No. 22-5277

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

END CITIZENS UNITED PAC,
Plaintiff-Appellant,

v.

FEDERAL ELECTION COMMISSION,
Defendant-Appellee,

NEW REPUBLICAN PAC,
Intervenor-Appellee.

On Appeal from the United States District Court
for the District of Columbia

RESPONSE TO PETITION FOR REHEARING EN BANC

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GLOSSARY

APA	Administrative Procedure Act
Complainant	End Citizens United PAC
FEC	Federal Election Commission
FECA	Federal Election Campaign Act
First Administrative Complaint	Administrative Complaint, MUR 7370, April 23, 2018 (J.A. 118-43)
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STATEMENT OF THE CASE

The petition for rehearing *en banc* (Doc. No. 2041239) fails to compellingly identify any conflict with decisions of this Court or the Supreme Court or new questions of exceptional importance. It should be denied. After considering the administrative complaints at issue in this proceeding, the Federal Election Commission ("FEC" or "Commission") did not approve pursuing the administrative matters further by the requisite votes and thereafter voted to close the files. The statement of reasons issued by the controlling group of commissioners, which provided the rationale for that decision, relied explicitly on prosecutorial discretion as an independent basis for dismissal and cited several reasons for invoking this discretion.

Over the past six years, this Court has consistently held that when the FEC dismisses administrative complaints on the basis — even in part — of prosecutorial discretion, those dismissals are not subject to judicial review. *Citizens for Resp. & Ethics in Wash. v. FEC*, 993 F.3d 880, 884 (D.C. Cir. 2021) ("*New Models*"), *pet. for reh'g en banc denied*, 55 F.4th 918, 919 (D.C. Cir. 2022); *Citizens for Resp. & Ethics in Wash. v. FEC*, 892 F.3d 434, 438 (D.C. Cir. 2018) ("*Commission on Hope*"), *pet. for reh'g en banc denied*, 923 F.3d 1141 (D.C. Cir. 2019) (per curiam); *see also Campaign Legal Ctr. v. FEC*, 89 F.4th 936, 941 (D.C.

Cir. 2024) (applying precedent from *New Models* and *Commission on Hope*).

The panel decision under review correctly applied this established Circuit law and held that the reasoning of the controlling group of Commissioners is unreviewable precisely because it rests, in part, on prudential and discretionary considerations. *See End Citizens United PAC v. FEC*, 90 F.4th 1172, 1178 (D.C. Cir. 2024) (citing *New Models*, 993 F.3d at 884, 893-95, and *Commission on Hope*, 892 F.3d at 439). Because the petition for *en banc* review evidences no lack of uniformity in the Court's decisions or an exceptional legal issue, it fails to justify such an extraordinary process.

STATEMENT OF FACTS

A. The Administrative Process and Judicial Review

End Citizens United PAC ("Complainant") filed two administrative complaints with the Commission in 2018 alleging that Senator Rick Scott, his campaign, and New Republican PAC ("New Republican") violated several requirements of the Federal Election Campaign Act ("FECA") during the 2018 Florida Senate race. (Admin. Compl., MUR 7370, April 23, 2018 (Joint Appendix ("J.A.") 118-43)[1]; Admin. Compl., MUR 7496, Sept. 14, 2018 (J.A. 175-82).) The first administrative complaint, MUR 7370 ("First Administrative Complaint"),

[1] Complainant also filed a supplement to the first complaint. (Supp. Admin. Compl., MUR 7370, Apr. 23, 2018 (J.A. 144-51).)

alleged that Scott failed to file a timely statement of candidacy, Rick Scott for Florida failed to timely file a statement of organization and required reports, and New Republican unlawfully accepted prohibited campaign funds while controlled by Scott. (*See* J.A. 118-22.) The second administrative complaint, MUR 7496, alleged that New Republican impermissibly coordinated expenditures with Rick Scott for Florida, resulting in excessive in-kind contributions.[2] (*See* J.A. 175-82.)

