IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant,

and

HILLARY FOR AMERICA, *et al.*,

Defendant-Intervenors.

Civil Action No. 19-2336 (JEB)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT-INTERVENORS' SECOND MOTION FOR SUMMARY JUDGMENT

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APA	Administrative Procedure Act
AR	Administrative Record
CLC	Campaign Legal Center
CTR	Correct the Record
F&LA	Factual & Legal Analysis
FEC	Federal Election Commission
FECA	Federal Election Campaign Act
FGCR	First General Counsel's Report
HFA	Hillary for America
MSJ	Motion for Summary Judgment
MUR	Matter Under Review
OGC	Office of General Counsel
PAC	Political Action Committee
SOR	Statement of Reasons

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court should grant summary judgment in favor of Defendant-Intervenors Correct the Record ("CTR") and Hillary for America ("HFA") for two primary reasons. First, on the merits, the controlling Commissioners' decision to dismiss Plaintiffs' administrative complaint was not contrary to law. The FEC could not agree to pursue enforcement on CLC's theory of input costs for unpaid Internet communications. The controlling Commissioners correctly found that CTR's transactions did not constitute coordinated expenditures based on the plain language of the regulations, longstanding Federal Election Commission ("FEC" or "Commission") precedent, and the absence of proof of coordination in the factual record. Had the FEC done otherwise and changed its position after more than a decade of enforcing the coordination rules as it has, it would have been even more exposed to a finding that it acted arbitrarily, capriciously, and contrary to law.

Plaintiffs' hyperbolic predictions about how the FEC's dismissal in this case would open the door to massive exploitation of the unpaid Internet exemption have not come to pass. *See* Pls.' Opp'n to Ints.' Am. Mot. to Dismiss at 53, ECF No. 27; Pls.' Mot. for Summ. J. at 54, ECF 35. This Court has the benefit of being able to observe what has happened in the campaign finance landscape since the 2016 election when the activity in question occurred. With respect to unpaid Internet communications, the answer is not much. That is because the unpaid Internet exemption applies to a narrow range of unpaid communications, and there are other statutory and regulatory provisions that prohibit the activity Plaintiffs are concerned about, such as the prohibition on the use of foreign money in American elections. *See* 52 U.S.C. § 30121, 11 C.F.R. § 110.20; *see also* 52 U.S.C. §§ 30101(4), 30103(3), 30125 (requiring organizations to register as a political

committee after meeting certain criteria demonstrating an election-influencing purpose, and stating that candidates cannot direct or control any soft money group).

Second, at this late date—nearly seven years after the alleged unlawful activity began and two federal election cycles later—Plaintiffs' injury is no longer redressable. The conduct in question took place during the 2016 presidential election season and the applicable five-year statute of limitations under 28 U.S.C. § 2462 has run on the relief Plaintiffs seek. Thus, even if this Court were to find that the FEC's dismissal was contrary to law, the most likely outcome is that the FEC would dismiss this matter because the statute of limitations has expired. But even if the allegations were not barred, as a practical matter it would be impossible for Intervenors to file amended reports disclosing the granular information Plaintiffs seek. Intervenors were not required under the Federal Election Campaign Act ("FECA" or "the Act") to keep records of disaggregated spending related to input costs for their unpaid Internet communications. Thus, they would have had significant difficulty in accurately parsing out that information retroactively and filing reports disclosing that information when this matter first began. But now that it is nearly seven years after the activity occurred, and the committees are now defunct, it would be impossible.

Consistent with the Court's order setting a schedule for summary judgment briefing, Intervenors submit this Second Motion for Summary Judgment. Given the parties' prior extensive briefing on the merits of this case, for the sake of judicial economy, Intervenors do not re-tread their merits arguments in full. Instead, pursuant to Federal Rule of Civil Procedure 10(c), Intervenors expressly incorporate by reference their prior summary judgment briefing on the merits, *see* Def. Ints.' Cross Mot. for Summ. J. & Opp'n to Pls.' Mot. for Summ. J. at 26-53, ECF No. 38-1; Def. Ints.' Reply in Support of Cross Mot. for Summ. J. at 11-27, ECF No. 44, and highlight certain important points for the Court. For the reasons set forth herein and in their prior

summary judgment briefing, Intervenors respectfully request that this Court enter summary judgment in favor of Intervenors.

STATEMENT OF FACTS

HFA was the principal campaign committee of former United States Secretary of State Hillary Clinton, who was the nominee of the Democratic Party for the office of President of the United States in the 2016 general election. AR380. CTR was a "hybrid" or *Carey* political action committee ("PAC") that registered with the FEC in June 2015. AR007 (quoting CTR's statement of registration). CTR was active during the 2016 election cycle, serving as a strategic research and rapid response team designed to defend Secretary Clinton from baseless political attacks. AR006-7 (quoting from CTR's website). As a hybrid PAC, CTR maintained one bank account that was subject to the Act's contribution limits and source restrictions and could make contributions to candidates, and a second bank account that could accept unlimited contributions from any source but could not contribute to federal candidates. *See Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011); AR380 n.2. CTR is no longer active.

During the 2016 election cycle, CTR conducted the vast majority of its activities online, using its website and social media accounts to set the record straight about Secretary Clinton's record when her opponents and media outlets made false and misleading claims about her. *See* AR006 (stating that, per CTR's website, CTR did not engage in paid communications). CTR also shared similar content with the people who subscribed to its email list. *See id.* It conducted a handful of other activities that were not related to its online presence, but those activities were relatively rare and represented a smaller portion of its program. *See* AR065-67. CTR reported every dollar it spent from both of its accounts as "expenditures" or "disbursements" on its regularly

filed FEC reports and included a purpose description for each itemized disbursement. *See Correct the Record*, FEC, https://www.fec.gov/data/committee/C00578997/ (last visited Aug. 11, 2022).

Beginning in 2015, various complainants filed administrative complaints with the FEC against HFA and CTR, including Plaintiffs. AR381. Plaintiffs' complaint, which the FEC designated Matter Under Review ("MUR") 7146, alleged that Intervenors were unlawfully coordinating their activities and that CTR had made, and HFA had accepted, millions of dollars of excessive and prohibited contributions that they failed to properly report. AR001. Both HFA and CTR filed administrative responses defending their activities and arguing that there is no reason to believe any unlawful coordination occurred. *See* AR062-78.

