UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GIFFORDS, *Plaintiff*, v. NATIONAL RIFLE ASSOCIATION OF AMERICA POLITICAL VICTORY FUND; NATIONAL RIFLE ASSOCIATION OF AMERICA INSTITUTE FOR LEGISLATIVE ACTION; MATT ROSENDALE FOR MONTANA; and JOSH HAWLEY FOR SENATE, *Defendants*.	)	Civil Action No. 1:21-cv-02887-EGS

DEFENDANT MATT ROSENDALE FOR MONTANA'S
REPLY IN SUPPORT OF ITS RULE 12(b)(1) AND 12(b)(2) MOTION TO DISMISS
FOR LACK OF SUBJECT-MATTER AND PERSONAL JURISDICTION

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INTRODUCTION

As each of the three pending motions to dismiss comprehensively demonstrate, Plaintiff's Complaint suffers from myriad and incurable defects. *See generally* ECF 30 ("Motion"); ECF 31-1 ("Hawley Motion"); ECF 35-1 ("NRA Motion").[1]

Chief among them, Plaintiff lacks standing because it has not suffered any injury cognizable under Supreme Court or D.C. Circuit precedent. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). *See* Motion at 15-24; Hawley Motion at 6-10; NRA Motion at 28-42. Plaintiff relies on purported competitive and informational harms. ECF 39 at 26-38 ("Opposition"). But the D.C. Circuit has never recognized the form of competitive injury Plaintiff alleges: A *non-candidate* purportedly harmed by a candidate campaign committee allegedly receiving illegal contributions in the form of coordinated expenditures. Moreover, nothing in the caselaw supports extending competitor standing, as that would result in nearly every political actor having standing to challenge campaign-finance violations. Regardless, Plaintiff's alleged injuries resulting from the 2018 campaign are not redressable under *Nader v. FEC*, 725 F.3d 226, 228 (D.C. Cir. 2013).

Similarly, Plaintiff's allegation of informational injury is belied by Plaintiff's Complaint and Opposition, and D.C. Circuit precedent squarely forecloses Plaintiff's argument. Plaintiff was able to, in its own words, "*meticulously* document[]" the very information Plaintiff claims to lack: the NRA's expenditures supporting Defendant Matt Rosendale for Montana's 2018 campaign. Opposition at 33-34 (emphasis added). As Plaintiff admits, the only information Plaintiff was allegedly "denied" was "the 'fact' of 'coordination'"—*i.e.*, whether those NRA expenditures were

[1] Defendant uses the same abbreviations as in its Motion. All citations to docket entries refer to ECF pagination.

actually illegal coordinated communications. *Wertheimer v. FEC*, 268 F.3d 1070, 1075 (D.C. Cir. 2001); Opposition at 37. But that is a "a legal conclusion that carries certain law enforcement consequences," not a "fact" for purposes of informational standing. *Wertheimer*, 268 F.3d at 1075. Accordingly, Plaintiff suffered no informational injury under binding D.C. Circuit precedent. *Id.*

Furthermore, this Court lacks personal jurisdiction over Defendant Matt Rosendale for Montana. None of Defendant Matt Rosendale for Montana's contacts with D.C. alleged by Plaintiff give rise to personal jurisdiction (and some of Plaintiff's extra-Complaint allegations are inaccurate, but personal jurisdiction is still lacking even assuming all allegations were accurate). In Plaintiff's own words, Plaintiff may only bring claims "arising *directly from* those contacts in this jurisdiction." Opposition at 63 (emphasis added; quoting *FC Inv. Grp. LC v. Lichtenstein*, 441 F. Supp. 2d 3, 9 (D.D.C. 2006)). And Plaintiff's claim that Defendant used a common vendor—located outside of D.C.—to coordinate expenditures with the NRA Defendants does not "aris[e] from" any alleged contacts with D.C. *See* D.C. Code § 13–423(a). Likewise, many of the alleged contacts are precluded from jurisdictional consideration by the government-contracts doctrine. *Okolie v. Future Servs. Gen. Trading & Contracting Co., W.L.L.*, 102 F. Supp. 3d 172, 177 (D.D.C. 2015).

Accordingly, this Court should grant Defendant Matt Rosendale for Montana's motion to dismiss with prejudice.

ARGUMENT

As was already plain on the face of the Complaint, Plaintiff's Opposition fails to demonstrate that this Court has jurisdiction—and, in particular, that the Court has jurisdiction over Defendant Matt Rosendale for Montana. *Owner-Operator Indep. Drivers Ass'n, Inc. v. U.S. Dep't of Transp.*, 879 F.3d 339, 346 (D.C. Cir. 2018) (requiring standing for each claim).

I. Plaintiff lacks standing because it lacks competitor and informational standing under longstanding precedent.

As Plaintiff's Opposition concedes, Plaintiff must demonstrate Article III standing independent of the FEC's alleged failure to act on Plaintiff's administrative complaints. Opposition at 15-16. Plaintiff relies on two grounds for standing: competitor and informational standing. *Id.* at 39. But Plaintiff has neither under binding D.C. Circuit precedent.

A. Plaintiff lacks competitor standing.

1. Plaintiff recognizes that it can only assert competitive injury arising from an "illegally structured" political or campaign environment—a concept that has never encompassed purported harms that non-candidates suffer from the alleged campaign-finance violations of candidates. Opposition at 27, 31, 32; *id.* at 33 ("the portions of [] *Gottlieb*" discussed in the Motion "do not relate to competitor standing . . . but rather to alternative theories of standing asserted by the individual voters in that case").[2] Accordingly, Plaintiff does not assert it has standing based on any "supposed injury to [its] ability to influence the political process." Motion at 19-20 (cleaned up; citing *Gottlieb v. FEC*, 143 F.3d 618, 621 (D.C. Cir. 1998)). Nor does Plaintiff attempt to rely on purported "unfair treatment burdening" a candidate. *Id.* at 20 (cleaned up; citing *Gottlieb*, 143 F.3d at 622).

Likewise, Plaintiff has not cited a single case in which any court has held that a *non-candidate* has standing to sue a candidate's campaign committee (or any other organization, like the

[2] Plaintiff's assertion also is not accurate. The portion of *Gottlieb* cited in Defendant Matt Rosendale for Montana's Motion specifically addressed whether "AmeriPAC [could] claim standing as a 'competitor' of the Clinton campaign." *Gottlieb*, 143 F.3d at 621; *see* Motion at 19.

