IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GIFFORDS,

Plaintiff,

v.

NATIONAL RIFLE ASSOCIATION OF AMERICA POLITICAL VICTORY FUND, *et al.*,

Defendants.

No. 21-cv-2887-EGS

PLAINTIFF'S COMBINED MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO ALL DEFENDANTS' MOTIONS TO DISMISS

TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

INTRODUCTION 1

BACKGROUND 4

I. Statutory, Regulatory, and Legal Background 4

A. FECA's Contribution Limits and Disclosure Requirements 4

B. The Federal Election Commission 6

1. Structure and Voting Rules 6

2. Decisions to Investigate Require Four Votes to Find "Reason to Believe" 6

3. Decisions to Dismiss Require a Majority Vote to "Close the File" 6

4. Lawsuits Challenging an FEC Dismissal or Delay 8

5. Citizen Suits to Remedy FECA Violations 10

II. Statement of Facts 10

A. Defendants' Violations of FECA 10

B. Plaintiff's Injuries Caused by Defendants' FECA Violations 11

III. Plaintiff's Compliance with 52 U.S.C. § 30109(a)(8) and *Giffords v. FEC* 13

LEGAL STANDARDS 15

ARGUMENT 16

I. Plaintiff Has Standing to Challenge Defendants' Illegal Coordination Scheme 17

A. Plaintiff Has Competitor Standing 17

1. Plaintiff Has Suffered a Competitive Injury 17

2. Plaintiff's Competitive Injuries Are Caused by the NRA Defendants and Redressable by the Court 23

B. Plaintiff Has Informational Standing 26

II. Plaintiff Has Satisfied the Requirements for Filing this FECA Citizen Suit 29

A. The Complaint Has Sufficiently Pleaded that Plaintiff Has Satisfied FECA's Requirements for Filing a Citizen Suit 30

B. Plaintiff Has Satisfied FECA's Requirements for Filing a Citizen Suit 31

C. This Court Correctly Ruled That Plaintiff Met the Statutory Requirements for Filing a Direct Action Under FECA in *Giffords v. FEC* 33

1. A Failed Reason-to-Believe Vote Is Not a Dismissal....................33

i. FECA and FEC Regulations 35

ii. FEC Policy 36

iii. FEC Practice 37

iv. Case Law 39

v. Defendant's Dismissal Theory Leads to Absurd Results and Is Contrary to the Bipartisan Structure of the Commission 41

vi. Defendants' Disagreement with FECA's Citizen-Suit Provision Provides No Basis for Changing the FEC's Voting Rules....................43

2. The FEC Has Not Dismissed the Underlying Enforcement Matter in this Case Because It Has Not Voted to Close the File....................44

3. The Court Correctly Determined that the Commission's Failure to Act on Plaintiff's Administrative Complaints Was Contrary to Law....................46

III. Plaintiff's Claims Are Not Barred by the Statute of Limitations....................48

A. The Statute of Limitations Did Not Begin to Run Against Giffords Until its Claims Against Defendants Accrued on November 1, 2021 48

B. The Statute of Limitations Applies Only to Monetary Sanctions and Does Not Bar Declaratory and Injunctive Relief....................51

IV. This Court Has Personal Jurisdiction over Matt Rosendale for Montana 53

A. Jurisdiction Is Proper Based on the Rosendale Campaign's FEC Filings in the District....................54

B. Jurisdiction Is Proper Based on the Campaign's Fundraising in the District....................57

C. If the Court Believes it Lacks Personal Jurisdiction the Proper Result Is to Grant Jurisdictional Discovery, or, at Minimum, Transfer the Case to a Proper Forum.......61

CONCLUSION....................61

TABLE OF AUTHORITIES

Cases:

3M Co. (Minnesota Mining & Manufacturing) v. Browner, 17 F.3d 1453 (D.C. Cir. 1994) 49, 50

Air Line Pilots Association, International v. Chao, 889 F.3d 785 (D.C. Cir. 2018) 21

Akhmetshin v. Browder, 993 F.3d 922 (D.C. Cir. 2021)....55, 56

American Action Network v. Cater America, LLC, 983 F. Supp. 2d 112 (D.D.C. 2013)....53

Artis v. Greenspan, 223 F. Supp. 2d 149 (D.D.C. 2002)....54

Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150 (1970)....17

Atchley v. AstraZeneca UK, 22 F.4th 204 (D.C. Cir. 2022) 53

Atlantigas v. Nisource, 290 F. Supp. 2d 34 (D.D.C. 2003) 56

Baker v. Carr, 369 U.S. 186 (1962)....23

Bigelow v. Garrett, 299 F. Supp. 3d 34 (D.D.C. 2018) 60, 61

Buchanan v. FEC, 112 F. Supp. 2d 58 (D.D.C. 2000) 18, 22

Buckley v. Valeo, 424 U.S. 1 (1976) 4, 5

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985)....54

Campaign Legal Center v. FEC, 952 F.3d 352 (D.C. Cir. 2020) 27, 29, 30

Campaign Legal Center v. FEC, No. 20-cv-0809-ABJ, 2021 WL 5178968 (D.D.C. Nov. 8, 2021) 10, 46

Campaign Legal Center v. Iowa Values, No. 21-CV-389-RCL, 2021 WL 5416635 (D.D.C. Nov. 19, 2021)....10, 29, 30, 31, 43, 44

Cellutech v. Centennial Cellular, 871 F. Supp. 46 (D.D.C. 1994) 61

Cement Kiln Recycling Coalition v. EPA, 255 F.3d 855 (D.C. Cir. 2001)....17

Chamber of Commerce of the U.S. v. FEC, 69 F.3d 600 (D.C. Cir. 1995) 21

Citizens for Percy '84 v. FEC, No. 84-cv-2653, 1984 WL 6601 (D.D.C. 1984)....9

Citizens for Responsibility & Ethics in Washington v. American Action Network, 410 F. Supp. 3d 1 (D.D.C. 2019)....40, 43, 48, 50

Citizens for Responsibility & Ethics in Washington v. FEC, 236 F. Supp. 3d 378 (D.D.C. 2017) 7, 39, 40

Citizens for Responsibility & Ethics in Washington v. FEC, 799 F. Supp. 2d 78 (D.D.C. 2011) 9, 40

Citizens for Responsibility & Ethics in Washington v. FEC, 892 F.3d 434 (D.C. Cir. 2018) 7, 9, 39, 40

Citizens for Responsibility & Ethics in Washington v. FEC, 971 F.3d 340, 346 (D.C. Cir. 2020) 7, 39

Citizens for Responsibility & Ethics in Washington v. FEC, 993 F.3d 880 (D.C. Cir. 2021) 7

Committee on the Judiciary of U.S. House of Representatives v. McGahn, 968 F.3d 755 (D.C. Cir. 2020) 28

Common Cause v. FEC, 489 F. Supp. 738 (D.D.C. 1980) 9

Cope v. Anderson, 331 U.S. 461 (1947) 52

Crown Coat Front Co. v. United States, 386 U.S. 503 (1967) 49, 50

Doe v. FEC, 920 F.3d 866 (D.C. Cir. 2019) 8, 39

Doe v. Roman Cath. Diocese of Greensburg, No. CV 20-1750 (EGS), 2022 WL 203455 (D.D.C. Jan. 24, 2022) 54, 58

Environment Research International v. Lockwood Greene Engineers, 355 A.2d 808 (D.C. 1976) 55, 56

Environmental Defense Fund v. EPA, 922 F.3d 446 (D.C. Cir. 2019)....................26, 28, 29

FC Investment Group LC v. Lichtenstein, 441 F. Supp. 2d 3 (D.D.C. 2006)....................53

FEC v. Democratic Senatorial Campaign Committee, 454 U.S. 27 (1981) 41

FEC v. National Republican Senatorial Committee, 877 F. Supp. 15 (D.D.C. 1995) 50, 51

FEC v. National Right to Work Committee, Inc., 916 F. Supp. 10 (D.D.C. 1996)....................52

Forras v. Rauf, 812 F.3d 1102 (D.C. Cir. 2016)....................53

Gabelli v. SEC, 568 U.S. 442 (2013)....................49

Gottlieb v. FEC, 143 F.3d 618 (D.C. Cir. 1998)....................20, 21, 24, 26

GTE New Media Services, Inc. v. BellSouth Corp., 199 F.3d 1343 (D.C. Cir. 2000) 61

Hardin v. Kentucky Utility Co., 390 U.S. 1 (1968)....................17

Holmberg v. Armbrecht, 327 U.S. 392 (1946)....................51

IMAPizza, 334 F. Supp. 3d 95 (D.D.C. 2018) 54

International Shoe Co. v. Washington, 326 U.S. 310 (1945) 53

Jordan v. FEC, 68 F.3d 518 (D.C. Cir. 1995) 9, 40

Kokesh v. SEC, 137 S. Ct. 1635 (2017) 51

La Botz v. FEC, 889 F. Supp. 2d 51 (D.D.C. 2012) 18, 21

Lewy v. Southern Poverty Law Center, 723 F. Supp. 2d 116 (D.D.C. 2010) 55

Licci ex rel. Licci v. Lebanese Canadian Bank, SAL, 732 F.3d 161 (2d Cir. 2013)....................59

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992) 24

Nader v. FEC, 725 F.3d 226 (D.C. Cir. 2013)....................18, 22

Natural Law Party of the U.S. v. FEC, 111 F. Supp. 2d 33 (D.D.C. 2000)............................18, 22

Okolie v. Future Services General Trading & Contracting Co., W.L.L., 102 F. Supp. 3d 172 (D.D.C. 2015) 16, 55

Ortiz v. Secretary of Defense, 41 F.3d 738 (D.C. Cir. 1994)...49

RELX, Inc. v. Baran, 397 F. Supp. 3d 41 (D.D.C. 2019)...15

Riordan v. SEC, 627 F.3d 1230 (D.C. Cir. 2010) 51, 52

Rose v. Silver, 394 A.2d 1368 (D.C. 1978)..56

SEC v. Carrillo, 115 F.3d 1540 (11th Cir. 1997) 59

Shays v. FEC, 414 F.3d 76 (D.C. Cir. 2005) 17, 18, 19, 20, 21, 22, 23, 24

Sherley v. Sebelius, 610 F.3d 69 (D.C. Cir. 2010) 20, 24, 25

Shoppers Food Warehouse v. Moreno, 746 A.2d 320 (D.C. 2000)..54, 58

Sierra Club v. Oklahoma Gas & Electric Co., 816 F.3d 666 (10th Cir. 2016) 52

Spannaus v. FEC, 990 F.2d 643 (D.C. Cir. 1993) 9, 40

Spannaus v. U.S. Department of Justice, 824 F.2d 52 (D.C. Cir. 1987) 49

United States v. Wilfred American Education Corporation, No. MISC. 86-333, 1987 WL 10501 (D.D.C. Apr. 23, 1987)..57

Ventura v. BEBO Foods, Inc., 595 F. Supp. 2d 77, 79 (D.D.C. 2009)...59

Wertheimer v. FEC, 268 F.3d 1070 (D.C. Cir. 2001)...27

Statutes and Regulations:

28 U.S.C. § 1406(a) 61

28 U.S.C. § 2462...48, 49, 51, 52

52 U.S.C § 30104(a) 26

52 U.S.C § 30104(b)(3) 28

52 U.S.C § 30106(a)(1)..6

52 U.S.C § 30106(b)(1) 6

52 U.S.C § 30106(c) 6, 41, 42

52 U.S.C § 30107(a)(9)...6, 41

52 U.S.C § 30109(a)(1)...6, 35

52 U.S.C § 30109(a)(2)...6, 14, 34, 35

52 U.S.C § 30109(a)(8)...13, 29, 30, 31, 32, 47

52 U.S.C § 30109(a)(8)(A) 8, 13, 44, 50, 56,

52 U.S.C § 30109(a)(8)(B) 8, 40

52 U.S.C § 30109(a)(8)(C) 8, 10, 15, 31, 32, 46, 48, 50, 57

52 U.S.C § 30109(a)(9)....................32
52 U.S.C § 30109(a)(12)(A)....................8
52 U.S.C § 30116(a)(1)....................5
52 U.S.C § 30116(a)(1)(C)....................5
52 U.S.C § 30116(a)(7)(B)....................5, 29
52 U.S.C § 30116(a)(7)(B)(i)....................5
52 U.S.C § 30118(a)....................5
11 C.F.R. § 5.4(a)(4)....................7, 8, 36
11 C.F.R. § 109.20....................5
11 C.F.R. § 109.21....................5, 26
11 C.F.R. § 109.21(b)....................5
11 C.F.R. § 109.21(b)(2)....................5
11 C.F.R. § 111.9(b)....................36
11 C.F.R. § 111.20(a)....................8, 36
D.C. Code § 13-423(a)(1)....................53

Other Authorities:

Amended Certification, MURs 6391 & 6471 (CHGO) (Sept. 16, 2014), https://eqs.fec.gov/eqsdocsMUR/15044380338.pdf....................9

Certification MUR 7181 (Independent Women's Voice) (Feb. 9, 2021), https://eqs.fec.gov/eqsdocsMUR/7181_06.pdf....................38

Certification, Agenda Doc. No. 21-21-A (Apr. 22, 2021), https://www.fec.gov/resources/cms-content/documents/Vote-Draft-Statement-of-Policy-Initial-Stage-in-the-Enforcement-Process-4-22-21.pdf....................37

Certification, MUR 2163 (American Jewish Committee) (Jan. 9, 1991), https://www.fec.gov/files/legal/murs/2163.pdf....................9

Certification, MUR 3178 (Handgun Control, Inc.) (July 24, 1991), https://www.fec.gov/files/legal/murs/3178.pdf....................9

Certification, MUR 4012 (Freedom's Heritage Forum, *et al.*) (Feb. 10, 1998), https://www.fec.gov/files/legal/murs/4012/28044203712.pdf....................38

Certification, MUR 4012 (Freedom's Heritage Forum, *et al.*) (May 27, 1998), https://www.fec.gov/files/legal/murs/4012/28044203734.pdf....................38

Certification, MUR 5754 (MoveOn PAC, *et al.*) (Sept. 14, 2004), https://www.fec.gov/files/legal/murs/5754/0000590C.pdf)....................38

Certification, MUR 5754 (MoveOn PAC, *et al.*) (Sept. 28, 2004), https://www.fec.gov/files/legal/murs/5754/0000590D.pdf....................38

Certification, MUR 5908 (Peace Through Strength PAC) (June 29, 2010), https://www.fec.gov/files/legal/murs/5908/10044274525.pdf 9

Certification, MUR 6589 (American Action Network, *et al.*) (June 26, 2014), https://eqs.fec.gov/eqsdocsMUR/14044361924.pdf....................40

Certification, MUR 6589 (American Action Network, *et al.*) (Oct. 19, 2016), https://eqs.fec.gov/eqsdocsMUR/16044401006.pdf....................40

Certification, MUR 6623 (Scalise for Congress, *et al.*) (July 31, 2012), https://eqs.fec.gov/eqsdocsMUR/13044330654.pdf....................38

Certification, MUR 7271 (Alexandra Chalupa, *et al.*) (Apr. 8, 2021), https://www.fec.gov/files/legal/murs/7271/7271_40.pdf 35

Certification, MURs 6391 & 6471 (CHGO) (Oct. 1, 2015), https://www.fec.gov/files/legal/murs/6391/15044380175.pdf 9, 39

Certification, MURs 7350, 7351, 7357 & 7382 (Cambridge Analytica LLC, *et al.*) (Apr. 12, 2019), https://www.fec.gov/files/legal/murs/7350/7350_27.pdf 7

Certification, MURs 7350, 7351, 7357 & 7382 (Cambridge Analytica LLC, *et al.*) (July 30, 2019), https://www.fec.gov/files/legal/murs/7350/7350_29.pdf....................7

Certification, MURs 7350, 7351, 7357 & 7382 (Cambridge Analytica LLC, *et al.*) (Aug. 22, 2019), https://www.fec.gov/files/legal/murs/7350/7350_37.pdf....................7

Certification, MURs 7370 & 7496 (New Republican PAC, *et al.*) (June 10, 2021), https://eqs.fec.gov/eqsdocsMUR/7370_16.pdf....................38

Certification, MURs 7370 & 7496 (New Republican PAC, *et al.*) (May 20, 2021), https://www.fec.gov/files/legal/murs/7370/7370_15.pdf 38

Club for Growth PAC, Return of Organization Exempt from Income Tax (IRS Form 990) (Dec. 15, 2009), available at https://pdf.guidestar.org/PDF_Images/2009/204/681/ 2009-204681603-05a204a1-9O.pdf....................60

Commission Action, MUR 002 (Litton) (1976), https://www.fec.gov/files/legal/murs/2.pdf 7

Commission Action, MUR 003 (Lemon) (Mar. 22, 1976), https://www.fec.gov/files/legal/murs/3.pdf 7

Contact Us, Club for Growth, https://www.clubforgrowth.org/contact/ 60

Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50702 (Aug. 2, 2016)....................8

FEC Directive No. 10 § B (June 8, 1978, amend. Dec. 20, 2007), https://www.fec.gov/resources/cms-content/documents/directive_10.pdf....................6

FEC, Enforcement Query System, https://eqs.fec.gov/eqs/searcheqs 36

FECTube, *Open Meeting of April 22, 2021*, at 14:31-15:18, YouTube.com (Apr. 22, 2021), https://www.youtube.com/watch?v=qMozMP5sPIE&t=871s 42

Lachlan Markay, *Exclusive: Audio Reveals Potentially Illegal Coordination Between NRA and Montana Senate Hopeful Matt Rosendale*, DailyBeast (Nov. 20, 2018), https://www.thedailybeast.com/exclusive-audio-reveals-potentially-illegal-coordination-between-nra-and-montana-senate-hopeful-matt-rosendale 58

Letter from Alan Gura, V.P. for Litigation, Institute for Free Speech, to the Hon. Shana M. Broussard, Chair, FEC (Apr. 8, 2021), https://www.fec.gov/resources/cms-content/documents/IFS_comment_on_Agenda_Document_No_21-21-A.pdf........................37

Matt Rosendale for Montana, Itemized Receipts (FEC Form 3) (June 20-Sept. 28, 2018), available at https://docquery.fec.gov/cgi-bin/forms/C00548289/1272593/sb/ALL 60

Matt Rosendale for Montana, Itemized Receipts (FEC Form 3) (Oct. 1-16, 2018), available at https://docquery.fec.gov/cgi-bin/forms/C00548289/1283737/sb/ALL 60

Matt Rosendale for Montana, Statement of Organization (FEC Form 1) (Apr. 3, 2018), available at https://docquery.fec.gov/pdf/989/201804030200179989/201804030200179989.pdf 60

Montana Senate 2018 Race, OpenSecrets, https://www.opensecrets.org/races/contributors?cycle=2018&id=MTS1&spec=N..60

Statement of Policy Regarding Closing the File at the Initial Stage in the Enforcement Process (Apr. 1, 2021), https://www.fec.gov/resources/cms-content/documents/mtgdoc-21-21-A.pdf..36

Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545 (Mar. 16, 2007)..37

INTRODUCTION

Plaintiff Giffords is a gun-safety organization that, among other goals, works to oppose the National Rifle Association ("NRA") and the federal candidates it supports. With this lawsuit, Giffords seeks to remedy the injuries it is suffering due to an ongoing scheme by two NRA entities to illegally contribute tens of millions of dollars in excessive and unreported campaign contributions to several federal candidates, including to candidates Josh Hawley and Matt Rosendale. The relief Plaintiff seeks would put an end to the competitive disadvantage Giffords is suffering due to Defendants' violations of federal campaign finance law and vindicate Giffords's statutory right to complete and accurate information about Defendants' campaign finance activity.

