UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PETER J. VROOM,

Plaintiff,

v.

FEDERAL ELECTION COMMISSION,
999 E Street, NW
Washington, DC 20463
(202) 694-1650

Defendant.

Civ. No. 12-00143 (RMC)

MOTION TO DISMISS

DEFENDANT FEDERAL ELECTION COMMISSION'S
MOTION TO DISMISS

The Federal Election Commission ("Commission") moves to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. Plaintiff Peter Vroom lacks Article III standing because he has failed to allege a legally cognizable injury-in-fact flowing from the statutory violation he alleged in his administrative complaint to the Commission, and because the injuries he alleges before this Court were not caused by the Commission and are not redressable in this action. Plaintiff also lacks prudential standing because his alleged injuries are beyond the zone of interests served by the Federal Election Campaign Act, 2 U.S.C. §§ 431-57. A memorandum of law in support of the Commission's motion and a proposed order are attached.

Respectfully submitted,

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MEMORANDUM

DEFENDANT FEDERAL ELECTION COMMISSION'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS

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I. INTRODUCTION

The Federal Election Commission ("Commission" or "FEC") moves to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(1) because plaintiff Peter Vroom lacks standing to challenge the Commission's dismissal of his complaint against companies associated with his former employer. Vroom filed this challenge under 2 U.S.C. § 437g(a)(8), which provides a cause of action for a "party aggrieved by an order of the Commission dismissing [an administrative] complaint filed by such a party." However, Vroom must still satisfy the constitutional elements of standing, and the only personal injury that plaintiff alleges in his judicial complaint — loss of employment allegedly due to his efforts to investigate corporate malfeasance — is completely unrelated to any violation of the Federal Election Campaign Act, 2 U.S.C. §§ 431-57 ("FECA" or "Act"), or to the Commission's dismissal of his administrative complaint. And this Court cannot redress Vroom's termination as relief in this case. In sum, plaintiff's complaint reflects nothing more than a desire to see the law enforced against his former employer and related companies — to have the FEC "get the bad guys." *Common Cause v. FEC*, 108 F.3d 413, 418 (D.C. Cir. 1997). But the D.C. Circuit has foreclosed Article III standing on that basis. Moreover, because employment disputes are clearly outside FECA's zone of interests, Vroom also lacks prudential standing. This case should be dismissed.

II. BACKGROUND

A. Parties

Plaintiff Peter Vroom alleges that he was terminated from his employment as the President and CEO of the Truck Renting and Leasing Association ("TRALA") by its board of directors on July 8, 2009, after he had initiated an investigation of potential conflicts of interest and tax fraud by members of the association. (Complaint for Declaratory and Injunctive Relief

("Compl.") ¶ 15 (Docket ("Doc.") No. 1); Letter from Peter Vroom to Office of the General Counsel (Feb. 8, 2011) at 3 (Plaintiff's Complaint Exhibit ("Pl.'s Exh.") 6 (Doc. No. 1-1 at 40)).)

The Federal Election Commission is an independent agency of the United States government with exclusive jurisdiction over the administration, interpretation, and civil enforcement of FECA. *See generally* 2 U.S.C. §§ 437c(b)(1), 437d(a), 437g. Congress authorized the Commission to "formulate policy" under FECA, *see, e.g.*, 2 U.S.C. § 437c(b)(1), and to make rules and issue advisory opinions, 2 U.S.C. §§ 437d(a)(7), (8); 437f; 438(a)(8). *See also Buckley v. Valeo*, 424 U.S. 1, 110-111 (1976). The Commission is also authorized to institute investigations of 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. §§ 437c(b)(1), 437d(a)(6), 437d(e), 437g(a)(6).

B. The FECA Enforcement Process

The Act 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 a 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 members of the Commission vote to find "reason to believe," the Commission can institute an investigation. *Id*. If the Commission dismisses the administrative complaint, the Commission notifies the complainant, *see* 11 C.F.R. § 111.9(b), and 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).[1]

