IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER and DEMOCRACY 21,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Case No. 22-3319

Hon. Christopher R. Cooper

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

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INTRODUCTION

In its September 26, 2023 ruling, this Court noted that its earlier decisions in the "delay case" that preceded this action "do[] not preclude Plaintiffs from claiming organizational standing here." Mem. Op. & Order at 27, ECF No. 23 ("Op."). It directed the parties to consider, however, whether the "Court's finding that Plaintiffs had no legal right to the disclosure of coordinated expenditures" in some way might "foreclose them from contending that they nonetheless have a weighty interest in those disclosures and that the absence of this information has interfered with their programmatic activities," *id.*, as would be necessary to establish organizational injury.

Otherwise put, the Court asks whether plaintiffs Campaign Legal Center ("CLC") and Democracy 21 are precluded from arguing that they have an organizational interest in information about possible in-kind contributions made by Right to Rise Leadership PAC and Right to Rise Super PAC (the "RTR committees") to the Bush campaign by the Court's earlier decision in the delay case that plaintiffs have no "legal right" to such information under the Federal Election Campaign Act ("FECA"). Plaintiffs would of course respond that they are not so precluded, and indeed the guiding principle of *People for the Ethical Treatment of Animals v. USDA*, 797 F.3d 1087, 1094-95 (D.C. Cir. 2015) ("*PETA*"), was precisely that an organization can suffer organizational injury when the nondisclosure of information impedes its operations, even if the group has no legal entitlement to such information.

A finding that plaintiffs had no *right* under FECA to "information" about whether the RTR committees coordinated their spending or otherwise made in-kind contributions to the Bush campaign says little about whether plaintiffs—and indeed the public at large—have an *interest* in knowing whether these committees were subsidizing Bush's pursuit of the presidency. Indeed, one might think that the question of coordination would be the central concern of voters, instead of the

more granular FECA information about specific committee expenditures that typically supports an informational injury claim.

But the Court's inquiry puts plaintiffs in an odd posture in this briefing—because of course plaintiffs' position is that they in fact *do* have a statutory right to accurate information about the dates, purposes, and amounts of any RTR committee expenditures that constituted in-kind contributions to the Bush campaign. Indeed, as plaintiffs have argued, it would be difficult to read the D.C. Circuit's decision in the Correct the Record and Hillary Clinton coordination case as holding otherwise. *CLC v. FEC*, 31 F.4th 781, 788 (D.C. Cir. 2022) ("*Clinton III*") (finding that super PAC's failure to "disaggregate" "already-reported expenditures to show which portions of those expenditures were coordinated contributions and which were not" was "a cognizable informational injury"); *see also* Pls.' Opp'n to FEC's 1st Mot. to Dismiss at 29-31, ECF No. 19 ("Pls.' Opp'n"). Organizational injury is not plaintiffs' preferred basis for arguing standing.

The unique procedural history of this case—and the idiosyncratic administrative proceedings here that resulted in numerous failed "reason to believe" votes over more than *seven* years of FEC delay—also points a way forward, however. In a typical 52 U.S.C. § 30109(a)(8) action, a court may be concerned that if it entertains the proposition that the non-disclosure of the "fact" of coordination constitutes organizational injury, it may be permitting an end-run around standing precedents suggesting the opposite with respect to informational injury. *Wertheimer v. FEC*, 268 F.3d 1070, 1075 (D.C. Cir. 2001); *see also Common Cause v. FEC*, 108 F.3d 413, 418 (D.C. Cir. 1997). Here, however, these concerns are not present: plaintiffs hardly wish to *avoid* the informational standing argument; to the contrary, plaintiffs are protesting that they have been barred from relying on informational injury, despite clearly suffering it. Furthermore, in this case, there was no real dispute about the candidate's failure to report all the testing-the-waters ("TTW")

activities that plaintiffs alleged had occurred under their "view of the law," *CLC v. FEC*, 245 F. Supp. 3d 119, 127 (D.D.C. 2017). Intervenor RTR Super PAC conceded this failure, and instead disputed whether certain activities were "campaign related" or claimed that this information was available in the RTR committees' FEC reports. *See, e.g.*, RTR Suppl. Br. at 12, *CLC v. FEC*, No. 1:20-cv-730-CRC (D.D.C. May 11, 2021), ECF No. 28.[1] This case thus allows a targeted inquiry into whether largely undisputed disclosure violations constitute an organizational injury, independently of whether they give rise to informational injury. They do, and what is more, the highly irregular procedural history of the administrative proceedings and this litigation means any finding of organizational injury would be cabined to the facts of this case, alleviating any concern that it might more broadly impact this Circuit's standing doctrine. This Court should find organizational standing and allow this case, stymied by the FEC's unprecedented *seven-year* delay in resolving plaintiffs' administrative complaints, to finally move forward.

SUMMARY OF ARGUMENT

The FEC's delay and ultimate dismissal of plaintiffs' administrative complaints impaired plaintiffs' operations in at least three ways. First, the FEC's inaction allowed RTR Super PAC and the Bush campaign (collectively "respondents") to withhold FECA-required information, which has "'perceptibly impaired'" plaintiffs' "organizational interests by depriving [them] 'of key information that [they] rel[y] on' to fulfill [their] mission." *Am. Anti-Vivisection Soc'y v. U.S. Dep't of Agric.*, 946 F.3d 615, 619 (D.C. Cir. 2020) (citing *PETA*, 797 F.3d at 1094). Plaintiffs are not precluded from making this argument because they are not renewing their claim here that they

[1] The administrative file indicated that all four Commissioners at some point in the proceedings also agreed that Bush may have committed pre-candidacy reporting violations; it was internal politics, not a legal or policy dispute, that resulted in the dismissal of these counts. *See* Statement of Reasons of Comm'r Ellen L. Weintraub at 1, MURs 6915 & 6927 (Sept. 30, 2022), https://www.fec.gov/files/legal/murs/6927/6927_27.pdf.

have a statutory right to this information—or, more precisely, a right to *more* information about the undisclosed activity than provided by the RTR committees' existing FEC reports. Instead, plaintiffs are arguing that, regardless of their informational rights, Bush's failure to fully disclose his pre-candidacy campaign activity—and the RTR committees' incomplete and inaccurate reporting of their spending in this period—caused plaintiffs organizational injury, including, but not limited to, the resources they expended in researching existing FEC reports to piece together any potential in-kind contributions between the respondents.

