UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMON CAUSE GEORGIA, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 22-3067 (DLF) REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

FEDERAL ELECTION COMMISSION'S REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

In its Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment (Docket Nos. 14, 14-1) ("Motion" or "Mot."), defendant Federal Election Commission ("FEC" or "Commission") explained that plaintiffs lack standing to bring a portion of their claims here, and that the dismissal of their administrative complaint was a reasonable and permissible exercise of enforcement discretion. In their Combined Reply in Support of Plaintiffs' Motion for Summary Judgment and Memorandum in Opposition to Defendant's Cross-Motion for Summary Judgment (Docket No. 17) ("Response" or "Resp."), plaintiffs dispute those points, but they rely on overstatements and oversimplifications as to the applicable law and facts, and they fail to counter the FEC's showing on the key issues in dispute.

With respect to standing, plaintiffs primarily emphasize that they have been injured by a lack of information that the Republican Party of Georgia ("Georgia GOP") was required to report regarding alleged coordinated, in-kind contributions made by True the Vote ("TTV"). But the Commission has not contested that point. Even assuming plaintiffs were indeed injured by the Georgia GOP's failure to report such contributions, plaintiffs have not demonstrated an injury sufficient to challenge the decision not to pursue alleged violations of provisions of the Federal Election Campaign Act ("FECA") prohibiting *coordinated corporate contributions to political parties*, provisions which require no disclosure and whose violation could not cause informational injury. In addition, plaintiffs have not met their burden of proof, as they must at the summary judgment stage, to establish that they have suffered organizational injury as a result of the alleged coordination by the Georgia GOP (as opposed to injury from ballot-integrity activities that TTV was undertaking anyway) which might serve as an independent basis to support standing. Because the Court has no jurisdiction to consider plaintiffs' claims regarding alleged corporate contributions, that portion of plaintiffs' complaint should be dismissed.

As to the merits of the dismissal of plaintiffs' claims, the Commission is entitled to summary judgment because plaintiffs cannot meet their heavy burden of demonstrating that the dismissal of Matter Under Review ("MUR") 7894 was contrary to law. As an initial matter, while plaintiffs accuse the Commission of relying too heavily on the principle of deference to agency decision-making, it is nonetheless well-established that deference is owed to a reasonable interpretation of its implementing statute generally, and more specifically it is owed to decisions (including split-vote FEC decisions like the one at issue here) that implicate the agency's expertise in FECA administrative enforcement proceedings. *See Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 357 (D.C. Cir. 2020) (per curiam).

The FEC showed that the controlling Commissioners dismissed MUR 7894 on multiple bases, each of which reflected a permissible view of the applicable law and a careful review of the factual record, and each of which is independently sufficient to support the dismissal. First, these Commissioners concluded that the activities at issue were directed at promoting compliance with state laws governing the *administration* of elections, an area that they determined is not within the scope of FECA, as reflected in an FEC regulation. *See* 11 C.F.R. § 108.7(c). Second, these Commissioners reasonably concluded that the activities constituted non-partisan issue advocacy with regard to such election administration, advocacy which like many activities *could* influence federal elections, but which was not undertaken for the purpose of doing so. Finally, the controlling Commissioners determined, after a comprehensive review of the facts in the administrative record, that the record did not contain sufficient evidence of actual "coordination" between TTV and the Georgia GOP within the meaning of FECA.

In response, plaintiffs' brief exaggerates the reach of the applicable law, how the controlling Commissioners applied it here, and the strength of the factual support for plaintiffs'

claims. Plaintiffs accuse the controlling Commissioners of applying impermissibly high standards of proof and creating unjustified "categorical" exceptions. But these claims are belied by the permissible standards the Commissioners actually invoked and the careful, specific application of those standards to the facts at issue in the Statement of Reasons ("SOR"). Plaintiffs also argue that in reaching their conclusions the controlling group disregarded key facts, but this is belied by the comprehensive SOR addressing the broader factual record, not just the few portions on which plaintiffs focus so closely, in particular one document's use of the word "request." Plaintiffs' Response underscores their sincere disagreement with the controlling group's reasoning, but it fails to meet its heavy burden to demonstrate that the group acted in a manner that was arbitrary, capricious, and contrary to law. The controlling Commissioners took a reasonable approach consistent with courts' repeated admonitions that the FEC interpret FECA with sensitivity to the First Amendment area in which the Commission regulates. Because the controlling analysis readily satisfies the deferential standard of review applicable here, the Court should grant the Commission's motion for summary judgment and deny plaintiffs' motion.

II. PLAINTIFFS LACK STANDING TO CHALLENGE THE DISMISSAL OF MUR 7894 WITH REGARD TO FECA'S PROHIBITION ON CORPORATE CONTRIBUTIONS TO POLITICAL PARTIES

As the Commission explained in its Motion, plaintiffs in this matter have challenged the dismissal of their administrative complaint with regard to two basic categories of claims: (1) that TTV made and the Georgia GOP knowingly accepted in-kind corporate *contributions* in the form of coordinated expenditures, in violation of 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2; and (2) that the Georgia GOP failed to *report* those contributions to the FEC, in violation of 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.3. (Mot. at 12-19.) Plaintiffs lack standing with respect to the contribution claims because they have not met their burden to demonstrate a legally cognizable injury, redressable by this Court, stemming from the decision not to investigate those claims.

Plaintiffs' rebuttal on the standing issue is devoted almost exclusively to emphasizing and re-iterating that they have suffered an informational injury due to the Georgia GOP's failure to report coordinated, in-kind contributions from TTV (Resp. at 5-12) — a point that the Commission does not actually contest (Mot. at 16). However, plaintiffs err in suggesting that an informational injury is sufficient to confer standing to challenge a decision not to pursue alleged violations of the ban on corporate contributions to political parties through coordinated expenditures, as opposed to violations of provisions requiring the *disclosure* of such contributions. (Resp. at 5-12) In addition, plaintiffs' limited effort to demonstrate a distinct organizational injury to support the contribution claims is fatally flawed, because it assumes injury based on the independent ballot-integrity efforts of TTV, without establishing that the conduct actually at issue here, *i.e.* TTV's coordination with the Georgia GOP, was the proximate cause of plaintiffs' claimed diversion of resources. (*Id.* at 12-13.) Thus, while plaintiffs may have standing to challenge alleged reporting violations, they have not made a sufficient showing with respect to the coordinated contributions they allege. Plaintiffs' challenge with respect to 52 U.S.C. § 30118(a) and 11 C.F.R. § 114.2 should accordingly be dismissed for lack of jurisdiction.

