UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASTRO Plaintiff, v. FEDERAL ELECTION COMMISSION, Defendant.	)	No. 22-cv-02176 OPPOSITION TO MOTION FOR TEMP. RESTRAINING ORDER AND PRELIMINARY INJUNCTION

FEDERAL ELECTION COMMISSION'S OPPOSITION TO PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

Plaintiff John A. Castro has filed this "emergency" application for a temporary restraining order and motion for preliminary injunction ("TRO App.") (Docket No. 18) seeking an order from this Court to enjoin the Federal Election Commission ("FEC" or "Commission") from accepting a statement of candidacy from former president Donald J. Trump, which Castro asserts will block Trump's ability to fundraise as a candidate. Castro argues that he is entitled to this relief because the Commission's acceptance of Trump's candidacy filing would be unlawful pursuant to Section 3 of the Fourteenth Amendment to the Constitution, also known as the "Disqualification Clause," because Castro alleges that Trump has engaged or aided in insurrection. Plaintiff's belated application seeking this extraordinary relief must be denied for the following reasons:

First, as explained in the Commission's pending partial motion to dismiss, the Commission has no authority to reject a prospective candidate's filings based on his alleged constitutional ineligibility for office, nor does it have jurisdiction to adjudicate whether a person

has "engaged in insurrection" under the Fourteenth Amendment. Castro's assertions that Trump's declaration of candidacy to the FEC confers the "privilege" of raising money for his campaign turns campaign finance law on its head. (TRO App. at 4, 18.) The filing of a declaration of candidacy is simply a public disclosure that an individual has become subject to the contribution limits and reporting requirements of the Federal Election Campaign Act ("FECA"), it is not a conferral by the Commission of authorization to run for office or raise campaign funds.

Second, Castro cannot plausibly allege any imminent, irreparable injury resulting from Trump filing his statement of candidacy with the FEC because the earliest election in which the two would face voters does not occur until 2024. Castro asserts that there is harm to him as a competitor of Trump in the 2024 election, however any purported harm stemming from his theory of "ineligible" candidates would not actually occur until voting happens. To the extent Castro claims that he is placed at a fundraising disadvantage due to Trump's candidacy, he has submitted no evidence to support his speculation that he would raise additional funds in the absence of Trump's candidacy. Any claim of irreparable harm is also undermined by the nine months Castro waited to seek preliminary injunctive relief. Although Castro has apparently based the timing on this application in conjunction with Trump's November 15 announcement that he is running for office, Castro has not justified the "emergency" nature of the injunctive relief he seeks on any basis given that he has made this same argument in his previously filed judicial complaints with this Court and has threatened to file this application for weeks. There is no more "emergency" now than there was then.

Third, any injunctive relief here would be inequitable because it would upend the status quo and severely impact the First Amendment rights of non-parties to this suit: Trump and

supporters of his campaign. Trump has already filed his statement of candidacy with the Commission, and Castro has not met his heavy burden of establishing entitlement to upend that status quo. Granting injunctive relief against a newly announced political campaign would also be a serious infringement on the associational rights of those seeking to affiliate with the Trump campaign through campaign contributions and otherwise. That relief should only be granted upon the strongest of showings, which is lacking here.

Castro meets none of the requirements for a preliminary injunction or temporary restraining order. His application should be denied.

I. BACKGROUND

A. The FEC

The FEC is a six-member, independent agency of the United States government with "exclusive jurisdiction" to administer, interpret, and civilly enforce FECA. *See generally* 52 U.S.C. §§ 30106, 30107. Congress authorized the Commission to "formulate policy" with respect to FECA, *id.* § 30106(b)(1); "to make, amend, and repeal such rules . . . as are necessary to carry out the provisions of [FECA]," *id.* §§ 30107(a)(8), 30111(a)(8); and to investigate possible violations of the Act, *id.* § 30109(a)(1)-(2). The Commission has exclusive jurisdiction to initiate civil enforcement actions for violations of the Act in the United States district courts. *Id.* §§ 30106(b)(1), 30109(a)(6).

B. FECA's 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 by filing a Statement of Candidacy on FEC Form 2. 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a). Those committees must then file periodic campaign finance disclosure reports reporting its receipts and disbursements. *Id.* § 30104(a)(3), (b). Candidates and their committees are also required to comply with FECA's source and amount limitations on contributions. *See* 52 U.S.C. § 30116(a)(1)(A); FEC Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 87 Fed. Reg. 5822 (February 2, 2022) (establishing inflation-adjusted $2,900 per election limit on contributions to candidates); *see* 52 U.S.C. § 30118 (prohibiting corporate contributions to candidates); *id.* § 30119 (prohibiting contributions by government contractors); *id.* § 30121 (prohibiting contributions by foreign nationals); *id.* § 30122 (prohibiting contributions in the name of another).