Second, the FEC's inaction here has resulted in no disclosure about possible coordination between the respondents during either the pre-candidacy period or the campaign. Insofar as the knowledge of coordination is tantamount to "knowledge as to whether a violation of the law has occurred," *Common Cause*, 108 F.3d at 418, this may not be "information" to which plaintiffs have a right under FECA—but plaintiffs are not making an informational standing argument here. Instead, plaintiffs argue that regardless of their "right" to this information, the complete lack of transparency about coordination between the respondents—a disclosure failure not ameliorated by respondents' existing FEC reports—concretely impairs their organizational operations and missions. Plaintiffs are not precluded from making this organizational standing argument here for the simple reason that they did not make this argument in the delay case; indeed, plaintiffs are not aware of any FECA case addressing the question whether deprivation of the "fact" of coordination alone, *Wertheimer*, 268 F.3d at 1075, can constitute an organizational injury even as it falls short of informational injury.

Third, this case is unique because the FEC also failed to issue any contemporaneous statement of reasons explaining the Commissioners' votes against finding reason to believe that respondents committed violations of federal law. Compl. ¶¶ 88, 95-97, ECF No. 1. Thus, in

addition to the Commission's failure to require respondents to report all information required by FECA—or to disclose the scope of their coordination—the no-voting Commissioners did not even provide their legal rationale for finding no "reason to believe" as the D.C. Circuit requires. *Common Cause*, 842 F.2d at 449; *see also End Citizens United PAC v. FEC*, 69 F.4th 916, 921 (D.C. Cir. 2023) (noting that controlling Commissioners "were obligated to issue a contemporaneous statement 'explaining their votes'") (quoting *Citizens for Resp. & Ethics in Washington v. FEC*, 892 F.3d 434, 437, 438 n.5 (D.C. Cir. 2018)). While plaintiffs may not have an informational "right" to a statement of reasons setting forth the controlling Commissioners' factual findings and conclusions of law, the lack of this guidance has injured plaintiffs' operations—as well as likely confused the regulated community at large—and necessitated continuing efforts to police similar testing-the-waters and super PAC-related violations in subsequent election cycles. The Commission's failure to act on plaintiffs' administrative complaints—and its failure to even explain its reasons for declining to act—have thus both impacted plaintiffs' programmatic activities and depleted their organizational resources.

FACTUAL AND PROCEDURAL BACKGROUND

In response to the FEC's first motion to dismiss, plaintiffs set forth in detail the FECA provisions governing both the substantive allegations of violation in their administrative complaints and the FEC's citizen's complaint process. Plaintiffs incorporate this discussion by reference, *see* Pls.' Opp'n at 5-20, and cover here only those aspects of the administrative and legal proceedings that are relevant to the questione of organizational standing.

A. Administrative proceedings

In 2015, CLC and Democracy 21 filed two FEC complaints against RTR Super PAC and Bush, which collectively alleged that Bush and the Super PAC had failed to comply with applicable

FECA contribution restrictions and disclosure requirements, both before Bush formally announced his candidacy on June 15, 2015 and for the duration of his official campaign.

On February 8, 2017, after reviewing plaintiffs' administrative complaints and the respondents' written responses, the FEC's Office of General Counsel ("OGC") issued its report recommending that the Commission find reason to believe that: (1) Bush failed to timely register as a candidate, and his authorized campaign committee, Jeb 2016, failed to timely register and report with the Commission; (2) Bush received excessive, unreported in-kind contributions from RTR Leadership PAC because the PAC paid for his TTW and/or campaign activity; and (3) Bush violated 52 U.S.C. § 30125(e) by establishing, financing, maintaining, or controlling RTR Super PAC, and the Super PAC violated this provision by soliciting and receiving soft money on behalf of the Bush campaign. *See* OGC Rpt. 45. Importantly, however, OGC's reports are entirely confidential until resolution of an administrative complaint, *see* 52 U.S.C. § 30109(a)(12)(A), and thus, by virtue of the Commission's extreme delay in resolving the matter, plaintiffs were unaware of these recommendations until after this Court's July 14, 2022 ruling dismissing their delay action.

In connection to its second recommendation, OGC noted that shortly after Bush's June 2015 official declaration of candidacy, Jeb 2016 filed its first disclosure report covering Bush's spending from May 2014 through June 2015, disclosing $516,870 for research and polling, consulting, and legal fees, but only a single payment of $1,089 for travel expenses. OGC Rpt. 6. In contrast, RTR Leadership PAC reported spending $4,896,426 between January and June 2015, *id.* at 7, with travel expenses totaling over $800,000, *id.* at 29-30. OGC found that it was likely that RTR Leadership PAC had funded some portion of Bush's travel and event schedule between January and June 2015, and indeed RTR Leadership PAC conceded as much, but argued that Bush

was appearing at such events as RTR's Chairman. *Id*. at 29. But OGC found that video footage of these events showed at least nine instances of Bush speaking about his campaign, with few references to RTR Leadership PAC, *id*. at 11, 29, thus indicating that these events should be deemed campaign events, not RTR events.

The Commission's ensuing voting on whether to follow OGC's recommendations and find "reason to believe" was protracted and confused. Essentially, although all then-serving Commissioners apparently agreed that there was reason to believe that Bush illegally delayed announcing his candidacy and failed to fully report his pre-announcement campaign activity, they differed on whether to proceed with respect to the alleged soft-money violations under 52 U.S.C. § 30125. Compl. ¶ 87. Consequently, the Commission held no vote—at least on the same motion—in which all four then-Commissioners found reason to believe that the two pre-candidacy violations occurred, despite the evident consensus on these two charges. *Id*. ¶¶ 85-86. *See also* Certification, MURs 6915 & 6927 (dated Dec. 7, 2018), https://www.fec.gov/files/legal/murs/6927/6927_15.pdf; Certification, MURs 6915 & 6927 (dated Dec. 14, 2018), https://www.fec.gov/files/legal/murs/6927/6927_16.pdf. On August 29, 2022, after multiple votes over four years, the Commission finally voted 4-1 to close the case file and thereby dismiss plaintiffs' complaints. Compl. ¶ 92.

At no point did any Commissioner issue a contemporaneous Statement of Reasons explaining their votes for or against finding reason to believe. *Id*. ¶ 88. The only statement issued by a Commissioner present for the "reason to believe" votes came years later from Commissioner Weintraub, who described the gridlock among her colleagues and expressed support for finding "reason to believe" with respect to all allegations of violation recommended by OGC. *See* Weintraub Statement of Reasons at 1.

Three current Commissioners issued a Statement shortly before their August vote to close the file in this case, but did not purport to explain the earlier "reason to believe" votes in the proceedings. Statement of Reasons of Chairman Dickerson and Comm'rs Cooksey and Trainor, MURs 6915 & 6927 (May 13, 2022), https://www.fec.gov/files/legal/murs/6927/6927_26.pdf. Instead, they noted that they were not on the Commission in late 2018, the period in which the relevant votes were cast, and took no position on the "merits of the decisions reached by our predecessors in declining to find reason to believe." *Id*. at 5.

