IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

VOGEL FOR CONGRESS by and through RAY WOLFF, Plaintiff, v. FEDERAL ELECTION COMMISSION, Defendant.	Case No. 1:11-cv-02309-RWR MEMORANDUM

FEDERAL ELECTION COMMISSION'S MEMORANDUM
IN SUPPORT OF ITS MOTION TO DISMISS

Plaintiff "Vogel for Congress by and through Ray Wolff" filed this action under 2 U.S.C. § 437g(a)(8) to challenge the Federal Election Commission's ("Commission" or "FEC") dismissal of Ray Wolff's administrative complaint. This Court, however, lacks subject matter jurisdiction because Wolff filed this action too late and because he lacks standing under Article III. The Commission therefore moves to dismiss this suit pursuant to Fed. R. Civ. P. 12(b)(1).

In his administrative complaint, Wolff alleged that the Indiana Democratic Party ("IDP") mailed flyers to Indiana Second Congressional District voters urging support for Libertarian candidate Mark Vogel without meeting certain disclaimer requirements of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-57 ("FECA" or "Act"). The First Amended Complaint ("Am. Compl.") (Docket No. 2) also claims that the Indiana Democratic Party failed to disclose that its mailing was not authorized by any candidate, in alleged violation of 2 U.S.C. § 441d and 11 C.F.R. §§ 110.11(b), 110.11(d)(3). (Am. Compl. ¶ 9.)

This Court lacks subject matter jurisdiction over this action because Wolff failed to meet the jurisdictional timing requirement of 2 U.S.C. § 437g(a)(8)(B), which requires any petition to review the Commission's dismissal of an administrative complaint to be filed within 60 days of its dismissal. Moreover, Wolff lacks Article III standing to pursue his claim because he alleges no injury-in-fact arising from the 2010 election cycle incident that could be redressed by a favorable decision in this case. Wolff himself was never a candidate for office, and he makes no allegation that he was harmed by IDP or by the Commission's dismissal of his administrative complaint. (*See* Am. Compl. ¶ 2.)

As we explain *infra* pp. 13-16, although "Vogel for Congress" does not appear to be a plaintiff in this action or to have any relevant legal status as an entity, even if it did, it too would lack standing. Vogel for Congress was not the administrative complainant and thus has no statutory standing as a plaintiff under 2 U.S.C. § 437g(a)(8)(A). Moreover, Mark Vogel's 2010 congressional campaign is over, and the Complaint contains no allegation that he intends to run again for that office. Nor does the Complaint allege any injury to Vogel for Congress caused by IDP or the Commission's dismissal of the administrative complaint. (*See* Am. Compl. ¶ 2.) Even if Vogel were to run again for federal office, no order of this Court that the FEC reconsider proceeding against IDP could remedy any injury from the 2010 election cycle.

I. BACKGROUND

A. The Parties

Ray Wolff alleges that he served as the media consultant for Vogel's 2010 campaign. (Am. Compl. ¶ 2.) Mark Vogel was the Libertarian candidate in 2010 for the congressional seat in Indiana's Second District. (*Id.*) However, Vogel never designated in writing any political committee to serve as his principal campaign committee, and Vogel for Congress never

registered as a political committee or filed any disclosure reports with the Commission. *See* 2 U.S.C. § 432(e)(1); Declaration of Nataliya Ioffe ("Ioffe Decl.") ¶ 11 (Exh. A).

The Federal Election Commission is an independent agency of the United States government with exclusive jurisdiction over the administration, interpretation, and civil enforcement of the Act. *See generally* 2 U.S.C. §§ 437c(b)(1), 437d(a), 437g. Congress authorized the Commission to "formulate policy" under FECA, *see, e.g.*, 2 U.S.C. § 437c(b)(1), and to make rules and issue advisory opinions, 2 U.S.C. §§ 437d(a)(7), (8); 437f; 438(a)(8). The Commission is also authorized to institute investigations of possible violations of the Act, 2 U.S.C. §§ 437g(a)(1)-(2), and the agency has exclusive jurisdiction to initiate civil enforcement actions in the United States district courts, 2 U.S.C. §§ 437c(b)(1), 437d(a)(6), 437d(e), 437g(a)(6).

