ORAL ARGUMENT NOT YET SCHEDULED

No. 19-5072

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPRESENTATIVE TED LIEU, *et al.*,
Plaintiffs-Appellants,

v.

FEDERAL ELECTION COMMISSION,
Defendant-Appellee.

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

FEDERAL ELECTION COMMISSION'S RESPONSE TO PETITION FOR INITIAL HEARING EN BANC

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GLOSSARY

FEC	Federal Election Commission
FECA	Federal Election Campaign Act

Appellants fail to show that this appeal is so extraordinary as to warrant initial *en banc* review. This case centers on whether the Federal Election Commission's ("FEC" or "Commission") decision not to pursue administrative enforcement proceedings was permissible. Representative Ted Lieu and other appellants (collectively, "Lieu") assert that the Commission acted "contrary to law" under 52 U.S.C. § 30109(a)(8) when it dismissed Lieu's claims that the receipts of ten independent expenditure-only political committees exceeded contribution limits in the Federal Election Campaign Act ("FECA"). But that alleged conduct indisputably fell within the scope of this Court's unanimous decision in *SpeechNow.org v. FEC*, 599 F.3d 686, 695 (D.C. Cir. 2010) (*en banc*) that such conduct cannot constitutionally be restricted, as well as within the safe harbor of an advisory opinion the FEC issued in conformance with *SpeechNow*. In fact, six other circuits have reached the same conclusion as *SpeechNow*. Accordingly, the district court correctly held that the Commission permissibly followed *SpeechNow* when it dismissed the administrative complaint and so the Commission lawfully chose not to impose compliance costs through investigation of the administrative respondents who relied on that precedent.

Lieu now seeks an initial hearing *en banc* as a means to obtain review of the *SpeechNow* decision itself. But such plenary review is "not favored," and Lieu has failed to show, as he must, that either (1) *en banc* determination is "necessary" to

"maintain uniformity of the court's decisions," or (2) "the proceeding involves a question of exceptional importance." Fed. R. App. P. 35(a). Lieu does not claim any conflict among this Court's rulings and solely argues that this case concerns a question of exceptional importance. But the question to which Lieu devotes his brief — whether this Court should overturn *SpeechNow* — is not one that the Court must or should reach in this review of an agency's administrative enforcement decision. Moreover, the *en banc* Court has already considered the precise legal arguments and similar factual material presented by Lieu here. *SpeechNow* might be revisited by this Court in a proper case, but this is not it. And reversal of the outcome of *SpeechNow* really requires Supreme Court review, which means consideration by the *en banc* court here would be a very poor use of judicial resources.

Lieu has failed to meet the high standard for initial *en banc* review. The petition should be denied.

BACKGROUND

I. THE COMMISSION

The FEC is a six-member independent agency charged with the administration, interpretation, and civil enforcement of FECA. 52 U.S.C. §§ 30101-46. Congress authorized the Commission to "administer, seek to obtain compliance with, and formulate policy with respect to" FECA, *id*. § 30106(b)(1);

to investigate possible violations of FECA, *id*. § 30109(a)(1)-(2); and to initiate civil enforcement actions for violations of FECA in federal court, *id*. §§ 30106(b)(1), 30109(a)(6).

II. FECA AND THIS COURT'S *SPEECHNOW* DECISION

FECA sets varying limits on contributions that political committees may receive, depending on the type of entity making the contribution. *See* 52 U.S.C. §§ 30101(4)(A), (8)(A)(i), (9)(A)(i); 30116(a). FECA prohibits any "person" from making a contribution of more than $5,000 to a political committee that is not authorized by a candidate or established by a political party, *id.* § 30116(a)(1)(C), and bars political committees from "knowingly accept[ing] any contribution" in excess of the applicable limits, *id.* § 30116(f).

FECA distinguishes between "independent expenditures" and other types of expenditures made to influence federal elections. 52 U.S.C. § 30101(17). "Independent expenditures" are defined as expenditures that "expressly advocate[] the election or defeat of a clearly identified candidate" and are "not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents." *Id.*

In its unanimous *en banc* decision in *SpeechNow.org*, this Court concluded that the $5,000 limit on contributions to other political committees in 52 U.S.C.

