

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

END CITIZENS UNITED PAC,

Appellant,

v.

FEDERAL ELECTION COMMISSION AND
NEW REPUBLICAN PAC,

Appellees.

Case No. 22-5277

**UNOPPOSED MOTION FOR INVITATION TO FILE
BRIEF AS *AMICI CURIAE***

Pursuant to Federal Rule of Appellate Procedure 29(b)(2) and Circuit Rule 35(f), the NRSC and the NRCC move for invitation to file an *amici curiae* brief in opposition to the Petition for Rehearing En Banc. The proposed brief is attached. Appellant End Citizens United PAC and Appellee New Republican PAC consent to this Motion. The Federal Election Commission recently entered an appearance in this matter and states that it takes no position on the Motion.

Interest of the Movants: The NRSC (the National Republican Senatorial Committee) is the principal national political party committee focused on electing Republicans to the United States Senate. The NRSC's membership includes all Republican Members of the Senate, including a respondent in the agency proceeding below.

The NRCC (the National Republican Congressional Committee) is the principal national political party committee devoted to electing Republicans to the United States House of Representatives. The NRCC's membership includes all Republican Members of the House.

For the NRSC, the NRCC, and their members, affirmation of the panel decision is essential to ensure that, as Congress instructed, enforcement of the Federal Election Campaign Act of 1971, as amended, requires four affirmative votes by a bipartisan majority of Commissioners on the Federal Election Commission and, just as important, that dismissal of an administrative complaint requires only three votes. Congress established the FEC in the shadow of Watergate and structured its enforcement mechanisms so that partisan political abuse would not chill “core constitutionally protected activity.” *Van Hollen, Jr. v. FEC*, 811 F.3d 486, 499 (D.C. Cir. 2016) (citation omitted). By requiring bipartisan agreement on FECA prosecutions, Congress blunted the risk that one political party could use agency enforcement to silence or damage another political party. Because dismissals do not pose the same risk, Congress did not require bipartisan agreement for the FEC to decline enforcement. The Petition seeks to wrongly upend this careful congressional design, enabling federal district judges to second-guess every FEC dismissal of an administrative complaint filed by a

partisan actor—including those where the FEC declined enforcement based on prosecutorial discretion.

Usefulness of Briefing by the Movants: If an invitation is granted, the brief will make a unique contribution. The FEC has not participated in this litigation, and New Republican PAC is a political action committee “that makes only independent expenditures and cannot contribute to candidates.” *See McCutcheon v. FEC*, 572 U.S. 185, 193 n.2 (2014) (plurality). The NRSC and the NRCC are the principal national political party committees focused on electing Republicans to Congress and thus speak for a wider segment of the regulated community, including candidates.

Founded in 1916 and 1866, respectively, the NRSC and the NRCC also bring a historical perspective that more recently formed political action committees may lack. In this case, their proposed brief provides helpful historical context not addressed by the parties about the events that led to the establishment of the FEC and the ways it operated in its earliest years. This information is relevant to the Court’s interpretation of FECA, because statutory “[l]anguage takes meaning from its linguistic context,’ as well as ‘historical and governmental contexts.’” *Biden v. Nebraska*, 143 S. Ct. 2355, 2378 (2023) (Barrett, J., concurring) (citation omitted).

For all these reasons, the Court should grant the Motion and invite the NRSC and the NRCC to file their proposed brief as *amici curiae* in opposition to the Petition for Rehearing En Banc.

Dated: March 8, 2024

Respectfully submitted,

/s/Jeremy J. Broggi

Michael E. Toner

Brandis L. Zehr

Jeremy J. Broggi

WILEY REIN LLP

2050 M Street NW

Washington, DC 20036

Phone: (202) 719-7000

Fax: (202) 719-7049

mtoner@wiley.law

bzehr@wiley.law

jbroggi@wiley.law

Counsel for the NRSC and the NRCC

CERTIFICATE OF COMPLIANCE

I hereby certify, on March 8, 2024, that:

1. This document complies with the word limit under Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rules of Appellate Procedure 32(f) and 27(a)(2)(B), this document contains 562 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document was prepared in a proportionally spaced typeface using Microsoft Word for Office 365 MSO in a 14-point Times New Roman font.

/s/Jeremy J. Broggi

Jeremy J. Broggi

CERTIFICATE OF SERVICE

I certify that on March 8, 2024, a true and correct copy of this Motion was filed and served electronically upon counsel of record registered with the Court's CM/ECF system.

/s/Jeremy J. Broggi
Jeremy J. Broggi