UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Peter J. Vroom,

Plaintiff,

v.

Federal Election Commission,

Defendant,

Civ. No. 12-00143 (RMC)

August 30, 2012

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Peter Vroom
Appearing *Pro Se*

611 Oakley Place
Alexandria, VA 22302
703-548-4502

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I. INTRODUCTION

Defendant Federal Election Commission (FEC or Commission) has moved to dismiss the complaint in this matter by arguing that the plaintiff lacks standing. The FEC can only make his argument by mischaracterizing the injuries pled by the plaintiff to establish a fact pattern that will fit cases where this Circuit has previously concluded plaintiffs lack standing. To accomplish this, the FEC improperly depicts Vroom's interest in pursuing the court action as an attempt to redress an employment dispute occurring more than three years ago. It does so because it benefits the FEC's desire to shoehorn Vroom's judicial complaint into a status that will be denied on the basis of standing. But Vroom makes no employment related claim whatsoever in his complaint and the only references made to his prior employment are made for the sole purpose of providing context as to how he became aware of General Electric's (GE) illegal financial deconsolidation of Penske Truck Leasing (PTL).

As Vroom makes clear in his complaint, the injuries he suffered resulted from the FEC's egregious failures in the handling of his administrative complaint (MUR 6455) involving GE's illegal financial deconsolidation of its former subsidiary, Penske Truck Leasing. The FEC failed to properly investigate Vroom's complaint and take appropriate enforcement action to revoke the disaffiliation of the GE and Penske PACs. GE remains the control party of Penske and the Penske PAC and the FEC's failure to investigate Vroom's complaint allows GE to continue to use the Penske PAC to make excess campaign contributions. As a result, Vroom and others that depend on the FEC to accurately report the financial support that GE provides to federal candidates are denied this information.

The FEC's July 29, 2009 Advisory Opinion (AO) allowed the GE and Penske PACs to disaffiliate and cease aggregating their campaign contributions under a single shared contribution limit. As a consequence, it is impossible to determine the actual magnitude of the financial support that GE provides to federal political candidates. This clearly represents an injury to Vroom as a voter and as an individual who regularly uses this information in his career. Moreover, because FEC Advisory Opinions can be relied upon by other "similarly situated" entities, the FEC's decision has potentially broad ranging implications for other affiliated PACs wishing to disaffiliate. If the FEC is not even handed in its application of the rules for disaffiliation, then companies like GE, will use controlled entities like PTL, to multiply their contribution limits while denying voters and other interested parties the ability to determine who is actually behind these contributions and the magnitude of he contributions attributable to certain PACs.

Incredibly, the FEC's response to Vroom's judicial complaint completely avoids

addressing the primary reason Vroom is currently before the court – the FEC's acknowledged "misplacement" of all 200 pages of the critical supporting documentation that Vroom presented with his FEC complaint. After Vroom's suspicions were aroused on the basis of the contents of the dismissal letter and the FEC counsel's opinion, FEC counsel admitted to Vroom on January 6, 2012 that the FEC had "misplaced" the majority of his complaint and had only considered his brief two-page cover letter to the FEC. This is all the more astounding because attorneys with the Securities and Exchange Commission had contacted the FEC independently in January 2011 to provide the FEC with a copy of Vroom's complaint detailing his allegations against GE and PTL involving shareholder fraud related to GE's illegal deconsolidation of PTL. This was the same material Vroom had provided with his FEC complaint. The FEC therefore failed to review and consider not only Vroom's complaint documentation but also the same documentation that was provided to them separately by the SEC. Moreover, in March 2011,Vroom provided a supplemental complaint that consisted of a letter to the SEC containing new and additional information on the GE/Penske deconsolidation. Vroom emailed the material to the FEC counsel handling MUR 6455 and also sent a notarized copy to the FEC. The FEC counsel assured Vroom it would be included as part of his complaint. The FEC has admitted that this information too was "misplaced" and never considered by the FEC or provided to the Respondents to answer. It is difficult to fathom the circumstances at the FEC under which such an amazing string of oversights could occur in the handling of both Vroom's complaints and the separate related SEC inquiry.

