IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON AND NOAH BOOKBINDER Plaintiffs, v. **FEDERAL ELECTION COMMISSION** Defendant.	Civil Action No. 19-2753

RESPONSE TO DEPARTMENT OF JUSTICE'S STATEMENT OF INTEREST

In accordance with the Court's Order, Doc. 12, Plaintiffs Citizens for Responsibility and Ethics in Washington ("CREW") and Noah Bookbinder file this response to the Department of Justice's ("DOJ") Statement of Interest.

More than two years ago, Plaintiffs filed an administrative complaint with the FEC alleging that FEC-registered political committees were used to conceal the true identities of donors to a political campaign, information that the Federal Election Campaign Act ("FECA") requires to be disclosed. Doc. 1, ¶¶ 1, 22-26. Plaintiffs brought suit in this court on September 16, 2019 seeking injunctive and declaratory relief to require the FEC to act on its complaint. Doc. 1. On April 9, 2020, the Court entered default judgment giving the FEC until July 8, 2020 to conform. Doc. 9. The FEC failed to do so, and as of today, more than twenty-eight months later, has still taken no action on the administrative complaint.

On October 16, 2020, more than six months after this Court entered final judgment in this matter, the Department of Justice filed a Statement of Interest, purportedly pursuant to 28 U.S.C. § 517, claiming that Plaintiffs lacked standing to bring this action. *See* Doc 11; Doc. 9 (Entry of Default Judgment on April 9, 2020). Courts have discretion to determine whether to consider a

statement of interest, and the relevant factors that courts consider "include whether the proffered information is timely and useful or otherwise necessary to the administration of justice." *U.S. ex rel. Gudur v. Deloitte Consulting LLP*, 512 F. Supp. 2d 920, 927 (S.D. Tex. 2007) (internal citations omitted).

The DOJ's statement of interest here is not "helpful or persuasive," *Lopez-Aguilar v. Marion Cty. Sheriff's Dep't*, 296 F. Supp. 3d 959, 964 n.1 (S.D. Ind. 2017), nor is it necessary to the administration of justice, not least because it fails to address binding authority that directly supports Plaintiffs' standing here. *Campaign Legal Center v. FEC*, 952 F.3d 352 (D.C. Cir. 2020) [hereinafter "CLC"], decided shortly before this Court's judgment, squarely finds plaintiffs, including good-government groups like CREW, suffer a cognizable injury when the FEC deprives them of information by failing to pursue their complaint, *id.*at 356.

Plaintiffs respectfully request that this Court decline to consider the DOJ's Statement of Interest, as it is both severely untimely and offers no substantive assistance to this Court due to its failure to address the controlling law of this Circuit. Further, as Plaintiffs have standing under settled law of the circuit, the Statement of Interest provides no basis for the Court to disturb the judgment that has already entered in this case.

I. This Court Should Decline to Consider the DOJ's Statement as It Is Exceedingly Untimely

Filed more than six months after entry of judgment and four months after the time to appeal expired, the DOJ's Statement of Interest is severely untimely. DOJ provides no explanation for the timing of its filing, simply asserting that the elapsed time should have "no bearing" on whether to vacate the judgment. Doc. 11 at 12. However, this Court has sole discretion to permit or deny a statement of interest, and the extreme untimeliness of the DOJ's statement *does* have bearing on whether this Court should decline to consider it. *LSP*

Transmission Holdings, LLC v. Lange, 329 F. Supp. 3d 695, 703–04 (D. Minn. 2018), *aff'd sub nom. LSP Transmission Holdings, LLC v. Sieben*, 954 F.3d 1018 (8th Cir. 2020); *Creedle v. Gimenez*, Civ. No. 17-22477, 2017 WL 5159602, at *2 (S.D. Fla. Nov. 7, 2017) ("[T]o the extent the Government contends that it can file a statement of interest at any time in a case and have it considered, that position is unavailing."); *see also United States v. 22,680 Acres of Land*, 438 F.2d 75, 77 (5th Cir. 1971) ("Even the United States itself does not have the right to participate in a case after 'standing by' and doing nothing until the litigation is concluded.").