C. Castro's Lawsuit and Application for Injunctive Relief

Castro is a declared candidate for the 2024 Republican nomination for President of the United States. (TRO App. at 1; Pl.'s Compl. for Declaratory and Injunctive Relief ("Compl.") (Docket No. 1) ¶ 8.) Plaintiff alleges that he filed his administrative complaint with the FEC on

March 23, 2022. (Compl. ¶ 11.) According to his court complaint, plaintiff's administrative complaint alleged that Trump meets the definition of a "candidate" under FECA and is therefore subject to FECA's organizational and reporting requirements, as well as its source and amount limitations on contributions. (*Id.*)

Initially, Castro primarily asserted in count one of his judicial complaint that the Commission's alleged failure to act on that administrative complaint was unlawful under 52 U.S.C. § 30109(a)(8) and the Administrative Procedure Act and sought an order compelling the Commission to require Trump to file a statement of candidacy for the 2024 Republican presidential nomination. (Compl. ¶ 1.) On November 15, 2022, Trump announced his candidacy for that nomination and filed a statement of candidacy with the FEC. *See* TRO App. at 3; Donald J. Trump, Statement of Candidacy (Nov. 15, 2022), https://docquery.fec.gov/cgi-bin/forms/C00828541/1661552/. Now that Trump has filed the document Castro sought to compel the Commission to require, the parties agree that count one is "moot." (TRO App. at 3.)

Count two of Castro's judicial complaint — which is the count at issue here — asserts that the Commission should be enjoined from accepting Trump's statement of candidacy because he is constitutionally ineligible to hold that office under the Disqualification Clause of the Fourteenth Amendment.[1] (Compl. ¶¶ 31-64, 84-88.) Because FECA does not authorize the Commission to reject a candidate's declaration based on his supposed constitutional ineligibility for office, the Commission moved to dismiss that count of Castro's complaint either because he

[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.

lacks Article III standing or because he failed to state a claim on which relief can be granted. (*See* FEC's Partial Mot. to Dismiss and FEC's Reply Mem. of P. & A. in Supp. of Its Partial Mot. to Dismiss (Docket Nos. 14, 16).) That motion is fully briefed and awaiting decision.

On November 16, 2022, plaintiff filed a motion for temporary restraining order and preliminary injunction on his Disqualification Clause claim that would "enjoin [the Commission] from accepting Donald J. Trump's FEC Form 2, Statement of Candidacy." (TRO App. at 20.) However, as noted in his motion, since at least October 6, plaintiff has been threatening to file an "emergency" motion for a temporary restraining order seeking this relief, in addition to asserting similar relief in his first judicial complaint filed with the Court in February 2022. (*See* TRO App. at 4-5.)

II. ARGUMENT

A. A Temporary Restraining Order Is an Extraordinary Remedy That Requires Plaintiff to Meet a Heavy Burden

"A temporary restraining order is an extraordinary remedy, one that should be granted only when the moving party, by a clear showing, carries the burden of persuasion." *Sibley v. Obama*, 810 F. Supp. 2d 309, 310 (D.D.C. 2011). The moving party must demonstrate: "(1) a substantial likelihood of success on the merits, (2) that it would suffer irreparable injury if the injunction were not granted, (3) that an injunction would not substantially injure other interested parties, and (4) that the public interest would be furthered by the injunction." *Coal. for Parity, Inc. v. Sebelius*, 709 F. Supp. 2d 6, 8 (D.D.C. 2010).

A "foundational requirement" for obtaining a temporary restraining order or preliminary injunction is that "the plaintiffs demonstrate a likelihood of success on the merits." *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 930 F.3d 1, 10 (D.C. Cir. 2019) (per curiam), cert. denied, 140 S, Ct. 789 (2020). But even if a plaintiff can show a likelihood of

success on the merits, a temporary restraining order "does not follow as a matter of course." *Benisek v. Lamone*, 138 S. Ct. 1942, 1943-44 (2018) (per curiam); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (holding that preliminary relief is "never awarded as of right"). Notably, "[t]he D.C. Circuit 'has set a high standard for irreparable injury'—it 'must be both certain and great; [and] it must be actual and not theoretical.'" *Baker DC, LLC v. Nat. Lab. Rel. Bd.*, 102 F. Supp. 3d 194, 198 (D.D.C. 2015) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) (alteration in original)). "A plaintiff seeking a preliminary injunction 'must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.'" *Changji Esquel Textile Co. Ltd. v. Raimondo*, 40 F.4th 716, 721 (D.C. Cir. 2022) (quoting *Winter*, 555 U.S. at 20).