§ 30116(a)(1)(C) is unconstitutional as applied to a political committee that makes only independent expenditures (commonly known as a "super PAC"). 599 F.3d at 696. The court explained that, although restrictions on political *contributions* face a less-stringent standard of scrutiny than do restrictions on political *expenditures*, *id.* at 692, "contribution limits still do implicate fundamental First Amendment interests," and therefore those "'involving significant interference with associational rights must be closely drawn to serve a sufficiently important interest,'" *id.* (quoting *Davis v. FEC*, 554 U.S. 724, 740 n.7 (2008)). Preventing *quid pro quo* corruption or its appearance had been held sufficient to justify the contribution limits at issue, the *en banc* court noted, but in *Citizens United v. FEC*, 558 U.S. 310 (2010), the Supreme Court had "expressly decid[ed]" that "'independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.'" *SpeechNow*, 599 F.3d at 692, 694 (quoting *Citizens United*, 558 U.S. at 357). That was so, the Supreme Court held, because the "'absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate.'" *Citizens United*, 558 U.S. at 357 (quoting *Buckley v. Valeo*, 424 U.S. 1, 47 (1976) (per curiam)).

"In light of the [Supreme] Court's holding as a matter of law that independent expenditures do not corrupt or create the appearance of *quid pro quo* corruption," the *SpeechNow* court concluded that "contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption." 599 F.3d at 694. Because "the government has no anti-corruption interest in limiting contributions to an independent expenditure group," the court stated, that interest cannot justify the burden contribution limits place on First Amendment rights, even assuming those intrusions are less extensive than an expenditure ban. *Id.* at 695. Thus, the court unanimously ruled that FECA's contribution limits "violate the First Amendment" as applied to SpeechNow. *Id.* at 696. Accordingly, on remand, the district court permanently enjoined the Commission from enforcing contribution limits against the *SpeechNow* plaintiffs. Am. J., *SpeechNow.org v. FEC*, No. 08-248, ECF No. 85 (D.D.C. Oct. 29, 2010).

In addition to the D.C. Circuit, five other courts of appeals have considered the issue since *Citizens United*. Each court has similarly held that, as a categorical matter, the government cannot constitutionally limit contributions to political committees that make only independent expenditures. *Republican Party of N.M. v. King*, 741 F.3d 1089, 1095-97 (10th Cir. 2013); *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 487 (2d Cir. 2013); *Texans for Free Enter. v. Tex. Ethics Comm'n*, 732 F.3d 535, 538 (5th Cir. 2013); *Wis. Right to Life State Political*

Action Comm. v. Barland, 664 F.3d 139, 154 (7th Cir. 2011); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 697-99 (9th Cir. 2010). The Fourth Circuit had reached the same conclusion prior to *Citizens United*. *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274 (4th Cir. 2008).

In the wake of the *SpeechNow* decision, the Commission issued an advisory opinion concluding that it "necessarily follows" from *Citizens United* and *SpeechNow* "that there is no basis to limit the amount of contributions to" an independent expenditure committee "from individuals, political committees, corporations and labor organizations." FEC Advisory Op. 2010-11 (Commonsense Ten), 2010 WL 3184269, at *2 (July 22, 2010). Once the Commission renders an advisory opinion, FECA provides a safe harbor for persons involved in materially indistinguishable activity, providing that those who do so in good faith "shall not . . . be subject to any sanction provided" by FECA. 52 U.S.C. § 30108(c)(1)(B), (c)(2). Since issuing the *Commonsense Ten* advisory opinion, the Commission has not enforced the limits in 52 U.S.C. § 30116(a)(1)(C) in the context of contributions to super PACs.

