City of Milwaukee v. Illinois & Michigan*, 451 U.S. 304 (1981) (citing 28 U.S.C. § 1391 as the basis for determining the "appropriate district court"); *Horizon Coal Corp. v. United States*, 43 F.3d 234, 240 n.5 (6th Cir. 1994) ("[A] finding that the United States Claims Court has exclusive jurisdiction over operator reimbursement actions would work a hardship against operators by requiring them to litigate their claims in Washington, D.C., rather than in the appropriate district court."); *see also NLRB v. Line*, 50 F.3d 311, 314 (5th Cir. 1995) ("Venue is necessarily defined as the appropriate district court to file an action."). In other words, the phrase simply refers to the district court where venue is proper under other rules.

Thus, as the FEC recognizes, other "courts in previous section 30110 cases" have relied on "§ 1391(e)" to determine "venue." Mot. 11 n.2 (citing, as an example, *Holmes v. FEC*, 99 F. Supp. 3d 123, 138 (D.D.C. 2015), *aff'd in part, rev'd part and remanded*, 823 F.3d 69 (D.C. Cir. 2016)). Conversely, the FEC identifies no case that has ever construed "appropriate district court" in 52 U.S.C. § 30110 to command a special venue inquiry, and Plaintiffs are unaware of any.

The FEC thus invites this Court to break new ground without ever explaining *why* it should do so. Indeed, adopting the FEC's construction of § 30110 would produce a hopelessly indeterminate venue provision. The term "appropriate," which "means 'specially fitted or suitable, proper,'" is "open-ended on its face" and thus "inherently context dependent." *Tanzin v. Tanvir*, 141 S. Ct. 486, 491 (2020) (cleaned up). FECA, however, neither defines the phrase "the appropriate district court" nor indicates *what* would make a particular forum "appropriate." Moreover, the FEC itself does not even attempt to define the term, other than to offer some reasons why it thinks litigating in the District of Columbia would be more desirable. *See* Mot. 9-12. Thus, under the FEC's theory, both bench and bar would be left with nothing more than "'the classic

broad and all-encompassing term that naturally and traditionally includes consideration of all the relevant factors.'" *Michigan v. EPA*, 576 U.S. 743, 752 (2015) (discussing "appropriate"). But there is no evident reason why Congress would have chosen to adopt such an inkblot approach to determining venue, which promises to needlessly "complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims"—all in a statutory provision Congress designed to *expedite* final resolution of the merits of a constitutional challenge. *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) (addressing "complex jurisdictional tests"); *see* 52 U.S.C. § 30110 (requiring "immediate[]" district court certification of "all questions of constitutionality" for "en banc" review). All of this confirms the FEC's theory cannot be right.

2. Even if the FEC's account of § 30110 were a plausible one, it still would not justify reading this provision to displace the general venue statute. "When confronted with two Acts of Congress allegedly touching on the same topic," courts are "not at liberty to pick and choose among congressional enactments and must instead strive to give effect to both." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624 (2018) (internal quotation marks omitted). As the "party seeking to suggest that two statutes cannot be harmonized, and that one displaces the other," the FEC therefore "bears the heavy burden of showing a clearly expressed congressional intention that such a result should follow," and must overcome "the strong presumption that repeals by implication are disfavored." *Id.* (cleaned up). At a minimum, nothing about § 30110's reference to "the appropriate district court" qualifies as a "clear and manifest congressional command to displace" the general venue statute. *Id.*; *see supra* Pt. I.A.1.

While the FEC notes (Mot. 11 n.2) Congress has displaced § 1391 through *other* specialized venue statutes, § 30110 cannot claim kinship with those provisions. To the contrary,

the examples cited by the FEC confirm that Congress knows how to clearly supplant the general venue statute when it wants to—and that it did not do so here. For example, the special remedial provision under Title VII discussed in *Bolar v. Frank*, 938 F.2d 377 (2d Cir. 1991) (cited at Mot. 11 n.2), specifically details four possible venues:

> [A]n action may be brought [1] in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, [2] in the judicial district in which the employment records relevant to such practice are maintained and administered, or [3] in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought [4] within the judicial district in which the respondent has his principal office.

