UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON, *et al.*,	)	
Plaintiffs,	)	Civ. No. 16-1088 (RJL)
v.	)	
FEDERAL ELECTION COMMISSION,	)	REPLY IN SUPPORT OF MOTION TO DISMISS
Defendant.	)	

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

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Plaintiffs lack standing because their case involves an attempt at law enforcement, not disclosure. Citizens for Responsibility and Ethics in Washington ("CREW") and Noah Bookbinder filed an administrative complaint with the Federal Election Commission ("Commission" or "FEC") alleging campaign finance violations by Murray Energy Corporation, Robert Murray, and the Murray Energy Corporation Political Action Committee ("MECPAC"). Specifically, plaintiffs alleged that Robert Murray and the corporation coerced employees into making contributions to MECPAC and reimbursed employees for contributions to MECPAC, leading to unlawful contributions made in the name of another and prohibited corporate contributions. Therefore, this case is a general law enforcement matter, not a case about obtaining information, and plaintiffs clearly lack standing to pursue it because a mere desire to see the government enforce the law against another party is not a legally cognizable interest.

Plaintiffs have tried to repackage their claims as being about finding the "true sources" of the allegedly unlawful contributions, in an attempt to show that plaintiffs have suffered an informational injury sufficient to confer standing. However, none of the violations they allege entail public disclosure of information. Nor have plaintiffs shown that they have suffered any "concrete and particular" injury or that any information they might incidentally gain through pursuit of their law enforcement allegations would be useful in their voting, as they must show to support informational standing here. There is already significant information available about the alleged actions of Murray Energy — including which federal candidates the corporation's affiliates supported — that would assist other voters who have an actual concrete interest in the candidates involved. Plaintiffs, however, have no interest in learning the "true sources" of funds within the Murray Energy affiliate group that is sufficient to support standing.

Nor can plaintiffs show that any order of this Court would redress their claimed injuries, since there is no basis to believe a remand to the FEC would provide plaintiffs with information useful in their voting. Indeed, having the FEC pursue plaintiffs' coercion claims would reveal no additional source information at all, since the source of the contributions would not change, and at a minimum plaintiffs lack standing to support those claims. Plaintiffs' complaint should thus be dismissed.

I. PLAINTIFFS HAVE NOT SUFFERED A CONCRETE AND PARTICULARIZED INJURY-IN-FACT

As discussed in the FEC's previous memorandum, this Court lacks jurisdiction over plaintiffs' claims because plaintiffs cannot establish that they: "(1) [have] suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." (FEC's Mem. in Supp. of its Mot. to Dismiss ("FEC Mem.") (Docket No. 10) at 7-22 (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-181 (2000) and *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992)).) Plaintiffs rely on the erroneous legal theory that any time someone inaccurately or incompletely discloses legally required information, it creates a concrete and particularized injury to a person with a desire to have that information corrected. That argument fails because this case does not involve any reporting violations and, in cases properly presenting the issue, the argument has been squarely rejected by the D.C. Circuit.

As an initial matter, this case does not include any reporting violations (Compl. ¶ 40; *In the Matter of Murray, et al*., MUR 6661, Am. Compl. ¶¶ 14-19 (Nov. 18, 2015), AR 199-200) (to be included in appendix); http://eqs.fec.gov/eqsdocsMUR/16044394574.pdf). Plaintiffs'

administrative complaint alleged unlawful coercion, contributions in the name of another, and unlawful corporate contributions. None of the FECA provisions these claims implicate involve the filing of disclosure reports or directly require that the public be provided with information.

