

NOT YET SCHEDULED FOR ORAL ARGUMENT

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No. 17-5049

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON  
& MELANIE SLOAN,

*Plaintiffs-Appellants,*

v.

FEDERAL ELECTION COMMISSION,

*Defendant-Appellee.*

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On Appeal from the United States District Court for the District of Columbia  
Case No. 1:15-vc-02038-RC

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**PLAINTIFFS-APPELLANTS'  
STATEMENT AS TO ISSUES ON APPEAL**

Plaintiffs-Appellants Citizens for Responsibility and Ethics in Washington and Melanie Sloan hereby state that they intend to raise the following issues in this appeal:

- (1) The Federal Election Campaign Act's ("FECA") 52 U.S.C. § 30109(a)(8)(C) allows a complainant to the Federal Election Commission

(“FEC”) whose complaint is dismissed to thereafter bring a suit “in the name of such complainant” against the alleged wrongdoer without the participation of the FEC or use of the agency’s resources, but only if a court finds the FEC’s dismissal was “contrary to law.” Below, the district court held that an FEC dismissal is not “contrary to law” when it is based solely on the FEC’s desire to preserve agency resources and avoid litigation risk, rather than on the merits of the complaint; a result which bars a complainant from bringing a meritorious suit in its own name even though such suit would neither expend agency resources nor pose any litigation risk to the agency, rendering § 30109(a)(8)(C)’s citizen-suit provision a dead letter. Did the district court commit reversible error?

(2) Did the district court commit reversible error when it found that a non-majority of the FEC Commission’s concerns about “litigation risk” rendered the dismissal of Plaintiffs-Appellants’ administrative complaint not “contrary to law” within the meaning of the FECA, despite the FEC’s ability to partially remedy the violation of the FECA by releasing information already in the FEC’s possession without incurring any such “litigation risk.”

(3) Whether the FEC has abdicated its statutory responsibilities in enforcing the FECA’s political committee registration provisions, 52 U.S.C. § 30103, where three commissioners of the FEC—a number sufficient to block FEC enforcement—have never found reason to believe a respondent has violated

the FECA's political committee provisions and sought sanctions for such violation in a contested case.

(4) Whether the FEC's dismissal of Plaintiffs-Appellants' administrative complaint was otherwise "contrary to law" within the meaning of the FECA.

Plaintiffs-Appellants reserve all of their rights to the issues they may decide to raise on appeal.

Dated: April 24, 2016.

Respectfully submitted,

/s/ Stuart McPhail

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 24, 2017, I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, thereby serving all persons required to be served.

/s/ Stuart McPhail  
Stuart C. McPhail