UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CAMPAIGN LEGAL CENTER and DEMOCRACY 21, Plaintiffs, v. **FEDERAL ELECTION COMMISSION**, Defendant, **RIGHT TO RISE SUPER PAC, INC.**, Intervenor-Defendant.	Case No. 20-cv-00730 (CRC)

MEMORANDUM OPINION AND ORDER

In 2015, Campaign Legal Center and Democracy 21 filed two complaints with the Federal Election Commission ("FEC") accusing Jeb Bush's nascent presidential campaign, and its related super PAC Right to Rise, of various violations of the Federal Election Campaign Act ("FECA"). The FEC designated the complaints Matter Under Review ("MUR") 6927, but failed to act on them due to a lack of a quorum.

Five years later, the Commission's continued inaction led plaintiffs to file this suit to compel the FEC to act on the complaints. Right to Rise intervened and moved to dismiss on the ground that the plaintiffs lacked standing under Article III and failed to state a claim. The Court denied Right to Rise's motion in part, finding that plaintiffs had alleged an informational injury on the theory that Governor Bush's first official campaign finance report did not fully disclose his pre-candidacy "testing-the-waters" spending, as FECA requires. Campaign Legal Ctr. v. FEC, 520 F. Supp. 3d 38, 46 (D.D.C. 2021) ("CLC I").

Right to Rise moved for reconsideration. After two rounds of briefing and oral argument, the Court granted Right to Rise's motion. Campaign Legal Ctr. v. FEC, —— F. Supp. 3d ——, 2021 WL 6196985, at *5 (D.D.C. Dec. 30, 2021) ("CLC II"). With the benefit of supplemental briefing and exhibits, the Court was able to deduce that the supposedly unaccounted for spending—mainly travel and lodging expenses—had in fact been fully disclosed in Governor Bush's reports, albeit in a less-than-straightforward way. Id. at *4. Because plaintiffs did not identify any additional "pre-candidacy events, travel, or speaking engagements from which the Court could infer the existence of still-undisclosed spending," the Court found that they had not established standing by a preponderance of the evidence. Id. at *5.

Plaintiffs now move for reconsideration of that decision. They do not challenge the Court's ruling on informational standing, however. They instead seek a ruling in the first instance on a second theory of standing—organizational standing—that they raised in their initial opposition to RTR's motion to dismiss. See Mot. at 1, ECF No. 34. The Court declined to reach plaintiffs' additional basis for standing in its initial decision because it found plaintiffs had suffered an informational injury. CLC I, 520 F. Supp. 3d at 45 n.1. Now that the Court has reconsidered that finding, plaintiffs wish to revive their argument that they have standing based on organizational injuries caused by the FEC's delay in acting on their administrative complaints. Mot. at 3.

Plaintiffs are correct that the Court initially reserved decision on the merits of their organizational standing argument because it found standing was satisfied on other grounds. The Court did not revisit the organizational standing argument in its decision reconsidering that order. See CLC II, 2021 WL 6196985, at *5. This oversight is of no moment, however, because

plaintiffs do not meet the standard for organizational standing under D.C. Circuit precent. The Court will therefore deny the motion for reconsideration.

I. Legal Standards

A. Motions for Reconsideration

Although the Federal Rules of Civil Procedure do not expressly address motions for reconsideration, a motion to reconsider a final judgment is typically treated as either a Rule 59(e) or Rule 60(b) motion. Roane v. Gonzales, 832 F. Supp. 2d 61, 64 (D.D.C. 2011). "As a general matter, courts treat a motion for reconsideration as originating under Rule 59(e) if it is filed within 28 days of the entry of the order at issue and as originating under Rule 60(b) if filed thereafter." Owen–Williams v. BB & T Inv. Servs., Inc., 797 F. Supp. 2d 118, 121–22 (D.D.C. 2011); see also Mohammadi v. Islamic Republic of Iran, 947 F. Supp. 2d 48, 76 (D.D.C. 2013), aff'd, 782 F.3d 9 (D.C. Cir. 2015).