A. Plaintiffs Must Establish Standing for Each Statutory Violation They Allege

It is a fundamental precept of federal jurisdiction that "standing is not dispensed in gross." *Davis v. FEC*, 554 U.S. 724, 734 (2008) (quoting *Lewis v. Casey*, 518 U.S. 343, 358, n.6 (1996)). Rather, "a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Id.* (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006)); *see Allen v. Wright*, 468 U.S. 737, 752 (1984) ("[T]he standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the *particular claims* asserted" (emphasis added));

Oklahoma v. United States, 62 F.4th 221, 233 (6th Cir. 2023) ("A plaintiff must establish standing for each claim he presses and *each statutory provision* he challenges.") (citing *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2207–08 (2021)) (emphasis added).

Accordingly, courts in this Circuit have conducted a separate standing analysis of each part of a plaintiff's claims alleging violations of multiple statutes and regulations, or subparts of such laws. *See Del. Dep't of Nat. Res. & Env't Control v. E.P.A.*, 785 F.3d 1, 10 (D.C. Cir. 2015) (plaintiff had standing to challenge one part of 2013 EPA rule regarding home power generation, but not another); *Elec. Priv. Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity*, 878 F.3d 371, 377 (D.C. Cir. 2017) (separately analyzing plaintiff's standing to challenge various subparts of government order regarding E-Government Act); *see also Disner v. United States*, 888 F. Supp. 2d 83, 87 (D.D.C. 2012) ("Pursuant to Federal Rule of Civil Procedure 12(b)(1), a defendant may move to dismiss a complaint, *or any portion thereof*, for lack of subject matter jurisdiction.") (emphasis added).

In all cases, the claimed injury must be commensurate with the challenged statute or regulation. For instance, in *Wagner v. Federal Election Commission*, 793 F.3d 1 (D.C. Cir. 2015), plaintiffs alleged that FECA's prohibition on federal contractors making federal campaign contributions while they negotiated or performed federal contracts violated contractors' First Amendment and equal protection rights. *Id.* at 3. During the pendency of litigation two plaintiffs completed their contracts, mooting their claims. *Id.* at 4. The remaining plaintiff retained standing. *Id.* However, because his injury was "notably narrower than" those of the dismissed plaintiffs, he had standing "only as it applies to contributions to candidates and parties" and not as to contributions to political causes generally. *Id.* at 4-5 (citing *Davis*, 554 U.S. at 734).

The FECA provisions at issue in this case are comparable to those involved in *Davis*. *See* 554 U.S. 724. There, a former Congressional candidate brought a facial constitutional challenge to the "Millionaires' Amendment," a provision of the Bipartisan Campaign Reform Act that modified FECA to relax limits on the ability of the opponent of self-financed candidates to raise money from donors and coordinate campaign spending with party committees. *Id.* at 728-29. After the FEC informed the plaintiff candidate that it had reason to believe he had violated the Millionaire's Amendment by failing to report personal expenditures during the 2004 campaign, he filed the suit alleging that the Amendment was unconstitutional. *Id.* The court determined that Davis had standing to challenge the *disclosure* requirements of the provision, *id.* at 733, but it noted that that did "not necessarily mean that [Davis] also [had] standing to challenge the scheme of contribution limitations that applie[d] when [the provision came] into play." *Id.* at 733-34. The court ultimately found Davis did have standing to challenge those as well, but it made clear that a distinct standing analysis was required. *Id.*

B. Plaintiffs Have Failed to Establish Standing for Their Claim That Coordinated Expenditures Resulted in Unlawful Corporate Contributions to the Georgia GOP

Because the above precedent makes clear that it is plaintiffs' burden to establish standing as to each statutory provision they challenge, including that they have suffered an injury actually caused by the provision of law at issue, their attempt to establish standing to challenge the corporate contribution ban primarily based on their alleged informational injury must fail. Plaintiffs claim that because this case "presents only a single count alleging that the dismissal of plaintiffs' administrative complaint was contrary to law[,]" and "the 'coordination-related' claims against TTV and the Georgia GOP are inextricable from those concerning the Georgia GOP's failure to disclose in-kind contributions resulting from such coordination" (Resp. at 5), it is sufficient for them to show standing as to some part of these claims. However, the law is clear

that a plaintiff's injury supporting standing to bring certain claims does not provide the Court with supplemental jurisdiction over claims unconnected to that injury. *See Wagner*, 793 F.3d at 4-5. Plaintiffs' claim regarding the prohibition on corporate contributions is not based on a "lack access to FECA-required information[,]" and "[i]f their challenge succeeds," they will not "gain access to that information[.]" (Resp. at 6 (citing *Campaign Legal Ctr. v. FEC*, 31 F.4th 781, 784, 793 (D.C. Cir. 2022) ("*Correct the Record*")).)

Nor can plaintiffs obtain standing for the corporate contribution allegation based on disclosure that might occur based on the contingency that they might succeed in their separate reporting allegation. Far from being "inextricably intertwined" (Resp. at 2), the various allegations are violations of separate provisions of law identified in plaintiffs' administrative complaint. (Compl., Exh. 1, ¶¶ 37, 40 (Docket No. 1-1).) Standing to obtain the disclosure that could occur from pursuit of a "violation of FECA's reporting requirements, 52 U.S.C. § 30104(b)(3)(A)" does not provide standing to pursue a "violation of FECA's prohibition on corporate contributions to a party committee, 52 U.S.C. § 30118(a)." (*Id.* ¶ 40.) Courts have rejected attempts to establish standing to challenge FEC enforcement decisions as to substantive campaign financing limitations or prohibitions that do not of their own force mandate the disclosure of information. *See Citizens for Responsibility & Ethics in Wash. v. FEC*, 267 F. Supp. 3d 50, 54 (D.D.C. 2017) (finding no standing where "plaintiffs cannot plausibly allege that an FEC enforcement action on [the straw donor prohibition, 52 U.S.C. § 30122] would require [the respondent] to disclose any information"). The D.C. Circuit requires such precision in claims to standing that even an allegation of a reporting violation is not sufficient for informational injury if the administrative complaint does not seek the required reporting as a remedy. *Common Cause v. FEC*, 108 F.3d 413, 418 (D.C. Cir. 1997) (per curiam) (reviewing

