UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GARCIA FOR CONGRESS, *et al.* Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 3:13-2401-K MEMORANDUM OF LAW

DEFENDANT FEDERAL ELECTION COMMISSION'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

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September 19, 2013

* *Counsel's pro hac vice applications (Docket Nos. 9-12) and the Commission's motion for waiver of fees and the local counsel requirement in Local Rule 83.10 (Docket No. 8) are pending.*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes and Regulations

Miscellaneous

Plaintiffs Garcia for Congress and Swati Patel, in her official capacity as treasurer, (collectively, "the Garcia Committee") challenge an administrative fine of $15,220 that the Federal Election Commission ("FEC" or "Commission") imposed as a penalty for the Garcia Committee's failure to file two mandatory campaign-finance disclosure notices in May 2012. The administrative record confirms that the Garcia Committee failed to timely file both of the statutorily required 48-hour disclosure notifications at issue here. And the amount of the Garcia Committee's fine — $15,220 for failing to timely report two loans by the candidate to his campaign of $100,000 and $50,000, respectively — comports with the regulatory schedule of penalties for 48-hour notices that are not timely filed.

The Garcia Committee does not dispute these critical facts. Instead, the Garcia Committee challenges the Commission's "refus[al] to modify [its] finding or the original civil money penalty" (Compl. ¶ 7 (Docket No. 1)) despite the Garcia Committee's request for "leniency." (Administrative Record ("AR") 007.) But neither the Garcia Committee's assertion of "an unintentional clerical error" nor its concern about how a "fine could delay the Committee's efforts to wind down and terminate the campaign" (*id.*), provided a legal basis for the Commission to excuse the Garcia Committee's reporting violations.

The only question before the Court is whether the Commission's action was reasonably supported by the administrative record. Because that record amply supports the Commission's decision, the Commission is entitled to judgment as a matter of law.

BACKGROUND

I. STATUTORY AND REGULATORY BACKGROUND

A. Reporting Requirements for Political Committees

The Federal Election Campaign Act, 2 U.S.C. §§ 431-457 ("FECA"), requires every "political committee" — which includes candidate campaigns, political parties, and other political organizations, *see* 2 U.S.C. § 431(4)-(6) — to designate a treasurer to maintain the committee's financial records. *See* 2 U.S.C. § 432(a)-(d). The treasurer must sign and file reports that detail, among other things, the committee's receipts and disbursements. 2 U.S.C. § 434(a)-(b). FECA establishes a periodic schedule for such reports. Under that schedule, a candidate committee must file (i) a pre-election report 12 days before the relevant election; (ii) a post-election report 30 days after the relevant election; and (iii) quarterly reports 15 days after each calendar quarter ends, "except that the report for the quarter ending December 31 shall be filed no later than January 31 of the following calendar year." 2 U.S.C. § 434(a)(2)(A)(i)-(iii). Most relevant here, a candidate committee must report in writing "any contribution of $1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after receipt of such contribution . . . ." 2 U.S.C. § 434(a)(6)(A). These are commonly referred to as 48-hour notices. FECA's reporting requirements further "substantial government interests," including, *inter alia*, "provid[ing] the electorate with information as to where political money comes from . . . in order to aid the voters in evaluating those who seek federal office." *Buckley v. Valeo*, 424 U.S. 1, 66-68 (1976) (citation and internal quotation marks omitted).

B. FECA's Enforcement Procedures

The Commission is the independent agency of the United States government with exclusive jurisdiction over the administration, interpretation, and civil enforcement of FECA. *See generally* 2 U.S.C. §§ 437c(b)(1), 437d(a), 437g. FECA establishes a detailed administrative process for the Commission to review alleged violations of the Act. *See* 2 U.S.C. § 437g(a). Under FECA, if at least four Commissioners vote to find "reason to believe" that a violation has occurred, the Commission's General Counsel can conduct an investigation that leads to a recommendation as to whether there is "probable cause to believe" a violation has occurred. 2 U.S.C. § 437g(a)(1)-(3). If at least four Commissioners then vote to find such probable cause, the Commission must attempt to resolve the matter by "informal methods of conference, conciliation, and persuasion, and to enter into a conciliation agreement" with the respondent. 2 U.S.C. § 437g(a)(4)(A)(i). If the Commission is unable to resolve the matter through voluntary conciliation, the Commission may file a civil suit against the respondent in federal district court. 2 U.S.C. § 437g(a)(6).

