IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER and DEMOCRACY 21,	)	
Plaintiffs,	)	Case No. 1:20-cv-00730
v.	)	Hon. Christopher R. Cooper
FEDERAL ELECTION COMMISSION,	)	
Defendant,	)	
RIGHT TO RISE SUPER PAC, INC.	)	
Intervenor-Defendant.	)	

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RIGHT TO RISE SUPER PAC, INC.'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION

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I. INTRODUCTION

The Court dismissed Plaintiffs' case for lack of subject matter jurisdiction because Plaintiffs failed to demonstrate an informational injury sufficient to establish Article III standing. Plaintiffs now seek reconsideration claiming that they have standing under a different theory: organizational standing. But this theory also fails, for both old reasons and new.

As for the old, Plaintiffs claim an organizational injury based on allegedly insufficient disclosures made by the respondents under FECA—the same theory that the Court already rejected because Plaintiffs' contentions as to missing disclosures were "unsupported inferences" insufficient to satisfy Plaintiffs' burden to show standing. ECF No. 33, at 10. While that conclusion was made in the context of Plaintiffs' informational-injury theory, it applies equally to Plaintiffs' organizational-standing theory, too.

The remainder of Plaintiffs' arguments fail, albeit for different reasons. While Plaintiffs also claim organizational injury based on lack of access to the FEC's MUR file, they fail to show they have a right to that information, or even that the lack of that information renders their activities infeasible. Further, Plaintiffs fail to even address the redressability element of their organizational-standing theory, a theory that also fails on redressability grounds because the claimed injury—deprivation of information in the FEC's MUR file—cannot be redressed by this Court in this case.

Accordingly, to the extent the Court dismissed Plaintiffs' case without expressly addressing their organizational-standing theory, such inadvertence was harmless and this Court should deny Plaintiffs' motion.

II. BACKGROUND

A. Plaintiffs' Administrative Complaints

In March 2015, Plaintiffs filed an administrative complaint with the FEC alleging that Governor Bush and "Right to Rise PAC" violated FECA by failing to comply with FECA's

"testing-the-waters" disclosure requirements, candidate-contribution limits, and candidate registration and reporting requirements. Compl. Ex. B. Mar. Admin. Compl., ECF No. 1-2. Two months later, Plaintiffs filed a second administrative complaint, this time alleging that Governor Bush and Right to Rise violated FECA by failing to comply with the "testing-the-waters" restrictions, candidate-contribution limits, and so-called "soft money" prohibitions. Plaintiffs also alleged that Governor Bush established, financed, maintained, and controlled Right to Rise in violation of FECA. Compl. Ex. A., May Admin. Compl. ECF No. 1-1. Plaintiffs' two FEC complaints were collectively designated by the FEC as Matter Under Review ("MUR") 6927.

B. Plaintiffs Commence this Action

Plaintiffs then filed the present action, seeking injunctive and declaratory relief to compel the FEC to take up their complaints under 52 U.S.C. § 30109(a)(8)(A). Compl. ¶ 2. Specifically, Plaintiffs alleged the FEC's inaction had deprived them of information regarding the extent of coordination between Right to Rise and the Bush campaign, *id.* ¶ 9, and the extent of Governor Bush's campaign spending, *id*. ¶ 10. Plaintiffs also alleged organizational injury from the inaction, claiming the allegedly inadequate disclosure of those same campaign finance activities caused Plaintiffs to divert funds and resources from other organizational needs. *Id*. ¶¶ 19, 22.

The FEC has not publicly acted on MUR 6927 and never appeared in this action. Right to Rise moved to intervene in June 2020, which this Court promptly allowed. Right to Rise then moved to dismiss Plaintiffs' complaint for lack of standing under Rule 12(b)(1) and, with respect to Plaintiffs' Administrative Procedure Act ("APA") claim, for failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

C. The Court's February 19, 2021 Memorandum Opinion and Order

On February 19, 2021, this Court issued a Memorandum Opinion and Order granting most of Right to Rise's motion to dismiss. ECF No. 17. Specifically, the Court concluded Plaintiffs'

complaint failed to state a claim under the APA. *Id*. 18-19. As for Plaintiffs' FECA claims, the Court held that *Wertheimer v. FEC,* 268 F.3d 1070, 1075 (D.C. Cir. 2001), precluded holding that Plaintiffs had standing to pursue their FECA claim as it relates to any alleged coordinated spending between Governor Bush and Right to Rise. *Id*. 12-15.