Finally, as further detailed in Vroom's complaint, the circumstances involving the actions taken by the FEC in the approval of both the GE/Penske PAC disaffiliation

Advisory Opinion and the FEC's subsequent review of Vroom's complaint were highly irregular, including:

- After a thorough six week review of the GE/Penske AO Request, the FEC General Counsel's Office strongly recommended that the Commission deny GE/Penske's request to disaffiliate the GE and Penske PAC's but then less than 24 hours before the Commission met on July 28, 2009 to consider the AO Request, the FEC General Counsel's Office was instructed by parties unknown within the Commission to provide the Commission with a second opinion (Draft Opinion B) approving the GE/Penske AO Request.
- On the basis alone of GE and Penske's razor thin 49.9% to 50.1% ownership interest ratio in the PTL joint venture, the FEC should have denied the PAC disaffiliation request. The FEC had never before in its history granted disaffiliation to two organizations where one of the organizations maintained more than a 40% outside interest in the other.
- Two FEC attorneys recused themselves during the Commissions July 29, 2009 consideration of the GE/Penske AO, including Rosemary Smith, the FEC Associate General Counsel whose division is responsible for the drafting of AO's and Kevin Plummer, Executive Assistant to FEC Commissioner and V. Chairman Petersen. Both Plummer and Petersen were former colleagues of Carol Laham at the Wiley Reins law firm, who was Penske's counsel leading in the AO request. Laham had also previously worked as a staff attorney in the FEC Office of General Counsel. Although Petersen called for the vote and voted to approve the GE/Penske PAC disaffiliation, he recused himself from voting on Vroom's complaint to the FEC.

II. BACKGROUND

A. MUR 6455

Vroom filed an administrative complaint with the Commission on November 16, 2010 (amended on February 8, 2011). The FEC designated it Matter Under Review ("MUR") 6455. Vroom's FEC complaint alleged that General Electric (GE) had unlawfully deconsolidated Penske Truck Leasing as a subsidiary from its public financial reporting and had then used the deconsolidation as the basis to seek an Advisory Opinion (AO) from the FEC allowing the disaffiliation of the GE PAC and the Penske PAC.

Vroom argued that the deconsolidation was fraudulent and GE remained the control party in the joint venture. Vroom provided extensive documentation with his complaint showing that GE maintained an actual ownership interest in the joint venture of approximately 80%, rather than the 49.9% paper ownership interest it claimed in its AO request to the FEC. Therefore, Vroom argued 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. 2 U.S.C. §§ 431(4)(B), 44la(a)(5), 441b(b); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1)(ii).

> (5) For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, …shall be considered to have been made by a single political committee…

The bulk of the supporting documentation Vroom provided to the FEC consisted of his November 1, 2010 complaint to the Securities and Exchange Commission (SEC), in which he alleged that GE's March 28, 2009 deconsolidation of Penske Truck Leasing from its balance sheet, which allowed GE to remove $7.5 billion in debt (GE's line of credit to Penske) from its SEC filings viewed by shareholders, was illegally accomplished through a series of prior loans from GE to Penske. Accordingly, GE remained the control party in the Penske Truck Leasing Joint Venture and the FEC should have denied disaffiliation of their respective PACs.

B. The FEC Misplaced and Failed to Consider the Critical Documented Evidence included with Vroom's Complaint

As more fully described in Vroom's judicial complaint to this court, on January 6, 2012, the FEC admitted to Vroom that it had "misplaced" all of the evidence Vroom had provided with his complaint and that the FEC never considered its contents prior to issuing its decision to dismiss. In its reply to this Court, the FEC admits that Vroom had provided his SEC complaint documentation with the filing of his FEC complaint. However, it makes no reference to its complete failure in the handling and consideration of the documents.

