IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEMOCRATIC NATIONAL COMMITTEE,

Plaintiff,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, THE WHITE HOUSE OFFICE, OFFICE OF MANAGEMENT AND BUDGET, and U.S. DEPARTMENT OF HOMELAND SECURITY,

Defendants.

Civil Action No. 1:26-cv-3506 (LLA)

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REPLY MEMORANDUM IN SUPPORT OF THE DNC'S MOTION FOR PRELIMINARY INJUNCTION AND § 705 STAY

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INTRODUCTION

The Trump Administration's use of taxpayer dollars to develop, distribute, air, stream, and promote political advertisements and purely partisan videos is brazen and unprecedented. This Court has already issued a temporary restraining order (TRO) against offending agency conduct and has concluded that the Democratic National Committee (DNC) is likely to succeed in prosecuting an Administrative Procedure Act (APA) claim against the Office of Management and Budget (OMB) and the Department of Homeland Security (DHS). *DNC v. Trump*, No. 1:26-cv-3506, 2026 WL 3228366 (D.D.C. Oct. 28, 2026) (Doc. 26). Another federal court has since concluded that the White House Office's actions are likely *ultra vires*. Tr. 32:20–33:3, 36:11–19, *Common Cause v. Dep't of Homeland Security*, No. 1:26-cv-8882 (S.D.N.Y. Oct. 30, 2026) (*Common Cause II*) (Doc. 31-2, at 105). With this Court's temporary restraining order set to expire on November 25, the DNC has moved for a preliminary injunction and Section 705 stay that will preclude further illegal conduct during the pendency of this litigation. *See* PI Mot. (Doc. 31).

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Defendants do not deny that the challenged ads are state-funded publicity or propaganda. Rather, they present a grab bag of defenses meant to stand between this Court and the merits. *See* Defs.' Opp. (Doc. 33). None succeed. This Court can still bar the production and distribution of official propaganda at public expense. For the reasons set out in the DNC's opening brief and reinforced below, this Court should grant a preliminary injunction and Section 705 stay.

ARGUMENT

In its opening brief, the DNC established that it is likely to succeed on the merits of its APA and *ultra vires* claims, that it faces irreparable harm, and that the balance of equities and the public interest favor a preliminary injunction. *See* PI Mem. (Doc. 31-1). Defendants do not engage with individual videos or advertisements, do not meaningfully contest the DNC's factual

contentions, and offer this Court no new evidence, only stale affidavits inadequate to preclude relief. *Compare* Defs.' Opp. 2–4, *with DNC v. Trump*, 2026 WL 3228366, at *13–14. Instead, their opposition rests on the standard toolkit of agency defenses. The typical assertions—that there is no final agency action, no clear constraint on the executive, and no standing or harm—are not enough to keep this Court from granting a preliminary injunction and Section 705 stay.

Each defense fails. This Court has already rejected the contentions that OMB apportionment and DHS obligations through contracting are not final agency action under the APA. *See DNC v. Trump*, 2026 WL 3228366, at *9–11. Congress's directive that appropriations shall not be used for domestic publicity or propaganda is sufficiently "clear and mandatory" to support *ultra vires* review, *Common Cause II* at 32:20–33:3, and White House staff who crafted the ads draw substantial salaries that exceed any de minimis threshold. The DNC established standing "when the suit was filed," *Davis v. FEC*, 554 U.S. 724, 734 (2008), and amending the complaint at Defendants' request to address post-filing conduct, Defs.' Expanded TRO Opp. 6, *Common Cause v. Dep't of Homeland Security*, No. 1:26-cv-8882 (S.D.N.Y. Oct. 27, 2026) (Doc. 86) (4th Declaration of Weineshet M. Lindholm Ex. 2), did not advance the standing benchmark. Finally, the DNC continues to face irreparable harm after Election Day, particularly as two House contests have gone to runoffs and several states will hold elections in 2027. This Court should continue to bar development and distribution of publicity and propaganda ads at public expense.

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I. The Challenged Ads Are Publicity or Propaganda Developed and Distributed at Government Expense in Violation of Clear Statutory Prohibitions.

The DNC's opening brief once again lays out a damning indictment of the Trump Administration's misuse of taxpayer funds. *See* PI Mem. 2–22. And once again, the White House Office, OMB, and DHS offer no defense on the fundamental issues before this Court. Defendants again concede that legislation enacted by Congress and signed by President Trump bars use of

appropriated funds for domestic "publicity or propaganda." Defs.' Opp. 1, 4 (quoting Consolidated Appropriations Act FY2026, Pub. L. No. 119-75, § 718, 140 Stat. 173, 495 (2026)). This Court already found it "[t]elling[]" that Defendants conceded the substantive merits of the DNC's APA claim with respect to the first five ads at issue (the First Wave Ads). *DNC v. Trump*, 2026 WL 3228366, at *12. Once again, Defendants do not address, and thus concede, that the Love Me Ad, the Maduro Ad, the Final Battle Ad, the Mount Rushmore Ad, and the American Military Power Ad are each publicity, propaganda, or both. Defendants also do not address the substance of the six challenged ads released by the White House Office after the DNC had moved for a TRO (the Second Wave Ads). Thus, Defendants also concede that the No Tax on Tips Ad, the $5000 to Americans Ad, the Stephen Miller Ad, the Man in the Arena Ad, the Cost of Socialism Ad, and the Retribution Through Success Ad are each publicity, propaganda, or both.

