UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASTRO	)	
Plaintiff,	)	No. 22-cv-02176
v.	)	
FEDERAL ELECTION COMMISSION,	)	REPLY IN SUPPORT OF PARTIAL MOTION TO DISMISS
Defendant.	)	

FEDERAL ELECTION COMMISSION'S REPLY MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS PARTIAL MOTION TO DISMISS

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INTRODUCTION

Plaintiff's judicial complaint asserts two counts. The first count challenges the Federal Election Commission's ("FEC" or "Commission") alleged failure to act upon an administrative complaint pursuant to 52 U.S.C. § 30109(a)(8) of the Federal Election Campaign Act ("FECA"), and the Administrative Procedure Act ("APA"). The second count seeks to assert a claim plaintiff describes as "contingent," that former President Donald J. Trump is ineligible to stand as a candidate for future election under the Disqualification Clause of the Fourteenth Amendment. (Pl.'s Mem. Of P. & A. in Opp. to Mot. to Dismiss ("Opp.") at 7.) The FEC's opening Memorandum of Points and Authorities in Support of its Partial Motion to Dismiss ("Mem.") demonstrated that Castro failed to establish Article III standing and failed to state a claim upon which relief could be granted on count two because the Commission has no authority to determine a candidate's constitutional eligibility for office, nor does it have jurisdiction to determine that a person is disqualified from office for engaging or aiding in insurrection, as plaintiff has asserted. As a result, there is no basis for plaintiff's requested relief that the Commission reject the filing of a prospective candidate's statement of candidacy, and by extension, no ability for the Court to order such relief. The FEC further demonstrated in its Motion that Castro's challenge to the Commission's alleged failure to act on his administrative complaint in count one fails to the extent it is brought under the APA because FECA is the exclusive means of challenging the FEC's handling of administrative enforcement matters.

Plaintiff's opposition to the FEC's Motion fails to seriously rebut any of these arguments. Rather, plaintiff's opposition misapprehends requirements for establishing standing, mischaracterizes the Commission's arguments, and incorrectly describes the procedure for the Commission's handling of an administrative Complaint. The FEC's Motion should be granted.

I. ARGUMENT

A. PLAINTIFF MISAPPREHENDS THE REQUIREMENTS TO ESTABLISH ARTICLE III STANDING FOR HIS DISQUALIFICATION CLAUSE CLAIM

Castro's arguments in support of standing for his Disqualification Clause claim are fundamentally flawed for two reasons: (1) Castro misunderstands the elements of standing; and (2) Castro's purported injuries are not caused by the Commission and cannot be redressed by a favorable decision.

Count one of plaintiff's judicial complaint asserts that the FEC has failed to act on his administrative complaint and seeks to compel the agency to declare Trump a candidate. Assuming Trump meets FECA's definition of a candidate that must file with the Commission, count two of plaintiff's judicial complaint requests that "the Commission block the acceptance of Mr. Trump's FEC Form 2, Statement of Candidacy, on the basis that accepting it would constitute unlawful state action" because Trump "'engaged in' the insurrection on January 6, 2021, and/or provided 'aid or comfort' to the Insurrectionists" and his alleged actions "strip him of the required qualifications under the United States Constitution to hold any political office in the United States." (Compl. ¶¶ 85-87.) Plaintiff appears to assert that a motion to dismiss count two of his complaint is "premature," because it is contingent on a finding as to count one. (Opp. at 7.) To be clear, the FEC's Motion does not challenge plaintiff's standing as to count one.[1] Rather, regardless of plaintiff's allegations as to whether the Commission has acted contrary to

[1] As explained in its original Memorandum and below, the Commission seeks to dismiss Count one's claim that the FEC has unlawfully failed to act only to the extent that it arises under the APA. (*See* Mem. at 13-15; *see also id.* at 1 ("Although the Commission will dispute that it has acted contrary to law in its processing of any such administrative complaint, this motion does not address [plaintiff's failure-to-act claim] to the extent it arises under FECA.").)

law as to count one, plaintiff has not established standing as to count two, his Disqualification Clause claim.

Castro erroneously conflates this Court's statutory subject matter jurisdiction and his requirement to establishing constitutional standing to assert this claim. Castro argues that because his Disqualification Clause claim "'aris[es] under'" the Constitution, this court has subject matter jurisdiction under the federal question statute." (Opp. at 9.) He similarly cites the APA for subject matter jurisdiction. (*Id*. at 9-10.) But even if those statutes would otherwise provide this Court subject matter jurisdiction, that does not absolve plaintiff from establishing constitutional standing to sue. *Cf. Bread Political Action Comm. v. FEC*, 455 U.S. 577, 585 (1982) (observing that plaintiffs "meeting the usual standing requirements" can bring a cause of action under the federal-question jurisdiction.). To establish *constitutional* standing, a plaintiff must allege (1) a personal injury-in-fact that is (2) fairly traceable to the defendant's conduct and (3) redressable by the relief requested. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). "The redressability inquiry poses a simple question: If plaintiffs secured the relief they sought, would it redress their injury?" *The Wilderness Soc. v. Norton*, 434 F.3d 584, 590 (D.C. Cir. 2006) (citation and internal punctuation omitted).

