UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AB PAC, Plaintiff, v. FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 22-2139 (TJK) MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

FEDERAL ELECTION COMMISSION'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS PARTIAL MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Lisa J. Stevenson
(D.C. Bar No. 457628)
Acting General Counsel
lstevenson@fec.gov

Kevin Deeley
Associate General Counsel
kdeeley@fec.gov

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Jacob Siler (D.C. Bar No. 1003383)
Assistant General Counsel
jsiler@fec.gov

Shaina Ward (D.C. Bar No. 1002801)
Attorney
sward@fec.gov

FEDERAL ELECTION COMMISSION
1050 First Street NE
Washington, DC 20463
(202) 694-1650

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The Federal Election Commission ("Commission" or "FEC") respectfully files this partial motion to dismiss plaintiff's Amended Complaint for Declaratory and Injunctive Relief ("Am. Compl.") (Docket No. 14) pursuant to Federal Rule of Civil Procedure 12(b)(1). Plaintiff AB PAC alleges that the FEC has failed to act on an administrative complaint in violation of 52 U.S.C. § 30109(a)(8). According to AB PAC, the underlying administrative complaint named a sole respondent — former president Donald J. Trump — and alleged that he violated the Federal Election Campaign Act of 1971 ("FECA") by making expenditures to advance a 2024 campaign for President without filing a statement of candidacy with the FEC or disclosing those expenditures and by accepting excessive contributions from his leadership PAC and a joint fundraising committee.

The FEC moved to dismiss plaintiff's original Complaint to the extent it sought an order compelling the Commission to act on any administrative complaint alleging Trump accepted excessive contributions in violation of 52 U.S.C. § 30116(f) because plaintiff failed to establish that the Commission's inaction deprived AB PAC of any information required to be disclosed, AB PAC could not establish that it was a competitor of Trump, and there was no other sufficient injury-in-fact to support Article III standing. Rather than oppose that motion, plaintiff amended its complaint to bolster allegations involving certain political action committees, or PACs, that were not described as respondents in the administrative complaint and who are allegedly benefiting from Trump's alleged FECA violations. Notwithstanding these amendments, however, plaintiff's amended complaint suffers from the same critical defect as its original one.

First, AB PAC does not suffer a competitive disadvantage from the Commission's alleged inaction on its administrative complaint against Trump because AB PAC does not itself seek elective office or nominate candidates for election, and therefore does not compete with

Trump. Second, Trump is the only respondent in plaintiff's administrative complaint. The purported injury to AB PAC that plaintiff alleges — that a lack of enforcement by the FEC against Trump increased competition from the PACs — is too remote and speculative to support standing under Article III. The FEC's Motion should be granted.

BACKGROUND

I. THE FEC AND FECA'S ADMINISTRATIVE ENFORCEMENT PROCESS

The FEC is a six-member, independent agency of the United States government with "exclusive jurisdiction" to administer, interpret, and civilly enforce FECA. *See generally* 52 U.S.C. §§ 30106, 30107. Congress authorized the Commission to "formulate policy" with respect to FECA, *id.* § 30106(b)(1); "to make, amend, and repeal such rules . . . as are necessary to carry out the provisions of [FECA]," *id.* §§ 30107(a)(8), 30111(a)(8); and to investigate possible violations of the Act, *id.* § 30109(a)(1)-(2). The Commission has exclusive jurisdiction to initiate civil enforcement actions for violations of the Act in the United States district courts. *Id.* §§ 30106(b)(1), 30109(a)(6).

FECA permits any person to file an administrative complaint with the Commission alleging a violation of the Act. *Id.* § 30109(a)(1); *see also* 11 C.F.R. § 111.4. After reviewing the complaint and any response filed by the respondent, the Commission considers whether there is "reason to believe" that FECA has been violated. 52 U.S.C. § 30109(a)(2). If at least four of the FEC's six Commissioners vote to find such reason to believe, the Commission may investigate the alleged violation; otherwise, the Commission dismisses the administrative complaint. *Id.* §§ 30106(c), 30109(a)(2).

