**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| CAMPAIGN LEGAL CENTER and DEMOCRACY 21,<br>Plaintiffs,<br><br>v.<br><br>FEDERAL ELECTION COMMISSION,<br>Defendant,<br><br>F8, ELI PUBLISHING, and STEVEN J. LUND,<br>Intervenor-Defendants. | Civil Action No: 1:16-cv-00752-JDB |

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS**

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

Page

**Cases:**

**Statutes and Regulations:**

**Administrative Record Materials:**

**Other Authorities:**

## TABLE OF ABBREVIATIONS

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|---|---|
| **BCRA** | Bipartisan Campaign Reform Act |
| **FACA** | Federal Advisory Committee Act |
| **FEC** | Federal Election Commission |
| **FECA** | Federal Election Campaign Act |
| **FGCR** | First General Counsel's Report |
| **FOIA** | Freedom of Information Act |
| **FWFA** | FreedomWorks for America (MUR 6711) |
| **KPD** | Kingston Pike Development, LLC (MUR 6711) |
| **MUR** | Matter Under Review |
| **OGC** | Office of General Counsel (FEC) |
| **ROF** | Restore Our Future |
| **SIG** | Specialty Investment Group, Inc. (MUR 6711) |
| **SOR** | Statement of Reasons |

# INTRODUCTION

## I. PRELIMINARY STATEMENT

Plaintiffs Campaign Legal Center ("CLC") and Democracy 21 brought this action for declaratory and injunctive relief against the Federal Election Commission ("FEC" or "Commission") pursuant to 52 U.S.C. § 30109(a)(8), challenging as arbitrary and capricious, and contrary to law, the dismissal of five administrative complaints filed by plaintiffs against entities and individuals (collectively, "Respondents")[1] for making "straw donor" contributions "in the name of" limited liability companies ("LLCs") and other corporate entities to independent expenditure-only committees (commonly referred to as "super PACs"), in violation of various disclosure provisions of the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30101 et seq., and Commission regulations.[2]

Permitting individuals to make political contributions in someone else's name, i.e. through a "straw donor," violates the fundamental purposes of the federal campaign finance laws: preventing real and apparent corruption and providing the public with information about the true sources of funds given and spent to influence federal elections. When Congress first enacted FECA in 1972, it included a prohibition on making contributions "in the name of another person" in order to prevent easy circumvention of the Act's disclosure provisions. Pub. L. No. 92-225, § 310, 86 Stat. 19 (now codified, as amended, at 52 U.S.C. § 30122). Congress

[1] *See* Certification (dated Feb. 23, 2016), Matters Under Review ("MURs") 6487 and 6488 (F8 LLC/Eli Publishing L.C. et al.); Certification (dated Feb. 23, 2016), MUR 6485 (W Spann LLC, et al.); Certification (dated Feb. 23, 2016), MUR 6711 (Specialty Investment Group, Inc., et al.) ("SIG"); Certification (dated Feb. 23, 2016), MUR 6930 (Prakazrel "Pras" Michel, et al.).

[2] The Commission has yet to transmit the administrative record in this case, but some of the record materials associated with the plaintiffs' five complaints can be obtained by searching for each matter (or "MUR") number in the FEC's online enforcement database at http://eqs.fec.gov/eqs/searcheqs. For the Court's convenience, plaintiffs' Table of Authorities includes a hyperlink to each administrative document cited herein.

understood that the disclosure laws would be meaningless if a contributor could evade them through the simple expedient of laundering a contribution through a "straw donor" who could then claim the contribution as his own.

Even though these five separate complaints were filed over a four-year period beginning in 2011, the FEC evaluated them jointly and dismissed all of them together in 2016 without investigation. The dismissal effectively sanctioned the ongoing and unlawful "use of straw donors to make contributions 'in the name of another'" and relieved the various respondents from any obligation to disclose their donors fully and accurately—thereby "depriv[ing] the plaintiff organizations, as well as the public, of information about the source of contributions to super PACs and other political committees," impeding plaintiffs' activities in multiple programmatic areas, and "prevent[ing] them from carrying out a central part of their mission." Compl. ¶ 16 (Apr. 22, 2016) (Dkt. # 1).

Nevertheless, the FEC now claims that plaintiffs lack standing, based on two equally flawed theories: first, that plaintiffs have not alleged any injury in fact, although their judicial complaint detailed at length the harm the FEC's action inflicted upon their organizations' programmatic activities in public education, litigation, regulatory practice and legislative policy, *see* Compl. ¶¶ 11-16; and second, that they "already possess the sought-after information regarding the contributions at issue in their administrative complaints," although plaintiffs do *not* possess that information and have not alleged otherwise. FEC Mem. Supp. Mot. to Dismiss (July 1, 2016) (Dkt. 13) ("FEC Br.").

The FEC's attack on plaintiffs' standing—and its attempt to minimize plaintiffs' injury—is particularly problematic because of the broad impact these dismissals will have. The FEC's abdication of its statutory obligation to compel the disclosure FECA requires has effects far

beyond this case, and casts doubt on the accuracy of all donor information reported by super PACs. This failure raises red flags because the type of committee at issue here—super PACs—poses unique challenges in terms of ensuring electoral transparency and preventing political corruption. Super PACs are the only committees regulated under FECA that can accept contributions from corporations, whose artificial form can easily be manipulated for the purpose of concealing or facilitating campaign-related contributions and expenditures. *Cf.* 52 U.S.C. § 30118. And super PACs are the only committees that can accept contributions without limit. *Cf.* 52 U.S.C. § 30116. These two factors mean that the potential for corruption is acute and close agency oversight is especially critical if the goals of FECA are to be realized: "deter[ring] actual corruption and avoid[ing] the appearance of corruption by exposing large contributions and expenditures to the light of publicity." *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976).

Because of the broad impact of the FEC's actions and the centrality of the donor disclosure plaintiffs are seeking to the purposes of FECA, the absence of this disclosure causes wide-ranging harm to plaintiffs' activities in public education, litigation, regulatory practice and legislative policy. As detailed below, the absence of corroborated information about the true donors to the committees named in the administrative complaints, as well as broader deficiencies in donor disclosure in connection to super PACs, impedes achievement of multiple organizational goals. In particular, without this information, plaintiffs cannot educate voters as to who is funding political communications or enable them to evaluate the credibility of the message or "hold corporations and elected officials accountable for their positions and supporters." *Citizens United v. FEC*, 588 U.S. 310, 370 (2010). Plaintiffs are also thwarted in the effort to compile an evidentiary record—crucial in defensive litigation and legislative efforts—

that demonstrates the influence wielded by big donors over candidates, officeholders and party leadership, and documents specific instances of political quid pro quo corruption.

Even if this were not the case, FECA creates a right to information required to be disclosed under the Act, and the denial of access to that information is a sufficient injury in and of itself to establish standing. Very recent case law from the U.S. Supreme Court and this circuit has provided further clarity on the connection between statutory rights and Article III standing, and suggests that under FECA in particular, "the violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact" in and of itself. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016). Furthermore, "a plaintiff seeking to demonstrate that it has informational standing generally 'need not allege any *additional* harm beyond the one Congress has identified.'" *Friends of Animals v. Jewell*, No. 15-5223, 2016 WL 3854010, at *2 (D.C. Cir. July 15, 2016) ("*FOA II*") (quoting *Spokeo*, 136 S. Ct. at 1549).

Finally, contrary to the FEC's claims, plaintiffs are not already "privy" to the information sought in their administrative complaints. Plaintiffs' administrative and judicial complaints were based largely on media reports—some of which are even disputed by the persons named as donors therein. It is astonishing that the FEC—the agency responsible for overseeing and enforcing the detailed disclosure laws enacted by Congress—would claim that these unverified accounts are tantamount to the information required to be disclosed in a statutorily prescribed format and subject to agency audit and enforcement actions under FECA, with any false statements subject to criminal and civil penalty. The specific programmatic purposes for which plaintiffs seek this information—for example, legislative testimony and court filings—require donor disclosure to meet at least some basic standards of authenticity and accuracy.

It is beyond dispute that Congress intended to subject the FEC's administration of the campaign finance laws to judicial review, as FECA's judicial review provision plainly contemplates close oversight of FEC enforcement decisions. CLC and Democracy 21 are long-standing nonprofit, nonpartisan organizations that play a crucial role in publicly disseminating and explaining campaign finance information obtained from the FEC. Under the FEC's theory of standing, however, plaintiffs—solely by virtue of their organizational structure and nonpartisan nature—have no standing to challenge a Commission decision that vitiates FECA's core purpose of "[f]ull and timely disclosure," 118 Cong. Rec. 326 (1972) (Rep. Keith), even though that very decision was predicated on solicitude for "the constitutional rights of closely held corporations."[3] Congress, at least, certainly never contemplated elevating the rights of single-member LLCs and corporate entities over the public's right to be informed about the processes of democratic elections and governance.

## II. STATEMENT OF THE CASE

### A. Statutory and Regulatory Background

To serve the electorate's compelling interest in knowing "where political campaign money comes from," *Buckley*, 424 U.S. at 66, federal election law imposes an array of disclosure obligations on individuals, groups and entities that give and spend money to influence elections.

One such requirement provides that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person." 52 U.S.C. § 30122. A "person" is defined to include "an individual, partnership,

[3] Suppl. Statement of Chairman Matthew S. Petersen and Comm'rs Caroline C. Hunter and Lee E. Goodman at 4 (Apr. 18, 2016), MURs 6485 (W Spann), 6487 & 6488 (F8 LLC/Eli Publishing), 6711 (SIG), and 6930 (Michel).

committee, association, corporation, labor organization, or any other organization or group of persons." *Id.* § 30101(11). The FEC regulation implementing this statutory prohibition provides two examples of conduct that would violate it: "[g]iving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made," 11 C.F.R. § 110.4(b)(2)(i), and "[m]aking a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source." *Id.* § 110.4(b)(2)(ii).

