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U.S. District & Bankruptcy Courts
for the District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PETER BERNEGGER,

Civil Action No. 1:25-cv-04563-TNM

Plaintiff,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

**PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AGAINST
DEFENDANT FEDERAL ELECTION COMMISSION**

Pursuant to Federal Rule of Civil Procedure 55(b)(2) and 55(d), Local Civil Rule 7, and 52 U.S.C. § 30109(a)(8)(C), the plaintiff Peter Bernegger respectfully moves this Court for entry of default judgment against the defendant Federal Election Commission. In support of this Motion, the plaintiff states as follows:

1. On December 31, 2025, the plaintiff commenced this action by filing the Complaint for Declaratory and Injunctive Relief (Dkt. 1), seeking review under 52 U.S.C. § 30109(a)(8) of the defendant's failure to act on the plaintiff's July 31, 2025 administrative complaint, docketed by the Commission as Matter Under Review ("MUR") No. 8386, concerning Senator Lindsey Graham, his principal campaign committee Team Graham, Inc. (FEC ID C00458828), and WinRed.

2. The plaintiff completed service of process pursuant to Federal Rule of Civil Procedure 4(i). On February 2, 2026, the United States Attorney for the District of Columbia, c/o Civil Process Clerk, 601 D Street, NW, Washington, DC 20530, was served by United States Postal Service Certified Mail, return receipt requested (Article No. 7022 2410 0000 8096 4832), with the

certified-mail return receipt reflecting delivery and signature on February 2, 2026. On February 2, 2026, the Attorney General of the United States, c/o Civil Process Clerk, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001, was served by United States Certified Mail (Article No. 7022 2410 0000 8096 4825), with the return receipt likewise reflecting delivery on February 2, 2026. The Federal Election Commission was served c/o its Office of General Counsel, 1050 First Street, NE, Washington, DC 20463, by United States Certified Mail (Article No. 7022 2410 0000 8096 4818); USPS tracking records confirm delivery at 9:24 a.m. on February 2, 2026. The Notices to Court of Proof of Service were filed on February 20, 2026 (Dkt. 3) and March 13, 2026 (Dkt. 4). The Clerk's Entry of Default likewise recites that the defendant was "duly served with summons and copy of the complaint on 2/2/2026." (Dkt. 8.)

3. No amended pleading has been filed. The Complaint filed December 31, 2025 (Dkt. 1) is the operative pleading.

4. The deadline for the defendant to answer or otherwise respond has expired. Under Federal Rule of Civil Procedure 12(a)(2), an agency of the United States must serve an answer within 60 days after service on the United States Attorney; based on the February 2, 2026 service, that period expired on April 3, 2026. The defendant has filed no answer, has filed no motion under Rule 12, and has neither requested nor obtained any enlargement of time under Rule 6(b).

5. The defendant's March 31, 2026 Notice of Lack of Quorum (Dkt. 5) is not a responsive pleading and does not "otherwise defend" within the meaning of Rule 55(a). The Notice does not admit or deny any allegation of the Complaint, asserts no defense, requests no relief, and seeks no extension of time. Its sole stated purpose is to advise the Court that the Commission "currently lacks a quorum and is currently without the authority to litigate the merits of plaintiff's Complaint." (Dkt. 5 ¶ 4.)

6. On April 2, 2026, the plaintiff filed a Motion for Entry of Default and Default Judgment (Dkt. 6), which the Court denied without prejudice by Minute Order of April 7, 2026, directing that “[e]ntry of default should be sought via affidavit, not motion” and that “default judgment may only be sought once default is entered.” (Minute Order, Apr. 7, 2026.) On May 29, 2026, the plaintiff filed his Declaration in Support of Request for Clerk’s Entry of Default (Dkt. 7). On June 7, 2026, this Court (McFadden, J.) entered a Minute Order finding that the plaintiff “has demonstrated that Defendant Federal Election Commission has failed to plead or otherwise defend this action in a timely manner,” Fed. R. Civ. P. 55(a), observing that “[a]lthough the agency has filed a Notice of Lack of Quorum, ECF No. [5], it has not otherwise responded to the Complaint,” and directing the Clerk of Court to enter default against the defendant. (Minute Order, June 7, 2026.) The Clerk’s Entry of Default was entered on the docket on June 8, 2026. (Dkt. 8.)

7. In its June 7, 2026 Minute Order, the Court further instructed that “[o]nce default is entered, Plaintiff should promptly follow the steps outlined in the federal rules to seek default judgment.” This Motion is filed promptly in compliance with that instruction.

