UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAWYERS COMMITTEE FOR 9/11 INQUIRY, INC., *et al.*,

Plaintiffs,

v.

CHRISTOPHER A. WRAY, Director, Federal Bureau of Investigation, *et al.*,

Defendants.

Civil Action No. 19-0824-TNM

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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CONTENTS

AUTHORITIES

Page(s)

Cases

Statutes

INTRODUCTION

Plaintiffs, the Lawyers' Committee for 9/11 Inquiry, Inc.; Robert McIlvaine; and Architects and Engineers for 9/11 Truth, bring this action challenging the adequacy of a report submitted by the Federal Bureau of Investigation ("FBI") to Congress regarding the FBI's implementation of recommendations set forth in the 2004 report by the 9/11 Commission. Plaintiffs contend that the report should have investigated theories that have circulated on the internet and in the media about various alternative causes of the 9/11 attacks, including what they believe to be indications of explosives having been planted on the ground floors of the World Trade Center buildings, purported images of individuals high-fiving in the aftermath of the attacks, and supposed evidence of Saudi financing and support for the attacks.

Plaintiffs' claims are subject to dismissal for several reasons. *First*, the information to be included in the report from the FBI was set forth in a statement published in the Congressional Record, not a duly promulgated law. That statement does not carry the force of law and cannot serve as the basis for a lawsuit. *Second*, even duly promulgated requirements that agencies submit informational reports to Congress are not actionable by private parties because such reports are not "final agency action" within the meaning of the APA. *Third*, Plaintiffs lack standing because they can neither demonstrate a cognizable injury nor show that any injury is likely to be redressed by a favorable outcome. And *finally*, even absent from these threshold defects, Plaintiffs claims would fail on the merits because the FBI fully discharged its requirement to report to Congress on certain specified subjects surrounding the FBI's implementation of the 9/11 Commission's recommendations. For these reasons, this case should be dismissed with prejudice.

BACKGROUND

A. The 9/11 Review Commission

In the wake of the terrorist attacks on September 11, 2001, Congress created the National Commission on Terrorist Attacks Upon the United States ("9/11 Commission"), charging it "to make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States' preparedness for, and immediate response to, the attacks" and "report . . . on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism." Pub. L. 107-306 (Nov. 27, 2002). The 9/11 Commission released its report on July 22, 2004. *See* Exhibit 1, *The 9/11 Commission Report* (July 22, 2004). It detailed how the September 11 attacks "were carried out by various groups of Islamist extremists . . . [and] driven by Usama Bin Laden." Exhibit 2, *The 9/11 Commission Report Executive Summary* at 3 (July 22, 2004). And it contained a series of recommended actions and reforms intended to protect against and prevent future terrorist attacks. *Id.* at 16–26.

Nine years after the publication of the 9/11 Commission Report, in an appropriations act, Congress allotted $500,000 in funding to the FBI to conduct a "comprehensive review of the implementation of the recommendations related to the [FBI] that were proposed in the report issued by the [9/11 Commission]." Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. No. 113-6, 127 Stat. 198, 247 (2013). An explanatory statement published in the Congressional Record elaborated further upon the scope of the review:

> The scope of this review shall include: (1) an assessment of progress made, and challenges in implementing the recommendations of the 9/11 Commission that are related to the FBI; (2) an analysis of the FBI's response to trends of domestic terror attacks since September 11, 2001, including the influence of domestic radicalization; (3) an assessment of any evidence now known to the FBI that was not considered by the 9/11 Commission related to any factors that contributed in any manner to the terrorist attacks of September 11,

> 2001; and (4) any additional recommendations with regard to FBI intelligence sharing and counterterrorism policy.

159 Cong. Rec. S1305 (Mar. 11, 2013). The explanatory statement instructed the FBI to submit a "report to the Committees, no later than one year after enactment of this Act, on the finding and recommendations resulting from this review. *Id.* Future appropriations acts for 2014 and 2015 allotted additional funds and extended the FBI's time to complete its review. *See* Consolidated and Further Continuing Appropriations Act, 2014, Pub. L. No. 113-76, 128 Stat. 5, 56 (2014); Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, 128 Stat. 2130, 2186–87 (2014); *see also* 160 Cong. Rec. H9346 (Dec. 11, 2014) ("The deadline to report to Congress . . . is extended until such time as the review is complete, or one year after the date of enactment of this Act, whichever is earlier.").

