

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

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

**FEDERAL ELECTION COMMISSION’S REPLY
IN SUPPORT OF ITS MOTION TO DISMISS**

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INTRODUCTION

Plaintiff Barbara Palmer's Response to the Motion to Dismiss ("Opp.") fails to show that she has an Article III injury required to bring this suit. The Federal Election Commission's ("FEC" or "Commission") Memorandum of Law in Support of its Motion to Dismiss ("Mem.") (Doc. No. 6-1) explained that Palmer's Complaint has merely asserted a general interest in seeing the agency enforce the law against others in the way that she desires, which is insufficient to establish injury in fact. Rather than showing how the FEC's dismissal of her administrative complaint affects her "in a personal or individual way," *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 n.1 (1992), Palmer's Response sets forth several arguments, none of which are sufficient to demonstrate that she has established Article III standing.

Palmer first conflates her burden to establish constitutional standing under Article III with the separate requirement that she establish a statutory cause of action. It is not enough for Palmer to allege violations of federal law that the Commission declined to pursue. Rather, Palmer must instead identify some concrete and particularized injury in fact that is fairly traceable to the Commission and redressable by this Court. Palmer's related claim of jurisdiction predicated on purported agency delay is not only erroneous but also moot because the Commission has already acted on her complaint. Second, Palmer's assertion that she has standing to seek "additional information" is similarly unavailing. (Opp. at 7.) The information that Palmer appears to want is proof that the respondents named in her administrative complaint violated the law by distributing or receiving certain grants. Yet as established precedent makes clear, a plaintiff lacks standing to require an administrative agency to label certain conduct illegal, absent some other allegation of personalized injury. Moreover, the information Palmer seeks is already available from another source: the IRS 990 forms that plaintiff herself submitted to the Commission. Lastly, Palmer's long list of unspecified "election law" violations cannot be

a basis for standing to sue the Commission absent some tie to federal campaign finance law; the FEC regulates campaign finance, not elections, and auditing a sister federal executive agency as Palmer appears to seek in her allegations regarding the Election Assistance Council (“EAC”) is beyond the scope of the Commission’s authority.

Because Palmer cannot show any basis for Article III standing, there is no jurisdiction for Palmer’s claims and this case must be dismissed.

ARGUMENT

A. Palmer Misapprehends the Requirements to Establish Article III Standing and Any Claim of Agency Delay is Moot

In its Memorandum, the Commission explained that Palmer failed to establish any personalized injury arising from her allegation 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”). (Mem. at 7-12.) Palmer’s allegation that the Commission did not “properly investigate” her administrative complaint prior to its dismissal, (Compl. ¶ 1) amounts to nothing more than a desire to “get the bad guys,” which the D.C. Circuit has held does not satisfy Article III’s injury-in-fact requirement. (See Mem. at 7-12.) Furthermore, Palmer fails to show that she has suffered any concrete or particularized injury from the alleged activities by the administrative respondents that would confer Article III standing. (See Mem. at 8-11 (discussing *Lujan*, 504 U.S. at 560).)

Palmer’s opposition does not dispute that she bears the burden of showing that he has standing, or that she must show “a discrete injury flowing from the alleged violation of FECA.” *Common Cause v. FEC*, 108 F.3d 413, 419 (D.C. Cir. 1997); see also Opp. at 1. However, Palmer erroneously conflates this Court’s statutory subject matter jurisdiction and her requirement to establishing constitutional standing. Palmer asserts that she “has standing to seek

judicial review of a final agency ruling under general federal question jurisdiction.” (Opp. at 10.) She further argues that “[d]enial of review in this Court will foreclose all judicial review of the FEC’s determination on Plaintiff’s original complaint,” and “[t]herefore, this Court’s review may be predicated on the general federal question jurisdiction statute, 28 U.S.C. § 1331.” (*Id.*) While it may be true that a plaintiff can establish that a Court has jurisdiction to review final agency action, that does not absolve a plaintiff from establishing *her* required constitutional standing to sue. *Cf. Bread Political Action Comm. v. FEC*, 455 U.S. 577, 585 (1982) (observing that plaintiffs “meeting the usual standing requirements” can bring a cause of action under the federal-question jurisdiction.).

