United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued May 15, 2026 Decided August 25, 2026

No. 25-5339

SGCI HOLDINGS III LLC AND SOOHYUNG KIM,
APPELLANTS

v.

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:24-cv-01204)

Patrick Strawbridge argued the cause for appellants. With him on the briefs were *Tyler R. Green*, *Jeffrey M. Harris*, *Taylor A.R. Meehan*, *Frank H. Chang*, and *Daniel M. Vitagliano*.

Andrew M. Bernie, Attorney, U.S. Department of Justice, argued the cause for federal appellees. With him on the brief were *Brett A. Shumate*, Assistant Attorney General, and *Charles Scarborough*, Attorney.

Michelle S. Kallen argued the cause for private appellees. With her on the brief were *Joshua Karsh*, *Cyrus Mehri*, *Elyse D. Echtman*, *Alison Brooke Schary*, *Marietta Catsambas*, *Louis*

Miller, *Nadia Ann Sarkis*, *David W. Schecter*, *Anne Marie McClellan*, *Peter Rutledge*, and *Paul M. Finamore.*

Paul D. Cullen, Jr. was on the brief for *amicus curiae* the Administrative Law and Agency Practice Community of the District of Columbia Bar in support of private appellees.

Before: SRINIVASAN, *Chief Judge*, and PILLARD and WILKINS, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* WILKINS.

WILKINS, *Circuit Judge*: In early 2022, Soohyung Kim, through his company Standard General, an affiliate of SGCI Holdings (collectively "Appellants") won a public bidding auction to buy TEGNA, a broadcast television station company. Because the deal would result in the transfer of a Federal Communications Commission ("FCC") license, the deal was contingent on Appellants obtaining regulatory approvals from both the Department of Justice and the FCC, which the merger agreement specified had to be done within 450 days. The proposed merger faced opposition from a number of organizations, including the Allen Group, Emmer Consulting (formerly known as the Goodfriend Group), NewsGuild, the National Association of Broadcast Employees and Technicians ("NABET"), United Church of Christ ("UCC"), Common Cause, and DISH Network Corporation ("DISH"), as well as a rival bidder and Allen Group CEO, Byron Allen, his longtime lobbyist, David Goodfriend, and DISH co-founder and board chairman Charlie Ergen (collectively, the "Private Appellees").

Ultimately, the 450-day window lapsed without FCC approval, causing Appellants' merger agreement with TEGNA to expire, and forcing Appellants to pay a hefty break-up fee.

Appellants then brought suit under the Equal Protection clause of the Fifth Amendment and 47 U.S.C. § 310(d) against the FCC, then-FCC Chairwoman Jessica Rosenworcel, and then-Chief of the FCC's Media Bureau Holly Saurer (collectively "FCC Appellees") Appellants also brought conspiracy and race discrimination claims against the FCC and Private Appellees under 42 U.S.C. § 1985(3) and 42 U.S.C. § 1986. Finally, Appellants brought race discrimination claims under 42 U.S.C. § 1981 against all Private Appellees other than DISH and Mr. Ergen and D.C. tortious interference and common law civil conspiracy claims against all Private Appellees. The District Court dismissed Appellants' complaint for a number of reasons, and Appellants timely appealed. For the following reasons, we now affirm.

I.

A.

This case concerns the Communications Act and the FCC's authority over broadcast license-transfer applications. Under 47 U.S.C. § 310(d), the Media Bureau—to which the FCC has delegated license-transfer application review, *see* 47 U.S.C. § 155(c), 47 C.F.R. § 0.61(a)—must determine whether "the public interest, convenience, and necessity will be served" prior to approving any such transfers. 47 U.S.C. § 310(d). The FCC is prohibited in such a review from comparing the license-transfer applicant against other potential applicants, i.e., from considering whether another buyer may better serve the "public interest, convenience, and necessity." *Id*. Importantly, "[a]ny party in interest" may petition the FCC to deny a transfer application, *id.* § 309(d)(1), and the FCC is allowed to "formally designate the application for a hearing" if it is unable to come to a decision based on "the application [for transfer], the pleadings filed, or other matters which it may officially notice" and a "substantial and material question of fact" is presented, *id*. § 309(d)(2), (e).

In early 2022, Appellants won an auction to acquire TEGNA and its 61 broadcast television stations in an $8.6 billion deal, beating out the Black-owned Allen Group's competing bid. J.A. 16, 35. The merger contract allowed 450 days to obtain the necessary regulatory approvals for the license transfer, well beyond the 180-day average that it usually took FCC to make a decision on such applications (also known as the "shot clock"). *Id.* at 35–36, 45. While Appellants timely submitted their license-transfer application to the Media Bureau, resulting in the shot clock beginning in April 2022, *id.* at 61, the agency took longer than 450-days to advance its decision, *id.* at 34–48. Because a core part of the transaction could not be fulfilled, the lack of regulatory approval in the mandated timeframe ultimately resulted in the break-up of the merger. *Id.* at 115.