NRA Defendants) for improper receipt of campaign funds.[3] Fundamentally, non-candidates like Plaintiff do not "compete" with candidates (or their campaign committees like Defendant) under D.C. Circuit precedent. *See* Motion at 19 (citing *Gottlieb*, 143 F.3d at 621; *Hassan v. FEC*, 893 F. Supp. 2d 348, 255 n.6 (D.D.C. 2012)).[4] Consequently Plaintiff has no answer to this Court's observations that the D.C. Circuit has only "found" competitor standing for "*already established candidates* . . . to challenge an 'assertedly illegal benefit' being conferred upon someone with whom those candidates compete." *Hassan*, 893 F. Supp. 2d at 254 n.6 (emphasis added; collecting cases).

Importantly, Defendant does not argue that *non-candidates* can *never* have competitor standing against certain other *non-candidate* entities, as Plaintiff suggests. Opposition at 30. Rather, the D.C. Circuit's caselaw makes clear that anyone asserting competitor standing—whether candidates or other organizations—must "personally compete[ ] in the same arena with" its alleged

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[3] Plaintiff's theory of competitive harm cannot justify standing against any of the defendants in this lawsuit, and Plaintiff does not address the ways in which its theory is especially weak as applied to Defendant Matt Rosendale for Montana in particular. *See* Motion at 19 n.7 (explaining why Plaintiff does not compete with candidates or organizations). Contrary to Plaintiff's assertion that it "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," Opposition at 38, it is Plaintiff's related (but distinct) Giffords PAC that "supports and endorses candidates and elected officials who promote policies to reduce gun violence and oppose the influence of the gun industry and the NRA, including by making political contributions and independent expenditures." ECF 39-1 ¶ 4 ("Decl."); *see also id.* ¶¶ 7-9, 17-20. For instance, when "Giffords opposed . . . Matt Rosendale" in 2018, it was Giffords PAC that made a "$2,500 contribution to Rosendale's opponent Jon Tester." *Id.* ¶ 13. In fact, Plaintiff is in exactly the same position as "the NRA-ILA, a 501(c)(4) corporation that is prohibited from making contributions to candidates." Opposition at 39.

[4] Plaintiff principally relies on *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005), but that case likewise acknowledged that "*candidates*" are those who "suffer[] more directly when political rivals get elected using illegal financing[.]" *Id.* at 83 (emphasis added). *Shays* is addressed below at pp.5-8, *infra*.

competitor. *Gottlieb*, 143 F.3d at 621. And, as applied to this case, a *non-candidate* like Plaintiff does not compete with a *candidate* campaign committee like Defendant. Furthermore, because non-candidate Plaintiff does not compete with candidate Defendant Matt Rosendale for Montana, whatever additional efforts Plaintiff took to oppose Defendant because of the alleged coordination cannot give rise to standing either, as Plaintiff argues. Opposition at 29.[5]

2. Rather than directly confronting the principles outlined in Defendant's Motion, Plaintiff relies almost entirely on the D.C. Circuit's decision in *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005). But that decision does not support Plaintiff here. *See also* Hawley Motion at 7-10. Fundamentally, *Shays* does not confer standing on *non-candidates* for the alleged campaign-finance violations of others. Instead, *Shays* stands for the limited proposition that candidates have standing to sue the FEC to ensure that the FEC's comprehensive regulation of campaign-finance comply with statutory requirements. Extending *Shays* any further would transform the carefully cabined competitor-injury doctrine into a source of automatic standing. Accordingly, *Shays* does not, as Plaintiff argues, stand for the broad proposition that anyone and everyone has a "legally cognizable right to a fair competitive environment" that gives rise to standing upon every alleged campaign-finance violation. Opposition at 27.

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[5] Similarly, Plaintiff's offhand reference to its efforts "countering" the allegedly illegal funds does not explain how Plaintiff's general opposition to the NRA Defendants' independent expenditures is meaningfully different from Plaintiff's opposition to allegedly illegal coordinated communications. Specifically, Plaintiff has declared that one of its core purposes is to oppose the NRA Defendants and their preferred candidates. *See* Opposition at 21-22. And Plaintiff likewise concedes that it does not know which of the potentially allegedly coordinated communications here were, in fact, coordinated communications. *See id.* at 37-38. So even assuming for the sake of argument that Defendant gains an advantage from the NRA's allegedly coordinated communications, Plaintiff's own purported organizational purpose and strategy dictates that Plaintiff would take efforts to "counter" the communications regardless of whether the NRA Defendants coordinated any communications.

Shays recognized candidates' standing to sue the FEC to seek redress for the "illegal structuring of a competitive environment"—and this narrow injury accords with other limitations that the D.C. Circuit has recognized. *Shays*, 414 F.3d at 85. *Shays* considered two Members of Congress challenging the FEC's implementing regulations for the Bipartisan Campaign Reform Act. *Id.* at 82. The Members asserted standing "*as candidates* waging reelection contests governed by BCRA." *Id.* (emphasis added). These candidates alleged that the FEC's implementing regulations were more lenient than BCRA permitted, and thus fundamentally altered the entire competitive landscape. *Id.* at 84-85 ("under FEC regulations permitting what BCRA prohibits, [plaintiffs] suffer injury to their interest, protected by that statute, in seeking reelection through contests untainted by BCRA-banned practices").

In other words, *Shays* recognized the harm that political *candidates* suffer when the FEC allegedly unlawfully imposes comprehensive regulations "set[ting] the rules of the game" for all federally regulable campaign activity:

> [A]t least two lines of precedent (procedural rights and competitor standing cases) embody a principle that supports Shays's and Meehan's standing: that when regulations illegally structure a competitive environment—whether an agency proceeding, a market, or a reelection race—parties defending concrete interests (e.g., retention of elected office) in that environment suffer legal harm under Article III.

