IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

SMP'S OPPOSITION TO NRSC'S MOTION TO DISMISS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE(S)

CASES

STATUTES

REGULATIONS

INTRODUCTION

In the 2024 election cycle, the National Republican Senatorial Committee (NRSC) spent almost $5 million of limited purpose specialty account funds on candidate advertising in support of Republican Senate candidates, in plain violation of the Federal Election Campaign Act of 1971 (FECA). In August 2025, Senate Majority PAC (SMP), a super PAC that competes directly with the NRSC to support the election of Democratic Senate candidates and oppose the election of Republican Senate candidates, filed an administrative complaint with the Federal Election Commission (FEC) to challenge the NRSC's unlawful spending. SMP filed that complaint to vindicate its private interests in obtaining a complete and accurate picture of the NRSC's financing and protecting itself from the NRSC's unfair competition in the limited markets for campaign advertising and voter persuasion. Nearly nine months later, the FEC has not taken any action on SMP's complaint. It cannot do so, because the FEC is without a quorum. So the NRSC is already repeating its past violations in the 2026 election cycle, and SMP is suffering yet another cycle of incomplete and inaccurate information and unfair competition.

Congress provided a remedy for this problem: a "party aggrieved" by the FEC's failure to act on a complaint may seek a declaration from this Court that the inaction is "contrary to law," and, if the FEC fails to conform with that declaration, may then sue the alleged violator directly. 52 U.S.C. § 30109(a)(8)(A), (C). With the 2026 election cycle now well underway, SMP brought this action to avail itself of that remedy.

SMP has standing based on two forms of injury. First, the NRSC's unlawful use of specialty account funds meant it failed to accurately report its receipts and expenditures, a textbook informational injury to organizations like SMP that use campaign finance information to participate in the political process. *See FEC v. Akins*, 524 U.S. 11 (1998). SMP relies on accurate disclosures from the NRSC to inform its advocacy and to make difficult decisions about

fundraising and allocation of limited resources, because SMP spends millions of dollars each cycle opposing the very candidates that the NRSC supports (and supporting those that the NRSC opposes). The NRSC's inaccurate disclosures directly undermine SMP's efforts.

Second, SMP suffers a competitive injury from the NRSC's unlawful conduct in support of Senate candidates that it is SMP's business to oppose (and vice versa). Both SMP and the NRSC are non-candidate advocacy groups that raise and spend money to support opposing candidates for Senate across the country. They therefore directly compete against each other for advertising time and voter attention. The NRSC's challenged conduct gives it an unlawful advantage in that competition, by allowing it to spend more money in competition with SMP than federal campaign finance laws allow. Campaign finance law forces organizations like SMP and the NRSC to choose between unlimited fundraising with no right to coordinate with candidates on expenditures (SMP's choice) and limited fundraising but certain amounts of lawful coordination (the NRSC's choice). The NRSC's unlawful conduct lets it keep the competitive benefit of its chosen form—certain coordination rights—while evading the associated fundraising limitations. That is an unlawful advantage that directly harms SMP.

SMP has also adequately pleaded that the FEC's failure to act is contrary to law. The FEC's complete and continued inaction is not justified by any complexity, need for investigation, or discretionary choice to delay—the FEC has simply had too few members to act. FECA's citizen suit provision exists to provide a backstop to a paralyzed FEC. And the NRSC's argument that FECA's entire enforcement mechanism violates Article II of the Constitution is a nonstarter. While exercises of prosecutorial discretion are generally unreviewable, the FEC has not and could not exercise any discretion, because it has no quorum with which to do so. And NRSC's suggestion that FECA's citizen suit provision impermissibly allows private parties to exercise state power

ignores that, like any other private right of action, it merely allows private plaintiffs to vindicate their own private interests, as SMP does here.

The Court should deny the NRSC's motion to dismiss, enter default judgment against the FEC, and, after giving the FEC the required thirty days to conform, allow SMP to vindicate its rights in a private suit against the NRSC.

BACKGROUND

I. Legal Background

FECA limits committees of a national party like the NRSC to raising $44,300 per year from any single individual donor to their general account. *See* 52 U.S.C. § 30116(a)(1)(B); FEC, Price Index Adjustments for Contribution & Expenditure Limitations, 90 Fed. Reg. 8526, 8528 (Jan. 30, 2025) (inflation adjustment). These general account funds may be spent for any lawful purpose, including television advertisements in support of political candidates, and committees like the NRSC are specifically and uniquely allowed to spend substantial sums in coordination with the candidates they support. *See* 52 U.S.C. § 30116(d); *DSCC v. FEC*, 454 U.S. 27 (1981) (holding that state parties can assign this authority to congressional committees like the NRSC); *see also NRSC v. FEC*, No. 24-621 (U.S. argued Dec. 9, 2025) (pending Supreme Court case that will address whether committees like the NRSC may spend *unlimited* coordinated sums).

FECA also allows congressional committees like the NRSC to establish separate specialty accounts that may be used "solely to defray expenses incurred with respect to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings of the party" or with respect to "the preparation for and the conduct of election recounts and contests and other legal proceedings." 52 U.S.C. § 30116(a)(9); *id.* § 30116(a)(1)(B). Each specialty account must be kept "separate" and "segregated" from general national party committee funds and used only for the designated purposes, which do not include election advertising in support of candidates. *Id.*

§ 30116(a)(1)(B), (a)(9). But the specialty accounts have separate contribution limits that are three-times higher than the general contribution limit. *See id.* A donor who has maxed out his or her general contribution limit to the NRSC can therefore still contribute six times more to the specialty accounts. But those amounts may only be spent for limited purposes.

