IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN ANTHONY CASTRO *Plaintiff*, *v.* FEDERAL ELECTION COMMISSION *Defendant*.	)	No.: 22-cv-02176 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE MOTION TO DISMISS

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE MOTION TO DISMISS

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November 7, 2022

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INTRODUCTION

Defendant has mischaracterized the relief sought by Plaintiff. As such, Plaintiff submits this *Memorandum of Points and Authorities In Opposition to the Motion to Dismiss* to accurately and thoroughly explain the law that applies in this case.

II. STATEMENT OF THE CASE

Plaintiff John Anthony Castro filed his Complaint for Declaratory and Injunctive Relief ("Compl.") (Docket No. 1) pursuant to the judicial review provision of the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30109(a)(8), and the judicial review provisions of the Administrative Procedure Act, 5 U.S.C. §§ 701 - 706.

Count I is based upon an administrative complaint that Plaintiff filed with Defendant on March 23, 2022. Plaintiff's administrative complaint sought to compel Defendant to declare Donald J. Trump a "candidate" within the meaning of FECA. Defendant failed to act on the administrative complaint within 120 days. Defendant has not presented any facts to rebut the assertion that it failed to act on the administrative complaint. Instead, Defendant, in its Motion to Dismiss, provided an unnecessary brief on its internal processes to give the appearance of a substantive reply. Federal law, pursuant to 52 U.S.C. § 30109(a)(8)(A), grants the right of judicial review if the FEC fails to act on an administrative complaint within 120 days. As such, the jurisdiction for Count I stems from 52 U.S.C. § 30109(a)(8)(A) due to the FEC's failure to act within 120 days regarding Donald J. Trump's activities mandating his statutory classification as a "candidate" given the invalidity of the FEC's *Testing the Waters* regulations under the U.S. Supreme Court's *Home Concrete* standard.

If *either* this Court determined that Donald J. Trump is a "candidate" and compels his compliance with FECA *or* Donald J. Trump announces his candidacy while these proceedings

are pending, then and only then do we look to Count II. As such, Count II is a contingent claim under Fed. R. Civ. P. 18(b) and any motion to dismiss it separately is premature as of the time of this filing.

Count II effectively states that, because Plaintiff has alleged in his Complaint that Donald J. Trump engaged in, provided aid to, or provided comfort to the insurrectionists that violently attacked our United States Capitol on January 6, 2021, if Defendant were to accept Donald J. Trump's FEC Form 2, Statement of Candidacy, that would constitute agency action "not in accordance with law" pursuant to Section 3 of the 14th Amendment. In other words, because factual allegations in a complaint must be accepted as true for purposes of a dismissal ruling and Plaintiff's Complaint specifically alleges that Trump engaged in, aided, or comforted insurrectionists, it must be accepted as true, again only for purposes of this motion to dismiss, that Trump violated Section 3 of the 14th Amendment and is, therefore, ineligible to pursue public office. If Defendant were to accept Donald J. Trump's FEC Form 2, Statement of Candidacy, that would constitute final agency action under 5 U.S.C. § 704 that is "not in accordance with law" under Section 3 of the 14th Amendment, which 5 U.S.C. § 706(2)(A) specifically prohibits. As such, the jurisdiction for the *contingent* Count II stems from 5 U.S.C. § 706(2)(A).

On October 31, 2022, Defendant filed a Partial Motion to Dismiss solely with regard to Count II pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6).

III. STATEMENT OF JURISDICTION

This Honorable Court has jurisdiction over the Fed. R. Civ. P. 18(b) *contingent* Count II pursuant to 28 U.S.C. § 1331 as well as 5 U.S.C. §§ 701-706 with a particular emphasis on 5 U.S.C. § 706(2)(A) for agency action "not in accordance with law."