For more than twenty years, the Commission was required to employ these general enforcement procedures for *all* violations of FECA — even the most straightforward violations in which committees simply failed to file their reports on time (or at all). In 1999, however, Congress amended FECA to create a streamlined enforcement system for violations of the periodic filing requirements. *See* Treasury and General Government Appropriations Act, 2000, Pub. L. No. 106-58, § 640, 113 Stat. 430, 476-477 (1999) (codified at 2 U.S.C. § 437g(a)(4)(C)). Specifically, Congress authorized the Commission to directly assess civil money penalties for violations of 2 U.S.C. § 434(a), which establishes, *inter alia*, the deadlines for political committees' disclosure reports. Pursuant to this authority, after the Commission finds reason to

believe a committee and its treasurer have failed to file a report (or filed a report late), the Commission may

> require the person to pay a civil money penalty in an amount determined under a schedule of penalties which is established and published by the Commission and which takes into account the amount of the violation involved, the existence of previous violations by the person, and such other factors as the Commission considers appropriate.

2 U.S.C. § 437g(a)(4)(C)(i)(II). By eliminating steps such as the probable-cause determination and conciliation period that apply to other FEC enforcement matters, this "administrative fines" program "create[d] a simplified procedure for the FEC to administratively handle reporting violations." H.R. Rep. No. 106-295, at 11 (1999). That procedure, "much like traffic tickets, . . . let[s] the agency deal with minor violations of the law in an expeditious manner." 65 Cong. Rec. H5622 (daily ed. July 15, 1999) (statement of Rep. Maloney).

A respondent who objects to the Commission's imposition of an administrative fine may seek judicial review of that fine in district court "by filing in such court . . . a written petition requesting that the determination be modified or set aside." 2 U.S.C. § 437g(a)(4)(C)(iii).

C. The Commission's Administrative-Fines Regulations

The Commission's administrative-fines regulations establish the schedules of penalties authorized by 2 U.S.C. § 437g(a)(4)(C)(i)(II). *See* 11 C.F.R. §§ 111.43(a)-(c); 111.44. These penalty schedules take into account whether the untimely (or not filed) report was election sensitive, how late it was filed, the dollar amount of the receipts and disbursements it detailed, and the number of prior violations by the respondent. *See* 11 C.F.R. §§ 111.43(a)-(c); 111.44. The schedule of civil penalties for 48-hour notices that are not filed or are filed late is set forth at 11 C.F.R. § 111.44. Under that regulation, the civil penalty for each untimely 48-hour notice is $110 plus ten percent of the amount of the contribution(s) not timely reported. 11 C.F.R. § 111.44(a)(1).

When the Commission finds reason to believe that a political committee has violated 2 U.S.C. § 434(a), the Commission notifies the committee of that finding. 11 C.F.R. § 111.32. The notification includes the factual and legal basis for the finding, the amount of the proposed civil penalty, and an explanation of the respondent's right to challenge both the reason-to-believe finding and the amount of the penalty. *Id.* Upon receipt of this notification, the respondent may either pay the penalty or challenge the finding or the proposed penalty. 11 C.F.R. § 111.33.

If a respondent wishes to challenge the Commission's reason-to-believe finding or the proposed penalty, the respondent must file a written response that "detail[s] the factual basis supporting its challenge and include[s] supporting documentation" within 40 days of the Commission's finding. 11 C.F.R. § 111.35(a), (e). There are three possible grounds for such a challenge: (1) factual errors in the Commission's finding (such as if the report was, in fact, timely filed); (2) inaccurate calculation of the penalty; or (3) a showing that

> The respondent used best efforts to file in a timely manner [but] was prevented from filing in a timely manner by reasonably unforeseen circumstances that were beyond the control of the respondent; and . . . [t]he respondent filed no later than 24 hours after the end of these circumstances.

11 C.F.R. § 111.35(b)(1)-(3). The regulations provide that "reasonably unforeseen circumstances" beyond a filer's control that would satisfy this "best-efforts" defense include events such as natural disasters, 11 C.F.R. § 111.35(b), (c), but do not include causes such as negligence or staff inexperience. *See* 11 C.F.R. § 111.35(d).