Regulations the FEC has promulgated under FECA also allow joint fundraising between different committees and candidates. 52 U.S.C. § 30102(e)(3)(A)(ii); 11 C.F.R. § 102.17. Joint fundraising committees formed for that purpose, however, must allocate funds without exceeding a contributor's limit as to any participating committee. 11 C.F.R. § 102.17(c)(1), (c)(2)(i)(C), (c)(2)(1)(D). Joint fundraising committees must then pay their operating expenses, which are borne by the participants based on their share of the funds received. *Id.* § 102.17(c)(7)(i)(A). Joint fundraising committees are also required to "report all funds received in the reporting period in which they are received," *id.* § 102.17(c)(8)(i)(a), and report "all disbursements in the reporting period in which they are made," *id.* § 102.17(c)(8)(ii). Together, these accounting and reporting requirements work to prevent contributors from using joint fundraising committees to evade contribution limits.

FECA also provides for enforcement of these rules. *See* 52 U.S.C. § 30109(a). A party who is aggrieved by a violation of FECA files a complaint directly with the FEC. *Id.* § 30109(a)(1). The agency may proceed with an investigation if—"by an affirmative vote of 4 of its members"—the Commission determines that it has "reason to believe" there has been a violation. *Id.* § 30109(a)(2). After an investigation, the Commission again votes on whether there is "probable cause to believe" the violation occurred and may only proceed with enforcement against the violator by an affirmative vote of four members. *Id.* § 30109(a)(4). If the FEC "fail[s] to act on such complaint during the 120-day period beginning on the date the complaint is filed," an

aggrieved party "may file a petition with the United States District Court for the District of Columbia," and the court may "declar[e]" that the FEC has acted "contrary to law" and "direct" that it conform. *Id.* § 30109(a)(8)(A), (C). If the FEC fails to do so within 30 days, the aggrieved party has a private right of action against the alleged violator. *Id.* § 30109(a)(8)(C).

II. The NRSC violates FECA.

In the 2024 election cycle, the NRSC violated FECA's restrictions on specialty accounts by spending at least $4.8 million in specialty account funds on candidate television advertisements. Compl. ¶ 4. Using three joint fundraising committees, the NRSC raised money for both its limited specialty accounts and its general account, as well as for three Republican senate candidates in Michigan, Nevada, and Wisconsin. *Id.* ¶¶ 4, 26. These JFCs raised millions of dollars allocated to the specialty accounts—and counted against the specialty account limits—along with money allocated to the NRSC's general fund and the candidates' campaigns. But the JFCs distributed less than $10,000 of that money to the specialty accounts, instead spending substantially all of it on campaign advertisements for Republican Senate candidates that was not a lawful use of specialty account funds. *Id.* ¶¶ 31–32.

III. SMP's Complaint.

On August 13, 2025, SMP filed an administrative complaint with the FEC that made these allegations and attached funding reports from the FEC's own records. *Id.* ¶ 1; *see also* Compl., Ex. 1, ECF No. 1-1 at 2–4 ("Administrative Complaint"). The Administrative Complaint also explained the harm to SMP and requested a prompt investigation. Administrative Complaint at 5. Then, nothing. After 176 days, the FEC had still not addressed SMP's complaint in any way to SMP's knowledge. Compl. ¶ 2. With no end in sight, SMP filed this lawsuit against the FEC to gain the right to proceed against the NRSC directly. *See generally* Compl.; *see also* Status Report, ECF No. 15 (explaining procedural steps).

LEGAL STANDARD

In evaluating the NRSC's motion to dismiss, the Court must accept SMP's allegations as true and draw all reasonable inferences in SMP's favor. *See Ho v. Garland*, 106 F.4th 47, 50 (D.C. Cir. 2024). In assessing the NRSC's jurisdictional challenge, the "court must accept as true all material allegations on the complaint, and must construe the complaint in favor of the complaining party." *Martha's Vineyard/Dukes Cnty. Fishermen's Ass'n v. Locke*, 811 F. Supp. 2d 308, 313 (D.D.C. 2011) (internal quotation marks omitted) (quoting *Ord v. District of Columbia*, 587 F.3d 1136, 1140 (D.C. Cir. 2009)). "[W]here necessary, the court may consider the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Coal. for Underground Expansion v. Mineta*, 333 F.3d 193, 198 (D.C. Cir. 2003) (citation omitted). A similar standard applies to the NRSC's Rule 12(b)(6) challenge: the Court must ask whether SMP's complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). This standard is satisfied where the complaint contains "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* While "the pleadings must 'give the defendants fair notice of what the claim is and the grounds upon which it rests,'" *Jones v. Kirchner*, 835 F.3d 74, 79 (D.C. Cir. 2016) (quoting *Twombly*, 550 U.S. at 555), they need not contain "detailed factual allegations," *id.* (quoting *Iqbal*, 556 U.S. at 678), or "plead law or match facts to every element of a legal theory," *Slinski v. Bank of Am., N.A.*, 981 F. Supp. 2d 19, 26 (D.D.C. 2013) (citing *Krieger v. Fadely*, 211 F.3d 134, 136 (D.C. Cir. 2000)), to survive a Rule 12(b)(6) motion.

ARGUMENT

I. SMP has standing.

A. SMP has adequately pleaded an informational injury.

SMP suffers an informational injury from the NRSC's challenged conduct, and from the FEC's failure to act on SMP's complaint challenging it. "The law is settled that a denial of access to information qualifies as an injury in fact where a statute (on the claimants' reading) requires that the information be publicly disclosed and there is no reason to doubt their claim that the information would help them." *Campaign Legal Ctr. v. FEC* ("*Correct the Record*"), 31 F.4th 781, 783 (D.C. Cir. 2022) (quoting *Campaign Legal Ctr. & Democracy 21 v. FEC* ("*Democracy 21*"), 952 F.3d 352, 356 (D.C. Cir. 2020) (per curiam)). While a plaintiff asserting an informational injury typically must identify "downstream consequences," *TransUnion LLC v. Ramirez*, 594 U.S. 413, 442 (2021) (citation omitted), it is enough for a plaintiff to allege that "failure to receive the requested disclosures would harm its ability to advance its organizational mission." *CREW v. FEC*, No. 22-cv-3281 (CRC), 2023 WL 6141887, at *6 (D.D.C. Sep. 20, 2023) (citing *TransUnion*, 594 U.S. at 442), or that the requested information is "related to [its] informed participation in the political process," *Correct the Record*, 31 F.4th at 789 (quoting *Nader v. FEC*, 725 F.3d 225, 230 (D.C. Cir. 2013)); *see also 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 satisfied where alleged nondisclosure "deprived ECU of information to which it was entitled by law and that would be relevant to its work").