> Vroom's initial administrative complaint contained allegations that the deconsolidation of General Electric Company ("GE") and Penske Truck Leasing ("Penske")-the latter of which is a member of TRALA-was unlawful, and he attached an administrative complaint that he had filed with the Securities and Exchange Commission ("SEC") earlier in November 2010.

Vroom twice contacted the FEC with written inquiries in January 2012 to ask if the FEC had a process available for reconsideration of his complaint short of his filing a petition for review with the District Court. The FEC provided no response thereby forcing Mr. Vroom to file this action. The FEC nonetheless now seeks to permanently avoid addressing their investigative failure by arguing that Vroom's complaint should be dismissed for technical reasons. Vroom can only surmise that the FEC has determined that it would prefer to try and gain the courts agreement to dismiss Vroom's complaint entirely on technical grounds rather than correct its serious internal mishandling of his administrative complaint. It is particularly concerning that in its reply to Vroom's judicial complaint, the FEC expresses no concern whatsoever with the implications of its failure to investigate Vroom's complaint, which is to allow GE to direct and control the operation of both the GE PAC and the Penske PAC and to enable GE to potentially

double its contributions to political candidates through its utilization of both its own PAC and the Penske PAC. Furthermore, Individuals like Vroom that rely on the FEC to provide reliable information about the source, distribution and magnitude of GE's political contributions to candidates are denied that information.

It is apparent that the FEC seeks to avoid drawing the Court's attention to its failures in the processing and investigation of Vroom's administrative complaint. Not until page 12 of its reply to Vroom's judicial complaint does the FEC make even the barest, and only, reference to "certain defects in the Commission's processing of the administrative complaint."

> "Vroom also alleges certain defects in the Commission's processing of his administrative complaint, including claims regarding what materials the agency considered (see Compl2, 29-45), but Common Cause rejected a plaintiffs standing based on an alleged failure by the Commission "to process its complaint in accordance with law." 108 F.3d at 419.[3]

The FEC's reply points to the Commission's vote to dismiss Vroom's complaint but makes no mention to the Court of the fact that the FEC Commissioners and the Respondents were given only 2 pages to consider of the approximately 200 page complaint that Vroom submitted.

> 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 and dismissed the complaint. *See* FEC, MUR 6455

III. VROOM MEETS ALL ELEMENTS FOR ARTICLE III STANDING

To establish standing: a plaintiff must show (1) an injury-in-fact, (2) a causal

connection between the injury and 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. The injury-in-fact must be an invasion of a legally protected interest that is "concrete and particularized" as well as "actual or imminent," not "conjectural" or "hypothetical." *Id.* at 560. The injury must also be "'fairly . . . trace[able] to the challenged action of the defendant, and . . . th[e] result [of] the independent action of some third party.'" *Id.* at 560-61 (quoting *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)). As discussed below, Vroom meets each of these requirements.

A. Vroom Suffers Informational Injury from the Failure of the FEC to Act on his Complaint

Informational injury is well recognized in this Circuit. Voters plainly have standing when they have been denied information about who is funding campaigns. Federal Election Comm'n v. Akins, 524 U.S. 11, 16 (1998) (injury to voters). The Court concluded the informational injury alleged by the plaintiffs, seeking "to evaluate the role that AIPAC's financial assistance might play in a specific election," fell within the broad standing net cast by Congress when it enacted section 437g(a)(8).

Similarly, here, the FEC's admitted failure to properly review Vroom's complaint and related documentation prior to the Commission's dismissal of his complaint allows the GE and Penske PAC's to continue to exceed allowable campaign contribution limits and misrepresent information in its filings with the FEC on the actual extent of its campaign finance activities.