Another key disclosure obligation extends to "political committees." A "political committee" is any "committee, club, association, or other group of persons" that receives more than $1,000 in contributions or makes more than $1,000 in expenditures during a calendar year, 52 U.S.C. § 30101(4); *see also* 11 C.F.R. § 100.5(a), and that has the "major purpose" of influencing federal elections. The FEC employs a two-prong test for determining political committee status, asking first whether an entity or other group of persons has made more than $1,000 in "expenditures" or received more than $1,000 in "contributions" during a calendar year, 52 U.S.C. § 30101(4)(A), and second, whether the organization has as its "major purpose . . . the nomination or election of a candidate." *Buckley*, 424 U.S. at 79. The FEC makes political committee status determinations on a case-by-case basis.

Any person may file an administrative complaint with the Commission alleging a violation of FECA. 52 U.S.C. § 30109(a)(1). A complaint must identify the complainants and be sworn and signed, and any allegations in a complaint "not based upon personal knowledge" should identify the source of the information that "gives rise to the complainant's belief in the truth of such statements." 11 C.F.R. § 111.4(b), (d). The Commission, after reviewing the

complaint and any responses, may then vote on whether there is sufficient "reason to believe" that a violation has occurred to justify an investigation. FECA requires an affirmative vote of four Commissioners to undertake most agency actions, 52 U.S.C. § 30106(c), including a "reason to believe" finding necessary to initiate an investigation. *Id.* § 30109(a)(2).[4]

After the investigation, the FEC's Office of General Counsel ("OGC") can recommend that the Commission vote on whether there is "probable cause" to believe the law has been violated. *Id.* § 30109(a)(3). If the Commission determines, by an affirmative vote of at least four Commissioners, that there is probable cause to believe that a violation of the law has been committed, it attempts to correct such violation and enter a conciliation (i.e., settlement) agreement with the respondent, which may include payment of a civil penalty. *Id.* § 30109(a)(4), (5).[5] If the Commission is unable to correct the violation and enter a conciliation agreement with the respondent, it may, by the affirmative vote of at least four Commissioners, institute a civil action against the respondent in federal district court. *Id.* § 30109(a)(6)(A). If the Commission dismisses a complaint, "[a]ny party aggrieved by an order of the Commission dismissing a complaint filed by such party . . . may file a petition in the United States District Court for the District of Columbia" seeking review of the Commission's action. *Id.* § 30109(a)(8)(A). If the court finds that the Commission's dismissal of the complaint was "contrary to law," it may order the Commission to take other action. *Id.* § 30109(a)(8)(C). If the Commission fails to conform to the court's order within 30 days, the complainant may bring a civil action against respondents to remedy the violation. *Id.*

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[4] To conserve agency resources, Alternative Dispute Resolution is also available to try to settle a matter outside of the traditional enforcement process. FEC Directive 68, Enforcement Procedures (Dec. 31, 2009), http://www.fec.gov/em/directive_68.pdf.

[5] In addition, the FEC's regulations allow the agency to settle a matter before, during or after an investigation, but before reaching probable cause to believe. 11 C.F.R § 111.18(d).

**B. Statement of Facts**

Plaintiffs' five administrative complaints alleged that named and unnamed individuals made political contributions to super PACs using named LLCs and other corporate entities as straw donors to hide the identities of the true sources of the contributions in disclosure reports filed with the FEC. Plaintiffs alleged that each individual violated 52 U.S.C. § 30122 by making a contribution "in the name of another" and each LLC/conduit violated 52 U.S.C. § 30122 by allowing its name to be used to make such a contribution. The complaints further alleged that four of the five LLC/corporate respondents violated 52 U.S.C. §§ 30102, 30103 and 30104 by failing to register and file reports as political committees. Compl. ¶ 2. In all but one case, MUR 6930 (Michel), the OGC issued a First General Counsel's Report ("FGCR") recommending the Commission find "reason to believe" that 52 U.S.C. § 30122 had been violated.[6]

The first three of plaintiffs' administrative complaints, filed in early August 2011 and designated MURs 6485, 6487 and 6488, involve three $1 million contributions from three different LLC/corporate entities—W Spann LLC, F8 LLC, and Eli Publishing L.C.—to Restore Our Future ("ROF"), the super PAC that supported Mitt Romney's 2012 presidential run.[7] The fourth complaint, filed on December 20, 2012 and designated MUR 6711, concerns over $12 million in contributions to the super PAC FreedomWorks for America ("FWFA"), made in the weeks before the 2012 election by a newly-formed corporation, Specialty Investment Group, Inc. ("SIG"), and its subsidiary, Kingston Pike Development, LLC ("KPD"). The fifth complaint,

[6] *See* FGCR (Aug. 28, 2012), MUR 6485 (W Spann); FGCR (June 6, 2012), MURs 6487 and 6488 (F8 LLC/Eli Publishing); FGCR (June 6, 2014), MUR 6711 (SIG); FGCR (Nov. 19, 2015), MUR 6930 (Michel).

[7] *See* Admin. Compl. (Aug. 5, 2011), MUR 6485 (W Spann); Admin. Compl. (Aug. 11, 2011), MUR 6487 (F8 LLC); Admin. Compl. (Aug. 11, 2011), MUR 6488 (Eli Publishing, L.C.); Admin. Compl. (Dec. 20, 2012), MUR 6711 (SIG); Admin. Compl. (Apr.13, 2015), MUR 6930 (Michel).

filed on April 13, 2015 and designated MUR 6930, involves $875,000 in contributions from SPM Holdings, LLC to the super PAC Black Men Vote.

**MUR 6485 (W Spann).** On August 5, 2011, plaintiffs filed a sworn administrative complaint alleging that W Spann LLC was used as a conduit to hide the true source of a $1 million contribution to ROF. *See* Compl. ¶¶ 30-34. In response to the complaint, Edward Conard, the LLC's sole member, "concede[d] that he used W Spann as a 'vehicle' for his contribution to ROF." Based on the complaint and the responses, OGC recommended the Commission find "reason to believe" that Conard and W Spann LLC violated 52 U.S.C. § 30122 and no "reason to believe" W Spann LLC violated 52 U.S.C. §§ 30102, 30103 and 30104. FGCR at 19.

**MURs 6487 and 6488 (F8/Eli Publishing).** On August 11, 2011, plaintiffs filed two sworn administrative complaints "alleging that F8 LLC and Eli Publishing L.C. were used as conduits to hide the true source of two $1 million contributions to [ROF] on March 31, 2011," Compl. ¶ 35, and asked the FEC to find "reason to believe" that F8 LLC and Eli Publishing L.C. and "the person(s) who created, operated and/or contributed" to them violated 52 U.S.C. § 30122. Plaintiffs further alleged that F8 and Eli Publishing L.C. violated 52 U.S.C. §§ 30102, 30103 and 30104 by failing to register and file reports as political committees. The OGC recommended opening an investigation, in part to uncover "whether others played a role in funding th[e] contributions [from F8 and Eli Publishing]." FGCR at 16.

**MUR 6711 (SIG).** On December 20, 2012, plaintiffs filed a sworn administrative complaint related to 20 contributions to FWFA, totaling more than $12 million, made by SIG and KPD between October 1 and November 1 of 2012. FGCR at 7. SIG and KPD were incorporated by William S. Rose, Jr., on September 26 and September 27, 2012. *Id.* Plaintiffs alleged that SIG and KPD, Rose, and "any other persons who made contributions in the name of

[SIG] and [KPD]," violated the straw donor prohibition, 52 U.S.C. § 30122, and that SIG and KPD violated 52 U.S.C. §§ 30102, 30103 and 30104. Compl. ¶ 40. "OGC recommended that the Commission find 'reason to believe' that Richard Stephenson, a director of" FWFA, made the contributions "using the names of SIG and KPD," based on press reports that "Stephenson pledged to make $10 to $12 million in contributions at an August 2012 FreedomWorks retreat, FreedomWorks executive Adam Brandon helped to arrange the contributions, and Stephenson dictated how the contributions would be spent." Compl. ¶ 41; *see* FGCR at 13-14. "OGC found that SIG and KPD were established with acknowledged 'political purposes' and funded with 'private capital' shortly before the 2012 election—days before their first contributions to FWFA—and dissolved less than a year later." Compl. ¶ 42 (citing FGCR at 14, 16).

**MUR 6930 (Michel)**. On April 13, 2015, plaintiffs filed a sworn administrative complaint alleging that there was "reason to believe" that Prakazrel "Pras" Michel, SPM Holdings LLC/SPM 2012 Holdings LLC, Black Men Vote, and the Treasurer of Black Men Vote, William Kirk Jr., violated 52 U.S.C. § 30122. The complaint cited FEC reports showing that Black Men Vote reported receiving a total of $1.325 million in itemized individual contributions in the 2012 election cycle from only three donors, SPM Holdings ($875,000 total), Michel ($350,000 total) and Earl Stafford ($100,000). Compl. ¶ 45.

On February 23, 2016, after a long delay,[8] the Commission voted on motions to find "reason to believe" a violation had occurred with respect to the allegations in plaintiffs' complaints, and failed in each case to obtain the four or more affirmative votes needed to find

[8] The controlling group apparently "refused to consider the first three matters without any justification for several years," and then, "[a]fter stalling on the oldest of these cases for *1,357 days*, they ultimately voted against opening an investigation or engaging in conciliation in every one of them." Statement of Comm'rs Ann M. Ravel and Ellen L. Weintraub at 1-2 (Apr. 13, 2016), MURs 6485 (W Spann), 6487 & 6488 (F8 LLC/Eli Publishing), 6711 (SIG), and 6930 (Michel).

"reason to believe" and proceed with an investigation. *See* 52 U.S.C. § 30109(a). Accordingly, the Commission dismissed all five complaints. On April 1, 2016, the three Commissioners who voted against finding reason to believe a violation had occurred in any of the five MURs issued a Statement of Reasons ("SOR") explaining their rationale.[9]

## III. LEGAL STANDARD

To establish Article III standing, plaintiffs must satisfy three elements. "First, [they] must have suffered an 'injury in fact'—that is, an invasion of a legally protected interest which is 'concrete and particularized' and 'actual or imminent.' Second, there must be a causal connection between [their] injury and the subject of [their] complaint such that the injury is 'fairly traceable to the challenged action of the defendant.' Third, it must be 'likely' that the injury will be 'redressed by a favorable decision.'" *Friends of Animals v. Jewell*, No. 15-5070, 2016 WL 3125204, at *5 (D.C. Cir. June 3, 2016) ("*FOA I*") (citations omitted).