Timely filed challenges to the Commission's reason-to-believe finding are reviewed by the Commission's "Reviewing Officer," 11 C.F.R. § 111.36(a), a member of the Commission's staff who is not involved in the reason-to-believe finding. After considering the respondent's submission, along with the reason-to-believe determination and any supporting documentation, 11 C.F.R. § 111.36(b), the Reviewing Officer submits a written recommendation to

the Commission, 11 C.F.R. § 111.36(e), that is also provided to the respondent, 11 C.F.R. § 111.36(f). The respondent may file a written response to the recommendation within ten days. *Id.* That response cannot raise any new arguments beyond those in the original written response, except in direct response to the Reviewing Officer's recommendation. *Id.*

After receiving the Reviewing Officer's recommendation and any timely additional response from the respondent, the Commission makes a final determination by an affirmative vote of at least four Commissioners as to whether the respondent violated 2 U.S.C. § 434(a) and, if so, the amount of the civil penalty. 11 C.F.R. § 111.37(a)-(c). When the Commission makes a final determination under this procedure, the reasons provided by the Reviewing Officer for her recommendation serve as the reasons for the Commission's action, unless otherwise indicated by the Commission. 11 C.F.R. § 111.37(d).

II. THE ADMINISTRATIVE DETERMINATION CHALLENGED IN THIS CASE

Domingo A. Garcia was a candidate in the Democratic Party's 2012 primary campaign for the Texas 33rd District U.S. House of Representatives seat. (Compl. ¶ 7.) Garcia for Congress was Mr. Garcia's principal campaign committee, *see id*; 2 U.S.C. § 431(5), and Swati Patel served as the committee's treasurer.

On March 7, 2012, Garcia for Congress registered with the Commission as the principal campaign committee for Mr. Garcia's congressional campaign. On April 25, 2012, the Commission sent as a courtesy the Primary Election Report Notice to all political committees who had registered to participate in that primary and provided email addresses, including the Garcia Committee, reminding them of the disclosure report filing deadlines for reports associated with the Texas primary, held on May 29, 2012. (*See* AR013-025.) The Garcia Committee's pre-primary report was due on May 17, 2012, *see* 2 U.S.C. § 434(a)(2)(A)(i); AR015, and the

Primary Election Report Notice advised that 48-hour notices for the Texas Primary would be required during the period of May 10 through May 26, 2012. AR015; *see* 2 U.S.C. § 434(a)(6)(A). Mr. Garcia then made two personal loans to his congressional campaign just days before this primary election, transferring $100,000 to his campaign on May 18, 2012, and $50,000 six days later on May 24, 2012. (*See* AR043-045; AR096-098.) Neither of these transfers was publicly reported through the required 48-hour notices before the May 29 Texas primary election. (AR002-007; AR099-102.)

The Garcia Committee filed its July 2012 Quarterly Report with the Commission on July 15, 2012. FEC Form 3, Report of Receipts and Disbursements for an Authorized Committee, Garcia for Congress, July 15, 2012, http://images.nictusa.com/cgi-bin/fecimg/?_12971464213%200. Schedule A of that Report, which contained the Garcia Committee's itemized receipts for the period of May 10 through June 30, 2012, included the May 18 and May 24 personal loans to his campaign. *Id.* at 21; *see* AR043-045.

On August 13, 2012, the Commission sent a letter requesting additional information to Garcia for Congress's treasurer, Swati Patel, regarding plaintiffs' failure to file the required 48-hour notices for the May 18 and 24 contributions disclosed on Schedule A of the Garcia Committee's July 2012 Quarterly Report. 2 U.S.C. § 437g(b); AR043 – 045. Five weeks later, on September 17, the Garcia Committee filed 48-hour notices for those two contributions/loans received. 48 Hour Notice of Contributions/Loans Received, Garcia for Congress, Sept. 17, 2012, http://images.nictusa.com/cgi-bin/fecimg/?_12952926876%200 (disclosing May 18 loan); 48 Hour Notice of Contributions/Loans Received, Garcia for Congress, Sept. 17, 2012, http://images.nictusa.com/cgi-bin/fecimg/?_12972184944%200 (disclosing May 24 loan).[1]

[1] The March 4, 2013 Declaration of Jodi Winship mistakenly states that the Garcia Committee had not filed the required 48-hour notices as of that date. (AR036.) This error, however, does

These belated notices of Mr. Garcia's pre-election loans to his campaign, filed more than three months after both the dates the loans were made and the May 29 Texas primary election, failed to fulfill the statutory requirement to report such campaign contributions "of $1,000 or more . . . within 48 hours after receipt of such contribution." 2 U.S.C. § 434(a)(6)(A). Pursuant to section 111.44(a) of the Commission's regulations, the proper penalty for the Garcia Committee's untimely notification of the two loans was $110 for each contribution, plus ten percent of the amount of the contributions. 11 C.F.R. § 111.44(a)(1). The total penalty calculated under this regulatory formula was $15,220. (AR030.)