Defendants—the NRA affiliates, Josh Hawley for Senate ("Hawley Campaign"), and Matt Rosendale for Montana ("Rosendale Campaign")—have each moved to dismiss. But no Defendant disputes that Giffords's allegations detailing the scheme successfully state claims for violations of the Federal Election Campaign Act ("FECA"). Instead, Defendants challenge this Court's jurisdiction and incorrectly claim that this suit is time barred. The Court should reject these claims.

First, Giffords has standing in two respects. It has competitor standing because Defendants' illegal scheme injures Giffords as a competitor of the NRA affiliates and their preferred candidates, not only in terms of spending funds, but also in electing candidates, and promoting policy goals. While the NRA affiliates have illegally contributed vast sums to their preferred candidates, including the Defendant candidate campaigns, Giffords has no legal way of obtaining the same financial and electoral benefits, which denies Plaintiff its statutory right to a FECA-regulated competitive political environment. Defendants' assertions that political competitor standing is limited only to candidates challenging Federal Election Commission ("FEC") regulations has no basis in the law.

Although Giffords's competitive injury is sufficient to establish its standing, Giffords also has informational standing because Defendants failed to report the illegal contributions at issue to the FEC as required by FECA. As a result, Defendants deprived Giffords of the accurate disclosure of contributor information that Giffords is entitled to under FECA, and which helps Giffords's efforts in advocating policies, mobilizing voters, and educating and supporting candidates. Defendants' claim that Plaintiff already has all of the information FECA requires is baseless in light of their admission that they have not reported the contributions Plaintiff alleges were made, including the details about such contributions FECA requires.

Second, in *Giffords v. FEC*, No. 19-cv-1192-EGS (D.D.C.), this Court specifically authorized Plaintiff to file this citizen suit against Defendants, and yet the NRA affiliates and Hawley Campaign (but not the Rosendale Campaign) claim that FECA's citizen-suit requirements have not been satisfied. This is incorrect. No Defendant disputes that the Complaint successfully pleads that Giffords satisfied each of FECA's requirements. Instead, Defendants incorrectly assert that they can relitigate this Court's ruling in *Giffords v. FEC* that the FEC's failure to act on Giffords's administrative complaints against Defendants was contrary to law. But Defendants misunderstand the relevant prerequisite: FECA requires a court in this District to "declare" that the FEC failed to act contrary to law before a citizen suit may be filed; as no Defendant disputes, this Court in fact issued that declaration and subsequently authorized this suit. Defendants' motions to dismiss therefore do not provide an opportunity for them to collaterally attack *Giffords v. FEC* or to require Plaintiff to, yet again, demonstrate that the FEC illegally failed to act.

In any event, Defendants' attempt to relitigate *Giffords v. FEC* fails on the merits. Defendants incorrectly assert that this Court erred in concluding that the FEC failed to act because, in their view, the FEC had allegedly already dismissed Plaintiff's administrative complaints seven

months earlier when it deadlocked in a series of votes on whether to find "reason to believe" Defendants violated FECA. But this Court was well aware of those votes when it concluded that the FEC's failure to act was contrary to law. And as FEC counsel accurately informed the Court at the time, those deadlocked votes did not dismiss the enforcement matters. As the text of FECA, FEC regulations, FEC policy, a half-century of FEC practice, and ample case law all make abundantly clear, an FEC enforcement matter is dismissed *not* upon a failed reason-to-believe vote, but only when a majority of voting Commissioners vote in favor of closing the enforcement file.

Here, the Commission voted twice on motions to close the file on Plaintiff's administrative complaints, and twice those votes failed. Because the Commission neither made a reason-to-believe determination nor dismissed Plaintiff's administrative complaints, the Court properly found that the FEC failed to act and that its failure was contrary to law. The decision by certain Commissioners to decline to dismiss administrative matters they believe the FEC should pursue in hopes of achieving consensus, is not some nefarious "scheme," as Defendants claim, simply because Defendants disagree with those choices. Indeed, Congress anticipated that the structure of the Commission would result in deadlock and created the private right of action invoked here to ensure that FECA did not become a dead letter, by allowing administrative respondents such as Giffords to file citizen suits seeking judicial remedies for injuries suffered due to FECA violations where the FEC is unable to act due to gridlock.

Third, contrary to the assertions of the NRA Defendants, Plaintiff's claims are not time barred. FECA contains no statute of limitations, and the NRA affiliates have not demonstrated that the catch-all five-year statute of limitations that applies to FEC lawsuits enforcing FECA also applies to citizen suits, such as this one. But even assuming it does, Plaintiff's suit is timely because the five-year period would not have begun to run until the date Plaintiff's claim accrued: November

1, 2021. Only upon that date—when the FEC's 30 days to conform with this Court's contrary-to-law declaration expired—did FECA permit Giffords to sue Defendants, and Giffords pursued its rights promptly by filing suit the next day. Defendants' contention that the five-year statute of limitations instead began to run when the alleged violations occurred not only ignores when Plaintiff's claims accrued, but would allow the FEC to effectively nullify FECA citizen-suits based on unlawful FEC delay by simply delaying long enough for the statute of limitations to run. In any event, regardless of when the statute began to run, it could not bar the injunctive and declaratory relief Plaintiff seeks.

Finally, the Rosendale Campaign's Rule 12(b)(2) motion should be denied because this Court has personal jurisdiction over the Rosendale Campaign. The Rosendale Campaign, which exists for the purpose of winning office in Washington, D.C., filed false campaign finance reports with the FEC in the District of Columbia. Not only that, but the Rosendale Campaign raised funds that are connected to the illegal contribution scheme in the District of Columbia, while maintaining a D.C.-based bank account. Each of these contacts is sufficient to establish jurisdiction, and even if they were not, the proper remedy would not be dismissal, as Defendant requests, but transfer to another venue.

Defendants' motions to dismiss should be denied.

BACKGROUND

I. Statutory, Regulatory, and Legal Background

A. FECA's Contribution Limits and Disclosure Requirements

Congress enacted FECA in response to the Watergate scandal and the "deeply disturbing" reports from the 1972 federal elections of contributors giving large amounts of money to candidates "to secure a political quid pro quo." *Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976) (per

curiam). To "limit the actuality and appearance of corruption resulting from large individual financial contributions," *id.* at 26, FECA limits the dollar amounts of contributions to federal candidates and prohibits corporations from contributing any amount from their treasury funds, 52 U.S.C §§ 30116(a)(1), 30118(a). FECA's limit on individual contributions to candidates was $2,600 per election in the 2014 cycle, and $2,700 per election in the 2016 and 2018 cycles. The limit on political committee contributions to candidates in the 2014, 2016, and 2018 cycles was $5,000 per calendar year. 52 U.S.C. § 30116(a)(1)(C). FECA also generally requires disclosure of the sources and amounts of contributions to candidates to deter corruption and inform voters who is spending to influence their vote. *See Buckley*, 424 U.S. at 66-67.

Under FECA, one type of contribution to a candidate is a "coordinated expenditure"—that is, an expenditure "made by any person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents." 52 U.S.C. § 30116(a)(7)(B). Coordinated expenditures include communications that are coordinated through a common vendor. 11 C.F.R. § 109.21(b). Common vendor coordination occurs when a person or entity pays a commercial vendor to create an advertisement expressly advocating for a candidate, the vendor has provided services or advice to the candidate in the last 120 days, and the vendor uses or conveys information received from the candidate that is material to the creation of the advertisement. *See* 11 C.F.R. § 109.21.

In-kind contributions, including coordinated communications, are subject to FECA's contribution limits and ban on corporate contributions, 52 U.S.C. § 30116(a)(7)(B)(i); 11 C.F.R. § 109.20, and must be reported as a contribution to that candidate by the entity that made the payment, 11 C.F.R. § 109.21(b). Under certain circumstances, the candidate is also required to report the contribution received. *Id.* § 109.21(b)(2).

B. The Federal Election Commission

1. Structure and Voting Rules

The Federal Election Commission is an independent federal agency established by Congress to "administer, seek to obtain compliance with, and formulate policy" with respect to FECA. 52 U.S.C. § 30106(b)(1). The agency is composed of six Commissioners, no more than three of whom may be from the same political party. *Id.* § 30106(a)(1). Four Commissioners must be present at any vote for the Commission to have a quorum. *See* FEC Directive No. 10 § B (June 8, 1978, amend. Dec. 20, 2007).[1] "All decisions of the Commission with respect to the exercise of its duties and powers under [FECA] shall be made by a majority vote . . . except that the affirmative vote of 4 members" is always required—regardless of Commissioner vacancies or abstentions—for certain actions, such as investigating FECA violations. 52 U.S.C. §§ 30106(c), 30107(a)(9).

2. Decisions to Investigate Require Four Votes to Find "Reason to Believe"

Any person may file a sworn administrative complaint with the FEC alleging a violation of FECA. *See* 52 U.S.C. § 30109(a)(1). At the initial stage of the enforcement process, the Commission may decide, "by an affirmative vote of 4 of its members," to investigate the allegations of an administrative complaint by finding "reason to believe" that a FECA violation has occurred. *Id.* § 30109(a)(2).

3. Decisions to Dismiss Require a Majority Vote to "Close the File"

Distinct from a vote to find reason to believe, FECA provides that the FEC may hold "a vote to dismiss." *Compare* 52 U.S.C. § 30109(a)(1) (discussing "a vote to dismiss"), *with id.* § 30109(a)(2) (separately discussing reason-to-believe votes). While a vote to find reason to

---

[1] *See* https://www.fec.gov/resources/cms-content/documents/directive_10.pdf.

believe is included among the list of actions for which FECA requires four votes, "dismissals are not on this list," and thus are governed by "FECA's general rule that the Commission must make decisions by majority vote." *See Citizens for Responsibility & Ethics in Washington* [("*CREW*")] *v. FEC*, 993 F.3d 880, 891 (D.C. Cir. 2021). It is the agency's "typical practice" to vote whether "to dismiss the administrative complaint" after a vote in which the agency lacks four votes to pursue the allegations in the complaint. *CREW v. FEC*, 971 F.3d 340, 346 (D.C. Cir. 2020). The Commission calls this vote to dismiss a "vote[] to close [the] enforcement file." *E.g.*, 11 C.F.R. § 5.4(a)(4); *see, e.g.*, *CREW v. FEC*, 892 F.3d 434, 442 n.13 (D.C. Cir. 2018) (describing how the FEC exercised its discretion to dismiss matter by voting "to close the file"); *CREW v. FEC*, 236 F. Supp. 3d 378, 388 (D.D.C. 2017) ("Facing deadlock, the Commission voted 5-1 to close the file."). The Commission has been dismissing cases by voting to close the file for at least the last 46 years.[2]

Absent majority support for a motion to close the file, an enforcement matter remains pending before the Commission even though, at that moment, there are not four votes to find reason-to-believe a violation occurred. *See, e.g.*, MURs 7350, 7351, 7357, and 7382 (Cambridge Analytica LLC, *et al.*) (after initially failing to find reason to believe, reversing course more than three months later and finding reason to believe on the same claims).[3] Once a Commission majority

---

[2] *See* Commission Action, MUR 002 (Litton) (1976) (reflecting a vote "to close the file"), https://www.fec.gov/files/legal/murs/2.pdf (*see* p. 21); *see* Commission Action, MUR 003 (Lemon) (Mar. 22, 1976) (stating that the FEC has "voted, 6-0, to close the file in this action"), https://www.fec.gov/files/legal/murs/3.pdf (*see* p. 10).

[3] *See* Certification, MURs 7350, 7351, 7357 & 7382 (Cambridge Analytica LLC, *et al.*) (Apr. 12, 2019) (failing, 2-0, to find reason to believe on a series of claims), https://www.fec.gov/files/legal/murs/7350/7350_27.pdf. *See* Certification, MURs 7350, 7351, 7357 & 7382 (Cambridge Analytica LLC, *et al.*) (July 30, 2019) (voting 4-0 to find reason to believe on several of the same clams), https://www.fec.gov/files/legal/murs/7350/7350_29.pdf; Certification, MURs 7350, 7351, 7357 & 7382 (Cambridge Analytica LLC, *et al.*) (Aug. 22, 2019) (same), https://www.fec.gov/files/legal/murs/7350/7350_37.pdf.

votes to dismiss a matter by closing the file, the FEC must notify the administrative complainant and respondent of the dismissal under 11 C.F.R. § 111.20(a). *See Doe v. FEC*, 920 F.3d 866, 871 n.9 (D.C. Cir. 2019) ("When the Commission ended its investigation and closed the file, it 'terminate[d] its proceedings' within the meaning of 11 C.F.R. § 111.20(a).").

In addition, although FECA prohibits the Commission from revealing the details of any ongoing enforcement matter absent consent from the respondent, 52 U.S.C. § 30109(a)(12)(A); 11 C.F.R. § 111.21(a)-(b), once the Commission has "voted to close [the] enforcement file," investigatory materials from the enforcement case must be publicly disclosed, 11 C.F.R. § 5.4(a)(4); *see also* 11 C.F.R. § 111.20(a) (providing that if the FEC "terminates its proceedings, it shall make public such action and the basis therefore no later than thirty (30) days from the date on which the required notifications are sent to the complainant and respondent"); *Doe*, 920 F.3d at 874 (describing how, after "the Commission voted to close its file," it "announced that it would release documents from the investigation"). The disclosed enforcement file includes only those documents that "reflected" and "explained the basis for" the agency's "'final determination' with respect to enforcement matters," including any Statements of Reasons. Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

4. Lawsuits Challenging an FEC Dismissal or Delay

Any administrative complainant "aggrieved" by dismissal of its complaint or "by a failure of the Commission to act on such complaint during the 120-day period beginning on the date the complaint is filed" may seek review in this District, 52 U.S.C. § 30109(a)(8)(A), and that court "may declare that the dismissal of the complaint or the failure to act is contrary to law," *id.* § 30109(a)(8)(C).

In a suit challenging an FEC dismissal, the administrative complainant must sue the Commission "within 60 days after the date of the dismissal," *id.* § 30109(a)(8)(B), which courts consider to be the date the agency successfully voted to close the file, *see CREW*, 892 F.3d at 436 (describing the FEC's dismissal as having occurred "in 2015," the year the agency voted to close the file, even though an agency vote to find reason to believe failed 3-3 in 2014[4]); *Jordan v. FEC*, 68 F.3d 518, 519 (D.C. Cir. 1995) (holding that plaintiff's dismissal challenge was untimely because it was filed 60 days after "[t]he Commission voted to dismiss Jordan's complaint on July 24, 1991," the date the FEC voted to close the file[5]); *Spannaus v. FEC*, 990 F.2d 643, 644 (D.C. Cir. 1993) (holding that, for purposes of the 60-day clock, "the date of dismissal was January 9, 1991," the date the FEC closed the file[6]); *CREW v. FEC*, 799 F. Supp. 2d 78, 83 (D.D.C. 2011) ("[T]he FEC voted to dismiss MUR 5908 on June 29, 2010," the date it voted to close the file,[7] "thereby triggering Plaintiffs' 60-day clock in which to appeal the dismissal").