In cases featuring much less egregious timelines than the one at issue here, courts have cited untimeliness as a basis to decline to consider or even to strike a DOJ statement of interest. *LSP Transmission* 329 F. Supp. 3d at 703–04 (finding DOJ's statement of interest untimely where it was filed "roughly two and one-half months after briefing was completed" and DOJ "offer[ed] no explanation, let alone good cause, for its delay"); *U.S. ex rel. Gudur v. Deloitte Consulting LLP*, 512 F. Supp. 3d 920, 927-28 (S.D. Tex. 2007) (finding government's statement of interest untimely where it was filed without leave and "after the final date for filing anything responsive to any of the pending motions for summary judgment set by the court"); *see also Chemical Bank N.Y. Trust Co. v. S.S Westhampton*, 268 F. Supp. 169, 172-73 (D. Md. 1967) ("enforce[ing]" the "requirement of timeliness" to prevent the United States from intervening in a case following significant litigation but prior to final judgment); *Creedle v. Gimenez*, No. 17-22477-CIV, 2017 WL 5159602, at *3 (S.D. Fla. Nov. 7, 2017) (characterizing a statement of interest as "egregiously late" where it was filed five months after a party filed a motion for summary judgment).

The DOJ cites no precedent to support such a late-filed statement of interest. While the DOJ cites a number of cases in support of its ability to file a statement of interest, in none of

those cases was the statement filed *after* judgment entered.[1] In fact, a review of the over 400 cases in which the Department of Justice has filed a statement of interest revealed only one other case in which the filing occurred after judgment. That case is *Campaign Legal Center. v. FEC*, Case No. 1:20-cv-1778 (D.D.C. June 30, 2020), where the DOJ filed its statement on the same day as the filing in this case, featuring the same arguments regarding standing, and similarly ignoring binding circuit law on point.

The DOJ's burgeoning habit of waiting until after judgment to attempt to intervene in a case should not be allowed to go further. To allow the DOJ to effectively reopen cases after judgment threatens the "fundamental principle" that "'a judgment conclusively resolves the case' because 'a judicial Power' is one to render dispositive judgments." *See Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 219 (1995) (*citing* Frank H. Easterbrook, *Presidential Review*, 40 Case. W. Res. L. Rev. 905, 926 (1990) (finding unconstitutional a statute purporting to reopen dismissed cases by retroactively changing the statute of limitations)).

Nor is it clear that this filing is authorized by § 517. That section, entitled "Interests of the United States in pending suits," provides:

> The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States.

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[1] *See* Doc. 11 at 1 n.1 (*citing Harrison v. Republic of Sudan*, 802 F.3d 399, 406–07 (2d Cir. 2015), *adhered to on denial of reh'g*, 838 F.3d 86 (2d Cir. 2016) (no reference to § 517, motion for appearance as amicus counsel filed after motion for rehearing en banc); *City of New York v. Permanent Mission of India to the United Nations*, 446 F.3d 365 (2d Cir. 2006), *aff'd and remanded*, 551 U.S. 193 (2007) (statement requested by the court from DOJ was received after briefing but before the case was decided and an opinion filed); *Koumoin v. Ki-Moon*, No. 16-CV-2111, 2016 WL 7243551 (S.D.N.Y. Dec. 14, 2016) (statement of interest filed after briefing but before judgment); *Application of Blondin v. Dubois*, 78 F. Supp. 2d 283 (S.D.N.Y. 2000) (statement of interest filed before judgment).

28 U.S.C. § 517. Thus, the text of the statute links the DOJ's ability to appear in any "State or district court" to "attend to the interests of the United States in a suit pending" in court.[2] Here, there is no "pending suit" as contemplated by § 517 with regard to which the DOJ may file a statement of interest. "The term 'pending' means '[r]emining undecided; awaiting decision.'" *Kellogg Brown & Root Service, Inc. v. U.S., ex. rel. Carter*, 575 U.S. 650, 135 S. Ct. 1970, 1978 (2015) (*quoting* Black's Law Dictionary 1314 (10th ed. 2014)); *Id.* ("defining 'pending' to mean 'not yet decided: in continuance: in suspense'") (*quoting* Webster's Third New International Dictionary 1669 (1976)); *see also McKenzie v. Kemna*, 786 F. Supp. 817, 819 (W.D. Mo. 1992) ("A suit is pending from the time it is instituted until its disposition is final."). In the instant matter, this Court entered judgment on April 9, 2020, ending any pending suit. Doc. 9. Section 517 does not give the DOJ broad authority to circumvent the judicial power to resolve a controversy, and its failure to file a timely statement of interest does not generate an exception to the statute or to the Federal Rules of Civil Procedure.[3]

Accordingly, due to its untimeliness alone, the Court should decline to consider the DOJ's statement.

