NOT SCHEDULED FOR ORAL ARGUMENT

No. 25-5188

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GIFFORDS,
Plaintiff-Appellee,

v.

FEDERAL ELECTION COMMISSION,
Defendant-Appellee,

NATIONAL RIFLE ASSOCIATION OF AMERICA, *et al.*,
Appellants.

On Appeal from the United States District Court
for the District of Columbia, No. 1:19-cv-01192-EGS
Before the Honorable Emmet G. Sullivan

PLAINTIFF-APPELLEE GIFFORDS'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY AFFIRMANCE

Adav Noti
Kevin P. Hancock
Daniel S. Lenz
Kunal Dixit
CAMPAIGN LEGAL CENTER ACTION
1101 14th St. NW, Suite 400
Washington, DC 20005
(202) 736-2200
khancock@campaignlegalcenter.org

Counsel for Plaintiff-Appellee

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GLOSSARY OF ABBREVIATIONS

FECA	Federal Election Campaign Act
NRA	National Rifle Association of America and National Rifle Association of America Political Victory Fund

INTRODUCTION

Rather than grapple with the problems with a non-party appealing the denial of a motion it was not entitled to bring, the NRA's response ("Resp.") largely restates the flawed jurisdictional arguments it made below. The district court correctly declined to reach those arguments, and the NRA's attempts to renew them here are inapposite: For nearly four years, the NRA declined to fully participate in this suit; only two years after final judgment did it attempt to raise these issues through a Rule 60(b)(4) motion. Those litigation choices render this appeal fatally flawed. *First*, only a party to a judgment, or someone bound by it, has procedural standing to appeal. But the NRA concedes that it is not a party and does not claim to be bound by the judgment it is seeking to void. *Second*, the NRA cannot point to any legally cognizable injury traceable to the order it seeks to appeal. *Third*, only a "party or its legal representative" can bring a Rule 60(b) motion, forcing the NRA, a non-party, to rely instead on an inapplicable, atextual, out-of-circuit exception that this Circuit has already rejected. The NRA has made its Federal Election Campaign Act ("FECA") arguments in a motion to dismiss currently pending before the district court hearing the citizen suit. For the NRA's appeal of the instant action, however, dismissal, or summary affirmance, is appropriate.

ARGUMENT

I. The NRA's appeal should be dismissed.

The NRA's appeal is procedurally barred, and the NRA lacks Article III standing. This appeal should therefore be dismissed.

A. The NRA's appeal is procedurally barred.

The NRA is not a party to this case, *see* Resp. at 6, 12, which bars its appeal, *see* Mot. at 5-8. And the NRA does not, and cannot, argue that it acquired "party" status through being bound by the underlying judgment, having taken the opposite position in *Giffords v. NRA*. *See* No. 1:21-cv-02887-LLA (D.D.C. Mar. 7, 2025), ECF No. 85 at 20 ("[T]he NRA is not bound by the Delay Suit Court's judgment."), 25 (same). Instead, the NRA claims that it is bound by the district court's decision not to void that underlying judgment. Resp. at 5-6.

But if the NRA is not bound by the judgment it is seeking to void, it cannot possibly be bound by the district court's decision not to void that same judgment. While a Rule 60(b)(4) motion "does not bring up the underlying judgment for review," *Banister v. Davis*, 590 U.S. 504, 520 (2020), the only purpose of that motion is to void a judgment. Unlike, for example, a denial of a motion to intervene, a Rule 60(b)(4) denial is inextricably tied to the final judgment. That denial, which simply denies the movant relief "from a final judgment, order, or proceeding," has no effect on the movant beyond the continued force of the underlying judgment. Fed.