Standing is not conferred for an alleged informational injury when the information purportedly sought would not emerge directly from pursuit of the alleged violation at issue. *See, e.g., Friends of Animals v. Jewell*, --- F.3d ---, 2016 WL 3854010, at *3 (D.C. Cir. July 15, 2016) (denying informational standing because plaintiff was seeking to enforce a statutory provision that required the Department of Interior to make a finding by a certain deadline but that "by its terms [did] not require the public disclosure of information"); *Nader v. FEC*, 725 F.3d 226, 230 (D.C. Cir. 2013) (denying informational standing to plaintiff whose administrative complaint had alleged illegal contributions and hoped that disclosure would help prove his allegations); *CREW v. FEC*, 475 F.3d 337, 341 (D.C. Cir. 2007) (denying standing to plaintiff whose administrative complaint alleging unlawful in-kind contribution of list of activist names had not even requested the information that it was relying upon to assert informational injury); *Common Cause v. FEC*, 108 F.3d 413, 418 (D.C. Cir. 1997) (denying informational standing to plaintiff where administrative complaint was primarily about law enforcement and only made a "nominal" allegation of reporting violations — "[i]n the thirteen paragraphs detailing the statutory and regulatory provisions applicable to this case, only one such paragraph makes any reference to the FECA reporting requirements."). Plaintiffs are the "'master of the complaint,'" and the Court may not assert jurisdiction on the basis of claims that are not in their administrative or court complaints. *Cf. Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826, 831 (2002) (quoting *Caterpillar Inc. v. Williams*, 482 U.S. 386, 398-99 (1987)) (discussing the well-pleaded complaint rule).

In any event, the analogous decision in *Nader v. FEC*, 725 F.3d 226, clearly refutes plaintiffs' overbroad notion of informational standing. In that case, former presidential candidate Ralph Nader sued the FEC over the dismissal of his administrative complaint. Just as in this case, Nader's administrative complaint had a law enforcement focus, alleging "that a large number of lawyers and law firms made undisclosed, in-kind contributions of legal services to the efforts of the John Kerry campaign to keep Nader's name off the ballot in numerous states." *Id.* at 230. Just as in this case, Nader asserted that he had informational standing, because if his allegations were true, then the respondents had denied him information by improperly reporting contributions and expenditures. *Id.* The D.C. Circuit disagreed. After acknowledging that informational standing was a valid legal theory, the court stated that "[i]t is not enough, however, to assert that disclosure is required by law." *Id.* at 229. The Court held that Nader's injury was not "sufficiently concrete to confer standing" because his motive was "seeking disclosure to promote law enforcement." *Id.* at 230. The Court concluded that Nader's motivation to have the FEC act was not to "facilitate his informed participation in the political process," but rather to "force the FEC to 'get the bad guys.'" *Id.* (quoting *Common Cause*, 108 F.3d at 418). That is precisely plaintiffs' goal here. As discussed in the Commission's previous brief, however, a party does not have a "justiciable interest in the enforcement of the law." (FEC Mem. at 11 (quoting *Common Cause*, 108 F.3d at 418).)

Plaintiffs primarily rely upon a misreading of *FEC v. Akins*, 524 U.S. 11 (1998), to support their incorrect legal theory that standing to sue the government exists any time a public entity inaccurately or incompletely discloses information that is required under a statute. But *Akins* does not stand for that proposition and it is easily distinguishable from this case. First, public disclosure provisions were among the actual violations at issue in *Akins*, unlike here

where reporting and potential dissemination of information is merely a hypothetical byproduct of enforcement of other FECA violations. The plaintiffs in *Akins* sued because of the FEC's determination that the American Israel Public Affairs Committee ("AIPAC") was not a political committee and therefore was not required "to make disclosures regarding its membership, contributions, and expenditures." *Id.* at 13. The *Akins* plaintiffs, who were ideologically opposed to AIPAC, wanted this disclosure "to evaluate candidates for public office, especially candidates who received assistance from AIPAC, and to evaluate the role that AIPAC's financial assistance might play in a specific election." *Id.* at 21. The *Akins* Court described the plaintiffs' interest in the information and stated that their failure to obtain it satisfied the standing inquiry because it "seems concrete and particular." *Id.* If the legal theory posited by plaintiffs in this case were correct, there would have been no need for the Court in *Akins* to even address why the plaintiffs wanted information from AIPAC or what they might do with it.