While plaintiffs bear the burden of proving that the Court has subject matter jurisdiction to hear their claims, *see Lujan*, 504 U.S. at 561, "[w]hether a party's claim requires dismissal because of an inability to establish standing depends on the stage of the litigation." *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015) ("*FWW*") (citing *Bennett v. Spear*, 520 U.S. 154, 167-68 (1997)). On a motion to dismiss under FRCP 12(b)(1), plaintiffs "need only 'state[ ] a *plausible* claim' that each element of standing is satisfied." *Hancock v. Urban Outfitters, Inc.*, No. 14-7047, 2016 WL 3996710, at *2 (D.C. Cir. July 26, 2016) (alteration in original) (emphasis added) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009)). General factual allegations are construed in the plaintiffs' favor, and are presumed to

[9] *See* SOR of Chairman Matthew S. Petersen and Comm'rs Caroline C. Hunter and Lee E. Goodman (Apr. 1, 2016), MURs 6485 (W Spann), 6487 & 6488 (F8 LLC/Eli Publishing), 6711 (SIG), and 6930 (Michel) ("Controlling Group SOR").

"embrace those specific facts that are necessary to support the claim." *Lujan*, at 561. At this stage of the proceedings, the Court "may consider materials outside the pleadings in deciding whether to grant a motion to dismiss for lack of jurisdiction." *Jerome Stevens Pharms., Inc. v. FDA*, 402 F.3d 1249, 1253 (D.C. Cir. 2005).

## ARGUMENT

### I. PLAINTIFFS HAVE STANDING TO BRING THIS CASE.

In their complaint, plaintiffs "state[d] a plausible claim" that their activities in multiple programmatic areas, including public education, litigation and legislative advocacy, "suffered an injury in fact fairly traceable to the actions of the defendant that is likely to be redressed by a favorable decision on the merits." *FWW*, 808 F.3d at 913 (citing *Humane Soc'y of the U.S. v. Vilsack*, 797 F.3d 4, 8 (D.C. Cir. 2015)).

The Court should "accept facts alleged in the complaint as true and draw all reasonable inferences from those facts in the plaintiffs' favor." *Hancock*, 2016 WL 3996710, at *2.

#### A. Plaintiffs' Allegations State a Cognizable Claim of Injury in Fact.

As the Supreme Court explained in *FEC v. Akins*, 524 U.S. 11 (1998), a plaintiff "suffers an 'injury in fact' when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *Id.* at 21; *see also Pub. Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 449 (1989) (holding that failure to obtain information subject to disclosure under Federal Advisory Committee Act, or "FACA," "constitutes a sufficiently distinct injury to provide standing to sue"). Plaintiffs CLC and Democracy 21 have been deprived of specific information subject to disclosure under FECA and critical to their organizational activities and missions. Because FECA "requires that the information 'be publicly disclosed' and there 'is no reason to doubt their claim that the information would help them,'" plaintiffs have suffered a sufficiently concrete and

particularized informational injury. *FOA I*, 2016 WL 3125204, at *6 (quoting *Ethyl Corp. v. EPA*, 306 F.3d 1144, 1148 (D.C. Cir. 2002)).

**1. Plaintiffs' Administrative Complaints Seek Information That Is "Required by Statute" to Be Disclosed and That They Have a Right to Obtain.**

One of FECA's original and central purposes was the "[f]ull and timely disclosure" of information about the sources of funds used to influence elections, both to provide the public with information about who is supporting a candidate and as a means of preventing actual and apparent corruption. 118 Cong. Rec. 326 (1972) (Rep. Keith) (singling out "[f]ull and timely disclosure of contributions" as one of FECA's main virtues). *See also* 118 Cong. Rec. 332-33 (1972) (Rep. Anderson) ("[So] that the public will know who is attempting to influence elections, the disclosure of campaign contributions is required."); S. Rep. No. 93-689, at 2 (1974) (noting that original version of FECA was "predicated upon the principle of public disclosure"). As a result of the FEC's decision to dismiss each of the plaintiffs' five administrative complaints, plaintiffs, as well as the public, have been denied information about the true source(s) of campaign funds, in violation of this undisputed central purpose of FECA.

Congress provided for broad disclosure related to political spending because it considered the information essential to the public's ability to evaluate candidates for office and to monitor elected officials in the conduct of their duties. *See Buckley*, 424 U.S. at 66-68. Like statutes such as FACA and the Freedom of Information Act ("FOIA"), FECA creates a right to information required to be disclosed under the Act, and the denial of a claimaint's access to that information can be a sufficient injury in and of itself to establish standing. As the Supreme Court just recently confirmed, "the violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact," *Spokeo*, 136 S. Ct. at 1549—and one of those "circumstances," the Court recognized, is the "'inability to obtain information' that Congress

ha[s] decided to make public" under FECA. *Id.* (citing *Akins*, 524 U.S. at 20-25). *Spokeo* therefore makes clear that "the existence and scope of an injury for informational standing purposes is defined by Congress: a plaintiff seeking to demonstrate that it has informational standing generally 'need not allege any *additional* harm beyond the one Congress has identified.'" *FOA II*, 2016 WL 3854010, at *2 (quoting *Spokeo*, 136 S. Ct. at 1549).

In their administrative complaints, plaintiffs alleged that individuals made contributions to super PACs through LLC and corporate "straw donors" in an unlawful attempt "to hide their identities as the true sources of the contributions in disclosure reports filed with the FEC." Compl. ¶ 2. Although the facts differ somewhat in each case, plaintiffs alleged that these "straw donor" contributions gave rise to apparent violations under two distinct parts of FECA, both inherently disclosure-related: (1) the Act's prohibition on making a contribution "in the name of another," 52 U.S.C. § 30122, and (2) its political committee registration and reporting requirements, *id.* §§ 30102, 30103 and 30104. Both 52 U.S.C. § 30122 and the political committee provisions exist to ensure that the public has full and accurate information about the sources of campaign spending, and, where applicable, to deter and expose illegal contributions. In other words, as plaintiffs' complaint makes clear, these provisions are aimed at providing "the electorate with information 'as to where political campaign money comes from . . .' in order to aid the voters in evaluating those who seek federal office," *Buckley*, 424 U.S. at 66-67, as well as at preventing "actual or perceived corruption in the political process," which Congress sought to eliminate by providing "transparency . . . of who is giving and who is spending money." *Kean for Congress Committee v. FEC*, 398 F. Supp. 2d 26, 38 (D.D.C. 2005). *See* Compl. ¶ 6.

FECA's prohibition on making contributions "in the name of another" maintains the integrity and effectiveness of the donor information that political committees, including super

PACs, are required to report to the FEC, and that the FEC is required to publicly disclose—all of which effectuates the public's interest in comprehensive and meaningful disclosure. Together, these requirements exist to ensure that the public has access to accurate and complete information about political spending. Because of the FEC's dismissals of their administrative complaints, plaintiffs have *neither* accurate nor complete information about the true sources of millions of dollars contributed to super PACs through opaque LLC/corporate entities, "information to which they are legally entitled under FECA and which they use for their particular organizational work and advocacy." Compl. ¶ 6. And, "by being denied access to that information," plaintiffs suffer the precise "type of harm Congress sought to prevent by requiring disclosure." *FOA II*, 2016 WL 3854010, at *3 (citing *Akins*, 524 U.S. at 21-22).

In this circuit, "the nature of the information allegedly withheld is critical to the standing analysis." *Common Cause v. FEC*, 108 F.3d 413, 417 (D.C. Cir. 1997). For example, if a plaintiff were "asserting an interest in knowing how much money a candidate spent in an election, infringement of such an interest may, under *Akins*, constitute a legally cognizable injury in fact." *Id.* at 418. The interest here is a great deal stronger: the information plaintiffs seek is not *how much* money was spent by any particular person in support of a candidate, but *who* spent it.

**2. Plaintiffs' Organizational Interests Have Been Directly and Adversely Impacted by the Deprivation of Information to Which They Are Entitled under FECA.**

To assess whether an organizational plaintiff has standing, courts "conduct the same inquiry as in the case of an individual," *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79 (1982); like individuals, organizations must show "actual or threatened injury in fact that is fairly traceable to the alleged illegal action and likely to be redressed by a favorable court decision." *Equal Rights Ctr. v. Post Props., Inc.*, 633 F.3d 1136, 1138 (D.C. Cir. 2011) (quoting *Spann v. Colonial Vill., Inc.*, 899 F.2d 24, 27 (D.C. Cir. 1990)). Under *Havens*, "an organization may

establish Article III standing if it can show that the defendant's actions cause a 'concrete and demonstrable injury to the organization's activities' that is 'more than simply a setback to the organization's abstract social interests.'" *ASPCA v. Feld Entm't, Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011) (citing *Havens*, 455 U.S. at 379). This is a "two-part inquiry in this circuit, requiring the organizational plaintiff to show that "the agency's action or omission to act 'injured the [organization's] interest,'" and "the organization 'used its resources to counteract that harm.'" *People for the Ethical Treatment of Animals v. USDA*, 797 F.3d 1087, 1094 (D.C. Cir. 2015) ("*PETA*") (citation omitted).

Here, the complaint described in considerable detail plaintiffs' programmatic activities, and how they are impaired by the FEC's failure to investigate the administrative complaints underlying this case and the related diversion of plaintiffs' resources that ensued. Nevertheless, the FEC objects that the plaintiffs "offers only abstract generalities without specifying, for example, any particular litigation, scheduled testimony, or current or looming outreach activity that the Commission's dismissal decisions challenged here might have hindered." FEC Br. 20. But the FEC cites no legal authority for its stringent standard of specificity for the pleadings—and there is none. At the motion to dismiss phase, general factual allegations are construed in the plaintiffs' favor, and are presumed to "embrace those specific facts that are necessary to support the claim." *Lujan*, at 561; *see also, e.g.*, *Humane Soc'y*, 797 F.3d at 8 ("To survive a motion to dismiss for lack of standing, a complaint must state a *plausible* claim that the plaintiff has suffered an injury in fact.") (emphasis added). Plaintiffs have more than adequately plead their organizational injury.