After reviewing the record in MUR 7146, the FEC's Office of General Counsel ("OGC") recommended dismissing or taking no action on most of the allegations contained in the complaints, but recommended finding reason to believe Intervenors violated the Act by making and accepting "unreported excessive and prohibited in-kind contributions" in the form of coordinated expenditures. AR106, 108–09. OGC also recommended that the FEC investigate HFA's and CTR's conduct. AR107. The FEC, however, did not adopt OGC's conclusions on coordinated spending. AR372-75.

On June 4, 2019, by a vote of 2-2, the Commissioners were unable to find reason to believe any violations had occurred or that an investigation was warranted. *Id.* The two controlling Commissioners published a Statement of Reasons ("SOR") on August 21, 2019, explaining the reasons why they voted to find no reason to believe. *See* AR380–97. The Commissioners reasoned that the regulation that governs coordinated communications, 11 C.F.R. § 109.21, applies only to "public communications." AR387–90. "Public communications," in turn, are enumerated types of communications defined by the FEC's regulations. AR387–88. Notably, the term "excludes all

internet communications 'except for communications placed for a fee on another person's Web site.'" AR388 (quoting 11 C.F.R. § 100.26). The controlling Commissioners concluded that, because none of CTR's communications were placed for a fee on a third party's website, they were not "public communications" and could not be "coordinated communications." AR390–94. Therefore, any amounts of money CTR spent on placing the communications, and all the "production" or "input" costs related to creating the communications, were not in-kind contributions to HFA. *Id.* The Commissioners then analyzed CTR's remaining expenditures for its non-communicative activities under 11 C.F.R. § 109.20, the regulation which applies to coordinated expenditures besides communications. AR390, 394–97. With respect to those non-communicative activities, the Commissioners found that the evidence in the record was insufficient to establish that HFA and CTR engaged in prohibited coordination. AR394–97.

Plaintiffs filed this suit under 52 U.S.C. § 30109(a)(8). Compl., ECF No. 1. On December 2, 2020, at summary judgment, this Court dismissed Plaintiffs' FECA claim because it determined that Plaintiffs had not suffered a cognizable informational injury sufficient to prove Article III standing. Order, ECF No. 45. The Court did not reach the merits of Plaintiffs' FECA claim. *See* Mem. Op., ECF No. 46. On February 12, 2021, this Court granted summary judgment in favor of Intervenors on Plaintiffs' APA claim—the only remaining claim in the case—and dismissed the case without prejudice. Order, ECF No. 52. Plaintiffs appealed the dismissal of their FECA claim to the D.C. Circuit. Pls.' Notice of Appeal, ECF No. 54. Plaintiffs did not appeal this Court's dismissal of their APA claim. *CLC v. FEC*, 31 F.4th 781, 788 (D.C. Cir. 2022) ("[Plaintiffs] do not challenge the District Court's dismissal of their Administrative Procedure Act claim . . . ."). On April 19, 2022, the D.C. Circuit reversed this Court's decision on the Plaintiffs' FECA claim, finding that they had suffered an informational injury sufficient for standing purposes to allege

that claim, and the matter was remanded to this Court. *Id.* at 793. This Court held a status conference, after which it ordered renewed summary judgment briefing.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986). To survive summary judgment, a plaintiff must demonstrate a genuine issue of material fact as to each element of every disputed claim. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). A plaintiff's bare, unsupported, or conclusory assertions are insufficient. *See Stewart v. White*, 61 F. Supp. 3d 118, 130 (D.C. Cir. 2014). To defeat a motion for summary judgment, a movant who would not bear the burden of proof at trial need not present evidence to put the plaintiff's claims in issue. *Celotex,* 477 U.S. at 325. It is sufficient to "point[] out … that there is an absence of evidence to support the nonmoving party's case." *Id.*

ARGUMENT

I. THE CONTROLLING BLOC'S DISPOSITION OF THE ADMINISTRATIVE COMPLAINT WAS NOT CONTRARY TO LAW.

In resolving Plaintiffs' administrative complaint, the FEC faced a question not clearly answered by FECA or the implementing regulations: Are the costs associated with the creation and placement of unpaid Internet communications—such as the compensation a staff member receives to write a blog post, or the costs of filming and editing a video that is posted to an organization's Twitter account—part and parcel of the communication such that they should be subject to regulation under 11 C.F.R. § 109.21, the coordination rule for expenses related to communications? *See* AR391. Or are they separate expenses such that they should be subject to regulation pursuant to 11 C.F.R. § 109.20, the coordination rule for non-communication expenses? *See id.* Plaintiffs take issue with the controlling Commissioners' legal conclusion that such input

costs fall within section 109.21 and are thus exempt from regulation as coordinated expenditures pursuant to the unpaid Internet exemption. Pls.' Mot. for Summ. J. at 23, 33, ECF No. 35; AR390-93. Applying that rule, the Commissioners determined that CTR's expenses for unpaid Internet communications were not contributions to HFA even though they were coordinated. The controlling Commissioners dismissed Plaintiffs' complaint. AR390-93, 396.

As explained herein and in Intervenors' previous summary judgment briefing, *see* Def. Ints.' Cross Mot. for Summ. J. & Opp'n to Pls.' Mot. for Summ. J. at 26-53, ECF No. 38-1; Def. Ints.' Reply in Supp. of Cross Mot. for Summ. J. at 11-27, ECF No. 44, the controlling Commissioners' decision to dismiss was not contrary to law; their decision was based on decades of FEC policies and precedent and sought to strike a balance that would avoid violating due process and regulating more speech than is permissible under the First Amendment. Moreover, the controlling Commissioners properly applied the coordination rule for non-communication expenses—section 109.20—to expenses for research and tracking, polling, and communications with reporters. The Commissioners dismissed the allegations because there was insufficient evidence in the record to conclude that CTR and HFA coordinated on activities other than unpaid Internet communications, or that HFA had not compensated CTR for the goods and services it received.

For the reasons discussed herein and in Intervenors' previous summary judgment briefing, see Def. Ints.' Cross Mot. for Summ. J. & Opp'n to Pls.' Mot. for Summ. J. at 26-53, ECF No. 38-1; Def. Ints.' Reply in Supp. of Cross Mot. for Summ. J. at 11-27, ECF No. 44, this Court should not disturb the controlling Commissioners' decision to dismiss the administrative complaint. The Court should grant summary judgment in favor of Intervenors.