42 U.S.C. § 2000e-5(f)(3). Similarly, the Uniformed Services Employment and Reemployment Rights Act (USERRA) provision addressed in *Johnson v. General Dynamics Information Technology, Inc.*, 675 F. Supp. 2d 236 (D.N.H. 2009) (cited at Mot. 11 n.2), expressly limits venue for USERRA suits against private employers to the "district court for any district in which the private employer of the person maintains a place of business." 38 U.S.C. § 4323(c)(2). And the federal habeas statute discussed in *Switkes v. Laird*, 316 F. Supp. 358 (S.D.N.Y. 1970) (cited at Mot. 11 n.2), specifies that courts may enter habeas relief only "within their respective jurisdictions," 28 U.S.C. § 2241, which has long been understood to mean "'in the district of confinement,'" *Rumsfeld v. Padilla*, 542 U.S. 426, 442 (2004).[2] That "Congress has been clear in promulgating venue in other federal statutes" means a provision that simply refers to an undefined "'appropriate district court'" "does not contain a special rule for venue." *Gouge, Jr. v. CSX Transp., Inc.*, No. 12-cv-1140, 2013 WL 3283714, at *2 (S.D. Ill. June 28, 2013) (quoting 49 U.S.C. § 20109(d)(3)).

[2] Moreover, § 1391(e), which governs "ordinary civil actions," does not cover "habeas corpus jurisdiction," meaning there is no conflict between the two provisions in the first place. *Schlanger v. Seamans*, 401 U.S. 487, 490 n.4 (1971).

B. This Is "The Appropriate District Court" Even Under The FEC's Theory.

Section 30110 clearly does not displace the general venue statute, but were it otherwise, this Court would still be "the appropriate district court" under that provision. Given that the term "appropriate" "'naturally and traditionally includes consideration of all the relevant factors,'" *Michigan*, 576 U.S. at 752, any inquiry into "the appropriate district court" here would be akin to the multi-factor transfer analysis under 28 U.S.C. § 1404(a), *see, e.g.*, *Tekfor, Inc. v. SMS Meer Serv., Inc.*, No. 5:12-cv-1341, 2014 WL 5456525, at *9 (N.D. Ohio Oct. 27, 2014) (describing the transferee district under § 1404(a) as "the appropriate district court"). Indeed, the FEC's case for why the D.C. District Court is the "appropriate" venue under § 30110 is essentially a short-form version of its § 1404(a) argument, *compare* Mot. 11-12 *with* Mot. 12-14, and fails for the same reasons, *see infra* Pt. II.

II. The FEC's Request To Transfer Must Be Denied.

As a fallback to its novel reading of 52 U.S.C. § 30110, the FEC urges this Court to transfer the case to the D.C. District Court under 28 U.S.C. § 1404(a), which, as relevant here, provides that "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." While this challenge could "have been brought" in the D.C. District Court, *see* 28 U.S.C. § 1391(e)(1)(A), the FEC cannot carry its heavy burden of showing a transfer to that forum is warranted.

"[T]he plaintiff's choice of forum should rarely be disturbed," *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947), so a "party seeking transfer under § 1404(a) bears the burden of showing that the relevant factors weigh 'strongly in favor of' transfer," *Mesa Indus., Inc. v. Charter Indus. Supply, Inc.*, No. 1:22-cv-160, 2022 WL 3082031, at *4 (S.D. Ohio Aug. 3, 2022); *see Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 571 U.S. 49, 62-63 & n.6 (2013) (discussing some of the relevant factors). In other words, "the Court does not start with the assumption that the case should proceed