IV. STATEMENT OF THE ISSUES

1. Whether this Court has subject matter jurisdiction over Count II?

2. Whether Count II is a claim upon which relief can be granted?

3. Whether Plaintiff has standing to litigate Count II?

4. Whether Plaintiff is entitled to the more lenient *pro se* standard?

V. SUMMARY OF ARGUMENT

A. THIS COURT HAS SUBJECT MATTER JURISDICTION OVER COUNT II PURSUANT TO THE FEDERAL QUESTION STATUTE AND THE ADMINISTRATIVE PROCEDURE ACT

On a motion to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), the plaintiff bears the burden of establishing that the court has subject-matter jurisdiction.[1] In considering a motion to dismiss for lack of subject-matter jurisdiction, the court should accept as true all of the factual allegations contained in the complaint.[2]

Because subject-matter jurisdiction focuses on the court's power to hear the plaintiff's claim, however, a court resolving a motion to dismiss under Rule 12(b)(1) must give the complaint's factual allegations closer scrutiny than that which is required for a motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim.[3] Moreover, the court is not limited to the allegations contained in the complaint.[4] Instead, to determine whether it has jurisdiction over the case, the court may consider materials outside the pleadings.[5] In other

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[1] *Tremel v. Bierman & Geesing, LLC*, 2003 WL 721911, at *2 (D.D.C.2003); *Rasul v. Bush*, 215 F.Supp.2d 55, 61 (D.D.C.2002).
[2] *Scandinavian Satellite Sys., AS v. Prime TV Ltd*., 291 F.3d 839, 844 (D.C.Cir.2002) (citing *Swierkiewicz v. Sorema N.A*., 534 U.S. 506, 508 n. 1 (2002)).
[3] *Grand Lodge of Fraternal Order of Police v. Ashcroft*, 185 F.Supp.2d 9, 13 (D.D.C.2001) (citing *56 5A FED. PRAC. & PROC. CIV. 2d § 1350).
[4] *Hohri v. U.S.*, 782 F.2d 227, 241 (D.C.Cir.1986), *vacated on other grounds*, 482 U.S. 64 (1987).
[5] *Herbert v. Nat'l Acad. of Sciences*, 974 F.2d 192, 197 (D.C.Cir.1992).

words, it's a common sense approach that allows the Court to consider all facts and circumstances in and outside the pleadings, such as the findings of the House Select Committee to Investigate the January 6th Attack on the United States Capitol.

To be clear, Fed. R. Civ. P. 18(b) clearly states that a "party may join two claims even though one of them is contingent on the disposition of the other." The federal judiciary has only once directly addressed the issue in stating that "[w]hether a complaint in a federal court states a claim is a matter of federal law and it is clear as a matter of federal procedure that a complaint may state a claim against a defendant before that defendant's contingent liability has become absolute."[6] In this case, Plaintiff alleges two bases for subject-matter jurisdiction over Count II.

First, Plaintiff alleges subject matter jurisdiction over Count II under the federal question statute.[7] 28 U.S.C. § 1331 provides that "district courts ... have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."[8] Here, Plaintiff alleges that, if the Count II contingency is satisfied, Defendant's acceptance of Donald J. Trump's FEC Form 2, Statement of Candidacy, would violate Section 3 of the 14th Amendment.[9] Because the claim "aris[es] under" the Constitution, this court has subject-matter jurisdiction under the federal question statute.[10]

Second, Plaintiff asserts that this Court has subject matter jurisdiction over Count II pursuant to the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), since Defendant would

[6] *U.S. v. Cisco Aircraft, Inc.*, 54 F.R.D. 181, 182 (D. Mont. 1972).
[7] Compl. ¶ 6 (citing 28 U.S.C. § 1331).
[8] 28 U.S.C. § 1331.
[9] Compl. ¶ 1.
[10] *Cook v. Babbitt*, 819 F.Supp. 1, 4 (D.D.C.1993) (finding subject-matter jurisdiction for claim arising under the Fifth Amendment's Due Process Clause).

be in violation of Section 3 of the 14th Amendment if it accepted Donald J. Trump's FEC Form 2, Statement of Candidacy, which would be enjoinable agency action "not in accordance with law."[11]

Under Article III of the U.S. Constitution, the Court's authority is limited to deciding only justiciable "cases" and "controversies."[12] A justiciable case or controversy can be distinguished from a hypothetical dispute because it is "definite and concrete."[13] It cannot be of an "abstract character" or seek "an opinion advising what the law would be upon a hypothetical state of facts."[14] The U.S. Supreme Court has held that "[a] claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated or indeed may not occur at all.'"[15]

In this case, Plaintiff is asserting that the *Testing the Waters* regulations are invalid as a matter of law and that Donald J. Trump is presently a "candidate" within the meaning of FECA thus requiring the filing of his FEC Form 2, Statement of Candidacy. Accepting Plaintiff's allegations as true, Defendant has a present duty to demand an FEC Form 2, Statement of Candidacy, from Donald J. Trump, which makes this case is ripe for review.