8. Because the defendant is an agency of the United States, the plaintiff must “establish[] a claim or right to relief by evidence that satisfies the court.” Fed. R. Civ. P. 55(d). The plaintiff has done so. The accompanying Memorandum of Points and Authorities and Declaration of Peter Bernegger, with Exhibits A through G listed in the accompanying Exhibit Index, set forth (a) the administrative-phase facts establishing the plaintiff’s July 31, 2025 filing of his administrative complaint, the Commission’s August 7, 2025 acknowledgment of receipt and assignment of MUR No. 8386, and the Commission’s failure to take any action of any kind thereafter; (b) the procedural facts establishing service, default, and the absence of any defense; and (c) the legal basis for relief under 52 U.S.C. § 30109(a)(8)(C).

9. The Commission's failure to act is contrary to law. The 120-day period prescribed by 52 U.S.C. § 30109(a)(8)(A) began on July 31, 2025, the date the Commission received the plaintiff's administrative complaint, and expired on November 28, 2025. More than ten months have now elapsed since the administrative complaint was filed, and the Commission has not made a "reason to believe" determination under 52 U.S.C. § 30109(a)(2), has not dismissed the administrative complaint, has not entered into conciliation, and has not communicated any disposition of MUR 8386 to the plaintiff. Under the framework of *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), endorsed by the D.C. Circuit in *FEC v. Rose*, 806 F.2d 1081, 1084 (D.C. Cir. 1986), and applied in *Giffords v. FEC*, No. 19-1192 (EGS), 2021 WL 4805478 (D.D.C. Oct. 14, 2021), and *Campaign Legal Center v. FEC*, No. 20-cv-0809 (ABJ) (D.D.C. Nov. 8, 2021) (granting default judgment against the Commission on its failure to act), that inaction is contrary to law.

10. Notice under Rule 55(b)(2). Although counsel for the Federal Election Commission filed the March 31, 2026 Notice of Lack of Quorum (Dkt. 5) for the limited purpose of advising the Court that the Commission cannot defend, the plaintiff treats that filing as an appearance "by a representative" for purposes of Rule 55(b)(2) and provides this Motion to counsel of record listed on Dkt. 5 - Lisa J. Stevenson, James D. McGinley, Michael D. Contino, and Shaina Ward of the FEC Office of General Counsel - together with the accompanying papers, more than seven days before any hearing on this Motion.

11. The plaintiff seeks the relief that Congress prescribed for this exact circumstance: (a) a declaration, under 52 U.S.C. § 30109(a)(8)(C), that the Commission's failure to act on the plaintiff's July 31, 2025 administrative complaint (MUR No. 8386) concerning Senator Lindsey Graham, Team Graham, Inc. (FEC ID C00458828), and WinRed is contrary to law; (b) an order

directing the Commission to conform with that declaration within thirty (30) days, including by making the “reason to believe” determination required by 52 U.S.C. § 30109(a)(2), certifying to this Court the date and result of any vote of the Commission, and filing any controlling Statement of Reasons sufficient to permit judicial review of any dismissal; (c) authorization, in the event the Commission fails to conform within thirty days, for the plaintiff to bring a civil action under § 30109(a)(8)(C) to remedy the violations involved in the original administrative complaint; (d) retention of jurisdiction over the conformance period; and (e) allowable costs pursuant to 28 U.S.C. § 1920.

12. Local Civil Rule 7(m) does not apply to this Motion. A motion for default judgment is dispositive, and LCvR 7(m) governs only nondispositive motions. Even if the Rule applied, conferral was not feasible: the defendant has formally represented to this Court that it lacks the quorum required to authorize the defense of this action (Dkt. 5), and no counsel has appeared on behalf of the defendant in any capacity beyond the filing of that Notice.

13. Pursuant to Local Civil Rule 7(a), this Motion is supported by the accompanying Memorandum of Points and Authorities. Pursuant to Local Civil Rule 7(c), this Motion is accompanied by a [Proposed] Order. Pursuant to Local Civil Rule 7(k), the [Proposed] Order includes a list of the names and addresses of all persons entitled to notice of its entry. An Exhibit Index accompanies the supporting Declaration.

WHEREFORE, the plaintiff respectfully requests that this Court GRANT this Motion for Default Judgment and enter the relief set forth in the accompanying [Proposed] Order Granting Plaintiff’s

Motion for Default Judgment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter Bernegger', is written over a horizontal line.