The Court reached a different conclusion regarding Plaintiffs' claim that Governor Bush "failed to disclose months of spending stemming from the testing-the-waters period of his nascent candidacy." *Id*. 10-12. There, the Court said that Plaintiffs did have Article III standing due to informational injury sustained during the five-month period from January 2015 to June 2015, while Governor Bush was testing-the-waters. The Court reasoned that "[w]hether Bush did, in fact, begin testing the waters in January 2015 is a merits issue," and that "[d]eprivation of the disclosures that FECA requires for that disputed period constitutes *an informational injury* to sustain Article III standing." *Id*. 11 (emphasis added).

D. The Court's December 30, 2021 Memorandum Opinion and Order

Two weeks later, Right to Rise sought reconsideration of that aspect of the Court's February 19, 2021 decision finding that Plaintiffs had standing to pursue their claim. ECF No. 19. The crux of Right to Rise's argument was that the Court had applied the incorrect legal standard to its motion, and that the decision reached the wrong result on standing because all the information required to be disclosed under FECA had been disclosed either in Bush's reports or Right to Rise's own reports; as a result, Plaintiffs had not suffered an informational injury because they had not been deprived of any legally-mandated disclosures. *Id*. *See also* ECF No. 28.

Around the same time, Plaintiffs filed a Motion for Default Judgment against the FEC, claiming that the FEC "failed to appear, answer, plead, or otherwise defend this action as required by the Federal Rules of Civil Procedure." ECF No. 23, at 1. Right to Rise responded in opposition

to Plaintiffs' motion, arguing that default judgment was not appropriate because Plaintiffs lacked standing and therefore failed to establish subject matter jurisdiction. ECF No. 24, at 1.

On December 30, 2021, after holding a hearing on the reconsideration motion and considering the parties' supplemental briefing, this Court issued a Memorandum Opinion and Order granting Right to Rise's Motion for Reconsideration, finding that Plaintiffs lacked standing, and dismissing the case for want of subject matter jurisdiction. ECF No. 33. As a result, the Court denied Plaintiffs' Motion for Default Judgment. *Id*.

Considering the parties' supplemental briefing, the Court held that Right to Rise "explains, in significantly more detail than it did previously, where the spending for each of the instances of travel that plaintiffs list can be found in [Right to Rise's] own reports." *Id*., at 8. That being so, the Court agreed with Right to Rise that the spending related to the campaign events identified by Plaintiffs had either been fully disclosed, or, in one instance, Plaintiffs failed to provide any evidence rebutting the proofs submitted by Right to Rise showing that an entity other than Right to Rise sponsored the activities in question, which strongly suggested that someone other than Bush or Right to Rise paid for and disclosed the relevant expenses. *Id*. at 8-9.

As a result, the Court was "convinced—with the benefit of [Right to Rise's] belated explanation of both its and Jeb 2016's reports—that the expenses for Bush's travel and lodging in connection with the events [identified by Plaintiffs] have been disclosed." *Id*. at 10. Because "Plaintiffs ha[d] not identified any other pre-candidacy events, travel, or speaking engagements from which the Court could infer the existence of still-undisclosed spending," the Court concluded that the complaint "does not contain more than the 'unsupported inference' that there is more spending to be disclosed," and therefore held that Plaintiffs "lack standing to advance their claim

under FECA." *Id*. The Court also denied Plaintiffs' Motion for Default Judgment due to lack of jurisdiction. ECF No. 33, at 10.

Plaintiffs now seek reconsideration, arguing that the Court is yet to rule on their "distinct claim to standing based on organizational injuries caused by the FEC's delay and inaction in this matter." ECF No. 34. Plaintiffs complain that "in denying the Plaintiffs' informational standing, the Court did not address the separate question it had previously deferred as to whether Plaintiffs have organizational standing based on the deleterious effects of FEC delay on their programmatic activities." *Id*. at 3-4. But as explained below, Plaintiff's organizational standing theory was so intertwined with the informational-injury theory of non-disclosure which the Court rejected that reconsideration is not justified, and any "inadvertence" was harmless.

