UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER, *et al.*,	
Plaintiffs,	Civ. No. 16-752 (JDB)
v.	
FEDERAL ELECTION COMMISSION,	
Defendant,	
F8, *et al.*,	REPLY IN SUPPORT OF MOTION TO DISMISS
Intervenor-Defendants.	

FEDERAL ELECTION COMMISSION'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS

In its opening memorandum, the Federal Election Commission ("FEC" or "Commission") showed that plaintiffs Campaign Legal Center ("CLC") and Democracy 21 lack Article III standing to pursue this action for judicial review of the Commission's dismissal of certain administrative complaints. The Commission explained that to demonstrate standing to obtain review pursuant to the Federal Election Campaign Act's ("FECA" or "Act") narrow review provision, 52 U.S.C. § 30109(a)(8), a plaintiff must identify a concrete and particularized injury, such as an informational one, resulting from the Commission's dismissal of its administrative complaint. And it clarified that a legally cognizable informational injury in this context must concern a deprivation of information that is useful in electoral voting and required by Congress to be disclosed. A desire merely to establish that FECA has been violated — what plaintiffs plainly seek here — is inadequate. The Commission also detailed courts' clear and repeated holdings that section 30109(a)(8) plaintiffs (or their members) must be voters or other

participants in political elections and campaigns. Non-membership organizations like CLC and Democracy 21 cannot demonstrate standing based on derivative harms resulting from an alleged inability to help others who *are* participants in the political process obtain information that *those individuals* may use in voting.

Plaintiffs' response to the Commission's dismissal motion confirms their lack of standing. Rather than explain how their allegations satisfy their burden, plaintiffs attempt to minimize it by misconstruing the holdings in two recent cases. Those case actually support the FEC's position, emphasizing that even where, as here, plaintiffs have invoked a statutory right to sue, they still must satisfy Article III's injury-in-fact requirement by demonstrating a concrete and particularized injury. Plaintiffs fail to do so. Indeed, their opposition underscores the attenuated connection between the dismissal decisions at issue here and plaintiffs' hypothetical injuries. Plaintiffs speculate about the "broad impact of the FEC's actions" in future circumstances, suggest that "others donors" may rely on the dismissal decisions as a "roadmap" to violate FECA in the future, and hyperbolically suggest that the challenged dismissal decisions "cast[] doubt on the accuracy of *all* donor information reported by super PACs." (Pls.' Opp'n at 2, 3, 24 (emphasis added).) But neither plaintiffs' erroneous legal arguments nor their unfounded speculation about *future* circumstances that are not the subject of any of their administrative complaints cure the deficiencies apparent on the face of their judicial complaint. Plaintiffs' opposition makes clear that what they really seek here is a determination whether FECA has been violated. Because plaintiffs sustain no particularized injury by virtue of not having received such a declaration, this case should be dismissed.

ARGUMENT

I. PLAINTFFS FAIL TO SATISFY THEIR BURDEN TO STATE A PLAUSIBLE CLAIM OF STANDING IF THE FACTUAL ALLEGATIONS IN THEIR COMPLAINT ARE ACCEPTED AS TRUE

It is well settled that this Court has "an affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority." *Citizens for Responsibility & Ethics in Washington* ("*CREW*") v. *FEC*, 799 F. Supp. 2d 78, 84 (D.D.C. 2011); *Jones v. Ashcroft*, 321 F. Supp. 2d 1, 5 (D.D.C. 2004) (citation omitted); *see also Herbert v. Nat'l Acad. of Sciences*, 974 F.2d 192, 196 (D.C. Cir. 1992) ("[A]s courts of limited jurisdiction, we are affirmatively obliged to consider whether the constitutional and statutory authority exist for us to hear each dispute put to us."). It is also not disputed that plaintiffs bear the burden of establishing the elements of Article III standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

To survive the Commission's motion to dismiss under Federal Rule of Civil Procedure 12(b)(1), plaintiffs' complaint "must contain sufficient factual matter, accepted as true, to 'state a claim [of standing] that is plausible on its face.'" *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015) (alteration in original) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). The Court must accept as true all of the plaintiff's well-pled factual allegations and draw all reasonable inferences in favor of the plaintiff, but need not accept the plaintiff's legal conclusions as true. *See Alexis v. District of Columbia*, 44 F. Supp. 2d 331, 336-37 (D.D.C. 1999).

