UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GARCIA FOR CONGRESS and SWATI PATEL,	)	
Plaintiffs,	)	Civ. No. 3:13-cv-2401-K
v.	)	REPLY
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DEFENDANT FEDERAL ELECTION COMMISSION'S REPLY TO PLAINTIFFS' RESPONSE TO THE COMMISSION'S MOTION FOR SUMMARY JUDGMENT

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The Federal Election Commission hereby responds to Plaintiffs' Brief in Support of their Response to Defendant's Motion for Summary Judgment ("Response"). (Doc. No. 29-2.) As demonstrated in the FEC's opening brief, the FEC acted reasonably when it assessed the Garcia for Congress campaign and its treasurer (collectively, "the Garcia Committee" or "the Committee") with an administrative fine of $15,220 for their failure to timely file two mandatory campaign-finance disclosure notices in May 2012. In its administrative challenge, the Garcia Committee objected to the fine based on a claimed "unintentional clerical error on the part of the Committee," concerns about how a "fine could delay the Committees its (sic) efforts to wind down and terminate the campaign," and a plea for "leniency." (Administrative Record ("AR") 007.) As the Commission explained in its opening brief (FEC's Mem. of Law in Support of Its Motion for Summary Judgment (Doc. No. 17) at 10 ("FEC Brief")), under the "highly deferential" standard of review applicable to cases, like this one, seeking judicial review of a final agency decision, the FEC's administrative determination was clearly reasonable and neither arbitrary nor capricious.

The Garcia Committee's Response to the FEC's summary judgment brief ignores the applicable legal standard, does not even attempt to refute the FEC's legal analysis, and appears to abandon the Committee's original bases for challenging the FEC's administrative determination. Instead, the Committee offers a variety of new allegations and arguments never presented to the FEC during the administrative phase of this case — arguments that are both irrelevant and lack merit. Regardless, the Committee's failure to raise such matters with the Commission in the first instance means that they have been waived and should not even be considered by this Court.[1]

[1] In the interest of a complete and accurate record, the Commission notes that the Garcia Committee's two motions seeking additional time to respond to the Commission's summary

The Garcia Committee has failed to advance any basis for this Court to find the challenged administrative fine unreasonable. As the Commission clearly demonstrated in its opening brief and as further detailed below, the administrative fine was reasonable and should be upheld by this Court.

THE GARCIA COMMITTEE MISUNDERSTANDS THE LIMITED ROLE OF A COURT CONDUCTING JUDICIAL REVIEW OF AN AGENCY DECISION

A. Arbitrary & Capricious Standard

This case seeks judicial review of an administrative determination by a federal agency. It is not a typical civil dispute between parties to be resolved by the court in the first instance. Yet the Garcia Committee's three-page discussion (Response at 5-7) of the *general* summary judgment standard completely ignores the relevant inquiry in cases like this one, in which the district court's role is solely to determine whether, "on the basis of the administrative record, . . . an agency reasonably could have found the facts as it did." *Cunningham v. FEC,* No. IP-01-0897-C-B/S, 2002 WL 31431557, at *3 (S.D. Ind. Oct. 28, 2002) (citations omitted); *see Pension Benefit Guar. Corp. v. Jones Mem'l. Hosp.,* 374 F.3d 362, 366-67 (5th Cir. 2004) (explaining that judicial review of administrative determinations "focuses on whether an agency articulated a rational connection between the facts found and the decision made").

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judgment motion (Docket Nos. 25 & 27) misrepresented the Commission's position regarding the Committee's requested extensions. In fact, the Committee never conferred with the Commission about its intention to request a 90-day extension, and the Commission did not agree to such a request. Nor did the Commission ever indicate that it would need three months to complete its Reply. Instead, in late September, undersigned counsel informed the Committee that the Commission was willing to consider any reasonable extension of the Committee's time to respond to the summary judgment motion, provided that the Committee was willing to agree to a similar extension of time, if any, for the Commission's reply. The parties never had any further discussion about extensions, in part because the Garcia Committee's first extension request occurred during the government shutdown.