In a suit challenging the FEC's "failure to act," rather than a dismissal, the issue is whether the agency has "fail[ed] to take timely final action" on the administrative complaint. *Citizens for Percy '84 v. FEC*, No. 84-cv-2653, 1984 WL 6601, *4 (D.D.C. 1984); *see also Common Cause v. FEC*, 489 F. Supp. 738, 744 (D.D.C. 1980) ("Where the issue before the Court is whether the

---

[4] *See* Amended Certification, MURs 6391 & 6471 (Commission on Hope, Growth and Opportunity ("CHGO")) (Sept. 16, 2014) (reflecting multiple failed 3-3 reason-to-believe votes), https://eqs.fec.gov/eqsdocsMUR/15044380338.pdf; Certification, MURs 6391 & 6471 (CHGO) (Oct. 1, 2015) (reflecting a failed 3-3 reason to believe vote, and a successful 5-1 vote to close the file), https://www.fec.gov/files/legal/murs/6391/15044380175.pdf.

[5] *See* Certification, MUR 3178 (Handgun Control, Inc.) (July 24, 1991), https://www.fec.gov/files/legal/murs/3178.pdf (p. 195).

[6] See Certification, MUR 2163 (American Jewish Committee) (Jan. 9, 1991), https://www.fec.gov/files/legal/murs/2163.pdf (at p. 618).

[7] *See* Certification, MUR 5908 (Peace Through Strength PAC) (June 29, 2010), https://www.fec.gov/files/legal/murs/5908/10044274525.pdf.

agency's failure to act is contrary to law, the Court must determine whether the Commission has acted 'expeditiously.'"). To make this determination, Courts apply a multi-factored analysis that includes the so-called "*TRAC* factors." *See, e.g.*, *Campaign Legal Ctr. v. FEC*, No. 20-cv-0809-ABJ, 2021 WL 5178968, at *5 (D.D.C. Nov. 8, 2021) (citing *Telecomms. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70, 70 (D.C. Cir. 1984)).

5. Citizen Suits to Remedy FECA Violations

In response to a suit challenging an FEC dismissal or delay, "the court may declare that the dismissal of the complaint or the failure to act is contrary to law, and may direct the Commission to conform with such declaration within 30 days." 52 U.S.C. § 30109(a)(8)(C). If the FEC fails to conform as directed, "the [administrative] complainant may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint." *Id.*; *Campaign Legal Ctr. v. Iowa Values*, No. 21-CV-389-RCL, 2021 WL 5416635, at *1 (D.D.C. Nov. 19, 2021) ("Refusing to 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.").

II. Statement of Facts

A. Defendants' Violations of FECA

As the Complaint alleges, since at least 2014, the NRA has engaged in an ongoing scheme to evade campaign finance regulations by using a series of shell corporations to surreptitiously and illegally coordinate advertising with at least seven candidates for federal office. *See* Compl. ¶¶ 2, 39-117 (Nov. 2, 2021), ECF No. 1.

Through this scheme, two NRA affiliates—a political committee called the National Rifle Association of America Political Victory Fund ("NRA-PVF") and the NRA's "principal lobbying

arm," a 501(c)(4) corporation called the National Rifle Association of America Institute for Legislative Action ("NRA-ILA") (collectively, the "NRA Defendants")—made up to $35 million in illegal, excessive, and unreported campaign contributions across the 2014, 2016, and 2018 elections, including to the Rosendale Campaign and the Hawley Campaign (collectively the "Candidate Defendants"). *See* Compl. ¶¶ 2-3, 39-117; *see* Mem. of Points and Authorities in Supp't of the NRA Defendants' Mot. to Dismiss Pl.'s Compl. ("NRA Mot.") at 2 (Jan. 28, 2022), ECF No. 35-1. These coordinated contributions violate FECA's contribution limits, corporate contribution ban, and disclosure requirements. *See* Compl. ¶¶ 2, 132-56.

The NRA Defendants coordinated with a number of candidates for federal office, including the Candidate Defendants, by contracting with a common vendor. *See, e.g.*, Compl. ¶¶ 4, 104-17. Under the common vendor scheme, the NRA Defendants and the candidates purchased advertisements through the political consultancy OnMessage/Starboard, which operates as "OnMessage" when it acts on behalf of candidates and as "Starboard" when it acts on behalf of the NRA. *See, e.g.*, Compl. ¶¶ 4, 41-50. Likewise, the NRA Defendants and the candidates placed campaign ads through a vendor named National Media, which purports to operate as "American Media and Advertising Group" ("AMAG") when it acts on behalf of candidates and "Red Eagle" when it acts on behalf of the NRA Defendants. *See, e.g.*, *id.* OnMessage/Starboard and National Media/Red Eagle/AMAG are functionally indistinguishable. *See, e.g.*, Compl. ¶¶ 4, 52. They are led by the same people, located at the same address, and have no internal separation or firewall between the staff who work for each entity. *See, e.g.*, *id.* Indeed, the same staff performed work for both the NRA Defendants and the candidates' campaigns during the same election cycles. *See, e.g.*, Compl. ¶¶ 5, 52.

B. Plaintiff's Injuries Caused by Defendants' FECA Violations

Plaintiff Giffords is a nonpartisan, nonprofit 501(c)(4) organization headquartered in Washington, D.C., that is dedicated to saving lives from gun violence. Compl. ¶ 14; Decl. of Alison Damaskos ¶ 1 (Feb. 18, 2022) ("Damaskos Decl."). Giffords exists in part to compete with the NRA and the candidates and policies it supports. Compl. ¶¶ 15-18; *see e.g.*, Damaskos Decl. ¶ 5. Plaintiff Giffords has been, and continues to be, injured by the NRA Defendants' illegal campaign contributions. *See, e.g.*, Compl. ¶¶ 14-23 Damaskos Decl. ¶¶ 6, 10-36. Giffords directly opposed the campaigns of several of the candidates who participated in the NRA scheme, and who benefited from the NRA Defendants' illegal contributions, including Representative Rosendale and Senator Hawley. Compl. ¶ 20; Damaskos Decl. ¶¶ 10-30. Giffords's affiliated political committee ("PAC") contributed $2,500 to Representative Rosendale's 2018 Senate race opponent Jon Tester, and $5,000 to Senator Hawley's 2018 opponent Claire McCaskill. Compl. ¶ 20; Damaskos Decl. ¶¶ 13-14. Giffords also continues to engage in legislative advocacy for positions that the NRA's beneficiaries have opposed while in office, and against positions that the NRA's beneficiaries have supported. Compl. ¶¶ 15-18, 20; Damaskos Decl. ¶¶ 2-6, 17, 26-27. By violating FECA's contribution limits, source restrictions, and disclosure requirements, the NRA Defendants received the unlawful economic benefit of being able to make as much as $35 million in contributions to candidates, while the Rosendale and Hawley Campaigns obtained the unlawful economic benefit of accepting up to $383,196 and up to almost $1 million in contributions respectively. Compl. ¶¶ 25, 106, 109. Giffords is injured by the competitive advantages the NRA Defendants and the Candidate Defendants have obtained by flouting campaign finance laws. *See* Compl. ¶¶ 6, 18, 23, 25, 106, 109. Damaskos Decl. ¶¶ 10-30.

Plaintiff Giffords intends to continue competing with the NRA Defendants and their favored candidates, including the Candidate Defendants, in future elections. *See* Compl. ¶¶ 14-23; Damaskos Decl. ¶¶ 17-25; *see also id.* ¶¶ 2-16. For example, Giffords intends to oppose the re-election of Matt Rosendale to the United States House in the upcoming 2022 mid-term election, and the re-election of Josh Hawley to the United States Senate in 2024. Damaskos Decl. ¶¶ 21-25. The competitive fundraising advantage that the Candidate Defendants enjoy over the candidates supported by Giffords as a result of the illegal contributions from the NRA "forces Plaintiff to spend its resources countering its opponents' illegally raised funds." *Id.* ¶¶ 29; *see also, e.g.*, Compl. ¶¶ 18-22.

In addition, Giffords relies on accurate information being included in FEC reports to further its mission of "saving lives from gun violence," by (1) "research[ing], writ[ing], and propos[ing] policies designed to reduce gun violence"; (2) "mobiliz[ing] voters and lawmakers in support of safer gun laws"; (3) "educat[ing] political candidates about issues and policies related to gun violence"; and (4) "support[ing] candidates for local, state, and federal office who favor strong gun-violence-prevention laws." Compl. ¶ 15; *see also id.* ¶¶ 16-22; Damaskos Decl. ¶¶ 2-3, 31-36. Giffords is injured by Defendants' violations because they deny Giffords campaign finance information to which it is entitled under FECA and which would help with its activities. *Id.*

III. Plaintiff's Compliance with 52 U.S.C. § 30109(a)(8) and *Giffords v. FEC*

To remedy its injuries, Plaintiff filed four administrative complaints with the FEC, from August 16 to December 7, 2018. Compl. ¶¶ 118-26. Those complaints demonstrate that the NRA Defendants made illegal, unreported, and excessive in-kind contributions, in the form of coordinated communications, to the campaigns of Thom Tillis, Tom Cotton, and Cory Gardner in

2014, Donald J. Trump and Ron Johnson in 2016, and Matt Rosendale and Josh Hawley in 2018. *See* Compl. ¶¶ 7, 118-26.

After the FEC failed to act on any of the complaints for more than 120 days, Giffords filed suit against the Commission on April 24, 2019 under 52 U.S.C. § 30109(a)(8)(A). *See* Compl. ¶¶ 8, 127-28; *see also* Compl., *Giffords v. FEC*, No. 19-cv-1192-EGS (D.D.C. Apr. 24, 2019), ECF No. 1. Nearly two years later, on February 9, 2021, the Commission held a vote on a motion to find no reason to believe the violations alleged in two of the four complaints occurred. Unredacted Mem. Op. at 9, *Giffords v. FEC*, No. 19-cv-1192-EGS (D.D.C. Oct. 14, 2021), ECF No. 88. That vote failed 2-3, with one recusal. *Id.* Nevertheless, all four of Plaintiff's administrative complaints were held over "for further consideration" at the Commission's next meeting. *Id.* Two weeks later, on February 23, 2021, the Commission held a vote on a motion to find reason to believe the violations alleged in all four of Plaintiff's complaints (including the two on which the Commission had previously voted on February 9). *Id*. Those votes failed, 3-2, with one recusal. *Id.* That same day, the Commission also voted on a motion to find no reason to believe the violations alleged in all four administrative complaints occurred. *Id.* Those votes also failed, 2-3, with one recusal. *Id.* Subsequently, "by a vote of 2-3, the FEC rejected a motion to close the enforcement matters, and thereby dismiss Plaintiff's administrative complaints." *Id.* at 10.

On September 30, 2021, this Court denied the FEC's motion for summary judgment and granted Giffords's cross-motion for summary judgment. Unredacted Mem. Op. at 31. The Court found that the FEC's "failure to take any action on the matters" in the seven months since February 2021 was contrary to law, retained jurisdiction until the FEC "takes final agency action with respect to Plaintiff's administrative complaints," and ordered the FEC "to conform to the Court's

Order within 30 days of the entry of the Order by making the reason-to-believe determination set forth in 52 U.S.C. § 30109(a)(2)." *Id.* at 30-31.

Six days before the expiration of the 30-day deadline, on October 26, 2021, the Commission "took an additional vote on whether to close the file. That vote did not pass." Tr. of Video Status Conf. ("Hr'g Tr.") at 6, *Giffords v. FEC*, No. 19-cv-1192-EGS (D.D.C. Nov. 1, 2021), ECF No. 89. That same day, the two Commissioners who voted against finding reason to believe in February 2021, "submitted to the administrative record their statement of reasons," which, the FEC told the Court, "will be released publicly when the files in the matter are closed." *Id.*

The FEC's 30-day period to conform with the Court's order expired without action by the FEC. Compl. ¶¶ 9, 130. On November 1, 2021 the Court held a hearing during which FEC counsel confirmed for the Court that Plaintiff's administrative complaints against Defendants remained open before the Commission, despite the agency's previous votes:

> THE COURT: If I understand correctly, once the case is closed, then the plaintiff would have received notice. But if I understand you correctly, the case is not currently closed, notwithstanding a vote; is that correct?
>
> [FEC COUNSEL:] Yes, your Honor.

Hr'g Tr. at 8, *Giffords v. FEC*, No. 19-cv-1192-EGS (D.D.C. Nov. 1, 2021), ECF No. 89; *see also id.* at 6, 10.

Later that day, on November 1, the Court issued an Order declaring that the FEC had "failed to conform" to the September 30 Order and ordering that, "pursuant to 52 U.S.C. § 30109(a)(8)(C)," Plaintiff Giffords "may bring 'a civil action to remedy the violations involved in the original complaints'" against the NRA. Compl. ¶¶ 9, 130; *see also* Order, *Giffords v. FEC*,

No. 19-cv-1192 (D.D.C. Nov. 1, 2021), ECF No. 75. On November 2, 2021, Giffords filed this civil action against Defendants under 52 U.S.C. § 30109(a)(8)(C). *See* ECF No. 1.

LEGAL STANDARDS

A motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(1) may assert either a facial or factual challenge to the Court's subject-matter jurisdiction. *RELX, Inc. v. Baran*, 397 F. Supp. 3d 41, 47 (D.D.C. 2019). In response to a facial challenge, a court must accept the complaint's allegations as true, view them in a light most favorable to the non-moving party, and deny the motion if those allegations plausibly establish jurisdiction. *Id.* at 48 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In response to a factual challenge, the court "may consider materials outside of the pleadings to determine whether it has subject matter jurisdiction over the claims." *Id.* at 47-48.

A Rule 12(b)(6) motion to dismiss "tests the legal sufficiency of a plaintiff's complaint; it does not require a court to assess the truth of what is asserted or determine whether a plaintiff has any evidence to back up what is in the complaint." *Tyes-Williams v. Whitaker*, 361 F. Supp. 3d 1, 6 (D.D.C. 2019) (citation omitted). Instead, the court must accept the allegations of the complaint as true, "construe[] all factual inferences in favor of the plaintiff," and deny the motion if the complaint "contain[s] sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'" *Id.* (citations omitted).

Finally, under Rule 12(b)(2), although a plaintiff bears the burden of demonstrating personal jurisdiction, to satisfy that burden, the plaintiff need only "allege specific acts connecting [the] defendant with the forum." *Okolie v. Future Servs. Gen. Trading & Contracting Co., W.L.L.*, 102 F. Supp. 3d 172, 175 (D.D.C. 2015). Moreover, in assessing whether it has personal

jurisdiction over a defendant, the court may go beyond the pleadings and evaluate any "relevant matter to assist it in determining the jurisdictional facts." *Id.*

ARGUMENT

Defendants' three motions to dismiss should each be denied. First, Giffords has standing to remedy Defendants' violations of federal campaign finance law. Second, as this Court ruled in *Giffords v. FEC*, Plaintiff has satisfied the requirements to file this FECA citizen suit. Third, Plaintiff's claims are not barred by any statute of limitations. Finally, the Court has personal jurisdiction over the Rosendale Campaign.

I. Plaintiff Has Standing to Challenge Defendants' Illegal Coordination Scheme

The Court should deny Defendants' motions to dismiss for lack of standing. To establish standing, a plaintiff must show that it has suffered an "injury in fact caused by the challenged conduct and redressable through relief sought from the court." *Shays v. FEC*, 414 F.3d 76, 83 (D.C. Cir. 2005) (citation omitted). Here, Giffords has suffered at least two distinct types of injuries that the Supreme Court and D.C. Circuit have held are sufficient to confer standing. First, Giffords has alleged a competitive injury caused by the NRA Defendants making, and the Candidate Defendants accepting, illegal, excessive, and unreported contributions in violation of FECA, which is redressable by a court order prohibiting Defendants from continuing to violate the law. Second, Defendants' FECA violations deny Giffords information about the precise amounts that the NRA Defendants contributed to the Candidate Defendants in the form of coordinated communications.

A. Plaintiff Has Competitor Standing

1. Plaintiff Has Suffered a Competitive Injury

Giffords has sufficiently alleged a competitive injury-in-fact. Defendants' illegal contributions to the Candidate Defendants and other federal candidates injure Giffords as a

political competitor of Defendants, forcing Giffords to compete on an illegally structured political playing field where its political competitors fundraise and spend outside the limits set by FECA.

"[W]hen [a] particular statutory provision . . . reflect[s] a legislative purpose to protect a competitive interest, the injured competitor has standing to require compliance with that provision." *Hardin v. Kentucky Utility Co.*, 390 U.S. 1, 6 (1968). Indeed, a plaintiff's pecuniary interest in successfully competing economically with its competitors is a well-established concrete interest supporting standing. *See, e.g.*, *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 152 (1970); *Shays*, 414 F.3d at 85-87; *Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855, 870 (D.C. Cir. 2001). Courts in this district and the D.C. Circuit have routinely found that competitive injuries are sufficient to confer standing under FECA. *See Shays*, 414 F.3d 76; *La Botz v. FEC*, 889 F. Supp. 2d 51, 56 (D.D.C. 2012); *Buchanan v. FEC*, 112 F. Supp. 2d 58, 63-66 (D.D.C. 2000); *Natural Law Party of the U.S. v. FEC*, 111 F. Supp. 2d 33, 45-47 (D.D.C. 2000); *see also, e.g.*, *Nader v. FEC*, 725 F.3d 226, 229 (D.C. Cir. 2013) (acknowledging that a failure to enforce FECA could produce competitive injury when plaintiff will compete against the entities violating FECA in the future).