Appellants blame a pantheon of actors for their inability to obtain regulatory approval from the FCC and for the eventual merger break-up. Indeed, Appellants' complaint outlines a conspiracy premised on Mr. Kim being the "wrong" kind of minority, with a broad range of conspirators working to ensure that Appellants would not obtain the regulatory approvals they needed to execute the Standard General-TEGNA merger. The alleged participants in this conspiracy included: two unions (NewsGuild and NABET); two non-profit organizations (UCC, Common Cause); a network provider (DISH); a media company and competing bidder (Allen Group); a lobbying group (Emmer Consulting, f/k/a the Goodfriend Group); three individuals (Byron Allen, Charles Ergen—who is the chairman and majority shareholder of DISH—and David Goodfriend, who is both Mr. Allen's and Mr. Ergen's longtime lobbyist); and the FCC itself (including then-Chairwoman Rosenworcel and her personal staffer and then-Media Bureau Chief, Holly Saurer). *Id.* at 24–28.

Appellants set forth a number of factual allegations supporting their claims. The following is a rendition of the most relevant facts for this appeal, drawn from the complaint, and which we accept as true under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

The alleged conspiracy began on April 27, 2022—less than a week after the FCC's shot clock began—when FCC Chairwoman Rosenworcel scheduled a meeting with DISH's Mr. Ergen. J.A. 62. The complaint did not allege what that meeting was about, but Appellants noted that DISH "had a direct interest in the Standard General-TEGNA retransmission fees it would pay to carry the TEGNA stations." *Id.* at 67. A few weeks later, a reporter asked Mr. Allen whether he had "given up on that deal," referring to the Standard General-TEGNA merger. *Id.* at 62. Mr. Allen responded that he had "never give[n] up on anything," that he was "always in the fight," and that "we're in round one." *Id.* Days after, David Goodfriend, who is "Mr. Allen's longtime lobbyist," scheduled a meeting with Ms. Saurer of the FCC to discuss a diversity initiative and a petition for rulemaking that Mr. Goodfriend had filed alongside Common Cause and UCC. *Id.* at 63. That same day, NewsGuild and Common Cause filed their first objection to the Standard General-TEGNA merger, arguing that Standard General's retransmission fees would be too high. *Id.* at 63–64. Afterwards, and despite Appellants' protests, the Media Bureau extended the initial public comment period by a month from May to June. *Id.* at 64 & n.70.

A few additional things occurred throughout the summer of 2022. The first was that Mr. Allen unexpectedly called Mr. Kim about the Standard General-TEGNA transaction in early

June, stating that Mr. Allen had heard that Mr. Kim was having a "hard time at the FCC." J.A. 65. Mr. Allen suggested that Mr. Kim could "smooth things over at the FCC" if Mr. Kim included Mr. Allen on the merger by selling some of the TEGNA stations to the Allen Group. *Id.* Mr. Kim declined. Appellants stated that in hindsight, Mr. Kim "understood Mr. Allen's call as a threat and the first indication that the fix was in—the FCC would not approve the transaction unless it came to include Mr. Allen and *his* [B]lack-owned media company as one of the new station owners." *Id.*

The second occurrence was that UCC, Common Cause, NewsGuild, and NABET filed petitions to deny the license-transfer application, stating that Standard General would cut newsroom jobs and increase retransmission fees, resulting in higher prices to DISH and consequently, DISH's customers. *Id.* at 66. Standard General responded to those objections, highlighting that the objectors had failed to acknowledge the positive impact to diversity that the merger would have on the industry in light of Mr. Kim's race as an Asian American, and further "pledged, under penalty of perjury, that the transactions will not result in station-level layoffs." *Id*. at 68–69 (citation modified). The objectors filed a consolidated reply approximately a month later, asserting that granting the license transfer application would do "nothing to create a more diverse media" and that the transaction would not "promote ownership diversity." *Id*. at 71–72 (citation modified). In that same reply, the objectors further encouraged the FCC to "investigate the involvement of shadowy foreign investors." *Id*. at 72 (citation modified).

The third occurrence was that the Goodfriend Group, led by lobbyist David Goodfriend, publicly appeared in the FCC proceedings on behalf of NewsGuild, and later, on behalf of NABET. *Id*. at 75. Appellants argued that the FCC used the objections, which allegedly had been "orchestrated by the Goodfriend Group and Mr. Goodfriend's longtime clients at the Allen Group and DISH—as a pretext for prolonging the license approval process for months." *Id*.

As summer bled into fall, Mr. Goodfriend began to play a greater role in the alleged conspiracy. Appellants alleged that Mr. Goodfriend had multiple disclosed *ex parte* meetings with the FCC on behalf of his clients, where he asked the FCC to order Standard General to produce more documents, emphasizing that the FCC should not feel pressure to complete its review by any "artificial deadlines established by the shot clock." *Id*. at 78–79. Mr. Goodfriend also continually raised concerns regarding job cuts if the Standard General-TEGNA merger went through. *Id*. at 79–80. Partly as a result of these objections, the Media Bureau ordered a second round of public comments in September 2022, accompanied by an order for additional documents relating to the transaction. *Id*. at 80. After the Media Bureau demanded additional documents, Mr. Goodfriend, on behalf of his clients, continued to make presentations to the FCC on the "foreign nature of the transaction." *Id*. at 83 (citation modified).

