

# Agenda

## Item #6



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commission Members  
From: Jonathan Wayne, Executive Director  
Date: January 21, 2009  
Re: Submission by Carl Lindemann

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In 2007, Carl Lindemann initiated a court proceeding challenging a December 20, 2006 determination by the Commission that the Maine Heritage Policy Center did not qualify as a political action committee (PAC) because of its advocacy in support of the Taxpayer Bill of Rights. Instead, the Commission determined that the MHPC was required to file campaign finance reports under another section of the Election Law, 21-A M.R.S.A. § 1056-B.

On December 16, 2008, the Maine Supreme Judicial Court affirmed a Superior Court decision that Mr. Lindemann did not have standing to challenge Commission's 2006 determination. Therefore, the courts have not considered whether the Commission made the correct determination on MHPC's status as a PAC. On December 16, 2008, I e-mailed to you the Supreme Judicial Court decision.

Mr. Lindemann has submitted the attached comments to the Commission regarding the Supreme Judicial Court's decision. He will be unable to attend the Commission's January 29 meeting, but is hopeful that his 2006-07 counsel, John Branson, may be able to attend on his behalf.

I believe Mr. Lindemann has two primary purposes in submitting the attached comments. First, as you consider complaints in the future, Mr. Lindemann would like you to be aware that some of the complainants will not have standing to appeal your determinations if the courts do not view them as persons who were aggrieved by your determination. Second, his comments are submitted in support of a statutory change that he proposed in connection with Agenda Item #2. Thank you.

# Carl Lindemann

P.O. Box 74  
Austin, Texas 78767-0074

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Phone 512-495-1511  
Email Carl@cyberscene.com

Maine Commission on Governmental  
Ethics and Election Practices

RE: Opportunities to Comment on Statute, Rule and Policy Changes

January 20, 2009

Dear Commission Chair Friedman and fellow Commissioners,

Executive Director Wayne asked that I provide this for a separate agenda item to discuss the Supreme Judicial Court's decision of December 16, 2008 regarding my appeal of the December 20, 2006 final determination of the Commission.

Why a separate agenda item? First, I believe that a discussion of this ruling should be handled as the October 21, 2008 Law Court ruling concerning the Commission. That was promptly put on the agenda for October 27, 2008 – only six day's notice. To match this, the December 16 ruling should have been included in the December 29<sup>th</sup> agenda. Now, including it as part of the January 29 agenda is appropriate.

This discussion is also necessary due to the fundamental change this ruling brings. Commissioners have had the belief that those with standing to bring cases to the Commission have the right of appeal. Numerous times, Commissioners expressed an expectation that they would be getting feedback from the courts in my appeal. That understanding requires reconsidered in light of this ruling. The ancillary issues raised in the Law Court's ruling here reach right into the fabric of the Commissioner's understanding of how to properly investigate and adjudicate matters brought to them in the public interest. This is at least as important as the narrower ramifications addressed in the agenda item for the Mowles' decision.

This matter may be touched on in a separate agenda item regarding specific proposals for proposed legislative changes. It is my hope that the conversation here may be more expansive given the broad implications. What does it mean for the Commission's mission to the public that public interest cases do not enjoy full standing? An examination of an analogous case decided by the United States Supreme Court puts the Law Court's ruling in context. John Branson, the attorney who represented me for the appeal, summarized the contrast between the two:

LINDEMANN – PAGE TWO

In *Federal Election Commission v. Akins*, the United States Supreme Court upheld a decision of the Court of Appeals for the District of Columbia holding that members of the general public had standing to appeal the Federal Election Commission's ("FEC") dismissal of their administrative complaint, which complaint had alleged that the American Israel Public Affairs Committee ("AIPAC") was functioning as a political action committee and was thereby required to disclose information about its campaign finance and activities under federal law. In *Akins*, the FEC argued vociferously against a finding of standing on the same basic grounds asserted by the Maine Ethics Commission, namely, that the citizen-complainants had not shown that they suffered an "injury in fact" that was concrete and particularized. *Akins*, 524 U.S. at 1821, 118 S.Ct. at 1783-84.

In rejecting the argument of the FEC, the High Court held that the citizen-complainants had standing to challenge the FEC's decision by virtue of the fact that the injury asserted fell well within the zone of interests sought to be protected by the federal campaign finance and reporting statute that the citizens were seeking to enforce. *Akins*, 524 U.S. at 20, 118 S.Ct. at 1783-84. The Supreme Court's elaboration of its decision is extremely instructive...

It may be of interest to note that the Maine Superior Court's decision cited the SCOTUS ruling – citing the dissenting opinion.

I am hoping that Mr. Branson will be able to be present for the discussion on January 29, but he has been unable to confirm his availability as of this date. In any case, it is my hope that this separate agenda item will be the occasion for a vibrant discussion that will be of public benefit.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl Lindemann". The signature is written in a cursive style with a long, sweeping underline.

encl.

Decision: 2008 ME 187  
Docket: Ken-08-133  
Argued: September 17, 2008  
Decided: December 16, 2008

Panel: SAUFLEY, C.J., and CLIFFORD,\* ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

CARL LINDEMANN

v.

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

MEAD, J.

[¶1] Carl Lindemann appeals from a judgment of the Superior Court (Kennebec County, *Mills, J.*) dismissing for lack of standing his petition for review of a final agency action made by the Commission on Governmental Ethics and Election Practices (Commission.) Lindemann argues that he meets the standing requirements set forth in the Maine Administrative Procedure Act (MAPA), and articulated by the United States Supreme Court in *Federal Election Commission v. Akins*, 524 U.S. 11 (1998). He also argues that pursuant to 5 M.R.S. § 11007(1) (2007), he was entitled to oral argument on his petition. We conclude that Lindemann does not have standing under either MAPA or *Akins*, and he was not

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\* Although not available at oral argument, Justice Clifford participated in the decision. M.R. App. P. 12(a).

entitled to oral argument pursuant to 5 M.R.S. § 11007(1). We affirm the judgment.

## I. BACKGROUND

[¶2] On October 19, 2006, Lindemann made an investigation request, pursuant to 21-A M.R.S. § 1003(2) (2007),<sup>1</sup> to the Commission. The request concerned the Maine Heritage Policy Center's (MHPC) involvement in a statewide referendum campaign to enact a Taxpayer Bill of Rights (TABOR). Lindemann's complaint suggested that MHPC qualified as a political action committee as defined by 21-A M.R.S. § 1052(5) (2007) and, as a political action committee, was required to register and file reports with the Commission. In the alternative, Lindemann suggested that if MHPC was not a political action committee, it was required to disclose expenditures made in connection with TABOR under 21-A M.R.S. § 1056-B (2007).<sup>2</sup>

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<sup>1</sup> Section 1003 authorizes investigations by the Commission. The pertinent part reads:

**2. INVESTIGATIONS REQUESTED.** A person may apply in writing to the commission requesting an investigation concerning the registration of a candidate, treasurer, political committee or political action committee and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

21-A M.R.S. § 1003(2) (2007).

<sup>2</sup> Section 1056-B governs expenditures for those organizations not considered political action committees. It provides:

[¶3] Beginning on October 20, 2006, Lindemann's complaint was addressed at a series of Commission meetings. The Commission received input on the matter from its staff, counsel for MHPC and Lindemann, and other interested parties. The Commission also received recordings of a public forum conducted by MHPC and MHPC press releases. On November 7, 2006, during the course of the Commission's review, the TABOR initiative was defeated.

[¶4] The Commission made its final decision (the enforcement decision) at its December 20, 2006, meeting. A written decision was issued on December 22, 2006, and consisted of three determinations. The Commission first determined that MHPC's major purpose was not to advocate for the passage of the TABOR initiative. Second, the Commission determined that MHPC was not a political action committee as defined at 21-A M.R.S. § 1052(5). Third, the Commission determined that MHPC had received contributions and made expenditures aggregating in excess of \$1500 for the purpose of initiating, promoting, or

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Any person not defined as a political committee who solicits and receives contributions or makes expenditures, other than by contribution to a political action committee, aggregating in excess of \$1,500 for the purpose of initiating, promoting, defeating or influencing in any way a ballot question must file a report with the commission.

21-A M.R.S. § 1056-B (2007).

Title 21-A M.R.S. § 1056-B has since been amended. P.L. 2007, ch. 477, § 4 (effective June 30, 2008) (codified at 21-A M.R.S. § 1056-B (2008)). These types of non-political action committees are now called "ballot question committees" and the contribution and expenditure amount has increased to \$5000. These changes do not impact the Court's analysis of Lindemann's standing.

influencing TABOR and directed MHPC to file a report pursuant to 21-A M.R.S. § 1056-B. The report was to be filed within thirty days of the written decision.<sup>3</sup>

[¶5] On January 19, 2007, Lindemann appealed to the Superior Court pursuant to M.R. Civ. P. 80C and 5 M.R.S. § 11002 (2007), requesting a review of the determinations and actions of the Commission. After Lindemann and the Commission filed their respective memoranda, Lindemann made a written request for oral argument. On February 28, 2008, without oral argument, the Superior Court issued its decision and order dismissing Lindemann's appeal. The court concluded that his injury was indistinct from any injury to the public at large, and therefore, Lindemann failed to satisfy the threshold requirement of standing. Lindemann's appeal to this Court followed.

## II. DISCUSSION

[¶6] Lindemann's standing argument is based in statute and federal case law. First, he argues that because the Campaign Reports and Finances statutes (campaign statutes), 21-A M.R.S. §§ 1001-1105 (2007), do not specifically preclude or limit judicial review of the Commission's enforcement decision, judicial review under MAPA is allowed. Second, Lindemann argues he has satisfied prudential standing as articulated by the United States Supreme Court in

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<sup>3</sup> MHPC's compliance with the Commission's order to file this report is not at issue.

*Akins*, because his informational injury,<sup>4</sup> the deprivation of information concerning TABOR, falls within the zone of interest sought to be protected by Maine's campaign statutes.

[¶7] A party's standing to bring a Rule 80C appeal is reviewed *de novo*. See *Norris Family Assocs., LLC v. Town of Phippsburg*, 2005 ME 102, ¶ 11, 879 A.2d 1007, 1012.

