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5 FEDERAL ELECTION COMMISSION,  
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8  
9 UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

10  
11 MAX ENGLERIUS, )  
a/k/a THE AMERICAN TRADITION PARTY, )  
12 Plaintiff, ) Case No. C09-0172-RSM  
13 v. )  
14 UNITED STATES GOVERNMENT, ) Federal Election Commission's  
Motion to Dismiss and Memo in  
15 Support Thereof  
16 Defendant. )

17 **DEFENDANT FEDERAL ELECTION COMMISSION'S**  
18 **MOTION TO DISMISS PLAINTIFF'S COMPLAINT FOR**  
**LACK OF JURISDICTION AND MEMORANDUM IN SUPPORT THEREOF**

19 **NOTE ON MOTION CALENDAR: Friday, May 8, 2009**

20 PLEASE TAKE NOTICE that on May 8, 2009, before the Honorable Ricardo S.  
21 Martinez, defendant Federal Election Commission ("Commission" or "FEC") will move  
22 pursuant to Federal Rule of Civil Procedure 12(b)(1) for an order dismissing this action, in  
23 which plaintiff Max Englerius seeks to have the 2008 presidential election invalidated as  
24 "illegally contrived," Compl. at 3, apparently at least in part because the Federal Election  
25 Commission is alleged to have permitted the major political parties to manipulate the  
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1 Presidential debates to exclude candidates, Compl. at 1.<sup>1</sup> The Commission moves to dismiss  
2 plaintiff's Complaint — which is little more than a re-filing of two previous cases — for lack  
3 of subject matter jurisdiction. As with those previously-dismissed cases, plaintiff still has  
4 not identified a basis for jurisdiction, still has not identified a waiver of sovereign immunity  
5 that would permit him to recover money damages from the United States, and — even if he  
6 had timely appealed a dismissal of an administrative complaint filed with the Commission —  
7 failed to file in the United States District Court for the District of Columbia, the sole court  
8 given jurisdiction to review Commission action or inaction regarding possible violations of  
9 FECA. A proposed Order is submitted herewith in accordance with Local Rule CR 7(b)(1).

11 *A. Background*

12 The Commission is an independent agency with exclusive jurisdiction to administer,  
13 interpret, and civilly enforce the Federal Election Campaign Act ("FECA" or "the Act"). 2  
14 U.S.C. 437c(b)(1); see also 2 U.S.C. 437d(a) and 437(g). Congress also gave the  
15 Commission exclusive jurisdiction to initiate civil actions in the United States district courts  
16 to obtain enforcement of these statutes. 2 U.S.C. 437c(b)(1), 437d(a)(6), and 437d(e).  
17 Congress has not permitted the Commission to institute judicial enforcement proceedings  
18 until after it has complied with a number of jurisdictional and procedural prerequisites set out  
19 in the Act. 2 U.S.C. 437g(a)(1)-(5).  
20

21  
22 The Act permits any person to file an administrative complaint with the Commission  
23 alleging a violation of the Act. 2 U.S.C. 437g(a)(1). If the Commission dismisses an  
24 administrative complaint, or fails to act on a complaint within 120 days after the complaint is  
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26 <sup>1</sup> Plaintiff has placed neither paragraph numbers nor page numbers on his complaint so  
27 references herein are to the ECF-generated page numbers.

1 filed, aggrieved parties may seek judicial review of the Commission’s action, but only in the  
2 United States District Court for the District of Columbia within 60 days after the date of the  
3 dismissal. 2 U.S.C. 437g(a)(8)(A).

4 *B. Procedural History*

5 Plaintiff’s present Complaint is the most recent iteration of a string of meritless cases  
6 he has filed throughout this decade regarding an apparent disagreement with the FEC’s  
7 oversight of the Commission on Presidential Debates. He first filed a lawsuit in 2000,  
8 *Englerius v. US Government, et al.*, 00-cv-2097-RSL. Magistrate Judge Monica J. Benton  
9 found that plaintiff had failed to “state with sufficient specificity the basis for the court’s  
10 jurisdiction,” under Federal Rule of Civil Procedure 8, Ord., June 13, 2001 (Docket #9,  
11 attached hereto as Exhibit 1), and recommended that plaintiff’s suit be dismissed with  
12 prejudice pursuant to Federal Rule of Civil Procedure 41(b) and dismissed as frivolous  
13 pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). Rept. and Recommendation, Feb. 14, 2002  
14 (Docket #25, attached hereto as Exhibit 2). On March 26, 2002 the Honorable Robert S.  
15 Lasnik adopted the Magistrate Judge’s Report and Recommendation (Ord. (Docket # 28,  
16 attached hereto as Exhibit 3), and entered Judgment dismissing plaintiff’s Complaint with  
17 prejudice (Docket # 29). On appeal, the U.S. Court of Appeals for the Ninth Circuit  
18 summarily affirmed. Ord., Sept. 13, 2002 (Docket # 35, attached hereto as Exhibit 4).