In November 2022, Appellants met with Chairwoman Rosenworcel for the first time during the application review process. *Id*. at 86. In that meeting, Mr. Kim raised that the objectors were espousing "race-laden rhetoric" and asked that the FCC strike the objections from the record. *Id.* According to Appellants, in response, Chairwoman Rosenworcel "laughed" and told Mr. Kim that "he should hear what was said about him behind closed doors." *Id*. Appellants did not have another meeting with the FCC after that. *Id.*

After Appellants' fruitless meeting with the FCC, and in response to Mr. Goodfriend and his clients' continuing objections to the Standard General-TEGNA merger, *id*. at 87–89, Standard General also made binding commitments guaranteeing jobs and waiving contractual provisions, ultimately allowing DISH or other providers to pick their pricing once the deal finalized, *id*. at 91. Despite these commitments, however, the Media Bureau still opted to open a third round of public comments in December 2022. *Id*. at 92–93. During that last round of objections, DISH publicly appeared in the FCC proceedings, *id*. at 93, and alongside the other previously mentioned objectors, argued that Standard General's recently made commitments about pricing "were not good enough," *id*. at 95–96. Appellants assert that they attempted to engage with the Media Bureau multiple times throughout this whole process, asking it to identify specific concerns, but that the Media Bureau refused to interact, beyond the one meeting that they had with Appellants in fall 2022. *Id*. at 97.

Finally, in February 2023, the FCC issued a hearing designation order ("HDO"), sending the transaction to an administrative law judge ("ALJ"), and thus effectively prolonging FCC review beyond the Standard General-TEGNA merger's deadline for regulatory approvals. *Id*. at 99–100. The Media Bureau did not identify the concerns that prompted this action, nor did it provide Standard General the opportunity to address any such concerns before issuing the HDO. *Id*. at 100. The HDO itself ordered the ALJ to examine whether the merger was structured in a way to trigger rate increases and whether the merger would reduce or impair localism. *Id*. at 101. The HDO made no mention of the FCC's mandate to ensure diversity in broadcasting, beyond noting that diversity was a broadcast policy objective. *Id*.

Although Appellants attempted to fast-track the HDO so that proceedings could finish before the expiration of the 450 days allotted in the transaction documents for regulatory approvals, their attempts proved futile. *Id*. at 106–107. Appellants also petitioned this Court for *mandamus*, but that was ultimately denied due to lack of jurisdiction since there was no final resolution by the full FCC. *SGCI Holdings III LLC v. FCC*, No. 23-1083 (D.C. Cir. Apr. 3, 2023) (per curiam). Finally, Standard General also tried to meet with various objectors, including DISH, UCC, and Common Cause, but all refused to meet. J.A. 111. Ultimately, Standard General's financing agreements expired, forcing a termination of the merger. *Id*. at 115. Standard General was obligated to pay a $136 million break-up fee to TEGNA, roughly $70 million in its own transaction costs, and shareholders, including Mr. Kim, lost nearly $2 billion in expected gains. *Id*. at 115–16. After the break-up, Mr. Allen publicly reiterated his continued interest in TEGNA, *id*. at 116, and later suggested to media that he would have no problem obtaining FCC approval for another deal he was participating in since he is "FCC approved" and had "magic trick[s]" for closing large deals, *id*. at 119–120. Given that the deal was dead, the ALJ terminated the hearing proceedings as moot on June 1, 2023. *Id*. at 117.

B.

Mr. Kim and Standard General then sued the FCC and Private Appellees. The suit alleged that FCC Appellees unconstitutionally discriminated in the license-transfer application process based on race in violation of Equal Protection (Count I) and violated the Communications Act's prohibition on considering other potential buyers in its public interest review (Count VIII). **[J.A. 140–42, 151–54]** The suit also alleged that various permutations of Private Appellees violated federal civil rights statutes as well as D.C. conspiracy and tort law. More specifically, Appellants alleged that all Private Appellees other than DISH and its chair, Mr. Ergen, violated 42 U.S.C. § 1981 (Count II), that all Private Appellees and FCC Appellees violated 42 U.S.C. §§ 1985(3) and 1986 (Counts III and IV), and that all Private Appellees engaged in tortious interference with contract and civil conspiracy under the laws of the District of Columbia (Counts V, VI, and VII). The suit sought declaratory and injunctive relief against FCC Appellees and damages against Private Appellees. Both sets of Appellees filed motions to dismiss.