#### A. Standing Under Maine's Campaign Statutes and MAPA

[¶8] In Maine, standing jurisprudence is prudential, rather than constitutional. *Roop v. City of Belfast*, 2007 ME 32, ¶ 7, 915 A.2d 966, 968. (quotation marks omitted). Standing is a threshold issue and Maine courts are "only open to those who meet this basic requirement." *Ricci v. Superintendent, Bureau of Banking*, 485 A.2d 645, 647 (Me. 1984). While there is no set formula for determining standing, a court may "limit access to the courts to those best suited to assert a particular claim." *Roop*, 2007 ME 32, ¶ 7, 915 A.2d at 968 (citation omitted). In addition, the question of whether a specific individual has standing is significantly affected by the unique context of the claim. *Id.*

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<sup>4</sup> In *Akins*, the Supreme Court labeled the plaintiffs' failure to obtain information an "informational injury." *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 24 (1998). "Informational injury" has been further defined as "that injury caused when voters are deprived of useful political information at the time of voting." *Judicial Watch, Inc. v. Fed. Election Comm'n*, 293 F. Supp. 2d 41, 46 (D. D.C. 2003).

[¶9] In the context of an administrative decision, as is the case here, the right to judicial review is governed by statute. *Nelson v. Bayroot, LLC*, 2008 ME 91, ¶ 9, 953 A.2d 378, 381. “Whether a party has standing depends on the wording of the specific statute involved.” *Id.*

[¶10] Title 21-A M.R.S. § 1003(2) (2007) of Maine’s campaign statutes provides:

A person may apply in writing to the commission requesting an investigation concerning the registration of a candidate, treasurer, political committee or political action committee and contributions by or to and expenditures by a person, candidate, treasurer, political committee or political action committee. The commission shall review the application and shall make the investigation if the reasons stated for the request show sufficient grounds for believing that a violation may have occurred.

[¶11] There is no express provision here or elsewhere in the Maine campaign statutes allowing or precluding judicial review of Commission enforcement determinations. As the Commission noted, MAPA governs judicial review of its actions.<sup>5</sup> Lindemann’s standing to obtain judicial review of the Commission’s enforcement decision, therefore, depends on whether he has standing under MAPA.

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<sup>5</sup> The written determination issued by the Commission provided that “any person aggrieved by [the Commission’s] determination has a right to seek judicial review . . . in Superior Court, in accordance with Title 5 M.R.S.A. §§ 11001 & 11002.”

[¶12] MAPA provides a right to judicial review to any person “aggrieved” by an agency’s final action or an agency’s failure or refusal to act. 5 M.R.S. § 11001(1), (2) (2007).<sup>6</sup> We conclude that neither provision of MAPA supports Lindemann’s claim for standing.

[¶13] First, section 11001(2) is inapplicable to Lindemann’s claim because the Commission has not failed or refused to act. Only a “person aggrieved by the failure or refusal of an agency to act” is entitled to judicial review pursuant to 5 M.R.S. § 11001(2). Here, Lindemann made an investigation request to the Commission pursuant to 21-A M.R.S. § 1003(2). The Commission reviewed and accepted Lindemann’s request and undertook an extensive investigation that included oral testimony at Commission meetings and review of extensive written

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<sup>6</sup> Section 11001(1) of MAPA sets forth the right to review agency action by providing:

Except where a statute provides for direct review or review of a pro forma judicial decree by the Supreme Judicial Court or where judicial review is specifically precluded or the issues therein limited by statute, any person who is aggrieved by final agency action shall be entitled to judicial review thereof in the Superior Court in the manner provided by this subchapter. Preliminary, procedural, intermediate or other nonfinal agency action shall be independently reviewable only if review of the final agency action would not provide an adequate remedy.

5 M.R.S. § 11001(1) (2007).

Section 11001(2) of MAPA sets forth the right to review an agency’s failure or refusal to act by providing:

Any person aggrieved by the failure or refusal of an agency to act shall be entitled to judicial review thereof in the Superior Court. The relief available in the Superior Court shall include an order requiring the agency to make a decision within a time certain.

5 M.R.S. § 11001(2) (2007).

submissions and documents.<sup>7</sup> The Commission's final agency action occurred when it voted and issued a written enforcement decision on the matter. Because the Commission has not failed or refused to act, section 11001(2) is not implicated.

[¶14] Section 11001(1) also provides no avenue to Lindemann to judicially attack the Commission's findings because he is unable to demonstrate that he is "aggrieved." Only a "person who is aggrieved by final agency action shall be entitled to judicial review." 5 M.R.S. § 11001(1). "Aggrieved," while not defined in MAPA, has been previously defined by this Court as requiring particularized injury—that is, the agency action or inaction must operate "prejudicially and directly upon the party's property, pecuniary or personal rights." *Nelson*, 2008 ME 91, ¶ 10, 952 A.2d at 382. In addition, we have required that the particularized injury be distinct from any injury experienced by the public at large. *Id.*; *Ricci*, 485 A.2d at 647.

[¶15] In limited circumstances, we have allowed individual members of the public to vindicate public rights in a judicial forum. *See generally Fitzgerald v. Baxter State Park Auth.*, 385 A.2d 189 (Me. 1978). For example, we recognized standing for citizens asserting a political right shared by the public at large, when a "particularized interest" was demonstrated. *McCaffrey v. Gartley*, 377 A.2d 1367,

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<sup>7</sup> As part of its investigation, the Commission could have subpoenaed witnesses and records and taken evidence under oath, but it was not required to do so. 21-A M.R.S. § 1003(1) (2007).

1370 (Me. 1977) (recognizing plaintiffs' standing as voters, property taxpayers, and signers of an initiative). Even in these circumstances, we still require a "particularized injury" or "direct and personal injury." *Fitzgerald*, 385 A.2d at 197; *see also Heald v. Sch. Admin. Dist. No. 74*, 387 A.2d 1, 3 (Me. 1978) (finding no standing when plaintiffs did not demonstrate direct personal injury). "Being affected by a governmental action is insufficient to confer standing in the absence of any showing that the effect is an injury." *Collins v. State*, 2000 ME 85, ¶ 7, 750 A.2d 1257, 1260.

[¶16] Here, Lindemann is arguably affected, but not directly or personally injured, by the Commission's enforcement decision. Assuming there was an injury that flowed from the Commission's final decision, the injury affected all citizens, not just Lindemann.<sup>8</sup> His alleged informational injury is indistinguishable from any injury experienced by other Maine citizens.

[¶17] Because the Commission did not fail or refuse to act and Lindemann is not "aggrieved" by the Commission's decision, we conclude that MAPA does not confer standing on Lindemann to appeal from the Commission's decision.<sup>9</sup>

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<sup>8</sup> There remains a very significant question of whether any injury of any kind occurred. *See infra* paragraph 21.

<sup>9</sup> Lindemann also does not have standing as a "party" as defined by the Maine Administrative Procedure Act (MAPA) in 5 M.R.S. § 8002(5) (2007). Party status is one, but not the only, requirement of standing under MAPA. *See Anderson v. Comm'r of Dep't of Human Servs.*, 489 A.2d 1094, 1097 n.6 (Me. 1985) (stating "[t]he plaintiff was a party before the hearing officer, also a necessary element of standing") (emphasis added); *see also Hammond Lumber Co. v. Fin. Auth. of Me.*, 521 A.2d 283, 286 n.5

Furthermore, an agency charged with enforcing a particular statute or rule has the prerogative of electing not to take action. *See generally, Herrle v. Town of Waterboro*, 2001 ME 1, ¶¶ 10-11, 763 A.2d 1159, 1161-62 (discussing prosecutorial discretion in enforcement actions). These decisions are left to the sole discretion of the agency and are not ordinarily subject to judicial review at the behest of members of the general public. In this matter, if the Commission received Lindemann's request for an investigation and elected not to investigate, the same result would occur—Lindemann lacks standing to seek judicial review. His right, as established in section 1003(2), is to request the Commission to conduct an investigation; the Commission's obligation *vis-à-vis* Lindemann is simply to accept and review his request. A review concluding that no action or investigation will be undertaken creates no right of judicial review in Lindemann or any other member of the general public.

B. Standing under *Federal Election Commission v. Akins*

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(Me. 1987) (stating “[b]eing a party during the proceedings before the agency is an essential *criterion* for standing”) (emphasis added); *but cf. Superintendent of Ins. v. Attorney General*, 558 A.2d 1197 (Me. 1989). In *Superintendent of Insurance*, the Insurance Code statutes at issue had a more expansive grant of standing than MAPA, allowing *any* party to a hearing to appeal therefrom. *Id.* at 1201 (emphasis added). Thus, a party did not need show particularized aggrievement in order to have standing pursuant to the Insurance Code statutes. Here, however, the Maine campaign statutes do not include an independent or more expansive grant of standing. Although Lindemann filed the initial request for investigation and offered documentation and comment, his participation in the process does not, *ipso facto*, render him an actual party to the proceedings before the Commission. Whether Lindemann has standing is governed only by MAPA, which requires a showing of particularized injury. Lindemann has failed to demonstrate particularized injury.

[¶18] Lindemann’s argument that he has standing as an ordinary citizen according to *Akins* is also unavailing. In *Akins*, the United States Supreme Court discussed its standing requirements in light of the Federal Election Campaign Act (FECA), 2 U.S.C.S. §§ 431-457 (LexisNexis 2002 & Supp. 2008), an Act that imposes extensive recordkeeping and disclosure requirements on political action committees. 524 U.S. at 15. Plaintiffs were voters who filed a complaint with the Federal Election Commission asking the FEC to find that the American Israel Public Affairs Committee had violated FECA in failing to abide by FECA’s disclosure requirements. *Id.* at 15-16. The FEC dismissed the complaint, finding that AIPAC was not a political action committee and therefore, not subject to the disclosure requirements. *Id.* at 17.

[¶19] On appeal, the United States Supreme Court found standing because “the injury asserted by the plaintiff arguably [fell] within the zone of interest to be protected or regulated by the statute.” *Akins*, 524 U.S. at 20 (citation omitted). In reaching this conclusion, the Court evaluated the language of the statute and the nature of the plaintiffs’ injury, stating that “Congress, intend[ed] to protect voters . . . from suffering the kind of injury at issue, [and] intended to authorize this kind of suit.” *Id.* The plaintiffs’ prudential standing in *Akins* was therefore a result of “the language of the [FECA] statute *and* the nature of the injury.” *Id.* (emphasis added). Both factors are absent in Lindemann’s case.

