

(emphasis added)), he has run for no federal office since 2008. The absence of a concrete future candidacy belies any possibility that Nader has standing to seek prospective relief.

Nader nonetheless alleges that he has standing because the Commission's determination "deprived [Nader] of the protection of federal law" and "invites further and even more flagrant violations of federal campaign finance laws in the future." (Compl. ¶¶ 5, 72.) Nader also alleges that the dismissal "prevented [him] from accessing information" (Compl. ¶ 5), caused him "ongoing reputational harm" (Compl. ¶ 73), and "threaten[ed] [him] with imminent harm" because of attachment proceedings against him stemming from his loss of a lawsuit related to his 2004 campaign. (Compl. ¶¶ 5, 45, 74.) As pointed out below, none of these allegations establishes Article III standing.

I. LEGAL REQUIREMENTS FOR CONSTITUTIONAL STANDING

Standing must be determined as a threshold jurisdictional matter. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101-02 (1998)). "[I]t is not proper for federal courts to proceed" to other questions when there are "jurisdictional objections." *In re Madison Guar. Sav. & Loan Ass'n*, 173 F.3d 866, 870 (D.C. Cir. 1999); *see also Judicial Watch, Inc. v. FEC*, 180 F.3d 277 (D.C. Cir. 1999) (dismissing petition for review of Commission's decision not to investigate administrative complaint where petitioner lacked standing under Article III).

As the party invoking federal jurisdiction, Nader bears the burden of establishing the elements that make up the “irreducible constitutional minimum” of constitutional standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Nader must show: (1) an injury in fact, (2) a causal connection between the injury and the challenged action of the defendant, and (3) a likelihood that the injury will be redressed by a favorable decision of the court. *Id.* at 560-61. He must make this demonstration “for each claim he seeks to press and for each form of relief that is sought.” *Davis v. FEC*, 554 U.S. 724, 734 (2008) (internal quotation marks and citations omitted).

The injury-in-fact must be an invasion of a legally protected interest that is “concrete and particularized” as well as “actual or imminent,” not “conjectural” or “hypothetical.” *Lujan*, 504 U.S. at 560 (internal quotation marks and citation omitted).

The injury must also be “fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party.” *Id.* at 560-61 (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)). Thus, when, as here, “a plaintiff’s asserted injury arises from the government’s allegedly unlawful regulation (or lack of regulation) of *someone else*,” standing is “substantially more difficult” to prove. *Id.* at 562 (emphasis in original); see also *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) (“[A] private

citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.”).

Nor can Nader cannot rely on 2 U.S.C. § 437g(a)(8) to satisfy standing under Article III. “Section 437g(a)(8)(A) does not confer standing; it confers a right to sue upon parties who otherwise already have standing.” *Common Cause v. FEC*, 108 F.3d 413, 419 (D.C. Cir. 1997).

II. NADER’S PAST STATUS AS A CANDIDATE DOES NOT GIVE GIVE HIM STANDING TO BRING THIS ACTION

A. Standing Cannot Be Based on Nader’s Alleged Interest in Proper Enforcement of the Law

Nader’s bare allegations of injury (Compl. ¶¶ 5, 72-74) fail to establish standing.¹ Nader cannot support his standing with his allegations that he was “deprived . . . of the protection of federal law” as a candidate or that the Commission’s conduct “invites further and even more flagrant violations of federal campaign finance laws in the future.” (Compl. ¶¶ 5, 72.) Such statements are merely generalized grievances regarding the proper enforcement of the law, and “an asserted right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdiction on a federal court.” *Allen v. Wright*, 468 U.S. 737, 754 (1984); *see FEC v. Akins*, 524 U.S. 11, 23 (1998);

¹ Facts giving rise to standing must be based on the complaint and factual record; “the necessary factual predicate may not be gleaned from the briefs and arguments.” *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 235 (1990) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 547 (1986)).

Lujan, 504 U.S. at 573-74; *Common Cause*, 108 F.3d at 419 (a plaintiff “cannot establish standing merely by asserting that the FEC failed to process its complaint in accordance with law”). “In other words, what [plaintiff] desires is for the Commission to ‘get the bad guys,’ [Plaintiff] has no standing to sue for such relief.” *Common Cause*, 108 F.3d at 418.