(i) Defendant Mischaracterizes the Relief Sought by Plaintiff

Plaintiff is not asking Defendant to conclude that Donald J. Trump engaged in an insurrection as Defendant ludicrously suggests in its Motion to Dismiss. With regard to Count II, Defendant expects to capitalize on Plaintiff's inadvertence in not specifically citing to 5 U.S.C. § 706(2)(A) for agency action "not in accordance with law" despite the fact that the

[11] Compl. ¶ 6 (citing 5 U.S.C. § 702).
[12] *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240–41 (1937).
[13] *Id*.
[14] *Id*.
[15] *Texas v. U.S.*, 523 U.S. 296, 300 (1998).

U.S. Supreme Court has held that a Complaint will survive dismissal if the "***facts*** alleged" in the Complaint "allow the court to draw" that as a "reasonable inference."[16] Unless this Honorable Court is prepared to declare that the Original Complaint's opening paragraph stating that the "FEC's acceptance of Donald J. Trump's FEC Form 2, Statement of Candidacy, is… action… in violation of Section 3 of the 14th Amendment" was not sufficient to draw the inference that Plaintiff was referring to agency action not in accordance with the law, Defendant's argument is baseless and without merit.

Plaintiff has specifically alleged that Donald J. Trump engaged in and/or provided "aid *or* comfort" to the insurrectionists that attacked our United States Capitol on January 6, 2021. These allegations must be accepted as true for dismissal purposes.[17] Plaintiff is asking this Court to conclude that the FEC's acceptance of Donald J. Trump's Form 2, Statement of Candidacy, would be in direct violation of Section 3 of the 14th Amendment and, therefore, constitute agency action "not in accordance with law" pursuant to 5 U.S.C. § 706(2)(A).

Contrary to Defendant's assertion that this Court lacks the authority to grant relief, this Court has the authority to even issue a Temporary Restraining Order under 5 U.S.C. § 705, which Plaintiff will be motioning for shortly.

After Defendant's Motion to Dismiss is denied, the case must be cleared for trial at which time Donald J. Trump must file a Motion for Intervention of Right under Fed. R. Civ. P. 24(a)(2). If the Court determines that Donald J. Trump did, in fact, engage in the

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[16] *Rollins v. Wackenhut Servs., Inc*., 703 F.3d 122, 129 (D.C. Cir. 2012) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A plaintiff need not cite every legal theory upon which relief can be granted. If the facts support a legal theory not raised in the Complaint, it will survive dismissal since the emphasis is on the reasonable inferences for legal relief that the facts support.

[17] *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *also see Kossick v. United Fruit Co*., 365 U.S. 731 (1961); . *U.S. v. New Wrinkle, Inc*., 342 U.S. 371 (1952); *Guessefeldt v. McGrath*, 342 U.S. 308 (1952).

insurrection, provide aid to the insurrectionary movement, or provide comfort to the insurrectionary movement, then it must conclude that the FEC's acceptance of Donald J. Trump's Form 2, Statement of Candidacy, would constitute agency action "not in accordance with law" under Section 3 of the 14th Amendment. As such, the Court would issue an injunction against the FEC preventing them from taking action "not in accordance with law." In other words, Defendant must be enjoined from accepting Donald J. Trump's FEC Form2, Statement of Candidacy.

Donald J. Trump would be unable to lawfully raise funds for his campaign but could still, nevertheless, find alternative financing for his campaign and pursue access to state ballots since each state may independently determine questions of fact regarding eligibility *de novo*. However, Plaintiff would once again file civil actions in state courts once both Plaintiff and Donald J. Trump are state-registered candidates for the Republican nomination for the Presidency of the United States.

