UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GIFFORDS, Plaintiff, v. FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 19-1192 (EGS) RESPONSE TO SUPPLEMENTAL STATEMENT

FEC RESPONSE TO NON-PARTIES' SUPPLEMENTAL STATEMENT

On December 6, 2024, non-parties National Rifle Association of America and National Rifle Association Political Victory Fund (collectively, "NRA") filed a supplemental statement ("NRA Supp." (ECF 101-2)) in support of their Motion for Relief from Orders and Judgment ("NRA Mot." (ECF 90-1)) to address *Campaign Legal Center v. 45Committee, Inc.*, 118 F.4th 378 (D.C. Cir. 2024) ("*45Committee*"). The Federal Election Commission ("Commission" or "FEC") hereby files this response to NRA's supplemental statement to provide three points for the Court. (*See* Dec. 9, 2024 Minute Order.)

First, the Court was well aware that the Commission had taken several reason-to-believe votes in February 2021 prior to its ruling on the parties' cross-motions for summary judgment on September 30, 2021.[1] *Compare* Mem. Op. at 9-10, 21, 26, 30 (ECF 88) (discussing the

[1] These votes were deadlocked, meaning "no bloc of four Commissioners vote[d] to find either reason to believe or no reason to believe." *45Committee*, 118 F.4th at 382; *see also* 52 U.S.C. § 30109(a)(2) (requiring an affirmative vote of four or more Commissioners to find that there is reason-to-believe a violation of the Federal Election Campaign Act has occurred or will occur).

Commission's reason-to-believe votes taken in February 2021),[2] *with* NRA Supp. at 1 (stating this fact was "unbeknownst to the Court when it entered the Orders and Judgment . . .").

Second, while NRA asserted in its motion that "a deadlocked reason-to-believe vote is the equivalent of a dismissal or termination of proceedings" (NRA Mot. at 30 (citing *Heritage Action for America. v. FEC*, 682 F. Supp. 3d 62 (D.D.C. 2023)), *45Committee* stated:

> Because a reason-to-believe vote resulting in a deadlock will give rise to a dismissal only if a majority of Commissioners separately votes to dismiss the complaint, the phrase we sometimes use—"deadlock dismissal,"—is perhaps a convenient shorthand but should not be misunderstood to mean a deadlocked vote constitutes or automatically occasions a dismissal.

118 F.4th 378 at 382 (internal citations omitted).

Third and finally, in *45Committee*, as here, there was a deadlocked reason-to-believe vote prior to the district court's determination that the Commission's delay was contrary to law. *45Committee*, 118 F.4th at 383-84; Mem. Op. at 9-10, 21, 26, 30. Within the thirty-day conformance period following the district court's contrary-to-law determination in *45Committee*, the Commission held a reason-to-believe vote, which was also deadlocked. 118 F.4th at 385. In the instant litigation, however, the Commission did not take a reason-to-believe vote during the conformance period. (Nov. 1, 2021 Hearing Transcript at 6:6-16 (ECF 90-9).)[3]

---

[2] *See also* FEC Notice of Subsequent Developments (ECF 84); FEC Second Notice of Subsequent Developments (ECF 85).

[3] NRA has accused the FEC of colluding with the plaintiff because it did not previously argue that the failed reason-to-believe vote in February 2021 rendered the case moot. (*See* NRA Mot. at 37-38, 40-42.) As previously noted, however, NRA's mootness argument is based entirely on cases decided after this case was closed. (*See* FEC Response to NRA Mot. at 6 (ECF 94).) The Commission further notes that, when it previously argued that a failure-to-act case was moot where the Commission had not only held a reason-to-believe vote but also found reason to believe a violation had occurred, that argument was rejected by the court. *Democratic Senatorial Campaign Comm. v. FEC*, No. CIV.A. 95-0349 (JHG), 1996 WL 34301203, at *9 (D.D.C. Apr. 17, 1996). *Cf. All. for Democracy v. FEC*, 335 F. Supp. 2d 39, 42 (D.D.C. 2004) (holding failure-to-act lawsuit was moot because the Commission had "completed its final action": "The conciliation agreement and closing of the administrative file mark[ed] the end of the enforcement

Respectfully submitted,

/s/ *Haven G. Ward*
Haven G. Ward (D.C. Bar No. 976090)
Attorney
hward@fec.gov

FEDERAL ELECTION COMMISSION
1050 First Street NE
Washington, DC 20463
(202) 694-1650

Lisa J. Stevenson (D.C. Bar No. 457628)
Acting General Counsel
lstevenson@fec.gov

Shaina J. Ward (D.C. Bar No. 1002801)
Acting Assistant General Counsel
sward@fec.gov

January 8, 2025

process under [52 U.S.C. § 30109(a)] and foreclose[d] any possible relief under [*id.* § 30109(a)(8)] based on the FEC's failure to act."); *Common Cause v. FEC*, 489 F. Supp. 738, 744 (D.D.C. 1980) ("Were the Court not now presented with executed conciliation agreements . . ., the Court would undoubtedly find the conduct of the investigation contrary to law."). NRA's accusations also contravene the D.C. Circuit's mandate that district courts "*must* presume an agency acts in good faith." *Comcast Corp. v. FCC*, 526 F.3d 763, 769 n.2 (D.C. Cir. 2008) (emphasis added)); *see also Friedman v. FAA*, 841 F.3d 537, 541 n.1 (D.C. Cir. 2016) (quoting same).