This is worth a pause for consideration. The President of the United States instructed his advisors that he wanted the White House Office to develop self-aggrandizing or purely partisan advertisements and to distribute them through government-funded purchases of TV advertising slots, notwithstanding statutory prohibitions. PI Mem. 2–3. Two federal courts found that this activity likely violated separation of powers principles. *See DNC v. Trump*, 2026 WL 3228366, at *12; *Common Cause v. Dep't of Homeland Security*, No. 1:26-cv-8882, 2026 WL 3043900, at *2–6, 14–16 (S.D.N.Y. Oct. 11, 2026); *see also Common Cause II* at 36:11–19. Yet the White House Office continued to develop self-aggrandizing or purely partisan advertisements and distributing them through official social media channels, as well as facilitating airing these the ads through third-party purchases of TV advertising slots. PI Mem. 10–12. Such lawless executive branch activity necessitates a preliminary injunction and Section 705 stay, both under the APA and *ultra vires* review.

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II. OMB and DHS's Final Actions to Fund Broadcasting the First Wave Ads Likely Violate the APA.

This Court and the *Common Cause* Court have already determined that the relevant OMB apportionment and DHS's entry into an ad-buy contract obligating federal funds are final agency actions. *See DNC v. Trump*, 2026 WL 3228366, at *9–11; *Common Cause*, 2026 WL 3043900, at *14 (recognizing concession). Each "mark[ed] the consummation of the agency's decisionmaking process" and "determined" "rights or obligations" or had "legal consequences." *DNC v. Trump*, 2026 WL 3228366, at *10 (quoting *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997)). Defendants once again argue that neither OMB's apportionment of the appropriated funds nor DHS's obligation of the funds constitute final agency action subject to APA review. Defs.' Opp. 19–24. This Court need not disturb its well-reasoned decision.[1]

A. OMB Apportionment to Facilitate Propaganda Ads Is Final Agency Action.

The OMB apportionment of $20 million in federal funds for use by CBP satisfies the *Bennett* test for final agency action. The question is not whether OMB itself obligated the funds. Defs.' Opp. 20. *Bennett* requires only that "the action must mark the consummation of the agency's decisionmaking process" (*i.e.*, "it must not be of a merely tentative or interlocutory nature") and "must be one by which rights or obligations have been determined, or from which legal consequences will flow." 520 U.S. at 177–78. OMB apportionment meets both prongs.

Apportionment is the final step in OMB's process, constituting the completed, approved plan for the use of budgetary resources, not a tentative recommendation or intermediate step. *See Citizens for Resp. & Ethics in Washington v. Off. of Mgmt. & Budget*, 791 F. Supp. 3d 29, 55 (D.D.C. 2025); *Nat'l Ctr. For Learning Disabilities v. Off. of Mgmt. & Budget*, No. 1:26-cv-13019,

[1] Once again, Defendants do not contest that challenged OMB and DHS actions are final agency action in the *Common Cause* litigation. *See* Defs.' Prelim. Inj. Opp., *Common Cause v. Dep't of Homeland Security*, No. 1:26-cv-8882 (S.D.N.Y. Nov. 5, 2026) (Doc. 113).

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2026 WL 2754447, at *12 (D. Mass. Sept. 17, 2026). Although the Supreme Court recently reaffirmed that the familiar two-prong test laid out in *Bennett* "remains finality's touchstone," *Sierra Club v. Envtl. Protection Agency*, 955 F.3d 56, 61 (D.C. Cir. 2020) (*citing U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590, 597 (2016)), Defendants point to pre-*Bennett* cases, in the hope that this Court will also require that any final agency action is both a necessary and sufficient cause of harm to the DNC. Defs.' Opp. 20. Yet *DRG Funding Corporation v. Secretary of Housing and Urban Development*, on which Defendants principally rely, merely collected the conflicting pre-*Bennett* standards that necessitated the Supreme Court's imposition of clarity. *See* 76 F.3d 1212, 1214 (D.C. Cir. 1996) ("Different verbal formulations have been used to determine whether agency action is 'final'"). *Bennett* rejected incorporation of traceability in the final action requirement, *see* 520 U.S. at 177, which renders Defendants' sufficiency demands "an undeveloped causation argument rather than an argument about the finality of OMB agency action." *DNC v. Trump*, 2026 WL 3228366, at *11 (citing *Bennett*, 520 U.S. at 177).