The District Court granted Appellees' motions to dismiss on two grounds. First, with regard to the equitable claims against FCC Appellees, the District Court held that Mr. Kim had failed to establish standing because he had failed to plausibly allege any certainly impending future injury imposed by FCC Appellees. The District Court also found that the alleged past discrimination was "weak" and that there was no "plausible theory of future discrimination." *SGCI Holdings v. FCC*, No. 24-cv-1204, 2025 WL 2400880, at *12, *9 (D.D.C. Aug. 19, 2025). Further, the District Court concluded that the alleged Communications Act violation was unlikely to occur again. Alternatively, the District Court held that the Hobbs Act vests exclusive jurisdiction over the Communications Act claim in this Court and that Mr. Kim should have exhausted remedies before the FCC; accordingly, it dismissed for lack of jurisdiction. Second, with regard to the damages claims against Private Appellees, the District Court held that *Noerr-Pennington* immunity barred Mr. Kim's civil rights and tortious interference claims, thus extending the predominately anti-trust doctrine into the civil rights and tort context. Mr. Kim timely appealed.

For the reasons set forth below, we now affirm the dismissal of the claims against FCC Appellees. We likewise affirm the dismissal of the claims against Private Appellees, albeit on the alternative ground that Appellants have failed to state a claim.

II.

The District Court rightly dismissed the complaint against FCC Appellees as Appellants have failed to demonstrate standing. Even assuming Appellants plausibly plead past racial discrimination by cobbling together a disparate set of alleged acts, performed by a disparate set of actors, there was no sufficient showing that such a confluence of factors was likely to cobble together again. As such, Appellants failed to demonstrate a substantial risk of future injury and therefore failed to establish standing for the prospective relief they sought. Accordingly, we affirm the District Court's dismissal of the claims against FCC Appellees for lack of subject-matter jurisdiction.

"To establish standing for prospective relief, a plaintiff opposing a motion to dismiss must plausibly allege facts that show 'the threatened injury is certainly impending, or there is a substantial risk that the harm will occur.'" *Jones v. U.S. Secret Serv.*, 143 F.4th 489, 495 (D.C. Cir. 2025) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). A plaintiff must show that they have "sustained or [are] immediately in danger of sustaining some direct injury as the result of the challenged official conduct and the injury or threat of injury must be both real and immediate, not conjectural or hypothetical." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101–02 (1983) (citation modified). Though past wrongs may be "evidence bearing on 'whether there is a real and immediate threat of repeated injury,'" *Lyons*, 461 U.S. at 102 (quoting *O'Shea v. Littleton*, 414 U.S. 488, 496 (1974)), "'[p]ast exposure to illegal conduct,' without more, is insufficient to establish standing for prospective relief," *Jones*, 143 F.4th at 495 (quoting *O'Shea*, 414 U.S. at 495).

The complaint alleged that Mr. Kim is a repeat player before the FCC and that he averred that he would appear before the FCC again soon. Using that allegation, Appellants contend that because the FCC allegedly considers race as part of its public interest review of license transfers and because Mr. Kim has already been racially discriminated against through the process of trying to obtain regulatory approval for the Standard General-TEGNA merger, he is likely to face future injury.

However, even assuming that Appellants' allegations regarding the past racial discrimination against Mr. Kim was plausible—a conclusion which is far from foregone, see *infra* Part III.B—the complaint makes no subsequent plausible allegations that the views expressed in the objectors' comments were also held by the FCC, endorsed or adopted by the FCC, or in any way otherwise attributable to the FCC such that they will again influence how the FCC interacts with Appellants. To establish attribution, Appellants pointed to the fact that when Mr. Kim raised his concerns about the alleged "race-laden rhetoric" and asked Chairwoman Rosenworcel to strike them from the record, she apparently "started to get up, laughed, and told Mr. Kim he should hear what was said about him behind closed doors." *Id*. at 86. Though FCC Appellees dispute these statements, FCC Appellees Br. 23, we accept them as true at this stage—but even doing so, they do not support a plausible allegation that the FCC will likely operate in the same way in the future. This is for two reasons. The first is that, as the FCC points out, the two officials that are named in the complaint, including Chairwoman Rosenworcel, no longer occupy those roles at the FCC. FCC Appellees Br. 28 (citing J.A. 232).

Additionally, even if we accept as true the factual allegation that "[w]hen the FCC reviews license-transfer applications, it considers the race of the applicants as part of its 'public interest' analysis," J.A. 50, the complaint does not plausibly allege that the FCC's alleged race-conscious policy prefers Black owners over Asian owners in reviewing license-transfer applications. Moreover, as FCC Appellees note, in alleging the existence of such a race-conscious policy, the complaint points to the FCC's practice of considering overall minority ownership levels in connection with promulgating rules and regulations limiting the number of stations an entity may own in a given market, not with reviewing individual license-transfer applications. FCC Appellees Br. 29–30.

Due to these two factors, along with a new administration and new leadership within the FCC, Appellants have not plausibly alleged a continuing policy that would discriminate against individual license-transfer applicants who are Asian. As such, even with a showing of a past instance of racial discrimination—which Appellants have failed to demonstrate, see *infra*—Appellants fail to make the plausible allegations required to show a "substantial risk" of future harm or one that is "certainly impending." *Susan B. Anthony List v. Driehaus*, 573 U.S. at 158. Said another way, the threat that Appellants perceive, based on the allegations in the complaint reviewed in the light most favorable to Appellants, is not "real" or "immediate" but rather "conjectural" or "hypothetical" at best. *Lyons*, 461 U.S. at 102.

