IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATE MAJORITY PAC Plaintiff, v. FEDERAL ELECTION COMMISSION Defendant, NRSC Intervenor-Defendant.	Civil Action No. 1:26-cv-336 (BAH)

NATIONAL REPUBLICAN SENATORIAL COMMITTEE'S
MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), the National Republican Senatorial Committee ("NRSC") respectfully moves this court to dismiss the claims in plaintiff's complaint. Plaintiffs fail to state a claim upon which relief may be granted for three reasons: (1) plaintiff lacks standing; (2) the defendant did not act contrary to law; and (3) contrary-to-law review of the defendant's inherent enforcement discretion violates Article II of the U.S. Constitution.

The grounds for this motion are set forth in the accompanying memorandum. A proposed order is attached.

Dated: April 27, 2026

Respectfully submitted,

/s/ Erin Morrow Hawley
Erin Morrow Hawley
D.C. Bar No. 500782
Pro hac vice
Dennis W. Polio
D.C. Bar No. 198054
John S. Ehrett
D.C. Bar No. 1657026
Pro hac vice
LEX POLITICA PLLC
700 Pennsylvania Avenue SE, Ste 440
Washington, D.C. 20003
(512) 354-1783
ehawley@lexpolitica.com
dpolio@lexpolitica.com
jehrett@lexpolitica.com

Counsel for Proposed Intervenor-Defendant NRSC

CERTIFICATE OF SERVICE

I hereby certify that, on April 27, 2026, the foregoing Motion to Dismiss was electronically served upon all counsel of record via the Court's CM/ECF system.

/s/ Erin Morrow Hawley
Erin Morrow Hawley
Counsel for Proposed Intervenor-Defendant NRSC

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NRSC'S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF ITS MOTION TO DISMISS

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GLOSSARY

FCC	Federal Communications Commission
FEC	Federal Election Commission
FECA	Federal Election Campaign Act
PAC	Political Action Committee
SMP	Senate Majority PAC

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INTRODUCTION

Senate Majority PAC—a group with no standing to bring this suit—demands that this Court compel the Federal Election Commission ("FEC") to do the impossible. The FEC has been without a quorum since April 2025. New members have been nominated to change that fact, but they have not yet been confirmed. The upshot is that, by law, with the current dearth of commissioners, the FEC currently *cannot* undertake enforcement actions past a certain point. *See* 52 U.S.C. § 30109(a)(2). Yet Senate Majority PAC insists that this Court must find the FEC's alleged failure to act on its administrative complaint to be "contrary to law." That cannot be right.

As a threshold matter, Senate Majority PAC lacks standing to bring this action, irrespective of the legal theory invoked. No court in this Circuit has *ever* permitted a Super PAC to obtain competitor standing. And for good reason: Senate Majority PAC, a Super PAC, does not directly compete with the NRSC, a national political party committee. Plaintiffs may not mix and match political actors. And even if they could, Senate Majority PAC has failed to allege any discrete competitive harm.

Meanwhile, Senate Majority PAC's informational injury claim falls short for a trifecta of reasons. First, Senate Majority PAC identifies no adverse downstream consequence, even though the rule is simple: "No concrete harm, no standing." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 417 (2021). Second, Senate Majority PAC had access to the information to which it claims to have been entitled all along. And third, Senate Majority PAC's backwards-looking "might have" allegations are far from concrete harms.

Compounding these problems, Senate Majority PAC's injuries are not redressable, both because backwards-looking allegations cannot support prospective relief and because a federal court may not order a federal agency to do the impossible. Without a quorum, the FEC may not lawfully take a reason-to-believe vote.

A decision compelling the FEC to act ultra vires, in the absence of the statutorily required quorum, would violate elementary principles of law. The judiciary cannot order the executive branch to directly contravene clear statutory authority—or, for that matter, suspend its own discretion regarding its enforcement priorities. The mere fact of administrative delay does nothing to change this: it is long-settled that agency delay alone "is not per se contrary to law." *Campaign Legal Ctr. v. 45Committee, Inc.*, 118 F.4th 378, 383 (D.C. Cir. 2024). Rather, the FEC's timeliness is assessed under the *Common Cause* and *TRAC* factors—factors that Senate Majority PAC's Complaint fails even to mention, much less support with well-pled facts. There is good reason for that omission: none of those factors favor Senate Majority PAC.

Taken together, these deficiencies are fatal. But even setting them aside, the FEC has *not* itself failed to act in this matter. The FEC took a cognizable enforcement "act" within the meaning of the Federal Election Campaign Act when it notified the respondents about Senate Majority PAC's administrative complaint. Because that enforcement step is expressly identified in the statute, and because the Commission's action is judicially noticeable, Senate Majority PAC further fails to plausibly allege that the FEC has "failed to act."

For all these reasons, the Court should dismiss the Complaint.

BACKGROUND

A. The FEC Enforcement Process

The Federal Election Commission is a six-member body charged with enforcing the Federal Election Campaign Act ("FECA"). By law, "[n]o more than 3 members of the Commission … may be affiliated with the same political party." 52 U.S.C. § 30106(a)(1). Reflecting that bipartisan structure, "the affirmative vote of 4 members of the Commission shall be required," § 30106(c), for the Commission "to initiate," "defend," "or appeal any civil action," § 30107(a)(6), "to render advisory opinions," § 30107(a)(7), "to develop … rules," § 30107(a)(8), or "to conduct investigations," § 30107(a)(9).

As relevant here, the FEC's investigation and enforcement process begins when someone files an administrative complaint alleging someone else violated FECA. *See* 52 U.S.C. § 30109(a)(1). The statute identifies the first step the FEC must take after receiving a complaint: "Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation." *Ibid.*

"The next step is for the FEC to vote to determine whether there is reason to believe the subject of the complaint has violated the Act." *Perot v. FEC*, 97 F.3d 553, 558 (D.C. Cir. 1996) (per curiam), *overruled on other grounds by 45Committee*, 118 F.4th at 386. This step requires four affirmative votes: "If the Commission, upon receiving a complaint, … determines, by an affirmative vote of 4 of its members, that it has reason to believe" a violation has been or will be committed, "[t]he Commission shall make an investigation of such alleged violation." 52 U.S.C. § 30109(a)(2). "Only after four commissioners make this discretionary decision 'shall' the Commission 'make an investigation.'" *CREW v.*

FEC, 993 F.3d 880, 892 (D.C. Cir. 2021); *see also Campaign Legal Ctr. v. FEC*, 106 F.4th 1175, 1185 (D.C. Cir. 2024) (explaining "the FEC [was] short of the four votes needed to authorize an investigation").