R. Civ. P. 60(b). The NRA acknowledges as much by claiming its alleged injury "is based on the orders and judgment for which the NRA sought vacatur below," Resp. at 10, not the Rule 60(b) denial itself. Thus, such a denial is not *per se* appealable, regardless of whether the appellant is a party to (or bound by) the judgment it is seeking to void. *See Alt. Rsch. & Dev. Found. v. Veneman*, 262 F.3d 406, 408 (D.C. Cir. 2001) (per curiam) ("Because intervention was properly denied, [plaintiff] is not a party to the action and lacks standing to appeal from . . . the order denying relief under Rule 60(b); we therefore grant the motion to dismiss as to those appeals.").[1]

If a Rule 60(b) denial conferred procedural standing to appeal, any party (or, accepting the NRA's position, a non-party) otherwise barred from appealing could simply backdoor that appeal through a Rule 60(b) motion. *See In re Sealed Case (Bowles)*, 624 F.3d 482, 487 (D.C. Cir. 2010) (discussing Rule 60(b) circumvention concerns). That would render restrictions on whether and when judgments can be appealed nullities. *See id.* And non-parties would have little reason to intervene before final judgment, knowing they could later bring a Rule 60(b)(4) motion and appeal any denial. Indeed, under the NRA's view, even non-parties whose

[1] The NRA's assertion that "Giffords knows—and concedes—that the NRA is bound by the order being appealed here," Resp. at 7, is wrong. *See* Mot. at 2 ("[The NRA] was not bound by the district court's judgment or, by definition, the court's decision not to revisit it[.]"), 7-8 (same).

intervention was correctly *denied* could pursue a broader appeal, using a Rule 60(b)(4) denial as a backdoor. *Contra Veneman*, 262 F.3d at 408.

The NRA also suggests that it is bound by the Rule 60 denial because "[t]he jurisdictional arguments raised in the NRA's Rule 60 motion may only be raised here in *this* case." Resp. at 6. That is contrary to the NRA's position in the citizen suit, where it has raised essentially the same arguments, albeit framed as a non-jurisdictional bases for dismissal. *See Giffords v. NRA*, ECF No. 85 at 21-26 ("The Delay Suit Court's determinations lack preclusive effect here [in the citizen suit]."). More fundamentally, the NRA provides no support for the proposition that any party (or non-party) is entitled to make any jurisdictional argument in any forum at any time—and that an inability to do so confers procedural standing to appeal.

Indeed, the opposite is true. Only some jurisdictional errors can properly support a Rule 60(b)(4) motion. *See U.S. Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270-71 (2010). "[A] motion under Rule 60(b)(4) is not a substitute for a timely appeal" but rather "applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a [certain type of] violation of due process." *Id.* Accordingly, "[f]ederal courts considering Rule 60(b)(4) motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction." *Id.* at 271 (quoting

Nemaizer v. Baker, 793 F.2d 58, 65 (2d Cir. 1986)). That holding cannot be reconciled with the NRA's claim that it may raise any jurisdictional argument in any forum through a Rule 60(b)(4) motion, let alone its claim that an inability to do so supplies a *per se* basis for appeal.

B. The NRA's appeal is jurisdictionally barred.

The NRA's alleged citizen-suit litigation costs do not create a legally cognizable injury.[2] *Contra* Resp. at 8-11. An injury based on unresolved litigation generally does not accrue until the defendant loses the subsequent case. *See Berger v. Weinstein*, 348 F. App'x 751, 755-56 (3d Cir. 2009). This accords with the general rule that "the fact that an order has an indirect or incidental effect on a non-party does not confer standing to appeal." *Microsystems Software, Inc. v. Scandinavia Online AB*, 226 F.3d 35, 42 (1st Cir. 2000). Non-parties do not necessarily have an Article III injury to appeal decisions simply because they may generate subsequent litigation or adjudications. *See ITServe All., Inc. v. DHS*, 590 F. Supp. 3d 27, 36 (D.D.C. 2022), *aff'd*, 71 F.4th 1028 (D.C. Cir. 2023); *PNGTS Shippers' Grp. v. FERC*, 592 F.3d 132, 138 (D.C. Cir. 2010) ("[B]eing forced to confront questions in

[2] The NRA attempts, without motion, to supplement the record on appeal with evidence that was not filed in the district court. *See* Resp. Ex. A. This is, of course, improper. *See* Fed. R. App. P. 10(e)(2). But it also highlights the problems with the NRA's desire to create a free-floating invitation for non-parties to litigate without intervening, *see* Mot. at 9-10 & n.4, including turning this Court of appellate review into one of first instance.

a future legal proceeding does not rise to the level of injury required for Article III standing.").