To establish constitutional standing, a plaintiff must allege (1) a personal injury-in-fact that is (2) fairly traceable to the defendant’s conduct and (3) redressable by the relief requested. *Lujan*, 504 U.S. at 560. Here, outside her generalized and insufficient allegations that the law has been violated, Palmer has alleged no personal injury from the alleged Center for Tech and Civic Life (“CTCL”) grants or from any other alleged FECA violation and therefore fails to establish the requisite constitutional standing.

To the extent plaintiff attempts to base jurisdiction on whether the FEC acted “expeditiously” in reviewing her administrative complaint, (Opp. at 10-11), this allegation is moot. On July 26, 2022, the Commission dismissed plaintiff’s administrative complaint, concluding the administrative matter. (*See* Mem. at 5; *see also* FEC, MUR 7946 Certification, https://www.fec.gov/files/legal/murs/7946/7946_23.pdf.) The agency has completed final action on plaintiff’s administrative complaint, and therefore any allegation based on alleged delay cannot present a live case or controversy that satisfies the requirements of Article III and should be dismissed as moot. Because federal courts “are not in the business of pronouncing that past

actions which have no demonstrable continuing effect were right or wrong,” plaintiff is not entitled to a declaration that the FEC took too long in acting on her administrative complaint. *City of Houston v. Dep’t of Hous. & Urb. Dev.*, 24 F.3d 1421, 1429 (D.C. Cir. 1994) (citing *Spencer v. Kemna*, 523 U.S. 1, 18 (1998).)

B. Palmer Has Not Established Informational Injury

Palmer’s administrative complaint alleged that grants distributed during the 2020 election by the non-profit corporation CTCL were unlawful contributions. (Pl.’s Compl. Exh. 3 at 2 ¶ 6.) 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.) Palmer argues in her Opposition that she has standing to seek “additional information” regarding the respondents in her administrative complaint that she believes “need[] further investigation.” (Opp. 7-8.) It is well-established that the denial of information may create an injury in fact. *See, e.g., FEC v. Akins*, 524 U.S. 11 (1998); *Public Citizen v. DOJ*, 491 U.S. 440 (1989). The Supreme Court has clarified, however, that an “asserted informational injury that causes no adverse effects cannot satisfy Article III.” *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2214 (2021) (quoting *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020)); *see also Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016). In *FEC v. Akins*, another suit challenging the Commission’s dismissal of an administrative complaint, the Supreme Court held that “a plaintiff suffers an ‘injury in fact’ when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute.” 524 U.S. 11, 21 (1998). In particular, the case concerned allegations that a nonprofit corporation should have been reporting its receipts and disbursements as a political committee under FECA, and the Court held that plaintiffs had demonstrated standing because

“[t]here [was] no reason to doubt [plaintiffs’] claim that the information would help them . . . to evaluate candidates for public office.” *Id.* On the other hand, courts in FEC cases comparable to the instant matter have repeatedly emphasized that a plaintiff seeking only determinations of illegality lacks standing to maintain their claims. *See, e.g., Wertheimer v. FEC*, 268 F.3d 1070, 1075 (D.C. Cir. 2001) (holding that plaintiffs lacked standing to seek a legal determination that certain transactions constitute coordinated expenditures); *Citizens for Resp. & Ethics in Wash. v. FEC*, 267 F. Supp. 3d 50, 54 (D.D.C. 2017) (holding that advocacy group lacked standing to challenge FEC dismissal of alleged violation of FECA’s “prohibition on pass-through contributions” because “nothing in the statute or regulatory regime” would have required the alleged violator to disclose information); *Vroom v. FEC*, 951 F. Supp. 2d 175, 178-79 (D.D.C. 2013) (holding that plaintiff lacked standing to seek a legal determination that certain political committees were affiliated). Critically, “[i]f the information withheld is simply the fact that a violation of FECA has occurred,” the plaintiff has not suffered the type of “informational injury” recognized in *Akins. Common Cause*, 108 F.3d at 417.

Palmer alleges that she has “standing to seek additional information that is required to be disclosed to the public.” (Opp. at 7.) However, the “information” to which Palmer claims that she is “entitled” (*id.* at 9) is in reality that the EAC or CTCL violated the law. *See* Compl. ¶ 13; *see also* Opp. at 1 (“The FEC has failed to properly examine, investigate, and analyze Plaintiff’s original complaint causing Plaintiff an informational injury sufficient to support standing in this case.”). Palmer has no individualized right to force the Commission to bring an enforcement action or investigate. *Wertheimer*, 268 F.3d at 1074-75. As the Supreme Court made clear in *Lujan*, plaintiffs who “claim[] no ‘particularized’ injury, but only a generalized interest shared by all citizens in the proper administration of the law” lack standing. *Lujan*, 504 U.S. at 573-74.