In any event, as set forth in the sections that follow, plaintiffs can provide numerous concrete examples of how the FEC's refusal to require disclosure under the FECA provisions at

issue here has thwarted plaintiffs' discrete programmatic activities and the achievement of their missions.

**a. The inability to obtain required disclosure information directly harms plaintiffs' organizational missions and impairs the programmatic activities they use to advance their missions.**

Plaintiffs' alleged injuries are concrete and go directly to their overarching organizational mission: to "strengthen our democracy" and "make democracy work for all Americans." Compl. ¶¶ 10, 14. In pursuing this mission, CLC and Democracy 21 are uniquely positioned among nonprofit organizations in their focus on issues of campaign finance and political disclosure and their concentration on legal work and public education in this area.

CLC was founded in 2002 by Trevor Potter, a former chairman and commissioner of the FEC, principally for the purpose of defending the newly-enacted Bipartisan Campaign Reform Act of 2002 ("BCRA") against constitutional challenge. Decl. of Paul S. Ryan ¶ 4 (attached hereto as Exhibit A). Today, CLC's mission includes "improving democracy" by defending campaign finance reforms, ensuring their proper implementation and enforcement, providing advice and assistance in the drafting and implementation of new laws, and serving as a legal and policy resource for the public and other organizations. Ryan Decl. ¶ 4. Since its founding, CLC has either represented a party or served as an *amicus curiae* in every campaign finance case decided by the Supreme Court, and filed comments or otherwise participated in almost every FEC rulemaking or proceeding of note. Compl. ¶¶ 12, 13.

Democracy 21 was founded in 1997 by Fred Wertheimer, who previously served from 1981 to 1995 as President of Common Cause, a nonpartisan advocacy group focusing on campaign finance and other good government reforms, and who has worked for over four decades on issues related to money in politics. Decl. of Fred Wertheimer ¶ 1 (attached hereto as Exhibit B). Democracy 21 also frequently participates in campaign finance litigation, and has

been active in filing comments and other submissions in proceedings before the FEC and IRS. *Id.* ¶¶ 6, 8, 9.

CLC and Democracy 21 work to realize their missions in four programmatic areas: public education, litigation, regulatory practice, and legislative policy efforts. Ryan Decl. ¶ 5. The FEC's failure to require disclosure of the true donors to the respondent committees, and the lack of accurate reporting of donors to super PACs under FECA that results from that failure, deprives plaintiffs of the information necessary to fulfill their programmatic goals. *Id.* ¶ 7.

***1. Public Education***

A central aspect of plaintiffs' programmatic work, and a key way they advance their organizational missions, is through public education efforts, i.e., "ensur[ing] that the public has access to information about the financing of our election campaigns." Compl. ¶ 10; Ryan Decl. ¶ 8. As the Supreme Court has held, campaign finance disclosure serves at least two essential interests of the public. "Disclosure provides the electorate with information 'as to where political campaign money comes from and how it is spent . . . in order to aid the voters in evaluating those who seek federal office." *Buckley*, 424 U.S. at 66-67 (footnotes omitted). In addition to this informational interest, the Court has also recognized that "disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." *Id.* at 67. CLC and Democracy 21 work to advance both of these interests in their public information efforts.

First, in terms of the informational interest, plaintiffs seek to educate voters as to persons and entities funding political communications to enable them "to evaluate the full context of the message." Ryan Decl. ¶ 9. Information about who is financing independent spending is particularly important in the wake of recent decisions that have deregulated in this area, such as

*Citizens United*, which invalidated the 60-year old ban on independent expenditures by corporations to influence federal elections. In striking down the ban, however, *Citizens United* heralded disclosure as an important check on any abuse of independent expenditures, noting that "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." 558 U.S. at 371. Similarly, in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010), the D.C. Circuit upheld the political committee disclosure requirements at issue here while at the same time striking down contribution limits applicable to committees making only independent expenditures. As the court explained, these disclosure provisions are important because "the public has an interest in knowing who is speaking about a candidate and who is funding that speech" even in connection to expenditures made independently of candidates or parties. *Id*. at 698. Without information about the true donors to super PACs like ROF, FWFA or Black Men Vote, CLC and Democracy 21 cannot effectively "alert the voter to the interests to which a candidate is most likely to be responsive." *Buckley*, 424 U.S. at 67. Ryan Decl. ¶ 12; Wertheimer Decl. ¶ 11.

The practical reality is that most voters do not have the time or expertise to review campaign reports to find and analyze specific information regarding who is funding political activity. It falls upon intermediary groups and individuals, such as reporters, bloggers, and nonprofit organizations such as CLC and Democracy 21, to do the research and disseminate the information to the voters. Ryan Decl. ¶ 10.

Second, CLC and Democracy 21 in particular seek to educate the public about instances where those who finance independent spending obtain undue influence over or access to candidates and officeholders so that voters can "hold those officeholders accountable and prevent corruption." Ryan Decl. ¶ 11. Even while deregulating independent corporate spending, the

*Citizens United* Court recognized that "[i]f elected officials succumb to improper influences from independent expenditures; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern." 558 U.S. at 361. Without accurate and verified donor disclosure, CLC and Democracy 21 cannot analyze connections between campaign contributions and policy outcomes, nor communicate to the public specific instances of political quid pro quo corruption. Ryan Decl. ¶ 12.

To promote these recognized public interests, CLC uses information obtained from FEC disclosure reports to prepare "publications, op-eds, blog posts, and other commentary through appearances on broadcast media and in interviews for print and web publications." Compl. ¶ 13. "These communications are directed towards educating policy makers and the public about who is spending money to influence elections through contributions to super PACs, candidates, political committees and party committees, as well as direct expenditures for independent expenditures and electioneering communications." *Id.* ¶ 13. Similarly, Democracy 21 "conducts public education efforts," *id.* ¶ 14, including by "regularly publish[ing] a Political Money Report," and "makes use of FEC campaign finance data in the op-ed articles it publishes and distributes to the media and the public." *Id.* ¶ 15. These activities are directly impeded by the FEC's failure to enforce the federal disclosure laws: quite simply, if plaintiffs do not have accurate donor information, they cannot educate the public on the financing of federal elections.

And plaintiffs also expend considerable resources to assist other information providers, such as reporters and other media representatives, who serve as intermediaries for the public. Wertheimer Decl. ¶ 5. CLC estimates that its staff handles at least 20 press calls a week. Ryan Decl. ¶ 14. According to internal tracking, CLC experts have been quoted or mentioned in approximately 475 separate articles just since February 1 of this year. *Id.*

Many of these calls involve questions about the sources of the funds being contributed to super PACs supporting specific candidates. *Id.* ¶ 15. The inadequate reporting of the donors to super PACs and concomitant difficulty in ascertaining who is financing independent spending often causes reporters to contact plaintiffs, for both guidance as to the law and advice on how to find information about significant donors to political committees that is not being properly reported. *Id.* ¶ 13. This work requires plaintiffs to divert resources and funds from other organizational needs to devote to this type of media outreach and collaborative research. *Id.*; Wertheimer Decl. ¶ 5.[10]

***2. Litigation***

The second programmatic area adversely affected by the FEC's refusal to investigate the respondent committees' failure to comply with the disclosure laws is CLC and Democracy 21's work in litigation.

To be sure, an Article III injury in a legal suit cannot be based on an organization's "expenditure of resources on that very suit." *Nat'l Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1434 (D.C. Cir. 1995) (quoting *Spann*, 899 F.2d at 27). But plaintiffs are not "piggybacking" on outlays related to this case, but instead, referring to their full organizational dockets, which include cases defending against challenges to the constitutionality of campaign finance laws, governmental ethics rules and various political disclosure laws, as well as affirmative cases (like this one) that seek to compel agency action or to advance the jurisprudence on democracy issues.

[10] This information about donors to super PACs is relevant to an analysis of the interests to which a candidate is likely to be responsive and to detecting any overlap in the interests of those supporting a super PAC and those supporting a candidate. In addition, the identity of the contributors to a super PAC may be relevant to an analysis of whether the super PAC is acting truly independently of the candidate. Ryan Decl. ¶ 15.

CLC was active as either an *amicus curiae* or counsel to a party in 19 cases in 2015, including representing Delaware's Attorney General and Commissioner of Elections in a constitutional challenge to the state's electioneering communications disclosure law. Ryan Decl. ¶ 17. The majority of the cases concerned the constitutionality or legality of various disclosure regimes applicable to campaign expenditures by groups "independent" of candidates or party committees, such as the respondent committees here. *Id.*

Plaintiffs' litigation programs are adversely affected by the lack of information in two principal ways. First, in their briefs and other legal submissions, plaintiffs frequently cite specific information about individual contributors reported to the FEC in disclosure reports under FECA. Ryan Decl. ¶ 18; Compl. ¶ 12. For instance, *amici* briefs submitted by CLC and Democracy 21 in the district court and Supreme Court in *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014) made frequent use of FEC disclosures, presenting data on large aggregate donors and the fundraising activities of joint fundraising committees.[11]

Second, an evidentiary record showing how the law at issue advances a cognizable governmental interest, mostly commonly the state's anti-corruption interest, is often crucial to the law's constitutional defense. *See, e.g.*, *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 391 (2000) ("[T]he quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised."). Even though this evidentiary burden may vary depending on the nature of the challenged law, the First Amendment requires something more than "mere conjecture" about the interests served by a campaign finance law. *Id*. at 392. *Cf. Citizens United*, 558 U.S. at 360

[11] *E.g.*, Brief of CLC et al. as *Amici Curiae* in Support of Appellee, *McCutcheon v. FEC*, 134 S. Ct. 1434 (No. 12-536), http://www.campaignlegalcenter.org/sites/default/files/12-536_bsac_Campaign_Legal_Center_0.pdf. *See also* Wertheimer Decl. ¶ 6.

(striking down corporate expenditure restriction in part because the McConnell record did not have "any direct examples of votes being ex-changed for . . . [independent] expenditures") (quotations omitted). Without knowledge of the identities of large campaign contributors, CLC is unable to link contributions to political favors and thereby create a record substantiating quid pro quo corruption. Ryan Decl. ¶ 19.