This Court has already distinguished *DRG Funding*, *see DNC v. Trump*, 2026 WL 3228366, at *11, and Defendants offer little more than "respectful[] disagree[ment]" with that analysis, Defs.' Opp. 22. In *DRG Funding*, "the D.C. Circuit held that a 'provisional' ruling in the context of an administrative adjudication that 'does not end the controversy' was not a final agency action subject to APA review," whereas here "[n]o such 'intermediate decision' is being challenged." *DNC v. Trump*, 2026 WL 3228366, at *23 (quoting *DRG Funding*, 76 F.3d at 1215). Defendants also rely on *Darby v. Cisneros*, 509 U.S. 137 (1993), another pre-*Bennett* decision, Defs.' Opp. 20, but there was no question that the challenged action in *Darby* was "final." 509 U.S. at 144 (recognizing concession). Finally, Defendants point to *Franklin v. Massachusetts*, 505 U.S. 788 (1992), yet another pre-*Bennett* decision, Defs.' Opp. 22, in which plaintiffs had

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challenged a report that carried "no direct consequences" and served "more like a tentative recommendation than a final and binding determination." 505 U.S. at 798. *Bennett* explicitly cabined *Franklin* to its facts and implicitly rejected its dicta. *See Bennett*, 520 U.S. at 178. Unlike *Franklin*, the case at bar "is not a case where completion of OMB's processes may later obviate the need for judicial review because there was no further action for OMB to take." *DNC v. Trump*, 2026 WL 3228366, at * 11 (cleaned up). Accordingly, OMB engaged in final agency action.

B. DHS Engaged in Final Agency Action to Fund Airing Propaganda Ads.

DHS's obligation of funds through procurement to air the First Wave Ads also constitutes final agency action. *See, e.g.*, *PETA v. Tabak*, 662 F. Supp. 3d 581, 591 (D. Md. 2023). Defendants admit that DHS entered into a binding contract with LMD Agency, through which DHS incurred legally binding obligations of up to $20 million. Defs.' Opp. 3. Even so, Defendants "resubmit their contention that the airing of the ads is not itself an agency action." Defs.' Opp. 22. This Court has already found that this suggestion "mischaracterizes the DNC's claim again DHS." *DNC v. Trump*, 2026 WL 3228366, at *11. As the DNC has repeatedly explained, its APA claim against DHS concerns the entirety of the procurement process *resulting* in the reservation of ad slots and the broadcast of the Propaganda Ads. *See* Am. Compl. ¶ 261 ("DHS's contracting and expenditure of appropriated funds to air the propaganda ads is 'final agency action.'" (quoting 5 U.S.C. § 704)); TRO Mem. 13, 15 (Doc. 3-1); TRO Reply 13–14 (Doc. 10); PI Mem. 24–25. Thus, "Defendants do not seriously dispute that DHS's conduct constitutes final agency action." *DNC v. Trump*, 2026 WL 3228366, at *11.

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This Court also has the authority to enjoin and stay final agency action involving LMD Agency, including "using funds appropriated by Congress for 'commemorative events' related to border security to pay any invoices for airing the challenged ads." *DNC v. Trump*, 2026 WL 3228366, at *11. Defendants ask this Court to reconsider and "respectfully resubmit[s]" that LMD

Agency is a necessary party to any relief. Defs.' Opp. 24. As this Court has recognized, however, DHS may attempt to make LMD Agency whole by seeking a deficiency appropriation. *See DNC v. Trump*, 2026 WL 3228366, at *11 n.13 (citing U.S. Gov't Accountability Off. (GAO), *Principles of Federal Appropriations Law* 2-4 (4th ed. 2016)). Even if this Court were to deem LMD Agency a necessary party—and it should not—relief is available as an exercise of "equity and good conscience." Fed. R. Civ. P. 19(b); *see also, e.g.*, *Gen. Elec. Co. v. Seamans*, 340 F. Supp. 636, 641 (D.D.C. 1972) (recognizing an "overriding public interest" . . . in having the governmental agencies follow their own regulations" including those governing procurement).

III. The White House Office's Creation and Distribution of the Challenged Ads Are Likely Ultra Vires.

The DNC is also likely to prevail on its claim that use of public employees to develop, distribute, stream, and promote propaganda ads is *ultra vires*. There is no question that federal law prohibits the use of appropriated funds for domestic "publicity or propaganda." Consolidated Appropriations Act, Pub. L. No. 119-75, § 718, 140 Stat. at 495. Yet Defendants have conceded that White House Office staff produced and distributed ads that are self-aggrandizing, purely partisan, or both. *See* Part I, *supra*. They do not argue that *ultra vires* review is "expressly precluded by statute" or that there is an "alternative procedure for review." Defs.' Opp. 14. (quoting *Glob. Health Council v. Trump*, 153 F.4th 1, 20 (D.C. Cir. 2026)). They also do not seriously contend that the publicity or propaganda ban is not mandatory. *See* Defs.' Opp. 15–17; *see also* Consolidated Appropriations Act, Pub. L. No. 119-75, § 718, 140 Stat. at 495 (directing that "[n]o part of any appropriation . . . shall be used"). They merely contend that the publicity or

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propaganda ban is not sufficiently specific or clear to allow ultra vires review and that staff salaries escape this universal ban. Defs.' Opp. 15–19. Neither defense has merit.[2]