In response to these appropriations and the accompanying explanatory statement, the Director of the FBI, in consultation with Congress, appointed three commissioners to what would come to be known as the "9/11 Review Commission." *See* Exhibit 3, *The FBI: Protecting the Homeland in the 21st Century: Report of the Congressional-directed 9/11 Review Commission* at (Mar. 2015) ("9/11 Review Commission Report"). The commissioners appointed an executive director and hired a staff, which was divided into four teams, each tasked with pursuing one of four lines of inquiry discussed with lawmakers during Congressional testimony given by the Commission in March 2014: (1) an assessment of the FBI's transition to a threat-based, intelligence driven organization; (2) an analysis of lessons learned from five high-profile terrorism cases from the past six year; (3) an evaluation of the FBI's state of preparedness to address the threat environment over the next decade; and (4) an examination of the FBI's need for closer collaboration with its strategic partners. *Id.* at 3–4. In addition, "the Review Commission produced a fifth chapter summarizing its effort to identify any evidence now known to the FBI that was not

considered by the 9/11 Commission related to any factors that contributed in any manner to the terrorist attacks of September 11, 2001." *Id.* at 4.

With respect to this fifth chapter, which is the subject of Plaintiffs' claims in this case, the Review Commission examined (1) the FBI's ongoing investigation into the 9/11 attacks, (2) trial preparations for the al-Qaeda defendants held at Guantanamo Bay; (3) media reports about an alleged FBI source with access to Osama Bin Laden, and (4) media reports about a Sarasota, Florida family with alleged connections to the 9/11 hijackers. *Id.* at 100–07. The Review Commission concluded that "no new information obtained since the 9/11 Commission 2004 report would change the 9/11 Commission's findings regarding responsibilities for the 9/11 attacks." *Id.* at 107. And it recommended that "the FBI continue its thorough investigation into the 9/11 attacks and, after the trial of the conspirators conclude, capture the lessons learned through the investigation, and provide detailed briefings to [the FBI Director] and the relevant congressional oversight committees." *Id.*

B. Plaintiffs' Claims

Plaintiffs are two organizations and an individual who find the fifth chapter of the Review Commission's report wanting. Plaintiff the Lawyers' Committee for 9/11 Inquiry, Inc. describes itself as a nonprofit corporation with the goal of promoting "transparency and accountability regarding the tragic events of 9/11." Compl. ¶ 10. Plaintiff Architects and Engineers for 9/11 Truth bills itself as seeking to "[educate] the public as to the true reasons [the World Trade Center] buildings collapsed on 9/11." *Id.* ¶ 11.[1] And Plaintiff Robert McIlvaine is the father of Bobby McIlvaine, one of the victims killed at the World Trade Center on September 11. *Id.* ¶ 13.

[1] Architects and Engineers for 9/11 Truth joins only some of the causes of action set forth in the complaint. *See* Compl. ¶ 12.

Plaintiffs allege that the Review Commission "failed to assess and report to Congress, as mandated, several other categories of significant 9/11 related evidence known to the FBI via reports in the press, via the web, and via public events and/or reflected in the FBI's own records." Compl. ¶ 27. More specifically, Plaintiffs contend that the Review Commission should have examined (1) "evidence related to the use of pre-placed explosives and/or incendiaries to destroy three World Trade Center buildings on 9/11," *id.* at 11 (Count I); (2) "evidence regarding the arrest and investigation of the 'high-fivers' observed and self-photographed celebrating the attacks on the World Trade Center on 9/11," *id.* at 23 (Count II); (3) "Defendants' destruction of 9/11 related evidence relevant and necessary to the 9/11 Commissions' [*sic*] compliance with its mandate from Congress," *id.* at 28 (Count III); (4) "evidence of terrorism financing and Saudi support for the 9/11 hijackers, *id.* at 30 (Count IV); (5) "9/11 Pentagon and surrounding area video evidence, *id.* at 36 (Count V); (6) "9/11 related recovered aircraft parts, wreckage, and parts' serial number evidence," *id.* at 38 (Count VI); and (7) "9/11 cell phone and air (seat back) phone calls evidence," *id.* at 40 (Count VII). Plaintiffs contend that the Review Commission's failure to examine this purported "evidence" violated Congress's instruction that it include in its report "an assessment of any evidence now known to the FBI that was not considered by the 9/11 Commission related to any factors that contributed in any manner to the terrorist attacks of September 11, 2001," 159 Cong. Rec. S1305, and therefore presents a cause of action under both the Administrative Procedure Act and the mandamus statute, *see id.* ¶¶ 44, 49, 71, 74, 81, 84, 93, 96, 102, 105, 111, 114, 120, 123.

