

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

PALMER,)	
)	
Plaintiff,)	Civ. No. 22-2876 (CRC)
)	
v.)	
)	MEMORANDUM IN SUPPORT OF
FEDERAL ELECTION COMMISSION,)	MOTION TO DISMISS
)	
Defendant.)	
)	

**FEDERAL ELECTION COMMISSION’S MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF ITS MOTION TO DISMISS**

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INTRODUCTION

The Federal Election Commission (“Commission” or “FEC”) respectfully files this motion to dismiss *pro se* plaintiff Barbara Palmer’s Complaint Seeking Judicial Review of Administrative Action (“Compl.”) (Docket No. 1) pursuant to Federal Rule of Civil Procedure 12(b)(1). Plaintiff’s complaint rests on the allegation that the FEC improperly dismissed an administrative complaint plaintiff previously filed with the Commission that claimed that grants distributed during the 2020 election by a non-profit corporation gave rise to multiple violations of the Federal Election Campaign Act of 1971 (“FECA”). Plaintiff filed her complaint to this Court under 52 U.S.C. § 30109(a)(8)(A), (C) of FECA, which provides a cause of action for a “party aggrieved by an order of the Commission dismissing [an administrative] complaint filed by such a party,” for a determination that the Commission’s dismissal was “contrary to law.” *Id.*

Although the Commission also disputes that it acted contrary to law in its dismissal of plaintiff’s administrative complaint, plaintiff’s judicial complaint fails in its entirety for a separate preliminary reason. Plaintiff lacks Article III standing to bring this suit because she has failed to establish any concrete and particularized injury. Rather, Palmer’s sole claim that the Commission failed to “properly investigate” plaintiff’s administrative complaint has asserted only a generalized desire to see the FEC apply the law against others. Because a generalized interest in seeing federal law enforced is insufficient to establish Article III standing, plaintiff’s suit must be dismissed for lack of jurisdiction. The FEC’s Motion should be granted.

I. BACKGROUND

A. The FEC and FECA’s Administrative Enforcement Process

The FEC is a six-member, independent agency of the United States government with “exclusive jurisdiction” to administer, interpret, and civilly enforce FECA. *See generally* 52 U.S.C. §§ 30106, 30107. Congress authorized the Commission to “formulate policy” with

respect to FECA, *id.* § 30106(b)(1); “to make, amend, and repeal such rules . . . as are necessary to carry out the provisions of [FECA],” *id.* §§ 30107(a)(8), 30111(a)(8); and to investigate possible violations of the Act, *id.* § 30109(a)(1)-(2). The Commission has exclusive jurisdiction to initiate civil enforcement actions for violations of the Act in the United States district courts. *Id.* §§ 30106(b)(1), 30109(a)(6).

FECA permits any person to file an administrative complaint with the Commission alleging a violation of the Act. *Id.* § 30109(a)(1); *see also* 11 C.F.R. § 111.4. After reviewing the complaint and any response filed by the respondent, the Commission considers whether there is “reason to believe” that FECA has been violated. 52 U.S.C. § 30109(a)(2). If at least four of the FEC’s six Commissioners vote to find such reason to believe, the Commission may investigate the alleged violation. *Id.* §§ 30106(c), 30109(a)(2).

If the Commission votes to proceed with an investigation, it then must determine whether there is “probable cause” to believe that FECA has been violated. *Id.* § 30109(a)(4)(A)(i). Like a reason-to-believe determination, a determination to find probable cause to believe that a violation of FECA has occurred requires an affirmative vote of at least four Commissioners. *Id.* §§ 30106(c), 30109(a)(4)(A)(i). If the Commission so votes, it is statutorily required to attempt to remedy the violation informally and attempt to reach a conciliation agreement with the respondent. *Id.* Entering into a conciliation agreement requires an affirmative vote of at least four Commissioners and such an agreement, unless violated, operates as a bar to any further action by the Commission related to the violation underlying that agreement. *Id.*

§ 30109(a)(4)(A)(i). If the Commission is unable to reach a conciliation agreement, FECA authorizes the agency to institute a *de novo* civil enforcement action in federal district court. *Id.* § 30109(a)(6)(A). The institution of a civil action under section 30109(a)(6)(A) requires an

affirmative vote of at least four Commissioners. *Id.*

If, at any point in the administrative process, the Commission determines that no violation has occurred, FECA provides the complainant with a narrow cause of action for judicial review of the Commission's dismissal decision. *See id.* § 30109(a)(8)(A) (detailing the procedure for seeking judicial review of an administrative dismissal and the scope of such review). That statutory provision also allows a party who has filed an administrative complaint with the Commission, after 120 days, to bring a civil action in this District alleging that the Commission has "fail[ed] to act" on its complaint. *Id.* § 30109(a)(8)(A).

