

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PETER BERNEGGER,

Civil Action No. 1:26-cv-00106-APM

Plaintiff,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

RECEIVED
Magroom

MAY - 5 2026

Angela D. Caesar, Clerk of Clerk
U.S. District Court, District of Columbia

**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 January 14, 2026, 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 refusal to process and failure to act on the plaintiff's administrative complaint concerning Friends of John Thune (FEC ID C00409581), its candidate John Thune, and its Treasurer Nicole Weyers.

2. The plaintiff completed service of process pursuant to Federal Rule of Civil Procedure 4(i). On January 20, 2026, at 1:51 p.m., Ambiko Wallace of Capitol Process Services, Inc., personally served the United States Attorney for the District of Columbia, c/o Civil Process Clerk, 601 D

Street, NW, Washington, DC 20530. On January 21, 2026, Carrie Hollingshed of Capitol Process Services, Inc., served the Attorney General of the United States by certified mail at 950 Pennsylvania Avenue, NW, Washington, DC 20530. On January 21, 2026, the plaintiff served the Federal Election Commission, c/o Office of General Counsel, 1050 First Street, NE, Washington, DC 20463, by United States Certified Mail (Article No. 9407 1362 0855 1285 4182 43). The FEC was personally served at 1050 First Street, NE on January 20, 2026, at 1:24 p.m., by serving Joe Johnson, Property Manager, authorized to accept service. The Summons Returned Executed and the supporting affidavits of service were filed on February 20, 2026 (Dkt. 6, 7) and March 13, 2026 (Dkt. 8).

3. On February 6, 2026, the plaintiff filed his First Amended Complaint, which was entered on the docket on February 18, 2026 (Dkt. 5). The First Amended Complaint is the operative pleading.

4. The deadlines for the defendant to answer or otherwise respond have 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; that period expired on March 23, 2026 (March 21, 2026 being a Saturday; *see* Fed. R. Civ. P. 6(a)(1)(C)). Under Rule 15(a)(3), a response to an amended pleading is due within the time remaining or 14 days after service of the amended pleading, whichever is later. Both periods have lapsed. 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 January 29, 2026 Notice of Lack of Quorum (Dkt. 3) is not a responsive pleading and does not "otherwise defend" within the meaning of Rule 55(a). The Notice was filed before the operative First Amended Complaint, is not directed to that pleading, does not admit or

deny any allegation, asserts no defense, requests no relief, and seeks no extension of time. Its sole stated purpose is to advise the Court that the Commission “lacks a quorum and is without the authority to litigate the merits of plaintiff’s Complaint.” (Dkt. 3 ¶ 4.)

6. On April 29, 2026, this Court (Mehta, J.) entered a Minute Order granting in part the plaintiff’s Motion for Entry of Default and Default Judgment (Dkt. 9) and directing the Clerk of Court to enter default against the defendant Federal Election Commission under Federal Rule of Civil Procedure 55(a). The Court expressly found that the defendant “has ‘failed to plead or otherwise defend’ this action in a timely manner” and that, “[a]lthough the agency has filed a Notice of Lack of Quorum, ECF No. [3], it has not otherwise entered an appearance in this case and responded to the Complaint.” (Minute Order, Apr. 29, 2026.) The Clerk’s Entry of Default has been made on the docket pursuant to that Order.

7. 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 H listed in the accompanying Exhibit Index, set forth (a) the administrative-phase facts establishing the plaintiff’s December 2025 submission of his administrative complaint and the Commission’s refusal to process it, communicated by FEC paralegal email on January 4, 2026; (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).

8. The Commission’s sole stated reason for refusing to process the plaintiff’s administrative complaint—that the complaint was not notarized—is contrary to law. An unsworn declaration subscribed under penalty of perjury pursuant to 28 U.S.C. § 1746 has “like force and effect” as a sworn affidavit “under any law of the United States or under any rule, regulation, order, or

requirement made pursuant to law.” 28 U.S.C. § 1746. Section 1746 therefore satisfies any sworn-statement requirement that the Commission may impose under 11 C.F.R. § 111.4(b). The plaintiff’s administrative complaint contained an executed § 1746 declaration; the Commission was without lawful authority to refuse to process it on the basis of the absence of notarization.