B. Legal Background

1. Procedural Background and Standard of Review

FECA permits any person to file an administrative complaint with the Commission alleging violations of the Act. 2 U.S.C. § 437g(a)(1); *see also* 11 C.F.R. § 111.4. Thus, even though Ray Wolff was neither a candidate for office nor a treasurer of a federal candidate's principal campaign committee, he was still permitted by law to seek administrative relief from the Commission. As required by section 437g(a)(1), Mr. Wolff signed and swore to his administrative complaint. He was the only signatory on the complaint, he signed his name next to the printed words "Complainant Signature," and the complaint was "[r]espectfully submitted" by "Ray Wolff[,] Media Coordinator[,] Vogel for Congress." (Exh. B at 2.)

Administrative complaints can lead to Commission enforcement proceedings and possible civil suit by the agency. *See generally* 2 U.S.C. §§ 437g(a)(2)-(6). However, before the agency may file suit to seek judicial remedies for any FECA violations, the Act requires that the

Commission take the following steps: find "reason to believe" a violation has occurred, conduct an investigation of the matter, find "probable cause to believe" a violation has occurred, and attempt to resolve the matter through conciliation. *See id.; Hagelin v. FEC*, 411 F.3d 237, 239 (D.C. Cir. 2005). The Commission may also find that no violation has taken place or take no further action in administrative enforcement proceedings.

Under 2 U.S.C. § 437g(a)(8)(A), the federal courts have limited judicial review of FEC enforcement decisions. Specifically, administrative complainants who can demonstrate statutory and constitutional standing may file suit to challenge "a failure of the Commission to act on such complaint[s]" within 120 days after the complaint was filed, and may also challenge the dismissal of their complaints by the Commission. 2 U.S.C. § 437g(a)(8)(A). *See, e.g., Citizens for Responsibility and Ethics in Washington v. FEC* ("*CREW*"), 475 F.3d 337 (D.C. Cir. 2007) (dismissing section 437g(a)(8) suit on standing grounds). However, "[a]ny petition under [§ 437g(a)(8)(A)] shall be filed, in the case of a dismissal of a complaint by the Commission, within 60 days after the date of the dismissal." 2 U.S.C. § 437g(a)(8)(B).

If a court reaches the merits of a Commission decision to dismiss an administrative complaint, it "may not disturb a Commission decision to dismiss a complaint unless the dismissal was based on an 'impermissible interpretation of the Act . . . or was arbitrary or capricious, or an abuse of discretion.'" *Common Cause v. FEC*, 108 F.3d 413, 415 (D.C. Cir. 1997) (quoting *Orloski v. FEC*, 795 F.2d 156, 161 (D.C. Cir. 1986)). The sole remedy the district court may grant in such a case is a declaration "that the dismissal of the complaint or the failure to act is contrary to law" and an order "direct[ing] the Commission to conform with such declaration within 30 days." 2 U.S.C. § 437g(a)(8)(C). *See Perot v. FEC*, 97 F.3d 553, 557-558 (D.C. Cir. 1996). If the Commission fails to conform to the court's declaration, the

administrative complainant "may bring, in the name of such complainant, a civil action to remedy the violation involved in the original complaint." 2 U.S.C. § 437g(a)(8)(C). Thus, "[a]part from § 437g(a)(8)(C), there is no private right of action to enforce FECA against an alleged violator." *Perot*, 97 F.3d at 558 n.2 (citations omitted). When the Commission follows the recommendation of its General Counsel and dismisses an administrative complaint, the General Counsel's report to the Commission provides the basis for judicial review. *Carter/Mondale Presidential Comm., Inc. v. FEC*, 775 F.2d 1182, 1186-87 (D.C. Cir. 1985) (rationale for the Commission's action may be "gleaned" from the staff reports) (citing *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 38 & n.19 (1981)).

C. Administrative Procedural History

On or about November 24, 2010, Wolff filed his administrative complaint (Exh. B) with the FEC alleging that the Indiana Democratic Party sent to voters a mailing "that endorsed Libertarian candidate Mark Vogel in the race. The flyer, however, was not authorized by Mr. Vogel or the Vogel for Congress committee and did not include the required disclaimer to this effect." *(Id.* at 1.) The administrative complaint urged that IDP should be "penalized and/or sanctioned accordingly." (*Id*. at 2.)

