UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPUBLICAN PARTY OF LOUISIANA, *et al.*,	)	
Plaintiffs,	)	Civ. No. 15-1241 (CRC-SS-TSC)
v.	)	
FEDERAL ELECTION COMMISSION,	)	MOTION TO DISSOLVE OR DISMISS
Defendant.	)	

DEFENDANT FEDERAL ELECTION COMMISSION'S MOTION TO DISSOLVE THREE-JUDGE COURT WITH INSTRUCTIONS TO DISMISS OR, ALTERNATIVELY, TO DISMISS ACTION

Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, defendant Federal Election Commission ("Commission") respectfully moves this Court for an order dissolving this three-judge Court for lack of jurisdiction, with instructions to the single-judge Court to dismiss the case or, alternatively, to enter an order dismissing the action. Plaintiffs lack a fundamental component of constitutional standing: actual injury. In support of this motion, the Commission is filing a supporting Memorandum, Exhibits, and a Proposed Order.

Consistent with the schedule established by the Court, on March 18, 2016, the Commission will be separately filing its motion for summary judgment and opposition to plaintiffs' summary judgment motion.

Respectfully submitted,

Daniel A. Petalas (D.C. Bar No. 467908)
Acting General Counsel
dpetalas@fec.gov

Seth Nesin
Attorney
snesin@fec.gov

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

Kevin Deeley
Acting Associate General Counsel
kdeeley@fec.gov

Harry J. Summers
Assistant General Counsel
hsummers@fec.gov

March 15, 2016

Greg J. Mueller (D.C. Bar No. 462840)
Attorney
gmueller@fec.gov

/s/ Charles Kitcher
Charles Kitcher (D.C. Bar No. 986226)
Attorney
ckitcher@fec.gov

COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, DC 20463
(202) 694-1650

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPUBLICAN PARTY OF LOUISIANA, *et al.*,	)	
Plaintiffs,	)	Civ. No. 15-1241 (CRC-SS-TSC)
v.	)	
FEDERAL ELECTION COMMISSION,	)	MEMORANDUM
Defendant.	)	

DEFENDANT FEDERAL ELECTION COMMISSION'S MEMORANDUM IN SUPPORT OF MOTION TO DISSOLVE THREE-JUDGE COURT WITH INSTRUCTIONS TO DISMISS OR, ALTERNATIVELY, TO DISMISS ACTION

Plaintiffs have shown no injury, and thus have no standing to maintain this challenge, because they have no funds that they have alleged they want to use in a manner prohibited by the Federal Election Campaign Act, 52 U.S.C. §§ 30101-30146 ("FECA" or "Act"), and no reasonable prospect of obtaining such funds. Plaintiffs are a state committee of a political party, the Republican Party of Louisiana ("LAGOP"), and two local party organizations, the Jefferson Parish Republican Parish Executive Committee ("JPGOP") and the Orleans Parish Republican Executive Committee ("OPGOP"). They wish to raise and spend funds for use on communications and other activities affecting federal elections without complying with the longstanding contribution limits of FECA.

Discovery has now established that there is only one source of nonfederal funds that plaintiffs wish to use on their desired federal activity: individual contributions in excess of FECA's $10,000 limit. But plaintiffs have no such contributions or contributors ready to give them such sums, and they have no sufficiently concrete prospect of receiving such contributions

in the future. Indeed, the local party plaintiffs have no contributions or contributors *at all*. In any event, FECA does not impose on the local parties the reporting obligations they have alleged. And no plaintiff has shown that applicable reporting obligations cause it constitutional injury. Because plaintiffs have no injury, this Court lacks the jurisdiction to grant their sweeping demands to return federal campaign finance law to the state in which it existed in the 1990s, when well-documented abuses involving political parties' use of soft money occurred. Accordingly, this three-judge Court should be dissolved and the matter remanded to the single-judge district Court for dismissal for lack of jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(1). Alternatively, the Court may dismiss the action itself.

BACKGROUND

I. PLAINTIFFS' CLAIMS

Plaintiffs are Louisiana-based state and local committees of the Republican Party. They seek declaratory and injunctive relief against three provisions of FECA: (1) the requirement that state and local parties must generally fund their "[f]ederal election activity" ("FEA") with money raised subject to FECA's source and amount restrictions, 52 U.S.C. § 30125(b)(1); (2) the requirement that costs for raising funds for FEA be paid for with funds subject to FECA's source and amount restrictions, *id.* § 30125(c); and (3) the requirement that state and local committees report their FEA, *id.* § 30104(e)(2). (Verified Compl. for Declaratory and Injunctive Relief Prayer for Relief ¶¶ 3-10 (Docket No. 1) ("Compl."); *see also* Mem. Op. at 6-7 (Docket No. 24) ("Mem. Op.").) Plaintiffs' claims have focused on contributions by individuals, not by corporations or other types of persons. (*See* Pls.' Reply Mem. Supporting Mot. to Expedite at 1 (Docket No. 18); Compl. ¶¶ 107, 137; Pls.' Mot. for Summ. J. at 13 (Docket No. 33); Pls.' Statement of Material Facts Not in Genuine Dispute at 29 ¶ 66 (Docket No. 33).)

