UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON, Plaintiff, v. FEDERAL ELECTION COMMISSION, Defendant, AMERICAN ACTION NETWORK, Intervenor-Defendant.	Civil Action No. 1:22-cv-03281 (CRC)

AMERICAN ACTION NETWORK'S
REPLY IN SUPPORT OF ITS MOTION TO DISMISS

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GLOSSARY

AAN	American Action Network
CREW	Citizens for Responsibility and Ethics in Washington
FEC	Federal Election Commission
FECA	Federal Election Campaign Act

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INTRODUCTION

CREW's opposition makes one thing perfectly clear: CREW rejects more than three-and-a-half decades of D.C. Circuit authority. When then-judge Ruth Bader Ginsburg held that a Federal Election Commission "dismissal due to a deadlock is reviewable," *Democratic Cong. Campaign Comm. v. FEC*, 831 F.2d 1131, 1132 (D.C. Cir. 1987) ("*DCCC*"), she affirmed a basic tenet of the congressional design for the agency: the Federal Election Campaign Act requires "four affirmative votes" to proceed with enforcement but only *three* to dismiss, *id.* at 1133; *accord CREW v. FEC*, 993 F.3d 880, 891 (D.C. Cir. 2021) ("*New Models*") (rejecting CREW's argument "that four commissioners must concur not only in enforcement actions, but also in nonenforcement actions"), *en banc reh'g denied*, 55 F.4th 918 (D.C. Cir. 2022). Accordingly, when three Commissioners vote to dismiss a complaint, their action and their reasononing speaks for the agency, as their three votes control even though they do not constitute a majority.

That principle controls this case. In 2014, the FEC deadlocked and so dismissed CREW's 2012 administrative complaint against AAN. This Court reviewed that dismissal and the explanation of the controlling three commissioners and ultimately determined that the FEC's reasons for dismissing were "not subject to judicial review" because the agency exercised unreviewable "prosecutorial discretion." *CREW v. AAN*, 590 F. Supp. 3d 164, 173–75 (D.D.C. 2022) ("*AAN III*"); *cf. Brownback v. King*, 141 S. Ct. 740, 750 (2021) ("a federal court always has jurisdiction to determine its own jurisdiction" (citation omitted)). Furthermore, the Court recognized that CREW's citizen suit based on the Commission's failure to take any action in 2018 on the same 2012 administrative complaint "must" be "dismiss[ed]" because the agency never should have been forced to take another vote on the 2012 administrative complaint after it dismissed it as a matter of prosecutorial discretion in 2014. *AAN III*, 590 F. Supp. 3d at 175.

This case seeks to collaterally attack the Court's dismissal of that first citizen suit via a second, parallel citizen suit that likewise seeks to enforce the same 2012 administrative complaint that the FEC dismissed long ago in exercise of its unreviewable enforcement discretion. To get there, CREW urges this Court to hold that a single Commissioner can retroactively "control" the rationale of agency action she opposed (in 2014) by announcing years later, in a dissent from a ministerial action to close a file (in 2022), that her abstention from an intervening substantive vote (in May 2018) somehow made her the sole controlling commissioner—even though this Court had already (in April 2018) asserted jurisdiction over CREW's first citizen suit. The result, according to CREW, is that this Court should authorize a new citizen suit based on the same "original complaint" even while the original citizen suit is still pending on appeal.

The Court should reject CREW's invitation to abandon nearly forty years of settled D.C. Circuit precedent. Indeed, CREW's opposition papers confirm what AAN has said from the beginning: this action is untimely, it is unreviewable, and CREW lacks standing. CREW's disputes with binding Circuit authority on each of these points are not for this Court to resolve, and CREW is free to make in its already-pending appeal all its meritless arguments for rejecting the authoritative precedents it does not like. This Court should dismiss.

ARGUMENT

I. CREW CONFIRMS THIS SUIT IS TIME BARRED.

The Court should dismiss because this action is untimely. FECA imposes a 60-day deadline to file a lawsuit challenging an FEC dismissal decision that is "jurisdictional and unalterable," *Nat'l Rifle Ass'n of Am. v. FEC*, 854 F.2d 1330, 1334 (D.C. Cir. 1988) (citation omitted); *see* 52 U.S.C. § 30109(a)(8)(A), (B), and this suit was filed years after the FEC's dismissal decisions. CREW's opposition attempts to obfuscate the record on this point, so it is important to yet again walk through the history of CREW's crusade against AAN.