In early February 2013, the Commission accepted its staff recommendation and (1) found reason to believe that the Garcia Committee had violated 2 U.S.C. § 434(a) by failing to file the required 48-hour notices; and (2) made a preliminary determination that a civil penalty of $15,220 be assessed. (AR001-006.) The Commission unanimously approved this recommendation on February 7, 2013. (AR006.) The matter was designated as Administrative Fine ("AF") 2636.

The Commission notified the Garcia Committee of its reason-to-believe finding and proposed fine by letter dated February 8, 2013. (AR046-059.) On February 26, 2013, the Garcia Committee submitted a response to the reason-to-believe determination. (AR007.) The Garcia Committee challenged the calculation of the proposed $15,220 civil penalty, requesting "leniency" on the grounds that an "unintentional clerical error on the part of the Committee" caused the non-filing and that the civil penalty "could delay" efforts to wind down and terminate

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not cast any doubt over the propriety of the Commission's final determination in this matter. The Commission's regulations impose the same penalty scheme for 48-hour notices that are "not filed" as it does for those that are "filed late," 11 C.F.R. § 111.44(a)(1), and the Garcia Committee's filing of the 48-hour notices *more than three months late*, on September 17, 2012, indisputably failed to comply with the statutory requirement to file such notices "within 48 hours" of the Committee's receipt of Mr. Garcia's May 2012 loans. 2 U.S.C. § 434(a)(6)(A).

the Garcia campaign. (*Id.*) With respect to the asserted clerical error, the Garcia Committee admitted that "as a result of this error, there was a failure to communicate requisite information to the compliance specialists responsible for filing the notices." (*Id.*) And regarding concerns about wind-down delays, the Garcia Committee stated that Mr. Garcia had contributed or loaned a total of "$2,287,776, or approximately 99% of the total contributions" to his campaign, and asked the Commission to "consider the implications that additional costs" of paying the civil penalty would impose "to not only the campaign, but also the candidate." (*Id.*)

The Commission's Acting Reviewing Officer, Ms. Rhiannon Magruder, received the Garcia Committee's response on March 1, 2013. (AR009-011.) Ms. Magruder forwarded a written recommendation to the Commission and the Garcia Committee on March 11, 2013. (AR060-063; AR064-098.) She noted in her recommendation that 48-hour notices were required for each of the candidate's May 18th and May 24th personal loans to the campaign, and concluded that "negligence is included at 11 C.F.R. §111.35(d) as an example of a circumstance that will not be considered reasonably unforeseen and beyond the respondents' control." (AR066.) In short, the Reviewing Officer concluded that the Garcia Committee's admitted negligence is no defense to its failure to timely file the required 48-hour notices. (*Id.*)

The Garcia Committee declined to submit any response to Ms. Magruder's recommendation. Ms. Magruder then recommended on April 3, 2013, that the Commission make a final determination that the Garcia Committee had violated 2 U.S.C. § 434(a), and assess the civil penalty calculated at the reason-to-believe stage, $15,220. (AR099.) The Commission unanimously voted on May 20, 2013, to adopt the Reviewing Officer's recommendations. (AR102.) The Commission notified the Garcia Committee of its final determination on May 23,

2013 (Compl., Ex. 1; AR103-106), and plaintiffs filed their petition for review with this Court thirty days later, on June 24, 2013.

ARGUMENT

I. STANDARD OF REVIEW

When district courts determine whether a Commission administrative determination should be "be modified or set aside," 2 U.S.C. § 437g(a)(4)(C)(iii), their review is governed by the Administrative Procedure Act ("APA"), 5 U.S.C. § 706. *Cooksey v. FEC,* No. 04-1152, 2005 WL 1630102, at *2 (W.D. La. June 9, 2005) (citing *Miles for Senate Comm. v. FEC,* No. 01-83, 2002 WL 47008 (D. Minn. Jan. 9, 2002)). Under the APA, a reviewing court may set aside final agency action only if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C). Courts determine "whether an agency articulated a rational connection between the facts found and the decision made"; the court is thus limited to reviewing the final agency decision "on the basis articulated by the agency itself." *Pension Benefit Guar. Corp.* ("*PBGC*") *v. Jones Mem. Hosp.,* 374 F.3d 362, 366-67 (5th Cir. 2004).

