**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| PETER J. VROOM,<br><br>Plaintiff,<br><br>v.<br><br>FEDERAL ELECTION COMMISSION,<br><br>Defendant. | Civ. No. 12-143 (RMC)<br><br>MOTION TO DISMISS AMENDED COMPLAINT |

**DEFENDANT FEDERAL ELECTION COMMISSION'S**
**MOTION TO DISMISS AMENDED COMPLAINT**

Defendant Federal Election Commission respectfully renews its motion to dismiss this action pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction. Because plaintiff Peter J. Vroom already possesses the information he purportedly seeks through this lawsuit, he has not alleged — and cannot allege — any cognizable informational injury caused by the Commission or redressable in this action. The amended complaint must be therefore dismissed because Vroom lacks Article III standing. A memorandum of points and authorities in support of the Commission's motion and a proposed order are attached.

Respectfully submitted,

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Dated: January 24, 2013

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| PETER J. VROOM, | ) | |
| Plaintiff, | ) | Civ. No. 12-143 (RMC) |
| v. | ) | |
| FEDERAL ELECTION COMMISSION, | ) | MEMORANDUM OF POINTS AND AUTHORITIES |
| Defendant. | ) | |

**DEFENDANT FEDERAL ELECTION COMMISSION'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO DISMISS**

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**TABLE OF CONTENTS**

**Page**

## I. INTRODUCTION

The Court dismissed plaintiff Peter Vroom's original complaint for failure to plead a cognizable injury-in-fact under Article III of the Constitution, but granted him the opportunity to amend his complaint to attempt to allege an informational injury. (Order, Dec. 6, 2012 ("Order") at 4 (Docket No. 12).) Because plaintiff's amended complaint presents no allegation that he has suffered any cognizable informational injury — much less any injury traceable to the actions of defendant Federal Election Commission or redressable by this Court — the amended complaint must be dismissed for lack of jurisdiction.

Plaintiff's amended complaint repeats his principal contention that the General Electric Company ("GE") and Penske Truck Leasing Corporation, L.P. ("Penske") filed with the FEC false and misleading information about their corporate relationship, leading the Commission in 2009 to allow Penske's political action committee ("Penske PAC") and General Electric's political action committee ("GE PAC") to "disaffiliate." *See* Advisory Opinion 2009-18, 2009 WL 2413841, at 8 (July 29, 2009). What plaintiff does not allege, however, is any fact showing that the Commission's dismissal of his administrative complaint about GE and Penske caused him informational injury. To the contrary, it is clear on the face of plaintiff's amended complaint that he already has access to every piece of information that he claims to seek in relation to these entities. In reality, the only relief plaintiff seeks in this case is "a legal determination that General Electric and Penske are in violation of the law," which the Court has already explained is "not a remedy to an injury." (Order at 3.) Accordingly, dismissal of Vroom's amended complaint is again mandated by the D.C. Circuit's controlling holdings that federal courts lack

jurisdiction in cases brought by plaintiffs seeking to force the FEC to "'get the bad guys.'" *Common Cause v. FEC*, 108 F.3d 413, 418 (D.C. Cir. 1997).[1]

## II. BACKGROUND

### A. Statutory Background

#### *1. Reporting Requirements and Contribution Limits for Political Committees*

The Federal Election Campaign Act, 2 U.S.C. §§ 431-57 ("FECA"), provides that a corporation can establish and administer a "separate segregated fund," apart from the corporation's general treasury, "to be utilized for political purposes." 2 U.S.C. § 441b(b)(2)(C). FECA defines such separate segregated funds to be a form of "political committee," commonly known as a "PAC." 2 U.S.C. § 431(4)(B).

PACs must file, *inter alia*, periodic public reports of their total operating expenses and cash on hand, as well as their receipts and disbursements, with limited exceptions for most transactions below a $200 threshold. *See* 2 U.S.C. § 434; *see also* Order at 2-3 (describing reporting requirements). PACs are also subject to limits on the contributions they can receive and make. Most PACs (including those at issue in this case) can receive contributions of up to $5,000 per contributor per year, 2 U.S.C. § 441a(a)(1)(C), and can contribute up to $5,000 per election to any candidate (with primary and general elections counted separately), *id.* § 441a(a)(2)(A); 11 C.F.R. § 100.2 (defining "election"). If multiple PACs are "established or financed or maintained or controlled" by a single entity, all the contributions made by those