As AAN explained (AAN Mem. 17–19), the FEC first dismissed CREW's 2012 complaint in 2014. Following this Court's remand, the FEC dismissed that same 2012 complaint again in 2016. After that, the FEC "failed to act," *CREW v. AAN*, 410 F. Supp. 3d 1, 25 (D.D.C. 2019) ("*AAN I*"), so, CREW "invoked FECA's citizen-suit provision to sue AAN directly," *id.* at 7, based on the allegations in its 2012 complaint. Following discovery, this Court dismissed CREW's citizen suit as unreviewable under binding D.C. Circuit precedent because the agency dismissed pursuant to its enforcement discretion. *AAN III*, 590 F. Supp. 3d at 174; *see New Models*, 993 F.3d 880. CREW appealed, and that appeal remains pending. In August 2022, apparently recognizing that the D.C. Circuit would soon resolve any remaining issues and that there was nothing left for the Commission to do, the Commission closed its administrative file and notified AAN that its investigative records would become public under agency regulations.

CREW concedes (Opp'n 26–27), as it must, that it is jurisdictionally barred from filing yet another suit trying to challenge the FEC's dismissal decisions in 2014 and 2016.[1] But, seeking to evade that insurmountable hurdle, CREW argues the FEC's "vote to close the file" on a case that it had already twice dismissed years ago somehow "dismissed this case" yet again, and hence renewed its opportunity to sue. Opp'n 26.

[1] CREW suggests there may have been a third dismissal "in 2018." Opp'n 26. The FEC record shows, however, that Commissioner Weintraub "abstained" rather than dissented from the substantive "reason to believe" vote that three Commissioners supported, apparently resulting in no action from the then four-member Commission. Compl. Ex. 4 (Certification, MUR No. 6589R (May 10, 2018)); *see* FEC, *Directive 10* (June 8, 1978) (amended Dec. 20, 2007), https://www.fec.gov/resources/cms-content/documents/directive_10.pdf. In all events, assuming, *arguendo*, that there had been a dismissal in May 2018—and that the FEC could somehow have retained jurisdiction to dismiss following CREW's filing suit on the same original complaint—this suit, filed October 2022, would still obviously have missed FECA's 60-day deadline. *See also Spannaus v. FEC*, 990 F.2d 643, 644–45 (D.C. Cir. 1993) (per curiam) (holding "the 60-day review period runs from the 'date of dismissal'" not the date of "notice").

That is nonsense. As a majority of Commissioners who voted to close the file explained, CREW's position is foreclosed by binding D.C. Circuit precedent and is "without legal support of any kind." Supp. Statement of Reasons of Chairman Allen J. Dickerson, MUR No. 6589R, at 1 (Oct. 12, 2022), https://www.fec.gov/files/legal/murs/6589R/6589R_32.pdf; *accord* Statement of Reasons of Chairman Allen J. Dickerson and Commissioners Sean J. Cooksey and James E. "Trey" Trainor, III, MUR No. 6589R (May 13, 2022), https://www.fec.gov/files/legal/murs/6589R/6589R_30.pdf. The only Commissioner who disagrees is Commissioner Weintraub, and she *voted against* closing the file. Compl. Ex. 3 (Certification, MUR No. 6589R (Aug. 29, 2022)).

That her dissent trying to characterize the Commission's ministerial action as a third "dismissal" does not control whether it actually is a dismissal, should be obvious. In fact, years of litigation proceeded in this Court at that Commissioner's behest—and continues to proceed in the D.C. Circuit—based on the understanding that the requisite dismissals occurred long ago and that the FEC's inaction in 2018 passed the baton to CREW.[2] Seeking to justify this untimely attempt to launch a second citizen suit, CREW string cites six cases that it claims all stand for the proposition that an FEC file closure is a "dismissal." None does.

Start with the obvious. None of the cases CREW cites says what CREW says—*i.e.*, that a Commission "vote to close the file . . . starts the FECA's sixty-day clock." Opp'n 24. That is why CREW sifts the administrative record underlying each case, hunting for clues that perhaps some

[2] There is thus no merit to CREW's position that it is entitled to a simultaneous, second citizen suit to enforce the same "original complaint" at issue in its first citizen suit. 52 U.S.C. § 30109(a)(8)(C). *But see* Opp'n 15 ("CREW's citizen suit should be authorized immediately"), 44 ("This Court should . . . expeditiously authorize CREW to bring its own citizen suit."). The fact that CREW requests this inappropriate relief confirms AAN's argument (AAN Mem. 1, 28) that this action is nothing more than an improper collateral attack on the Court's prior dismissal order. *See, e.g.*, *Stone v. Lynch*, 174 F. Supp. 3d 291, 294 (D.D.C. 2016) (Cooper, J.) (holding an action is an impermissible "collateral attack if, in some fashion, it would overrule a previous judgment." (brackets and internal quotation marks omitted)).