As the Commission explained in its opening brief (FEC Br. at 10-11), this Court may set aside the Commission's administrative-fine determination only if that determination was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C). The arbitrary and capricious standard of review is "highly deferential" and "presumes the validity of agency action." *Nat'l Ass'n of Clean Air Agencies v. EPA,* 489 F.3d 1221, 1228 (D.C. Cir. 2007) (citation omitted). Where, as here, an agency's determination is supported by "substantial evidence," *i.e.*, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," the determination is not arbitrary or capricious. *Dutka v. AIG Life Ins. Co.*, 573 F.3d 210, 213 (5th Cir. 2009) (citations and quotations omitted).

The Garcia Committee's cases (Response at 5-7) discussing the summary judgment standard outside the review-of-an-agency-decision context are inapposite. And the Committee's discussion of those irrelevant authorities fails to identify any basis for this Court to invalidate the Commission's administrative fine based on the administrative record in this case.

B. Judicial Review is Confined to Those Matters Presented to the FEC During the Administrative Proceedings

The Garcia Committee not only misunderstands the applicable legal standard, it breaches an important aspect of that standard by asking this Court to consider new allegations and arguments never presented to the Commission during the underlying administrative proceedings. But as the Commission noted in its opening brief (FEC Br. at 14 n.4), it is well settled that plaintiffs seeking judicial review of an administrative determination are deemed to have waived any arguments not presented to the agency during the administrative process under review. "Absent exceptional circumstances, a party cannot judicially challenge agency action on grounds not presented to the agency at the appropriate time during the administrative proceeding."

Public Citizen, Inc. v. EPA, 343 F.3d 449, 461 (5th Cir. 2003); *see, e.g., Gulf Restoration Network, Inc. v. Salazar*, 683 F.3d 158, 174-75 (5th Cir. 2012) ("Under ordinary principles of administrative law a reviewing court will not consider arguments that a party failed to raise in [a] timely fashion before an administrative agency.") (internal quotation marks omitted); *Bass v. Dep't of Agric.*, 211 F.3d 959, 964 (5th Cir. 2000) (per curiam) ("As a general rule, in considering a petition for review from a final agency order, the courts will not consider questions of law which were neither presented to nor passed on by the agency.") (internal quotation marks omitted). The Commission's regulations, moreover, specifically put all administrative-fines respondents on notice that "failure to raise an argument in a timely fashion during the administrative process" constitutes "a waiver of the respondent's right to present such argument in a petition to the district court."[2] 11 C.F.R. § 111.38.

This rule makes sense. Otherwise, a federal district court "would 'usurp[ ] the agency's function' and 'deprive the [agency] of an opportunity to consider the matter, make its ruling, and

[2] The Garcia Committee's purported attempt to supplement the administrative record in this case through its attachment of the December 9, 2013 affidavit of its treasurer (Docket No. 29-3) is also improper. "Supplementation of the administrative record is not allowed unless the moving party demonstrates unusual circumstances justifying a departure from the general presumption that review is limited to the record compiled by the agency." *Medina County Envt'l Action Ass'n v. Surface Transp. Bd.,* 602 F.3d 687, 706 (5th Cir. 2010) (internal quotation marks omitted); *Luminant Generation Co., LLC. v. EPA*, 714 F.3d 841, 850 (5th Cir.) *cert. denied*, 134 S. Ct. 387 (2013) ("The focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court.") (internal quotation marks omitted). The Committee has not even attempted to suggest that any of the three factors that would allow supplementation of an agency's administrative record exist in this case. *See id.* at 849 -50 (listing such factors as 1) an agency's deliberate or negligent exclusion of documents that may have been adverse to its decision; 2) the district court's need to supplement the record with "background information" in order to determine whether the agency considered all of the relevant factors; and 3) an agency's failure to explain administrative action so as to frustrate judicial review). In any event, as discussed *infra* at pp. 6 - 10 & 11-12, the Patel Affidavit only undermines the Committee's arguments that the Commission's administrative determination was unreasonable.

state the reasons for its action.'" *BCCA Appeal Group v. EPA*, 355 F.3d 817, 828-29 (5th Cir. 2003) (quoting *Unemployment Comp. Comm'n v. Aragon,* 329 U.S. 143, 155 (1946)); *see Cunningham,* 2002 WL 31431557, at *4 ("Simple fairness to those who are engaged in the tasks of administration, and to litigants, requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection *made at the time* appropriate under its practice." (quoting *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 37 (1952); (emphasis added)). "Thus, any objections not made before the administrative agency are subsequently waived before the courts." *Cunningham,* 2002 WL 31431557, at *4 (citation and footnote omitted).

