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

In his opposition to the Federal Election Commission's ("FEC's" or "Commission's") motion to dismiss, plaintiff Peter Vroom fails to rebut the Commission's showing that he lacks Article III standing to challenge the Commission's dismissal of his administrative complaint. Vroom has not suffered any cognizable harm — including any informational injury — from the alleged violations of the Federal Election Campaign Act ("FECA"), 2 U.S.C. §§ 431-57, that he raised in his administrative complaint or from the Commission's dismissal of that complaint. Nor has Vroom alleged any injury arising from the dismissal that could be remedied by the Court. Because Vroom lacks standing to bring his claims, the Court should grant the Commission's motion to dismiss.

I. VROOM LACKS ARTICLE III STANDING BECAUSE HE CANNOT DEMONSTRATE ANY COGNIZABLE PERSONAL INJURY ARISING FROM THE FECA VIOLATIONS ALLEGED IN HIS ADMINISTRATIVE COMPLAINT

In its Memorandum in Support of its Motion to Dismiss ("FEC Mem.") [Doc. 7], the Commission explained (at 7-10) that none of the various injuries of which Vroom complains satisfy Article III's injury-in-fact requirement. First, Vroom's alleged injury related to his termination from the Truck Renting and Leasing Association ("TRALA") is not, as required by

Common Cause v. FEC, 108 F.3d 413 (D.C. Cir. 1997), a discrete injury arising from an alleged violation of FECA. (*See* FEC Mem. at 7.) Second, Vroom's allegation that the Commission's dismissal of his complaint denied him the "benefits" of a decision "on the merits of his complaint" (Compl. ¶ 16) [Doc. 1] amounts to nothing more than a desire to "get the bad guys," which *Common Cause* held does not satisfy Article III's injury-in-fact requirement. (*See* FEC Mem. at 7-8.) Third, GE PAC's and Penske PAC's allegedly unlawful contributions did not injure Vroom in a "particularized" and "concrete" way that would confer Article III standing. (*See* FEC Mem. at 8-9 (discussing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).) Finally, Vroom's claims regarding alleged defects in the Commission's processing of his administrative complaint — even if assumed to be true for purposes of this motion (although they are not) — are foreclosed by *Common Cause*, 108 F.3d at 419, which held that a plaintiff does not have standing to allege that the Commission failed "to process its complaint in accordance with the law." (FEC Mem. at 8.)

Vroom does not dispute that he bears the burden of showing that he has standing, or that he must show "a discrete injury flowing from the alleged violation of FECA." *Common Cause*, 108 F.3d at 419. Nor does he dispute that his alleged injury related to his termination from TRALA is not a cognizable injury in fact. (*See* Pl.'s Opp. to Def.'s Mot. to Dismiss at 2 ("Pl.'s Opp.") [Doc. 9] ("Vroom makes no employment related claim whatsoever in his complaint.").) Instead, in his opposition, Vroom largely changes his approach and now claims that he has been injured by being deprived of information to which he is entitled under FECA. But because the Commission's dismissal of Vroom's administrative complaint has not prevented any information from being disclosed to the public pursuant to FECA, Vroom's new arguments still fail to allege any concrete and particularized injury that would give him standing to bring this suit.

A. Vroom Has Not Suffered Informational Injury

Vroom erroneously and belatedly attempts to recast his alleged injury as an informational injury. (*See* Pl.'s Opp. at 9-13.) But this newly-minted allegation is still insufficient to confer Vroom standing. In *FEC v. Akins*, another suit challenging the Commission's dismissal of an administrative complaint, the Supreme Court 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." 524 U.S. 11, 21 (1998). In particular, the case concerned allegations that a large nonprofit corporation should have been reporting its receipts and disbursements as a political committee under FECA, and the Court held that plaintiffs had demonstrated standing because "[t]here [was] no reason to doubt [plaintiffs'] claim that the information would help them . . . to evaluate candidates for public office." *Id.*; *see also, e.g., Common Cause*, 103 F.3d at 418 ("[W]e expressly limited our recognition of this injury to those cases where the information denied is both useful in voting and required by Congress to be disclosed"); *Judicial Watch, Inc. v. FEC*, 293 F. Supp. 2d 41, 46 (D.D.C. 2003) (defining "informational injury" as "that injury caused when voters are deprived of useful political information at the time of voting").