B. PLAINTIFF HAS STATED A CLAIM UPON WHICH RELIEF CAN BE GRANTED UNDER THE U.S. CONSTITUTION AND THE ADMINISTRATIVE PROCEDURE ACT

A Rule 12(b)(6) motion to dismiss "tests the legal sufficiency of a plaintiff's complaint; it does not require a court to assess the truth of what is asserted or determine whether a plaintiff has any evidence to back up what is in the complaint."[18] Instead, the court must accept the allegations of the complaint as true, "construe[] all factual inferences in favor of the plaintiff,"

[18] *Tyes-Williams v. Whitaker*, 361 F. Supp. 3d 1, 6 (D.D.C. 2019) (citation omitted).

and deny the motion if the complaint "contain[s] sufficient factual matter . . . to 'state a claim to relief that is plausible on its face.'"[19]

(i) Plaintiff Seeks to Enjoin Agency Action Contrary to Law

Any "person suffering a legal wrong because of agency action, or adversely affected or aggrieved by agency action… is entitled to judicial review"[20] of "final agency action"[21] to the extent the agency action is "not in accordance with law."[22] The D.C. Circuit has held that a mere FEC advisory opinion constitutes final agency action subject to judicial review under the APA authorizing a pre-enforcement legal challenge.[23] As such, any suggestion that the FEC is somehow not subject to the APA is without merit.

Plaintiff will suffer a competitive injury as explained and elaborated upon in the subsequent sections if Defendant engages in agency action not in accordance with the law by accepting Donald J. Trump's FEC Form 2, Statement of Candidacy.

(ii) Defendant Mischaracterizes Case Law Applying the APA to the FEC

In 1946, President Franklin D. Roosevelt signed the Administrative Procedure Act into law.[24] "By providing an effective method for regulating agency action, the APA preserved individual rights as against the abuse of administrative power and made such action more authoritative and acceptable to the public."[25] As part of this effort to guard against agency abuses, Congress also ensured that American citizens aggrieved by agency action could seek

[19] *Id*. (citations omitted).
[20] 5 U.S.C. § 702.
[21] 5 U.S.C. § 704.
[22] 5 U.S.C. § 706(2)(A).
[23] *See Unity08 v. FEC*, 596 F.3d 861 (DC Cir. 2010).
[24] P.L. 79-404, 60 Stat. 237 (1946)
[25] Roni A. Elias, The Legislative History of the Administrative Procedure Act, 27 Fordham Envtl. L. Rev. 207 (2016).

judicial review of said actions to "compel agency action unlawfully withheld or unreasonably delayed."[26]

Since then, the federal judiciary began to explore the question: what constitutes unreasonable delay? The judiciary has now ultimately concluded that, without a statutory or regulatory provisions governing the agency's pace, courts must defer to the "sound discretion of the agency," which could be years in some cases.[27]

In 1971, Congress enacted the Federal Election Campaign Act, which lacked a central administrative agency to enforce the rules for fear of political bias and pending presidential election. After serious allegations of campaign finance abuses during the 1972 presidential campaign, Congress enacted the Federal Election Campaign Act Amendments of 1974 to established the Federal Election Commission ("FEC") as an independent agency, a framework for accepting and adjudicating complaints regarding campaign finance law violations, and judicial review for agency action unlawfully withheld or unreasonably delayed with regard to said complaints as they relate to campaign finance law violations.[28] Most importantly, Congress, being aware of the flaw in the APA that did not define what constituted an unreasonable delay of agency action, set forth a specific timeframe by which the FEC had to either dismiss a complaint or take action thereon. In other words, by establishing a timeframe, Congress eliminated the "sound discretion of the agency" loophole in the APA that the federal judiciary had properly identified.

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[26] Administrative Procedure Act, P.L. 79-404, § 10 (1946). This is now codified at 5 U.S.C. § 706(1)

[27] *See, e.g., Alfassi v. Garland*, No. 21-CV-61735-RS, 2022 WL 3273116, at *3 (S.D. Fla. July 11, 2022); *also see Gonzalez v. Cuccinelli*, No. 19-1435, 2021 WL 127196 (4th Cir. Jan. 14, 2021); *Milligan v. Pompeo*, 502 F. Supp. 3d 302 (D.D.C. 2020), *appeal dismissed sub nom. Milligan v. Blinken*, No. 21-5017, 2021 WL 4768119 (D.C. Cir. Sept. 21, 2021); *Uranga v. U.S. Citizenship & Immigr. Servs*., 490 F. Supp. 3d 86 (D.D.C. 2020); *Ahmed v. Holder*, 12 F. Supp. 3d 747 (E.D. Pa. 2014); *Lakner v. U.S. Dep't of Def*., 755 F. Supp. 2d 132 (D.D.C. 2010)

[28] Federal Election Campaign Act Amendments of 1974, PL 93–443, 88 Stat 1263 (OCTOBER 15, 1974).