1. Vroom's Status as a Voter in National Elections and Career in Politics and

as a Lobbyist Provides him Standing

Under *Atkins*, denial to plaintiffs of information to which they are statutorily entitled and which would be useful for evaluating candidates for election constitutes a sufficient injury in fact to meet their burden of establishing their standing to sue. In this case, Vroom not only maintains status as a voter in national elections and needs this information in his evaluation of candidates but also in his current and past career as a lobbyist, congressional campaign manager, congressional chief of staff and trade association CEO. In these capacities, Vroom very actively participates in the political process involving the analysis of candidates for election to federal political office and he regularly utilizes the FEC website and its database for this purpose. Accordingly, he relies upon the FEC to ensure the accuracy and validity of these reports.

Vroom also operates the *Alliance for Corporate Integrity*, which provides information to the public on corporations, including the financial support they provide to federal political candidates. The failure of the FEC to properly investigate the GE and Penske PAC disaffiliation and to take appropriate enforcement action to end the excess campaign contributions denies Vroom the ability to determine the actual extent of the financial support that GE provides to political candidates. Furthermore, because an FEC Advisory Opinion can be relied upon by other "similarly situated" entities, the FEC's decision involving the GE/Penske PAC disaffiliation and failure to investigate Vroom's complaint has broad ranging implications for other affiliated PACs wishing to disaffiliate.

In *Common Cause v. FEC,* this Circuit emphasized that the *nature* of the information withheld is "critical to the standing analysis." 108 F.3d 413, 417 (D.C.Cir.1997). "Informational injury," that injury caused when voters are deprived of

useful political information at the time of voting, is a "particularized injury sufficient to create standing" if the denied information is "useful in voting and required by Congress to be disclosed." Such an injury occurs when a voter is deprived of information showing how much money a candidate spent during an election, or the identity of donors to a candidate's campaign, because both types of information are useful in voting and are required by Congress to be disclosed.

2. Vroom's Complaint Highlights the Importance of having Reliable Election Finance Information Available Specifically with Respect to GE due to its Size

Although the FEC neglects to reference it, Vroom's complaint at 40 and 41, specifically discusses why it is so critical that the FEC provide accurate information about GE's campaign contributions and donors. The section itself is entitled "*GEPAC's Status as one of the Nation's Largest PAC's and Campaign Contributors Demanded that the FEC Closely Adhere to Federal Campaign Laws and Regulations involving Disaffiliation Requests.*"

> 40. The General Electric Political Action Committee is among the country's largest contributors of federal campaign donations and the FEC should have been particularly mindful here of the importance of applying its standards for disaffiliation evenly and equally. In 2009-2010, GEPAC made $2.03 million in campaign contributions to U.S. policy makers in Congress that averaged over $4,000 per member of the House and over $7,000 per member of the Senate. Over the past ten years, the company's PAC and employees have given $13 million in federal contributions, with $1.6 million of it going to members of the House Ways and Means and Senate Finance Committees.
>
> 41. GE also has one of Capitol Hill's busiest lobbying operations, spending $205 million over the past ten years to influence lawmakers and regulators. *The New York*

> *Times* reported that the corporate giant paid no taxes in 2011 while receiving a $3.2 billion tax benefit. *The Times* article noted that GE achieved these results not only through creative accounting, but also by lobbying Congress for less stringent tax laws. Since 2006, the company has earned $26 billion in profits has not paid any income tax and received a refund of $4.1 billion for that time period.

3. Accurate Information on GE's Political Contributions to Candidates is being Denied to Vroom

Voters considering candidates in federal elections are entitled to know the source of the campaign contributions received by those candidates and this responsibility is vested with the FEC under FECA. By virtue of the FEC's decision to allow the GE and Penske PACs to disaffiliate and its subsequent failure to investigate Vroom's complaint, Vroom is unable to obtain accurate information about the extent of political contributions made by GE to political candidates. In *Federal Election Comm'n v. Akins, 524 U.S. 11, 16 (1998),* the Supreme Court ruled that this type of informational injury imposes an injury that confers standing upon the complainant.