In *Shays*, the D.C. Circuit held that "by banning certain campaign practices, Congress has created" a legally cognizable right to a fair competitive environment. 414 F.3d at 89. There, two Members of Congress challenged several FEC regulations interpreting a statute amending FECA, contending that those regulations would erode the statute's reforms and allow the plaintiffs' political competitors to engage in conduct that Congress had prohibited. *See* 414 F.3d at 82-84. The court recognized that the plaintiffs had alleged a sufficient injury in fact, holding that if the FEC failed to enforce FECA in the way the statute required, the two Congressmembers, who regularly faced re-election campaigns, would suffer injury to their right to a legally structured

competitive political environment in those campaigns, as their competitors would be able to operate outside FECA's limits. *Id*. at 84-87.

Here, like in *Shays*, FECA's contribution limits, corporate contribution ban, and disclosure requirements define the competitive environment under which Giffords, the NRA Defendants, and the Candidate Defendants all operate. *See, e.g.*, *id.* at 8. Giffords, as a 501(c)(4) organization with an affiliated PAC, competes with the NRA Defendants and Candidate Defendants both to raise funds and to elect candidates, Compl. ¶¶ 15-18, 20-23; Damaskos Decl. ¶¶ 10-16, 29-30, and will continue to do so in the future, Damaskos Decl. ¶¶ 17-28; *see also* Compl. ¶¶ 14-23. Giffords opposed, and will continue to oppose, the election of Candidates Rosendale and Hawley to federal office, Compl, ¶ 20; Damaskos Decl. ¶¶ 13-14, 21-25. And, Giffords has supported and will continue to support the election of rival candidates. Compl, ¶ 20; Damaskos Decl. ¶¶ 13-14, 22, 25. Under FECA, Giffords and the candidates it supports are subject to the same restrictions on contributions that they allege Defendants have violated. Thus, Giffords competes politically in the same FECA-regulated arena as the Defendants.

Moreover, the competitive injury in this case is even clearer than that in *Shays*. While that decision recognized an injury based merely on potential future FECA violations, Plaintiff's Complaint documents actual, concrete FECA violations by Defendants. Compl. ¶¶ 3-6, 25-27, 39-117, 132-156. Moreover, unlike the Congressmembers in *Shays*, who, if their challenge had failed, could at least have benefitted from engaging in the allegedly illegal activity on the same terms as their rivals under the challenged regulations, *see* 414 F.3d at 86, Giffords cannot violate FECA as its competitors did without risking FEC enforcement, and thus has no way of obtaining benefits like those received by the NRA Defendants or Candidate Defendants.

Plaintiff's Complaint alleges specific facts showing that over the past eight years NRA has accrued as much as $35 million in competitive advantage over Giffords by funneling illegal contributions to a multitude of candidates, including the Candidate Defendants. Compl. ¶¶ 2-3, 39-117.[8] This includes $383,196 in illegal contributions that were made in the form of coordinated expenditures made by the NRA-ILA, a 501(c)(4) corporation that is prohibited from making contributions to candidates and that were accepted by the Rosendale Campaign. Compl. ¶¶ 25, 28, 106, 109. It also includes up to $1 million in excessive contributions made by the NRA-PVF and accepted by the Hawley Campaign. Compl. ¶¶ 25, 28, 106, 109. These illegal contributions, which far exceed what is legally allowed, gave both the NRA Defendants and the Candidate Defendants a competitive advantage over Giffords and its preferred candidates and increased spending overall in races in which Giffords competed.[9] And, this spending "forces Giffords to spend its resources countering its opponents' illegally raised funds," Damaskos Decl. ¶¶ 29; *see also, e.g.*, Compl. ¶¶ 18-22, which imposes an injury in fact, *see Shays*, 414 F.3d at 86 (finding that the plaintiffs suffered a political competitive injury from the "*intensified* competition" resulting from their rivals' illegal spending) (emphasis in original); *cf. Sherley v. Sebelius*, 610 F.3d 69, 72 (D.C. Cir. 2010) (explaining that in the business context, a competitive injury exists where "a seller facing increased competition may lose sales to rivals, or be forced to . . . expend more resources to achieve the same sales").

Competitor standing in the political arena is not limited to candidates, as the Candidate Defendants claim. *See, e.g.*, Mem. in Supp't of Def. Hawley Campaign's Mot. to Dismiss Pl.'s

[8] Given these specific allegations, Plaintiff's competitive injuries are concrete and particularized, and do not rest on a "conclusory" allegation of competitive injury, as the NRA Defendants claim. *See* NRA Mot. at 24.

[9] As such, the Rosendale Campaign's assertion that Plaintiff alleged a competitive injury only against the NRA Defendants fails. *See* Rosendale Mot. at 9-10.

Compl. ("Hawley Mot.") at 5 (Jan. 21, 2022), ECF No. 31-1; Def. Rosendale Campaign's Rule 12(b)(1) and 12(b)(2) Mot. to Dismiss for Lack of Subject-Matter J. and Personal J. ("Rosendale Mot.") at 10-12 (Jan. 21, 2022), ECF No. 30. Instead, it extends to "parties defending concrete interests" in a competitive environment. *Shays*, 414 F.3d at 87. Indeed, *Shays* indicated that competition to defend this interest extends not just to candidates, but also to "candidates and parties 'in a position' to exploit FEC-created loopholes." *Id.* (emphasis added) (citation omitted) (quoting *Gottlieb v. FEC*, 143 F.3d 618, 621 (D.C. Cir. 1998)); *see also id.* at 86 (citing, as examples of potential competitors who could exploit FEC-created loopholes, a rival candidate's "supporters," and "rival state parties"); *see also Chamber of Com. of the U.S. v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (stating that if the FEC failed to enforce its rules governing nonprofit corporations, "a political competitor could challenge the Commission's dismissal of its complaint").

Defendants' reliance on *Gottlieb* and *Hassan v. FEC*, 893 F. Supp. 2d 248 (D.D.C. 2012) is misplaced. *See* Rosendale Mot. at 10-12. *Gottlieb*, which was decided years before *Shays*, did not hold that all non-candidates are excluded from competitor standing. Instead, the court held that a PAC could not assert political competitor standing to challenge a candidate's use of public matching funds, but only because the PAC "was never in a position to receive matching funds itself" and thus not in a position to compete for those public funds. 414 F.3d at 87 (quoting *Gottlieb*, 143 F.3d at 621). In *Hassan*, a district court simply followed *Gottlieb* in finding that a party asserting competitor standing "must show that he personally competes in the same arena with the same party to whom the government has bestowed an illegal benefit." *Id*. at 254 n.6 (quoting *Gottlieb*, 143 F.3d at 620-21). Here, as described above, Giffords is an FEC-regulated entity that directly competes in the same arena with Defendants in private fundraising, spending, and electoral success, while subject to FECA's source and amount fundraising restrictions.

Just as competitor standing under *Shays* is not limited to candidates, it also is not limited to cases involving regulatory challenges, as the NRA Defendants and Hawley Campaign assert. *See* NRA Mot. at 35; Hawley Mot. at 5. Although the plaintiffs in *Shays* were challenging FEC regulations on the grounds that they created an unfair competitive environment, the court did not limit its holding to that context, nor suggest that political competitor standing is in any way unusual. *See Shays*, 414 F.3d at 83-95; *see, e.g.*, *Air Line Pilots Ass'n, Int'l v. Chao*, 889 F.3d 785, 788 (D.C. Cir. 2018) (holding that *Shays* extends to "government action" generally and applying competitor standing to review an administrative adjudication); *La Botz*, 889 F. Supp. 2d at 56 (finding political competitor standing in case involving an FEC administrative adjudication); *Buchanan*, 112 F. Supp. 2d at 63-66 (same); *Natural Law Party of the U.S.*, 111 F. Supp. 2d at 45-47 (same). Instead, *Shays* articulated the broad and intuitive principle that injured competitors have standing to sue under statutes that reflect an interest in protecting competitive interests, and indeed that there is "longstanding precedent" for recognizing such injuries. *Id*. at 85.

Next, the Hawley Campaign contends that Giffords lacks political competitor standing based on an apparent misunderstanding of the nature of Plaintiff's injury. Defendant repeatedly mischaracterizes Plaintiff's injury as stemming from the FEC's "dismiss[ing] an enforcement matter," Hawley Mot. at 5, but the FEC has not dismissed the underlying enforcement matters, and Plaintiff's claims in this case are against Defendant for violating the law, not against the FEC (which is not a party to this case) for failing to enforce the law. As a result, the Hawley Campaign's assertion that *Nader* precludes competitor standing based on claims against the FEC for failing to enforce the law, *see* Hawley Mot. at 3-4, has no application to this case. In any event, Defendant's mischaracterization of *Nader* puts it at odds with *Shays*, which explicitly recognizes competitor standing for plaintiffs challenging illegally structured campaign environments. 414 F.3d at 89.

This apparent conflict is easily resolved, however, because rather than foreclosing standing based on competitive injury, the *Nader* court merely concluded that the plaintiff lacked standing because he failed to allege sufficiently concrete plans to compete politically in the future, rendering his injury not redressable. *See Nader*, 725 F.3d at 228. In contrast, Giffords does have definite plans to continue to compete against Defendants in the future. Damaskos Decl. ¶¶ 17-25; *see also id.* ¶¶ 2-16; Compl. ¶¶ 14-23; *supra* pp 12-13.

Finally, contrary to the NRA Defendants' assertion, NRA Mot. at 25, the injury alleged by Giffords is particular to the organization because of its unique and undisputed role as a competitor to the NRA Defendants. Compl. ¶¶ 14-23. And the NRA Defendants' contention that Giffords cannot show injury because it was still able to participate successfully in the political marketplace is unavailing. Ultimately, there is no way for Giffords to obtain the same benefits the NRA Defendants have accrued without violating the law. "[B]eing put to the choice of either violating [campaign finance law] or suffering disadvantage . . . constitutes Article III injury." *Shays*, 414 F.3d at 89. Regardless of how robustly Giffords competes with the NRA's *legal* political activity, *see, e.g.*, NRA Mot. at 25-27, it cannot lawfully compete with the NRA's millions of dollars in *illegal* contributions to political candidates. Thus, unlike in *Shays*, Giffords does not "possess the same legal options as [its] rivals." 414 F.3d at 94.

In sum, Plaintiff Giffords has been forced to compete against the NRA Defendants and its favored candidates, including the Candidate Defendants, in an illegally structured contest. Defendants have broken the law, and thus accrued a benefit to themselves that is legally unattainable for Plaintiff. In remedying this harm, Plaintiff does not seek a "mere advisory opinion," rather, Giffords "possess[es] 'such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court

so largely depends for illumination of difficult . . . questions.'" *Shays*, 414 F.3d at 95 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

2. Plaintiff's Competitive Injuries Are Caused by the NRA Defendants and Redressable by the Court

Plaintiff's competitive injury is caused by the NRA Defendants' illegal contributions to political candidates Plaintiff opposes, including the Candidate Defendants. The NRA Defendants do not actually dispute this, nor do they challenge the facts alleged in Plaintiff's Complaint that support its competitor standing. Instead, the NRA Defendants describe at length harms that Plaintiff has not alleged, and fault Plaintiff for not seeking relief that would redress those harms. *See, e.g.*, NRA Mot. at 28-30. Plaintiff does not here assert an "injury arising from the government's allegedly unlawful regulation of someone else." *Id.* at 30 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992)). Instead, Plaintiff argues that by violating the law and accruing to themselves the benefit of making and accepting unlimited contributions shielded from public view, the Defendants have gained a competitive advantage over Plaintiff. *See Shays*, 414 F.3d at 86.

Further, Plaintiff's claim does not "rest on a series of hypothetical occurrences, none of which Plaintiffs can demonstrate came to pass," NRA Mot. at 31 (quoting *Gottlieb*, 143 F. 3d at 622), nor does it rest on speculation about Giffords's "ability to influence the political process," *see* Rosendale Mot. at 11-12 (quoting *Gottlieb*, 143 F.3d at 621). First, the portions of the *Gottlieb* decision relied on by the Defendants do not relate to competitor standing, which Plaintiff has alleged here, but rather to alternative theories of standing asserted by the individual voters in that case. *Id*. As such, Defendant's reliance on those findings to undercut Plaintiff's claim to competitor standing is unavailing. Second, Plaintiff's Complaint meticulously documents millions of dollars in illegal, excessive, and unreported contributions between the NRA Defendants and their

preferred candidates, including the Candidate Defendants. Thus, unlike the voters in *Gottlieb*, Giffords has shown that it is "personally disadvantaged" by as much as $35 million due to the NRA Defendants' accrual of unlawful benefits here. *Id.* As such, Plaintiff has shown that Defendant's illegal contribution scheme has unfairly increased competition and has caused their injury. *See Sherley*, 610 F.3d at 73 ("[T]he basic requirement common to all our cases is that the complainant show an actual or imminent increase in competition, which increase we recognize will almost certainly cause an injury in fact."); *cf.* NRA Mot. at 33 ("This Circuit in particular, however, has emphasized that 'the basic requirement common to all [such] cases' is that the allegedly unlawful competitive benefit must '*almost certainly cause an injury in fact*.'" (quoting *Sherley*, 610 F.3d at 73) (emphasis added by NRA Defendants)).

The NRA Defendants' and Rosendale Campaign's contentions that Plaintiff has failed to show redressability similarly fails. NRA Mot. at 32-33; Rosendale Mot. at 13. Defendants contend that *Nader* held that competitive injuries are unredressable because the threat of harm to future competition is too speculative. In *Nader*, however, the Court merely concluded that the plaintiff lacked standing because he failed to allege sufficiently concrete plans to compete politically in the future, rendering his injury unredressable. The decision thus acknowledged that a plaintiff who *did* have definite plans to compete in the future could claim competitor standing under *Shays*. *See id.* at 228-29. Here, unlike the plaintiff in *Nader*, Giffords has such definite plans: Plaintiff will continue to compete in the future against the NRA and its favored candidates, including by opposing the Candidate Defendants in their upcoming elections. Damaskos Decl. ¶¶ 17-25; *see also id.* ¶¶ 2-16; Compl. ¶¶ 14-23. And, this Court has already found that there is "a threat of recurrence" with regard to the violations alleged in Plaintiff's Complaint, particularly with respect to the Rosendale Campaign, because the NRA Defendants continued to coordinate with the

Rosendale Campaign after they were on notice that the common vendor scheme violated FECA. Unredacted Mem. Op. at 17, *Giffords v. FEC*, No. 19-cv-1192 (D.D.C. Oct. 14, 2021).[10] As such, it is beyond dispute that Plaintiff's competitive injury would be remedied by a court order declaring Defendants' coordinated contribution scheme illegal and prohibiting the NRA and the Candidate Defendants from continuing to violate the law.

The remainder of the NRA Defendants' claims about the alleged unredressability of Plaintiff's injury suffers from the same failure as its causation argument—it is largely ungrounded in the injury that Plaintiff actually asserts. *See* NRA Mot. at 32-33 (discussing the *Gottlieb* court's rejection of the standing theories asserted by the individual voters, not relied upon here).

For the foregoing reasons, the Court should deny Defendants' motion to dismiss Plaintiff's claim for lack of standing.

B. Plaintiff Has Informational Standing

Although Giffords's competitive injuries are sufficient to support its standing, Defendants' violations of FECA have also caused Giffords informational injuries that are redressable by the Court. "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." *CLC v. FEC*, 952 F.3d 352, 356 (D.C. Cir. 2020) (quoting *Env't Def. Fund v. EPA*, 922 F.3d 446, 452 (D.C. Cir. 2019)). In this case, Defendants' violations of FECA deny Giffords information about the precise amounts that the NRA Defendants contributed to the Campaign Defendants in the form of coordinated

---

[10] Since then, the NRA has continued to support candidate Matt Rosendale in is 2020 and 2022 elections. Damaskos Decl. at ¶¶ 21-23.

communications. This injury derives from the failure of the Campaign Defendants and the NRA Defendants to report coordinated communications as in-kind contributions as required by FECA.

Failure to file "accurate disclosure[s] of contributor information" can produce informational injury under the Act. *CLC*, 952 F.3d at 356. For example, as alleged in Plaintiff's Complaint, advertisements run by the NRA-ILA during the 2018 election cycle opposing Rosendale's opponent were coordinated with the Rosendale Campaign, and therefore constituted in-kind contributions of which FECA requires disclosure by both participants. *See* Compl. ¶¶ 104-07; *see also* 52 U.S.C. § 30104(a); 11 C.F.R. § 109.21. However, neither the NRA Affiliates nor the Rosendale Campaign reported any such contributions. Compl. ¶ 116. This nonreporting of in-kind contributions in the form of coordinated communications deprives Giffords of "accurate disclosure of contributor information" and leaves it in the dark as to the magnitude of the contributions at issue, as Giffords cannot assess exactly how much the NRA Defendants spent producing and distributing these particular communications. The Court could redress this informational injury by ordering Defendants to file corrective reports with the FEC that accurately report each contribution made in the form of coordinated communications, and by enjoining Defendants from committing any additional violations in the future. *See* Compl. at 40 ¶¶ 5-7. The same analysis applies to the NRA Defendants' unreported contributions to the Hawley Campaign. *See, e.g.*, Compl. ¶¶ 108-17. Giffords therefore has informational standing.