9. Notice under Rule 55(b)(2). Although counsel for the Federal Election Commission filed the January 29, 2026 Notice of Lack of Quorum (Dkt. 3) 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. 3—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.

10. 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 refusal to process and failure to act on the plaintiff’s administrative complaint concerning Friends of John Thune (C00409581) is contrary to law; (b) an order directing the Commission to conform with that declaration within thirty (30) days, including by docketing and processing the plaintiff’s administrative complaint consistent with FECA and the Commission’s implementing regulations and by certifying any vote 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.

11. 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. 3), and no counsel has appeared on behalf of the defendant in any capacity beyond the filing of that Notice.

12. 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,



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

Dated: May 4, 2026

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PETER BERNEGGER,

Civil Action No. 1:26-cv-00106-APM

Plaintiff,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

RECEIVED
Mailroom

MAY - 5 2026

Angela L. Jaesa, Clerk of Clerk
U.S. District Court, District of Columbia

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

TABLE OF CONTENTS

INTRODUCTION 1

FACTUAL AND PROCEDURAL BACKGROUND..... 3

 A. The Plaintiff’s December 2025 Administrative Complaint 3

 B. The Commission’s January 4, 2026 Refusal to Process..... 4

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

 D. The Commission’s January 29, 2026 Notice of Lack of Quorum 5

 E. The First Amended Complaint and Expiration of the Response Period 5

 F. The Court’s April 29, 2026 Order Directing Entry of Default..... 6

ARGUMENT 6

 I. Subject-Matter Jurisdiction and Venue Are Proper..... 6

II. Plaintiff Has Standing under § 30109(a)(8)(A)..... 7

III. Plaintiff Has Provided the Notice Required by Rule 55(b)(2)..... 7

IV. Default Judgment Standard under Rule 55(b)(2) and 55(d) 8

V. The Commission’s Refusal to Process Is Contrary to Law Because 28 U.S.C. § 1746
Substitutes for Notarization 9

VI. The Commission’s Failure to Act Is Independently Contrary to Law..... 11

VII. The Commission’s Lack of Quorum Does Not Defeat Judicial Review 13

VIII. Plaintiff Is Entitled to the Narrow, Statutory Relief Authorized by § 30109(a)(8)(C).. 14

CONCLUSION..... 15

TABLE OF AUTHORITIES

Cases

- Adkins v. Teseo*, 180 F. Supp. 2d 15 (D.D.C. 2001)
- Carter v. Clark*, 616 F.2d 228 (5th Cir. 1980)
- Common Cause v. FEC*, 489 F. Supp. 738 (D.D.C. 1980)
- FEC v. Akins*, 524 U.S. 11 (1998)
- Giffords v. FEC*, No. 19-1192 (EGS), 2021 WL 4810333 (D.D.C. Sept. 30, 2021)
- LeBoeuf, Lamb, Greene & MacRae, L.L.P. v. Worsham*, 185 F.3d 61 (2d Cir. 1999)
- Nissho-Iwai Am. Corp. v. Kline*, 845 F.2d 1300 (5th Cir. 1988)
- Orloski v. FEC*, 795 F.2d 156 (D.C. Cir. 1986)

Pfeil v. Rogers, 757 F.2d 850 (7th Cir. 1985)

Telecomms. Rsch. & Action Ctr. v. FCC, 750 F.2d 70 (D.C. Cir. 1984)

Statutes

28 U.S.C. § 1331

28 U.S.C. § 1391(e)(1)

28 U.S.C. §§ 2201–2202

28 U.S.C. § 1746

52 U.S.C. § 30102

52 U.S.C. § 30104

52 U.S.C. § 30106

52 U.S.C. § 30107(a)(6)

52 U.S.C. § 30109(a)(1)

52 U.S.C. § 30109(a)(2)

52 U.S.C. § 30109(a)(8)(A)

52 U.S.C. § 30109(a)(8)(B)

52 U.S.C. § 30109(a)(8)(C)

52 U.S.C. § 30122

Rules and Regulations

Fed. R. Civ. P. 4(i)