A. The Publicity and Propaganda Ban Is Clear and Specific.

The White House Office is "plainly act[ing] . . . contrary to a specific prohibition in the statute that is clear and mandatory." *Fed. Express Corp. v. U.S. Dep't of Commerce*, 39 F.4th 756, 763 (D.C. Cir. 2022). No statutory definitions of "publicity" or "propaganda" are required to allow *ultra vires* review. *See Nat'l Trust for Historic Pres. in the U.S. v. Nat'l Park Serv.*, 827 F. Supp. 3d 93, 107 (D.D.C. 2026) ("Even in *ultra vires* cases, courts retain their duty to apply 'commonsense' canons of construction grounded in the way ordinary people read English." (quoting *United States v. Williams*, 553 U.S. 285, 294 (2008)), *aff'd as modified*, 185 F.4th 1185 (D.C. Cir. 2026). "[A] provision may be 'unambiguous without addressing every interpretive theory;' instead 'it need only be plain to anyone reading that it encompasses the conduct at issue.'" *United States v. Sargent*, 103 F.4th 820, 826 (D.C. Cir. 2024) (quoting *Salinas v. United States*, 522 U.S. 52, 60 (1997)) (alteration marks omitted). Certainly, this Court and the *Common Cause* Court have had no difficulty finding the challenged ads to be "publicity or propaganda." *DNC v. Trump*, 2026 WL 3228366, at *12; *Common Cause*, 2026 WL 3043900, at *16.

Defendants cannot inject ambiguity into these mandatory terms. The flagrant conduct at issue makes the bright line clear. In this case, White House Office staff edited a 2024 campaign ad to remove campaign finance disclosures and notify the public that the ad had been "Paid for by the U.S. Government." White House Office staff compiled footage of campaign rallies, military action, and cabinet secretaries' obsequious praise into hype reels for the President and cut a

[2] Defendants also argue that the President is not subject to *ultra vires* review, Defs.' Opp. 14, even though the DNC does not seek preliminary relief against the President, PI Mot. 1–4. Once again, this boilerplate is irrelevant to the instant motion. *See also DNC v. Trump*, 2026 WL 3228366, at *7 n.7; TRO Reply 14 n.3.

stereotypical negative ad warning of the dangers of "socialism." The list goes on. *See* PI Mem. 5–7, 10–13. These are categorically distinct from "the President and his most senior advisors . . . publici[zing] their Administration's achievements." Defs.' Opp. 17; *see also* PI Mem. 18–19 (contrasting propaganda ads and public service announcements). These ads cannot be confused with bona fide efforts "to inform the public of [Administration] policies, to justify its policies[,] and to rebut attacks on its policies." Defs.' Opp. 18 (quoting *Principles of Federal Appropriations Law* at 3-296); *cf.* The White House, *YouTube*, https://www.youtube.com/@WhiteHouse/videos (providing dozens of recent videos not challenged by the DNC that inform the public or address Administration policies). Even a letter signed by a U.S. Ambassador that served as cover for a mass mailing of editorials favoring President Nixon, Defs.' Opp. 18, is categorically distinct from the challenged ads because the mailing "rebut[ted] claims that allies of the United States had turned against the United States in the days preceding the 'ceasefire' on Vietnam and were critical of the President" and because it is "part of the function of a foreign legation . . . to obtain and to communicate information on press reaction in a host country to policies of the United States" and "was not for the aggrandizement of the Department of State." GAO, *Circumstances of a Mass Mailing of a Letter in Praise of President Nixon*, B-178528 (July 27, 1973), https://perma.cc/R82J-M5U2. It is not part of the function of the White House Office to prepare purely partisan or self-aggrandizing ads. Policing the line between permissible White House Office activity and pure partisanship typically falls to a functioning White House Counsel's office and need not involve the courts. *See, e.g.*, Bob Bauer, *Thoughts on the Proper Role of the White House Counsel*, Lawfare (Feb. 21, 2017), https://perma.cc/7UN3-LT5J.[3]

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[3] Though secondary to the direct ban under the Consolidated Appropriations Act, the Purpose Statute and Antideficiency Act are similarly clear and mandatory, contrary to Defendants' minimal argument. Defs.' Opp. 19. The Purpose Statute dictates that "Appropriations shall be applied only

B. There Is No Staff Salary Exception to the Publicity and Propaganda Ban.

Defendants concede that White House Office staff developed and distributed the propaganda ads, and they cannot craft a government salary carveout to the publicity and propaganda ban. *See Common Cause II* at 30:19–22, 32:20–33:3 (finding use of "staff time paid for by taxpayer appropriated fund[s] to compile and create" challenged ads was "clearly and substantially likely" to be *ultra vires*). Once again, Congress has directed that "No part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by Congress." Consolidated Appropriations Act, Pub. L. No. 119-75, § 718, 140 Stat. at 495. To be sure, other legislation specifically prohibits use of appropriated funds for "salaries of federal employees who do certain things." Defs.' Opp. 16. But "[n]o part of any appropriation" perforce includes staff salaries. The Hatch Act, 5 U.S.C. §§ 7321–26, which guards against individual-level partisan activity, does not displace the publicity and propaganda ban. Specifically, the Hatch Act carveout for White House Office staff with duties and responsibilities at all hours and in all places, Defs.' Opp. 16–17, merely establishes guardrails for safe exercise of First Amendment rights and dovetails with the publicity and propaganda ban. *See* 5 U.S.C. § 7324(b)(2)(B)(i) (allowing partisan activity outside of normal duty hours, away from the normal