C. Plaintiff's Administrative Complaint

More than a year after he was terminated from his position at TRALA, Vroom filed an administrative complaint with the Commission on November 16, 2010, which he amended on February 8, 2011. (Compl. ¶ 1; Pl.'s Exh. 6 (Doc. No. 1-1).) The matter was designated Matter Under Review ("MUR") 6455. 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's amended FEC complaint alleged that unlawful deconsolidation of the corporations meant that the separate segregated funds (or "PACs") of GE and Penske should be treated as affiliated, not separate, and therefore subject to a single contribution limit under FECA. 2 U.S.C. §§ 431(4)(B), 441a(a)(5), 441b(b); 11 C.F.R. §§ 100.5(g)(2), 110.3(a)(1)(ii). Under the Act, a multicandidate political committee such as GE PAC or Penske PAC may not contribute more than $5,000 per election to a candidate's campaign committee. *See* 2 U.S.C. § 441a(a)(2), (4); 11 C.F.R. § 100.52(d)(1). The amended complaint specifically alleged that excessive contributions resulted when Penske PAC made $5,000 in contributions to the Gerlach for Congress Committee in connection with the 2010 primary and general elections and then GE

[1] If a court has subject matter jurisdiction to review the substance of the Commission's action, it "may not disturb a Commission decision to dismiss a complaint unless the dismissal was based on an 'impermissible interpretation of the Act . . . or was arbitrary or capricious, or an abuse of discretion.'" *Common Cause*, 108 F.3d at 415 (quoting *Orloski v. FEC*, 795 F.2d 156, 161 (D.C. Cir. 1986)).

PAC made contributions of $1,500 and $1,000 to that same committee for those same elections. (Pl.'s Exh. 6 (Doc. No. 1-1 at 38-39).) According to the amended complaint, the affiliated committees thus exceeded the contribution limit by $1,500 in the primary election and $1,000 in the general election. (*Id.*)

Vroom's amended FEC complaint also alleged that the Commission had been mistaken in issuing Advisory Opinion 2009-18, 2009 WL 2413841 (July 29, 2009). In that ruling, the Commission had opined that GE PAC and Penske PAC, based on the facts presented in the advisory opinion request, would be considered disaffiliated and subject to separate contribution limits. Vroom also claimed that GE and Penske "knowing[ly] and willful[ly] fil[ed] false, misleading and incomplete information with the FEC . . . for purposes of obtaining the Advisory Opinion issued by the FEC on July 29, 2009" (Pl.'s Exh. 6 (Doc. No. 1-1 at 35)), but that allegation did not specify a FECA violation.

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 Certification, http://eqs.nictusa.com/eqsdocsMUR/11044310276.pdf (Dec. 1, 2011).

D. Plaintiff's Judicial Complaint

On January 27, 2012, Vroom filed the instant complaint against the Commission pursuant to 2 U.S.C. § 437g(a)(8), seeking judicial review of the Commission's dismissal of MUR 6455. Vroom argues that GE and Penske supplied false and misleading information in order to obtain the 2009 FEC advisory opinion. (Compl. ¶¶ 1, 17-43.) Vroom also alleges that he was terminated from his employment with TRALA after he sought an investigation of potential conflicts of interest and tax fraud by members of the association and that "[t]he FEC's failure to

adequately investigate and pursue Vroom's complaint and to cooperate fully with the SEC investigation has allowed GE/Penske to continue to operate in violation of the law and denied Mr. Vroom the benefits of the FEC's finding on the merits of his complaint." (Compl. ¶¶ 15-16.)

Vroom seeks an order directing the Commission to consider whether GE PAC and Penske PAC are in fact affiliated based on his FEC and SEC administrative complaints, "or alternatively . . . a declaratory judgment that declares that the GE and Penske PACs are in fact affiliated." (Compl. at 22.) Vroom does not specifically request any relief related to the contributions by GE PAC and Penske PAC to the Gerlach committee that were described in his amended administrative complaint. (*Id.*)

III. PLAINTIFF LACKS ARTICLE III STANDING

The Court should dismiss this case because Vroom has failed to show any of the three required elements of standing under Article III of the Constitution. Plaintiff has alleged no personal injury from the 2010 campaign contributions of the GE and Penske PACs or from any other alleged FECA violation. Moreover, the injury he allegedly suffered regarding his termination from TRALA was not caused by the Commission's dismissal of his FEC complaint and would not be redressable by an order remanding the matter to the Commission.