[1] Vroom's amended pleading fails, among other things, to "state [his] claims . . . in numbered paragraphs, each limited as far as practicable to a single set of circumstances," Fed. R. Civ. P. 10(b), and thus it is subject to dismissal for being facially defective. *See, e.g.*, *Rogler v. U.S. Dep't of Health & Human Servs.*, 620 F. Supp. 2d 123, 127-28 (D.D.C. 2009) (dismissing amended *pro se* complaint for failing to comply with Rules 8(a) and 10(b)). However, because the absence of Article III jurisdiction in this case would render futile any further amendment of the complaint, the Commission does not seek dismissal of the amended complaint for its procedural improprieties.

affiliated PACs are "considered to have been made by a single political committee" for purposes of the contribution limit. 2 U.S.C. § 441a(a)(5).

*2. The FEC and Its Enforcement Process*

The FEC is the independent agency of the United States government with exclusive jurisdiction over the administration, interpretation, and civil enforcement of FECA. Congress authorized the Commission to "formulate policy" with respect to FECA, 2 U.S.C. § 437c(b)(1); "to make, amend, and repeal such rules . . . as are necessary to carry out the provisions of [the] Act," 2 U.S.C. § 437d(a)(8); and to issue advisory opinions construing the Act, 2 U.S.C. §§ 437d(a)(7), 437f. The Commission is also authorized to investigate possible violations of the Act, 2 U.S.C. §§ 437g(a)(1)-(2), and has exclusive jurisdiction to initiate civil enforcement actions in the United States district courts, 2 U.S.C. § 437g(a)(6).

FECA permits any person to file an administrative complaint with the Commission alleging a violation of the Act. 2 U.S.C. § 437g(a)(1); *see also* 11 C.F.R. § 111.4. After reviewing the complaint and any response filed by the respondent, the Commission may vote on whether there is "reason to believe" that a violation has occurred. 2 U.S.C. § 437g(a)(2). If at least four of the FEC's six Commissioners vote to find such reason to believe, the Commission can institute an investigation. *Id*. If the Commission dismisses the administrative complaint, the complainant can seek judicial review of that determination pursuant to 2 U.S.C. § 437g(a)(8)(A). If a court declares that the Commission's dismissal was "contrary to law," it can order the Commission to conform to the court's declaration within 30 days. 2 U.S.C. § 437g(a)(8)(C); *see also Common Cause*, 108 F.3d at 415 (noting that standard of review is whether "the dismissal was based on an 'impermissible interpretation of the Act . . . or was arbitrary or capricious, or an abuse of discretion'" (quoting *Orloski v. FEC*, 795 F.2d 156, 161 (D.C. Cir. 1986))).

**B. Factual Background**

In 2009, the FEC issued Advisory Opinion 2009-18, 2009 WL 2413841 (July 29, 2009) ("AO 2009-18"). In that opinion, the Commission concluded that GE and Penske — which had previously shared much of their corporate ownership — were no longer controlled by the same entity. *Id*. at 8. Accordingly, the Commission found that the companies' separate segregated funds (GE PAC and Penske PAC) would no longer be considered affiliated for purposes of 2 U.S.C. § 441a(a)(5). *See id.*

Plaintiff was the President and CEO of the Truck Renting and Leasing Association ("TRALA") until July 8, 2009. (Compl. Exh. 6 at 35 (Docket No. 1-1).) He alleges that while employed at TRALA he "became aware" of certain improprieties involving GE, GE PAC, Penske, and Penske PAC. (Am. Compl. at 4 (Docket No. 13).)[2] On November 16, 2010, plaintiff filed with the Commission an administrative complaint — later designated Matter Under Review ("MUR") 6455 — regarding these improprieties. Specifically, he alleged that the deconsolidation of GE and Penske was unlawful due to Penske's ongoing financial reliance on GE. (*Id.* at 2; Compl. Exh. 6 at 35-37 (Docket No. 1-1).) Vroom included in his complaint materials he had previously submitted to the Securities and Exchange Commission regarding the same subject.

