No. 22-5323

UNITED STATES COURTS OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOHN ANTHONY CASTRO,

Plaintiff-Appellants,

v.

FEDERAL ELECTION COMMISSION,

Defendant- Appellee

On Appeal from an Order of the United States
Court of Appeals for the District of Columbia Circuit

PLAINTIFF-APPELLANT'S PETITION FOR PANEL REHEARING OR REHEARING EN BANC

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I. STATEMENT REQUIRED BY RULE 35(B)

Rehearing of this case is warranted in that the panel erred in finding and agreeing with the district court that Appellant has not shown that he has Article III standing to pursue Count Two of his complaint.

I. A. THE COMMISSION'S ADMINISTRATIVE COMPLAINT AND ENFORCEMENT PROCESS

FECA sets forth a detailed, multi-stage process for the FEC's review and resolution of private administrative complaints.

Any person may file a complaint alleging a violation of FECA, 52 U.S.C. § 30109(a)(1). The FEC, after reviewing the complaint and any responses, then votes on whether there is "reason to believe" a violation has occurred, in which case it "shall" investigate. Id. § 30109(a)(2). FECA requires an affirmative vote of four Commissioners to undertake most agency actions, id. § 30106(c), including a reason-to-believe finding necessary to initiate an investigation, id. § 30109(a)(2).

After the investigation, the FEC votes on whether there is "probable cause" to believe FECA was violated. Id. § 30109(a)(3). If it determines, by an affirmative vote of at least four Commissioners, that there is probable cause, it "shall" attempt to "correct or prevent such violation" by conciliating with the respondent. Id. § 30109(a)(4)(A), (a)(5). If the FEC is unable to correct the violation and enter a

conciliation agreement, it "may," by the affirmative vote of at least four Commissioners, institute a civil action against the respondent. Id. § 30109(a)(6)(A).

If, at any of these decision-making junctures, fewer than four Commissioners vote to proceed, the FEC may vote to dismiss the complaint and the majority or controlling group must issue a Statement of Reasons to permit subsequent judicial review. *Common Cause v. FEC*, 842 F.2d 436, 449 (D.C. Cir. 1988); *Democratic Cong. Campaign Comm. v. FEC*, 831 F.2d 1131, 1135 & n.5 (D.C. Cir. 1987).

FECA also provides a right of judicial review to the complainant: "Any party aggrieved by an order of the FEC dismissing a complaint filed by such party . . . may file a petition" in the district court seeking review of the FEC's action. 52 U.S.C. § 30109(a)(8)(A). If the court finds the dismissal "contrary to law," it may order the FEC to conform with such declaration within 30 days. Id. § 30109(a)(8)(C).

II. INTRODUCTION AND SUMMARY

Pursuant to Fed. R. App P. 35 and 40, JOHN ANTHONY CASTRO respectfully petition for panel rehearing or rehearing en banc. The panel opinion seriously erred in: Finding and agreeing with the district court that Appellant has not shown that he has Article III standing to pursue Count Two of his complaint.

This panel's decision has exceptional importance because a careful application of the canons of statutory construction and interpretation reveals that,

pursuant to 52 U.S.C. § 30101(2), the FEC can and must determine an individual's eligibility to pursue and/or hold public office prior to accepting or maintaining an individual's FEC Form 2, Statement of Candidacy. If the FEC is permitted to accept an FEC Form 2 with knowingly false information from a constitutionally ineligible candidate, such agency action would be "not in accordance with the law" pursuant to 5 U.S.C. § 706(2)(A) and subject to injunctive relief pursuant to 5 U.S.C. § 705.

Panel rehearing or rehearing en banc is warranted and needed.

III. ISSUE PRESENTED

1. Whether Plaintiff's injury was not traceable to the Federal Election Commission's failure to consider an individual's constitutional eligibility as an implied requirement to be a "candidate" as defined in 52 U.S.C. § 30101(2)?
2. Whether Plaintiff's injury was not redressable on the basis that the Federal Election Commission purportedly lacks jurisdiction to reject a constitutionally ineligible candidate's filing despite an individual's constitutional eligibility being an implied requirement to be a "candidate" as defined in 52 U.S.C. § 30101(2)?