Here, Vroom has not suffered informational injury because he has not been deprived of *any* information that must be disclosed pursuant to FECA. Vroom does not even allege that GE PAC or Penske PAC has failed or will fail to meet their reporting obligations under the Act; to the contrary, Vroom cites relevant information from these entities' FEC reports in his administrative and judicial complaints. (*See* Pl.'s Exh. 6 (Doc. No. 1-1 at 38-39); Pl.'s Opp. at 11 (quoting Compl. ¶ 40).) Nor does Vroom seek any information in his request for relief from this Court, or indicate what additional information would be made available if the two PACs reported as affiliated instead of unaffiliated entities. Instead, this lawsuit asks the Court to

declare that GE PAC and Penske PAC are legally affiliated (Compl. p. 22) so that "Vroom [can] determine the actual extent of the financial support that GE provides to political candidates." (Pl.'s Opp. at 10.) But Vroom already knows the size of the contributions each PAC made (*see* Pl.'s Exh. 6 (Doc. No. 1-1 at 38-39)), so the "missing information" that Vroom claims he was deprived of is already public.

In reality, Vroom does not seek information, but rather a legal determination that the contributions of Penske PAC and GE PAC should be attributed to GE. As previously explained (FEC Mem. at 7-8), Vroom's interest in having the Commission label the actions of a third party as unlawful cannot support standing. This was precisely the holding of the D.C. Circuit's decision in *Wertheimer v. FEC*, 268 F.3d 1070 (D.C. Cir. 2001). In that case, several individuals associated with government-reform groups alleged that the Commission had failed to identify certain expenditures by the major political parties as impermissible "contributions" and "expenditures" to candidates. *Id.* at 1073. Relying on *Akins*, the plaintiffs contended that the Commission's decision deprived them of "required information about the source and amount of candidates' financing." *Id.* The court held, however, that the plaintiffs "do not really seek additional facts but only the legal determination that certain transactions constitute [illegal] expenditures." *Id.* at 1075. Not only did the plaintiffs fail "to show . . . that they are directly being deprived of any information," but they also failed to show that "the legal ruling they seek might lead to additional factual information." *Id.* at 1074. Accordingly, the court held that the plaintiffs failed to carry their burden to demonstrate an Article III injury in fact. *Id.* at 1074-75.

Like the unsuccessful plaintiffs in *Wertheimer*, Vroom seeks "a legal conclusion that carries certain law enforcement consequences," *i.e.*, that "the GE and Penske PACs should continue to be treated as affiliated, not separate, and should remain subject to a single

contribution limit under FECA." (*See* Pl.'s Opp. at 6.) "In other words, what [plaintiff] desires is for the Commission to 'get the bad guys,' rather than disclose information. [Plaintiff] has no standing to sue for such relief." *Common Cause*, 108 F.3d at 417-18 (explaining that the government's "alleged failure to 'disclose' that certain conduct is illegal by itself does not give rise to a constitutionally cognizable injury").[1]

In any event, Vroom's claim of informational injury is beyond the scope of his complaint, and so his Article III standing cannot be premised on it. "[I]t is the burden of the party who seeks the exercise of jurisdiction in his favor . . . clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute" and "the necessary factual predicate may *not* be gleaned from the briefs and arguments." *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231, 235 (1990) (citations and quotation marks omitted; emphasis added). As previously explained (FEC Mem. at 7), Vroom complains that he has been denied the "benefits of the FEC findings on the merits of his complaint." (Compl. ¶ 16.) But a favorable Commission decision consistent with Vroom's views of the facts and law is not "information which must be publicly disclosed pursuant to a statute." *Akins*, 524 U.S. at 21. Since Vroom's complaint nowhere presents the necessary factual predicates for a claim of informational injury, the Court should reject that belated argument.[2]

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[1] Because Vroom seeks only a legal conclusion from the Commission and has not been denied any information that the Act requires to be disclosed, his alleged desire for information (*see* Pl.'s Opp. at 9-11) in his capacity as a voter, consultant, or lobbyist is irrelevant.