In particular, CLC and Democracy 21 have been active in litigating the constitutionality of restrictions on contributions to independent expenditure-only committees for almost a decade, including participating as *amici curiae* in *SpeechNow* and *North Carolina Right to Life, Inc. v. Leake*, 525 F.3d 274 (4th Cir. 2008). Ryan Decl. ¶ 20 & n.2. *See also* Wertheimer Decl. ¶ 8. CLC and Democracy 21 believe the constitutionality of such restrictions will remain a fundamental focus of their future litigation efforts. Ryan Decl. ¶ 20. Key to any defense of such contribution restrictions is a record corroborating the anti-corruption interests they serve, with evidence demonstrating, for instance, the political influence and access obtained by large contributors to super PACs, as well as any explicit quid pro quos that arise from such unregulated contributions. *Id.* ¶ 21. In the *SpeechNow* litigation, CLC attempted as *amici* to introduce evidence into the record relating to the donors to independent expenditure committees and the political influence their donations purchased—as did the FEC in their unsuccessful defense of these federal limits. *Id.* But without accurate reporting of the donors to super PACs and other committees, neither plaintiffs nor any governmental defendant—including the FEC—can compile the type of record that will be needed to sustain such limits, as well as many other types of campaign finance laws.

***3. Administrative agency practice***

Another program inhibited by the Commission's failure to investigate, as well as its general failure to ensure accurate donor disclosure, is plaintiffs' administrative practice to ensure the effective implementation and interpretation of campaign finance laws. Ryan Decl. ¶ 22. CLC regularly "participates in rulemaking and advisory opinion proceedings at the FEC to ensure that the agency is properly interpreting and enforcing federal election laws and files complaints . . . against individuals or organizations that violate the law." Compl. ¶ 10. Democracy 21 "also participates in rulemakings and advisory opinion proceedings, and other administrative matters, at the FEC." *Id.* ¶ 14.

Between March 2015 and March 2016, CLC filed eight complaints with the FEC, submitted three sets of comments on FEC rulemakings and sent eight letters to federal regulatory agencies such as the IRS or SEC on enforcement matters. Ryan Decl. ¶ 23. Democracy 21 joined in most of those administrative filings. Wertheimer Decl. ¶ 9.

The FEC's failure to enforce the straw donor prohibition in connection to the plaintiffs' five complaints has had a detrimental impact on plaintiffs' agency practice. First, it has created a roadmap for other donors to evade the applicable disclosure laws by employing LLCs as straw donors to conceal contributions to super PACs. Ryan Decl. ¶ 25. CLC and Democracy 21 have had to divert resources to counter these blatant violations of 52 U.S.C. § 30122, and have filed an additional four complaints with the FEC to address this abuse:

- On February 22, 2016, CLC and Democracy 21 filed an FEC complaint against DE First Holdings, which came into existence just one day before it gave $1 million to the super PAC Coalition for Progress, requesting that the FEC investigate whether the LLC was the true source of the funds as required by 52 U.S.C. § 30122.
- On February 22, 2016, CLC and Democracy 21 filed an FEC complaint against Andrew Duncan and IGX alleging possible violations of 52 U.S.C. § 30122, after Duncan stated

to the Associated Press that he had used the company, IGX, to make a donation of $500,000 to the super PAC supporting Marco Rubio, Conservative Solutions PAC.

- On March 2, 2016, CLC and Democracy 21 filed a complaint asking the FEC to investigate contributions funneled through "Decor Services LLC" to a pro-Chris Christie super PAC just 16 days after the LLC's formation.

- On March 22, 2016, CLC and Democracy 21 filed a complaint against Children of Israel LLC for violating 52 U.S.C. § 30122 by contributing $150,000 to Pursuing America's Greatness, a super PAC supporting Mike Huckabee's presidential run, and $250,000 to Stand for Truth, a pro-Ted Cruz super PAC.

Ryan Decl. ¶ 25 & n.3.

Second, the FEC's failure to investigate the complaints here and to ensure accurate donor disclosure has greatly hindered plaintiffs' efforts to "help expose violations of other campaign finance restrictions, such as those barring contributions from foreign corporations or individuals." *SpeechNow*, 599 F.3d 698. Ryan Decl. ¶ 26. Without complete and correct donor information, there is no way to verify that super PACs are complying with the applicable source prohibitions, such as the prohibition on contributions by governmental contractors, 52 U.S.C. § 30119, or foreign nationals, *id.* § 30121. In July of this year, for instance, CLC and Democracy 21 filed a complaint alleging that Suffolk Construction Company, a contractor to the federal government, had given the super PAC Priorities USA Action over $300,000 in violation of 52 U.S.C. § 30119.[12] Although in this instance, the reported contributor appears to be the true donor, the FEC's inadequate enforcement of the disclosure laws calls into question whether the identities of other donors or their status as governmental contractors can be verified.

Furthermore, without accurate reporting, plaintiffs—not to mention the FEC—have no means of knowing whether foreign nationals are attempting to impact American elections by

[12] CLC & Democracy 21 Complaint re: Priorities USA & Suffolk Construction (Jul. 6, 2016), http://www.campaignlegalcenter.org/sites/default/files/FEC%20Complaint%20Against%20Priorities%20USA%20Action.pdf.

routing veiled donations through straw donors. The concern about illegal foreign influence is not chimerical: CLC and Democracy 21 recently filed a complaint against the campaign of Republican presidential nominee Donald Trump requesting that the FEC investigate his repeated solicitation of foreign nationals—including foreign politicians in Iceland, Scotland, Australia and England—for campaign contributions in open violation of FECA.[13]

Finally, the lack of accurate donor disclosure impedes plaintiffs' ability to effectively participate in rulemaking proceedings before the FEC and other agencies. Without a clear understanding of the financing of federal elections, plaintiffs will be disadvantaged in their efforts to craft new rules and guidance, as well as in their ability to analyze proposed rules and participate in other FEC guidance proceedings. Ryan Decl. ¶ 27.

***4. Legislative policy***

Also adversely impacted by the FEC's failure to investigate violations of the disclosure laws are plaintiffs' efforts to achieve legislative and policy solutions that are effective, realistic and can survive judicial review under current Supreme Court jurisprudence. Ryan Decl. ¶ 28. CLC provides advice and assistance in support of important money in politics reforms, aiding legislators, other nonprofit organizations, ballot measure groups and policymakers in the drafting and analysis of legislation and administrative regulations. CLC engages in these efforts at all levels of government. CLC's State and Local Reform Program conducts activities ranging from drafting state and local reform proposals or ballot initiatives to providing expert witness testimony in state and local legislative and agency hearings. CLC is currently advising or advised

[13] CLC & Democracy 21 Complaint re: Donald J. Trump for President (June 29, 2016), http://www.campaignlegalcenter.org/sites/default/files/FEC%20Complaint%20Against%20Trump.pdf.

in the last year more than 15 states or local municipalities on campaign finance, pay-to-play and disclosure reforms. Ryan Decl. ¶ 29.

At the federal level, plaintiffs are asked testify before Congress on problems with the current campaign finance laws and to provide expertise in the drafting of campaign finance legislation. *Id.* ¶ 30; Wertheimer Decl. ¶ 10. For example, in its July 2015, testimony before the United States Senate Committee on the Judiciary, Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts CLC discussed the lack of disclosure of political contributions to super PACs.[14] Representatives of Democracy 21 similarly have testified in Congress about various campaign finance reform measures. *Id.* ¶ 10.

The FEC's failure to ensure accurate reporting under FECA of the donors funding independent expenditures affects this programmatic area in at least two concrete respects. First, as discussed with respect to the litigation programs, most campaign finance laws cannot survive constitutional review without an evidentiary record. Ryan Decl. ¶ 31. The record supporting a state law can highlight the experiences of different jurisdictions, including elections at the federal, state and municipal level, to substantiate the purpose and constitutional justification for the law. *See Shrink Missouri*, 528 U.S. at 391 (finding that Missouri can look to other jurisdictions for evidence of potential corruption to justify state contribution limit including federal elections). Consequently, CLC works to assist lawmakers and other advocates in building a legislative record, based on national, regional and local evidence of problems to be remedied by legislation, and its experts testify before governmental bodies in support of legislation and provide evidence of money-in-politics problems. Ryan Decl. ¶ 31. Analysis of the identity of

[14] Testimony of Lawrence M. Noble, *Revisiting IRS Targeting: Progress of Agency Reforms and Congressional Options*, U.S. Senate Committee on the Judiciary (July 29, 2015), http://www.campaignlegalcenter.org/sites/default/files/Larry%20Noble%20Testimony%20before%20Senate%20Judiciary%20on%20-%20IRS%20501cs%207-29-15.pdf.

donors to political committees—and in particular, testimony as to any political influence purchased though large donations to super PACs or other political committees—is key to substantiating the anti-corruption purpose of a proposed law or policy.

Second, crucial to enactment of such legislation is a communications effort that describes the public interests advanced by the legislation, in particular the prevention of the purchase of political influence and access. Ryan Decl. ¶ 32. Documenting the connection between campaign contributions and political favors is one of the most effective and important forms of advocacy for campaign finance legislation or ballot measures. Efforts to "follow the money" are entirely reliant on accurate and verifiable disclosure of donors to committees and other political actors—exactly the type of information that FECA requires and the FEC has declined to pursue in connection to the administrative complaints underlying this case.

**b. Defendant's attempts to discount plaintiffs' allegations of injury to their programmatic activities fail and run counter to the applicable case law.**

The FEC first attempts to attack plaintiffs' allegations of injury by asserting that plaintiffs' description of their organizational harm is not sufficiently concrete, making it mere "speculation" and "conjecture." FEC Br. 20.