Unlike in *Akins*, the purported injury in this case is neither concrete nor particular, even if plaintiffs are correct that MECPAC or some other entity should have disclosed its contributions differently (and plaintiffs had alleged that violation). "Article III standing requires a concrete injury even in the context of a statutory violation." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016). A plaintiff cannot "allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III." *Id*. (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009)). As the Supreme Court stated recently in *Spokeo*, a case seeking judicial review of claims regarding the publication of erroneous statutorily-required information, "not all inaccuracies cause harm or present any material risk of harm." 136 S. Ct. at 1550 (vacating and remanding case because it was uncertain whether the plaintiff's injury was sufficiently "concrete" to constitute an injury in fact, despite the fact that the defendant had

published inaccurate and potentially harmful information about the plaintiff in violation of a federal statute).

The concreteness of an informational injury is determined in large part by Congressional intent, *see Akins*, 524 U.S. at 24-25 (noting Congress's "constitutional power" to authorize the vindication of an informational injury), and there is no indication of an intent to recognize such an injury in plaintiffs' situation here. In *Akins,* the Supreme Court noted that FECA's judicial review provision expressed a congressional intent to "cast the standing net broadly" for the effort by plaintiffs in that case to force the FEC to require AIPAC to provide statutorily required reporting information. *Id.* at 19. That ruling is consistent with Congress's intent with respect to reporting provisions — they exist to provide the public with useful voting information. But again, as explained above, this case does not involve reporting violations.

Nor is the alleged injury in this case particularized. Unlike the *Akins* plaintiffs, who were ideologically opposed to AIPAC, or the *Spokeo* plaintiff, who had incorrect personal information about himself published online, plaintiffs in this case have shown no direct connection to Murray Energy or its allegedly unlawful conduct. CREW is not an organization ideologically opposed to Murray Energy's policy positions; rather, it is an organization devoted to the general promotion of government integrity and campaign finance regulation. (Pls.' Compl. for Injunctive and Declaratory Relief ("Compl.") ¶ 7 (Docket No. 1).) Neither CREW nor Mr. Bookbinder were incorrectly identified or omitted in reports filed with the FEC. As discussed below, the information plaintiffs claim to have been deprived of would not help them evaluate candidates for public office. *See infra* pp. 10-16. Plaintiffs' sole connection to this matter is their belief that the administrative respondents broke the law and their desire to punish those respondents. Such an alleged injury is generalized, not particularized, and therefore plaintiffs do not have an injury-

in-fact sufficient to confer standing. *See Spokeo*, 136 S. Ct. at 1548 ("For an injury to be 'particularized,' it 'must affect the plaintiff in a personal and individual way.' (quoting *Lujan*, 504 U.S. at 560 n.1).

II. THE INFORMATION PLAINTIFFS CLAIM TO SEEK DOES NOT SATISFY THE THRESHOLD REQUIREMENT OF BEING USEFUL IN VOTING

As the FEC has explained, a claim of informational injury due to an FEC dismissal is not legally cognizable unless the information sought would be useful to a voter considering federal candidates, and the information that plaintiffs seek here has no such utility. (FEC Mem. at 11-16.) To avoid this conclusion, plaintiffs primarily argue that: 1) the law does not require information to be useful in voting; 2) they may have standing if information obtained might be useful to someone else in voting; and 3) even if the information must be useful in voting, the information they seek here would be useful when they vote. (Pls.' Mem. in Opp'n to Def. FEC's Mot. to Dismiss ("Pls.' Mem.") at 14-20 (Docket No. 14).) Each of these arguments is flawed.

A. A Lack of FECA-Required Information Does Not Cause an Injury for Standing Purposes Unless the Information Would Be Useful in Voting

Both the Supreme Court and the D.C. Circuit have made clear that there is no legally cognizable informational injury in an action seeking review of an FEC administrative dismissal without a nexus between voting and the information that a plaintiff alleges it has been deprived of. *See Akins*, 524 U.S. at 24-25 (information must be "directly related to voting."); *Common Cause*, 108 F.3d at 418 (information must be "useful in voting"). Plaintiffs ignore this language and argue that the mere denial of any statutorily-required information constitutes a sufficient injury, even if that information would have no utility at all. But the cases plaintiffs cite do not support their claim.