For similar reasons, Nader lacks standing to challenge the Commission’s decision to designate the proper respondents to Nader’s administrative complaint. Even if Nader were able to prevail on his claim that the Commission’s decision was contrary to law, he has no standing to sue merely to revise the agency’s longstanding interpretation of its statute. And there is no other injury he could plausibly allege, because as the district court found, “[t]he notice procedures set out in Section 437g are for the benefit of those who[] Nader alleges violated the Act, not for Nader’s benefit . . . , [so] the only persons and entities who could have been prejudiced by the FEC’s error were ultimately absolved of liability.” (J.A. 26.)

B. Nader Cannot Demonstrate Standing Based on an Alleged Informational Injury

Although in *Akins* the Supreme Court recognized “informational injury” as a potential basis for Article III standing in a suit brought under section 437g(a)(8), nothing in Nader’s claims comes close to the establishing the injuries the Court found sufficient in that case. In *Akins*, the plaintiffs were a group of registered

voters who asserted that the American Israel Public Affairs Committee (“AIPAC”) — an organization whose views the plaintiffs had long opposed — should have been regulated by the Commission as a political committee. *See* 524 U.S. at 15-16. The Commission’s failure to so regulate the group denied the plaintiffs access to any of the financial information that political committees must disclose. *See* 2 U.S.C. § 434. Without such disclosure, the *Akins* plaintiffs, as voters, had no way to determine which candidates were supported by AIPAC and to what extent. *See* 524 U.S. at 16, 20-21. That factual context led the Court to accept “[plaintiffs’] claim that the information would help them (and others to whom they would communicate it) to evaluate candidates for public office, especially candidates who received assistance from AIPAC, and to evaluate the role that AIPAC’s financial assistance might play in a specific election.” *Id.* at 21. The Court then held that, because there was “no reason to doubt” the usefulness of this information to those plaintiffs, the plaintiffs had suffered a concrete and particularized injury. *Id.*; *see also id.* at 24-25 (“[T]he informational injury . . . here, directly related to voting, . . . is sufficiently concrete and specific . . .”); *Common Cause*, 108 F.3d at 418 (plaintiff suing under 2 U.S.C. 437g(a)(8) must show that the information it seeks “is *both* useful in voting *and* required by Congress to be disclosed” (emphasis added)).

Akins is inapposite here. Even assuming that his administrative complaint could be viewed as seeking “information” about transactions between his various political opponents during the 2004 election, Nader utterly fails to explain what he would do with such information if he received it or how it might be useful to him. His only allegation in this respect is that the denial of information is causing him “ongoing reputational harm” (Compl. ¶ 73) — *i.e.*, that the Commission’s failure to uncover information about his opponents is somehow damaging Nader’s reputation, presumably among voters. But Nader does not explain how he would use information that, for example, a particular ballot challenge was coordinated with the Kerry campaign to rectify his alleged reputational harm. Regardless of what information comes out, it cannot alter the fundamental fact that *no voter will be able to vote for Nader in the 2004 election*. And unlike the plaintiffs in *Akins*, who sought information regarding which candidates to support, Nader surely needs no information to decide whom to vote for in any election in which Nader himself is a candidate for president (past or future).

The absence of any demonstrable use for the information Nader seeks (other than to further his quest to prove that he was right and the Commission wrong) is fatal to his claims of informational standing. *See Alliance for Democracy v. FEC*, 335 F. Supp. 2d 39, 48 (D.D.C. 2004) (action under 2 U.S.C. 437g(a)(8) dismissed for lack of standing because the plaintiffs “failed to show how information about

the precise value of a mailing list . . . could have a concrete effect on plaintiffs' voting in future elections involving different candidates"); *Alliance for Democracy v. FEC*, 362 F. Supp. 2d 138, 144-45 (D.D.C. 2005) (same); *cf. Winpisinger v. Watson*, 628 F.2d 133, 139 (D.C. Cir. 1980) ("The endless number of diverse factors potentially contributing to the outcome of . . . elections . . . forecloses any reliable conclusion that voter support of a candidate" is attributable to any one factor); *see also Shakman v. Dunne*, 829 F.2d 1387, 1397 (7th Cir. 1987).