Because the allegations regarding racial discrimination form the basis of Appellants' standing arguments for both their constitutional claims and their statutory claims under the Communications Act,[1] the failure to plausibly allege past racial

[1] *See* Appellants' Br. 28–30. Even if Appellants made an independent standing argument for the Communications Act claim, it would be

discrimination is fatal to both claims. Because Appellants do not have standing to bring these claims, the District Court properly dismissed them for lack of subject-matter jurisdiction. Because we affirm the dismissal of the claims against the FCC on that basis, we need not consider whether the District Court had jurisdiction under the Hobbs Act for the claims filed against FCC Appellees or whether Appellants had a cause of action for their statutory claim.

III.

A.

Turning now to the conspiracy and civil rights claims lodged against Private Appellees, we must again, first assure ourselves of jurisdiction. Private Appellees assert that the District Court did not have jurisdiction over those claims because Appellants: (1) essentially "repackaged their challenge to the FCC process as a civil conspiracy" when it was in fact a challenge to a FCC final order, over which the D.C. Circuit has exclusive jurisdiction; and (2) failed to administratively

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unavailing because the complaint does not support a plausible allegation that provides the basis for a substantial risk of future injury based on any alleged violations of the Communications Act. The best Appellants can show is language buried in a parenthetical in one of eleven document requests from the FCC asking for documents addressing "alternative transactions considered among the companies." J.A. 410; *see also* Appellants' Br. 44 (citing J.A. 80–81, 153). It strains credulity to interpret this request as asking about alternative bidders when it is clearly asking about alternative transaction structures amongst the companies involved in the current bid under review. Moreover, even if Appellants had alleged a past Communications Act violation, the complaint fails to plausibly allege that such action is likely to recur, let alone to them. This vanishingly thin support for standing on the Communications Act claim could not provide the "substantial risk the harm will occur" that Appellants needed to show. *Susan B. Anthony List v. Driehaus*, 573 U.S. at 158.

exhaust their case by not seeking full FCC review. Private Appellees' Br. at 39. Both arguments are unavailing.

As relevant here, 28 U.S.C. § 2342(1)—also known as the Hobbs Act—governs the review process for FCC final orders, stating that the D.C. Circuit has "exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of" any such final orders. *See also* 47 U.S.C. § 402(b)(3); *FCC v. ITT World Commc'ns, Inc.*, 466 U.S. 463, 468 (1984). Additionally, failure to exhaust administrative remedies bars judicial review of FCC orders. *Coal. for Pres. of Hisp. Broad. v. FCC*, 931 F.2d 73, 76–77 (D.C. Cir. 1991).

The Supreme Court has held that while a "special statutory review scheme . . . may preclude district courts from exercising jurisdiction over challenges to federal agency action . . . . a statutory review scheme of that kind does not necessarily extend to every claim concerning agency action." *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 185 (2023). When the claim is not "of the type Congress intended to be reviewed within" the "statutory structure," then we presume that "Congress does not intend to limit jurisdiction." *Id.* at 186 (citation modified). While there are three factors that are helpful in answering this question—whether foreclosing district court jurisdiction prevents judicial review of the claim, whether the claim is wholly collateral to the statutory review scheme, and whether the claim is outside the agency's expertise—"[t]he ultimate question" is "whether the statutory review scheme . . . reaches the claim in question." *Id.*

Here, it is clear that the Hobbs Act statutory review scheme does not reach the claims lodged against Private Appellees. Appellants have raised claims that Private Appellees, who are third parties to the license-transfer application, conspired to engage in racial discrimination against Appellants to foil their application with the FCC. These are squarely civil rights violations that the FCC—an agency with a mission of "regulat[ing] interstate and international communications," FED. COM. COMM'N, *About the FCC*, https://www.fcc.gov/about/overview (last accessed July 16, 2026)—has no expertise to hear and resolution of the issue would have no bearing on the FCC's processing of Appellants' license-transfer application. *See Axon*, 598 U.S. at 186. Accordingly, the District Court had jurisdiction to hear the case, and so too do we have jurisdiction to hear an appeal from the District Court's decision under 28 U.S.C § 1291. Further, because Appellants' claims against Private Appellees were not "of the type" that Congress intended to be reviewed by the Court of Appeals, and would not have been appropriately raised in front of the FCC, there was no exhaustion requirement that attached to these claims. *Id.*

