ORAL ARGUMENT NOT YET SCHEDULED

No. 22-5323

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOHN ANTHONY CASTRO,
Plaintiff-Appellant,

v.

FEDERAL ELECTION COMMISSION,
Defendant-Appellee.

On Appeal from the United States District Court
for the District of Columbia

FEDERAL ELECTION COMMISSION'S MOTION FOR SUMMARY AFFIRMANCE

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INTRODUCTION

Appellee Federal Election Commission ("Commission" or "FEC") respectfully moves for summary affirmance because the parties' positions are so clear that further proceedings would offer no benefit. *See Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297-98 (D.C. Cir. 1987). Appellant John Anthony Castro's appeal challenges the district court's straightforward conclusion that the Commission does not cause a redressable injury to an individual seeking a political party's nomination when a rival candidate files with the agency a preliminary document merely announcing his intent to seek the same nomination. Acceptance of that document does not grant the Commission's imprimatur to the candidate's eligibility for the office sought, nor is it required before a candidate raises funds that may be used to advance his election. Rather, that document simply notifies the public that the individual is a candidate for office and identifies the principal campaign committee associated with that candidate. The district court's decision that the only act attributable to the Commission — accepting former President Donald J. Trump's Statement of Candidacy — did not cause a redressable injury was therefore inarguably correct.

Despite Castro's claim, the Commission has no authority to conclude that a candidate is constitutionally disqualified from holding Federal office pursuant to Section 3 of the Fourteenth Amendment to the Constitution, also known as the

violation. 52 U.S.C. § 30109(a)(8)(C); *see FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 488 (1985).

B. Federal Election Commission Act Definition of a Federal "Candidate"

FECA defines the term "candidate" to mean "an individual who seeks nomination for election, or election, to Federal office." 52 U.S.C. § 30101(2). An individual is "deemed to seek nomination for election, or election" if they receive "contributions" or make "expenditures" aggregating in excess of $5,000, of if the individual has "given his or her consent to another person" to do so on his or her behalf. *Id.* § 30101(2)(A)-(B). "Contribution" and "expenditure" are defined terms of art. *See* 52 U.S.C. § 30101(8), (9). Those terms cover only those receipts and disbursements that are made "for the purpose of influencing any election for Federal office." *Id*. § 30101(8)(A)(i), (9)(A)(i); *see also FEC v. Akins*, 524 U.S. 11, 15 (1998).

Consistent with First Amendment principles, there are few limits on a person's ability to raise or spend money related to politics independent of candidates or parties, though in certain circumstances those activities are required to be publicly reported. *See generally Citizens United v. FEC*, 558 U.S. 310 (2010). Once an individual becomes a candidate, however, they are subject to comprehensive registration and reporting requirements. Candidates must designate in writing a principal campaign committee within 15 days of becoming a candidate

Act . . ., 52 U.S.C. § 30109, and the Administrative Procedure Act . . ., 5 U.S.C. § 706, for unlawful agency delay against the Commission." (Add. 2, ¶ 2.)

The first count of Castro's judicial complaint alleged that Trump "raised" and "expended" funds in excess of $5,000 to promote his candidacy in the 2024 presidential election, and the Commission must therefore must "declare [Trump] a candidate who must . . . fully comply with federal and state campaign finance laws." (Add. 4, ¶ 11); *see also* 52 U.S.C. §§ 30101(2), 30102(e)(1), 30104(a)(3). Castro further asserted that the Commission's regulation exempting funds raised to "'test[] the waters'" of federal candidacy from the definition of a contribution cannot prevent Trump from meeting the statutory thresholds because it is invalid. (*See* Add. 8, ¶¶ 23-30.) For this count, Castro sought an order compelling the Commission to require Trump to file a Statement of Candidacy for the 2024 Republican presidential nomination. (*See* Add. 1, ¶ 1.)

The second count of his complaint asserted that after ordering the Commission to declare Trump a candidate, the Court "must enjoin the Commission from accepting" Trump's candidacy filings because his alleged actions related to the January 6, 2021 attack on the United States Capitol disqualify him from holding the office of the presidency under Section 3 of the Fourteenth Amendment

to the United States Constitution.[1] (Add. 9 ¶ 31; *see also* Add. 24-25, ¶¶ 85-88.) Castro sought a declaration that, "contrary to law," the Commission "failed to act within the prescribed 120-day period" under 52 U.S.C. § 30109(a)(8)(A) & (C). (*See* Add. 4 ¶ 12.)

D. District Court Proceedings

On October 31, 2022, the Commission filed a partial motion to dismiss count two of Castro's complaint pursuant to Rule 12(b)(1) or alternatively Rule 12(b)(6) of the Federal Rules of Civil Procedure. (FEC's Mot. To Dismiss, *Castro v. FEC*, 22-2176 (D.D.C. Oct. 31, 2022) (Docket No. 14).) The Commission asserted that because FECA does not authorize the Commission to reject a candidate's declaration based on his supposed constitutional ineligibility for office, Castro lacked Article III standing to assert this claim, or alternatively, failed to state a claim on which relief can be granted. (*See id.*)

On November 15, 2022, Trump announced his candidacy for nomination for the office of the presidency in 2024, and filed a Statement of Candidacy with the

[1] Section 3 of the Fourteenth Amendment states, "[n]o person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof." U.S. Const. amend. XIV, § 3.