FECA permits any person to file an administrative complaint alleging violations and sets forth detailed enforcement procedures the Commission must follow when considering such allegations. 52 U.S.C. § 30109(a). The statute requires obtaining the affirmative vote of four Commissioners to proceed through each stage in the enforcement process: four or more votes are required for the Commission to find that there is "reason to believe" an administrative respondent committed (or is about to commit) a violation of FECA, and then four or more votes are required to find that there is "probable cause to believe" a violation occurred. *Id.* § 30109(a)(2), (a)(4)(A)(i). After satisfying all other procedural requirements, the Commission "*may* . . . institute a civil action for relief," a decision which also requires four or more affirmative votes. *Id.* § 30109(a)(6)(A)

[2] Complainant's petition does not appear to challenge this or the district court's conclusion that the FEC's dismissal of the second administrative complaint (MUR 7496) was reasonable. The Commission thus focuses primarily on the First Administrative Complaint, providing background on the second administrative complaint where necessary for context.

(emphasis added).

Here, the Commissioners voted 3-3 on a motion to find there was reason to believe that Scott, his campaign, and New Republican violated FECA as set forth in the First Administrative Complaint and to take no action on the second administrative complaint, falling one vote short of the four votes necessary to authorize an investigation or otherwise proceed with the matter that was the subject of the First Administrative Complaint. (J.A. 270-71.) Thereafter, the Commission voted 3-3 on whether to dismiss the complaints pursuant to the agency's prosecutorial discretion and, finally, voted 5-1 to close the file in these matters. (J.A. 272-73.)

Under long-standing Circuit law, the three Commissioners who voted against finding reason to believe "constitute a controlling group" whose rationale "necessarily states the agency's reasons for acting as it did." *FEC v. Nat'l Republican Senatorial Comm.*, 966 F.2d 1471, 1476 (D.C. Cir. 1992). The controlling group of Commissioners issued a July 21, 2021, statement of reasons explaining their votes in this matter. (*See* Statement of Reasons of Vice Chair Allen Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor III (J.A. 281-91).)

Following an analysis of the merits of the administrative complaint, the controlling group of Commissioners ultimately concluded the matters "merited the

invocation of . . . prosecutorial discretion." (J.A.290; *see also* J.A. 282 (citing *Heckler v. Chaney*, 470 U.S. 821 (1985).) "To probe [Scott's] subjective intent [to become a candidate] during this period," the three Commissioners reasoned, "would have necessitated a wide-ranging, costly, and invasive investigation into both Scott and New Republican's activities during that period of time, and possibly after." (J.A. 290.) They highlighted the need to make "difficult decisions" about which investigations to pursue "while the Commission is still working through a substantial backlog of cases that accumulated while it lacked a quorum" and concluded that they were "unable to justify the commitment of the Commission's scarce enforcement resources to such a lengthy and cumbersome investigation on the basis of such a thin evidentiary reed." (*Id*.)

Commissioners Broussard and Weintraub separately issued a statement of reasons, dated July 15, 2021, articulating their conclusion that there was reason to believe violations had occurred. (*See* Statement of Reasons of Chair Shana M. Broussard and Commissioner Ellen L. Weintraub (J.A. 274-80).) In their statement, these Commissioners set forth their view that the weight of the evidence supported a finding of reason to believe that Scott had failed to file a timely candidacy statement and New Republican had violated FECA. (*See id*.)

B. District Court Decision

Complainant sought judicial review on August 9, 2021. Because the

Commission did not authorize defense of this lawsuit, *see* 52 U.S.C. §§ 30106(c), 30107(a)(6), the Commission did not appear in the case, though it did file the administrative record pursuant to the district court's order. (*See* J.A. 3-4.) The district court permitted New Republican to intervene as of right. (J.A. 3.)

The district court granted New Republican's summary-judgment motion, ruling that the Commission's dismissal of the First Administrative Complaint was unreviewable as an exercise of prosecutorial discretion under *New Models*. (*See* J.A. 97-115.) Because the controlling group of Commissioners' statement of reasons specifically invoked prosecutorial discretion in declining to investigate the timing of Scott's candidacy announcement and related alleged FECA violations, the district court concluded it was barred from reviewing any challenge. (J.A. 107-10.)

C. D.C. Circuit Panel Decision

The Complainant appealed to this Court. Here, the panel majority affirmed the district court, holding that the dismissal of the First Administrative Complaint was not reviewable because the controlling Commissioners relied on prosecutorial discretion. *End Citizens United*, 90 F.4th at 1175, 1178-81. The Court explained that the controlling statement rested on prudential considerations, including the limited time and resources available for an investigation and the Commission's

sizeable case backlog, which are "quintessential elements of prosecutorial discretion." *Id.* at 1178-79.