The Garcia Committee has waived the following arguments, each of which it raised *for the first time* in its summary judgment Response: (a) attempts to invoke the best-efforts defense based on the alleged inexperience, pregnancy, and maternity leave of the Garcia Committee's treasurer (Response at 8-9; Patel Aff. at 2-3), and the Committee's alleged reliance on the advice or assistance of a third-party vendor (Response at 8; Patel Aff. at 2); (b) attempts to mitigate responsibility for the reporting violations based on the Commission's emailing of a courtesy reminder notice to a purportedly incorrect email address for the Committee (Response at 7-8; Patel Aff. at 3); (c) an attempt to identify as an unresolved legal question whether a candidate's loans to his campaign committee constitute campaign contributions subject to Federal Election Campaign Act ("FECA") reporting requirements (Response at 9; Patel Aff. at 3); and (d) alleged inconsistencies between the fine imposed here and the decade-old conciliation of an unrelated Commission matter that did not meet the criteria for the administrative-fine program (Response at 10-11).[3]

[3] Even if the Garcia Committee had not waived its right to pursue these new arguments, its reliance on them now would be fruitless because they lack any merit. *See infra* Part II.

II. THE ADMINISTRATIVE FINE CHALLENGED HERE WAS REASONABLE AND THE GARCIA COMMITTEE HAS FAILED TO DEMONSTRATE OTHERWISE

A. The Garcia Committee Has No Best-Efforts Defense

As the Commission explained in its opening brief (FEC Br. at 5), a political committee may challenge a Commission finding of a reporting violation by: (1) identifying factual errors in the Commission's finding (such as if the report was, in fact, timely filed); (2) demonstrating that the calculation of the penalty was inaccurate; or (3) showing that "the respondent used best efforts to file in a timely manner [but] was prevented from [doing so] by reasonably unforeseen circumstances that were beyond the control of the respondent; and . . . [t]he respondent filed no later than 24 hours after the end of these circumstances." 11 C.F.R. § 111.35(b)(1)-(3). The Garcia Committee has not identified any factual error in the Commission's administrative finding nor alleged that the fine was inaccurately calculated, so it has thus conceded the accuracy and reasonableness of the underlying administrative determination on these issues.

The Committee instead attempts to demonstrate (Response at 7-9) its use of "best efforts" to comply with its statutory obligations, but it fails to identify any "reasonably unforeseen circumstances" as that term is defined in Commission regulations. Such circumstances include systemic failures such as a breakdown of Commission computers or Commission-provided software, 11 C.F.R. § 111.35(c)(1); widespread disruptions to the internet (not specific to the respondent or its internet service provider), 11 C.F.R. § 111.35(c)(2); or severe weather or a disaster-related incident, 11 C.F.R. § 111.35(c)(3). The Commission's regulations categorically exclude from the best-efforts defense any errors that arise from negligence; delays caused by committee vendors or contractors; illness, inexperience, or unavailability of the treasurer or other staff; and a committee's failure to know filing dates. *See* 11 C.F.R. § 111.35(d). None of the

Garcia Committee's various explanations for its failure to timely file the 48-hour notices — including its newly minted explanations improperly presented for the first time in the Committee's summary judgment Response — satisfies the regulatory requirements for the best-efforts defense.

First, by abandoning its only best-efforts argument to the Commission — based on a claimed "unintentional clerical error on the part of the Committee" (AR007) — the Committee apparently has conceded that the only best-efforts argument properly before this court lacks any merit. (*See* FEC Br. at 12-14.)

Second, as explained below, the Committee's newly asserted grounds for relying on the best-efforts defense, in addition to being waived, *see supra* Part I.B, are irrelevant and fail to provide any basis for challenging the administrative fine here.