SMP has suffered—and will continue to suffer, due to the FEC's inaction—downstream consequences from the NRSC's failure to accurately disclose its use of specialty account funds for general advertising purposes. SMP "depend[s] on the NRSC's campaign finance disclosures to make its own decisions on raising and spending money." Compl. ¶ 39. With more accurate

information, SMP would have "considered different ways to allocate its own expenditures." *Id.* For example, SMP "might have chosen to spend more on a top target Senate race if it knew that the NRSC had more resources available for television advertising, while strategically decreasing spending in another, less competitive Senate race where the chance of victory was projected to be lower." *Id.* This information is thus "related to [SMP's] informed participation in the political process." *Correct the Record*, 31 F.4th at 789 (citation omitted); *see Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (three-judge court) ("[E]xpress-advocacy expenditures are an integral aspect of the process by which Americans elect officials to federal, state, and local government offices.").

The D.C. Circuit has recognized that misreported or mischaracterized contributions and expenditures cause "downstream consequences" to organizations that use campaign finance information. In *Correct the Record*, the D.C. Circuit held that plaintiffs—a nonprofit watchdog group and its president—had suffered an informational injury based on alleged misreporting of whether certain super PAC expenditures qualified as "coordinated" expenditures with the Clinton campaign. 31 F.4th at 792–93. It explained that the "disaggregation" of coordinated and independent expenditures—properly categorized—"would result in disclosure of the numerical *amounts* of any coordinated expenditures that were contributions to the Clinton campaign." *Id.* at 790. "That 'information would help [Appellants] (and others to whom they would communicate it) to evaluate candidates for public office, . . . and to evaluate the role that [Correct the Record's] financial assistance might play in a specific election.'" *Id.* at 784 (quoting *FEC v. Akins*, 524 U.S. 11, 21 (1998)); *see also Democracy 21*, 952 F.3d at 356 (holding that plaintiffs had standing to challenge "violations of FECA provisions that require accurate disclosure of contributor information, and the filing of public reports by political committees." (citation omitted)). SMP has

an even more direct interest in the information sought here than did the nonprofit watchdog organizations in these cases—SMP relies on accurate and timely campaign finance disclosures not just to "defend and implement campaign finance reform," *Democracy 21*, 952 F.3d at 356, or to evaluate candidates, but to make decisions on raising and spending money to support the candidates the NRSC opposes and oppose the candidates that the NRSC supports. Compl. ¶ 39. The information is thus unquestionably "relevant to [SMP's] work." *End Citizens United PAC*, 2022 WL 4289654, at *4.

SMP did not need to plead that it would *certainly* adjust its spending plans if it had accurately reported information from the NRSC, as the NRSC seems to believe. NRSC Intervenor's Mot. Dismiss ("Mot."), ECF No. 22 at 16. In *Animal Legal Defense Fund, Inc. v. Vilsack*, 111 F.4th 1219 (D.C. Cir. 2024), for instance, a plaintiff who wished to buy dog food made from ethically raised chickens alleged that the Food Safety Inspection Service (FSIS) failed to adequately review graphics on poultry labels. *Id.* at 1229. The D.C. Circuit held that these allegations sufficed under *TransUnion* because the plaintiff "desire[d] information with which she can make an informed purchasing decision, and the 'information deficit' created by FSIS's policy 'hinder[s] [her] ability to do so.' . . . That is the sort of 'downstream consequence' that can establish Article III standing." *Id.* (quoting *TransUnion*, 594 U.S. at 442).[1]

So too here. Like the plaintiff in *Vilsack*, SMP is harmed by an "allegedly unlawful policy" that "prevents [it] from confidently making purchasing decisions" consistent with its strategic goals. *Id.*; *see also Neguse v. U.S. Immigr. & Customs Enf't*, 813 F. Supp. 3d 45, 74 (D.D.C. 2025) (holding plaintiff suffered "downstream consequences" where the "information deficit" created by

[1] The D.C. Circuit nonetheless held that the plaintiff lacked standing on the independent ground that the injuries alleged were not "ongoing or imminent." 111 F.4th at 1230.

the challenged policies "hinder[ed] their ability" "to make informed decisions" (citation modified)). And just as the plaintiff in *Vilsack* did not need to allege that she certainly would have made a different purchasing decision if she had accurate and complete information, SMP did not need to allege that it certainly would have allocated its limited funds differently. It is enough that SMP has alleged "an intent to *use* the information to participate in . . . the political process." *Laufer v. Looper*, 22 F.4th 871, 881 (10th Cir. 2022) (emphasis added) (citing *FEC v. Akins*, 524 U.S. 11 (1998) (emphasis added)); *see also Neguse*, 813 F. Supp. 3d at 74 ("The Supreme Court has found standing when the denial of information harmed the requestors' ability to engage in the political and policymaking process." (citing *Pub. Citizen v. U.S. Dep't of Just.*, 491 U.S. 440, 449 (1989); *Akins*, 524 U.S. at 21)). All that is required is that the information sought has "some relevance" to SMP. *Griffin v. Dep't of Lab. Fed. Credit Union*, 912 F.3d 649, 654 (4th Cir. 2019); *see also End Citizens United PAC*, 2022 WL 4289654, at *4.

Nor is the NRSC correct that SMP lacks informational injury because the information it seeks is already available from a different source. Mot. at 16–17. That inquiry "starts and stops with examining whether a plaintiff 'only seek[s] the same information from a different source' such that *no 'additional facts'* will result." *Correct the Record*, 31 F.4th at 791 (emphasis added) (quoting *Wertheimer v. FEC*, 268 F.3d 1070, 1074–75 (D.C. Cir. 2001)). The NRSC points to FCC statutes requiring public disclosure of information about political ad buys. Mot. at 17 (citing 47 U.S.C. § 315(e)(2)(B)). That is not the information SMP seeks. Public information about the amounts the NRSC has *already spent* on ad buys is only half the equation. To make informed decisions about its own fundraising and spending, SMP needs to know how much money the NRSC has *available* for ad spending. *See* Compl. ¶ 39. By using money raised through JFCs for

specialty accounts to finance ad buys, the NRSC has obscured this information. Accurate reporting would therefore disclose "additional facts." *Correct the Record*, 31 F.4th at 792.