The Court rejected End Citizens United's argument that the controlling group of Commissioners' discretionary considerations were subject to judicial review because they were intertwined with a reviewable legal analysis of FECA. *See id.* at 1179. It explained that, though "[n]onenforcement decisions often turn on both discretionary factors and legal determinations . . . a dismissal is entirely unreviewable if it depends *even in part*" on traditional, prudential enforcement considerations. *See id.* (emphasis added). The Court also refused Complainant's request to reconsider the decisions in *Commission on Hope* and *New Models*. It noted that End Citizens United's arguments had been recently addressed by the Court in *New Models*, which explained in detail how that decision accorded with FECA, and that *New Models* is binding on the panel. *See id.* at 1180. Judge Pillard dissented in part. The Commission hereby responds to the petition for rehearing *en banc* as ordered by the Court (Doc. No. 2041869).

STANDARD OF REVIEW

Rehearing *en banc* "is not favored" and "ordinarily will not be ordered unless" a petitioner demonstrates it "is necessary to secure or maintain uniformity of the court's decisions" or "the proceeding involves a question of exceptional importance." Fed. R. App. P. 35(a). Petitions for panel rehearing "must state with

particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended." *Id.* at 40(a)(2).

The Supreme Court has long recognized that a federal law enforcement agency is generally "far better equipped" than the judiciary to analyze practical factors that attend a particular decision about whether to bring an enforcement action. *Heckler*, 470 U.S. at 831. Those considerations led the Court to the conclusion that agency decisions not to enforce are presumptively unreviewable absent clear direction from Congress. *Id.* at 832. Additionally, FECA specifically limits judicial review to a determination of whether the dismissal was "contrary to law." 52 U.S.C. § 30109(a)(8)(A),(C).

Subsequently, this Court has held in a series of recent decisions, beginning in 2018, that "a Commission nonenforcement decision is reviewable only if the decision rests solely on" interpretation of FECA, and not if a basis for dismissal was the agency's prosecutorial discretion. *New Models*, 993 F.3d at 884; *Comm'n on Hope*, 892 F.3d at 438; *Campaign Legal Ctr.*, 89 F.4th at 938-39. Furthermore, this Circuit has long held that the Commission "clearly has a broad grant of discretionary power in determining whether to investigate a claim." *Common Cause v. FEC*, 655 F. Supp. 619, 623 (D.D.C. 1986), *rev'd on other grounds*, 842 F.2d 436 (D.C. Cir. 1988); *see also Democratic Cong. Campaign Comm. v. FEC*, 831 F.2d 1131, 1133-34 (D.C. Cir. 1987) ("*DCCC*") (discussing the Commission's

prosecutorial discretion); *FEC v. Rose*, 806 F.2d 1081, 1091 (D.C. Cir. 1986) ("It is not for the judiciary to ride roughshod over agency procedures or sit as a board of superintend[e]nce directing where limited agency resources will be devoted. [Courts] are not here to run the agencies.").

ARGUMENT

I. THE PANEL'S DECISION DOES NOT CONFLICT WITH ANY DECISION OF THE SUPREME COURT OR THIS COURT

A. The Panel's Decision Does Not Conflict with the Supreme Court's Holding in *FEC v. Akins*

Complainant's reliance on the Supreme Court's discussion of prosecutorial discretion in *FEC v. Akins*, 524 U.S. 11 (1998), overstates the extent of any conflict between the panel's decision and *Akins*. In *Akins*, the Supreme Court rejected the Commission's argument that *all* Commission decisions "not to undertake an enforcement action" were unreviewable on the basis that FECA "indicates the contrary." *Id.* at 26. However, that case did not evaluate a dismissal based on prosecutorial discretion, but instead considered whether the administrative complainants had standing to sue regarding dismissal of an allegation that was based solely on a legal determination of the merits.