dismissal of administrative complaint alleging excessive contributions and failures to report them). [1] Just as with the *CREW* case, required disclosure cannot be "plausibly alleged" as a remedy for the alleged violation of the corporate contribution prohibition. *Citizens for Responsibility & Ethics in Wash. v. FEC*, 267 F. Supp. 3d at 54. The D.C. Circuit has already rejected conflation of allegations of unlawful coordination and failures to comply with reporting requirements when it declined to find standing for transactions already sufficiently reported but arguably required to be reported by another party. *See Wertheimer v. FEC*, 268 F.3d 1070, 1074-75 (D.C. Cir. 2001); *see also Am. Soc'y for Prevention of Cruelty to Animals v. Feld Ent., Inc.*, 659 F.3d 13, 23 (D.C. Cir. 2011) (no standing to challenge prohibition on certain activity where even injunction in plaintiffs' favor "would [not] entitle plaintiffs to any information").

Plaintiffs rely (Resp. at 5) on *Correct the Record*, 31 F.4th at 790, in which a plaintiff did establish the cognizable informational injury required for standing to challenge the FEC's dismissal of an administrative complaint, but that case merely iterates a point the Commission does not contest: that an informational injury is sufficient to confer standing to challenge the dismissal of claims as to *disclosure* requirements. *Id.* at 793 ("Appellants have established an informational injury in fact"). Critically, that court was concerned exclusively with whether FECA "gives Appellants a statutory right to information[,]" and the court's discussion was limited to FECA provisions which require disclosure or define terms relevant to it. *Id.* at 790 (citing 52 U.S.C. §§ 30104(b), 30116(a)(7)). Thus, *Correct the Record* cannot be read to

[1] When pleading their requested remedies for all alleged violations, mandated reporting was not even sufficiently important to plaintiffs to include it as an explicit request. Plaintiffs' administrative complaint here sought "sanctions . . . including civil penalties," an injunction against future violations, and unspecified "additional remedies." (Docket 1-1 ¶ 42.) Even as to their allegations of reporting violations, a catch-all provision is thus all that could potentially be construed to include the mandated reporting that plaintiffs' court briefs belatedly attempt to prioritize.

approve standing to pursue challenges as to provisions of FECA that do not result in an informational injury to the litigant.

In addition, plaintiffs briefly seek to establish an organizational injury to support their contribution claims, but they have not met their burden to support such an injury with evidence, and so it cannot serve as an independent basis to establish standing as to the contribution claims. In its Motion, the Commission noted that plaintiffs raise no challenge to TTV's election-integrity activities standing alone, despite plaintiffs' opposition to and efforts to counter such activities. (Mot. at 15.) Instead, plaintiffs' administrative complaint challenges only the alleged unlawful *coordination* of such activities with the Georgia GOP. Plaintiffs cannot rely on their abstract desire to see the law enforced against TTV and the Georgia GOP to establish Article III standing for their contribution claims, because a plaintiff's interest in "seeing that the laws are enforced" is not "legally cognizable within the framework of Article III." *Sargent v. Dixon*, 130 F.3d 1067, 1069 (D.C. Cir. 1997); *see Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 573-74 (1992). And here, there is direct evidence in the record that TTV would have undertaken its ballot-integrity work regardless of its contacts with the Georgia GOP, whether those contacts are deemed to be unlawful coordination or not. (AR0044-45, 48; AR0285-86.) Thus, plaintiffs have not met their burden of showing that the decision not to pursue their allegations that coordinated expenditures resulted in unlawful contributions has caused them any harm. Plaintiffs further have not established causation in the Article III standing analysis, as the alleged injury must have "a nexus to the substantive character of the statute or regulation at issue." *Shays v. FEC*, 337 F. Supp. 2d 28, 46 (D.D.C. 2004) (citing *Diamond v. Charles*, 476 U.S. 54, 70 (1986)). Here, plaintiffs' claim that the decision not to enforce provisions prohibiting in-kind corporate contributions

caused harm to their voter protection work is simply too attenuated from the "substantive character" of these campaign finance restrictions.

In their Response, plaintiffs argue that the decision not to move forward on their complaint "empowered TTV to more effectively engage in activities that impinge on eligible Georgians' right to vote, thereby directly injuring Common Cause Georgia's organizational efforts to protect that right." (Resp. at 13.) Plaintiffs point to indications in the record that "TTV worked with members of the Georgia GOP to recruit volunteers" and that there was "a partnership between TTV and the Georgia GOP for the Georgia GOP to provide access to Georgia county residents willing to serve as 'challengers' and challenge the ballots identified by TTV[.]" (Resp at 13 (citing AR 60-61, 71).) But plaintiffs point to no tangible, specific harm to their own activities as a result of any coordination. The vague alleged connections to plaintiffs are too thin to support standing. Moreover, although the views of Commissioners are not owed deference in a standing analysis, the controlling Commissioners did review the record evidence and concluded that on balance, "TTV's alleged activity was not undertaken 'in cooperation, consultation, or concert with, or at the request or suggestion of' the Georgia GOP[,]" and thus "no coordination occurred[.]" (AR0285; *see* Mot. at 35.) The Commissioners further determined that "TTV was pursuing these initiatives — and would have continued to do so — *regardless* of [TTV executive director] Engelbrecht's meeting with the Georgia GOP." (AR0285; *see* Mot. at 36.) These conclusions of Commissioners illustrate plaintiffs' inability to establish that any alleged *coordination* was the cause of alleged injuries to plaintiffs' voter-protection work. Similarly, plaintiffs have failed to show that their alleged injury would be redressed by a favorable decision by this Court, because they have not shown that TTV would alter the ballot-integrity work that plaintiffs have alleged has caused them harm (as opposed to

any alleged coordination with the Georgia GOP), and redressability cannot rest on mere speculation as to what third parties might do in response to a favorable ruling. *See Renal Physicians Ass'n v. U.S. Dep't of Health & Hum. Servs.*, 489 F.3d 1267, 1274-75 (D.C. Cir. 2007).

Finally, the necessary chain of causation is further attenuated because plaintiffs offer only one inadequate fact to demonstrate the required diversion of resources in response to the coordination they allege: the hiring of a contractor to work on voter protection efforts, "such as disinformation monitoring and public education on the implications of voter challenges like those brought by [TTV]." (Resp. at 13 (citing Dennis Decl. ¶ 13).) However, the generality of and qualifications in this statement mean that it falls far short of establishing the necessary specific relationship to any alleged coordinated activities by the Georgia GOP and TTV.