III. LEGAL STANDARD

Plaintiffs seek reconsideration under Fed. R. Civ. P. 60(b)(1) and (6) on the grounds of "mistake," "inadvertence," or "any other reason that justifies relief." ECF No. 34, at 4. "It is well-settled that the party seeking relief from a judgment bears the burden of demonstrating that he satisfies the perquisites for such relief." *Green v. AFL CIO*, 811 F. Supp. 2d 250, 254 (D.D.C. 2011). "Relief under Rule 60(b)(1) motions is rare," *Hall v. CIA*, 437 F.3d 94, 99 (D.C. Cir. 2006), and should only be granted when the moving party shows the Court's order contains a clear or obvious error, *Douglas v. D.C. Hous. Auth*., 306 F.R.D. 1, 5 (D.D.C. 2014.

The Court need not grant reconsideration on the mere presence of mistake or inadvertence if that mistake or inadvertence was harmless. *S. Pac. Commc'ns Co. v. Am. Tel. & Tel. Co*., 740 F.2d 1011, 1022 (D.C. Cir. 1984) (affirming district court's denial of Rule 60(b)(6) motion on the ground that any error was harmless). *See also* Fed. R. Civ. P. 61 (no error or defect in any ruling or order is grounds for vacating or modifying a judgment or order unless the error affects a party's substantial rights).

IV. ARGUMENT

A. Plaintiffs are required to show Article III standing regardless of their standing theory.

While Plaintiffs characterize organizational standing as "analytically distinct" from other Article III standing inquiries, the traditional three-part standing inquiry applies "with no less force to suits brought by organizational plaintiffs" such as Plaintiffs in this case. *Common Cause v. FEC*, 108 F.3d 413, 417 (D.C. Cir. 1997) (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378 (1982)). Accordingly, Plaintiffs must demonstrate Article III standing and can do so only by establishing that they "have suffered an (1) injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical, (2) which is fairly traceable to the challenged act, and (3) likely to be redressed by a favorable decision." *Common Cause*, 108 F.3d at 417 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)).

In cases where, as here, Plaintiffs' "asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of someone else, it is substantially more difficult to establish injury in fact." *Common Cause*, 108 F.3d at 417 (cleaned up). As with the prior proceedings in this matter, Plaintiffs "bear[] the burden of proving by a preponderance of the evidence that the Court has subject-matter jurisdiction over [their] claims." *Schmidt v. U.S. Capitol Police Bd.*, 826 F. Supp. 2d 59, 69 (D.D.C. 2011) (citing *Lujan*, 504 U.S. at 561).

B. Plaintiffs have not suffered a legally cognizable injury sufficient to show organizational standing.

Because the organizational Plaintiffs sue on their own behalf, they may only satisfy the first element of Article III standing—injury in fact—by establishing "concrete and demonstrable injury to the organization's activities—with [a] consequent drain on the organization's resources—constitut[ing] . . . more than simply a setback to the organization's abstract social interests."

Common Cause, 108 F.3d at 417 (cleaned up). Likewise, "[t]he organization must allege that discrete programmatic concerns are being directly and adversely affected by the challenged action." *Id*.

Plaintiffs fail to show the sort of injury in fact sufficient to demonstrate organizational standing. In fact, for much of this litigation, Plaintiffs claimed an organizational injury based on allegedly insufficient disclosures made by the respondents under FECA—essentially claiming the same injury as they did for their standing theory based on informational injury. *E.g.*, Pls.' MTD Opp'n, ECF No. 13 at 39 (claiming organization injury where "[t]he FEC's protracted delay deprives [Plaintiffs] of required FECA disclosure information that both plaintiffs need to inform the public about candidates' financial support and relationships with donors."); Pls.' Opp'n to RTR's Mot. for Recons., ECF No 21, at 17 ("[P]laintiffs have had to divert resources from other planned organizational needs to research, fill in the gaps in the Bush campaign's and RTR's disclosure reports, and explain to reporters and partner organizations how they might attempt to find information not properly reported by Bush and RTR."); Pls.' Mot. for Default J., ECF No. 23, at 10-11 (claiming organizational standing where "Plaintiffs' public education, legislative policy, and regulatory reform programs depend on access to FECA-required campaign disclosures…."). But this Court has already concluded that these statements alleging undisclosed spending are nothing more than "unsupported inferences" that are insufficient to satisfy Plaintiffs' burden to show standing. ECF No. 33, at 10. While that conclusion was made in the context of Plaintiffs' informational-injury theory, it applies equally to Plaintiffs' organization-standing theory, too. Plaintiffs have failed to show there is more spending to be disclosed, and they cannot rely on those contentions for the sake of demonstrating standing.