> Respondents also satisfy constitutional standing requirements. Their inability to obtain information that, they claim, FECA requires AIPAC to make public meets the genuine "injury in fact" requirement that helps assure that the court will adjudicate "[a] concrete, living contest between adversaries." Coleman v. Miller, 307 U.S. 433, 460 (Frankfurter, J., dissenting). United States v. Richardson, 418 U.S. 166 , distinguished. The fact that the harm at issue is widely shared does not deprive Congress of constitutional power to authorize its vindication in the federal courts where the harm is concrete. See Public Citizen v. Department of Justice, 491 U.S. 440, 449 -450. The informational injury here, directly related to voting, the most basic of political rights, is sufficiently concrete.

> Respondents have also satisfied the remaining two constitutional standing requirements: The harm asserted is "fairly traceable" to the FEC's decision not to issue its complaint, and the courts in this case can "redress" that injury. Pp. 8-14.

B. Vroom shows Personal Injury Resulting from the FECA Violation

The FEC claims that Vroom fails to satisfy the injury-in-fact requirement because he does not state any injury from a violation of FECA. However, as already shown in this reply brief, it is simply not the case. In his complaint, Vroom repeatedly and specifically discusses the injury caused to him by the FEC's failure to investigate his complaint. Vroom also explains that future injury will occur if the FEC is not required to reconsider Vroom's complaint with all of the complaint contents and documentary evidence before it.

> 45. These are not esoteric issues but go directly to the equal application of campaign laws in the United States to ensure that no individual or entity is allowed to circumvent laws affecting the election process. If the FEC decision is allowed to stand, companies like GE, having involvement in dozens of partnerships and joint ventures, could control and/or influence the distribution of campaign contributions far beyond its own PAC, thereby circumventing the campaign contribution limits imposed upon GEPAC. As the result of the FEC's decision, GE now has the ability, through its control of Penske Truck Leasing, to direct contributions not only for its own PAC but for Penske PAC as well. Mr. Vroom has already shown that in the 2008-10 election cycle, shortly after receiving its disaffiliation approval from the FEC, GE and Penske together exceeded the legal campaign contribution limits to Representative Gerlach (R-PA), the congressman representing the district containing Penske's corporate headquarters.

1. The FEC Failed to Perform its Congressionally Mandated Responsibilities under FECA

The Federal Election Campaign Act of 1971 (FECA) seeks to remedy corruption of the political process. As relevant here, it imposes extensive recordkeeping and disclosure requirements upon "political committee[s]," which include " any committee, club, association or other group of persons which receives" more than $1,000 in "contributions" or "which makes" more than $1,000 in "expenditures" in any given year, 2 U.S.C. 431(4)(A) (emphasis added). FECA imposes an obligation upon the FEC to ensure that where two related organizations both have PACs and one organization controls the other, that they must share a single contribution limit.

> (5) For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, ...shall be considered to have been made by a single political committee...(page 63)

C. Vroom's Injuries can be Effectively Addressed and Meet the Causation and Redressability Requirements for Article III Standing

The FEC argues that Vroom *"alleges no injury that "stemm[ed] from the FEC's dismissal of . . . [plaintiffs] administrative complaint or that can be addressed by this court.... And Vroom does not explain how a Commission investigation of the allegedly excessive contribution involved here, and any eventual sanction imposed on GE or Penske, could possibly remedy any harm plaintiff may have suffered from a violation of FECA. In sum, plaintiff cannot meet the causation and redressability requirements of Article III standing."*

In order to make this claim, the FEC chooses to completely ignore Section G of Vroom's judicial complaint describing how the FEC's action to reconsider the disaffiliation decision with the benefit of Vroom's documentation not previously reviewed by it can address the injuries caused. Vroom makes clear his interest in seeing that the FEC abides by FECA and its own regulations in evenly applying campaign finance law that Vroom and others must regularly rely upon.