The Commission's Office of General Counsel designated the administrative complaint as Matter Under Review ("MUR") 6434, sent Wolff an acknowledgment letter, and sent a notification letter to IDP. In response, IDP argued that no candidate disclaimer was required because the mailing was part of volunteer party activity and thus exempt from the disclosure requirements under 11 C.F.R. § 100.147(e).

The Commission's Office of General Counsel prepared a General Counsel's Report ("GCR") recommending that the Commission find no "reason to believe" that IDP violated the

Act and that the Commission close its file in the matter. (Exh. C.) The GCR analyzed the relevant legal and factual issues, including the IDP's responsive submission, and concluded that no disclosure requirements had been violated.

On October 18, 2011, the Commission voted 3-2 to approve the General Counsel's recommendation to find no "reason to believe" that IDP had violated the Act. (Exh. D.) Because a four-vote majority is required to adopt such a recommendation, however, the vote failed. *See* 2 U.S.C. §§ 437c(c), 437g(a)(2). On the same day, the Commission then voted 5-0 to close the file. (Exh. D.) The Commission's Deputy Secretary certified these votes on October 20, 2011. (*Id.*) In a letter dated November 2, 2011, the Office of General Counsel notified Wolff that FECA "allows a complainant to seek judicial review of the Commission's dismissal of this action." (Exh. E.) That letter also specifically informed Wolff that on "October 18, 2011 . . . the Commission decided to close its file in this matter"; enclosed with the letter was the "dispositive General Counsel's Report." (*Id.*)

D. Plaintiff's Judicial Complaint

On December 30, 2011, Wolff filed his Complaint challenging the Commission's dismissal decision. (Docket No. 1.) He requested a finding that the Commission's dismissal was contrary to law and a remand of MUR 6434 to the Commission with an order to conform to the Court's declaration. (*Id.* at 3.) Then, on January 6, 2012, Wolff filed his "First Amended Complaint for Judicial Review of Federal Election Commission Dismissal of Administrative Complaint." (Docket No. 2.) Despite the new title, Wolff's Amended Complaint made virtually no changes to his original complaint.

III. THE COURT SHOULD DISMISS PLAINTIFF'S COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION

The Commission dismissed Wolff's administrative complaint on October 18, 2011, and Wolff filed his judicial Complaint on December 30, 2011 — 73 days after the dismissal. Accordingly, the complaint must be dismissed because it was not filed "within 60 days after the date of the dismissal." 2 U.S.C. § 437g(a)(8)(B). In addition, the Court should dismiss this case because Wolff lacks standing under Article III.

A. Wolff Failed to Meet the Jurisdictional 60-Day Statutory Deadline for Filing His Judicial Complaint

Under Federal Rule of Civil Procedure 12(b)(1), an action must be dismissed if the Court lacks subject matter jurisdiction. *See Auster v. Ghana Airways, Ltd.*, 514 F.3d 44, 48 (D.C. Cir. 2008). "In every case, the jurisdictional requirements of Article III must be present before a court may proceed to the merits. Where both standing and subject matter jurisdiction are at issue, however, a court may inquire into either, and, finding it lacking, dismiss the matter without reaching the other." *Moms Against Mercury v. Food & Drug Admin.*, 483 F.3d 824, 826 (D.C. Cir. 2007) (citations omitted). If jurisdiction is lacking, the Court cannot proceed; its sole remaining duty is to state it lacks jurisdiction and dismiss the case. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). When reviewing motions to dismiss for lack of subject matter jurisdiction, courts review the complaint liberally and grant plaintiffs the benefit of all inferences that can be derived from the facts alleged. *Barr v. Clinton*, 370 F.3d 1196, 1199 (D.C. Cir. 2004). The Court may also consider matters outside the pleadings to evaluate a defendant's challenge to subject matter jurisdiction. *Settles v. U.S. Parole Comm'n*, 429 F.3d 1098, 1107 (D.C. Cir. 2005). *See Morrison v. Amway Corp.*, 323 F.3d 920, 924-925 (11th Cir. 2003). *See also Vink v. Hendrikus Johannes Shijf Rolkan N.V.*, 839 F.2d 676, 677 (Fed.

Cir. 1988) (court may consider affidavits and exhibits without converting the motion to dismiss into a motion for summary judgment).