Plaintiff asserts that these four factors have been evaluated on a "sliding scale," such that a stronger showing on one factor could make up for a weaker showing on another. (TRO App. at 6). However, this Court has recently noted that this approach "is likely inconsistent with" the Supreme Court's holding in *Winter*. *Zeynali v. Blinken*, No. 22-cv-2683 (BAH), 2022 WL 4462304, at *2 n.3 (D.D.C. Sept. 26, 2022) (citing *Archdiocese of Wash. v. Wash. Metro. Area. Transit Auth*., 897 F.3d 314, 334 (D.C. Cir. 2018) (observing that *Winter* may be "properly read to suggest a 'sliding scale' approach to weighing the four factors be abandoned"); *Davis v. Pension Benefit Guar. Corp*., 571 F.3d 1288, 1295–96 (D.C. Cir. 2009) (Kavanaugh, J., concurring) (noting that "this Circuit's traditional sliding-scale approach to preliminary injunctions may be difficult to square with the Supreme Court's recent decisions in" *Winter*)). After *Winter*, an applicant must "establish that he is likely to succeed on the merits." 555 U.S. at 20.

A plaintiff seeking extraordinary relief must provide sufficient credible evidence to meet his burden of proof. *See Cal. Ass'n of Private Postsecondary Schools v. DeVos*, 344 F. Supp. 3d 158, 166-67 (D.D.C. 2018).

B. Plaintiff Cannot Meet the Heavy Burden of Demonstrating that he is Substantially Likely to Succeed on the Merits

Castro is unable to show that he is likely to succeed on the merits of his claim for the same reasons asserted in the Commission's motion to dismiss: the Commission lacks authority under FECA to reject a candidate declaration on the grounds that the candidate is ineligible to hold the office sought. (*See* Docket Nos. 14-1, 16.) Because the Commission lacks authority to reject Trump's filing on the basis Castro presses, no action of the Commission has caused any of Castro's asserted injuries and no relief directed at the Commission would remedy those injuries. Castro therefore lacks Article III standing to sue.

1. Because the Commission lacks authority to reject candidacy declarations from disqualified candidates, Castro's purported injuries are not traceable to or redressable by an order directed at the Commission.

To have Article III standing a plaintiff must establish: (1) he has "suffered an 'injury in fact[,]" which the Supreme Court defines as "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not [merely] conjectural or hypothetical," *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal citations and quotation marks omitted); (2) that there is a "causal connection between the injury and the conduct complained of[,]" which requires the injury to be "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court," *id.* (internal quotation marks and alterations omitted); and (3) that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* at 561 (internal quotation marks omitted).

To establish traceability, a plaintiff must establish that the defendant's challenged actions caused the plaintiff's injury. *See Lujan*, 504 U.S. at 560. Redressability requires that a plaintiff demonstrate "a substantial likelihood that the requested relief will remedy the alleged injury in fact." *Teton Hist. Aviation Found. v. U.S. Dep't of Def.*, 785 F.3d 719, 724 (D.C. Cir. 2015) (per curiam) (internal quotation marks omitted). A "substantial likelihood" requires "more than the remote possibility . . . that [the plaintiff's] situation might . . . improve were the court to afford relief," *Warth v. Seldin*, 422 U.S. 490, 491 (1975). To obtain the extraordinary relief of an injunction, Castro "cannot 'rest on . . . mere allegations, but must set forth by affidavit or other evidence specific facts' that, 'if taken to be true,' demonstrate a substantial likelihood of standing." *Elec. Priv. Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity*, 878 F.3d 371, 377 (D.C. Cir. 2017).

Here, no order this Court could direct to the Commission could redress plaintiff's purported injury because 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.

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.[2] To the extent there is any ambiguity whether FECA's statutory definition of "candidate" permits the Commission to reject a filing pursuant to the Disqualification Clause or other constitutional requirements for candidate eligibility, this Court should give deference to the FEC's reasonable construction. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984).