court erroneously took jurisdiction over an untimely dismissal. But none did, and even if CREW had managed to strain the gnat it still swallows the camel by ignoring the "well-established rule that cases in which jurisdiction is assumed *sub silentio* are not binding authority for the proposition that jurisdiction exists." *Wagner v. FEC*, 717 F.3d 1007, 1016 (D.C. Cir. 2013) (citation omitted); *see Lewis v. Casey*, 518 U.S. 343, 352 n.2 (1996) ("[T]he existence of unaddressed jurisdictional defects has no precedential effect.").

In all events, the cases and their underlying agency records support AAN, not CREW. In *CREW v. FEC*, 892 F.3d 434 (D.C. Cir. 2018) ("*CHGO*"), the FEC "dismissed [CREW's] administrative complaint" "in 2015." *Id.* at 436–37. As CREW well knows as the complainant in that case, the FEC's record shows that on October 1, 2015, "the Commission . . . [f]ailed by a vote of 3-3 to . . . [f]ind reason to believe" that the respondent violated FECA. Attach. A, at 1 (Certification, MUR Nos. 6391 and 6471 (Oct. 1, 2015)). *On the same day*, "the Commission . . . [d]ecided by a vote of 5-1 to . . . [c]lose the file" and [s]end the appropriate letters." *Id.* at 2. The "dismissal," as every member of the panel recognized, resulted from "[t]he deadlock." 892 F.3d at 437; *see id.* at 449 (Pillard, J., dissenting) ("FECA's 'judicial review prescription' calls for review of an FEC dismissal that is, as here, 'due to a deadlock'—that is, a three-to-three tie vote by the Commissioners"). It was thus the deadlock, not the contemporaneous administrative act of closing the file, that gave rise to jurisdiction. Indeed, no one—not even the dissent—claimed that the file closure had any jurisdictional significance. CREW's decision to emphasize the date of the FEC's file closure while omitting that its deadlocked vote *happened on the same day* gets it nowhere.

None of the other decisions CREW cites involves review of a deadlock dismissal—let alone an attempt to review a deadlock dismissal several years after the fact based on the ministerial

act of closing the file on the long-ago-dismissed case. In *Common Cause v. FEC*, 842 F.2d 436 (D.C. Cir. 1988), the FEC considered an administrative complaint alleging coordination between five independent committees and Ronald Reagan's officially authorized campaign committee. In 1980, the Commission found "reason to believe" that a statutory violation had taken place with respect to three committees but deadlocked on the other two. "[T]he 3-3 deadlock among the Commissioners . . . resulted in a dismissal of the coordination claims against these two parties." *Id.* at 438. Following its investigation into the other three, "the General Counsel recommended that the Commission take no additional action" and, in 1983, the Commission by majority vote agreed. *Ibid.*; *see* Attach. B, at 1–2 (Certification, MUR Nos. 1252/1299 (May 24, 1983)).

Common Cause sought judicial review, arguing "that the Commission's ultimate dismissal of the coordination . . . claims that it had investigated and its failure to give reasons for declining to investigate the coordination charges against [the other two committees] were 'contrary to law.'" *Common Cause*, 842 F.2d at 439. The latter argument turned on the D.C. Circuit's intervening decision in *DCCC*, which had for the first time "found that a Commission dismissal of a complaint resulting from a 3-3 deadlock vote was reviewable when the General Counsel had made a contrary recommendation based on FEC precedent." *Common Cause*, 842 F.2d at 448. The D.C. Circuit "decline[d] to apply th[at] precedent retroactively to [*Common Cause*], which arose before our *DCCC* decision." *Ibid.* Because the D.C. Circuit declined to apply *DCCC* retroactively, it addressed on the merits only the Commission's 1983 actions, not its 1980 actions. The court thus had no occasion to consider the timeliness of Common Cause's challenge with respect to the 1980 deadlock dismissals, and the decision does not purport to address that issue. CREW is thus simply wrong to claim that *Common Cause* supports its position here.