B. Delay case

On March 13, 2020, CLC and Democracy 21 filed suit under 52 U.S.C. § 30109(a)(8)(A), arguing that the FEC's failure to act on plaintiffs' administrative complaints was contrary to law. *See* Compl., *CLC v. FEC*, No. 1:20-cv-730-CRC (D.D.C. Mar. 13, 2020), ECF No. 1. The FEC did not appear in the lawsuit and was declared in default, *see* Compl. ¶ 65, but RTR Super PAC was permitted to intervene. *Id*.

On February 19, 2021, this Court held that plaintiffs had sufficiently alleged an informational injury relating to the five-month period from January 2015 to June 2015, in which Governor Bush was concededly testing the waters—and during which, plaintiffs alleged, Bush had failed to disclose all campaign-related spending. *CLC v. FEC*, 520 F. Supp. 3d 38, 45-46 (D.D.C. 2021) (*Right to Rise I*). But the opinion also noted that the Court "d[id] not address plaintiffs' contention that they have standing based on organizational injury and FEC delay" because it found that plaintiffs had suffered an informational injury based upon Bush's deficient pre-candidacy reporting. *Id*. at 44 n.1.

Upon reconsideration—and in light of RTR Super PAC's belated claims that it or other entities had paid for and reported at least some of Bush's pre-announcement campaign activities—

the Court in December 2020 determined that plaintiffs did not suffer informational injuries sufficient for Article III standing. *See CLC v. FEC,* 578 F. Supp. 3d 1(D.D.C. 2021) ("*Right to Rise II"*). In particular, the Court found that intervenor had sufficiently demonstrated that the RTR committees had reported at least some of the expenses relating to five Bush appearances between January and June 2015 that plaintiffs had identified as unreported by the Bush campaign. *Id*. at 583. But in this ruling, the Court did not address the separate question it had previously deferred as to whether plaintiffs nevertheless might have organizational standing based on the deleterious effects of the FEC's inaction—and respondents' less than complete reporting—on plaintiffs' programmatic activities.

Plaintiffs moved for reconsideration of this decision, but solely to ask the Court to address whether the FEC's extensive delay in the administrative proceedings injured plaintiffs' organizational interests by depriving them of the full administrative file, noting that FECA's confidentiality provision, 52 U.S.C. § 30109(a)(12), prevents the FEC from disclosing any documents connected to an open Matter Under Review (or "MUR") until the matter is resolved. As plaintiffs argued, "the Commission's failure to take any final action on Plaintiffs' complaints shields these [MUR] documents and these facts from public view and deprives Plaintiffs of necessary information to effectuate their missions." Pls.' Mot. Reconsider at 7, *CLC v. FEC,* No. 1:20-cv-730-CRC (D.D.C. Feb. 2, 2022), ECF No. 34. Plaintiffs did not ask the Court to again consider whether plaintiffs had suffered a more typical organizational injury—i.e., whether the FEC's inaction on their administrative complaints resulted in a deprivation of FECA-required or other information that impeded the plaintiffs' organizational activities. This question was thus deferred by the Court in its February 2021 ruling and then not taken up again in either its December 2021 ruling or in its decision denying plaintiffs' motion for reconsideration, *see* Mem. Op., *CLC*

v. FEC, No. 20-cv-00730-CRC (D.D.C. July 14, 2022), ECF No. 39.

C. Procedural history

Plaintiffs initiated this action on October 28, 2022 to challenge the FEC's unlawful dismissal of their two administrative complaints.

The FEC appeared and moved to dismiss, but almost exclusively on the basis that plaintiffs were barred from establishing standing because the delay case (in which the agency itself had not participated) "concluded that plaintiffs lack an informational or organizational injury, which is preclusive here." FEC Mot. to Dismiss at 13, ECF No. 12. This Court ruled that plaintiffs were precluded from arguing informational standing based on the delay case's "previous judgments that Plaintiffs did not assert a valid informational injury because they are not entitled to the disclosures that they seek." Op. at 27. The Court, however, found that the delay case's rulings did not address whether plaintiffs suffered organizational injury on grounds that "the Commission's failure to enforce the FECA is depriving them of mandatory disclosures and forcing them to expend their own resources to compensate for this informational black hole." *Id*.

LEGAL STANDARD

To demonstrate Article III standing, plaintiffs must establish three elements: (1) "injury in fact"; (2) causation; and (3) redressability. *Friends of Animals v. Jewell*, 824 F.3d 1033, 1040-41 (D.C. Cir. 2016).

With respect to informational standing, "a denial of access to information qualifies as an injury in fact where a statute (on the claimants' reading) requires that the information be publicly disclosed and there is no reason to doubt their claim that the information would help them." *CLC v. FEC*, 952 F.3d 352, 356 (D.C. Cir. 2020) (citation omitted). Organizational standing, by contrast, does not turn on whether a statute "*requires* that . . . information be publicly disclosed."

Id. (emphasis added). Instead, a plaintiff must show, first, "that the agency's action or omission to act injured the organization's interest," by, for instance, depriving it of information helpful to its activities; and second, that it "used its resources to counteract that harm." *PETA*, 797 F.3d at 1094 (cleaned up). The harm alleged by the organization by reason of agency action must be "both concrete and specific to the work in which [plaintiffs are] engaged," *see Action Alliance of Senior Citizens of Greater Phila. v. Heckler*, 789 F.2d 931, 938 (D.C. Cir. 1986), and "more than simply a setback to the organization's abstract social interests," *Am. Anti-Vivisection Soc'y*, 946 F.3d at 618. But the harm need not concern an infringement of organization's *legal* right to different agency action.

Furthermore, "[a]nother way that an organization may allege sufficient injury to its interests is where the agency action at issue 'limits [the organization's] ability to seek redress for a violation of law.'" *CLC v. FEC*, 466 F. Supp. 3d 141, 153 (D.D.C.), *on reconsideration in part*, 507 F. Supp. 3d 79 (D.D.C. 2020), *rev'd and remanded*, 31 F.4th 781 (D.C. Cir. 2022) (*Clinton I*) (citing *Food & Water Watch Inc. v. Vilsack*, 808 F.3d 905, 921 (D.C. Cir. 2015)). *See also Action Alliance*, 789 F.2d at 937–38 (finding organizational injury where complainants pled that "the challenged regulations den[ied] the . . . organizations access to information and avenues of redress they wish to use in their routine information-dispensing, counseling, and referral activities").