On February 8, 2011, Vroom amended his administrative complaint to allege that the unlawful deconsolidation of GE and Penske meant that GE PAC and Penske PAC should be treated as affiliated under FECA. The amended complaint asserted that the Commission had been mistaken in issuing AO 2009-18, and that Penske had filed "misleading and incomplete information with the FEC in order to obtain" the advisory opinion. (Compl. Exh. 6 at 38 (Docket

[2] For the purposes of this motion only, the Commission "accept[s] as true" the facts pleaded in plaintiff's amended complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

No. 1-1).) The complaint stated that, after the Commission issued AO 2009-18, Penske PAC made $5,000 in contributions to the James Gerlach for Congress Committee in connection with each of the 2010 primary and general elections, and GE PAC made contributions of $1,500 and $1,000, respectively, for those elections to that same committee. (Am. Compl. at 9; Compl. Exh. 6 at 38-39 (Docket No. 1-1).) Vroom therefore alleged that the affiliated PACs' contributions had exceeded their combined contribution limit by $1,500 in the primary election and $1,000 in the general election. (Compl. Exh. 6 at 38-39 (Docket No. 1-1).) Vroom explained that he had identified these alleged violations by examining the information reported by the PACs and made publicly available by the FEC. (*Id.* at 38 ("I am providing information from the FEC database relating to the 2008-2010 election cycle showing the combined contributions made by Penske and GE to Representative James Gerlach (R-PA).").)

On November 29, 2011, after considering Vroom's complaint and responses from the respondents in MUR 6455, the Commission determined by a vote of 5-0 that there was no reason to believe a violation of FECA had occurred. *See* FEC, MUR 6455 Certification, http://eqs.nictusa.com/eqsdocsMUR/11044310276.pdf (Dec. 1, 2011); *see also* Compl. Exh. 1 at 2-16 (Docket No. 1-1). The Commission concluded that it had not relied on misleading and incomplete information in its issuance of AO 2009-18 because it had already been aware of the facts Vroom cited regarding, *inter alia*, overlapping board members and certain lines of credit between Penske and GE. (Compl. Exh. 1 at 9-12 (Docket No. 1-1).) Because Vroom's allegations concerning AO 2009-18 were "without merit," the Commission concluded that the PACs were properly disaffiliated, and their contributions to Representative Gerlach were therefore not excessive. (*Id.* at 16.)

**C. Procedural History**

On January 27, 2012, plaintiff commenced the present action against the Commission pursuant to 2 U.S.C. § 437g(a)(8), seeking judicial review of the Commission's dismissal of MUR 6455. On December 6, 2012, the Court granted the Commission's motion to dismiss plaintiff's complaint on the basis that he sought only "a legal determination that General Electric and Penske are in violation of the law, not a remedy to an injury." (Order at 3.) Relying on *Common Cause*, in which the D.C. Circuit held that a party does not have standing to sue the FEC on the grounds that "'a violation of FECA has occurred'" and refused to "'recogniz[e] a justiciable interest in the enforcement of the law,'" the Court found that Vroom failed to plead injury-in-fact. (*Id.* at 3-4.) Because plaintiff argued in his opposition to the FEC's motion that he had suffered informational injury, however, the Court granted him leave to file an amended complaint demonstrating "that he was prevented from seeking information that will help him to evaluate candidates for office." (*Id.* at 4.)

On January 7, 2013, plaintiff filed an amended complaint (Docket No. 13) that restates his allegations regarding the Commission's handling of his administrative complaint and AO 2009-18. The amended complaint alleges that plaintiff has standing in this Court because the Commission's dismissal of MUR 6455 denies him "the ability to fully and accurately determine the source, magnitude and ultimate recipients of political contributions made by the General Electric PAC" — information that he says he uses in his "career" and as a voter "in national elections." (Am. Compl. at 5-7.) Vroom argues that by virtue of the "improper" disaffiliation of GE PAC and Penske PAC, "GE now has not one but two PACs under its control and it is therefore no longer possible for [Vroom] or [Vroom's] organization, the *Alliance for Corporate Integrity*, to determine the extent of political contributions made to federal candidates that should be attributable to GE." (*Id.* at 8-9.) He also claims that "the FEC's failure to enforce and apply

FECA responsibly" renders him "unable to use the FEC data, knowing it is not accurate." (*Id.* at 10.)

Vroom's amended complaint concludes with a request for the same relief sought in his original, dismissed complaint: An order directing the Commission "to consider Vroom's complete complaint and to evenly apply its own preceden[ts] . . . to determine whether the GE and Penske PAC's [sic] are affiliated"; or alternatively "to issue a declaratory judgment that declares that the GE and Penske PACs are in fact affiliated." (*Id.* at 17.)