Fed. R. Civ. P. 12(a)(2)

Fed. R. Civ. P. 15(a)(3)

Fed. R. Civ. P. 55(a)

Fed. R. Civ. P. 55(b)(2)

Fed. R. Civ. P. 55(d)

11 C.F.R. § 111.4

11 C.F.R. § 111.5

11 C.F.R. § 111.6

11 C.F.R. § 111.7

LCvR 5.1

LCvR 7(a), (c), (e), (k)

INTRODUCTION

This is a Federal Election Campaign Act (“FECA”) action under 52 U.S.C. § 30109(a)(8) presenting two independent and reinforcing grounds for relief on a record that is now beyond dispute. *First*, in December 2025 the plaintiff Peter Bernegger submitted to the Federal Election Commission (“the Commission” or “the FEC”) an administrative complaint concerning Friends of John Thune (FEC ID C00409581), its candidate John Thune, and its Treasurer Nicole Weyers, alleging structured (“smurfed”) contributions in the name of another in violation of 52 U.S.C. § 30122 and related reporting violations under 52 U.S.C. §§ 30102 and 30104. The plaintiff’s administrative complaint was executed under penalty of perjury pursuant to 28 U.S.C. § 1746. On January 4, 2026, a paralegal in the Commission’s Office of General Counsel notified the plaintiff by electronic mail that the Commission would not process the administrative complaint, on the sole stated ground that the complaint was not notarized. (Bernegger Decl. ¶ 7 & Ex. D.) *Second*, the 120-day statutory period under 52 U.S.C. § 30109(a)(8)(A) has long since elapsed since the plaintiff’s December 2025 submission, and the Commission has taken no action of any kind on the merits.

Both grounds are independently sufficient. The Commission’s notarization-only refusal is contrary to law because 28 U.S.C. § 1746 expressly provides that an unsworn declaration subscribed under penalty of perjury “may, with like force and effect,” satisfy any sworn-statement requirement imposed by “any law of the United States or . . . any rule, regulation, order, or requirement made pursuant to law.” 28 U.S.C. § 1746. Section 1746 by its terms reaches the FEC’s notarization regulation at 11 C.F.R. § 111.4(b). Independently, the Commission’s subsequent inaction has triggered the failure-to-act framework of *Common Cause v. FEC*, 489 F. Supp. 738 (D.D.C. 1980), and *Giffords v. FEC*, 2021 WL 4810333 (D.D.C. Sept. 30, 2021).

On January 14, 2026, 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 one-page Notice of Lack of Quorum (Dkt. 3) stating that it cannot litigate the merits; the plaintiff filed a First Amended Complaint that the Commission has neither answered nor moved against; the deadlines under Rules 12(a)(2) and 15(a)(3) have lapsed; and on April 29, 2026, this Court (Mehta, J.) entered a Minute Order directing the Clerk to enter default under Rule 55(a). The case is therefore ripe for default judgment under Rule 55(b)(2) and 55(d).

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 dismissal or 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 respondent "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 the December 2025 administrative complaint; 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 December 2025 Administrative Complaint.

In December 2025, the plaintiff executed and submitted to the Commission an administrative complaint under 52 U.S.C. § 30109(a)(1) and the FEC's implementing regulations at 11 C.F.R. §§ 111.4–111.7. (First Am. Compl. ¶¶ 12–16 (Dkt. 5); Bernegger Decl. ¶¶ 3–6 & Ex. E.) The administrative complaint alleges that Friends of John Thune (FEC ID C00409581), its candidate John Thune, and its Treasurer Nicole Weyers engaged in or facilitated structured, high-frequency, multi-same-day contribution patterns consistent with contributions in the name of another, false reporting, and related FECA violations. (Bernegger Decl. ¶ 4.) The administrative complaint identifies 714 contributor identities flagged for anomalous patterns, 3,996 flagged transactions, and approximately \$1,148,902 in flagged contributions during the analyzed period; it further documents repeated multi-same-day contribution bursts, including donors making seventeen or more contributions on a single date. (Bernegger Decl. ¶ 5; First Am. Compl. ¶¶ 14–15.) The administrative complaint cites violations of 52 U.S.C. § 30122 (contributions in the name of another) and §§ 30102, 30104 (recordkeeping and reporting). (First Am. Compl. ¶ 16.)