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to the objects for which the appropriations were made except as otherwise provided by law." 31 U.S.C. § 1301(a). Defendants' *ipse dixit* contention that the Purpose Statute is unclear runs headlong into the plain text. *See also U.S. Dep't of Navy v. Fed. Labor Relations Auth.*, 665 F.3d 1339, 1348 (D.C. Cir. 2012) (applying Purpose Statute as a "core tenet of appropriations law"). The Antideficiency Act directs that "an officer or employee of the United States Government . . . may not make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation" or "involve [the U.S.] government in a contract or obligation for the payment of money before an appropriation is made." 31 U.S.C. § 1341(a)(1)(A)–(B). The absence of a private enforcement mechanism does not preclude *ultra vires* review. *See, e.g.*, *Int'l Ass'n of Machinists & Aerospace Workers v. Griffin*, 590 F. Supp. 2d 171, 174 (D.D.C. 2008) (contrasting doctrines). Indeed, an alternative procedure for review would bar an *ultra vires* claim. *See Fed. Express Corp.*, 39 F.4th at 763.

duty post, and without associated costs paid by the U.S. Treasury). Ultimately, Defendants make no effort to distinguish *Neguse v. U.S. Immigration and Customs Enforcement*, in which Judge Cobb painstakingly analyzed a similar "use" prohibition and applied an appropriations rider to staff time. *See* 822 F. Supp. 3d 86, 105 (D.D.C. 2026), *appeal docketed*, No. 26-5072 (D.C. Cir.).

This Court also should not create a de minimis exception for *ultra vires* activity. Defs.' Opp. 10, 17. No court has done so previously. *See id.*; *see also, e.g.*, *Envtl. Def. Ctr. v. Babbitt*, 73 F.3d 867, 871–72 (9th Cir. 1995) ("The use of any government resources—whether salaries, employees, paper, or buildings—to accomplish [an official action] would entail government expenditure."). The GAO applies no such exception, as it has applied the publicity and propaganda ban to activity as minor as signing a letter typed on official stationery but drafted by others. *See Circumstances of a Mass Mailing of a Letter in Praise of President Nixon*, *supra*. In any case, the development and distribution of the challenged ads far exceeds that threshold. The eleven challenged ads make up a substantial portion of the edited content released by the White House Office of Digital Strategy in September and October 2026. *See* The White House, *YouTube*, *supra*. The Office of Digital Strategy employs several staffers, whose salaries range from $65,000 to $175,000. *See* Exec. Office of the President, *Annual Report to Congress on White House Office Personnel* (July 1, 2026) (4th Lindholm Decl. Ex. 1). This staff activity is distinct from the GAO determination on which Defendants rely, which may not have resulted in any use of appropriations. *See* GAO, *Department of Education—No Child Left Behind Act Video News Release and Media Analysis*, B-304228 (Sept. 30, 2005), https://perma.cc/7CFP-LXAK ("It is virtually impossible to separate and cost out the amount of funds associated with [evaluating media representation of the Republican Party]. The Department incurred little if any additional expense by including the

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improper factor in one of six analyses.") (cited in *Principles of Federal Appropriations Law* at 3-295).

IV. The DNC Maintains Standing to Challenge the Propaganda Ads.

A. The DNC Did Not Abandon its Standing by Supplementing its Allegations.

The DNC properly alleged harms that existed at the time this litigation began and either continue to exist or are subject to the voluntary cessation doctrine, *see DNC v. Trump*, 2026 WL 3228366, at *8–9, 13–14. Defendants have attempted a rug pull by demanding amended complaints to challenge ongoing illegal activity and then arguing that the DNC abandoned its standing by doing so. *Compare* Defs.' Opp. 12–13, 23, *with* Defs.' Expanded TRO Opp. 6, *Common Cause v. Dep't of Homeland Security*, No. 1:26-cv-8882 (S.D.N.Y. Oct. 27, 2026) (Doc. 86). But "a federal court's constitutional authority cannot be so readily manipulated." *FBI v. Fikre*, 601 U.S. 234, 241 (2024). Throughout litigation, "the standing inquiry remains focused on whether the party invoking jurisdiction had the requisite stake in the outcome when the suit was filed." *Davis*, 554 U.S. at 734; *see also, e.g.*, *Friends of the Earth, Inc v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 170 (2000); *Conolly v. Taylor*, 27 U.S. (2 Pet.) 556, 565 (1829) ("Where there is no change of party, a jurisdiction depending on the condition of the party is governed by that condition, as it was at the commencement of the suit."); *Mollan v. Torrance*, 22 U.S. (9 Wheat.) 537, 539 (1824) (explaining that subject-matter jurisdiction "depends upon the state of things at the time of the action brought"). Thus, "[a]n amended complaint—while the operative pleading for purposes of evaluating the sufficiency of the allegations, the viability of the claims, and the requested relief—does not restart the date for assessing standing." *Lutter v. JNESO*, 86 F.4th 111, 125 (3d Cir. 2023) (internal footnote omitted).