Plaintiffs rely heavily on the Supreme Court's recent statement that a plaintiff "need not

allege any additional harm beyond the one Congress has identified." *Spokeo*, 136 S. Ct. at 1549. But plaintiffs have distorted the Court's intended meaning. The Court merely stated that "the violation of a procedural right granted by statute can be sufficient *in some circumstances* to constitute injury in fact." *Id.* (emphasis added). The Court was not saying that the violation of a statutory procedural right *by itself* constituted an injury in fact in all circumstances, as plaintiffs assert here. In fact, one of the two cases that the *Spokeo* opinion cites as support for its statement is *Akins*, which had cabined its holding — in a challenge to an FEC administrative dismissal decision like the one at issue here — to information that was "directly related to voting." *Akins*, 524 U.S. at 24-25; *Spokeo*, 136 S. Ct. at 1549 (citing *Akins* and *Public Citizen v. DOJ*, 491 U.S. 440 (1989) (discussed below)).

Plaintiffs also cite *Public Citizen v. DOJ*, but that was not a Federal Election Campaign Act ("FECA") case, and so standing there did not require a nexus to voting. But the case does show that utility is an important aspect of the standing inquiry. In *Public Citizen*, two interest groups argued that the Federal Advisory Committee Act required information to be made public about potential judges being vetted by a committee of the American Bar Association. 491 U.S. at 443-45. In analyzing whether those interest groups had standing to bring the suit, the Court considered the specific information requested, whether the interest groups were motivated by a desire for that information, and what the groups intended to do with it. *See id.* at 449 ("they seek access to the ABA Committee's meetings and records in order to monitor its workings and participate more effectively in the judicial selection process."); *id.* ("Appellant WLF has specifically requested, and been refused, the names of candidates under consideration by the ABA Committee, reports and minutes of the Committee's meetings, and advance notice of future meetings."). The Court also considered whether the information sought would actually be useful

to those groups. *Id.* at 450 ("[A]ppellants might gain significant relief if they prevail in their suit. Appellants' potential gains are undoubtedly sufficient to give them standing." (footnote omitted)).

If plaintiffs' legal theory here were correct, there would have been no need for the Supreme Court to discuss the usefulness or need for information in *Spokeo*, *Akins*, or *Public Citizen*, nor for the D.C. Circuit to address such matters in cases like *Common Cause* and *Nader*, supra pp. 3-4. The courts' careful consideration of these factors shows that to support informational injury, a plaintiff must show it has a desire and use for the information that is consistent with the specific "harm . . . Congress has identified" (*Spokeo*, 136 S. Ct. at 1549) when it has crafted a disclosure statute. Of course, plaintiffs here did not allege any violation of a disclosure provision of FECA. But even if they had, in crafting FECA's disclosure provisions, Congress believed that a lack of disclosure would diminish the ability of voters to make an informed decision. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976) (stating that the first governmental interest in disclosure is to "provide[] the electorate with information . . . in order to aid the voters in evaluating those who seek federal office."). So plaintiffs must make a showing that the specific information they seek would assist in informing voters with relevant information. They cannot do so.

B. Information a Plaintiff Seeks Must Be Useful to That Plaintiff's Voting

The FEC has explained that, to establish informational standing, the information sought must "'have a concrete effect on plaintiffs' voting,' *i.e.*, that plaintiffs (or their members) must be participants in political elections and campaigns." (FEC Mem. at 12 (*quoting Alliance for Democracy v. FEC* ("*Alliance I*"), 335 F. Supp. 2d 39, 48 (D.D.C. 2004). Plaintiffs argue there is no such requirement and accuse the Commission of basing its argument on an "overwrought

reading" of *Alliance I*. (Pls.' Mem at 18.) That decision does clearly support the principle that the information sought must have an effect on a plaintiff's voting, but that is not a novel or obscure legal theory; rather, it is just another way of saying that the injury must be particularized. (*See supra* pp. 2-7.) The requirement for an injury to be particularized, rather than merely a general grievance, is a bedrock element of standing doctrine. *See Spokeo*, 136 S. Ct. at 1548 ("For an injury to be 'particularized,' it 'must affect the plaintiff in a personal and individual way.'") (quoting *Lujan*, 504 U.S. at 560 n.1).