"Following any investigation, the Commission votes on whether there is 'probable cause to believe' a violation has been or will be committed." *45Committee*, 118 F.4th at 382 (quoting 52 U.S.C. § 30109(a)(4)(A)(i)). This step, just like a reason-to-believe vote, requires a minimum of four affirmative votes. "If four or more Commissioners vote to find probable cause, the Commission may then pursue an escalating series of enforcement steps, each of which [also] requires four votes to initiate." *Ibid.* (citing §§ 30109(a)(4)(A)(i), (a)(5)(C), (a)(6)(A)).

The Commission cannot publicly disclose the complaint or any investigation or votes related to it until it terminates its proceedings. *See* 11 C.F.R. §§ 111.20, 111.21; 52 U.S.C. § 30109(a)(12)(A). However, the respondent named in the complaint may disclose that information and may authorize others to disclose it. 11 C.F.R. § 111.21(a), (c); 52 U.S.C. § 30109(a)(12)(A).

B. FECA's Cause of Action

FECA instructs the FEC "to conduct investigations and hearings expeditiously." 52 U.S.C. § 30107(a)(9). "[B]ut FECA 'does not create a deadline in which the FEC must act.'" *Jud. Watch, Inc. v. FEC*, 293 F. Supp. 2d 41, 48 (D.D.C. 2003) (quoting *Stockman v. FEC*, 138 F.3d 144, 152 (5th Cir. 1998)).

Instead, FECA provides that "[a]ny party aggrieved … by a failure of the Commission to act on [an administrative] complaint during the 120-day period beginning

on the date the complaint is filed, may file a petition with the United States District Court for the District of Columbia." 52 U.S.C. § 30109(a)(8)(A). "[T]he court may declare that … the failure to act is contrary to law." § 30109(a)(8)(C).

Although FECA's cause of action "ripens after that 120-day period," "[t]he Commission's failure to act within that 120-day period or any other timeframe is not per se contrary to law." *45Committee* 118 F.4th at 383; *see also FEC v. Rose*, 806 F.2d 1081, 1092 (D.C. Cir. 1986) ("Mr. Rose, it will be recalled, contended that [FECA] required the Commission to act within 120 days or within an election cycle. We unequivocally rejected both contentions."). Rather, courts in this District "analyze the lawfulness of the Commission's challenged inaction under a set of factors laid out in *Common Cause v. FEC*, 489 F. Supp. 738, 744 (D.D.C. 1980), and *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) (*TRAC*)." *45Committee*, 118 F.4th at 383; *see also Rose*, 806 F.2d at 1084 & n.6, 1091–92 & n.17.

C. Senate Majority PAC's Administrative Complaint

Senate Majority PAC filed its administrative complaint in August 2025.[1] Compl. ¶ 1. On August 28, the FEC sent a notification letter to the NRSC informing it that the FEC had "received a complaint" indicating it "may have violated the Federal Election Campaign Act of 1971." *See* Exhibit 1 at 1. The notification letter informed the NRSC of its right to

[1] Senate Majority PAC alleges it filed its administrative complaint August 13, 2025. Compl. ¶ 1. The as-filed copy enclosed with the FEC's notification letters is file-stamped August 21, 2025. Exhibit 1 at 3.

respond under the statute and enclosed a copy of Senate Majority PAC's administrative complaint.

The FEC has been without the statutory quorum of four commissioners since April 2025. When the administrative complaint was filed in August 2025, the FEC had only three confirmed commissioners. *See* FEC's Notice of Lack of Quorum ¶ 2, *Lacy v. FEC*, No. 25-cv-1808 (RDM) (filed July 7, 2025), ECF No. 12. In September 2025, another FEC Commissioner departed the agency. *See* Faith Wardwell, *Hobbled Federal Campaign Finance Enforcer Loses Another Member*, Politico (Sept. 25, 2025), https://tinyurl.com/76mzm689. President Trump has since nominated two additional commissioners. *See* The White House, Presidential Actions, *Nominations Sent to the Senate* (Feb. 11, 2026), https://tinyurl.com/ydcsf4z3. But the Senate has not yet voted on those nominations. Thus, the Commission has been without a quorum for the entire time Senate Majority PAC's administrative complaint has been pending.

D. Senate Majority PAC's Judicial Complaint

On February 5, 2026, Senate Majority PAC filed its judicial Complaint. The Complaint contains just one count, asserting that the FEC's alleged "failure to act on Plaintiff's administrative complaint is contrary to law under 52 U.S.C. § 30109(a)(8)(A)." Compl. ¶ 46.

The Complaint is remarkably light on facts regarding the FEC's alleged inaction. The Complaint states that 176 days elapsed after Senate Majority PAC filed its administrative complaint, that Senate Majority PAC is unaware of any FEC action during that time, and that the statute allows a lawsuit after 120 days. *See* Compl. ¶ 2 ("To SMP's

knowledge, the Commission has not taken any action on SMP's complaint in the 176 days since SMP filed it. SMP therefore brings this action …"); ¶ 45 ("Upon information and belief, the FEC has failed to act on Plaintiff's administrative complaint since SMP filed it 176 days ago, exceeding the 120-day statutory response period."). That's it. The Complaint says nothing about FECA's enforcement scheme, the initial enforcement steps the statute authorizes the FEC to take (and which the record shows the FEC in fact took here), or why there has been no further action. The Complaint never mentions the word "quorum" and is conspicuously silent about the fact that the FEC has been without one during the *entire* time its administrative complaint has been pending.

Instead, the bulk of the Complaint seeks to color this Court's perception of the underlying merits of Senate Majority PAC's administrative complaint—something not at issue here. Senate Majority PAC complains that joint fundraising committees ("JFCs") established between the NRSC and three 2024 Senate campaigns wrongly paid for fundraising advertisements. But those advertisements solicited contributions to the JFCs, and the JFCs properly allocated those solicitation costs pursuant to mandatory and long-standing FEC fundraising rules at 11 C.F.R. § 102.17(c). Consistent with those rules, which have been in place for forty-plus years, a portion of the JFCs' advertising costs were allocated to the NRSC. This is nothing novel. National party committees, moreover, have included "specialty" accounts in a wide variety of candidate-authorized joint fundraising committee solicitations—on both sides of the aisle—for at least a decade, requiring proportionate allocation of joint fundraising costs under 11 C.F.R. § 102.17. Until now, there has been no suggestion to or from the FEC that national party committees with

specialty accounts should be treated any differently under the joint fundraising rules. *See* 11 C.F.R. § 102.17(c)(7)(i)(A); *see also* Advisory Op. 2007-24 (Burkee/Walz), at 5.