Because FECA does not authorize the Commission to reject candidate filings for purported disqualification for office, Castro has not established standing or entitlement to relief.

2. Filing a Declaration of Candidacy does not confer the Commission's endorsement to raise funds.

Although the Commission requires all persons meeting FECA's candidacy definition to comply with FECA's requirements, declaring one's candidacy by filing with the Commission is

[2] The Commission also concluded 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 ineligibility was contested.

not a license to participate in politics. Castro repeatedly asserts that the acceptance of Trump's statement of candidacy filings would violate Section 3 of the Fourteenth Amendment by "expressly permitting an ineligible candidate to raise funds to unlawfully campaign for public office," (TRO App. at 4) and that raising money for a campaign is a "privilege." (*Id.* at 4). But seeking contributions and spending money in pursuit of political office are acts with constitutional dimension that are not subject to the government's prior approval. *See, e.g.*, *Buckley*, 424 U.S. at 14-23. Unless there is a constitutionally permissible statutory prohibition, the default rule is that the financing of federal campaigns is permitted.

Castro's argument that the Commission has caused his injury by "bestowing upon a constitutionally ineligible Presidential candidate the privilege of raising an unlimited sum of campaign funds" is, therefore, manifestly incorrect. (TRO App. at 18.) If anything, declaring one's candidacy *limits* the amount of money a person may raise in connection with Federal elections because candidates are subject to contribution limits while non-candidates generally are not. *See* 52 U.S.C. § 30116(a)(1)(A). In fact, because he is not a party to this case, it is not even clear that enjoining the Commission from accepting Trump's candidacy filings would prevent the former President from raising money from his supporters. *See* Fed. R. Civ. P. 65(d)(2) (defining scope of persons bound by court's injunctions or restraining order).

Because the Commission does not grant license for persons to raise funds, no act of the Commission caused Castro's purported fundraising injuries. As such, he lacks Article III standing to sue.

3. This Court need not resolve Castro's contention that Trump is disqualified from holding office, which can be adjudicated in a proper forum.

Because the Commission lacks authority to adjudicate Disqualification Clause claims, it would be inappropriate for it to take any position on that question here. These matters would

have to be litigated in an appropriate forum. But the Commission's lack of authority to reject candidate filings means that there is no remedy directed at the FEC this Court could grant that would provide the relief plaintiff seeks on this claim. *See Berg v. Obama*, 574 F. Supp. 2d 509, 525 (E.D. Pa. 2008) (dismissing complaint against Commission for lack of standing where "[i]t seems clear that the Campaign Act does not address the sort of corruption that Plaintiff alleges in his Complaint"), *aff'd*, 586 F.3d 234 (3d Cir. 2009); *Nat'l Wildlife Fed'n v. U.S. Army Corps of Eng'rs*, 170 F. Supp. 3d 6, 16 (D.D.C. 2016) ("The disconnect between the relief sought and the harm stated therefore precludes finding the requisite redressability."); *see also Nat'l Black Police Ass'n v. District of Columbia*, 108 F.3d 346, 349 (D.C. Cir. 1997) ("[A] federal court has no power to render advisory opinions or decide questions that cannot affect the rights of litigants in the case before them." (internal quotation marks and alterations omitted)).

If plaintiff wants to raise a challenge to Trump's constitutional eligibility to be president, his claim would need to lie against an appropriate entity involved with those matters, not the FEC. *See generally* Derek Mueller, *What the Litigation Path of Eligibility Challenges to Donald Trump May Look Like*, Election Law Blog (Nov. 15, 2022, 5:43 PM), https://electionlawblog.org/?p=131285#more-131285.

C. Plaintiff Cannot Demonstrate Irreparable Harm

Castro fails to meet his burden to show that he will suffer irreparable harm without the extraordinary remedy he seeks. *Winter*, 555 U.S. at 22. "[T]he basis of injunctive relief in the federal courts has always been irreparable harm." *Sampson v. Murray*, 415 U.S. 61, 88 (1974) (citation and internal quotation marks omitted). The D.C. Circuit "has set a high standard for irreparable injury," underscoring that the injury "must be both certain and great . . . actual and not theoretical." *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297 (internal quotation marks

omitted). Plaintiff must show that "the certain and immediate harm" is also "truly irreparable in the sense that it is 'beyond remediation.'" *Fisheries Survival Fund v. Jewell*, 236 F. Supp. 3d 332, 336 (D.D.C. 2017) (quoting *Power Mobility Coal. v. Leavitt*, 404 F. Supp. 2d 190, 204 (D.D.C. 2005).