Plaintiffs assert that it is unnecessary to show this element of particularity here because *Akins* "did not even mention the particular district in which the plaintiffs voted as being a relevant factor to the standing analysis, even though the court below raised that issue and suggested it could be determinative." (Pls.' Mem at 17.) But such an analysis would have been unnecessary due to the broad scope of AIPAC's influence. As described in the opinion of the Court of Appeals, AIPAC had "approximately 50,000 supporters nationwide" and "a budget of about $10 million (as of 1989) that lobbies Congress and the executive branch," and the group "used full-time staff to meet with nearly every candidate for federal office." *Akins v. FEC*, 101 F.3d 731, 734 (D.C. Cir. 1996). If AIPAC was meeting with nearly every candidate for federal office, and lobbying both Congress and the executive branch, it was a virtual certainty that information about AIPAC's activities would be useful in voting to some or all of the six plaintiffs in *Akins*. Furthermore, because AIPAC's activities were not public, the plaintiffs in *Akins* lacked basic information about the universe of potential contacts.

C. Any Information Purportedly Sought in This Case Would Not Be Useful to Plaintiffs' Voting

Plaintiffs completely fail to meet their burden of establishing that any information that might be obtained as an offshoot of the Commission's enforcement of coercion and contribution

violations would help with their voting. By contrast with *Akins*, according to the reports filed with the FEC, MECPAC only made 16 contributions during the first half of 2016, and a total of 82 contributions during the two-year 2014 election cycle, none of which went to federal candidates in Maryland, where plaintiff Noah Bookbinder votes. *See* http://www.fec.gov/finance/disclosure/candcmte_info.shtml (search for Murray Energy Corporation Political Action Committee). Plaintiffs have drawn no link from the information they seek to Mr. Bookbinder's voting decisions, nor to the voting decisions of any individual that CREW considers a member of its organization; indeed plaintiffs have failed to even show that CREW has any members. (*See* FEC Mem. at 15-16.) And it is insufficient merely to suggest a possibility that someone associated with CREW might at some point have use for the information. *See Summers*, 555 U.S. at 499 (rejecting the concept of probabilistic standing and asserting that an organization must identify specific members with an injury). It is plaintiffs' burden to show a particularized injury and they have failed to do so.

Their failure is particularly apparent given the limited information that may be revealed if the Court were to remand, the Commission chose to investigate plaintiffs' allegations, and the Commission uncovered any unlawful activity after guidance from the Court. None of the violations plaintiffs allege involve directly depriving the public of information for which FECA requires disclosure; instead, their claims involve the solicitation and making of contributions, not public disclosure. (*See* FEC Mem. at 9 (citing Compl. ¶ 40; *In the Matter of Murray, et al.*, MUR 6661, Am. Compl. ¶¶ 14-19 (Nov. 18, 2015), AR 199-200) (to be included in appendix); http://eqs.fec.gov/eqsdocsMUR/16044394574.pdf.) Plaintiffs' theory of standing is that if the FEC were to investigate, the information that would be disclosed would be useful in their voting. But in fact, any information that would be revealed would be very limited. *See CREW v. FEC*,

401 F. Supp. 2d 115, 120-21 (D.D.C. 2005) (dismissing for lack of standing due to the "character of the information sought.").