There is nothing untoward about this practice. In 2025, the FEC unanimously rejected an argument alleging improper "subsidization" of campaign activities through the activities of a joint fundraising committee, simply because the committee's fundraising activities resembled traditional advertising. *See* MUR 8243 (Brandon Herrera), Factual & Legal Analysis at 8. The determinant of lawfulness was neither the identity of the committee participants nor the nature of the fundraising activity, but whether the allocations in question were proportionate among committee participants—as here, they were.

Senate Majority PAC does not, and cannot, allege that the specialty account participants in the NRSC's joint fundraising committee paid a disproportionate share of the committee's fundraising expenses. Quite the opposite: the NRSC would have violated the law had it *not* allocated expenses among participants in proportion to their receipts. That should be the end of the matter.

The NRSC looks forward to the FEC addressing Senate Majority PAC's administrative complaint when its quorum is restored and vindicating the NRSC of any alleged wrongdoing.

STANDARD OF REVIEW

The Court should dismiss the Complaint for lack of subject matter jurisdiction and for failure to state a claim. "In response to a motion to dismiss a complaint for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1), the plaintiff

must prove by a preponderance of the evidence that the Court has jurisdiction." *Nat'l Ass'n for Home Care & Hospice, Inc. v. Burwell*, 77 F. Supp. 3d 103, 107 (D.D.C. 2015). To survive a Rule 12(b)(6) motion to dismiss, meanwhile, the "complaint 'must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Cureton v. Duke*, 272 F. Supp. 3d 56, 61 (D.D.C. 2017) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

The Court "assume[s] the truth of all material factual allegations in the complaint." *Am. Nat. Ins. Co. v. FDIC*, 642 F.3d 1137, 1139 (D.C. Cir. 2011). But the court will "not assume the truth of legal conclusions," *Williams v. Lew*, 819 F.3d 466, 472 (D.C. Cir. 2016) (citing *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015)), nor "accept 'threadbare recitals of a cause of action's elements, supported by mere conclusory statements,'" *ibid.* (quoting *Iqbal*, 556 U.S. at 663).

"In ruling on a Rule 12(b)(6) motion to dismiss, the Court may consider any documents either attached to or incorporated in the complaint without converting the motion to dismiss into one for summary judgment. This includes documents that are referred to in the complaint and central to the plaintiff's claim even if they are produced, not by the plaintiff in the complaint, but by the defendant in a motion to dismiss." *Cureton*, 272 F. Supp. 3d at 61 (cleaned up). "In addition, the Court may consider 'matters of which it may take judicial notice.'" *Ibid.* (quoting *EEOC v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997)).

ARGUMENT

I. THE COURT SHOULD DISMISS BECAUSE SENATE MAJORITY PAC LACKS STANDING.

Article III of the Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. Standing requirements thus separate those disputes "that are of the justiciable sort referred to in Article III," from those that are more appropriately resolved by the political branches. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The "irreducible constitutional minimum" of standing requires a plaintiff to show "(1) an injury-in-fact that is (2) traceable to the defendant's conduct and (3) redressable by a favorable decision of the court." *Hall v. D.C. Bd. of Elections*, 141 F.4th 200, 204–05 (D.C. Cir. 2025) (quoting *Lujan*, 504 U.S. at 560–61). The plaintiff "'bears the burden' of establishing these three essential elements." *Id*. (citing *Lujan*, 504 U.S. at 561). Further, where a plaintiff is not a regulated party but challenges instead the government's allegedly unlawful lack of regulation "of someone else," standing is "substantially more difficult to establish." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 382 (2024).

Section 30109(a)(8)(A) creates a cause of action but "does not confer standing." *Common Cause v. FEC*, 108 F.3d 413, 419 (D.C. Cir. 1997); *accord Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009) ("deprivation of a procedural right" "is insufficient to create Article III standing"). Because "Article III standing requires a concrete injury even in the context of a statutory violation," *TransUnion*, 594 U.S. at 426, a Section

30109(a)(8)(A) plaintiff—just like any other plaintiff—must "demonstrate a 'discrete injury' flowing from the alleged violation of FECA." *Common Cause*, 108 F.3d at 419.

Senate Majority PAC gestures towards two theories of standing: competitive injury and informational injury. Neither satisfies Article III.

A. Senate Majority PAC Cannot Establish Competitive Injury.

Senate Majority PAC first seeks refuge in the doctrine of competitor standing. It claims to be in competition with the NRSC and to suffer competitive harm from the NRSC's joint fundraising accounts with three different candidates. That argument is a nonstarter because plaintiffs may not mix and match marketplace competitors. Senate Majority PAC "do[es] not directly and currently compete with" a party committee like the NRSC. *See PSSI Glob. Servs., L.L.C. v. FCC,* 983 F.3d 1, 11 (D.C. Cir. 2020). Nor has it made any concrete showing of competitive harm: It does not compete in the same arena as the NRSC.

To invoke competitor standing, a plaintiff must establish that "it is in fact a *direct* and *current* competitor in [the] market." *Air Excursions LLC v. Yellen*, 66 F.4th 272, 279–80 (D.C. Cir. 2023). Plaintiffs must also show causation, *i.e.*, "that the challenged government action results in an actual or imminent increase in competition, which … will almost certainly cause an injury in fact." *Id.* at 279 (citation omitted); *Mobile Relay Assocs. v. FCC*, 457 F.3d 1, 13–14 (D.C. Cir. 2006) (finding no competitor standing where plaintiff failed "to make a concrete showing that they are likely to suffer financial injury"). Windfall theories of competitive harm are not cognizable; it is not enough to allege that a rival's "favorable regulatory treatment has created a skewed playing field." *PSSI Glob. Servs.,*

L.L.C., 983 F.3d at 11. Instead, a plaintiff asserting competitor standing must "make a concrete showing that it is in fact likely to suffer financial injury as a result of the challenged action." *KERM, Inc. v. FCC*, 353 F.3d 57, 60–61 (D.C. Cir. 2004).