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

B. The Commission's January 4, 2026 Refusal to Process.

On January 4, 2026, a paralegal in the Commission's Office of General Counsel notified the plaintiff by electronic mail that the Commission would not process the plaintiff's administrative complaint concerning Friends of John Thune. (Bernegger Decl. ¶ 7 & Ex. D.) The sole stated reason for the refusal was that the administrative complaint was not notarized. (*Id.*) The Commission did not assign the administrative complaint a Matter Under Review (MUR) number,

did not docket it, did not acknowledge it, and did not undertake the preliminary processing prescribed by 11 C.F.R. §§ 111.4–111.7. (Bernegger Decl. ¶ 9.)

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

The plaintiff filed this action on January 14, 2026 (Dkt. 1). Service was effected on each of the three Rule 4(i) targets: (i) the United States Attorney for the District of Columbia was personally served at 601 D Street, NW, Washington, DC, on January 20, 2026, by Ambiko Wallace of Capitol Process Services, Inc., with the Affidavit of Service filed February 20, 2026 (Dkt. 6); (ii) the Attorney General of the United States was served by certified mail on January 21, 2026, by Carrie Hollingshed of Capitol Process Services, Inc., with the Affidavit of Service by Certified Mail filed February 20, 2026 (Dkt. 7) and a supplemental Affidavit of Service filed March 13, 2026 (Dkt. 8); and (iii) the Federal Election Commission was served at 1050 First Street, NE on January 20, 2026, at 1:24 p.m., by serving Joe Johnson, Property Manager, authorized to accept service. And the Office of General Counsel, 1050 First Street, NE, Washington, DC, by United States Certified Mail (USPS Article No. 9407 1362 0855 1285 4182 43) on January 21, 2026. (Bernegger Decl. ¶¶ 11–13 & Ex. C.)

D. The Commission’s January 29, 2026 Notice of Lack of Quorum.

On January 29, 2026, the Commission filed a one-page Notice of Lack of Quorum (Dkt. 3), signed by Lisa J. Stevenson (Acting General Counsel), James D. McGinley (Associate General Counsel), Michael D. Contino (Attorney), 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. The Notice states only that the Commission “lacks a quorum and is without the authority to litigate the merits of plaintiff’s Complaint.” (Dkt. 3 ¶¶ 2–4.) The Notice

was filed before the operative First Amended Complaint and is not directed to that pleading. (Bernegger Decl. ¶ 16 & Ex. F.)

E. The First Amended Complaint and Expiration of the Response Period.

The plaintiff filed and served the First Amended Complaint on February 6, 2026, and it was entered on the docket on February 18, 2026 (Dkt. 5). Under Rule 12(a)(2), an agency of the United States must respond within 60 days after service on the United States Attorney—here, March 23, 2026 (March 21, 2026 being a Saturday; *see* Fed. R. Civ. P. 6(a)(1)(C)). Under Rule 15(a)(3), the response to an amended pleading is due within the time remaining or 14 days after service of the amended pleading, whichever is later. Both deadlines have long since expired. (Bernegger Decl. ¶¶ 15, 17.) The Commission has not answered, moved under Rule 12, or sought leave to enlarge its time to respond.

F. The Court’s April 29, 2026 Order Directing Entry of Default.

On March 24, 2026, the plaintiff filed his Motion for Entry of Default and Default Judgment (Dkt. 9), and on April 20, 2026, he filed a supplemental Declaration in Support of Request for Clerk’s Entry of Default (Dkt. 10). On April 29, 2026, this Court (Mehta, J.) entered a Minute Order granting in part the Motion for Entry of Default and directing the Clerk of Court to enter default against the defendant Federal Election Commission under Rule 55(a). The Court expressly found that the defendant “has ‘failed to plead or otherwise defend’ this action in a timely manner” and that, “[a]lthough the agency has filed a Notice of Lack of Quorum, ECF No. [3], it has not otherwise entered an appearance in this case and responded to the Complaint.” (Minute Order, Apr. 29, 2026.) The Clerk’s Entry of Default has been made on the docket. (Bernegger Decl. ¶ 18 & 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 the Commission refused to process and on which the Commission has not acted within the statutory 120-day period. The Supreme Court has held that the word “aggrieved” in § 30109(a)(8)(A) reflects a congressional intent “to cast the standing net broadly,” and that an administrative complainant in such a posture has Article III standing where the Commission’s action or inaction deprives the complainant of statutorily protected interests. *FEC v. Akins*, 524 U.S. 11, 19–26 (1998) (Breyer, J.). 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. 3) 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, the [Proposed] Order, and the Certificate of Service on counsel of record listed on Dkt. 3—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 VIII below. 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 unrebutted.