[¶20] First, unlike FECA, Maine’s campaign statutes do not expressly provide a right to judicial review.<sup>10</sup> MAPA governs any right to judicial review. While there is an express provision in MAPA allowing for the judicial review of agency decisions, MAPA limits standing to petition for judicial review to those who are “aggrieved.” As we have explained, Lindemann is not aggrieved, and thus has no right of judicial review under MAPA.

[¶21] Second, while Lindemann alleges an informational injury identical to that of the plaintiffs in *Akins*, he fails to demonstrate that he was deprived of useful political information. In *Akins*, plaintiffs were denied all access to information concerning contributions to and expenditures by AIPAC. Lindemann, on the other hand, has received information on MHPC’s financial involvement with TABOR. Through the filing of a section 1056-B report, Lindemann gained information on MHPC’s expenditures made for the purpose of initiating, promoting, or influencing TABOR. Any informational injury as it pertained to MHPC’s financial involvement with TABOR ceased to exist when this information was disclosed pursuant to section 1056-B. See *Alliance For Democracy v. Fed. Election Comm’n*, 335 F. Supp. 2d 39, 48 (D. D.C. 2004) (finding no injury when plaintiffs

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<sup>10</sup> The two statutory provisions interpreted by the Court in *Akins* were within the federal election campaign chapter, and within a section entitled “Enforcement.” Section 437g(a)(1) states “[a]ny person who believes a violation of this Act . . . has occurred, may file a complaint with the Commission.” 2 U.S.C.S. § 437g(a)(1) (LexisNexis 2002). Section 437g(8)(A) states “[a]ny party aggrieved by an order of the Commission dismissing a complaint filed by such party . . . may file a petition with the United States District Court for the District of Columbia.” 2 U.S.C.S. § 437g(8)(A) (LexisNexis 2002).

“already possess the information they claim to lack”); *see also Alliance for Democracy v. Fed. Election Comm’n*, 362 F. Supp. 2d 138, 147 (D. D.C. 2005) (stating “no informational injury has been sustained here because the information required to be disclosed by the statute has already been disclosed”).

[¶22] Because MAPA requires that those seeking judicial review of administrative decisions be “aggrieved,” and because Lindemann has failed to demonstrate a cognizable injury, *Akins* does not apply.<sup>11</sup>

### C. Oral Argument

[¶23] Lindemann also contends that the Superior Court erred in failing to schedule oral argument on his petition. Title 5 M.R.S. § 11007(1) states, “The [Superior Court], upon request or its own motion, shall set a schedule for the filing of briefs by the parties and for oral argument.” Lindemann argues that this statute mandates, as a matter of law, oral argument on all such petitions.

[¶24] Procedural rulings or other matters where the court has choices are reviewed for abuse of discretion. *Bates v. Dep’t of Behavioral & Developmental Servs.*, 2004 ME 154, ¶ 38, 863 A.2d 890, 901.

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<sup>11</sup> Lindemann also argues that given the compelling need for a transparent political process, we should recognize standing for ordinary citizens. Because standing in administrative appeals is statutorily based, whether standing to challenge a determination of the Commission should extend to the general public is a decision to be made by the legislature, not the judiciary. *See Varney v. Look*, 377 A.2d 81, 83 (Me. 1977) (“The right of appeal . . . may be granted subject to such restrictions, limitations and conditions as the Legislature may attach to it.”) (citation omitted).

[¶25] Rule 80C(c) of the Maine Rules of Civil Procedure limits the manner and scope of review to that “provided by 5 M.R.S.A. § 11007(2) through section 11007(4).” The statutory provision Lindemann invokes, 11007(1), is thus excluded from the Rule. To the extent that Rule 80C differs or conflicts with MAPA, the Rule governs the manner and scope of the court’s review of final agency action. *Arsenault v. Crossman*, 1997 ME 92, ¶ 4, 696 A.2d 418, 419; *see also State v. Leonard*, 470 A.2d 1262, 1266 (Me. 1984) (citing 4 M.R.S.A. § 8 (1979)) (“All laws in conflict [with promulgated procedural rules] shall be of no further force and effect.”).

[¶26] Rule 80(C)(c) states that “unless the court otherwise directs,” oral argument will be scheduled. The plain language of the Rule gives the court the prerogative to schedule, or not schedule, oral argument on 80C appeals. The court’s failure to hold oral argument was therefore not an abuse of discretion.

The entry is:

Judgment affirmed.

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**Attorney for Carl Lindemann:**

John H. Branson, Esq. (orally)  
Law Office of John H. Branson, P.A.  
183 Middle Street, 4<sup>th</sup> Floor  
PO Box 7526  
Portland, Maine 04112-7526

**Attorney for the Maine Commission on Governmental  
Ethics and Election Practices:**

G. Steven Rowe, Attorney General  
Phyllis Gardiner, Asst. Atty. Gen. (orally)  
Six State House Station  
Augusta, Maine 04333-0006

U.S., at 363, 32 S.Ct., at 800–801. By contrast, the counts at issue in this case allege no conspiracy. They describe activity in which Cabrales alone, untied to others, engaged.

9In *re Palliser* concerned a man who sent letters from New York to postmasters in Connecticut, attempting to gain postage on credit, in violation of then-applicable law. The Court held that the defendant could be prosecuted in Connecticut, where the mail he addressed and dispatched was received. 136 U.S., at 266–268, 10 S.Ct., at 1036–1037. The *Palliser* opinion simply recognizes that a mailing to Connecticut is properly ranked as an act completed in that State. Cf. 18 U.S.C. § 3237(a) (“Any offense involving the use of the mails . . . is a continuing offense and . . . may be . . . prosecuted in any district from, through, or into which such . . . mail matter . . . moves.”); *United States v. Johnson*, 323 U.S. 273, 275, 65 S.Ct. 249, 250, 89 L.Ed. 236 (1944) (consistent with the Constitution “an illegal use of the mails . . . may subject the user to prosecution in the district where he sent the goods, or in the district of their arrival, or in any intervening district”). Cabrales, however, dispatched no missive from one State into another. The counts before us portray her and the money she deposited and withdrew as moving inside Florida only.

Finally, the Government urges the efficiency of trying Cabrales in Missouri, because evidence in that State, and not in Florida, shows that the money Cabrales allegedly laundered derived from unlawful activity. Although recognizing that the venue requirement is principally a protection for the defendant, Reply Brief 10, the Government further maintains that its convenience, and the interests of the community victimized by drug dealers, merit consideration.

But if Cabrales is in fact linked to the drug-trafficking activity, the Government is not disarmed from showing that is the case. She can be, and indeed has been, charged with conspiring with the drug dealers in Missouri. If the Government can prove the agreement it has alleged, Cabrales can be prosecuted in Missouri for that confederacy, and her money laundering in Florida could

be shown as overt acts in furtherance of the conspiracy. See 18 U.S.C. § 371 (requiring proof of an “act to effect the object of the conspiracy”). 10As the Government acknowledged, the difference in the end result “probably . . . would be negligible.” Tr. of Oral Arg. 52; see United States Sentencing Commission, Guidelines Manual § 1B1.3 (Nov. 1995) (providing for consideration of “Relevant Conduct” in determining sentence).

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We hold that Missouri is not a place of proper venue for the money-laundering offenses with which Cabrales is charged. For the reasons stated, the judgment of the Court of Appeals for the Eighth Circuit is

*Affirmed.*



524 U.S. 11, 141 L.Ed.2d 10

11FEDERAL ELECTION COMMISSION,  
Petitioner,

v.

James E. AKINS, Richard Curtiss, Paul  
Findley, Robert J. Hanks, Andrew  
Killgore, and Orin Parker.

No. 96–1590.

Argued Jan. 14, 1998.

Decided June 1, 1998.

A group of voters sought review of the Federal Election Commission’s (FEC) decision dismissing their administrative complaint, which alleged that an organization was a “political committee” under the Federal Election Campaign Act (FECA), and thus, should have been subject to registration and reporting requirements. The United States District Court for the District of Columbia, June L. Green, J., granted summary judgment for the FEC, and the voters appealed. After remanding for clarification, 1992 WL 183209, the Court of Appeals, District of

Columbia Circuit, en banc, 101 F.3d 731, vacating an earlier panel decision, 66 F.3d 348, reversed. Certiorari was granted. The Supreme Court, Justice Breyer, held that the voters had standing to bring the suit.

Vacated and remanded.

Justice Scalia filed a dissenting opinion, in which Justices O'Connor and Thomas joined.

### 1. Elections ⇌317.5

A group of voters satisfied prudential standing requirements in an action in which the voters alleged that an organization was a "political committee" under the Federal Election Campaign Act (FECA), and thus, subject to registration and reporting requirements; the injury of which the voters complained, their failure to obtain relevant information, was injury of a kind that FECA sought to address. Federal Election Campaign Act of 1971, § 309(a)(1), (8)(A), as amended, 2 U.S.C.A. § 437g(a)(1), (8)(A).

### 2. Federal Civil Procedure ⇌103.2

The word "aggrieved" is historically associated with a congressional intent to cast the standing net broadly—beyond the common-law interests and substantive statutory rights upon which "prudential" standing traditionally rested.

See publication Words and Phrases for other judicial constructions and definitions.

### 3. Federal Civil Procedure ⇌103.2

Prudential standing is satisfied when the injury asserted by a plaintiff arguably falls within the zone of interests to be protected or regulated by the statute in question.

### 4. Elections ⇌317.5

The inability of a group of voters to obtain information, specifically, lists of donors to an organization and campaign-related contributions and expenditures that the Federal Election Campaign Act (FECA) allegedly required the organization to make public, satisfied the "injury in fact" requirement for Article III standing, despite a claim that the action involved only a "generalized grievance"; there was no reason to doubt the

voters' claim that the information would help them and others to evaluate candidates for public office, especially candidates who received assistance from the organization, and to evaluate the role that the organization's financial assistance might play in a specific election. U.S.C.A. Const. Art. 3, § 2, cl. 1; Federal Election Campaign Act of 1971, § 309(a)(1), (8)(A), as amended, 2 U.S.C.A. § 437g(a)(1), (8)(A).