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22 Despite this dismissal with prejudice, Plaintiff saw fit on September 2, 2005 to re-file  
23 his case. *Englerius v. United States Government et al.*, Case C05-1515-MJP. He complained  
24 again about the 2000 Commission on Presidential Debates and also about the dismissal of an  
25 administrative complaint he had filed with the Commission, and requested that the Court  
26 order the extraordinary relief of “invalidating the 2000/2004 elections as illegally contrived,”  
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1 Compl. at 19 (Docket #1) (C05-1515 complaint attached to the instant complaint). On  
2 September 20, 2005, the Court entered a *sua sponte* order declining to serve plaintiff's  
3 Complaint and granting leave to amend, finding that:

4           Plaintiff's complaint does not comply with the requirements set  
5 forth in Rule 8(a). While Plaintiff filed his Complaint on the Court's  
6 forms, it is not clear what law or laws he intends to sue the Defendants he  
7 names. If Plaintiff wishes to proceed with this action, he must specifically  
8 identify the legal and factual basis for his suit, the parties and individuals  
9 involved, and the basis for this Court's jurisdiction. . . . Plaintiff should  
10 be advised that he may sue the United States only under certain statutes  
11 where the government has waived sovereign immunity. If he wishes to  
12 pursue one of these causes of action, he must state which statute applies  
13 and to whom he believes it applies in his case.

14 Ord. Declining to Serve and Granting Leave to Amend ¶¶ 2-3 (Docket #4, attached hereto as  
15 Exhibit 5). When plaintiff failed to cure these deficiencies during the thirty-day period  
16 allowed by the Court, Judge Marsha J. Pechman dismissed his action without prejudice on  
17 November 3, 2005. Ord. (Docket #7, attached hereto as Exhibit 6). On appeal, the district  
18 court decision was again summarily affirmed. Mem. Ord., May 22, 2006 (Docket # 12  
19 attached hereto as Exhibit 7).

20           Plaintiff's current Complaint is virtually identical to the one he filed in case 05-1515;  
21 indeed, he has simply re-filed his complaint in case number C05-1515 and added a three-  
22 page prologue that specifically asserts that "[t]hat Complaint [05-1515] was dismissed in  
23 error," Compl. at 1. Plaintiff once again seeks to invalidate recent presidential elections —  
24 including the 2008 election — as "illegally contrived." *Id.* at 3.

25           *C. Plaintiff's Complaint Should Be Dismissed*

26           Because Plaintiff has done little more here than re-file his dismissed 2005 Complaint,  
27 a case that simply raised the same claims that had been dismissed as frivolous in 2002, his  
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1 new Complaint should be dismissed. The current Complaint still fails to identify *any* law  
2 under which he is bringing suit, let alone one through which the government has waived  
3 sovereign immunity. He thus has not cured any of the defects that were identified in the  
4 Court's two previous dismissal decisions. In addition, to the extent that plaintiff seeks  
5 review of the Commission's dismissal of his administrative complaint, plaintiff did not file  
6 this case within 60 days of the dismissal and did not file in the United States District Court  
7 for the District of Columbia. This Court thus lacks jurisdiction for any such claim. 2 U.S.C.  
8 437g(a)(8)(A). In short, plaintiff's new "complaint" is as defective as his 2005 pleading and  
9 should be dismissed.  
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11 Respectfully submitted,

12 /s/ Thomasenia P. Duncan  
13 Thomasenia P. Duncan  
General Counsel

14 /s/ David Kolker  
15 David Kolker  
Associate General Counsel

16 /s/ Kevin A. Deeley  
17 Kevin A. Deeley  
Assistant General Counsel

18 /s/ Benjamin A. Streeter III  
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28 April 10, 2009

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**CERTIFICATE OF SERVICE**

BENJAMIN A. STREETER III, an attorney of record for defendant Federal Election Commission , hereby certifies that he served a copy of the foregoing DEFENDANT FEDERAL ELECTION COMMISSION’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT FOR LACK OF JURISDICTION AND MEMORNADUM IN SUPPORT THEREOF upon Pro Se plaintiff Max Englerius by depositing a copy of the same, first class postage prepaid, into the United States Mail this 10<sup>th</sup> day of April, 2009 addressed to the last address on record, 1400 S. Thistle St., Seattle, Washington 98108.

/s/ Benjamin A. Streeter III

Benjamin A. Streeter III