But the D.C. Circuit's recent *PETA* decision makes clear that its organizational standing precedents do not erect the impossible jurisdictional bar the FEC describes. 797 F.3d at 1097. In *PETA*, an organizational plaintiff with a mission of "prevent[ing] cruelty and inhumane treatment of animals" alleged that "[o]ne of the primary ways [it] accomplishes its mission is educating the public by providing 'information about the conditions of animals held by particular exhibitors." *Id.* at 1094 (citations omitted). The court found that the USDA's failure to enforce the Animal Welfare Act had "perceptibly impaired" that mission because it "deprived PETA of key information that it relies on to educate the public," *id.*, namely, enforcement reports that the

USDA had no statutory obligation to produce. Therefore, "at the dismissal stage," PETA had "alleged a cognizable injury sufficient to support standing," *id*. at 1094-95—*even though* there was "no suggestion that anything in the Animal Welfare Act or any regulation [gave] PETA any legal right to such information," *id.* at 1103 (J. Millett, dubitante). If PETA's claims of informational injury were sufficient to establish its organizational standing, plaintiffs' allegations here certainly clear Article III's jurisdictional hurdle.

Also instructive is *Action Alliance of Senior Citizens of Greater Philadelphia v. Heckler*, 789 F.2d 931, 935 (D.C. Cir. 1986), in which the court found standing as to "four organizations that endeavor[ed], through informational, counseling, referral, and other services, to improve the lives of elderly citizens" in a challenge to regulations adopted by the U.S. Department of Health and Human Services (HHS). Their alleged injury pertained to the fact that "the HHS-specific regulations . . . significantly restrict[ed] [the] flow" of "information regarding services available to the elderly." *Id*. at 937. The court noted that "the challenged regulations den[ied] the [plaintiffs] access to information and avenues of redress they wish to use in their routine information-dispensing, counseling, and referral activities." *Id*. at 937-38. It concluded that, "[u]nlike the mere interest in a problem or [an] ideological injury," the plaintiffs had "alleged inhibition of their daily operations, an injury both concrete and specific to the work in which they are engaged." *Id.* at 938 (citations omitted).

As was the case in *PETA* and *Action Alliance*, the FEC's failure to require the reporting of the identities of the true donors to super PACs has "significantly restrict[ed] [the] flow" of "key information" that CLC and Democracy 21 "rel[y] on to educate the public," as well as in litigation, regulatory proceedings and legislative advocacy. *PETA*, 797 F.3d at 1094; *Action Alliance*, 789 F.2d at 937. This is not "conjecture." Plaintiffs' submissions provide a concrete,

factual description of their programmatic activities and how the FEC's failure to investigate "den[ies] [CLC and Democracy 21] access to information and avenues of redress they wish to use in their routine . . . activities," *Action Alliance*, 789 F.2d at 937-38, in multiple programmatic areas.

The FEC next disputes whether plaintiffs have established an injury in fact by contending that "the information of which plaintiffs claim to have been deprived must be 'directly related to voting' to constitute a legally cognizable injury," FEC Br. 11 (citing *Akins*, 524 U.S. at 24-25), and that this circuit categorically limits informational standing to plaintiffs who seek information that would be "useful in voting," *id*.

But, almost by definition, much of the information required to be disclosed under FECA is "related" to voting and would be useful to voting. *See, e.g.*, 52 U.S.C. § 30101(8)(A)(i) (defining "contribution" as "any gift . . . or anything of value made" "for the purpose of *influencing any election* for Federal office") (emphasis added). The FEC does not seriously claim—nor could it—that the identity of donors giving as much as $1 million is not "useful" to informed voting. Instead, the FEC implies that plaintiffs need *themselves be voters* for standing purposes, while simultaneously all but acknowledging that the case law does not support this conclusion. FEC Br. 18-19 & n.4. In *Akins*, the Court "found nothing in [FECA] that suggests Congress intended to exclude voters from the benefits of these provisions, o*r otherwise to restrict standing*, say, to political parties, candidates, or their committees." 524 U.S. at 20 (emphasis added).

As subsequently confirmed in *Kean for Congress*, a committee or group therefore has standing if it can demonstrate that the information sought would be "useful" to its mission and programmatic activities. There, the FEC likewise argued that "FECA disclosures are meant *only*

for voters." 398 F. Supp. 2d at 37. The Court disagreed, finding that "*Akins* does not lend itself to such a narrow construction." *Id.* It went on to explain:

> Beyond the language in *Akins*, it is plain that the ultimate goal of FECA was to eliminate actual or perceived corruption within the political process. To further that goal, especially as to perceived corruption, the reporting requirements in FECA create transparency in the political process by informing the political process of who is giving and who is spending money. There is nothing in the text of FECA limiting that information to voters, nor would it seem to further the ends of FECA if voters were the only political actors the information was intended to assist.

*Id.* at 38 (citations omitted). Like the other non-voter actors discussed in *Kean for Congress*, groups like CLC and Democracy 21 "serve a critical role in the political process of accumulating and disseminating information to their supporters and to voters in general." *Id.*

The decision in *CREW v. FEC*, 401 F. Supp. 2d 115 (D.D.C. 2005) ("*CREW I*"), where CREW had also asserted an informational injury, does not counsel otherwise. There, the Court found that CREW, a section 501(c)(3) group, had no standing to pursue its challenge to the FEC's dismissal of its complaint after the FEC found "reason to believe" that President George W. Bush's 2004 presidential campaign had received a voter list as an illegal in-kind contribution. But the Court's chief concern was that "there are a multitude of reason[s] to doubt [CREW's] asserted justification for the information sought," *id*. at 120 (citations omitted), because the FEC had already found that the Bush campaign had violated FECA and obtained an estimate of the list's value from the respondents. *Id*. at 117. CREW was attempting to maintain its lawsuit solely on the ground that it needed a *more detailed* valuation of the list than what the respondents had already provided. *Id*. The court's concern was less about CREW's status as a non-voter and more about the character of the information CREW was seeking: "the precise dollar value of the list" was not "useful in voting *at all*, even to the participants in the political process." *Id*. at 121 (citations omitted).

Here, by contrast, plaintiffs are trying to uncover or corroborate the identities of some of the largest contributors in the 2012 election, and to ensure that the FEC requires accurate reporting of all donors to super PACs active in federal elections. True and complete information about the identity of large donors is necessary to the detection of quid pro quo corruption, making this the form of disclosure that is likely most crucial to achieving "the ultimate goal of FECA," i.e., "eliminate[ing] actual or perceived corruption within the political process." *Id.* at 38. And unlike in *CREW*, the FEC has taken *no* action in connection to the five complaints here. The FEC certainly has not obtained from the respondents any sworn statements as to the true donors to the committees named in the complaints—at least not to plaintiffs' knowledge, which is admittedly incomplete given the FEC's refusal to provide the administrative record as required by LCvR 7(n)(1). The only information available to plaintiffs is a handful of unverified and unverifiable media reports, some of which are even disputed by the persons named as donors therein. *See, e.g.*, FGCR at 19, MUR 6711 ("[T]he facts are disputed as to who directed that these funds were to be contributed to FWFA."); Response from Richard J. Stephenson at 2 (June 14, 2013), MUR 6711 (SIG). Of course, the FEC's OGC largely concluded that these reports "provide a level of specificity that rises above mere surmise," FGCR at 10, MURs 6487 & 6488, but three Commissioners apparently did not agree.

Finally, in part because the information sought here is so much more central to informed voting than the single valuation at issue in *CREW*, its absence causes a broad array of injury to plaintiffs' activities in public education, litigation, regulatory practice and legislative policy. The court in *CREW* noted that the group alleged "no demonstrable injury . . . with respect to any programmatic activity," 401 F. Supp. 2d at 123—and indeed, it is difficult even to conceive of how a slightly more precise monetary valuation of a single voter list *could* even impact its

organizational activities. Here, by contrast, plaintiffs have described at length the harm the FEC's abdication of its statutory duty to require accurate donor disclosure has caused to CLC's and Democracy 21's four principal programmatic areas.

**3. Plaintiffs Are Not Already "Privy" to the Information Sought in Their Administrative Complaints.**

The Commission's entire jurisdictional argument principally rests on the claim that plaintiffs have suffered no redressable injury because they already have "the very information they could possibly obtain" through their administrative actions. FEC Br. 12. That claim, in turn, appears to be based entirely on the FEC's assertion that the "plaintiffs' judicial complaint repeatedly identifies the individuals that provided the money used to make the contributions," FEC Br. 8, and that suffices to extinguish any claim of informational harm. This line of attack misrepresents the plaintiffs' complaint and is impossible to square with the underlying facts of this case. Contrary to the FEC's representations, plaintiffs are *not* already "privy" to the information they sought in their administrative complaints and that they continue to seek by way of this lawsuit.

Notwithstanding the fact that their complaint identifies some individuals that have been publicly identified in connection with some of the unlawful contributions at issue in the five MURs, plaintiffs do not have complete information as to all five matters. Indeed, one of the individuals named in plaintiffs' judicial complaint as someone who may have "provided the money used to make the contributions" (FEC Br. 13) not only never confirmed having any connection to the LLC entities in question, but also denounced the allegations as "unadorned speculation" based on "anonymously sourced news articles."[15] And even if every piece of

[15] *See, e.g.*, Stephenson Response at 2, MUR 6711 (attacking the "veracity" of the articles); Response from F8 LLC at 1 (Oct. 6, 2011), MUR 6487 (F8 LLC) ("The complaint identifies 'person(s) who created, operated and/or contributed to F8 LLC,' but provides no factual basis for

"unsubstantiated, anonymously-sourced" information the media has reported about these individuals turns out to be true, it would not account for all of the straw contributions at issue in the five MURs. For example, the plaintiffs' judicial complaint acknowledges Steven J. Lund's apparent connection to F8 LLC, but states only that OGC found "reason to believe" that F8 was "not the true source of the $1 million contribution," Compl. ¶ 37, and specifically refers to "Unknown Respondents" in connection with that entity. *Id.* ¶ 39. *See also* FGCR at 16, MURs 6487 and 6488 (recommending "reason to believe" finding "*to determine whether others played a role* in funding th[e] contributions [from F8 and Eli Publishing].") (emphasis added).

Moreover, even assuming any of this information *were* verified or complete, FECA still conditions the form of its disclosure. The public—and the plaintiffs here—have a right to receive information required under FECA that conforms to FECA's specific disclosure provisions, i.e., information reported in the particular manner, form and time prescribed by statute.[16] Assuming plaintiffs *did* possess all of the information sought in their administrative complaints (and they do not) the specific programmatic purposes for which they seek this information requires it to have some indicia of authenticity. For example, plaintiffs need accurate and verifiable disclosure information for use in future scholarly publications, legislative testimony and court filings—and, notwithstanding the FEC's credulous statement that plaintiffs already have sufficient information that they are "free to use for all the purposes they claim" (FEC Br. 14), self-serving press

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the identity of those persons, their alleged involvement in the alleged violations, or even whether such persons exist.").