Because plaintiffs' motion was filed 34 days after this Court's December 30, 2021 Order in CLC II, the Court will consider it under Rule 60(b), which authorizes the Court to grant relief from an order or final judgment in limited circumstances, including for "mistake," "inadvertence," or "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(1), (b)(6); see West v. Holder, 309 F.R.D. 54, 55–56 (D.D.C. 2015). "It is well-settled that the party seeking relief from a judgment bears the burden of demonstrating that he satisfies the prerequisites 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. C.I.A., 437 F.3d 94, 99 (D.C. Cir. 2006), and should only be granted when the movant 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).

B. Standing

To have standing to bring a particular suit, "a plaintiff must 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 v. FEC, 108 F.3d 413, 416–17 (D.C. Cir. 1997) (citations and internal quotation marks omitted).

When an organization sues on its own behalf, "it must establish concrete and demonstrable injury to the organization's activities—with a consequent drain on the organization's resources—constituting more than simply a setback to the organization's abstract social interests." Id. at 417 (cleaned up). Specifically, "the plaintiff must [first] show that the defendant's 'action or omission to act injured the organization's interest,' [and] [s]econd, the plaintiff must show that it 'used its resources to counteract that harm.'" Elec. Priv. Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity, 878 F.3d 371, 378 (D.C. Cir. 2017) ("EPIC") (quoting People for the Ethical Treatment of Animals v. USDA, 797 F.3d 1087, 1094 (D.C. Cir. 2015) ("PETA")). "The doctrines of informational and organizational standing do not derogate from the elemental requirement that an alleged injury be 'concrete and particularized.'" Id. at 380 (quoting Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992)).

II. Analysis

Plaintiffs argue they have been injured by the FEC's failure to act on their administrative complaints because it denied them "access . . . key information they need to effectuate their missions as campaign finance reform organizations." Mot. at 4. In particular, plaintiffs want

access to documents in the FEC's MUR file, which can include decisional documents and submissions by respondents. The FEC has a duty to disclose these documents "once the matter is decided or otherwise terminated." Id. at 5–6. However, FECA's confidentiality provision prevents the FEC from disclosing the contents of the MUR file until the matter is terminated. Id. at 5; see 52 U.S.C. § 30109(a)(12)(A); 11 C.F.R. § 111.21. Therefore, according to the plaintiffs, their organizational injury—lack of access to the MUR file—flows directly from the FEC's failure to act on their administrative complaints. Reply at 9, ECF No. 36.

There is one problem with this argument: The D.C. Circuit has repeatedly held that the FEC's failure to process an administrative complaint in a timely manner is insufficient to create Article III standing. See Common Cause, 108 F.3d at 419 (holding that § 30109(a)(8)(A) "does not confer standing; it confers a right to sue upon parties who otherwise already have standing"); see also Campaign Legal Ctr. v. FEC, 860 F. App'x 1, 5 (D.C. Cir. 2021) (rejecting CLC's argument that "when the Commission violates the complainant's right to a prompt and lawful resolution of the complaint, the Commission causes an injury sufficient for Article III standing" (citation and internal quotation marks omitted)); id. at 4–5 (describing this argument as foreclosed by settled Supreme Court and Circuit precedent). This holding flows from the principle that "deprivation of a procedural right" alone "is insufficient to create Article III standing." Summers v. Earth Island Inst., 555 U.S. 488, 496 (2009); see also Spokeo, Inc. v. Robins, 578 U.S. 330, 341 (2016) (explaining that a plaintiff "cannot satisfy the demands of Article III by alleging a bare procedural violation").