As explained further below, plaintiffs allege that specific persons made contributions in the name of another that should have been disclosed, by routing the funds through limited liability companies and other entities. *See infra* pp. 16-17. In each case where plaintiffs continue to seek filing of disclosure reports by the alleged straw entity, plaintiffs allege that the entity engaged in no activity other than the purported contributions at issue. (Pls.' Opp'n at 41.) Because the Court must accept those allegations as true at this stage of the proceedings, plaintiffs

have the factual information they seek regarding the funds alleged to have been contributed. *Id.* *See infra* pp. 16-17.

The question whether plaintiffs have adequately alleged a legally cognizable injury is a legal determination, and "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions," *Iqbal*, 556 U.S. at 678.[1] Jurisdiction is not presumed to lie in the plaintiffs' favor; plaintiffs *are* required to demonstrate a concrete and particularized informational injury. *See* FEC Mem. at 11-12; *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016) (clarifying that a plaintiff does *not* "automatically satisf[y] the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right" and emphasizing that "Article III standing requires a concrete injury even in the context of a statutory violation"); *CREW*, 799 F. Supp. 2d at 85-91 (holding that plaintiffs in section 30109(a)(8) challenge lacked standing and granting Commission's motion to dismiss); *Vroom v. FEC*, 951 F. Supp. 2d 175 (D.D.C. 2013) (same).

II. PLAINTIFFS HAVE FAILED TO IDENTIFY A LEGALLY COGNIZABLE INJURY

As previously explained (FEC Mem. at 10-11), where a plaintiff seeking judicial review under FECA claims an informational injury, that party must allege that the challenged dismissal decision deprived the party of information that was required to be disclosed under FECA and "the nature of the information allegedly withheld is critical to the [court's] standing analysis." *Common Cause v FEC*, 108 F.3d 413, 417 (D.C. Cir. 1997) (per curiam); *CREW v FEC*, 401 F. Supp. 2d 115, 120 (D.D.C. 2005). Specifically, the information of which a plaintiff claims to have been deprived must be "directly related to voting" to constitute a legally cognizable injury.

[1] When courts reach the merits in the context of judicial review of an agency decision, the ordinary summary judgment standard of construing facts in the light most favorable to the nonmovant is of course inapplicable. *See, e.g., Marshall Cty. Health Care Auth. v. Shalala*, 988 F.2d 1221, 1225-26 (D.C. Cir. 1993).

FEC v. Akins, 524 U.S. 11, 24-25 (1998). Courts in this District have explained that the sought-after information must "have a concrete effect on *plaintiffs'* voting," *i.e.*, plaintiffs (or their members) must be participants in political elections and campaigns. *Alliance for Democracy v. FEC* ("*Alliance I*"), 335 F. Supp. 2d 39, 48 (D.D.C. 2004); *see also Judicial Watch, Inc. v. FEC*, 293 F. Supp. 2d 41, 46 (D.D.C. 2003); *Kean for Congress Comm. v. FEC*, 398 F. Supp. 2d 26, 38 (D.D.C. 2005) (explaining that the relevant group that may have standing to bring an action under section 30109(a)(8) include "political committees, candidates, and candidate committees").

The D.C. Circuit has further explained, in the specific context of judicial review under section 30109(a)(8), that where an organizational plaintiff brings suit on its own behalf, it must establish that the challenged dismissal decision caused a "'concrete and demonstrable injury to the organization's activities — with [a] consequent drain on the organization's resources — constitut[ing] . . . more than simply a setback to the organization's abstract social interests.'" *Common Cause*, 108 F.3d ar 417 (quoting *Nat'l Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1433 (D.C. Cir. 1995)); *see also id.* ("The organization must allege that discrete programmatic concerns are being directly and adversely affected by the challenged action.").