1. Castro cannot establish any immediately impending electoral or financial harm from the Commission's acceptance of Trump's Statement of Candidacy.

Trump's Statement of Candidacy does not cause any immediate irreparable harm. As of today, the nominating contests for the Republican presidential nomination remain more than 14 months away. That leaves ample time for the Court to resolve any properly asserted challenge to a candidate's eligibility before any candidate would face voters. While the Commission steadfastly maintains this is not such a proper challenge, even if Castro were fully correct on the merits of his claims, he would not face voters in an election with a disqualified candidate until 2024.

Nor can Castro show that any other concrete injury is certainly impending. *See Union of Concerned Scientists v. U.S. Dep't of Energy*, 998 F.3d 926, 929 (D.C. Cir. 2021) ("[A] threatened injury must be 'certainly impending" or there has to be a "substantial risk that the harm will occur") (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)). Castro's argument that he suffers irreparable financial harm from Trump's declaration of candidacy (TRO App. at 16-19) is legally incorrect and factually unsupported.[3] The basis of Castro's legal argument is that, now that Trump has declared his candidacy, Castro will face diminution of opportunity to obtain campaign contributions from donors. (*Id.* at 18-19.) But

[3] Castro also asserts there are "First Amendment Implications" to denying his request for injunctive relief. (TRO App. at 18-19.) That argument, however, appears to exclusively rely on the assertion that he must compete with Trump for limited campaign donations and so fails for the same reasons.

courts have never treated the universe of potential campaign contributions as a "finite and limited resource." (TRO at 24.) Contribution limits do not "reduce the total amount of money potentially available to promote political expression," but rather "merely . . . require candidates and political committees to raise funds from a greater number of persons." *Buckley*, 424 U.S. at 22. Potential contributors may give to an unlimited number of candidates, *McCutcheon v. FEC*, 572 U.S. 185, 227 (2014) (striking down aggregate contribution limits), and so the fact that some donors may give to Trump's campaign does not restrict Castro's ability to seek additional contributions from those same donors. If anything, Trump's declaration of candidacy makes it easier for Castro to compete with Trump for contributions, because contributions to entities affiliated with Trump are now unambiguously subject to the dollar limit. In the period before his candidacy began — whenever that was, given that plaintiff had previously called the timing into question in count one — Trump could coordinate with independent expenditure entities that had no contribution limit.

To the extent Castro is arguing that some donors will elect not to contribute to Castro *because* Trump is a candidate, he offers only speculation in support of that factual assertion. A plaintiff's "mere allegations, without more, do not support a finding of irreparable injury." *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297-99. Indeed, Castro must demonstrate his entitlement to temporary relief with evidence supporting his application. But he has not identified a single person who would otherwise donate to his campaign if Trump were not a declared candidate. *See Save Jobs USA v. U.S. Dep't of Homeland Security*, 105 F. Supp. 3d 108, 113 (D.D.C. 2015) (holding that plaintiff failed to establish irreparable competitive harm where they had not submitted evidence that its members would compete for jobs with visa recipients authorized to apply for employment authorization by challenged rule). It is not

enough for Castro to allege that he "could" compete with Trump over the same pool of potential donors, he must demonstrate that he would lose out on contributions that he would otherwise obtain. *Id.* Castro has failed to offer any such evidence. And even if Castro had submitted this evidence, he would not be able to demonstrate a likelihood of success on the merits in any event.

Castro otherwise asserts that the Disqualification Clause "created an implied right to be free of having to compete against individuals engaged in insurrection against the United States of America" (TRO App. at 14), but he cites nothing to support that conclusory statement. The text of the Disqualification Clause speaks not of competition over campaign contributions or elections but of a prohibition on "holding office." Const. Amend. 14, § 3, cl. 1. And Castro nowhere provides support for the idea that it grants an individual right to sue to be free from financial competition with candidates that should be disqualified or a freestanding right to petition the judiciary to adjudicate such claims, let alone a lawsuit directed at the FEC.