in whichever forum is slightly more advantageous to the parties or the witnesses," *Nat'l Ben. Programs, Inc. v. Express Scripts, Inc.*, No. 2:09-cv-1156, 2010 WL 1963431, at *2 (S.D. Ohio May 17, 2010), but with "a presumption that the plaintiff's choice of a forum is entitled to considerable weight," *Doe S.W. v. Lorain-Elyria Motel, Inc.*, No. 2:19-cv-1194, 2020 WL 1244192, at *4 (S.D. Ohio Mar. 16, 2020). While the FEC acknowledges that "a plaintiff's choice of forum is generally entitled to deference," Mot. 16, it offers three reasons why that presumption does not control here. All are meritless. *Cf. Mesa*, 2022 WL 3082031, at *16 (noting that while "the public and private interests relevant to the transfer analysis are myriad, . . . the parties focus on five," and limiting the analysis to those considerations).

A. This District Has A Substantial Connection To Plaintiffs' Challenge.

To start, the FEC makes the remarkable claim that the presumptive deference to Plaintiffs' choice of forum does "not apply" here on the premise that this District "'has no connection with the matter in controversy.'" Mot. 16; *see* Mot. 9-11, 15-16. Indeed, the FEC goes so far as to suggest that the NRSC and the NRCC merely "included in their complaint two Ohio individuals" at random in order to "file[] here." Mot. 4. But *Senator* Vance and Former *Congressman* Chabot were not plucked from a Cincinnati phonebook, and the FEC's cavalier dismissal of Plaintiffs' interests here only betrays the agency's disregard for the core political speech at stake.[3]

Plaintiffs bring this suit not because they have some abstract interest in federal campaign-finance law or the FEC's operations, but because they want to make coordinated expenditures on speech in this District, and throughout Ohio, to the maximum extent permitted by the Constitution.

[3] Perhaps even more troubling, the FEC suggests that allowing this challenge to proceed in this District would raise partiality concerns because this Court was "former[ly]" a "partner at the[] firm" of some of Plaintiffs' "counsel" from 2006 to 2011. Mot. 16 n.4. That baseless insinuation only underscores the weakness of the FEC's motion. *Cf.* 28 U.S.C. § 455(b)(2) (requiring disqualification of a judge who, while "in private practice," "served as lawyer *in the matter in controversy*, or a lawyer with whom he previously practiced law served *during such association* as a lawyer *concerning the matter*") (emphases added).

For example, while Senator Vance can conduct official *Senate* business in both the District of Columbia and Ohio, his *campaign* does its most important business—communicating with Ohio voters—in the latter, including in this District. That is why his campaign's place of business is not found on Capitol Hill, but in Cincinnati. *See supra* at 2. And that makes sense: Senator Vance does not wish to coordinate spending with his political party in order to serve digital ads on voters in Georgetown, broadcast TV ads airing on D.C. television stations alongside Washington Capitals games, or purchase yard signs for row houses on Capitol Hill. Rather, he wishes to campaign for support from and communicate with the electorate in the very place where he and the voters who elected him live—Ohio. And to effectively and efficiently do so, he wishes to coordinate with his political party activities supporting his campaign in this State.

Likewise, the Committees' most substantial activity relevant to their First Amendment claims are party coordinated expenditures on campaign activities that do not occur in the District of Columbia, but across the country, including in the electoral bellwether of Ohio. The Committees' overriding aim is not to make coordinated expenditures to influence political campaigns in Washington, D.C.—which the Constitution assigns no voting members in either House of Congress—but in Senate races and House races in Ohio and other hotly contested States. And the coordinated party expenditure limits they challenge here—which, as to the NRSC, are directly tied to the voting age population of the targeted state electorate, including in Ohio, 52 U.S.C. § 30116(d)(3)(A)—apply to *all* elections "for Federal office," *id.* § 30116(d), not a seat on the D.C. City Council.