CREW's citation to *Doe 1 v. FEC*, 920 F.3d 866 (D.C. Cir. 2019) is likewise inapposite. There, two plaintiffs brought a preemptive First Amendment challenge to the FEC's planned disclosure of their identities pursuant to its "disclosure policy." *Id.* at 869. In other words, they were challenging the agency's decision to disclose materials, not its decision to dismiss a complaint. *Doe* thus unsurprisingly says nothing at all about any deadlocked vote.

In the course of describing the Commission's disclosure policy, the court remarked that "[w]hen the Commission ended its investigation and closed the file, it 'terminate[d] its proceedings' *within the meaning of 11 C.F.R. § 111.20(a).*" *Id.* at 871 n.9 (emphasis added). CREW quotes selectively (Opp'n 24) the court's remark about termination but elides the qualifying language that points to section 111.20(a) of the Commission's rules. That language is key to understanding the court's statement because section 111.20(a) is among the trifecta of agency regulations governing the Commission's obligation to make public "disclosure of investigatory file materials in closed cases." *AFL-CIO v. FEC*, 333 F.3d 168, 171 (D.C. Cir. 2003) (identifying 11 C.F.R. §§ 111.20, 111.21, and 5.4). That the *Doe* court linked section 111.20(a) disclosure obligations with the concept of file closure reinforces AAN's position that "the FEC's non-statutory file closure procedure . . . is merely an administrative function to demarcate the 'public release of all investigatory file materials not exempted by the Freedom of Information Act' and [does] not . . . serve as a shadow dismissal procedure." AAN Mem. 21 (citation omitted).

CREW's remaining cases are even farther afield. Like *Doe*, neither *Spannaus v. FEC*, 990 F.2d 643 (D.C. Cir. 1993) (per curiam), *Jordan v. FEC*, 68 F.3d 518 (D.C. Cir. 1995), nor *CREW v. FEC*, 799 F. Supp. 2d 78 (D.D.C. 2011), mentions any deadlocked vote. And that makes sense because the record in each proceeding shows that the Commission action was taken by majority vote on the same day the Commission also voted to close the file. *See* Attach. C, at 1 (Certification,

MUR No. 3178 (July 24, 1991)); Attach. D, at 1 (Certification, MUR No. 2163 (Jan. 9, 1991)); Attach. E, at 1 (Certification, MUR No. 5908 (June 29, 2010)). Furthermore, in each case the court found that it *lacked jurisdiction* to review the action in question (in *Spannaus* and *Jordan* because, like here, the suits were untimely!). Obviously, as none of these cases found jurisdiction, none supports CREW's argument.

The bottom line is simple. The FEC first dismissed CREW's complaint in 2014 and, following this Court's remand, the FEC dismissed CREW's complaint again in 2016. These were the only times the agency dismissed the complaint. Because the statutory deadline to challenge the FEC's dismissals ran long ago, CREW's untimely effort to challenge those dismissals yet again through this collateral action seeking judicial review based on the same original complaint "must be dismissed for lack of jurisdiction." *Jordan*, 68 F.3d at 519.

II. CREW CONFIRMS THIS SUIT IS UNREVIEWABLE.

The Court should also dismiss because this action is unreviewable. As AAN explained, CREW's suit is merely another effort to obtain review of an FEC decision to dismiss a complaint in an exercise of its unreviewable prosecutorial discretion, which this Court already held unreviewable in *AAN III*. *See* AAN Mem. 22–28.

A. CREW Wrongly Dismisses Binding D.C. Circuit Authority.

This Court dismissed CREW's citizen suit because D.C. Circuit precedent unambiguously required that result. In *New Models*, the D.C. Circuit squarely held that "a Commission decision that rests even in part on prosecutorial discretion cannot be subject to judicial review." *AAN III*, 590 F. Supp. 3d at 174 (quoting *New Models*, 993 F.3d at 884); *see CHGO*, 892 F.3d at 442. Seeking dismissal in this case, AAN explained that just as the FEC's 2014 dismissal of CREW's 2012 complaint precluded review of CREW's first citizen suit based on that same complaint, it

also precludes judicial review here even if the FEC's 2022 file closure were another dismissal. *See* AAN Mem. 23–25.