This information—the amount of cash on hand that the NRSC has available for advertisements at a given time—is crucial to SMP's fundraising and ad buying strategy and is not available from any other source. It is true that JFCs must regularly report the identity of their donors and the amounts of their contributions. But the *allocation* of those funds among the various JFC members does not get reported until *after* the funds (or what remains of them) are disbursed to the JFC members, including the NRSC. And with the sham JFCs at issue, those disbursements were not made until *after* the general election. Compl. ¶ 38. So, while SMP may be able to determine after the fact how much money the JFC allocated to various accounts—which is how it is able to *now* estimate that the NRSC's sham JFCs spent at least $4.8 million in specialty account funds on advertising last cycle, Compl. ¶ 31—those disclosures come far too late to be of any use to SMP during the election cycle. And the accurate categorization of these funds matters for informational injury purposes. In *Correct the Record*, for example the D.C. Circuit distinguished *Wertheimer* because "the information sought by the plaintiffs in *Wertheimer* had already been 'disaggregated' and marked as coordinated in the reports of political parties, so the plaintiffs had access to all the information they were seeking." 31 F.4th at 791 (quoting *Wertheimer*, 268 F.3d at 1075). As in *Correct the Record*, "the information at issue in this case has not been disaggregated" in time to be useful to SMP. *Id.* at 792.

Finally, SMP's informational injury is not in any sense "self-inflicted." Mot. at 19. Nor does it boil down to "pointing to an expenditure of resources." *Id.* SMP's injury arises not from an alleged diversion of resources, but rather from being deprived of the accurate information that it needs to make "informed . . . decision[s]" about how to allocate its limited resources. *Vilsack*, 111

F.4th at 1229. And "disadvantage in achieving its mission," Mot. at 19 (quoting Compl. ¶ 14), is precisely the sort of "downstream consequence" that courts have found sufficient to establish informational injury. *E.g.*, *CREW*, 2023 WL 6141887, at *6.

B. SMP has adequately pleaded a competitive injury.

In addition, and independently, SMP suffers a competitive injury from the NRSC's unlawful use of specialty account funds for advertising purposes in support of candidates that SMP opposes, and in opposition to candidates that SMP supports. "The doctrine of competitor standing" recognizes that plaintiffs "'suffer [an] injury in fact when agencies lift regulatory restrictions on their competitors or otherwise allow increased competition' against them." *Sherley v. Sebelius*, 610 F.3d 69, 72 (D.C. Cir. 2010) (quoting *La. Energy & Power Auth. v. FERC*, 141 F.3d 364, 367 (D.C. Cir. 1998)). The D.C. Circuit has "applied the doctrine of competitor standing to the political 'market.'" *Id.* (citing *Shays v. FEC*, 414 F.3d 76, 87 (D.C. Cir. 2005). In *Shays v. FEC*, the D.C. Circuit held that two members of Congress had competitor standing to challenge FEC regulations of private donors and political parties. *See Shays*, 414 F.3d at 85. The challenged rules permitted "supporters" of "rival candidate" to "finance issue ads more than 120 days before the election" and allowed "rival state parties" to "spend soft money to pay employees devoting a quarter of their time to defeating" the plaintiff congressmen. *Id.* at 86. The court explained that the candidates had standing to challenge the regulations because FECA creates a legally cognizable right to a fair "competitive environment," the invasion of which creates standing. *Id.* And the challenged regulations infringed on this right by subjecting the plaintiffs "to a broader range of competitive tactics than federal law would otherwise allow." *Id.* Similarly, another court in this district has held that "a rival PAC has standing to challenge FEC dismissal of a complaint" against a competing PAC. *End Citizens United PAC*, 2022 WL 4289654, at *4 ("ECU, which competes with NRP in

the context of Florida elections, Compl. ¶¶ 16–18, has standing to challenge NRP's failure to disclose that information.").

SMP similarly has competitive standing because the FEC's failure to act on its complaint against the NRSC and its JFCs forces it to respond to "a broader range of competitive tactics" than FECA allows. *Shays*, 414 F.3d at 86. SMP is an independent expenditure–only committee whose "singular mission is to elect Democrats to the United States Senate." Compl. ¶¶ 10–11, 14. The NRSC is a committee established by a national party whose sole purpose is to elect Republicans to the United States Senate. While their organizational structures differ, the two entities compete directly for limited advertising space and to persuade voters to support their respective candidates. SMP thus "personally competes in the same arena" with the NRSC. *Gottlieb v. FEC*, 143 F.3d 618, 621 (D.C. Cir. 1998); *see End Citizens United PAC*, 2022 WL 4289654, at *2, *4 (finding that a "Democratic political action committee" and a "Republican super PAC" "compete[] in the context of Florida elections"). And by allowing the NRSC to continue to raise and spend funds on advertising in excess of the applicable limits, the FEC's inaction on SMP's complaint allows the NRSC to purchase a greater volume of advertisements. That, in turn, forces SMP to respond with greater ad purchasing of its own to counteract the NRSC's message and persuade voters. That increased spending is a classic "[p]ocketbook" harm—"a traditional Article III injury." *Bost v. Ill. State Bd. of Elections*, 146 S. Ct. 513, 524 (2026) (Barrett, J., concurring).