A. The controlling Commissioners' dismissal of Plaintiffs' administrative complaint is entitled to deference.

A court may require the FEC to reconsider its decision on an administrative complaint only when the decision is "contrary to law." 52 U.S.C. § 30109(a)(8)(C). The "contrary to law" standard is highly deferential to decisions made by the FEC. It allows a court to disrupt the agency's decision-making in only two narrow circumstances: (1) if "the FEC dismissed the complaint as a result of an impermissible interpretation of the Act," or (2) if, after permissibly interpreting the Act, the decision was still "arbitrary[,] capricious or an abuse of discretion." *Orloski v. FEC*, 795 F.2d 156, 161 (D.C. Cir. 1986). Generally, the first standard applies to questions of law, and asks whether the agency's interpretation of a statute was reasonable. *See FEC v. Democratic Senatorial Campaign Comm.* ("*DSCC*"), 454 U.S. 27, 39 (1981). The second standard is reserved for questions of fact and measures, for example, whether the agency has "entirely failed to consider an important aspect of the problem" or "offered an explanation for its decision that runs counter to the evidence." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

As this Court recognized at an earlier stage of the proceedings, the "contrary to law" standard prohibits a court from "substitut[ing] its judgment for that of the agency." *CLC v. FEC*, 466 F. Supp. 3d 141, 156 (D.D.C. June 4, 2020) (quoting *Airmotive Eng'g Corp. v. FAA*, 882 F.3d 1157, 1159 (D.C. Cir. 2018)). Rather, the court's role is to determine "whether the Commission's construction was sufficiently reasonable." *DSCC*, 454 U.S. at 39 (quotation marks omitted). Congress granted the FEC "'extensive rulemaking and adjudicative powers'" and the authority to "'formulate general policy with respect to the administration of [the] Act,'" making it "precisely the type of agency to which deference should presumptively be afforded." *Id.* at 37 (quoting *Buckley v. Valeo*, 424 U.S. 1, 110 (1976)).

Similarly, whether a decision is "arbitrary, capricious, or [an] abuse of discretion" is an "extremely deferential standard which requires affirmance if a rational basis for the agency's decision is shown." *Akins v. FEC*, 736 F. Supp. 2d 9, 17 (D.D.C. 2010) (quotation marks omitted). Under this standard, reversal is permitted "only if the agency's decision is not supported by substantial evidence, or the agency has made a clear error in judgment." *Hagelin v. FEC*, 411 F.3d 237, 242 (D.C. Cir. 2005) (quotation marks omitted). In short, the arbitrary and capricious standard "presume[s] the validity of agency action." *Am. Horse Prot. Ass'n, Inc. v. Yeutter*, 917 F.2d 594, 596 (D.C. Cir. 1990). It is well-established that, where, as here, "the Commissioners deadlock on a vote and, consequently, dismiss the matter, the Commissioners who vote not to proceed (Controlling Commissioners) must explain their reasons" in a Statement of Reasons that is entitled to deference. *CREW v. FEC*, 892 F.3d 434, 442 (D.C. Cir. 2018); *see also CREW v. FEC*, 236 F. Supp. 3d 378, 390 (D.D.C. 2017), *aff'd*, 892 F.3d 434 (D.C. Cir. 2018).

While the controlling bloc may not have made the same choice Plaintiffs or the Court would have made, its legal conclusions about input costs were reasonable in light of the need to take into account important First Amendment and due process concerns. The controlling bloc found a way to balance those interests and still apply its existing precedent, while—contrary to Plaintiffs' characterization—exempting only a relatively small amount of overall electoral spending from regulation as coordinated expenditures. This outcome comports with the Act and the First Amendment and should not be disturbed.

B. The Commissioners' decision to exempt input costs for unpaid Internet communications represents a permissible interpretation of the Act and was not arbitrary or capricious.

Plaintiffs' primary argument before this Court is that by exempting all component costs of online communications from treatment as coordinated expenditures, the FEC created a loophole in the Act through which groups can spend unlimited amounts of money in consultation with

candidates. *See* Pls.' Mot. for Summ. J. at 12, 31, ECF No. 35. This view should be rejected because it overstates the implications of the controlling bloc's decision and reads the Act in a vacuum.

1. The controlling bloc's dismissal has not created an unprecedented loophole and reflected a reasonable balancing of constitutional concerns.

To begin with, despite Plaintiffs' imagined parade of horribles, *see id.*, there has not been a massive migration of electoral spending to unpaid Internet activity as a result of the controlling Commissioners' decision to dismiss their administrative complaint in this matter. A lot of time has passed since the 2016 election, and despite Plaintiffs' alarmist rhetoric about how the Commissioners' decision in this matter would create massive amounts of coordinated spending that would go unregulated, the campaign finance system as it pertains to unpaid Internet activity has remained overwhelmingly the same since the FEC dismissed their complaint.

The FEC's rule on input costs has not, and indeed does not, open the door to coordinated spending on the scale that Plaintiffs imagine because the Commission's decision to exempt input costs associated with unpaid Internet communications does not apply to television advertisements, radio advertisements, or paid Internet communications, which are highly effective forms of targeted advertising. Unpaid Internet communications are a relatively small and low-impact category of advertising within the universe of ways a group can communicate about elections. Unlike virtually any other form of political advertising, people are not bombarded with unpaid Internet content. Instead, they must seek it out. They must know what website to type into their browser to find an article, and they must follow a particular group on social media to see its updates. Unpaid Internet communications are treated differently from other communications under campaign finance laws in large part because they are unique in that they have a self-selected

audience. *See* Internet Communications, 71 Fed. Reg. 18589, 18590 (Apr. 12, 2006), 2006 WL 927156; *see also Reno v. ACLU*, 521 U.S. 844, 868 (1997) (referring to the Internet as a "vast democratic forum[]" and observing that certain factors allowing for "government supervision and regulation" over other modes of communication are not present with the Internet).

Moreover, other regulatory provisions regulate the illegal activity causing Plaintiffs' apparent concern. For example, Plaintiffs caution that foreign money will seep into U.S. elections, but there is a separate ban on foreign nationals, directly or *indirectly*, making "expenditure[s]." 52 U.S.C. § 30121(a)(1) (emphasis added); 11 C.F.R. § 110.20. FECA also separately prohibits candidates from exerting control over organizations that are not subject to the Act's contribution limits. *See* 52 U.S.C. § 30125. And groups that spend money on influencing elections must register as political committees and report their expenditures. *See* 52 U.S.C. §§ 30101(4), 30103(3). As with CTR, their spending will not take place in the dark.