The arbitrary and capricious standard of review is "highly deferential" and "presumes the validity of agency action." *Nat'l Ass'n of Clean Air Agencies v. EPA,* 489 F.3d 1221, 1228 (D.C. Cir. 2007). Agency determinations supported by "substantial evidence," *i.e.*, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," are not arbitrary or capricious. *Dutka v. AIG Ins. Co.,* 573 F.3d 210, 213 (5th Cir. 2009). Courts should "uphold a decision of less than ideal clarity if the agency's path may be reasonably discerned." *PBGC*, 374 F.3d at 367.

A plaintiff challenging an agency decision "has the burden of proving that the agency's determination was arbitrary or capricious." *Medina Cnty. Envtl. Action Ass'n. v. Surface Transp. Bd.,* 602 F.3d 687, 699 (5th Cir. 2010). "The focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985); *see Luminant Generation Co., LLC. v. EPA,* 714 F.3d 841, 850 (5th Cir. 2013) (same). Thus, the question presented to the court on motions for summary judgment in APA challenges is whether, "on the basis of the administrative record, . . . an agency reasonably could have found the facts as it did." *Cunningham v. FEC,* No. IP-01-0897-C-B/S, 2002 WL 31431557, at *3 (S.D. Ind. Oct. 28, 2002) (citations omitted).

II. THE COMMISSION'S DETERMINATION SHOULD BE AFFIRMED

A. The Administrative Record Establishes That the Garcia Committee Failed to Timely File Its 48-Hour Notices

The Commission's finding that the Garcia Committee failed to timely file two 2012 primary 48-hour notices was a reasonable determination based on the administrative record. The Reviewing Officer's recommendation, which the Commission adopted, described the underlying facts accurately, correctly analyzed the violation, and applied the Commission's administrative-fines regulations appropriately.

The primary evidence on which the Commission relied — Commission records showing that the required notifications were not filed on time and the Garcia Committee's own admission of negligence in meeting its reporting obligations — clearly establishes the reasonableness of the Commission's determination that the Garcia Committee violated its reporting obligations. The Commission correctly determined that the Garcia Committee's 48-hour notices had not been

received by the Commission within 48 hours.[2] In fact, the required 48-hour notices were first filed on September 17, 2012, more than three months after they were due. *See supra* p. 7. And the Commission considered the Garcia Committee's February 26, 2013 response to the Commission's reason-to-believe finding in which the Garcia Committee admitted that the 48-hour notices had not been timely filed because of the Garcia Committee's "failure to communicate requisite information to the compliance specialists responsible for filing notices," which the Garcia Committee characterized as "an unintentional clerical error on the part of the Committee." (AR007.) On the basis of the record, the Commission reasonably concluded that the Garcia Committee failed to timely file the requisite 48-hour notices as a result of its own negligence and then properly verified that the correct civil penalty had been assessed pursuant to 11 CFR § 111.44. (AR065-066; AR099-102.) "Since the record is clear that the relevant factors were considered and the applicable regulations were strictly applied to Plaintiff['s] violations," the Court should conclude that the Commission's final determination and assessment of civil penalties is "supported by a rational basis and does not indicate a clear error of judgment. In light of that conclusion, further analysis is neither required, nor permitted." *Cox for U.S. Senate Comm., Inc. v. FEC,* Civ. No. 03C3715, 2004 WL 783435, at *5 (N.D. Ill. Jan. 22, 2004).

B. The Commission Reasonably Rejected Plaintiffs' Challenge to the Commission's Administrative Findings

The Garcia Committee's February 26, 2013 letter challenging the proposed administrative fine raised two arguments: 1) "that the Committee demonstrated use of 'best efforts,' and that the unfiled reports were due to an unintentional clerical error on the part of the Committee"; and 2) a request for "leniency due to the fact that [Garcia] is in the process of

[2] The Reviewing Officer also noted that the Commission had on April 25, 2012 sent the Garcia Committee the Primary Election Report Notice, which informed all Texas primary candidate committees of their filing obligations. (AR066; AR069-078.)

winding down and any additional financial burden could potentially delay its ability to terminate." (AR007.) The Commission reasonably rejected both arguments, neither of which provided any basis for modifying the proposed administrative finding or civil penalty.