III. FECA'S ADMINISTRATIVE ENFORCEMENT PROCESS

FECA permits any person to file an administrative complaint with the FEC alleging a violation of FECA. 52 U.S.C. § 30109(a)(1). Following notification to a person alleged to have committed a FECA violation (*i.e.*, the "respondent") and

an opportunity to respond, the Commission must then determine whether there is "reason to believe" a violation of FECA occurred. *Id*. § 30109(a)(2)-(3). If the FEC determines that there is, the agency may investigate. *Id*. The agency must then determine whether there is "probable cause" to believe FECA has been violated and, if it does, attempt to enter into a conciliation agreement with the respondent. *Id*. § 30109(a)(4)(A)(i). If unable to conciliate, the FEC is authorized to institute a de novo civil enforcement action in court. *Id*. § 30109(a)(6)(A). All of these steps require the affirmative vote of at least four Commissioners.

If, at any point in the process, the Commission lacks the required four votes to proceed, it may dismiss the administrative complaint. 52 U.S.C. § 30109(a)(8)(A). After such a dismissal, "[a]ny party aggrieved" by the dismissal may file suit against the Commission to obtain review. *Id*. If the court finds that the dismissal was "contrary to law," it may order the Commission to conform to the court's decision within 30 days. *Id*. § 30109(a)(8)(C).

IV. LIEU'S ADMINISTRATIVE COMPLAINT AND THE ADMINISTRATIVE PROCEEDINGS

In July 2016, Representative Lieu and others who are appellants here filed an administrative complaint with the Commission alleging that ten independent expenditure-only political committees "knowingly accepted multiple contributions that exceed $5,000 per person per year, in violation of 52 U.S.C. § 30116(a)(1)(C) and (f)." (FEC's Mot. for Summ. Affirmance ("Summ. Aff. Mot.") at 10 (Doc.

#1787446).) The complainants "concede[d] that *SpeechNow* and" the *Commonsense Ten* advisory opinion "permit the conduct described in the" administrative complaint. (*Id*. at 11.) Because all seven of the circuit courts that had considered the question had ruled that super PACs may accept unlimited contributions, the Commission declined "to accept [Lieu's] invitation not to acquiesce" in those decisions. (*Id*.) In May 2017, the Commission thus unanimously voted to find no reason to believe that the administrative respondents had violated FECA, and it dismissed the administrative complaint. (*Id*.)

V. PROCEDURAL HISTORY

Lieu challenged the Commission's dismissal of the administrative complaint as "contrary to law" under 52 U.S.C. § 30109(a)(8). *Lieu v. FEC*, 370 F. Supp. 3d 175, 182 (D.D.C. 2019). The district court granted the Commission's motion to dismiss, concluding that the agency action was lawful because the Commission had properly followed binding precedent in applying *SpeechNow*. *Id*. at 186. The district court determined that no subsequent ruling of the Supreme Court or the *en banc* D.C. Circuit purported to overrule *SpeechNow*. *Id*. at 185-86.[1]

[1] In light of its conclusions, the district court did not address Lieu's arguments that the Commission erroneously acquiesced to *SpeechNow* and that the agency's reliance on the *CommonSense Ten* advisory opinion was contrary to law. *Lieu*, 370 F. Supp. 3d at 186 n.8.

After Lieu appealed, the FEC filed a motion for summary affirmance, which Lieu opposed. (Summ. Aff. Mot.; Appellants' Resp. in Opp'n to FEC's Mot. for Summ. Affirmance and Affirmative Req. to Hold FEC's Mot. in Abeyance (Doc. #1790270).) Lieu then filed a petition for initial hearing *en banc*. (Appellants' Pet. For Hr'g En Banc ("Pet.") (Doc. #1793993).)

ARGUMENT

I. PLENARY REVIEW IS UNWARRANTED BECAUSE THIS COURT NEED NOT REVISIT *SPEECHNOW* TO RESOLVE THIS CASE

The central issue in this case under section 30109(a)(8) is whether it was contrary to law for the Commission to dismiss Lieu's administrative complaint. (*See* Summ. Aff. Mot. at 15-19.) The Commission did so in accord with the D.C. Circuit's decision in *SpeechNow*, directly applicable precedent that has been subsequently cited by the Supreme Court and not undercut. (*Id.*) That is enough. The correctness of *SpeechNow* need not be revisited by all active judges of this Court to affirm the agency's decision not to undertake enforcement action against private parties that would be contrary to clear and unanimous prevailing law.