[2] The fact that Vroom is not represented by counsel does not remedy his failure to allege facts that support his standing to bring suit. Although a pro se document "is to be liberally construed," *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), "the district court need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint." *Henthorn v. Dep't of Navy*, 29 F.3d 682, 684 (D.C. Cir. 1994) (quotation marks omitted). "Indeed, the requirement that courts liberally interpret *pro se* pleadings does not dispense with the constitutional requirement of standing." *Strunk v. Obama*, No. 10-486, --- F. Supp. 2d ---, 2011 WL 8600375 (D.D.C. Jan. 5, 2011); *see also Powell v. Am. Fed'n of*

B. Vroom Was Not Injured by the Commission's Procedural Handling of His Administrative Complaint

Vroom also cannot obtain standing from his baseless claim (Pl.'s Opp. at 4, 7-8) that the Commission "misplaced" or otherwise failed to consider certain materials that he submitted with his initial complaint.[3] As previously explained (FEC Mem. at 8), this claim does not state a cognizable injury in fact under *Common Cause*, where the D.C. Circuit held that a plaintiff did not have standing to allege that the Commission failed "to process its complaint in accordance with the law." *See* 108 F.3d at 418-19 (citing *Lujan* and holding that alleged "procedural injury" in Commission's processing of plaintiff's administrative complaint "is not a legally cognizable interest for purposes of standing").

Regardless, the Commission's determination to base its final decision on some pieces of submitted evidence and not on others is a type of investigative decision that falls squarely within

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Teachers, No. 11-493, --- F.Supp. 2d ---, 2012 WL 3264735, at *2 (D.D.C. Aug. 13, 2012) ("[P]ro se plaintiffs are not freed from the requirement to plead an adequate jurisdictional basis for their claims.") (internal quotation marks omitted).

[3] Although it is presumed true for purposes of this motion to dismiss, Vroom's allegation that the Commission "misplaced" his documentation is based on his complete misinterpretation of the Commission's procedures. Vroom believes that the Commission must have lost his documents because they were not specifically cited in the agency's analysis of his administrative complaint or placed on the Commission's website after the administrative matter concluded. (*See* Compl. ¶ 3.) But the Commission does not post on its website the entire file in any matter; only the materials deemed directly determinative of the Commission's final decision are made public. *See* FEC, *Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record*, 74 Fed. Reg. 66,132 (Dec. 14, 2009) (explaining that report that is basis of Commission's decision is placed on the public record); *Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files*, 68 Fed. Reg. 70,426 (Dec. 18, 2003). In this case, the Commission's staff reviewed *every* document that Vroom submitted in connection with his administrative complaint and made those documents available to the FEC's Commissioners for their review prior to voting on the disposition of Vroom's administrative complaint. The particular documents about which Vroom is concerned were not mentioned in the Commission's report or placed on its website simply because they were not determinative. Vroom's convenient new allegation — that "FEC counsel admitted to Vroom on January 6, 2012 that the FEC had 'misplaced'" his documents (Pl.'s Opp. at 4) — is not in his complaint and should be disregarded.

the Commission's prosecutorial discretion. *See CREW v. FEC*, 475 F.3d 337, 340 (D.C. Cir. 2007) ("The Supreme Court in *Akins* recognized that the Commission, like other Executive agencies, retains prosecutorial discretion."); *see also Young v. U.S. ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 807 (1987) ("[P]rosecutor exercises considerable discretion in matters such as . . . what information will be sought as evidence . . . ."); *Sloan v. U.S. Dep't of Hous. and Urban Dev.*, 236 F.3d 756, 762 (D.C. Cir. 2001) ("[T]he sifting of evidence, the weighing of its significance, and the myriad other decisions made during investigations plainly involve elements of judgment and choice."); *cf. Stark v. FEC*, 683 F. Supp. 836, 840 (D.D.C. 1988) ("[I]t is . . . surely committed to the Commission's discretion to determine where and when to commit its investigative resources."). Thus, Vroom's allegation that the Commission did not consider certain materials that he submitted is not an injury in fact that could confer standing.