The essence of plaintiffs' challenge is their desire to raise individual contributions for use on FEA — communications and other activities affecting federal elections — without complying with FECA's longstanding contribution restrictions, to which FEA is generally subject. However, as the single-judge Court explained in its opinion convening this three-judge Court, "[p]laintiffs do not directly challenge [FECA's] base contribution limits" in this case. (Mem. Op. at 7.) That is because this Court would not have jurisdiction to hear such a challenge; it would be "unable" to provide them that relief. (*Id.* at 14.) Consequently, plaintiffs have instead sought to "enable circumvention of [FECA's] limits" and to "effectively eviscerate" them by bringing a different case. (*Id.* at 7.) This different case asks the Court to invalidate the restrictions on state and local parties' use of nonfederal funds for FEA, known as "soft money," but the case appears to rest primarily on the claim that requiring plaintiffs to use federal funds for federal election activity injures them because it subjects them to federal political committee registration and reporting requirements. In other words, plaintiffs are seeking to avoid FECA's restrictions on their use of soft money for FEA because they allege that the Act's disclosure provisions — registration and reporting requirements — are burdensome. (*Id.* at 11-12.)

II. DISCOVERY

The brief discovery period the Court authorized enabled the Federal Election Commission ("FEC" or "Commission") to learn certain facts about plaintiffs' operations, proposed activities, and claims. In particular, the FEC gained information about the kinds of "nonfederal funds" plaintiffs will use for their proposed FEA. (*See, e.g.*, Mem. Op. at 5-6 ("[Plaintiffs] seek to use nonfederal funds to engage in a wide variety of non-coordinated 'federal election activity,' including conducting mass mailings exhorting voter registration and voting; performing voter identification; undertaking other generic campaign activity; and paying

some portion of the salaries of employees who spend a significant amount of their time on federal election activity." (citing Compl. ¶¶ 84-106) (footnote omitted).)

Each plaintiff responded to the FEC's written discovery requests. (Exh. 1, Pl. LAGOP's Responses to FEC's First Set of Disc. Reqs. ("LAGOP's Disc. Responses"); Exh. 2, Pl. JPGOP's Responses to FEC's First Set of Disc. Reqs. ("JPGOP's Disc. Responses"); Exh. 3, Pl. OPGOP's Responses to FEC's First Set of Disc. Reqs. ("OPGOP's Disc. Responses").) The FEC also conducted a deposition of each plaintiff's organizational designee pursuant to Federal Rule of Civil Procedure 30(b)(6). (Exh. 4, Dep. of Jason Dorè (Jan. 26, 2016) ("LAGOP 30(b)(6) Dep."); Exh. 5, Dep. of Paulette Thomas (Jan. 27, 2016) ("JPGOP 30(b)(6) Dep."); Exh. 6, Dep. of John A. Batt, Jr. (Jan. 27, 2016) ("OPGOP 30(b)(6) Dep.").)

Discovery established that the local party plaintiffs, JPGOP and OPGOP, expect no individual contributions at any level and have had none in recent years, with the sole exception of $1 an individual gave to JPGOP sometime in the last quarter of 2015. (Exh. 5, JPGOP 30(b)(6) Dep. at 10:7-10; 22:11-18; 47:8-24; Exh. 6, OPGOP 30(b)(6) Dep. at 11:17-19; 21:21-22:24; 36:24-37:13.) Instead, these plaintiffs have a single and defined source of income: "qualifying fees" that candidates pay in order to get on ballots. Exh. 5, JPGOP 30(b)(6) Dep. at 23:3-10; 25:19-23; 47:25-48:3; Exh. 6, OPGOP 30(b)(6) Dep. at 21:21-22:19; La. Stat. § 18:464; Louisiana Secretary of State, *Qualify for an Election*, http://www.sos.la.gov/ElectionsAndVoting/BecomeACandidate/QualifyForAnElection/Pages/default.aspx (last visited Mar. 11, 2016) ("Candidates may qualify for office by paying a qualifying fee or by filing a nominating petition."). As LAGOP's designee explained:

> Under State law . . . both parties, [R]epublican and [D]emocratic parties, are allowed to charge up to [a certain] percent of what the State or local governing body charges for a qualifying fee for an office. The candidate pays their qualifying fee to either the

> Secretary of State or the respective clerk of court, and those percentage of fees owed to the Party are remitted back to the State Party . . . . They prefer it be used for party building purposes and overhead.

Exh. 4, LAGOP 30(b)(6) Dep. at 24:21-25:9; *see also* La. Stat. § 18:464(G) (such fees "shall be used solely for the operation of such committees. No such fees shall be used for the direct benefit of any particular candidate for public office").

LAGOP, the state party, identified four sources of revenue: (1) donors — individuals and businesses; (2) qualifying fees; (3) data fees; and (4) transfers from other committees like the Republican National Committee ("RNC"). (Exh. 4, LAGOP 30(b)(6) Dep. at 24:11-27:10.) LAGOP is aware of no contributors seeking to give it more than $10,000. (Exh. 4, LAGOP 30(b)(6) Dep. at 127:21-24; Exh. 1, LAGOP Disc. Responses at 21 (RFA #14) (admitting same).) LAGOP receives data fees for providing access to its data center, which contains information about voters that LAGOP provides to candidates who it determines are running "valid credible campaign[s]." (Exh. 4, LAGOP 30(b)(6) Dep. at 26:8-23.) Transfers from the RNC — LAGOP's overwhelmingly predominant source for such transfers — are federal funds that the RNC has raised from permissible sources and decided to provide to LAGOP, which is lawful because the base contribution limits "do not apply to transfers between and among political committees which are national, State, district, or local committees (including any subordinate committee thereof) of the same political party," 52 U.S.C. § 30116(a)(4). (Exh. 4, LAGOP 30(b)(6) Dep. at 27:2-10.)