Plaintiffs attempt to sidestep this problem by arguing that while a "bare procedural failure to process administrative complaints" would not confer standing, "the FEC's egregious delay in *this* instance inflicts [a] concrete and particularized injury" on plaintiffs. Mot. at 8–9. That is so,

plaintiffs say, because that delay has deprived them "of any factual or legal analysis generated by the Commission or its Office of General Counsel in processing the complaints." MTD Opp'n at 39, ECF No. 13. But this is a distinction without a difference. The only "concrete and particularized" injury plaintiffs assert is a lack of access to the MUR file. Because the MUR documents cannot be disclosed until the FEC closes a case, plaintiffs' alleged injury is not particularized at all—it will occur whenever the FEC fails to act on a complaint after the 120-day deadline in § 30109(a)(8). Finding standing in this case would thus amount to an end-run around the otherwise clear precedent that such a delay does not confer standing. See Common Cause, 108 F.3d at 419.[1]

Plaintiffs also have not established that they have a right to the information they seek. See WildEarth Guardians v. Salazar, 859 F. Supp. 2d 83, 92 (D.D.C. 2012) ("To establish informational standing, a plaintiff must . . . identify a statute that, on plaintiff's reading, directly requires the defendant to disclose information that the plaintiff has a right to obtain[.]"). Not only have plaintiffs failed to identify such a statute, but, as noted above, the law actually prohibits the FEC from disclosing the contents of the MUR file until the matter is closed. See 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."). Plaintiffs cannot have suffered an informational

[1] In Campaign Legal Center v. FEC, 860 F. App'x 1 (D.C. Cir. 2021), the Circuit declined to reach CLC's separate argument that the FEC's delay had caused an additional informational injury—the same argument plaintiffs make here—because CLC raised it for the first time on appeal. However, the Circuit expressed some doubt that the FEC's delayed administrative action could support an informational standing argument, because "the Center [did] not allege that any party is in violation of mandatory reporting . . . requirements." Id. at 6.

injury when the information they seek is required by statute to be kept confidential. See Common Cause, 108 F.3d at 418 (limiting informational injury under FECA to "those cases where the information denied is both useful in voting and required by Congress to be disclosed"); Judicial Watch v. FEC, 180 F.3d 277, 278 (D.C. Cir. 1999) (per curiam) (finding no standing where plaintiff did not "mention disclosure requirements or suggest that it desired documents that the alleged violators were required to disclose").

Plaintiffs rely on PETA for the proposition that an organization can suffer a concrete injury when it is "denied 'key information that it relies on to educate the public,'" Mot. at 9 (quoting PETA, 797 F.3d at 1094 (majority op.)), "even if the organization does not have 'any legal right' to the information sought," id. (quoting PETA, 797 F.3d at 1103–04 (Millett, J., dubitante)). The information at issue in PETA consisted of bird-exhibition inspection reports that the USDA failed to create due to its ten-year delay in crafting and publishing bird-specific animal welfare regulations under the Animal Welfare Act ("AWA"). PETA, 797 F.3d at 1091 (majority op.). The Circuit held that PETA had suffered a cognizable injury sufficient to support standing because its lack of access to bird-related AWA information impeded its daily operations and forced it to expend resources to counteract that harm. Id. at 1094–95.

Because no statute required the USDA to produced the reports PETA sought, the outcome in that case arguably sits in tension with this Circuit and the Supreme Court's test for informational standing, which requires that "on the plaintiff's view of the law, the government or a third party was *required by statute* to make public the information at issue." Id. at 1104 (emphasis added) (citing FEC v. Akins, 524 U.S. 11, 21 (1998)); see also Nader v. FEC, 725 F.3d 226, 229 (D.C. Cir. 2013) (same); Friends of Animals v. Jewell, 828 F.3d 989, 992 (D.C. Cir. 2016) (same); Elec. Priv. Info. Ctr. v. United States Dep't of Com., 928 F.3d 95, 103 (D.C.