Complainant argues that, under *Akins*, "reason to believe" assessments under FECA are expressly exempted from the general presumption of unreviewability of prosecutorial discretion decisions. (Pet. 8-9.) However, the Supreme Court's

decision in *Akins* regarding the review of agency legal conclusions provides scant basis for such reasoning. 524 U.S. at 25-26.

In *Akins*, the FEC's declination of action at issue was solely based on the legal determination that the organization at issue "was not subject to the disclosure requirements" because it did not meet the legal definition of a "political committee." *Id.* at 18. As this Court subsequently described it, the Commission decision in *Akins* was "based . . . entirely on legal grounds," which a reviewing court could evaluate under FECA's contrary to law standard. *New Models*, 993 F.3d at 893 (citing *Akins*, 524 U.S. at 25); *see also Comm'n on Hope*, 892 F.3d at 441 n.11.

The distinction in *Akins* between reviewable legal conclusions and unreviewable invocations of prosecutorial discretion is crucial. In *Akins*, the Court reasoned that the mere possibility of a prosecutorial-discretion dismissal did not defeat standing because the Court could not "know that the FEC would have exercised its prosecutorial discretion [that] way." 524 U.S. at 25. Here, by contrast, the controlling Commissioners expressly invoked prosecutorial discretion when explaining their votes against finding reason to believe.

Given its focus, *Akins* is not, as Complainant contends, a blanket rejection of the unreviewability of the FEC's prosecutorial discretion. The Supreme Court subsequently confirmed that permissible judicial review to correct legal errors did

not eliminate the Commission's authority to "decid[e] to exercise prosecutorial discretion" and cited *Heckler* for that view. *Id.*; *see also New Models*, 993 F.3d at 895 (noting that *Akins* "emphasized that the reviewability of the Commission's action depended on the existence of a legal ground of decision").

Complainant argues that the Commission invoked prosecutorial discretion in *Akins* as a basis for its dismissal decision (Pet. 10), but the cited footnote argued the Commission "should be accorded deference" for the "discretionary judgment" about how to apply the "major purpose test" — a reviewable legal determination, Reply Br. for Pet'r, *FEC v. Akins*, 524 U.S. 11 (1997) (No. 96-1590), 1997 WL 675443, at *9 n.8 (D.C. Cir. Oct. 30, 1997).

Akins, thus, involved evaluation of the degree of deference, but it was within the context of a reviewable legal decision. The Supreme Court did not have occasion to consider a dismissal based on prosecutorial discretion.

B. The Panel's Decision Does Not Deviate from This Circuit's Precedent Regarding Prosecutorial Discretion

En banc review is unwarranted because there is no conflict between the panel decision and the Circuit authority Complainant relies on. (*See* Pet. 8-10.) Of the operative opinions Complainant cites, none reviewed a Commission decision not to proceed with an enforcement matter "when the controlling Commissioners provide[d] a statement of reasons explaining the dismissal turned in whole or in part on enforcement discretion" or invoked the "practical enforcement

considerations" that underlie *Heckler*. *New Models*, 993 F.3d at 885, 894; *Commission on Hope*, 892 F.3d at 438; *DCCC*, 831 F.2d at 1133 (reviewing an unexplained Commission dismissal); *Chamber of Commerce of U.S. v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (reviewing a challenge to a Commission rule); *Orloski v. FEC*, 795 F.2d 156, 160 (D.C. Cir. 1986) (reviewing a dismissal based on a "no reason to believe" finding). Complainant has thus failed to identify any conflicting authority that would support its petition for *en banc* review.

Complainant argues that *DCCC* stands for the proposition that judicial review is not limited to actions on the merits. (Pet. 9.) However, in *DCCC*, this Court instead held that a split vote by the Commission was not itself an act of prosecutorial discretion and rejected the Commission's argument that dismissals resulting from the inability of any position to garner four Commission votes are *per se* "immunized from judicial review because they are simply exercises of prosecutorial discretion." 831 F.2d at 1133. It was because the controlling Commissioners had not explained the rationale for their vote in the matter at issue that this Court remanded the case for an explanation. *Id.* at 1133.

As this Court has recognized, *DCCC* did not "'answer . . . for all cases' the question of whether a Commission dismissal due to deadlock is 'amenable to judicial review.'" *New Models*, 993 F.3d at 894 (quoting *DCCC*, 831 F.2d at

1132). Unlike *DCCC*, the controlling Commissioners here, in *Commission on Hope*, and in *New Models*, expressly invoked prosecutorial discretion.