See publication Words and Phrases for other judicial constructions and definitions.

### 5. Federal Courts ⇌12.1

Article III limits Congress' grant of judicial power to "cases" or "controversies," which means that a party asserting a claim must show, inter alia, an injury in fact; this requirement helps assure that courts will not pass upon abstract, intellectual problems, but will adjudicate concrete, living contests between adversaries. U.S.C.A. Const. Art. 3, § 2, cl. 1.

### 6. Federal Civil Procedure ⇌103.2

The fact that a political forum may be more readily available where an injury is widely shared, while counseling against interpreting a statute as conferring standing, does not, by itself, automatically disqualify an interest for purposes of Article III standing; such an interest, where sufficiently concrete, may count as an "injury in fact." U.S.C.A. Const. Art. 3, § 2, cl. 1.

### 7. Elections ⇌317.5

The harm asserted by a group of voters, an inability to obtain information that the Federal Election Campaign Act (FECA) allegedly required an organization to make public, was fairly traceable to the Federal Election Commission's (FEC) decision that the organization was not a "political committee" subject to the disclosure requirements of the FECA, and the voters' action could redress that injury, thus satisfying the traceability and redressability requirements for the voters to have Article III standing to challenge the FEC's decision, even though the FEC may have decided, in the exercise of its discretion, not to require the organization to produce the information even if the FEC had agreed with the voters' view of the law.

U.S.C.A. Const. Art. 3, § 2, cl. 1; Federal Election Campaign Act of 1971, § 309(a)(1), (8)(A), as amended, 2 U.S.C.A. § 437g(a)(1), (8)(A).

#### 8. Administrative Law and Procedure ◊668, 753

Although agencies often have discretion about whether to take a particular action, those adversely affected by a discretionary agency decision generally have standing to complain that the agency based its decision upon an improper legal ground; if a reviewing court agrees that the agency misinterpreted the law, it will set aside the agency's action and remand the case, even though the agency, like a new jury after a mistrial, might later, in the exercise of its lawful discretion, reach the same result for a different reason. U.S.C.A. Const. Art. 3, § 2, cl. 1.

#### 9. Elections ◊317.5

A group of voters challenging the Federal Election Commission's (FEC) decision that an organization was not a "political committee" subject to the disclosure requirements of the Federal Election Campaign Act (FECA) had standing despite a claim that the case involved an agency's decision not to undertake an enforcement action, an area generally not subject to judicial review. U.S.C.A. Const. Art. 3, § 2, cl. 1; Federal Election Campaign Act of 1971, § 309(a)(1), (8)(A), as amended, 2 U.S.C.A. § 437g(a)(1), (8)(A).

#### *Syllabus* \*

The Federal Election Campaign Act of 1971 (FECA) seeks to remedy corruption of the political process. As relevant here, it imposes extensive recordkeeping and disclosure requirements upon "political committee[s]," which include "any committee, club, association or other group of persons which receives" more than \$1,000 in "contributions" or "which makes" more than \$1,000 in "expenditures" in any given year, 2 U.S.C. § 431(4)(A) (emphasis added), "for the purpose of influencing any election for Federal office," §§ 431(8)(A)(i), (9)(A)(i). Assistance given to help a particular candidate will not

\* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader.

count toward the \$1,000 "expenditure" ceiling if it takes the form of a "communication" by a "membership organization or corporation" "to its members"—as long as the organization is not "organized primarily for the purpose of influencing [any individual's] nomination . . . or election." § 431(9)(B)(iii). Respondents, voters with views often opposed to those of the American Israel Public Affairs Committee (AIPAC), filed a complaint with petitioner Federal Election Commission (FEC), asking the FEC to find that AIPAC had violated FECA and, among other things, to order AIPAC to make public the information that FECA demands of political committees. In dismissing the complaint, the FEC found that AIPAC's communications fell outside FECA's membership communications exception. Nonetheless, it concluded, AIPAC was not a "political committee" because, as an issue-oriented lobbying organization, its major purpose was not the nomination or election of candidates. The District Court granted the FEC summary judgment when it reviewed the determination, but the en banc Court of Appeals reversed on the ground that the FEC's major purpose test improperly interpreted FECA's definition of a political committee. The case presents this Court with two questions: (1) whether respondents had standing to challenge the FEC's decision, and (2) whether an organization falls outside FECA's definition of a "political committee" because "its major purpose" is not "the nomination or election of candidates."

#### *Held:*

1. Respondents, as voters seeking information to which they believe FECA entitles them, have standing to challenge the FEC's decision not to bring an enforcement action. Pp. 1783–1787.

12(a) Respondents satisfy prudential standing requirements. FECA specifically provides that "[a]ny person" who believes FECA has been violated may file a complaint with the FEC, § 437g(a)(1), and that "[a]ny party aggrieved" by an FEC order dismiss-

See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

ing such party's complaint may seek district court review of the dismissal, § 437g(a)(8)(A). History associates the word "aggrieved" with a congressional intent to cast the standing net broadly—beyond the common-law interests and substantive statutory rights upon which "prudential" standing traditionally rested. *E.g.*, *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 60 S.Ct. 693, 84 L.Ed. 869. Moreover, respondents' asserted injury—their failure to obtain relevant information—is injury of a kind that FECA seeks to address. Pp. 1783–1784.

(b) Respondents also satisfy constitutional standing requirements. Their inability to obtain information that, they claim, FECA requires AIPAC to make public meets the genuine "injury in fact" requirement that helps assure that the court will adjudicate "[a] concrete, living contest between adversaries." *Coleman v. Miller*, 307 U.S. 433, 460, 59 S.Ct. 972, 985, 83 L.Ed. 1385 (Frankfurter, J., dissenting). *United States v. Richardson*, 418 U.S. 166, 94 S.Ct. 2940, 41 L.Ed.2d 678, distinguished. The fact that the harm at issue is widely shared does not deprive Congress of constitutional power to authorize its vindication in the federal courts where the harm is concrete. See *Public Citizen v. Department of Justice*, 491 U.S. 440, 449–450, 109 S.Ct. 2558, 2564–2565, 105 L.Ed.2d 377. The informational injury here, directly related to voting, the most basic of political rights, is sufficiently concrete. Respondents have also satisfied the remaining two constitutional standing requirements: The harm asserted is "fairly traceable" to the FEC's decision not to issue its complaint, and the courts in this case can "redress" that injury. Pp. 1784–1787.

(c) Finally, FECA explicitly indicates a congressional intent to alter the traditional view that agency enforcement decisions are not subject to judicial review. *Heckler v. Chaney*, 470 U.S. 821, 832, 105 S.Ct. 1649, 1656, 84 L.Ed.2d 714, distinguished. P. 1787.

2. Because of the unusual and complex circumstances in which the case arises, the second question presented cannot be addressed here, and the case must be remanded. After the FEC determined that many persons belonging to AIPAC were not "mem-

bers" under FEC regulations, the Court of Appeals overturned those regulations in another case, in part because it thought they defined membership organizations too narrowly in light of an organization's First Amendment right to communicate with its members. The FEC's new "membership organization" rules could significantly affect the interpretative issue presented by Question Two. Thus, the FEC should proceed to determine whether or not AIPAC's expenditures qualify as "membership communications" under the new rules, and thereby fall outside the scope of "expenditures"<sup>13</sup> that could qualify it as a "political committee." If it decides that the communications here do not qualify, then the lower courts can still evaluate the significance of the communicative context in which the case arises. If, on the other hand, it decides that they do qualify, the matter will become moot. Pp. 1787–1788.

101 F.3d 731, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, KENNEDY, SOUTER, and GINSBURG, JJ., joined. SCALIA, J., filed a dissenting opinion, in which O'CONNOR and THOMAS, JJ., joined, *post*, p. 1788.

Seth P. Waxman, Washington, DC, for petitioner.

Daniel M. Schember, Washington, DC, for respondents.

For U.S. Supreme Court briefs, see:

1997 WL 523390 (Pet.Brief)

1997 WL 675443 (Reply.Brief)

Justice BREYER delivered the opinion of the Court.

The Federal Election Commission (FEC) has determined that the American Israel Public Affairs Committee (AIPAC) is not a "political committee" as defined by the Federal Election Campaign Act of 1971 (FECA or Act), 86 Stat. 11, as amended, 2 U.S.C. § 431(4), and, for that reason, the FEC has refused to require AIPAC to make disclosures regarding its membership, contribu-

tions, and expenditures that FECA would otherwise require. We hold that respondents, a group of voters, have standing to challenge the 14Commission's determination in court, and we remand this case for further proceedings.

## I

In light of our disposition of this case, we believe it necessary to describe its procedural background in some detail. As commonly understood, the FECA seeks to remedy any actual or perceived corruption of the political process in several important ways. The Act imposes limits upon the amounts that individuals, corporations, "political committees" (including political action committees), and political parties can contribute to a candidate for federal political office. §§ 441a(a), 441a(b), 441b. The Act also imposes limits on the amount these individuals or entities can spend in coordination with a candidate. (It treats these expenditures as "contributions to" a candidate for purposes of the Act.) § 441a(a)(7)(B)(i). As originally written, the Act set limits upon the total amount that a candidate could spend of his own money, and upon the amounts that other individuals, corporations, and "political committees" could spend independent of a candidate—though the Court found that certain of these last-mentioned limitations violated the First Amendment. *Buckley v. Valeo*, 424 U.S. 1, 39–59, 96 S.Ct. 612, 644–654, 46 L.Ed.2d 659 (1976) (*per curiam*); *Federal Election Comm'n v. National Conservative Political Action Comm.*, 470 U.S. 480, 497, 105 S.Ct. 1459, 1468–1469, 84 L.Ed.2d 455 (1985); cf. *Colorado Republican Federal Campaign Comm. v. Federal Election Comm'n*, 518 U.S. 604, 613–619, 116 S.Ct. 2309, 2314–2318, 135 L.Ed.2d 795 (1996) (opinion of BREYER, J.).