While "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, . . . [i]n response to a summary judgment motion, . . . the plaintiff can no longer rest on such 'mere allegations,' but must 'set forth' by affidavit or other evidence 'specific facts'" that demonstrate with admissible evidence that it has established the elements of standing. *See Lujan*, 504 U.S. at 561 (quoting Fed. R. Civ. P. 56(e); *see Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 115 n. 31 (1979)); *Democratic Senatorial Campaign Comm. v. FEC*, 139 F.3d 951, 952 (D.C. Cir. 1998) (per curiam) ("evidence there must be" to establish the elements of standing at the summary judgment stage); *Humane Soc'y of the U.S. v. Perdue*, 935 F.3d 598, 602 (D.C. Cir. 2019) (quoting *Lujan*, 504 U.S. 561) (The plaintiffs "must prove injury in fact with 'specific facts' in the record."). But plaintiffs have failed to identify such evidence to show they suffered harm as a result of any coordination between TTV and the Georgia GOP, nor that their organization diverted resources in response. Therefore, plaintiffs

have not met their burden at summary judgment, and their claims as to alleged coordination resulting in prohibited corporate contributions must be dismissed.

III. THE DISMISSAL OF MUR 7894 WAS NOT CONTRARY TO LAW

A. The Controlling Commissioners' Reasonable Interpretations of FECA Are Entitled to Deference Here

In its Motion, the Commission showed that FECA's "contrary to law" standard of review is highly deferential and that the decision under review here is entitled to that deference. (Mot. at 19-26.) In their Response, plaintiffs concede that the well-established standard for judicial review of a claim pursuant to 52 U.S.C. § 30109(a)(8)(C), as stated in *Orloski v. Federal Election Commission*, 795 F.2d 156, 161 (D.C. Cir. 1986), is a "deferential inquiry[.]" (Resp. at 15 (citing *Campaign Legal Ctr. v. FEC*, 952 F.3d 352, 357 (D.C. Cir. 2020) (per curiam)).)[2] However, plaintiffs effectively attempt to carve out key portions of the controlling Statement of Reasons from that deferential review, particularly what plaintiffs characterize as the controlling Commissioners' "view of the Commission's limited role in our Constitutional structure, . . . their interpretation of federal court decisions construing the scope of FECA preemption," and "their speculation about abuse that might result from the Commission's proper enforcement of the law[.]" (Resp. at 17.) Each of these arguments is misguided.

While plaintiffs are correct that "[t]he FEC is not entitled to deference for its interpretations of the Constitution or judicial precedent" (Resp. at 16), this statement distorts the way in which the controlling Commissioners permissibly considered binding precedent in interpreting FECA here. In its Motion (Mot. at 24-25), the Commission noted that the controlling Commissioners had explicitly observed that "federal courts have carefully limited our

[2] Plaintiffs do argue at length that "deferential review does not excuse impermissible constructions of the Act or arbitrary and unreasoned decisionmaking" (Resp. at 14; *see id*. at 14-17), which is also not disputed.

jurisdiction as a matter of constitutional imperative[,]" and that "[t]o respect those limits is to remain mindful that, to put it plainly, not everything that could impact an election is a potential FECA violation." (AR0281; *see id*. n.36.) These Commissioner concerns are evidence of their reasoned decision-making, not because they receive deference in interpreting the Constitution, but because the stated views are an accurate statement of how the FEC is to engage in its duty to interpret its organic statute, as articulated by the Supreme Court and this Circuit over the course of decades. (AR0281 n.36 (listing cases).) As the Commission also noted, when evaluating the reasonableness of the FEC's statutory constructions of FECA, courts have deferred to the agency's reasoning specifically because it was consistent with a limited approach in this delicate area of constitutionally protected activity. (Mot. at 25 (citing *Van Hollen v. FEC*, 811 F.3d 486, 491 (D.C. Cir. 2016); *FEC v. Machinists Non-Partisan Pol. League*, 655 F.2d 380, 394 (D.C. Cir. 1981); *Common Cause v. FEC*, 842 F.2d 436, 448 (D.C. Cir. 1988).))

By highlighting caselaw discussing the scope and purpose of FECA, including the extent of the statute's preemption of state laws, the controlling Commissioners sought to interpret FECA in a manner consistent with decades of precedent in an area of constitutionally protected activity. Plaintiffs' attempt to use this discussion of the caselaw to reduce the scope of the deference owed to the controlling group's interpretation of FECA could discourage reference to such binding precedent in future statements of reasons, potentially decreasing the quality of such statements and even hampering judicial review. Instead, the proper role for the Court is to evaluate all of the stated reasons that the Commissioners offered for their decision in this case, and certainly nothing requires the Court to do otherwise.

Furthermore, plaintiffs continue to claim that the controlling Commissioners' reasoning is not entitled to *Chevron* deference (Resp. at 17-19), but plaintiffs fail to engage with the

controlling authority the Commission offered in its Motion. (*See* Mot. at 21-24; *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).) For instance, plaintiffs again argue that *United States v. Mead Corporation*, 533 U.S. 218 (2001), forecloses deference to an FEC split-vote dismissal (Resp. at 17), while disregarding cases cited by the Commission where courts in this Circuit have reaffirmed the applicability of *Chevron* to such dismissals in multiple post-*Mead* decisions. (Mot. at 22 (citing *Campaign Legal Center*, 952 F.3d at 357; *FEC v. NRA*, 254 F.3d 173, 184-86 (D.C. Cir. 2001); *CREW v. FEC*, 209 F. Supp. 3d 77, 85-86 n.5 (D.D.C. 2016) (rejecting argument that *Mead* altered the standard of review)).) And plaintiffs again claim that a statement of two FEC Commissioners cannot receive deference because it is not "the agency's 'authoritative' or 'official position' *on the law*." (Resp. at 17-18 (quoting *Kisor v. Wilkie*, 139 S. Ct. 2400, 2416 (2019)).) Yet this claim ignores that the Commission, in its Motion, demonstrated that *Kisor* was explicitly limited to an agency's interpretation of its regulations, as opposed to its implementing statute (Mot. at 22 (citing *Kisor*, 139 S. Ct. at 2425 (Roberts, J., concurring in part)), and that post-*Kisor*, courts in this Circuit have continued to apply *Chevron* deference in this context without reference to *Kisor*. (Mot. at 22-23 (citing *Solar Energy Indus. Ass'n v. FERC*, 59 F.4th 1287, 1292 (D.C. Cir. 2023); *Loper Bright Enterprises v. Raimondo*, 45 F.4th 359, 369 (D.C. Cir. 2022)).)