The NRSC's reliance on cases finding that Super PACs do not "directly compete" with candidates for office is therefore misplaced. Neither SMP nor the NRSC are candidates for office. Both are outside entities that directly compete for limited airtime and the attention of voters to support or oppose candidates for office. In *AB PAC*, for instance, Judge Kelly explained: "that the candidate whom AB PAC plans to support in the 2024 presidential election may suffer a

fundraising disadvantage relative to Trump because of the FEC's inaction on its excessive-contributions claim is of no moment; AB PAC has not shown that *it* has been disadvantaged." *AB PAC v. FEC*, No. 22-cv-2139 (TJK), 2023 WL 4560803, at *5 (D.D.C. July 17, 2023). Here, however, SMP does not seek to "stand in the shoes" of the Democratic candidates it supports "to seek relief for FECA violations committed by the [candidates'] potential opponent[s]." *Id.* It seeks relief for its *own* injuries resulting from increased competition in the specific arena of non-candidate political advertising.

The NRSC's response that it is not a rival Super PAC but instead a national party committee defines the relevant "market" far too narrowly. The NRSC's insistence that competitive standing only arises between competitors of the same organizational form is inconsistent with *Shays* itself, which upheld competitive standing based on a competitive threat to candidates by, for example, independent issue advertisements run by "supporters" of other candidates. *See* 414 F.3d at 86. Regardless of their organizational structures, the NRSC and SMP compete in the same field—not for votes, as do candidates, but for advertising space and to persuade voters. And the fact that Super PACs, unlike party committees, are "independent expenditure-only political committees," Mot. at 13, supports, rather than undermines, SMP's standing. As the NRSC explains, "federal law prohibits Super PACs from coordinating expenditures with a candidate." *Id.* The same is not true, however, of the NRSC. As a national party committee, the NRSC *is* allowed to coordinate its advertising spending with candidates—within limits. *See* 52 U.S.C. § 30116(d). This difference reflects the careful balance that Congress struck in FECA in regulating party committees. Super PACs like SMP may raise and spend unlimited funds to support any candidate they wish—but they may not coordinate their spending with campaign committees. Party committees like the NRSC, on the other hand, may coordinate their message with candidates, subject to the tradeoff

that their receipts and expenditure are subject to strict limits. By circumventing these limits, the NRSC is attempting to take advantage of the benefits of coordinated spending without also accepting the limitations that Congress imposed to go along with it. SMP is directly harmed by this unlawful action by its "political competitor" and has standing for that reason. *Shays*, 414 F.3d at 87 (emphasis omitted) (quoting *Chamber of Com. v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995)).

C. SMP's injuries are redressable.

The NRSC is also wrong to argue that a favorable ruling here would not redress SMP's alleged injuries. By seeking action against the NRSC for its past legal violations, SMP seeks to prevent or deter future violations in the 2026 election cycle and beyond. SMP has adequately alleged that the information deficits and unfair competition it encountered in the 2024 election cycle are likely to recur in 2026 and thereafter. And the NRSC's "past wrongs" are "evidence bearing on whether there is a real and immediate threat of repeated injury." *Jibril v. Mayorkas*, 20 F.4th 804, 814 (D.C. Cir. 2021) (citation modified). The Court need not speculate as to whether the NRSC's unlawful behavior will continue into the 2026 election cycle because *it already has*: the NRSC has run at least one campaign advertisement in connection with the 2026 Senate election in Texas that is paid for by a joint fundraising committee that includes the NRSC's specialty accounts. Compl. ¶ 40.

The FEC's lack of quorum is also irrelevant to redressability. "Congress foresaw the possibility that the FEC could abdicate its responsibilities." *Campaign Legal Ctr. v. Iowa Values*, 573 F. Supp. 3d 243, 249 (D.D.C. 2021). So, rather than "abandon its citizens to one agency's whims, Congress carefully constructed [FECA] to provide for citizen suits, where an aggrieved party can directly sue a potential FECA violator in federal court." *Id.* If the Court denies the NRSC's motion to dismiss and grants SMP's motion for default judgment, then SMP will be

entitled to a declaration that the FEC's "failure to act is contrary to law," as is specifically authorized by 52 U.S.C. § 30109(a)(8)(C). The FEC will then have the right to "conform with such declaration within 30 days." *Id.* If the FEC still fails to take action on SMP's underlying complaint within that time period—whether because the FEC lacks a quorum or for some other reason—SMP will be entitled to "bring, in [its own] name [], a civil action to remedy the violation involved in the original complaint" that SMP filed against the NRSC. *Id.* The FEC's lack of quorum therefore is no obstacle to the Court's ability to grant effective relief.

The NRSC's argument that private parties lack standing to bring a lawsuit "alleging inadequate law enforcement," Mot. at 21, misses the point. SMP "seek[s] information to facilitate [its] informed participation in the political process" and to redress the competitive injuries described above—not "to force the FEC to 'get the bad guys.'" *Nader*, 725 F.3d at 230. SMP "is not merely suing to force [the NRSC] to follow the law because of a general interest in the common concern for obedience to law. Instead, [SMP] is allegedly uniquely injured by a lack of information it is legally entitled to and by [the NRSC's] allegedly unlawful withholding of that information." *Iowa Values*, 573 F. Supp. 3d at 255 (internal citation omitted). And for the reasons explained *infra* Part III, there is no constitutional barrier to the Court awarding the relief ultimately sought here—the ability to bring a citizen suit to enforce private rights.

II. The FEC's failure to act on SMP's Administrative Complaint is contrary to law.

The FEC's lack of quorum does not shield its inaction—or the NRSC's FECA violations—from judicial review. To the contrary, "Congress foresaw the possibility that the FEC could abdicate its responsibilities to serve as an electoral watchdog." *Iowa Values*, 573 F. Supp. 3d at 249. Congress therefore provided a backstop: in the event of "a failure of the Commission to act on [its] complaint," a plaintiff "may bring . . . a civil action to remedy the violation involved in the

original complaint." 52 U.S.C. § 30109(a)(8)(C). SMP seeks to avail itself of this congressionally mandated relief valve by obtaining a declaration from this Court that would permit it to initiate a citizen suit against the NRSC directly.