FECA expressly limits the scope of relief available to a plaintiff challenging an FEC dismissal decision or alleging that the Commission has failed to act on an administrative complaint. The reviewing court may only (a) declare that the Commission's failure to act or dismissal was "contrary to law" and (b) order the Commission to "conform with" the court's declaration within 30 days. 52 U.S.C. § 30109(a)(8)(C).

B. FECA's Limits on Contributions

FECA defines a "contribution" as any "gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8); *accord* 11 C.F.R. § 100.52(a). The term "anything of value" includes in-kind contributions, such as "the provision of any goods or services without charge or at a charge that is less than the usual normal charge." 11 C.F.R. § 100.52(d)(1). The Act defines an expenditure as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office. 52 U.S.C. § 30101(9).

FECA prohibits any person from making a contribution in the name of another person or knowingly allowing his or her name to be used to make such a contribution. *Id.* § 30122.

FECA and the Commission’s regulations also prohibit contributions during certain time periods by any person who enters into a contract with the United States or its departments or agencies for “furnishing any material, supplies, or equipment,” if payment on such contract “is to be made in whole or in part from funds appropriated by Congress.” *Id.* § 30119(a)(1); 11 C.F.R. § 115.2(a). Finally, FECA prohibits corporations from making contributions to federal candidates, and likewise bars candidates, political committees (other than independent expenditure-only political committees and committees with hybrid accounts), and other persons, from knowingly accepting or receiving corporate contributions. 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b), (d). FECA also provides that “any officer or any director of any corporation” shall not “consent to any [prohibited] contribution or expenditure by the corporation.” 52 U.S.C. § 30118(a).

C. Agency Proceedings Related to Plaintiff’s Administrative Complaint

On November 7, 2021, plaintiff filed an administrative complaint with the Commission which was designated Matter Under Review (“MUR”) 7946. Plaintiff supplemented her complaint on January 3, 2022. (*See* Compl. ¶ 8; *see also* Pl.’s Exh. 2 (Doc. No. 1-4), Pl.’s Exh. 3 (Doc. No. 1-5).) Palmer’s administrative complaint alleged that grants distributed during the 2020 election by the Center for Tech and Civic Life, (“CTCL”), a 501(c)(3) non-profit corporation, which were made to state and local election administrators ostensibly for the purpose of assisting with the administration of elections during the COVID-19 pandemic, were, in fact, made for the purpose of increasing the turnout of Democratic voters, and therefore constituted contributions to various Democratic candidates or committees. (Pl.’s Exh. 3 at 2 ¶ 6 (alleging that the grants were “designed with the intent to tilt the 2020 federal elections toward” Democratic candidates).) The administrative complaint points to the distribution of the grants, asserting that they were targeted at “urban cities . . . to turn out the progressive vote.” (*Id.* at 9 ¶ 46.) In addition to CTCL, Palmer’s administrative complaint requested that the Commission

seek action against one CTCL employee, the Election Assistance Commission, (“EAC”), an independent federal agency, and two employees of the EAC. (*See* Pl.’s Exh. 3.).