While plaintiffs bear the burden of proving that the Court has jurisdiction to hear their claims, on a motion to dismiss, plaintiffs "need only 'state[] a plausible claim' that each element of standing is satisfied." *Hancock v. Urban Outfitters, Inc.*, 830 F.3d 511, 513 (D.C. Cir. 2016) (alteration in original) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009)). In evaluating a motion to dismiss, courts review the complaint liberally and grant plaintiffs the benefit of all inferences that can be derived from the facts alleged. *Barr v. Clinton*, 370 F.3d 1196, 1199 (D.C.

Cir. 2004). For purposes of the Rule 12(b)(1) motion, the Court "may consider materials outside the pleadings." *Jerome Stevens Pharms., Inc. v. FDA*, 402 F.3d 1249, 1253 (D.C. Cir. 2005).

ARGUMENT

I. FEC Inaction Has Caused Organizational Injury by Depriving Plaintiffs of Key Information They Need to Effectuate Their Missions.

CLC and Democracy 21 have suffered organizational injury sufficient to confer standing, because the FEC's seven-year failure to act on their complaints—and its eventual dismissal of the complaints without a written explanation—has "injured the [plaintiffs'] interest," and required plaintiffs to "use[] [their] resources to counteract that harm.'" *PETA*, 797 F.3d at 1094 (internal quotations omitted).

The FEC's egregious delay and ultimate unexplained dismissal of plaintiffs' administrative complaints meant that plaintiffs were deprived of three things vital to their operations: (1) information that FECA requires to be disclosed—including which purportedly independent expenditures by the RTR committees were in fact in-kind contributions to the campaign, and their dates, amounts, and purposes; (2) information about whether or the extent to which the RTR committees coordinated with Bush, even insofar as this constitutes a "legal determination"; and (3) a statement of reasons setting forth the Commissioners' reasoned explanation of the legal bases for their decision to find no reason to believe. This "information" is essential to the success of programmatic activities advancing plaintiffs' missions, including their public education work to inform voters about campaign spending, legislative advocacy to improve campaign finance laws, and watchdog efforts to monitor officeholders' and candidates' compliance with the law. The Commission's failure to act on the allegations here forced plaintiffs to divert resources from other organizational needs to research and fill in the missing disclosure information they sought in the complaints, and it has a continued effect on plaintiffs' public education and watchdog work

relating to the issues of pre-candidacy campaigning and coordination between candidates and super PACs.

A. The FEC's inaction has deprived plaintiffs of FECA-required information—and "information about coordination"—critical to their programs.

Drawing a line between FECA-required information and mere "knowledge as to whether a violation of the law has occurred," *Wertheimer*, 268 F.3d at 1074, has sometimes proven difficult in the context of coordinated spending, where a finding of coordination entails *both* statutory reporting obligations *and* liability for potential contribution limit violations. *But see Clinton III*, 31 F.4th at 790 (recognizing FECA requires a coordinating committee "to disaggregate its reporting to show the actual amounts of various expenditures that were in-kind contributions" to a campaign). But regardless of the distinction, plaintiffs' organizational activities were impeded by *both* the FEC's failure to compel respondents to report all information required by FECA *and* its refusal to require the RTR committees to disclose whether or the extent to which their reported expenditures were coordinated with the campaign.

First, the deprivation of FECA-required information has harmed several key programmatic activities central to plaintiffs' mission. Most crucially, complete and accurate disclosure is essential to plaintiffs' efforts to analyze FEC reports and inform voters about campaign spending and the true sources and nature of candidates' support. In addition to communicating to the public about information in disclosure reports, plaintiffs also educate the public more broadly about trends in campaign practices, including problematic activities such as candidates illegally delaying the announcement of their candidacy or collaborating closely with supposedly independent political committees. Having full and accurate information about the financing of important campaigns is necessary for these public education efforts. Compl. ¶¶ 13-15, 18-19.

Moreover, the FEC's inaction has also directly harmed plaintiffs' watchdog activities by

depriving plaintiffs of FECA-required information they need to conduct their regulatory practice before the FEC and thus "limit[ing] [plantiffs'] ability to seek redress for a violation of law.'" *Food & Water Watch*, 808 F.3d at 921. To advance their organizational missions of promoting government transparency and accountability, plaintiffs regularly file complaints against individuals or organizations that violate federal election law and participate in rulemaking and advisory opinion proceedings at the FEC to ensure the proper interpretation and enforcement of those laws. Compl. ¶¶ 13, 16, 19. The Commission's continued failure to act inhibits plaintiffs' regulatory practice, impeding efforts to oversee the enforcement of federal campaign finance laws and hold the FEC accountable.

Second, knowledge about whether an outside group is making "coordinated expenditures" with a campaign, as defined by FECA, is information of clear interest to the public and of use to plaintiff organizations—even if this is not "information" to which plaintiffs are statutorily entitled. Indeed, the district court in *Clinton* recognized as much in its December 2020 decision. Even as it found that CLC lacked informational standing to seek a determination that the super PAC Correct the Record had "coordinated" with the Clinton campaign, it acknowledged that:

> One could be forgiven for thinking, as Plaintiffs appear to, that whether an expenditure was coordinated between a PAC and a campaign is a piece of information — regardless of its separate law-enforcement consequences — that citizens can also use to inform their participation in the political process. For instance, upon learning that a candidate and a PAC coordinated, an interested voter could choose to avoid supporting, financially or electorally, that candidate or other candidates who coordinate with that same PAC or its leaders in the future.

CLC v. FEC, 507 F. Supp. 3d 79, 85–86 (D.D.C. 2020) ("*Clinton II*"), *rev'd and remanded*, 31 F.4th 781 (D.C. Cir. 2022) (internal citations omitted).

However, as the district court continued, the D.C. Circuit has never deemed the "fact of coordination" to be FECA-required disclosure such that its "denial" constitutes a traditional

informational injury. *Id.* at 86. Indeed, this has never been CLC's position, either in the *Clinton* litigation or here.[2]

But even though "knowledge of coordination" may not be the type of information that would support an informational injury, there is no precedent that forecloses the possibility that deprivation of this information might cause organizational injury. Indeed, this was the apparent conclusion drawn in June 2020 by the district court in the *Clinton* litigation—although the district court would later itself *sua sponte* reverse this initial decision, only to be again reversed by the D.C. Circuit, which in effect resurrected the reasoning of the initial decision. *Clinton I,* 466 F. Supp. 3d at 154.