The Rosendale Campaign incorrectly contends that Plaintiff cannot establish informational standing because Defendants have allegedly already disclosed all information the Act requires, relying principally on *Wertheimer v. FEC*, 268 F.3d 1070 (D.C. Cir. 2001). Mot. at 14-16. However, the fact that Plaintiff does not already know all the financial details underlying the coordinated communications at issue distinguishes this case from *Wertheimer*. The *Wertheimer*

court held that the plaintiffs in that case had suffered no informational injury when *all* the underlying details of a set of coordinated expenditures were publicly available, and the plaintiffs sought merely an FEC declaration that the expenditures were in fact coordinated. *See id.* at 1074-75. In particular, the expenditures at issue had already been publicly reported, itemized, and "label[ed] . . . as a discrete category." *Id.* at 1074. In contrast, because the NRA Defendants and the Candidate Defendants have declined to report coordinated expenditures as contributions as required by FECA, it is impossible to determine which of Defendants' numerous financial transactions were made in furtherance of their coordinated advertising scheme. As such, Plaintiff is denied information required under FECA, namely the amount of contributions made by the NRA Defendants to the Candidate Defendants. *See* 52 U.S.C. § 30104(b)(3); § 30116(a)(7)(B).[11]

Specifically, while the Complaint alleges that the NRA Defendants made "*up to* $35 million in illegal, excessive, and unreported campaign contributions across the 2014, 2016, and 2018 elections," Compl. at 1 (emphasis added), *see also* Compl. ¶¶ 3 ("as much as $35 million"), 25, 49, 64, including "up to $383,196" in expenditures in support of Matt Rosendale, Compl. ¶ 149, Plaintiff does not know (and thus has not alleged) which NRA-ILA expenditures were actually coordinated (and thus, constituted contributions to the Rosendale Campaign). Absent comprehensive reporting by Defendants on which expenditures, including their dates and amounts, were coordinated between the NRA-ILA and the Rosendale Campaign, Plaintiff is denied the information that it is guaranteed under FECA. Because "the denial of information to which the plaintiff claims to be entitled by law establishes a quintessential injury in fact," *Committee on the*

---

[11] A case involving similar standing issues about *Wertheimer*'s scope is currently before the D.C. Circuit. *See CLC v. FEC*, No. 21-5081 (D.C. Cir. argued Nov. 15, 2021).

Judiciary of U.S. House of Representatives v. McGahn, 968 F.3d 755, 766 (D.C. Cir. 2020) (en banc), Plaintiff has sufficiently alleged an informational injury.

As to this informational injury, "there is no reason to doubt . . . that [this] information would help" Giffords. *CLC*, 952 F.3d at 356 (quoting *Env't Def. Fund*, 922 F.3d at 452). In *CLC*, the D.C. Circuit recognized informational standing when the plaintiffs relied on accurate FEC disclosures to advance "their efforts to defend and implement campaign finance reform." *Id.* at 356. Similar to the *CLC* plaintiffs, Giffords relies on accurate information being included in FEC reports to further its mission of "saving lives from gun violence," by (1) "research[ing], writ[ing], and propos[ing] policies designed to reduce gun violence"; (2) "mobiliz[ing] voters and lawmakers in support of safer gun laws"; (3) "educat[ing] political candidates about issues and policies related to gun violence"; and (4) "support[ing] candidates for local, state, and federal office who favor strong gun-violence-prevention laws." Compl. ¶ 15; *see also id.* ¶¶ 16-22; Damaskos Decl. ¶¶ 2-3, 31-36. Accurate information about the relationship between the NRA-ILA and Rosendale Campaign would directly advance these efforts and thereby "help" Giffords. *CLC*, 952 F.3d at 356 (quoting *Env't Def. Fund*, 922 F.3d at 452).

In sum, Giffords has satisfied all the requirements for informational standing.[12]

II. Plaintiff Has Satisfied the Requirements for Filing this FECA Citizen Suit

As this Court already found in the related case of *Giffords v. FEC*, Plaintiff satisfied FECA's statutory prerequisites for filing this private right of action. *See supra* pp. 13-16. The

[12] The Rosendale Campaign contends that Plaintiff's alleged standing deficiencies are so severe they cannot be solved by re-pleading. Rosendale Mot. at 14-16. Not so. As demonstrated herein, Plaintiff's Complaint successfully pleads standing on two independent grounds. But to the extent the Court determines otherwise, Plaintiff respectfully requests that any dismissal be without prejudice to Plaintiff's ability to amend the Complaint. *See, e.g.*, *Corsi v. Mueller*, 422 F. Supp. 3d 51, 65 (D.D.C. 2019).

Court should therefore reject the NRA Defendants' attempt to relitigate that case here under the guise of disputing the Court's subject-matter jurisdiction, *see* NRA Mot. at 17-22, and the Hawley Campaign's similar attempt under the guise of a Rule 12(b)(6) motion, *see* Hawley Mot. at 6-20; *cf. Campaign Legal Ctr. v. Iowa Values*, No. 21-CV-389-RCL, 2021 WL 5416635, at *3 (D.D.C. Nov. 19, 2021) (denying defendant's attempt "to relitigate the merits of this Court's decisions in" the underlying FEC delay suit in a similar FECA citizen-suit).

Defendants' challenge fails for three reasons. First, no Defendant disputes that the Complaint sufficiently pleads that Plaintiff met FECA's requirements to file this citizen suit under 52 U.S.C. § 30109(a)(8). Thus, the Hawley Campaign's Rule 12(b)(6) motion must fail. Second, Defendants' do not dispute that *Giffords v. FEC* in fact declared the FEC's failure to act contrary to law and authorized this lawsuit. Thus, the NRA Defendants' Rule 12(b)(1) factual challenge must also fail. Third, Defendants' motions do not provide an opportunity to collaterally attack the merits of *Giffords v. FEC*, but even if they did, that challenge fails because Defendants do not provide any valid reason for the Court to second guess its rulings in that case.

A. The Complaint Has Sufficiently Pleaded that Plaintiff Has Satisfied FECA's Requirements for Filing a Citizen Suit

The Court should deny the Hawley Campaign's Rule 12(b)(6) motion, which the NRA Defendants joined. That motion does not claim—nor could it—that the Complaint fails to plead that this citizen suit is authorized under 52 U.S.C. § 30109(a)(8). To bring a civil action to remedy a FECA violation,

> [t]he complainant must file (1) a complaint with the FEC, (2) wait for the complaint's dismissal or 120 days of inaction, (3) file a petition in the United States District Court for the District of Columbia, (4) convince the court to find that the FEC's dismissal or failure to act was contrary to law, and (5) give the FEC at least 30 days to conform with the court's decision.

Iowa Values, 2021 WL 5416635, at *3 (citing 52 U.S.C. § 30109(a)(8)).

Plaintiff has pleaded each of these elements. The Complaint alleges that (1) from August 16, 2018 through December 13, 2018, Plaintiff filed four administrative complaints with the FEC demonstrating FECA violations by the Defendants (among others), Compl. ¶¶ 118-26; (2) "the FEC failed to act on any of the complaints for more than 120 days," *id.* ¶ 8; *see also id.* ¶ 128; (3) after the 120 days elapsed, Plaintiff filed a civil action in this District against the FEC for its failure to act on the administrative complaints, *id.* ¶ 128; (4) on September 30, 2021, this Court held that the FEC's failure to act was contrary to law and ordered the FEC to act on the complaint within 30 days, *id.* ¶ 129 (citing Order, *Giffords v. FEC*, No. 19-cv-1192 (D.D.C. Sept. 30, 2021), ECF No. 71); and (5) on November 1, 2021, the Court declared that the FEC had failed to conform within 30 days to the Court's September 30 Order and authorized Plaintiff to file this lawsuit, *see id.* ¶ 130 (citing Order, *Giffords v. FEC*, No. 19-cv-1192 (D.D.C. Nov. 1, 2021), ECF No. 75).

As such, Plaintiff's Complaint is facially sufficient. Indeed, no Defendant claims that these pleadings are insufficient, and so any facial challenge to the Complaint—including the Hawley Campaign's Rule 12(b)(6) motion and the NRA Defendant's Rule 12(b)(1) motion—must be denied.

B. Plaintiff Has Satisfied FECA's Requirements for Filing a Citizen Suit

The NRA Defendants' Rule 12(b)(1) factual challenge must also fail because, in substance, that challenge admits that Plaintiff in fact satisfied each of FECA's citizen-suit requirements, and those facts are established by the *Giffords v. FEC* record in any event. *See* NRA Mot. at 2-3, 8, 14-17, 22 (admitting that Giffords filed four administrative complaints, waited 120 days before suing the FEC over its failure to act, and convinced this Court to declare that failure contrary to law; admitting that the Court gave the FEC 30 days to conform by making a reason-to-believe determination; and admitting that in the time allowed by the Court the FEC merely affirmed its

inability to make that determination); *see also* Hawley Mot. at 2, 8, 15 (same). Thus, there is no dispute that, as a factual matter, Giffords met the requirements of section 30109(a)(8).

Instead of challenging these facts, Defendants improperly attempt to relitigate this Court's ruling in *Giffords v. FEC* that the Commission failed to act on Plaintiff's administrative complaints, and that this failure was contrary to law. That ruling was correct (as explained *infra*, Part II.C), but in any event, whether that ruling was correct is not up for debate here, since the relevant FECA precondition to this suit is whether "*the court* . . . *declare*[*d*] that the failure to act is contrary to law." 52 U.S.C. § 30109(a)(8)(C); *Iowa Values*, 2021 WL 5416635, at *3 (explaining that, to file a citizen suit, Plaintiff must "convince the court to find the FEC's . . . failure to act was contrary to law"). As Defendants concede, the *Giffords v. FEC* court in fact made that declaration. NRA Mot. at 15-16; Hawley Mot. at 15.

Allowing defendants in FECA citizen suits to relitigate the Plaintiff's successful challenge to the FEC's delay or dismissal would be inconsistent with FECA's command that only district courts in the District of Columbia may decide (subject to appeal) whether an FEC dismissal or delay is contrary to law. 52 U.S.C. § 30109(a)(8), (9). While an administrative complainant must file any challenge to an FEC dismissal or failure to act in a court in this District, a resulting citizen suit may be filed in *any* district court. *See id.* § 30109(a)(8)(C). Thus, allowing a citizen-suit defendant to re-litigate the administrative complainant's claim against the FEC would, contrary to section 30109(a)(8), allow district courts outside this District to review, and effectively reverse, decisions by courts in this District holding that an FEC dismissal or delay was contrary to law, despite lacking jurisdiction to hear such claims, and without the participation of the FEC. Not only that, but administrative complainants would also effectively be required to convince two district

courts that the FEC acted contrary to law in order to exercise its right to bring a citizen suit, even though FECA contains no such requirement.

Finally, the Court should not allow Defendants to collaterally attack this Court's rulings in *Giffords v. FEC* under section 30109(a)(8), given that Defendants did not attempt to intervene in time to be heard on the issue of FEC delay in that case. The NRA Defendants waited until after summary judgment had already been granted to move to intervene, and then did so only for the limited purpose of unsealing the judicial record. *See* Minute Order, *Giffords v. FEC*, No. 19-cv-1192-EGS (D.D.C. Dec. 13, 2021) (granting the NRA Defendants' motion to intervene and unsealing the record). The Hawley Campaign did not attempt to intervene at all. Yet the facts Defendants rely on to attack this Court's ruling—which the NRA Defendants obtained through intervention—are precisely the facts that were already before the Court in *Giffords v. FEC*. Defendants' attempt to belatedly advance new legal arguments based on old facts to argue this Court erred in *Giffords v. FEC* has no place in the current action.

In sum, Plaintiff has satisfied FECA's statutory prerequisites for bringing this citizen suit, and the Court should reject Defendants' request to relitigate the merits of *Giffords v. FEC*.

C. This Court Correctly Ruled That Plaintiff Met the Statutory Requirements for Filing a Direct Action Under FECA in *Giffords v. FEC*

Even if Defendants could relitigate *Giffords v. FEC* in this case, that effort would fail on the merits. Citing no intervening case law, Defendants incorrectly claim that this Court erred in concluding that Plaintiff had met its statutory burden to show that the FEC failed to act, that its failure was contrary to law, and that it failed to conform to this Court's order within 30 days. *See* NRA Mot. at 17-22; Hawley Mot. at 6-20. Defendants' arguments in support of this claim are meritless. First, a failed reason-to-believe vote is not a "self-executing dismissal," as Defendants claim. Second, because the FEC did not dismiss Plaintiff's administrative complaints in February

2021 (or at any other time), the administrative complaints remain open and the FEC's failure to act on Plaintiff's complaint has only continued. Third, this Court correctly found that the FEC's failure to act was contrary to law in *Giffords v. FEC* even though the Commission held votes on the administrative matters in February 2021. As such, this Court's prior rulings were (and remain) correct.

1. A Failed Reason-to-Believe Vote Is Not a Dismissal

Defendants erroneously contend that the Commission's failure to obtain the requisite four votes to find reason-to-believe in February 2021 effected an immediate and "self-executing" dismissal of Plaintiff's administrative complaints. NRA Mot. at 15; Hawley Mot. at 16. Defendants do not explain, however, how this contention could be true given that the FEC continued to hold votes on the matters after its initial failed no reason-to-believe vote on February 9, 2021—including two subsequent votes on whether to find reason-to-believe that also failed—and that the agency "*rejected* a motion to close the enforcement matters, and thereby dismiss Plaintiff's administrative complaints," Unredacted Mem. Op. at 10, *Giffords v. FEC*, No. 19-cv-1192 (D.D.C. Oct. 14, 2021) (emphasis added). Because the Commission did not "mak[e] the reason-to-believe determination set forth in 52 U.S.C. § 30109(a)(2)" or dismiss Plaintiff's administrative complaint within 30 days of its September 30, 2021 Order (or at any other point), the Court correctly authorized this lawsuit. *See infra* pp. 46-47.

Defendants concede, as they must, that the FEC has long dismissed matters by holding a distinct vote to close the enforcement file. *See* NRA Mot. at 10 (admitting that in the "ordinary course" after a deadlock on reason-to-believe, the FEC decides whether "to close the file"), 22 (characterizing the vote to close the file as a "tradition"); Hawley Mot. at 13 (admitting that, "historically," it is the FEC's "routine" and "typical practice" to vote whether to close the file). As

Defendants further acknowledge, the FEC itself does not even claim that a failed reason-to-believe vote dismisses an enforcement matter. *See* NRA Mot. at 15; Hawley Mot. at 17-18. Nevertheless, Defendants assert that the FEC has—for at least the last 46 years—engaged in a meaningless exercise in voting whether to close an enforcement file, and that such votes are "ministerial act[s] with no substantive legal effect." NRA Mot. at 22; *see also* Hawley Mot. at 13.

Defendants' position is baseless. It finds no support in FECA, FEC regulations, FEC policy, FEC practice, case law, or the proceedings in *Giffords v. FEC*. If accepted, Defendants' theory would also lead to absurd results, violate the agency's voting rules that enforce its bipartisan structure, and needlessly prevent Commissioners from attempting to reach consensus after initial disagreement. The Court should reject Defendants' request to change the FEC's voting rules merely because Defendants disagree with Congress's choice to allow administrative respondents to seek judicial enforcement of FECA in cases where the FEC is gridlocked and unable to act.

i. FECA and FEC Regulations

There is no basis in either FECA or FEC regulations for Defendants' position that a failed reason-to-believe vote results in a "self-executing" dismissal and, indeed, Defendants assert their position with a conspicuous lack of statutory or regulatory authority. *See* NRA Mot. at 10-22; Hawley Mot. at 11, 13.

Defendants are simply wrong when they claim that FECA's four-vote requirement to find reason to believe means that a lack of four votes automatically results in a dismissal. *See* NRA Mot. at 21; Hawley Mot. at 10-11, 18. The provision of FECA describing the four-vote requirement for finding reason to believe does not state or imply that a matter is automatically dismissed when a reason-to-believe vote fails. *See* 52 U.S.C. § 30109(a)(2). In fact, FECA specifically references

a distinct "vote to dismiss" an administrative complaint in the prior section of the statute. *See id.* § 30109(a)(1).

This distinct vote to dismiss is operationalized by the FEC's vote to close the file. *See supra* pp. 6-8. The vote to close the file does not violate FECA's reservation of the four-affirmative-vote requirement to findings of "reason to believe," as Defendants suggest, *see* NRA Mot. at 20-21; Hawley Mot. at 20, because closing the file requires only a majority vote of a quorum of the Commission. *See supra* pp. 6-7. Cases therefore can be, and are, dismissed based on just three votes in favor of closing the file, when those three Commissioners are in the majority. *See, e.g.*, Certification, MUR 7271 at ¶ 2 (Alexandra Chalupa, *et al.*) (Apr. 8, 2021) (closing the file on a 3-2 vote).[13]

The Commission's regulations also offer Defendants no support. Even though those regulations specifically reference the "vote[] to close [the] enforcement file," 11 C.F.R. § 5.4(a)(4), the Hawley Campaign asserts that "FEC regulations [do not] even mention a vote to 'close the file,'" Hawley Mot. at 18. The Hawley Campaign claims support from 11 C.F.R. § 111.9(b), but that regulation undermines the argument that a failed 3-2 or 2-3 reason-to-believe vote dismisses a matter: section 111.9(b) states that one method by which the FEC "terminates its proceedings" is where it "*finds* no reason to believe"—*i.e.*, where four or more Commissioners vote that there is not reason to believe—and that provision conspicuously does not describe a reason-to-believe deadlock as having the same effect. *Id.* (emphasis added); *see also* 11 C.F.R. § 111.20(a) (same).