Today, this statutory timeframe for *de jure* unreasonable delay is codified at 52 U.S.C. § 30109(a)(8)(A) and permits a civil action before the U.S. District Court for the District of Columbia after 120 days of agency inaction.

In 2018, U.S. District Court Judge Amy Berman Jackson held that "judicial review is not available under the APA where the applicable statute precludes judicial review. Thus, for the same reasons that judicial review ***of the challenged enforcement actions*** is precluded by FECA, it is precluded under APA."[29] In other words, 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.

Defendant only reads the portion "judicial review is not available under the APA" to mislead the Court into believing that the 2018 CREW case somehow exempted the FEC from the APA, which is patently frivolous. The APA specifically holds that any "[s]ubsequent statute may not be held to supersede or modify this subchapter… except to the extent that it does so expressly."[30] Moreover, the U.S. Court of Appeals for the D.C. Circuit expressly ruled on this issue in 2021 in holding that the "APA imposes a high bar, met only if Congress has established procedures so clearly different from those required by the APA that it must have intended to displace the norm."[31] The D.C. Circuit went on to declare that "FECA's procedures are entirely compatible with the APA."[32] As such, nothing in FECA was intended to supersede the APA.

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[29] *Citizens for Resp. & Ethics in Washington v. FEC*, 363 F. Supp. 3d 33, 44 (D.D.C. 2018).
[30] 5 U.S.C. § 559.
[31] *Asiana Airlines v. FAA*, 134 F.3d 393, 397 (D.C. Cir. 1998) (citing to *Citizens for Resp. & Ethics in Washington v. Fed. Election Comm'n*, 993 F.3d 880, 889–90 (D.C. Cir. 2021)).
[32] *Id*.

C. PLAINTIFF HAS STANDING TO BRING COUNT II

To establish standing, a plaintiff must show that it has suffered an "injury in fact caused by the challenged conduct and redressable through relief sought from the court."[33]

(i) Political Competitor Standing

The U.S. Court of Appeals for the D.C. Circuit has explained that political competitor standing is akin to economic competitor standing, whereby a plaintiff has standing to challenge a government action that benefits a plaintiff's competitor to the detriment of the plaintiff.[34] Political competitor standing, however, is only available to plaintiffs who can show that they "personally compete[] in the same arena with the same party to whom the government has bestowed the assertedly illegal benefit."[35] The D.C. Circuit has also held that if a plaintiff can show he is a "direct and current competitor," then competitor standing must be recognized as a matter of established case law.[36] Even this court has recognized that a "candidate—as opposed to individual voters and political action groups—would theoretically have standing based upon a 'competitive injury'" if he could show that "he personally competes in the same arena with the same party."[37]

John Anthony Castro registered as a candidate with the Federal Election Commission and is directly and currently competing against Donald J. Trump for the Republican

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[33] *Shays v. FEC*, 414 F.3d 76, 83 (D.C. Cir. 2005) (citation omitted).
[34] *See Shays v. FEC*, 414 F.3d 76, 87 (D.C. Cir. 2005).
[35] *Gottlieb v. FEC*, 143 F.3d 618, 621 (D.C. Cir. 1998) (internal quotation marks omitted); *see also Fulani v. Brady*, 935 F.2d 1324, 1327-28 (D.C. Cir. 1991) (holding that presidential candidate did not have "competitor standing" to challenge CPD's tax-exempt status where the candidate was not eligible for tax-exempt status); *Hassan v. FEC*, 893 F. Supp. 2d 248, 255 (D.D.C. 2012), *aff'd*, No. 12-5335, 2013 WL 1164506 (D.C. Cir. Mar. 11, 2013) ("Plaintiff cannot show that he personally competes in the same arena with candidates who receive funding under the Fund Act because he has not shown that he is or imminently will be eligible for that funding.").
[36] *New World Radio, Inc. v. FCC*, 294 F.3d 164, 170 (D.C. Cir. 2002)
[37] *Hassan v. FEC*, 893 F. Supp. 2d 248, 255 n.6 (D.D.C. 2012) (emphases added) (quoting *Gottlieb*, 143 F.3d at 621)

nomination for the Presidency of the United States. As such, Plaintiff meets all of the criteria of the D.C. Circuit's jurisprudence. To hold otherwise would directly contradict decades of established legal precedent and reasoning.