Peter Bernegger, Plaintiff
1806 Brynwood Trace
New London, WI 54961
Telephone: (920) 551-0510
Email: peter@electionwatch.info

Dated: June 12, 2026

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PETER BERNEGGER,

Civil Action No. 1:25-cv-04563-TNM

Plaintiff,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PLAINTIFF’S MOTION FOR DEFAULT JUDGMENT**

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INTRODUCTION

This is a Federal Election Campaign Act (“FECA”) action under 52 U.S.C. § 30109(a)(8) presenting a single, dispositive ground for relief on a record that is now beyond dispute. On July 31, 2025, the Federal Election Commission (“the Commission” or “the FEC”) received the plaintiff Peter Bernegger’s administrative complaint concerning Senator Lindsey Graham, his principal campaign committee Team Graham, Inc. (FEC ID C00458828), and WinRed, alleging structured (“smurfed”) contributions in the name of another in violation of 52 U.S.C. § 30122, false reporting in violation of 52 U.S.C. § 30104(b), and circumvention of contribution limits in violation of 52 U.S.C. § 30116. By letter dated August 7, 2025, the Commission acknowledged receipt and assigned the matter MUR No. 8386. (Bernegger Decl. ¶ 7 & Ex. D.) The Commission has done nothing since. The 120-day statutory period under 52 U.S.C. § 30109(a)(8)(A) expired on November 28, 2025; more than ten months have now elapsed since the administrative complaint was filed; and the Commission has taken no action of any kind on the merits. (Bernegger Decl. ¶ 8.)

On December 31, 2025, the plaintiff timely commenced this action. He perfected service on the Commission, the United States Attorney for the District of Columbia, and the Attorney General of the United States as required by Federal Rule of Civil Procedure 4(i); the Commission filed only a Notice of Lack of Quorum (Dkt. 5) stating that it cannot litigate the merits; the deadline

under Rule 12(a)(2) lapsed on April 3, 2026; and on June 7, 2026, this Court (McFadden, J.) entered a Minute Order finding that the Commission “has failed to plead or otherwise defend this action in a timely manner” and directing the Clerk to enter default under Rule 55(a). The Clerk’s Entry of Default was entered on June 8, 2026 (Dkt. 8). The Court instructed that, once default is entered, the plaintiff “should promptly follow the steps outlined in the federal rules to seek default judgment.” (Minute Order, June 7, 2026.) The case is therefore ripe for default judgment under Rule 55(b)(2) and 55(d), and this Motion is filed in direct compliance with the Court’s instruction.

The plaintiff seeks the narrow, statutory remedy Congress prescribed for this exact circumstance. Section 30109(a)(8)(C) authorizes this Court, upon a finding that the Commission’s failure to act on a complaint is contrary to law, to declare that conduct contrary to law and to “direct the Commission to conform with such declaration within 30 days.” 52 U.S.C. § 30109(a)(8)(C). If the Commission does not conform, the statute authorizes the complainant to bring a civil action against the original respondents “to remedy the violation involved in the original complaint.” *Id.* The plaintiff does not at this stage ask the Court to adjudicate the underlying FECA violations alleged in MUR 8386; that adjudication is the subject of the conditional citizen-action remedy that Congress placed in § 30109(a)(8)(C) and that becomes available only if and when the Commission fails to conform.

FACTUAL AND PROCEDURAL BACKGROUND

The factual record in support of this Motion is set out in the accompanying Declaration of Peter Bernegger and authenticated exhibits. The salient points are summarized below.

A. The Plaintiff’s July 31, 2025 Administrative Complaint (MUR 8386).

On July 31, 2025, the Commission received the plaintiff's administrative complaint, filed under 52 U.S.C. § 30109(a)(1) and the FEC's implementing regulations at 11 C.F.R. §§ 111.4–111.7. (Compl. ¶¶ 17–23 (Dkt. 1); Bernegger Decl. ¶¶ 3–6 & Ex. E.) The administrative complaint alleges that Senator Lindsey Graham, Team Graham, Inc. (FEC ID C00458828), affiliated committee actors, and WinRed engaged in or facilitated structured, high-frequency, multi-same-day contribution patterns consistent with contributions in the name of another, false reporting, and circumvention of contribution limits, in violation of 52 U.S.C. §§ 30122, 30104(b), and 30116. (Compl. ¶¶ 18–19; Bernegger Decl. ¶¶ 4–5.) It is supported by a committee-level analysis of the FEC's own database records identifying 156,039 flagged transactions totaling approximately \$11,090,385, involving 18,040 unique flagged contributor identities, representing 39.2% of available committee transactions analyzed and 17.2% of total committee transaction value analyzed; a “Top 50” table of unusually high-frequency donors; and sample Schedule A receipt entries reflecting anomalous penny and one-dollar “transfer” activity. (Compl. ¶¶ 20–23; Bernegger Decl. ¶ 5.)

The administrative complaint was verified and executed under penalty of perjury pursuant to 28 U.S.C. § 1746. (Bernegger Decl. ¶ 6 & Ex. E.)