When arguing that the chronological benchmark advances upon the filing of an amended complaint, Defendants pluck quotes out of context to blur the distinction between the timing of a

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suit and the nature of the allegations therein. In *Rockwell International Corporation v. United States*, jurisdiction over a realtor's False Claims Act suit was defeated by the withdrawal of a necessary allegation in an amended complaint. *See* 549 U.S. 457, 473–75 (2007).[4] In *Royal Canin U.S.A., Inc. v. Wullschleger*, a post-removal amendment eliminated all federal claims, which allowed a remand to state court for consideration of the remaining state-law claims. *See* 604 U.S. 22, 28-30 (2025). In *Mohammadi v. Islamic Republic of Iran*, plaintiffs alleged an exception to the Foreign Sovereign Immunities Act's general jurisdictional bar, 28 U.S.C. § 1604, in their first three complaints but omitted that basis in their third amended complaint. 782 F.3d 9, 17–18 (D.C. Cir. 2015). And in *G&E Real Estate, Inc v. Avison Young—Washington, D.C., LLC*, the court considered "whether to look to the state of things at the time of the *original* complaint or at the time of the filing of an *amended* complaint for evaluating standing in a diversity case," finding that an assignment of rights prior to the amended complaint established Article III jurisdiction. 168 F. Supp. 3d 147, 159 (D.D.C. 2016). Context matters, and it defeats Defendants' argument.

In the parallel *Common Cause* litigation, Defendants sought to defeat injunctive relief against propaganda ads developed and distributed after this litigation began by demanding that "[a]t a minimum, Plaintiffs should be required to amend their Complaint to specify the conduct that has caused the claimed injury before any injunctive relief can be sought." Defs.' Expanded TRO Opp. 6. Defendants specifically drew a line between "advertisements that were aired under the DHS contract" and "ads posted to a YouTube page" but did not suggest that Plaintiffs could only challenge one set of illegal conduct or the other in the same suit. *Id.* at 6 n.1. Although

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[4] As *Rockwell* recognizes, a final pretrial order supersedes all prior pleadings, *id.* at 474, but it cannot be that the standing benchmark advances to the eve of trial, otherwise the voluntary cessation doctrine and the mootness exception for matters capable of repetition yet evading review would serve no purpose, *see, e.g.*, *Friends of the Earth*, 528 U.S. at 170.

Defendants have not argued that the standing benchmark in *Common Cause* advanced upon the filing of an amended complaint, *see* Defs.' Opp. to Motion for Prelim. Inj. 6-11, *Common Cause v. DHS*, 1:26-cv-8882 (S.D.N.Y. Nov. 5, 2026) (Doc. 113), they attempt to do so here.

Judicial estoppel bars a nearly identical set of Defendants—each represented by the Department of Justice—from asserting inconsistent positions in an effort to strip the DNC of its standing. *See New Hampshire v. Maine*, 532 U.S. 742, 749-51 (2001) (collecting cases). "Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter . . . assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him." *Zedner v. United States*, 547 U.S. 489, 504 (2006) (internal citation and quotation marks omitted). The DNC had notified the Court of post-filing events through status reports and stated that they should be included in any relief the Court granted. *See* Status Rep. 1–2 (Doc. 14); 2d Status Rep. 1 (Doc. 21); 4th Status Rep. 1–2 (Doc. 25); *see also DNC v. Trump*, 2026 WL 3228366. at *12. With those notices on file, Defendants argued that amendment was necessary to convey jurisdiction over these later activities. They cannot now argue that amendment deprives this Court of jurisdiction over the APA claims.[5]

This Court may remove any question concerning its jurisdiction by construing the Amended Complaint as a supplemental complaint. *See, e.g.*, *Organic Trade Ass'n v. U.S. Dep't of Agric.*, 370 F. Supp. 3d 98, 110–11 (D.D.C. 2019) (construing motion to amend as motion to supplement); *see also, e.g.*, *Northstar Fin. Advisors Inc. v. Schwab Invs.*, 779 F.3d 1036, 1043–45 (9th Cir. 2015) (same); *Feldman v. L. Enf't Assocs.*, 752 F.3d 339, 347-48 (4th Cir. 2014) (curing

[5] Even if the benchmark were to advance, DHS has not yet released funds to LMD Agency to compensate it for the reservation of air time for the First Wave ads. Because relief remains available, this matter was not moot when the DNC filed its amended complaint. *See Chafin v. Chafin*, 568 U.S. 165, 172 (2013).

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perceived defect by construing amended complaint as supplemental complaint). *See generally* Fed. R. Civ. P. 8(e) ("Pleadings must be construed so as to do justice."). Although Defendants have not addressed the distinction, supplementation may have been the technically proper course to add allegations concerning post-filing events. *See United States v. Hicks*, 283 F.3d 380, 385–86 (D.C. Cir. 2002). In such circumstances, an amended complaint can and should be construed as a supplemental complaint *nunc pro tunc*, both in the interest of judicial economy and because Defendants were not prejudiced by any mislabeling. *See Univ. of Colorado Health v. Azar*, 486 F. Supp. 3d 185, 210 (D.D.C. 2020).

B. Defendants Cannot Establish that the APA Claim Against DHS Is Moot.

Defendants also repeat their argument that the DNC cannot show likely future injury stemming from the DHS's contracting activity, Defs.' Opp. 23, which this Court has already deemed "unpersua[sive]," *DNC v. Trump*, 2026 WL 3228366, at *9. *See also* PI Mem. 32–34 (addressing mootness and voluntary cessation). Defendants offer no new arguments that warrant disturbing this Court's earlier conclusion that they "cannot meet their 'formidable burden of showing that it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Id.* (quoting *Mehneh v. Rubio*, 164 F.4th 928, 931 n.* (D.C. Cir. 2026)). Nothing has changed in this regard since the Court issued its TRO.