III. REGULATORY BACKGROUND

Under FECA, individuals may contribute up to $10,000 annually to the state committee of a given political party and affiliated local committees in that state. 52 U.S.C. § 30116(a)(1)(D). Individuals may give more than $10,000 in a single year to state and local

committees only if state law so allows. Louisiana permits individuals to contribute up to $100,000 to state political committees, including each party's state and local committees, over a period of four years. La. Stat. § 18:1505.2(K)(1). These "excess" contributions are considered to be nonfederal contributions and cannot be used on federal activities such as FEA. 52 U.S.C. § 30125(b)(1). This lawsuit seeks to change that.

With respect to qualifying and data fees, the FEC's party committee guide explains that "[a]s a general rule, if the funds in question are from permissible sources (e.g., individuals) rather than from persons prohibited from making contributions under federal law (e.g., corporations, labor organizations, foreign nationals), the funds may be deposited into a federal account." FEC, *Political Party Committees* at 18 (Aug. 2013), http://www.fec.gov/pdf/partygui.pdf. Thus, the agency has opined that ballot fees remitted to a state political party committee that were paid by a federal candidate may be deposited into the state party committee's federal account. Advisory Op. 1988-33, 1988 WL 170426, at *4 (Oct. 11, 1988) ("[T]he Party may deposit in its Federal account a sum that represents its portion of the qualification fees and party assessments paid by Florida's Federal candidates."). LAGOP has availed itself of this guidance. *See, e.g.*, FEC, *Republican Party of Louisiana, Report of Receipts and Disbursements* at 38 (May 15, 2015), http://docquery.fec.gov/pdf/453/15970698453/15970698453.pdf (reporting receipt of $9,075 worth of "federal candidate qualifying fees" in its federal account). Similarly, the Commission has opined that income resulting from a party committee's rental of its mailing list at fair-market rates can be deposited into the committee's federal account and used on federal activities. Advisory Op. 2002-14, 2003 WL 715988, at *4 (Jan. 31, 2003) ("The rental payments would be considered to be Federal funds usable by the [committee] for federal election purposes and for

any other purpose permitted under the Act and the Commission's regulations."). Again, LAGOP has done this itself. *See, e.g.*, FEC, *Republican Party of Louisiana, Report of Receipts and Disbursements* at 13 (Oct. 20, 2013), http://docquery.fec.gov/pdf/022/13942148022/13942148022.pdf (reporting $1,500 in federal income from candidate's payment of a "list rental fee").

Finally, because transfers of funds from the RNC consist solely of federally-permissible funds, 52 U.S.C. § 30125(a), they may be spent on any federal activities, including FEA.

ARGUMENT

This Court lacks jurisdiction over plaintiffs' claims because plaintiffs are missing an essential component of Article III standing: actual injury. Their lawsuit asks this Court to invalidate, functionally if not formally, FECA's provisions restricting their use of a certain kind of nonfederal funds — individual contributions that do not comply with FECA's amount restrictions — on activities ranging from specific kinds of "independent" FEA to all FEA. (Mem. Op. at 7-8.) Information developed in discovery shows, however, that plaintiffs have no such contributions and no reasonable prospect of receiving them in the future. The local party plaintiffs, JPGOP and OPGOP, virtually never have contributors of any kind. And LAGOP is aware of no one wishing to give it a single dollar that it cannot deposit in its federal account and use on any FEA it wishes. Moreover, discovery has confirmed that the injuries identified by the single-judge Court are premised on plaintiffs' erroneous assertions about what reporting obligations apply to the local party plaintiffs. Those parties have no injury because FECA does not impose upon them the reporting obligations that they previously identified. Finally, plaintiffs' contention that injury resulting from FECA's disclosure provisions grants them standing to challenge FECA's contribution restrictions contravenes the bedrock jurisdictional

principle requiring a logical connection between the injury pled and the relief sought. Plaintiffs' notion that their (illusory) injuries resulting from alleged burdens imposed by FECA's disclosure provisions permit them to invalidate the Act's contribution restrictions is wholly insubstantial and must be rejected.

I. REQUIREMENTS FOR STANDING

"Every plaintiff in federal court bears the burden of establishing the three elements that make up the 'irreducible constitutional minimum' of Article III standing: injury-in-fact, causation, and redressability." *Dominguez v. UAL Corp.*, 666 F.3d 1359, 1362 (D.C. Cir. 2012) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). Each of the three plaintiffs in this case must have an actual injury that is connected to the relief requested for the case to be a "proper object of this District Court's remediation." *Lewis v. Casey*, 518 U.S. 343, 358 (1996) (observing that the district court had found "actual injury on the part of only one named plaintiff"); *Wagner v. FEC*, 793 F.3d 1, 4 (D.C. Cir. 2015) (en banc) (explaining that claims of two of three plaintiffs had become moot because they were no longer federal government contractors), *cert. denied sub nom. Miller v. FEC*, 136 S. Ct. 895 (2016). The Supreme Court's "standing inquiry has been especially rigorous when reaching the merits of the dispute would force [the Court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional." *Raines v. Byrd*, 521 U.S. 811, 819-20 (1997). Standing must exist on the date the complaint is filed and continue to exist throughout the litigation. *Davis v. FEC*, 554 U.S. 724, 734 (2008).

