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)

NRSC'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS

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GLOSSARY

FEC	Federal Election Commission
FECA	Federal Election Campaign Act
PAC	Political Action Committee

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INTRODUCTION

Senate Majority PAC's opposition clarifies the ambition of its lawsuit: not merely to apply existing law, but to dramatically revise and extend it. For instance: the law does not hold that a party deprived of information that "might have" benefited them has properly alleged an Article III injury. But Senate Majority PAC argues just that. The law does not hold that a Super PAC and a national party committee are similarly situated for purposes of competitor standing. But Senate Majority PAC argues just that. The law does not hold that redressability exists where an agency is statutorily incapable of acting. But Senate Majority PAC argues just that. Finally, the law does not hold that agency inaction compelled by a lack of quorum is somehow "contrary to law." But again, Senate Majority PAC argues just that.

Over and over—from its theory of standing, to its requested relief, to its understanding of what agency actions are "contrary to law"— Senate Majority PAC invites this court to go where no court has gone before. But there is good reason for prior judicial hesitation. Senate Majority PAC's capacious understanding of standing would turn campaign finance law into a litigation free-for-all. And its novel understanding of the law of vacancies—that an agency's inability to adjudicate a matter, due to lack of quorum, can somehow be "contrary to law"—would sidestep the executive branch's constitutional role in law enforcement. This Court should not head down that path.

Nor should it countenance Senate Majority PAC's attempt to color the Court's perception of the underlying merits of Senate Majority PAC's Administrative Complaint—merits not at issue here. Opp. at 7–8; *see also* 11 C.F.R. § 102.17(c)(7)(i)(A) (requiring proportionate allocation of joint fundraising costs); Fed. Elec. Comm'n, Advisory Op. 2007-24 (Burkee/Walz) (Dec. 7, 2007), at 5.

In all events, because Senate Majority PAC lacks standing, because it failed to show that the FEC has behaved "contrary to law," and because it already received the sole FEC action to which it is entitled, Senate Majority PAC's Complaint should be dismissed.

ARGUMENT

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

A. Senate Majority PAC Has Failed to Plead an Informational Injury.

Without demonstrating concrete injury, a plaintiff has no standing. Nevertheless, just as in its Complaint, Senate Majority PAC falls back on wholly speculative theories of informational injury. These cannot form the basis of a viable claim under Article III.

Senate Majority PAC alleges that it has "suffered" and "will continue to suffer" because it "*might have* chosen to spend more on a top target Senate race" if it knew more about the NRSC's priorities. Opp. at 7–8 (emphasis added). Further, Senate Majority PAC boldly declares it need not establish that it would "*certainly* adjust its spending plans if it had accurately reported information from the NRSC." Opp. at 9 (emphasis added). All that the Complaint must allege, according to Senate Majority PAC, is a bare "intent to use the information to participate" politically. Opp. at 10 (quoting *Laufer v. Looper*, 22 F.4th 871,

881 (10th Cir. 2022)). Or maybe not: Senate Majority PAC's own Complaint alleges only that its activities might—or might not—have been informed by the information it demands from the NRSC. Who can really say?

Federal law, however, reflects a much simpler principle: "No concrete harm, no standing." *TransUnion, LLC v. Ramirez*, 594 U.S. 413, 417 (2021). Vague allegations about what Senate Majority PAC *might* have done, or how it *might* have used information from the NRSC, do not come close to satisfying that requirement.

None of Senate Majority PAC's cited cases are to the contrary. To a one, all use the language of concrete, rather than speculative or hypothetical, injuries. *Correct the Record* countenanced informational injury where "there is no reason to doubt [claimants'] claim that the information *would help them*." *Campaign Legal Ctr. v. FEC* ("*Correct the Record*"), 31 F.4th 781, 783 (D.C. Cir. 2022) (emphasis added) (quoting *Campaign Legal Ctr. & Democracy 21 v. FEC* ("*Democracy 21*"), 952 F.3d 352, 356 (D.C. Cir. 2020) (per curiam)). Not "might"—*would*. Concreteness makes the difference. *See also Citizens for Resp. and Ethics in Washington v. FEC*, No. 22-cv-3281 (CRC), 2023 WL 6141887, at *6 (D.D.C. Sep. 20, 2023) (finding informational injury where information "would harm [claimant's] ability to advance its organizational mission"); *End Citizens United PAC v. FEC*, No. CV 21-2128 (RJL), 2022 WL 4289654, at *4 (D.D.C. Sep. 16, 2022) (finding informational injury where information "would be relevant").