A. Plaintiff's Burden to Demonstrate Article III Standing

As the party invoking federal jurisdiction, Vroom bears the burden of establishing the elements of constitutional standing. *Coal. for Mercury-Free Drugs v. Sebelius*, 671 F.3d 1275, 1279 (D.C. Cir. 2012) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). Vroom cannot rely on 2 U.S.C. § 437g(a)(8), the statutory provision that allows challenges to the dismissal of an administrative complaint, to satisfy the standing requirements of Article III. "Section 437g(a)(8)(A) does not confer standing; it confers a right to sue upon parties who otherwise already have standing." *Common Cause*, 108 F.3d at 419; *accord Citizens for*

Responsibility and Ethics in Washington v. FEC, 799 F. Supp. 2d 78, 85 (D.D.C. 2011). A plaintiff "cannot establish standing merely by asserting that the FEC failed to process its complaint in accordance with law." *Common Cause*, 108 F.3d at 419. Instead, Vroom is required "clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." *Rempfer v. Sharfstein*, 583 F.3d 860, 868-69 (D.C. Cir. 2009) (quoting *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990)).

Vroom bears the burden of showing that he meets the three requirements that are an "irreducible constitutional minimum" for standing: (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 not . . . 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)). Thus, when, as here, "a 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 and quotation marks omitted); *see also 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."). Standing "focuses on the complaining party to determine 'whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.'" *Am. Legal Found. v. FCC*, 808 F.2d 84, 88 (D.C. Cir. 1987)) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)).

B. Vroom Fails to Show a Personal Injury Based on Any FECA Violation

Plaintiff's judicial complaint makes clear that Vroom has suffered no injury-in-fact from the allegedly excessive contributions by GE PAC and Penske PAC to the Gerlach committee or from any other alleged FECA violation. Vroom barely mentions those contributions in his judicial complaint (Compl. ¶ 45), and he does not even attempt to explain how they have caused him an injury sufficient to establish Article III standing. Instead, in the section of his complaint titled "Parties and Standing," Vroom alleges injuries unrelated to FECA violations. (Compl. ¶¶ 15-16.) He alleges that he was "terminated 'without cause'" from his position at TRALA and that this action was "directly linked to GE's simultaneous illegal deconsolidation of Penske from [GE's] balance sheet."[2] (*Id.*) But none of these allegations satisfy Article III's injury-in-fact requirement because they do not state any injury from a violation of FECA.

> As in *Lujan*, absent the ability to demonstrate a "discrete injury" *flowing from the alleged violation of FECA*," [plaintiff] cannot establish standing merely by asserting that the FEC failed to process its complaint in accordance with law. To hold otherwise would be to recognize a justiciable interest in having the Executive Branch act in a lawful manner. This, the Supreme Court held in *Lujan*, is not a legally cognizable interest for purposes of standing. *Lujan*, 504 U.S. at 573.

Common Cause, 108 F.3d at 419 (emphasis added).

Vroom essentially alleges that he was harmed because the Commission failed to enforce the law, but *Common Cause* emphasized that when the gravamen of a plaintiff's complaint is the desire for the Commission to "get the bad guys," the plaintiff fails to satisfy Article III. 108 F.3d at 418. Vroom alleges cryptically that the Commission's dismissal of MUR 6455 denied him "the benefits of the FEC findings on the merits of his complaint." (Compl. ¶ 16.) Such a

[2] Vroom's allegation regarding "illegal deconsolidation" refers to the deconsolidation of GE and Penske that took place on March 28, 2009, allegedly in violation of FIN-46 of the Financial Accounting Standards Board — but *not* allegedly in violation of any provision of FECA. (*See* Compl. ¶¶ 16, 33.)

generalized, undefined "benefit" does not qualify as a concrete injury-in-fact under *Common Cause*, and in later decisions the D.C. Circuit has similarly denied standing based on a purported interest in the Commission making a "legal determination" that certain transactions constitute unlawful behavior. *Wertheimer v. FEC*, 268 F.3d 1070, 1075 (D.C. Cir. 2001). *See also Judicial Watch, Inc. v. FEC*, 180 F.3d 277, 278 (D.C. Cir. 1999). Vroom also alleges certain defects in the Commission's processing of his administrative complaint, including claims regarding what materials the agency considered (*see* Compl. ¶¶ 2, 29-45), but *Common Cause* rejected a plaintiff's standing based on an alleged failure by the Commission "to process its complaint in accordance with law." 108 F.3d at 419.[3]

Plaintiff's sole allegation of a FECA violation was the allegedly excessive amount of contributions given by GE PAC and Penske PAC to the Gerlach committee in 2010. (Compl. ¶ 45; Pl.'s Exh. 6 (Doc. No. 1-1 at 38-39).) But Vroom does not even attempt to show that these contributions injured him in any way — let alone that any injury was sufficiently "particularized" and "concrete" to satisfy Article III. *Lujan*, 504 U.S. at 560. "[P]articularized" means that "the injury must affect the plaintiff in a personal and individual way." *Id*. at 560 n.1.