## III. PLAINTIFF LACKS STANDING BECAUSE HE HAS SUFFERED NO INFORMATIONAL INJURY

Plaintiff cannot meet his burden under Article III to demonstrate that he has sustained any injury-in-fact here because the information he purportedly seeks — the total amount of GE's political contributions — is already publicly available and in his possession. This case is not like *FEC v. Akins*, 524 U.S. 11 (1998), in which the plaintiffs were concretely and actually injured by a true absence of information about an organization that was not under any obligation to file reports with the FEC. Rather, this case is indistinguishable from those in which advocacy groups have sought to obtain advisory legal declarations that various other entities violated the law — cases in which the courts of this Circuit have consistently found the plaintiffs to lack standing.

### A. Plaintiff Bears a Heavy Burden to Demonstrate Article III Standing Here

Article III of the Constitution limits the jurisdiction of federal courts to cases or controversies. U.S. Const. art. III, § 2, cl. 1. That courts liberally interpret *pro se* pleadings does not "dispense with the constitutional requirement that the plaintiff have standing to bring his claims." *Dorsey v. District of Columbia*, 747 F. Supp. 2d 22, 26 (D.D.C. 2010), *aff'd*, No. 10-7172, 2011 WL 1766035 (D.C. Cir. Apr. 12, 2011) (dismissing *pro se* plaintiff's complaint). "[T]he core component of standing is an essential and unchanging part of the case-or-

controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Nor does the fact that Vroom brings suit pursuant to 2 U.S.C. § 437g(a)(8), the statutory provision that allows challenges to the dismissal of an administrative complaint, relieve him of the obligation to demonstrate standing. "Section 437g(a)(8)(A) does not confer standing; it confers a right to sue upon parties who otherwise already have standing." *Common Cause v. FEC*, 108 F.3d 413, 419 (D.C. Cir. 1997).[3]

To establish standing, plaintiff bears the burden of demonstrating (1) an "injury in fact," (2) a causal connection between the alleged injury that is "fairly traceable" to the challenged conduct of the defendant, and (3) a likelihood that the injury will be redressed by a "favorable decision" of the court. *Lujan*, 504 U.S. at 560-61 (internal quotation marks omitted). "Injury in fact" is "an invasion of a legally protected interest" which is both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Id.* at 560 (internal quotation marks omitted). Where, as here, the plaintiff's "asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else*," standing is "substantially more difficult" to prove. *Id.* at 562 (emphasis in original; internal quotation marks omitted); *see also*

[3] Relying on *Akins*, plaintiff raises a new contention that he has prudential standing in this Court because he has suffered informational injury that falls within the zone of interests that FECA seeks to address. (Am. Compl. at 5-6.) The doctrine of prudential standing, however, is not an alternative to Article III standing but an *additional* "judicially self-imposed" requirement. *Bennett v. Spear*, 520 U.S. 154, 162 (1997); *see also Akins*, 524 U.S. at 19-26 (requiring plaintiffs to establish both prudential standing and Article III standing); *Nat'l Credit Union Admin. v. First Nat. Bank & Trust Co.*, 522 U.S. 479, 488 (1998) ("We have interpreted § 10(a) of the [Administrative Procedure Act] to impose a prudential standing requirement *in addition to* the requirement, imposed by Article III of the Constitution, that a plaintiff have suffered a sufficient injury in fact." (emphasis added)). Thus, even assuming *arguendo* that plaintiff falls within the "zone of interests" sought to be protected by FECA, he must nonetheless demonstrate the mandatory elements of constitutional standing. *See Southwest Gas Corp. v. F.E.R.C.*, 40 F.3d 464, 466-68 (D.C. Cir. 1994) (although plaintiff fell within "zone of interests," it lacked standing because it suffered no injury in fact); *cf. T & S Prods., Inc. v. U.S. Postal Serv.*, 68 F.3d 510, 512-14 (D.C. Cir. 1995) (finding no standing due to lack of injury in fact and, in light of that conclusion, finding no reason to address issue of prudential standing).

*Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) ("[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another.").