Section 111.9(b) further undermines Defendants claim that Plaintiff's administrative complaint has been dismissed. That regulation requires the FEC, when it "terminates its proceedings," to notify "complainant and respondent by letter." Yet Plaintiff has received no such

---

13 *See* https://www.fec.gov/files/legal/murs/7271/7271_40.pdf.

notification, and Defendants do not claim to have either. Similarly, 11 C.F.R. § 111.20(a), requires the FEC, when it "terminates its proceedings," to "make public such action," and yet Defendants do not claim this has occurred; indeed, a search for the relevant MURs on the FEC's enforcement query system continues to yield no documents as of this filing. *See* FEC, Enforcement Query System, https://eqs.fec.gov/eqs/searcheqs (last visited Feb. 18, 2022).

ii. FEC Policy

The FEC's policy choices also undermine Defendants' claim that a failed reason-to-believe vote results in a self-actuating dismissal. In fact, less than a year ago, the Commission *rejected* a proposed Statement of Policy that would have implemented the very automatic dismissals that Defendants claim are already law. *See* Statement of Policy Regarding Closing the File at the Initial Stage in the Enforcement Process at 1 (Apr. 1, 2021) (proposing that, upon a failed reason-to-believe vote, the "file will be closed unless the Commission votes to keep the file open");[14] Certification, Agenda Doc. No. 21-21-A (Apr. 22, 2021) (noting proposal was not adopted).[15] The debate surrounding the failed proposal makes clear that the vote to close the file carries great legal significance: As one commentor writing in support of the failed proposal stated, closing the file "has significant value to all concerned," because "[c]losing a file for lack of Commission consensus signals to the parties and the courts that the FEC will not act on that complaint." Letter from Alan Gura, V.P. for Litigation, Institute for Free Speech, to the Hon. Shana M. Broussard, Chair, FEC (Apr. 8, 2021).[16]

---

[14] *See* https://www.fec.gov/resources/cms-content/documents/mtgdoc-21-21-A.pdf.

[15] *See* https://www.fec.gov/resources/cms-content/documents/Vote-Draft-Statement-of-Policy-Initial-Stage-in-the-Enforcement-Process-4-22-21.pdf.

[16] *See* https://www.fec.gov/resources/cms-content/documents/IFS_comment_on_Agenda_Document_No_21-21-A.pdf.

The failed proposal sought to alter the Commission's current statement of policy for the initial stage of enforcement proceedings, which states that the "Commission will close the file," when "at least *four* Commissioners[] find[] that there is 'no reason to believe,'" but makes no such promises for when, as in this case, fewer than four Commissioners concur on whether reason to believe exists. *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) (emphasis added).

iii. FEC Practice

Defendants' claim that a failed reason-to-believe vote automatically dismisses a matter is contrary to decades of Commission practice. Examples of cases in which an enforcement matter continued despite a failed reason-to-believe vote are legion.

In some cases, the Commission has held one failed reason-to-believe or probable-cause-to-believe vote, only to later vote that there was in fact reason to believe or probable cause to believe on the same claim. *See, e.g.*, MURs 7350, 7351, 7357, and 7382 (Cambridge Analytica LLC, *et al.*);[17] MUR 6623 (Scalise for Congress, *et al.*);[18] MUR 5754 (MoveOn PAC, *et al.*);[19] MUR 4012 (Freedom's Heritage Forum, *et al.*).[20] In other cases (such as the enforcement matters

---

[17] *See supra* p. 7 & n.3.

[18] *See* Certification, MUR 6623 (Scalise for Congress, *et al.*) (July 31, 2012) (failing, 3-3, to find reason to believe that William A. Bennett violated FECA, and then voting 5-1 to find reason to believe on the same claims), https://eqs.fec.gov/eqsdocsMUR/13044330654.pdf.

[19] *See* Certification, MUR 5754 (MoveOn PAC, *et al.*) (Sept. 14, 2004) (failing, 3-2, to find reason to believe), https://www.fec.gov/files/legal/murs/5754/0000590C.pdf; Certification, MUR 5754 (MoveOn PAC, *et al.*) (Sept. 28, 2004) (voting 5-1 to find reason to believe on the same claims), https://www.fec.gov/files/legal/murs/5754/0000590D.pdf.

[20] *See* Certification, MUR 4012 (Freedom's Heritage Forum, *et al.*) (Feb. 10, 1998) (failing, 3-2, to find probable cause to believe), https://www.fec.gov/files/legal/murs/4012/28044203712.pdf; Certification, MUR 4012 (Freedom's Heritage Forum, et al.) (May 27, 1998) (authorizing a civil suit against same respondents), https://www.fec.gov/files/legal/murs/4012/28044203734.pdf.

at issue here), the agency held one failed reason-to-believe vote, and then later held additional failed votes. *See, e.g.*, MURs 7370 & 7496 (New Republican PAC, *et al.*);[21] MUR 7181 (Independent Women's Voice);[22] MURs 6391 & 6471 (Commission on Hope, Growth, and Opportunity ("CHGO")).

For instance, in MURs 6391 & 6471 (CHGO), the Commission failed, 3-3, to find reason to believe that the respondent failed to register as a political committee on September 16, 2014, and then, on October 1, 2015, held another reason-to-believe vote on the same allegation, which also failed, 3-3.[23] *See also CREW v. FEC*, 236 F. Supp. 3d 378, 387-88 (D.D.C. 2017), *aff'd*, 892 F.3d 434 (D.C. Cir. 2018). Only after the Commission voted 5-1 to close the file on the date of the second reason-to-believe vote was the case dismissed. *See id.* at 388. The three Commissioners who twice voted against finding reason to believe issued a Statement of Reasons that recognizes that the first deadlocked reason-to-believe vote did not dismiss the matter. *See* Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee S. Goodman at 3-4, MURs 6391 & 6471 (CHGO) (Nov. 6, 2015). They explained that, after the first vote, they anticipated the FEC's investigation of the respondent relating to other claims would allow them to be "able to make a finding regarding CHGO's political committee status" once the investigation was completed. *Id.* After that investigation, those Commissioners remained

---

[21] *See* Certification, MURs 7370 & 7496 (New Republican PAC, *et al.*) (May 20, 2021) (failing, 3-3, to find reason to believe), https://www.fec.gov/files/legal/murs/7370/7370_15.pdf; see Certification, MURs 7370 & 7496 (New Republican PAC, *et al.*) (June 10, 2021) (failing, 3-3, to dismiss under *Heckler v. Chaney* and to find no reason to believe on the same allegations, and subsequently voting 5-1 to close the file), https://eqs.fec.gov/eqsdocsMUR/7370_16.pdf.

[22] *See* Certification MUR 7181 (Independent Women's Voice) (Feb. 9, 2021) (failing, 3-3, to find reason to believe, and then voting 4-2 to dismiss under *Heckler v. Chaney*, and then voting 6-0 to close the file), https://eqs.fec.gov/eqsdocsMUR/7181_06.pdf.

[23] *See* Amended Certification, MURs 6391 & 6471 (CHGO) (Sept. 16, 2014), *supra* n.4; *see* Certification, MURs 6391 & 6471 (CHGO) (Oct. 1, 2015), *supra* n.4.

unconvinced, and so, more than a year after the first reason-to-believe vote, they again voted against reason to believe and concluded that "the most prudent course *was to close the file* consistent with the Commission's exercise of its discretion in similar matters." *Id.* at 4 (emphasis added); *see also CREW*, 236 F. Supp. 3d at 389 (same).

iv. Case Law

Case law also fails to support Defendants' position. Courts have repeatedly recognized that the Commission dismisses matters by holding a distinct vote to close the file. *See supra* pp. 7-8 (citing *CREW*, 971 F.3d at 346; *Doe*, 920 F.3d at 871 n.9; *CREW*, 892 F.3d at 442 n.13; *CREW*, 236 F. Supp. 3d at 388). The D.C. Circuit has also recognized that the date the FEC closed the file (and not the date of any previous reason-to-believe votes) is "the date of the dismissal" that triggers section 30109(a)(8)(B)'s 60-day deadline for a complainant to sue the FEC to challenge the dismissal. *See supra* p. 9 (citing *CREW*, 892 F.3d at 436; *Jordan*, 68 F.3d at 519; *Spannaus*, 990 F.2d at 644; *see also CREW*, 799 F. Supp. 2d at 83).

Against this weight of authority, the NRA Defendants point to no case law holding that a failed reason-to-believe vote automatically dismisses a case without a majority of the Commission also voting to close the file, and indeed, Plaintiff is aware of no such case. The Hawley Campaign can point only to *dicta* conflating a deadlocked reason-to-believe vote with a vote to dismiss a complaint by closing the file in contexts where the distinction made no difference. *See* Hawley Mot. at 11-13. *CREW v. American Action Network*, 410 F. Supp. 3d 1 (D.D.C. 2019), is typical: That case stemmed from an enforcement matter that resulted in two deadlocked reason-to-believe votes where, after each failed vote, the Commission also voted to "[c]lose the file." *See id.* at 9-

11.[24] *American Action Network*'s suggestion, quoted in Defendant's motion, that "[i]f fewer than four Commissioners find 'reason to believe[,]' . . . the complaint is dismissed," 410 F. Supp. 3d at 8; Hawley Mot. at 12, thus reflects nothing more than the fact that, in that case, once the reason-to-believe vote failed, the Commission voted to dismiss the complaint—in other words, one simply followed the other. It is little wonder then that the decisions cited by Defendant have not discussed the difference between a failed reason-to-believe vote and a vote to dismiss by closing the file; as Defendant acknowledges, a successful vote to close the file has historically often followed after a failed reason-to-believe vote. Hawley Mot. at 13.

v. Defendant's Dismissal Theory Leads to Absurd Results and Is Contrary to the Bipartisan Structure of the Commission

If accepted, Defendants' theory that failed reason-to-believe votes result in automatic dismissals would lead to absurd results and deleterious effects for the FEC.

First, if it were true that a failed reason-to-believe vote self-actuated a dismissal, then the numerous cases (like this one) where the Commission held multiple failed reason-to-believe votes would have, nonsensically, "terminated" multiple times.

Second, Defendants' theory would result in FEC motions to dismiss that fail to pass and yet *result in a dismissal anyway*. If any "deadlocked vote in an enforcement matter *is a final agency action resulting in dismissal of the complaint*," as the Hawley Campaign claims, *see* Hawley Mot. at 11, then that would illogically mean that a failed motion to dismiss that deadlocked 3-3 would nevertheless *dismiss* a case. Defendants' incorrect position that three Commissioners—potentially all of a single political party—can dismiss a matter "at any time," even when they do not comprise

---

[24] *See* Certification, MUR 6589 (American Action Network, *et al.*) (Oct. 19, 2016), https://eqs.fec.gov/eqsdocsMUR/16044401006.pdf; Certification, MUR 6589 (American Action Network, *et al.*) (June 26, 2014), https://eqs.fec.gov/eqsdocsMUR/14044361924.pdf.

a majority, also contradicts the bipartisan structure of the Commission. *See FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 37 (1981) ("[T]he Commission is inherently bipartisan in that no more than three of its six voting members may be of the same political party.").

Indeed, the Hawley Campaign—whose argument the NRA Defendants adopt—does not shy away from its "heads I win, tails you lose" approach, as it categorically claims that "FECA provides that three Commissioners have the authority to vote to dismiss an administrative complaint *at any time*," whether they constitute a majority of voting Commissioners or not. Hawley Mot. at 12 (emphasis added). To be sure, a bipartisan group of at least four Commissioners is necessary for the agency to pursue enforcement. 52 U.S.C. §§ 30106(c), 30107(a)(9). But the FEC's bipartisan structure, enforced by its majority-vote rule, also prevents a non-majority partisan bloc from dismissing enforcement matters at will without the support of a member from another party. Otherwise, a partisan bloc of three Commissioners could unilaterally dismiss all cases brought against any members of their own party—or dismiss all cases, period. Congress would surely be surprised to learn that when it required "all decisions" of the FEC to be made "by a majority vote of the members of the Commission," 52 U.S.C. § 30106(c), it was in fact authorizing a non-majority of Commissioners to exercise one of the FEC's most important powers by dismissing enforcement matters.

Third and finally, if FEC enforcement matters automatically terminated when the Commission's first attempt at reaching a four-vote consensus failed, it would end the ability of Commissioners to reach across the aisle and achieve bipartisan consensus on whether to proceed or dismiss. As described above, the Commission has changed its mind in matters after an initial failed reason-to-believe vote. *See supra* p. 7, 38. And, as one Commissioner recently explained during the hearing in which the agency rejected the automatic dismissals for which Defendants

advocate here, the Commissioners often negotiate after failed votes on whether to proceed or dismiss a particular matter:

> We've had cases that have stretched on for months and cases that have stretched on for years, while commissioners went back and forth and tried to decide what to do with the matter and, you know, I'm not going to say that having a case drag on that long is the ideal situation, but commissioners were exercising their role under the statute and trying to decide what to do. We've had many cases where there were votes on a matter in one meeting and then the case would be held over and we would discuss it in a further meeting. Sometimes, it would get delayed through any number of meetings and none of that would be possible, and sometimes at the end of the day we came to some resolution after all that time.

FECTube, *Open Meeting of April 22, 2021*, at 14:31-15:18, YouTube.com (Apr. 22, 2021).[25] If Defendants had their way, such efforts to achieve bipartisan compromise would come to an end.

vi. Defendants' Disagreement with FECA's Citizen-Suit Provision Provides No Basis for Changing the FEC's Voting Rules

Finally, Defendants are not entitled to a judicial order changing the FEC's voting rules merely because they are unhappy with how the Commission has voted. Defendants malign certain Commissioners for voting against dismissing matters those Commissioners believe the FEC should pursue, as engaging in a "scheme" and a "ruse" that allegedly leaves the FEC defenseless in court[26] while allowing "[a]ctivist groups" to sue the FEC and respondents. *See* NRA Mot. at 10-11; *see also* Hawley Mot. at 18-19. But there is nothing remotely untoward about Congress's policy choices to require a majority vote to dismiss a case and to allow administrative respondents to seek judicial enforcement in cases where the FEC is unable to act due to partisan gridlock. *See, e.g.*, *Iowa Values*, 2021 WL 5416635, at *7 (rejecting constitutional challenges to FECA's citizen-

[25] https://www.youtube.com/watch?v=qMozMP5sPIE&t=871s.

[26] Despite going on at length about how the alleged "Weintraub Scheme" involves certain Commissioners "refus[ing] to provide the four affirmative votes necessary to authorize the FEC's General Counsel to defend the FEC in court," NRA Mot. at 11, the NRA Defendants attach, as an exhibit to their motion, the certification showing that Commissioners authorized a defense in *Giffords v. FEC*, *see id.*, Ex. F.

suit provision); *Am. Action Network*, 410 F. Supp. 3d at 27 (same, and observing that "[e]nforcement by private attorneys general has become a feature of many modern legislative programs"). Indeed, when Congress "mandated that the six-member Commission be split down party lines, it anticipated that partisan deadlocks were likely to result," and so with FECA's citizen-suit provision, "it legislated a fix." *Am. Action Network*, 410 F. Supp. 3d at 6. Thus, "[i]t is inaccurate to characterize a [FECA] citizen suit as an evasion of proper process for the purpose of a fishing expedition," as Defendants effectively do here, since the citizen-suit provision is a part of FECA's enforcement process, "not a bypass of the process." *Iowa Values*, 2021 WL 5416635, at *7.[27]

In sum, only a majority vote to close the enforcement file, and not a failed reason-to-believe vote, dismisses an FEC enforcement matter.

2. The FEC Has Not Dismissed the Underlying Enforcement Matter in this Case Because It Has Not Voted to Close the File

As confirmed by the FEC's own lawyers, because the FEC did not dismiss Plaintiff's administrative complaints in February 2021 (or at any other time), the administrative complaints remain open notwithstanding the failed reason-to-believe votes. Hr'g Tr. at 8, *Giffords v. FEC*, No. 19-cv-1192-EGS (D.D.C. Nov. 1, 2021), ECF No. 89. Recognizing this, the Hawley Campaign

---

[27] In any event, the decision of some Commissioners not to dismiss enforcement matters that they believe the FEC should pursue does not create an opportunity for a FECA citizen-suit where one might not otherwise exist, as Defendants suggest, NRA Mot. at 10-11, since FECA's citizen-suit provision also authorizes lawsuits on the basis of FEC dismissals, 52 U.S.C. § 30109(a)(8)(A), (C). In other words, had the FEC actually dismissed Plaintiff's administrative complaint in February 2021, as Defendants incorrectly claim, Plaintiff could have sued the FEC to challenge the dismissal, *see* 52 U.S.C. § 30109(a)(8)(A), as Defendants acknowledge, *see* NRA Mot. at 10 (admitting that if the FEC closes the file, that "leaves the complainant with the option of challenging as 'contrary to law' the statement of reasons serving as the Commission's decision for judicial review purposes"). If Plaintiff then succeeded in showing that the dismissal was contrary to law, but the FEC remained deadlocked on enforcement, and thus failed to conform with an order to comply, that too would trigger a citizen suit.

implausibly claims that the FEC's attorney purposefully concealed the alleged dismissal from the Court in a bid to "effectively consent[] to his client losing the underlying case," *id.* at 18, and to "intentionally limit[] the [agency's] own powers," *id.* at 6. The NRA Defendants make the similarly extraordinary claim that the FEC's attorney was "being coy, if not outright dishonest, in pretending that the underlying MURs [were] still 'open.'" NRA Mot. at 15.