The D.C. Circuit has unequivocally held that the district courts in this Circuit — the only courts where cases brought under 2 U.S.C. § 437g(a)(8) can be filed — lack jurisdiction if judicial complaints are untimely. *Jordan v. FEC*, 68 F.3d 518 (D.C. Cir. 1995). After noting that "[s]tatutory time limits on judicial review are traditionally considered jurisdictional," the D.C. Circuit held in particular that "a petitioner's failure to comply with the 60-day limit in § 437g(a)(8) divests the district court of jurisdiction." *Id.* at 518-19 (citations omitted).

As noted above, the Commission dismissed Wolff's administrative complaint on October 18, 2011. (Exh. D.) Thus, when Wolff filed his original Complaint before this Court on December 30, 2011, he did so *73 days* after the Commission's dismissal of his administrative complaint. As a result, Wolff failed to comply with the Act's requirement that suits alleging improper dismissals of administrative complaints must be filed "within *60 days* after the date of the dismissal," 2 U.S.C. § 437g(a)(8)(B) (emphasis added), and this Court is without jurisdiction.

Plaintiff erroneously alleges (Am. Comp. ¶ 6) that the dismissal took place on November 2, 2011, presumably based on the date of the General Counsel's notification letter (Exh. E). Any argument based on the date of the notification letter, however, must fail. *Jordan* explicitly rejected the exact same argument:

> Jordan cannot save his case on the ground that the "date of dismissal" in § 437g(a)(8)(B) is the date of a letter from the Commission's general counsel informing him of the Commission's vote, rather than the date of the vote. Our decision in *Spannaus v. Federal Election Commission*, 990 F.2d 643 (D.C. Cir. 1993), is to the contrary. True, *Spannaus* focused on a different issue: whether the 60-day limit in § 437g(a)(8)(B) begins on the date the party *receives* the general counsel's letter. 990 F.2d at 644. But in rejecting that argument, *Spannaus* also implicitly rejected the one Jordan makes here. While the general counsel's letter in *Spannaus* was dated January 18, 1991, *see* Spannaus v. FEC, No. 91-0681, 1992 WL 71402, at *1 (D.D.C. Mar. 25,

> 1992), this court indicated that the 60-day clock began ticking eight days earlier — on the date of the Commission's vote. 990 F.2d at 644.

68 F.3d at 519. As the D.C. Circuit further noted, section 437g(a)(8) "speaks of 'dismissal of a complaint by the Commission.' The general counsel is not 'the Commission'; the only action 'by the Commission' here was the vote to dismiss. Hence, the 'date of dismissal' is the date of the Commission's vote." *Id.* at 519.

Thus, Wolff's filing of his judicial complaint 73 days following the Commission's dismissal of his administrative complaint deprives this Court of subject matter jurisdiction, and the case should therefore be dismissed with prejudice.

B. Wolff Lacks Article III Standing to Challenge the Dismissal of His Administrative Complaint

1. A Party Challenging the FEC's Dismissal of an Administrative Complaint Must Show All the Elements of Constitutional Standing

Article III of the Constitution limits the "judicial power" of the United States to the resolution of "cases" and "controversies." One element of the "'bedrock' case-or-controversy requirement is that plaintiffs must establish that they have standing to sue." *McConnell v. FEC*, 540 U.S. 93, 225 (2003) (*quoting Raines v. Byrd*, 521 U.S. 811, 818 (1997)). Determining standing is a threshold jurisdictional requirement. *Steel Co.*, 523 U.S. at 101-02; *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990); *Kucinich v. Bush*, 236 F. Supp. 2d 1, 3 n.5 (D.D.C. 2002); *The Grand Council of the Crees of Quebec v. FERC*, 198 F.3d 950, 954 (D.C. Cir. 2000). Each court has "an affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority." *Jones v. Ashcroft*, 321 F. Supp. 2d 1, 5 (D.D.C. 2004) (citation omitted).