[3] Similarly, Vroom complains that the Commission's decision in Advisory Opinion 2009-18 was wrong, but even if Vroom had standing to challenge the dismissal of his administrative complaint, that advisory opinion could not be challenged here. *See* FEC Advisory Op. 2009-18, 2009 WL 2413841; Compl. ¶¶ 17-28. Vroom brought this action pursuant to 2 U.S.C. § 437g(a)(8), which provides limited judicial review for parties "aggrieved by an order of the Commission dismissing a complaint," not parties displeased by a Commission *advisory opinion*. In any event, Vroom would also lack Article III standing to challenge the advisory opinion because he did not request that opinion and his conduct was not at issue. *See Am. Legal Found.*, 808 F.2d at 88 (standing inquiry "focuses on the complaining party to determine 'whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues'") (quoting *Warth*, 422 U.S. at 498)). The judicial process is not "a vehicle for the vindication of the value interests of concerned bystanders." *Valley Forge Christian Coll. v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 473 (1982) (citation omitted). *Compare Unity08 v. FEC*, 596 F.3d 861, 865 (D.C. Cir. 2010) (requester of an FEC advisory opinion may seek judicial review under the Administrative Procedure Act).

Vroom's complaint makes no such allegation.

Moreover, even if Vroom had alleged that he had been injured by the PACs' past campaign contributions, he has failed to allege any threat of future harm from such contributions or from any other FECA violation. *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* ("*NRDC*"), 147 F.3d 1012, 1022 (D.C. Cir. 1998) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974)). Here, the only remedy Vroom could receive would be an order for prospective relief: a remand of his administrative complaint to the Commission for it to conform to the Court's declaration of law. 2 U.S.C. § 437g(a)(8)(C); *see Perot v. FEC*, 97 F.3d 553, 557-58 (D.C. Cir. 1996). "'Because injunctions regulate future conduct, a party has standing to seek injunctive relief only if the party alleges, and ultimately proves, a real and immediate — as opposed to merely conjectural or hypothetical — threat of *future injury*.'" *NRDC*, 147 F.3d at 1022 (internal citation omitted and emphasis added). Accordingly, because Vroom's complaint is devoid of any allegation of future injury to himself that has "'sufficient immediacy and reality,'" there is nothing that "warrant[s] invocation of the jurisdiction of the District Court." *O'Shea*, 414 U.S. at 497 (quoting *Golden v. Zwickler*, 394 U.S. 103, 109 (1969)).[4]

In sum, plaintiff has failed to meet his burden to allege a threat of future harm stemming from a violation of FECA that is "concrete and particularized" as well as "actual or imminent,

[4] As explained *supra* pp. 7-9, although Vroom complains that the Commission's dismissal of his administrative complaint allows GE and Penske to "continue to operate in violation of the law [which has] denied Mr. Vroom the benefits of the FEC's findings on the merits of his complaint" (Compl. ¶ 16), he does not allege any concrete and particular injury he would suffer personally if the PACs remain unaffiliated.

not conjectural or hypothetical." *Lujan*, 504 U.S. at 560 (internal quotation marks and citation omitted).

C. Plaintiff Cannot Satisfy the Causation and Redressability Requirements for Constitutional Standing

Plaintiff alleges no injury that "stemm[ed] from the FEC's dismissal of . . . [plaintiff's] administrative complaint" or that could be remedied by this Court. *Judicial Watch*, 180 F.3d at 277. Because Vroom alleges that the Commission failed to pursue alleged FECA violations by GE and Penske — a claim based on actions by third parties — causation and redressability are closely related and difficult to establish.

> When plaintiffs' claim hinges on the failure of government to prevent another party's injurious behavior . . . both prongs of standing analysis can be said to focus on principles of causation: fair traceability turns on the causal nexus between the agency action and the asserted injury, while redressability centers on the causal connection between the asserted injury and judicial relief.