But the matters were still open, and indeed *are* still open, as this Court recognized, because the FEC's failed reason-to-believe votes did not result in automatic dismissal. *See supra* pp. 34-46. Far from being "mistaken[]," "misunderstanding of the law," or "in the dark," as Defendants assert, NRA Mot. at 12; Hawley Mot. at 16-17, the Court, before its ruling, had been periodically updated by the FEC regarding the administrative proceedings, including the February 2021 votes, *see* NRA Mot. at 14-15. The Court's ruling discussed those failed votes, and then explicitly ordered the FEC to "mak[e] the reason-to-believe *determination* set forth in [FECA]" and retained jurisdiction." Unredacted Mem. Op. at 30-31, *Giffords v. FEC*, No. 19-cv-1192-EGS (Oct. 14, 2021) (emphasis added). Thirty days later, on November 1, 2021, the FEC informed the Court that the Commissioners had not changed their positions since the February 2021 votes but had failed again to close the file. *See* Hr'g Tr. at 5, *Giffords v. FEC*, No. 19-cv-1192-EGS (D.D.C. Nov. 1, 2021), ECF No. 89. The Court therefore issued an order finding that the FEC had failed to conform to its September 30 declaration and authorizing Plaintiff to file this lawsuit.

Because the underlying enforcement matters are still open, it is irrelevant that the two Commissioners who voted against finding reason to believe in February 2021 have drafted a Statement of Reasons explaining their votes, which they submitted to the administrative record on October 26, 2021. *See* NRA Mot. at 21-22; Hawley Mot. at 15. Commissioners are free to draft a Statement of Reasons whenever they want. The timing of this draft—coming *eight months* after

the February 2021 votes and just six days before the expiration of the FEC's November 1 deadline to conform to the Court's contrary-to-law declaration—suggests that the Statement was litigation driven, and not a contemporaneous explanation of the basis for the votes taken seven months prior, nor an indication that any Commissioner considered those votes to constitute a dismissal. In any event, the draft is irrelevant (and remains non-public) because it is pre-decisional: The agency only publicly releases documents reflecting or explaining the basis for the "agency's 'final determination' with respect to enforcement matters," including any Statements of Reasons. *See* 81 Fed. Reg. at 50,702. Thus, as FEC counsel explained to the *Giffords v. FEC* court, the draft Statement of Reasons "will be released publicly when the files in the matters are closed," Hr'g Tr. at 7, *Giffords v. FEC*, No. 19-cv-1192-EGS (D.D.C. Nov. 1, 2021), ECF No. 89, to the extent it remains relevant to any future final determination. While courts have held that the Statement of Reasons of the Commissioners who voted against reason to believe "'necessarily states the agency's reasons for acting as it did'" for purposes of judicial review, NRA Mot. at 21-22 (quoting *FEC v. Nat'l Republican Senatorial Comm.*, 966 F.2d 1471, 1476 (D.C. Cir. 1992) (emphasis omitted)), that is true only when "those Commissioners constitute a controlling group for purposes of *the decision* [*to dismiss*]," *Nat'l Republican Senatorial Comm.*, 966 F.2d at 1476. Here, there has been no "decision" to dismiss. Until such a decision, the FEC could change its mind and find reason to believe, in which case, the draft Statement of Reasons would be rendered meaningless.

3. The Court Correctly Determined that the Commission's Failure to Act on Plaintiff's Administrative Complaints Was Contrary to Law

Because the FEC's deadlocked reason-to-believe votes did not dismiss Plaintiff's administrative complaints, those votes did not end the FEC's "failure to act" under section 30109(a)(8)(C), as Defendants contend, *see* Hawley Mot. at 6; NRA Mot. at 20-21. This contention

fails because it ignores the legal standards for evaluating the Commission's failure to act, and this Court's sound reasoning thereunder in *Giffords v. FEC*.

In a suit challenging an FEC "failure to act," the issue is not whether the agency has acted *at all*, but whether it has acted "expeditiously" and taken "timely final action" on an administrative complaint. *See supra* pp. 9-10. As a result, courts have found the FEC's failure to act not only continued but was contrary to law "even when the agency took *some action*." *Campaign Legal Ctr. v. FEC*, 2021 WL 5178968 at *7 (emphasis added).

Accordingly, this Court correctly observed that the issue in *Giffords v. FEC* was whether the FEC had made an expeditious "decision *whether or not* to investigate." Unredacted Mem. Op. at 13, *Giffords v. FEC*, No. 19-cv-1192-EGS (Oct. 14, 2021) (emphasis added). This determination turns on a multitude of factors, each of which was addressed in this Court's ruling in *Giffords v. FEC*. *See, e.g.*, *id*. Defendants make no attempt to address those factors, nor to dispute the Court's finding that the Commission's failure to act in the *seven months after* the votes were taken was unreasonable. *See id*. Instead, Defendants argue simply that the FEC did *something*, and thus it cannot be found to have failed to act. NRA Mot. at 19. This is not the standard for determining whether the FEC acted reasonably or expeditiously on Plaintiff's complaints for purposes of FECA. *See* Unredacted Mem. Op. at 12-13, 27-31, *Giffords v. FEC*, No. 19-cv-1192-EGS (D.D.C. Oct. 14, 2021); *supra* pp. 9-10. As such, it is not a sufficient basis for this Court to set aside its ruling that the FEC's "failure to take any action on the matters" in the seven months after it voted on the matters in February 2021 was contrary to law.[28]

---

[28] To the extent Plaintiff pointed out in *Giffords v. FEC* that there was no evidence that the FEC had even taken a vote in arguing that the FEC had failed to act, Plaintiff merely emphasized the extent of the FEC's failure, and did not suggest that merely deadlocking on a vote would be sufficient to end the Commission's unreasonable delay. *Contra* NRA Mot. at 20. Indeed, the FEC's failure to act within the meaning of section 30109(a)(8) continues to this day.

* * *

In sum, the Court should deny Defendants' motions. Plaintiff's Complaint more than adequately pleads facts satisfying FECA's requirements to bring this citizen suit, and, in substance, Defendants do not dispute that Plaintiff has met each of those requirements. In any event, Defendant's improper attempt to collaterally attack the Court's judgment in *Giffords v. FEC* lacks merit because the FEC did not dismiss the underlying enforcement matters at issue in this case.

III. Plaintiff's Claims Are Not Barred by the Statute of Limitations

Plaintiff's claims are not barred by the statute of limitations. While FECA does not contain an explicit statute of limitations, courts routinely "appl[y] the catch-all five-year limitations period set forth in 28 U.S.C. § 2462" to cases brought by the FEC seeking civil penalties for FECA violations. *Am. Action Network*, 410 F. Supp. 3d at 23. The NRA Defendants do not dispute that the Complaint's allegations with respect to the Defendants' activities after November 2, 2016—five years before Plaintiff filed the Complaint—are not time barred. But Defendants incorrectly contend that section 2462 bars Plaintiff's claims with respect to any of their illegal activities that occurred before that date. NRA Mot. at 36. To the extent the statute of limitations even applies to Plaintiff's claims,[29] it only began to run on the day that Plaintiff's claim accrued, November 1, 2021. Further, even if the statute of limitations did apply to activity that pre-dates November 2, 2016, it would only run as to fines or other monetary damages, and not to injunctive and declaratory relief.

---

[29] It is an open question in this Circuit whether section 2462 applies to citizen suits at all. *See CREW*, 410 F. Supp. 3d at 23. Although the NRA Defendants cite two out-of-circuit cases where courts applied 2462 to private rights of action, NRA Mot. at 37, neither court actually considered—and thus did not decide—the question of whether section 2462 applies solely to governmental enforcement actions. Like the court in *CREW* however, this court "need not resolve this skirmish," *id.*, because regardless, the statute has not run.

A. The Statute of Limitations Did Not Begin to Run Against Giffords until its Claims against Defendants Accrued on November 1, 2021

Under section 2462, the statute of limitations runs from "when the claim first accrued." 28 U.S.C. § 2462. Plaintiff's claim did not accrue, and thus the statute of limitations did not begin to run, until November 1, 2021, when the FEC failed to conform with the Court's September 30, 2021 order, and this Court authorized suit under 52 U.S.C. § 30109(a)(8)(C). *CREW*, 410 F. Supp. at 24 ("[T]he question is not when the alleged violation occurred, but when the claim first could have been brought: that is, when [plaintiff] had a 'complete and present cause of action.'") (quoting *Gabelli v. SEC*, 568 U.S. 442, 448 (2013)). Indeed, "the D.C. Circuit has found it 'virtually axiomatic' that 'a statute of limitations cannot begin to run against a plaintiff before the plaintiff can maintain a suit in court' and thus 'a cause of action does not 'first accrue' . . . until a party has exhausted all administrative remedies whose exhaustion is a prerequisite to suit.'" *Id.* at 24 (citing *Spannaus v. U.S. Department of Justice*, 824 F.2d 52, 56-57 (D.C. Cir. 1987)); *see also Crown Coat Front Co. v. United States*, 386 U.S. 503, 514 (1967) (declining to enforce statute of limitations from the time of violation where plaintiff "is compelled to resort to administrative proceedings which may be protracted and which may last" beyond the statutory period, such that plaintiff "is barred from the courts by the time his administrative appeal is finally decided.").

The NRA Defendants rely on *3M Co. (Minn. Mining & Mfg.) v. Browner*, 17 F.3d 1453, 1462 (D.C. Cir. 1994), *see* NRA Mot. at 39, but that case says nothing about when a private right of action predicated on exhaustion of administrative remedies accrues, nor could it, since it did not involve a private right of action. Instead, *3M* merely stands for the proposition that section 2462 applies to administrative enforcement proceedings, and that an administrative agency's enforcement claim accrues on the date of the underlying violation, not the date of the agency's discovery of that violation. 17 F.3d at 1457, 1462. *3M* is therefore entirely consistent with *CREW*

and the other precedents noted above: "a statute of limitations will not normally begin to run until a party has acquired the right to initiate the proceeding covered by the limitations period." *Ortiz v. Secretary of Defense*, 41 F.3d 738, 743 (D.C. Cir. 1994). Under *3M*, an administrative agency's right to pursue enforcement accrues once the violation occurs—there is no further factual predicate necessary for the agency to begin enforcement.[30] 17 F.3d at 1462. Here, as in *CREW*, the "final factual prerequisite" necessary to give rise to Plaintiff's claim was the "exhaustion of mandatory administrative process." 410 F. Supp. 3d at 24 n. 9. Thus, Giffords had a "complete and present" cause of action under section 30109(a)(8)(C) only when the FEC failed to conform to this Court's order to act within 30 days.[31] *Id.* at 24. As such, Plaintiff's claim is not barred by the statute of limitations.

Nonetheless, the NRA Defendants urge this Court to ignore binding D.C. Circuit and Supreme Court precedent on the ground that allowing Plaintiff to pursue its claim would be bad policy because it allows the FEC to "cure an expired statute of limitations" by allowing a "private party to pursue the matter in a citizen suit." NRA Mot. at 40. But the NRA Defendants preferred policy would allow the FEC to nullify citizen-suits based on unlawful FEC delay by simply delaying *longer* and running out the statute of limitations. This would thwart Congress's intent in authorizing plaintiffs harmed by the FEC's unlawful delay to bring FECA citizen suits. *See* 52

---

[30] Contrary to the NRA Defendants' assertions, Plaintiff is not seeking to be excused from the statute of limitations because of the "degree of difficulty that a litigant must undergo to file a complaint in this court." NRA Mot. at 42 (citing *3M*, 17 F.3d at 1461-63). It was not "difficult" for Plaintiff to file suit in this court prior to November 1, 2021, it was *impossible* because Plaintiff's private right of action did not accrue until the FEC failed to conform.

[31] For this reason, the NRA Defendants' reliance on *FEC v. Christian Coal*, 965 F. Supp. 66 (D.D.C. 1997) and *FEC v. Nat'l Republican Senatorial Comm*., 877 F. Supp. 15 (D.D.C. 1995) are inapposite—Plaintiff does not dispute that the FEC's claim to enforcement accrues from the date of the violation. *See* NRA Mot. at 40 ("the foregoing cases apply to lawsuits initiated by the FEC").

U.S.C. 30109(a)(8)(A); *cf. Crown Coat Front Co.*, 386 U.S. at 514 (finding that barring plaintiffs from court on the grounds that mandatory administrative proceedings lasted longer than the statute of limitations is "not an appealing result, nor in our view, one that Congress intended").

B. The Statute of Limitations Applies Only to Monetary Sanctions and Does Not Bar Declaratory and Injunctive Relief

Even assuming a statute of limitations applicable to this action began to run on November 2, 2016—which it did not—it would not bar Giffords from seeking any of the injunctive and declaratory relief sought in its Complaint. *See, e.g.*, Compl. at 39-40. "[I]t is well settled that '[t]raditionally and for good reasons, statutes of limitation are not controlling measures of equitable relief,'" and "the explicit language of § 2462" in particular "only refers to 'enforcement of any civil fine, penalty or forfeiture.'" *FEC v. Nat'l Republican Senatorial Comm.*, 877 F. Supp. 15, 20-21 (D.D.C. 1995) ("*NRSC*") (quoting *Holmberg v. Armbrecht*, 327 U.S. 392, 396 (1946)); *see also Riordan v. SEC*, 627 F.3d 1230, 1234 (D.C. Cir. 2010), *abrogated in part by Kokesh v. SEC*, 137 S. Ct. 1635 (2017) ("[T]he five-year statute of limitations in 28 U.S.C. § 2462 applies to an action for the enforcement of a 'fine, penalty, or forfeiture.'").

The NRA Defendants' efforts to get around section 2462's limited applicability are unavailing, belied by centuries-old distinctions between monetary and non-monetary relief. Relying on *Kokesh*, the NRA Defendants contend that Plaintiff's request for declaratory and injunctive relief with respect to the pre-November 2016 violations constitutes a "penalty" because it redresses a public rather than an individual harm. *See* NRA Mot. at 38 (citing *Kokesh*, 137 S. Ct. at 1642). This argument fails for three reasons. First, the holding in *Kokesh* was limited to whether "disgorgement in the securities-enforcement context is a penalty within the meaning of § 2462," 137 S. Ct. at 1639, an issue not presented in this case, which involves no claim for disgorgement. Second, as discussed *supra* Part I, Giffords asks the Court to remedy individual harms imposed by

Defendants on Giffords—competitive and informational injuries—by declaring Defendants' actions illegal and enjoining them from continuing to violate the law. That forcing the NRA Defendants to comply with the law would, as Defendants apparently concede, also benefit the public does not transform Plaintiff's request for relief into a "penalty." Third, the NRA Defendants' fail to explain how declaratory and injunctive relief, which are inherently prospective and intended to prevent future violations of the law rather than to punish previous violations, are "sought for the purpose of punishment" under the second prong of their purported test. *Cf., e.g.*, *Riordan*, 627 F.3d at 1234-35 (finding that a cease and desist order is not a fine, forfeiture, or penalty covered by § 2462 because such orders "simply requires [a defendant] not to violate the relevant . . . laws in the future" and are thus "purely remedial and preventative") (internal citations and quotations omitted).

Finally, the NRA Defendants incorrectly assert that even if the statute of limitations is limited to civil penalties for violations that occurred prior to November 1, 2016, the concurrent remedy doctrine bars equitable relief for those same violations. NRA Mot. at 38-39. But while courts have held that the concurrent remedies doctrine bars mandatory injunctive relief, none of the cases cited by Defendants establish that the prohibitory injunctive relief sought by Plaintiff here is barred under the concurrent remedies doctrine. *See, e.g.*, *Cope v. Anderson*, 331 U.S. 461 (1947) (seeking to enforce assessments on shares against defendant stockholders); *Sierra Club v. Okla. Gas & Elec. Co.*, 816 F.3d 666 (10th Cir. 2016) (seeking injunction requiring defendant to obtain permit and upgrade facilities). Defendants rely on *FEC v. Nat'l Right to Work Comm., Inc.*, *see* NRA Mot. at 38, but that case is inapposite because the court declined to grant injunctive relief given that twelve years had passed since the defendant violated the law, 916 F. Supp. 10, 15 (D.D.C. 1996), in stark contrast to the violations Plaintiff alleges here, which are ongoing.

Ultimately, because the statute of limitations does not bar any of Plaintiff's claims or requested relief, the Court has no need to reach the question of whether the concurrent remedies doctrine is implicated. Further, even if both the statute of limitations and the concurrent remedies doctrine apply—they do not—they would merely inform the scope of relief to which Plaintiff is entitled and would not serve as the basis for dismissing any of Plaintiff's claims.

For the foregoing reasons, the Court should deny the NRA Defendants' motion to dismiss on the ground that Plaintiff's claims are barred by the statute of limitations.