If the Commission votes to proceed with an investigation, it then must determine whether there is "probable cause" to believe that FECA has been violated. *Id.* § 30109(a)(4)(A)(i). Like a reason-to-believe determination, a determination to find probable cause to believe that a

violation of FECA has occurred requires an affirmative vote of at least four Commissioners. *Id.* §§ 30106(c), 30109(a)(4)(A)(i). If the Commission so votes, it is statutorily required to attempt to remedy the violation informally and attempt to reach a conciliation agreement with the respondent. *Id.* Entering into a conciliation agreement requires an affirmative vote of at least four Commissioners and such an agreement, unless violated, operates as a bar to any further action by the Commission related to the violation underlying that agreement. *Id.* § 30109(a)(4)(A)(i). If the Commission is unable to reach a conciliation agreement, FECA authorizes the agency to institute a *de novo* civil enforcement action in federal district court. *Id.* § 30109(a)(6)(A). The institution of a civil action under section 30109(a)(6)(A) requires an affirmative vote of at least four Commissioners. *Id.*

FEC administrative enforcement matters are required by FECA to be kept confidential until the administrative process is complete. 52 U.S.C. § 30109(a)(12)(A) ("Any notification or investigation made under this section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made."); 11 C.F.R. § 111.21. FECA further provides for the imposition of a fine on "[a]ny member or employee of the Commission, or any other person, who violates" section 30109(a)(12)(A). 52 U.S.C. § 30109(a)(12)(B).

If, at any point in the administrative process, the Commission determines that no violation has occurred or decides to dismiss the administrative complaint for some other reason, FECA provides the complainant with a narrow cause of action for judicial review of the Commission's dismissal decision. *See id.* § 30109(a)(8)(A) (detailing the procedure for seeking judicial review of an administrative dismissal and the scope of such review). That statutory provision also allows a party who has filed an administrative complaint with the Commission,

after 120 days, to bring a civil action in this District alleging that the Commission has "fail[ed] to act" on its complaint. *Id*. § 30109(a)(8)(A).

FECA expressly limits the scope of relief available to a plaintiff challenging an FEC dismissal decision or alleging that the Commission has failed to act on an administrative complaint. The reviewing court may only (a) declare that the Commission's failure to act or dismissal was "contrary to law" and (b) order the Commission to "conform with" the court's declaration within 30 days. 52 U.S.C. § 30109(a)(8)(C).

II. AGENCY PROCEEDINGS RELATED TO PLAINTIFF'S ADMINISTRATIVE COMPLAINT

Plaintiff AB PAC alleges that it is a hybrid political action committee ("PAC") that is registered with the FEC. (Am. Compl. ¶ 17.)[1] According to the Amended Complaint, AB PAC supports Democratic candidates by conducting research on Republican candidates, which it releases to the public and the media. (*Id.* ¶ 18.) Plaintiff alleges that it tracks Republican candidates and makes independent expenditures in support of Democratic candidates. (*Id.*) Plaintiff further alleges that it spent tens of millions of dollars on communications opposing Trump and supporting then-candidate President Joseph Biden in the 2020 presidential election. (*Id.*) Additionally, plaintiff alleges that in the 2024 presidential election, AB PAC again plans to make independent expenditures opposing the Republican nominee and supporting the Democratic nominee. (*Id.*) Plaintiff alleges that it "directs most of its operations in competition with Republican candidates and PACs." (*Id.* ¶ 20.) However, AB PAC does not allege that it

[1] A "hybrid PAC" is a committee that accepts funds and makes contributions to candidates subject to FECA's amount and source limitations but that also maintains a separate bank account to deposit and spend unlimited funds on independent expenditures and from sources such as labor unions or corporations that would otherwise be barred from being contributed to candidates. *See Carey v. FEC*, 791 F. Supp. 2d 121, 131-32 (D.D.C. 2011).

nominates candidates for federal office, and as an artificial entity, it is not itself eligible to stand for election.

Plaintiff alleges that it filed an administrative complaint with the FEC on March 17, 2022. (*Id.* ¶ 1.) Plaintiff's administrative complaint asserted two categories of potential FECA violations that it asked the Commission to investigate. (*Id.* ¶¶ 49-53.) The first category alleges that Trump is a "candidate" for the president in the 2024 election cycle, and he has therefore violated FECA's requirement that candidates for federal office file a statement of candidacy and campaign finance disclosure reports identifying his contributions and expenditures. (*See id.* ¶ 52 (citing 52 U.S.C. §§ 30102(e)(1) and 30104).) The second category alleges that Trump has accepted excessive contributions above FECA's dollar amount limitations for his purported 2024 presidential campaign from an entity called "Save America" — his leadership PAC — and a joint fundraising committee because those entities spent more than $5,000 on alleged in-kind contributions. (*Id.* ¶ 53 (citing 52 U.S.C. § 30116(f).) Plaintiff's administrative complaint requests that the Commission "(1) investigate the allegations against Mr. Trump, (2) compel disclosure of any expenditures made to support Mr. Trump's candidacy, (3) enjoin Mr. Trump from further violations, and (4) fine Mr. Trump the maximum amount permitted by law." (*Id.* ¶ 10.) In this Court, plaintiff seeks a declaration "that the FEC's failure to act" is "contrary to law" under 52 U.S.C. § 30109(a)(8)(A) & (C). (Am. Compl. ¶ 7.) Plaintiff also seeks "declaratory and injunctive relief" to compel the Commission "to act on Plaintiff's administrative complaint" within 30 days. (*Id.*; *see also* Am. Compl. Requested Relief ¶¶ 1-4.)