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C. *Bost* Provides a Valid Alternative to Competitive Injury.

Even as they press mootness claims, Defendants do not contest the competitive injury is a suitable foundation for standing in this case. *See* Defs.' Opp. 8; *see also Shays v. FEC*, 414 F.3d 76, 85–86 (D.C. Cir. 2005). Yet as a final matter, Defendants misconstrue this Court's decision to find likely standing based on competitive injury as a rejection of standing based on *Bost v. Illinois State Bd. of Elections*, 607 U.S. 71 (2026). Defs.' Opp. at 11-12 (citing *DNC v. Trump*, 2026 WL 3228366, at *9 n.9). Not so. Although *Bost* may not reach mere "government

attempts—unsuccessful at that—to alter election rules or procedures," *DSCC v. Trump*, No. 1:26-cv-3674, 2026 WL 3306993, at *6 (D.D.C. Nov. 2, 2026), Defendants here have not merely tried and failed to change the rules governing elections. They have fundamentally altered electoral competition by throwing open the doors to official propaganda and government spending to prop up the incumbent administration's electoral fortunes. This injury to the "interest in a fair process" supports standing. *Bost*, 607 U.S. at 77. "Win or lose, candidates suffer when the process departs from the law." *Id.* So too does the DNC. *See Nat'l Republican Senatorial Comm. v. FEC*, 609 U.S. 908, 922, 934 (2026).

V. The DNC Faces Irreparable Harm Long Before Election Day 2028.

OMB and DHS actions restrained only by judicial order and the White House Office's ongoing unlawful activity establish a "clear and present need for equitable relief" to prevent irreparable harm to the DNC. *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016); *see also* PI Mem. 37–38. Defendants contend that any threat of irreparable harm is no longer imminent now that the midterm elections have "passed." Defs.' Opp. 8; *see also* Defs.' Opp. 10–11. But the midterms are not even past. On December 12, 2026, two Congressional races in Louisiana will proceed to runoffs. *See* Supplemental Declaration of Liberty Schneider ¶ 21. There is no basis to distinguish these runoffs from contests in which votes were cast by November 3, given that they involve the same legislative body and the national scope of Defendants' ad campaign on both TV and social media.

Even after the Louisiana runoffs, the threat of imminent, irreparable harm will persist, despite Defendants' baseless claim that the "next relevant election is now two years away." Defs.' Opp. 7, 10; *see also* Defs.' Opp. 24 (similar). There are numerous, scheduled partisan elections in 2027, and little more than a year remains before the first presidential primaries. *See* Supp.

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Schneider Decl. ¶¶ 21–22. Fundamentally, the publicity and propaganda ban is not limited to the months or weeks before a federal election, evincing harm throughout the election cycle. *See* Consolidated Appropriations Act, Pub. L. No. 119-75, § 718, 140 Stat. at 495; *cf.* 52 U.S.C. § 20507(c)(2) (90-day quiet period for certain voter registration list maintenance before regular federal elections); *id.* § 30104(f)(3) (defining "electioneering communications" subject to disclosure as occurring within "50 days before a general, special or runoff election" or "30 days before a primary or preference election").[6]

Yet looking to particular election dates misses a fundamental point: for better or worse, American politics have long featured a "permanent campaign." *See, e.g.*, Sidney Blumenthal, *The Permanent Campaign: Inside the World of Elite Political Operatives* (1980). Should TROs issued by this Court and the *Common Cause* Court lapse without further equitable relief, Homeland Security Secretary Mullin has welcomed the opportunity for DHS to fund airing future publicity and propaganda advertisements, or "public service announcements" in his telling. Lindholm Supp. Decl. Ex. 4 (Doc. 10-1, at 14).[7] The White House Office's partisan videos also currently aim to improve the electoral fortunes of President Trump's allies and to harm the reputation and success of the DNC and Democrats. *See* 4th Lindholm Decl. Ex. 4 (noting White House YouTube page's 3.35 million subscribers). Were this not the case, the White House Office would not have produced

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[6] To be sure, this Court previously recognized that the threat of irreparable harm was "particularly acute . . . in the final weeks before the November 2026 elections." *DNC v. Trump*, 2026 WL 3228366, at *8. But the Court's determination was not predicated on the election being held within a week; nor did this Court determine that there would not be irreparable harm after November 3. *See id.* (recognizing generally that "Defendants' unlawful actions impose competitive harm on the DNC and its members, including Democratic candidates running for office").

[7] A TRO that will soon lapse does not undermine the need for a preliminary injunction. *Cf. Sampson v. Murray*, 415 U.S. 61, 87–88 (1974) (recognizing preliminary injunction may be a mere extension of a TRO).

a publicity video for newly appointed Chief of Staff Stephen Miller on November 6, which uses the same audio as the Stephen Miller Ad developed by the White House Office and aired by MAGA Inc. in the weeks before Election Day, alongside different visuals. *See* 4th Lindholm Decl. Ex. 7; Supp. Schneider Decl. ¶ 20. The White House Office's publicity and propaganda videos also continue to create a competitive advantage for Republicans, which has required the DNC to make compensatory investments in content development, particularly as compared to the RNC. *See* Supp. Schneider Decl. ¶ 23; 4th Lindholm Decl. ¶¶ 9–10, Exs. 5–6 (noting RNC's last YouTube video posted on August 20, 2026, whereas DNC has posted 31 videos since that date, including 19 since the close of the polls on Election Day).

