UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PETER J. VROOM, Plaintiff, v. FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 12-143 (RMC) REPLY IN SUPPORT OF MOTION TO DISMISS

DEFENDANT FEDERAL ELECTION COMMISSION'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

Plaintiff Peter Vroom's opposition to defendant Federal Election Commission's motion to dismiss plaintiff's amended complaint fails to rebut the Commission's showing that plaintiff has not sustained any informational injury, much less any injury that is redressable by this Court. Plaintiff contends that the Commission's dismissal of his administrative complaint against GE PAC and Penske PAC prevents him from "accurately" knowing how much those PACs have contributed to federal candidates. As the Commission has explained, however, plaintiff lacks Article III standing because (1) the information he claims to desire is already publicly available, and (2) granting him the relief he requests would not lead to the disclosure of any new information. Accordingly, the Commission respectfully requests that the Court grant the Commission's motion and dismiss plaintiff's amended complaint with prejudice.

I. PLAINTIFF ALREADY POSSESSES ALL THE INFORMATION HE CLAIMS TO SEEK

A plaintiff suffers informational injury only when he is actually deprived of relevant information. *See FEC v. Akins*, 524 U.S. 11 (1998); *see also Common Cause v. FEC*, 108 F.3d 413, 417 (D.C. Cir. 1997) ("[T]he nature of the information allegedly withheld is

critical to the standing analysis."). Thus, the Court in *Akins* found the plaintiffs there had suffered informational injury because they were totally in the dark about which federal candidates the organization in question was supporting. 524 U.S. at 16, 20-21.

Vroom has identified no such absence of information. In his opposition, plaintiff argues that he is like the plaintiffs in *Akins* because he has been "denied . . . the ability to accurately determine which corporate entity, GE or Penske, is the actual source of the financial contributions being made to federal candidates." (Pl.'s Opp'n to FEC's Mot. to Dismiss Am. Compl. at 3 (Doc. No. 17) ("Pl.'s Opp'n").) But as the Commission demonstrated in its opening memorandum, plaintiff has complete access to — and has repeatedly invoked — the details of GE PAC's and Penske PAC's *respective* contributions to candidates, all of which the PACs have reported separately to the Commission. (Def. FEC's Mem. of P. & A. in Support of Mot. to Dismiss at 10 & n.4 (Doc. No. 15) ("FEC Mem.").) Plaintiff's opposition brief reconfirms his possession of that information; indeed, his opposition includes a table neatly summarizing six years' worth of GE PAC's and Penske PAC's separate contributions to a member of Congress. (Pl.'s Opp'n at 11.)[1] Plaintiff's claim of injury, which he attempts to support with the very information he allegedly lacks, thus falls of its own weight.

Vroom also claims that he lacks "accurate" information regarding GE PAC's and Penske PAC's political contributions. (*See* Pl.'s Opp'n at 2-3.) Yet plaintiff has never challenged the accuracy of any of the financial figures reported by the PACs. To the contrary, plaintiff's argument is particularly self-defeating because his primary claim — that GE PAC and Penske PAC disaffiliated illegally, so their aggregate reported contributions in the 2010 and 2012

[1] Plaintiff's data table also belies his assertion that he is somehow "ethically" barred from "aggregat[ing]" the PACs' contribution amounts or communicating those amounts publicly. (Pl.'s Opp'n at 2.)

election cycles exceeded the legal limit (Pl.'s Opp'n at 10-11) — is *premised upon* the accuracy of the contribution amounts reported by GE PAC and Penske PAC. Without accepting those reported amounts as correct, there would be no "excess" contributions for plaintiff to complain about.[2] Thus, in reality, plaintiff's claim regarding "inaccurate" information merely repackages his claim that GE PAC's and Penske PAC's properly reported contributions were illegal. (*See id.* at 2-5.) This is not a request for information; it is a request for "a legal determination that General Electric and Penske are in violation of the law," which the Court explained in its earlier dismissal order is "not a remedy to an injury." Order, Dec. 6, 2012 ("Order") at 3 (Doc. No. 12); *Wertheimer v. FEC*, 268 F.3d 1070, 1074-75 (D.C. Cir. 2001) (finding no informational injury where "each transaction appellants allege is illegal is reported in some form").

Because plaintiff already has the information he seeks through this lawsuit, the inescapable conclusion is that he has suffered no informational injury and therefore lacks standing. His effort to have the Commission "'get the bad guys,'" *Common Cause*, 108 F.3d at 418, by obtaining an advisory legal declaration that GE and Penske have violated the law must therefore fail for lack of jurisdiction under the binding precedent of *Common Cause* and *Wertheimer* (*see* Order at 4 (holding that plaintiff has no "'justiciable interest in the [FEC's] enforcement of the law'" (quoting *Common Cause*, 108 F.3d at 418))), as well as the other indistinguishable cases decided by the courts of this Circuit (*see* FEC Mem. at 12-14 (citing cases dismissing lawsuits against the Commission seeking information the plaintiffs already possessed)).

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[2] While plaintiff's new allegations regarding the 2012 election cycle are outside the scope of his amended complaint and thus cannot be the basis of Article III standing, *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231, 235 (1990), these new allegations further highlight that he already has all the information he purportedly seeks.