On July 20, 2022, plaintiff filed its original Complaint in this Court against the Commission alleging that the Commission has failed to act on its administrative complaint. (*See* Pl.'s Complaint for Declaratory and Injunctive Relief (Docket No. 1).) On September 26, 2022,

the Commission filed a partial motion to dismiss plaintiff's complaint asserting that plaintiff failed to establish Article III standing on its excessive contribution claim and therefore this portion of the complaint must be dismissed. (*See* Docket No. 12.) Thereafter, pursuant to Rule 15 of the Federal Rules of Civil Procedure, plaintiff filed the Amended Complaint.

ARGUMENT

I. AB PAC LACKS ARTICLE III STANDING TO COMPEL THE COMMISSION TO ACT ON ITS EXCESSIVE CONTRIBUTION CLAIM

A. Standard of Review

A plaintiff bears the burden of demonstrating that it has properly invoked this Court's subject-matter jurisdiction. *See Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015). A motion to dismiss for lack of standing is properly considered under Rule 12(b)(1), as lack of standing is a "defect in subject matter jurisdiction." *Haase v. Sessions*, 835 F.2d 902, 906 (D.C. Cir. 1987); *M.J. v. District of Columbia*, 401 F. Supp. 3d 1, 7-8 (D.D.C. 2019). When deciding a motion under Rule 12(b)(1), a court must accept all well-pleaded factual allegations in the complaint as true. *See Jerome Stevens Pharms., Inc. v. FDA*, 402 F.3d 1249, 1253 (D.C. Cir. 2005). Because the court has "an affirmative obligation to ensure that it is acting within the scope of its jurisdictional authority," however, the factual allegations in the complaint "will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim." *Grand Lodge of the Fraternal Ord. of Police v. Ashcroft*, 185 F. Supp. 2d 9, 13-14 (D.D.C. 2001) (internal quotation marks omitted); *see also Nat'l Ass'n for Latino Cmty. Asset Builders v. Consumer Fin. Prot. Bureau*, 581 F. Supp. 3d 101, 104 (D.D.C. 2022) (same). As the party bringing suit, AB PAC bears the burden of establishing standing. *Attias v. Carefirst, Inc.*, 865 F.3d 620, 625 (D.C. Cir. 2017).

To have Article III standing a plaintiff must establish: (1) it has "suffered an 'injury in fact[,]" which the Supreme Court defines as "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not [merely] conjectural or hypothetical," *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal citations and quotation marks omitted); (2) that there is a "causal connection between the injury and the conduct complained of[,]" which requires the injury to be "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court," *id.* (internal quotation marks and alterations omitted); and (3) that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* (internal quotation marks omitted). These three components of the Article III "case or controversy" requirement are designed to ensure that the "plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant *his* invocation of federal court jurisdiction and to justify [the] exercise of the court's remedial powers on his behalf." *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976) (internal quotation marks omitted). Moreover, "standing is not dispensed in gross" and "a plaintiff must demonstrate standing 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 alterations omitted).

Where a plaintiff asserts a procedural right, he must show that he has suffered a personal and particularized injury that impairs one of his concrete interests. *Int'l Bhd. of Teamsters v. TSA*, 429 F.3d 1130, 1135 (D.C. Cir. 2005). "[D]eprivation of a procedural right without some concrete interest that is affected by the deprivation — a procedural right *in vacuo* — is insufficient to create Article III standing." *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009).