Plaintiffs' opposition confirms that they cannot satisfy these threshold jurisdictional requirements. Plaintiffs still do not identify how *the specific information* they could potentially obtain as a result of this action has a concrete and particularized effect on plaintiffs' electoral voting, or the voting of any of their members since they have none. Instead, plaintiffs devote much of their opposition to describing generalized concerns about the adequacy and accuracy of reporting of donors to super PACs and such PACs' compliance generally with other FECA provisions (*e.g.*, Pls.' Opp'n at 18, 21, 25-26), as well as to speculating about various

hypothetical consequences plaintiffs believe may result from the Commission's alleged creation of "a roadmap" for *future* violations of these provisions (*e.g.*, Pls.' Opp'n at 20, 22-24, 26, 28 (speculating about future instances of alleged quid pro corruption, constitutional litigation, administrative rulemakings, and efforts to "follow the money")). As the Commission detailed in its opening brief and explains further below, plaintiffs' concerns about the Commission's enforcement of FECA, in the underlying MURs or in the future, are insufficient to confer standing to pursue this judicial review action.

Plaintiffs' opposition also confirms the lack of any legal authority supporting their attempt to satisfy standing based on derivative harms resulting from their alleged inability to help *others* obtain information that those individuals may use in voting. And plaintiffs' recognition that they merely seek information "corroborating" what they affirmatively allege in their complaint further confirms their lack of any legally cognizable informational injury here.

A. Plaintiffs Do Not Claim a Concrete and Particularized Informational Injury Resulting From the Challenged Dismissal Decisions

Throughout their opposition, plaintiffs repeatedly emphasize the importance of FECA's disclosure provisions and the provision prohibiting contributions in the name of another. (*See, e.g.*, Pls.' Opp'n at 1 ("[S]traw donor[s] violate[] the fundamental purposes of the federal campaign finance laws"); *id.* at 3 ("Super PACs are the only committees . . . whose artificial forms can easily be manipulated for the purpose of concealing or facilitating campaign-related contributions and expenditures); *id.* at 14-15 ("FECA's prohibition on making contributions 'in the name of another' maintains the integrity and effectiveness of the donor information that political committees . . . are required to report to the FEC …); *id.* at 18 ("'disclosure requirements deter actual corruption and avoid the appearance of corruption'"). But the importance of those provisions is neither in dispute nor relevant to determining whether the

plaintiff organizations have suffered a concrete and particularized informational injury as a result of the specific FEC dismissal decisions they challenge.

Plaintiffs' general concerns about violations of FECA's disclosure requirements and the Act's prohibition on contributions in the name of another are likewise insufficient to demonstrate a concrete and particularized informational injury here. Plaintiffs' *speculation* that the dismissal decisions they seek to challenge could "create[] a roadmap for *other donors* to evade applicable disclosure laws" *in the future* (Pls.' Opp'n at 24) is entirely hypothetical and does not demonstrate any actual, concrete injury particularized to plaintiffs resulting from the specific dismissal decisions plaintiffs challenge here. Similarly, plaintiff's allegations (Pls.' Opp'n at 24-25) that they have filed *other* administrative complaints against *other* entities for *other* alleged violations also does not demonstrate any informational injury to plaintiffs resulting from the Commission's actions in the enforcement matters at issue here. Nor do plaintiffs demonstrate a cognizable informational injury by alleging concerns about "verify[ing] that super PACs are complying with the applicable source prohibitions" (Pls.' Opp'n at 25); "ensur[ing] accurate reporting under FECA of the donors funding independent expenditures" (Pls.' Opp'n at 27); or a general desire for "a clear understanding of the financing of federal elections" (*id.* at 26).