### B. Plaintiff's Own Allegations Show that the Dismissal of His Administrative Complaint Has Not Deprived Him of Any Information

"Informational injury" arises "when voters are deprived of useful political information at the time of voting." *Judicial Watch, Inc. v. FEC*, 293 F. Supp. 2d 41, 46 (D.D.C. 2003); *see generally Akins*, 524 U.S. at 19-25. In *Akins*, the plaintiffs were a group of registered voters who asserted that the American Israel Public Affairs Committee ("AIPAC") — an organization whose views the plaintiffs had long opposed — should have been regulated by the Commission as a political committee. 524 U.S. at 15-16. The Commission's decision not to so regulate the group denied the plaintiffs access to the financial information that political committees must disclose. *See* 2 U.S.C. § 434. Without such disclosure, the *Akins* plaintiffs had no way to determine which candidates were supported by AIPAC and to what extent. 524 U.S. at 16, 20-21. Because there was "no reason to doubt [the plaintiffs'] claim that the information would help them (and others to whom they would communicate it) to evaluate candidates for public office," the Court held that the plaintiffs had suffered a concrete and particularized injury. *Id*. at 21; s*ee also id.* at 24-25 ("[T]he informational injury . . . here, directly related to voting, . . . is sufficiently concrete and specific . . . .").

This case is nothing like *Akins*. First, the *Akins* plaintiffs were alleging that a non-reporting entity should be forced to report, so the plaintiffs stood to obtain a significant amount of information about AIPAC's campaign-related spending if the Commission ordered AIPAC to register as a political committee. In contrast, Vroom's allegations concern groups that are *already* subject to the full panoply of FECA's political-committee reporting requirements. Indeed, plaintiff claims to seek information that would give him "the ability to fully and

accurately determine the source, magnitude and ultimate recipients of political contributions made by the General Electric PAC" (Am. Compl. at 5-6), but the factual premise of his administrative complaint was that the sum of GE PAC's and Penske PAC's political contributions — information he took "from the FEC database" of the PACs' mandatory reports — rendered those contributions unlawful. (Compl. Exh. 2 at 38-39 (Docket No. 1-1) (using reported data to calculate allegedly excessive contributions from GE to Representative Gerlach).) The "source, magnitude and ultimate recipients" of every other contribution made by these PACs is similarly available on the FEC's website.[4] (*See* Am. Compl. at 7 ("Vroom very actively participates in the political process involving the analysis of candidates . . . and he regularly utilizes the FEC website and its database for this purpose.").) Plaintiff has not alleged the existence of a single piece of information about the PACs' receipts or spending of which he has been deprived.

Because Vroom already knows or has access to the information he supposedly seeks, he cannot demonstrate any informational injury that is both "concrete and particularized" and "actual [and non-hypothetical]." *Lujan*, 504 U.S. at 560. No "depriv[ation] of useful political information" exists. *Judicial Watch*, 293 F. Supp. 2d at 46. Vroom's failure to identify any actual information that he is credibly lacking "is of no small moment, for the nature of the information allegedly withheld is critical to the standing analysis." *Common Cause*, 108 F.3d at 417. Here, the information Vroom supposedly lacks is now and will remain publicly available

[4] This information can be obtained in both summary and detailed form from the Commission's search page, http://www.fec.gov/finance/disclosure/candcmte_info.shtml. GE PAC's identification number is C00024869; Penske PAC's is C00373217. GE PAC's and Penske PAC's most recent filings total more than 800 pages. *See* http://images.nictusa.com/pdf/780/12940824780/12940824780.pdf (GE PAC); http://images.nictusa.com/pdf/635/12940770635/12940770635.pdf (Penske PAC).

as the two PACs continue to be subject to their reporting obligations.[5] Thus, Vroom's real grievance is that the information he already possesses has not been deemed "illegal." But, as the Court has already held, seeking "a legal determination that General Electric and Penske are in violation of the law [is] not a remedy to an injury." (Order at 3.)

Second, Vroom nowhere explains how the information he purportedly seeks would be "useful [to him] in voting." *Common Cause*, 108 F.3d at 418. The *Akins* plaintiffs wanted to know which candidates AIPAC was supporting so that they could vote against (and ask others to vote against) those candidates. Because the list of candidates GE PAC and Penske PAC have supported is a matter of public record, however, obtaining such information cannot be the basis for Vroom's claim. The only allegation he makes regarding the use of non-disclosed information is the vague assertion that the Commission's dismissal of his complaint will have "broad ranging implications" for unnamed "'similarly situated' entities." (Am. Compl. at 8.) That is nothing more than an allegation that the Commission may fail to enforce the law properly in the future; it does not allege that plaintiff is missing any information, much less explain what plaintiff would do with such information. His allegation is therefore insufficient as a matter of law to render standing proper here. *See Alliance for Democracy v. FEC*, 335 F. Supp. 2d 39, 48 (D.D.C. 2004) (action under § 437g(a)(8) dismissed for lack of standing because plaintiffs "failed to show how information about the precise value of a mailing list . . . could have a concrete effect on