1. The Treasurer's Inexperience and Pregnancy/Maternity Leave Are Not "Reasonably Unforeseen" Circumstances That Can Trigger the Best-Efforts Defense

Even if, as the Garcia Committee now suggests (Patel Aff. at 1-3), its treasurer Ms. Patel lacked experience or knowledge of federal campaign finance rules, Commission regulations explicitly designate "[n]egligence" and "inexperience . . . of the treasurer or other staff" as "[c]ircumstances that will not be considered reasonably unforeseen and beyond the control" of the respondent committee. *Compare* Patel Aff. at 1-3, *with* 11 C.F.R. § 111.35(d)(1), (3). Section 111.35(d)(3) of the Commission's regulations likewise excludes "[i]llness . . . or unavailability of the treasurer" as "unforeseen circumstances" that can trigger the best-efforts defense. *Compare* Response at 8-9 (citing treasurer's "unexpected pregnancy" and "maternity leave" as purported "unforeseen circumstances" that "made it difficult, if not impossible" for Ms. Patel "to work effectively in May 2012," when the Committee's two 48-hour disclosure notices

regarding the candidate's loans to his committee were due), *with* 11 C.F.R. § 111.35(d)(3) (expressly listing illness and unavailability of treasurer as circumstances that will not be considered reasonably unforeseen).

2. The Committee's Hiring of a Contractor to Assist With Its Compliance Obligations Fails to Demonstrate Entitlement to the Best-Efforts Defense

Although it never raised the issue with the Commission, the Committee now asserts that it hired a compliance consultant to comply with FEC rules (Response at 8), but it utterly fails to explain how that alleged fact is relevant to any best-efforts argument. Commission regulations exclude "[d]elays caused by committee vendors or contractors," 11 C.F.R. § 111.35(d)(2), so even if the Committee intended to suggest that its compliance consultant was responsible for its reporting violations (and even if such an argument were not waived, *see supra* Part I.B), such a claim would be insufficient to trigger the best-efforts defense.

B. The Committee's Statutory Reporting Obligations Are Not Contingent Upon Successful Transmission of Courtesy Email Reminders

The Garcia Committee appears to argue (Response at 7-8; Patel Aff. at 3) that its responsibility for failing to timely file two statutorily mandated campaign-finance disclosure notices is somehow mitigated by its treasurer's assertion that "there is no reason to believe Mr. Garcia ever received" a courtesy email from the Commission reminding the Committee of upcoming reporting obligations. This argument is fatally flawed for at least three reasons.

First, the argument was never presented to the Commission and so it is not properly before the Court. *See supra* Part I.B.

Second, even if the argument had not been waived, it lacks any merit. The Committee's campaign-finance reporting obligations are mandated by statute. *See generally* 2 U.S.C. § 434(a); FEC Br. at 2. In particular, the Committee's statutory obligation to report to the

Commission in writing its receipt of "any contribution of $1,000 or more . . . after the 20th day, but more than 48 hours before, any election" and to do so "within 48 hours after the receipt of such contribution," 2 U.S.C. § 434(a)(6)(A), clearly does not depend upon the Commission's successful transmission of a notice reminding the Committee of its statutory reporting obligations. Nor do the Act or Commission regulations even require such reminder notices to be sent. Indeed, as is clearly stated in the Primary Election Report Notice, such emails are distributed only "as a courtesy" (AR014); "The Commission provides reminders of upcoming filing dates *as a courtesy* to help committees comply with the filing deadlines set forth in the Act and Commission regulations. *Committee treasurers must comply with all applicable filing deadlines established by law, and the lack of prior notice does not constitute an excuse for failing to comply with any filing deadline*." (AR016 (emphasis added).)

Third, even if the argument were not meritless, its factual premise — the alleged lack of "any evidence" that the email address "garciadtx@gmail.com" existed for Garcia for Congress or anyone else in 2012 — is belied by the administrative and public record. As documented in a Commission memorandum related to the Garcia Committee's underlying administrative challenge (AR013), the Committee "amended its Statement of Organization on April 9, 2012, to disclose a number of changes, including a new committee email address: garciadtx@gmail.com." Indeed, although the Garcia Committee's original Statement of Organization, filed on March 7, 2012, listed garciadtx@aol.com as the Committee's email address, the Committee filed an amended Statement of Organization one month later, on April 9, 2012, and listed on page 1 of that filing a new email address: garciadtx@gmail.com. *Compare* Statement of Organization, Garcia for Congress, Mar. 7, 2012, http://docquery.fec.gov/pdf/924/12030752924/12030752924.pdf, *with* Statement of Organization (Amended), Garcia for Congress, Apr. 9, 2012,

http://docquery.fec.gov/pdf/813/12951365813/12951365813.pdf.[4] The Committee's treasurer, Ms. Patel, electronically signed the amended form. Thus, when the Commission emailed a courtesy reminder of the upcoming reporting deadlines to the Garcia Committee on April 25, 2012 (*see* AR014-020), it used the email address *provided to the Commission by the Committee* in its most recent FEC filing (AR013).