The administrative complaint alleged that there was an effort to “funnel funds from a wealthy individual and their related and/or controlled entities, through a federal contractor,” which plaintiff alleges that CTCL was in the 2020 election. (*Id.* at 3 ¶ 8.)¹ The complaint further alleged that the EAC was also a source of the grants and that “taxpayer funds” were effectively “funnel[ed] . . . to assist with the 2020 election cycle campaigns of specific candidates and/or political parties.” (*Id.* at 3 ¶ 7.) Based on these allegations, plaintiff claimed that the CTCL, EAC, and associated personnel violated a variety of FECA provisions. Plaintiff alleged that the CTCL grants were actually in-kind contributions, which CTCL was prohibited from making either because it is a corporation or because it was a federal contractor. (*Id.* at 3 ¶ 9 (citing 52 U.S. § 30119; 11 C.F.R. § 114.2).) Plaintiff further claimed that CTCL knowingly permitted its name to be used to make a contribution in the name of another, and that CTCL’s grants constituted contributions in excess of the limit. (*Id.* at 3 ¶ 10 (citing 52 U.S.C. § 30122).) Plaintiff requested that the Commission (1) “investiga[te]” CTCL’s alleged payments to the EAC; and (2) investigate all respondents for violations of 52 U.S.C. §§ 30119 and 30122 and 11 C.F.R. § 114.2. (*Id.* at 19-20.)

On July 26, 2022, after considering Palmer’s complaint and responses from persons referenced in the complaint, the Commission determined by a vote of 6-0 that there was no reason to believe a violation of FECA had occurred and dismissed the administrative complaint. *See* FEC, MUR 7946 Certification, https://www.fec.gov/files/legal/murs/7946/7946_23.pdf. The

¹ The text of plaintiff’s administrative complaint identified two sources of funding for the grants as Mark Zuckerberg, the founder and CEO of Meta (formerly Facebook), and his wife Dr. Pricilla Chan. (Exh. 3 at 44 ¶¶ 58-64.)

Commission notified plaintiff on August 8, 2022, regarding the dismissal of her complaint and provided a Factual and Legal analysis that explained the Commission's findings. *See* Notification to Barbara W. Palmer, https://www.fec.gov/files/legal/murs/7946/7946_24.pdf. The Commission explained that there was no reasonable basis to conclude that the respondents funded or awarded grants for the purpose of influencing a federal election or to increase votes for Democratic candidates. Further, the Commission found that there was no indication that the respondents coordinated with any candidate or committee, and that therefore the grants were neither contributions nor expenditures under FECA. The Commission's findings, responses, and certifications are all publicly available on the FEC's website. *See generally* Closed Matters Under Review, MUR 7946, <https://www.fec.gov/data/legal/matter-under-review/7946/>. Additional information about the CTCL grants plaintiff challenges, including the amount and recipient information of CTCL's donations to local election officers, are disclosed in CTCL's IRS Form 990 that plaintiff submitted to the FEC with her administrative complaint. (*See* Pl.'s Exh. 2, pp. 35-172, available at https://www.fec.gov/files/legal/murs/7946/7946_06.pdf.)

D. Plaintiff's Judicial Complaint

On September 21, 2022, plaintiff filed her complaint with this Court in connection with the administrative complaint that plaintiff had earlier filed with the agency. (*See generally* Compl.) Plaintiff alleges that the Commission, has "wholly failed to address the issues raised in Plaintiff's Administrative Complaint," or "make proper referral as required by law." (*Id.* ¶ 14.) Plaintiff requests that the Court "declare that the [FEC] failed to properly investigate" her complaint pursuant to 52 U.S.C. § 30109 and "[o]rder the FEC to conform with such declaration within 30 days." (Compl. Requested Relief.)

ARGUMENT

I. PALMER LACKS ARTICLE III STANDING TO COMPEL THE COMMISSION TO “PROPERLY INVESTIGATE” HER ADMINISTRATIVE COMPLAINT

The Court should dismiss plaintiff’s complaint because she has failed to establish the required elements of standing under Article III of the Constitution. Plaintiff has alleged no personal injury from the alleged CTCL grants or from any other alleged FECA violation. Indeed, plaintiff makes no attempt to explain how the Commission’s decision to dismiss her administrative complaint caused her any concrete injury. Rather, Palmer relies on her statements that she has standing as a “representative of all United States citizens, regardless of political party affiliation, that seek to protect their most basic right to have meaningful participation in electing their political leaders.” (Compl. ¶ 5). These generalized grievances fail as a matter of law.