Plaintiffs alternatively argue that, even if *Chevron* deference did apply in this context, "the challenged decision would fail at *Chevron* step one" because "FECA explicitly and unambiguously prohibits corporations like TTV from providing a political party like the Georgia GOP 'anything of value . . . in connection with any election.'" (Resp at 18-19 (citing 52 U.S.C. § 30118(a), (b)(2)).) But plaintiffs fail to show that the application of FECA's general standards are so clear and unambiguous in this context. The Supreme Court found the language "for the

purpose of . . . influencing" any election for Federal office to be unconstitutionally vague in the context of the "expenditure" definition. *Buckley v. Valeo*, 424 U.S. 1, 78 (1976). And the application of this language to the alleged coordinated expenditures here, where the fact of coordination is in dispute, and the expenditures relate to compliance with state voter registration and verification laws and related issue advocacy, is subject to multiple reasonable interpretations. As the FEC showed (Mot. at 19-26), the controlling group's decision here is entitled to great deference.

B. The Controlling Commissioners Reasonably Determined That TTV's Activities Were Not Undertaken "for the Purpose of Influencing" a Federal Election Under FECA

1. The Controlling Commissioners Reasonably Determined That TTV's State Law Compliance Activities Here Were Beyond the Reach of FECA

The FEC showed in its opening brief that the controlling Commissioners permissibly found TTV's alleged activities to be directed at compliance with voting requirements under Georgia law and thus beyond the reach of FECA. (Mot. at 27-30.) Contrary to plaintiffs' contentions, the Commissioners' reliance in part on that quality of TTV's activities was plainly not an "invented" rationale. (Resp. at 19.) Commission regulations regarding FECA's interaction with such state statutes are clearly relevant to the facts here, and it was reasonable for the Commissioners to find that those regulations provide guidance as to FECA's reach in this case. Thus, claims that this rationale was "plucked out of thin air" and that "this case implicates no questions about the scope, validity, or application of any state law" (Resp. at 20) are belied by the Commissioners' detailed reasoning on this point. Similarly, plaintiffs' criticism of arguments in the FEC's opening brief about the controlling statement that there may be reasonable disagreement regarding these issues (*id.*) reflects a misconception of the applicable standard of review. The controlling group's interpretation need only be a reasonable one.

First, plaintiffs' attack on the controlling Commissioners' "preemption" rationale as one that could undermine FECA enforcement exaggerates the position these Commissioners actually took. The Commissioners' SOR did not say that anything "arguably relating" to state law compliance was exempt from FECA. (Resp. at 23.) Instead, the Commissioners simply found, based on their review of the record, that TTV's activities in this case "targeted compliance with valid Georgia laws governing signature-verification, ballot-curing, ballot drop boxes, and residence requirements" (AR0282) — laws that they found to be "at the heart of TTV's activities" (*id*.) —and therefore relevant Commission regulations indicated that those activities were beyond FECA's reach. *See* 11 C.F.R. § 108.7(c)(3), (4).

For these reasons, plaintiffs' "slippery slope" hypotheticals are inapposite. It is simply not the case that "[t]his interpretation would allow any person to evade FECA's contribution limits and disclosure requirements so long as their coordinated expenditures relate in some way to 'compliance' with state election law[]" (Resp. at 26-27), as there is no reason to believe that in future enforcement proceedings Commissioners will rely on bare claims that the respondent's activities "relate in some way" to complying with state election laws, without evaluating the record to determine, as the Commissioners did here, whether the activities actually focus on compliance with state law requirements that are beyond FECA's reach as indicated in 11 C.F.R. § 108.7(c)(3) and (4). Similarly, the SOR did not state or imply that a party could ask a corporation to conduct its "entire field operation[.]" (Resp. at 27.) Such an arrangement implies high levels of coordination and partisan electoral purpose which are a far cry from what the controlling group found in the record in this matter. Nor did the SOR indicate that a corporation could simply "gift" services to parties such as "collecting signatures to get on the ballot, obtaining and updating voter files, and even maintaining unemployment insurance for

employees[.]" (*Id.*) Such a transparent effort to advance the electoral prospects of a particular candidate or political party would be very different from the ballot-integrity activities that were involved in this matter.

Furthermore, while the SOR did state that "state law compliance is categorically excluded from the Commission's enforcement jurisdiction" (AR0281), this is a reasonable reading of the limits of the reach of FECA under FEC regulations. 11 C.F.R. § 108.7(c) provides that FECA "does not supersede State laws" including "Voter registration[,] [p]rohibition of false registration, voting fraud, theft of ballots, and similar offenses[.]" Plaintiffs repeat variations of the phrase "categorically excluded" many times (Resp. at 1, 17, 19, 20, 22, 23, 28, 35), implying that the controlling Commissioners began and ended their analysis with this simple observation. Yet as noted, the record demonstrates that the Commissioners carefully reviewed both the text of 11 C.F.R. § 108.7(c) and the record evidence of TTV's actual conduct before concluding that its activities were best understood as falling outside FECA's scope. (AR0281-82.)

Second, plaintiffs unjustifiably discount rational concerns about what would happen if FECA enforcement were deemed to cover expenditures to comply with state laws in the context of federal elections. The Commissioners reasonably concluded that this case does, in fact, "raise the specter of a possible conflict between FECA and a particular state law[.]" (Resp. at 25.)

Plaintiffs argue that "the controlling Commissioners did not purport to justify their 'non-preemption' theory by claiming to have 'foresee[n] a chilling effect' on 'state law compliance' activities" (Resp. at 23), but this constitutes an overly restrictive reading of the SOR. The Commissioners' specific discussion of state law compliance is brief (AR0281-82 n.__), but it is only one part of a five-page, extensively supported subsection discussing the relevant "for the purpose of influencing any election for Federal office" standard at 52 U.S.C. § 30101(8)(A)(i).