(a) Plaintiff Will Suffer a Competitive Injury

Plaintiff reiterates Paragraph 10 of his Complaint in that a fellow primary candidate, whose injury would be competitive injury in the form of a diminution of fundraising, has federal judicial standing to sue a fellow primary candidate that he believes is ineligible to hold office and to prevent agency action not in accordance with the United States Constitution.[38]

Plaintiff will suffer a concrete competitive injury if the constitutionally ineligible Donald J. Trump campaign committee is permitted to raise funds, which puts Plaintiff at a fundraising disadvantage.[39] If Defendant is permitted to accept Donald J. Trump's FEC Form 2, Statement of Candidacy, Mr. Trump will be the Republican Party's presumptive nominee and completely dominate at fundraising. This will siphon off tens if not hundreds of millions of dollars to a constitutionally ineligible candidate in violation of Section 3 of the 14th Amendment to the U.S. Constitution. There is no question this political competitor injury is traceable to Defendant's act of accepting a constitutionally ineligible candidate's Form 2, Statement of Candidacy, which permits that person to raise an endless amount of campaign funds.

[38] *See Fulani v. League*, 882 F.2d 621 (2d Cir. 1989).
[39] *See McConnell v. FEC*, 540 U.S. 93, 107, *overruled on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010).

(b) The Competitive Injury is Traceable to Defendant's Agency Action Contrary to Law

The competitor standing doctrine recognizes "parties suffer constitutional injury in fact when agencies… otherwise allow increased competition."[40]

In this case, Plaintiff is already an FEC-registered 2024 Republican Presidential Candidate. Donald J. Trump is not. Defendant's acceptance of Donald J. Trump's FEC Form 2, Statement of Candidacy, would increase allow increased competition as to Plaintiff.

In accordance with the D.C. Circuit's ruling in *Mendoza v. Perez*, Plaintiff will suffer a constitutional injury in fact sufficient to confer Article III standing.

(c) Plaintiff is Within the Zone of Interests Sought to be Protected

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. The agency action in this case would be the FEC's unlawful acceptance of Donald J. Trump's FEC Form 2, Statement of Candidacy. Plaintiff, as a fellow Republican primary Presidential candidate, is a person who would suffer a legal wrong (an ineligible candidate being granted the right to raise unlimited sums of funds) or be adversely affected (having a fundraising disadvantage) by the FEC's unlawful acceptance of Donald J Trump's FEC Form 2, Statement of Candidacy. As such, Plaintiff is within the zone of interests the APA sought to protect.

Furthermore, when Section 3 of the 14th Amendment was adopted, it was specifically designed to ensure that non-insurrectionists did not have to politically compete with the more popular pro-insurrectionist politicians in the South. It was specifically designed to remove

[40] *See Mendoza v. Perez*, 754 F.3d 1002, 1011 (D.C. Cir. 2014) (citing to *La. Energy and Power Auth. v. FERC*, 141 F.3d 364, 367 (D.C. Cir. 1998); *Sherley v. Sebelius*, 610 F.3d 69, 72–73 (D.C. Cir. 2010)).

overwhelming popular pro-insurrectionists from the ballot. As such, Plaintiff is not simply within the zone of interests; Plaintiff is the precise type of person Section 3 of the 14th Amendment sought to protect.

Although the U.S. Supreme Court arguably abolished the doctrine of prudential standing in *Lexmark*, Plaintiff satisfies prudential standing in that his injury is particularized and concrete, he satisfies Article III standing, he is within the zone of interests Congress sought to protect under the APA, and he is within the zone of interests sought to be protected by Section 3 of the 14th Amendment to the U.S. Constitution.[41]

(d) The Competitive Injury is Redressable with Injunctive Relief

This Honorable Court has the power to "hold unlawful" any "agency action… found to be… not in accordance with law"[42] In fact, Congress went further and provided that this Honorable Court may, when "such conditions as may be required and to the extent necessary to prevent irreparable injury," "issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings."[43] In other words, this Honorable Court may issue a Temporary Restraining Order preventing Defendant from accepting Donald J. Trump's FEC Form 2, Statement of Candidacy.