A. Standard of Review

A plaintiff bears the burden of demonstrating that she has properly invoked this Court’s subject-matter jurisdiction. *See Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015). A motion to dismiss for lack of standing is properly considered under Rule 12(b)(1), as lack of standing is a “defect in subject matter jurisdiction.” *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987); *M.J. v. District of Columbia*, 401 F. Supp. 3d 1, 7-8 (D.D.C. 2019). When deciding a motion under Rule 12(b)(1), a court must accept all well-pleaded factual allegations in the complaint as true. *See Jerome Stevens Pharms., Inc. v. FDA*, 402 F.3d 1249, 1253 (D.C. Cir. 2005). Because the court has “an affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority,” however, the factual allegations in the complaint “will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim.” *Grand Lodge of the Fraternal Ord. of Police v. Ashcroft*, 185 F. Supp. 2d 9, 13-14

(D.D.C. 2001) (internal quotation marks omitted); *see also Nat'l Ass'n for Latino Cmty. Asset Builders v. Consumer Fin. Prot. Bureau*, 581 F. Supp. 3d 101, 104 (D.D.C. 2022) (same). As the party bringing suit, Palmer bears the burden of establishing standing. *Attias v. Carefirst, Inc.*, 865 F.3d 620, 625 (D.C. Cir. 2017).

To have Article III standing, a plaintiff must establish: (1) she has “suffered an ‘injury in fact[,]’” which the Supreme Court defines as “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not [merely] conjectural or hypothetical,” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal citations and quotation marks omitted); (2) that there is a “causal connection between the injury and the conduct complained of[,]” which requires the injury to be “fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court,” *id.* (internal quotation marks and alterations omitted); and (3) that it is “likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Id.* (internal quotation marks omitted). These three components of the Article III “case or controversy” requirement are designed to ensure that the “plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant *his* invocation of federal court jurisdiction and to justify [the] exercise of the court’s remedial powers on his behalf.” *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976) (internal quotation marks omitted). Moreover, “standing is not dispensed in gross” and “a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought.” *Davis v. FEC*, 554 U.S. 724, 734 (2008) (internal quotation marks and alterations omitted).

Where a plaintiff asserts a procedural right, she must show that she has suffered a personal and particularized injury that impairs one of her concrete interests. *Int'l Bhd. of*

Teamsters v. TSA, 429 F.3d 1130, 1135 (D.C. Cir. 2005). Despite the fact that Congress passed section 30109(a)(8)(A)’s judicial review provision, “[i]t makes no difference that the procedural right has been accorded by Congress.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009).

“[D]eprivation of a procedural right without some concrete interest that is affected by the deprivation — a procedural right *in vacuo* — is insufficient to create Article III standing.” *Summers*, 555 U.S. at 496. Particularized means that “the injury must affect the plaintiff in a personal and individual way.” *Id.* at 560 n.1. And when, as here, “a plaintiff’s asserted injury arises from the government’s allegedly unlawful regulation (or lack of regulation) of *someone else*,” standing is “substantially more difficult” to establish. *Id.* at 562; accord *Common Cause v. FEC*, 108 F.3d 413, 417 (D.C. Cir. 1997); see also *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) (“[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.”) Standing “focuses on the complaining party to determine ‘whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.’” *Am. Legal Found. v. FCC*, 808 F.2d 84, 88 (D.C. Cir. 1987) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). Thus, courts “may not entertain suits alleging generalized grievances that agencies have failed to adhere to the law.” *Freedom Republicans, Inc. v. FEC*, 13 F.3d 412, 415 (D.C. Cir. 1994); see also *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016) (“Congress’ role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement” because “Article III standing requires a concrete injury even in the context of a statutory violation.”). A plaintiff must demonstrate “that he has ‘a personal stake in the outcome,’ . . . distinct from a ‘generally available grievance about government.’” *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962) and *Lance v. Coffman*, 549 U.S. 437, 439 (2009)).