[16] In the [FOIA] context, by way of analogy, "[t]he 'Supreme Court has expressly ruled that persons seeking to vindicate a statutory right to information have standing even if they know or should know that the untruthful information they receive is false, and *even if the information is available to them through other channels*.'" *Zivotofsky ex rel. Ariz. v. Sec'y of State*, 444 F.3d 614, 618 (D.C. Cir. 2006) (emphasis added) (quoting *Pub. Citizen v. FTC*, 869 F.2d 1541, 1548 n. 13 (D.C. Cir. 1989)).

releases and preliminary findings in a General Counsel's Report are no substitutes for the disclosure required under FECA.

This argument reflects a cavalier attitude towards the requirements of the laws the FEC is entrusted to enforce and the public's right to accurate information presented in the manner in which Congress dictated. First, the representations in the complaint regarding the identity of the contributions are based on various sources, none of which were the reports the statute required to be filed with the FEC. In fact, the Commission itself has never confirmed that these individuals "provided the money," the named individuals themselves have refused to acknowledge "provid[ing] the money," the controlling group of Commissioners pointedly questioned the credibility and accuracy of this information,[17] and considerable information required to be disclosed under FECA remains unknown and unavailable to plaintiffs in any form. Second, even if it turns out that the information was accurately reported in the press or via other public statements, that is not a substitute for the information being reported accurately to the FEC, with any false statements subject to criminal and civil sanction. *See, e.g.*, 52 U.S.C. § 30109(d); 18 U.S.C. § 1001. While the FEC may be unconcerned with the requirements of the law it enforces, the credibility of the work of those who use that information, like CLC and Democracy 21, depends on the ability to rely on its standardization, accuracy and central availability.

**a. Plaintiffs do not allege that they seek information that is "already available to them."**

The FEC's contention that plaintiffs have "allege[d] the very information they could possibly obtain" (FEC Br. 12) is simply incorrect. Plaintiffs seek this Court's review of the dismissal of their administrative complaints, so their judicial complaint necessarily addresses the

[17] Controlling Group SOR at 5 (criticizing OGC's theory that Stephenson may have been the "true source" of the $12 million contributed to FWFA as unfounded because it was "[b]ased on anonymous sources quoted in a news article").

relevant facts of the underlying MURs. In some of those MURs, plaintiffs or the OGC referenced press reports that suggested that certain individuals may have "provided the money" to the LLCs. But plaintiffs have nowhere alleged or implied that they currently know who in fact provided the money.

In making this argument, the Commission makes far too much of plaintiffs' reference to having been deprived of "timely" information. *See, e.g.*, FEC Br. 1, 8, 13, 14, 20, 22; *see also* FEC Reply Supp. Mot. to Defer at 4 (Dkt. 17). As a threshold matter, this claim is really one of mootness, not standing: the FEC is simply claiming that this controversy is no longer live. *E.g.*, FEC Br. 13 ("Regardless of *when* the plaintiffs obtained the information . . . they have such information *now*.").[18] Whatever their theory of justiciability, the argument is unavailing.

By hanging its entire motion to dismiss on this supposedly "revealing" (FEC Br. 13) or "telling[]"[19] word, the FEC appears to either misunderstand or willfully misconstrue plaintiffs' complaint. Plaintiffs allege that they have been "deprived of timely information," which was required to be disclosed and to which they were entitled under FECA, "as a result of the FEC's dismissal of plaintiffs' administrative complaints." But *untimeliness* is not the injury they

[18] Presumably, the FEC frames this argument in terms of injury in fact because, under a mootness analysis, plaintiffs' claims are plainly of the type that are "capable of repetition, yet evading review." *Cf. Shays v. FEC*, 424 F. Supp. 2d 100, 111 (D.D.C. 2006) ("Just because defendants have uttered the word 'redressibility' instead of 'mootness,' however, does not change the fact that defendants are raising, at heart, a mootness challenge.").

[19] The Commission also attacks plaintiffs' complaint on this basis because, in their opposition to the FEC's *separate* motion to defer, they "tellingly" failed to "dispute that they are *now* aware of the sources of money used to make the contributions that are the basis for their administrative complaints." Reply at 5. Plaintiffs were obviously under no obligation to respond to the Commission's jurisdictional claims in the context of a separate procedural motion, but insofar as the Commission seeks to merge consideration of its two motions, its characterization of the plaintiffs' complaint is flatly wrong for all of the reasons discussed here. And, as also stated in their opposition to the FEC's motion to defer, plaintiffs' position was and is that there are no jurisdictional deficiencies on the face of their complaint that they need the administrative record to "cure," but the record might be helpful to the Court's standing inquiry and the FEC has offered utterly no reason to justify a departure from Rule 7(n)'s default requirement.

claim.[20] The FEC elides the fact that plaintiffs simply do *not possess*, nor have they alleged that they possess, full disclosure of the true donors to the committees named in the administrative complaints. Their injury is not a temporary past deprivation of information subsequently disclosed, but the past and *ongoing* deprivation of information *never* disclosed; the untimeliness of the disclosure is a continuing harm. Ultimately, although the Commission labors mightily to transform a single adjective into an admission of jurisdictional defect or mootness, the word cannot bear such weight.

Moreover, the discussion of these individuals in the complaint characterizes the *OGC*'s findings, as well as information supplied by the individuals themselves in response to the complaints or as reported in news articles; plaintiffs do not assert this information as proof of its truth, completeness or accuracy. *See, e.g.*, Compl. ¶¶ 31, 42, 46, 47 ("Conard claimed," "OGC found," "Lund is reported to have told the news media," and "[a]ccording to [a press report]."). As noted in their complaint, plaintiffs simply asserted that this information was more than sufficient to support a "reason to believe" finding, so the dismissal of their administrative complaint rested on an impermissible interpretation of FECA and was arbitrary, capricious, an abuse of discretion and otherwise contrary to law. Compl. ¶ 65. *See also* 52 U.S.C. § 30109(a)(8)(A); *Orloski v. FEC*, F.2d 156, 161 (D.C. Cir. 1986).

[20] Of course, plaintiffs' administrative complaints *were* "subject to inordinate delay," *see* SOR of Vice Chairman Steven T. Walther, and Comm'rs Ann M. Ravel and Ellen L. Weintraub at 2 n.3 (Apr. 1, 2016), MURs 6485 (W Spann), 6487 & 6488 (F8 LLC/Eli Publishing), 6711 (SIG), and 6930 (Michel)—although plaintiffs do not base their standing on that fact. The FEC's inability to resolve their complaints in a timely manner goes to merits issues—namely, it tends to negate the purported concerns about the need for "fair notice" and "First Amendment clarity" espoused in the controlling Commissioners' dispositive SOR. *See* Controlling Group SOR at 2, 12-14; *see also* Ravel and Weintraub Statement at 1 ("Our colleagues' sudden belief in the importance of public guidance on this topic rings hollow when there were so many opportunities over the course of almost four years to provide that guidance.").

The FEC's position is particularly unreasonable given the posture of plaintiffs' administrative complaints, which were all dismissed under the undemanding "reason to believe" standard applicable at the investigatory stage of FEC enforcement proceedings. The FEC has described the statutory "reason to believe" phrase as "misleading" because it "implies that the Commission has evaluated the evidence and concluded that the respondent has violated the Act," when in fact "a 'reason to believe' finding simply means that, after evaluating the complaint, the respondents' responses to the complaint . . . and information available on the public record, the Commission believes a violation *may have* occurred." FEC Legislative Recommendations 2005, http://www.fec.gov/law/legislative_recommendations_2005.shtml (emphasis added). Indeed, according to the Commission's stated policy, "reason to believe" exists where "a complaint credibly alleges that a significant violation may have occurred." FEC Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12545 (Mar. 16, 2007). Yet the Commission, without ever having analyzed whether any of plaintiffs' complaints raised "credibl[e] alleg[ations]," now wants to use the substance of those allegations against plaintiffs to defeat their right of judicial review.

Because plaintiffs' complaints were dismissed *before* the investigatory stage of FEC enforcement proceedings, the record is necessarily incomplete. Denying plaintiffs and the public required disclosures simply because the plaintiffs "identified" the ostensible individuals who violated the Act—albeit not with enough specificity to persuade three FEC commissioners that there was reason to believe "a violation *may have* occurred"—requires a rigidly circumscribed view of the public's role in FEC enforcement processes that cannot be squared with the statutory mandate. On the Commission's theory, any preliminary information that a plaintiff supplies to justify the need for further agency investigation is itself sufficient to vindicate the plaintiff's

informational rights and defeat the plaintiff's own standing, even if the relevant information is disputed or unknown.

Incredibly, the FEC appears to be arguing that the interests of those who use and rely on the contributor information that Congress required to be accurately reported to the FEC—and required the FEC to make public—ends as soon as someone, somewhere, publishes what they claim to be that information in some form. In the FEC's view, as soon as there is a news report alleging that someone made a straw contribution, no one has a right to demand that the FEC take action to ensure that accurate information is provided to the public in the form and manner mandated by Congress. If that is true, contributors looking to hide their names can do so with impunity, knowing that they can avoid any penalties as long as they make some public disclosure in some manner at some time. Likewise, administrative complainants are being effectively told to thread the needle by providing enough information to justify further investigation, but not so much that they defeat their own standing should the FEC ignore the violation.

**b. The "true sources" of the LLC contributions remain unsubstantiated, disputed or entirely unknown, and none of the straw entities has disclosed or otherwise made public the information that political committees are required to report under FECA.**

Semantics aside, plaintiffs have demonstrably *not* received the information due to them, as well as the public, under FECA. The information to which the plaintiffs are supposedly "privy" is incomplete or nonexistent, and in no case has it been substantiated—by the supposed donors or anyone else. Moreover, the controlling group premised its decision on the assertion that the FEC's enforcement authority is limited to cases presenting direct evidence of a violation. Now, the FEC seeks to defend the dismissals on the ground that the very information that was insufficient to even open an investigation can simultaneously satisfy all of plaintiffs' informational claims. As a matter of both fact and logic, the argument is manifestly unsound.