IV. This Court Has Personal Jurisdiction over Matt Rosendale for Montana

To establish specific personal jurisdiction, Giffords need only show that jurisdiction is proper under the District of Columbia's long-arm statute and the Due Process Clause of the Fifth Amendment. *See Forras v. Rauf*, 812 F.3d 1102, 1105-06 (D.C. Cir. 2016). The District's long-arm statute provides, among other things, that a "court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's . . . transacting any business in the District of Columbia." D.C. Code § 13-423(a)(1). This portion of the long-arm statute is coextensive with the due process clause, merging the jurisdictional analysis into a single inquiry: whether the defendant has "minimum contacts with [the District] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Am. Action Network v. Cater Am., LLC*, 983 F. Supp. 2d 112, 119 (D.D.C. 2013) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

The "minimum contacts" standard is satisfied if a defendant has taken "some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum." *Atchley v. AstraZeneca UK Ltd.*, 22 F.4th 204, 233 (D.C. Cir. 2022) (citation omitted). Purposeful availment is judged by the quality, not the quantity, of the defendant's contacts, and is satisfied if the

defendant "should have reasonably anticipated having to litigate a matter arising directly from those contacts in this jurisdiction." *FC Inv. Grp. LC v. Lichtenstein*, 441 F. Supp. 2d 3 (D.D.C. 2006). At this stage in the proceedings, Giffords "need only make a *prima facie* showing that the court has personal jurisdiction," and all inferences must be drawn in Giffords's favor. *Doe v. Roman Cath. Diocese of Greensburg*, No. CV 20-1750 (EGS), 2022 WL 203455 at *5 (D.D.C. Jan. 24, 2022); *IMAPizza*, 334 F. Supp. 3d 95, 108 n.2, 110, 114 (D.D.C. 2018). "Even a small amount of in-jurisdiction business activity is generally enough to permit the conclusion that a nonresident defendant has transacted business here." *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 331 (D.C. 2000). And indeed, even a single act can support jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 n.18 (1985).[32]

The Rosendale Campaign has two separate and independent sources of minimum contacts with the District, each of which alone is an adequate basis for exercising specific personal jurisdiction. Taken together, the case is even clearer. First, Defendant filed the false campaign finance reports that are the basis for Giffords's Complaint in the District. Second, the Campaign conducted fundraising activities in the District that are connected to the illegal coordination scheme at issue in this case. Personal jurisdiction is proper on each of these distinct grounds, but if the court disagrees, the proper remedy is not dismissal, but transfer to the United States District Court for the District of Montana.

---

[32] The Court may also "consider material outside of the pleadings in ruling on a motion to dismiss for lack of . . . personal jurisdiction. *Artis v. Greenspan*, 223 F. Supp. 2d 149, 152 (D.D.C. 2002).

A. Jurisdiction is Proper Based on the Rosendale Campaign's FEC Filings in the District

Personal jurisdiction exists in the District of Columbia because the Rosendale Campaign's *raison d'etre*—indeed, the reason for every federal campaign committee's existence—is to win a position in the seat of government in Washington, D.C. And, as a federal campaign committee, the Rosendale Campaign filed regular campaign finance reports with the FEC, which is located in Washington, D.C. Compl. at 39 ¶ 156. Defendant does not dispute that its FEC filings—and omissions—are sufficient to subject it to the Court's jurisdiction, but rather claims these reports are excluded from the jurisdictional analysis under the "government contacts" doctrine, which it asks the court to apply to campaign finance reports for the first time. Rosendale Mot. at 21.

To be sure, the government contacts doctrine has been applied to exclude from the jurisdictional analysis "a nonresident's entry into the District of Columbia for 'the purpose of contacting federal governmental agencies.'" *Id.* (quoting *Okolie*, 102 F. Supp. 3d at 177. The D.C. Circuit recently acknowledged, however, that "the scope of the government contacts doctrine" is "unsettled" and "uncertain." *Akhmetshin v. Browder*, 993 F.3d 922, 927-28 (D.C. Cir. 2021). That is because the D.C. Court of Appeals, which has recognized that the exception "does not hinge upon the wording of the" District's long-arm statute, *Env't Rsch. Int'l v. Lockwood Greene Engineers*, 355 A.2d 808, 813 (D.C. 1976), has intermittently justified the doctrine on two distinct principles, *Akhmetshin*, 993 F.3d at 927-28, neither of which apply in this case. The first is a prudential theory that the exception is necessary to "prevent the District of Columbia from becoming a national judicial center based solely upon parties' contacts with the federal government." *Lewy v. S. Poverty Law Ctr.*, 723 F. Supp. 2d 116, 126 (D.D.C. 2010). The second is a constitutional theory that the exception "protect[s] the right of citizens to freely access and petition the government." *Id.*

Initially, the D.C. Court of Appeals explained the doctrine based on a prudential, not a constitutional, principle, rooted in the "unique character of the District as the seat of national government and in the correlative need for unfettered access to federal departments and agencies." *Akhmetshin*, 993 F.3d at 927 (quoting *Env't Rsch. Int'l*, 355 A.2d at 813). Invoking jurisdiction based on contacts with government agencies, the court feared, "would threaten to convert the District of Columbia into a national judicial forum." *Id.* (quoting *Env't Rsch. Int'l*, 355 A.2d at 813).

Later, however, "the D.C. Court of Appeals held 'that the First Amendment provides the only principled basis' for the government contacts exception, with the exception's 'premise' having shifted 'solely to the First Amendment.'" *Id.* at 928 (quoting *Rose v. Silver*, 394 A.2d 1368, 1374 (D.C. 1978)). This more limited basis for the exception would cabin the government contacts exception to cases where exercising personal jurisdiction over a defendant would burden the "right to petition the government for a redress of grievances, without fear of the threat of suit if the[] contacts were limited to asserting that constitutional right." *Rose*, 394 A.2d at 1374. Under this rationale, the court has, for example, applied the government contacts exception to corporate lobbying activities in the District. *See, e.g.*, *Atlantigas v. Nisource*, 290 F. Supp. 2d 34, 44 (D.D.C. 2003).

This Court need not resolve the uncertain scope of the government contacts exception to recognize that it does not apply to suits brought under FECA's private right of action. *See* 52 U.S.C. § 30109(a)(8)(A). Defendant does not, and indeed could not, contend that filing false campaign finance reports with the FEC is an exercise of its First Amendment "right to petition the government for a redress of grievances." *Rose*, 394 A.2d at 1374. So the conception of the

government contacts doctrine expressed in *Rose*, and which the D.C. Circuit seemed to believe might be the "only" basis for the exception last year in *Akhmetshin*, does not apply here.

Even if the broader basis for the exception—to avoid "convert[ing] the District of Columbia into a national judicial forum"—survives *Akhmetshin*, that is no basis for invoking it here. *Akhmetshin*, 993 F.3d at 927 (quoting *Env't Rsch. Int'l*, 355 A.2d at 813). Direct action suits under FECA pose no risk of flooding D.C. courts with litigation. *Cf. United States v. Wilfred Am. Educ. Corp.*, No. MISC. 86-333, 1987 WL 10501, at *4 (D.D.C. Apr. 23, 1987) (declining to apply the government contacts exception where "finding personal jurisdiction [would] not threaten to convert the District of Columbia courts into a national judicial forum"). Most importantly, under FECA's enforcement scheme, filing suit in "the United States District Court for the District of Columbia" is *already* a prerequisite to a citizen suit. *See* 52 U.S.C. § 30109(a)(8)(C). Before an aggrieved party, like Giffords here, can initiate a direct suit against a respondent for violating federal campaign finance law, FECA directs the injured party to first file a petition against the FEC in the U.S. District Court for the District of Columbia. *See id.* Far from fearing that these actions would cripple the administration of D.C. courts, Congress *intended* this Court to be the primary forum in which FECA enforcement actions would take place.

More practically, the rarity of FECA direct action lawsuits also contravenes the assertion that the government contacts exception is necessary to spare the caseload of D.C. courts. FECA has governed campaign finance law in the United States for over 50 years, yet this case is one of, at most, four cases in which a private right of action has accrued to remedy the FEC's failure to act on an administrative complaint. When these rare cases do arise, litigating them in a forum with expertise in federal campaign finance law is consistent with the principles of fair adjudication that underlie personal jurisdiction determinations.

B. Jurisdiction Is Proper Based on the Campaign's Fundraising in the District

The court need not even address the "uncertain" government contacts question in this case because the Rosendale Campaign's own fundraising and banking activities in the District are sufficient to confer specific personal jurisdiction over this suit.

First, the Rosendale Campaign's fundraising activities in the District are sufficient to confer personal jurisdiction. An out-of-state defendant who markets itself to D.C. clients is subject to jurisdiction in the District. *Shoppers Food Warehouse*, 746 A.2d at 331 (en banc) (exercising jurisdiction due to defendant's purposeful advertising in the District which created a "deliberate and voluntary association with the District and its residents"). Here, Rosendale appeared at a fundraising event in the District in July 2018 as part of the Campaign's comprehensive scheme to violate federal campaign finance laws. Compl. at 29 ¶ 105. At the event, Rosendale, an agent of Defendant, his own campaign committee, invoked the scheme to earn donor support. In addition to this overt campaign activity, the Campaign maintained a bank account in Washington, D.C., enjoyed a D.C.-based PAC as its largest donor, and may have had employees in the District.[33]

The role of the coordination scheme in the Rosendale Campaign's financing strategy became public when the *Daily Beast* released audio of a July 2018 fundraising event in the District, which is quoted at length in Giffords's administrative complaint.[34] At the event, Rosendale told

---

[33] It is well settled that a principal may be subject to personal jurisdiction on the basis of an agent's acts. *See, e.g.*, *Roman Cath. Diocese of Greensburg*, 2022 WL 203455 at *8. The text of the D.C. long-arm statute itself provides that "A District of Columbia court may exercise personal jurisdiction over a person, who acts directly *or by an agent*, as to a claim for relief arising from the person's. . . transacting any business in the District of Columbia." D.C. Code § 13-423 (emphasis added).

[34] Giffords's administrative complaint, which Plaintiff filed on September 17, 2018, is available at https://campaignlegal.org/sites/default/files/2018-09/CLC%20Complaint%20to%20FEC%20Against%20Rosendale%20%2B%20NRA.pdf. The audio is available at Lachlan Markay, *Exclusive: Audio Reveals Potentially Illegal Coordination Between NRA and Montana*

attendees that outside groups were spending to support his campaign, before going on to assure supporters that Montana was "a big race for the NRA," and that the NRA was preparing to pour money into his campaign. Admin. Compl. at 4 ¶¶ 10, 11. In particular, Rosendale explained that the NRA's concern with Supreme Court nominations had motivated the NRA to enter the Montana race. *Id.* at 4 ¶ 11.

Less than two months later, the NRA spent hundreds of thousands of dollars on ads opposing Rosendale's opponent, Senator Jon Tester. Admin. Compl. at 4 ¶ 12; Compl. at 29 ¶ 106. The ads aired during Supreme Court nomination hearings and attacked Senator Tester for his votes on prior nominees. Admin. Compl. at 5 ¶ 13. The NRA ran the campaign through Starboard, spending nearly $400,000 on the ads. Compl. at 29 ¶ 106. Meanwhile, the Rosendale Campaign spent over $400,000 on similar ads, purchased through Starboard alter ego OnMessage. *Id.*

This event was directly connected to the Rosendale Campaign's illegal campaign financing. The Rosendale Campaign used the event to raise funds for its illicit campaign activities. And the Campaign leveraged the scheme to boost the confidence of its donors whose financial support it hoped to attract. The event and the scheme were thus closely intertwined with the Campaign's broader course of campaign finance violations.

Second, the Rosendale Campaign's banking activity in the District also supports jurisdiction in this case. Circuit courts have "unequivocally" held "that maintaining bank accounts in the forum for purposes of carrying out the subject transactions constitutes purposeful availment and invocation of the benefits of the forum's laws." *SEC v. Carrillo*, 115 F.3d 1540, 1546 (11th Cir. 1997); *see also, e.g.*, *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161, 168

Senate Hopeful Matt Rosendale, DailyBeast (Nov. 20, 2018), https://www.thedailybeast.com/exclusive-audio-reveals-potentially-illegal-coordination-between-nra-and-montana-senate-hopeful-matt-rosendale.

(2d Cir. 2013) (purposeful "use of a . . . bank account, standing alone, may be considered a 'transaction of business' under the long-arm statute"); *see also Ventura v. BEBO Foods, Inc.*, 595 F. Supp. 2d 77, 79 (D.D.C. 2009) (holding that corporate defendants' owner's "alleged banking and check writing activities" in the District were sufficient to satisfy the D.C. long-arm statute).

Here, the Rosendale Campaign's Statement of Organization indicates that it banked with EagleBank, located on K Street in downtown Washington D.C., during the 2018 election cycle.[35] And the Campaign's top donor during the race, Club for Growth PAC, is based in the District,[36] and contributed more than $375,000 to Rosendale.[37] Similar filings also show the Rosendale Campaign made disbursements in the District throughout the campaign (including for facility rental in July 2018, the same time as the fundraiser discussed above),[38] and even paid payroll tax to the District of Columbia Treasury,[39] suggesting the Campaign had District-based employees.

Contrary to Defendant's assertions, *see* Rosendale Mot. at 22-24, Defendant's contacts with the District are sufficiently related to Plaintiff's claim to support jurisdiction. Defendant relies principally on *Bigelow v. Garrett*, 299 F. Supp. 3d 34 (D.D.C. 2018), but that case supports the Court exercising personal jurisdiction in this case. In *Bigelow*, a photographer alleged a copyright

---

35 *See, e.g.*, Matt Rosendale for Montana, Statement of Organization (FEC Form 1) (Apr. 3, 2018), available at https://docquery.fec.gov/pdf/989/201804030200179989/201804030200179989.pdf.

36 *See, e.g.*, Club for Growth PAC, Return of Organization Exempt from Income Tax (IRS Form 990) (Dec. 15, 2009), available at https://pdf.guidestar.org/PDF_Images/2009/204/681/2009-204681603-05a204a1-9O.pdf; *see also Contact Us*, Club for Growth, https://www.clubforgrowth.org/contact/ (last visited, Feb. 7, 2022).

37 *Montana Senate 2018 Race*, OpenSecrets, https://www.opensecrets.org/races/contributors?cycle=2018&id=MTS1&spec=N (last visited Feb. 6, 2022).

38 Matt Rosendale for Montana, Itemized Receipts (FEC Form 3) (June 20-Sept. 28, 2018), available at https://docquery.fec.gov/cgi-bin/forms/C00548289/1272593/sb/ALL.

39 Matt Rosendale for Montana, Itemized Receipts (FEC Form 3) (Oct. 1-16, 2018), available at https://docquery.fec.gov/cgi-bin/forms/C00548289/1283737/sb/ALL.

infringement claim against a congressional campaign committee, *id.* at 39-40, and, in support of personal jurisdiction, "alleged only that the defendants raised funds in the District and maintained professional relationships with 'D.C.-based persons or entities,'" *id.* at 45. Yet the court did not hold that these contacts—which pale in comparison to those alleged here—were too minimal to establish personal jurisdiction; rather, the court held that the plaintiff had "not sufficiently connected his copyright infringement claim to the business activities." *Id.* There is no such problem in this case: the campaign finance violations Plaintiff alleges are closely connected to Defendant's campaign fundraising and banking activities in the District, as noted above.

C. If the Court Believes it Lacks Personal Jurisdiction the Proper Result Is to Grant Jurisdictional Discovery, or, at Minimum, Transfer the Case to a Proper Forum

Plaintiff has sufficiently alleged a prima facie case for personal jurisdiction over Defendant Rosendale for Montana. But, if the Court requires more evidence before exercising personal jurisdiction, the proper remedy would be to grant jurisdictional discovery to permit Plaintiff to supplement the record. *See, e.g.*, *GTE New Media Servs., Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1351-52 (D.C. Cir. 2000). If the Court instead determines that it lacks personal jurisdiction, transfer to the U.S. District Court for the District of Montana pursuant to 28 U.S.C. § 1406(a), rather than dismissal, would be the proper result. *See Bigelow*, 299 F. Supp. 3d at 48 ("Transfer is appropriate 'when procedural obstacles such as lack of personal jurisdiction impede an expeditious and orderly adjudication on the merits'"). In this case, transfer to the District of Montana, which Defendant does not claim would be improper, would "save the parties the time and expense of refiling this lawsuit in a different district," and the Rosendale Campaign "would not be prejudiced by a transfer to the district where [it] reside[s]." *Id.* at 49 (quoting *Cellutech v. Centennial Cellular*, 871 F. Supp. 46, 50 (D.D.C. 1994)).

CONCLUSION

For these reasons, Plaintiff respectfully requests that the Court deny Defendants' motions to dismiss.

Dated: February 18, 2022

Respectfully submitted,

/s/ *Kevin P. Hancock*

Mark P. Gaber (DC Bar No. 988077)
Kevin P. Hancock**
Molly E. Danahy (DC Bar No. 1643411)
Orion de Nevers^
CAMPAIGN LEGAL CENTER ACTION
1101 14th Street NW, Ste. 400
Washington, DC 20005
(202) 736-2200
mgaber@campaignlegalcenter.org
khancock@campaignlegalcenter.org
mdanahy@campaignlegalcenter.org
odenevers@campaignlegalcenter.org

Counsel for Plaintiff Giffords

** *Admitted* Pro Hac Vice. *Barred in the State of New York. Not admitted to the D.C. Bar. Practicing under the supervision of Adav Noti, member of the D.C. Bar.*

^ *Application for* Pro Hac Vice *admission pending. Bared in the State of California. Not admitted to the D.C. Bar. Practicing under the supervision of Molly Danahy member of the D.C. Bar.*

DAVID PUCINO*
Giffords Law Center to
Prevent Gun Violence
223 West 38th St. #90
New York, NY 10018
(917) 680-3473
dpucino@giffords.org

* *Admitted* Pro Hac Vice