B. The Commission's August 7, 2025 Acknowledgment and Subsequent Inaction.

By letter dated August 7, 2025, the Commission acknowledged receipt of the administrative complaint, confirmed that it was received on July 31, 2025, and assigned it MUR No. 8386. (Compl. ¶ 24; Bernegger Decl. ¶ 7 & Ex. D.) The Commission thereafter took no action. It has not made a “reason to believe” determination under 52 U.S.C. § 30109(a)(2), has not dismissed the administrative complaint, has not entered into conciliation, has not instituted civil proceedings, and has communicated nothing to the plaintiff beyond the initial acknowledgment.

(Compl. ¶¶ 28–29; Bernegger Decl. ¶ 8.) The 120-day period of 52 U.S.C. § 30109(a)(8)(A) began on July 31, 2025 and expired on November 28, 2025. (Compl. ¶¶ 25–26.)

C. Commencement of This Action and Rule 4(i) Service.

The plaintiff filed this action on December 31, 2025 (Dkt. 1). Service was effected on each of the three Rule 4(i) targets by United States Postal Service Certified Mail, return receipt requested: (i) the United States Attorney for the District of Columbia (Article No. 7022 2410 0000 8096 4832), delivered February 2, 2026; (ii) the Attorney General of the United States (Article No. 7022 2410 0000 8096 4825), delivered February 2, 2026; and (iii) the Federal Election Commission, c/o Office of General Counsel (Article No. 7022 2410 0000 8096 4818), delivered at 9:24 a.m. on February 2, 2026. Proof of service was filed on February 20, 2026 (Dkt. 3) and March 13, 2026 (Dkt. 4). (Bernegger Decl. ¶¶ 10–12 & Ex. C.) The Clerk’s Entry of Default recites that the defendant was “duly served with summons and copy of the complaint on 2/2/2026.” (Dkt. 8.)

D. The Commission’s March 31, 2026 Notice of Lack of Quorum.

On March 31, 2026, the Commission filed its Notice of Lack of Quorum (Dkt. 5), signed by Michael D. Contino (Attorney), with Lisa J. Stevenson (Deputy General Counsel – Law), James D. McGinley (Associate General Counsel), and Shaina Ward (Acting Assistant General Counsel). The Notice does not admit or deny any allegation in the Complaint, asserts no defense, requests no relief, and seeks no extension of time. It states that it is given “for the sole purpose of notifying the Court that the Commission currently lacks a quorum and is currently without the authority to litigate the merits of plaintiff’s Complaint.” (Dkt. 5 ¶ 4; Bernegger Decl. ¶ 14 & Ex. F.) The Notice represents that the Commission has been without a quorum since May 1, 2025, when the

resignation of Commissioner Allen Dickerson left it with three Commissioners, and that the October 3, 2025 resignation of Commissioner James E. “Trey” Trainor left it with two. (Dkt. 5 ¶¶ 2–3.)

E. Expiration of the Response Period.

Under Rule 12(a)(2), an agency of the United States must respond within 60 days after service on the United States Attorney—here, by April 3, 2026, based on the February 2, 2026 service. That deadline has long since expired. (Bernegger Decl. ¶ 15.) The Commission has not answered, moved under Rule 12, or sought leave to enlarge its time to respond.

F. The Court’s June 7, 2026 Order Directing Entry of Default.

On April 2, 2026, the plaintiff filed a Motion for Entry of Default and Default Judgment (Dkt. 6), which the Court denied without prejudice by Minute Order of April 7, 2026, directing that “[e]ntry of default should be sought via affidavit, not motion” and that “default judgment may only be sought once default is entered.” On May 29, 2026, the plaintiff filed his Declaration in Support of Request for Clerk’s Entry of Default (Dkt. 7). On June 7, 2026, this Court (McFadden, J.) entered a Minute Order finding that the plaintiff “has demonstrated that Defendant Federal Election Commission has failed to plead or otherwise defend this action in a timely manner,” Fed. R. Civ. P. 55(a), observing that “[a]lthough the agency has filed a Notice of Lack of Quorum, ECF No. [5], it has not otherwise responded to the Complaint,” and directing the Clerk of Court to enter default. The Clerk’s Entry of Default was entered on the docket on June 8, 2026 (Dkt. 8). The Court further instructed that, once default is entered, the plaintiff “should promptly follow the steps outlined in the federal rules to seek default judgment.” (Bernegger Decl. ¶¶ 16–17 & Ex. A.) This Motion now seeks default judgment under Rule 55(b)(2) and 55(d).