Next, Private Appellees assert that Appellants lack Article III standing to assert the civil rights and conspiracy claims because Appellants' complaint did not plausibly allege injury caused by Private Appellees. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) The core of their argument is that the alleged causation was "speculative" because the complaint "offers no plausible explanation" for how "disparate actors caused the FCC to issue a decision it would not otherwise make." Private Appellees' Br. at 40–41. We find this argument unpersuasive. At the motion to dismiss stage, for standing purposes, we must "presume that general allegations embrace those specific facts that are necessary to support the claim." *Lujan*, 504 U.S at 561 (citation modified), and we must presume plaintiffs will prevail on the merits of their claim, *LaRoque v. Holder*, 650 F.3d 777, 785 (D.C. Cir. 2011). The complaint alleges that Private Appellees worked in coordination to persuade the FCC to deny Appellants' license-transfer application, either by lobbying the FCC (including in meetings with the then-chairwoman of the FCC) or by filing petitions urging the FCC to deny the application. As the District Court explained, Appellants claim that "the FCC's actions—including the [hearing designation order]—were plausibly caused, in whole or in part, by [Private Appellees'] lobbying and petitioner efforts. *SGCI Holdings*, 2025 WL 2400800, at *13. Appellants therefore have alleged standing to sue Private Appellees.

B.

We now turn to the merits of the case and review the District Court's grant of Private Appellees' motion to dismiss. We review such a dismissal *de novo* and "grant[] [plaintiffs] the benefit of all inferences that can be derived from the facts alleged." *Zukerman*, *v. USPS*, 961 F.3d 431, 441 (D.C. Cir. 2020) (citation modified). However, we cannot accept any conclusory allegations as true at the motion to dismiss stage. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Instead, in determining whether to accept the conclusory allegations, we interrogate whether the factual allegations in the complaint "nudge[]" the conclusory allegations "from conceivable to plausible." *Twombly*, 550 U.S. at 570. Here, even after drawing all inferences in favor of Appellants, we hold that they have failed to state plausible claims against Private Appellees, warranting dismissal of their complaint.[2]

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[2] The District Court dismissed Appellants' claims against Private Appellees, not by ruling on whether Appellants' had plausibly stated a claim, but instead, by applying *Noerr-Pennington* immunity. *Noerr-Pennington* refers to the immunity granted to "private parties" in the anti-trust context "when they petition for governmental action having the same anticompetitive result." The Noerr-Pennington Doctrine, Federal Land Use Law & Litigation § 10:21 (2025 ed.). This Court has also applied the doctrine in labor cases. *See Venetian Casino Resort, LLC v. NLRB*, 793 F.3d 85, 87 (D.C. Cir. 2015). The District Court extended the reach of the doctrine to civil rights violations and tortious conduct when it decided that such

First, Appellants allege that Private Appellees violated civil rights statutes, 42 U.S.C. §§ 1981, 1985(3), and 1986. Section 1981(a) guarantees the right to "make and enforce contracts" regardless of race. Section 1985(3) provides damages for anyone injured by two or more persons conspiring "for the purpose of depriving . . . any person . . . of the equal protection of the laws." And Section 1986 provides a cause of action against anyone who knows "any of the wrongs conspired to be done" under § 1985(3) and neglects to prevent the wrong, despite having the ability to do so.

All three statutes have something in common—to plead violations of each, Appellants must plausibly allege that Private Appellees engaged in intentional race discrimination. *See Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 589 U.S. 327, 333 (2020) (holding that a plaintiff must plausibly plead that "race was a but-for cause of its injury" when alleging a violation under 42 U.S.C. § 1981); *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 267–68 (1993) (holding that to establish a violation of § 1985(3), the plaintiff must prove, alongside other elements, some "racial, . . . invidiously discriminatory animus" of the conspirators); *Bowie v. Maddox*, 642 F.3d 1122, 1128 (D.C. Cir. 2011) ("Recovery under § 1986 depends on the existence of a conspiracy under § 1985.").

Even after drawing all inferences in favor of Appellants, we hold that they have failed to plausibly plead racial

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immunity applied to Private Appellees here. Because the District Court's dismissal can be affirmed on the alternative ground that Appellants have failed to state plausible claims against Private Appellees, we decline to reach the question of the applicability and reach of *Noerr-Pennington* immunity. *See Process & Indus. Devs. Ltd. v. Fed. Republic of Nigeria*, 27 F.4th 771, 775 (D.C. Cir. 2022) (holding that an appellate court can "affirm the District Court on any valid ground.").

discrimination. Appellants base their argument that Mr. Kim was racially discriminated against primarily on the allegation that comments made by Private Appellees as objectors to the license transfer application were racially discriminatory. More specifically, Appellants assert that Private Appellees' FCC filings "are direct evidence of racial animus," *see* Reply Br. 37–38, by pointing to their allegations that the objectors "peddled the very xenophobia they claim to oppose" because they encouraged the "FCC to investigate the involvement of shadowy foreign investors" and warned the agency of "excessive foreign ownership interests," J.A. 71–73 (citation modified). Appellants then argue in their briefing that the objectors' concerns were "baseless," and "sent a clear message and carried the distinct tone of racial motivations and implications," thus providing evidence that the "opposition was motivated in part by animus." Reply Br. at 10–11 (citations modified).