Hypothetical scenarios do not establish standing. Else, there would be no point in imposing standing requirements at all. This is especially true in the informational context: Any plaintiff in any imaginable case "might" benefit from receiving some requested

information or other, under the right circumstances. But that bare possibility does not confer Article III standing. Any conclusion to the contrary would effectively overturn *TransUnion*—not to mention decades of precedent requiring an actual injury-in-fact. Perhaps that is the point. But it is not the law.

In fact, *TransUnion* made clear that an informational injury is not exempt from Article III's strictures. Rather, as with any other claim, an informational claimant must establish a concrete down-stream injury. *TransUnion*, 594 U.S. at 431 ("An asserted informational injury that causes no adverse effects cannot satisfy Article III.") (citation omitted). A lack of information alone is not enough. *Id.* And while organizational spending may in limited circumstances satisfy Article III, Senate Majority PAC disclaims any injury "aris[ing] from an alleged diversion of resources" for informational standing. Opp. at 11; *cf. FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 395 (2024) (holding that a plaintiff may not spend its way into standing and that an allegation "that an organization diverts its resources in response to a defendant's actions" is insufficient under Article III).

Senate Majority PAC further claims that it suffers from an "information deficit" that hinders its ability to "make an informed purchasing decision" about where to invest its resources. Opp. at 9–10 (citing *Animal Legal Defense Fund, Inc. v. Vilsack*, 111 F.4th 1219, 1229 (D.C. Cir. 2024)). But *Animal Legal Defense Fund*—a case that concluded that the plaintiff ultimately lacked standing—is inapposite. There, the D.C. Circuit found that the plaintiff had alleged an injury where she lacked sufficient information to determine whether a purchasing decision *would* violate her deeply held ethical beliefs. 111 F.4th at 1229. In other words, the information sought was dispositive of her purchasing decision.

This was *not* a case in which—as here—the plaintiff lacked information that *might or might not* turn out to be relevant to her purchasing decision.

Likewise, *Neguse* was predicated on the conclusion that the challenged action—in that case, a restriction of congresspersons' ability to visit ICE detention facilities—*had in fact* "harmed the requestors' ability to engage in the political and policymaking process." *Neguse v. U.S. Immigr. & Customs Enf't*, 813 F. Supp. 3d 45, 74 (D.D.C. 2025). The injury there was not merely hypothetical, but concrete. Conversely, Senate Majority PAC's informational injury claim is entirely premised upon "gross speculation"—the sort of hypothetical that is "far too fanciful to merit treatment as an 'injury in fact.'" *Gottlieb v. FEC*, 143 F.3d 618, 621 (D.C. Cir. 1998).

Senate Majority PAC now argues that it requires information not only about the NRSC's expenditures but also cash on hand of all of its affiliated groups and "how much money the NRSC has *available* for ad spending." Opp. at 10. For starters, information regarding cash on hand is *already* available and reclassifying the challenged expenditures would not affect the method of reporting cash on hand. 52 U.S.C. § 30104(b)(1). Further, even if Senate Majority PAC were correct (it is not) that the expenditures in question should be reclassified as coordinated expenditures, such expenditures would be reported on regularly scheduled reports, which significantly lag real time, and are therefore unhelpful for media buying decisions. Indeed, coordinated expenditures for ads can be reported up to *50 days* after the ads air. 11 C.F.R. § 104.5(c)(3)(i) (monthly report due 20 days after last day of calendar month). While this timeframe narrows as election day nears, *see* 11 C.F.R. § 104.5(c)(3)(ii), it still lags real-time spending decisions. The data is several days old at

best, and 50 days old at worst. That's why political actors, especially sophisticated and well-funded ones like Senate Majority PAC, do not ordinarily rely on FEC reports to plan media spending or evaluate cash reserves. Further, where disclosure of information would—as here—add "only a trifle to the store of information about the transaction already publicly available," *Citizens for Resp. and Ethics in Washington v. FEC*, 475 F.3d 337, 340 (D.C. Cir. 2007), plaintiffs have failed to establish a viable informational injury claim.