(AR0281-85.) In this subsection, the Commissioners discussed concerns with over-regulating activity that is not obviously intended to impact a federal election but that is typically subject to regulation under state law. For instance, the Commissioners cited litigation regarding election administration issues by non-profits (like TTV) challenging "mail-in ballot requirements," "buffer zones around polling places," and "numerous other election-related laws and practices" which are rightly considered "expenditures and not contributions under [FECA]." (AR0283.) The Commissioners concluded that bringing this activity "within FECA's ambit . . . would establish a rule with no logical endpoint, unconstitutionally subjecting a broad swath of protected advocacy and civic participation to the specter of Commission enforcement action." (AR0284.) This discussion, within the SOR subsection discussing the purpose for which TTV's expenditures were made, is reasonably viewed as relating to the potential for a "chilling effect" on "state law compliance activities," as the Commission previously indicated. (Mot. at 27-30.) That is particularly so given the SOR's immediately preceding discussion regarding the limitations of FECA's legislative grant. (AR0280-81; *see supra* pp. 12-15.) And plaintiffs have not demonstrated, as they must, that such concerns were unreasonable or unwarranted.

In a related vein, plaintiffs go too far by suggesting that "[t]his case . . . does not even theoretically implicate the validity of any state law[.]" In fact, such an implication is not difficult to imagine. The activities engaged in by TTV include "a statewide election integrity hotline[,]" "host[ing] election worker training and signature verification courses," and "provid[ing] the data and research to preemptively challenge potentially ineligible voters." (AR0278.) Voter eligibility is a matter of state law. If all expenditures by any person or organization aimed at ensuring those who sought to vote were eligible to do so were regarded as "expenditures" in accordance with FECA, this could fundamentally reshape such efforts. Organizations that

previously were subject only to state regulation would instead operate within FECA's compliance regime, and funding of such organizations would be subject to new and potentially conflicting disclosures and limitations. However, the controlling Commissioners here reasonably elected to interpret the law so as to avoid such a conflict.

Plaintiffs do not seriously dispute that there is some limit to the reach of FECA, or that an unduly expansive interpretation of the statute could raise serious concerns, including where such an interpretation would affect the states' central role in administering the conduct of voting in elections. On multiple occasions courts have determined that state laws governing activity with the potential to impact federal elections nevertheless fell outside FECA's scope. *See WinRed, Inc v. Ellison*, 581 F. Supp. 3d 1152 (D. Minn. 2022), *aff'd*, 59 F.4th 934 (8th Cir. 2023); *Priorities USA v. Nessel*, 978 F.3d 976, 983 (6th Cir. 2020); *Holtzman v. Oliensis*, 91 N.Y.2d 488, 695 N.E.2d 1104 (1998).

At base, though plaintiffs clearly disagree with the controlling Commissioners' interpretation of FECA and whether it reaches TTV's conduct in this matter, this amounts to no more than a reasonable disagreement on those issues. And those issues, like others regarding FECA's scope, fall squarely within the Commission's expertise, to which deference is owed. *See Teper v. Miller*, 82 F.3d 989, 998 (11th Cir. 1996) ("An agency like the FEC, to which Congress has delegated broad discretion in interpreting and administering a complex federal regulatory regime, is entitled to significant latitude when acting within its statutory authority, *even in its decisions as to the scope of preemption of state law*.") (emphasis added); *Weber v. Heaney*, 793 F. Supp. 1438, 1455 (D. Minn. 1992) ("Determining the scope of preemption appears to fall within the competence of the commission in light of its administrative responsibilities."), *aff'd*, 995 F.2d 872 (8th Cir. 1993).

2. The Controlling Commissioners Reasonably Determined That TTV's Ballot-Integrity Activities Constituted Issue Advocacy That Was Not Undertaken for the Purpose of Influencing a Federal Election

As the Commission explained in its Motion (Mot. at 31-35), the controlling Commissioners also reasonably determined that TTV's activities in "trying to influence how elections are administered" were, "as a policy matter, [] different from acting 'for the purpose of influencing' a federal election" and therefore "fall outside our jurisdiction" (AR0282 (citing *Buckley*, 424 U.S. at 79)). This basis for the controlling group's decision not to proceed with enforcement was reasonable, and it is entitled to deference from this Court.

Plaintiffs' attack on this part of the controlling Commissioners' reasoning argues primarily that the Commissioners erred in applying a narrowed construction of FECA's "for the purpose of influencing" language to TTV's conduct at issue, because that conduct constituted a "contribution" in the form of coordinated expenditures, not the "expenditures" to which the *Buckley* court had applied such a construction. (Resp. at 28-32.) However, the application of these distinctions is not nearly so clear in the context of the activity at issue in this case, and the controlling group's analysis was a reasonable one.

As a threshold matter, whether TTV in fact made contributions to the Georgia GOP in the form of expenditures coordinated with that party, or whether TTV simply made independent expenditures that it would have made regardless of any cooperation or discussion with the Georgia GOP, is a contested factual matter. After reviewing the record evidence here, plaintiffs clearly reached a conclusion different from the controlling Commissioners, but as the Commission has explained (Mot. at 35-39) and discusses further below (*infra* pp. 23-25), the Commissioners' conclusion on that point was reasonable. Spending by TTV that was not coordinated would be subject only to the narrower construction of "for the purpose of influencing" articulated by the *Buckley* court. Indeed, the SOR explicitly noted that "TTV's

activities can only arguably be regarded as in-kind 'contributions' if they were 'coordinated' with the Georgia GOP, 52 U.S.C. § 30116(a)(7)(B)(ii)[,]" and, referencing the relevant discussion, the SOR noted that "this is not satisfied here." (AR0283 n.45).

Moreover, plaintiffs' treatment of coordinated expenditures as indistinguishable, legally and factually, from contributions is overly simplistic treatment of such conduct that does not take sufficient account of the constitutional and statutory concerns at play. As this Circuit has explained, "to qualify as [an] 'expenditure' in the first place, spending must be undertaken 'for the purpose of influencing' a federal election (or else involve 'financing' for redistribution of campaign materials)." *Shays v. FEC*, 414 F.3d 76, 99 (D.C. Cir. 2005). The fact-intensive nature of determining what constitutes a "coordinated" expenditure is thus carried out in the Commission's regulations, which describe the features of such expenditures in different contexts. 11 C.F.R. §§ 109.20, 109.21; *see In re Cao*, 619 F.3d 410, 418 (5th Cir. 2010) (en banc) ("The FEC regulations make abundantly clear that the only coordinated expenditures captured by the statutory reach of FECA are campaign-related expenditures which *Buckley* recognized that Congress could regulate as contributions."). Here, there is no concrete evidence that the staff of the Georgia GOP provided any level of detail or input into TTV's operations, discussed the level of their spending, or weighed in on similar matters. Plaintiffs admit that the "for the purpose of influencing" limitation applies to expenditures by "independent actors[.]" (Resp. at 30.) To the extent the controlling group reasonably determined that TTV was not making "expenditures," using the narrower construction was permissible.