C. Vroom Has Not Alleged a Cognizable Future Injury

Vroom's allegations of future injuries arising from the Commission's action are no more cognizable than his claims of past injury. As previously explained (FEC Mem. at 9), *past* harm alone cannot support standing sufficient to justify the relief Vroom seeks because "'[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief.'" *Natural Res. Def. Council v. Pena*, 147 F.3d 1012, 1022 (D.C. Cir. 1998) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974)). Thus, Vroom must also demonstrate a future injury in fact that is an invasion of a legally protected interest that is "imminent" as well as "concrete and particularized," rather than "conjectural or hypothetical." *Lujan*, 504 U.S. at 560 (internal quotation marks omitted). "[P]articularized . . . mean[s] that the injury must affect the plaintiff in a personal and individual way." *Id.* at 560 n.1. Thus, the injury cannot be merely a generalized grievance about the government that affects all citizens or derives from an

overall interest in the proper enforcement of the law. *Id.* at 573-74; *see also Warth v. Seldin*, 422 U.S. 490, 499 (1975) ("[W]hen the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction.").

Vroom alleges that he will incur future injury "[i]f the FEC's decision is allowed to stand" because "companies like GE" will be able to "circumvent the campaign contribution limits." (Pl.'s Opp. at 13 (quoting Compl. ¶ 45).) That broad grievance — dissatisfaction with the enforcement of the law as to a generalized category of actors — is precisely the type of alleged future harm that does *not* satisfy the injury-in-fact requirement for standing. *Lujan*, 540 U.S. at 573-74; *Warth*, 422 U.S. at 499. Because such concerns affect all or a large class of citizens in substantially equal measure and Vroom fails to assert that any specific harm will redound particularly to his detriment, his generalized allegations of hypothetical future injury cannot satisfy Article III. *See, e.g., Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 215-227 (1974) (holding that citizens who had brought suit under the Incompatibility Clause challenging the eligibility of Members of Congress to serve in the military reserves had only generalized interests and lacked standing).[4]

II. VROOM CANNOT SATISFY THE CAUSATION AND REDRESSABILITY REQUIREMENTS FOR ARTICLE III STANDING

The Commission demonstrated in its prior brief (FEC Mem. at 10-12) that Vroom has not alleged any injury caused by the Commission's dismissal of his administrative complaint that could be remedied by the Court. Vroom's opposition does not dispute any of the Commission's arguments related to causation or redressability. Instead, Vroom's only argument appears to be

[4] Because Vroom's assertion of "prudential standing" (Pl.'s Opp. at 16) is also based on his general dissatisfaction with the regulation of GE and similar entities, that claim fails for the same reasons as his claims of future injury. (*See* FEC Mem. at 12-13.)

that his interest in "seeing that the FEC abides by FECA and its own regulations" would be redressed by the Court ordering the Commission to reconsider this matter in light of his supplemental materials. (*See* Pl.'s Opp. at 15.) But since "having the Executive Branch act in a lawful manner . . . is not a legally cognizable interest for purposes of standing," *Common Cause*, 108 F.3d at 419, Vroom's argument is irrelevant. Likewise, any claims that his alleged informational injury is capable of redress would be equally doomed: Because Vroom does not allege that GE PAC or Penske PAC will fail to report all the information FECA requires, an order from this Court directing the Commission to reexamine Vroom's administrative complaint — the only remedy to which he is entitled, 2 U.S.C. § 437g(a)(8)(C) — would not result in the release of any additional information in the future.[5]

CONCLUSION

Plaintiff Vroom cannot meet his burden of alleging cognizable personal injury arising from a violation of the Act. He did not suffer any informational injury, and he has not alleged an imminent threat of cognizable future injury that would render jurisdiction proper. As such, Vroom lacks Article III standing, and the Court should grant the Commission's motion to dismiss.

Respectfully submitted,

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[5] In its motion to dismiss, the Commission explained (FEC Mem. at 8 n.3) that Vroom lacked standing to challenge an FEC advisory opinion to which Vroom was not a party. Although Vroom again criticizes this advisory opinion in his opposition (at 3), he does not provide any authority or argument to counter the Commission's showing that he lacks standing to challenge it.

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September 21, 2012

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

I hereby certify that on September 21, 2012, I caused to be electronically filed with the Court the Federal Election Commission's Reply in Support of its Motion to Dismiss. 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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