Furthermore, as Intervenors have previously pointed out, there is nothing in the controlling Commissioners' SOR in this matter that weakens 11 C.F.R § 109.20's application to expenses not associated with communications. *See* Def. Ints.' Cross Mot. for Summ. J. & Opp'n to Pls.' Mot. for Summ. J. at 33, ECF No. 38-1. While Plaintiffs claim that section 109.20 will become a "superfluity," Pls.' Mot. for Summ. J. at 33, ECF No. 35, the administrative record in this matter belies that assertion. The controlling Commissioners analyzed several categories of CTR's non-communication related spending under section 109.20, *see* AR393-96. Had the Commissioners adopted Plaintiffs' approach, by contrast, the exemption for unpaid Internet communications would be rendered meaningless. Communications that are free to place on the Internet are just that—free. If costs associated with the creation of them were not exempt, then the unpaid Internet exemption would have no purpose.

Plaintiffs rely heavily on the *Shays v. FEC* decision in which the court invalidated a previous version of the Commission's regulation defining "public communication," which stated that no "communications over the Internet" are "general public political advertising," because it had the effect of exempting "an entire class of political communications" from the coordinated communication regulation. *See* 337 F. Supp. 2d 28, 70 (D.D.C. 2004). However, the court explicitly recognized that "all Internet communications do not fall within" the meaning of "public communication," and instructed the FEC to create a new regulation that draws a meaningful line between those that do and those that do not. *Id.* at 67, 70 ("While all Internet communications do not fall within [the descriptive phrase of "any other form of general public political advertising], some clearly do."). The court issued this guidance with full knowledge that whatever the FEC deemed to fall outside the definition of "public communication"—ultimately, unpaid Internet communications—would not meet the standard for coordinated communications. *See id.* at 70-71. The Commission's dismissal of Plaintiffs' administrative complaint comports with the *Shays* decision. The *Shays* court knew and clearly intended that certain Internet communications would not be subject to all the restrictions of federal campaign finance law. It recognized that exempting certain Internet communications and their costs from regulation as coordinated expenditures was appropriate.

As Intervenors explained in their previous summary judgment briefing, the court's decision in *Shays* and the FEC's decision to exempt input costs comports with First Amendment considerations. *See* Def. Ints.' Cross Mot. for Summ. J. & Opp'n to Pls.' Mot. for Summ. J. at 27-29, 44-46, ECF No. 38-1; Def. Ints.' Reply in Supp. of Cross Mot. for Summ. J. at 11-16, ECF No. 44. As the D.C. Circuit has recognized, "an administrative agency may be influenced by constitutional considerations in the way it interprets or applies statutes." *Branch v. FCC*, 824 F.2d

37, 47 (D.C. Cir. 1987); *see also Common Cause v. FEC*, 842 F.2d 436, 448 (D.D.C. 1988) (articulating that part of the FEC's duty in administering FECA is to "allow the maximum of first amendment freedom of expression in political campaigns" within Congress's framework). A bright-line rule that exempts all the input costs of free online communications from treatment as contributions achieves the delicate balance between enforcing campaign finance laws and not regulating more speech than is necessary to achieve the anti-corruption purpose of FECA. Drawing vague distinctions between expenses that are the "direct costs" of unpaid Internet communications and those which are not "direct costs," as Plaintiffs demand, *see* Pls.' Opp'n to Ints.' Mot. to Dismiss at 40, ECF No. 27, would create an unworkable standard that would leave the regulated community guessing which of their expenses are exempt and which would be subject to coordination rules. Such a vague standard would chill political speech, which is precisely what the First Amendment prohibits. *See Orloski*, 795 F.2d at 167 ("In this politically-charged area, bright-line tests are virtually mandated . . ."). The bright-line test articulated by the FEC and followed in this matter both comports with FECA and is constitutionally sound.

2. The controlling bloc's position is consistent with FEC policy, precedent, and regulations.

In addition to contending that the FEC created a loophole in its handling of the administrative complaint, Plaintiffs erroneously claim that the FEC acted inconsistently with its policy, precedent, and regulations when it dismissed the administrative complaint. Pls.' Mot. for Summ. J. at 12, ECF No. 35. Plaintiffs concede that the Commission has previously exempted certain input costs from regulation—such as online processing and email list rental fees—but maintain that exempting "overhead" expenses like salaries and office space is a dramatic expansion of the Commission's precedent. *Id.* at 37. As Intervenors explained in their previous summary judgment briefing, however, FEC Commissioners have consistently stated that all "associated

production costs" of unpaid Internet communications are exempt from regulation, and they explicitly rejected a complainant's request to treat as coordinated "the cost of staff time, office space, equipment usage, etc." that a group undertook to create free online content. *See* Def. Ints.' Cross Mot. for Summ. J. & Opp'n to Pls.' Mot. for Summ. J. at 39-40, ECF No. 38-1 (quoting SOR of Comm'rs Hunter, Goodman & Peterson at 5 n.21, MUR 7023 (Kinzler for Congress) (Jan. 23, 2018)); SOR of Comm'rs Goodman, Hunter & Petersen at 4, MUR 6729 (Checks and Balances for Economic Growth) (Oct. 23, 2014)).

Intervenors have presented this Court with numerous examples of FEC enforcement actions in which a controlling bloc of Commissioners declined to subject *any* input costs to a coordination test. *See* Def. Ints.' Cross Mot. for Summ. J. & Opp'n to Pls.' Mot. for Summ. J. at 38-42, ECF No. 38-1. The controlling bloc's decision in this matter simply involved more money than in past decisions, not fundamentally different conduct. This is an issue of degree, not kind. But there is no room in the First Amendment for applying such a ceiling to spending or punishing someone for speaking more than others. *See Davis v. FEC*, 554 U.S. 724, 739 (2008) (invalidating a statutory scheme that "impose[d] an unprecedented penalty" on candidates for "robustly exercis[ing] that First Amendment right"); *Buckley*, 424 U.S. at 54 (stating there is no government interest sufficient "to justify the restriction on the quantity of political expression").