Likewise insufficient are plaintiffs' assertions (Pls.' Opp'n at 24) that their administrative agency practice has been supposedly harmed by the Commission's "failure to investigate, as well as [the Commission's] general failure to ensure accurate donor disclosure." Not only do such claims fail to identify any concrete or particularized informational injury, but they reveal that the essence of this lawsuit is plaintiffs' deficient argument that the Commission has failed to "get the bad guys." *Common Cause*, 108 F.3d at 418; *see* Pls.' Opp'n at 2 (complaining, erroneously, that the FEC's dismissal of specific administrative complaints "effectively sanctioned" violations

of FECA). But "[i]t is axiomatic that standing cannot rest on a plaintiff's alleged interest in having the law enforced . . . because such an injury is too generalized and ideological." *CREW*, 401 F. Supp. 2d at 22 (citation omitted). Indeed, the vast majority of plaintiffs' allegations involve two layers of efforts to have the law enforced. (*See, e.g.*, Pls.' Opp'n at 24 (referencing CLC's efforts to "ensure that the agency is properly . . . enforcing federal election laws and file[] complaints . . . against individuals or organizations that violate the law") (quoting Compl. ¶ 10).) Plaintiffs' claim that they will be injured absent findings regarding the FECA violations alleged here because of an impact on their efforts to establish *other* FECA violations poses a double "get-the-bad-guy" problem.

Plaintiffs' opposition thus reveals their inability to satisfy their burden to demonstrate a legally cognizable informational injury *resulting from* the specific dismissal decisions they challenge. Plaintiffs instead attempt to diminish their burden by misconstruing two recent decisions as permitting them to demonstrate standing merely by alleging a violation of a procedural right. Plaintiffs misinterpret those decisions.

First, contrary to plaintiffs' suggestion (Pls.' Opp'n at 4, 13-14), *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), does *not* stand for the proposition that plaintiffs' mere allegation of a "violation of a procedural right granted by statute" is sufficient to demonstrate their standing. In *Spokeo*, the Supreme Court vacated a Ninth Circuit decision finding that an allegation that the defendant had violated the plaintiff's statutory rights under the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.*, was sufficient to confer Article III standing. The Supreme Court held that the court of appeals had failed to consider whether the alleged procedural violation — the defendant's alleged failure to comply with FCRA's requirements concerning the creation and use of consumer reports — caused the plaintiff an injury that was *both*

particularized *and concrete*. *See Spokeo, Inc.*, 136 S. Ct. at 1550 ("Because the Ninth Circuit failed to fully appreciate the distinction between concreteness and particularization, its standing analysis was incomplete. It did not address the question . . . whether the particular procedural violations alleged in this case entail a degree of risk sufficient to meet the concreteness requirement.") Particularly relevant here, and contrary to plaintiffs' description of the Court's holding, *Spokeo* emphasized that "Congress' role in identifying and elevating intangible harms *does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right*." *Id.* at 1549 (emphasis added). The Court echoed the well settled principle that "Article III standing requires a concrete injury even in the context of a statutory violation," and explained that a plaintiff thus "could not, for example, allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III." *Id.*

Plaintiffs cite (Pls.' Opp'n at 14) the *Spokeo* Court's observation, referencing *FEC v. Akins*, 524 U.S. 11, 20-25 (1998), that "in some circumstances" a plaintiff's "inability to obtain information that Congress ha[s] decided to make public" under FECA may constitute injury-in-fact. 136 S. Ct. at 1549. But as the *Akins* Court itself explained, those circumstances involve alleged injuries suffered by voters. 524 U.S. at 22 (distinguishing taxpayer standing from "voter standing"). Indeed, as the *Spokeo* Court explained, *Akins* "confirm[ed] that *a group of voters*' 'inability to obtain information' that Congress had decided to make public is a sufficient injury in fact to satisfy Article III." 136 S. Ct. at 1549 (emphasis added). But plaintiffs are not voters and do not have any voting members. *See infra* pp. 14-16; (FEC Mem. at 17-19).

Second, and for similar reasons, the D.C. Circuit's recent decision in *Friends of Animals v. Jewell* ("*FOA II*"), No. 15-5223, 2016 WL 3854010 (D.C. Cir. July 15, 2016) (cited at Pls.'