FEC. (*See* Donald J. Trump, Statement of Candidacy (Nov. 15, 2022), https://docquery.fec.gov/cgi-bin/forms/C00828541/1661552/.) One day later, on November 16, 2022, plaintiff filed a "emergency" motion for temporary restraining order and preliminary injunction. (Pl's Mot. for Temp. Restraining Order, *Castro v. FEC*, 22-2176 (D.D.C. Nov. 16, 2022) (Docket No. 17).) In his motion, Castro again sought an order from the district court to enjoin the FEC from accepting the Statement of Candidacy from Trump based on his alleged constitutional ineligibility for office, which he asserted would block Trump's ability to fundraise as a candidate. (*See id.*) Given that Trump had now filed the document Castro sought to compel the Commission to require, Castro agreed that count one of his judicial complaint was "moot." (*Id.* at 3.)

E. District Court Order Dismissing Castro's Complaint and Denying Motion for Temporary Restraining Order and/or Preliminary Injunction

On December 6, 2022, the district court granted the FEC's motion to dismiss, denied Castro's motion for a temporary restraining order and/or preliminary injunction, and dismissed Castro's complaint in its entirety for lack of standing. (Add. 27-32, Order, *Castro v. FEC,* 22-2176 (D.D.C. Dec. 6, 2022).) First, the Court concluded that "Mr. Castro's alleged injury—having to compete with Mr. Trump—is not traceable to the Commission." (Add. 30.) It found that "this erroneous idea—upon which Mr. Castro's entire case turns—is completely

lacking in support." (*Id.*) The Court explained that "[n]othing in the statement of candidacy, FEC Form 2, lends credence to Mr. Castro's belief that it plays a role in determining Mr. Trump's eligibility to run for office." (*Id.*) Second, the Court held that "Mr. Castro's alleged injury is not redressable. Because "the Commission has no jurisdiction to reject Trump's candidacy filings," the Court "has no authority to order the agency to violate the law." (Add. 31.)

Furthermore, the Court noted that even if the Court were "somehow able to force the Commission to reject Mr. Trump's Statement of Candidacy, Mr. Castro has not shown how this would cure his alleged injury." (*Id.*) Because "the FEC cannot confer constitutional legitimacy to Mr. Trump's candidacy by accepting his Statement of Candidacy, the Court fails to see how rejection of the same would stop Mr. Trump from running his campaign and competing against Mr. Castro." (*Id.*) Having concluded that Castro failed to establish standing, the Court determined that it lacked subject matter jurisdiction, dismissed count two, and denied Castro's motion for a temporary restraining order and/or a preliminary injunction. (Add. 32.) Because Trump had filed his Statement of Candidacy since the pendency of Castro's Complaint, it was "undisputed" that Count one was now moot, and the Court accordingly dismissed the Complaint in its entirety. (*Id.*) The

district court did not assess the merits of Castro's claims under Rule 12(b)(6). On December 7, 2022, Castro appealed the district court's order.[2]

ARGUMENT

I. STANDARD OF REVIEW

"Summary affirmance is appropriate where the merits are so clear as to justify summary action." U.S. Court of Appeals for the D.C. Circuit, Handbook of Practice and Internal Procedures at 35-36; *see also Jenkins v. District of Columbia*, No. 18-5021, 2018 WL 3726280, at *1 (D.C. Cir. July 20, 2018) (citing *Taxpayers Watchdog, Inc.*, 819 F.2d at 297). In circumstances where the merits are so clear, "no benefit will be gained from further briefing and argument of the issues presented." *Taxpayers Watchdog, Inc.*, 819 F.2d at 298; *Cascade Broad. Grp. Ltd. v. F.C.C.*, 822 F.2d 1172, 1174 (D.C. Cir. 1987) (per curiam) ("[S]ummary disposition will be granted where the merits of the appeal or petition for review are so clear that 'plenary briefing, oral argument, and the traditional collegiality of the

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[2] Since the filing of his appeal in this case, Castro has filed a lawsuit against Trump directly in the United States District Court, Southern District of Florida. *See* Amended Compl., *Castro v. Trump*, 9:23-cv-80015 (AMC) (S.D. Fla. Jan. 19, 2023) (Docket No. 7). In it, he makes similar allegations as he has asserted here, namely seeking an order from that court determining Trump's "constitutional ineligibility to pursue public office and appear on state ballots for the nomination for election to the Presidency of the United States due to his provision of aid or comfort to the January 6 insurrections." (*Id.* ¶ 11.) Castro further seeks an order "to enjoin any further fundraising or campaigning, and to ensure the prevention of his inauguration in the event the Republican Party is unable to prevent his nomination and subsequent election." (*Id.* ¶14.)

decisional process would not affect our decision.'" (quoting *Sills v. Fed. Bureau of Prisons*, 761 F.2d 792, 793-94 (D.C. Cir. 1985))).