The panel's decision was also consistent with *Chamber of Commerce*. In that case, the Court posited a hypothetical challenge to a dismissal of an administrative complaint predicated on a controlling Commissioner's explanation that her vote was based on her view that the regulation was legally unenforceable, not prosecutorial discretion. 69 F.3d at 603; Statement of Comm'r Lee Ann Elliott Regarding Advisory Op. Req. 1994-4 (Oct. 26, 1994), https://www.fec.gov/files/legal/aos/1994-04/1079290.pdf (explaining that membership rule was "without statutory support"). Thus, this hypothetical dismissal was based solely on a legal determination, not in any part the exercise of prosecutorial discretion. As such, there exists no conflict between this reasoning and the panel's ruling in this case.

There is likewise no conflict between the panel's decision in this case and *Orloski*. *Orloski* did not, as Complainant contends, affirm that FEC nonenforcement decisions based on prosecutorial discretion are reviewable. (Pet. 9-10.) Nor could it, because the FEC dismissal in that case was based entirely on the Commission's reviewable legal interpretation of FECA. *Orloski*, 795 F.2d. at 160-61; *see also New Models*, 993 F.3d at 894-99. In short, the Court in *Orloski* had no occasion to consider prosecutorial discretion and made no ruling on that

matter. As the panel decision recognized, *Orloski* merely stands for the proposition that "the Commission cannot apply an otherwise permissible interpretation of FECA in an unreasonable way — which is the same review that courts regularly conduct under Section 706 of the [Administrative Procedure Act ("APA")]." *New Models*, 993 F.3d at 894; *see also Hagelin v. FEC*, 411 F.3d 237, 242 (D.C. Cir. 2005) (considering whether the Commission's application of FECA to respondent's conduct was "arbitrary or capricious, or an abuse of discretion" (quoting *Orloski*, 795 F.2d at 161)).

C. The Panel Decision Is Consistent with Current Concepts of Administrative Law

The *New Models* and *Commission on Hope* decisions are rooted in the principle that judicial review of an agency action is unavailable where there is "no law to apply." *New Models*, 993 F.3d at 885 (quoting *Comm'n on Hope*, 892 F.3d at 440). *Heckler* emphasized that a court generally has no "meaningful standards" by which to review an agency exercise of prosecutorial discretion. 470 U.S. at 834. Such decisions are, therefore, generally "committed to agency discretion by law" under the APA. *Id.* at 835. And courts have applied *Heckler* even when, like FECA, the underlying statute provides procedures for judicial review separate from the APA. *E.g., Steenholdt v. FAA*, 314 F.3d 633, 638-39 (D.C. Cir. 2003).

While it is also true that Congress may provide meaningful limits on an agency's prosecutorial discretion by statute, which could be enforced by judicial

review, *see id*., FECA's text does not "set substantive enforcement priorities nor does it establish standards to guide enforcement discretion." *New Models*, 993 F.3d at 890; *see also Comm'n on Hope*, 892 F.3d at 440. Rather, FECA simply directs that the Commission "shall" take specific actions "[i]f" it makes certain predicate legal determinations, 52 U.S.C. § 30109(a)(2), (a)(4)(A)(i); it does not require the Commission "to make those legal determinations in the first instance." *Comm'n on Hope*, 892 F.3d at 439. And its ultimate decision whether to institute a civil enforcement action "is explicitly vested in the Commission's discretion" by providing only that the "'Commission *may*'" file suit. *New Models*, 993 F.3d at 890 (quoting 52 U.S.C. § 30109(a)(6)(A)). Congress determined that challenges to FEC dismissals would be available only to the extent the dismissals were "contrary to law." 52 U.S.C. § 30109(a)(8)(C). But it provides no authority or guidance to a court in determining whether a particular enforcement action "fits the agency's overall policies" or is within the agency's budget. *Heckler*, 470 U.S. at 831.