ARGUMENT

I. Subject-Matter Jurisdiction and Venue Are Proper.

This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 52 U.S.C. § 30109(a)(8), and authority to grant declaratory relief under 28 U.S.C. §§ 2201–2202. Section 30109(a)(8)(A) vests the United States District Court for the District of Columbia with exclusive jurisdiction over actions challenging the Commission’s dismissal of, or failure to act on, an administrative complaint. Venue is also proper under 28 U.S.C. § 1391(e)(1) because the defendant is an agency of the United States.

II. Plaintiff Has Standing under § 30109(a)(8)(A).

The plaintiff is a “party aggrieved” within the meaning of 52 U.S.C. § 30109(a)(8)(A) because he is the complainant whose administrative complaint (MUR 8386) the Commission has failed to act on within the statutory 120-day period. The Supreme Court has held that history associates the word “aggrieved” in § 30109(a)(8)(A) with a congressional intent “to cast the standing net broadly,” and that an administrative complainant has Article III standing where the Commission’s inaction deprives the complainant of information that FECA’s disclosure regime requires to be made public. *FEC v. Akins*, 524 U.S. 11, 19–26 (1998). The Complaint expressly pleads this informational injury (Compl. ¶¶ 9–10 (Dkt. 1)), and the plaintiff relies on accurate and complete campaign-finance disclosures in his evaluation of candidates, committees, and fundraising practices. (Bernegger Decl. ¶ 2.) This Court has found standing on a materially identical informational-injury showing by an administrative complainant seeking relief for the Commission’s failure to act. See *Campaign Legal Ctr. v. FEC*, No. 20-cv-0809 (ABJ), Mem. Op.

at 7–9 (D.D.C. Nov. 8, 2021), ECF No. 24 (“CLC v. FEC”). The plaintiff thus satisfies both Article III and the statute.

III. Plaintiff Has Provided the Notice Required by Rule 55(b)(2).

Rule 55(b)(2) requires that, “[i]f the party against whom a default judgment is sought has appeared personally or by a representative,” that party “must be served with written notice of the application at least 7 days before the hearing.” Fed. R. Civ. P. 55(b)(2). Although counsel for the Commission filed the Notice of Lack of Quorum (Dkt. 5) only for the limited purpose of advising the Court of the Commission’s inability to defend, the plaintiff treats that filing as an appearance “by a representative” for purposes of Rule 55(b)(2)’s notice provision. The plaintiff has accordingly served this Motion, the supporting Memorandum, the Declaration of Peter Bernegger, the Exhibit Index, and the [Proposed] Order on counsel of record listed on Dkt. 5—Lisa J. Stevenson, James D. McGinley, Michael D. Contino, and Shaina Ward of the FEC Office of General Counsel—more than seven days before any hearing on this Motion. Treating the Notice as an appearance for notice purposes is consistent with, and does not undermine, this Court’s Rule 55(a) determination that the Notice does not “otherwise defend” on the merits.

IV. Default Judgment Standard under Rule 55(b)(2) and 55(d).

Rule 55 prescribes a two-step path to default judgment. The Clerk’s entry of default under Rule 55(a) is the ministerial first step; the substantive motion under Rule 55(b)(2) follows. Following the Clerk’s entry, “[a] defaulting defendant is deemed to admit every well-pleaded allegation in the complaint.” *Adkins v. Teseo*, 180 F. Supp. 2d 15, 17 (D.D.C. 2001). Although the default thereby establishes liability, where the amount of damages is not certain the Court must

independently determine the appropriate sum. *Id.* The plaintiff seeks no monetary damages here, so the latter rule has no application.

Where, as here, the defaulting defendant is “the United States [or] a United States agency,” the claimant must additionally “establish[] a claim or right to relief by evidence that satisfies the court.” Fed. R. Civ. P. 55(d). The plaintiff has done so through the accompanying Declaration of Peter Bernegger and authenticated exhibits, as set out in Sections V through VII below. Although default judgment is reserved for cases in which “the adversary process has been halted because of an essentially unresponsive party,” *Mwani v. bin Laden*, 417 F.3d 1, 7 (D.C. Cir. 2005), that is precisely this case: the Commission has filed nothing beyond its Notice of Lack of Quorum and has been found in default. Rule 55(b)(2) provides that the Court “may conduct hearings” as needed, but no hearing is required where, as here, the relief sought is declaratory and the record is un rebutted.

This Court has granted exactly this relief on default judgment against the Commission in a materially identical posture. In *CLC v. FEC*, the Commission failed to appear or defend an action challenging its failure to act on an administrative complaint; the Clerk entered default; and the Court (Jackson, J.) granted default judgment, declared the Commission’s failure to act contrary to law, ordered the Commission to act on the administrative complaint within thirty days pursuant to 52 U.S.C. § 30109(a)(8)(C), awarded costs under 28 U.S.C. § 1920, and retained jurisdiction until the agency acts. *CLC v. FEC*, Mem. Op. at 1–2, 18. As that Court put it: “dysfunction is no excuse; the failure to act is simply contrary to law.” *Id.* at 18.