In addition, "'[s]tanding is not dispensed in gross.'" *Davis*, 554 U.S. at 734 (quoting *Lewis*, 518 U.S. at 358 n.6); *Wagner*, 793 F.3d at 5 (same). "[A] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Davis*, 554

U.S. at 734 (internal quotation marks omitted). "If the right to complain of *one* administrative deficiency automatically conferred the right to complain of *all* administrative deficiencies, any citizen aggrieved in one respect could bring the whole structure of state administration before the courts for review. That is of course not the law." *Lewis*, 518 U.S. at 358 n.6. "'[A] plaintiff who has been subject to injurious conduct of one kind [does not] possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject.'" *Id.* (quoting *Blum v. Yaretsky*, 457 U.S. 991, 999 (1982)).

If this Court determines that plaintiffs lack standing, it may dissolve itself. *Schonberg v. FEC*, 792 F. Supp. 2d 14, 19 (D.D.C. 2011) ("We . . . hold that this three-judge district court lacks jurisdiction to consider Schonberg's BCRA claim and we grant the Commission's motion to dissolve."). That is because "[a] three-judge court is not required . . . when the Court lacks jurisdiction over a plaintiff's claims." *Hassan v. FEC*, 893 F. Supp. 2d 248, 257-58 (D.D.C. 2012), *aff'd*, No. 12-5335, 2013 WL 1164506 (D.C. Cir. Mar. 11, 2013); *Shapiro v. McManus*, 136 S. Ct. 450, 455 (2015) ("'[A] three-judge court is not required where the district court itself lacks jurisdiction of the complaint or the complaint is not justiciable in the federal courts.'" (quoting *Gonzalez v. Automatic Emps. Credit Union*, 419 U.S. 90, 100 (1974))).

Whether the Court grants the FEC's request for dissolution and remand, or its alternative request to dismiss, the result will be the same: "when a three-judge court denies a plaintiff injunctive relief on grounds which, if sound, would have justified dissolution of the court as to that plaintiff, or a refusal to request the convention of a three-judge court ab initio, review of the denial is available only in the court of appeals." *Gonzalez*, 419 U.S. at 101; *see also id.* ("Where the three-judge court perceives a ground justifying both dissolution and dismissal, the chronology of decisionmaking is typically a matter of mere convenience or happenstance. Our

mandatory docket must rest on a firmer foundation than this."); *accord* Mem. Op. at 10 n.2 (noting that "the three-judge court convened to hear Plaintiffs' challenge will retain and may exercise the authority to dissolve itself — an order that would be appealable not directly to the Supreme Court, but instead to the U.S. Court of Appeals for the D.C. Circuit").

II. PLAINTIFFS LACK STANDING BECAUSE THEY HAVE NO INJURY

A. The Local Party Plaintiffs Lack Injury

1. The Local Party Plaintiffs Have No Contributions

The local party plaintiffs cannot show that FECA causes them any injury because they have no contributions at all, much less any individual contributions that could not be used for FEA. OPGOP has not received a single contribution of any kind in at least the last eight years. (Exh. 6, OPGOP 30(b)(6) Dep. at 11:17-19; 36:24-37:8 ("Q. Can you tell me the last time the [committee] received a contribution from any individual? A. I don't believe we have on my watch. . . . Q. What about other types of contributors, organizations? A. No. Q. Same answer, not on your watch? A. Correct.").) JPGOP has received only $1 in contributions during the last five years or more. (Exh. 5, JPGOP 30(b)(6) Dep. at 10:7-10; 22:11-18; 47:8-24.)[1]

Neither committee reasonably anticipates receiving contributions in the future. OPGOP's representative testified that the committee's efforts at fundraising have "failed miserably." (Exh. 6, OPGOP 30(b)(6) Dep. at 29:5-18; *see also id.* at 37:9-13 ("Q. Are you aware of any individual or entity that wishes to contribute to the [committee]? A. I am not. Q. At any level of contribution? A. No.").) JPGOP's representative testified that the committee does not solicit contributions because its "source of income is defined." (Exh. 5, JPGOP 30(b)(6) Dep. at 47:25-

[1] Of course, that $1 individual contribution could be used on FEA. 52 U.S.C. §§ 30116(a)(1)(D), 30125(b)(1).

48:3; *see also id.* at 47:8-24 ("Q. Other than the individual dollar contributor, any other individual contributors that the Jefferson [committee] is aware of? A. That's correct. Q. Other types of contributors like corporations on entities that you are aware of? A. That does not happen. Q. Are you aware of any individual that currently desires to give a contribution to the Jefferson [committee]? A. I would have no way of knowing that. . . . Q. . . . I'm asking if you are aware of anyone who has communicated to you interest in making a contribution either as an individual or a corporation to the Jefferson PEC? A. I'm not aware of any.").

