IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

E. EDWARD ZIMMERMANN,	:	**CIVIL ACTION**
Plaintiff,	:	
v.	:	**No. 16-4564**
UNITED STATES NATIONAL LABOR RELATIONS BOARD, *et al.*	:	
Defendants.	:	

ORDER

AND NOW, this 6th day of April, 2018, upon consideration of Defendants' "Motion to Dismiss Amended Complaint" (Doc. No. 31), and Plaintiff's Response in Opposition thereto (Doc. No. 33), and upon a review of the record, I find as follows:

FACTUAL & PROCEDURAL BACKGROUND

1. Plaintiff, E. Edward Zimmerman, proceeding pro se, brought this action against the United States Department of Labor and the National Labor Relations Board (together, "the Federal Defendants"), as well as the Pennsylvania Department of General Services (the "Pennsylvania Defendant"). Plaintiff's original Complaint sought monetary damages and a judicial declaration that federal and state regulation of wages, benefits, and collective bargaining violate his constitutional rights, including his rights under the Due Process Clause of the Fifth and Fourteenth Amendments.
2. All Defendants moved to dismiss for lack of subject matter jurisdiction and failure to state a claim, and on August 14, 2017, the Honorable Legrome D. Davis issued an Order dismissing Plaintiff's original Complaint in its entirety. Judge Davis concluded

that Plaintiff's claims against the Pennsylvania Defendant, as well as Plaintiff's monetary damages claims against the Federal Defendants, were barred by sovereign immunity.

3. Judge Davis dismissed Plaintiff's remaining claims—his declaratory judgment claims against the Federal Defendants—under Federal Rule of Civil Procedure 12(b)(1). Judge Davis explained that Plaintiff's original Complaint did not satisfy the injury-in-fact requirement for Article III standing because it lacked specific factual allegations regarding how Plaintiff had been harmed. However, Judge Davis allowed Plaintiff to file an Amended Complaint to attempt to cure this deficiency.
4. On October 4, 2017, this matter was reassigned to me from Judge Davis.
5. On October 30, 2017, Plaintiff filed an Amended Complaint. Thereafter, the Federal Defendants again moved to dismiss for lack of subject-matter jurisdiction and failure to state a claim. Plaintiff responded to the Motion, which is now ripe for decision.[1]
6. For the reasons that follow, I will dismiss this matter with prejudice for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).

LEGAL STANDARD

7. Federal Rule of Civil Procedure 12(b)(1) allows a party to move for dismissal of any claim for which the district court lacks subject matter jurisdiction. A Rule 12(b)(1) motion may challenge jurisdiction based on the face of the complaint or its existence in fact. See Mortensen v. First Fed. Savings and Loan Ass'n, 549 F.2d 884, 891 (3d

[1] Plaintiff has also filed several other motions, including a "Motion for Summary Judgment" (Doc. No. 30), an "Order to Show Cause and for Sanctions and Interim Attorney's Fees" (Doc. No. 34), a "Motion Under Seal to Review This Matter in Private" (Doc. No. 36), and several other submissions under seal. Because I will grant Defendants' Motion to Dismiss, and dismiss Plaintiff's Amended Complaint with prejudice, I need not address Plaintiff's Motion for Summary Judgment or his request for sanctions and attorneys' fees.

Cir. 1977). Where, as here, the challenge is facial, the court must accept as true all well-pleaded allegations in the complaint and draw reasonable inferences in favor of the plaintiff. Id. In applying this standard, the court "may consider only the allegations contained in the complaint, exhibits attached thereto, and matters of public record." Beverly Enterps., Inc. v. Trump, 182 F.3d 183, 190 n.3 (3d Cir. 1999) (citing Pension Benefit Gaur. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993)). Regardless of whether the challenge is facial or factual, the plaintiff bears the burden of persuasion. Mortensen, 549 F.2d at 891.

8. A claim may also be dismissed for lack of subject matter jurisdiction under Rule 12(b)(1) if it is "wholly insubstantial and frivolous." Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1408-1409 (3d Cir. 1991) (quoting Bell v. Hood, 327 U.S. 678, 682 (1946). Such dismissal is appropriate where the claims are "so insubstantial, implausible, foreclosed by prior decisions . . . , or otherwise completely devoid of merit as not to involve a federal controversy." Id. (quoting Oneida Indian Nation v. Cnty. of Oneida, 414 U.S. 661, 666 (1974)).