Just as venue for a libel claim is proper in the forum where the libelous material was published because "the claim arose where the libel was published," *Klauder & Nunno Enterprises, Inc. v. Hereford Assocs., Inc.*, 723 F. Supp. 336, 343 (E.D. Pa. 1989), venue for a First Amendment

claim is proper in the forum where the burdened speech would occur. And here, that speech has and would occur in this District. For instance, the NRSC targeted this forum in 2022 with coordinated advertising specific to Ohio's U.S. senate race, running seven figures worth of ads predominately in four cities (Cincinnati, Cleveland, Columbus, and Dayton), three of which are in this District. *See ICYMI NEW AD// JD Vance's Ohio Story*, NRSC.org Press Release (Aug. 3, 2022), https://bit.ly/3DcpMuf. The NRCC similarly spent up to the maximum amount of coordinated party expenditure authority assigned to it to communicate with voters in the First Congressional District in support of Steve Chabot's 2022 general election campaign. And both the NRSC and the NRCC intend to make similar and greater coordinated expenditures on campaign speech in this District, and throughout Ohio, in the future. Compl. ¶¶ 29-31, 34-37. So even if "some" of the relevant events here "played out in" Washington, D.C., the burdened political speech at the heart of this case has "a substantial connection to Ohio." *Mesa*, 2022 WL 3082031, at *17.

Conversely, it is far from clear what "unique connection to the matter in controversy" the District of Columbia has. Mot. 15. As the FEC admits, "no district has any claims to unique local concerns" when it comes to "the 'public affected'" by the challenged laws, *id.*, and Washington, D.C., which lacks a voting member in either House of Congress, can boast even less, *see supra* at 9. And while the FEC asserts that the "vast majority of the facts relevant to these claims originate in the District of Columbia," it never specifies what facts those might be. Mot. 4. At most, it insists that "virtually all the parties in the case reside or at least do most business" inside the Beltway, *id.*, but never grapples with the fact that the relevant "business" *for this case* occurs in Ohio, where Plaintiffs seek to engage in campaign-related speech, *see supra* at 8-10.[4]

[4] For all these reasons, "a substantial part of the events or omissions giving rise to the claim occurred" in this district, meaning venue is proper in this District under 28 U.S.C. § 1391(e)(1)(B) as well. Because this Court clearly has venue under § 1391(e)(1)(C), however, there is no need to also address this basis for venue. *See supra* Pt. I.

B. This District Is A More Convenient Forum.

This Court is the most convenient forum given the substantial connections between this case and this District. *See supra* Pts. I-II.A. Unable to escape the presumptive deference owed Plaintiffs' choice of forum, the FEC tries to overcome it by claiming that "the District of Columbia is the most convenient district" for resolving this case. Mot. 5. That argument is doubly flawed.

1. To start, the D.C. District Court is a far less convenient forum *for Plaintiffs* for the simple reason that its current docket congestion threatens a slower resolution of this case than in this Court. Whether it goes to the interests of the parties or the public, "'the administrative difficulties flowing from court congestion'" present an important consideration in the § 1404(a) analysis, *Atl. Marine*, 571 U.S. at 62 n.6, primarily because "getting to trial may be speedier" due to a particular jurisdiction's "less crowded docket," Wright & Miller, 15 Fed. Prac. & Proc. Juris. § 3854 (4th ed. Apr. 2022 update); *see, e.g.*, *Fannin v. Jones*, 229 F.2d 368, 369 (6th Cir. 1956) (per curiam) ("A court should not under § 1404(a) look to docket conditions in order simply to serve the court's own convenience. A prompt trial, however, is not without relevance to the convenience of parties and witnesses and the interest of justice.") (internal citations omitted). Accordingly, "transfer will be denied if the docket congestion is greater in the proposed transferee court than it is in the original forum." 15 Fed. Prac. & Proc. Juris. § 3854 (citing, *e.g.*, *Emps. Mut. Cas. Co. v. Bartile Roofs, Inc.*, 618 F.3d 1153, 1169 (10th Cir. 2010)).