In addition to being consistent with prior decisions of the Commission, the controlling Commissioners' SOR here is consistent with the FEC's 2006 Internet Communication rulemaking. During the rulemaking, Plaintiffs and other organizations submitted a comment urging the Commission to ensure that the input costs of unpaid Internet communications can be treated as coordinated, even if the resulting communications are not. As described in greater detail in Intervenors' summary judgment briefing, *see* Def. Ints.' Cross Mot. for Summ. J. & Opp'n to Pls.'

Mot. for Summ. J. at 33-37, ECF No. 38-1; Def. Ints.' Reply in Supp. of Cross Mot. for Summ. J. at 17-18, ECF No. 44, the Commission decided not to change its final rules to address the comment, leaving in place what CLC admitted was the Commission's standard position on input costs: treating the costs of creating campaign-related materials the same as the costs of distributing them. Plaintiffs argue that the Commission's statement in the rulemaking that "a political committee's purchase of computers" would be an expenditure, even if those computers are used to create unpaid Internet communications, supports their argument that certain input costs incurred for unpaid Internet activity is regulated. Pls.' Mot. for Summ. J. at 17, ECF No. 35 (citing Internet Communications, 71 Fed. Reg. 18589, 18613 (Apr. 12, 2006), 2006 WL 927156). But that does not support Plaintiffs' argument that a political committee's purchases must be contributions if they are coordinated. CTR has never disputed that its spending qualified as "expenditures." In fact, it reported all of its expenditures on its FEC reports. That CTR made "expenditures" does not impact the coordination analysis.

The FEC has exempted the input costs of unpaid Internet communications from regulation as coordinated expenditures since the adoption of its current coordinated communication regulation, which coincided with the rise of the Internet as a popular forum for political discourse. The controlling bloc's decision with regard to CTR was a faithful interpretation of Commission policy, precedent, and regulations. Had the Commissioners agreed with the position that Plaintiffs presented in their administrative complaint and sought to penalize CTR and HFA for coordinating input costs, they would have caused serious due process concerns by reversing course without providing notice to the regulated community and created an unworkable and vague standard that would have violated the First Amendment. *See FCC v. Fox Television Stations, Inc.*, 567 U.S. 239,

254 (2012); Def. Ints.' Cross Mot. for Summ. J. & Opp'n to Pls.' Mot. for Summ. J. at 43-45, ECF No. 38-1; Def. Ints.' Reply in Supp. of Cross Mot. for Summ. J. at 16-17, ECF No. 44.

C. The FEC's treatment of CTR's non-communication spending was not arbitrary and capricious.

While Plaintiffs' core complaint is that the FEC misconstrued the Act when examining input costs associated with unpaid Internet communications, Plaintiffs also believe that the Commission ignored evidence that CTR and HFA were coordinating on activities other than unpaid Internet communications, such as CTR's surrogate training program, opposition research, and contacts with the press. The record, however, supports the Commissioners' conclusions on these issues. Plaintiffs did not present specific facts showing that CTR and HFA were coordinating on activities outside of unpaid Internet communications. They instead asked the Commission to assume that coordination on some activity—here unpaid Internet communications—is evidence of coordination on other activity. The Commissioners did not accept this argument and were justified in requiring more than speculation to find reason to believe Intervenors violated the Act.

1. The Commissioners did not create an artificially high bar for proving there is reason to believe a violation occurred.

Plaintiffs previously attacked the Commissioners' evidentiary findings by claiming they misinterpreted the reason-to-believe-standard by requiring specific evidence of coordination. *See* Pls.' Mot. for Summ. J. at 38–40, ECF No. 35. But courts and Commissioners have repeatedly stated that before finding reason to believe, there must be sufficient specific facts that, if true, would support a finding that the respondent has violated the Act. Otherwise, the Commission will simply be fishing into an "area rife with first amendment associational concerns." *FEC v. LaRouche Campaign*, 817 F.2d 233, 234 (2nd Cir. 1987); Def. Ints.' Cross Mot. for Summ. J. & Opp'n to Pls.' Mot. for Summ. J. at 47-49, ECF No. 38-1. As a controlling bloc recently stated, "[t]he standard, after all, is 'reason to believe,' not reason to question." SOR of Comm'rs

Dickerson, Cooksey & Trainor at 7 n.31, MUR 7753 (Everytown for Gun Safety Action Fund, Inc.) (Oct. 8, 2021). If CLC had presented facts suggesting that CTR and HFA coordinated on the activities that were non-communicative in nature, as opposed to coordinating on CTR's Internet communications, then the FEC would have found reason to believe and investigated; the standard is not "impossible" to meet.

2. The record evidence supports the Commissioners' conclusion that CTR's non-communicative expenses were not coordinated.

The Commissioners carefully considered the expenses that were unrelated to unpaid Internet communications—including CTR's surrogacy program, research and training efforts, and contacts with reporters—and reasonably concluded that the record evidence supported the conclusion that they were not coordinated with HFA. Plaintiffs, however, argue that the Commissioners ignored, or failed to properly weigh, evidence of coordination. *See* Pls.' Mot. for Summ. J. at 46, ECF No. 35. But as the Commissioners point out, the evidence CLC presented in its complaint does not show that CTR coordinated the non-communication activities. *See* AR396–97. CLC cited news articles showing that CTR was coordinating some of its activities with the Clinton campaign, but not all of them. See AR005–6. One cited article even explains that the Clinton campaign said that "[a]ny nonpublic information of value that [CTR] shares with Clinton staff will be purchased" to avoid accepting a contribution. AR007 (quoting Matea Gold, 2016 Race's Theme Song: Blurred Lines, Wash. Post (July 12, 2015), 2015 WLNR 20606053).

In their response to Plaintiffs' administrative complaint, Intervenors explained how each of Plaintiffs' allegations with respect to Intervenors' non-Internet related activities did not amount to violations of the law. In particular, CTR explained that it did not solicit or accept suggestions from HFA concerning the surrogate training sessions, AR66; it required HFA to pay fair market value for coordinated research and tracking services to prevent in-kind contributions from

occurring, AR66-67; HFA paid CTR the fair market value (over $280,000) for research and publicly reported those transactions, *id.*; CTR made its polling publicly available on its website, AR64-65; and CTR relied on news organizations' press exemption when talking with reporters, AR66. The controlling bloc credited these explanations as satisfactory, especially in the absence of any specific evidence to the contrary. AR393-96.