IV. STATEMENT OF THE PROCEEDING

This case involves Appellee seeking declaratory and injunctive relief against the Federal Election Commission concerning Donald J. Trump's candidacy for President of the United States. Appellant is a U.S. Citizen and a FEC-registered 2024 Republican primary presidential candidate. On March 23, 2022, Appellant filed an administrative complaint with the Federal Election Commission requesting that the agency declare Donald Trump a "candidate" within the meaning of the Federal Election Campaign Act ("FECA") based on Donald J. Trump's alleged campaign spending and the FEC's campaign finance rules. The Commission did not act within its statutorily prescribed 120-day period. Pursuant to 52 U.S.C. § 30109(a) (8) and the Administrative Procedure Act, 5 U.S.C. § 706, Appellant then brought suit. Appellant in his complaint brought forward two counts 1) The Federal Election Commission require Donald J. Trump to file a statement of candidacy, and 2) reject Donald J. Trump's statement of candidacy based on the Fourteenth Amendment's Disqualification Clause. On November 15, 2022, Donald J. Trump. filed his statement of candidacy with the Commission, rendering Count I moot. Appellant moved for a temporary restraining order, or in the alternative, a preliminary injunction enjoining the agency from accepting Donald J. Trump's statement of candidacy. Appellee states that Count II is based on the legal basis of the Fourteenth Amendment's Disqualification Clause as well as Appellee suffering competitive

injury should the Federal Election Commission accept Donald J. Trump's statement of candidacy since he himself is competing in the 2024 Republican presidential primary and vying for the same support of donations as Donald J. Trump. *See* Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction at 1, ECF No. 17 and Plaintiff's Memorandum of Points and Authorities in Opposition of Defendant's Motion to Dismiss at 16-17, ECF No. 15. The Federal Election Commission sought to dismiss Count II for lack of standing and failure to state a claim upon which relief can be granted. *See* Defendant's Memorandum of Points and Authorities Supp. Partial Motion to Dismiss at 10-15, ECF No. 14-1. The parties agree that Count I was moot upon Donald J. Trump's filing of his statement of candidacy on November 15, 2022. The District Court stated that Appellant's theory his alleged injury-having to compete with Donald J. Trump-, although is viable, is not traceable to the Commission and fails the redressability requirements of standing.

This panel or judge erroneously determined that the Appellant has not shown that he has Article III standing to pursue Count II of his complaint.

V. STATEMENTS OF NECESSARY FACTS

FECA sets forth a detailed, multi-stage process for the FEC's review and resolution of private administrative complaints.

Any person may file a complaint alleging a violation of FECA. 52 U.S.C. § 30109(a)(1). The FEC, after reviewing the complaint and any responses, then votes on whether there is "reason to believe" a violation has occurred, in which case it "shall" investigate. Id. § 30109(a)(2). FECA requires an affirmative vote of four Commissioners to undertake most agency actions, id. § 30106(c), including a reason-to-believe finding necessary to initiate an investigation, id. § 30109(a)(2).

After the investigation, the FEC votes on whether there is "probable cause" to believe FECA was violated. Id. § 30109(a)(3). If it determines, by an affirmative vote of at least four Commissioners, that there is probable cause, it "shall" attempt to "correct or prevent such violation" by conciliating with the respondent. Id. § 30109(a)(4)(A), (a)(5). If the FEC is unable to correct the violation and enter a conciliation agreement, it "may," by the affirmative vote of at least four Commissioners, institute a civil action against the respondent. Id. § 30109(a)(6)(A).