As such, Defendant's claim that this Honorable Court lacks the power to provide relief is without merit.

[41] *Public Citizen v. FEC*, 788 F.3d 312 (DC Cir. 2015).
[42] 5 U.S.C. § 706(2)(A).
[43] 5 U.S.C. § 705.

D. PLAINTIFF IS ENTITLED TO THE MORE LENIENT *PRO SE* STANDARD

In its Motion to Dismiss, Defendant begs the Court to declare that Plaintiff is an attorney not entitled to the "less stringent standards than formal pleadings drafted by lawyers."[44] In support of this proposition, Defendant's only legal authority is a single citation to *Penkoski v. Bowser*, which involved Christopher Sevier who is licensed to practice law with numerous state bars.

Plaintiff, on the other hand, is not licensed with *any* state bar. Plaintiff is an Enrolled Agent with the Internal Revenue Service, which authorizes Plaintiff to practice tax before the U.S. Department of Treasury. However, Plaintiff is not permitted to practice before the U.S. Tax Court and no law expressly permits Plaintiff to practice in any state court. Whether Plaintiff is even permitted to hold himself out to the public as an "attorney" is an unsettled legal issue that must be revisited by the U.S. Supreme Court since the court was unable to address that specific issue in the pivotal case of *Sperry v. Florida*.[45]

Plaintiff is a *pro se* litigant entitled to the more "liberal standards."[46]

VI. CONCLUSION

Plaintiff asks this Court to deny Defendant's Motion to Dismiss.

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[44] *Penkoski v. Bowser*, 548 F.Supp.3d 12, 19-20 (D.D.C. 2021).

[45] 373 U.S. 379, 383 n.1 (1963) ("Petitioner's right to refer to himself as a 'Patent Attorney' has been mooted by his voluntary discontinuance of the use of the term 'attorney.'"). Although Plaintiff does refer to himself as an International Tax Attorney, that has no bearing on Plaintiff's knowledge of the rules of civil procedure, which licensure with a state bar creates a presumption of knowledge of. Despite Plaintiff's high intelligence quotient and knowledge of Microsoft Word to properly format documents and create a table of contents, Plaintiff's credentials create no presumption of knowledge of the technical rules of civil procedure, federal drafting standards, or local rules. Plaintiff is learning these rules as he goes and cannot be held to the same standard as those who have passed state bars and draft pleadings on a regular basis.

[46] *Id*.

Dated: November 7, 2022

Respectfully submitted,

By 

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Plaintiff, *Pro Se*

VERIFICATION

I, John Anthony Castro, declare as follows:

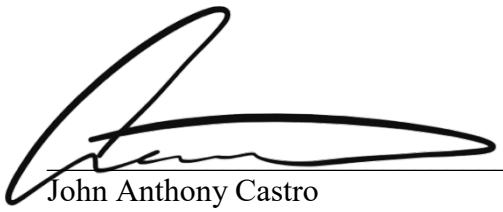
1. I am the plaintiff in the present case, a U.S. citizen, and an FEC-registered Republican primary presidential candidate (Candidate FEC ID Number P40007320) for the 2024 Presidential Election.

2. I intend to fully utilize all of my skills and knowledge to prevent Donald J. Trump from being elected to or holding any public office in the U.S.

3. I have personal first-hand knowledge of the matters set forth in both the Original Complaint and this Memorandum, including witnessing Donald J. Trump providing words of comfort to the insurrectionists on live television, and, if called upon to testify, I would competently testify as to the matters stated herein.

4. Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury that the foregoing is true and correct, including the incorporation of all matters referenced in the Original Complaint.

Executed on November 7, 2022.



John Anthony Castro

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on November 7, 2022. I further certify that a true and accurate copy of the foregoing document was served by electronic mail on the following recipients on November 7, 2022:

Federal Election Commission
Litigation Division
Attorney Shaina Ward
1050 First Street NE
Washington, DC 20463
(202) 694-1650

/s/ John Anthony Castro
John Anthony Castro