Further, in responding to Plaintiffs' organizational standing argument, Right to Rise does not concede that a claimant may proceed upon organizational standing where the plaintiff's claimed injury in fact is based on the deprivation of information. Indeed, it appears that the jurisprudential basis for organizational standing based on deprivation of information traces its roots to the same source as informational injury. *See Found. on Econ. Trends v. Watkins*, 794 F. Supp. 395 (D.D.C. 1992). In *Watkins*, the district court considered a plaintiff-organization's standing based on "information dissemination activities" in the context of inaction by a federal agency. *Id*. at 398. There, the court noted that plaintiff actually relied "on a line of cases within this circuit going back to a footnote in a 1973 opinion" suggesting that, "where an organization asserts a plausible link between the agency's action, the informational injury, and the organization's activities," and "the organization can point to concrete ways in which their programmatic activities have been harmed by an infringement on the right to information," the organization's right to judicial review may be sustained on informational standing ground." *Id*. (cleaned up). In other words, organizational standing in which the claimed injury is the alleged "infringement on the right to information" is subject to the same limitations as other standing theories relying on the same informational injury. And for that reason, Plaintiffs may not end-run their failure to prove an informational injury by proceeding instead on the theory of organizational standing but based on an injury to their "information dissemination activities." Plaintiffs' motion should be denied.

Attempting to plead around the lack of informational injury, Plaintiffs also base their organizational-standing theory on the premise that "the FEC's failure to act on their administrative complaints has inflicted concrete organizational injury on Plaintiffs by depriving them of access to key information they need to effectuate their missions as campaign finance reform

organizations." ECF No. 34, at 4. Specifically, Plaintiffs claim that the FEC's delay "ensures that information in the MUR file about the complaints cannot now—and may never—be provided to Plaintiffs or the public, including any legal conclusions, factual findings, or vote records generated by the Commission or its Office of General Counsel in processing the complaints." ECF No. 34, at 6. As Plaintiffs would have it, their lack of access to this "key information" injures Plaintiffs because without it they cannot "effectively play their role as regulatory watchdogs, educate the public and partner organizations with informed policy analysis, or identify and prioritize necessary campaign finance reforms." *Id*. at 9.

But not just any injury will suffice for organizational standing—this is, after all, an Article III standing analysis. The D.C. Circuit's decision in *People for the Ethical Treatment of Animals v. U.S. Dep't of Agric*., 797 F.3d 1087 (D.C. Cir. 2015) ("*PETA*"), heavily cited in Plaintiffs' motion, is instructive in that regard. There, the Court reasoned that the "key issue is whether [the organization] has suffered a concrete and demonstrable injury to [its] activities, mindful that, under our precedent, a mere setback to [the organization's] abstract social interests is not sufficient." *Id*. at 1093 (cleaned up). As for the facts of that case, the circuit court affirmed the district court's conclusion that, because the defendant USDA's inaction "perceptibly impaired" PETA's mission by, among other things, "preclud[ing] PETA from preventing cruelty and inhumane treatment" of animals, PETA had shown that the USDA's inaction had injured its interests. *Id*. at 1094. The circuit court reasoned that the injury sustained by PETA was similar to other cases where, "[u]nlike the mere interest in a problem or [an] ideological injury, the plaintiffs had alleged inhibition of their daily operations . . . ." *Id*. (citing *Action All. of Senior Citizens of Greater Philadelphia v. Heckler*, 789 F.2d 931, 937-38 (D.C. Cir. 1986)) (cleaned up). *Accord Competitive Enter. Inst. v. Nat'l Highway Traffic Safety Admin*., 901 F.2d 107, 122 (D.C. Cir. 1990) ("Allegations of injury

to an organization's ability to disseminate information may be deemed sufficiently particular for standing purposes where that information is essential to the injured organization's activities, *and where the lack of the information will render those activities infeasible*.") (emphasis added).