That is the case here. As of now, the D.C. District Court faces an enormous backlog of cases and trial proceedings. As one Member of that Court has explained, January 6-related litigation has already "'created a massive traffic jam' on the court calendar." Sarah D. Wire, *Ripples for Years to Come: What the Jan. 6 Cases Mean for the Judicial System*, L.A. TIMES (Oct. 31, 2022) (quoting Judge Mehta), https://lat.ms/3ZXlMrj. As of November 9, 2022, there were 950 criminal trials pending in the D.C. district court. *See* Eleventh Extension of Authorization for

Use of Video Teleconferencing and Teleconferencing for Certain Criminal and Juvenile Delinquency Proceedings, Standing Order No. 22-64 at ¶ 7 (BAH) (Nov. 9, 2022), https://bit.ly/3ZXNp3z. And there is no sign that the problem will abate any time soon. While there are "nearly 900" January 6 arrests currently "moving their way through the court system," federal prosecutors have indicated that "it's 'not an unreasonable expectation' that more than 2,000 cases could be filed." Wire, *supra*. And this "heavier than normal workload in a single court" will almost certainly "ripple through all aspects" of its docket, "civil cases" included. *Id.*

While the FEC may prefer for this challenge to languish in an overcrowded district court, such a result would neither be "convenien[t]" for Plaintiffs nor "in the interest of justice." 28 U.S.C. § 1404(a). Nor would it be consistent with § 30110, a provision designed to allow "immediate[]" certification of constitutional challenges to FECA to the relevant en banc court of appeals. 52 U.S.C. § 30110.

2. The supposed inconveniences faced by the FEC, by contrast, are negligible at best. While the FEC plays up the proximity of the "federal courthouse" in Washington, D.C., to (some of) the parties and (some of) their counsel, it does not claim that litigating this case here would result in any meaningful burden. Mot. 4. For example, neither the FEC nor its lawyers have "submitted affidavits averring to the disruption traveling to Ohio would create in their personal and professional lives." *Mesa*, 2022 WL 3082031, at *14. Nor has the FEC identified any "non-party, non-employee witnesses who would likely be inconvenienced if travel to Ohio becomes necessary." *Id.* at *17. In fact, the FEC has not even identified either a single issue of fact that will require travel for an evidentiary hearing or an allegation in the complaint that cannot be established through the submission of affidavits and declarations, witnesses who reside in this district, or technological means. *Cf.* Mot. 9. That is unsurprising, as the "location of documents and sources

of proof have become a less significant factor in the § 1404(a) transfer analysis because of technological advances and availability of documents in electronic form." *Mesa*, 2022 WL 3082031, at *17.

To the extent the less-than-two-hour flight from Washington to Cincinnati ever ends up proving significantly burdensome, "parties now routinely conduct depositions remotely via videoconferencing technology, and courts use the same technology for oral arguments, evidentiary hearings, and even mediation discussions." *Id.* Indeed, the FEC has proven quite capable of adapting to such technological advancements itself, as it recently held an open meeting in which witnesses joined virtually via Zoom. *See* FEC, January 12, 2023 Open Meeting, https://bit.ly/3DbH7Ua (last visited Jan. 30, 2023). For their part, Plaintiffs would gladly agree to measures facilitating the FEC's ability to "participate in an evidentiary hearing remotely" to the extent it ever becomes necessary. *Mesa*, 2022 WL 3082031, at *14.

In all events, any travel-related inconveniences here cut both ways. While Senator Vance will appear in Washington, D.C., to attend to "Senate" business, Mot. 11, he is a resident of this District and his *campaign* conducts the substantial part of its operations from Cincinnati. *See supra* at 2. Transfer could therefore inconvenience him and any present or former campaign staff. Accordingly, any travel-related burdens on the FEC do not strongly weigh in favor of transferring this case to the District of Columbia, especially when proceeding in that forum would likely impede the prompt resolution of this case, *see supra* Pt. II.B.1.