CREW's principal response is to attack the legitimacy of *New Models*, falsely claiming that "*New Models* is not binding caselaw in this Circuit." Opp'n 2; *see id.* at 28 ("if this case cannot be distinguished from *CHGO* and *New Models*, those decisions must be disregarded"), 34–43 (arguing *New Models* "must be disregarded" "even assuming that this case is 'on all fours' with *New Models*" (emphasis omitted)). CREW is, of course, entitled to its own opinion. But it is not entitled to its own facts. "[I]n our hierarchical system of absolute vertical stare decisis," *Klayman v. Obama*, 805 F.3d 1148, 1149 (D.C. Cir. 2015) (Kavanaugh, J., concurring), "district judges, like panels of th[e D.C. Circuit], are obligated to follow controlling circuit precedent until either [the Circuit], sitting en banc, or the Supreme Court, overrule it," *United States v. Torres*, 115 F.3d 1033, 1036 (D.C. Cir. 1997). Two D.C. Circuit panels have now rejected the same arguments CREW makes here about a supposed conflict between the Circuit's most recent teaching and its earlier case law—first in *CHGO* and, more recently, in *New Models*—and both times the en banc Circuit has declined to rehear the panel decision. This Court rightly agreed that *New Models* is binding. Contrary to CREW's assertions, this Court must continue to follow *New Models* "whether or not" it agrees that decision "is correct." *Save Our Cumberland Mountains, Inc. v. Hodel*, 826 F.2d 43, 54 (D.C. Cir. 1987) (R.B. Ginsburg, J., concurring) (citation and subsequent history omitted).

In addition to *New Models*, CREW attacks nearly forty years of D.C. Circuit precedent regarding judicial review of deadlocked dismissals. Although CREW's entire case is based on the views of a single FEC commissioner, it argues, apparently without even appreciating the irony, that this Court should not credit the FEC's 2014 statement of reasons invoking prosecutorial

discretion because it was "signed by only three commissioners." Opp'n 31; *see also id.* at 16 (asserting "three commissioners could not alone" "vote to exercise discretion"). That is, of course, flatly contrary to the D.C. Circuit's oft-repeated holding that "when the Commission deadlocks 3-3 and so dismisses a complaint . . . the three Commissioners who voted to dismiss *must* provide a statement of their reasons for so voting." *FEC v. Nat'l Republican Senatorial Comm.*, 966 F.2d 1471, 1476 (D.C. Cir. 1992) (emphasis added). "Since those Commissioners constitute a controlling group for purposes of the decision," the D.C. Circuit has explained, "their rationale *necessarily states* the agency's reasons for acting as it did." *Ibid.* (emphasis added); *see also DCCC*, 831 F.2d at 1134–35. CREW is therefore simply wrong when it argues that "[t]he deadlocking commissioners' [2014] statement does not explain the dismissal" because three was not "the majority." Opp'n 32. Under binding D.C. Circuit precedent, it plainly was.

B. CREW Pretends One Commissioner Speaks For The FEC.

CREW is equally wrong when—after strenuously objecting that three commissioners cannot "alone" control the agency—it suddenly throws the stick in reverse and contends that Commissioner Weintraub *alone* "now speaks as the Commission in this matter." Opp'n 30. Not surprisingly, neither CREW nor the FEC can cite a single authority for the bizarre proposition that a lone commissioner's solo dissent somehow retroactively vitiates the reasoning that the Commission *actually* embraced years ago.[3]

The absurdity of the proposition is self-evident. FECA requires four votes to proceed with an enforcement action and only three to dismiss. 52 U.S.C. § 30109(a)(2); *see New Models*, 993

[3] It is unclear whether FEC counsel accepts CREW's position that Commissioner Weintraub's statement is controlling or is merely purporting to take "the factual allegations in the complaint as true." FEC Mem. 10. Either way, counsel is mistaken. Far from a mere factual allegation, CREW's theory advances a legal conclusion that is both wrong on the merits and unentitled to the presumption of truth.

F.3d at 891 (expressly rejecting CREW's argument "that four commissioners must concur not only in enforcement actions, but also in nonenforcement actions"). That is why, when the Commission deadlocks, the reviewing court employs "a rather apparent fiction" whereby "the statement or statements of those naysayers . . . will be treated as if they were expressing the Commission's rationale for dismissal." *CHGO*, 892 F.3d at 437–38.

This fiction works to enable meaningful judicial review—including, as happened here, review that ultimately determines the agency's dismissal decision is unreviewable because it rests on prosecutorial discretion. But according to CREW's attempted abuse of this legal fiction, Commissioner Weintraub may, by abstaining from the Commission's 2018 enforcement vote and then subsequently issuing a statement explaining that her decision was disingenuous, single-handedly rescind the agency's 2014 exercise of discretion and override the written explanations of the three Commissioners who (unlike Commissioner Weintraub) actually voted to dismiss. The result of that position, if taken seriously, would be to undermine meaningful judicial review and to allow individual rogue commissioners to compel enforcement action without "the requisite four affirmative votes" mandated by statute. *DCCC*, 831 F.2d at 1133. That is not the law.