[5] Vroom has never claimed that the PACs have failed to file their mandatory reports with the Commission or that the contribution amounts they have reported are inaccurate; he simply argues that the two entities should be treated as affiliated. Even if the PACs were deemed to be affiliated, they could continue to operate as two entities and file separate reports as long as they abided by the contribution limits applicable to a single entity. *See* 2 U.S.C. § 441a(a)(5). Alternatively, the PACs might be able to reorganize themselves into a single entity, in which case they would file one set of reports for the joint organization. Either way, Vroom would receive no additional information.

plaintiffs' voting in future elections involving different candidates"); *Alliance for Democracy v. FEC*, 362 F. Supp. 2d 138, 144-45 (D.D.C. 2005) (same).

Third, controlling D.C. Circuit precedent forecloses plaintiff's claim of informational injury. Specifically, *Wertheimer v. FEC*, 268 F.3d 1070 (D.C. Cir. 2001), and *Common Cause* rejected efforts to use section 437g(a)(8) to obtain a legal conclusion that third parties were in violation of federal campaign finance law.

In *Wertheimer*, the plaintiffs filed an administrative complaint with the FEC alleging that during the 1996 and 2000 presidential campaigns the two major political parties made impermissible contributions to, and expenditures on behalf of, their presidential nominees. After the Commission dismissed the plaintiffs' administrative complaint, they brought suit in this Court, claiming that the Commission's dismissal injured them by "depriv[ing] them of required information about the source and amount of candidates' financing." *Id.* at 1073. Applying *Akins*, the D.C. Circuit noted that "all political parties currently report all disbursements [and] that each transaction appellants allege is illegal is reported in some form." *Id.* at 1074. Thus, the court concluded that the plaintiffs had "failed to show either that they are directly being deprived of any information or that the legal ruling they seek might lead to additional factual information," and that they therefore lacked injury-in-fact. *Id*. ("[T]he government's alleged failure to 'disclose' that certain conduct is illegal by itself does not give rise to a constitutionally cognizable injury.").

The *Wertheimer* plaintiffs' insufficient claim of informational injury cannot be distinguished from Vroom's allegation that the public disclosure of GE PAC's and Penske PAC's contributions is "tainted" (Am. Compl. at 10) because the Commission has not labeled those contributions excessive or unlawful. Just as in *Wertheimer*, the political committees here

"currently report all disbursements," and "each transaction [plaintiff] allege[s] is illegal is reported in some form," so success for Vroom would at most result in the same information being disclosed again or another way. 268 F.3d at 1074. Thus, like the plaintiffs in *Wertheimer*, Vroom has "failed to establish that the ruling sought would yield anything more than a legal characterization or duplicative reporting of information that under existing rules is already required to be disclosed." *Id.* at 1075.

Likewise, the plaintiff in *Common Cause* had filed with the Commission an administrative complaint alleging, *inter alia*, that certain political party committees had made excessive contributions to a senatorial candidate. When the Commission dismissed the administrative complaint after an investigation, Common Cause brought suit under section 437g(a)(8), arguing that the FEC's decision "deprived Common Cause's voting members of vital political information." *Common Cause*, 108 F.3d at 417. On appeal from the district court's grant of partial summary judgment to the Commission, the D.C. Circuit dismissed the case for lack of standing, holding that "[n]othing in FECA requires that information concerning a violation of the Act as such be disclosed to the public." *Id.* at 418. It further explained:

> To hold that a plaintiff can establish injury in fact merely by alleging that he has been deprived of the knowledge as to whether a violation of the law has occurred would be tantamount to recognizing a justiciable interest in the enforcement of the law. This we cannot do. . . . Congress cannot, consistent with Article III, create standing by conferring upon all persons an abstract, self-contained, noninstrumental 'right' to have the Executive observe the procedures required by law.