In its first decision, the *Clinton* district court found that CLC had successfully alleged both informational injury and organizational injury. As to the latter, it noted that CLC had alleged both that the "agency's statutory interpretation 'deprived [the organization] of key information that it relies on to educate the public,'" 466 F. Supp. 3d at 153, and that the "agency action at issue limits [CLC's] ability to seek redress for a violation of law," *id*. (internal quotation marks omitted). In fact, the district court went on, "the injury to CLC's public-education activities goes well beyond those deemed sufficient in *American Anti-Vivisection Society* and *PETA*: the organization here is describing not only proactive efforts to educate the public, but also a need to respond to requests from reporters." *Id*. at 154 (internal citation omitted).

[2] Instead, CLC argued, and the D.C. Circuit ultimately agreed, that a political committee is statutorily required to provide complete and accurate information about each in-kind contribution in the form of a coordinated expenditure with a campaign. *Clinton III*, 31 F.4th at 790. It was the deprivation of FECA-required information about the amounts, dates, and purposes of each in-kind contribution made by Correct the Record that comprised an informational injury in the *Clinton* case.

As the *Clinton* district court noted, plaintiffs' injury here is analogous to the injury suffered by the *PETA* plaintiffs. PETA alleged that the USDA's failure to apply the Animal Welfare Act to birds injured its organizational interests by depriving PETA of information it needed to conduct public education activities central to its mission of preventing animal cruelty and inhibiting its ability to combat bird abuse through USDA enforcement complaints. 797 F.3d at 1094-95. The Court agreed, finding that the USDA's inaction "deprived PETA of key information that it relies on to educate the public" where public education efforts were "[o]ne of the 'primary' ways in which PETA accomplishe[d] its mission." *Id*. at 1094 (citation omitted). The Court concluded that the agency's inaction, which resulted in the deprivation of "investigatory information," resulted in an injury sufficiently "concrete and specific" to confer organizational standing. *Id*. at 1095.

Similarly, the FEC's failure to require respondents here to provide all FECA-required information and to disclose the "fact of coordination" prevents plaintiffs from achieving their mission of strengthening the democratic process through public education, legislative advocacy, and regulatory watchdog work. The FEC's inaction hinders these efforts by "depriv[ing] [plaintiffs] of key information that [they] rel[y] on to educate the public" and to engage in the "normal process of submitting [FEC] complaints" and in Commission rulemakings and other proceedings. *Id*. at 1094.

B. Plaintiffs' arguments concerning organizational injury by reason of informational deprivation are not precluded.

As this Court recognized in its latest ruling, Op. at 17, it made no decision on this organizational standing argument in the delay case. *See also* Order & Op. at 2, *CLC v. FEC*, No. 20-cv-00730-CRC (D.D.C. July 14, 2022), ECF No. 39 ("Plaintiffs are correct that the Court initially reserved decision on the merits of their organizational standing argument because it found

standing was satisfied on other grounds. The Court did not revisit the organizational standing argument in its decision reconsidering that order.").

Nor is it clear why "the Court's categorical language that Plaintiffs have no legally cognizable interest in labeling spending 'coordinated,'" Op. at 27 (citation omitted), precludes plaintiffs from making the argument that the FEC's refusal to require full disclosure from respondents harmed their organizational operations. To be sure, plaintiffs must show that it is not the loss of their statutory right to information *alone* that constitutes their injury—and instead must demonstrate that the deprivation of information has strained, for example, their public education or watchdog activities and caused a drain of resources. *PETA*, 797 F.3d at 1094. But neither prong of *PETA*'s test for organizational injury turns on a plaintiff's legal right to information.

1. The FEC does not so much assert that plaintiffs' argument for organizational standing is precluded, as just assume that it "must fail" on its merits. FEC Mot. at 15. But the FEC does not provide any basis for this assumption except to cite non-FECA cases for the proposition that "where an alleged organizational injury is part and parcel of [an] alleged informational injury the court has rejected, the organizational theory must fail with it." *Id.* (citation omitted).

But, as the FEC also admits, the reason that its cited cases found no organizational injury was because the plaintiffs there had pled an injury consisting of only the deprivation of the sought-after information itself; they articulated no further concrete impact or harm to their activities by reason of this deprivation. In *Elec. Priv. Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity*, 878 F.3d 371 (D.C. Cir. 2017), for instance, the court pointed out that the agency's failure to issue a "privacy impact assessment" did not have any appreciable impact on the plaintiff group, finding, for instance, that the plaintiff did not take any actions that it would not have taken "even if the defendants had produced an assessment." *Id.* at 379. *In Lawyers' Comm. for 9/11 Inquiry,*

Inc. v. Wray, 848 Fed. App'x 428 (D.C. Cir. 2021), the court found that the organizational harm that the plaintiff group posited "rest[ed] on layers of speculation" relating to its hope for a possible future monetary award, but not from the defendant FBI but from a non-party, the U.S. State Department. *See id.* at 431 (quoting *Turlock Irrigation Dist. v. FERC*, 786 F.3d 18, 25 (D.C. Cir. 2015) ("[W]e have repeatedly held that litigants cannot establish an Article III injury based on the 'independent actions of some third party not before this court.'")).

These cases thus stand for the uncontroversial proposition that a claim to organizational standing based on informational deprivation fails if a group articulates no harm to its organization beyond the loss of information alone, or must resort to pure speculation about possible future injury. Here by contrast, as was the case in the *Clinton* litigation, plaintiffs have pled concrete harm to their activities: the absence of full and accurate FECA reporting impedes their "proactive efforts to educate the public" and their "ability to seek redress for a violation of law," as well as creating "a need to respond to requests from reporters." *Clinton I*, 466 F. Supp. 3d at 154.

2. The FEC also contends that plaintiffs in this dismissal action have not "identif[ied] any new testing-the-waters expenditures that were not disclosed previously" or "provid[ed] this Court with [a] basis to revisit its conclusion that plaintiffs lack a cognizable interest in the labeling of this information as 'coordinated.'" FEC Mot. at 18. But, drawing on the OGC report that was made public only upon the dismissal of plaintiffs' administrative complaints, plaintiffs raised seven "new" TTW events that Bush had failed to account for in his campaign's first disclosure reports. Pls.' Opp'n at 33-34. This Court ruled that plaintiffs were precluded from raising these events because plaintiffs "fail[ed] to explain why they were unable to identify these alleged testing-the-waters events in the delay case" given that footage of such events may have been in the public domain. Op. at 24-25. But it is unclear why *failure* to identify these events previously, even if the

result of pure oversight, means plaintiffs are precluded from doing so in a later case. "The preclusive effect of the first jurisdictional judgment is limited to matters actually raised and necessarily decided; it does not extend to matters that *could have been raised*, as would the preclusive effect of a judgment on the merits." *GAF Corp. v. United States*, 818 F.2d 901, 913 (D.C. Cir. 1987) (emphasis added). *See also Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (finding that issue preclusion bars only "successive litigation of an *issue of fact or law actually litigated and resolved* in a valid court determination") (emphasis added) (internal quotation marks omitted). And certainly, even if plaintiffs are barred from raising these events with respect to an argument for informational injury, which admittedly was considered as to *other* unreported TTW events by this Court in the delay case, plaintiffs should not be barred from doing so with respect to an organizational standing argument that indisputably was not "resolved" in the delay case.