The history of this litigation also proves the absurdity of CREW's position. For years, CREW subjected its ideological opponent, AAN, to invasive and burdensome discovery of its confidential, highly confidential, and First Amendment privileged information. For years, AAN sought review in the court of appeals and was rebuffed, *see, e.g.*, *CREW v. FEC*, No. 18-5136, 2018 WL 5115542 (D.C. Cir. Sept. 19, 2018); *CREW v. FEC*, Nos. 16-5300, 16-5343, 2017 WL 4957233 (D.C. Cir. Apr. 4, 2017), and forced to wait until the end of CREW's meritless citizen suit. Now, CREW claims all that was meaningless because Commissioner Weintraub had not yet

spoken "as the Commission." Opp'n 30. Why then has CREW been wasting everyone's time and resources for the last decade?

Adding insult to repeated injury, CREW claims that it can pursue simultaneously the original citizen suit that this Court dismissed (that is, the citizen suit that is now on appeal in the D.C. Circuit with CREW's principal brief due next month) and a second citizen suit that it asks this Court to authorize through this litigation. Opp'n 15 ("CREW's citizen suit should be authorized immediately"), 44 ("This Court should . . . expeditiously authorize CREW to bring its own citizen suit."). That, of course, is nonsense. FECA authorizes, in limited circumstances, "*a* civil action to remedy the violation involved in the *original complaint*." 52 U.S.C. § 30109(a)(8)(C) (emphases added). By the plain terms of the statute, this Court may not authorize more than one citizen suit based on the same original complaint.

The best view is the obvious one. When, in April 2018, the FEC "failed to act" and permitted CREW "to sue AAN directly," *AAN I*, 410 F. Supp. 3d at 7, 25; *see also* Compl. Ex. 2 (Statement of Vice Chair Ellen L. Weintraub Regarding *CREW v. FEC & AAN*, at 1 (Apr. 19, 2018)), jurisdiction shifted from the agency to this Court. The first stage of CREW's citizen suit culminated when the Court correctly held that binding precedent unambiguously required dismissal. That decision will now be subject to the D.C. Circuit's review, and CREW can make there all its meritless arguments for rejecting binding Circuit authority. But FECA does not permit CREW to bring—or Commissioner Weintraub to unilaterally authorize—a second citizen suit that collaterally attacks the first merely because they are unhappy with the result. *See also* AAN Mem. 27–28.

III. CREW CONFIRMS THAT IT LACKS STANDING.

In addition, the Court should dismiss because CREW lacks standing. As AAN explained, the Supreme Court recently held that "[a]n 'asserted informational injury that causes no adverse

effects cannot satisfy Article III,'" *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2214 (2021) (quoting *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020) (Katsas, J., sitting by designation)), and CREW's conclusory allegations fail to plead factual content showing any ill effects from its failure to obtain AAN's donor information. AAN Mem. 15–17.

CREW asserts *TransUnion* is "ambiguous in context." Opp'n 20 n.6. But the Supreme Court said what it said, explaining that where a statute makes "information subject to public[ ] disclosure" the plaintiff must still "identif[y] . . . 'downstream consequences' from failing to receive the required information." *TransUnion*, 141 S. Ct. at 2214; *see Trichell*, 964 F.3d at 1004 ("the plaintiffs in *Public Citizen* and *Akins* identified consequential harms from the failure to disclose the contested information"). Far from ambiguous, the "context" of the Supreme Court's statement confirms that merely identifying a statutory right is insufficient to demonstrate informational injury under Article III.

CREW reveals the inadequacy of its alleged harm when it attempts to differentiate between "assess[ing] anyone else's legal compliance" (which it appears to agree *is not* a cognizable injury) and "pursu[ing] violations of the Act" (which it contends *is* a cognizable injury). Opp'n 21–22. Either way, CREW's hair splitting overlooks the simple reality that a plaintiff cannot "establish injury in fact merely by alleging that he 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); *see TransUnion*, 141 S. Ct. at 2206 ("the public interest that private entities comply with the law cannot 'be converted into an individual right by a statute that denominates it as such'") (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576–77 (1992)). Because that is what the Complaint alleges, CREW has not demonstrated standing.