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[2] While the third clause provides that the DOJ may "attend to any other interest of the United States," this appears to contemplate interests other than those in state or federal court, such as in administrative matters. *See, e.g.*, Statement of Interest, *Media Gen. Operations, Inc. v. Schurz Comm. Inc.*, No. 116-CV-26-JRH-BKE, 2016 WL 930580 (FCC Rcd. Mar. 9, 2016) (DOJ files statement of interest in Federal Communications Commission hearing). As discussed above, this clause would otherwise run afoul of the fundamental principle that it is in the power of the judiciary, not Congress, to conclusively resolve judicial cases through entry of judgment. *See Plaut*, 514 U.S. at 219.

[3] This is not changed by the fact that the statement of interest concerns subject matter jurisdiction. *Insurance Co. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n. 9 (1982) ("It has long been the rule that principles of res judicata apply to jurisdictional determinations — both subject matter and personal."); *U.S. Aid Funds Inc. v. Espinoza*, 559 U.S. 260, 271 (2010) ("[A] judgement is void because of a jurisdictional defect . . . only [in] the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction.").

II. Plaintiffs Have Article III Standing

In addition to its untimeliness, DOJ's statement is unhelpful to this Court, because Plaintiffs have Article III standing under settled law.[4] They have suffered injury from the FEC's failure to act that deprives them of information to which they are legally entitled, and CREW further has standing because the failure to act has impaired CREW's programmatic activities. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).[5]

A. Settled Law Confirms that Plaintiffs Have Standing Based on Informational Injury

Standing based on informational injury, such as the one at issue here, is settled law in the D.C. Circuit. "'The law is settled that a denial of access to information qualifies as an injury in fact where a statute (on the claimants' reading) requires that the information be publicly disclosed and there is no reason to doubt their claim that the information would help them.'" *CLC*, 952 F.3d at 356 (*quoting Envtl. Def. Fund v. EPA*, 922 F.3d 446, 452 (D.C. Cir. 2019)); *FEC v. Akins*, 524 U.S. 11, 21 (1998) ("The 'injury in fact' that respondents have suffered consists of their inability to obtain information . . . that, on respondents' view of the law, the [FECA] requires that [respondent] make public."); *Friends of Animals v. Jewell*, 824 F.3d 1033,

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[4] Statements of interest that misconstrue the case or controlling case law are not "helpful or persuasive" to the court. *Lopez-Aguilar*, 296 F. Supp. 3d at 964 n.1. The United States' views may be of interest to the court, but those views "merit no special deference." *Republic of Austria v. Altmann,* 541 U.S. 677, 701 (2004). Rather, the purpose of a statement of interest is to assist the court by expressing the government's views of the law. *See Eley v. District of Columbia*, 201 F. Supp. 3d 150, 158 (D.D.C. 2016) ("[T]he Court . . . will consider the views of the United States in resolving these disputes")*; see also Lempert v. Rice*, 956 F. Supp. 2d 17, 20 (D.D.C. 2013) (referring to a court-requested Statement of Interest for the United States' views on immunity); *United States ex rel. Lynch v. Univ. of Cincinnati Med. Ctr.*, LLC, No. 1:18-CV-587, 2020 WL 1322790, at *4 (S.D. Ohio Mar. 20, 2020) ("The Court will consider the Statement of Interest . . . insofar as the filings are relevant and aid the Court. . . .").

[5] The DOJ does not challenge the traceability or redressibility prongs of the standing analysis. However, the D.C. Circuit found both to be present to establish standing in *CLC*, 952 F.3d at 356, in a factual scenario analogous to the present matter.