The Court further states, however, that in raising these seven "new" events in this dismissal case, plaintiffs are merely "speculat[ing]" that these events were "unreported," Op. at 24, suggesting that these events may have indeed been disclosed in some form in respondents' existing FEC reports. But Bush in fact failed to report these events, OGC Rpt. at 11-12 & n.44, and given that RTR Leadership PAC did not designate any of its reported spending as relating to these Bush campaign appearances,[3] plaintiffs by necessity can only "speculate" as to whether they were reported "in some form" in the PAC's existing filings. Pls.' Opp'n at 34. It is precisely *because of* respondents' reporting failures that plaintiffs must resort to conjecture.

But even if plaintiffs did not have a legal right to complete reporting about these seven TTW events, respondents' inadequate reporting of these events nevertheless inflicted

[3] Importantly, these RTR events only became "Bush events" because OGC made the legal judgment that they should be deemed campaign appearances after reviewing footage of Bush's appearances, OGC Rpt. 11-12, 29.

organizational injury because the lack of disclosure harmed plaintiffs' activities and required the outlay of "resources to counteract that harm," *PETA*, 797 F.3d at 1094. Indeed, this Court's discussion of this question only underscores the resource-intensive nature of any post hoc effort to fill in the gaps of respondents' omissions in reporting. If, in the course of the delay case, plaintiffs indeed had scoured the internet for unreported Bush appearances of which they were only partially aware, viewed all footage of these events, calculated the amount of time devoted to "RTR-related" topics versus "campaign-related" topics, and then made a judgment call about whether each such event could be fairly deemed a "Bush campaign appearance": this endeavor would take significant staff time and attorney hours.[4] Thus, even if plaintiffs are not *legally entitled* to more reporting about respondents' expenditures for these events, attempting to retroactively reconstruct the likely in-kind contributions from RTR Leadership PAC to the campaign in connection to this TTW activity would still consume resources, confirming that inadequate disclosure can inflict organizational injury.

C. Plaintiffs' organizational injury is exacerbated by the Commission's failure to explain its reasoning for dismissal.

Plaintiffs have also been injured by the Commissioners' failure to issue a contemporaneous statement of reasons explaining their failure to find reason to believe respondents had violated FECA, including its disclosure requirements. The Commission has thus failed to meet even the

[4] Plaintiffs are not arguing that the time or resources they devoted *to this litigation* represent a cognizable depletion of resources for the purposes of organizational standing. *See Equal Rts. Ctr. v. Post Properties, Inc.*, 633 F.3d 1136, 1140 (D.C. Cir. 2011) ("While the diversion of resources to litigation or investigation in anticipation of litigation does not constitute an injury in fact sufficient to support standing, [plaintiff's] alleged diversion of resources to programs designed to counteract the injury to its interest in promoting fair housing could constitute such an injury."). This discussion is meant merely to highlight how identifying and analyzing inadequate FEC reporting—for example, in service of CLC's public education efforts—is a resource-intensive endeavor causing organizational injury.

most basic rule of reasoned decisionmaking, *see Orloski v. FEC*, 795 F.2d 156, 161 (D.C. Cir. 1986), declining to shed any light on how the Commission analyzes the issues of law raised by the administrative complaints, or to find any facts illuminating the relationship between the RTR committees and the Bush campaign. This silence has allowed Bush-style evasions of campaign finance disclosure requirements to continue across multiple election cycles unchecked, requiring plaintiffs to expend additional resources to both police these abuses and educate the public. *See infra* Part I.D.

This argument is not precluded by any rulings in the delay case because any statements of reasons are released only upon dismissal of an administrative complaint, and thus this particular Commission failure was not at issue in the previous litigation.

Plaintiffs concede that they are aware of no case law considering whether the "deprivation" of a statement of reasons can constitute a cognizable injury to a FECA complainant, organizational or otherwise. But such statements have been required for decades by the courts when the Commission dismisses an administrative complaint against OGC's recommendation, *Common Cause*, 842 F.2d at 449, and certainly plaintiffs are entitled to bring suit to assert procedural rights. *Cf. Mendoza v. Perez*, 754 F.3d 1002, 1010 (D.C. Cir. 2014 (noting that when plaintiff seeks to vindicate a procedural right "the normal standards for immediacy and redressability are relaxed" once injury is shown). The lack of case law on the issue is thus likely because the Commission's complete failure issue an explanation here is so extraordinary. But the D.C. Circuit has held that the Commission's failure to issue a contemporaneous statement of reasons for a vote against "reason to believe" requires the matter to be remanded to the agency for the issuance of a reviewable legal rationale. *End Citizens United PAC*, 69 F.4th at 923-24; *see also id*. at 923 (noting that parties did not cite "a single case in which the court has sustained over the complainant's

challenge a statement of reasons belatedly filed in derogation of *Common Cause*'s principles").

Further, this Court need not consider whether the absence of such a statement *alone* constitutes an injury-in-fact. This lapse can instead be seen as exacerbating the Commission's failure to require the respondents to file complete FECA disclosure and deepening the "informational black hole" around the alleged coordination between the RTR committees and the Bush campaign.

The FEC's failure to even explain its application of the law to the allegations in the administrative complaints harms plaintiffs' public education, watchdog, and legislative advocacy efforts. Compl. ¶¶ 14-16, 19-20. For instance, plaintiffs devote significant resources to the effort of educating the public both about the financial activity of individual candidates and more broadly about how the FEC applies the law in various contexts, including, for instance, how it interprets a candidate's obligations in the pre-candidacy period. *See, e.g.*, Sophia Gonsalves-Brown, *Testing the Waters, Explained*, CLC, https://campaignlegal.org/update/testing-waters-explained; Sophia Gonsalves-Brown, *Who Is Already Testing the Waters for 2024?*, https://campaignlegal.org/update/who-already-testing-waters-2024. Without either disclosure from respondents, or an explanation from the FEC for its dismissal, plaintiffs are hindered in identifying emerging problems in the FEC's interpretations of FECA and in providing guidance about the scope of the law to the public and media outlets.