At bottom, Senate Majority PAC complains of "an "allegedly unlawful policy" that "prevents [it] from confidently making purchasing decisions" consistent with its strategic goals." Opp. at 9 (citation omitted). That sentence reveals the fatal flaw in Senate Majority PAC's theory: its real complaint is with *Congress*, which prescribed the basis for the reporting regimen—including the reporting timetables—with which the NRSC has fully complied. Even when a group is entitled to the public reporting of certain information, it is not entitled to earlier reporting than is required by law simply because the statutory timetable is inconvenient for their private purposes.

B. Senate Majority PAC Has Failed to Establish Competitor Standing.

Once again, existing law is clear: in the words of Judge Kelly, "[n]o court has *ever* extended competitor standing to cover PACs" as competitors with candidates or party committees. *AB PAC v. FEC*, No. CV 22-2139 (TJK), 2023 WL 4560803, at *4 (D.D.C. July 17, 2023) (emphasis added). This Court should decline Senate Majority PAC's request for this Court to be the first.

As the NRSC explained in its opening brief, in extending competitor standing to the political arena, courts have been careful to maintain the doctrine's traditional limits. Mot.

to Dismiss at 10–14. Namely, the parties in question must be "*direct* and *current* competitor[s]." *Air Excursions LLC v. Yellen*, 66 F.4th 272, 280 (D.C. Cir. 2023). Mere political opposition is not enough; rather, "competitor standing requires actual participation in the relevant market." *PSSI Glob. Servs., L.L.C. v. FCC*, 983 F.3d 1, 11 (D.C. Cir. 2020).

Senate Majority PAC's argument for competitor standing, like its argument for informational injury, stands to gut existing doctrine. The Super PAC shrugs off its "organizational structure[]" because it allegedly competes in "the same field" as the NRSC—"for advertising space and to persuade voters." Opp. at 14. That is descriptively false: as a matter of federal law, Senate Majority PAC does not compete with the NRSC or its affiliated committees where advertising rates and content protection are concerned. *See* Fed. Comms. Comm'n, Public Notice DA 26-300 (Mar. 30, 2026), https://docs.fcc.gov/public/attachments/DA-26-300A1.pdf. But as Senate Majority PAC sees it, the Super PAC has a broad right to a fair "competitive environment" and so enjoys competitor standing. Opp. at 12 (quoting *Shays v. FEC*, 414 F.3d 76, 86 (D.C. Cir. 2005).

That gives the game away. Taken seriously, Senate Majority PAC's argument would mean that *any and all* entities engaged in political persuasion are "competitors" for standing purposes. That theory cannot be squared with existing law, which requires that a plaintiff be a "*direct* and *current*" competitor in the relevant "market" in question. *Air Excursions*, 66 F.4th at 280 (cleaned up). Further, the "market" does not—as Senate Majority PAC appears to believe—mean the "marketplace of ideas" writ large. That would eviscerate the longstanding requirement that a plaintiff show that he "personally competes in the same arena with the same party who has supposedly received an improper benefit."

Gottlieb, 143 F.3d at 621; *see AB PAC*, 2023 WL 4560803, at *5 (PACs "do not compete in the political marketplace directly against candidates" nor "compete directly against each other in the same way candidates do").

Here, Senate Majority PAC concedes (as it must) that it is not "eligible" for the benefit the NRSC allegedly improperly received. *Cf. Gottlieb*, 143 F.3d at 621. That alone should resolve this matter. Senate Majority PAC's appeal to a fair "competitive environment" would render the entire policy or political landscape the relevant competitive arena, stretching competitor standing beyond all recognition.

Shays is not to the contrary. In that case, the D.C. Circuit awarded competitor standing to congressional *candidates* who were defending their own concrete interests (e.g., retention of elected office). Far from bolstering Senate Majority PAC's competitive-standing argument, the case explains that candidates and political parties are differently situated from Super PACs: Super PACs do not "defend[] concrete interests" in the same way party and candidate committees do. *Shays*, 414 F.3d at 87 (political competitor standing analogous to economic competitor standing only where "candidates and parties" are engaged in "genuine rivalry"). Senate Majority PAC's preference to advocate for Democratic candidates is not equivalent to (for instance) the Democratic Senatorial Campaign Committee's structural interest in competing with the NRSC in defense of Democratic candidates, or a candidate's uniquely "personal stake" in the outcome of their own election. *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 79 (2026).