1041 (D.C. Cir. 2016); *see also CREW v. FEC*, 243 F. Supp. 3d 91, 101-2 (D.D.C. 2017) ("'The denial of information [a plaintiff] believes that the law entitled him to' constitutes an injury in fact." (internal quotation omitted)).

DOJ's statement, however, fails to address informational injury and fails to cite, much less discuss, *CLC*, the controlling D.C. Circuit case on point. Instead, DOJ argues that the FEC's "delay in taking action on Plaintiffs' administrative complaint is not sufficient to confer standing." Doc. 11 at 6. DOJ misses the point. Plaintiffs' standing is not based on delay alone, rather it arises from the "settled" law that deprivation of information to which Plaintiffs are entitled constitutes injury-in-fact under Article III. *CLC*, 952 F.3d at 356; *see Akins*, 524 U.S. at 21. DOJ's attempt to paint CREW's informational injury as not sufficiently particularized or concrete is similarly unavailing as it ignores the binding case law of informational injury, instead citing two cases that were brought under other standing theories. *See* Doc. 11 at 8–9. Neither of the two cases cited by DOJ concern informational injury. First, in *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 920-21 (D.C. Cir. 2015), the court expressly relied on the fact the plaintiff did *not* allege "agency inaction injured the organization because the organization suffered a 'denial of access to . . . information.'" *Id.* (contrasting *PETA v. U.S. Dep't of Ag.*, 797 F.3d 1087, 1095 (D.C Cir. 2015)). Second, DOJ cites *CREW v. FEC*, 267 F. Supp. 3d 50 (D.D.C. 2017). There, the court denied CREW standing precisely because it construed CREW's claim as not seeking information to which it was entitled under the FECA. *Id.* at 54 (asserting "there is no serious argument that the provision of FECA the plaintiffs invoked . . . entitle[d] them to information in any reasonably direct way").

As the D.C. Circuit reaffirmed as recently as March 2020, plaintiffs can establish Article III injury-in-fact based on the denial of information to which they are entitled. In this case, the

D.C. Circuit found standing, based on informational injury, for two plaintiffs that, like Plaintiff CREW, are "nonprofit, nonpartisan organizations dedicated to supporting and enforcing campaign finance laws." *CLC*, 952 F.3d at 355-56. In *CLC*, the D.C. Circuit rejected the FEC's argument that plaintiffs did not allege an injury-in-fact because they were not deprived of information for personal voting or personal political participation. *Id.* at 356. Rather, as the D.C. Circuit confirmed, injury is established if a statute requires that information be publicly disclosed and there is no question regarding the plaintiff's claim that the information would help them. *Id.* Further, the D.C. Circuit found that the *CLC* plaintiffs' injury was traceable to the FEC's dismissal of the complaints and that the injury was likely to be "redressed by a favorable [court] decision." *Id*. (internal citations omitted). The DOJ does not address, or even cite, this controlling D.C. Circuit case. Doc. 11.

As was the case in *CLC*, Plaintiffs' underlying FEC complaint here alleged violations of FECA provisions that "require accurate disclosure of contributor information." *See CLC*, 952 F.3d at 356 (finding standing to pursue violations of "straw donor" provision, 52 U.S.C. § 30122); Doc. 8-6, at ¶¶ 50–69 (same). Accordingly, Plaintiffs similarly have suffered informational injury because they have been deprived of information the FECA entitles them to have. Nor is Plaintiffs' informational injury based on whether documents might be lost during delay, a harm that DOJ characterizes as "speculative." Doc. 11 at 2, 8. Rather, Plaintiffs' injury occurs due to the current deprivation of information to which it is legally entitled, a harm that is current and ongoing. Doc. 1, ¶¶ 8, 11, 57, 66. And, as was the case for the plaintiffs in *CLC*, there is "no reason to doubt" that Plaintiffs would use the disclosures they seek to "further their efforts to defend and implement campaign finance reform." *See* 952 F.3d at 356 (*citing Jewell*, 824 F.3d at 1041 (internal citations omitted)). *Compare* Doc. 1, ¶¶ 8–11 *with CLC*, 952 F.3d at

355-6 (finding sufficient CLC's assertion it is "dedicated to supporting and enforcing campaign finance laws" and participates in "public education, litigation, regulatory practice, and legislative policy").