FEC inaction also impedes plaintiffs' legislative policy efforts. The FEC's failure to issue any sort of statement of reasons here means there is incomplete public information about how the FEC interprets and applies, among other key FECA provisions, the reporting requirements for testing the waters activity, 11 C.F.R. § 101.3, and the soft money prohibition in 52 U.S.C. § 30125(e)(l). This failure to provide clarity about the Commission's interpretation of the law

impedes a full analysis of the efficacy of FECA and hamstrings plaintiffs' development of policy and legislative solutions to improve campaign finance and disclosure laws. Compl. ¶¶ 13-14, 19-20.

D. Plaintiffs have diverted resources to address the gaps in disclosure created by FEC inaction.

Plaintiffs have expended resources to counteract these organizational injuries. *See PETA*, 797 F.3d at 1094. As plaintiffs alleged in the delay case, the FEC's failure to compel disclosure from RTR Super PAC and the Bush campaign caused plaintiffs to divert resources from their other planned organizational needs to research relevant law and fill in the gaps to the best of their ability, including by explaining to reporters and partner organizations how they might attempt to find information not properly reported. Compl. ¶¶ 17, 20.

Plaintiffs are forced to divert resources in a futile attempt to compensate for the absence of the three categories of information sought here: (1) respondents' failure to provide complete FECA reporting about in-kind contributions from the RTR committees to the campaign, (2) the FEC's failure to require the RTR committees to disclose whether their reported expenditures were coordinated, and (3) the FEC Commissioners' failure to provide any legal explanation for why they found no "reason to believe" and dismissed plaintiffs' administrative complaints. The absence of the first two categories required plaintiffs to divert resources to review incomplete disclosure reports and to reallocate staff time to assist reporters and partner organizations. Compl. ¶¶ 17, 20; *see also* Pls.' Opp'n at 42-43. The absence of the third has required additional resources because CLC has continued to file complaints alleging testing-the-waters violations, but without the benefit of the Commission's legal analysis of the allegations in the Bush/RTR administrative proceedings.

These claims of injury based on the diversion of organizational resources clear the Article III bar, especially at this stage of the case. *See Abigail Alliance for Better Access to Developmental*

Drugs v. Eschenbach, 469 F.3d 129, 132 (D.C. Cir. 2006); *PETA*, 797 F.3d at 1096. As the court in *Clinton* explained, "[r]esources do not grow on trees—when an organization has to 'divert' them from an area where it planned to spend time and money to one where it did not, that leaves fewer resources for its 'other organizational needs.'" *Clinton I*, 466 F. Supp. 3d at 154 (quoting *Common Cause*, 108 F.3d at 417).

Neither the Court nor the FEC seriously contend that plaintiffs failed to plead a diversion of resources in the delay case; instead they question whether plaintiffs are suffering an "ongoing organizational injury all these years after the 2016 presidential campaign has concluded." Op. at 28. Plaintiffs do not deny that they must demonstrate an ongoing injury, but dispute that this requires a showing that they are "still diverting resources to address questions" about the Bush campaign to the same extent today as they were in 2015. *Id*.

Plaintiffs' injuries are ongoing in that they still have not received all the information they are due under FECA from either Bush or RTR Super PAC, nor full disclosure about the scope of coordination between the respondents. The deprivation of information has not been remedied by respondents, who have made no attempt to file amended committee reports, even though RTR Super PAC alleged in the delay case that it had paid for several Bush events between January and June 2015 without designating which expenses on its FEC reports related to this purpose. *See, e.g.*, RTR Suppl. Br. at 12, 1:20-cv-730-CRC, ECF No. 28; Pls.' Opp'n at 29 & n.8.

Furthermore, the mere passage of time cannot moot plaintiffs' injury. Were this the rule, it would doom almost all Section 30109(a)(8) actions based on informational standing because most take years to resolve. Moreover, this approach would reward FEC delay by effectively immunizing belated dismissals from meaningful judicial review under 52 U.S.C. § 30109(a)(8): the longer the Commission drags out administrative proceedings, the less likely a complainant

would have standing to object. It is thus unsurprising that the FEC cites not a single FECA case in support of its theory that CLC's and Democracy 21's pursuit of what it describes as "one-off pieces of information"[5] is insufficiently connected to their current organizational activities. FEC Mot. at 20-21.

Indeed, according to the FEC's theory, many courts to have considered whether the FEC's dismissal of an administrative complaint was contrary to law—including the Supreme Court in *Akins*—may have actually lacked jurisdiction to reach that question. The original administrative complaint underlying the *Akins* decision was filed on January 9, 1989, and involved activity that took place between 1980 and 1990; the Supreme Court nevertheless upheld the redressability of the plaintiffs' informational injury in 1998. *See FEC v. Akins*, 524 U.S. 11, 25 (1998). And litigation spurred by the original *Akins* complaint continued through 2010, despite involving alleged violations that ceased after the 1980s. *Akins v. FEC*, 736 F. Supp. 2d 9, 13-16 (D.D.C. 2010).

To be sure, *Akins* proceeded on the basis of an informational injury, whereas this Court has limited its inquiry to whether plaintiffs have suffered organizational injury. But the somewhat

[5] The only authority the FEC cites to directly support the proposition that "an organization's lack of access to discrete, one-off pieces of information" does not constitute injury-in-fact is a district court decision currently under appeal. FEC Mot. at 20 (citing *Doc Soc'y v. Blinken*, No. 19-cv-3632 (TJK), 2023 WL 5174304, at *6 (D.D.C. Aug. 11, 2023), *on appeal*, No. 23-5232 (D.C. Cir. appeal docketed Aug. 11, 2023)). And, even putting aside whether plaintiffs here are seeking only "one-off pieces of information," neither the FEC nor the *Blinken* decision cite any D.C. Circuit authority that espouses this supposed principle. For instance, in *Food & Water Watch*, the case on which *Blinken* principally relied, the plaintiff group did not even allege informational deprivation in asserting organizational standing to challenge USDA regulations that allegedly relaxed the poultry-processing inspection process. Instead, as the Court noted, the group's standing argument was based on its claim that it would spend resources educating the public about why the new inspection rules undercut food safety, not on any allegation that "the USDA's action" restricted the "information that [the group] uses to educate its members." 808 F.3d at 921. *See also supra* at 17-18.

different bases for injury-in-fact both rely on a theory of informational deprivation, and there is no reason why the passage of, for instance, five years would render missing information "stale" for the purposes of organizational injury, but not so for the purposes of informational injury. Moreover, the perverse incentives created by a contrary approach—effectively shielding gross agency delay from judicial review—is equally problematic in both contexts.