V. The Commission’s Refusal to Process Is Contrary to Law Because 28 U.S.C. § 1746 Substitutes for Notarization.

The Commission’s sole stated ground for refusing to process the plaintiff’s December 2025 administrative complaint—that the complaint was not notarized—is foreclosed by federal statute. Congress enacted 28 U.S.C. § 1746 precisely to permit unsworn declarations to substitute, with like force and effect, for sworn affidavits in any context governed by federal law. The statute provides:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same . . . such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form: . . . “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).”

28 U.S.C. § 1746(2). The text reaches “any rule, regulation, order, or requirement made pursuant to law,” and the Commission’s notarization regulation at 11 C.F.R. § 111.4(b) is precisely such a regulation. By the plain text of § 1746, the plaintiff’s administrative complaint—executed under

penalty of perjury—satisfied any sworn-statement requirement that the Commission could lawfully impose under its regulations.

The federal courts have uniformly applied § 1746 to give unsworn declarations “like force and effect” as sworn affidavits across the breadth of federal law. *See, e.g., Carter v. Clark*, 616 F.2d 228, 230 (5th Cir. 1980) (§ 1746 “permits a sworn statement to be replaced by a written declaration as long as the document declares its contents to be true under penalty of perjury”); *Pfeil v. Rogers*, 757 F.2d 850, 859 (7th Cir. 1985) (“[I]t is well settled that statements which comply with 28 U.S.C. § 1746 are equivalent to affidavits”); *Nissho-Iwai Am. Corp. v. Kline*, 845 F.2d 1300, 1306 (5th Cir. 1988) (§ 1746 declaration is the equivalent of a sworn affidavit); *LeBoeuf, Lamb, Greene & MacRae, L.L.P. v. Worsham*, 185 F.3d 61, 65–66 (2d Cir. 1999) (same).

There is no exception in § 1746 for FEC administrative complaints, and the Commission lacks authority to create one by regulation. *Cf. Common Cause v. FEC*, 489 F. Supp. 738, 744 (D.D.C. 1980) (“Common Cause I”) (Commission’s implementing regulations must operate within the bounds of FECA and other applicable federal law). The Commission’s notarization-only refusal to process the plaintiff’s administrative complaint accordingly contravenes 28 U.S.C. § 1746 on its face. That is a quintessential “contrary to law” disposition under 52 U.S.C. § 30109(a)(8)(C).

The structural consequence is significant. By refusing to process the administrative complaint, the Commission foreclosed the statutory enforcement process Congress created in 52 U.S.C. § 30109. The Commission did not (a) make a “reason to believe” finding under § 30109(a)(2), (b) dismiss the complaint by Statement of Reasons, (c) enter into conciliation under § 30109(a)(4)(A), or (d) institute civil proceedings under § 30109(a)(6). (Bernegger Decl. ¶ 9.) The notarization-only refusal effectively functions as a dismissal—one undertaken on a legally untenable basis. The plaintiff is therefore entitled to the conformance order Congress prescribed for this exact

circumstance: an order directing the Commission to docket and process the administrative complaint consistent with FECA and the Commission's own regulations.