Plaintiffs take two broad approaches in trying to explain why the information they seek might be useful, but each type of argument merely illustrates that such information could be useful under some circumstances, not that the information at issue in *this* case would be useful in *this* circumstance. First, plaintiffs rely on opinions stating generally that knowledge of the source of contributions can be useful to voters. (Pls.' Mem. at 13 (quoting *Buckley*, 424 U.S. at 66-67 (stating that such knowledge can provide information about "where political campaign money comes from" and allows "voters to place each candidate in the political spectrum" and "alert[s] voters to the interests to which a candidate is most likely to be responsive.")); Pls.' Mem at 15-16 (including similarly general quotations from *Akins*, 524 U.S. at 24-25, and *Common Cause*, 108 F.3d at 418).) Next, plaintiffs hypothesize that it could be important to know "if, for example, an environmentalist candidate received money from a coal company rather than its employee" or a "pro-business candidate took money from a union rather than its member." (Pls.' Mem. at 16.)

The problem with plaintiffs' approaches is that they trade mainly in generalities, rather than the specific information that plaintiffs would obtain if they were successful *in this lawsuit*. As an initial matter, plaintiffs misleadingly claim that "[t]he administrative complaint, as amended, alleged Respondents unlawfully coerced an unknown number of Murray Energy employees into contributing *to federal candidates* and to MECPAC . . ." (Pls.' Mem at 1 (emphasis added); *see also id.* at 2 ("the amended administrative complaint alleged . . . Respondents coerced Murray Energy employees into contributing to MECPAC *and to federal candidates*." (emphasis added)).) In fact, the amended administrative complaint, like the original

administrative complaint, makes no mention of contributions made directly to federal candidates — it makes allegations solely about unlawful contributions made to MECPAC. (*See* Amended Admin. Complaint ¶ 9 (respondents allegedly "coerced company employees to make contributions to [MECPAC] by threatening employees with financial reprisals, including the loss of their jobs, if they failed to contribute to [MECPAC].") (AR 197-98); *id.* ¶ 11 (alleging that Robert Murray "personally threatened employees of Murray Energy Corporation with the loss of their jobs if they failed to contribute to [MECPAC].") (AR 198); *id.* ¶ 12 ("[T]he Murray Energy Corporation and Mr. Murray reimbursed employees for their contributions to the PAC by giving bonuses Mr. Murray personally approved.") (AR 198-99); *id.* ¶¶ 15, 17, 19 (listing the three counts of the administrative complaint, all of which exclusively discuss contributions to MECPAC, not direct contributions to federal candidates) (AR 199-200). Because allegations about direct contributions to federal candidates were never made in the administrative complaint, plaintiffs can hardly claim to be "aggrieved" by the failure of the FEC to pursue such allegations. *See* 52 U.S.C. § 30109(a)(8) (limiting judicial review to a party "aggrieved by an order of the Commission dismissing a complaint filed by such party.").

The distinction between the true source of contributions to MECPAC and contributions made directly to federal candidates matters because information about direct contributions to candidates more clearly permits plaintiffs to "place each candidate in the political spectrum" and alert them "to the interests to which a candidate is most likely to be responsive." *Buckley*, 424 U.S. at 66-67. Information about contributions to MECPAC is considerably more limited in this regard. Plaintiff Bookbinder does not vote for PACs, only candidates. And although it could be useful in some hypothetical circumstances to know "if, for example, an environmentalist candidate received money from a coal company" or a "pro-business candidate took money from

a union" (Pls.' Mem. at 16), his interest in information about where MECPAC's funds come from is of less use.