STANDARDS

A. Dismissal under Rule 12(b)(1)

Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a claim must be dismissed if a district court lacks jurisdiction to entertain the claim. Because Rule 12(b)(1) concerns a court's ability to hear a particular claim, a court must scrutinize the plaintiff's allegations more closely when considering a motion to dismiss pursuant to Rule 12(b)(1) than it would under a motion to dismiss pursuant to Rule 12(b)(6). *Macharia v. United States*, 334 F.3d 61, 64, 69 (D.C. Cir. 2003). In deciding a motion under Rule 12(b)(1), a court must "accept as true all of the factual allegations contained in the complaint" and draw all reasonable inferences in favor of the plaintiff, *Brown v. District of Columbia*, 514 F.3d 1279, 1283 (D.C. Cir. 2008), but courts are "not required . . . to accept inferences unsupported by the facts or legal conclusions that are cast as factual allegations," *Rann v. Chao*, 154 F. Supp. 2d 61, 64 (D.D.C. 2001). Further, the "court may consider such materials outside the pleadings as it deems appropriate to resolve the question whether it has jurisdiction in the case." *Scolaro v. D.C. Bd. of Elections & Ethics*, 104 F. Supp. 2d 18, 22 (D.D.C. 2000). Ultimately, the plaintiff bears the burden of establishing the Court's jurisdiction, *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 182–83 (1936), and where jurisdiction does not exist, "the court cannot proceed at all in any cause," *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998).

B. Dismissal under Rule 12(b)(6)

Under the Federal Rules of Civil Procedure, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. (8)(a), which serves to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S.

41, 47 (1957)). Rule 12(b)(6) provides a vehicle for parties to challenge the sufficiency of a complaint on the ground that it "fail[s] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When presented with a motion to dismiss for failure to state a claim, the district court must accept as true the well-pleaded factual allegations in the complaint. *Atherton v. Dist. of Columbia Office of Mayor*, 567 F.3d 672, 681 (D.C. Cir. 2009). Although "detailed factual allegations" are not necessary to withstand a motion to dismiss, to provide the "grounds" of "entitle[ment] to relief," a plaintiff must furnish "more than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Twombly*, 550 U.S. at 555. "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 667 (2009) (quoting *Twombly*, 550 U.S. at 557). Rather, a complaint must contain sufficient factual allegations that, if accepted as true, "state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. The plaintiff must provide more than just "a sheer possibility that a defendant has acted unlawfully." *Id.* at 1950. When a complaint's well-pleaded facts do not enable a court, "draw[ing] on its judicial experience and common sense," "to infer more than the mere possibility of misconduct," the complaint has not shown that the pleader is entitled to relief. *Id.*

ARGUMENT

I. The instructions to the Review Commission lack the force of law.

Plaintiffs contend that the Review Commission failed to conduct a proper "assessment of any new evidence now known to the FBI that was not considered by the 9/11 Commission related to any factors that contributed in any manner to the terrorist attacks of September 11, 2001." *See*,

e.g., Compl. ¶ 44. But that instruction lacks the force of law because it was conveyed in an explanatory statement published in the Congressional Record, not duly enacted legislation. *See* 159 Cong. Rec. S1305. As such, it cannot serve as the basis for a cause of action under the APA or the mandamus statute.

Explanatory statements published in the Congressional Record lack the force of law because they do not follow the constitutional procedure of being voted on and approved by both houses of Congress. *See Am. Hosp. Ass'n v. NLRB*, 499 U.S. 606, 616 (1991) (noting that the House and Senate Committee Reports on National Labor Relations Act Amendments of 1974 do not have "the force of law, for the Constitution is quite explicit about the procedure that Congress must follow in legislating."); *see also Goldring v. Dist. of Columbia*, 416 F.3d 70, 75 n.3 (D.C. Cir. 2005) ("The language the appellants rely on is from the 'joint explanatory statement' . . . and thus has no force of law."); *Roeder v. Islamic Rep. of Iran*, 333 F.3d 228, 236–37 (D.C. Cir. 2003) (holding that a joint explanatory statement "do[es] not have the force of law" because "[w]hile the conference report and the joint explanatory statement are printed in the same document, Congress votes only on the conference report.").