Defendants' arguments to the contrary rely on a series of errors and misreadings. Defs.' Opp. 8–11. *Murthy v. Missouri*, held that plaintiffs were "ill suited to the task of establishing their standing to seek forward-looking relief," 603 U.S. 43, 70 (2024); the Court did not address the presence or absence of irreparable harm. *But see* Defs.' Opp. 8–9. Once again, the standing question here turns on a voluntary cessation claim already rejected by this Court. *See DNC v. Trump*, 2026 WL 3228366, at *12–13; *see also* Defs.' Opp. 11 (objecting to "conclusion that these arguments 'sound[] in mootness'" (quoting *DNC v. Trump*, 2026 WL 3228366, at *12) (alteration in original)). The DNC also does not seek relief against MAGA Inc., as Defendants suggest. Defs.' Opp. 9. Alongside the allocation and obligation of federal funds to air publicity and propaganda, the DNC challenges "use of staff time to create, transfer, and post the challenged ads to social media pages," including to transfer the content to MAGA Inc. Defs.' Opp. 9. In these actions, "appropriated funds are . . . involved," *Principles of Federal Appropriations Law* at 3-282 to -283 (quoted in Defs.' Opp. 9), and each of the challenged ads was developed and distributed by White House Office staff, *see* Lindholm Decl. Ex. 18 (Doc. 3-4, at 81).

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Finally, Defendants err in suggesting that the White House staff time needed to develop publicity or propaganda ads (and associated salaries) is *de minimis*, Defs.' Opp. 9–10, for the reasons already explained, *see* Part III, *supra*. Equating staff salaries and harm is also an incomplete framing. White House Office development of the First Wave Ads was a necessary predicate to airing them at government expense, and development and distribution of the Second Wave Ads facilitates both MAGA Inc. airing them and viewership on official YouTube and social media channels. The wanton illegality of Defendants' conduct also yields earned media that ultimately conveys their message, a message Republican committees and candidates would otherwise pay to promote. *See, e.g.*, Ed O'Keefe and Aaron Navarro, *New Trump-Focused "Love Me" Ad Campaign Paid for by Taxpayers Hits Airwaves*, CBS News (Sept. 25, 2026), *available at* https://www.cbsnews.com/news/trump-focused-ad-campaign-taxpayers/ (TV and online news story incorporating clips of challenged ad) (Lindholm 4th Decl. Ex. 3).

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V. The Remaining Factors Demand Relief.

The balance of equities and public interest continue to favor immediate injunctive relief. Defendants have voluntarily ceased using Treasury funds to air propaganda ads (for now), but continue to use government personnel to develop and distribute propaganda ads, even after issuance of this Court's TRO and the initial and expanded TROs in *Common Cause*. Just as the passage of Election Day does not foreclose irreparable harm, it also does not tilt the equities against relief, as Defendants contend. *See* Part IV, *supra*; *cf.* Defs.' Opp. 24. Defendants' argument is even weaker in the latter context, as the equities favor fair campaigns from start to finish, without the incumbent administration putting a thumb on the scale. *See, e.g.*, *Jackson v. Jones*, 824 F. Supp. 3d 1336, 1358 (N.D. Ga.) (rejecting timing considerations under the balance of equities governing a campaign finance dispute), *aff'd*, 179 F.4th 846 (11th Cir. 2026). Fundamentally, the timing of relief has no impact on the equities between these parties and the public interest.

Defendants also suggest that potential reports on Antideficiency Act violations and the activity of the political branches weigh against the equities and the public interest in relief, but these are at best merits arguments. There may one day be a report on the use of government funds for propaganda ads, Defs.' Opp. 25, although such reports must come from the "head of the agency," 31 U.S.C. § 1351, who was party to the illegal activity at issue here. Congress may also exercise its "authority to oversee federal agencies" by calling hearings. Defs.' Opp. 25. In the interim, there is no "public interest in the perpetuation of unlawful agency action." *Newby*, 838 F.3d at 12; *see also id.* at 13 (recognizing "compelling interest in preserving the integrity of [the] electoral process" (alteration in original)).[8]

Defendants have no legitimate or judicially recognizable interest in continuing their unlawful conduct or restarting the conduct from which they are currently barred. All relevant factors weigh in favor of a preliminary injunction and § 705 stay.

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CONCLUSION

For the reasons set out in the DNC's opening brief and for the foregoing reasons, the Court should grant the DNC's motion for a preliminary injunction and § 705 stay, order Defendants to cease spending public funds to develop and air the propaganda ads, and prohibit further use of propaganda ads developed at public expense.

[8] Under the equities, Defendants also repeat their merits argument that no relief is available because there is no "private right of action" under the Antideficiency Act. Defs.' Opp. 25. As this Court has already recognized, this "misses the point." *DNC v. Trump*, 2026 WL 3228366, at *12. The DNC has brought APA and *ultra vires* claims, not a claim under the Antideficiency Act itself.

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