Cir. 2019) (same, citing Jewell); Campaign Legal Ctr. v. FEC, 31 F.4th 781, 788 (D.C. Cir. 2022) ("To succeed, [a]ppellants must show that the legal ruling they seek might lead to additional factual information that, on their view of the law, FECA requires the [i]ntervenors to make public.").[2] The Court need not resolve this apparent tension, however, because even PETA does not get plaintiffs over the finish line. In PETA, the USDA was not *required* to produce the enforcement reports, but nothing in any statute *forbade* their release either. PETA, 797 F.3d at 1106 (Millett, J., dubitante); see also Am. Anti-Vivisection Soc'y v. United States Dep't of Agric., 946 F.3d 615, 619 (D.C. Cir. 2020) (noting that plaintiff's claim to standing was "even stronger than was PETA's" because plaintiff sought "standards that it alleges USDA is legally

[2] PETA could be reconciled with this line of cases if viewed as an organizational standing case rather than an informational one. This is not such a stretch, given that the majority opinion applies the organizational standing test and says nothing about informational injury. See PETA, 797 F.3d at 1093–94). For organizational standing, a plaintiff must demonstrate a "concrete and demonstrable injury" to its activities and a "consequent drain on the organization's resources [that] constitutes far more than simply a setback to the organization's abstract social interests." Id. at 1093 (quoting Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982)). For an informational injury, by contrast, the plaintiff "must point to some statutory entitlement to the information it seeks," Marino v. Nat'l Oceanic & Atmospheric Admin., 451 F. Supp. 3d 55, 60 (D.D.C. 2020), aff'd, 33 F.4th 593 (D.C. Cir. 2022), but it "generally 'need not allege any additional harm beyond the one Congress has identified'" in mandating disclosure, Jewell, 828 F.3d at 992 (citation omitted).

PETA may be understood, then, as holding that an organization can establish standing when its operations are directly and substantially impaired by a change in an agency's informational gathering or dissemination practice, even if the information is not required by law to be disclosed. But to succeed in establishing such an injury, the organization must show the type of direct impairment to its daily operations that is required for organizational standing, but that is typically not required for informational standing. See PETA, 797 F.3d at 1092, 1095–96 (finding the organization demonstrated "real, concrete obstacles" to its work that flowed directly from the USDA's inaction). Here, as described below, plaintiffs have not alleged the kind of direct impairment to their daily operations that was found in PETA, nor have they identified a statute that entitles them to the information they seek. Plaintiffs must establish one or the other to get into federal court. See EPIC, 878 F.3d at 379; see also Competitive Enter. Inst. v. Nat'l Highway Traffic Safety Admin., 901 F.2d 107, 123 (D.C. Cir. 1990) (explaining that when an organization seeks to establish standing based on the government's failure to produce information, the organization "must point to concrete ways in which [its] programmatic activities have been harmed").

required to promulgate"). Here, by contrast, plaintiffs' alleged injury stems from the unavailability of documents that are required by statute to be kept confidential. Plaintiffs offer no legal authority that extends PETA to this circumstance.

Even if plaintiffs' injury were sufficiently "concrete and demonstrable" to satisfy the first part of the organizational standing test, they still fail the second prong of the test because they have not demonstrated a drain on their resources as a result of their lack of access to the MUR file. To establish standing, plaintiffs "must allege that discrete programmatic concerns are being directly and adversely affected by the challenged action." Common Cause, 108 F.3d at 417 (quoting Nat'l Taxpayers Union v. United States, 68 F.3d 1428, 1433 (D.C. Cir. 1995)). They have not done so. All of the plaintiffs' programmatic concerns stem from "the gaps in the Bush campaign's and [Right to Rise's] disclosure reports"—not from the lack of access to the FEC's MUR file. RTR's Opp'n to Pls.' Mot. for Recons. at 7, ECF No. 35. For example, plaintiffs allege that they were forced to divert resources from other planned organizational needs to "explain[] to reporters . . . how they might attempt to find information not properly reported [under FECA]." Fischer Decl. ¶¶ 20–21, ECF No. 13-1; see also Compl. ¶¶ 19, 22 (claiming CLC and Democracy 21 must divert resources due to inadequate financial disclosure by a candidate or Super PAC); Pls.' Opp'n to RTR's Mot. for Recons. at 17, ECF No. 21 ("[P]laintiffs have had to divert resources from other planned organizational needs to research, fill in the gaps in the Bush campaign's and [Right to Rise's] disclosure reports, and explain to reporters and partner organizations how they might attempt to find information not properly reported by Bush and RTR.").