VI. The Commission's Failure to Act Is Independently Contrary to Law.

Independent of the notarization issue, the Commission's subsequent inaction is independently contrary to law under the failure-to-act framework of 52 U.S.C. § 30109(a)(8)(A). FECA itself supplies the operative time-frame standard: the Commission must "act[] expeditiously" on administrative complaints. 52 U.S.C. § 30109(a)(3)(A); see *Common Cause v. FEC*, 489 F. Supp. 738, 744 (D.D.C. 1980) ("Common Cause I") ("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.'"). In assessing expeditiousness, the Court considers the multi-factor analysis set out in *Common Cause I*: "Factors the Court may consider in making its determination include 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.* The Court is also to consider the unreasonable-delay factors articulated by the D.C. Circuit in *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 79–80 (D.C. Cir. 1984) ("TRAC"), including (1) whether the time the agency takes is governed by a rule of reason, (2) whether Congress has provided a timetable, (3) whether human health and welfare are at stake, (4) the effect on competing agency priorities, (5) the nature and extent of the interests prejudiced by delay, and (6) whether impropriety lurks behind agency lassitude (which need not be shown). *TRAC*, 750 F.2d at 80. Judge Sullivan synthesized and applied both frameworks in granting summary judgment to a complainant in a materially similar posture in *Giffords v. FEC*, No. 19-1192 (EGS), 2021 WL 4810333, at *4–*8 (D.D.C. Sept. 30, 2021) (declaring the Commission's failure to act on four administrative complaints contrary to law and ordering the Commission to

make the reason-to-believe determination required by 52 U.S.C. § 30109(a)(2) within thirty days). For the avoidance of doubt, the related “impermissible-interpretation / arbitrary-or-capricious” standard applicable to review of FEC *dismissals* is articulated in *Orloski v. FEC*, 795 F.2d 156, 161 (D.C. Cir. 1986); the failure-to-act framework from *Common Cause I* and *TRAC* controls the inaction component of this case.

Each Common Cause / Giffords 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 Friends of John Thune (FEC ID C00409581). The supporting donor table identifies 714 contributor identities, 3,996 flagged transactions, and approximately \$1,148,902 in flagged contributions, including donors making seventeen or more contributions on a single date and repeated multi-same-day contribution bursts. (Bernegger Decl. ¶ 5; First Am. Compl. ¶¶ 14–16.) Much like the complaints in *Giffords*, the allegations “could be verified from the FEC’s own records.” *Giffords*, 2021 WL 4810333, at *5.

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 and 30104. (First Am. Compl. ¶ 16.) Senator Thune currently serves as Majority Leader of the United States Senate; the recurrence risk in subsequent election cycles is a hallmark of an unreasonable delay. *Cf. Giffords*, 2021 WL 4810333, at *5–*6.

Information availability. The Commission has access to all of the data it needs to evaluate the complaint. The contribution records, donor identifications, employer/occupation fields, and aggregate-cycle totals are all on the FEC’s own publicly accessible database. There is no information bottleneck. *Cf. Giffords*, 2021 WL 4810333, at *6.

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.

Prejudicial effect of the delay. The five-year statute of limitations applicable to FECA enforcement actions, 28 U.S.C. § 2462, is approaching for the earliest contribution years analyzed. As *Giffords* recognized, the Commission’s delay “potentially prejudices Plaintiff if the [Commission’s] delay ultimately contributes to a decision to dismiss Plaintiff’s administrative complaints because the statute of limitations had expired or is about to expire.” *Giffords*, 2021 WL 4810333, at *7.

Resources and competing priorities. The Commission’s “resource” argument cuts the wrong way here. The Commission has been without a quorum since May 1, 2025—before the plaintiff’s December 2025 administrative complaint was even submitted—and remains without a quorum today. (Dkt. 3 ¶ 3.) The plaintiff cannot be made to bear the consequences of the Commission’s structural inability to convene. *Cf. Giffords*, 2021 WL 4810333, at *7.

Statutory time constraints and rule of reason. The 120-day clock under § 30109(a)(8)(A) ran from the December 2025 submission and elapsed in April 2026. (Bernegger Decl. ¶ 9.) The Commission has not represented that it is “moving expeditiously” or has any concrete plan to act. *Cf. TRAC*, 750 F.2d at 80; *Giffords*, 2021 WL 4810333, at *8 (“dilatory conduct is not explained and cannot be condoned if the statute is to have any meaning” (citation omitted)).