With respect to the local party plaintiffs' sole source of funds, qualifying fees (Exh. 5, JPGOP 30(b)(6) Dep. at 23:3-10; 25:19-23; Exh. 6, OPGOP 30(b)(6) Dep. at 21:21-22:19), Louisiana law provides that such fees "shall be used solely for the operation of such committees. No such fees shall be used for the direct benefit of any particular candidate for public office." La. Stat. § 18:464(G). When the FEC asked whether the local plaintiffs intend to use such funds on FEA, the plaintiffs said that these fees are "not relevant" to their claims, a "matter of state law," and "not relevant to this case." (Exh. 2, JPGOP's Disc. Responses at 18-19 (Interrogatory #7); Exh. 3, OPGOP's Disc. Responses at 18-19 (Interrogatory #7).) The complaint does not seek any relief relating to such fees. Nor does it even mention them.

It now seems clear that the local parties have challenged restrictions that do not harm them. When asked how OPGOP ended up being a plaintiff here, OPGOP's representative answered: "I don't know." (Exh. 6, OPGOP 30(b)(6) Dep. at 37:14-18.)

> Q. Do you have an understanding of what [the committee] is trying to accomplish in this case?
> A. What the [committee] is trying [to] accomplish in the case?
> Q. Yes.
> A. I believe I do.
> Q. What is that understanding?
> A. Clarification of support for those candidates on the federal level in our interactions with them.

> Q. Anything besides clarification?
> A. No.
> Q. . . . *Is there something the committee would like to do but can't?*
> A. Referring to the [committee]?
> Q. Yes.
> A. *No.* Pardon me. I'll correct that. Getting more republicans elected in Orleans Parish.

(*Id.* at 37:19-38:10 (emphasis added).)[2] JPGOP's representative testified that while JPGOP is attempting to vindicate its "[f]reedom of speech" by suing the FEC in order to be able to do "whatever activities are appropriate to elect not only our local and state officials but also our federal officials without the burdensome activity that the FEC would require, if we currently supported, federal candidates, for example" (Exh. 5, JPGOP 30(b)(6) Dep. at 51:11-18), it does not seek to use the qualifying fees that wholly constitute its budget to support federal candidates because the fees "cannot be spent on that because of state law" (*id.* at 53:2-22); *see also id.* at 24:5-8 (the committee's funds are used for "[m]eetings, refreshments, telephone line, postage, printing"); Exh. 6, OPGOP 30(b)(6) Dep. at 19:17-20:25; 22:20-24 (the committee's funds are used for mailings coordinated with nonfederal candidates and "refreshments at meetings"); Exh. 4, LAGOP 30(b)(6) Dep. at 25:8-9 (noting that the state prefers qualifying fees to "be used for party building purposes and overhead"). None of the plaintiffs is suing the state of Louisiana for the right to use qualifying fees to support federal candidates. (*E.g.*, Exh. 5, JPGOP 30(b)(6) Dep. at 62:15-21.)

The complaint does state that the local party plaintiffs want to "spend under $5,000 in 2015 and 2016 on [FEA]." (Compl. ¶ 110.) Although the complaint is devoid of allegations

---

[2] Plaintiffs have not identified any genuine need for clarification of FECA and FEC regulations applying to the local party plaintiffs, but any such clarification can be obtained by calling the FEC's Information Division's toll-free phone number or by emailing that Division. FEC, *Quick Answers to Common Questions*, http://www.fec.gov/ans/answers.shtml. Alternatively, persons can request advisory opinions from the Commission. 52 U.S.C. § 30108.

discussing specific FEA these plaintiffs wish to spend money on, even if the Court were to assume that such intent existed, the plaintiffs' desired level of activity could be funded by a single individual, who could today give JPGOP and OPGOP $5,000 each (and do so again every year) in order to fund their FEA. 52 U.S.C. § 30125(b)(1). No law needs to be invalidated in order for these plaintiffs to do this activity. What they need is a contributor, not a judgment. (*Accord* Exh. 2, JPGOP's Disc. Responses at 11 (RFA #16) (admitting that the committee is aware of no one wishing to contribute $5,000 or more to it); Exh. 3, OPGOP's Disc. Responses at 12 (RFA #17) (same).)

The evidence conclusively establishes that the local party plaintiffs do not have an injury conferring standing before this Court. That no one wishes to make contributions to these plaintiffs is simply not attributable to FECA.

2. No Registration or Reporting Requirements Restrict or Burden the Local Party Plaintiffs' Desired Activity

Discovery has also confirmed that the local party plaintiffs' claim that they would suffer injury from reporting obligations if they had contributions is incorrect. In convening this three-judge Court, the single-judge Court relied on plaintiffs' characterizations of their injuries. Observing that although "the allegations in [the] verified complaint are far from crystal clear on this point, Plaintiffs appear to claim that their injury derives from being forced to spend only federal funds, contained in a federal account and subject to federal regulations, on federal election activity." (Mem. Op. at 11.) The Court explained that, despite this lack of clarity, "for the local-party plaintiffs to conduct their desired federal election activity — at least the amount of activity they seek to fund — they would be forced to open a federal account and to comply with the accompanying regulations and reporting requirements." (*Id.* at 11-12.) The Court thus concluded that "[b]ecause BCRA forces Plaintiffs to channel funding for most federal election

activity through federal accounts, which they allege to be a relatively burdensome alternative to funding such activity through existing nonfederal accounts, Plaintiffs have identified an injury — a restriction on their speech — that suffices to establish constitutional standing." (*Id.* at 12.)

