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

DCCC,

*Plaintiff,*

v.

FEDERAL ELECTION COMMISSION,

*Defendant,*

NRSC,

*Intervenor-Defendant.*

Civil Action No. 24-cv-2935 (RDM)

**NRSC'S RESPONSE TO DCCC'S SUPPLEMENTAL MEMORANDUM**

The DCCC's supplemental brief concedes the heart of its case is moot. It does not dispute that the alleged competitive injury that once animated this suit is gone following the Supreme Court's decision in *NRSC v. FEC*, 146 S. Ct. 2404 (2026). So the DCCC now relies exclusively on its purported informational injury. But that theory relies on issues not raised before the FEC, claims not asserted in the Amended Complaint (or supported by evidence at summary judgment), and an erroneous view of the law. Beyond those dispositive jurisdictional flaws, the DCCC's supplemental brief confirms that it lacks a cause of action. The Court should dismiss.

## I. THE DCCC CONFIRMS INFORMATIONAL STANDING CANNOT DEFEAT MOOTNESS.

The DCCC's brief confirms that its only possible basis for standing is informational injury. *See* Dkt. 60 at 6–10 (DCCC Supp. Br. 1–5). But there is no such injury for four reasons.

*First* is mootness. The DCCC claims an informational injury from the FEC's failure to act on an advisory-opinion request. But that advisory-opinion request made no mention of disclosure obligations. *See* Dkt. 59 at 6–7 (NRSC Supp. Br. 2–3); Dkt. 58 at 14–15 (FEC Supp. Br. 9–10). For that reason the DCCC's Amended Complaint does not—and could not—bring a claim for relief about disclosure obligations relating to the joint-fundraising advertisements at issue in the advisory-opinion request. *See* Dkt. 59 at 8–9 (NRSC Supp. Br. 4–5); Dkt. 58 at 14–15 (FEC Supp. Br. 9–10). Those problems end this case: the DCCC cannot escape mootness by manufacturing "an informational injury" out of an "excessive-contributions claim," *AB PAC v. FEC*, 2023 WL 4560803, at *5 (D.D.C. July 17, 2023) (Kelly, J.) (dismissing on Article III jurisdictional grounds); *see also id.* at n.4 (observing that a plaintiff "cannot expand the scope of its administrative complaint when responding to a motion to dismiss" (cleaned up)). That is doubly so for an excessive-contributions claim that all agree is now moot. *See* Dkt. 59 at 9 (NRSC Supp. Br. 5). Despite the Court repeatedly raising this issue at the July 29 status conference, *see* Dkt. 59 at 7 (NRSC Supp. Br. 3) (quoting transcript), the DCCC has no response.[1]

*Second*, the informational injuries alleged in the DCCC's supplemental brief appear nowhere in the DCCC's Amended Complaint. The Amended Complaint alleged two missing pieces of information: (1) "how much each ad raises," and (2) "how much each [joint-fundraising committee] participant committee is paying for each ad." Dkt. 28 at 28 (¶ 89). The DCCC's supplemental brief alleges it lacks (1) disclosure of "the candidate supported," (2) disclosure of expenditures on a "JFC Ad purchase" (not "each ad"), and (3) monthly disclosures. Dkt. 60 at 7–8 (DCCC Supp. Br. 2–3). Even if the DCCC were right that its success in this suit would entitle it to this information, *but see infra*, that would not redress alleged informational deficits about "each ad." Dkt. 28 at 28 (Am. Compl. ¶ 89). That defeats redressability and compels dismissal. *See* Dkt. 59 at 10 (NRSC Supp. Br. 6 & n.3).

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[1] The DCCC skips informational injury and recycles its mistaken arguments about the NRSC being bound by a decision of this Court. *See* Dkt. 60 at 10–11 (DCCC Supp. Br. 5–6). That argument misses the Court's point and is wrong. *See* Dkt. 40 at 47–48 (NRSC MTD Reply 38–39).

*Third*, the DCCC's standing declaration fails to establish an evidentiary basis for its new theories. A "plaintiff moving for summary judgment" must provide "evidence sufficient to support its standing." *Entergy Arkansas, LLC v. FERC*, 134 F.4th 576, 580 (D.C. Cir. 2025). Here, the DCCC's only evidence is a declaration attesting that it categorically lacks "information (amount, purpose, etc.) about the expenditures for which each participant of a joint fundraising committee is ultimately responsible" and that the "DCCC makes resource allocations based on that type of information." Dkt. 36-1 at 6 (Merz Decl. ¶ 13). But the DCCC in fact does have access to "that type of information." *See* Dkt. 59 at 10–13 (NRSC Supp. Br. 6–9); Dkt. 58 at 11–13 (FEC Supp. Br. 6–8). While the DCCC now questions the utility of that information, *see* Dkt. 60 at 6–10 (DCCC Supp. Br. 1–5), its declarant says *nothing* about any need for specific information beyond what is already available to it or how any additional information would be useful. Such generic, factually incorrect assertions fail to place the DCCC's standing beyond dispute. *See, e.g.*, *Pub. Citizen, Inc. v. Trump*, 435 F. Supp. 3d 144, 152 (D.D.C. 2019) (Moss, J.). Thus, the Court should grant summary judgment for the NRSC. *See* Fed. R. Civ. P. 56(1).