If, at any of these decision-making junctures, fewer than four Commissioners vote to proceed, the FEC may vote to dismiss the complaint and the majority or controlling group must issue a Statement of Reasons to permit subsequent judicial review. *Common Cause v. FEC*, 842 F.2d 436, 449 (D.C. Cir. 1988); *Democratic Cong. Campaign Comm. v. FEC*, 831 F.2d 1131, 1135 & n.5 (D.C. Cir. 1987).

FECA also provides a right of judicial review to the complainant: "Any party aggrieved by an order of the FEC dismissing a complaint filed by such party . . . may

file a petition" in the district court seeking review of the FEC's action. 52 U.S.C. § 30109(a)(8)(A). If the court finds the dismissal "contrary to law," it may order the FEC to conform with such declaration within 30 days. Id. § 30109(a)(8)(C). If the FEC fails to conform, the complainant may bring a civil action directly against the respondents to remedy the violation. Id.

Appellant filed an administrative complaint with the FEC on March 23, 2022. The FEC failed to act on the administrative complaint within 120 days as required by law.

On July 25, 2022, Appellant filed a judicial complaint with the district court against the FEC. In the Complaint, Appellant sought to obtain injunctive relief to prevent the FEC from accepting Donald J. Trump's FEC Form 2, Statement of Candidacy, on the grounds that he is disqualified from holding public office pursuant to Section 3 of the 14th Amendment to the U.S. Constitution and that the FEC's acceptance would be agency action "not in accordance with the law" pursuant to 5 U.S.C. § 706(2)(A) and subject to injunctive relief pursuant to 5 U.S.C. § 705. Specifically, Appellant explained that because Donald J. Trump is not qualified to hold public office pursuant to the self-executing Section 3 of the 14th Amendment for having provided "aid or comfort" to the January 6 Insurrectionists, he could not be a "candidate" within the meaning of 52 U.S.C. § 30101(2).

In response to Appellant's explicit citation to 52 U.S.C. § 30101(2), the lower Court ruled that "Mr. Castro's alleged injury—having to compete with Mr. Trump—is not traceable to the Commission… [because the] FEC… possesses no authority to evaluate a prospective candidate's eligibility for federal office… [and] Mr. Castro has not pointed to a statute or regulation indicating otherwise." *Castro v. FEC*, No. CV 22-2176 (RC), 2022 WL 17976630, at *2 (D.D.C. Dec. 6, 2022). The lower Court completely disregarded Appellant's explicit citation to 52 U.S.C. § 30101(2) as the statute providing the FEC with the authority to assess an individual's eligibility.

VI. ARGUMENT

A. The Panel's Holding that Appellee Has Not Shown that He Has Article III Standing to Pursue Count II is Contrary to the Plain Meaning of the Statute and Raises an Exceptionally Important Question.

The lower court and the panel utterly and inexcusably failed to consider Appellant's assertion that 52 U.S.C. § 30101(2) serves as the statutory authority for the FEC to determine an individual's eligibility to be a "candidate."

The lower Court held the following: "Mr. Castro's alleged injury—having to compete with Mr. Trump—is not traceable to the FEC. Traceability requires a causal connection between the injury and the conduct complained of. According to Mr. Castro, by accepting Mr. Trump's statement of candidacy, FEC Form 2, the FEC has

confirmed Mr. Trump's eligibility to run for President, thereby creating competitive harm for Mr. Castro. But this erroneous idea—upon which Mr. Castro's entire case turns—is completely lacking in support. The FEC explains that it possesses no authority to evaluate a prospective candidate's eligibility for federal office. It represents that, under the FECA, Congress only gave the agency power to regulate federal campaign finance—that is, among other things, the raising, spending, and disclosing of campaign funds—and not to determine who is constitutionally eligible to run for office. Mr. Castro has not pointed to a statute or regulation indicating otherwise." *Castro v. FEC*, No. CV 22-2176 (RC), 2022 WL 17976630, at *2 (D.D.C. Dec. 6, 2022).