In the context of a failure-to-act claim pursuant to 52 U.S.C. § 30109(a)(8)(A), it is not enough for a plaintiff to allege that the Commission has not acted on an administrative complaint. That is so because section 30109(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) (per curiam). Rather, a plaintiff bringing a failure-to-act claim under section 30109(a)(8)(A) must allege that it suffered some additional concrete injury beyond the mere alleged agency inaction. *See Campaign Legal Ctr. v. FEC*, 860 F. App'x 1, 4-5 (D.C. Cir. 2021) (per curiam).

B. AB PAC Does Not Have Standing to Ask This Court to Compel the Commission to Enforce a Contribution Limit Against a Third Party

As an initial matter, plaintiff cannot rely on its abstract desire to see the law enforced against Trump in its preferred matter to establish Article III standing on its excessive contribution claim. A plaintiff's interest in "seeing that the laws are enforced" is not "legally cognizable within the framework of Article III." *Sargent v. Dixon*, 130 F.3d 1067, 1069 (D.C. Cir. 1997); *see Lujan*, 504 U.S. at 573-74. As to its excessive contribution claim, AB PAC does not allege that the Commission's lack of administrative action causes it to be deprived of information to which it believes it is entitled. Nor could it, because even if the Commission brought a successful enforcement action based on AB PAC's allegations that Trump had accepted excessive contributions, no additional disclosure would result. *See Citizens for Resp. & Ethics in Wash. v. FEC*, 267 F. Supp. 3d 50, 53 (D.D.C. 2017) ("Plaintiffs have alleged no facts that they were harmed by the money spent by Murray Energy PAC or by the direct donations that Murray Energy employees gave. The particularized harm they plead is not about the money in politics but about the lack of information about that money.").

The relief AB PAC seeks is for this Court to compel the FEC to enforce a contribution limit against a political candidate it opposes. Such concerns cannot be the basis for standing because there is no "justiciable interest in having the Executive Branch act in a lawful manner." *Common Cause*, 108 F.3d at 419. AB PAC has no Article III right to seek "a legal conclusion that carries certain law enforcement consequences" for others. *Wertheimer v. FEC,* 268 F.3d 1070, 1075 (D.C. Cir. 2001). "While 'Congress can create a legal right . . . the interference with which will create an Article III injury,' . . . Congress cannot . . . create standing by conferring 'upon *all* persons . . . an abstract, self-contained, noninstrumental 'right' to have the Executive observe the procedures required by law.'" *Common Cause,* 108 F.3d at 418 (quoting *Lujan*, 504 U.S. at 573) (emphasis in original, internal citation omitted).

C. AB PAC Lacks Standing to Pursue Its Claim of Excessive Contributions Because it is Not a Competitor Candidate

In its Amended Complaint, AB PAC alleges that the Commission's nonenforcement against Trump places it and the future Democratic nominee for president at a competitive disadvantage. (Am. Compl. ¶ 3 (arguing that Trump's "failure to declare his candidacy in accordance with the law and acceptance of unlawful contributions provides him with a competitive edge over the Democratic candidate in the 2024 presidential election"); *id.* ¶ 6 (alleging Trump has "an unlawful head start against his opponents"); *id.* ¶ 13 (alleging that "the Commission's inaction is allowing one candidate to build a campaign with illegal funds" provides a competitive advantage).) Even assuming it were the case that a Democratic candidate were injured by the Commission's alleged inaction, that would not support *AB PAC's* standing because it is not a candidate and does not compete directly with Trump. The D.C. Circuit's cases have applied competitor standing for "already established candidates . . . to challenge an 'assertedly illegal benefit' being conferred upon someone with whom those candidates compete."

See Hassan v. FEC, 893 F. Supp. 2d 248, 254 n.6 (D.D.C. 2012); *see also Shays v. FEC*, 414 F.3d 76, 85 (D.C. Cir. 2005) (finding standing for members of Congress who intended to run for reelection and were challenging FEC regulations applicable to candidates and political parties). But those cases do not extend standing to the established candidate's political supporters.