The local party plaintiffs' claims that they would have to report their FEA to the Commission and open new bank accounts are erroneous. Because JPGOP and OPGOP are not federal political committees, and because they want to stay that way by "spend[ing] under $5,000 in 2015 and 2016 on [FEA]" (Compl. ¶ 110), they are not required to report their FEA to the FEC at all. Def. FEC's Answer to Pls.' Compl. (Docket No. 19) ¶ 35 ("Answer"); 11 C.F.R. § 300.36(a)(1); Exh. 2, JPGOP Disc. Responses at 11 (RFA #9) (admitting same); Exh. 3, OPGOP Disc. Responses at 11 (RFA #10) (same). Thus, the mistaken understanding that these plaintiffs would have "to comply with" FEC "reporting requirements" (Mem. Op. at 11-12) results from plaintiffs' inaccurate pleading (Compl. ¶ 35), which warrants reconsideration. *See Nat'l Ctr. for Mfg. Scis. v. Dep't of Def.*, 199 F.3d 507, 511 (D.C. Cir. 2000) (explaining that district court was correct to grant reconsideration where it found errors of law compelling it to change its position). Although 11 C.F.R. § 300.36(a)(1) requires organizations like JPGOP and OPGOP to "keep records of amounts received or expended . . . and, upon request, . . . make such records available for examination by the Commission," it does not require them to file any reports with the FEC. Further, both organizations' designees testified that this kind of recordkeeping is no burden but something "[a]ny reasonable person would do" (Exh. 5, JPGOP 30(b)(6) Dep. at 29:21-30:2) and "standard operating procedure" (Exh. 6, OPGOP 30(b)(6) Dep. at 24:5-15).

In addition, under the FEC's regulations, FEA by state and local committees like plaintiffs may be paid for with various kinds of accounts, which can include a "federal account."

(Answer ¶¶ 36-39.) The local parties have not alleged that they will receive any relevant federally impermissible funds, nor is there any reasonable prospect they will do so. *See supra* pp. 10-11. And, of course, these plaintiffs have no standing to complain about bank accounts when they do not have any contributions to deposit into them in the first place. And even if they did, this Court lacks the power to invalidate the FEC regulations that govern the local party plaintiffs' uses of bank accounts. The Court's jurisdiction is limited to hearing challenges to "the statute itself," not FEC regulations. *McConnell v. FEC*, 540 U.S. 93, 223 (2003), *overruled in part by Citizens United v. FEC*, 558 U.S. 310 (2010); *McConnell v. FEC*, 251 F. Supp. 2d 176, 264 (D.D.C. 2003) (per curiam); *Bluman v. FEC*, 766 F. Supp. 2d 1, 4 (D.D.C. 2011).

* * *

In sum, the record developed since this three-judge Court was convened reveals that the local party plaintiffs are not injured by having to file any federal reports or disclose any contributions for use on FEA, which they have alleged no specific desire to do. (Exh. 6, OPGOP 30(b)(6) Dep. at 39:4-23 (explaining that although "by virtue of human nature we desire to have more resources to be able to do more things," the committee has not "actually sat down and thought about what those things might be").) Nor are they injured by having to open any new bank accounts. These plaintiffs have no injury that is related to any relief requested that is a "proper object of this District Court's remediation." *Lewis*, 518 U.S. at 358.

B. LAGOP Also Lacks Standing

LAGOP lacks standing because discovery shows it does not reasonably anticipate receiving any individual contributions that it cannot spend on FEA. LAGOP is not aware of any individual contributor wishing to give it more than the federal limit of $10,000 (Exh. 4, LAGOP 30(b)(6) Dep. at 127:21-24; Exh. 1, LAGOP Disc. Responses at 21 (RFA #14) (admitting

same)). Because any funds raised within that limit are federally compliant and can easily be identified as such, LAGOP's claim based upon the receipt of hypothetical nonfederal funds is fictitious.[3]

LAGOP's claims have focused on individual donors as the only source of funds at issue. Plaintiffs have stated that this case is about "the right of state and local committees to make independent communications . . . with . . . contributions, *from individuals*, that they have and routinely raise." (Pls.' Reply Mem. Supporting Mot. to Expedite at 1 (Docket No. 18) (emphasis added); *see* Compl. ¶ 137 (explaining that plaintiffs' proposed account would "only solicit contributions from individuals," not corporations or unions).) Plaintiffs have repeatedly indicated that they will comply with a long list of other FECA contribution prohibitions, including the "ban on any contributions by national banks and congressionally authorized corporations 'in connection with any election.'" (Compl. ¶ 107 (fourth bullet (citing 52 U.S.C. § 30118); Pls.' Mot. for Summ. J. at 13 (Docket No. 33) (averring that "[i]n paying for independent FEA, Plaintiffs want to use nonfederal funds, on hand or to be raised, compliant with state law and the federal law provisions listed in SMF ¶ 66 (Compl. ¶ 107)"); Pls.' Statement of Material Facts Not in Genuine Dispute at 29 ¶ 66 (Docket No. 33) (same).) Corporate contributions are therefore excluded from the case.[4] Furthermore, like the local party

---

[3] LAGOP has maintained a federal political committee since 1993, and it must continue to maintain one due to expenditures it makes each year for the purpose of influencing federal elections, such as communications coordinated with candidates. FEC, *Candidate and Committee Viewer*, http://www.fec.gov/finance/disclosure/candcmte_info.shtml (permitting a search for LAGOP, committee no. C00187450). LAGOP's registration and reporting with the Commission, and maintenance of a Federal account, are thus not fairly traceable to BCRA.