A decision is "contrary to law" if "the FEC dismissed the complaint as a result of an impermissible interpretation of" FECA or "if the FEC's dismissal of the complaint, under a permissible interpretation of the statute, was arbitrary or capricious, or an abuse of discretion." *Orloski v. FEC*, 795 F.2d 156, 161 (D.C. Cir. 1986). The standard "requires affirmance if a rational basis for the agency's

decision is shown." *Orloski*, 795 F.2d at 167 (citation omitted). Of course, courts are not obligated to give binding deference to an agency's interpretation of judicial precedent or of the Constitution. *See, e.g.*, *Univ. of Great Falls v. NLRB*, 278 F.3d 1335, 1341 (D.C. Cir. 2002).[2]

Here, the district court correctly determined that "the D.C. Circuit has spoken on the issue — limits on contributions to Super PACs are unconstitutional — and the D.C. Circuit's reasoning is binding." *Lieu*, 370 F. Supp. 3d at 186. And because Lieu's "allegations about the violations of the Super PACs fall squarely within the holding of *SpeechNow*," "[i]t cannot be said that the FEC's determination, which was based on *SpeechNow*, was contrary to law." *Id.* It was clearly lawful for the Commission to elect not to defy precedent that is binding in this Circuit, and the consistent rulings of six other courts of appeals, to pursue enforcement against administrative respondents. *See supra* at 7-8.

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[2] The FEC has acknowledged that deference is not accorded in the review of its application of judicial precedent here (*see* Summ. Aff. Mot. at 15-16), so Amici's contentions to the contrary are incorrect. (*See* Br. of Citizens for Resp. & Ethics in Wash. ("CREW") at 12-13 (Doc. #1795068).) CREW cites examples of review of FEC matters that involved interpretation of caselaw, *id.*, but there are no interpretive questions here since application of *SpeechNow* is undisputed. In any event, those cases do not support CREW's proposition that "the question before the Court is whether *SpeechNow*, and the FEC's reliance on it, reflects a permissible interpretation of the First Amendment." (*Id.*)

Lieu claims that the FEC's dismissal of the administrative complaint was contrary to law because *SpeechNow* was wrongly decided (Pet. at 8-11), but whether the FEC acted permissibly in dismissing Lieu's administrative complaint does not depend on the correctness of *SpeechNow*. Lieu has conceded that *SpeechNow* governs here, so in essence he is arguing that the FEC was *required* to disregard a clear and binding judicial holding on a constitutional issue. (Summ. Aff. Mot. at 14 (citing *Grant Med. Ctr. v. Hargan*, 875 F.3d 701, 703 (D.C. Cir. 2017) ("Given that obeying judicial decisions is usually what courts expect agencies to do, [Lieu] face[s] an uphill battle.")).) Neither Lieu nor amici provide any authority supporting the claim that the Commission's determinations can be "contrary to law" under section 30109(a)(8) when the agency acquiesces to binding Circuit precedent establishing a constitutional rule. *Cf. Carey v. FEC*, 864 F. Supp. 2d 57, 63 (D.D.C. 2012) (ordering Commission to pay legal fees after concluding that the agency had failed to adhere to "binding precedent in this Circuit," including *SpeechNow*).

II. THIS IS NOT AN APPROPRIATE VEHICLE TO CHALLENGE *SPEECHNOW*

An action under section 30109(a)(8) is not the appropriate vehicle by which to challenge the *SpeechNow* decision, and thus *en banc* review is not warranted here. (*See* Summ. Aff. Mot. at 18-19; FEC's Reply in Supp. of Its Mot. for Summ. Affirmance ("Summ. Aff. Reply") at 9-12 (Doc. #1793228).) Review of

Commission enforcement decisions cannot turn on speculation about potential future modifications of judicial decisions that were binding at the time of the agency action. If the Commission had pursued enforcement action against the respondents named in Lieu's administrative complaint, those respondents would have had to defend their conduct in further FEC administrative proceedings — and potential enforcement litigation — even though the D.C. Circuit and other jurisdictions have held that such conduct cannot be limited consistent with the First Amendment. And had the Commission pursued enforcement in the face of contrary binding precedent, it might have been exposed to an award of legal fees for taking a litigation position that was not "substantially justified." (Summ. Aff. Mot. at 18 & n.5; Summ. Aff. Reply at 11-12.)