Id. at 85, 87.[6]

Consequently, *Shays* does not stand for the proposition that individual violations of campaign-finance laws—even the complicated conspiracy that Plaintiff alleges here—constitute an "illegally structured campaign environment." And *Shays* certainly did not, as Plaintiff argues, hold

[6] It is only in this context—suing the FEC for the FEC's comprehensive regulation of campaign finance—that the court recognized "intensified competition" could be a legally cognizable injury. *Shays*, 414 F.3d at 87.

that political candidates would have standing "if the FEC *failed to enforce* FECA" based on an "injury to their right to a legally structured competitive political environment in those campaigns." Opposition at 27-28 (emphasis added; citing *Shays*, 414 F.3d at 84-87).[7] And it certainly did not hold that *non-candidates* have standing for every alleged FEC failure to enforce—as Plaintiff asserts here.[8]

Instead, this Court and the D.C. Circuit have recognized limited examples of competitive injuries giving rise to competitor standing. Unsurprisingly, Plaintiff cannot identify a single case in which a non-candidate suffered a cognizable injury from an alleged coordinated communication. And the cases that Plaintiff does cite illustrate the limited scope of *Shays*. *See* Opposition at 27, 31. For instance, Defendant cites cases in which *candidates* were excluded from the ballot. *See La Botz v. FEC*, 889 F. Supp. 2d 51, 56 (D.D.C. 2012) (exclusion from a political debate); *Buchanan v. FEC*, 112 F. Supp. 2d 58, 66 (D.D.C. 2000) (same); *Nat. Law Party of U.S. v. FEC*, 111 F. Supp. 2d 33, 44 (D.D.C. 2000) (same). Plaintiff also suggests that *Nader v. FEC* "acknowledg[es] that a failure to enforce FECA could produce competitive injury when [a] plaintiff will compete against

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[7] Regardless of how *Shays* has been characterized in other legal contexts governed by different statutory schemes, the D.C. Circuit's caselaw on competitor standing in campaign-finance cases control here. *Cf.* Opposition at 31 (collecting non-campaign-finance cases); *Air Line Pilots Ass'n, Int'l v. Chao*, 889 F.3d 785, 788 (D.C. Cir. 2018) ("This court . . . has consistently held that *union members* have standing to challenge agency action authorizing competitive entry into their employers' markets.") (emphasis added; collecting cases).

[8] Plaintiff secondarily cites *Chamber of Commerce of the United States v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995), for the proposition that any type of "political competitor could challenge *the Commission's* dismissal of its complaint." Opposition at 30 (emphasis added). But while the statute, 52 U.S.C. § 30109(a)(8), gives *a cause of action* to those who file administrative complaints with the FEC to sue *the FEC*—as Plaintiff did in a separate proceeding related to this matter—that still fails to address the issue of standing and, specifically, whether the type of non-candidate "political competitor" that Plaintiff purports to be has standing to sue a candidate's campaign committee like Matt Rosendale for Montana.

the entities violating FECA in the future." Opposition at 27; *see also id.* at 22-23. But the injury asserted in that case was a *candidate* who was denied access to the ballot. *Nader*, 725 F.3d at 228 ("Ralph Nader filed an administrative complaint with the Federal Election Commission alleging that various organizations violated election laws during their efforts to keep him off the ballot."). These kinds of harms are direct harms to *candidates'* ability to engage in core and necessary components of the electoral process, like political debates and ballot access. Accordingly, the Article III injuries recognized by these cases have been directly tethered to candidates, and none recognize a cognizable injury for non-candidates to sue a candidate for alleged campaign-finance violations.

3. Finally, Plaintiff cannot establish redressability. Even if Plaintiff had alleged a sufficient competitive injury based on conduct in previous elections, "a favorable decision here will not redress the injuries [Plaintiff] claims." *Id.*; *see* Motion at 20-22 (addressing lack of redressability). The injury that Plaintiff asserts is "unfairly increased competition" arising from "Defendants' [alleged] illegal contribution scheme," Opposition at 34, which can only be redressable if that scheme is ongoing. *Nader*, 725 F.3d at 228.

Plaintiff does not dispute that the only allegations it has made with particularity are *retrospective* campaign-finance violations. This pleading failure is fatal to Plaintiff's Complaint. Plaintiff similarly does not dispute that the D.C. Circuit has only recognized competitor standing when plaintiffs allege injury in an *ongoing or future* election. *Id.* (collecting cases). Most pertinently, with respect to Defendant Matt Rosendale for Montana, Plaintiff has only alleged violations from the 2018 campaign and election—not the more-recent 2020 campaign or the upcoming 2022 campaign. ECF 1 ¶¶ 14, 20, 26, 104-107, 135, 139, 149, 152, 156 ("Compl.").[9] To be sure, Plaintiff

[9] Plaintiff has used its Opposition to add to the Complaint's allegations: "[T]he NRA has continued to support candidate Matt Rosendale in is 2020 and 2022 elections." Opposition at 35

has made the threadbare assertion that the alleged violations are somehow ongoing, even though the 2018 election occurred years ago. *Id.* ¶ 6. But threadbare complaint allegations are not enough to survive a motion to dismiss. *E.g.*, *Hassan*, 893 F. Supp. 2d at 252 (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Thus, the Complaint contains no competent allegations of current or prospective injuries, and thus it does not matter that Plaintiff contends it will oppose Defendant Matt Rosendale for Montana in the future. Opposition at 34.

Similarly, this Court's observation in *Giffords v. FEC* that there is a "threat of recurrence" (based on *past* alleged coordinated expenditures) does not relieve Plaintiff of its obligation to affirmatively establish its standing by sufficiently pleading a redressable injury. *Cf.* Unredacted Mem. Op. at 17, ECF 88, *Giffords v. FEC*, No. 19-cv-1192 (D.D.C. Oct. 14, 2021). As addressed above, Plaintiff has not pleaded any factual allegations—including any allegations underlying this Court's conclusion in *FEC v. Giffords*—that support Plaintiff's conclusory allegation that Defendant Matt Rosendale for Montana continues to violate campaign-finance law.

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n.10 (citing Decl. ¶¶ 21-23). Even assuming for the sake of argument that Plaintiff has properly introduced these extra-Complaint allegations, these allegations fail to meet Plaintiff's burden and they demonstrate why granting Plaintiff leave to amend its Complaint would be futile. None of these allegations include any allegation of continued illegal coordinated expenditures after 2018. Specifically, these allegations merely state: (1) Representative Rosendale was re-elected to the House of Representatives in 2020; (2) Representative Rosendale has stated his intent to run in the 2022 election; (3) Matt Rosendale for Montana is Representative Rosendale's "designated campaign committee for 2022"; (4) Plaintiff will oppose Representative Rosendale in 2022; (5) Giffords PAC "expects to make expenditures against Matt Rosendale and to make contributions to his opponent in 2022" and (6) the NRA-PVF "spent $10,057.81 in support of Matt Rosendale's election in 2020" and "made a $1,000 contribution to Matt Rosendale for Montana on September 30, 2021." Decl. ¶¶ 21-23.