A. The *Common Cause* and *TRAC* factors demonstrate that the FEC's failure was contrary to law.

The traditional factors for evaluating whether FEC inaction is contrary to law, to the extent they are applicable here, weigh in SMP's favor. Inaction, and the reasons for inaction, are typically analyzed under factors laid out in *Common Cause v. FEC* ("*Common Cause*"), 489 F. Supp. 738 (D.D.C. 1980), and *Telecommunications Research & Action Center v. FCC* ("*TRAC*"), 750 F.2d 70 (D.D.C. 1984). *See Campaign Legal Ctr. v. 45Committee, Inc.*, 118 F.4th 378, 383 (D.C. Cir. 2024). The *Common Cause* and *TRAC* courts laid out several, non-exhaustive equitable factors to assess the explanations for the FEC and FCC's inaction, respectively. A debilitating lack of quorum pushes these factors to their useful limits, but considering each in turn still shows that the FEC's failure to act on SMP's complaint—and the lack of any prospect of future action—is contrary to law.

"When evaluating whether the FEC's inaction on a complaint is 'contrary to law,' the Court must determine whether the FEC acted 'expeditiously' considering factors such as '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.'" *Iowa Values*, 573 F. Supp. 3d at 252 (quoting *Common Cause*, 489 F. Supp. at 744). Here, each of these factors support finding that the FEC's delay is contrary to law.

The allegations in SMP's Complaint establish the "credibility" of the underlying Administrative Complaint and the serious threat posed "to the integrity of the electoral system." *Id.* at 253. SMP's allegations also demonstrate "a threat of recurrence." *Giffords v. FEC*, No. 19-

cv-1192 (EGS), 2021 WL 4805478, at *5 (D.D.C. Oct. 14, 2021); *see* Compl. ¶ 40 (discussing JFC advertising in the 2026 Texas Senate race). The NRSC acknowledges these allegations, complaining that "the bulk of the Complaint seeks to color this Court's perception of the underlying merits of Senate Majority PAC's administrative complaint." Mot. at 7. Puzzlingly, the NRSC simultaneously claims that the underlying merits are "not at issue here," *id.* and faults SMP for failing to "discuss" these factors, *id.* at 23. But the underlying factual allegations are not disputed and are apparent from the NRSC's own FEC filings. The FEC already has available to it all the information necessary to resolve SMP's Administrative Complaint. *See* Compl., Ex. 1, ECF No. 1-1 at 8–11; *cf. Iowa Values*, 573 F. Supp. 3d at 253 (noting complaint could be verified by FEC's own records). The Administrative Complaint presents a pure question of law: whether the NRSC may use JFCs to circumvent statutory limitations on the use of specialty account funds and contribution limits on general account funds. And the only thing "novel" about the issues involved is the egregiousness of the NRSC's violations. The underlying law is straightforward, as SMP has explained. Compl. ¶ 3. In any event, "novelty" might justify delay if an agency were actively investigating and considering a complaint; it cannot justify the FEC's complete failure to act here.

For similar reasons, the FEC's resources are a less relevant factor here: without a quorum, the FEC cannot expend resources investigating a complaint or engaging in litigation. *See* 52 U.S.C. § 30107(a)(6), (9); *see also id.* § 30106(c). The NRSC argues that the FEC is "bereft of resources," Mot. at 25 (internal quotation marks omitted), but this forces a square peg in a round hole: the resources inquiry is meant to evaluate the agency's triage of competing demands in the face of finite resources, not total paralysis due to a lack of quorum. In *Iowa Values*, for example, the court connected the resources and novelty factors, noting the relevance of "a novel issue that would demand a substantial amount of the agency's resources." 573 F. Supp. 3d at 253. The NRSC does

not argue that resolving the purely legal issues in SMP's complaint would demand some extraordinary amount of FEC time, money, or other resources. And courts in this district have routinely refused to excuse FEC inaction simply due to a lack of quorum. *See, e.g.*, *Iowa Values*, 573 F. Supp. 3d at 254 ("Like other courts in this district, this Court will not excuse the FEC's inaction just because there were periods where it lacked a quorum."); *Giffords*, 2021 WL 4805478, at *7 (finding, even when the FEC lacked a quorum for 16 months, "the FEC cannot ignore its statutory obligations by allowing a matter to languish").

At bottom, the *Common Cause* factors are meant to probe whether the FEC acted "expeditiously." 489 F. Supp. at 744. The *Common Cause* court was "disturbed" by the FEC's delay, but the FEC was spared a contrary-to-law ruling because it had delayed to "collect[] . . . further evidence," entered conciliation agreements with the majority of the parties named in the complaint, and represented that the remaining complaints would be settled soon. *Id.* at 744. Here, the FEC has taken *no* action on SMP's complaint, and there is no reasonable prospect that it will do so any time soon.

Courts also look to the *TRAC* factors in evaluating the reasons for the FEC's delay. *See, e.g.*, *Iowa Values*, 573 F. Supp. 3d at 253. Those factors include:

> (1) the time agencies take to make decisions must be governed by a rule of reason;
>
> (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason;
>
> (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake;
>
> (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority;

> (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and
>
> (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

Giffords, 2021 WL 4805478, at *4 (citing *TRAC*, 750 F.2d at 80). The statutory "timetable," is primary among these factors because through it, Congress has spoken to the "the speed with which it expects the agency to proceed." *TRAC*, 750 F.2d at 80. "Here, Congress provided a 'timetable' to inform the rule of reason: when the FEC fails to 'act on such complaint during the 120-day period beginning on the date the complaint is filed,' citizens are allowed to challenge that delay in federal court." *Iowa Values*, 573 F. Supp. 3d at 253 (quoting 52 U.S.C. § 30109(a)(8)(A)). The FEC's delay of 176 days (and counting) therefore weighs heavily in favor of finding the delay contrary to law. *Cf. FEC v. Rose*, 806 F.2d 1081, 1091 n.17 (D.C. Cir. 1986) ("[W]hen we look to the Campaign Act itself to inform a rule of reason, we see that the Commission acted within all of the time limits specified in that statute.").