At the very least, there is no support for a simplistic, one-dimensional analysis that fails to engage with the different factors that affect the existence of "coordination," and thus whether spending should be classified as a permissible expenditure or an impermissible contribution. For

instance, plaintiffs argue that TTV's organizational purpose should play no part in the Commissioners' consideration here because "[t]he statutory standard they were purporting to apply does not look to the spender's general organizational purpose or turn on whether its activities could incidentally impact the outcome of federal elections[.]" (Resp. at 33.) Indeed, plaintiffs explicitly note that they do not even concede that TTV's efforts at issue here were undertaken "at least in part" to advance the organization's policy goals, *i.e.* election integrity and voter verification. (Resp. at 34 n.6.) However, an organization's overall purpose is clearly at least germane to whether it had the "purpose of influencing" a federal election in undertaking specific activities. An organization that was formed to advance bona fide public issues through the political process has a First Amendment interest in expressing itself that is distinct from influencing federal elections, even if the distinction is not always easy to draw. *See Buckley*, 424 U.S. at 42 ("Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions."). Thus, a political party's "partnership" with such an organization can differ from that party's "partnership" with, for example, a roofing contractor.

Plaintiffs similarly overreach by arguing that none of the relevant precedent relied on by the controlling Commissioners is "remotely supportive of the decision." (Resp. at 35.) As the FEC explained (Mot. at 32-33), despite some differences the MURs the Commissioners cited remain analogous and instructive. For instance, in the Van Hollen MUR the Commission made clear that the fact that services rendered may benefit a campaign does not answer the question of whether such services were provided for the purpose of influencing a federal election. MUR 7024, FEC Factual & Legal Analysis at 5-8, https://eqs.fec.gov/eqsdocsMUR/17044420401.pdf. There, the *pro bono* legal services rendered by Campaign Legal Center and the other groups

were provided to advance their core purpose to impact how federal elections are conducted and administered. *Id*. Yet the Commission concluded that the mere potential impact of the organizations' work on a particular candidate's election was too indirect and attenuated to constitute a contribution. *Id.* at 6. So here, it was reasonable for the controlling group to determine that the potential impact of TTV's work on particular electoral outcomes was not clear enough to be considered a contribution.

Finally, with respect to TTV's alleged "intent" to influence the outcome of the Georgia runoff elections in 2021, plaintiffs offer some evidence that is probative (Resp. at 37) but is still only part of a larger picture that is subject to different interpretations. For instance, it is noteworthy that much of the evidence relied on by plaintiffs, including quotations from TTV's executive director to the effect that "illegal votes" occur "in Democrat counties" and that their purpose was to "'win by eliminating votes and changing the count," comes from testimony in litigation in Texas that did not necessarily relate to Georgia. In addition, plaintiffs do not credit other evidence, such as the contemporaneous statements of TTV emphasizing its core interest in election integrity or its subsequent explanations in the course of this enforcement proceeding. (AR0047-48.) In reaching their conclusion, the Commissioners were entitled to consider all evidence before them and reasonably determined that the whole picture was consistent with an effort to promote compliance with ballot integrity, rather than influencing the election in a partisan way.

C. The Controlling Commissioners Reasonably Determined That TTV's Activities Were Not Coordinated with the Georgia GOP

As the FEC explained, the controlling Commissioners reasonably concluded that the TTV activities at issue in this matter were not coordinated with the Georgia GOP. (Mot. at 35-39.) Contrary to plaintiffs' contention (Resp. at 38), the Commission did not state that plaintiffs

challenged "only" the weight to be given to the record evidence for and against coordination between TTV and the Georgia GOP. Instead, in its brief the FEC discussed in detail the evidence the controlling Commissioners did in fact rely upon and simply observed that plaintiffs' criticism of the Commissioners' reasoning in large part focused on their alleged failure to credit other evidence to a greater extent. (Mot. at 35-39.)

In their Response, plaintiffs stress very heavily that "[t]he Commissioners unreasonably disregarded the Georgia GOP's explicit '*request*' for help" (Resp. at 38), relying on the use of that term in one TTV document. However, the lack of a specific reference to that single term is not dispositive in light of the full record. The Commissioners did explicitly acknowledge and address the "reference to a 'partnership' between TTV and the Georgia GOP" (AR0286), a comparable shorthand term used to describe the relation between these entities. As the FEC explained (Mot. at 37), the Commissioners were permitted to credit TTV's explanation in the record for its use of the term "partnership," where it stated that it had used the term not "in an official sense" or to indicate a "joint venture[,]" but rather to refer "to all persons who were also pursuing election integrity," including "parties, voters, other organizations, individuals, and others who were pursuing election integrity through their own efforts." (AR0047-48.) Furthermore, while the SOR did not directly cite this portion of the record, it did reference "the record" showing that the use of the term "partnership" here had a "colloquial and not a legal significance" (AR0286), and the factual background section of the SOR is replete with citations to the Engelbrecht Declaration (*see* AR0277-79) which addresses the "request," making clear that the Commissioners considered this evidence in reaching their conclusions.

Plaintiffs emphasize that neither FECA nor FEC regulations require the presence of a formal agreement for the Commission to find coordination and allege that "[t]he Commissioners'

approach of . . . demanding proof of a formal agreement or official partnership was flatly contrary to FECA" (Resp. at 40), but the Commissioners made no such demand, and plaintiffs fail to identify one in the SOR. There is no dispute that the statutory definition of coordination is found at 52 U.S.C. § 30116(a)(7)(B)(ii), and it was this language that the Commissioners repeatedly invoked as their baseline for determining whether there was reason to believe either TTV or the Georgia GOP violated this standard. (*See* AR0280, AR0283 n.45, AR0285.)