Opp'n at 14), also does not support plaintiffs' claim to have informational standing here. In *FOA II*, the Court of Appeals affirmed the district court's dismissal of a complaint filed by an organization that claimed informational standing to challenge the Secretary of Interior's alleged failure to act in accordance with a deadline in the Endangered Species Act, 16 U.S.C. § 1531 *et seq*. *Id.* at *1. The court in *FOA II* emphasized that for a plaintiff to establish an informational injury that is both concrete and particularized, he "may need to allege that nondisclosure has caused it to suffer the kind of harm from which Congress, in mandating disclosure, sought to protect individuals or organizations like it." 2016 WL 3854010, at *3. In support, the court cited and contrasted three cases involving standing under FECA, none of which support the organizational plaintiffs' standing here: *Akins* involved voter standing, 524 U.S. at 21-23, and *Shays v. FEC*, 528 F.3d 914, 923 (D.C. Cir. 2008), concerned the standing of members of Congress engaged in campaigns for office. And in *Nader*, the court explained that the plaintiff, a voter and former presidential candidate, had not suffered informational injury because he sought, as plaintiffs do here, merely for the Commission "get the bad guys." *Nader v. FEC*, 725 F.3d 226, 230 (D.C. Cir. 2013).

Spokeo and *FOA II* thus make clear that plaintiffs' bare allegations here of informational "injury in and of itself" (Pls.' Opp'n at 13) are not enough and their failure to identify a concrete and particularized injury that is actual or imminent, and not conjectural or hypothetical, requires the dismissal of this case.

B. Plaintiffs Have Not Identified Any Programmatic Concerns That Are Directly and Adversely Affected *by the Challenged Dismissal Decisions*

As previously explained (FEC Mem. at 12), where, as here, an organizational plaintiff brings suit on its own behalf, "it must establish 'concrete and demonstrable injury to the organization's activities — with [a] consequent drain on the organization's resources —

constitut[ing] . . . more than simply a setback to the organization's abstract social interests.'" *Common Cause*, 108 F.3d at 417 (quoting *Nat'l Taxpayers Union, Inc.*, 68 F.3d at 1433). "The organization must allege that discrete programmatic concerns are being directly and adversely affected *by the challenged action*." *Id.* (emphasis added). In *CREW*, 401 F. Supp. 2d 115, the district court thus determined that the plaintiff organization had not adequately alleged impairment to its programmatic activities because it had failed to identify specific plans for the information it was purportedly denied. The court explained that the D.C. Circuit's opinion in *Common Cause* required CREW to "identify exactly how its alleged lack of access to the [information it claimed to seek] has impeded its programmatic activities." *Id.* at 122. The court concluded that CREW failed to do so because it "never specified any programmatic concerns that have been concretely and directly impacted adversely by the FEC's actions," *i.e.*, it had failed to identify any "particular plan . . . for the use of the information." *Id.*

The same is true of plaintiffs here. Neither their complaint nor their opposition to the FEC's motion to dismiss identifies any "particular plan" for using any information they could potentially obtain if they were to prevail in this action. Indeed, although plaintiffs have devoted over ten pages of their opposition to providing additional details about their use of campaign-finance-related information in their various activities and programs *generally* (Pls.' Opp'n at 17-28), conspicuously absent from those pages is any explanation of how the lack of the "corroborating" information plaintiffs hope to obtain through this lawsuit specifically has harmed those activities and programs. Plaintiffs' generalized interest in the Commission's investigation and enforcement of alleged campaign finance violations (*see, e.g.*, Pls.' Opp'n at 3, 5, 17-28), allegations about a "general failure to ensure accurate donor disclosure" (*id.* at 24), and speculation that the Commission has "created a roadmap" for *future* violations of FECA (*id.*)

do not demonstrate how the dismissal decisions at issue here have concretely and directly harmed plaintiffs' programs. And their claim that without "accurate donor information," they must divert resources into assisting "reporters and other media representatives" (Pls.' Opp'n at 20), and filing additional complaints that with the Commission (*id.* at 24-25) does not demonstrate that the dismissal decisions at issue *here* have harmed plaintiffs' programmatic activities.[2]