Palmer's informational challenge is tantamount to an abstract interest in enforcement of the law — which does not create standing — and not a particularized injury created by the Commission's dismissal.

To the extent that Palmer is seeking the source of funding of the grants, these are sources already known to plaintiff. (*See* Opp. at 3-4 (citing CTCL's IRS Form 990 that plaintiff submitted to the Commission and acknowledging CTCL donors were identified in parallel FEC administrative complaint).) 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* Mem. at 6.) Thus, Palmer has not identified any information that is truly unavailable; her claim is rather that the information is presented in a way that she believes is legally insufficient. What Palmer seeks is a legal determination, *i.e.*, that respondents made "illegal and prohibited contributions to political candidates and campaigns," (Opp. at 5; *see also* Compl. ¶¶ 11, 14 (requesting that the Court compel the FEC to "properly investigate" the respondents and "make proper referral as required by law.")) The law in this Circuit is clear that Palmer has no standing to sue on the basis that "the information withheld is simply the fact that a violation of FECA has occurred." *See Common Cause*, 108 F.3d at 417.

C. Plaintiff's Allegations of Election Violations Are Insufficient to Create an Injury in Fact

Palmer asserts that the Commission's "failure" to act on her administrative complaint "properly," poses a "substantial and ongoing threat to the electoral system," and goes on to allude to election-related violations that she claims took place during the 2020 election cycle and will happen again. (Opp. 12-13; *id.* at 17-19.) She further claims that the FEC "has a duty to enforce the federal election laws and the uphold the integrity of the United States and its

Constitution,” and address state election procedure. (*Id.* at 19; *see also id.* (“The FEC already has authority and ability to correct these problems and right the ship of State.”) Yet, these unspecified “election law” violations cannot be a basis of a constitutional injury sufficient to sue the Commission unless tied to some provision of a statute the FEC administers. The FEC regulates campaign finance — that is, the organization of campaign committees; the raising, spending, and disclosing of campaign funds; and the receipt and use of public funding for qualifying candidates — not the rules or mechanics of voting in the elections themselves. *See generally* 52 U.S.C. §§ 30101-30126. Thus, plaintiff’s request that it is “incumbent upon the FEC to work diligently to prevent any action, by state election officers, federal agencies, or not-for-profit organizations from introducing fraud and corruption into federal elections” outside of campaign finance (Opp. at 19) is mistaken and irrelevant to her requirement to establish standing. FECA does not grant the Commission authority to make any election-related determinations as it sees fit. *See Castro v. FEC*, No. 22-2176, 2022 WL 17976630, *2-*3 (D.D.C. Dec. 6, 2022) (finding a lack of standing because the Commission has no authority to address an election allegation unrelated to federal campaign finance), *appeal docketed*, No. 22-5323 (D.C. Cir.). And although Palmer seeks to have the FEC audit the EAC, *see* Opp. at 15 (asserting that “the EAC went far beyond its powers during the 2020 election cycle”), an audit of a sister federal executive agency is similarly beyond the scope of Commission authority.

Palmer does not cite any FECA provision or other authority that would grant the Commission this authority as plaintiff has asserted. To the extent Palmer attempts to tie her election related claims to FECA, she again only expresses a desire to have the FEC pursue the administrative respondents in her preferred way, which is not a legally cognizable injury. (*See*

Opp. at 17 (“The FEC has wholly failed to address in its ruling violations of federal election statutes”).

CONCLUSION

For all the foregoing reasons and for the reasons set forth in the FEC’s initial memorandum in support of its motion to dismiss, the Court should dismiss plaintiff’s complaint.

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CERTIFICATE OF SERVICE

I, Shaina Ward, certify that on February 9, 2023, I electronically filed the foregoing Reply in support of Motion to Dismiss with the Clerk of the United States District Court for the District of Columbia by using the Court's CM/ECF system, and served a copy of the same via USPS First Class Mail to:

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