[4] Although plaintiffs' discovery responses and deposition answers mention that they would like to use corporate contributions on FEA (*e.g.*, Exh. 1, LAGOP Disc. Responses at 24-25 (Interrogatory #3)), the court filings cited above disclaim that request, and plaintiffs' complaint and summary judgment motion leave out such contributions. And for good reason, because this

plaintiffs, LAGOP admits that the qualifying fees it receives pursuant to Louisiana law are "not relevant" to its claims, a "matter of state law," and "not relevant to this case." (Exh. 1, LAGOP's Disc. Responses at 28 (Interrogatory #7).) In any event, LAGOP has (consistent with FEC guidance) deposited qualifying fees received from Louisiana's Secretary of State into its federal account. *See supra* p. 6. The same is true of LAGOP's data fees and the transfers it has received from the RNC. *See supra* pp. 6-7. Consequently, the only nonfederal source of funds at issue is LAGOP's individual contributions.

When the single-judge Court was determining whether to convene this three-judge Court, the FEC contended that there was no standing due to plaintiffs' failure to identify any individual contributor wishing to give them sums exceeding the $10,000 limit on contributions to state and local committees. *See* 52 U.S.C. § 30116(a)(1)(D) (providing that "no person shall make contributions . . . to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000"); FEC's Opp'n to Pls.' Appl. for a Three-Judge Ct. at 27 (Docket No. 15) ("Three-Judge Court Opp'n") ("plaintiffs have offered no evidence that, even absent the limit, there is anyone who wants to give them such significant sums"). Plaintiffs countered that, *e.g.*, "[t]he gravamen of this case is that Plaintiffs want to use funds *from their state account*, even *at the level of $1*, for FEA." (Exh. 1, LAGOP Disc. Responses at 30 (Interrogatory #10).) At oral argument, plaintiffs argued that they should be free to deposit that $1 individual contribution in their state account "bucket" instead of their federal account "bucket" if they so chose. They contended that "there is no justification at all for asking [plaintiffs] to comb their contributions to screen them for

---

Court lacks the authority to invalidate FECA's ban on corporate contributions in section 30118(a). *Cf.* Mem. Op. at 14 ("The Court agrees that a three-judge court would be unable to provide Plaintiffs the relief they seek if what they sought was to invalidate the base contribution limits put in place by FECA."); *Rufer v. FEC*, 64 F. Supp. 3d 195, 203-04 (D.D.C. 2014).

compliance with FECA, when they have to date only been screened to meet state requirements" and asserted a "screening problem" that makes it "overwhelmingly difficult and burdensome" to identify FECA-compliant funds that ended up in LAGOP's nonfederal account. (*E.g.*, *id.* at 30-31 (Interrogatory #10).)

Discovery has revealed these "screening" contentions to be "[p]ure applesauce." *King v. Burwell*, 135 S. Ct. 2480, 2501 (2015) (Scalia, J., dissenting). In fact, LAGOP's website states on its donation page form that "Contributions to The Republican Party of Louisiana received from individuals and other federally permissible sources will be deposited in [LAGOP's] federal account." LAGOP, *Donate*, http://www.lagop.com/donate (last visited Mar. 14, 2016). LAGOP's designee not only confirmed that this statement is true (Exh. 4, LAGOP 30(b)(6) Dep. at 108:5-109:2) but also testified that, "as a general rule, when we have federally compliant dollars, they are deposited into the federal account first" (*id.* at 39:3-5; *see also id.* at 110:18-24 (explaining that LAGOP's treasurer has been "instruct[ed]" to put "all" federally-compliant dollars "into the federal account"). This is borne out by LAGOP's depositing of federally-permissible qualifying and data fees into its federal account. The few federally-permissible dollars that ended up in LAGOP's nonfederal account were deposited there solely for convenience. (*Id.* at 109:8-110:9.) Discovery also revealed that LAGOP has no problem screening individual contributions for federal compliance. (*Id.* at 111:3-112:12.) LAGOP's treasurer simply determines whether the contributor has already given the maximum contributions by checking its disclosure database, a process that its compliance firm repeats as a "double-check[] before they file a report." (*Id.*)

Discovery also confirmed the obvious: FECA does not prohibit LAGOP from receiving, for example, an individual contribution in the amount of $250 and then using such funds on any

FEA LAGOP wishes to do. (Exh. 4, LAGOP 30(b)(6) Dep. at 126:8-11.) Despite being able to use its federally-permissible funds on FEA, however, LAGOP does not actually want to do that. What it wishes to do is "free[] up" (*id.* at 126:16) its federal money for use on other federally permissible expenditures — such as independent expenditures. Thus, even though it *can* use FECA-compliant contributions on FEA, it would *prefer* to use other, hypothetical nonfederal funds on FEA so that FECA-compliant funds can be saved for other federal uses that LAGOP values more. (*Id.* at 126:12-127:20.)