While the plaintiffs in *CLC* sued following the FEC's dismissal of their complaint and Plaintiffs here challenge the FEC's prolonged failure to act on their complaint, this distinction is immaterial to the standing inquiry. "The requester is injured-in-fact for standing purposes because he did not get what the statute entitled him to receive." *Zivotofsky ex rel. Ari Z. v. Sec'y of State*, 444 F.3d 614, 617–18 (D.C. Cir. 2006). Accordingly, where plaintiffs allege a "'discrete injury flowing from' the violation of the Act," then they are injured in fact and have standing to challenge the FEC's failure to act. *Common Cause v. FEC*, 108 F.3d 413, 418–19 (D.C. Cir. 1997) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572 (1992)); *see also FEC v. Rose*, 806 F.2d 1081, 1091 (D.C. Cir. 1986) (considering judgment to plaintiff for FEC's failure to act on complaint alleging failure to report violation of FECA); *Free Speech for People v. FEC*, 442 F. Supp. 3d 335, 343–45 (D.D.C. 2020) (analyzing plaintiff's standing to challenge FEC's failure to act on a complaint by looking to the existence of an informational injury suffered by lack of enforcement); *Judicial Watch, Inc. v. FEC*, 293 F. Supp. 2d 41, 45–48 (D.D.C. 2003) (same). The FECA is not unique in this regard, and courts routinely recognize jurisdiction over suits by those whose request for information is met with agency inaction. *See, e.g.*, *CREW v. FEC*, 711 F.3d 180, 182 (D.C. Cir. 2013) ("[I]f the agency has not issued its 'determination'" on plaintiff's FOIA request "within the required time period, the requester may bring suit directly in federal district court without exhausting administrative appeal remedies."); *Air Alliance Houston v. U.S. Chemical Safety Hazard Investigation Bd.*, 365 F. Supp. 3d 118, 126 (D.D.C. 2019) (finding standing where agency's unreasonable delay "den[ied] the public, and these particular Plaintiffs,

the very information that the act contemplates would be publicly available"). Finally, whether caused by the FEC's outright dismissal or endless delay, Plaintiffs are still currently suffering ongoing injury due to not being able to access the information that they entitled, by statute, to have. Doc 1. ¶¶ 8, 11.[6]

Nor is CREW's status as a non-voter and Mr. Bookbinder's as a Maryland voter sufficient to prevent Plaintiffs from establishing injury-in-fact, as DOJ asserts. Rather, as the Supreme Court stated in *Akins*, FECA disclosure requirements not only aid plaintiffs' efforts "to evaluate candidates for public office . . . and to evaluate the role that [the political committee]'s financial assistance might play in a specific election," but also helps "others to whom [the plaintiffs] would communicate [that information]." 524 U.S. at 21 (reversing the lower court ruling that limited injuries to only the denial of information useful to each plaintiff in voting). In other words, the Court expressly acknowledged injury to the plaintiffs' ability to receive information *for the purposes of sharing it with other* is the "type of harm Congress sought to prevent." *Friend of Animals v. Jewell*, 828 F.3d 989, 992 (D.C. Cir. 2016); *see also id.* ("[A] plaintiff seeking to demonstrate that it has informational standing generally need not allege any *additional* harm beyond the one Congress has identified." (emphasis in original) (internal citations omitted)); *CLC*, 952 F.3d at 356 (rejecting FEC's argument that only information used for "personal voting or political participation" is relevant to establish injury-in-fact) (internal citations omitted); *Zivotofsky*, 444 F.3d at 617 ("[W]hy [plaintiff] wants the information, what he