This case concerns requirements in the Act that extend beyond these better-known contribution and expenditure limitations. In particular, the Act imposes extensive record-keeping and disclosure requirements upon groups that fall within the Act's definition of a "political committee." Those groups must register with the FEC, appoint a treasurer,

keep names and addresses of contributors, track the amount and purpose of disbursements, and file complex FEC 15reports that include lists of donors giving in excess of \$200 per year (often, these donors may be the group's members), contributions, expenditures, and any other disbursements irrespective of their purposes. §§ 432–434.

The Act's use of the word "political committee" calls to mind the term "political action committee," or "PAC," a term that normally refers to organizations that corporations or trade unions might establish for the purpose of making contributions or expenditures that the Act would otherwise prohibit. See §§ 431(4)(B), 441b. But, in fact, the Act's term "political committee" has a much broader scope. The Act states that a "political committee" includes "any committee, club, association or other group of persons which receives" more than \$1,000 in "contributions" or "which makes" more than \$1,000 in "expenditures" in any given year. § 431(4)(A) (*emphasis added*).

This broad definition, however, is less universally encompassing than at first it may seem, for later definitional subsections limit its scope. The Act defines the key terms "contribution" and "expenditure" as covering only those contributions and expenditures that are made "for the purpose of influencing any election for Federal office." §§ 431(8)(A)(i), (9)(A)(i). Moreover, the Act sets forth detailed categories of disbursements, loans, and assistance-in-kind that do not count as a "contribution" or an "expenditure," even when made for election-related purposes. §§ 431(8)(B), (9)(B). In particular, assistance given to help a candidate will not count toward the \$1,000 "expenditure" ceiling that qualifies an organization as a "political committee" if it takes the form of a "communication" by an organization "to its members"—as long as the organization at issue is a "membership organization or corporation" and it is not "organized primarily for the purpose of influencing the nomination . . . or electio[n] of any individual." § 431(9)(B)(iii).

This case arises out of an effort by respondents, a group of voters with views often

opposed to those of AIPAC, to 16 persuade the FEC to treat AIPAC as a "political committee." Respondents filed a complaint with the FEC, stating that AIPAC had made more than \$1,000 in qualifying "expenditures" per year, and thereby became a "political committee." 1 Record, Exh. B, p. 4. They added that AIPAC had violated the FEC provisions requiring "political committee[s]" to register and to make public the information about members, contributions, and expenditures to which we have just referred. *Id.*, at 2, 9-17. Respondents also claimed that AIPAC had violated § 441b of FECA, which prohibits corporate campaign "contribution[s]" and "expenditure[s]." *Id.*, at 2, 16-17. They asked the FEC to find that AIPAC had violated the Act, and, among other things, to order AIPAC to make public the information that FECA demands of a "political committee." *Id.*, at 33-34.

AIPAC asked the FEC to dismiss the complaint. AIPAC described itself as an issue-oriented organization that seeks to maintain friendship and promote goodwill between the United States and Israel. App. 120; see also Brief for AIPAC as *Amicus Curiae* (AIPAC Brief) 1, 3. AIPAC conceded that it lobbies elected officials and disseminates information about candidates for public office. App. 43, 120; see also AIPAC Brief 6. But in responding to the § 441b charge, AIPAC denied that it had made the kinds of "expenditures" that matter for FECA purposes (*i.e.*, the kinds of election-related expenditures that corporations cannot make, and which count as the kind of expenditures that, when they exceed \$1,000, qualify a group as a "political committee").

To put the matter more specifically: AIPAC focused on certain "expenditures" that respondents had claimed were election related, such as the costs of meetings with candidates, the introduction of AIPAC members to candidates, and the distribution of candidate position papers. AIPAC said that its spending on such activities, even if election related, fell within a relevant exception. They amounted, said AIPAC, 17 to communications by a membership organization with its members, App. 164-166, which the Act exempts from its definition of "expenditures,"

§ 431(9)(B)(iii). In AIPAC's view, these communications therefore did not violate § 441b's corporate expenditure prohibition. 2 Record, Doc. No. 19, pp. 2-6. (And, if AIPAC was right, those expenditures would not count towards the \$1,000 ceiling on "expenditures" that might transform an ordinary issue-related group into a "political committee." § 431(4).)

The FEC's General Counsel concluded that, between 1983 and 1988, AIPAC had indeed funded communications of the sort described. The General Counsel said that those expenditures were campaign related, in that they amounted to advocating the election or defeat of particular candidates. App. 106-108. He added that these expenditures were "likely to have crossed the \$1,000 threshold." *Id.*, at 146. At the same time, the FEC closed the door to AIPAC's invocation of the "communications" exception. The FEC said that, although it was a "close question," these expenditures were not membership communications, because that exception applies to a membership organization's communications with its members, and most of the persons who belonged to AIPAC did not qualify as "members" for purposes of the Act. App. to Pet. for Cert. 97a-98a; see also App. 170-173. Still, given the closeness of the issue, the FEC exercised its discretion and decided not to proceed further with respect to the claimed "corporate contribution" violation. App. to Pet. for Cert. 98a.

The FEC's determination that many of the persons who belonged to AIPAC were not "members" effectively foreclosed any claim that AIPAC's communications did not count as "expenditures" for purposes of determining whether it was a "political committee." Since AIPAC's activities fell outside the "membership communications" exception, AIPAC could not invoke that exception as a way of escaping 18 the scope of the Act's term "political committee" and the Act's disclosure provisions, which that definition triggers.

The FEC nonetheless held that AIPAC was not subject to the disclosure requirements, but for a different reason. In the FEC's view, the Act's definition of "political committee" includes only those organizations

that have as a "major purpose" the nomination or election of candidates. Cf. *Buckley v. Valeo*, 424 U.S., at 79, 96 S.Ct., at 663. AIPAC, it added, was fundamentally an issue-oriented lobbying organization, not a campaign-related organization, and hence AIPAC fell outside the definition of a "political committee" regardless. App. 146. The FEC consequently dismissed respondents' complaint.

Respondents filed a petition in Federal District Court seeking review of the FEC's determination dismissing their complaint. See §§ 437g(a)(8)(A), 437g(a)(8)(C). The District Court granted summary judgment for the FEC, and a divided panel of the Court of Appeals affirmed. 66 F.3d 348 (C.A.D.C.1995). The en banc Court of Appeals reversed, however, on the ground that the FEC's "major purpose" test improperly interpreted the Act's definition of a "political committee." 101 F.3d 731 (C.A.D.C.1996). We granted the FEC's petition for certiorari, which contained the following two questions:

"1. Whether respondents had standing to challenge the Federal Election Commission's decision not to bring an enforcement action in this case.

"2. Whether an organization that spends more than \$1,000 on contributions or coordinated expenditures in a calendar year, but is neither controlled by a candidate nor has its major purpose the nomination or election of candidates, is a 'political committee' within the meaning of the [Act]." Brief for Petitioner I.

We shall answer the first of these questions, but not the second.

### II

[1] The Solicitor General argues that respondents lack standing to challenge the FEC's decision not to proceed against AIPAC. He claims that they have failed to satisfy the "prudential" standing requirements upon which this Court has insisted. See, e.g., *National Credit Union Admin. v. First Nat. Bank & Trust Co.*, 522 U.S. 479, 488, 118 S.Ct. 927, 933, 140 L.Ed.2d 1 (1998) (NCUA); *Association of Data Processing Service Organizations, Inc. v. Camp*, 397

U.S. 150, 153, 90 S.Ct. 827, 829-830, 25 L.Ed.2d 184 (1970) (*Data Processing*). He adds that respondents have not shown that they "suffe[r] injury in fact," that their injury is "fairly traceable" to the FEC's decision, or that a judicial decision in their favor would "redres[s]" the injury. E.g., *Bennett v. Spear*, 520 U.S. 154, 162, 117 S.Ct. 1154, 1161, 137 L.Ed.2d 281 (1997) (internal quotation marks omitted); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561, 112 S.Ct. 2130, 2136-2137, 119 L.Ed.2d 351 (1992). In his view, respondents' District Court petition consequently failed to meet Article III's demand for a "case" or "controversy."

[2] We do not agree with the FEC's "prudential standing" claim. Congress has specifically provided in FECA that "[a]ny person who believes a violation of this Act . . . has occurred, may file a complaint with the Commission." § 437g(a)(1). It has added that "[a]ny party aggrieved by an order of the Commission dismissing a complaint filed by such party . . . may file a petition" in district court seeking review of that dismissal. § 437g(a)(8)(A). History associates the word "aggrieved" with a congressional intent to cast the standing net broadly—beyond the common-law interests and substantive statutory rights upon which "prudential" standing traditionally rested. *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 62 S.Ct. 875, 86 L.Ed. 1229 (1942); *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470, 60 S.Ct. 693, 84 L.Ed. 869 (1940); *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994 (C.A.D.C.1966) (Burger, J.); *Associated Industries of New York State v. Ickes*, 134 F.2d 694 (C.A.2 1943) (Frank, J.). Cf. Administrative Procedure Act, 5 U.S.C. § 702 (stating that those "suffering<sup>20</sup> legal wrong" or "adversely affected or aggrieved . . . within the meaning of a relevant statute" may seek judicial review of agency action).

[3] Moreover, prudential standing is satisfied when the injury asserted by a plaintiff "arguably [falls] within the zone of interests to be protected or regulated by the statute . . . in question." *NCUA, supra*, at 488, 118 S.Ct., at 933 (quoting *Data Processing, su-*

*pra*, at 153, 90 S.Ct., at 829–830). The injury of which respondents complain—their failure to obtain relevant information—is injury of a kind that FECA seeks to address. *Buckley*, *supra*, at 66–67, 96 S.Ct., at 657–658 (“political committees” must disclose contributors and disbursements to help voters understand who provides which candidates with financial support). We have found nothing in the Act that suggests Congress intended to exclude voters from the benefits of these provisions, or otherwise to restrict standing, say, to political parties, candidates, or their committees.

Given the language of the statute and the nature of the injury, we conclude that Congress, intending to protect voters such as respondents from suffering the kind of injury here at issue, intended to authorize this kind of suit. Consequently, respondents satisfy “prudential” standing requirements. Cf. *Raines v. Byrd*, 521 U.S. 811, 820, n. 3, 117 S.Ct. 2312, 2318, n. 3, 138 L.Ed.2d 849 (1997) (explicit grant of authority to bring suit “eliminates any prudential standing limitations and significantly lessens the risk of unwanted conflict with the Legislative Branch”).