*Id.* (quotation marks, citations, and alterations omitted). Because "the relief requested by Common Cause . . . is for the Commission to 'get the bad guys,' rather than disclose information[,] Common Cause ha[d] no standing to sue." *Id.* As Judges in this District have repeatedly found, that holding and *Wertheimer* foreclose plaintiffs from using section 437g(a)(8) to bring suits that nominally seek publicly available information but actually seek a judicial

declaration that some third party violated federal campaign finance law. *See Herron for Congress v. FEC*, Civ. No. 11-1466, 2012 WL 5451811, at *7 (D.D.C. Nov. 8, 2012) (finding no Article III jurisdiction when plaintiff had already received information he claimed to desire); *Citizens for Responsibility & Ethics in Wash. v. FEC*, 799 F. Supp. 2d 78, 89 (D.D.C. 2011) ("[Plaintiffs] simply do not allege any specific *factual information* they lack that is not already publicly available in the published FEC documents . . . . [W]hat Plaintiffs want is a reclassification of [the administrative respondent's] disbursements as 'in-kind contributions' under FECA."); *Alliance For Democracy*, 362 F. Supp. 2d at 145 ("[P]laintiffs lack standing because they already have the information they are seeking and therefore have not suffered an informational injury.").

## IV. PLAINTIFF ALSO LACKS STANDING BECAUSE HE CANNOT ESTABLISH THE REQUIRED ELEMENTS OF CAUSATION AND REDRESSABILITY

An inevitable corollary of the fact that plaintiff has identified no actual informational injury is that he also cannot establish causation and redressability. In this context, where Vroom's asserted injury stems from "the government's allegedly unlawful regulation (or lack of regulation) of *someone else*," *Lujan*, 504 U.S. at 562 (emphasis in original), the causation and redressability prongs of the standing analysis require greater scrutiny. "[W]hile not necessarily fatal to standing," the indirectness of injury "may make it substantially more difficult to meet the minimum requirement of Art. III: To establish that, in fact, the asserted injury was the consequence of the defendants' actions, or that prospective relief will remove the harm." *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 44-45 (1976) (internal quotation marks omitted).

For the reasons discussed above, the Commission's dismissal of MUR 6455 caused no injury to plaintiff because it did not deprive him of any information. Plaintiff's alleged injury is

also not redressable because even if the Court were to grant the relief Vroom seeks in his Amended Complaint — *i.e.*, to "instruct the FEC" to reconsider Vroom's administrative complaint or alternatively to overrule AO 2009-18 (Am. Compl. at 17) — Vroom would receive no new information as a consequence of that ruling. The most that could happen would be that GE PAC and Penske PAC would have to re-affiliate, which would limit the combined size of their political contributions. Under no circumstance would any new or additional information about the PACs' contributions be disclosed.[6]

## V. CONCLUSION

For the foregoing reasons, the Commission requests that the Court dismiss Vroom's Amended Complaint with prejudice for lack of jurisdiction.

Respectfully submitted,

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[6] Like his original complaint, plaintiff's amended complaint contains lengthy allegations of improprieties in the Commission's issuance of AO 2009-18 and negligence in the processing of his administrative complaint. (Am. Compl. at 10-17.) The Court has already held that the allegations on these subjects in plaintiff's original complaint failed to establish Article III standing (Order at 3-4), and that holding is the law of the case. *See Crawford-El v. Britton*, No. 94-7203, 72 F.3d 919 (Table), 1995 WL 761781, at *2 (D.C. Cir. Nov. 28, 1995) (per curiam) (affirming dismissal of portions of amended complaint that "merely reasserted the same non-litigation injuries" and concluding that "the law of the case controls"). The only remaining question for standing purposes is plaintiffs' claim of informational injury. (*See* Order at 4 ("Mr. Vroom claimed in his opposition that he was prevented from seeking information . . . , and he will be given the opportunity to amend his Complaint to reflect *this injury*." (emphasis added)).)

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Dated: January 24, 2013

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| PETER J. VROOM,<br><br>Plaintiff,<br><br>v.<br><br>FEDERAL ELECTION COMMISSION,<br><br>Defendant. | Civ. No. 12-143 (RMC)<br><br>CERTIFICATE OF SERVICE |

**CERTIFICATE OF SERVICE**

I hereby certify that on January 24, 2013, I caused to be electronically filed with the Court the Federal Election Commission's Motion to Dismiss, Memorandum of Points and Authorities, and Proposed Order. I also certify that on that same date, I caused to be sent by UPS a copy of the same materials to plaintiff at the following address:

Peter J. Vroom
611 Oakley Place
Alexandria, VA 22302

*/s/ Charles Kitcher*
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