C. Mr. Garcia's Loans to His Campaign Are Indisputably Reportable "Contributions"

Even if the Garcia Committee had not waived its new argument (Response at 9) about whether "personal loans" are reportable "contributions," that argument plainly lacks any merit. FECA explicitly defines "contribution" as "*any* gift, subscription, *loan*, advance, or deposit of money or anything of value made by *any person* for the purpose of influencing any election for

[4] Although the Garcia Committee's purported supplementation of the administrative record through an affidavit asserting new allegations and arguments is improper, *see supra* note 2, the Court "may 'tak[e] judicial notice of the [Commission's] own records,'" *Lacson v. Holder*, 428 Fed. Appx. 750, 751 n.1 (9th Cir. 2011) (quoting *Dent v. Holder*, 627 F.3d 365, 371 (9th Cir. 2010)). *See Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011) (recognizing general principle that district courts may take "judicial notice of publicly-available documents . . . which [a]re matters of public record directly relevant to the issue at hand"). As the Ninth Circuit has explained, whereas the general rule limiting judicial review to the administrative record is "intended to ensure that petitioners present all outside documents, reports, or information during the course of the administrative proceedings and not offer them for the first time before th[e] court," that principle is inapplicable to "a court's taking judicial notice of the agency's own records," *Lising v. INS*, 124 F.3d 996, 998 (9th Cir. 1997), particularly where, as here, the "augmenting materials [a]re merely explanatory of the original record" and "clarif[y] a [purported] dispute" regarding the original record. *Bunker Hill Co. v. EPA*, 572 F.2d 1286, 1292 (9th Cir. 1977). *See also, e.g., Krichbaum v. U.S. Forest Servs.*, 973 F. Supp. 585, 589 (W.D. Va. 1997) (explaining that courts reviewing agency decisions may consider documents that the agency relied on outside administrative record that provide "background information [] necessary to clarify technical issues"); *Buffalo Cent. Terminal v. United States*, 886 F. Supp. 1031, 1045–46 (W.D.N.Y. 1995) ("[T]he court is permitted to go outside of the administrative record to consider background evidence to clarify the information before the agency at the time of its decision.").

Federal office . . . ." 2 U.S.C. § 431(8)(A)(i) (emphasis added).[5] The Act further provides that any candidate for federal office, "who receives a contribution, or any loan for use in connection with the campaign of such candidate for election, . . . shall be considered, for purposes of this Act, as having received the contribution or loan, . . . as the case may be, as an agent of the authorized committee or committees of such candidate." 2 U.S.C. § 432(e)(2); *see also Herron for Congress v. FEC*, 903 F. Supp. 2d 9, 11-12 (D.D.C. 2012) (describing candidate committees' obligations under FECA and Commission regulations to make certain disclosures related to loans they receive). FEC regulations also specify that "[a] loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid." 11 CFR § 100.52(b)(2).

Nothing in this unambiguous statutory language carves out any special exemption for personal loans by candidates to their authorized campaigns: a loan from any person, including the candidate, is a contribution. Nor can there be any doubt that the purpose of the loan was to influence a federal election; to the contrary, the Committee's treasurer asserts (Patel Aff. at 2) that the funds were loaned to pay campaign staff and expenses.