*Fourth*, the DCCC's attempts to manufacture informational deficits are unconvincing. The DCCC says it needs to know "the candidate supported" in joint-fundraising committees with "multiple candidate-committee members." Dkt. 60 at 7 (DCCC Supp. Br. 2). But the DCCC can already find "the name of the candidate" featured in an advertisement in a television station's political file. 47 U.S.C. § 315(e)(2); *see* Dkt. 59 at 10–11 (NRSC Supp. Br. 6–7). It can also view the ads themselves. Further, the DSCC's advisory-opinion request made no mention of multi-candidate committees, and the DCCC's citation to 2026 reports cannot establish standing for a complaint filed in 2024. *See Jibril v. Mayorkas*, 101 F.4th 857, 870 (D.C. Cir. 2024) ("the plaintiff bears the burden of establishing standing at the outset of the litigation").

The DCCC also says it lacks information about "the share of any JFC Ad purchase that is attributable to each participant." Dkt. 60 at 7 (DCCC Supp. Br. 2). But, for one, the DCCC can figure out this information using the already-available allocation formula. *See* Dkt. 59 at 10–12 (NRSC Br. 6–8); Dkt. 58 at 12–13 (FEC Br. 7–8). The DCCC quibbles with the reliability of this method on an ad-by-ad basis. *See* Dkt. 60 at 8 (DCCC Supp. Br. 3) (asserting formula must be applied for "each individual contribution"), 9 (p. 4) (asserting formula can change "per fundraising event"), 10 (p. 5) (asserting "JFC's FEC report does not distinguish among fundraising events"). But the DCCC never explains why deeming some joint-fundraising committee advertisements "coordinated expenditures" would change those supposed limitations. Nor could it: "the substance of the public information is the same" regardless of reporting vehicle. Dkt. 58 at 12–13 (FEC Br. 7–8). Thus, "[e]ven if joint-fundraising advertisements were deemed coordinated expenditures, the DCCC would not obtain any information it claims to lack." Dkt. 59 at 12 (NRSC Br. 8).

Next, the DCCC says "JFCs generally file reports quarterly, whereas party committees must file monthly." Dkt. 60 at 7–8 (DCCC Supp. Br. 2–3) (emphasis omitted). But all television ad spending is reported *daily* under the FCC's political-file rules. *See* Dkt. 59 at 11 (NRSC Supp. Br. 7 & n.4). In any event, deeming joint fundraising committee advertisements "coordinated expenditures" would not change the fact that these committees are required to file FEC reports only quarterly. *See* Dkt. 59 at 12 (NRSC Supp. Br. 8 n.6).

## II. THE DCCC CONFIRMS IT LACKS A CAUSE OF ACTION.

The DCCC twists both settled doctrine and its own pleadings to argue that its challenge is "fit for review." Dkt. 60 at 12–15 (DCCC Supp. Br. 7–10). While the NRSC's principal briefing has already rebutted these arguments, it addresses two points here.

*First*, the DCCC repeatedly cites (at 1, 6, 10) the APA for the proposition that courts reviewing agency action must "decide all relevant questions of law." But it omits the qualifying language immediately preceding that clause: "*To the extent necessary to decision* and when presented, the reviewing court shall decide all relevant questions of law[.]" 5 U.S.C. § 706 (emphasis added). Here, the Court is asked to decide whether the FEC's "failure to issue an advisory opinion, and subsequent closure of" the advisory-opinion docket was lawful. Dkt. 28 at 30 (Am. Compl. ¶ 97). Deciding whether joint-fundraising committee advertisements are "coordinated expenditures" is not "necessary to decision" after the Supreme Court's decision in *NRSC*. That is because if the FEC's non-decision is understood as a determination that joint-fundraising committee advertisements do not violate FECA's contribution limits, that determination was correct because *NRSC* rendered those limits unconstitutional. Thus, the DCCC lacks a cause of action for the relief it seeks. *Accord* Dkt. 40 at 17 (NRSC MTD Reply 8) (citing 5 U.S.C. § 706).

*Second*, the DCCC argues that three Commissioners' votes against enforcement can be treated as agency action and that the same reasoning should apply here. *See* Dkt. 60 at 15 (DCCC Supp. Br. 10). But the D.C. Circuit has already rejected that analogy because "FECA's text explicitly permits review of probable-cause deadlocks as agency action." *Pub. Citizen, Inc. v. FERC*, 839 F.3d 1165, 1170 (D.C. Cir. 2016). Because the DCCC did not pursue FECA's enforcement scheme, it is subject to the default agency-action rule that when an agency reaches a "deadlock," it has not "engaged in an 'action' of any kind." *Ibid.*; *see also ibid.* (favorably citing case "finding unreviewable an FEC deadlock" in response to an advisory-opinion request). The D.C. Circuit has already squarely rejected the DCCC's exact analogy. This Court should too.

## CONCLUSION

The Court should grant the NRSC's motion to dismiss and deny the DCCC's motion for summary judgment.

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Respectfully submitted,

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