Plaintiff's allegation that it is injured because a hypothetical candidate it intends to support will be at a fundraising disadvantage (*see, e.g.*, Am. Compl. ¶ 3) does not establish competitor standing for AB PAC. In *Gottlieb v. FEC*, the D.C. Circuit concluded that a PAC lacked standing as a competitor to challenge the use of public matching funds by a candidate it opposed "because it was never in a position to receive matching funds itself." 143 F.3d 618, 621 (D.C. Cir. 1998). "*Only another candidate* could make such a claim." *Id.* (emphasis added). As the *Gottlieb* court reasoned, competitor standing "require(s) that the plaintiff 'show that he personally competes in the same arena with the same party to whom the government has bestowed the assertedly illegal benefit.'" *Id.* (quoting *In re U.S. Catholic Confer.*, 885 F.2d 1020, 1029 (2d Cir. 1989)). Similarly, in *Fulani v. Brady*, the court concluded that a minor party candidate for President could not establish competitor standing to challenge the tax-exempt status of the sponsor of the Presidential debates, which had excluded her from participating, because she was not in competition for that benefit. *See* 935 F.2d 1324, 1327-28 (D.C. Cir. 1991). As these cases demonstrate, it is not enough for AB PAC to claim that a candidate it supports will be at a disadvantage in raising money. AB PAC must also allege that *it* is denied the benefit of the purported nonenforcement of contribution limits that Trump is receiving.

Plaintiff cannot make that showing because it is not among Trump's competitors in any election. AB PAC cannot allege, for example, that it must comply with a contribution limitation that the Commission is not enforcing against Trump. As a hybrid PAC, plaintiff is permitted to

raise contributions into a separate account for independent expenditures which are not subject to the amount and source limitations FECA places on candidates. *See Carey v. FEC*, 791 F. Supp. 2d 121, 131-32 (D.D.C. 2011). Absent being denied a benefit a similarly situated party received, moreover, AB PAC is not injured merely because Trump raises and spends more money than plaintiff would like. *Cf. Davis*, 554 U.S. at 741-42; *McConnell v. FEC*, 540 U.S. 93, 227-28 (2003) (holding that plaintiff lacked competitive injury because they did '"not wish to solicit or accept large campaign contributions permitted by"' federal law).

Nor may AB PAC rely on its allegation that it will voluntarily "spend more money on independent expenditures supporting the 2024 Democratic presidential nominee" if the Commission does not enforce FECA in the way it desires against a differently situated person. (Am. Compl. ¶ 14.) Those increased expenditures result not from any cognizable injury but from AB PAC's voluntary decision to counteract others' spending decisions. *See People for the Ethical Treatment of Animals v. U.S. Dep't of Agric.*, 797 F.3d 1087, 1103 (D.C. Cir. 2015) (Millett, J., dubitante) ("[W]here concerns about governmental action that was not targeted at the plaintiffs did not constitute an Article III injury, the costs voluntarily incurred in response to those concerns could not fill the gap either."); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 417 (2013).

To be sure, AB PAC alleges that it is an ideological opponent to Trump and desires a different candidate to be elected president in 2024. But a political action committee like AB PAC lacks competitor standing to challenge a benefit given to a candidate if that benefit is granted solely to candidates, because they are not competitors in the same "arena." *See Gottlieb*, 143 F.3d at 621. It therefore cannot rely on its ideological opposition to Trump's candidacy to

establish competitor standing with regard to the excessive contribution claims it alleges it made to the Commission.

D. AB PAC's Allegations About the Activity of Other PACs do Not Establish Standing

Plaintiff's Amended Complaint additionally alleges that Save America, a joint fundraising committee, and other unspecified independent expenditure-only committees are allegedly illegally raising money with Trump's support. (*See, e.g.*, Am. Compl. ¶¶ 3, 6, 21-22.) In addition to its allegations against Trump, plaintiff now claims that it "competes on several metrics with" the "entire political ecosystem of Republican PACs, Super PACs, and candidates" to whom Trump's allegedly unlawful fundraising practices flow. (*Id.* ¶ 22; *see also id.* ¶ 13 ("[T]he Commission's inaction is allowing one candidate to build a campaign with illegal funds and to raise unlimited funds for independent expenditure-only committees that support him.").) Plaintiff further asserts that its "expenditure strategy is in part informed by the behavior of Republican PACs." (*Id.* ¶ 20). Therefore, plaintiff claims, it is at a competitive disadvantage as a result because "[a] candidate who solicits unlimited funds for independent expenditure-only committees that will support that candidate also benefits from increased independent expenditures," and "[t]he candidate's opponents, who are abiding by FECA, are at a disadvantage." (*Id.* ¶ 21). These allegations do not cure plaintiff's lack of standing, however.