Competitor standing in the political sphere is even more carefully circumscribed as it rests on an extension of the economic standing principle that government action vis-à-vis business competitors can "cause" a plaintiff "to lose business." *See El Paso Nat. Gas Co. v. FERC*, 50 F.3d 23, 27 (D.C. Cir. 1995). In some circumstances, competitor standing has been extended to political candidates and political parties. *See Shays v. FEC*, 414 F.3d 76, 83–89, 92 (D.C. Cir. 2005) (political candidates); *Nat. L. Party of U.S. v. FEC*, 111 F. Supp. 2d 33, 45–46 (D.D.C. 2000) (political parties). And given the "practical identity of interests" between political parties and their candidates, *Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 630 (1996) (Kennedy, J., joined by Rehnquist, C.J., and Scalia, J., concurring in the judgment and dissenting in part), courts have sometimes extended competitor standing for political candidates to the political parties that support them. *See Nat. L. Party,* 111 F. Supp. 2d at 45–47. But, as Judge Kelly recently explained, "[n]o court has ever extended competitor standing to cover PACs." *AB PAC v. FEC*, No. CV 22-2139 (TJK), 2023 WL 4560803, at *4 (D.D.C. July 17, 2023); *see also id.* at *5 ("No court has ever extended the political competitor-standing doctrine beyond political candidates and parties in that way.").

To invoke political competitor standing, the D.C. Circuit has held that a plaintiff must establish that "he was personally disadvantaged." *Gottlieb v. FEC*, 143 F.3d 618, 621 (D.C. Cir. 1998). That means a plaintiff must "show that he personally competes in the

same arena with the same party to whom the government has bestowed the assertedly illegal benefit." *Id.*; *Fulani v. League of Women Voters Educ. Fund*, 882 F.2d 621 (2d Cir. 1989) (rejecting "competitor standing" where plaintiff "was not in a position to be granted tax-exempt status, and thus was not in competition for that benefit").

In *Gottlieb v. Federal Election Commission*, for instance, the D.C. Circuit held that AmeriPAC lacked competitor standing to challenge the transfer of $1.4 million in matching funds from President Clinton's primary campaign to his general election fund. 143 F.3d at 620–21. AmeriPAC was unable to claim standing as a "competitor" of the Clinton campaign "because it was never in a position to receive matching funds itself" and thus was not "personally disadvantaged." *Id.* "Only another candidate could make such a claim." *Id.*

Senate Majority PAC insists that it is in "direct competition" with the NRSC. Compl. ¶ 14. It is not. The NRSC is not a rival Super PAC. It is a national party committee. *See* 52 U.S.C. § 30101(14); *McConnell v. FEC*, 540 U.S. 93, at 133 n.38 (2003) (identifying the NRSC as a national party committee). Super PACs are fundamentally different. They are independent expenditure-only political committees. Compl. ¶ 3; *see* FEC, *Political Action Committees (PACs)* (last visited April 7, 2026), https://tinyurl.com/pmjv2vjb. Because federal law prohibits Super PACs from coordinating expenditures with a candidate, they do not "personally compete in the same arena" as candidates or party committees. *See, e.g.*, *Gottlieb*, 143 F.3d at 621 ("AmeriPAC cannot claim standing as a 'competitor' of the Clinton campaign."). Indeed, as Judge Kelly concluded, rival Super PACS do not even "compete directly against *each other* in the same

way candidates do." *AB PAC*, 2023 WL 4560803, at *5 (emphasis added); *see also Air Excursions*, 66 F.4th at 280 ("The plaintiff must also show that it is in fact "a *direct* … competitor'" (emphasis in original)). If rival Super PACs do not compete directly against each other, *see AB PAC*, 2023 WL 4560803, at *5, they certainly do not compete directly against political party committees. In short, Senate Majority PAC's competitor standing argument fails because it "do[es] not directly and currently compete with" the NRSC. *PSSI Glob. Servs.*, 983 F.3d at 11.

The competitor standing argument also fails because Senate Majority PAC has not made any "concrete showing" that the FEC's alleged nonenforcement caused them injury. Senate Majority PAC "cannot claim standing as a 'competitor' of the [NRSC] because it was never in a position to" fundraise for segregated accounts it is not legally allowed to create. *See Gottlieb*, 143 F.3d at 621; *Fulani v. Brady*, 935 F.2d 1324, 1327–29 (D.C. Cir. 1991). It certainly was not "personally disadvantaged." *Id.* Accordingly, Senate Majority PAC cannot possibly be competitively harmed by the FEC's alleged non-enforcement.

At day's end, Senate Majority PAC urges this Court to extend political competitor standing far beyond what any court has countenanced. This Court should refuse that invitation.

B. Senate Majority PAC Cannot Establish an Informational Injury.

Senate Majority PAC claims to have suffered an informational injury "because it had an inaccurate impression of the NRSC's fundraising and expenditures." Compl. ¶ 39. It complains that the JFC's reporting hampered its ability "to accurately and timely monitor the NRSC's fundraising and spending." Compl. ¶ 13. And it claims it "bas[ed] its strategy

on incorrect information" because it "would have considered different ways to allocate its own expenditures if it had known the NRSC's true spending." Compl. ¶ 39. None of these allegations make logical sense, and, critically, none of these allegations come close to satisfying Article III.

First, Senate Majority PAC has not plausibly alleged *any* concrete downstream injury. The Supreme Court has made clear that "[a]n 'asserted informational injury that causes no adverse effects cannot satisfy Article III,'" *TransUnion*, 594 U.S. at 431 (quoting *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020) (Katsas, J., sitting by designation)). "Only those plaintiffs who have been concretely harmed by a defendant's statutory violation may sue that private defendant over that violation in federal court." *Id.* at 4–27; *Campaign for Accountability v. Dep't of Just.*, 155 F.4th 724, 733 (D.C. Cir. 2025) (holding plaintiff must show "it suffers the type of harm Congress sought to prevent by requiring disclosure"); *Neguse v. U.S. Immigr. & Customs Enf't*, No. 25-CV-2463 (JMC), 2025 WL 3653597, at *12 (D.D.C. Dec. 17, 2025) (holding informational injuries must cause "adverse effects" or "downstream consequences" to be cognizable under Article III); *see Grae v. Corr. Corp. of Am.*, 57 F.4th 567, 570–71 (6th Cir. 2023) (collecting cases recognizing this principle in the context of public disclosure laws).

In an attempt to conjure up an adverse downstream consequence, Senate Majority PAC suggests it "would have considered different ways" to spend its own resources. Compl. ¶ 39. It says that it "*might have* chosen to spend more on a top target Senate race if it knew that the NRSC had more resources available for television advertising, while

strategically decreasing spending in another, less competitive Senate race where the chance of victory was projected to be lower." Compl. ¶ 39.