Plaintiffs describe how the MUR file may contain "legal analysis of the FEC's Office of General Counsel, . . . the factual record generated by the proceedings, . . . [or] materials that

illuminate or confirm the factual allegations in a complaint." Mot. at 6–7. And they assert that this information enables them to "effectively play their role as regulatory watchdogs" and "identify and prioritize necessary campaign finance reforms." Id. at 9; see also Fischer Decl. ¶ 28 ("[I]ncomplete public information about how the FEC interprets and applies a number of key FECA provisions . . . hamstrings CLC's development of policy to improve or extend campaign finance . . . laws."). That may well be so. But nowhere do plaintiffs show, as they must, that they have diverted any of their resources to counteract this lack of information. See EPIC, 878 F.3d at 378 ("[P]laintiff must show that it used its resources to counteract that harm" to establish organizational standing. (citation and internal quotation marks omitted)). While the information in the MUR file may help plaintiffs advocate for campaign finance reform generally, "[i]mpediments to 'pure issue-advocacy,' cannot establish standing." Elec. Priv. Info. Ctr. v. Fed. Aviation Admin., 892 F.3d 1249, 1255 (D.C. Cir. 2018) (quoting PETA, 797 F.3d at 1094); see also Food & Water Watch, Inc. v. Vilsack, 808 F.3d 905, 920 (D.C. Cir. 2015) ("An organization does not suffer an injury in fact where it expends resources to educate its members and others unless doing so subjects the organization to operational costs beyond those normally expended." (cleaned up)).

Plaintiffs also profess an interest in what the MUR file's contents might reveal about the FEC's legal analysis, any "unusual voting behavior" or "reason-to-believe votes" by the Commissioners, and "the factual allegations in [the] complaint." Mot. at 7. But a plaintiff cannot "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." Common Cause, 108 F.3d at 418. Plaintiffs have therefore shown only a setback to their "abstract social interests," which is insufficient for Article III standing. Id. at 417; see Am. Soc'y for Prevention of Cruelty to Animals v. Feld Ent.,

Inc., 659 F.3d 13, 24 (D.C. Cir. 2011) ("[A]n organization's abstract interest in a problem is insufficient to establish standing, 'no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem.'" (quoting Sierra Club v. Morton, 405 U.S. 727, 739 (1972)).

III. Notice of Subsequent D.C. Circuit Decision

On May 3, 2022, plaintiffs filed a notice of supplemental authority alerting the Court to a recently-published decision of the D.C. Circuit, Campaign Legal Ctr. v. FEC, 31 F.4th 781 (D.C. Cir. 2022). See Pls.' Notice of Suppl. Auth., ECF No. 37. Plaintiffs argue that this supplemental authority "controverts the Court's holding that plaintiffs did not suffer informational injury" based on the Bush campaign's and Right to Rise's method of reporting Bush's testing-the-water activity. Id. at 4–5. This supplemental authority bears directly on plaintiff's first theory of standing—informational injury—which they specifically did not challenge in the present motion for reconsideration. See Mot. at 1 ("Plaintiffs do not ask to revisit the question of informational standing that was ruled on by the Court."). Accordingly, this topic is outside the scope of the present motion and the Court declines to consider it. Plaintiffs are free to raise this argument on appeal.

IV. Conclusion

For the foregoing reasons, it is hereby

ORDERED that [34] Plaintiff's Motion for Reconsideration is DENIED.

SO ORDERED.

CHRISTOPHER R. COOPER
United States District Judge

Date: July 14, 2022