Second, although it is fair to say that fewer "reporters [are] still dialing CLC's line" in connection to plaintiffs' administrative complaints, Op. at 28, the abuses alleged therein remain acutely relevant to this election cycle, where current candidates appear to be closely following Bush's playbook. Even if CLC is diverting fewer resources to counteract the respondents' specific failures to make all required disclosures in 2015-16, combatting similar violations of the testing-the-water and disclosure rules continues to command CLC's staff time and resources.

The FEC's failure to enforce the law in this area of activity—or even to articulate a legal basis for declining to find "reason to believe" in the administrative proceedings here—has encouraged an upsurge in schemes to game the timing of candidacy announcements in order to evade disclosure and circumvent FECA's contribution limits. Indeed, both frontrunners for their party's Presidential nomination in this cycle have been charged with possible pre-candidacy violations, including the failure to properly disclose all spending in this period. *See, e.g.*, First General Counsel's Rpt. (Joseph R. Biden, Jr.) at 3-4, MUR 7931, https://www.fec.gov/files/legal/murs/7931/7931_33.pdf; First General Counsel's Rpt. (Donald J. Trump) at 2-3, MURs 7968, 7969, https://www.fec.gov/files/legal/murs/7968/7968_07.pdf. And abuses of the pre-candidacy period extend well beyond the high-stakes presidential race, marking

various congressional campaigns across the country.[6]

The FEC's enforcement vacuum has generated an increasing volume of watchdog work for plaintiffs, requiring plaintiffs to devote additional resources to policing these potential violations. In the last few years alone, plaintiffs have taken the following actions in this area:

In May 2023, CLC filed a FEC complaint against Governor Ron DeSantis, alleging that he violated FECA by transferring $80 million from his old state-election PAC to the pro-DeSantis super PAC Never Back Down prior to formally announcing his run for President. *See CLC Alleges DeSantis Violated Federal "Soft Money" Ban with State Funds* (May 30, 2023), https://campaignlegal.org/document/clc-alleges-desantis-violated-federal-soft-money-ban-state-funds. Indeed, following the roadmap set by Bush, DeSantis spent much of the early months of 2023 engaging in extensive fundraising, including for his state committee and the super PAC Never Back Down, and campaigning in early primary states like Iowa and New Hampshire—all while delaying the official start of his candidacy. Compl. (Ronald D. Desantis, et al.), ¶¶ 4-15, https://campaignlegal.org/sites/default/files/2023-05/DeSantis%20Soft%20Money%20Complaint%20%28Final%29.pdf.

In 2022 and 2023, CLC filed an FEC complaint and supplement, joined by NRDC Action Votes, against former President Trump, alleging that he transferred up to $60 million worth of soft

[6] *See, e.g.*, Nick Evans, *Complaint alleges Frank LaRose broke 'testing the waters' rules in Ohio U.S. Senate race*, Ohio Capital Journal (July 28, 2023), https://ohiocapitaljournal.com/2023/07/28/complaint-alleges-frank-larose-broke-testing-the-waters-rules-in-ohio-u-s-senate-race/; Roger Sollenberger, *Multi-Millionaire Senate Candidate Pushes the Bounds of Election Laws*, Daily Beast (Oct. 26, 2023), https://www.thedailybeast.com/multi-millionaire-senate-candidate-david-mccormick-pushes-the-bounds-of-election-laws; Will Peebles, *FEC complaint filed against Rep. Buddy Carter for spending advertising money outside his district*, Savannah Morning News (Aug. 11, 2021) https://www.savannahnow.com/story/news/2021/08/11/democrats-file-complaint-alleging-illegal-campaign-spending-us-rep-buddy-carter-georgia-senate-run/5504537001/.

money from his leadership PAC to Make America Great Again, Inc., a super PAC that spent millions to influence the 2022 midterm elections and has continued to spend in support of Trump's presidential candidacy in the 2024 election cycle. Compl. (Donald J. Trump), https://campaignlegal.org/sites/default/files/2022-11/Trump%20Save%20America%20PAC%20Complaint%20%28Final%29.pdf; *CLC Partners with NRDC Action Votes to File Supplemental FEC Complaint Against Donald Trump* (May 17, 2023), https://campaignlegal.org/document/clc-partners-nrdc-action-votes-file-supplemental-fec-complaint-against-donald-trump-and. Following the same playbook as Bush, President Trump made these transfers prior to the formal announcement of his 2014 campaign, although his public statements and activities evidenced his clear intent to run for President well prior to this announcement.

In August 2019, CLC filed a complaint with the FEC alleging that the 2020 presidential campaign of Bill De Blasio, and two committees, Fairness PAC and NY Fairness PAC, violated FECA because the PACs made excessive and undisclosed in-kind contributions to support de Blasio's testing-the-waters and campaign activities. Compl. (De Blasio 2020, et al.), https://campaignlegal.org/sites/default/files/2019-08/8-7-19%20de%20Blasio%20%28signed%29.pdf. Fairness PAC and NY Fairness PAC paid for hundreds of thousands of dollars in staff, polling, and travel to early primary states in the months before de Blasio formally announced his candidacy, but the de Blasio campaign failed to fully disclose these TTW expenditures on its first report, or the contributors who had paid for them. On April 17, 2023, the FEC entered into a conciliation agreement with the De Blasio campaign, Fairness PAC, and NY Fairness PAC, imposing fines and requiring DeBlasio campaign to amend its FEC reports to correctly report all information related to the contributions it received from the

committees, as well as its unreported TTW expenditures and disbursements. FEC Ltr. re: MUR 7634 (De Blasio 2020, et al.) (April 19, 2023), https://campaignlegal.org/sites/default/files/2023-04/MUR%207634%20Closing%20Letter%20to%20Complainant.pdf.

Thus, while FECA information about any specific in-kind contribution from RTR Super PAC to the Bush campaign may no longer draw huge public interest, disclosure of the full scope and amount of the RTR committees' support of the Bush campaign in the pre-candidacy period would aid voters' understanding of analogous TTW schemes in this election cycle. And although plaintiffs may not now be expending significant resources researching individual in-kind contributions made or received by Bush and the RTR committees in the 2015-16 cycle, they are devoting their organizational capacity to publicizing and taking action against current pre-candidacy soft money abuses and disclosure violations—campaign finance problems that the FEC's inaction in this case has allowed to run rampant.

CONCLUSION

For these reasons, the FEC's motion to dismiss should be denied.

Dated: February 16, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2024, I caused a true and correct copy of the foregoing documents to be served upon all counsel of record registered with the Court's ECF system, by electronic service via the Court's ECF transmission facilities.

Respectfully submitted,

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