In other words, the plaintiffs in those cases had shown an organizational injury for standing purposes not because they disagreed with the promulgation of a rule or the outcome of a proceeding, but because the defendant's conduct literally restrained or prevented plaintiff from carrying out its mission such that plaintiff's activities were not feasible.

The organizational injuries Plaintiffs allege here fall far short of that mark. For example, Plaintiffs' claim—that they cannot "educate the public and partner organizations with informed policy analysis, or identify and prioritize necessary campaign finance reforms" without access to the FEC's file in the underlying MUR—does not demonstrate that those same activities are now infeasible. In fact, they show just the opposite. As Right to Rise explained in its motion to dismiss, there are instances where, presumably like the underlying MUR in this case, the Commissioners vote in such a way that the FEC deadlocks—meaning that there are not four votes to find reason to believe that a violation occurred, and likewise there are not four votes to dismiss the matter, either. Among the reasons for such an impasse: Commissioners might not believe that a respondent's actions violate FECA, Commissioners may believe a gray area of law is best resolved with a prospective policy statement, or Commissioners may believe that the questioned conduct is not an enforcement priority.

The bottom line for this inquiry is not the current, temporary absence of the MUR file, but deadlock. The "FEC will regularly deadlock as part of its *modus operandi*. *Pub. Citizen, Inc. v. FERC*, 839 F.3d 1165, 1171 (D.C. Cir. 2016). It simply means the Commission is split as to how to handle the underlying MUR, and knowledge of that split is everything Plaintiffs need to know

to educate the public about the state of campaign finance law, and to advocate policymakers for change. The fact that the FEC has deadlocked on this MUR signals to Plaintiffs that the Commission disagrees on how to interpret the law here, and/or on the priority of this MUR, which should actually help Plaintiffs' mission to the extent they disagree with the *status quo*. They are free to educate the public as to their disagreement with the current state of affairs, and to make their case to the public and policymakers alike that the underlying rules or laws ought to be changed. For that reason alone, Plaintiffs' public education and policy advocacy activities remain wholly intact and are no less feasible today than if they received the MUR file tomorrow.

As for the remaining alleged organizational injury—Plaintiffs' claim that they cannot effectively play the role as regulatory watchdogs without the MUR file—that, too, is insufficient for standing purposes. While Plaintiffs are free to fancy themselves as "work[ing] to ensure that the Federal Election Commission enforces current campaign finance laws,"[1] a grandiose and self-serving mission statement does not create an otherwise unrecognized interest for standing purposes. Setting aside the fact that Plaintiffs' alleging the inability to enforce laws is an admission that what Plaintiffs really seek here is "a legal conclusion that carries certain law enforcement consequences" in which they have "no legally cognizable interest," *Wertheimer v. FEC,* 268 F.3d 1070, 1075 (D.C. Cir. 2001), their claimed injury is nothing more than the sort of bare procedural injury precluded by *Lujan* and its progeny.

This is further evidenced by Plaintiffs' attempt to buttress their alleged injury, explaining that, "even at the reason-to-believe stage, it is not uncommon for a MUR file to contain materials that *illuminate or confirm the factual allegations in a complaint*, such as a sworn affidavit from a

[1] Campaign Legal Center, "Campaign Finance," *available at* https://campaignlegal.org/issues/campaign-finance (last visited Feb. 15, 2022).

respondent," ECF No. 34 at 8 (emphasis added). But it is well-settled in the D.C. Circuit that a plaintiff may not "establish injury in fact merely by alleging that he has been deprived of the knowledge as to whether a violation of the law has occurred," as that "would be tantamount to recognizing a justiciable interest in the enforcement of the law." *Common Cause*, 108 F.3d at 418 (D.C. Cir. 1997). Simply put, "[n]othing in FECA requires that information concerning a violation of the Act as such be disclosed to the public," and "even if FECA did require such disclosure," the D.C. Circuit has expressed "doubt whether this requirement could create standing." *Id*. For those reasons, Plaintiffs failed to show a concrete injury to sustain organizational standing, and their motion should be denied.