V. The Commission’s Failure to Act on MUR 8386 Is Contrary to Law.

The D.C. Circuit has established that whether the Commission’s treatment of an administrative complaint is “contrary to law” within the meaning of § 30109(a)(8) is determined

by applying the factors set forth in *Common Cause v. FEC*, 489 F. Supp. 738, 744 (D.D.C. 1980) (“Common Cause I”), together with the unreasonable-delay factors of *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) (“TRAC”). See *FEC v. Rose*, 806 F.2d 1081, 1084 & n.6 (D.C. Cir. 1986). Although FECA does not fix a deadline for final action on an administrative complaint, it imposes an obligation to investigate complaints expeditiously: “Where the issue before the Court is whether the agency’s failure to act is contrary to law, the Court must determine whether the Commission has acted ‘expeditiously.’” *Common Cause I*, 489 F. Supp. at 744; see *Democratic Senatorial Campaign Comm. v. FEC*, No. 95-0349 (JHG), 1996 WL 34301203, at *4 (D.D.C. Apr. 17, 1996) (“DSCC”). The Commission fails to act where, as here, it has neither made a “reason to believe” determination under § 30109(a)(2), nor dismissed the administrative complaint, nor taken any other final action resolving it. See 52 U.S.C. § 30109(a)(8)(A); *Common Cause I*, 489 F. Supp. at 743–44. The Common Cause I factors are “the credibility of the allegation, the nature of the threat posed, the resources available to the agency, and the information available to it, as well as the novelty of the issues involved.” *Id.* at 744. The TRAC factors include whether the agency’s timetable is governed by a rule of reason, whether Congress has provided a timetable, the interests prejudiced by delay, the effect on competing agency priorities, and the principle that the Court “need not find any impropriety lurking behind agency lassitude” to hold agency action unreasonably delayed. *TRAC*, 750 F.2d at 80. Both frameworks were synthesized and applied in favor of complainants in materially similar postures in *Giffords v. FEC*, No. 19-1192 (EGS), 2021 WL 4805478 (D.D.C. Oct. 14, 2021) (declaring the Commission’s failure to act on four administrative complaints contrary to law and ordering it to make the reason-to-believe determination set forth in 52 U.S.C. § 30109(a)(2) within

thirty days, see Order, ECF No. 71 (Sept. 30, 2021)), and in *CLC v. FEC*, Mem. Op. at 9–18 (granting default judgment against the Commission on the same analysis).

Each Common Cause / TRAC factor weighs in the plaintiff’s favor:

Credibility of the allegations. The administrative complaint is supported by analysis of the FEC’s own database records for Team Graham, Inc. (FEC ID C00458828). The committee-level analysis identifies 156,039 flagged transactions totaling approximately \$11,090,385, involving 18,040 unique flagged contributor identities, representing 39.2% of available committee transactions analyzed and 17.2% of total committee transaction value analyzed, together with a “Top 50” high-frequency donor table and sample Schedule A entries reflecting anomalous penny and one-dollar “transfer” activity. (Bernegger Decl. ¶ 5; Compl. ¶¶ 20–23.) In *CLC v. FEC*, this Court found the credibility factor satisfied where the allegations were “based on filings that [the respondent] itself made with the FEC and the IRS.” Mem. Op. at 10–11. The same is true here: the allegations rest on the respondents’ own Schedule A filings in the Commission’s database. Indeed, the Commission’s own acknowledgment letter assigned the complaint a MUR number, confirming that it satisfied the threshold requirements for processing. (Bernegger Decl. ¶ 7 & Ex. D.)

Nature of the threat. The administrative complaint alleges a sustained scheme of contributions in the name of another in violation of 52 U.S.C. §§ 30122, 30104(b), and 30116, involving approximately \$11 million in flagged contributions to the principal campaign committee of a sitting United States Senator. “The threat to the electoral system is highlighted not only by the amounts of money involved and the impact upon close elections, but by the serious threat of recurrence.” *DSCC*, 1996 WL 34301203, at *5. The recurrence risk in subsequent election cycles is a hallmark of an unreasonable delay.

Information availability. The Commission has access to all of the data it needs to evaluate the complaint. The contribution records, donor identifications, employer and occupation fields, and aggregate-cycle totals are all in the FEC's own publicly accessible database. There is no information bottleneck. Cf. *CLC v. FEC*, Mem. Op. at 11 (information-availability factor weighed in plaintiff's favor where the relevant information was publicly available and on file with the Commission itself).