That allegation is woefully inadequate to establish a concrete downstream effect. The "might have" allegation "rests on gross speculation and is far too fanciful to merit treatment as an 'injury in fact.'" *Gottlieb*, 143 F.3d at 621. Senate Majority PAC hypothesizes that it "*might have* chosen to spend more" in one unidentified race and less in a second unidentified race "if it knew that the NRSC had more available for television advertising." Compl. ¶ 39. "[S]tanding theories that require guesswork" do not pass muster. *Murthy v. Missouri*, 603 U.S. 43, 57 (2024) (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 413 (2013)). Rather, the injury-in-fact requires that a plaintiff's injury be "concrete, particularized, and actual or imminent." *TransUnion*, 594 U.S. at 423. Senate Majority PAC's suggestion that it "might have" spent more in a "top target" Senate race, Compl. ¶ 39, does not a concrete injury-in-fact make.

The same is true of Senate Majority PAC's vague references to elections in Texas and Wisconsin, or more broadly to "35 Senate elections . . . at least 10 of which are expected to be competitive enough to attract significant spending." Compl. ¶¶ 6, 12, 40. Without concrete allegations of a "threatened injury," Senate Majority PAC has nothing but a "generalized interest in deterrence [that] is insufficient for purposes of Article III" redressability. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 108–09 (1998).

Second, informational standing exists only when "the information [sought] is not currently known" and "cannot be gleaned from the disclosures that have already been made." *Campaign Legal Center v. FEC*, 31 F.4th 781, 783 (D.C. Cir. 2022). Here, federal

law requires television stations to maintain public inspection files and to publicly disclose *any* request for a political advertising buy—the very information Senate Majority PAC says it lacked. *See* 47 U.S.C. § 315(e)(2)(B). These files must be posted within one business day of a buy request and must contain the requested buyer's name, ad rates, air times, and scheduling. The information is made publicly available in an online database hosted by the FCC. *See* https://publicfiles.fcc.gov. And given that high-demand slots can sell out months in advance, political committees often book months in advance. They are made so early that they are not often in response to others' buys but rather based on polling, strategy, and vote goals. Indeed, advertising purchases are no secret: political committees regularly publicize their plans months ahead of scheduled airtime, and this information is widely covered in the press.[2] A competitive analysis of the FCC file, which Senate Majority PAC was certainly doing, would have shown every TV buy requested by the NRSC or any of its JFCs. *See* Compl. ¶ 12 (alleging Senate Majority PAC "spends significant resources carefully monitoring fundraising and expenditures by groups who support Republican candidates). And in practice, candidates on both sides of the aisle routinely pay vendors for real-time information about advertising purchases, allowing them to monitor media strategies as they develop. Senate Majority PAC cannot establish standing based on information it could so easily publicly access. *Campaign Legal Center*, 31 F.4th at 783. At

[2] *See* https://www.nrcc.org/2024/06/27/nrcc-ie-reserves-45-7-million-in-first-round-of-ad-reservations-to-grow-the-house-majority/; https://www.politico.com/news/2024/06/20/senate-gop-nrsc-advertising-00164161 ("A second crucial piece is a heavy reliance on joint TV ad buys between the campaign arm and the candidates").

a minimum, an informational injury does not exist because Senate Majority PAC had an "easy means for alleviating [its] alleged uncertainty." *Nat'l Fam. Plan. & Reprod. Health Ass'n, Inc. v. Gonzales*, 468 F.3d 826, 831 (D.C. Cir. 2006).

Indeed, the face of Senate Majority PAC's complaint belies its supposed need for the allegedly nondisclosed information. Senate Majority PAC alleges that the NRSC spent "at least $4.8 million in specialty account funds on candidate television advertisements"—and in doing so, recites the very information it claims to have lacked. Compl. ¶¶ 4, 31. And Senate Majority PAC concedes that JFCs must "regularly report the identify of their donors and the amounts of their contributions." Compl. ¶ 4. They must also regularly report expenditures—including television fundraising costs—in the reporting period in which they are made. 11 C.F.R. § 102.17(c)(8). That means that Senate Majority PAC could easily determine the amount of funds available to the JFCs and the NRSC. *Contra* Compl. ¶¶ 4, 13. According to its own Complaint, Senate Majority PAC in fact knows precisely how much the JFCs spent on fundraising. Compl. ¶ 33. And again, Senate Majority PAC knew or should have known about every television solicitation purchase made by *any* Republican group. *See* Compl. ¶ 12.

Senate Majority PAC nevertheless complains that the "allocation" of those funds was not reported until disbursement. But that fact is irrelevant to its alleged injuries. Senate Majority PAC cannot dispute that it knew—or easily could have known—the JFCs and NRSC's fundraising numbers and expenses, including expenditures made for solicitation communications. Whatever "increase in information" Senate Majority PAC seeks from "duplicative reporting requirements" here would be "trivial." *Wertheimer v. FCC*, 268 F.3d

1070, 1075 (D.C. Cir. 2001). In fact, the idea that FEC reporting was necessary to inform Senate Majority PAC's advertising strategy does not pass the straight-face test. As noted above, campaigns do *not* rely on FEC reports to place media buys but rather competitive analysis of the FCC files and intelligence offered by specialized vendors. There is good reason for this: information is not instantaneously reported to the FEC. Placing television buys based on monthly FEC reports would be wildly ineffective because it would be responding to dated information. The FEC reporting delay dooms Senate Majority PAC's representation that it needed this information to inform its own advertising strategy.

Third, "it is settled that a plaintiff cannot show injury simply by pointing to an expenditure of resources," *LPA Inc. v. Chao*, 211 F. Supp. 2d 160, 165 (D.D.C. 2002), much less a hypothetical "might have" expenditure. "[S]elf-inflicted harm doesn't satisfy the basic requirements for standing." *Gonzales*, 468 F.3d at 831. Nor do vague allegations about a "disadvantage in achieving its mission." *Cf.* Compl. ¶ 14. Rather, for organizational standing to exist, an organization must divert resources to counteract a *harm* that already exists. *See All. for Hippocratic Med.*, 602 U.S. at 394. Here, Senate Majority PAC does not identify any downstream consequence of the alleged nondisclosure.

In short, there is no FECA exception to Article III. Because Senate Majority PAC has not plausibly alleged any adverse downstream consequence arising from its failure to obtain the information it seeks, it has not established standing, and the Complaint must be dismissed.