Other types of actions would be more appropriate for the challenge that Lieu seeks to make here. For example, assuming standing at the time a complaint was filed, Lieu could have directly challenged the *Commonsense Ten* advisory opinion regarding the Commission acquiescing in *SpeechNow*.[3] *See, e.g., Unity08 v. FEC*, 596 F.3d 861, 864-65 (D.C. Cir. 2010) (concluding that a Commission advisory opinion was final agency action subject to judicial review). Alternatively, Lieu

[3] The Commission's issuance of the applicable advisory opinion, which placed the conduct at issue within a safe harbor, provides an additional reason for the lawfulness of declining to enforce provisions of FECA that had been struck down. *See supra* at 6.

could have brought a declaratory judgment suit to construe the constitutionality of FECA under FECA's special review provision, 52 U.S.C. § 30110, as Lieu recognizes (Pet. at 15). (*See* Summ. Aff. Reply at 10.) Options like these would have presented the constitutional issue for which Lieu seeks review *en banc* without involving the FEC's enforcement authority and the rights of the administrative respondents.

III. LIEU PRESENTS NO COMPELLING NEW GROUNDS ON WHICH TO REVISIT *SPEECHNOW* IN THIS CASE

Even if this were the right type of case by which to challenge *SpeechNow*, Lieu fails to demonstrate that revisiting that case is a question of exceptional importance in this Court. *SpeechNow* was already decided *en banc*, and this Court did so based on its reading of the "holding as a matter of law" in *Citizens United*. 599 F.3d at 694. Any re-evaluation of the decision thus should occur at the Supreme Court, as it did in the two cases on which Lieu relies. (Pet. at 16 (citing *Janus v. AFSCME*, 138 S. Ct. 2448 (2018); *Brown v. Bd. of Educ.*, 98 F. Supp. 797 (D. Kans. 1951), *rev'd*, 347 U.S. 483 (1954)).) Lieu's reliance on these cases is misplaced in any event, as neither involved review of an administrative enforcement decision under the contrary-to-law standard applicable here.

Even if Lieu's arguments were appropriately addressed here rather than by the Supreme Court, this Court already considered the main legal arguments he makes and comparable factual submissions, and his other claims are unpersuasive.

(*See* Summ. Aff. Reply at 7-9.) Lieu does not meet his burden of demonstrating that it is exceptionally important that all active judges of this Court address this issue a second time.

Many of the alleged flaws in *SpeechNow* that Lieu presents here (Pet. at 8-14) were actually raised before the *SpeechNow* court. For instance, Lieu challenges the reasoning that "if independent expenditures do not corrupt, contributions to entities that make only such expenditures cannot corrupt either." (Pet. at 8 (citing *SpeechNow*, 599 F.3d 694).) But the FEC argued to the *SpeechNow* court that contributions to groups making independent expenditures can lead to corruption and the appearance of corruption. *See* FEC Br. at 12-25 (Doc. #1220957), *SpeechNow.org v. FEC*, No. 09-5342/08-5223 (D.C. Cir. Dec. 15, 2009), https://transition.fec.gov/law/litigation/keating_ac_fec_brief.pdf ("*SpeechNow* Brief"). The Commission explained that the Supreme Court had established a standard of review applicable to limits on contributions that is more permissive than the standard applicable to expenditure limits,[4] an issue Lieu also raises here (Pet. at 11-12). However, the Court of Appeals expressly rejected that argument, writing that limits on contributions to super PACs were unconstitutional "[n]o matter which standard of review" applies. *SpeechNow*, 599 F.3d at 696.

[4] FEC Br. at 19-23 (Doc. #1207856), *SpeechNow.org v. FEC*, No. 08-5223 (D.C. Cir. Sept. 23, 2009), https://transition.fec.gov/law/litigation/speechnow_fec_brief_092309.pdf. ("FEC *SpeechNow* PI Br.").