B. Palmer Does Not Have Standing Because She Cannot Show a Concrete and Particularized Injury Based on Any Alleged FECA Violation

Plaintiff cannot rely on her abstract desire to see the law enforced against the alleged violators in her administrative complaint in her preferred manner to establish Article III standing. 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*, 504 U.S. at 573-74. Here, Palmer fails to show that she has suffered any concrete or particularized injury from the alleged activities by the administrative respondents that plaintiff has identified. Rather, although the Commission unanimously found no reason to believe the respondents violated FECA after considering the allegations, plaintiff now simply requests that this Court compel the FEC to "properly investigate" the respondents and "make proper referral as required by law." (Compl. ¶ 11; *id.* ¶ 14.) Such concerns that the Commission should enforce the law against alleged violators cannot be the basis for standing because there is no "justiciable interest in having the Executive Branch act in a lawful manner." *Common Cause*, 108 F.3d at 419.

Thus, Palmer has no Article III right to seek "a legal conclusion that carries certain law enforcement consequences" for others. *Wertheimer v. FEC*, 268 F.3d 1070, 1075 (D.C. Cir. 2001). "While 'Congress can create a legal right . . . the interference with which will create an Article III injury,' . . . Congress cannot . . . create standing by conferring 'upon *all* persons . . . an abstract, self-contained, noninstrumental 'right' to have the Executive observe the procedures required by law.'" *Common Cause*, 108 F.3d at 418 (quoting *Lujan*, 504 U.S. at 573) (internal citation omitted); *see also Campaign Legal Ctr. v. FEC*, No. 20-5159, 860 Fed. App'x 1, *4 (D.C. Cir. May 11, 2021) ("[A]n interest 'in proper administration of the laws (specifically, in agencies' observance of a particular, statutorily prescribed procedure)' is a generic interest in

good government that is shared equally by all citizens and does not amount to a concrete or particularized Article III injury.”).

Plaintiff’s judicial complaint makes clear that she has suffered no injury-in-fact from the CTCL grants. Indeed, she describes herself as a person “eligible to vote in United States federal elections and registered as a voter in the State of Texas.” (Compl. ¶ 5.) Plaintiff further alleges that she is “representative of all United States citizens, regardless of political party affiliation, that seek to protect their most basic right to have meaningful participation in electing their political leaders.” (*Id.*). Plaintiff does not even attempt to explain how the lack of investigation of the allegations in the administrative complaint have caused *her* an injury “in a personal and individual way.” *Lujan*, 504 U.S. at 560 n.1; *see also Citizens for Resp. & Ethics in Wash. v. FEC*, 267 F. Supp. 3d 50, 53 (D.D.C. 2017) (“easily” dismissing claims because plaintiffs “have not alleged any injury in fact arising from [the alleged wrongdoing]”).

Plaintiff claims that the Commission “fail[ed] to make significant inquiry,” or “carefully examine” the transactions at issue (Compl. ¶ 13), but her desire to have the FEC pursue the administrative respondents is not a legally cognizable injury. These were the precise interests held insufficient in *Common Cause*. *See* 108 F.3d at 418; *see also Wertheimer*, 268 F.3d at 1074-75 (rejecting standing for plaintiffs who “do not really seek additional facts but only the legal determination that certain transactions constitute coordinated expenditures”). The prayer for relief in the administrative complaint further reveals plaintiff’s lack of injury sufficient for Article III purposes. Plaintiff requested that the Commission (1) investigate CTCL’s alleged payments to the EAC; and (2) investigate all respondents for violations of FECA’s prohibition on contributions by federal contractors, contributions in the name of another, and ban on corporate contributions, pursuant to 52 U.S.C. §§ 30119 and 30122 and 11 C.F.R. § 114.2. The first

requested relief does not relate to an alleged campaign finance violation but rather to a question of appropriations that is outside the FEC's jurisdiction. The second does not allege a disclosure violation but only that the money came from impermissible sources, or sources already known to plaintiff, including Mark Zuckerberg and Pricilla Chan.

In this case, Palmer may have a general interest in learning whether there was anything unlawful about the CTCL grants, but plaintiff's desire "for the Commission to 'get the bad guys'" is not a legally cognizable interest, *Common Cause*, 108 F.3d at 418. Plaintiff cannot establish a concrete and particularized injury from the dismissal of the allegations in her administrative complaint and thus has failed to demonstrate Article III standing.

CONCLUSION

For all the foregoing reasons, the Court should dismiss plaintiff's complaint.

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