The Court's ruling contained a verifiably false assertion. In ECF 20, Appellant cited 52 U.S.C. § 30101(2)'s definition of a "candidate." A careful study of the statutory construction reveals that a candidate is someone who "seeks nomination for election, or election, to Federal office." The FEC would have this Honorable Court disregard the opening definition of a candidate and only focus on the situation where an individual is "deemed to seek nomination for election, or election" for crossing the direct or indirect $5,000 contribution or expenditure threshold.

If an individual is constitutionally ineligible to seek or hold public office, then they cannot legally be considered a "candidate" within the meaning of 52 U.S.C. § 30101(2).

The legal question for this Court is, if it is accepted as true that a candidate is constitutionally ineligible to pursue and/or hold public office, can that person lawfully be considered a "candidate" for purposes of 52 U.S.C. § 30101(2)? And if this Court determines that a constitutionally ineligible individual cannot be a candidate within the meaning of 52 U.S.C. § 30101(2), does the FEC have the authority thereunder to make a determination as to eligibility when said eligibility is challenged by a fellow primary candidate? And if the FEC does not take corrective action, is the agency's action "not in accordance with the law" pursuant to 5 U.S.C. § 706(2)(A) and subjective to injunctive relief pursuant to 5 U.S.C. § 705?

VII. CONCLUSION

For the reason stated above, JOHN ANTHONY CASTRO, respectfully request that the Court grant rehearing or rehearing en banc.

Respectfully submitted,

Dated April 17, 2023

By: _____

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CERTIFICATE OF COMPLIANCE

I certify that this petition complies with the type-volume limitations of the Federal Rule of Appellate Procedure 35(B)(3)(A) and 40(b)(2) contains 2493 words, excluding the parts exempted by the Federal Rule of Appellate Procedure 32(f).

I also certify that this petition complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

John Anthony Castro

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 2023, a true and accurate copy of the foregoing petition with accompanying Exhibits (if any) was served by using the Court's CM/ECF system. All participants are registered CM/ECF users and will be served by the appellate CM/ECF system.

John Anthony Castro

ADDENDUM

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ADDENDUM A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-5323 **September Term, 2022**

1:22-cv-02176-RC

Filed On: April 10, 2023

John Anthony Castro,

Appellant

v.

Federal Election Commission,

Appellee

BEFORE: Millett, Wilkins, and Katsas, Circuit Judges

O R D E R

Upon consideration of the motion for summary affirmance, the court's order to show cause filed on February 8, 2023, the opposition to the motion for summary affirmance, and the reply, it is

ORDERED that the order to show cause be discharged. It is

FURTHER ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). The parties agreed in district court that Count One of appellant's complaint was moot, and appellant has not shown that he has Article III standing to pursue Count Two of his complaint. See generally Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1547 (2016).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

ADDENDUM B

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOHN ANTHONY CASTRO	)	
Appellant,	)	
v.	)	No.: 22-5323
FEDERAL ELECTION COMMISSION	)	
Appellee.	)	

APPELLANT JOHN ANTHONY CASTRO'S CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to United States Court of Appeals for D.C. Circuit Rule 28(a)(1), Appellant John Anthony Castro submits its Certificate as to Parties, Rulings and Related Cases.

(A) Parties and Amici. John Anthony Castro is the plaintiff in the district court and Appellant in this Court. John Anthony Castro, as an individual, certifies that there are no parent companies and no publicly held companies to disclose pursuant to Circuit Rule 26.1,

(A) The Federal Election Commission is the defendant in the district court and Appellee in this Court.

(B) Rulings Under Review. John Anthony Castro appeals the December 6, 2022 Order (Doc. 21) of the U.S. District Court for the District of Columbia (Contreras, R.) granting defendant-appellee Federal Election Commission's Partial Motion to Dismiss and denying plaintiff-appellant John Anthony Castro's Motion for a Temporary Restraining Order and/or a Preliminary Injunction.

(C) Related Cases. The appealed ruling has not previously been before this Court or any other court. There are no related cases pending before this Court or any other court of which Appellee is aware.

Date: April 17, 2023

Respectfully submitted,

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