A situation similar to this case arose in the United States District Court of the Eastern District of Virginia, and that court's reasoning is highly instructive here. In *SourceAmerica v. United States Department of Education*, the plaintiffs claimed that the Department of Defense had failed to promulgate regulations as instructed by a joint policy statement accompanying the National Defendant Authorization Act for Fiscal Year 2015. No. 17-0893, 2018 WL 1453242, at *10 (E.D. Va. Mar. 23, 2018). Noting that "Congress did not vote on the statement and the statement did not go through the process of bicameralism and presentment necessary to give it the force of law," the court held that the Department of Defense was not legally required to promulgate

the regulations specified by in the joint policy statement and that therefore "plaintiffs' claim seeking to compel agency action fails." *Id.*

This case compels the same result. The instruction that the Review Commission conduct an "assessment of any evidence now known to the FBI that was not considered by the 9/11 Commission" was contained in an "explanatory statement" introduced into the Congressional Record by Senator Lisa Murkowski. *See* 159 Cong. Rec. S1305. It was not voted upon by the houses of Congress nor presented to the President for approval. It therefore does not carry the force of law. *See SourceAmerica*, 2018 WL 1453242, at *10. The enacted legislation accompanying the explanatory statement only allocated funds that "shall be for a comprehensive review of the implementation of the recommendations related to the Federal Bureau of Investigation that were proposed in the report issued by the [9/11 Commission]." *See* 127 Stat. 247. Nothing about that language would compel the FBI to examine the purported "evidence" from the internet and news reports that Plaintiffs believe should have been incorporated into the Review Commission's report. Consequently, Plaintiffs' claims are subject to dismissal.

II. Congressional reporting requirements are not subject to judicial review.

Even if the reporting requirement upon which Plaintiffs rely were included in duly enacted legislation carrying the force of law, their claims would fail for the independent reason that informational reports to Congress do not determine rights or obligations or trigger legal consequences and are therefore not "final agency actions" subject to challenge under the APA.

The Court of Appeals for the Ninth Circuit considered a similar reporting requirement in *Guerrero v. Clinton*, where the plaintiff sought to challenge an executive branch official's failure for six consecutive years to provide statutorily required annual reports to Congress. 157 F.3d 1190, 1191–92 (9th Cir. 1998). Notwithstanding these clear violations of the statutory text, the Ninth Circuit concluded that the adequacy of reports was not judicially reviewable under the APA

because the submission of an informational report to Congress was not a final agency action because "no legal consequences flow from the report. No matter what it says or how much it says, the report is simply a document submitted to Congress that Congress has no obligation to consider, let alone act upon." *Id.* at 1194; *see also Nat. Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 318 (D.C. Cir. 1988) (holding that "the general presumption of reviewability of agency action" does not apply to "[e]xecutive responses to congressional reporting requirements" that "[l]ack[] a provision for judicial review"); *Coll. Sports Council v. Gov't Accountability Office*, 421 F. Supp. 2d 59, 68 (D.D.C. 2006) (holding that the plaintiffs could not bring an APA claim to challenge an agency's misstatement to Congress under a reporting statute because "[w]here a report is not explicitly or implicitly intended as anything more than a vehicle to inform Congress, it is for Congress alone to determine if the Report satisfies the statutory requirements it enacted" (internal quotation marks and citation omitted)).

The explanatory statement's directions for the Review Commission's report did not create any rights or obligations for the Plaintiffs; it simply directed the FBI to submit certain information "to the Committees" of Congress. 159 Cong. Rec. S1305; *see also* 160 Cong. Rec. H512 (extending the FBI's time "to report to Congress on the findings of the independent review specified in the explanatory statement accompanying the fiscal year 2013 Department of Justice appropriations"). It is for Congress alone to determine whether the Review Commission's report satisfied these instructions, Plaintiffs cannot demand judicial review of its adequacy. *See Guerrero*, 157 F.3d at 1191–92; *NRDC*, 865 F.2d at 318.

III. Plaintiffs lack standing.

For reasons similar to those expressed in the immediately preceding section, Plaintiffs also lack constitutional standing to challenge the sufficiency of the FBI's report to Congress. To establish constitutional standing, "plaintiff[s] must have suffered or be imminently threatened with

a concrete and particularized 'injury in fact' that is fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable judicial decision." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125 (2014) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Plaintiffs can neither show a cognizable injury, nor that any such injury would be redressable with a favorable decision.