Subject matter jurisdiction is both a statutory requirement and a constitutional requirement under Article III. *Akinseye v. District of Columbia*, 339 F.3d 970, 971 (D.C. Cir. 2003). Even if Wolff has statutory standing under 2 U.S.C. § 437g(a)(8) because he filed the

underlying administrative complaint, he must independently establish Article III standing. "Section 437g(a)(8)(A) does not confer standing; it confers a right to sue upon parties who otherwise already have standing." *Common Cause,* 108 F.3d at 419; *accord, e.g., CREW*, 475 F.3d at 341; *Judicial Watch, Inc. v. FEC,* 180 F.3d 277 (D.C. Cir. 1999). Article III standing has three requirements: (1) the plaintiff has suffered "an injury in fact," (2) the injury bears a causal connection to the defendant's challenged conduct, and (3) a favorable decision will likely provide the plaintiff redress from that injury. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992). The party bringing the claim bears the burden of establishing all three elements. *Elk Grove Unified Sch. Dist. v. Newdow,* 542 U.S. 1, 12 (2004); *Lujan,* 504 U.S. at 560-61. Wolff meets none of these requirements.

2. Wolff Has Not Alleged an Injury-In-Fact Caused by the Commission's Dismissal of His Administrative Complaint That Could be Redressed by This Court

Wolff has failed entirely to satisfy his burden of demonstrating an injury-in-fact under Article III. First, his complaint does not contain a single allegation describing any concrete and particularized injury he suffered as a result of the Commission's dismissal of his administrative complaint. Although he alleges that IDP's mailer lacked an adequate disclaimer indicating that it was not authorized by Mark Vogel, Wolff never alleges or describes how that mailer, which endorsed Vogel, constitutes an injury-in-fact under Article III to *him*, let alone how an enforcement decision by the Commission has caused him harm. The 2010 election has long been concluded, and no action of the Commission can now change its results or change how Wolff performed his job as Vogel's media coordinator.

Second, because Wolff seeks only declaratory and injunctive relief, his failure to allege any actual or imminent injury that could be redressed by this Court *in the future* is fatal to his

ability to demonstrate constitutional standing. "In actions for injunctive relief, harm in the past . . . is not enough to establish a present controversy, or in terms of standing, an injury in fact." *Am. Society for the Prevention of Cruelty to Animals v. Ringling Bros. and Barnum & Bailey Circus*, 317 F.3d 334, 336 (D.C. Cir. 2003). "Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief." *Tierney v. FEC*, 538 F. Supp. 2d 99, 102 (D.D.C. 2008) (*citing Natural Res. Def. Council v. Pena*, 147 F.3d 1012, 1022 (D.C. Cir. 1998)); *see also O'Shea v. Littleton*, 414 U.S. 488, 495-496 (1974). Wolff makes no claim of future injury-of-fact from the possibility of a repetition of the disputed mailing, nor does he allege that Mark Vogel intends to run for federal office again and that he would again be his media coordinator — or even that Wolff has any personal knowledge of Vogel's future campaign plans.[1]

Third, Wolff cannot successfully demonstrate standing based on an injury-in-fact to *someone else*. *Powers v. Ohio*, 499 U.S. 400, 410 (1991) ("In the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties."). Although Wolff has labeled the plaintiff here as "Vogel for Congress by and through Ray Wolff," he cannot avoid the requirements of Article III — and the general bar on asserting the rights of third parties — merely by conclusorily stating that he is

[1] Vogel has not filed any statement of candidacy with the Commission for the 2012 election cycle, Exh. A at ¶ 11, and Wolff makes no allegation of imminent harm regarding any future candidacy by Vogel. *See McConnell v. FEC*, 540 U.S. 93, 226 (2003) ("Because Senator McConnell's current term does not expire until 2009, the earliest day he could be affected by [the challenged provision] is 45 days before the Republican primary election in 2008. This alleged injury in fact is too remote temporally to satisfy Article III standing."); *cf. Golden v. Zwickler*, 394 U.S. 103, 109-10 (1969) (finding claim nonjusticiable when it was unlikely that a particular congressman would run again for Congress); *Renne v. Geary*, 501 U.S. 312, 321 (1991) (challenge to state law prohibiting endorsements of candidates in local, nonpartisan elections was not ripe because, among other reasons, none of the plaintiffs alleged a concrete plan to endorse any particular candidate in future elections).

acting on behalf of "Vogel for Congress."[2] Standing "focuses on the *complaining party* to determine 'whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.'" *Am. Legal Found. v. FCC*, 808 F.2d 84, 88 (D.C. Cir. 1987) (emphasis added) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). To show standing, a plaintiff must allege facts '"demonstrating that he is a proper party to invoke judicial resolution of the dispute."' *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990) (quoting *Warth*, 422 U.S. at 518). Here, even if the Commission were to proceed further in its enforcement process against IDP in a way that might address *someone's* future injury, any such future impact would not provide a basis for *Wolff's* standing under Article III.