[4, 5] Nor do we agree with the FEC or the dissent that Congress lacks the constitutional power to authorize federal courts to adjudicate this lawsuit. Article III, of course, limits Congress’ grant of judicial power to “cases” or “controversies.” That limitation means that respondents must show, among other things, an “injury in fact”—a requirement that helps assure that courts will not “pass upon . . . abstract, intellectual problems,” but adjudicate “concrete, living contest[s] between adversaries.” *Coleman v. Miller*, 307 U.S. 433, 460, 59 S.Ct. 972, 985, 83 L.Ed. 1385 (1939) (Frankfurter, J., dissenting); see also *Bennett*, *supra*, at 167, 117 S.Ct., at 1163; *Lujan*, *supra*, at 560–561, 112 S.Ct., at 2136–2137. In our view, respondents here have suffered a genuine “injury in fact.”

The “injury in fact” that respondents have suffered consists of their inability to obtain information—lists of AIPAC donors (who are, according to AIPAC, its members), and campaign-related contributions and expendi-

tures—that, on respondents’ view of the law, the statute requires that AIPAC make public. There is no reason to doubt their claim that the information would help them (and others to whom they would communicate it) to evaluate candidates for public office, especially candidates who received assistance from AIPAC, and to evaluate the role that AIPAC’s financial assistance might play in a specific election. Respondents’ injury consequently seems concrete and particular. Indeed, this Court has previously held that a plaintiff suffers an “injury in fact” when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute. *Public Citizen v. Department of Justice*, 491 U.S. 440, 449, 109 S.Ct. 2558, 2564, 105 L.Ed.2d 377 (1989) (failure to obtain information subject to disclosure under Federal Advisory Committee Act “constitutes a sufficiently distinct injury to provide standing to sue”). See also *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373–374, 102 S.Ct. 1114, 1121–1122, 71 L.Ed.2d 214 (1982) (deprivation of information about housing availability constitutes “specific injury” permitting standing).

The dissent refers to *United States v. Richardson*, 418 U.S. 166, 94 S.Ct. 2940, 41 L.Ed.2d 678 (1974), a case in which a plaintiff sought information (details of Central Intelligence Agency (CIA) expenditures) to which, he said, the Constitution’s Accounts Clause, Art. I, § 9, cl. 7, entitled him. The Court held that the plaintiff there lacked Article III standing. 418 U.S., at 179–180, 94 S.Ct., at 2947–2948. The dissent says that *Richardson* and this case are “indistinguishable.” *Post*, at 1791. But as the parties’ briefs suggest—for they do not mention *Richardson*—that case does not control the outcome here.

*Richardson*’s plaintiff claimed that a statute permitting the CIA to keep its expenditures nonpublic violated the Accounts Clause, which requires that “a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.” 418 U.S., at 167–169, 94 S.Ct., at 2942–2943. The Court held that the plaintiff lacked standing because there was “no logical nexus” between the

[plaintiff's] asserted status of taxpayer and the claimed failure of the Congress to require the Executive to supply a more detailed report of the [CIA's] expenditures." *Id.*, at 175, 94 S.Ct., at 2946; see also *id.*, at 174, 94 S.Ct., at 2945 (quoting *Flast v. Cohen*, 392 U.S. 83, 102, 88 S.Ct. 1942, 1953, 20 L.Ed.2d 947 (1968), for the proposition that in "taxpayer standing" cases, there must be "a logical nexus between the status asserted and the claim sought to be adjudicated").

In this case, however, the "logical nexus" inquiry is not relevant. Here, there is no constitutional provision requiring the demonstration of the "nexus" the Court believed must be shown in *Richardson* and *Flast*. Rather, there is a statute which, as we previously pointed out, *supra*, at 1783, does seek to protect individuals such as respondents from the kind of harm they say they have suffered, *i.e.*, failing to receive particular information about campaign-related activities. Cf. *Richardson*, 418 U.S., at 178, n. 11, 94 S.Ct., at 2947, n. 11.

The fact that the Court in *Richardson* focused upon taxpayer standing, *id.*, at 171-178, 94 S.Ct., at 2943-2947, not voter standing, places that case at still a greater distance from the case before us. We are not suggesting, as the dissent implies, *post*, at 1791, that *Richardson* would have come out differently if only the plaintiff had asserted his standing to sue as a voter, rather than as a taxpayer. Faced with such an assertion, the *Richardson* Court would simply have had to consider whether "the Framers . . . ever imagined that *general directives* [of the Constitution] . . . would be subject to enforcement by an individual citizen." 418 U.S., at 178, n. 11, 94 S.Ct., at 2947, n. 11 (emphasis added). But since that answer (like the answer to whether there was taxpayer standing in *Richardson*) would have rested in significant part upon the Court's view of the Accounts Clause, it still would not control our answer in this case. All this is to say that the legal logic which critically determined *Richardson*'s outcome is beside the point here.

The FEC's strongest argument is its contention that this lawsuit involves only a "generalized grievance." (Indeed, if *Richardson*

is relevant at all, it is because of its broad discussion of *this* matter, see *id.*, at 176-178, 94 S.Ct., at 2946-2947, not its basic rationale.) The FEC points out that respondents' asserted harm (their failure to obtain information) is one which is "shared in substantially equal measure by all or a large class of citizens." Brief for Petitioner 28 (quoting *Warth v. Seldin*, 422 U.S. 490, 499, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343 (1975)). This Court, the FEC adds, has often said that "generalized grievance[s]" are not the kinds of harms that confer standing. Brief for Petitioner 28; see also *Lujan*, 504 U.S., at 573-574, 112 S.Ct., at 2143-2144; *Allen v. Wright*, 468 U.S. 737, 755-756, 104 S.Ct. 3315, 3326-3327, 82 L.Ed.2d 556 (1984); *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 475-479, 102 S.Ct. 752, 760-762, 70 L.Ed.2d 700 (1982); *Richardson, supra*, at 176-178, 94 S.Ct., at 2946-2947; *Frothingham v. Mellon*, decided with *Massachusetts v. Mellon*, 262 U.S. 447, 487, 43 S.Ct. 597, 601, 67 L.Ed. 1078 (1923); *Ex parte Levitt*, 302 U.S. 633, 634, 58 S.Ct. 1, 1, 82 L.Ed. 493 (1937) (*per curiam*). Whether styled as a constitutional or prudential limit on standing, the Court has sometimes determined that where large numbers of Americans suffer alike, the political process, rather than the judicial process, may provide the more appropriate remedy for a widely shared grievance. *Warth, supra*, at 500, 95 S.Ct., at 2205-2206; *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 222, 94 S.Ct. 2925, 2932-2933, 41 L.Ed.2d 706 (1974); *Richardson*, 418 U.S., at 179, 94 S.Ct., at 2947-2948; *id.*, at 188-189, 94 S.Ct., at 2952-2953 (Powell, J., concurring); see also *Flast, supra*, at 131, 88 S.Ct., at 1968-1969 (Harlan, J., dissenting).

The kind of judicial language to which the FEC points, however, invariably appears in cases where the harm at issue is not only widely shared, but is also of an abstract and indefinite nature—for example, harm to the "common concern for obedience to law." *L. Singer & Sons v. Union Pacific R. Co.*, 311 U.S. 295, 303, 61 S.Ct. 254, 258, 85 L.Ed. 198 (1940); see also *Allen, supra*, at 754, 104 S.Ct., at 3326; *Schlesinger, supra*, at 217, 94

S.Ct., at 2930. Cf. *Lujan, supra*, at 572–578, 112 S.Ct., at 2142–2146 (injury to interest in seeing that certain procedures are followed<sup>24</sup> not normally sufficient by itself to confer standing); *Frothingham, supra*, at 488, 43 S.Ct., at 601 (party may not merely assert that “he suffers in some indefinite way in common with people generally”); *Perkins v. Lukens Steel Co.*, 310 U.S. 113, 125, 60 S.Ct. 869, 876, 84 L.Ed. 1108 (1940) (plaintiffs lack standing because they have failed to show injury to “a particular right of their own, as distinguished from the public’s interest in the administration of the law”). The abstract nature of the harm—for example, injury to the interest in seeing that the law is obeyed—deprives the case of the concrete specificity that characterized those controversies which were “the traditional concern of the courts at Westminster,” *Coleman*, 307 U.S., at 460, 59 S.Ct., at 985 (Frankfurter, J., dissenting); and which today prevents a plaintiff from obtaining what would, in effect, amount to an advisory opinion. Cf. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240–241, 57 S.Ct. 461, 463–464, 81 L.Ed. 617 (1937).

[6] Often the fact that an interest is abstract and the fact that it is widely shared go hand in hand. But their association is not invariable, and where a harm is concrete, though widely shared, the Court has found “injury in fact.” See *Public Citizen*, 491 U.S., at 449–450, 109 S.Ct., at 2564–2565 (“The fact that other citizens or groups of citizens might make the same complaint after unsuccessfully demanding disclosure . . . does not lessen [their] asserted injury”). Thus the fact that a political forum may be more readily available where an injury is widely shared (while counseling against, say, interpreting a statute as conferring standing) does not, by itself, automatically disqualify an interest for Article III purposes. Such an interest, where sufficiently concrete, may count as an “injury in fact.” This conclusion seems particularly obvious where (to use a hypothetical example) large numbers of individuals suffer the same common-law injury (say, a widespread mass tort), or where large numbers of voters suffer interference with voting rights conferred by law. Cf. *Lujan,*

*supra*, at 572, 112 S.Ct., at 2142–2143; *Shaw v. Hunt*, 517 U.S. 899, 905, 116 S.Ct. 1894, 1900–1901, 135 L.Ed.2d 207 (1996). We conclude that, similarly, the informational injury at issue here, directly<sup>25</sup> related to voting, the most basic of political rights, is sufficiently concrete and specific such that the fact that it is widely shared does not deprive Congress of constitutional power to authorize its vindication in the federal courts.