[6] Timeliness is a key consideration in achieving the purpose of disclosure under the FECA. *See Democratic Senatorial Campaign Comm. v. FEC*, Case No. Civ. A. 92-0349, 1996 WL 34301203, at *8 (D.D.C. Apr. 17, 1996) ("threats to the health of our electoral processes also require timely attention."); *see generally Citizens United v. FEC*, 558 U.S. 310, 367-68 (2010) (purpose of disclosure is to allow viewers of ads to "evaluate the arguments to which they are being subjected" and "help citizens make informed choices in the political marketplaces," both of which require timely disclosure (citations omitted))

plans to do with it, what harms he suffered from the failure to disclose—are irrelevant to his standing."). Indeed, the Court has recognized that using information to "evaluate candidates for public office" is only one of the purposes contemplated by Congress in enacting the FECA. *Akins*, 524 U.S. at 21. In addition, Congress sought disclosure rules to also "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the *light of publicity*," and to provide information "to detect violations" of other portions of the FECA. *Buckley v. Valeo*, 424 U.S. 1, 67-68 (1976) (emphasis added). Here, it is clear that both CREW and Mr. Bookbinder have suffered these harms due to the FEC's failure to act on its complaint seeking information from the dark-money groups at issue. Doc. 1, ¶¶ 8–11.

B. The Harm to CREW's Programmatic Activities Is an Independent Injury

In addition to and independent of CREW's informational injury, the FEC has further caused CREW injury because its "discrete programmatic concerns are being directly and adversely affected by the challenged action." *Common Cause*, 108 F.3d at 417 (*citing Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (stating there "can be no question that the organization has suffered injury in fact" where there is "perceptibl[e] impair[ment]" of organization's activities)). While the denial of information can cause this injury, *see Havens*, 455 U.S. at 369 (injury caused by withholding information about apartment availability), there is no need to demonstrate a legal right to that information to establish standing under this alternative basis, *id*. at 378 (finding defendant's actions caused injury without inquiring whether plaintiff had legal right to information); *PETA v. U.S. Dep't of Ag.*, 797 F.3d 1087, 1091-92, 1093-97 (D.C. Cir. 2015) (denial of "access to information" and material deprivation of "avenues of redress" each constitute separate organizational harms); *Action Alliance of Senior Citizens of Greater Phila. v. Heckler*, 789 F.2d 931, 938 (D.C. Cir. 1986) (finding defendant's actions caused injury without inquiring whether plaintiff had legal right to information); *Spann v.*

Colonial Village, Inc., 899 F.2d 24, 27 (D.C. Cir. 1990) (defendant's advertising injured plaintiff's "interest in encouraging open housing"). So long as the defendant's action is "at a loggerheads with the stated mission of the plaintiff," and the action makes "the organization's activities more difficult," the plaintiff suffers a cognizable injury. *Nat'l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1429–30 (D.C. Cir. 1996); *see also Sherley v. Sebelius*, 610 F.3d 69, 72 (D.C. Cir. 2010) (defendant's activities rendering plaintiff's business activities more difficult constitute injury-in-fact).

Here, the FEC's failure to take action on Plaintiffs' administrative complaint regarding the unlawful concealing of campaign information required to be disclosed by the FECA is directly at "a loggerheads" with CREW's mission to "protec[t] our political system against corruption and reduc[e] the influence of money in politics." Doc. 1, ¶ 4. The FEC's inaction makes CREW's activities of "disseminat[ing] information to the public about public officials and their actions, and the outside influences that have been brought to bear on those actions" more difficult. *Id.* ¶¶ 5–7. The "denial of access to . . . information" used by CREW to further its mission is "concrete and specific to the work in which [CREW is] engaged." *PETA*, 797 F.3d at 1095.

Indeed, another judge of this district has upheld CREW's standing to bring suit based on an injury from unlawfully withheld information that should have been disclosed under the FECA. *See CREW v. FEC*, 243 F. Supp. 3d 91, 102 n.5 (D.D.C. 2017). There, the court found, on final judgment, that CREW's asserted injuries—the same as alleged here—are sufficient to show CREW's "discrete programmatic concerns are being directly and adversely affected" by the failure to disclose. *Id.* DOJ's statement does not cite this case, much less distinguish it from the present situation.

Accordingly, in addition to CREW's informational injury, the FEC's impairment of CREW's activities satisfies Article III. As Plaintiffs have standing to bring this suit, this Court had jurisdiction to enter judgment.

CONCLUSION

As the DOJ's statement is both exceedingly untimely and unhelpful, Plaintiffs respectfully request that the Court decline to consider it, and if the Court does consider it, find that Plaintiffs had standing, rendering the Court within its jurisdiction to enter the final judgment that issued more than six months ago.

Respectfully submitted,

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