Moreover, as the Commission previously noted (FEC Mem. at 21), plaintiffs have yet to identify any plan to use the information they already possess, whether obtained through FECA disclosures or otherwise. In their opposition, for example, plaintiffs acknowledge (Pls.' Opp'n at 40) that Edward Conard has "been disclosed pursuant to FECA's reporting provisions" as the source of the contributions at issue in MUR 6485, but plaintiffs have not identified any activity or program for which they intend to use such information. And, as explained above, plaintiffs plainly lack standing to obtain "information" concluding that the transaction at issue in that MUR violated FECA.[3]

Plaintiffs purport to rely on *PETA v. Department of Agriculture*, 797 F.3d 1087 (D.C. Cir. 2015), and *Action Alliance of Senior Citizens of Greater Philadelphia v. Heckler*, 789 F.2d 931

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[2] Plaintiffs' particular assertion (Pls.' Opp'n at 24) that they "had to divert resources" to file "an additional four complaints" alleging "blatant violations" of FECA resulting from the supposed "roadmap" created by the dismissal decisions at issue in this case defies logic. The four complaints plaintiffs identify were filed in February and March 2016 (*see id.* at 24-25), *i.e.*, *before* the April 1, 2016 Statements of Reasons explaining the dismissal decisions challenged here were issued.

[3] Plaintiffs' generalized discussion (Pls.' Opp'n at 21-23) of their "work in litigation" defending "challenges to the constitutionality of campaign finance laws, governmental ethics rules and various political disclosure laws, as well as affirmative cases" does not demonstrate how the information plaintiffs could potentially obtain in this lawsuit would advance those other litigation interests. Any allegation of injury to this kind of activity is inherently speculative and depends on which legal matters and issues may arise in the future.

(D.C. Cir. 1986) ("*Action Alliance*"), but neither case supports plaintiffs' overly generalized programmatic injury claims. In *PETA*, the D.C. Circuit concluded that "[b]ecause PETA has expended resources to counter [the USDA's allegedly unlawful failure to apply the Animal Welfare Act's ("AWA") general animal welfare regulations to birds], it has established Article III organizational standing." 797 F.3d at 1095. *PETA* is clearly distinguishable. First, *PETA* does not involve informational injury under FECA or the programmatic injury requirement identified in *Common Cause* for organizations suing on their own behalf under the Act. So *PETA* cannot cast doubt on the FECA cases cited by the Commission that require injury to programmatic activity far less attenuated than those claimed by plaintiffs in this case. *See supra* pp. 4-5.

Second, unlike what plaintiffs have alleged here, the resources expended by PETA *directly* resulted from the challenged agency actions. The court of appeals found that as a result of the USDA's unwillingness to bring birds within the federal AWA, PETA *itself* investigated allegations of bird mistreatment and was forced to file complaints with "pertinent local, state, and/or federal agencies." *Id.* at 1095-96. Here, by contrast, plaintiffs take no comparable actions, particularly none related to the purported violations at issue here, and instead allege only harm to their "overarching organizational mission." (*See* Pls.' Opp'n at 17-28).

For much the same reasons, the other case relied on by the plaintiffs to support their argument that they have suffered injury to their programmatic activities, *Action Alliance*, is no more helpful to them. Like *PETA*, *Action Alliance* does not involve standing under FECA, and the injury suffered by the plaintiffs in that case was far less speculative and attenuated than plaintiffs' claimed injuries here. Specifically, the court concluded that the challenged agency actions — publishing certain regulations and failing to act on other proposed regulations —

would directly hamper the ability of the plaintiff organizations to provide assistance to their members. *Action Alliance*, 789 F.2d at 937 (explaining that the plaintiffs had suffered an information injury because the information denied them "would enhance the capacity of [plaintiffs] to refer members to appropriate services and to counsel members when unlawful age discrimination may have figured in a benefit denial"). Here, by contrast, plaintiffs have no members, and the relation between the information purportedly denied them and the injury suffered is much more speculative and indeterminate.