The result of this discovery is that LAGOP lacks standing to pursue its claims. There is not a single dollar that LAGOP has or expects to receive from an individual that it is prevented from using on the FEA it alleges it would like to do. Its *choice* not to use its FECA-compliant funds on FEA, because it would prefer to spend those funds on other things, is a "self-inflicted harm [that] doesn't satisfy the basic requirements for standing." *Nat'l Family Planning & Reprod. Health Ass'n, Inc. v. Gonzales*, 468 F.3d 826, 831 (D.C. Cir. 2006). And even if LAGOP or one of the other plaintiffs were now to produce a donor wishing to give it more than $10,000, plaintiffs' claims have been revealed to be what the FEC has said all along: a hypothetical challenge to "FECA's $10,000 base annual limit on [individual] contributions to state and local committees" (Three-Judge Court Opp'n at 1) that this Court lacks jurisdiction to redress, Mem. Op. at 14 ("The Court agrees that a three-judge court would be unable to provide Plaintiffs the relief they seek if what they sought was to invalidate the base contribution limits put in place by FECA."); *Rufer v. FEC*, 64 F. Supp. 3d 195, 203-04 (D.D.C. 2014). And in any case, such a submission would come too late: standing must exist at the time the complaint is filed. *See Davis*, 554 U.S. at 734. Plaintiffs' lawsuit seeking permission to spend funds they currently do not have and have shown no expectation of receiving means the case is "'essentially

fictitious.'" *Shapiro*, 136 S. Ct. at 455-56 (quoting *Bailey v. Patterson*, 369 U.S. 31, 33 (1962) (per curiam)). It should be dismissed.

III. PLAINTIFFS LACK STANDING TO CHALLENGE FECA'S CONTRIBUTION RESTRICTIONS BASED UPON A DISCLOSURE INJURY

An independent jurisdictional impediment to all plaintiffs' standing is the mismatch between their supposed injury and the broad relief they request. As the single-judge Court determined, to the extent LAGOP or the other plaintiffs have any injury, that injury is being "forced to maintain a federal account and to comply with the regulations and reporting requirements that accompany such an account." (Mem. Op. at 11.) But standing "is not dispensed in gross.'" *Lewis*, 518 U.S. at 358 n.6; *Wagner*, 793 F.3d at 5 (same). The injury the single-judge Court identified is exclusively a *disclosure*-based injury. This injury has nothing to do with freeing plaintiffs from limits on the contributions they may receive, or what they can do with such contributions. And in discovery, plaintiffs have failed to demonstrate any link between such an injury and their requested relief, or any unusual burden they suffer because of FECA's disclosure requirements.

And even if plaintiffs were bringing a bona fide challenge to the Act's disclosure provisions, those provisions have been overwhelmingly approved by the Supreme Court and the D.C. Circuit. *See, e.g.*, *Citizens United*, 558 U.S. at 310 ("Identification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected." (internal quotation marks omitted)); *Buckley v. Valeo*, 424 U.S. 1, 68 (1976) (per curiam) (holding that the Act's disclosure requirements for political committees "directly serve substantial governmental interests"); *SpeechNow.org v. FEC*, 599 F.3d 686, 698 (D.C. Cir. 2010) (en banc) (political committee disclosure requirements further the public's "interest in knowing who is speaking about a candidate and who is funding

that speech," and "deter[] and help[] expose violations of other campaign finance restrictions"), *cert. denied*, 562 U.S. 1003 (2010). Furthermore, disclosure provisions are evaluated not based on whether they are closely drawn to match the government's important interest in limiting quid-pro-quo corruption (the standard for evaluating generally applicable contribution limits, *McCutcheon v. FEC*, 134 S. Ct. 1434, 1445 (2014)), but with respect to whether they have a substantial relation to the government's important interests, *Citizens United*, 558 U.S. at 366-67, such as providing the public with information. Such disclosure-based interests extend beyond reducing the risk and appearance of quid-pro-quo corruption. *E.g.*, *McCutcheon*, 134 S. Ct. at 1459 ("Disclosure requirements are in part justified based on a governmental interest in provid[ing] the electorate with information about the sources of election-related spending." (internal quotation marks omitted)).

Accordingly, plaintiffs' attempt to "eviscerate" (Mem. Op. at 7) FECA's soft money *contribution* limits on the basis of a *disclosure* injury is insubstantial and federal courts lack jurisdiction to hear it. *See Shapiro*, 136 S. Ct. at 455 ("Absent a substantial federal question, even a single-judge district court lacks jurisdiction . . . ."). Plaintiffs' case should be dismissed.

CONCLUSION

For the foregoing reasons, the Court should dissolve this three-judge Court with instructions to the single-judge Court to dismiss or, alternatively, dismiss the case for lack of jurisdiction.

Respectfully submitted,

Daniel A. Petalas (D.C. Bar No. 467908)
Acting General Counsel
dpetalas@fec.gov

Seth Nesin
Attorney
snesin@fec.gov

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

Kevin Deeley
Acting Associate General Counsel
kdeeley@fec.gov

Harry J. Summers
Assistant General Counsel
hsummers@fec.gov

March 15, 2016

Greg J. Mueller (D.C. Bar No. 462840)
Attorney
gmueller@fec.gov

/s/ Charles Kitcher
Charles Kitcher (D.C. Bar No. 986226)
Attorney
ckitcher@fec.gov

COUNSEL FOR DEFENDANT
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, DC 20463
(202) 694-1650