Castro does not dispute that he bears the burden of showing that he has standing, or that he must show that his alleged injury is traceable to the FEC's conduct and redressable by the Court. (*See* Opp. at 11.) Yet Castro fails to establish at least these two essential elements of constitutional standing. As discussed in the FEC's Motion, the Commission has no authority to declare that an individual has "engaged in insurrection or rebellion" against the United States or its Constitution or otherwise evaluate a prospective candidate's eligibility for federal office. Plaintiff similarly does not dispute that there is no provision in FECA or otherwise that grants the

Commission this authority. In fact, Castro candidly concedes that it is "ludicrous[]" to suggest that his complaint asks the Commission to take a position on Trump's eligibility. (Opp. at 10.)

The very fact that the Commission cannot "conclude that Donald J. Trump engaged in an insurrection" (*id.*) negates any possibility of constitutional standing. Because the Commission lacks jurisdiction over that issue, it cannot in this action take any position on the central question Castro asserts, whether to dispute or agree with his position. There is, therefore, no actual case or controversy between the parties in this case.

Plaintiff's competitor standing argument also raises points that are not relevant to the motion. Castro argues that he would suffer "a competitive injury" if Trump becomes a candidate. (*Id*. at 13.) However, the FEC is not asserting here that plaintiff lacks standing because he is not a "competitor." Even assuming Castro is injured by Trump's allegedly unlawful candidacy, the Commission has no jurisdiction to reject Trump's candidacy filings and, therefore, the Commission is the wrong entity from which to seek relief. As a result, plaintiff's competitor standing arguments are misplaced as well.

Put simply, his alleged injuries under this claim cannot be redressed by the Commission and by extension, the Court. For this reason, count two should be dismissed.

B. PLAINTIFF HAS FAILED TO STATE A CLAIM UNDER THE DISQUALIFICATION CLAUSE

Plaintiff fails to establish Article III standing to pursue this claim pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. However, as demonstrated in the Commission's opening brief, count two should also be dismissed pursuant to Rule 12(b)(6) for failure to state a claim. The FEC's Motion can be granted under either theory and the Court is not limited solely to plaintiff's allegations as to the 12(b)(1) portion of the argument. *Boritz v. United States*, 685 F. Supp. 2d 113, 119 (D.D.C. 2010). Just as plaintiff has misconstrued

Article III standing principles, he has similarly misstated whether this Court may grant relief on the merits of his Disqualification Clause claim. Plaintiff focuses on his "specific" allegations in his complaint that he asserts "must be accepted as true for dismissal purposes." (Opp. at 11.) While a Court must treat a plaintiff's factual allegations as true for purposes of a motion to dismiss pursuant to rule 12(b)(6), even those allegations need only be accepted to the extent that they plausibly give rise to an entitlement to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). Here, even accepting plaintiff's factual allegations as true, plaintiff cannot state a claim for relief because there is no plausible connection between plaintiff's alleged harm and the Commission's alleged conduct. To the extent that Plaintiff attempts to rest his claim on 5 U.S.C. § 706(2)(A) of the APA "for agency action 'not in accordance with law,'" (Opp. at 10), neither FECA nor the APA provide authority to enjoin the Commission from accepting a candidate's filings because he is disqualified from office, and therefore plaintiff has not stated a claim for relief for this reason as well.

C. PLAINTIFF MISSTATES THE ADMINISTRATIVE PROCEDURE FOR HANDLING ADMINISTRATIVE COMPLAINTS

In addition to failing to establish standing or state a claim under the Disqualification Clause, plaintiff also erroneously asserts that he is entitled to relief that the Court is simply unable to provide in this matter. This is an action alleging agency delay in acting on his administrative complaint. If Castro were successful in alleging that the Commission had unlawfully failed to act on the administrative complaint pursuant to 52 U.S.C. § 30109(a)(8), the relief he could receive is necessarily limited. As explained in the FEC's Motion, FECA expressly limits the scope of relief available to a plaintiff challenging an FEC dismissal decision or alleging that the Commission has failed to act on an administrative complaint. The only relief FECA provides to such a complainant is a declaration that the "dismissal of the complaint or the

failure to act is contrary to law" and a remand to the Commission for conformance "with such declaration within 30 days." 52 U.S.C. § 30109(a)(8)(C). Success on count one would not, therefore, create a separate right of action with additional forms of relief under the facts that plaintiff has alleged. As such, plaintiff's position that if the FEC's Motion is denied, "the case must be cleared for trial at which time Donald J. Trump must file a Motion for Intervention of Right" is entirely misplaced. (*See* Opp. at 11.) The Court does not have jurisdiction to make a determination as to whether Trump "engaged in" or "aided" insurrection as plaintiff alleges. (*Id.* at 7.) Nor does the Court have the ability to issue an injunction or restraining order providing for this relief. (*See id.*).