Similarly, *End Citizens United PAC* stands, at most, for the proposition that Super PACs compete with *other Super PACs*. *End Citizens United PAC*, 2022 WL 4289654, at

*4. It does *not*, in any sense, support Senate Majority PAC's position that competitor standing can be acquired by mixing-and-matching entities that are asymmetrically situated. Because the NRSC is not a Super PAC, it does not compete in the same "market" with Senate Majority PAC. *See* FCC, Public Notice DA 26-300, *supra*. Any attempt to collapse this distinction threatens the entire body of competitor-standing caselaw.

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

In addition to Senate Majority PAC's failure to allege an informational injury or establish competitor standing, its alleged injuries are nonredressable. Significantly, in its Opposition, Senate Majority PAC appears to entirely abandon its backward-looking allegations of injury. *See* Op. at 15–16 ("SMP seeks to prevent or deter future violations in the 2026 election cycle and beyond."). All that's left is a conclusory allegation of harm supposedly resulting from one campaign advertisement in Texas. *See* Opp. at 15. But as explained above, Senate Majority PAC has failed to plead a cognizable informational injury or competitive harm *as to Senate Majority PAC*. *See supra* I.A. And while Senate Majority PAC declares candidly that, through this lawsuit, it "seeks to prevent or deter future violations in the 2026 election cycle and beyond," Opp. at 15, it is long-settled law that a "generalized interest in deterrence . . . is insufficient for purposes of Article III." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 108–09 (1998).

Senate Majority PAC further contends that the FEC's lack of quorum is not a barrier to redressability, because FECA's citizen-suit provision allows it to vindicate its rights notwithstanding FEC inaction. That argument badly distorts established doctrine. In order "[t]o determine whether an injury is redressable," a court will "consider the relationship

between *the judicial relief requested* and *the injury suffered*." *Murthy v. Missouri*, 603 U.S. 43, 73 (2024) (cleaned up) (emphasis added). Here, Senate Majority PAC sued *the FEC*, alleges an injury *by the FEC*, and requests that this Court "[o]rder *the FEC* to conform" with a declaration that *the FEC's* purported "failure to act on Plaintiff's administrative complaint was contrary to law." Compl. at 12 (emphasis added). Yet as Senate Majority PAC is forced to concede, such "conform[ance]–*i.e.*, taking action on the Administrative Complaint—is impossible because the FEC cannot legally act at all. *Id.* No judicial order can change that. Because courts cannot order agencies to act ultra vires, Senate Majority PAC's alleged injuries are not redressable.

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

A. Because the FEC Has Lacked a Quorum, It Cannot Have Acted Unreasonably or "Contrary to Law."

Senate Majority PAC, acknowledging for the first time in its Opposition filing that the FEC lacks a quorum and so cannot legally act, falls back on a novel and entirely untested legal theory: that FECA's citizen-suit provision now serves as a "backstop" to allow campaign finance law enforcement to proceed where the FEC is statutorily precluded from acting, including by a lack of agency quorum. Opp. at 16–17.

Senate Majority PAC does not cite a shred of legal authority or legislative history for this theory, because there is none. Every single one of Senate Majority PAC's citations is to authorities in which the agency had at least *some* opportunity to act. None address a situation where the FEC lacked a quorum during the *entire pendency* of a plaintiff's complaint. And for good reason: that is not what FECA contemplates.

Invoking *Iowa Values* and *Giffords*, Senate Majority PAC alleges that "courts in this district have routinely refused to excuse FEC inaction simply due to a lack of quorum." Opp. at 19. Not so. In *Iowa Values*, "the FEC *had* a quorum during the pendency of plaintiff's complaint." *Campaign Legal Ctr. v. Iowa Values*, 573 F. Supp. 3d 243, 254 (D.D.C. 2021). The FEC was, in fact, "statutorily capable of acting on the complaint" for over a month, but did not do so. *Id.* (cleaned up). Though that quorum persisted for "a limited amount of time," the fact remains: there was a quorum and the FEC did not act. *Id.* In the instant case, the FEC has *never* had a quorum and *never* been legally capable of acting upon Senate Majority PAC's Administrative Complaint. *Iowa Values* does not support Senate Majority PAC's broad claim that private litigants may bypass the FEC when it has no quorum.