The Commission sensibly determined that the Garcia Committee's "best efforts" argument lacked merit and rejected it. The Commission's regulations provide that an administrative-fines respondent may challenge a reason-to-believe finding on the grounds that the respondent "used best efforts to file in a timely manner" but was prevented from doing so "by reasonably unforeseen circumstances" beyond the respondent's control. 11 C.F.R. § 111.35(b)(3); *see also* 2 U.S.C. § 432(i). The circumstances the Commission considers "reasonably unforeseen" include such systemic failures as a breakdown of Commission computers or Commission-provided software, 11 C.F.R. § 111.35(c)(1); widespread disruptions to the internet (not specific to the respondent or its internet service provider), 11 C.F.R. § 111.35(c)(2); or severe weather or a disaster-related incident, 11 C.F.R. § 111.35(c)(3).[3] The Commission's regulations categorically exclude from the best-efforts defense any errors that arise from the negligence or inexperience of a committee's staff. *See* 11 C.F.R. § 111.35(d).

The Garcia Committee has never alleged that its failure to timely file the 48-hour notices resulted from any of the "unforeseen circumstances" covered by the best-efforts defense. FEC regulations explicitly state that a respondent's own negligence cannot qualify for the best-efforts defense. 11 C.F.R. § 111.35(d). The Commission thus acted reasonably not only in rejecting this

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[3] In addition, the respondent can invoke the best efforts defense only if the report was "filed no later than 24 hours after the end of these circumstances." 11 C.F.R. § 111.35(b)(3)(ii). The Garcia Committee has not claimed that it filed its notices within 24 hours after the conclusion of any unforeseen circumstances. It filed the required 48-hour notices nearly four months later. *See supra* p. 7. "Plaintiffs' failure to report the [candidate] loans during the 48-Hour Reporting Period quite clearly subverted 'substantial governmental interests' furthered by 2 U.S.C. § 434(a)(6)(A)." *Cox for U.S. Senate Comm., Inc.*, 2004 WL 783435 at *14 (declining to modify or set aside $22,150 civil penalty).

defense, but also in finding that the Garcia Committee had failed to timely file the 48-hour notices and assessing the $15,220 civil penalty.

The Commission likewise acted reasonably in rejecting the Garcia Committee's request for "leniency," which has no legal basis in the Commission's administrative-fines regulatory scheme. Even if, as the Garcia Committee asserted, payment of the civil penalty "could delay [the Garcia Committee's] efforts to wind down and terminate the campaign" (AR007), such delays are not a legal basis for excusing a reporting violation. *See* 11 C.F.R. § 111.35(b)(1)-(3) (listing only permissible "grounds for challenging the reason to believe finding or proposed civil penalty," none of which concerns wind-down or termination delays resulting from payment of the penalty).[4]

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[4] To the extent the Garcia Committee's complaint purports to challenge the Commission's administrative determination based on new arguments about an unspecified "safe harbor provision . . . designed to encourage individuals to vote or register to vote" (Compl. ¶ 8), or alleged inconsistencies between the civil penalty at issue here and unspecified fines for other violations by other individuals or committees in other, unrelated cases (Compl. ¶ 11), the Garcia Committee has waived its right to assert such arguments, which were never presented to the Commission during the administrative proceedings under review. Indeed, the Commission's regulations specifically put all administrative-fines respondents on notice that "failure to raise an argument in a timely fashion during the administrative process" constitutes "a waiver of the respondent's right to present such argument in a petition to the district court." 11 C.F.R. § 111.38. This rule is consistent with the reviewing court's limited role of reviewing the final agency decision "on the basis articulated by the agency itself," *PBGC,* 374 F.3d at 367. "'Simple fairness to those who are engaged in the tasks of administration, and to litigants, requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection *made at the time* appropriate under its practice.'" *Cunningham,* 2002 WL 31431557, at *4 (emphasis added) (quoting *United States v. L.A. Tucker Truck Lines, Inc.,* 344 U.S. 33, 37 (1952)). "Thus, any objections not made before the administrative agency are subsequently waived before the courts." *Id.* (citation and footnote omitted).

CONCLUSION

For the foregoing reasons, the Commission's imposition of an administrative fine was reasonable and fully supported by the administrative record. Accordingly, the Garcia Committee's petition to set aside the penalty should be rejected and the Commission's determination should be affirmed.

Respectfully submitted,

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September 19, 2013

CERTIFICATE OF SERVICE

I, Benjamin A. Streeter III, electronically submitted the foregoing document with the Clerk of the Court for the Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

Dated: September 19, 2013

Benjamin A. Streeter III