C. Senate Majority PAC's Alleged Injuries Are Not Redressable.

Senate Majority PAC's alleged injuries are not redressable. "To determine whether an injury is redressable," courts "consider the relationship between the judicial relief requested and the injury suffered." *Murthy*, 603 U.S. at 73 (quotation marks omitted). Here, the declaratory and injunctive relief Senate Majority PAC seeks would not redress its asserted injuries.

Start with the primarily backwards-looking nature of Senate Majority PAC's alleged injuries. Senate Majority PAC suggests it had "an inaccurate impression of the NRSC's fundraising and expenditures," Compl. ¶ 39, that past reporting "harmed its ability to accurately and timely monitor the NRSC's fundraising and spending," Compl. ¶ 13, and that it "might have" behaved differently if it had known certain information, Compl. ¶ 39. But such "[p]ast injury does not justify forward looking … relief." *Doe 1 v. Apple Inc.*, 96 F.4th 403, 413 (D.C. Cir. 2024); *see also Nader v. FEC*, 725 F.3d 226, 229 (D.C. Cir. 2013) ("Even if the FEC were to afford Nader the relief he seeks, that outcome would not reverse the ballot-access harms that Nader alleges he suffered in 2004, or compensate him for them."). Nor, as previously noted, has the "imminence of a future violation" been established with any specificity. *Steel Co.*, 523 U.S. at 108.

There are still more fundamental problems with redressability. The FEC has no quorum. And under its authorizing statute, the Commission is incapable of further action without one. Senate Majority PAC's demand that "the FEC … conform with" an order to take further enforcement action would require the impossible. The Commission is statutorily barred from undertaking such conforming action. No judicial order can change

that. Because courts cannot order agencies to do the impossible—here, by enjoining the FEC to act ultra vires, in violation of its constitutive statutes, *see McCutcheon v. FEC*, 496 F. Supp. 3d 318, 334 (D.D.C. 2020)—Senate Majority PAC's purported injury is nonredressable.

Compounding these redressability problems is the unusual nature of Senate Majority PAC's suit. "[F]ederal courts have not traditionally entertained lawsuits" alleging inadequate law enforcement. *United States v. Texas*, 599 U.S. 670, 681 (2023). The Supreme "Court has long held 'that a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution.'" *Id.* at 674 (quoting *Linda R. S. v. Richard D.*, 410 U.S. 614, 619 (1973)); *see also, e.g.*, *Nader*, 725 F.3d at 230 (FEC complainant lacked standing "to force the FEC to 'get the bad guys'"). Yet that is exactly Senate Majority PAC's basis for standing. It expressly faults the FEC for purportedly failing "to take enforcement actions against [alleged] violators of federal law." *Texas*, 599 U.S. at 684; *see* Compl. ¶ 6 (alleging injury "if enforcement action is not taken against" defendants). "[T]he federal courts are not the proper forum to resolve [such a] dispute," *Texas*, 599 U.S. at 685, and this Court should "decline" Senate Majority PAC's invitation "to start the Federal Judiciary down that uncharted path," *id.* at 681.

II. THE COURT SHOULD DISMISS BECAUSE THE FEC DID NOT ACT CONTRARY TO LAW.

Senate Majority PAC accuses the FEC of "fail[ing] to act on [its] administrative complaint since [it] filed it 176 days ago" and claims this failure is "contrary to law."

Compl. ¶¶ 45–46. It is not, for three reasons. First, Senate Majority PAC has not plausibly alleged that FEC inaction is contrary to law because it asserts no factual matter beyond the alleged delay. Second, its entire delay argument is premised on a badly flawed legal theory: that the FEC's failure to act is somehow "contrary to law" even when the absence of a quorum renders agency action impossible. Senate Majority PAC would have the FEC act ultra vires and without statutory authority. And worse, Senate Majority PAC seeks a judicial order compelling the Commission to act—even in the absence of the statutorily-required quorum. That cannot be right. Third and ironically, the Commission *has* acted on Senate Majority PAC's administrative complaint—by issuing a notification letter to the NRSC. This Court should dismiss.

A. Senate Majority PAC Fails to State a FECA Claim.

Senate Majority PAC fails to plausibly allege that the FEC's alleged failure to act on its administrative complaint was "contrary to law." Compl. ¶ 46. Indeed, the only fact that Senate Majority PAC proffers is that 176 days have elapsed since it filed its administrative complaint. But delay alone is insufficient. A delay must itself be "contrary to law" to state a claim under Section 30109(a)(8)(A).

FECA "does not create a deadline in which the FEC *must act*." *Jud. Watch, Inc.*, 293 F. Supp. 2d at 48 (quoting *Stockman,* 138 F.3d at 152) (emphasis added). "The Commission's failure to act within that 120-day period or any other timeframe is not per se contrary to law." *45Committee*, 118 F.4th at 383. What matters, in determining whether delay was unlawful, is the underlying rationale for the Commission's delay.

That is why, as the D.C. Circuit has explained, courts in this Circuit "review a[n] [FEC] failure to act by considering the factors laid out in *Common Cause* and *TRAC*." *45Committee*, 118 F.4th at 391; *accord Rose*, 806 F.2d at 1084 n.6 (similar); *see generally Common Cause v. FEC*, 489 F. Supp. 738 (D.D.C. 1980); *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70 (D.C. Cir. 1984) [hereinafter *TRAC*]. Were delay alone enough, there would be no need to resort to these factors. In fact, when courts in this Circuit apply the *Common Cause* and *TRAC* factors, they routinely find that FEC delays far beyond the 120-day statutory period are "substantially justified." *Rose*, 806 F.2d at 1091; *see id.* at 1091 n.17 ("the fact that the investigation took approximately two years does not, standing alone, violate a rule of reason"); *In re Nat. Cong. Club*, No. 84-5701, 1984 WL 148396, at *1 (D.C. Cir. Oct. 24, 1984) (vacating district court order which "incorrectly applied a 'presumption' that the Commission has acted 'contrary to law; whenever it fails to resolve a complaint within the two-year period between elections").