B. Plaintiff lacks an informational injury sufficient to confer standing because it has all information to which it is entitled under FECA.

Plaintiff also lacks informational standing. *See* Motion at 22-24.[10] At bottom, Plaintiff alleges it has suffered an injury because the NRA Defendants reported their expenditures as legal independent expenditures rather than illegal coordinated communications. Opposition at 39. Specifically, Plaintiff argues that "Defendants' [alleged] violations of FECA deny Giffords information about the *precise amounts* that the NRA Defendants contributed to the Campaign Defendants *in the form of coordinated communications*" which "derives from the failure of the Campaign Defendants and the NRA *Defendants to report coordinated communications as in-kind contributions* as required by FECA." *Id.* at 35-36 (emphases added). But this is a legal conclusion that the D.C. Circuit has long held does not give rise to an Article III informational injury because Plaintiff already has all of the information to which it is entitled under law. Matt Rosendale for Montana and the NRA Defendants have exhaustively disclosed their political advocacy for the 2018 campaign at issue, including dates, purposes, and costs—as Plaintiff recreates in its Complaint. Motion at 30.

Plaintiff does not dispute the core principles of the D.C. Circuit's caselaw, which foreclose an informational injury when a Plaintiff "already possess[es] the information [it] claim[s] to lack." *All. for Democracy v. FEC*, 335 F. Supp. 2d 39, 48 (D.D.C. 2004). For instance, Plaintiff does not dispute that an Article III informational injury does not arise simply because a party "has been deprived of the knowledge as to whether a violation of the law has occurred." *Common Cause v. FEC*, 108 F.3d 413, 418 (D.C. Cir. 1997) (per curiam); *accord Judicial Watch, Inc. v. FEC*, 293

[10] Plaintiff did not sufficiently allege an informational injury, *see* Motion at 14, but the Parties agree that the Court should definitively resolve the question of Plaintiff's standing, including informational standing. *See* Opposition at 35-38 & n.12.

F. Supp. 2d 41, 46 (D.D.C. 2003). Nor does Plaintiff dispute that the Act only gives Plaintiff "the right to know [1] who is spending money to influence elections, [2] how much they are spending, and [3] when they are spending it"—information that Defendants have already disclosed in their FEC filings. *Citizens for Responsibility & Ethics in Wash v. Am. Action Network*, 410 F. Supp. 3d 1, 12 (D.D.C. 2019) (citing *FEC v. Akins*, 524 U.S. 11, 24-25 (1998)). Finally, Plaintiff does not argue that Defendants have failed to make any disclosure *apart* from their alleged failure to classify the speech at issue as coordinated rather than independent expenditures.[11] Consequently, Plaintiff does not "dispute that all [Defendants] currently report all disbursements or that each transaction [Plaintiff] allege[s] is illegal is reported *in some form*." *Wertheimer*, 268 F.3d at 1074 (emphasis added).

Instead, Plaintiff argues that Defendants should have reported the publicly disclosed information in *another* form—*i.e.*, that the speech that was in fact publicly disclosed should have been labeled differently as coordinated rather than independent expenditures. Specifically, Plaintiff argues that Defendants "have declined to report coordinated expenditures as contributions," and thus Plaintiff has been denied information required under the Act. Opposition at 37. And Plaintiff requests Defendants "file corrective reports" merely re-categorizing that already disclosed information. *Id.* at 36.

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[11] Nor does Plaintiff explain why it must know which expenditures were allegedly coordinated to aid its mission. Though Plaintiff generically asserts that the additional disclosed fact of coordination would aid various functions, Plaintiff does not explain why. For instance, given that the NRA Defendants must disclose when they advocate for Representative Rosendale, Plaintiff will have access both to any communications and their corresponding disclosures. This information should further Plaintiff's interest in, for example, "support[ing] candidates for local, state, and federal office who favor strong gun-violence-prevention laws." Opposition at 38 (alteration in original; quoting Compl. ¶ 15).

Accordingly, this is the paradigmatic case in which a plaintiff seeks a legal evaluation of already-disclosed information rather than un-disclosed information mandated by FECA. As the D.C. Circuit has held, "'coordination' appears to us to be a legal conclusion that carries certain law enforcement consequences," and thus does not give rise to an informational injury. *Wertheimer*, 268 F.3d at 1075. Indeed, Plaintiff merely "seek[s] the same information" that Defendants have provided in their FEC filings "from a different source," *id.* at 1074—*i.e.*, as "reporting by Defendants on which expenditures, including their dates and amounts, *were coordinated* between the NRA-ILA and the Rosendale Campaign." Opposition at 37; *see also id.* ("Plaintiff does not know (and thus has not alleged) *which NRA-ILA expenditures were actually coordinated* (and thus, constituted contributions to the Rosendale Campaign).") (emphasis added).

"[Plaintiff] has no standing to sue for such relief." *Common Cause*, 108 F.3d at 418. Plaintiff recognizes, as it must, that Plaintiff's assertions of illegal coordination are only possible because of the comprehensive disclosures that Defendants have already made: "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." Opposition at 33-34 (emphasis added).

Plaintiff asserts that *Wertheimer* does not apply here because of alleged factual dissimilarities. As an initial matter, these alleged factual distinctions played no role in the D.C. Circuit's analysis. *Wertheimer* explicitly recognized that "all political parties currently *report all disbursements* or that each transaction appellants allege is illegal is reported *in some form*." *Wertheimer*, 268 F.3d at 1074 (emphasis added). Thus, the only "fact" that went undisclosed in *Wertheimer* was the "fact" of "coordination"—which is the same injury alleged here. *Id.* If there were any

ambiguity in *Wertheimer* itself, the cases applying it since have not adopted Plaintiff's narrow and erroneous reading. *See* Motion at 22-24 (discussing cases).[12]

Moreover, Plaintiff's alleged factual distinction is incorrect. Plaintiff argues that in *Wertheimer* "the expenditures at issue had already been publicly reported, itemized, and '*label[ed] . . . as a discrete category*.'" Opposition at 39 (emphasis added; quoting *Wertheimer*, 268 F.3d at 1074). But *Wertheimer* said no such thing. Rather, Plaintiff cites a portion of *Wertheimer* that merely restates the requirements of the law: "FECA requires political parties to report each disbursement and to label coordinated expenditures as a discrete category." *Wertheimer*, 268 F.3d at 1074.