In addition to being legally deficient, the Committee's attempt to manufacture a legal question about whether Mr. Garcia's loans were reportable contributions (*see* Response at 9) is undermined by Ms. Patel's representations in her affidavit that the Committee's hired compliance consultant "confirmed that [the Committee was] late in filing the requisite disclosure

[5] *See also Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 198 n.19 (1981) ("The Act defines 'contribution' broadly to include 'any gift, subscription, *loan*, advance, or deposit of money or anything of value . . . or . . . the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.") (quoting 2 U.S.C. 431(8)(A)(i), (ii); emphasis added); *Cox for U.S. Senate Comm., Inc. v. FEC*, Civ. No. 03C3715, 2004 WL 783435, at *14 (N.D. Ill. Jan. 22, 2004) (declining to modify or set aside $22,150 civil penalty where plaintiffs failed to file 48-hour reports for candidate loans).

notifications" about Mr. Garcia's loans to his campaign and that ultimately Ms. Patel "knew that those disclosure notifications should have been filed by May 20 and 26, 2012." (Patel Aff. at 3.)

D. The Challenged Civil Penalty Was Assessed Pursuant to the Statutory Administrative Fines Program and the Formula Set Forth in Commission Regulations

As detailed in the Commission's opening brief and not disputed by the Garcia Committee, the civil penalty challenged here was imposed by the Commission pursuant to the streamlined enforcement procedures statutorily designated for violations of FECA's periodic filing requirements. (*See* FEC Br. at 3-4 (describing amendments to FECA creating statutory administrative fines program).) Unlike the enforcement process applicable to other violations of the Act, Congress specifically authorized the Commission to directly assess civil money penalties for violations of 2 U.S.C. § 434(a), while eliminating steps such as the probable-cause determination and conciliation period that apply to other FEC enforcement matters. (*See* FEC Br. at 4 (citing H.R. Rep. No. 106-295, at 11 (1999).) The administrative fine challenged here — $15,200 for failure to timely report two campaign loans of $100,000 and $50,000, respectively — was calculated pursuant to 11 C.F.R. § 111.44(a)(1), which provides for a penalty of $110 plus ten percent of the amount of the contribution not timely reported. (FEC Br. at 8; AR030.) The Garcia Committee fails to identify anything unreasonable about the Commission's administrative fine determination or calculation.

Instead, the Committee offers (Response at 10-11) another improper argument that it never raised during the administrative proceedings, *see supra* Part I.B — that the challenged fine was arbitrary or capricious because the Garcia Committee was not afforded an opportunity to negotiate the amount of the proposed penalty. In support of this argument, the Committee identifies *Alliance for Democracy v. FEC*, 362 F. Supp. 2d 138 (D.D.C. 2005), which concerned

the Commission's settlement of alleged violations by another committee of other provisions of FECA that are not part of the statutory administrative fines program. *Alliance for Democracy*, 362 F. Supp. 2d at 139-40. In particular, *Alliance for Democracy* concerned allegedly excessive contributions in violation of 2 U.S.C. § 441(a)(a)(2)(A), and related alleged reporting violations of section 434(b), which governs the required contents of reports required under section 434(a). 362 F. Supp. 2d at 140-41, 146 n.8. Those allegations are subject to the Commission's traditional enforcement procedures, which include a probable-cause determination and conciliation process. *See generally* 2 U.S.C. § 437(g).

This case, by contrast, concerns the Garcia Committee's violation of section 434(a), which generally outlines who must file campaign-finance disclosure reports and when such reports must be filed. As explained above, violations of section 434(a) are generally *not* subject to the traditional enforcement procedures but instead are handled under the streamlined administrative-fines scheme, 11 C.F.R. §§ 111.30-111.31, which does not include a conciliation process and which, "much like traffic tickets, . . . let[s] the agency deal with minor violations of the law in an expeditious manner." 65 Cong. Rec. H5622 (daily ed. July 15, 1999) (statement of Rep. Maloney). Thus, both this matter and *Alliance for Democracy* were treated appropriately under the particular regulatory scheme governing the violations alleged. The Garcia Committee's reliance on *Alliance for Democracy* is clearly misplaced, and the Committee has failed to demonstrate any basis for finding that the Commission's administrative determination here was arbitrary, capricious, or otherwise unreasonable.

CONCLUSION

For the reasons stated above and in the Commission's opening brief, the Court should grant the Commission's motion for summary judgment.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Benjamin A. Streeter III, an attorney of record, hereby certify that on this 20th day of December, 2013, I electronically submitted the foregoing document with the Clerk of the Court for the Northern District of Texas, using the electronic case filing system. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

s/ Benjamin A. Streeter III
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