A. Injury

Plaintiffs lack a cognizable injury. A plaintiff who seeks to challenge the government's failure to observe a required procedure must demonstrate that the government's conduct threatens a "separate concrete interest" of the plaintiff, and "a plaintiff raising only a generally available grievance about government—claiming harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy." *Defenders of Wildlife*, 504 U.S. at 572-74. Moreover, "[w]hen the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily 'substantially more difficult' to establish." *Id.* at 562 (quoting *Allen v. Wright*, 468 U.S. 737, 758 (1984)). A plaintiff may establish informational standing "when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute." *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 21 (1998) (citing *Public Citizen v. Dep't of Justice,* 491 U.S. 440, 449 (1989)). "To carry its burden of demonstrating a 'sufficiently concrete and particularized informational injury,' the plaintiff must show that '(1) it has been deprived of information that, on its interpretation, a statute requires the government or a third party to disclose to it, and (2) it suffers, by being denied access to that information, the type of harm Congress sought to prevent by requiring disclosure.'" *Elec. Privacy Info. Ctr. v. Presidential Advisory Comm'n on Election*

Integrity, 878 F.3d 371, 378 (D.C. Cir. 2017), *cert. denied*, 139 S. Ct. 791 (2019) (quoting *Friends of Animals v. Jewell*, 828 F.3d 989, 992 (D.C. Cir. 2016)).

None of the three plaintiffs can establish injury via informational standing because they cannot show that they have been deprived of information that was statutorily prescribed to be disclosed *to them*. *See Elec. Privacy Info. Ctr*, 878 F.3d at 378. To the contrary, Plaintiffs' acknowledge that they seek information that they believe should have been disclosed to *Congress*. *See* Compl. at ¶ 7. Further, Plaintiffs' alleged injuries are not the type of harm that Congress sought to prevent by requiring the FBI to provide the requested information. Plaintiff McIlvaine, as the father of a 9/11 victim, asserts "an important personal interest" in "coming to closure regarding" the 9/11 tragedy. *Id.* at ¶ 13. While this is no doubt an important personal interest, it is not the type of harm that Congress sought to prevent by requesting the assessment from the FBI. That assessment was meant to inform Congress about "the implementation of the recommendations related to the [FBI] that were proposed in the report issued by the [9/11 Commission]," Pub. L. No. 113-6, 127 Stat. 247, not to report to the public on alternate theories behind the cause of the 9/11 attacks.

The two organizational plaintiffs lack a cognizable injury for the same reason. Both organizations allege that Defendants' actions injured their interest in promoting the mission of their organization. Plaintiff Lawyers' Committee suggests that Defendants' alleged failure to adequately respond to the congressional reporting requirement injured its distinct interest in "transparency and accountability regarding the tragic events of 9/11." Compl. at ¶ 10. And Plaintiff Architects and Engineers suggests that it has a distinct interest due to its mission that "includes investigation and education of the public as to the true reasons these WTC buildings collapsed on 9/11." *Id.* ¶ 11. Again, the alleged harm to these interests are not the type of harm that the

instructions in the explanatory statement sought to address. Moreover, "the Supreme Court held that an organization may establish Article III standing if it can show that the defendant's actions cause a 'concrete and demonstrable injury to the organization's activities' that is 'more than simply a setback to the organization's abstract social interests.'" *Am. Soc. for Prevention of Cruelty to Animals v. Feld Entm't, Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011) (quoting *Havens Realty Corp. v. Coleman,* 455 U.S. 363, 379 (1982)); *see also Sierra Club v. Morton*, 405 U.S. 727, 739 (1972) ("But a mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization 'adversely affected' or 'aggrieved' within the meaning of the APA."). To show injury in the D.C. Circuit, an organization must show that (1) "the defendant's allegedly unlawful activities injured the plaintiff's interest in promoting its mission" and that (2) "the plaintiff used its resources to counteract that injury." *Feld*, 659 F.3d at 25 (citing *Equal Rights Ctr. v. Post Properties, Inc.*, 633 F.3d 1136, 1140 (D.C. Cir. 2011)). Plaintiffs have not alleged any facts that would meet that showing.