Even assuming AB PAC is a competitor in "the entire political ecosystem," its allegations about Republican PACs and Super PACs cannot directly support its claim of injury from lack of enforcement because AB PAC does not allege it asked the Commission to pursue anyone other than Trump. Critically, AB PAC's filings indicate that Trump is the only identified respondent in plaintiff's administrative complaint. (Am. Compl., Exh. 1, at 1 (identifying "Donald J. Trump" as sole respondent).) AB PAC's requested relief was directed solely at Trump, asking

that the Commission "enjoin Mr. Trump from further violations" with no mention of any relief it was requesting as to any PAC. (*Id.* at 11.) As a result, the Court does not have jurisdiction to consider allegations about unnamed respondents, including any named or unnamed PACs alluded to in plaintiff's amended complaint. *See Citizens for Resp. & Ethics in Wash. v. FEC*, 363 F. Supp. 3d 33, 40 (D.D.C. 2018) ("the language of [Section 30109(a)(8)] does not reflect any intent on the part of Congress to provide for judicial review of the agency's exercise of its discretion to decline to pursue the facts beyond the four corners of the administrative complaint."). Here too, plaintiff "cannot expand the scope of their administrative complaint now by reading words into it that were not there." *Id.* at 42; *see also Citizens for Resp. & Ethics in Wash. v. Am. Action Network*, 410 F. Supp. 3d 1, 20 (D.D.C. 2019), *on reconsideration*, No. 18-cv-945 (CRC), 2022 WL 612655 (D.D.C. Mar. 2, 2022) (same).

Moreover, any alleged injury from the purported benefit of nonenforcement that "flow[s]" to any PAC is too attenuated and speculative to establish standing. Am. Compl. ¶ 22; *see Lujan*, 504 U.S. at 560. The D.C. Circuit has held that a party seeking competitor standing must be a "'direct and current competitor.'" *KERM, Inc. v. FCC*, 353 F.3d 57, 60 (D.C. Cir. 2004) (*quoting New World Radio, Inc. v. FCC*, 294 F.3d 164, 170 (D.C. Cir. 2002)). The D.C. Circuit has not extended competitor standing to the type of allegations plaintiff asserts here against these so-called "competitor" PACs. Plaintiff asserts that the alleged benefits Trump has received "flow freely from Mr. Trump to the entire political ecosystem of Republican PACs, Super PACs, and candidates that AB PAC must expend resources to monitor and with whom AB PAC competes on several metrics, including spending on independent expenditures in support of preferred candidates." (Am. Compl. ¶ 22.) However, whether these PACs have gained a competitive advantage over plaintiff because of Trump's alleged campaign-finance violations is

far too speculative to constitute injury-in-fact and incapable of being redressed by this Court. *Gottlieb*, 143 F.3d at 621 (concluding that an allegation on injury to four voters "'ability to influence the political process' rests on gross speculation and is far too fanciful to merit treatment as an 'injury in fact.'").

AB PAC further speculates that a "candidate who flouts campaign finance laws . . . *may* amass more money" for his own campaign and Super PACs supporting it. (Am. Compl. ¶ 21 (emphasis added).) But a Super PAC is permitted to raise unlimited funds for independent expenditures regardless of Trump's candidacy status. It is equally plausible that a Super PAC supporting Trump could raise the same amount of funds even had Trump declared his candidacy.

At base, plaintiff claims that it would not face unfair competition from rival PACs if (1) the Commission concluded Trump meets FECA's candidacy definition; (2) Trump filed a statement of candidacy and abided by FECA's limits on candidates, either through a conciliation agreement or through successful enforcement litigation; (3) Republican PACs supporting Trump had their fundraising levels affected. But what affect a Commission enforcement action against Trump would have on third parties outside the scope of plaintiff's administrative complaint is too speculative and attenuated to support Article III standing.

CONCLUSION

For all the foregoing reasons, the Court should dismiss plaintiff's amended complaint to the extent it seeks an order compelling the Commission to act on any administrative complaint alleging Trump accepted excessive contributions in violation of 52 U.S.C. § 30116(f).

Respectfully submitted,

Lisa J. Stevenson (D.C. Bar No. 457628)
Acting General Counsel
lstevenson@fec.gov

Jacob Siler (D.C. Bar No. 1003383)
Assistant General Counsel
jsiler@fec.gov

Kevin Deeley
Associate General Counsel
kdeeley@fec.gov

November 4, 2022

/s/ *Shaina Ward*
Shaina Ward (D.C. Bar No. 1002801)
Attorney
sward@fec.gov

FEDERAL ELECTION COMMISSION
1050 First Street NE
Washington, DC 20463
(202) 694-1650