C. Nader Cannot Demonstrate Standing Based on the Attachment Proceedings Against Him Stemming from Challenges to His Ballot Access in Pennsylvania

Nader's final claim of ongoing injury is that the Commission's actions "threaten[ed] [him] with imminent harm" because of attachment proceedings stemming from the successful challenge to keep him off the 2004 ballot in Pennsylvania. (Compl. ¶¶ 5, 45, 74.) According to Nader's administrative complaint, after the ballot challenge succeeded, the court approved a bill of costs of \$81,102.19 against him. (J.A. 119-20.) To satisfy that judgment, attorneys from a law firm that was named in Nader's administrative complaint obtained writs of attachment against Mr. Nader's personal accounts, and, as of the filing of his administrative complaint in 2008, the accounts were still frozen. (J.A. 120-21.)

Nader does not explain how the Commission's dismissal of his administrative complaint has any connection with the attachment proceedings he

describes. The Commission investigates civil violations of the Federal Election Campaign Act (“FECA”), 2 U.S.C. §§ 431-57, but the attachments appear to stem from violations of Pennsylvania law. Thus, even if the law firm that brought ballot challenges against Nader were violating FECA when they did so, such violations would cast no doubt on the state court’s decision that Nader’s petition was unlawful under state law, much less on the court’s subsequent decision to award fees to the prevailing parties in that litigation.

III. NADER CANNOT DEMONSTRATE STANDING BASED UPON THE MERE POSSIBILITY THAT HE MIGHT RUN FOR OFFICE AGAIN IN THE FUTURE

Nader alleges, with no further details, that he “may run for office again.” (Compl. ¶ 6.) The Supreme Court has made clear, however, that such inchoate “‘some day’ intentions — without any description of concrete plans, or indeed even any specification of *when* the some day will be — do not support a finding of the ‘actual or imminent’ injury that our cases require.” *Lujan*, 504 U.S. at 564 (emphasis in original); cf. *Golden v. Zwickler*, 394 U.S. 103, 109 (1969) (finding no jurisdiction due to mootness because former candidate’s “assertion in his brief that the former Congressman can be ‘a candidate for Congress again’ is hardly a substitute for evidence that this is a prospect of ‘immediacy and reality’”).

Even if Nader’s allegation were sufficient to establish a genuine future intention to run for president in 2016, and it is not, any connection between this

suit and that future campaign is far too attenuated to demonstrate standing. There is no evidence or allegation that the candidate against whom Nader ran in 2004, John Kerry, intends to run again, and the record establishes that many of the organizations about which Nader complained are now defunct. (J.A. 299, 300, 306, 307, 309.) Thus, for Nader's future campaign to be affected by this suit, an unlikely sequence of events would have to occur: (1) Nader would have to run for president again; (2) his Democratic opponent would have to seek to keep him off the ballot (despite the fact that Nader ran for president in 2008 (Compl. ¶ 6) and has not even alleged that his opponents engaged in any such activity during that campaign); (3) outside groups that did not exist in 2004 would have to come to share the Democratic party's concern about Nader; (4) the Democratic party and/or its candidate would have to illegally coordinate their anti-Nader activities with these outside groups; and (5) dozens of law firms in various states would have to determine that Nader's candidacy was sufficiently threatening to the Democrat's chances that they would be willing to illegally contribute free legal services to keep Nader off the ballot.

