

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER,

*Plaintiff,*

v.

Case No. 20-cv-1778 (RCL)

FEDERAL ELECTION COMMISSION,

*Defendant.*

**MEMORANDUM AND ORDER**

On October 14, 2020, after defendant Federal Election Commission (“FEC”) failed to defend this action, the Court entered default judgment for plaintiff. ECF No. 14. Two days later, the Department of Justice (“DOJ”) filed a Statement of Interest in this matter pursuant to 28 U.S.C. § 517, which authorizes the DOJ to “attend to the interests of the United States in a suit pending in [federal court].” *See* ECF No. 16; 28 U.S.C. § 517. In its Statement of Interest, the DOJ argues that the Court should vacate the Order of default judgment because plaintiff “has not alleged an injury sufficient to demonstrate standing.” ECF No. 16 at 6, 14. Specifically, the DOJ claims that “the Commission’s delay in acting on an administrative petition, is, standing alone, not an injury.” *Id.* (citing *Common Cause v. FEC*, 108 F.3d 413, 419 (D.C. Cir. 1997)). And, the DOJ adds, “a bare procedural violation divorced from any concrete harm’ does not satisfy the injury-in-fact requirement of Article III.” *Id.* at 6–7 (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016)).

The Court directed plaintiff to respond to the DOJ’s Statement of Interest, ECF No. 17, which it did on November 16, 2020, ECF No. 18. In its response, plaintiff argues that under *FEC v. Akins*, 524 U.S. 11 (1998), it is well settled that “a plaintiff suffers an ‘injury in fact’ when

the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute.” ECF No. 18 at 3–4 (quoting *Akins*, 524 U.S. at 21).

Shortly thereafter, it came to the Court’s attention that the FEC had been restored to a policymaking quorum. See Congressional Research Service, *Federal Election Commission: Membership and Policymaking Quorum, In Brief*, <https://fas.org/sgp/crs/misc/R45160.pdf> (updated Dec. 11, 2020). Accordingly, when the Court requested the DOJ to reply to plaintiff’s response, it asked that the DOJ address the effect of that development on this matter. ECF No. 19. Rather than doing so, however, the DOJ’s reply simply states that “[s]hould the Commission seek to appear in this case, the Department would defer to the arguments and positions taken by the Commission.” ECF No. 20 at 2. In its sur-reply, which the Court authorized, ECF No. 19, plaintiff argues in part that the FEC’s restoration to a quorum has no effect on this matter because “the FEC had a quorum during the pendency of [plaintiff’s administrative complaint] from May 19, 2020 to July 3, 2020 . . . and thus, during that time period, the FEC could have acted on the [administrative] complaint.” ECF No. 21 at 2 (internal quotation marks omitted).

Though the DOJ is not a party to this suit and thus cannot move to vacate the Court’s Order entering default judgment for plaintiff, the Court nevertheless finds it appropriate to address the argument set forth in the DOJ’s Statement of Interest, ECF No. 16, and subsequent filings, ECF Nos. 18, 20 & 21. In short, the Court declines the DOJ’s invitation to vacate the Order of default judgment for lack of standing, because the DOJ’s position is foreclosed by well-established law.

In *FEC v. Akins*, the Supreme Court held that the denial of access to information is a cognizable injury when two conditions are met: First, the plaintiff credibly claims that the information sought would help voters evaluate candidates for public office and, second, on the plaintiff’s view of the law, the Federal Election Campaign Act (“FECA”) requires the information

sought to be made public. *Akins*, 524 U.S. at 21; accord *Campaign Legal Center and Democracy* 21, 952 F.3d at 356.

This “informational injury” is precisely the deprivation that plaintiff alleges here. *Akins*, 524 U.S. at 24. Plaintiff alleges that it filed an administrative complaint with the FEC claiming that Iowa Values, a 501(c)(4) nonprofit, violated FECA in part by failing to publicly disclose its contributions, expenditures, and debts. Compl., ECF No. 1 at ¶¶ 2–3. Plaintiff further alleges that it seeks “accurate and complete reporting of campaign finance information” to produce “reports and other materials to [educate] the public about campaign spending and the true sources and scope of candidates’ financial support.” *Id.* at ¶ 10. It carries out these activities, plaintiff explains, “to ensure that the public is equipped with the information necessary to evaluate different candidates and messages and to cast informed votes.” *Id.* at ¶ 11. Plaintiff thus pleads a cognizable “informational injury.” *Akins*, 524 U.S. at 24.

To argue that plaintiff does *not* plead a cognizable injury, the DOJ relies primarily on *Common Cause v. FEC*, 108 F.3d 413 (D.C. Cir. 1997). See ECF No. 16 at 11–13. But the D.C. Circuit decided *Common Cause* the year *before* the Supreme Court’s ruling in *Akins*. And the DOJ’s attempt to distinguish *Akins* on its facts is unpersuasive. The DOJ argues that unlike in *Akins*, where the Court “analyzed standing after the Commission *denied* an administrative complaint,” plaintiff here “has not been denied any information” because it is still waiting for the FEC to act on its administrative complaint. ECF No. 20 at 5.

*Akins*, however, makes no such distinction. There, the Court explained the plaintiffs’ injury as follows:

The ‘injury in fact’ that [plaintiffs] have suffered consists of their inability obtain information—lists of [ ] donors, and campaign-related contributions and expenditures—that on [plaintiffs’] view of the law, [FECA] requires [be made] public. There is no reason to doubt their claim that the


information would help them (and others to whom they would communicate it to) to evaluate candidates for public office . . . . [Plaintiffs'] injury consequentially seems concrete and particular.

*Akins*, 524 U.S. at 21. In other words, the “concrete and particular” injury in *Akins* was the plaintiffs’ inability to obtain information that they credibly believed they were entitled to under FECA. *See id.* So long as a party is unable to obtain such information, then, it does not matter whether the information is out of reach because the FEC denied the party’s administrative complaint or because the FEC has yet to act. The DOJ’s attempt to distinguish *Akins* is thus unpersuasive.

In sum, because plaintiff alleges a cognizable informational injury under *Akins*, the Court will not vacate its Order of default judgment against the FEC for lack of standing.

It is **SO ORDERED**.

Date: February 5, 2021

  
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Hon. Royce C. Lamberth  
United States District Judge