Novelty. The legal theory - contributions in the name of another in violation of § 30122 and the corresponding regulation, 11 C.F.R. § 110.4(b) - is not novel. The statute and regulation have been in force for decades and have been applied in routine FEC enforcement matters. Cf. *CLC v. FEC*, Mem. Op. at 11 (novelty factor weighed in plaintiff's favor given "the routine nature of this administrative complaint").

Prejudicial effect of the delay. The five-year statute of limitations applicable to FECA enforcement actions, 28 U.S.C. § 2462, continues to run on the contribution activity analyzed in the administrative complaint; every month of Commission inaction narrows the window in which the violations can be remedied at all. Delay also prejudices the public interest FECA protects: "Public confidence in our democratic electoral system, which [FECA] seeks to protect, turns on investigations that are conducted within a reasonable time and on effective enforcement." *Giffords*, 2021 WL 4805478, at *7 (quoting *DSCC*, 1996 WL 34301203, at *8); see also *CLC v. FEC*, Mem. Op. at 17 ("[P]ublic confidence in our electoral system can also be undermined when alleged violations of law remain unaddressed."). And "[e]lection cycles, while not dispositive, are not irrelevant." *DSCC*, 1996 WL 34301203, at *7. The contribution activity analyzed in the administrative complaint spans 2021 through 2025, and the 2026 general election is now months away.

Resources and competing priorities. The Commission’s “resource” argument cuts the wrong way here. By its own account, the Commission has lacked a quorum since May 1, 2025, and has had only two Commissioners since October 3, 2025. (Dkt. 5 ¶¶ 2–3.) But a quorum lapse at most “temporarily impede[s] the agency’s ability to decide whether to initiate an investigation”; it is no indication that the Commission “lacks the resources or capacity to conduct investigations or perform its statutory duties under FECA,” and this Court has weighed the resources factor in the complainant’s favor on that basis. *CLC v. FEC*, Mem. Op. at 11–12. The Office of General Counsel remains staffed and operational, as its filing in this case demonstrates. (Dkt. 5.) The plaintiff cannot be made to bear the consequences of the Commission’s structural inability to convene.

Statutory time constraints and rule of reason. Congress supplied the relevant indication of speed: the 120-day clock under § 30109(a)(8)(A) ran from the July 31, 2025 filing and elapsed on November 28, 2025. More than ten months have now passed, and beyond the ministerial issuance of the August 7, 2025 acknowledgment letter, the Commission has taken no action whatsoever and has offered no explanation or timetable. Courts in this district have found that comparable delays violate the rule of reason, even where the agency took some action: “it is staggering to suggest it is reasonable to take 22 months to assign an enforcement attorney to a Tier One case or 27 months for the Commissioners to determine whether there is ‘reason to believe’ that violations have occurred.” *DSCC*, 1996 WL 34301203, at *9; see *CLC v. FEC*, Mem. Op. at 14–16 (rule-of-reason factors favored mandamus relief where the Commission “failed to take any action beyond the ministerial issuance of a notice of receipt”).

On a record materially indistinguishable from those that supported relief in *Giffords* and in *CLC v. FEC*, the plaintiff respectfully submits that the Commission's failure to act on his administrative complaint is contrary to law within the meaning of § 30109(a)(8)(C).

VI. The Commission's Lack of Quorum Does Not Defeat Judicial Review.

The Commission's quorum failure neither defeats this Court's jurisdiction nor cures its statutory non-action. Section 30109(a)(8)(A) conditions the judicial remedy solely on the Commission's dismissal of, or "failure . . . to act on such complaint during the 120-day period," with no exception for the cause of the inaction. See 52 U.S.C. § 30109(a)(8)(A). The *Giffords* court found the Commission's delay unreasonable "even taking the lack of quorum into consideration." *CLC v. FEC*, Mem. Op. at 15 (so characterizing *Giffords*, 2021 WL 4805478, at *7). If a quorum failure could insulate the Commission from § 30109(a)(8) review, the Commission could nullify Congress's enforcement scheme by allowing its own membership to fall below quorum - a result the statutory text does not permit.