Furthermore, Plaintiff's citations to caselaw regarding Defendants' general obligations to disclose information are inapplicable here because "the nature of the information allegedly withheld is critical to the standing analysis." *Common Cause*, 108 F.3d at 417. *Cf.* Opposition at 36-37 (collecting cases). For instance, Plaintiff relies heavily on *Campaign Legal Center (CLC) & Democracy 21 v. FEC*, 952 F.3d 352 (D.C. Cir. 2020). But that case involved allegations that entities completely failed to file FEC reports, as opposed to here where speech was publicly disclosed on FEC forms. Stated differently, *CLC* did not involve a party allegedly failing to disclose mere legal

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[12] Among those cases is *Campaign Legal Center v. FEC*, in which this Court held that "it is possible that *no plaintiff* would have standing to sue the FEC alleging campaign-finance violations by an entity that has already disclosed its expenditures, no matter how obvious or gross the violations." 507 F. Supp. 3d 79, 90-91 (D.D.C. 2020), *appeal pending*, No. 21-5081 (D.C. Cir. argued Nov. 15, 2021). *See also* Opposition at 38 n.11 (noting the same case). The Court recognized that, under *Wertheimer*, a "finding of 'coordination' does not amount to a 'fact' that must be disclosed under [the Act]." *Campaign Legal Ctr.*, 507 F. Supp. 3d at 84 (quoting *Wertheimer*, 268 F.3d at 1075). And it observed—as is true here—that "Plaintiff[ ], like any other 'citizen who wants to learn the details of' [Defendants'] disbursements, can already find the amount, date, recipient, and purpose of every single one simply 'by visiting the Commission's website.'" *Id.* (citing *Citizens for Responsibility and Ethics in Wash. v. FEC*, 475 F.3d 337, 339 (D.C. Cir. 2007) (finding no informational injury)).

conclusions like coordinated expenditures. To the contrary, *CLC* involved allegations that "various individuals made political contributions to Super PACs by using closely held corporations and limited liability companies (LLCs) as straw donors" and that "corporate entities violated FECA by failing to register and file reports as political committees." *Id.* at 355. In other words, the Plaintiff in *CLC* "fail[ed] to obtain information which must be publicly disclosed pursuant to a statute," because the entity there allegedly did not file FEC reports at all. *Nader*, 725 F.3d at 229 (quoting *Akins*, 524 U.S. at 21).

* * *

In sum, Plaintiff's two alleged bases for standing do not apply here. These defects are fundamental to Plaintiff's claim, and therefore the case should be dismissed with prejudice.

II. This Court lacks personal jurisdiction over Defendant Matt Rosendale for Montana.

This Court also lacks personal jurisdiction over Defendant Matt Rosendale for Montana because the Defendant's contacts with D.C. that Plaintiff has alleged in its Complaint (and in its extra-Complaint declaration) do not confer specific personal jurisdiction—and many of these alleged contacts must be excluded from consideration under D.C.'s government-contacts doctrine. Moreover, Plaintiff's arguments that the alleged campaign-finance violations at issue arose from what little D.C. contacts Plaintiff alleges are wholly unpersuasive and facially implausible.[13]

As Plaintiff agrees, this Court only has personal jurisdiction based on "claim[s] for relief *arising from* . . . transacting any business in the District of Columbia." D.C. Code § 13–423(a)(1); *see* Opposition at 62. In its Opposition, Plaintiff has distilled its jurisdictional allegations into two grounds for personal jurisdiction. First, Plaintiff contends that Defendant filed allegedly deficient

[13] Plaintiff does not allege that D.C. has general personal jurisdiction over Defendant Matt Rosendale for Montana. *See* Motion at 26-27.

disclosures with the FEC, a federal agency located in D.C. But this argument would require the Court to simply ignore D.C.'s own limitations on its jurisdiction. Second, Plaintiff asserts that Defendant Matt Rosendale for Montana "conducted fundraising activities in the District that are connected to the illegal coordination scheme at issue in this case." *Id.* at 63. This allegation plainly fails to comply with D.C.'s long-arm statute.

A. Defendant Matt Rosendale for Montana's FEC filings must be excluded from jurisdictional considerations under the District of Columbia's government-contacts doctrine.

1. Longstanding D.C. precedent holds that "contact with a federal instrumentality located in the District will not give rise to personal jurisdiction." *United States v. Ferrara*, 54 F.3d 825, 831 (D.C. Cir. 1995) (citing *Envt'l Research Int'l, Inc. v. Lockwood Greene Eng'rs, Inc.*, 355 A.2d 808, 813 (D.C. 1976)); *accord Okolie*, 102 F. Supp. 3d at 177 ("a nonresident's entry into the District of Columbia for 'the purpose of contacting federal governmental agencies cannot serve as a basis for personal jurisdiction,'" and "[s]uch contacts are 'excluded from the jurisdictional calculus'") (quoting *Alkanani v. Aegis Def. Servs., LLC*, 976 F. Supp. 2d 13, 25 (D.D.C. 2014)).

This government-contacts doctrine is well-worn and consistently applied. *E.g.*, *Sharp Corp. v. Hisense USA Corp.*, 292 F. Supp. 3d 157, 171 (D.D.C. 2017) ("fil[ing] with a government agency" insufficient) (citation omitted); *Okolie*, 102 F. Supp. 3d at 175 (contract negotiations with federal government insufficient); *Stevens v. Del. State Univ.*, 70 F. Supp. 3d 562, 564 (D.D.C. 2014) ("contacts with the Department of Education" insufficient); *AGS Int'l Servs. S.A. v. Newmont USA Ltd.*, 346 F. Supp. 2d 64, 81-82 (D.D.C. 2004) (contacts with International Finance Corporation insufficient); *Cellutech, Inc. v. Centennial Cellular Corp.*, 871 F. Supp. 46, 50 (D.D.C. 1994) ("filings with the FCC and the SEC in the District of Columbia" insufficient); *Inv. Co. Inst. v. United States*, 550 F. Supp. 1213, 1217 (D.D.C. 1982) (SEC filings insufficient); *Lex*

Tex Ltd. v. Skillman, 579 A.2d 244, 246 (D.C. 1990) ("[m]ere contacts with the federal government" insufficient) (collecting cases).