This Court reviews a district court dismissal of a complaint for lack of subject matter jurisdiction *de novo*. *Ass'n of Civil Technicians, Inc. v. Federal Labor Relations Auth.*, 283 F.3d 339, 341 (D.C. Cir. 2002).

II. THE DISTRICT COURT CORRECTLY DISMISSED CASTRO'S COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION

This Court should summarily affirm the district court's order dismissing this action in its entirety because Castro's Article III standing is so clearly lacking as to warrant summary disposition. No further briefing or argument would cast doubt on this decision. To demonstrate Article III standing, a plaintiff must demonstrate that he has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). An injury in fact "must be 'concrete and particularized," and "a grievance that amounts to nothing more than an abstract and generalized harm to a citizen's interest in the proper application of law does not count." *Carney v. Adams*, 141 S. Ct. 493, 498 (2020) (quoting *Lujan*, 504 U.S. at 560).

Even assuming his complaint alleged a constitutionally sufficient injury in the form of illegal competition for the Republican Party nomination, Castro failed

to allege that his injury was caused by anything the Commission did or not do and no court order directed to the Commission could redress it. FECA does not grant the Commission authority to reject a Statement of Candidacy because the candidate is constitutionally ineligible for office. FECA regulates only the *financing* of federal campaigns, that is, the organization of campaign committees; the raising, spending, and disclosing of campaign funds; and the receipt and use of public funding for qualifying candidates. *See generally* 52 U.S.C. §§ 30101-30126. Castro does not cite any FECA provision or other authority that would grant the Commission unilateral authority to disqualify a person from running for federal office. Nor could he, because Congress has not granted the Commission the power to refuse to accept candidates' statements of candidacy on the basis that plaintiff has asserted.

Furthermore, clear agency precedent establishes that FECA does not permit the Commission to prohibit even an acknowledged unqualified candidate from raising funds or campaigning for office. *See* FEC Advisory Op. 2011-15 (Hassan), 2011 WL 3917133 (Sept. 2, 2011). In *Hassan*, the Commission concluded that FECA did not prohibit a naturalized citizen "from becoming a 'candidate' as that term is defined in" the Act even though the Constitution provides that only "'a natural born Citizen . . . shall be eligible for the Office of President.'" *Id*. at *1-2 (quoting U.S. Const. art. II, § 1, cl. 5). As the Commission concluded, FECA's

"definition of 'candidate' does not turn on whether an individual is a natural born citizen or a naturalized citizen, so long as that person meets the other criteria that define a 'candidate.'" *Id*. at *2. FECA "does not prevent [a person] from holding himself out as a candidate because the statutory definition does not turn on a person's eligibility to be seated for the office he or she seeks." *Id*. at *2.[3]

As the district court correctly held, "[n]othing in the statement of candidacy, FEC Form 2, lends credence to Mr. Castro's belief that it plays a role in determining Mr. Trump's eligibility to run for office. The statement of candidacy is a two-page form that an individual must file with the FEC for the purposes of designating a principal campaign committee within '15 days after becoming a candidate.'" (Add. 30) (citing 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1).) As such, Castro "failed to meet his burden to show the Court how the Commission's handling of Mr. Trump's statement of candidacy has any bearing on Mr. Castro's alleged injury." (Add. 31.) Furthermore, even assuming the district court could force the Commission to reject Trump's Statement of Candidacy, the district court

[3] The Commission also concluded in *Hassan* that "[c]lear and self-avowed constitutional ineligibility for office" was a basis for denying a prospective candidate's entitlement to public funds under the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-9042. *See* FEC Advisory Op. 2011-15 (Hassan), 2011 WL 3917133, at *3. Unlike FECA, however, that act calls upon the Commission to make eligibility determinations, 26 U.S.C. § 9033, in a context with a different constitutional standard, *Buckley v. Valeo*, 424 U.S. 1, 95-96 (1976) (per curiam). Even then, *Hassan* does not indicate such a finding would be appropriate where eligibility was contested.

rightly noted that Castro failed to show how this would cure his alleged injury. Because "the FEC cannot confer constitutional legitimacy to Mr. Trump's candidacy by accepting his statement of candidacy, the Court fails to see how rejection of the same would stop Mr. Trump from running his campaign and competing against Mr. Castro." (*Id.*)

In sum, Castro's alleged injuries under this claim cannot be redressed by the Commission, and by extension the Court. Castro asserts no other plausible basis to establish constitutional standing. And because the district court lacked subject matter jurisdiction over Castro's claim, it correctly denied his motion for emergency and injunctive relief. *See Steel Co. v. Citizens for a Better Environ.*, 523 U.S. 83, 94 (1998) ("'Without jurisdiction the court cannot proceed at all in any cause . . . and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.'" (quoting *Ex Parte McCardle*, 74 U.S. 506, 514 (1868)).

CONCLUSION

For the foregoing reasons, this Court should summarily affirm the district court's order granting the Commission's motion to dismiss Castro's complaint.

Respectfully submitted,

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I hereby certify, on this 23rd day of January, 2023, that:

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/s/ *Shaina Ward*
Shaina Ward

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 2023, I electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the D.C. Circuit 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.

/s/ *Shaina Ward*
Shaina Ward