But these are conclusory statements that this Court cannot accept as true at the motion to dismiss stage. *See Iqbal*, 556 U.S. at 678. And those conclusory allegations of racial discrimination are unsupported by the factual allegations accompanying such conclusions. As noted, the Appellants principally rely on allegations that the FCC adopted racially discriminatory comments that objectors levied against the Standard General-TEGNA merger. The complaint alleged that the objectors' comments reflected racial animus against Mr. Kim in two ways: (1) that they preferred Mr. Allen because he is Black over Mr. Kim who is Asian, and (2) that they "maligned [Mr. Kim] as a foreigner." J.A. 22–23. Those allegations invite our limited consideration of the immediately surrounding context of the referenced comments, even at the motion to dismiss stage. *See Banneker Ventures, LLC v. Graham*, 789 F.3d 1119, 1133 (D.C. Cir. 2015). Our consideration of the immediate context is confined to the "portions" of the document that the Appellants themselves "adopted" by quoting and relying on them in their complaint. *Id.* Here, we need look no further than the very sentences and paragraphs of the comments cited in the complaint to confirm that Appellants have mischaracterized the objectors' comments as to Mr. Kim's race. Considered in their immediate context, the statements plucked from the objectors' comments do not support a plausible inference that the objectors opposed the merger because of Mr. Kim's race.

To focus in on the comments themselves, in order to support their conclusory allegation that the objectors evinced anti-Asian discrimination against Mr. Kim, and preferred Mr. Allen to Mr. Kim due to their respective races, the complaint cites to various quotes from the objectors' submissions stating that the Standard General-TEGNA merger: (1) did "not promote ownership diversity as it is understood by the public interest and civil rights community and by commission policy;" (2) did "nothing to increase ownership opportunities for women and people of color to enter the marketplace;" (3) was "not likely to provide additional members of historically excluded groups the opportunity to gain wealth and influence in society;" and (4) did not address "long-standing inequities produced by structural racism, xenophobia, and misogyny." *Id.* at 71–72.

Appellants characterized these comments as evincing a preference for Black owners over Asian owners, but that is not supported by any of the objectors' comments in the record when reviewed in context. Indeed, the comment from which the various quotes are lifted also specifically states: "[T]he Commission's public interest goals are not focused on promoting one kind of owner over another. Rather, it is promoting antagonistic and competing viewpoints in a vibrant marketplace of ideas." *Id.* at 215. The comments also recognized that it is good that Mr. Kim was "not barred by his race from . . . [being] at the lead of this transaction" and that the intended CEO is "not barred by her gender to be selected to run a large corporation," and that their concerns stemmed from the impact that the structure of the transaction—i.e., the structure of "a single large LLP or corporation of the type proposed here"—would bear on the media industry broadly. *Id.*[3]

Moreover, while the comments do state that the Standard General-TEGNA "transaction does not promote ownership diversity as it is understood by the public interest and civil rights community, and by commission policy," *id*. at 71–72, 389, we cannot hold that such language plausibly raises an inference of anti-Asian discrimination. The first sentence of that section of that comment clearly dispels such a notion: "The [Appellants] express concern that the [objectors'] long-standing support for ownership diversity means that they should automatically support a transaction as long as a woman or person of color is at the helm of a transaction." *Id*. at 389. Private Appellees did not display animus against Asians, but instead stated that they would not support a transaction merely because an owner is diverse when the transaction hampers diversity in other respects. Ultimately, a review of the

[3] The full text of the comment regarding this point reads: "It is certainly a good thing that Mr. Kim is not barred by his race from becoming a successful entrepreneur with the acumen and business relationships giving him access to capital such that he is at the lead of this transaction. It is certainly a good thing that Ms. McDermott is not barred by her gender to be selected to run a large corporation. Unfortunately, it is rare for members of either of these groups to be in such a position. But a single large LLP or corporation of the type proposed here is not going to ameliorate or address long-standing inequities produced by structural racism, xenophobia or misogyny - and is not likely to provide additional members of historically excluded groups the opportunity to gain wealth and influence in society." J.A. 215.

objectors' comments as a whole demonstrates that there is no anti-Asian rhetoric within the submissions.

As noted above, Appellants also argued that the objectors discriminated against Mr. Kim by maligning him as a foreigner because he was Asian. To support such a conclusion, the complaint points to quotes from the objectors' submission expressing concerns: (1) that the Standard General-TEGNA merger presented the threat of "involvement of shadowy foreign investors" and of "anonymous foreign investment in American newsrooms"; (2) that the FCC allowed "excessive foreign ownership interests" when "recent . . . events have demonstrated the downside of the non-citizens potentially having the ability to influence domestic elections"; and (3) regarding the "changing geopolitical environment" specifically "China[']s] increased tensions in the Taiwan Strait." *Id*. at 23, 72–73, 83.

Reviewing only the cherry-picked quotes from the complaint could lead to a plausible interpretation that these comments either targeted Mr. Kim on the basis of his race *or* they were concerned with foreign corporate ownership structures in the Standard General-TEGNA deal. However, again reviewing the comments in their context leaves no plausible suggestion that they are xenophobic against Mr. Kim. Even the complaint noted that the "objectors couched their criticism as one about Standard General's offshore funding sources . . . [that] were in the Cayman Islands and the British Virgin Islands." *Id*. at 72.