Finally, while Plaintiffs' failure to show a "concrete and demonstrable injury to [their] organization's activities" is dispositive, they have also failed to show a "consequent drain on [their] organization's resources" that "constitut[es] more than simply a setback to the organization's abstract social interests." *Id.* at 417 (cleaned up). Indeed, under the second step of the organizational injury standard, Plaintiffs must also prove they diverted resources and undertook expenditures "in response to, and to counteract, the effects of the [defendant's] alleged unlawful acts." *PETA*, 797 F.3d at 1097 (cleaned up). Here, Plaintiffs vaguely claim that "FEC inaction has forced [them] to divert resources from other planned organizational needs in various ways, including, for example, explaining to reporters how to find information not properly disclosed under FECA." ECF No. 34, at 10. In fact, all of Plaintiffs' allegations pertaining to the diversion of resources stem from allegations of improper or inadequate disclosures under FECA. *E.g.*, ECF No. 1, ¶ 19 (Plaintiff CLC alleging diversion of resources due to inadequate FECA disclosures); *id*. ¶ 22 (Plaintiff Democracy 21 alleging diversion of resources where "disclosure information is

unavailable, inadequate, or inaccurate"). But those allegedly diverted resources are not remotely sufficient to show standing, for several reasons.

First, they focus entirely on the alleged failure to disclose campaign finance information in compliance with FECA. But the Court already rejected Plaintiffs' inadequate disclosure theory, ECF No. 33, at 10, and because the absence of inadequate disclosures vitiated Plaintiffs' informational injury standing theory, it likewise defeats this aspect of Plaintiff's organizational standing theory, too. Second, those alleged actions were not taken "in response to, and to counteract, the effects of the [FEC's] alleged unlawful acts," *PETA*, 797 F.3d at 1097 (cleaned up). Rather, they were instead necessary due to the manner in which the disclosures were made by someone *other than the FEC*. For these reasons, Plaintiffs cannot establish organizational standing, and the Court should deny Plaintiffs' motion.[2]

C. The injury alleged by Plaintiffs cannot be redressed by this Court.

Even assuming Plaintiffs can establish injury in fact, their organizational standing theory falters on redressability grounds. To satisfy the redressability element of Article III standing, Plaintiffs must establish that "it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000) (citing *Lujan*, 504 U.S. at 560–61). But Plaintiffs have failed to do so by a preponderance of the evidence.

As an initial matter, Plaintiffs failed to even address the element of redressability as it pertains to their organizational-standing injury. For example, in Plaintiffs' Response to Right to

[2] In its Reply in support of its Motion to Dismiss, Right to Rise argued that Plaintiffs cannot claim organizational standing when the claimed injury is based on the deprivation of information to which Plaintiffs have no legal right. *See* ECF No. 15, at 13-16. That same argument precludes Plaintiffs' organizational standing in this instance, too, because Plaintiffs have no legal right to the information in the MUR file they now claim to seek. That argument is therefore incorporated here by reference.

Rise's Motion to Dismiss, Plaintiffs simply stated that their "organizational injuries flow directly from the FEC's failure to act on their administrative complaints, and this Court is empowered under 52 U.S.C. § 30109(a)(8)(C) to redress that failure." ECF No. 13, at 43. But Plaintiffs do not explain *how* it is that their claimed organizational injury would be redressed by an order from this Court. Nor do Plaintiffs explain how it is this Court might redress their claimed organizational injuries in their Response to Right to Rise's Motion for Reconsideration, ECF No. 21, at 17 (simply stating that "[a]n order of this Court directing the FEC to act within 30 days pursuant to 52 U.S.C. § 30109(a)(8)(C) would plainly redress plaintiffs' Article III injuries."), or even in their instant motion. *See generally* ECF No. 34.

In other words, nothing in the record explains how a favorable ruling from this Court would provide Plaintiffs with the information on which they now rest their standing theory—information in the FEC's MUR file such as "legal conclusions, factual findings, or vote records generated by the Commission or its Office of General Counsel in processing the complaints," or even "the factual record generated by the proceedings" such as "any responses or other submissions by the respondents." ECF No. 34, at 6. When the FEC deadlocks, no one can compel that internal proceedings, factual findings, and legal conclusions be disclosed. To the contrary, these are all required by statute to be kept confidential. 52 U.S.C. § 30109(a)(12). And the time for Plaintiffs to address redressability has long since passed; to do so now in the context of a motion for reconsideration would be inappropriate. For that reason alone, Plaintiffs have failed to satisfy their burden of showing organizational standing by a preponderance of the evidence, and this Court should deny Plaintiffs' motion. *See Alabama Power Co. v. Gorsuch*, 672 F.2d 1, 6-7 (D.C. Cir. 1982) (declining to address undeveloped argument and collecting cases in which courts decline to consider issues not addressed by the parties).