D. PLAINTIFF HAS FAILED TO STATE A CLAIM UNDER THE APA

As noted above, to the extent that plaintiff's challenge to the Commission's alleged failure to act in count one arises under the APA, it must be dismissed because FECA provides the exclusive vehicle for judicial review of the Commission's handling of enforcement complaints. Despite plaintiff's argument in his Opposition, the FEC has not argued that the Commission is generally "exempted" from the APA or that FECA "supersedes" the APA. (*See* Opp. at 15, 18.) Rather, as explained in its opening brief, this Court has held that Section 30109(a)(8) precludes review under the APA of the FEC's handling of administrative enforcement complaints. *Citizens for Resp. & Ethics in Washington v. FEC*, 164 F. Supp. 3d 113, 120 (D.D.C. 2015) (Because FECA provides "a detailed mechanism for judicial consideration of particular issues at the behest of particular persons," that remedy is the exclusive means to enforce the Act (quoting *Stockman v. FEC*, 138 F.3d 144, 154 (5th Cir. 1998)); *see also Perot v. FEC*, 97 F.3d 553, 559 (D.C. Cir. 1996) (precluding judicial review of FEC action other than through the procedures set forth in FECA); *Citizens for Resp. & Ethics in Washington*, 164 F. Supp. 3d at 120 ("FECA's legislative history only confirms that Congress

meant for the Act's 'delicately balanced scheme of procedures and remedies' to be 'the exclusive means for vindicating the rights and declaring the duties stated' in the Act.") (citation omitted).

Indeed, plaintiff does not actually contest this. *See* Opp. at 18 (noting that "judicial review of the FEC's dismissal of or inaction with regard to a complaint regarding campaign finance law violations is what is exclusively controlled by FECA and not available under the APA"). And importantly, the APA is not itself an independent basis for subject matter jurisdiction. *Fund for Animals, Inc. v. U.S. Bureau of Land Mgmt.*, 460 F.3d 13, 18 n.4 (D.C. Cir. 2006); *Cohen v. United States*, 650 F.3d 717, 723 (D.C. Cir. 2011) (acknowledging that the APA "is not an independent source of jurisdiction"); *Trudeau v. FTC*, 456 F.3d 178, 183 (D.C. Cir. 2006) ("[T]he APA does not afford an implied grant of subject-matter jurisdiction permitting federal judicial review of agency action." (citation omitted)). The portions of plaintiff's complaint that purport to rely on the APA for a failure-to-act claim or seek relief beyond what is permitted in section 30109(a)(8) thus fail to state a claim and should be dismissed.[2]

Finally, plaintiff asserts that he is entitled to a more lenient standard as a pro se plaintiff because although he refers to himself as a tax attorney, he is not licensed in any state. (Opp. at 20, n.45.) Plaintiff, having previously litigated in federal court, is not entirely new to federal proceedings. *See, e.g.*, *John A. Castro v. Georgetown Univ., et al.*, No. 3:18-cv-00645-M (N.D.

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[2] Although the substance of Castro's failure-to-act claim is not at issue in this motion to the extent it arises under FECA, his assertion that Congress has established "a specific timeframe by which the FEC [must] either dismiss a complaint or take action thereon" is incorrect. (Opp. at 14 (citing 52 U.S.C. 30109(a)(8)(A).) The 120-day period in section 30109(a)(8) is a jurisdictional threshold; there is no specific timetable for action or resolution of enforcement matters by the agency. *See FEC v. Rose,* 806 F.2d 1081, 1091-92 (D.C. Cir. 1986); *Democratic Senatorial Campaign Comm. v. FEC*, No. Civ. A. 95-0349 (JHG), 1996 WL 34301203, at *7 (D.D.C. Apr. 17, 1996) ("Congress did not provide the FEC with a specific statutory timetable within which it must act on administrative complaints . . . [and] [c]ourts have construed the 120-day period of [section 30109(a)(8)(A)] as jurisdictional in nature and not as a time period in which the FEC is required to complete final action.").

Tex. Mar. 19, 2018) (Docket No. 1). Moreover, a pro se complaint must still "present a claim on which the court can grant relief." *Chandler v. Roche*, 215 F. Supp. 2d 166, 168 (D.D.C. 2002). Even under a liberal construction of his pro se complaint, Castro has failed to establish standing or state a claim for which he is entitled to relief on his Disqualification Cause claim or any purported claim under the APA. Accordingly, these claims must be dismissed.

II. CONCLUSION

For the foregoing reasons, and those set forth in the FEC's Partial Motion to Dismiss, the Court should grant the FEC's partial motion, and dismiss plaintiff's Disqualification Clause claim and plaintiff's failure-to-act claim under the Administrative Procedure Act.

Respectfully submitted,

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