Because this long chain of hypothetical events is not "actual or imminent," but "conjectural or hypothetical," it is insufficient to establish standing. *Lujan*, 504 U.S. at 560 (internal quotation marks and citation omitted); *Grocery Mfrs. Ass'n v. EPA*, 693 F.3d 169, 175-76 (D.C. Cir. 2012) (holding that plaintiff could

not establish standing to challenge government action based on “convoluted” and “hypothetical chain of events” that would have to occur for plaintiff to suffer injury from that action); *N.Y. Reg’l Interconnect, Inc. v FERC*, 634 F.3d 581, 587 (D.C. Cir. 2011) (plaintiff “cannot establish constitutional standing because . . . [its] alleged injury rests upon a hypothetical chain of events, none of which is certain to occur”); *Public Citizen, Inc. v. NHTSA*, 489 F.3d 1279, 1295 (D.C. Cir. 2007) (holding that standing to challenge government action cannot be premised “solely on an event that, for any given individual, is extremely unlikely to occur” because “disputes about future events where the possibility of harm to any given individual is remote and speculative are properly left to the policymaking Branches, not the Article III courts”); *cf. Renne v. Geary*, 501 U.S. 312, 321 (1991) (holding that challenge to state law prohibiting endorsements of candidates in certain elections was not ripe because, among other reasons, none of the plaintiffs alleged a concrete plan to endorse any particular candidate in future elections).²

² Under the related Article III doctrine of mootness, jurisdiction is rarely proper in cases involving such unlikely sequences of events — especially when they depend in part on the actions of third parties, as they would here. *See People for the Ethical Treatment of Animals, Inc. v. Gittens*, 396 F.3d 416, 424 (D.C. Cir. 2005) (“To conclude that a dispute like this would arise in the future requires us to imagine a sequence of coincidences too long to credit.”); *see also, e.g., Bois v. Marsh*, 801 F.2d 462, 466 (D.C. Cir. 1986) (finding no jurisdiction because “there are in this case ‘too many variables to allow a prediction that appellant [] will again be subjected to action of this sort’” (quoting *Grano v. Barry*, 733 F.2d 164, 167 (D.C.Cir.1984))).

IV. NADER CANNOT SATISFY THE CAUSATION AND REDRESSABILITY REQUIREMENTS FOR CONSTITUTIONAL STANDING

Nor can Nader establish, as he must, that his so-called injuries “stemm[ed] from the FEC’s dismissal of . . . [plaintiff’s] administrative complaint” and could be remedied by this civil action. *See Judicial Watch*, 180 F.3d at 277 (D.C. Cir. 1999) (per curiam). Because Nader complains here that the Commission failed to pursue his allegations against numerous third parties, causation and redressability are closely related.

When plaintiffs’ claim hinges on the failure of government to prevent another party’s injurious behavior . . . both prongs of standing analysis can be said to focus on principles of causation: fair traceability turns on the causal nexus between the agency action and the asserted injury, while redressability centers on the causal connection between the asserted injury and judicial relief.

Freedom Republicans, Inc. v. FEC, 13 F.3d 412, 418 (D.C. Cir. 1994) (citations omitted).

The Commission obviously did not cause the violations of FECA allegedly committed by the individuals and entities identified in the administrative complaint. Thus, to trace his injuries to the actions challenged in this suit, Nader would have to show that those injuries arose from the Commission’s dismissal of his administrative complaint, not from the alleged actions of his political competitors. *See Lujan*, 504 U.S. at 560-61 (holding that injury “result[ing from] the independent action of some third party” would not be “fairly . . . trace[able] to

the challenged action of the defendant”). He cannot. For the reasons stated previously, the only such injury he even attempts to allege is “informational,” and his allegation in that respect fails as a matter of law to state an injury sufficient to convey standing. *See supra* pp. 5-8.

It is likewise unclear whether any of the harm alleged by Nader is redressable here because the Commission cannot provide the information he seeks regarding illegal contributions. Only the respondents can do so, but given that nearly all, if not all, of the outside groups involved in the alleged conspiracy are now defunct, there would seem to be little likelihood of such disclosures ever being made even if Nader were to prevail here. In any event, as discussed *supra* pp. 7-8, Nader fails to allege or explain how any reputational or campaign injury — much less a state-court attorney-fee award — could be redressed either (1) by receiving information about contributions or expenditures made in 2004 or (2) by having the Commission inform over 100 lawyers that Nader believes they violated the law more than eight years ago.

CONCLUSION

For the foregoing reasons, the Court should hold that Nader lacks standing and should therefore dismiss his appeal for lack of jurisdiction.

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