But even looking past Plaintiffs' failure to develop—or even address—the redressability element of the Article III standing inquiry, Plaintiffs' organizational standing theory fails because Plaintiffs' alleged injury—the deprivation of information in the Commission's MUR file—cannot be redressed by this Court in this case. Even if (1) Plaintiffs were to demonstrate Article III standing *and* prove that the FEC's "failure to act is contrary to law," and (2) the Court entered an order under section 30109(a)(8)(C) "direct[ing] the Commission to conform" with the Court's order declaring its alleged inaction contrary to law "within 30 days," 52 U.S.C. § 30109(a)(8)(C), that would not remedy Plaintiffs' alleged deprivation of information.

Such an order would not require the FEC to decide and "close" the case. And so long as the underlying MUR remains "open," the Commission is required by law to keep any complaint filed with the Commission, any notification sent by the Commission, any investigation conducted by the Commission, and any findings made by the Commission, confidential. 52 U.S.C. § 30109(a)(12); 11 C.F.R. 111.21. This point was conceded by Plaintiff, *see* ECF No. 34, at 5, and is well-settled law. *In re Sealed Case*, 237 F.3d 657, 666–67 (D.C. Cir. 2001) ("We hold that both [52 U.S.C. § 30109(a)(12)(A)] and 11 C.F.R. § 111.21(a) plainly prohibit the FEC from disclosing information concerning ongoing investigations under any circumstances without the written consent of the subject of the investigation."). And section 30109 does *not* authorize the Court to order the FEC to "close" the MUR such that the aforementioned confidentiality provisions would no longer preclude disclosure of the information allegedly sought by Plaintiffs. So long as the Commission choses to keep the matter "open," the Commission is statutorily prohibited from providing Plaintiffs with the information on which they now rely for standing purposes.

In sum, any relief this Court orders would not result in Plaintiffs receiving the information from the MUR file they now claim to seek. Rather, the FEC will continue not participating in this

suit—as has been the case since Plaintiffs filed their complaint nearly two years ago on March 13, 2020—and Plaintiffs would then ask this Court to authorize them to file a private suit against Right to Rise and the other respondents under section 30109(a)(8)(C). Make no mistake, that's Plaintiffs' real goal here, and has been from the outset. But even then, Plaintiffs' alleged injury of information deprivation would remain unredressed. As a result, Plaintiffs have failed to demonstrate organizational standing, and this Court should deny Plaintiffs' Motion for Reconsideration.

To the extent Plaintiffs genuinely wish to receive the information they now claim to seek, they are free to pursue that information through more appropriate channels, such as the Freedom of Information Act, however dubious that might be in light of the confidentiality provisions under FECA. What's certain is that the injury Plaintiffs claim here will not be redressed under section 30109(a)(8), and Plaintiffs therefore lack standing to proceed.

V. CONCLUSION

For these reasons, Right to Rise respectfully requests that the Court deny Plaintiffs' Motion for Reconsideration.

Dated: February 16, 2022

Respectfully Submitted,

DICKINSON WRIGHT PLLC

/s/ Charles R. Spies
Charles R. Spies, Bar ID: 989020
1825 Eye Street, N.W., Suite 900
Washington, D.C. 20006
Telephone: (202) 466-5964
Facsimile: (844) 670-6009
cspies@dickinsonwright.com

Robert L. Avers Bar ID: MI0080
350 S. Main Street, Ste 300
Ann Arbor, MI 48104
(734) 623-1672
ravers@dickinsonwright.com

John J. Bursch*
Bursch Law PLLC
9339 Cherry Valley Ave. SE, #78
Caledonia, MI 49316
(616) 450-4235
jbursch@burschlaw.com

Attorneys for Defendant-Intervenor

*Pending Admission

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 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.

/s/ Robert L. Avers