Here, Senate Majority PAC's failure to allege *any* factual content beyond the supposed existence of a 176-day delay fails to state a claim that the FEC acted contrary to law. The sole factual matter alleged in the Complaint is that 176 days elapsed after Senate Majority PAC filed its administrative complaint. *See* Compl. ¶ 2 ("To SMP's knowledge, the Commission has not taken any action on SMP's complaint in the 176 days since SMP filed it. SMP therefore brings this action …"); ¶ 45 ("Upon information and belief, the FEC has failed to act on Plaintiff's administrative complaint since SMP filed it 176 days ago, exceeding the 120-day statutory response period."). Nowhere does Senate Majority PAC discuss: (1) the credibility of its allegation; (2) the nature of the threat posed; (3) the

resources available to the agency; (4) the information available to the agency; or (5) the novelty of the issues involved. *See Common Cause v. FEC*, 489 F. Supp. 738, 744 (D.D.C. 1980); *see also TRAC*, 750 F.2d at 80 (enumerating additional factors, including a "rule of reason," relevant to agency delay).

That Senate Majority PAC does not address a single *Common Cause* or *TRAC* factor is not only telling but dispositive. Because the Complaint fails to state a claim that FEC's alleged delay was contrary to law, it must be dismissed.

B. In the Absence of a Required Quorum, An Agency's Lack of Action Is Not Contrary to Law.

Ultimately, Senate Majority PAC's curious silence regarding the *Common Cause* and *TRAC* factors is understandable. Those factors point only one way. The Commission has been without a quorum since April 2025—well before Senate Majority PAC filed its administrative complaint. Far from being unlawful, the FEC's alleged delay was the *only lawful* course available to the FEC until a quorum is restored. The FEC has not taken additional action on Senate Majority PAC's Complaint for a simple reason: FECA forbids it. *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 [substantive] action"). Without a quorum, the Commission has no statutory authority to proceed further with Senate Majority PAC's administrative complaint.

From where the matter presently stands, the next enforcement step would be to hold a "reason to believe" vote. *45Committee*, 118 F.4th at 382 (quoting 52 U.S.C. § 30109(a)(2)). But the Commission may only determine "reason to believe" "by an

affirmative vote of 4 of its members." 52 U.S.C. § 30109(a)(2); *see also* § 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 … (9) … of section 30107(a)"); *Campaign Legal Center v. FEC*, 106 F.4th 1175, 1185 (D.C. Cir. 2024) ("the FEC [was] short of the four votes needed to authorize an investigation"). The FEC's rules reinforce this four-commissioner requirement. *See* FEC Directive 10, § L (June 8, 1978 amend. Dec. 20, 2007), https://tinyurl.com/ysuur6b3 (providing that without an express exception the Commission "may not act on any matter" when it has fewer than four Members).

Where (as here) the Commission has fewer than four confirmed commissioners,[3] it is statutorily prohibited from determining whether there is reason to believe the law was violated. 52 U.S.C. § 30109(a)(2). Indeed, the FEC has been without a quorum the *entire* time Senate Majority PAC's administrative complaint has been pending. In *Common Cause* parlance, the FEC is bereft of "resources" to take further action on the administrative complaint because it has never had a quorum during its pendency. The lack of a quorum does not merely excuse the Commission's alleged failure to act—it required it.

The FEC does not act contrary to law when it refuses to vote because it lacks the requisite number of commissioners, as other courts in this District have recognized. In *McCutcheon v. FEC* (Bates, J.), the FEC had only three commissioners and so did not issue a requested advisory opinion (an action which, just like finding reason to believe, requires

[3] President Trump nominated two new commissioners in February, but the Senate has not yet voted on those nominations.

four votes). 496 F. Supp. 3d at 318. Judge Bates explained that even though "the FEC is required to render an advisory opinion in response to a complete request within sixty days of receipt under 52 U.S.C. § 30108, it is prohibited from issuing an advisory opinion without the affirmative votes of four Commissioners approving such issuance under 52 U.S.C. § 30106." *Id.* at 324. Finding no authority that would allow the FEC "to circumvent the four-vote requirement," Judge Bates held that "the Commission's conduct"—or one might say, its nonconduct— "was compelled by law." *Id.* He went on to emphasize that, "[i]f anything, the FEC would abuse its discretion by rendering an advisory opinion without the requisite four-vote approval, and the Court would certainly not compel it to do so here." *Id.*

So too here. Even if FECA required the Commission to make a determination within 120 days (it does not), the Commission has no authority "to circumvent the four-vote requirement" under 52 U.S.C. § 30109(a)(2). *Id*. Far from being "contrary to law," because the Commission lacks a quorum, its alleged inaction is "compelled by law." *Id*.

In fact, the NRSC is aware of no case finding FEC inaction "contrary to law" where the Commission has been without a quorum for the entire pendency of the administrative complaint. And for good reason. Any contrary conclusion would raise rampant separation-of-powers concerns. It would impermissibly allow federal courts to compel executive agencies to act in contravention of statutory limitations. *See Rose*, 806 F.2d at 1091 ("It is not for the judiciary to ride roughshod over agency procedures or sit as a board of superintendance [sic] . . . . We are not here to run the agencies.*"); see also In re Barr Lab'ys, Inc.*, 930 F.2d 72, 74 (D.C. Cir. 1991) ("[R]espect for the autonomy and

comparative institutional advantage of the executive branch has traditionally made courts slow to assume command over an agency's choice of priorities[.]"). As the Supreme Court has said in another context, it is up to Congress, not the federal courts, to fix any dysfunction caused by a lack of quorum. *See New Process Steel, L.P. v. NLRB*, 560 U.S. 674, 688 (2010).

An agency whose powers are statutorily bound up with the existence of a membership quorum cannot act when the President and the Senate have not appointed and confirmed, respectively, sufficient members. The structural reality is that without a quorum, the FEC is legally incapable of acting—and no judicial order can change that.

This Court should dismiss because FECA compelled the FEC's alleged inaction.

C. Even Were the FEC's Delay Contrary to Law, It Was Not Unreasonable.

Even if this Court were to determine that the FEC's statutorily-compelled inaction was somehow contrary to law (it is not), Senate Majority PAC is not entitled to an order compelling the Commission to act because the *TRAC* factors do not support an order from this Court compelling agency action. Given the absence of a quorum, the FEC lacks entirely the requisite enforcement resources. Indeed, it is statutorily barred from further action. This Court should not order the Commission to act ultra vires.