Moreover, given the absence of any claimed injury-in-fact, Wolff cannot sustain his burden of showing that his injury, if any, is traceable to any action of the Commission or redressable by this Court. Wolff brought suit against the Commission, not the entity that sponsored the mailing that is allegedly the direct cause of his injury. When a plaintiff's asserted injury stems from "the government's allegedly unlawful regulation (or lack of regulation) of *someone else*," *Lujan*, 504 U.S. at 562 (1992) (emphasis in original), the "fairly traceable" and redressability prongs of standing analysis require more exacting scrutiny. "[W]hile not necessarily fatal to standing, [the indirectness of injury] "'may make it substantially more difficult to meet the minimum requirements of Art. III: To establish that, in fact, the asserted injury was the consequence of the defendants' actions, or that prospective relief will remove the harm.'" *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 44-45 (1976) (quoting *Warth*, 422 U.S. at 505).

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[2] Even if Wolff could assert rights on behalf of Vogel for Congress, he would still lack standing. As we explain *infra* pp. 13-16, Vogel for Congress was not the administrative complainant and appears to have no legal status as a federal political committee.

In sum, Wolff's complaint is merely a general request that the Commission "get the bad guys," but such a desire, one that for Article III purposes is no more than a generalized call for proper enforcement of the law, is inadequate to establish standing. *Common Cause*, 108 F.3d at 418.

C. Even If "Vogel for Congress" Were a Plaintiff in Its Own Right, It Would Lack Both Statutory and Constitutional Standing

1. "Vogel for Congress" Has No Legal Status as a Candidate's Principal Campaign Committee

The plaintiff in this case, "Vogel for Congress by and through Ray Wolff," is not Mark Vogel, a natural person, who was the 2010 candidate for Congress. Wolff asserts that "Plaintiff Vogel for Congress is a US Congressional campaign committee" (Am. Compl. ¶ 2), but this description has no meaning under FECA. Under the Act, a person becomes a "candidate" when he or she receives more than $5,000 in contributions or makes more than $5,000 in expenditures. 2 U.S.C. § 431(2). And within 15 days of becoming a "candidate," each candidate for federal office "shall designate in writing a political committee . . . to serve as the principal campaign committee of such candidate." 2 U.S.C. § 432(e)(1).[3] Candidates must designate treasurers for these committees, 2 U.S.C. § 432(a), and the treasurers are responsible for complying with certain obligations to maintain accounts, keep records, and make periodic reports of receipts and disbursements to the Commission. *See* 2 U.S.C. §§ 432(c)-(f), 433, 434.

The term "US Congressional campaign committee" does not appear in FECA. Whatever Wolff means by this term, there is no doubt that Mark Vogel never designated any political committee to serve as his principal campaign committee pursuant to 2 U.S.C. § 432(e)(1) in the 2010 election cycle. As described in the attached declaration of Nataliya Y. Ioffe of the FEC's

[3] The terms "political committee," "principal campaign committee," and "authorized committee" are separately defined in FECA. 2 U.S.C. §§ 431(4)-(6).

Reports Analysis Division (Exh. A), a search of the Commission's documents from the 2010 election cycle reveals no records, no registration forms, and no disclosure reports from Mark Vogel or any entity or committee on his behalf, including the so-called "US Congressional campaign committee."[4] As a result, any entity intended to be named with the description "Vogel for Congress by and through Ray Wolff" has no legal significance under FECA.

2. "Vogel for Congress" Has No Statutory Standing in This Case

Whatever its precise legal status, "Vogel for Congress" was not the administrative complainant and therefore would lack statutory standing to bring this case if it had been named separately as a plaintiff in Wolff's Complaint.