Plaintiffs suggest that information about contributions to MECPAC could be useful because MECPAC uses its funds to make contributions of its own to federal candidates and political parties. (*See, e.g.*, Pls. Mem. at 18 n. 6 (suggesting that because MECPAC made contributions to national Republican committees, the money "could easily have flowed to every federal election in the country.").) But the existence of MECPAC as an intermediary reduces the value of learning which personnel associated with MECPAC have contributed to it. When MECPAC supports a candidate, that information could have value to a properly interested voter in the same manner as the hypotheticals described by plaintiffs in their brief — a candidate that receives support from MECPAC is more likely to share at least some of Murray Energy's policy preferences. But that information is already publicly available from reports of MECPAC's disbursements. The information that plaintiffs claim they need, however, involves contributions made *to* MECPAC, not contributions *from* MECPAC. And plaintiffs make no attempt to explain how plaintiff Bookbinder would use that information in determining how to vote. For each individual contribution to MECPAC, plaintiffs suggest only two alternatives: either the true source of the contribution was Robert Murray / Murray Energy or it was a voluntary contribution from someone who wanted to support MECPAC. In either case, it is MECPAC's subsequent decisions about how to use those funds that principally shed light on federal candidates; knowing the source of the funds to MECPAC provides less direct information relevant to an assessment of candidates. Because information about contributions to MECPAC provides only indirect information about candidates to which plaintiffs have no connection, they have not suffered an informational injury by failing to receive it.

It is true that the FEC's First General Counsel's Report and one of the Commissioners' Statements of Reasons considered contributions made directly to candidates, but as noted above, plaintiffs cannot be aggrieved by a decision not to pursue an allegation they did not make in the administrative proceeding. (*See supra* pp. 12-13; *see also* FEC First General Counsel's Report (AR 203-04, 223); Statement of Reasons of FEC Vice Chairman Steven T. Walther and Commissioners Ann M. Ravel and Ellen L. Weintraub (AR 229, 231).) And even if such agency consideration could support plaintiffs' standing, information about such contributions in this case does not establish relevance to voting. Plaintiff Bookbinder already has information about the federal candidates, whether the funds for those contributions originated with the named contributor or with Murray Energy or Robert Murray. In each of those situations, someone with an interest in the financial health of Murray Energy is contributing to a particular candidate. Federal candidates are required to make a good faith effort to obtain employer information from contributors who give the candidates more than $200 per year and they must provide that information in their FEC reports. 11 C.F.R. §§ 102.9(d), 104.7(b)(2), 104.8(a). So plaintiff Bookbinder would already have such information as to Murray Energy employees who made such contributions.[1]

Because any information obtained by an FEC investigation would not be useful to voters,

[1] Indeed, the website on which plaintiffs propose the Court rely for information, www.opensecrets.org, does not even distinguish between contributions from employees and corporate PACs in its aggregation of certain data. *See, e.g.*, Sarah Bryner, *Who Gives the Most? OpenSecrets.org Releases Updated Top Contributors List* (Aug. 6, 2014) http://www.opensecrets.org/news/2014/08/who-gives-the-most-opensecrets-org-releases-updated-top-contributors-list/ (explaining that donor totals "include individual contributions made by employees of these companies . . . as well as limited contributions made by the company's own PAC"). While plaintiffs may cite materials outside the pleadings for purposes of this motion, the Open Secrets website is not a repository of public records eligible for plaintiffs to request judicial notice during the Court's consideration on the merits, as plaintiffs contend. (Pls.' Mem. at 3 n.1.)

the lack of such information does not create an injury to plaintiffs sufficient to create standing.

III. PLAINTIFFS FAIL TO ESTABLISH THAT ANY INJURY THEY HAVE SUFFERED WOULD BE REDRESSABLE BY THIS COURT

A. Reporting of Any New Information Is Unlikely

Even if plaintiffs had suffered an injury-in-fact, they would nonetheless lack standing unless it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 560–61 (citation and internal quotes omitted). As the FEC explained, however, it is unlikely that a favorable decision for plaintiffs here would result in new reporting of information because such a result would depart from the Commission's common practice in enforcing allegations of coercion or contributions made in the name of another. (FEC Mem. at 20-22.) Plaintiffs argue that, even in the absence of revised reports, their alleged informational injury could be remedied because "the FEC would presumably still publicize the names of the individual employees who were coerced and reimbursed and which contributions were coerced and reimbursed." (Pls.' Mem. at 25.) But this theory is "speculative" if not implausible and therefore is insufficient to confer standing.