Complainant's argument that the panel decision is not consonant with administrative law precedent (Pet. 13-14) suggests that a reader must glean a prudential consideration from the controlling Commissioners' statement. But the statement explicitly invoked prosecutorial discretion, relying on prudential concerns regarding the size and scope of the investigation. *End Citizens United*, 90 F.4th at 1178-79. The controlling Commissioners plainly intended to dismiss the

case at least in part as a matter of prosecutorial discretion related to these articulated considerations. *See BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) (reviewing court will affirm so long as one independent ground for decision is valid unless it is demonstrated that the agency would not have acted on that basis in the absence of an alternative ground).

II. COMPLAINANT FAILS TO RAISE A NEW LEGAL QUESTION OF EXCEPTIONAL IMPORTANCE

En banc review is warranted in instances where a petitioner raises a legal question of exceptional importance. Complainant has failed to articulate such a case here. Complainant's remaining arguments (Pet. 15-17) raise policy concerns resulting from the panel's decision and concerns about judicial oversight of Commission enforcement decisions.

The petition does not raise a new issue of law that has not been already repeatedly heard by this Circuit in the aforementioned cases. The panel's decision in this case straightforwardly reiterates the same deference to the Commission's prosecutorial discretion in accordance with Circuit precedent. Unlike other agencies, however, judicial review remains available for nonenforcement decisions based on Commission interpretations of FECA. *End Citizens United*, 90 F.4th at 1181-83 (reviewing dismissal based on legal determinations, without reliance on prosecutorial discretion).

The petition's speculative suggestion that the panel opinion has or will "empower[] a partisan-aligned non-majority bloc" to make pretextual claims of prosecutorial discretion (Pet. 15) is discordant with the presumption of regularity. Agency officials are accorded the "presumption of honesty and integrity." *Withrow v. Larkin*, 421 U.S. 35, 47 (1975). To the extent that Complainant suggests that certain Commissioners might be tempted to "tack on" a discretionary ground to defeat judicial review (Pet. 16), courts "must presume an agency acts in good faith," absent strong evidence to the contrary. *Comcast Corp. v. FCC*, 526 F.3d 763, 769 n.2 (D.C. Cir. 2008). A recognition that there will be competing views about the legality and advisability of applying FECA to specific instances of alleged violations is reflected in Congress's choice to structure the agency with Commissioners from different political parties who must agree to go forward with such cases.

This Court has repeatedly concluded that, when the FEC dismisses an administrative complaint based in part on prosecutorial discretion, it is not subject to judicial review. Complainant has not presented any new issue of importance that has not already been addressed by this Circuit in order to justify relitigating the question.

CONCLUSION

For the foregoing reasons, Complainant's petition should be denied.

Respectfully submitted,

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March 8, 2024

CERTIFICATE OF COMPLIANCE

This document complies with the word limit set forth in the Court's February 22, 2024, Order (Doc. No. 2041869) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 3,773 words.

The brief also 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 the brief uses the proportionally spaced typeface Microsoft Word 14-point Times New Roman.

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of March 2024, I electronically filed the Brief for Federal Election Commission with the Clerk of the United States Court of Appeals for the D.C. Circuit by using the Court's CM/ECF system. Service was made on the following through CM/ECF:

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APPELLEE FEDERAL ELECTION COMMISSION'S CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to this Court's Order of October 20, 2022, and D.C. Circuit Rule 28(a)(1), appellee Federal Election Commission ("FEC" or "Commission") submits its Certificate as to Parties, Rulings, and Related Cases.

(A) ***Parties and Amici***. End Citizens United PAC is the plaintiff in the district court and the appellant in this Court. The Commission is a defendant in the district court and an appellee in this Court. New Republican PAC was granted leave by the district court to intervene in the action as a defendant in the district court and is an appellee in this Court.

(B) ***Rulings Under Review***. End Citizens United PAC appeals the September 16, 2022, memorandum opinion and order of the U.S. District Court for the District of Columbia (Leon, J.) granting Defendant-Intervenor New Republican PAC's Cross-Motion for Summary Judgment and denying Plaintiff End Citizens United PAC's Motion for Default Judgment, or, in the Alternative, for Summary Judgment. The September 16, 2022, opinion is not published in the federal reporter but is available at 2022 WL 4289654 and was entered on this Court's docket on October 20, 2022.

The panel's Opinion is available at 90 F.4th 1172.

(C) ***Related Cases***. The Commission knows of no related cases.