C. Informational Injury Under 52 U.S.C. § 30109(a)(8) Is Limited to Individuals and Organizations that Are Participants in Political Elections and Campaigns

As the FEC previously explained (Mem. at 17-19), CLC and Democracy 21 lack standing for the separate and additional reason that they are not voters, do not claim to have any members who vote, and are not otherwise participants in political elections and campaigns. *See, e.g.*, *Common Cause*, 108 F.3d at 418 (explaining that a particularized informational injury is sufficient to create standing where plaintiffs have alleged that "voter[s] [were] deprived of useful [political] information at the time" of voting) (citation omitted); *Alliance I*, 335 F. Supp. 2d at 48 (explaining that plaintiffs had not suffered cognizable injury because they had "failed to show how information about the [sought after information] could have a concrete effect on plaintiffs' voting in future elections involving different candidates"); *CREW*, 401 F. Supp. 2d at 120-21 (holding that CREW lacked standing in part because the value of the information it claimed to have been deprived of could "[]not be useful to CREW in voting," due to CREW's status as a non-profit corporation that is not a "participant[] in the political election and campaign process").

Cases in this circuit show that section 30109(a)(8) plaintiffs must be voters, have voting members, or at least be participants in political elections and campaigns, *i.e.*, political committees, candidates, and candidate committees. None of the cases cited by plaintiffs (Pls.'

Opp'n at 28-30) supersede those directly applicable holdings. As explained above, *supra* pp. 12-14, neither *PETA* nor *Action Alliance* involves plaintiffs suing the Commission under FECA. Plaintiffs' remaining cases fare no better.

Contrary to plaintiffs' assertion (Pls.' Opp'n at 30-31), the district court in *Kean for Congress v. FEC*, 398 F. Supp. 2d 26 (D.D.C. 2005), did not hold that non-political-committee organizations like CLC and Democracy 21 have standing under section 30109(a)(8). On the contrary, to the extent the court in *Kean* answered that question implicitly, it suggested that such entities *do not have standing*: "The relevant group intended to benefit from the FECA disclosure requirements stretches beyond voters to include *political committees, candidates, and candidate committees*," *id.* at 38 (emphasis added), *i.e.*, a group that does not include the plaintiff organizations.

And *CREW v. FEC*, 401 F. Supp. 2d 115, which plaintiffs also argue supports their standing claims, actually undermines them. In *CREW*, the district court found that the plaintiff non-profit organization did *not* establish an informational injury. Plaintiffs try (Pls.' Opp'n at 31) to diminish the significance of the court's conclusion that the plaintiff, "a 501(c)(3) non-profit, tax-exempt organization that cannot vote and is legally foreclosed from contributing to or participating in the political process," and which "does [not] have any members who participate in the political process," was "simply the wrong party to seek redress for the injury that has allegedly been suffered." *Id.* at 121. But it is not true, as plaintiffs argue (Pls.' Opp'n at 31), that the court in *CREW* was less interested in CREW's status as a non-voter than the character of the information of which it claimed to have been deprived. It was only *after* the court explained that CREW was "simply the wrong party to seek redress" that the court explained that "[*m*]*oreover*,

the Court is not convinced that the precise dollar value of the list is 'useful in voting' *at all*, even to the participants in the political process." *Id.* (first emphasis added).

Plaintiffs' discussion of *CREW* also disregards the D.C. Circuit's opinion affirming the district court's decision in that case and distinguishing it from the Supreme Court's opinion in *Akins*. The Court of Appeals explained that unlike the voters in *Akins*, "who wanted certain information so that they could make an informed choice among candidates in future elections, CREW cannot vote; it has no members who vote; and because it is a § 501(c)(3) corporation under the Internal Revenue Code, it cannot engage in partisan political activity." *CREW v. FEC*, 475 F.3d 337, 339 (D.C. Cir. 2007). That holding forecloses plaintiffs' standing arguments here.