2. Castro's delay in seeking relief indicates that any harm is not imminent or irreparable.

Additionally, Castro's delay in filing this motion further undermines any claim of irreparable harm. *See, e.g.*, *Tenacre Foundation v. INS*, 78 F.3d 693, 695 n.2 (D.C. Cir. 1996) (finding that seven-month delay before filing suit "undermines any assertions that [plaintiff] will suffer irreparable harm if the Court does not grant preliminary injunctive relief") (internal quotation marks omitted); *Fund for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975) (holding that delay of forty-four days before seeking injunctive relief "bolstered" the "conclusion that an injunction should not issue"); *W. Watershed Projects v. Bernhardt*, 468 F. Supp. 3d 29, 50 (D.D.C. 2020). Castro first alleged that Trump met FECA's definition of candidacy despite his constitutional ineligibility for office in a complaint filed in this Court on February 11, 2022. Compl., *Castro v. FEC*, No. 1:22-cv-369 (D.D.C. filed Feb. 11, 2022). Rather than seek

injunctive relief at that time, Castro instead voluntarily dismissed that lawsuit, reportedly to file an administrative complaint with the Commission. Minute Order, *Castro v. FEC*, No. 1:22-cv-369 (D.D.C. Apr. 13, 2022); *see* Compl. ¶ 2 (purporting to assert a claim under 52 U.S.C. § 30109 for "unlawful agency delay").) Castro then filed the instant action on July 25, 2022. (*See* Compl.) Although he admits that he has been considering seeking temporary injunctive relief since early October (TRO App. at 4-5), Castro took no steps to seek that relief until November 16 — more than nine months after making his initial allegations at issue in his application.

That delay also means that Castro's motion comes too late to prevent the filing of the form Castro seeks to enjoin. Trump has already filed the statement of candidacy — his FEC Form 2 — that Castro seeks to enjoin the Commission from accepting. *See* Donald J. Trump, Statement of Candidacy (Nov. 15, 2022), https://docquery.fec.gov/cgi-bin/forms/C00828541/1661552/. Far from preserving the status quo, Castro's motion seeks to upend it. *See Abdullah v. Bush*, 945 F. Supp. 2d 64, 67 (D.D.C. 2013) ("A preliminary injunction that would change the status quo is an even more extraordinary remedy."). But even assuming the merits of Castro's Disqualification Clause claim may be heard in this forum in a lawsuit directed at the Commission, that claim can and should proceed in the normal course without temporary or preliminary relief.

Because "[t]he basis of injunctive relief in the federal courts has always been irreparable harm," *Sampson v. Murray*, 415 U.S. 61, 88 (1974), Castro's failure to establish this element alone warrants denial of the requested temporary restraining order and preliminary injunction.

D. The Balance of Harms Favors the Commission and an Injunction Would be Contrary to the Public Interest

The balance of the equities and the public interest also weigh heavily in favor of preserving the status quo and denying plaintiff's request for extraordinary injunctive relief. "It is in the public interest for courts to carry out the will of Congress and for an agency to implement properly the statute it administers." *Mylan Pharm., Inc. v. Shalala*, 81 F. Supp. 2d 30, 45 (D.D.C. 2000).

It bears repeating that Castro asks this Court to intervene to prevent a former President from even raising funds for election. Plaintiff cites no precedent that supports such an order. Government action, including from the Judicial Branch, to prevent a potential candidate from raising any funds for office implicate extremely serious First Amendment speech and association concerns and should not be done absent a clear entitlement to relief that is lacking here. If Castro wishes to pursue his claim that Trump is disqualified from office, he should press it against appropriate entities.

D. Castro is Not Entitled to a Declaratory Judgment

Castro's memorandum requests a final declaratory judgment that the Commission's acceptance of Trump's statement of candidacy would be contrary to law (TRO App. at 20), but he is not entitled to final relief at this preliminary stage. "The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held." *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). As such, it is "generally inappropriate for a federal court at the preliminary-injunction stage to give a final judgment on the Merits." *Id.*

E. No Hearing on this Motion is Necessary or Required

Finally, although plaintiff requests a hearing in this matter, the Court is not required to provide the plaintiff a hearing where, as is here, one is unnecessary. *See Johnson v. Holway*, 329

F.Supp.2d 12, 14 n. 1 (D.D.C.2004) (denying the plaintiff's request for an evidentiary hearing because the existing record was sufficient); Local Civil Rule 65.1(d) (requiring a hearing on an application for a preliminary injunction no later than 21 days after its filing, unless the court earlier decides the motion on the papers). The record is sufficient to demonstrate Castro's lack of a right to the relief he seeks here and thus no hearing is necessary for the Court to make this determination.

III. CONCLUSION

For the foregoing reasons, plaintiff's application for an emergency temporary restraining and motion for preliminary injunction order should be denied.

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