Accordingly, under a straightforward application of the doctrine, Defendant's FEC filings—which are mandated by statute as a prerequisite to engaging in core political speech—cannot give rise to specific personal jurisdiction in D.C. *See, e.g.*, *Bigelow v. Garrett*, 299 F. Supp. 3d 34, 45 (D.D.C. 2018).[14] This conclusion accords with the principles underlying the doctrine.

First, the doctrine generally "prevent[s] 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). Federal law requires countless contacts with the federal government, and if D.C. became a proper forum for anyone with such contacts, D.C. courts' personal jurisdiction would be limited only by the imagination of federal legislators and regulators. *Id.* In response, Plaintiff argues that this inquiry should be cause-of-action specific: "Direct action suits under FECA pose no risk of flooding D.C. courts with litigation" because they

[14] Plaintiff suggests that the government-contacts doctrine should apply differently to candidate campaign committees making FEC filings "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." Opposition at 64. But Plaintiff's observation merely underscores a core purpose of the doctrine: While Representative Rosendale seeks election to serve his constituents in Congress (located in D.C.), Defendant Matt Rosendale for Montana operates to elect Representative Rosendale *in Montana*. And in order to do so, Defendant must interact with the FEC. *Bigelow*, 299 F. Supp. 3d at 43 n.4 ("The fact that the Committee was organized with the Federal Election Commission based in the District does not, standing alone, provide jurisdiction here. . . . [T]he 'government contacts' exception prevents Mr. Bigelow from basing personal jurisdiction on that fact."). Relatedly, *Bigelow* belies Plaintiff's assertion that Defendant Matt Rosendale for Montana is seeking to apply the government-contacts doctrine to "campaign finance reports for the first time." Opposition at 64. Being "organized with the [FEC]," *Bigelow*, 299 F. Supp. 3d at 43 n.4, necessarily entails filing campaign finance reports with the agency. *See* 52 U.S.C. § 30104(a)(2).

are relatively rare. Opposition at 66.[15] Plaintiff also argues that Congress intended this Court to have exclusive jurisdiction over the prerequisite suits under 52 U.S.C. § 30109(a)(8)(C). *Id.*

But Plaintiff's arguments ignore the purpose of the doctrine: Whether Congress intended *for the FEC* to be sued in D.C. does not mean that Congress wished for every entity across the country required to make an FEC filing to be subject to D.C.'s personal jurisdiction. And though Congress imposed mandatory jurisdiction in this Court for claims *against the FEC* for failure to act, it did not mandate jurisdiction in any court for private rights of action against other respondents/defendants. *Compare* 52 U.S.C. § 30109(a)(8)(A), *with id.* § 30109(a)(8)(C).

Second, though the statutorily mandated FEC filings are not themselves exercises of "the right of citizens to freely access and petition the government" (*see* Opposition at 65), FEC filings are prerequisites to engaging in a broad range of First Amendment protected conduct. *Lewy*, 723 F. Supp. 2d at 126; *see Buckley v. Valeo*, 424 U.S. 1, 23 (1976) (per curiam) ("the Act's contribution and expenditure limitations both implicate fundamental First Amendment interests"); *see also id.* at 62-64 (addressing the reporting requirements for political committees required to register with the FEC). Accordingly, not subjecting every FEC-regulated entity to the jurisdiction of D.C. courts furthers First Amendment values by limiting those entities' exposure to the courts of foreign jurisdictions.

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[15] The case that Plaintiff cites for this case-by-case evaluation is decades old, and "even if [it] had any precedential value, which is doubtful, it is clearly distinguishable from the case at hand." *Morgan v. Richmond Sch. of Health & Tech., Inc.*, 857 F. Supp. 2d 104, 109 (D.D.C. 2012). The unpublished 1987 decision in *United States v. Wilfred American Educational Corp.*, held that "defendant's contacts with the government relating to federal financial aid were sufficient to establish personal jurisdiction," based specifically on the fact that "the Inspector General of the Department of Education, . . . sought to enforce subpoenas, which were enforceable in any appropriate United States district court under the Inspector General Act of 1978, and which were designed to investigate the defendant's use, or misuse, of financial aid." *Id.* (discussing *Wilfred*, 1987 WL 10501 (D.D.C. Apr. 23, 1987)).

Contrary to Plaintiff's argument, this First Amendment rationale is not the "only" basis for the government-contacts doctrine. Opposition at 66. Plaintiff appears to be quoting the D.C. Circuit's quotation of a 1978 D.C. case. *Akhmetshin v. Browder*, 993 F.3d 922, 928 (D.C. Cir. 2021) ("a panel of the D.C. Court of Appeals held 'that the First Amendment provides the only principled basis' for the government contacts exception") (quoting *Rose v. Silver*, 394 A.2d 1368, 1374 (D.C. 1978)). But—to the extent that the underlying basis of the doctrine is relevant in individual cases—the D.C. Court of Appeals still refers favorably to the rationale against converting D.C. into a national forum. *E.g.*, *Companhia Brasileira Carbureto De Calcio v. Applied Indus. Materials Corp.*, 35 A.3d 1127, 1131 (D.C. 2012). As D.C. law makes clear, "permitt[ing] [D.C.] courts to assert personal jurisdiction over nonresidents whose sole contact with the District consists of dealing with a federal instrumentality . . . would pose a threat to free public participation in government." *Envt'l Research*, 355 A.2d at 813.

2. Despite the doctrine's clear application here, Plaintiff argues that the scope of the doctrine is unclear. But, as demonstrated by the long line of cases applying the doctrine—including *Bigelow* quite recently—Plaintiff is incorrect. And the case that Plaintiff cites for the proposition that the doctrine's status is "unsettled" and "uncertain" only identified questions at the periphery of the doctrine—not the doctrine's core application to U.S. residents' statutorily mandated contacts with federal agencies. Specifically, *Akhmetshin* considered "[1] whether nonresident aliens may invoke the government contacts exception, and [2] the scope of conduct to which it applies"—*e.g.*, whether it applies to "lobbying and advocacy efforts." 993 F.3d at 925, 928. The first consideration does not apply here, as Defendant Matt Rosendale for Montana is a resident of Montana and not a foreign national. Neither does the second consideration: Whatever ambiguity exists as to the precise lobbying activities identified in *Akhmetshin*, the D.C. Circuit had no question whether

"dealing with a federal instrumentality" or "access to federal departments and agencies" (like the FEC filings) fall within the government-contacts doctrine's core protections. *Id.* at 927; *see also id.* at 964 n.1 ("the only types of 'uniquely governmental activities' that courts in this Circuit have found to qualify under the government contacts doctrine" include "attending meetings at, or communicating with, federal departments and agencies").