C. This Court Is Equally Qualified To Apply Federal Law.

Moving on from convenience considerations, the FEC claims that the Members of the D.C. District Court (and the D.C. Circuit) are "uniquely qualified" to "resolve the issues" in this case, given their experience with "federal campaign finance law" and challenges to "'the constitutionality of federal legislation' generally." Mot. 15-17. That argument is a non-starter.

Where, as here, "a case raises a federal question, the 'governing law' factor generally provides no basis for granting a transfer motion, because 'all federal courts are presumed to be equally familiar with federal law.'" *SEC v. Comm. on Ways & Means of the U.S. House of Representatives*, 161 F. Supp. 3d 199, 229 (S.D.N.Y. 2015). When both potential "venues are federal district courts applying the same federal law . . . most courts have frowned on the suggestion that the judges of one district are more capable or experienced in a particular area than are judges of another district"—even when it comes to "patent cases." *Lewis v. Grote Indus., Inc.*, 841 F. Supp. 2d 1049, 1055 (N.D. Ill. 2012); *see* 15 Fed. Prac. & Proc. Juris. § 3854 ("[A]ll federal judges are considered adept at interpreting the various aspects of federal law."). In any event, the FEC's insinuation that both this Court and the Sixth Circuit are unfamiliar with "federal campaign finance law" or "constitutional challenges to broadly applicable federal legislation" is simply false. Mot. 15-17; *see, e.g.*, *United States v. Emmons*, 8 F.4th 454 (6th Cir. 2021) (First Amendment challenge to FECA's ban on corporate contributions); *Thomas More Law Ctr. v. Obama*, 651 F.3d 529 (6th Cir. 2011), *abrogated by NFIB v. Sebelius*, 567 U.S. 519 (2012) (Commerce Clause challenge to the Affordable Care Act); *Ohio v. Yellen*, 547 F. Supp. 3d 713 (S.D. Ohio 2021) (Spending Clause challenge to the American Rescue Plan Act), *rev'd in part, vacated in part*, 53 F.4th 983 (6th Cir. 2022).

Indeed, the FEC's argument stands in significant tension with Congress's decision to allow constitutional challenges to FECA to proceed immediately to courts of appeals other than the D.C. Circuit. 52 U.S.C. § 30110. As the FEC points out, "four FECA judicial review provisions route cases" to the D.C. District Court. Mot. 14. But § 30110 does not. Challenges under that provision therefore are regularly litigated in courts outside of the Beltway, consistent with Congress's express directive to "certify 'all questions of constitutionality of this Act' to the various circuit

courts of appeals." *Bread Pol. Action Comm. v. FEC*, 635 F.2d 621, 626 (7th Cir. 1980) (en banc), *rev'd on other grounds*, 455 U.S. 577 (1982); *see, e.g.*, *California Med. Ass'n v. FEC*, 453 U.S. 182, 186 (1981) (challenge brought within the Ninth Circuit); *In re Cao*, 619 F.3d 410, 415 (5th Cir. 2010) (en banc) (challenge brought in Louisiana); *Khachaturian v. FEC*, 980 F.2d 330, 331 (5th Cir. 1992) (en banc) (same). The FEC's invitation to accord significant weight to the D.C. District Court's purported expertise in the § 1404(a) analysis—and thereby route virtually every constitutional challenge to FECA to the Capital—threatens to nullify that legislative choice and must be rejected. *See FEC v. NRA Pol. Victory Fund*, 513 U.S. 88, 95 (1994) ("Where Congress includes particular language in one section of a statute but omits it in another, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (cleaned up).

CONCLUSION

This Court should deny the motion to dismiss or transfer this case.

January 30, 2023

Respectfully submitted,

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**Application for admission pro hac Vice forthcoming

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of this filing to all counsel of record.

/s/ Thomas Conerty
Thomas Conerty

Counsel for Plaintiffs