The NRA's reliance on *Raytheon Co. v. Ashborn Agencies, Ltd.* and *Sea-Land Service, Inc. v. Department of Transportation* is misplaced. *See* Resp. at 9. In *Raytheon*, Ashborn sued Raytheon in Israel instead of arbitrating in the United States, resulting in "costs and burdens" on Raytheon from document translation and witness travel. 372 F.3d 451, 453-54 (D.C. Cir. 2004). But the costs Raytheon incurred from this "additional proceeding" violated the parties' arbitration agreement, whereas FECA expressly authorizes the citizen-suit litigation. Similarly, in *Sea-Land Service*, this Court found that precedential effects that generate future litigation, "no matter how foreseeable," are not sufficient to confer standing. 137 F.3d 640, 648 (D.C. Cir. 1998). The "additional proceeding" referenced in that decision was not, as here, a separate case—but gave rise to a "narrow exception" permitting a party to challenge a generally applicable rule that interposed another layer into agency proceedings. *Id*. *Giffords v. NRA* is not an "additional proceeding," meaning additional layer of review, under FECA—it is a separate *de novo* lawsuit. *See* 52 U.S.C. § 30109(a)(8)(C). The NRA's defense in that case—and how it chooses to spend on that defense—does not confer standing here.

II. In the alternative, the district court's decision should be summarily affirmed.

Absent from the NRA's response is any discussion of the text of Rule 60(b), which the district court applied, correctly, to conclude that the NRA was not entitled to bring its Rule 60(b)(4) motion. The Rule states that relief is available only for a "party or its legal representative." Fed. R. Civ. P. 60(b). The NRA is neither, and does not claim otherwise. This resolves the question. *See Ratner v. Bakery & Confectionary Workers Int'l Union of Am.*, 394 F.2d 780, 782 (D.C. Cir. 1968); *Agudas Chasidei Chabad of U.S. v. Russian Fed'n* ("*Chabad II*"), 19 F.4th 472, 477 (D.C. Cir. 2021). This Court has consistently held that non-parties are not entitled to seek relief under Rule 60(b) and the district court's decision—applying that precedent—was plainly correct, warranting summary affirmance.

A. *Chabad II* confirms that the district court properly denied the NRA's Rule 60(b)(4) motion.

The NRA fundamentally misreads *Chabad II*, which the district court correctly found controls. *Chabad II* squarely addressed whether a non-party could seek relief under Rule 60(b)(4)—this Court affirmed a district court holding finding that a non-party could not bring such a motion, noting that this Court had not adopted an exception and, instead, following the "plain language" of the Rule. 19 F.4th at 474; *see also Agudas Chasidei Chabad of U.S. v. Russian Fed'n* ("*Chabad I*"), No. 1:05-cv-01548, 2020 WL 13652608, at *2 (D.D.C. July 28, 2020). These cases

address the same question presented here—whether a non-party may bring a motion under Rule 60(b)(4) challenging the court's jurisdiction—and answered "no." *Id.* ("[T]he court affirms the denial of relief pursuant to Federal Rule of Civil Procedure 60(b)."); *Chabad I*, 2020 WL 13652608, at *2. The district court was bound to apply this holding. *United States v. Torres*, 115 F.3d 1033, 1036 (D.C. Cir. 1997).

While the Court may consider subject matter jurisdiction *sua sponte*, Resp. at 14, it does not follow that district courts should ignore the requirements of Rule 60(b) whenever a non-party wishes to opine on the court's jurisdiction. Such a rule would effectively overrule *Chabad II*, and the NRA cites nothing that would support such a change.[3]

B. The district court properly declined to apply the *Grace* exception.

This Court has not adopted the atextual exception from *Grace v. Bank Leumi Trust Co. of New York*. 443 F.3d 180 (2d Cir. 2006). The only D.C. Circuit case addressing *Grace* is *Chabad II*, which found that the non-party appellant's reliance on that case was "misplaced" and, as discussed, affirmed that a non-party was not entitled to bring a Rule 60(b)(4) motion. 19 F.4th at 477. The district court here

[3] The NRA cites three cases in support of the uncontested notion that a Court may raise subject matter jurisdiction issues *sua sponte*. None of those cases actually address motions brought under Rule 60(b), and all three were decided before *Chabad II*. *See* Resp. at 14-15; *see also NetworkIP v. FCC*, 548 F.3d 116, 120 (D.C. Cir. 2008); *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010); *Jakks Pac., Inc. v. Accasvek, LLC*, 270 F. Supp. 3d 191, 196 n.4 (D.D.C. 2017). Only *Jakks Pacific* discussed Rule 60(b), although not the question presented in this case.

applied the same analytical method from *Chabad II*—noting that this Court has not adopted the *Grace* exception but nonetheless comparing the specific facts in that case and finding, correctly, that nothing similar occurred here. Op. at 13-14.