II. THE RELIEF PLAINTIFF SEEKS WOULD NOT REDRESS HIS ALLEGED INJURY

Even if the Court were to find that plaintiff faces informational injury, he has failed to identify any relief the Court could grant to redress such injury. Plaintiff asks the Court to order the Commission to reconsider the permissibility of GE PAC's and Penske PAC's disaffiliation, or for the Court itself to decide that the Commission's decision on that question was arbitrary and capricious. (Am. Compl. at 17.) Were the Court to do either of these things, however, the most that could happen is that the PACs would be subject to a single $5,000 contribution limit going forward, and their past contributions might be deemed excessive. *But see* 2 U.S.C. § 437f(c)(2) (providing that entity acting in reliance on advisory opinion "shall not, as a result of any such act, be subject to any sanction"). Contrary to plaintiff's argument, concluding that the contributions were "illegal" would not make them "inaccurate": Vroom would receive no new factual information because the past contribution amounts that were reported would not change even if they were "[re-]attributed" to GE PAC (Pl.'s Opp'n at 5) or re-disclosed in another way. *See Wertheimer*, 268 F.3d at 1074-75 (holding that plaintiff lacked standing to seek disclosure of already-reported information).

Furthermore, even if plaintiff were somehow to achieve everything he seeks in this case — including the forced reaffiliation of GE PAC and Penske PAC — the net effect would be that plaintiff and the public would end up with *less* information about the respective political activities of GE and Penske. Currently, as a result of the Commission's decision to permit the PACs' disaffiliation, plaintiff and the public know what each PAC does on its own. Were the PACs required to reaffiliate, however, they would have more leeway to blur their activities in the manner plaintiff allegedly seeks to prevent. For example, the PACs could consolidate into a single entity that makes biennial $5,000 contributions to candidates. It would be impossible

under this scenario to determine the very thing plaintiff claims to want to know: whether the contributions are attributable to GE or Penske. In addition, affiliated PACs can transfer unlimited funds to each other. 11 C.F.R. § 102.6(a); 11 C.F.R. § 110.3(c)(1). Thus, the PACs could continue to operate separately — with one of them contributing up to $5,000 to each candidate and the other contributing $0 — but with the funding for the contributions being transferred from GE PAC to Penske PAC or vice-versa. In that case plaintiff *really would be* "denied . . . the ability to accurately determine which corporate entity . . . is the actual source of the financial contributions" and the "true extent of GE's political . . . influence." (Pl.'s Opp'n at 3-4.) Reaffiliation would therefore decrease the information available to plaintiff and others about GE's and Penske's separate political activities.

Finally, plaintiff's new request (which is not mentioned in his amended complaint) that the Court order the Commission's Inspector General to initiate an investigation into these matters must be rejected. The only relief to which plaintiff could be entitled here is a declaration that the Commission's dismissal of plaintiff's administrative complaint was "contrary to law." *See* 2 U.S.C. § 437g(a)(8)(A) (providing for judicial review of dismissal of an administrative complaint); *Alliance for Democracy v. FEC*, 335 F. Supp. 2d 39, 43 (D.D.C. 2004) (quoting § 437g(a)(8)). Plaintiff cites no statute or judicial precedent authorizing the Court to intrude upon the Commission's internal processes in the manner he belatedly requests.[3] *Cf.* Hr'g on

[3] In making this request, plaintiff reiterates his accusations concerning the Commission's supposed misconduct in the handling of the underlying advisory opinion and administrative complaint. (Pl.'s Opp'n at 7-10.) While the allegations in plaintiff's amended complaint must be accepted as true for purposes of a motion to dismiss (and only for those purposes), these specific allegations have nothing to do with the instant motion because they are irrelevant to whether plaintiff has sustained an injury by having been "prevented from seeking information that will help him to evaluate candidates for office." (Order at 4.) And the allegations have already been found wanting by the Court for jurisdictional purposes (*id.* at 3-4) in a ruling that is law of the case (*see* FEC Mem. at 15 n.6).

Mots. at 22, *Vroom v. Gen. Electric, Inc.*, Civ. No. 1:10-1250 (E.D. Va. Jan. 28, 2011), ECF No. 44 (dismissing Vroom's complaint and citing his legal proceedings involving other government agencies as "evidence" of "a borderline bad faith attempt" to seek redress of unrelated issues).

III. CONCLUSION

Vroom lacks standing to maintain this case. He has "failed to establish that the ruling sought would yield anything more than a legal characterization or duplicative" — or reduced — "reporting of information that under existing rules is already required to be disclosed." *Wertheimer*, 268 F.3d at 1075. Under *Common Cause* and *Wertheimer* and their progeny, the Court has no jurisdiction to hear a case seeking an advisory ruling that a third party has violated federal campaign finance law. For these reasons, and for the reasons set forth in the FEC's initial memorandum, the Court should dismiss plaintiff's amended complaint with prejudice.

Respectfully submitted,

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Dated: March 7, 2013

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I hereby certify that on March 7, 2013, I caused to be electronically filed with the Court the Federal Election Commission's Reply in Support of Its Motion to Dismiss Plaintiff's Amended Complaint. 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:

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