B. Defendant Matt Rosendale for Montana's other alleged contacts with the District of Columbia are insufficient to give rise to personal jurisdiction—especially because Plaintiff's claims do not directly arise from those alleged contacts.

Plaintiff has not demonstrated that its claims arise "*directly from*" Defendant Matt Rosendale for Montana's alleged "contacts in this jurisdiction." Opposition at 63 (quoting *FC*, 441 F. Supp. 2d at 9); *see also* D.C. Code § 13–423(a)(1) (requiring claims to "aris[e] from" enumerated contacts with D.C.); Motion at 28-32. Plaintiff alleges that Defendant has "transact[ed]" business in D.C. based on the following allegations: (1) Defendant fundraised in D.C. through Representative Rosendale's actions in D.C. (the only allegation included in the Complaint); (2) Defendant allegedly has a bank account in D.C. (which is incorrect, *see infra* p.21); (3) Defendant's "largest donor" may be a "D.C.-based PAC"; and (4) Defendant "may have had employees in the District" (which is also incorrect, *infra* p.23). Opposition at 67.

As Defendant Matt Rosendale for Montana argued in its Motion (at 30-32), these assorted allegations are insufficient for specific personal jurisdiction based on claims unrelated to those contacts. *Bigelow*, 299 F. Supp. 3d at 42-46; *id.* at 46 ("the sole allegations relating to actions taken in the District are that the Committee made payments to persons and entities in the District for

advertising, raised funds from and communicated with District residents, and displayed Mr. Bigelow's photograph on various websites and in an 'email blast'").[16]

None of Defendant Matt Rosendale for Montana's alleged contacts is sufficient to give rise to specific personal jurisdiction because Plaintiff's claims do not arise from these alleged contacts. Fundamentally, Plaintiff alleges that the NRA Defendants made illegal coordinated communications on Defendant's behalf in Montana. Compl. ¶ 117. Plaintiff further alleges that those coordinated communications were carried out through communications and payments to firms located outside D.C. *Id.* ¶¶ 44, 46, 106-07; Opposition at 68. The necessary components of this claim involve Defendant Matt Rosendale for Montana's political communications in Montana, the NRA Defendants' political communications in Montana, and Defendants' interactions with common vendors—located in Virginia and Maryland. 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.21(d)(4). None of those elements involves anything in D.C.

Accordingly, Plaintiff's claim has nothing to do with anything Defendant was alleged to have done in D.C.—and certainly does not arise "directly from" any of the alleged contacts. Opposition at 63 (quoting *FC*, 441 F. Supp. 2d at 9). An examination of each alleged contact (fundraising, bank account, largest donor, and employees) confirms this.

First, Plaintiff's claims do not arise from Defendant's (legitimate) fundraising efforts from others, even if those efforts occurred in D.C. Plaintiff has attempted to tie Representative Rosendale's appearance at a D.C. fundraiser to the alleged common-vendor scheme, even though the idea at the core of Plaintiff's claim is that the common-vendor scheme was to *avoid* the need to

[16] In addition to concluding that the claim in *Bigelow* did not arise from the alleged contacts, the court also concluded that these contacts were insufficient to confer *general* personal jurisdiction. *Bigelow*, 299 F. Supp. 3d at 42.

engage in other fundraising. *See* Opposition at 68-69. The alleged coordinated expenditures in this case do not arise from Representative Rosendale mentioning the NRA in a speech, as Plaintiff suggests. *See id.* at 67-68. And Plaintiff does not allege that Representative Rosendale raised money for the NRA Defendants' coordinated spending at that event or that any coordination occurred at the event. Plaintiff's mere conclusory assertion that Representative Rosendale's mention of the NRA—a widely known organization—was "closely intertwined" with the alleged common-vendor scheme is wholly insufficient. *See id.* at 68 (citing Compl. ¶ 106).[17]

Second, the location of Defendant Matt Rosendale for Montana's bank account is similarly irrelevant to Plaintiff's claims. As an initial matter, Plaintiff's argument is factually incorrect: Defendant Matt Rosendale for Montana does not have a bank account in D.C. *See* Decl. of Cabell Hobbs ¶¶ 3-7, attached as Ex. A. As stated in the FEC filing that Plaintiff itself relies on, the D.C. bank account Plaintiff identifies belongs to the FreedomWorks Victory Joint Fundraising Committee—*not* Defendant. *See* FEC Statement of Organization: Matt Rosendale for Montana (Apr. 3, 2018), https://bit.ly/35jai9N.

Even if Defendant had a D.C. bank account—or if the joint fundraising committee's bank account were relevant—Plaintiff's claims of alleged coordinated communications outside D.C. do not arise from where Defendant's bank is located. In fact, Plaintiff essentially argues that defendants bypassed any formal deposits into Matt Rosendale for Montana's bank account through the

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[17] Plaintiff also suggests that a single fundraiser constitutes the kind of "advertising" giving rise to jurisdiction. Opposition at 67 (citing *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 331 (D.C. 2000)). But even if appearing at fundraisers were akin to advertising, appearance at a single fundraiser is not akin to a company's systematic advertisement across multiple mediums for stores "in very close proximity to the District's borders." *Shoppers Food*, 746 A.2d at 324. And this Court has rejected the idea that receiving funds from D.C. is sufficient to confer jurisdiction. *Bigelow*, 299 F. Supp. 3d at 42.

common-vendor scheme. Plaintiff relies almost exclusively on out-of-circuit cases that do not address D.C.'s specific personal jurisdiction statute. *See* Opposition at 68-69 (collecting cases).[18] And the only D.C.-specific case Plaintiff cites illustrates why the location of Defendant Matt Rosendale for Montana's bank account is irrelevant here. In *Ventura v. BEBO Foods, Inc.*, employees of multiple restaurants sued for wage violations. 595 F. Supp. 2d 77, 79 (D.D.C. 2009). The court concluded that the owner and operator of those restaurants—including some restaurants *located in D.C.*—was subject to D.C.'s personal jurisdiction based, in part, on his "alleged banking and check writing activities *related to plaintiffs*." *Id.* at 83 (emphasis added). In other words, the court concluded it had personal jurisdiction over someone who actively did business through his businesses and bank in D.C. Here, there is no such nexus between D.C. and Defendant Matt Rosendale for Montana, its activities, and its bank account.