As a threshold matter, the FEC's mere delay beyond the 120-day window provided by statute is not unreasonable ipso facto. *Citizens for Percy '84 v. FEC*, No. CIV.A. 84-2653, 1984 WL 6601, at *4 (D.D.C. Nov. 19, 1984) ("Congress did not intend to create a presumption that delay in excess of 120 days was unreasonable, per se, or that 120 days was a deadline for final action on complaints."). In this Circuit, even when an agency's

delay in action is found to be contrary to law, courts often consider an additional set of factors—set forth in *Telecommunications Research & Action Center v. Federal Communications Commission*—to determine whether the delay was unreasonable and an order compelling action is warranted. Those factors are as follows: (1) the timing of agency decisions must be governed by a "rule of reason"; (2) applicable statutory deadlines; (3) human health and welfare concerns; (4) any impact on higher-priority agency work; (5) the nature and extent of interests prejudiced by delay; and (6) the presence or absence of "impropriety lurking behind agency lassitude[.]" *Id*.

Here, none of the *TRAC* factors support Senate Majority PAC, and the first—rule of reason—is dispositive. That factor dooms an order compelling the FEC to act. The "rule of reason" employed in the present case is both straightforward and obvious: once the FEC regains a quorum, it must act within a reasonable time on the matters on its docket, including Senate Majority PAC's complaint. Until then, any delay is not merely reasonable but required by law.

D. By Issuing a Notification Letter, The FEC Took Action on Senate Majority PAC's Administrative Complaint.

Senate Majority PAC alleges that the FEC wholly "failed to act" on its administrative complaint. Compl. ¶ 45. Not so. The FEC "acted" within the meaning of the statute when it issued a notification letter to the NRSC pursuant to 52 U.S.C. § 30109(a)(1).

A failure to act on a pending administrative complaint means a failure "to take some cognizable enforcement step under the statute in response to the complaint." *45Committee*, 118 F.4th at 391. But the sending of a notification letter, which does not require a four-

vote quorum, is in fact the first "step" in the FECA enforcement scheme, as the D.C. Circuit has long recognized. In *Perot v. FEC*, the D.C. Circuit acknowledged that the respondent identified in an administrative complaint "had to be notified within five days" and described the FEC vote on reason to believe that would follow as "[t]he *next step*" in the enforcement process. *See* 97 F.3d at 558 (emphasis added). Here, the Commission made just such a required notification: on August 28, 2025, the FEC sent a letter to the NRSC notifying it that the agency had "received a complaint" alleging it "may have violated the Federal Election Campaign Act of 1971" and informing the NRSC of its statutory right to respond. Exhibit 1.[4] That defeats Senate Majority PAC's claim. Because the sending of a notification letter is an enforcement step expressly recognized by FECA, the Commission has not ultimately "failed to act" on Senate Majority PAC's administrative complaint.

At this stage of the process, Senate Majority PAC has received all that it is due—FEC action taking the form of a notification letter to the NRSC, with any further activities held in abeyance until such time as the FEC obtains the statutorily required quorum. Under the circumstances, Senate Majority PAC cannot coherently demand more.

[4] The Court may take judicial notice of these facts in ruling on a motion to dismiss because they are matters of public record found in government documents and are "central to the plaintiff's claim." *Cureton*, 272 F. Supp. 3d at 61; *see Johnson v. Comm'n on Presidential Debates*, 202 F. Supp. 3d 159, 167, 178 (D.D.C. 2016) (Collyer, J.) (dismissing after taking judicial notice of FEC documents), *aff'd*, 869 F.3d 976 (D.C. Cir. 2017).

III. THE COURT SHOULD DISMISS BECAUSE CONTRARY-TO-LAW REVIEW OF THE FEC'S INHERENT ENFORCEMENT DISCRETION VIOLATES ARTICLE II.

Under the Constitution, "[t]he entire 'executive Power' belongs to the President alone." *Seila L. LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 213 (2020); see U.S. Const., art. II, § 1, cl. 1; *id.* § 3. Enforcement discretion is part of that authority.

Every executive agency necessarily makes discretionary judgments about when and whether to undertake enforcement activities. Managing agency resources is the executive branch's prerogative under Article II. "Civil enforcement actions are presumptively committed to the agency's discretion, consistent with the Article II power to take care of faithful execution of the laws." *CREW*, 993 F.3d at 888; *see Texas*, 599 U.S. at 679 ("[T]he Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case."); *Buckley v. Valeo*, 424 U.S. 1, 138 (1976) (holding "[t]he Commission's enforcement power, … is authority" the Constitution confers on "the President").

Where the FEC chooses not to invest its limited investigative resources in a particular matter, that choice is judicially unreviewable. That choice *cannot*, logically, be "contrary to law," because no positive law requires that the FEC prioritize all potential matters equally. See *CREW*, 993 F.3d at 888 ("[M]atters committed to agency discretion are not subject to judicial review."); *ICC v. Bhd. of Locomotive Eng'rs*, 482 U.S. 270, 283 (1987) ("[T]he refusal to prosecute cannot be the subject of judicial review."); *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("[A]n agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."). Holding otherwise would violate the executive branch's Article II

prerogative to set its own enforcement priorities and allocate limited agency resources accordingly. Because the Complaint, at bottom, seeks to review the FEC's discretionary decision not to allocate resources in the way that Senate Majority PAC prefers—and seeks to compel a contrary result, in violation of long-settled constitutional principles—it is noncognizable and should be dismissed.

The opening of the Complaint gives the real game away, announcing that Senate Majority PAC is less interested in securing FEC action than in pursuing a citizen suit against the NRSC and the other agency respondents. Compl. ¶ 7 (citing 52 U.S.C. § 30109(a)(8)(C)). But Article II requires that the responsibility for enforcing federal law must remain solely within the Executive Branch. *Seila Law*, 591 U.S. at 213–14; *Buckley*, 424 U.S. at 138–41. As the NRSC has elsewhere explained, Congress cannot deputize private citizens to enforce FECA through civil litigation. *See* NRSC & NRCC Am. Br. 18–21, *End Citizens United PAC v. FEC*, No. 22-577 (D.C. Cir. Jan. 2, 2025) (en banc). Because that is what Senate Majority PAC ultimately seeks to do, the Complaint must be dismissed for this additional reason.

CONCLUSION

The Court should dismiss.

Respectfully submitted,

/s/ Erin Morrow Hawley
Erin Morrow Hawley
District of Columbia Bar 500782
Pro hac vice
Dennis W. Polio
D.C. Bar No. 198054
John S. Ehrett
District of Columbia Bar 1657026
Pro hac vice
LEX POLITICA PLLC
700 Pennsylvania Avenue SE, Ste 440
Washington, D.C. 20003
(512) 354-1783
ehawley@lexpolitica.com
dpolio@lexpolitica.com
jehrett@lexpolitica.com

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Counsel for Intervenor-Defendant NRSC