Giffords played out similarly. There, the FEC lost its quorum during the pendency of plaintiff's several complaints, then "regained quorum," and then lost it again. *Giffords v. Fed. Election Comm'n*, Civ. Action No. 19-1192 (EGS), 2021 WL 4805478, at *7 (D.D.C. Oct. 14, 2021). Upon briefly regaining quorum, the FEC averred that "a considerable backlog of old and new administrative enforcement matters" impeded its ability to act on plaintiff's complaint. *Id.* at *6. That fact distinguishes this case. In ruling that the FEC had acted in a manner contrary to law, the *Giffords* court did not find that the delays *attributable to a lack of quorum* were improper. Quite the opposite: the court acknowledged that "the Commission was incapable of addressing Plaintiff's complaints while it was without a quorum." *Id.* at *7. Instead, *Giffords* was concerned that the FEC had been "allowing a matter to languish" while considering other matters during those

executive sessions it did convene. *Id.* at *7. Here, there have been no executive sessions because a quorum has never existed.

Senate Majority PAC further cites two orders in *Campaign Legal Center v. FEC*, as allegedly standing for the proposition that "the FEC's lack of quorum is no bar to this Court finding an unreasonable delay." Opp. at 22. But neither order supports that position. In the first, Judge Lamberth stated outright that his contrary-to-law finding was predicated on the fact that the FEC "had a quorum during the pendency of [the matter] from May 19, 2020 to July 3, 2020" and so "was statutorily capable of acting on the complaint during that period." Order, *Campaign Legal Ctr. v. FEC*, No. 1:20-cv-1778 (D.D.C. Oct. 14, 2020), ECF No. 14, n.1. Similarly, the second order was entered well *after* the FEC had regained a quorum. Order, *Campaign Legal Ctr. v. FEC*, No. 1:20-cv-1778 (D.D.C. Feb. 11, 2021), ECF No. 24.

This case stands alone. The FEC has not possessed a quorum at any point since the filing of Senate Majority PAC's Administrative Complaint. It has not "allowed" Senate Majority PAC's complaint to "languish." *Giffords*, 2021 WL 4805478, at *7. Rather, as Senate Majority PAC is forced to concede, "without a quorum, the FEC cannot expend resources investigating a complaint." Opp. at 18. Thus, neither *Iowa Values* nor *Giffords* nor *Campaign Legal Center* is on point, because none contemplates a *total* lack of quorum.

FEC inaction under such circumstances is neither unreasonable nor contrary to law.[1] Indeed, inaction *was* the FEC following the law. That should end the matter. And yet,

[1] Senate Majority PAC argues that "[a] debilitating lack of quorum pushes the [*Common Cause* and *TRAC*] factors to their useful limits." Opp. at 17. At minimum, that lack of

according to Senate Majority PAC, Congress created FECA's citizen-suit provision for situations just like this one, for cases where "the FEC—whether due to a lack of quorum or political deadlock—may fail in its duty to act on administrative complaints." Opp. at 23. Again, Senate Majority PAC cites zero authority for its expansive theory. Nor can it, because there is none.[2]

The fact that, as Senate Majority PAC puts it, "nothing has been done on Senate Majority PAC's Administrative Complaint, and that there seems to be no prospect of anything being done anytime soon," Opp. at 21, is no doubt frustrating for Senate Majority PAC. It is no doubt frustrating for many other FEC complainants situated similarly to Senate Majority PAC. But here too, SMP's frustration is with Congress. Commissioner nominations sufficient to establish quorum are pending before the U.S. Senate. *See* The White House, *Nominations Sent to the Senate* (Feb. 11, 2026), https://www.whitehouse.gov/presidential-actions/2026/02/nominations-sent-to-the-senate-b65f/. SMP cannot sidestep this process because Congress has not moved quickly enough for their liking.

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quorum mandates a finding that the FEC's inaction was reasonable under those factors because the agency was unable to harness *any* of its resources and because a statutorily mandated delay necessarily complies with a rule of reason. Opp. at 23–27.

[2] *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1 (2013) is not to the contrary. While in that case, the Supreme Court correctly stated that Arizona was "free" to seek a writ of mandamus to compel agency action where a lack of quorum precluded such agency action, the Court decided exactly nothing about the reasonableness of agency inaction under such circumstances. *Inter Tribal Council of Arizona*, 570 U.S. at 19 n.10. A litigant is "free," after all, to make any number of long-shot legal claims.