As described *supra* p. 3, the administrative complainant below was Ray Wolff, the sole signatory on the administrative complaint and whose signature appears next to the words "Complainant Signature." (Exh. B at 2.) The terms of 2 U.S.C. § 437g(a)(8) plainly permit a petition for judicial review to be filed *only* by the *same* person who filed the administrative complaint. "Any party aggrieved by an order of the Commission dismissing a *complaint filed by such a party* under [2 U.S.C. 437g(a)](1), or by a failure of the Commission to act on *such complaint* during the 120-day period beginning on the date the complaint is filed, may file a petition …." 2 U.S.C. § 437g(a)(8)(A) (emphasis added). Thus, in *Judicial Watch, Inc. v. FEC*, 293 F. Supp. 2d 41, 45 (D.D.C. 2003), the court dismissed a case brought by an organization that had not been a signatory to the administrative complaint, holding that it was "not entitled to seek judicial relief here." Likewise, because Ray Wolff was the only person who signed and swore to the administrative complaint at issue, he is the only person eligible to sue under section 437g(a)(8) — *not* "Vogel for Congress" or "Vogel for Congress by and through Ray Wolff."

[4] The fact that Mark Vogel never designated a principal campaign committee could mean that he never crossed the Act's contribution or expenditure thresholds in 2 U.S.C. § 431(2).

3. Even if "Vogel for Congress" Had Statutory Standing, It Would Still Lack Standing Under Article III

Even if "Vogel for Congress" had been an administrative complainant, it would still lack standing under Article III. Much like the Complaint's inadequate allegations of injury regarding Wolff himself, allegations of injury (past or future) regarding "Vogel for Congress" are absent from the Complaint. (*See* Am. Compl. ¶ 2.) Thus, for much the same reasons that Wolff has failed to satisfy his burden of demonstrating an injury-in-fact under Article III, so has "Vogel for Congress." *See supra* pp. 10-11.

Moreover, because the purported entity "Vogel for Congress" is not a candidate, principal campaign committee, or treasurer of any properly registered candidate's committee, that entity's interest in any future disclaimer violations is no greater than that of the general public. If Vogel had designated a principal campaign committee under 2 U.S.C. § 432(e)(1), such a committee might have had continuing recordkeeping and reporting obligations until it were terminated. *See* 2 U.S.C. § 433(d). Or, it might have been designated as Vogel's principal campaign committee again if he had run for office in 2012. But because "Vogel for Congress" never registered with the Commission, it appears to implicate no continuing or future activities that would have any legal consequences under the Act.[5] This case is thus easily distinguished from *Kean for Congress Comm. v. FEC*, 398 F. Supp. 2d 26 (D.D.C. 2005). There the court held that the "numerous FEC regulations found pertaining to formation, pre-election activity, post-election activity, and termination of a candidate committee indicate that the candidate committee is far from moribund after the date of the election." *Id.* at 39.

[5] "Vogel for Congress" appears never to have been a cognizable legal entity, let alone had formal status as a principal campaign committee or any other kind of federal political committee. Thus, even if "Vogel for Congress" ever had some function, it became moribund with the end of the 2010 election cycle.

Finally, even if Vogel were to announce that he is again running for federal office, that fact alone would not suffice to give "Vogel for Congress" standing to pursue this challenge involving a past injury. Former candidates who challenge FEC dismissals of their administrative complaints about allegedly unlawful obstacles to their past electoral success lack standing unless they can show that the relief they seek would actually redress their alleged injuries. *See Tierney*, 538 F. Supp. 2d at 102-103 (an accounting of state party's past disbursements and an order restoring funds to that party would not remedy former federal candidate's alleged injury in not receiving the party's past support or any potential injury from failing to receive support in the future). Here, even if the Court were to remand to the Commission with a declaration that the agency's dismissal had been contrary to law, and even if the Commission then pursued an enforcement action against the IDP, it is highly speculative that such a determination would help "Vogel for Congress." As explained *supra* p. 11, an injury in the past cannot provide the requisite injury-in-fact to obtain prospective relief. The hypothesis that a Commission determination that IDP should have included an additional disclaimer in the disputed 2010 mailing would affect any future electoral contest in which Vogel might compete is no more than baseless surmise, and even the Amended Complaint fails to include any such speculation.[6]

In sum, because Wolff has established neither an injury-in-fact, traceability, nor redressability, the Court is without subject matter jurisdiction and the Commission's motion to dismiss should be granted.

[6] Any such assertion would be particularly speculative here, given that the mailer actually *endorsed* Vogel's 2010 candidacy.

IV. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court dismiss the complaint in this matter with prejudice for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).

Respectfully submitted,

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