The Freedom Republicans, Inc. v. FEC, 13 F.3d 412, 418 (D.C. Cir. 1994) (citation omitted). And when a plaintiff'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 "fairly traceable" and redressability prongs of standing analysis require more exacting 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*, 426 U.S. at 44-45 (quoting *Warth*, 422 U.S. at 505).

To the extent plaintiff has alleged any injury here, his claims seem to focus on his termination from employment with TRALA and his efforts to persuade the SEC to investigate the deconsolidation of GE and Penske. But the Commission, the only defendant in this case,

obviously did not cause those events. To the contrary, any injury to plaintiff as a result of those events — besides having no connection to FECA — would be "th[e] result [of] the independent action of some third party" and would not be "fairly . . . trace[able] to the challenged action of the defendant [FEC]." *Lujan*, 504 U.S. at 560-61 (internal quotation marks and citation omitted). Indeed, plaintiff's employment with TRALA ended *before* any alleged violations of FECA occurred and *before* the Commission dismissed his administrative complaint. The complaint alleges that Vroom was terminated from employment at TRALA on July 8, 2009, that the GE and Penske PACs made excessive contributions in 2010, and that the Commission dismissed Vroom's complaint on November 29, 2011. (Compl. ¶¶ 1, 15, 33, 45.) Because plaintiff's alleged injuries related to TRALA simply had nothing to do with FECA or the Commission, plaintiff cannot satisfy the causation element of Article III standing. *See Transp. Workers Union of Am., AFL-CIO v. Transp. Sec. Admin.*, 492 F.3d 471, 477 (D.C. Cir. 2007) (holding that agency action was not shown to cause termination of employee when it may have occurred without agency action); *Florida Audubon Soc. v. Bentsen*, 94 F.3d 658, 666 (D.C. Cir. 1996) (en banc) (rejecting claim when plaintiffs "premise[d] their claims of particularized injury and causation on a lengthy chain of conjecture").

Likewise, the Court cannot redress any injury plaintiff may have suffered in his relations with TRALA by ordering the Commission to pursue FECA violations against GE or Penske. Even if the Court were to remand this matter to the Commission, any interest Vroom may have in the Commission determining that a third party acted unlawfully cannot, by itself, support standing. *Wertheimer*, 268 F.3d at 1075 (explaining that a plaintiff who sought nothing more than a "legal characterization" of another person's illegal activity lacked standing). And Vroom does not explain how a Commission investigation of the allegedly excessive contributions

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.

IV. PLAINTIFF LACKS PRUDENTIAL STANDING

Vroom's complaint should also be dismissed for the independent reason that his alleged injury does not satisfy the requirements for prudential standing. Prudential standing embodies judicially self-imposed limits on federal jurisdiction. *See Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11-12 (2004). The doctrine reflects a "general prohibition on a litigant's raising another person's legal rights" and it "require[s] that a plaintiff's complaint fall within the zone of interests protected by the law invoked." *Id.* (internal quotation marks and citation omitted). Here, Vroom would have to demonstrate a "substantial probability" that his claim falls within FECA's zone of interest. *See Nat'l Ass'n of Home Builders v. Army Corps of Eng'rs*, 417 F.3d 1272, 1287-88 (D.C. Cir. 2005).

Plaintiff cannot make that showing. 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. Vroom cannot demonstrate that Congress intended to authorize this action under 2 U.S.C. § 437g(a)(8) as a means to advance plaintiff's interest in pursuing issues regarding his former employment or the deconsolidation of certain business entities. *See, e.g., Am. Fed'n of Gov't Employees, AFL-CIO v. Rumsfeld*, 321 F.3d 139, 143 (D.C. Cir. 2003) (when interests are only marginally

related to the purpose of a statute "it cannot reasonably be inferred that Congress intended to permit this law suit"); *Water Transp. Ass'n v. ICC,* 819 F.2d 1189, 1193 (D.C. Cir. 1987) (water carrier association could not challenge rail rate contracts because statute's zone of interest only covered rail carriers). Thus, because Vroom's stated interests are related only marginally (if at all) to FECA, he lacks prudential standing, and his complaint should be dismissed.

V. CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court dismiss the complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).

Respectfully submitted,

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Certificate of Service

I hereby certify that on July 27, 2012, I caused to be electronically filed with the Court the Federal Election Commission's Motion to Dismiss, including a memorandum in support of the motion and a 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:

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/s/ Harry J. Summers
Harry J. Summers
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