The NRA's other critiques of the district court's opinion are meritless. *First*, the district court did not "universally reject[]" *Grace*, Resp. at 16, but rather, demonstrated why the exception would not apply even if adopted. Op. at 13-14. *Second*, the district court's reliance on *Ratner* was hardly misplaced, considering that *Chabad II* cited it as authority for the general rule against non-party Rule 60(b) motions, fifteen years after *Grace*. 19 F.4th at 477. Just like this Court, the district court relied on *Ratner* for the proposition that the Rules should be applied as written, consistent with the instructions of the Supreme Court. *Id.*; *see also Pavelic & LeFlore v. Marvel Ent. Grp.*, 493 U.S. 120, 123 (1989); *Walker v. Armco Steel Corp.*, 446 U.S. 740, 750 n.9 (1980). The same is true of the district court's single citation, in a footnote, to *McKeever v. Barr*, 920 F.3d 842 (D.C. Cir. 2019). Op. at 13. As the district court stated, *McKeever* addresses the propriety of recognizing unlisted exceptions to federal rules, including through reference to Rule 60(b). 920 F.3d at 847. *Third*, the district court correctly found, and the NRA does not seriously contest, that the facts of this case are a far cry from those in *Grace*. Op. at 13-14; *Federman v. Artzt*, 339 F. App'x 31, 33-34 (2d Cir. 2009) (summary order). In short, the district court carefully explained why it was required to apply Rule 60(b) as

written, including whether it should apply the *Grace* exception, to deny the NRA's motion. This is consistent with this Court's decision in *Chabad II* and warrants summary affirmance.

C. The district court's findings were sufficient for appellate review.

Finally, the NRA's assertions regarding the district court's factual findings, *see* Resp. at 18-22, are a transparent attempt to bootstrap its procedurally barred arguments in support of its Rule 60(b)(4) motion. Having resolved the NRA's motion based on the plain language of Rule 60(b), the district court was not required to address the balance of the arguments. *See Amoco Prod. Co. v. Fry*, 118 F.3d 812, 817 (D.C. Cir. 1997) ("Because we agree with the District Court that the first of these reasons is dispositive . . . we need not address the second."). By sufficiently explaining the reasoning behind its actual decision, the district court discharged its obligation.[4]

[4] The NRA's claim that this Court should view evidence favorably to the nonmovant is incorrect. Resp. at 21-22. The case it cites in support, *Taxpayers Watchdog, Inc. v. Stanley*, involved review of a summary judgment decision, requiring that standard of review. 819 F.2d 294, 298 (D.C. Cir. 1987). Denials of Rule 60(b) motions are generally reviewed for abuse of discretion, although decisions regarding the validity of judgments may be reviewed *de novo*. *Bell Helicopter Textron v. Islamic Republic of Iran*, 734 F.3d 1175, 1179 (D.C. Cir. 2013).

CONCLUSION

The Court should dismiss this appeal or, in the alternative, summarily affirm the district court's order denying the NRA's Rule 60(b) motion.

Dated: August 11, 2025

Respectfully submitted,

/s/ Kevin P. Hancock
Adav Noti
Kevin P. Hancock
Daniel S. Lenz
Kunal Dixit
CAMPAIGN LEGAL CENTER ACTION
1101 14th St. NW, Suite 400
Washington, DC 20005
(202) 736-2200
anoti@campaignlegalcenter.org
khancock@campaignlegalcenter.org
dlenz@campaignlegalcenter.org
kdixit@campaignlegalcenter.org

Counsel for Plaintiff-Appellee

CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Fed. R. App. P. 27(d)(2)(C) because it contains 2,583 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This filing complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared using Microsoft Office Word in Times New Roman 14-point font.

CERTIFICATE OF SERVICE

I certify that on August 11, 2025, I electronically filed this reply with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system, thereby serving all persons required to be served.

/s/ Kevin P. Hancock
Kevin P. Hancock