CREW appears to reveal its true concern when it asserts that "AAN's donors" "supported candidates of the Republican [P]arty and helped flip the House." Opp'n 23. AAN is an issue-focused 501(c)(4) social-welfare organization that works to encourage and promote "center-right policies based on principles of freedom, limited government, American exceptionalism, and strong national security," AAN, *About AAN*, https://americanactionnetwork.org/about (last visited Feb. 10, 2023). As such, AAN "welcomes supporters of its center-right values and policy proposals regardless of party affiliation" and frequently works "with legislators, government officials, and advocates of either party who are willing to advance policies consistent with the [AAN's] principles." *Ibid.* AAN's purpose *is not* to advocate partisan outcomes.

CREW, on the other hand, adopts a partisan framing throughout its brief, repeatedly labeling people and issues as either "Republican" or "Democratic." Opp'n 9, 15, 23, 24, 26, 33, 34. That CREW views its own work as inherently partisan has not escaped the notice of outside observers. *See, e.g.*, Kenneth P. Vogel, *David Brock expands empire*, Politico (Aug. 14, 2014), https://www.politico.com/story/2014/08/david-brock-citizens-for-responsibility-and-ethics-in-washington-110003 (explaining "[David] Brock was elected chairman of the group's board last week after laying out a multifaceted expansion intended to turn the group into a more muscular — and likely partisan — attack dog[.]"); Paul Singer, *Ethics watchdog drops its non-partisan veneer*, USA Today (Aug. 14, 2014), https://www.usatoday.com/story/news/politics/onpolitics/2014/08/14/ethics-watchdog-drops-its-non-partisan-veneer/81232064/. But CREW's apparent motives are certainly not consistent with the fact that it holds itself out as an allegedly non-partisan 501(c)(3) organization that is prohibited by the Internal Revenue Code from engaging in partisan political activity. In any event, CREW's apparent concern with Republican activity in the 2022 mid-term elections cannot establish informational injury.

CONCLUSION

The Court should dismiss this case.

Respectfully submitted,

By: s/ Stephen J. Obermeier

Stephen J. Obermeier (D.C. Bar No. 979667)
Caleb P. Burns (D.C. Bar No. 474923)
Jeremy J. Broggi (D.C. Bar No. 1191522)
WILEY REIN LLP
2050 M Street, NW
Washington, DC 20036
(202) 719-7000
sobermeier@wiley.law

Dated: February 10, 2023

Counsel for American Action Network

ATTACHMENT A

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURs 6391 and 6471
Commission on Hope, Growth and Opportunity	)	
	)	

CERTIFICATION

I, Shelley E. Garr, recording secretary of the Federal Election Commission executive session, do hereby certify that on October 01, 2015, the Commission took the following actions in the above-captioned matter:

1. Failed by a vote of 3-3 to:

   a. Find reason to believe that the Commission on Hope, Growth and Opportunity violated 52 U.S.C. §§ 30102, 30103, 30104, 30120(a)(3), and 30120(d)(2).

   b. Enter into pre-probable cause conciliation with the Commission on Hope, Growth and Opportunity.

   c. Approve the Factual and Legal Analysis as recommended in the Third General Counsel's Report dated September 24, 2015, as circulated by the Chair's Office on September 30, 2015.

   d. Approve the appropriate letter.

Commissioners Ravel, Walther, and Weintraub voted affirmatively for the motion.

Commissioners Goodman, Hunter, and Petersen dissented.

2. Decided by a vote of 5-1 to:

   a. Close the file.

   b. Send the appropriate letters.

Commissioners Goodman, Hunter, Petersen, Ravel, and Weintraub voted affirmatively for the decision. Commissioner Walther dissented.

Attest:

October 2, 2015
Date

Shelley E. Garr
Shelley E. Garr
Deputy Secretary of the Commission

ATTACHMENT B

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Ronald Reagan	)	
Reagan/Bush Committee	)	
(aka Reagan General Election Committee)	)	MUR 1252/1299
Reagan for President Committee	)	
Americans for Change	)	
Americans for an Effective Presidency	)	
Fund for a Conservative Majority	)	
National Congressional Club	)	
National Conservative Political Action Committee	)	

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CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission Executive Session on May 24, 1983, do hereby certify that the Commission took the following actions in MUR 1252/1299:

1. Decided by a vote of 5-1 to take no further action with regard to the violations of 26 U.S.C. §9012(f) by Americans for Change, Americans for an Effective Presidency, the Fund for a Conservative Majority, the National Congressional Club and the National Conservative Political Action Committee.