[7, 8] Respondents have also satisfied the remaining two constitutional standing requirements. The harm asserted is “fairly traceable” to the FEC’s decision about which respondents complain. Of course, as the FEC points out, Brief for Petitioner 29–31, it is possible that even had the FEC agreed with respondents’ view of the law, it would still have decided in the exercise of its discretion not to require AIPAC to produce the information. Cf. App. to Pet. for Cert. 98a (deciding to exercise prosecutorial discretion, see *Heckler v. Chaney*, 470 U.S. 821, 105 S.Ct. 1649, 84 L.Ed.2d 714 (1985), and “take no further action” on § 441b allegation against AIPAC). But that fact does not destroy Article III “causation,” for we cannot know that the FEC would have exercised its prosecutorial discretion in this way. Agencies often have discretion about whether or not to take a particular action. Yet those adversely affected by a discretionary agency decision generally have standing to complain that the agency based its decision upon an improper legal ground. See, e.g., *Abbott Laboratories v. Gardner*, 387 U.S. 136, 140, 87 S.Ct. 1507, 1510–1511, 18 L.Ed.2d 681 (1967) (discussing presumption of reviewability of agency action); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410, 91 S.Ct. 814, 820–821, 28 L.Ed.2d 136 (1971). If a reviewing court agrees that the agency misinterpreted the law, it will set aside the agency’s action and remand the case—even though the agency (like a new jury after a mistrial) might later, in the exercise of its lawful discretion, reach the same result for a different reason. *SEC v. Chenery Corp.*, 318 U.S. 80, 63 S.Ct. 454, 87 L.Ed. 626 (1943). Thus respondents’ “injury in fact” is “fairly traceable” to the FEC’s decision not to issue its complaint, even

though the FEC might reach the same result exercising its discretionary powers lawfully. For similar reasons, the courts in this case can “redress” respondents’ “injury in fact.”

[9] <sup>126</sup> Finally, the FEC argues that we should deny respondents standing because this case involves an agency’s decision not to undertake an enforcement action—an area generally not subject to judicial review. Brief for Petitioner 23, 29. In *Heckler*, this Court noted that agency enforcement decisions “ha[ve] traditionally been ‘committed to agency discretion,’” and concluded that Congress did not intend to alter that tradition in enacting the APA. 470 U.S., at 832, 105 S.Ct., at 1656; cf. 5 U.S.C. § 701(a) (courts will not review agency actions where “statutes preclude judicial review,” or where the “agency action is committed to agency discretion by law”). We deal here with a statute that explicitly indicates the contrary.

In sum, respondents, as voters, have satisfied both prudential and constitutional standing requirements. They may bring this petition for a declaration that the FEC’s dismissal of their complaint was unlawful. See 2 U.S.C. § 437g(a)(8)(A).

### III

The second question presented in the FEC’s petition for certiorari is whether an organization that otherwise satisfies the Act’s definition of a “political committee,” and thus is subject to its disclosure requirements, nonetheless falls outside that definition because “its major purpose” is not “the nomination or election of candidates.” The question arises because this Court, in *Buckley*, said:

“To fulfill the purposes of the Act [the term ‘political committee’] need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” 424 U.S., at 79, 96 S.Ct., at 663.

The Court reiterated in *Federal Election Comm’n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 252, n. 6, 107 S.Ct. 616, 625, n. 6, 93 L.Ed.2d 539 (1986):

“[A]n entity subject to regulation as a ‘political committee’ under the Act is one that

is either ‘under the control <sup>127</sup> of a candidate or the major purpose of which is the nomination or election of a candidate.’”

The FEC here interpreted this language as narrowing the scope of the statutory term “political committee,” wherever applied. And, as we have said, the FEC’s General Counsel found that AIPAC fell outside that definition because the nomination or election of a candidate was not AIPAC’s “major purpose.” App. 146.

The en banc Court of Appeals disagreed with the FEC. It read this Court’s narrowing construction of the term “political committee” as turning on the First Amendment problems presented by regulation of “independent expenditures” (i.e., “an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate,” § 431(17)). 101 F.3d, at 741. The Court of Appeals concluded that the language in this Court’s prior decisions narrowing the definition of “political committee” did not apply where the special First Amendment “independent expenditure” problem did not exist. *Id.*, at 742–743.

The Solicitor General argues that this Court’s narrowing definition of “political committee” applies not simply in the context of independent expenditures, but across the board. We cannot squarely address that matter, however, because of the unusual and complex circumstances in which this case arises. As we previously mentioned, *supra*, at 1782, the FEC considered a related question, namely, whether AIPAC was exempt from § 441b’s prohibition of corporate campaign expenditures, on the grounds that the so-called “expenditures” involved only AIPAC’s communications with its members. The FEC held that the statute’s exception to the “expenditure” definition for communications by a “membership organization” did not apply because many of the persons who belonged to AIPAC were not “members” as defined by FEC regulation. The FEC acknowledged, however, that this was a “close question.” App. to Pet. for Cert. 98a; see also App. <sup>128</sup> 144–146, 170–171. In particular, the FEC thought that many of the persons

who belonged to AIPAC lacked sufficient control of the organization's policies to qualify as "members" for purposes of the Act.

A few months later, however, the Court of Appeals overturned the FEC's regulations defining "members," in part because that court thought the regulations defined membership organizations too narrowly in light of an organization's "First Amendment right to communicate with its 'members.'" *Chamber of Commerce v. Federal Election Comm'n*, 69 F.3d 600, 605 (C.A.D.C.1995). The FEC has subsequently issued proposed rules redefining "members." Under these rules, it is quite possible that many of the persons who belong to AIPAC would be considered "members." If so, the communications here at issue apparently would not count as the kind of "expenditures" that can turn an organization into a "political committee," and AIPAC would fall outside the definition for that reason, rather than because of the "major purpose" test. 62 Fed.Reg. 66832 (1997) (proposed 11 CFR pts. 100 and 114).

The consequence for our consideration of Question Two now is that the FEC's new rules defining "membership organization" could significantly affect the interpretive issue presented by this question. If the Court of Appeals is right in saying that this Court's narrowing interpretation of "political committee" in *Buckley* reflected First Amendment concerns, 101 F.3d, at 741, then whether the "membership communications" exception is interpreted broadly or narrowly could affect our evaluation of the Court of Appeals' claim that there is no constitutionally driven need to apply *Buckley*'s narrowing interpretation in this context. The scope of the "membership communications" exception could also affect our evaluation of the Solicitor General's related argument that First Amendment concerns (reflected in *Buckley*'s narrowing interpretation) are present whenever the Act requires disclosure. In any event, it is difficult to decide the <sup>29</sup>basic issue that Question Two presents without considering the special communicative nature of the "expenditures" here at issue, cf. *United States v. CIO*, 335 U.S. 106, 121, 68 S.Ct. 1349, 1356-1357, 92 L.Ed. 1849 (1948) (describing relation between membership communications and con-

stitutionally protected rights of association). And, a considered determination of the scope of the statutory exemption that Congress enacted to address membership communications would helpfully inform our consideration of the "major purpose" test.

The upshot, in our view, is that we should permit the FEC to address, in the first instance, the issue presented by Question Two. We can thereby take advantage of the relevant agency's expertise, by allowing it to develop a more precise rule that may dispose of this case, or at a minimum, will aid the Court in reaching a more informed conclusion. In our view, the FEC should proceed to determine whether or not AIPAC's expenditures qualify as "membership communications," and thereby fall outside the scope of "expenditures" that could qualify it as a "political committee." If the FEC decides that despite its new rules, the communications here do not qualify for this exception, then the lower courts, in reconsidering respondents' arguments, can still evaluate the significance of the communicative context in which the case arises. If, on the other hand, the FEC decides that AIPAC's activities fall within the "membership communications" exception, the matter will become moot.

For these reasons, the judgment of the Court of Appeals is vacated, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

Justice SCALIA, with whom Justice O'CONNOR and Justice THOMAS join, dissenting.

The provision of law at issue in this case is an extraordinary one, conferring upon a private person the ability to bring an Executive agency into court to compel its enforcement<sup>30</sup> of the law against a third party. Despite its liberality, the Administrative Procedure Act does not allow such suits, since enforcement action is traditionally deemed "committed to agency discretion by law." 5 U.S.C. § 701(a)(2); *Heckler v. Chaney*, 470 U.S. 821, 827-835, 105 S.Ct. 1649, 1653-1658, 84 L.Ed.2d 714 (1985). If provisions such as the present one were commonplace, the role of

the Executive Branch in our system of separated and equilibrated powers would be greatly reduced, and that of the Judiciary greatly expanded.

Because this provision is so extraordinary, we should be particularly careful not to expand it beyond its fair meaning. In my view the Court's opinion does that. Indeed, it expands the meaning beyond what the Constitution permits.

### I

It is clear that the Federal Election Campaign Act of 1971 (FECA or Act) does not intend that *all* persons filing complaints with the Federal Election Commission have the right to seek judicial review of the rejection of their complaints. This is evident from the fact that the Act permits a complaint to be filed by “[a]ny *person* who believes a violation of this Act . . . has occurred,” 2 U.S.C. § 437g(a)(1) (emphasis added), but accords a right to judicial relief only to “[a]ny *party aggrieved* by an order of the Commission dismissing a complaint filed by such party,” § 437g(a)(8)(A) (emphasis added). The interpretation that the Court gives the latter provision deprives it of almost all its limiting force. *Any voter* can sue to compel the agency to require registration of an entity as a political committee, even though the “aggrievement” consists of nothing more than the deprivation of access to information whose public availability would have been one of the consequences of registration.

This seems to me too much of a stretch. It should be borne in mind that the agency action complained of here is not the refusal to make available information in its possession that the Act requires to be disclosed. A person demanding provision of information that the law requires the agency to furnish—one demanding compliance with the Freedom of Information Act or the Federal Advisory Committee Act, for example—can reasonably be described as being “aggrieved” by the agency's refusal to provide it. What the respondents complain of in this suit, however, is not the refusal to provide information, but the refusal (for an allegedly improper reason) to commence an agency enforcement action against a third person. That refusal

*itself* plainly does not render respondents “aggrieved” within the meaning of the Act, for in that case there would have been no reason for the Act to differentiate between “person” in subsection (a)(1) and “party aggrieved” in subsection (a)(8). Respondents claim that each of them is elevated to the special status of a “party aggrieved” by the fact that the requested enforcement action (if it was successful) would have had the effect, among others, of placing certain information in the agency's possession, where respondents, along with everyone else in the world, would have had access to it. It seems to me most unlikely that the failure to produce that effect—*both* a secondary consequence of what respondents immediately seek, *and* a consequence that affects respondents no more and with no greater particularity than it affects virtually the entire population—would have been meant to set apart each respondent as a “party aggrieved” (as opposed to just a rejected complainant) within the meaning of the statute.