On the same record that supported relief in *Giffords*, 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).

VII. 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 court in *Giffords* confronted the same posture—a Commission that had been without a quorum for an extended period—and rejected the Commission's argument that quorum-driven inaction was somehow exempt from § 30109(a)(8)(C) review. *Giffords*, 2021 WL 4810333, 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 Commission's January 29, 2026 Notice itself acknowledges that the Commission retains operational capacity to communicate with respondents and the Court. 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.

VIII. 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 the December 2025 administrative complaint. The relief requested is:

(1) a declaration, under 52 U.S.C. § 30109(a)(8)(C), that the Commission's refusal to process and failure to act on the plaintiff's December 2025 administrative complaint concerning Friends of John Thune (C00409581) is contrary to law;

(2) a declaration that an unsworn declaration subscribed under penalty of perjury pursuant to 28 U.S.C. § 1746 has “like force and effect” as a sworn affidavit and satisfies any sworn-statement requirement that the Commission may impose under 11 C.F.R. § 111.4(b);

(3) an order directing the Commission to conform with those declarations within thirty (30) days, including by (i) docketing and processing the plaintiff’s administrative complaint consistent with FECA and 11 C.F.R. §§ 111.4–111.7, (ii) taking final action in the form of a “reason to believe” determination under 52 U.S.C. § 30109(a)(2), as the Court ordered in *Giffords*, 2021 WL 4810333, at *9, (iii) certifying to this Court the date and result of any vote of the Commission, identifying each Commissioner’s vote, and (iv) filing with this Court any controlling Statement of Reasons sufficient to permit judicial review of any dismissal;

(4) 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;

(5) retention of jurisdiction during the conformance period (*see Giffords*, 2021 WL 4810333, at *9 (retaining jurisdiction)); and

(6) allowable costs.

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

Dated: May 4, 2026

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

PETER BERNEGGER,

Civil Action No. 1:26-cv-00106-APM

Plaintiff,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

RECEIVED
MsRoom

MAY - 5 2026

Angela Duase Clerk of Clerk
U.S. District Court District of Columbia

CERTIFICATE OF SERVICE

I, Peter Bernegger, hereby certify that on May 4, 2026, I caused a true and correct copy of the following documents to be served on the persons identified below by the methods indicated:

1. Plaintiff's Motion for Default Judgment Against Defendant Federal Election Commission;
2. Memorandum of Points and Authorities in Support of Plaintiff's Motion for Default Judgment;
3. Declaration of Peter Bernegger in Support of Plaintiff's Motion for Default Judgment, with Exhibits A through H;
4. Exhibit Index;
5. [Proposed] Order Granting Plaintiff's Motion for Default Judgment; and
6. This Certificate of Service.

Service was made on the following recipients. I treat the Notice of Lack of Quorum (Dkt. 3) as an appearance "by a representative" of the Federal Election Commission for purposes of the seven-

day notice requirement of Federal Rule of Civil Procedure 55(b)(2), and have provided counsel of record listed on Dkt. 3 with the foregoing papers more than seven days before any hearing on the Motion.

RECIPIENTS AND METHOD OF SERVICE

Counsel for Defendant Federal Election Commission (Dkt. 3):

Lisa J. Stevenson, Acting General Counsel — 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

(202) 694-1650

Method of service: by FedEx 2 Day air with tracking, to the FEC Office of General Counsel at 1050 First Street, NE, Washington, DC 20463. Fed. R. Civ. P. 5(b)(2)(F).

United States Attorney for the District of Columbia:

Civil Process Clerk
United States Attorney's Office
601 D Street, NW
Washington, DC 20530

Method of service: FedEx 2 Day air with tracking.

Attorney General of the United States:

Civil Process Clerk
U.S. Department of Justice
950 Pennsylvania Avenue, NW

Washington, DC 20530-0001

Method of service: FedEx 2 Day air with tracking.

Friends of John Thune (FEC ID C00409581) (courtesy notice):

Nicole Weyers, Treasurer
Friends of John Thune
P.O. Box 841
Sioux Falls, SD 57101

Method of service: FedEx 2 Day air with tracking.

I certify under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,



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

Dated: May 4, 2026