In their five separate administrative complaints, plaintiffs alleged that there was reason to believe that certain named and unnamed persons violated the Act by making contributions to super PACs "in the name of" corporate/LLC shell entities formed and/or deployed for the explicit purpose of evading FECA's disclosure requirements, and that the entities violated the Act by allowing their names to be used for that purpose. Four of the five complaints also alleged violations of FECA's political committee registration and reporting provisions as to the straw entities. Only one of the alleged donors, Mr. Conard, has since been disclosed pursuant to FECA's reporting provisions as the true source of the funds contributed in the straw entity's name.[21] None of the straw entities has registered as a political committee or provided any of the information that political committees are required to report, as plaintiffs alleged they were obligated to do under FECA.

Indeed, the source(s) of the alleged straw donor contributions in MUR 6711 remains an open question. Plaintiffs identified Richard J. Stephenson, the CEO of Cancer Treatment Centers of America, FGCR at 5, MUR 6711, in an amendment to their administrative complaint after he was named in press reports as the source of $12 million in contributions routed through the entities, but he has never confirmed his involvement. Suppl. to Admin. Compl. (Apr. 23, 2013), MUR 6711 (SIG). Quite the opposite, actually: in his response to the agency, Stephenson specifically attacked the "veracity" of the reports linking him to the contributions. Stephenson Response at 2, MUR 6711 ("Perhaps because the sources cited in the article are anonymous, complainants concede that they themselves cannot be sure of the veracity of the news article,

[21] ROF amended its 2011 mid-year report report to disclose that Edward Conard was the true source of the previously reported $1 million contributions from W Spann. *See* FGCR at 5, MUR 6485. Conard also issued a public statement identifying himself as the contributor, and his attorney apparently provided a declaration to the FEC averring her role in forming the straw entity, although the declaration is not publicly available. *See id.* at 3-5.

alleging that there is only reason to believe [Stephenson] may have violated section 441f 'if the information presented in the article is true.'"). Stephenson dismissed the allegations as "little more than unadorned speculation pegged to vague allegations by anonymous sources in a news story." *Id.* No other individual has come forward as the true source of the "private capital" used to make contributions through SIG/KPD, which remain listed as the donors on FWFA's disclosure reports. FWFA 2012 Pre-General Report; *see* Compl. ¶ 42.

In MURs 6487 and 6488, the OGC specifically found that there was "reason to believe that the $1 million contributions made on the same day to ROF nominally by Eli Publishing and F8 were in fact engineered and made by Lund and *other unknown respondents*." FGCR at 3 (emphasis added); *see also* Eli Publishing/Lund Answer ¶ 36 ("Denied that the OGC report stated that Steven J. Lund was the source of the $1 million contributions. The OGC report states only that there is 'reason to believe' Lund was the source of funds."). Lund never confirmed that fact, and obviously, neither did "unknown respondents." Lund "d[id] not address the authenticity of the[] admissions" he reportedly made to the media. FGCR at 11.

Moreover, although all but one of the straw entities (W Spann) are still listed as donors on the relevant reports, none have registered as political committees or filed the requisite reports of their receipts and expenditures—despite plaintiffs' uncontroverted claims that the entities had the requisite major purpose because they transacted no business and engaged in no activities beyond making political contributions, thus triggering political committee status under FECA. *See, e.g.*, FGCR (F8/Eli Publishing) at 12 ("The Complaint alleges that F8 does not conduct any business, and F8 does not deny the allegation, stating only that F8's purpose is 'commercial.'"). Instead, the controlling Commissioners appeared to accept as true the various respondents'

claims that the LLCs had legitimate non-political activity, but there is nothing to support that proposition in the public record or anywhere else that makes it "available" to plaintiffs.[22]

**c. There is no support for the contention that access to incomplete and unverified information vindicates the plaintiffs' right to that information under FECA.**

In support of the FEC's apparent belief that having some information—however incomplete or inaccurate it might be—is enough to defeat the plaintiffs' standing, it relies on case law with readily distinguishable facts brought under qualitatively different provisions of FECA. That reliance is misplaced.

For example, the FEC cites *Wertheimer v. FEC*, 268 F.3d 1070 (D.C. Cir. 2001), in which plaintiffs sought disclosure of the "fact" that a political party committee had illegally "coordinated" its expenditures with a candidate. Because information about the expenditures was already subject to disclosure under a separate FECA reporting provision—including who made the expenditures; when and where they made them; for how much; and for what purpose, *id.* at 1072-73—the court found that the plaintiffs had "failed to establish that the ruling sought would yield anything more than a legal characterization or duplicative reporting of information that under existing rules is already required to be disclosed." 268 F.3d at 1075. But plaintiffs here are not claiming a "justiciable interest in the enforcement of the law." *Common Cause*, 108 F.3d at 418. This is not a case involving the information being reported to the FEC on the wrong form or not being properly characterized. Plaintiffs are complaining about being deprived of specific, as yet undisclosed information to which they are statutorily entitled—(1) the true sources of contributions made to super PACs "in the name of" straw entities with marginal or nonexistent

[22] Although several of the public MUR documents refer to attachments that apparently contain information on this score, the attachments themselves are not included in the public case file. Whatever they might contain, though, even if some of the LLCs could identify some legitimate business activities, the available evidence is more than sufficient to support plaintiffs' allegations that these entities were operating as political committees.

business activities; and (2) the comprehensive reports of all but one of the straw entity's receipts and expenditures, as required under FECA's political committee disclosure provisions.

The FEC's other authorities are even less persuasive. For example, the FEC cites a case holding that "a plaintiff who had alleged reporting violations *regarding his own contributions* to a candidate lacked standing because he was 'already aware of the facts underlying his own alleged contributions' and his judicial-review action was unlikely to produce additional facts of which the plaintiff was not already knowledgeable." FEC Br. 13 (emphasis added) (citing *Judicial Watch, Inc. v. FEC*, 293 F. Supp. 2d 41, 47 (D.D.C. 2003)). But of course there was every indication that the plaintiff in *Judicial Watch* had complete knowledge of all possible information that could be disclosed through an investigation—*he himself* made the contributions at issue. Plaintiffs here have no such personal knowledge.

The D.C. Circuit's decision in *CREW v. FEC*, 475 F.3d 337 (D.C. Cir. 2007) ("*CREW II*"), is likewise inapposite. FEC Br. 13. There, CREW had filed a complaint alleging violations of the prohibition on corporate contributions to candidates based on the transfer of a donor list from a 501(c)(3) corporation to the committee of a federal candidate. After its complaint was dismissed as a matter of prosecutorial discretion following a determination that the value of the list was de minimis, CREW filed suit, alleging injury based on the deprivation of information as to the precise value of the list. *Id.* at 338-39. The court held that CREW failed to establish how the "precise dollar value" of the list would be useful to it or to voters generally given that every other detail of the transaction was available on the FEC's website. *Id.* at 339-40; *cf. Alliance for Democracy v. FEC*, 335 F. Supp. 2d 39, 48 (D.D.C. 2004) (dismissing delay case as moot because plaintiff could not demonstrate informational injury based on alleged deprivation of "the precise value of a mailing list and the date it was transferred").

Similarly, the FEC cites *CREW v. FEC*, 799 F. Supp. 2d 78, 89 (D.D.C. 2011) ("*CREW III*") with circumstances that supposedly "underscor[e] plaintiffs' lack of standing here," FEC Br. 15, asserting without further discussion or analysis that the cases are on all fours because CREW "lacked a cognizable informational injury where they failed to 'allege any specific factual information . . . that [wa]s not already publicly available.'" *Id.* at 13 (citing 799 F. Supp. 2d at 89). Of course, the FEC fails to note that the information was all "publicly available" because it found reason to believe and conducted an investigation, ultimately dismissing the matter because the violations were found to be de minimis. *Id.* at 83 (discussing late filing allegation based on declaration of candidacy filed three days late and allegedly excessive in-kind contributions totaling $10,200). Moreover, the "information" of which CREW was allegedly deprived merely sought to "reclassify" certain disbursements—spending that occurred in known amounts and from *known sources*—as in-kind contributions. *Id.* at 89 ("Far from asserting even 'an interest in knowing how much money a candidate spent in an election,' as the D.C. Circuit hinted might suffice as an informational injury, what [CREW] want[s] is a reclassification of [a committee's] disbursements as 'in-kind contributions' under FECA.") (citations omitted). Here, by contrast, there has been no RTB finding or subsequent investigation; other than Mr. Conard, there has been no official confirmation or admission that any of the individuals named in plaintiffs' complaint was the actual source of the contributions; and the identity or identities of the person(s) that contributed to FWFA is completely unknown.

**B. The Plaintiffs' Injury Is Fairly Traceable to the Dismissal of their Administrative Complaints and Is Likely to Be Redressed by a Favorable Court Decision.**

The FEC does not dispute that plaintiffs can establish causation. Under 52 U.S.C. § 30109(a)(8), any party "aggrieved" by the dismissal of their administrative complaint can seek review of that decision here. Plaintiffs' failure to obtain information about the true sources of

funds contributed through straw donors is a direct result of the FEC's failure to find reason to believe that any of the administrative respondents made unlawful straw donor contributions or triggered FECA's political committee disclosure requirements. As a result, none of the respondents were under any obligation to make the disclosures at issue. The plaintiffs' injury is thus "fairly traceable" to the actions of the FEC.

Finally, for plaintiffs' claims to be redressable, it need only be likely that a favorable court decision will redress their injury. *Lujan*, 504 U.S. at 561. Although the FEC does appear to dispute the existence of a redressable injury, it frames that argument in terms of injury in fact. For the same reasons that plaintiffs have stated a plausible claim of injury sufficient to confer standing, their injury can be redressed by the declaratory relief they seek from this Court. *See Akins*, 524 U.S. at 25.

## CONCLUSION

The motion to dismiss should be denied.

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Respectfully submitted,

/s/ J. Gerald Hebert

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