Factors three and five—prejudicial effect and tolerability of delay—also support SMP here. As "multiple courts in this district have recognized[,] 'threats to the health of our electoral processes also require timely attention.'" *Iowa Values*, 573 F. Supp. 3d at 253 (quoting *Giffords*, 2021 WL 4805478, at *6); *see also DSCC v. FEC*, No. Civ.A. 95-0349 (JHG), 1996 WL 34301203, at *8 (D.D.C. Apr. 17, 1996) ("Threats to our electoral processes should not be encouraged by FEC lethargy . . . ."). SMP's Administrative Complaint alleges millions of dollars of improper expenditures in violation of FECA. The contribution limits at stake here are not merely economic—they impact the critical outcomes of elections. *See* Compl. ¶¶ 40–42. "In view of the significant amount of money at issue and the potential harms that could result if [SMP's] allegations are proven true," the FEC's failure to act was prejudicial. *Giffords*, 2021 WL 4805478, at *6. And the prejudice to SMP in particular is significant because this dispute impacts its ability

to compete on a level electoral field in the important and upcoming 2026 elections. *See supra* Part I.

As to the fourth factor, the FEC is not struggling with "higher" or "competing" priorities—it is in a state of complete paralysis. This is not a case where the FEC is simply dragging its feet, taking its time to investigate the facts, constrained by limited resources, or exercising its discretion to choose among enforcement priorities. The agency is simply unable to act.

Finally, *TRAC*'s instruction that "the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed," 750 F.2d at 80 (internal quotation marks and citation omitted), supports a contrary to law finding here in the absence of a quorum. SMP is not arguing that the FEC could have or should have acted without a quorum—the law forbids it. But it is nevertheless true that nothing has been done on SMP's Administrative Complaint, and that there seems to be no prospect of anything being done anytime soon. The equitable considerations laid out in *Common Cause* and *TRAC* are not a matter of assigning blame. "Like other courts in this district, this court [should] not excuse the FEC's inaction just because there were periods when it lacked a quorum." *Iowa Values*, 573 F. Supp. 3d at 254.

B. The FEC's lack of quorum necessitates, rather than precludes, judicial review.

Despite Congress's clear intent to provide redress when the FEC's administrative process breaks down, the NRSC would allow a lack of quorum to grind FECA's entire enforcement mechanism to an indefinite halt. Mot. at 24. According to the NRSC, delay—even interminable delay—is the "*only lawful* course" in the absence of a quorum. *Id.* That is backwards. The lack of a quorum counsels in *favor* of judicial review here. Not only has the FEC failed to act on SMP's

Administrative Complaint—there is no reasonable probability that it will take any such action in the foreseeable future. Indeed, as all agree, it is statutorily unable to do so.

Both in the FECA context and elsewhere in administrative law, it is well established that a lack of quorum does not insulate agency inaction from judicial review. Courts in this circuit have routinely refused to excuse FEC inaction when it lacks a quorum. *See, e.g.*, *Iowa Values*, 573 F. Supp. 3d at 254; *Giffords*, 2021 WL 4805478, at *7. Similarly to FECA's enforcement provision, the Administrative Procedure Act contains a right to seek judicial relief for "agency action unlawfully withheld." 5 U.S.C. § 706(1). As the Supreme Court observed in *Arizona v. Inter Tribal Council of Arizona, Inc.*, a litigant is still "free" to pursue this action even when an agency "lacks a quorum." 570 U.S. 1, 19 n.10 (2013). While the Court reserved the question of remedy—"whether a court can *compel* agency action," *id.* (emphasis added)—that is a separate question from the reasonableness of the agency's inaction.

Here, the FEC's lack of quorum is no bar to this Court finding an unreasonable delay. All SMP seeks is an order "declar[ing]" the failure to act was contrary to law, and "direct[ing]" the proper course, which is that its complaint should be heard and acted on as Congress provided either by the agency or by a court. 52 U.S.C. § 30109(a)(8)(C); *see also* Order, *Campaign Legal Ctr. v. FEC*, No. 1:20-cv-1778 (D.D.C. Oct. 14, 2020), ECF No. 14 (finding the FEC's failure to act contrary to law and directing the FEC to conform with the order); Order, *Campaign Legal Ctr. v. FEC*, No. 1:20-cv-1778 (D.D.C. Feb. 11, 2021), ECF No. 24 (finding that the FEC had failed to comply with the court's October 14, 2020 order and declaring that plaintiff could bring a civil action).

Reading FECA as the NRSC suggests would also mean that the civil suit backstop is totally unavailable when it is most needed: when the FEC *cannot* act. Statutes should be read to avoid

such absurdity. *Cannon v. Watermark Ret. Cmtys., Inc.*, 45 F.4th 137, 149 (D.C. Cir. 2022). *McCutcheon v. FEC*, 496 F. Supp. 3d 318 (D.D.C. 2020), is no help to Intervenor on this score, *contra* Mot. at 25–26, and only illustrates Congress's intent to provide a path forward for complainants like SMP. *McCutcheon* involved a party's request for an FEC advisory opinion under 52 U.S.C. § 30108, which permits requests for advice "concerning the application" of the FECA—a far cry from a live dispute between two parties. *McCutcheon*, 496 F. Supp. 3d at 321. While the FEC has a duty to timely act on such requests, *see* 52 U.S.C. § 30108(a), there is no right of action under § 30108 to seek judicial review of the agency's delay. And, more importantly, there is no provision in that section permitting a plaintiff to bring a civil action in district court for an advisory opinion. In the absence of such provisions, the *McCutcheon* court found that, to give "effect . . . to all its provisions," FECA's quorum requirement controlled and ensured that advisory opinions issue only when a proper majority agrees on that guidance. 496 F. Supp. 3d at 333.

Section 30109, unlike Section 30108, *does* offer SMP an avenue for redress in this circumstance—a contrary to law declaration followed by a citizen suit under Section 30109(A)(8)(C). Courts "assume that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another section of the same Act." *Polselli v. IRS*, 598 U.S. 432, 439 (2023) (internal quotation marks and citation omitted). The NRSC's argument that "it is up to Congress, not the federal courts, to fix any dysfunction caused by a lack of quorum," Mot. at 27, overlooks that Congress *has* fixed this problem with the private right of action in Section 30109(a)(8)(C). All the Court must do is give effect to Congress's chosen remedial scheme, which explicitly contemplates citizen suits in the event that the FEC—whether due to a lack of quorum or political deadlock—may fail in its duty to act on administrative complaints.