Finally, plaintiffs take issue with what they describe as the controlling Commissioners' "new and impermissible exceptions to FECA for in-kind contributions that are purportedly made available to both parties or placed in the public domain." (Resp. at 41.) However, this too exaggerates the position the Commissioners in fact took. The Commissioners simply took note of the fact that TTV offered its services to the general public, including outreach to the Georgia Democratic Party, as one factor among several it considered in reaching its conclusion. (AR0279.) The Commissioners further cited several MURs where the Commission had declined to make a finding of coordination based, in part, on the public nature of the communications at issue. (AR0286 n.63 (citing MUR 7797 (Sara Gideon for Maine, *et al.*) (no coordination based upon public tweet); MUR 7700 (VoteVets, *et al*.) (same).) The Commissioners' reliance on this factor was reasonable, as organizations like TTV have every ability to provide their services only to particular parties and candidates if they seek to influence electoral outcomes in their favor.

D. Plaintiffs' Attack on the Controlling Commissioners' Factual Analysis Is Meritless and Does Not Establish That They Acted Contrary to Law

Plaintiffs conclude their Response by arguing that the dismissal of MUR 7894 was "arbitrary, unreasonable, and wholly contrary to the record" (Resp. at 43), but this section is largely redundant, re-iterating several arguments addressed above and failing to offer an independent basis to find that the controlling group acted contrary to law. (Resp. at 43-47.)

Plaintiffs' one-sided recitation of the facts does not paint a complete picture of the record before the Commissioners in this matter, and it cannot establish that they acted unreasonably.

In addition, plaintiffs' concluding argument fails to acknowledge the high degree of deference owed to agency decision-making generally, and to the Commission's campaign finance expertise in particular. As discussed *supra* pp. 12-15 and in the Commission's Motion (Mot. at 40), the Court must be "extremely deferential" to the agency's decision-making in an enforcement context, which "requires affirmance if a rational basis . . . is shown," *Orloski*, 795 F.2d at 167 (internal quotation marks omitted). Courts must defer to the FEC unless the agency fails to meet the "minimal burden of showing a coherent and reasonable explanation [for] its exercise of discretion." *Carter/Mondale Presidential Comm., Inc. v. FEC*, 775 F.2d 1182, 1185 (D.C. Cir. 1985) (internal quotation marks omitted); *see Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983) (Courts will not overturn agency decisions absent evidence that the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.").

Here, the controlling Commissioners plainly met the standards for deference and affirmance, as evidenced by their detailed and thoroughly supported SOR, which extensively referenced Commission enforcement proceedings, advisory opinions, and judicial precedents. (AR0277-86.) The SOR addressed each of the central contentions made in plaintiffs' administrative complaint, and plaintiffs do not suggest otherwise. In their Response, plaintiffs again focus narrowly on the controlling Commissioners' alleged failure to address the Georgia GOP's "request" that TTV assist with the Senate runoff elections. (Resp. at 44.) However, as

previously explained, the Commissioners directly addressed the record evidence referring to a "partnership" between TTV and the Georgia GOP, as well as the remainder of the underlying factual record, and they clearly met the "minimal burden of showing a coherent and reasonable explanation [for] its exercise of discretion." *Carter/Mondale Presidential Comm.*, 775 F.2d at 1185 (internal citation omitted). Plaintiffs' assertion that there was a "complete failure to reasonably reflect upon the information contained in the record" (Resp. at 44 (citing *Fred Meyer Stores, Inc. v. NLRB*, 865 F.3d 630, 638 (D.C. Cir. 2017)) itself fails to fully engage with the actual analysis the Commissioners undertook.

Finally, plaintiffs again argue that the controlling Commissioners "imposed a heightened standard of proof" at the "pre-investigatory stage of FEC enforcement matters[,]" but this claim too is mistaken. (Resp. at 45.) First, plaintiffs' arguments for a lower standard of proof could alter the fundamental deference owed to agency decision-making in this context. *See supra* pp. 19-24; *Orloski*, 795 F.2d at 167 (applying an "extremely deferential standard" to the FEC's determination that a complaint failed to establish "reason to believe" (internal quotation marks omitted)). And again, plaintiffs greatly understate the extent to which the controlling Commissioners carefully evaluated the record, before simply reaching a different conclusion from the one plaintiffs would prefer.

Plaintiffs' attempts to distinguish the Court's opinion in *Nader v. Federal Election Commission*, 854 F. Supp. 2d 30 (D.D.C. 2012) are unavailing, and that case remains analogous to the matter at bar. The plaintiff in that case argued that the district court had placed an "improper evidentiary burden" on him by requiring "actual proof" of FECA violations rather than the less stringent "reason to believe" standard of what is now 52 U.S.C. § 30109(a)(2), the same standard under which plaintiffs' complaint was evaluated here. 854 F. Supp. 2d at 34.

Like plaintiffs, Nader alleged that he was being held to an impermissibly higher standard of proof, despite the court's citations and references to the correct evidentiary standard under FECA. *Compare id. with* Resp. at 45. The court determined that, without more, there was simply no reason to assume that the court had applied an evidentiary burden higher than the one it specifically invoked and referenced in response to Nader's allegations. 854 F. Supp. 2d at 35-36. Likewise here, there is no evidence that "the Commissioners imposed a heightened standard of proof that has no place at the threshold, pre-investigatory stage of FEC enforcement matters" (Resp. at 45), or that they would require a "sworn admission, in a Non-Prosecution Agreement with the Department of Justice" before making the requisite finding in this or any other case (*id.* at 46). In fact, plaintiffs' claims are contradicted by the legal standard the Commissioners explicitly invoked and referenced multiple times. (*See, e.g.*, AR0285 ("we found no reason to believe that an expenditure occurred"); AR0286 ("we found no reason to believe") (listing FECA and FEC regulations at issue).)

In sum, the controlling Commissioners issued a lengthy, detailed SOR explaining their reasoning in this matter. They addressed the facts in the record and cited numerous applicable precedents in support of their conclusions. The usual deference to that decision is fully warranted, and the dismissal of plaintiffs' administrative complaint was reasonable.

IV. CONCLUSION

For the foregoing reasons, plaintiffs' Motion for Summary Judgment should be denied, and the Commission's Motion for Summary Judgment should be granted.

Respectfully submitted,

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May 5, 2023

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2023, I served the foregoing pursuant to Fed. R. Civ. P. 5(b)(2)(E) on counsel of record, as a registered ECF user, through the Court's ECF system.

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