As Intervenors have previously explained, even if CTR's polling was not considered an input cost for an Internet communication and was instead analyzed under section 109.20, it still would not be a contribution. *See* Def. Ints.' Cross Mot. for Summ. J. & Opp'n to Pls.' Mot. for Summ. J. at 51-52, ECF No. 38-1. Plaintiffs fail to discuss or analyze the actual FEC regulation that prescribes when polls are treated as in-kind contributions, and they present no evidence that the elements of that regulation are met here. Section 106.4 of the FEC regulations states that a political committee's sharing of a poll with a campaign results in a contribution only if the "poll results are accepted by [the] candidate." 11 C.F.R. § 106.4(b). "The acceptance of any part of a poll's results which part, prior to receipt, has been made public without any request, authorization, prearrangement, or coordination by the candidate-recipient . . . shall not be treated as a contribution." *Id.* § 106.4(c). Moreover, a candidate does not accept poll results such that they are a "contribution" unless the candidate receives "cross- tabs, questions asked, and methodology." SOR of Comm'rs Hunter, Goodman & Petersen at 6, MUR 6958 (McCaskill) (Feb. 28, 2017). "Top line" results, without more, do not constitute a contribution. *See* SOR of Comm'rs Hunter & Petersen at 6, MUR 6908 (NRCC) (May 2, 2019).

Plaintiff CLC's administrative complaint did not include any specific allegations that CTR paid for the poll related to Clinton's performance in a Democratic debate, or released the results, at the specific request or suggestion of HFA, or in cooperation, consultation or concert with HFA.

See generally AR001–52. Nor did it allege that CTR publicly posted the raw data from the poll on the Internet or gave the data to HFA. *See id.* Thus, under the polling regulations and the relevant Statement of Reasons, there was no in-kind contribution in the form of polling from CTR to HFA. *See* 11 C.F.R. §106.4(c). Plaintiffs may argue that the controlling Commissioners did not consider the preceding arguments as reasons for dismissal in their SOR. But federal courts do not reverse for harmless error, as here when the ultimate outcome would have been the same regardless of the reasoning. *See* 28 U.S.C. § 2111 (codifying a harmless error standard); *see also FEC v. Legi-Tech, Inc.*, 75 F.3d 704, 708 (D.C. Cir. 1996).

Finally, while the Commissioners did not specifically discuss Intervenors' argument that the press exemption protected CTR's communications with reporters from treatment as coordinated expenditures, they concluded that such communications did not result in contributions because: (1) they did "not appear to be 'public communications' . . . covered under section 109.21" and therefore could not be coordinated; and (2) the complaints did not present "facts to show that particular efforts were even 'coordinated' with Hillary for America." AR395. Given the alternative reasons to dismiss Plaintiffs' claims, there was no need for the Commissioners to address Intervenors' press exemption argument. *See Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43 (stating that an agency decision is arbitrary and capricious only if it "entirely failed to consider an important aspect of the problem," not every possible aspect). The SOR demonstrates that the controlling Commissioners looked at the record as a whole, discussed the ultimate issue of coordination at length, and omitted superfluous lines of reasoning. This was sufficient to show a "rational basis for the agency's decision." *Akins*, 736 F. Supp. 2d at 17.

II. PLAINTIFFS' INJURIES ARE NOT REDRESSABLE.

A. The ultimate remedy Plaintiffs seek is barred by the statute of limitations.

The gravamen of Plaintiffs' complaint is that Intervenors failed to report certain activity in a disaggregated format on FEC reports filed in 2016 and early 2017. Am. Compl. ¶¶ 2-3, ECF No. 15; Pls.' Opp'n to Ints.' Cross Mot. for Summ. J. & Reply in Supp. of Mot. for Summ. J. at 14-15, ECF No. 42. The statute of limitations on that activity expired on February 1, 2022, five years after the 2016 year-end report was due. *See* 28 U.S.C. § 2462; 52 U.S.C. § 30104(a)(3)-(4).[1] But the FEC has yet to file suit against Intervenors. Accordingly, even if this Court were to order the FEC to act within 30 days because it finds that the FEC acted contrary to law when it dismissed Plaintiffs' administrative complaint, and even if the FEC then reverses course and finds reason to believe Intervenors violated FECA, the most likely outcome is that the FEC would dismiss this matter because the statute of limitations has expired. *See* Statement of Reasons ("SOR") of Comm'rs Dickerson, Cooksey & Trainor, MUR 7859 (Citizens for a Working America) (Dec. 17, 2021) (current controlling bloc of Commissioners concluding that the five-year statute of limitations prevents the FEC from imposing fines and bars equitable relief); SOR of Comm'rs Dickerson & Trainor, MUR 6992 (Trump) (Aug. 31, 2021) (stating that "we cannot lawfully act on alleged violations that are more than five years old," and when the statute of limitations has expired "we lack[ ] discretion, prosecutorial or otherwise, as to whether to proceed"); SOR of Comm'rs Dickerson, Cooksey & Trainor, MUR 7181 (Independent Women's Voice) (Mar. 18,

[1] CTR filed an amended 2016 year-end report on April 15, 2017. *See CTR Committee Filings*, FEC, https://www.fec.gov/data/committee/C00578997/?tab=filings&cycle=2016 (last accessed Aug. 7, 2022). Even counting from that later date, the statute of limitations has expired. Likewise, HFA amended some of its 2015-2016 reports, but did so by February 2017. *See HFA Committee Filings: 2015-2016*, FEC, https://www.fec.gov/data/committee/C00575795/?cycle=2016&tab=filings (last accessed Aug. 7, 2022). The statute of limitations has expired on violations related to those reports as well.