This conclusion is strengthened by the fact that this citizen-suit provision was enacted two years after this Court's decision in *United States v. Richardson*, 418 U.S. 166, 94 S.Ct. 2940, 41 L.Ed.2d 678 (1974), which, as I shall discuss at greater length below, gave Congress every reason to believe that a voter's interest in information helpful to his exercise of the franchise was *constitutionally inadequate* to confer standing. *Richardson* had said that a plaintiff's complaint that the Government was unlawfully depriving him of information he needed to properly fulfill his obligations as a member of the electorate in voting” was “surely the kind of a generalized grievance” that does not state an Article III case or controversy. *Id.*, at 176, 94 S.Ct., at 2946.

And finally, a narrower reading of “party aggrieved” is supported by the doctrine of constitutional doubt, which counsels us to interpret statutes, if possible, in such fashion as to avoid grave constitutional questions. See *United States ex rel. Attorney General v. Delaware & Hudson Co.*, 213 U.S. 366, 408, 29 S.Ct. 527, 535–536, 53 L.Ed. 836 (1909); *Edward J. DeBartolo Corp. v. Florida Gulf*

*Coast Building & Constr. Trades Council*, 485 U.S. 568, 575, 108 S.Ct. 1392, 1397–1398, 99 L.Ed.2d 645 (1988). As I proceed to discuss, it is my view that the Court's entertainment of the present suit violates Article III. Even if one disagrees with that judgment, however, it is clear from *Richardson* that the question is a close one, so that the statute ought not be interpreted to present it.

## II

In *Richardson*, we dismissed for lack of standing a suit whose "aggrievement" was precisely the "aggrievement" respondents assert here: the Government's unlawful refusal to place information within the public domain. The only difference, in fact, is that the aggrievement there was more direct, since the Government already had the information within its possession, whereas here respondents seek enforcement action that will bring information within the Government's possession and *then* require the information to be made public. The plaintiff in *Richardson* challenged the Government's failure to disclose the expenditures of the Central Intelligence Agency (CIA), in alleged violation of the constitutional requirement, Art. I, § 9, cl. 7, that "a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." We held that such a claim was a nonjusticiable "generalized grievance" because "the impact on [plaintiff] is plainly undifferentiated, and common to all members of the public." 418 U.S., at 176–177, 94 S.Ct., at 2946 (internal quotation marks and citations omitted).

It was alleged in *Richardson* that the Government had denied a right conferred by the Constitution, whereas respondents here assert a right conferred by statute—but of course "there is absolutely no basis for making the Article III inquiry turn on the source of the asserted right." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 576, 112 S.Ct. 2130, 2144, 119 L.Ed.2d 351 (1992). The Court

today distinguishes *Richardson* on a different basis—a basis that reduces it from a landmark constitutional holding to a curio. According to the Court, "*Richardson* focused upon taxpayer standing, . . . not voter standing." *Ante*, at 1785. In addition to being a silly distinction, given the weighty governmental purpose underlying the "generalized grievance" prohibition—viz., to avoid "something in the nature of an Athenian democracy or a New England town meeting to oversee the conduct of the National Government by means of lawsuits in federal courts," 418 U.S., at 179, 94 S.Ct., at 2947—this is also a distinction that the Court in *Richardson* went out of its way explicitly to eliminate. It is true enough that the narrow question presented in *Richardson* was "[w]hether a federal taxpayer has standing," *id.*, at 167, n. 1, 94 S.Ct., at 2942, n. 1. But the *Richardson* Court did not hold only, as the Court today suggests, that the plaintiff failed to qualify for the exception to the rule of no taxpayer standing established by the "logical nexus" test of *Flast v. Cohen*, 392 U.S. 83, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968).<sup>\*</sup> The plaintiff's complaint in *Richardson* had also alleged that he was "a member of the electorate," 418 U.S., at 167, n. 1, 94 S.Ct., at 2942, n. 1, and he asserted injury in that capacity as well. <sup>134</sup>The *Richardson* opinion treated that as fairly included within the taxpayer-standing question, or at least as plainly indistinguishable from it:

"The respondent's claim is that without detailed information on CIA expenditures—and hence its activities—he cannot intelligently follow the actions of Congress or the Executive, nor can he properly fulfill his obligations as a member of the electorate in voting for candidates seeking national office.

"This is surely the kind of a generalized grievance described in both *Frothingham* and *Flast* since the impact on him is plainly undifferentiated and common to all members of the public." *Id.*, at 176–177,

<sup>\*</sup> That holding was inescapable since, as the Court made clear in another case handed down the same day, "the *Flast* nexus test is not applicable where the taxing and spending power is not

challenged" (as in *Richardson* it was not). *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 225, n. 15, 94 S.Ct. 2925, 2934, n. 15, 41 L.Ed.2d 706 (1974).

94 S.Ct., at 2946 (citations and internal quotation marks omitted) (emphasis added).

If *Richardson* left voter standing unaffected, one must marvel at the unaccustomed ineptitude of the American Civil Liberties Union Foundation, which litigated *Richardson*, in not immediately refiling with an explicit voter-standing allegation. Fairly read, and applying a fair understanding of its important purposes, *Richardson* is indistinguishable from the present case.

The Court's opinion asserts that our language disapproving generalized grievances "invariably appears in cases where the harm at issue is not only widely shared, but is also of an abstract and indefinite nature." *Ante*, at 1785. "Often," the Court says, "the fact that an interest is abstract and the fact that it is widely shared go hand in hand. But their association is not invariable, and where a harm is concrete, though widely shared, the Court has found 'injury in fact.'" *Ibid*. If that is so—if concrete generalized grievances (like concrete particularized grievances) are OK, and abstract generalized grievances (like abstract particularized grievances) are bad—one must wonder why we ever developed the superfluous distinction between generalized and particularized grievances at all. But of course the Court is <sup>135</sup>wrong to think that generalized grievances have only concerned us when they are abstract. One need go no further than *Richardson* to prove that—unless the Court believes that deprivation of information is an abstract injury, in which event this case could be disposed of on that much broader ground.

What is noticeably lacking in the Court's discussion of our generalized-grievance jurisprudence is all reference to two words that have figured in it prominently: "particularized" and "undifferentiated." See *Richardson, supra*, at 177, 94 S.Ct., at 2946–2947; *Lujan*, 504 U.S., at 560, and n. 1, 112 S.Ct., at 2136, and n. 1. "Particularized" means that "the injury must affect the plaintiff in a personal and individual way." *Id.*, at 560, n. 1, 112 S.Ct., at 2136, n. 1. If the effect is "undifferentiated and common to all members of the public," *Richardson, supra*, at 177, 94 S.Ct., at 2946 (internal quotation marks and citations omitted), the plaintiff has

a "generalized grievance" that must be pursued by political, rather than judicial, means. These terms explain why it is a gross oversimplification to reduce the concept of a generalized grievance to nothing more than "the fact that [the grievance] is widely shared," *ante*, at 1786, thereby enabling the concept to be dismissed as a standing principle by such examples as "large numbers of individuals suffer[ing] the same common-law injury (say, a widespread mass tort), or . . . large numbers of voters suffer[ing] interference with voting rights conferred by law," *ibid*. The exemplified injuries are widely shared, to be sure, but each individual suffers a particularized and differentiated harm. One tort victim suffers a burnt leg, another a burnt arm—or even if both suffer burnt arms they are *different* arms. One voter suffers the deprivation of *his* franchise, another the deprivation of *hers*. With the generalized grievance, on the other hand, the injury or deprivation is not only widely shared but it is *undifferentiated*. The harm caused to Mr. Richardson by the alleged disregard of the Statement-of-Accounts Clause was precisely the same as the harm caused to everyone else: unavailability of a <sup>36</sup>description of CIA expenditures. Just as the (more indirect) harm caused to Mr. Akins by the allegedly unlawful failure to enforce FECA is precisely the same as the harm caused to everyone else: unavailability of a description of AI-PAC's activities.

The Constitution's line of demarcation between the Executive power and the judicial power presupposes a common understanding of the type of interest needed to sustain a "case or controversy" against the Executive in the courts. A system in which the citizenry at large could sue to compel Executive compliance with the law would be a system in which the courts, rather than the President, are given the primary responsibility to "take Care that the Laws be faithfully executed," Art. II, § 3. We do not have such a system because the common understanding of the interest necessary to sustain suit has included the requirement, affirmed in *Richardson*, that the complained-of injury be particularized and differentiated, rather than common to all the electorate. When the Executive

can be directed by the courts, at the instance of any voter, to remedy a deprivation that affects the entire electorate in precisely the same way—and particularly when that deprivation (here, the unavailability of information) is one inseverable part of a larger enforcement scheme—there has occurred a shift of political responsibility to a branch designed not to protect the public at large but to protect individual rights. “To permit Congress to convert the undifferentiated public interest in executive officers’ compliance with the law into an ‘individual right’ vindicable in the courts is to permit Congress to transfer from the President to the courts the Chief Executive’s most important constitutional duty . . .” *Lujan, supra*, at 577, 112 S.Ct., at 2145. If today’s decision is correct, it is within the power of Congress to authorize any interested person to manage (through the courts) the Executive’s enforcement of any law that includes a requirement

for the filing and public availability of a piece of paper. Id. This is not the system we have had, and is not the system we should desire.

\* \* \*

Because this statute should not be interpreted to confer upon the entire electorate the power to invoke judicial direction of prosecutions, and because if it is so interpreted the statute unconstitutionally transfers from the Executive to the courts the responsibility to “take Care that the Laws be faithfully executed,” Art. II, § 3, I respectfully dissent.