B. Redressability

In addition, none of the plaintiffs can establish that a favorable judicial decision would redress their grievances. With regard to redressability, "[c]ourts do not lightly speculate how 'independent actors not before [them]' might "exercise [their] broad and legitimate discretion." *West v. Lynch*, 845 F.3d 1228, 1237 (D.C. Cir. 2017) (quoting *Lujan*, 504 U.S. at 562) (internal quotation omitted). In *Guerrero v. Clinton*, the Ninth Circuit found the plaintiffs lacked standing under the APA and mandamus statute because their alleged injuries were not redressable. 157 F.3d 1190 (9th Cir. 1998). In *Guerrero*, Guam, the Northern Mariana Islands, and Hawaii challenged the adequacy of a report to Congress by the Director of the Office of Insular Affairs on

the impact of the Compact of Free Association Act of 1985 on their islands. *Id.* at 1191–93. The court found that the plaintiffs' claimed injuries, which included "the presence of diseases and adverse effects on law enforcement as a result of Compact immigration," were not redressable by the court because "nothing that [the court] could order with respect to the reports or their adequacy can make Congress do anything." *Id.* at 1194. The court found that because the reports were "purely informational" and have "no effect on any right or obligation of anyone . . . the relief requested (a better report) cannot make any legal difference that will redress the governments' injury from Compact's impact." *Id.* at 1195 (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83 (1998)).

Here, the Plaintiffs contend that a favorable decision "is reasonably expected to result in a better public understanding of the events of 9/11 and possibly disclosure of criminal conduct or government malfeasance, misfeasance or non-feasance not previously known by the public." *See* Compl. at ¶ 13. To assume that Defendants would find such information by investigating the purported leads identified in Plaintiffs' complaint is overly speculative as to the future actions of "independent actors." *See West*, 845 F.3d at 1237. As such, Plaintiffs have not shown that their alleged injuries are redressable by a favorable decision.

IV. The Review Commission fulfilled its instructions.

Even were Plaintiffs able to overcome the foregoing threshold legal and jurisdictional defects precluding their claims, their complaint would still be subject to dismissal because the Review Commission's report clearly fulfilled the instructions of the explanatory statement.

The explanatory statement instructed the FBI to "conduct a comprehensive external review of the implementation of the recommendations related to the FBI that were proposed in the report issued by the [9/11 Commission]," including, in part, "an assessment of any evidence now known to the FBI that was not considered by the 9/11 Commission related to any factors that contributed

in any manner to the terrorist attacks of September 11, 2001." 159 Cong. Rec. S1305. The FBI fulfilled that requirement by forming the Review Commission, which "conducted multiple interviews of key personnel at FBI Headquarters and in the field to identify any new information related to the 9/11 attacks, with a special emphasis on identifying any previously unknown co-conspirators." Exhibit 3 at 100. These efforts included travelling to multiple field offices, receiving briefings at FBI Headquarters from some of the lead investigators and analysts concerning the 9/11 attacks, and investigating two claims of new evidence reported in the press. *Id.* These efforts plainly fulfilled the instructions of the explanatory statement.

The explanatory statement did not compel the FBI—with the limited time and budget allotted and with the other responsibilities imposed—to conduct a full investigation of every theory regarding the 9/11 attacks that has been expressed on the internet and in the media over the course of the 10 years since the 9/11 Commission released its report. Indeed, as the Review Commission noted, the appropriations acts and the explanatory statements did not even provide the Review Commission with the means to review all of the evidence in the possession of the FBI, let alone every theory expressed in the public domain. *Id.* ("Given the time and resources available, it was beyond the scope of the Review Commission's activities to re-interview every witness or to review all of the documents related to the FBI's investigation of the 9/11 attacks. The FBI's investigation since 9/11 has involved over 500,000 leads, over 167,000 interviews, and millions of pages of documents."). Further, given that the appropriations acts and the explanatory statements specifically charged the FBI primarily with reporting on its implementation of the 9/11 Commission's recommendations, those instructions should not be construed so as to require the FBI with investigating theories that would undermine the 9/11 Committee report's underlying

finding that 9/11 attacks "were carried out by various groups of Islamist extremists . . . [and] driven by Usama Bin Laden." Exhibit 2 at 3.

Because the FBI acted reasonably in discharging the instructions in the explanatory statement, Plaintiffs claims would fail on the merits even were the Court able to reach them.

CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' complaint with prejudice.

Dated: August 9, 2019

Respectfully submitted,

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