2021) (remarking on the five-year statute of limitations and the policy reasons for it). As a result, Plaintiffs have failed to establish that the injury upon which they proceed and the relief that they request—the FEC forcing Intervenors to file amended reports disclosing certain disaggregated activity—could actually follow from a favorable decision of this Court. *Friends of the Earth v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000). When, as here, "redress depends on the cooperation of a third party, it becomes the burden of the [plaintiff] to adduce facts showing that" the actions of the third party who has discretion "will be made in such manner as to . . . permit redressability of injury." *U.S. Ecology, Inc. v. U.S. Dep't of Interior*, 231 F.3d 20, 24-25 (D.C. Cir. 2000) (quotation marks omitted). Plaintiffs have not and indeed cannot meet that burden because the FEC—the agency that has "exclusive jurisdiction" over civil enforcement of FECA, *Citizens for Resp. & Ethics in Wash. v. FEC*, 164 F. Supp. 3d 113, 119 (D.D.C. 2015)—would likely dismiss their complaint on remand because the FEC is barred from pursuing both monetary and injunctive relief by the applicable five-year statute of limitations set forth in 28 U.S.C. § 2462.

1. The FEC must bring an action to enforce FECA within five years of the alleged violation.

There is no specific statute of limitations governing civil claims brought under FECA, *see* 52 U.S.C. § 30101, *et seq*. But federal courts have long held that the "catch-all" five-year statute of limitations at 28 U.S.C. § 2462, which is applicable to any "action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise," applies to FECA violations. *See* 28 U.S.C. § 2462; *FEC v. Williams*, 104 F.3d 237, 239-40 (9th Cir. 1996); *FEC v. Nat'l Right to Work Comm.*, 916 F. Supp. 10, 13 (D.D.C. 1996); *FEC v. Nat'l Republican Senatorial Comm.*, 877 F. Supp. 15, 19 (D.D.C. 1995). The statute of limitations begins to run on a FECA claim on "the date when the claim first accrued," which is the date of the alleged wrongdoing. *See* 28 U.S.C. § 2462; *Nat'l Right to Work Comm.*, 916 F. Supp. at 13-14; *Nat'l*

Republican Senatorial Comm., 877 F. Supp. at 19-20. For reporting violations, the claim first accrues when the FEC report containing the alleged violations is filed with the FEC. *See* SOR of Comm'rs Dickerson, Cooksey & Trainor at 3, MUR 7284 (AB PAC) (Apr. 16, 2021) (measuring statute of limitations for "alleged misreporting" based on the date reports were filed); *cf. Citizens for Resp. & Ethics in Wash.*, 236 F. Supp. 3d at 392 (stating that FECA does not "impose a continuous reporting requirement," so the statute of limitations begins running after the report is filed and does not appear to be tolled indefinitely under a "continuing violation" theory).

In the context of bringing an action to enforce FECA, the "action, suit or proceeding" that must be commenced within five years as set forth in 28 U.S.C. § 2462 is a lawsuit brought by the FEC in federal court. *See*, *e.g.*, Mem. Op. at 1, *FEC v. O'Donnell*, No. 1:15-cv-00017, 2017 WL 1404387 (D. Del. Apr. 19, 2017) (stating that FECA empowers courts to impose penalties if the Commission makes a sufficient showing that a violation has occurred); *Nat'l Republican Senatorial Comm.*, 877 F. Supp. at 19. The filing of the FEC administrative complaint is irrelevant for statute of limitations purposes. The FEC does not have the power to enforce FECA against an alleged violator on its own; it must bring a separate lawsuit in federal court to penalize an actor for violating the Act. *See* 52 U.S.C. § 30109(a) (empowering FEC to negotiate voluntary conciliation agreements with respondents but requiring it to file a lawsuit to obtain penalties or other relief against any respondent who will not settle); *Nat'l Republican Senatorial Comm.*, 877 F. Supp. at 18 ("In contrast to certain other agencies and regulatory regimes, the FEC is given no power to adjudicate liability or impose civil penalties for violations of FECA. Instead, the FEC's role is to . . . determine whether or not to bring a civil enforcement action."). Because more than five years have passed since the alleged incomplete FEC reports were filed, and the FEC failed to bring suit

within that time period, the FEC is now barred from doing so and cannot require Intervenors to file amended reports disclosing the information Plaintiffs seek.

2. The statute of limitations has not been tolled.

To the extent Plaintiffs contend that this litigation tolled the statute of limitations such that the FEC has more time to pursue enforcement against Intervenors, this Court should not adopt that position. While it appears that no court has explicitly decided whether a suit under 52 U.S.C. § 30109(a)(8)(A) such as this one tolls the statute of limitations, tolling does not make sense in this context for a variety of reasons.

First, as other courts in this district have observed, statutes of limitations exist in part because "it is inappropriate for a government regulator to wield the threat of an open-ended penalty. This is particularly true in cases where the ongoing threat of penalties may disrupt core First Amendment political activities." *Nat'l Republican Senatorial Comm.*, 877 F. Supp. at 18; *see also Nat'l Right to Work Comm.*, 916 F. Supp. at 13 (reiterating same). Tolling the statute of limitations during the pendency of a contrary-to-law action—which often involves appeals and can involve a second lawsuit after remand to the FEC—could add many years to the five-year period during which the FEC must seek a penalty. During that indefinite period, political actors that have allegedly violated the Act would be stymied in their activities as they attempt to act under the cloud of FEC investigation and potential penalties.

Second, tolling is reserved for rare cases because evidence goes stale when the statute of limitations is extended for long periods of time. *See Nat'l Republican Senatorial Comm.*, 877 F. Supp. at 20. If the statute of limitations is paused during the pendency of a section 30109(a)(8)(A) lawsuit, then by the time the FEC is again vested with jurisdiction to consider the complaint, it would likely confront "problems of missing documents, faded memories, and absent witnesses" that make it difficult to find evidence of a violation and equally as difficult for the respondent to

mount a defense. *See Nat'l Right to Work Comm.*, 916 F. Supp. at 15. This is particularly true in the political context, where campaigns become defunct after the relevant election has passed and it is common practice for campaign and political committee employees to change jobs at the end of every two-year election cycle. Permitting the statute of limitations to run during FECA administrative actions, including contrary-to-law actions, encourages plaintiffs and the FEC to act promptly, which avoids the problems of stale evidence and stifled First Amendment activities. *See Nat'l Republican Senatorial Comm.*, 877 F. Supp. at 20 (stating that tolling defeats a purpose of a statute of limitations, which is encouraging law enforcement officials to act promptly). Finally, as a practical matter, Intervenors are unaware of any tolling doctrine that would permit a lawsuit brought by a third party (here, Plaintiffs) to extend the time that a federal agency has to file a complaint against an individual or entity that has allegedly violated the law enforced by the agency.