It is not plausible that "anonymous foreign investment" referred to Mr. Kim when both his identity is clearly known and he is not a foreigner. Instead, it *is* plausible that that concern refers to the "involvement of large hedge funds headquartered in the Cayman Islands and the British Virgin

Islands." *Id*. at 405 (discussing the transparency concerns regarding the involvement of foreign hedge funds in the transaction).[4] These comments clearly show that the concerns regarding "shadowy foreign investors"[5] also have nothing to do with Mr. Kim but everything to do with the structure and financing of Standard General's deal.[6] Lastly, any discussion of the "changing geopolitical environment" was not isolated to East Asia but rather related more broadly to large current geopolitical actions. *See id.* at 438 (discussing Russia's invasion of Ukraine alongside increased tensions between China and Taiwan).[7]

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[4] The full text of the comment regarding this point reads: "As [a union] has pointed out in letters to President Biden, involvement of large hedge funds headquartered in the Cayman Islands and the British Virgin Islands, thus necessitating a waiver of the Commission's foreign ownership limits, are flashing red lights that cry out for further inquiry. Standard General and its financiers have failed to produce the documents detailing whose money they invest and whether they agreed to cut costs at the expense of hardworking Americans in order to pay the interest on. Transparency is a core tenet of good journalistic ethics; the involvement of shadowy foreign investors must be explored at hearing." J.A. 405.

[5] This term is quoted many times in the complaint but only appears once as quoted above in the objectors' comments, and it is made very apparent in that comment that it is about foreign entities and funding rather than about Mr. Kim.

[6] To be sure, the complaint pointed to a few other comments that interpreted these objectors' comments in a similar way. *See* J.A. 73–75. We disagree. Such an interpretation is fully belied by the context of the comments in which these quotes appear. Moreover, in discussing the concerns about foreign interests, the objectors specifically drew a contrast to Mr. Kim: "[I]t is scant assurance that, on paper, according to the Applicants, voting control will be held by Mr. Kim." *Id*. at 409.

[7] The full text of the comment regarding this point reads: "[W]e are living in unusual times when it comes to foreign investment issues. Since the announcement of the proposed transaction in this proceeding, Russia

In sum, all the comments Appellants point to in their complaint are not racist or xenophobic, but instead, are related to concerns regarding the structure and financing of Standard General and the merger at large. The text of the relevant comments in question makes clear that the objectors' concerns about the transaction exist *despite* Mr. Kim's race rather than *because* of Mr. Kim's race. *Id*. at 389–91. The heart of their concerns is with the *structure* of the transaction reducing local news coverage and diversity of media and the *financing* of the transaction lacking transparency. Having explained that a holistic review of the objectors' comments demonstrate that the comments were driven by concerns about the deal's structure—and not by racial animus against Mr. Kim—we see no other facts in the complaint that could support a plausible allegation of past racial discrimination against Mr. Kim.

Consequently, because the complaint does not plausibly allege discriminatory intent, a necessary element of all the civil rights statutes, Appellants' civil rights claims must be dismissed.

Appellants also allege claims for tortious interference with contract, tortious interference with prospective business opportunity, and civil conspiracy against Private Appellees. Here too, Appellants have failed to state plausible claims.

To plead tortious interference with contract under D.C. law a plaintiff must plausibly plead: "(1) the existence of a contract; (2) knowledge of the contract; (3) intentional procurement of a breach of the contract; and (4) damages resulting from the breach." *Paul v. Howard Univ*., 754 A.2d

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invaded Ukraine and China increased tensions in the Taiwan Strait. The Commission should not assume that CFIUS alone is responsible for the implications of anonymous foreign investment." J.A. 438.

297, 309 (D.C. 2000) (citation modified). The elements are generally the same for claims for tortious interference with prospective business opportunity except that rather than pleading the existence, knowledge, and breach of a contract, a plaintiff must plausibly plead the existence, knowledge, and interference with a business relationship. *Onyeoziri v. Spivok*, 44 A.3d 279, 286 (D.C. 2012).

Appellants have failed to plausibly plead both tortious interference claims because both their claims are premised on FCC approval of their transfer-license application. In other words, both claims rely upon the assumption that but-for Private Appellees' actions, Appellants would have obtained FCC approval of their license-transfer application. But under D.C. law, a tortious interference claim cannot stand when it relies upon discretionary government approval. *Carr v. Brown*, 395 A.2d 79, 84 (D.C. 1978). This is because "an applicant"—like Standard General—"cannot expect upon the basis of any experience that his application will be automatically approved within a specific period of time." *Id.* at 83. Therefore, Appellants have no legally protected expectancy. And because their civil conspiracy claim is based upon the same underlying torts—to "disrupt, interfere with, and prevent Standard General's performance of the merger and financing agreements' conditions to obtain FCC approval of the transfer of the broadcast license"—it too fails. J.A. 151.

IV.

For the foregoing reasons, the decision of the District Court is affirmed.

So ordered.