> G. The FEC Must Immediately be Required to Reconsider its Disaffiliation Decision to Protect the Integrity of the Federal Campaign Finance Laws
> 44. If the FEC is allowed to so capriciously interpret and apply its own regulations in this area, what would prevent controlled entities similar to Penske Truck Leasing in its relationship to GE, from simply making empty promises to the FEC about their plans to end the financial support and then continue to operate just as they had before but with double the political contribution limits available to them? It is precisely to avoid questions of preference and favoritism that the Commission must faithfully and evenly apply federal campaign finance law and its own regulations. This is all the more true when dealing with multi-billion dollar corporations like GE and Penske, who wield enormous influence. Perceptions of favoritism can be erosive and the FEC's granting of disaffiliation to the GE and Penske PACs in the absence of any precedent in FEC history, should concern all Americans.

IV. Vroom Complaint Satisfies a Showing of Prudential Standing

The FEC also argues that Vroom's complaint should be dismissed because *"his alleged injury does not satisfy the requirements for prudential standing."* However, the only way the FEC can make this claim is by again utilizing its self-serving and nonsensical view that Vroom seeks to remedy injuries related to his employment.

> *"FECA was enacted "to limit the actuality and appearance of corruption resulting from large individual financial contributions"*

> *within the campaign finance system. Buckley, 424 U.S. at 26. But the only injuries Vroom has alleged derive from his past employment and his apparent desire to punish alleged corporate misconduct, concerns well beyond FECA's zone of interest in the federal campaign finance system.*

Contrary to the FEC's repeated attempts to improperly suggest Vroom's complaint is somehow related to employment injuries, the injury he pleads is exactly the type of injury that the FEC states in its reply. Certainly, as one of the largest PAC's in the nation, GE is engaged in the receipt and making of *"large individual campaign contributions."* The *Atkins* decision made clear that a group of voters satisfied prudential standing requirements in an action in which the voters alleged that an organization was a "political committee" under the Federal Election Campaign Act (FECA), and thus, subject to registration and reporting requirements; the injury of which the voters complained, their failure to obtain relevant information, was injury of a kind that FECA sought to address. Federal Election Comm'n v. Akins, 524 U.S. 11, 16 (1998)

> Respondents satisfy prudential standing requirements. FECA specifically provides that "[a]ny person" who believes FECA has been violated may file a complaint with the FEC, 437g(a)(1), and that "[a]ny party aggrieved" by an FEC order dismissing such party's complaint may seek district court review of the dismissal, 437g(8)(A). History associates the word "aggrieved" with a congressional intent to cast the standing net broadly-beyond the common law interests and substantive statutory rights upon which "prudential" standing traditionally rested. E.g., FCC v. Sanders Brothers Radio Station, 309 U.S. 470 . Moreover, respondents' asserted injury their failure to obtain relevant information-is injury of a kind that FECA seeks to address. Pp. 6-8.

V. CONCLUSION

Vroom's complaint satisfies all of the elements required to establish standing under Article III of the Constitution. The FEC misportrays Vroom's complaint for the purpose of denying Vroom standing in order to avoid its responsibility to properly investigate Vroom's administrative complaint. Vroom requests that this Court instruct the FEC to consider Vroom's complete complaint and to evenly apply its own precedence from previous FEC AO rulings and the ten factors of affiliation to determine whether the GE and Penske PAC's are affiliated; or alternatively, to issue a declaratory judgment that declares that the GE and Penske PACs are in fact affiliated, and that the decision to the contrary that the FEC issued is arbitrary and capricious.

Respectfully submitted,

Peter Vroom
Appearing *Pro Se*

611 Oakley Place
Alexandria, VA 22302
703-548-4502

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CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2012, I caused to be mailed by the U.S. Postal Service for filing with the Court, Plaintiff Peter Vroom's Opposition to the Federal Election Commission's Motion to Dismiss, I also certify that on that same date, I caused to be sent by U.S. Postal Service a copy of the same materials to Defendant at the following addresses:

Anthony Herman (D.C. Bar No. 424643)
FEC General Counsel
FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

Peter J. Vroom
611 Oakley Place
Alexandria, VA 22302