   Commissioners Elliott, Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision; Commissioner Aikens dissented.

2. Decided by a vote of 5-0 to take no further action with regard to the alleged violations of 2 U.S.C. § 441a(a) by Americans for Change, the Fund for a Conservative Majority and the National Conservative Political Action Committee.

   Commissioners Elliott, Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision; Commissioner Aikens abstained.

(Continued)

3. Decided by a vote of 5-0 to take no further action with regard to the alleged violations by Ronald Reagan and his authorized committees of 2 U.S.C. §441a(f).

   Commissioners Elliott, Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision. Commissioner Aikens abstained on the vote.

4. Decided by a vote of 6-0 to find no probable cause to believe that Ronald Reagan and his authorized committees violated 26 U.S.C. § 9012(b)(1).

   Commissioners Aikens, Elliott, Harris, McDonald, McGarry and Reiche voted affirmatively for the decision.

5. Decided by a vote of 4-2 to find no probable cause to believe that Americans for Change, the Fund for a Conservative Majority, and the National Conservative Political Action Committee violated 2 U.S.C. § 432(e)(4).

   Commissioners Aikens, Elliott, McDonald, and McGarry voted affirmatively for the decision; Commissioners Harris and Reiche dissented.

6. Decided by a vote of 6-0 to close the file in this matter.

   Commissioners Aikens, Elliott, Harris, McDonald, McGarry, and Reiche voted affiramtively for the decision.

7. Decided by a vote of 6-0 to direct the Office of General Counsel to send the appropriate letters pursuant to the actions taken above.

   Commissioners Aikens, Elliott, Harris, McDonald, McGarry, and Reiche voted affirmatively for the decision.

Attest:

5/25/83
Date

Marjorie W. Emmons
Secretary of the Commission

ATTACHMENT C

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Handgun Control, Inc.;	)	MUR 3178
Handgun Control, Inc. Political Action Committee and	)	
Edwin O. Welles, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on July 24, 1991, the Commission decided by a vote of 5-0 to take the following actions in MUR 3178:

1. Decline to reopen issues resolved in MURs 1604, 1891, and 2115.
2. Dismiss the compliant in MUR 3178.
3. Close the file.
4. Approve the appropriate letters, as recommended in the General Counsel's Report dated July 18, 1991.

Commissioners Aikens, Elliott, Josefiak, McDonald and McGarry, voted affirmatively for the decision; Commissioner Thomas did not cast a vote.

Attest:

7-24-91
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Fri., July 19, 1991 11:36 a.m.
Circulated to the Commission: Mon., July 22, 1991 11:00 a.m.
Deadline for vote: Wed., July 24, 1991 11:00 a.m.

ATTACHMENT D

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
American Jewish Committee and Jonathan Levine, Director; Anti-Defamation League of B'nai B'rith and Abraham Foxman, National Director.	)	MUR 2163

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 9, 1991, the Commission decided by a vote of 6-0 to take the following actions in MUR 2163:

1. Take no further action as to the American Jewish Committee and Jonathan Levine, as director.

2. Take no further action as to the Anti-Defamation League of B'nai B'rith and Abraham Foxman, as National Director.

3. Approve the appropriate letters, as recommended in the General Counsel's Report dated January 2, 1991.

4. Close the file in this matter.

Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

Jan. 10, 1991
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Wed., Jan. 2, 1991 3:49 p.m.
Circulated to the Commission: Thurs., Jan. 3, 1991 11:00 a.m.
Deadline for vote: Wed., Jan. 9, 1991 4:00 p.m.

dr

ATTACHMENT E

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 5908
Duncan Hunter; Hunter for President, Inc. and Bruce Young, in his official capacity as Treasurer; Peace Through Strength Political Action Committee and Meredith G. Kelley, in her official capacity as Treasurer	)	

CERTIFICATION

I, Darlene Harris, recording secretary for the Federal Election Commission executive session on June 29, 2010, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 5908:

1. Take no further action with respect to this matter.
2. Close the file in MUR 5908.
3. Issue an appropriate Statement(s) of Reasons.
4. Send the appropriate letters.

Commissioners Hunter, McGahn II, Petersen, Walther and Weintraub voted affirmatively for the decision. Commissioner Bauerly did not vote.

Attest:

June 30, 2010
Date

Darlene Harris
Darlene Harris
Deputy Secretary of the Commission