Plaintiffs have alleged a widespread scheme that operated "likely for many years" in which Murray Energy employees were coerced or reimbursed for campaign contributions. (Compl. ¶ 29.) According to its website, Murray Energy currently employs more than 6,000 United States workers, *see* http://www.murrayenergycorp.com/, and that number is considerably smaller than it has been in the recent past. *See, e.g.*, Timothy Puko and John W. Miller, *Murray Energy to Lay Off Around 1,800 Workers*, The Wall St. Journal (May 21, 2015), http://www.wsj.com/articles/murray-energy-to-lay-off-around-1-400-workers-at-nine-locations-1432242012. The Commission is unlikely to investigate the circumstances of each solicitation to, and contribution made by, the thousands of Murray Energy employees and former employees

over many years in an effort determine exactly which contributions were made voluntarily and which were the result of coercion or were contributions made in the name of another, and to then publicize a comprehensive catalogue of such information. As a result, even if plaintiffs were successful in obtaining a remand to the FEC, and even if the Commission then conducted an investigation, and even if that investigation uncovered the pattern of illegality that plaintiffs have alleged, there is still no realistic possibility that plaintiffs would receive the level of granular detail that they simply "presum[e]" that the FEC would post on its website. (Pls.' Mem. at 25.) As described in the FEC's previous memorandum, by far the most likely outcome of such an investigation, if it uncovered contributions made in the name of another or unlawful corporate contributions, would be an administrative settlement with the respondents that required some combination of civil penalties, refund or disgorgement, and cease-and-desist terms. (FEC Mem. at 20.) Such a settlement might contain admissions, but it would be highly unlikely to catalogue all past contributions by employees.

Moreover, even if direct contributions to federal candidates were properly part of this case, *see supra* pp. 12-13, the campaigns that received those contributions were not among the administrative respondents, and therefore it is implausible that they would amend any reports based on information about whether contributions had been made in the name of another, even if the campaigns were still operating today. And because contributors that are not political committees do not file reports of their contributions, the reports of the recipient federal campaigns would be the only source of such information.

B. Plaintiffs' Coercion Claims Have No Nexus to the Release of Information and Those, at a Minimum, Must Be Dismissed

Plaintiffs' coercion claims, even if established, would not alter the identity of the contributor involved. Plaintiffs would thus gain no new contributor information—merely an

awareness of wrongdoing that is insufficient to support standing. Those claims, at a minimum, must be dismissed. Plaintiffs present no support for their contention that the FEC would publicize the names of any individual employees found to have been coerced. (Pls.' Mem. at 25.)

Moreover, if the FEC were to determine that a contribution were coerced, the "true source" of the contribution would not change, and it is unlikely that that contribution would be attributed in any sense to the party that engaged in the coercion. Plaintiffs make the novel legal argument that in a case of coercion, the party that coerced the contribution should be characterized as the "true source" of the contribution. (Pls.' Mem at 7 n.4 (citing *Nye & Nissen v. United States*, 336 U.S. 613, 618 (1949), and 3 Am. Jur. 2d Agency § 245 (2016)). But plaintiffs provide no support from the legislative history or the over forty years of history of the FEC to support that legal conclusion, and nor are we aware of any. There is no support for the notion that any coerced contributions would be reported differently or that any further investigation of plaintiffs' coercion claims would result in additional source information. Therefore, such an endeavor would be no more than the classic effort to force the agency to "get the bad guys," *Common Cause*, 108 F.3d at 418, and so clearly insufficient to support standing. This is fatal to plaintiffs' claims based on alleged coercion. Since "standing is not dispensed in gross," *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996), a plaintiff "must demonstrate standing for each claim he seeks to press." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006); *Allen v. Wright*, 468 U.S. 737, 752 (1984) ("[T]he standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted."). Thus, plaintiffs' claims regarding coercion by the respondents in this matter must be dismissed.

IV. CONCLUSION

For all the reasons stated above and in the FEC's previous brief, the Court should dismiss plaintiffs' complaint for lack of jurisdiction.

Respectfully submitted,

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