C. The FEC's notification letter to the NRSC was not enforcement action.

The NRSC counterintuitively argues that, despite its lack of quorum, the FEC did "act" within the meaning of FECA when it issued a notification letter to the NRSC in August 2025. Mot. at 28–29. Not so. The sending of a notification letter under 52 U.S.C. § 30109(a)(1) is a purely ministerial step that must occur *before* "any vote on the complaint, other than a vote to dismiss," to give the alleged violator an opportunity to demonstrate "that no *action* should be taken." *Id.* (emphasis added). FECA thus by its plain terms distinguishes notification in writing from "action" on the complaint. It would be nonsensical to say that the recipient of the notification must have an opportunity to argue that "no action should be taken against such person" if the sending of the notification itself qualified as an "action." And the verb form of the word "action"—to "act"—should have the same meaning in 52 U.S.C. § 30109(a)(8)(C) that it does in 52 U.S.C. § 30109(a)(1). *See IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005).

The NRSC cites no precedent for its contrary interpretation and there is none. The D.C. Circuit in *45Committee, Inc.*, 118 F.4th 378, held that a failed reason-to-believe vote qualified as "some cognizable enforcement step under the statute." *Id.* at 391. That is a far cry from the mere sending of a notification letter, which is done automatically without any vote by the Commission. And in *Perot v. FEC*, 97 F.3d 553 (D.C. Cir. 1996), the court simply observed that the "next step" after sending a notification letter "is for the FEC to vote to determine whether there is reason to believe the subject of the complaint has violated the Act." *Id.* at 558. Neither case even remotely suggests that sending a notification letter is a "cognizable enforcement step," nor that the FEC may take such a step in the absence of a quorum. That interpretation would swallow Section 30109(a)(8)(C)'s "failure to act" provision whole.

III. FECA does not violate Article II.

The NRSC's argument that FECA's entire enforcement mechanism violates Article II misapprehends the nature of the FEC's inaction and has been rejected by multiple courts. As an initial matter, the NRSC's arguments regarding the FEC's prosecutorial discretion are misplaced because the FEC has not invoked its discretion here. True, the FEC may act on an administrative complaint by declining to bring an enforcement action as a matter of prosecutorial discretion. *See Campaign Legal Ctr. v. FEC*, No. 19-cv-2336 (JEB), 2025 WL 315143, at *5 (D.D.C. Jan. 28, 2025) ("The basis for such declinations may be considerations of prosecutorial discretion, which have been deemed virtually unreviewable—at least for now." (citing *End Citizens United PAC v. FEC*, 90 F.4th 1172, 1178–79 (D.C. Cir. 2024)), *appeal docketed*, No. 25-5027 (D.C. Cir. Feb 12, 2025).[2] But that is not what happened here. The FEC did not "choose[] not to invest its limited investigative resources." Mot. at 30. It simply did not make any choice at all. The D.C. Circuit has "expressly rejected" the argument that "deadlock dismissals" are "simply exercises of prosecutorial discretion." *End Citizens United PAC v. FEC*, 69 F.4th 916, 920 (D.C. Cir. 2023) (quoting *DCCC v. FEC*, 831 F.2d 1131, 1133–34 (D.C. Cir. 1987)). Instead, "to determine whether the Commission exercised its prosecutorial discretion under *Heckler* in effecting a deadlock dismissal, the court looks not to the label given to one or more of its failed votes but rather to the statement of reasons of the controlling Commissioners." *Id.* at 921; *cf. CREW v. FEC*, 892 F.3d 434, 439 (D.C. Cir. 2018) ("The three naysayers on the Commission placed their judgment squarely on the ground of prosecutorial discretion."). Here, there was no statement of reasons—or

[2] The D.C. Circuit has granted rehearing *en banc* in *End Citizens United PAC* to reconsider whether FEC dismissals resting on prosecutorial discretion are immune from judicial review. *End Citizens United PAC v. FEC*, No. 22-5277, 2024 WL 4524248 (D.C. Cir. Oct. 15, 2024).

even a failed vote—because the FEC lacked the quorum necessary even for a deadlock dismissal. There was therefore no exercise of prosecutorial discretion.

Nor is the NRSC correct that FECA's citizen suit provision violates Article II. Mot. at 31. At least two courts in this district have rejected that argument, explaining that § 30109(a)(8)(C) citizen suits "do not violate the Take Care Clause" in Article II "because these suits do not implicate the Executive Branch's prosecutorial discretion. If the FEC determines in its prosecutorial discretion to decline enforcement and dismiss a complaint, that action cannot be held contrary to law and cannot trigger § 30109(a)(8)(C)." *Iowa Values*, 573 F. Supp. 3d at 256 (citing *CREW v. Am. Action Network*, 410 F. Supp. 3d 1, 26 (D.D.C. 2019)). Moreover, § 30109(a)(8)(C) "does not violate Article II because in every case in which it is available, the citizen with standing to invoke the provision does so in its own name to remedy a violation of federal law that has caused it injury." *CREW*, 410 F. Supp. 3d at 27 (internal quotation marks and citation omitted). In other words, a private citizen bringing a citizen suit under FECA is "not vindicating a public right in the courts" but is instead "vindicating its own unique and particularized informational injury." *Iowa Values*, 573 F. Supp. 3d at 256.

CONCLUSION

The Court should deny the NRSC's motion to dismiss.

Dated: May 11, 2026

Respectfully submitted,

/s/ *David R. Fox*
David. R. Fox (D.C. Bar No. 1015031)
Richard A. Medina (D.C. Bar No. 90003752)
dfox@elias.law
rmedina@elias.law
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW, Suite 400
Washington, D.C. 20001
Tel: (202) 968-4490

Walker McKusick* (WA Bar No. 63205)
wmckusick@elias.law
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, WA 98101
Tel: (202) 968-4659

Counsel for Plaintiff

**Admitted pro hac vice*