The plaintiff acknowledges that in *CLC v. FEC* the court initially denied a first default-judgment motion without prejudice because both the suit and the motion had been filed while the Commission lacked a quorum, and granted the renewed motion only after the Commission, having regained its quorum, still failed to appear. Mem. Op. at 1–2. This case stands on a stronger footing: this Court has already determined, on this record and with the Notice of Lack of Quorum before it, that the Commission "has failed to plead or otherwise defend this action in a timely manner," has directed the Clerk to enter default, and has expressly instructed the plaintiff to "promptly follow the steps outlined in the federal rules to seek default judgment." (Minute Order, June 7, 2026.) Moreover, the relief sought is calibrated to the quorum problem: if the Commission regains its quorum, it can conform within the thirty-day period; if it cannot or does not, § 30109(a)(8)(C)'s

conditional citizen-suit authorization supplies the remedy Congress designed for that very contingency, and shifts the enforcement burden off the agency entirely.

The Commission's March 31, 2026 Notice itself acknowledges that the Commission retains operational capacity to communicate with respondents and the Court, and it represents that nominations to restore the quorum were announced on February 11, 2026 and remain pending. (Dkt. 5 ¶ 3.) The quorum problem is an institutional failure within the Commission's and the political branches' control; the consequences cannot be made to fall on a private complainant.

VII. Plaintiff Is Entitled to the Narrow, Statutory Relief Authorized by § 30109(a)(8)(C).

The plaintiff intentionally limits this Motion to the statutory remedy in § 30109(a)(8)(C) and does not, at this stage, ask the Court to adjudicate any underlying FECA violation alleged in MUR 8386. The relief requested is:

- (1) a declaration, under 52 U.S.C. § 30109(a)(8)(C), that the Commission's failure to act on the plaintiff's July 31, 2025 administrative complaint (MUR No. 8386) concerning Senator Lindsey Graham, Team Graham, Inc. (FEC ID C00458828), and WinRed is contrary to law;
- (2) an order directing the Commission to conform with that declaration within thirty (30) days, including by (i) taking final action in the form of a "reason to believe" determination under 52 U.S.C. § 30109(a)(2), the same conformance remedy ordered in *Giffords* (Order, ECF No. 71 (D.D.C. Sept. 30, 2021)) and in *CLC v. FEC* (Mem. Op. at 18), (ii) certifying to this Court the date and result of any vote of the Commission, identifying each Commissioner's vote, and (iii) filing with this Court any controlling Statement of Reasons sufficient to permit judicial review of any dismissal;

(3) authorization for the plaintiff to bring a civil action under § 30109(a)(8)(C) to remedy the violations involved in the original administrative complaint if the Commission fails to conform within thirty days;

(4) retention of jurisdiction during the conformance period, see *Cobell v. Norton*, 240 F.3d 1081, 1109 (D.C. Cir. 2001) (district court has discretion to “retain jurisdiction until a federal agency has complied with its legal obligations”); *CLC v. FEC*, Mem. Op. at 18 (retaining jurisdiction “until the agency acts”); and

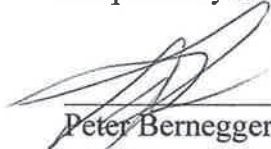
(5) allowable costs pursuant to 28 U.S.C. § 1920, as awarded in *CLC v. FEC*, Mem. Op. at 18.

Each item of requested relief is expressly authorized by the text of § 30109(a)(8)(C); none implicates monetary damages against the United States; and none asks the Court at this stage to adjudicate the underlying FECA allegations or to direct any criminal prosecution.

CONCLUSION

For the foregoing reasons, the plaintiff respectfully requests that the Court GRANT this Motion for Default Judgment and enter the relief set forth in the accompanying [Proposed] Order Granting Plaintiff’s Motion for Default Judgment.

Respectfully submitted,



Peter Bernegger, Plaintiff
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Email: peter@electionwatch.info

Dated: June 12, 2026

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PETER BERNEGGER,

Civil Action No. 1:25-cv-04563-TNM

Plaintiff,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2026, I caused a true and correct copy of the foregoing Plaintiff's Motion for Default Judgment, the Memorandum of Points and Authorities in support thereof, the Declaration of Peter Bernegger with Exhibits A through G, the Exhibit Index, and the [Proposed] Order to be served on counsel for the defendant Federal Election Commission listed on the Notice of Lack of Quorum (Dkt. 5), by electronic mail and by United States First-Class Mail, postage prepaid, addressed as follows:

Lisa J. Stevenson, Deputy General Counsel – Law — l Stevenson@fec.gov
James D. McGinley, Associate General Counsel — jmcginley@fec.gov
Michael D. Contino, Attorney — mcontino@fec.gov
Shaina Ward, Acting Assistant General Counsel — sward@fec.gov
Federal Election Commission, Office of General Counsel
1050 First Street, NE, Washington, DC 20463

Respectfully submitted,

Dated June 12, 2026

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MAILROOM**

JUN 15 2026

Angela D. Caesar, Clerk
U.S. District & Bankruptcy Courts
for the District of Columbia



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