3. The statute of limitations applies to equitable relief.

To the extent Plaintiffs argue that 28 U.S.C. § 2462 applies only to monetary penalties, not the equitable relief they seek in the form of amended FEC reports, they are incorrect. The Supreme Court and this court have squarely rejected that argument. In *Kokesh v. SEC*, the Supreme Court held that the limitations period provided for under section 2462 applied to the SEC's claim for disgorgement—an equitable remedy. 137 S. Ct. 1635, 1643 (2017). Whether a remedy represents a "penalty" does not turn on whether it is legal or equitable, but rather on the remedy's purpose and the body of law being enforced. *See id.* at 1642; Suppl. SOR of Comm'r Cooksey at 3, MURs 6917, 6929, 6955 & 6983 (Walker) (Apr. 29, 2021) (citing *Kokesh v. SEC*). If, as here, the equitable remedy is imposed to enforce public laws as opposed to private rights, and its purpose is

to punish and deter future violations instead of solely serving a remedial purpose, then the remedy is a penalty subject to § 2462's limitations period.[2] *See Kokesh*, 137 S. Ct. at 1642-43.

But even if filing amended reports was not a "penalty" within the meaning of section 2462, "the reporting remedy would likely still be barred under the concurrent-remedies doctrine." Suppl. SOR of Comm'r Cooksey at 3, MURs 6917, 6929, 6955 & 6983 (Walker). "As the Supreme Court held in *Cope v. Anderson*, where a party's legal remedies are time-barred, its concurrent equitable claims are generally barred as well." *Id.* (citing *Cope v. Anderson*, 331 U.S. 461, 464 (1947)). The Ninth Circuit—the only federal appeals court to consider whether the concurrent remedies doctrine applies to equitable remedies issued by the FEC—agreed that equitable remedies are barred where the statute of limitations has run on the available legal remedies. *See Williams*, 104 F.3d at 240. Moreover, in *FEC v. National Right to Work Committee*, another court in this district explained that under Supreme Court precedent, "'equity will withhold its relief . . . where the applicable statute of limitations would bar the concurrent legal remedy.'" 916 F. Supp. at 14-15 (quoting *Cope*, 331 U.S. at 464).[3] An equitable remedy is concurrent with a legal remedy when "an action

[2] In 2020, the D.C. Circuit declined to extend *Kokesh* to a case examining whether a person's lifetime ban from a financial services profession was "impermissibly punitive" under the Exchange Act. *See Saad v. SEC*, 980 F.3d 103 (D.C. Cir. 2020). It upheld a line of cases on this subject concluding that bars on people serving in certain professions following discovery of their wrongdoings were "remedial" rather than "punitive." *See id.* However, *Saad* has no bearing on *Kokesh*'s application here. The D.C. Circuit stated that the question at issue in *Saad* was "how far the principles governing section 2462's 'penalty' inquiry extend beyond the statute of limitations context." *Id.* at 107. Here, we are squarely in that context.

[3] Two courts in this district have declined to apply the concurrent remedies doctrine. *See FEC v. Christian Coal.*, 965 F. Supp. 66, 70-72 (D.D.C. 1997); *Nat'l Republican Senatorial Comm.*, 877 F. Supp. at 20-21. Both of these courts, however, appear to have rested their logic on a misinterpretation of *Holmberg v. Armbrecht*, 327 U.S. 392 (1946), which considered whether defendants could invoke a state's statute of limitations in a lawsuit seeking to vindicate "a federal right for which the sole remedy [was] in equity." *Id.* at 395. Where there is a concurrent remedy at law, as is the case here and for all FECA actions, the concurrent remedies doctrine applies.

at law or equity could be brought on the same facts," as is the case here where Plaintiffs' legal and equitable claims rest on the same statement of facts. *See Nat'l Parks & Conservation Ass'n, Inc. v. Tenn. Valley Auth.*, 502 F.3d 1316, 1327 (11th Cir. 2007). The ultimate equitable relief sought by Plaintiffs is barred by the statute of limitations.

B. Intervenors lack the granular knowledge necessary to file amended reports disclosing the information Plaintiffs seek.

Following the D.C. Circuit's opinion and earlier summary judgment briefing in this case, Intervenors understand that Plaintiffs do not believe that every expenditure CTR made was coordinated with HFA. Plaintiffs believe that *portions* of CTR's reported expenditures were coordinated with HFA and would ask the FEC to require Intervenors to file amended FEC reports that "disaggregate" each expenditure. *See* Appellants' Opening Br. at 3, 30-32, *CLC v. FEC*, No. 21-5081 (D.C. Cir. July 22, 2021); Pls.' Opp'n to Ints.' Cross Mot. for Summ. J. & Reply in Supp. of Mot. for Summ. J. at 13, ECF No. 42. For example, Plaintiffs would ask the FEC to require CTR to disclose *what portion of each monthly or biweekly salary payment* represented (1) compensation for activities conducted on behalf of CTR or that were properly exempt from treatment as a contribution, and (2) what portion represented compensation for non-exempt activities undertaken to benefit HFA. Appellants' Opening Br. at 30-31, *CLC v. FEC*, No. 21-5081.

The problem with Plaintiffs' request, however, is that Intervenors were not required to maintain records of such information. Thus, they would have had significant difficulty filing reports disclosing that information when this matter first began. At this point—almost seven years since much of the activity in question occurred—HFA and CTR are defunct, memories have faded, and it would be impossible to obtain the granular information necessary to file accurate amended reports disclosing the information Plaintiffs seek. CTR has already reported the information it

retained about its expenditures, and it does not have information regarding the portions of each of its 2015 and 2016 expenditures that would be considered a "contribution" to HFA under Plaintiffs' theory of the law. If this Court orders the FEC to reconsider its decision to dismiss; and if the FEC comes to a different conclusion this time; and if the FEC's lawsuit is not barred by the statute of limitations; Plaintiffs still cannot meet their burden of showing that their alleged injuries are redressable.

CONCLUSION

For the foregoing reasons, and the reasons set forth in Intervenors' prior summary judgment briefing on the merits, the Court should grant Intervenors' Second Motion for Summary Judgment.

DATED: August 12, 2022

Respectfully submitted,

By: /s/ *Aria C. Branch*

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CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2022, I caused a true and correct copy of the foregoing document to be served upon all counsel of record registered with the Court's ECF system, by electronic service via the Court's ECF transmission facilities.

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