Additionally, despite Lieu's contention that *SpeechNow* failed to address the point that contributions to "a distinct spending organization" are not entitled to full First Amendment protection (Pet. at 10-11), the FEC in fact pointed out to the *SpeechNow* court that the district court had applied intermediate scrutiny to the contribution limits at issue because "[l]ike the contributors discussed in *Buckley*, 'contributors to SpeechNow are not, through their donations, engaging in direct speech,'" and instead "SpeechNow, as a legally separate organization, is speaking as their proxy." *SpeechNow* PI Br. at 9 (internal citation omitted); *id*. at 19-20.

Furthermore, the FEC presented to the *SpeechNow* court the same type of empirical evidence that Lieu claims warrants *en banc* review of that decision (Pet. at 13-14), but the Court nevertheless found that the legal holding in *Citizens United* controlled. The FEC provided historical examples raising questions of *quid pro quo* corruption involving independent expenditures. *SpeechNow* Brief at 21-25. The FEC presented evidence that candidates value such expenditures, *SpeechNow* Brief at 12-13, 15-16, 19-20, just as Lieu argues now (Pet. at 12). And the FEC presented empirical evidence of the appearance of corruption (Pet. at 13-14), including a survey with a significant majority of respondents indicating "that large contributions to groups to spend on advertising campaigns supporting congressional candidates are just as likely to lead to 'political favors' or 'special consideration' as direct contributions to candidates." *SpeechNow* Brief at 24.

Amici cite more recent research in which "mock jurors" were asked whether contributions *when paired with a specific official action* could support a criminal bribery charge. (*See* Br. for Amici Curiae Christopher T. Robertson, et al. (Doc. # 1795003).) However, that research is less related to the constitutional issues in *SpeechNow* than the evidence that was in the case record. *SpeechNow* Brief at 24. Amici also offer personal observations about apparent corruption related to super PACs after *SpeechNow* (Br. of Sen. Sheldon Whitehouse, *et al*. at 1-8 (Doc. #1795042)), but again, the same sort of observations were presented in *SpeechNow*. *SpeechNow* Brief at 13, 16-18, 23-25.

Lieu's claims that *SpeechNow* has lost its binding force are unavailing. Lieu contends that *McCutcheon v. FEC* undermines *SpeechNow* (Pet. at 11-12), but the controlling opinion in *McCutcheon* actually cited *SpeechNow* in explaining that FECA's contribution "limits govern contributions to traditional PACs, *but not to independent expenditure PACs*." 572 U.S. 185, 193 n.2 (2014) (plurality op.) (emphasis added). Lieu also relies on *Republican Party of Louisiana v. FEC* (Pet. at 12-13), but there the Supreme Court affirmed the decision of a three-judge district court that had explicitly distinguished *SpeechNow* on the basis that the political parties in that litigation differed from the groups involved in *SpeechNow*. 219 F. Supp. 3d 86, 98 (D.D.C. 2016) ("[E]ven if contributions to independent-expenditure organizations present no potential for *quid pro quo* corruption,

contributions to political parties, for the reasons described in *McConnell*, have that potential."), *aff'd*, 137 S. Ct. 2178 (2017).

The other cases Lieu cites for the point that contributions to third parties can be corrupting (Pet. at 8-10) fail to support his motion. In one criminal case, the court found after trial that the evidence for a *quid pro quo* related in part to independent expenditures was so lacking that no rational juror could have inferred an explicit one. *United States v. Menendez*, 291 F. Supp. 3d 606, 623-35 (D.N.J. 2018) (concluding by quoting Gertrude Stein, "'There is no there there'"). Another related to an issue-advocacy contribution that was explicitly distinguished from candidate-election campaign contributions. *See United States v. Siegelman*, 640 F.3d 1159 (11th Cir. 2011). And the third, also a criminal matter, pre-dates *SpeechNow*. *See United States v. Brewster*, 506 F.2d 62 (D.C. Cir. 1974). Lieu provides no basis to reconsider *SpeechNow* here.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of July, 2019, I electronically filed the Federal Election Commission's Response to Petition for Initial Hearing *En Banc* with the Clerk of the United States Court of Appeals for the D.C. Circuit by using the Court's CM/ECF system, which will serve all counsel of record.

I further certify that I also will cause the requisite number of paper copies of the brief to be filed with the Clerk.

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