D. Plaintiffs' Interest in "Corroborating" the Information They Already Possess Does Not Show Cognizable Informational Injury

As the Commission previously explained (FEC Mem. at 12-14), courts in this Circuit have repeatedly explained that where the information plaintiffs were purportedly deprived of is already available to them, they lack standing to bring their claims, regardless of when they obtained the information they sought through their underlying administrative complaints. And because plaintiffs' judicial complaint repeatedly identifies the individuals that plaintiffs allege provided the money used to make the contributions that are the basis of each of plaintiffs' administrative complaints, plaintiffs have not suffered an informational injury. (*See* Compl. ¶¶ 31-32, 34 (describing contributions at issue in MUR 6485); *id.* ¶¶ 36, 37 (describing contributions at issue in MURs 6487 and 6488); *id.* ¶ 41 (describing contributions at issue in MUR 6711); *id.* ¶ 49 (describing contributions at issue in MUR 6930).)[4]

[4] Plaintiffs wrongly claim (Pls.' Opp'n at 33) that the Commission's "entire jurisdictional argument principally rests" on this particular argument. In fact, plaintiffs' possession of the information they purport to seek is only one of several *independent* reasons that plaintiffs lack standing. *See supra* pp. 6-16; FEC Mem. at 14-22.

Plaintiffs' opposition fails to refute that, according to the facts alleged in the complaint, they already possess the information they seek. Plaintiffs' judicial complaint identifies Edward Conard as having "authorized W Spann to make the $1 million contribution" to Restore Our Future (Compl. ¶ 32; *see id* ¶ 31, 34); Steven J. Lund as "the source of the two $1 million contributions" to Restore Our Future in March 2011 (*id.* ¶ 36; *see id.* ¶ 37); Richard Stephenson as having "made twenty contributions totaling over $12 million" to the super PAC FreedomWorks for America through the SIG and KPD (*id.* ¶ 41); and Pras Michel as having "provided $1.225 million in total to Black Men Vote," including $875,000 contributed through SPM Holdings LLC (i*d.* ¶ 49). With respect to the purported straw entities, for the ones for which plaintiffs seek disclosure reports, plaintiffs allege that those entities engaged in no activity other than the political contributions at issue. (Pls.' Opp'n at 41.) Plaintiffs thus seek no information beyond the contributions they have already alleged. Plaintiffs do not dispute that they have made such allegations and emphasize that what they seek is not the facts themselves but "corroborat[ion]" of the information they already have. (Pls.' Opp'n at 3, 32.) Plaintiffs thus focus on *form* over *content* and explain that what they seek through this lawsuit is to obtain the information they already have "in the particular manner, form and time prescribed by statute." (Pls.' Opp'n at 34.) But an informational injury is not sustained by the absence of "corroboration" of information plaintiffs already possess.

In *Judicial Watch v. FEC*, 293 F. Supp. 2d 41, 47 & n.9 (D.D.C. 2003), for example, the court held in part that the plaintiff lacked a cognizable informational injury where he was already "aware of the facts" concerning certain allegedly unreported contributions. Although it is true that the contributions at issue in *Judicial Watch* were the plaintiff's own, it is also true that if the only information that is relevant to determining informational injury is that which is "in the

particular manner, form and time prescribed by statute," what plaintiff knew about his own contributions would have been irrelevant since the Commission itself "never confirmed" that information. (*See* Pls.' Opp'n at 34-35.) Indeed, plaintiffs lack any support for their arguments that the only information relevant to determining if a plaintiff has suffered informational injury is matters about which he has "personal knowledge," or which has been "confirmed by the Commission."

In any event, even if plaintiffs could both demonstrate an injury based on their desire for "corroborating" information *and* satisfy the other requirements for standing under section 30109(a)(8), *see supra* pp. 6-16, plaintiffs' opposition still confirms that plaintiffs lack standing to challenge the dismissal of their administrative complaint in MUR 6485 (W Spann). As plaintiffs note (Pls.' Opp'n at 40 n.21), both Restore Our Future PAC and Edward Conard have publicly confirmed that Conard was the source of the money contributed to Restore Our Future at issue in that matter, *i.e.*, plaintiffs affirmatively admit that they already have "corroborating" information regarding that contribution, including "pursuant to FECA's reporting provisions." (Pls.' Opp'n at 40.)

CONCLUSION

For all the foregoing reasons, as well as those set forth in the Commission's motion to dismiss, the Commission asks this Court to dismiss plaintiffs' complaint for lack of jurisdiction.

Respectfully submitted,

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