B. The FEC Has Not Failed to "Act," Because It Initiated Process Via a Notification Letter.

A failure to act means a failure to take "some cognizable enforcement step" under FECA. *Campaign Legal Ctr. v. 45Committee, Inc.*, 118 F.4th 378, 391 (D.C. Cir. 2024). As all agree, FECA provides that the sending of a notification letter is the first step in its enforcement process. And as the D.C. Circuit has long recognized, this is how the FEC "proceed[s] with due deliberation after it receives a complaint alleging violations" of FECA. *Perot v. FEC*, 97 F.3d 553, 558 (D.C. Cir. 1996). "Proceeding with due deliberation" is *action*. And a notification letter is a key component of that process. It is a step that puts the recipient party on notice, typically triggering a legal response, and lays out the framework for all subsequent proceedings. At bottom, a notification letter evinces the FEC's commitment to seriously engage the allegations brought forward by a complainant—and in so doing commits both the resources of the Commission and, implicitly, the recipient.

FECA's delay-suit provision offers a mechanism for relief where the FEC deliberately ignores an enforcement matter entirely. That is not the case here. By sending a notification letter—the only enforcement step the FEC is permitted to take without a quorum—the FEC has signaled its intent to take Senate Majority PAC's Administrative Complaint seriously. It has *acted*. But until such time as it obtains a quorum, it cannot further adjudicate Senate Majority PAC's claims. Under these circumstances, both Senate Majority PAC's bid for unprecedented judicial relief—compelling an agency to act ultra vires—and its concomitant attempt to pursue a citizen suit are wholly inappropriate.

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

Senate Majority PAC misconstrues the NRSC's Article II argument. In this case, the Court need not hold that FECA's citizen-suit provision violates Article II, full stop. Rather, the point here is that Senate Majority PAC's *effort to leapfrog the FEC and skip straight to citizen litigation* is contrary to Article II, because the enforcement discretion to act on Senate Majority PAC's Administrative Complaint is properly vested in the FEC.

Enforcement discretion under FECA, as with all administrative agencies, resides with the executive branch. *See Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 499 (2010) ("The Constitution requires that a President chosen by the entire Nation oversee the execution of the laws."); *Seila Law LLC v. CFPB*, 591 U.S. 197, 213–14 (2020) (same). Accordingly, where the FEC prioritizes certain enforcement priorities over others, its choice to do so cannot be "contrary to law.". Holding otherwise would imply that FECA's citizen-suit provision functions as a pressure valve, allowing private litigants to step in wherever the FEC declines to act. And that is, in fact, what Senate Majority PAC argues. See Opp. at 16–17 (characterizing the citizen-suit provision as a "congressionally mandated relief valve" that will allow Senate Majority PAC to "initiate a citizen suit against the NRSC directly").

FECA does not work that way. The D.C. Circuit has affirmatively rejected "the idea" that the FEC's exercise of prosecutorial discretion "triggers FECA's 'citizen-suit' provision, which entitles a private entity to bring an enforcement action when the Commission has declined to do so." *Citizens for Resp. and Ethics in Washington v. FEC*,

892 F.3d 434, 439–40 (D.C. Cir. 2018). Rather, a court may not "subject the Commission's exercise of discretion to judicial review"—through a citizen-suit or otherwise. *Id.* at 440. Congress intended that the FEC, like all executive agencies, have the power to enforce FECA in appropriate cases—or, in its discretion, decline to do so.

According to Senate Majority PAC, the FEC's discretion is not at issue because the FEC "did not make any choice at all." Opp. at 25. But the bulk of its Opposition advances the theory that the agency somehow "acted contrary to law." Both positions cannot be correct. Regardless, Senate Majority PAC's lawsuit aims to deprive the FEC of any ability to exercise its discretion after it regains a quorum. *That* is the fundamental Article II problem. Nothing in FECA suggests that the citizen-suit provision was designed to permit complainants to bypass the executive branch altogether if the nomination and confirmation process happens to take too long. This Court should reject Senate Majority PAC's invitation to short-circuit the process provided by Congress.

CONCLUSION

The Court should dismiss.

Respectfully submitted,

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