Finally, Plaintiff offers an assortment of extra-Complaint allegations that similarly do not give rise to specific personal jurisdiction. The fact that Defendant Matt Rosendale for Montana has donors in D.C. is completely irrelevant to allegations regarding coordinated communications with the NRA Defendants. *Bigelow*, 299 F. Supp. 3d at 42. Likewise, renting a facility in D.C. does not give rise to specific personal jurisdiction for anything other than actions directly arising from that rental—for instance, a breach of contract claim based on the rental agreement. *See id.*

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[18] *SEC v. Carillo* concluded that, among other contacts, a defendant "purposefully availed" itself of the forum "by setting up bank accounts to facilitate purchases of the unregistered securities" in a case alleging securities law violations. 115 F.3d 1540, 1546 (11th Cir. 1997) ("Bosque itself maintained the bank accounts in the forum in furtherance of the alleged fraudulent scheme"). Similarly, *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*—after certification to New York state court—held that New York had personal jurisdiction over a party that "used its New York correspondent account dozens of times to effect its support of Shahid and shared terrorist goals, not once or twice by mistake." 732 F.3d 161, 168 (2d Cir. 2013) (quotation marks omitted) (case concerning funding of international terrorism).

And Plaintiff's allegation that Defendant Matt Rosendale for Montana paid payroll tax is likewise insufficient. One of Defendant's employees merely maintained a D.C. residence—Defendant did not maintain an employee in D.C. *See* Ex. A ¶¶ 8-11. Plaintiff cites nothing for the proposition that an organization like Defendant can be subject to the personal jurisdiction of D.C. because one of the organization's employees in Montana maintains a residence in D.C. And Plaintiff likewise does not explain how its claims arise from Defendant's employee's residence in D.C.

C. Plaintiff is not entitled to jurisdictional discovery on personal jurisdiction and there is no need to transfer the case because Plaintiff lacks standing.

Especially in light of Plaintiff's lack of standing, *see supra* Part I, this Court should not grant jurisdictional discovery in furtherance of Plaintiff's request "to conduct a fishing expedition in the hopes of discovering some basis of jurisdiction." *Okolie*, 102 F. Supp. 3d at 178 (D.D.C. 2015) (citing *In re Papst Licensing GMBH & Co. KG Litig.*, 590 F. Supp. 2d 94, 101 (D.D.C. 2008)); *accord Bigelow*, 299 F. Supp. 3d at 47-48; *see* Opposition at 70. Nor should the Court transfer the case to Montana, given the lawsuit's myriad defects.

CONCLUSION

Defendant Matt Rosendale for Montana respectfully requests that this Court grant Defendant's Motion and dismiss Plaintiff's Complaint with prejudice.

Dated: March 4, 2022

Respectfully submitted,

/s/ Scott A. Keller

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CERTIFICATE OF SERVICE

This document was served on counsel for Plaintiff and all other counsel that have made an appearance in this case on March 4, 2022, using the Court's CM/ECF file and service system.

/s/ Scott A. Keller
Scott A. Keller

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GIFFORDS, *Plaintiff*, v. NATIONAL RIFLE ASSOCIATION OF AMERICA POLITICAL VICTORY FUND; NATIONAL RIFLE ASSOCIATION OF AMERICA INSTITUTE FOR LEGISLATIVE ACTION; MATT ROSENDALE FOR MONTANA; and JOSH HAWLEY FOR SENATE, *Defendants*.	)	Civil Action No. 1:21-cv-02887-EGS

EXHIBIT A
DECLARATION OF CABELL HOBBS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GIFFORDS, *Plaintiff*, v. NATIONAL RIFLE ASSOCIATION OF AMERICA POLITICAL VICTORY FUND; NATIONAL RIFLE ASSOCIATION OF AMERICA INSTITUTE FOR LEGISLATIVE ACTION; MATT ROSENDALE FOR MONTANA; and JOSH HAWLEY FOR SENATE, *Defendants*.	)	Civil Action No. 1:21-cv-02887-EGS

DECLARATION OF CABELL HOBBS IN SUPPORT OF DEFENDANT MATT ROSENDALE FOR MONTANA'S REPLY IN SUPPORT OF ITS RULE 12(b)(1) AND 12(b)(2) MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER AND PERSONAL JURISDICTION

I, Cabell Hobbs, declare as follows:

1. I am the Assistant Treasurer of Matt Rosendale for Montana, a position I have held since October 13, 2017. In that role, I am responsible for managing Matt Rosendale for Montana's Bank accounts and its payroll. The statements contained herein are based on my personal knowledge as Assistant Treasurer of Matt Rosendale for Montana, as well as my review of Matt Rosendale for Montana's records and the information provided to me as Assistant Treasurer.

2. I submit this declaration to clarify two factual assertions that Plaintiff Giffords made in its Opposition to Matt Rosendale for Montana's Motion to Dismiss. ECF 39.

3. *First*, Matt Rosendale for Montana does not have a bank account in Washington D.C.

4. The D.C. Eagle Bank account listed in Matt Rosendale for Montana's FEC Statement of Organization belongs to the FreedomWorks Victory 2018 joint fundraising committee ("JFC"). Matt Rosendale for Montana was required to disclose this JFC bank account under FEC regulation.

5. The JFC was a separate and legally distinct entity in which Matt Rosendale for Montana was a participant.

6. The JFC's bank account was not the bank account that Matt Rosendale for Montana used for banking.

7. At all times during the 2017-2018 election cycle that is at issue in this matter, Matt Rosendale for Montana's bank account was located in Arlington, Virginia. While the committee's current FEC registration (Form 1) indicates a Washington, D.C. address for the committee's Truist/BB&T bank account, the committee has never done any banking at that branch location. Rather, the Washington, D.C. address is associated with the bank relationship manager assigned to the committee after that bank's merger in 2019.

8. *Second*, Defendant Matt Rosendale for Montana did not have any employees in D.C. during the 2017-2018 election cycle that is at issue in this matter, and does not have employees in D.C. currently.

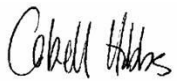
9. Matt Rosendale for Montana paid payroll tax to D.C. in 2018 because one of its employees maintained a residence in D.C.

10. That employee's work was done in Montana.

11. Under our tax records, this employee's designated work location and state where work for Defendant Matt Rosendale for Montana was done was Montana.

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

Executed on 03/01/2022.



Cabell Hobbs