9. A pro se plaintiff's complaint is to be read liberally. Spruill v. Gillis, 372 F.3d 218, 236 n.12 (3d Cir. 2004) (citing Alston v Parker, 363 F.3d 229, 233-34 (3d Cir. 2004)). "Notwithstanding this liberality, pro se litigants are not relieved of their obligation to allege sufficient facts to support a cognizable legal claim." Humbert v. Levi, No. 08-cv-268, 2015 WL 1510982, at *4 (E.D. Pa. Apr. 2, 2015) (citing United States v. Miller, 197 F.3d 644, 648 (3d Cir. 1999)).

ANALYSIS

10. Article III of the United States Constitution limits federal judicial jurisdiction to cases and controversies. U.S. Const. art. III, § 2; see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). Requiring a plaintiff to demonstrate standing ensures that he "allege[s] such a personal stake in the outcome of the controversy as to warrant *his* invocation of federal-court jurisdiction." Summers v. Earth Island Inst., 555 U.S. 488, 493 (2009) (emphasis in original) (quoting Warth v. Seldin, 422 U.S. 490, 498-99 (1975)). To satisfy this burden, a plaintiff must show (1) "that he is under a threat of suffering 'injury in fact' that is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical"; (2) "it must be fairly traceable to the challenged action of the defendant"; and (3) "it must be likely that a favorable judicial decision will prevent or redress the injury." Id. "A federal court must dismiss a complaint for lack of subject matter jurisdiction under the case-or-controversy requirement of Article III of the United States Constitution if the plaintiff lacks standing to bring a claim." Travelers Indem. Co. v. Cephalon, Inc., 32 F. Supp. 3d 538, 544 (E.D. Pa. 2014) (citing Lujan, 504 U.S. at 555), aff'd, 620 F. App'x 82 (3d Cir. 2015).

11. Plaintiff's ten-paragraph Amended Complaint—when stripped of legal conclusions—contains only five factual allegations:

    - "The United States Government purchases in excess of twenty billion dollars [of] construction services per year."
    - "Plaintiff and his Employees are a for profit commercial enterprise, building commercial, industrial and residential buildings."

- "Plaintiff and his Employees would like to compete for government construction contracts."
- "The defendants have and continue to prohibit Plaintiff and his Employees from competing for federal government contracts because the terms and conditions of employment and working conditions Plaintiffs and his Employees have agreed to, are unsatisfactory to the Defendants."
- Without an immediate ruling from this court determining whether the Defendants['] exclusionary conduct is permittable, Plaintiff and his employees['] extra ordinary earnings power will continue to be diminished."

(Am. Compl. ¶¶ 6-10.)

12. For the same reasons Judge Davis articulated in dismissing Plaintiff's original Complaint, these allegations are too vague to support the conclusion that Plaintiff has suffered, or will imminently suffer, an injury in fact, rather than an injury that is merely conjectural or hypothetical.

13. Like his original Complaint, Plaintiff's Amended Complaint alleges that he is an employer. Yet, as before, Plaintiff does not identify his business or provide any details about his business other than that it is a "for profit commercial enterprise, building commercial, industrial and residential buildings." (Am. Compl. ¶ 7.)

14. Plaintiff's Amended Complaint alleges that Plaintiff's business would "like to compete for government construction contracts," but does not identify any specific contract for which his business either has competed, or could compete but for the federal regulations he is challenging. (Am. Compl., ¶ 8.)

15. And while Plaintiff's Amended Complaint alleges that "the terms of employment and working conditions Plaintiff[] and his Employees have agreed to[] are unsatisfactory to the Defendants," Plaintiff does not identify any of those conditions or terms. (Am. Compl. ¶ 9.)

16. In sum, Plaintiff's Amended Complaint—like his original Complaint—lacks factual allegations that, if true, would support the conclusion that he has suffered, or will imminently suffer, an injury in fact.[2] See, e.g., Relly v. Ceridian Corp., 664 F.3d 38, 42 (3d Cir. 2011) ("Allegations of possible future injury are not sufficient to satisfy Article III. Instead, a threatened injury must be certainly impending, and proceed with a high degree of immediacy, so as to reduce the possibility of deciding a case in which no injury would have occurred at all[.]" (internal quotation marks and citations omitted)). Accordingly, Plaintiff's Amended Complaint will be dismissed under Federal Rule of Civil Procedure 12(b)(1) for lack of Article III standing.

17. While a district court is generally required to allow a pro se plaintiff to amend his complaint to cure deficiencies, a court is not required to do so where amendment would be "inequitable or futile." Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004).

18. Here, Plaintiff has previously been given an opportunity to amend his Complaint to plead facts supporting his standing under Article III. In allowing Plaintiff to amend, Judge Davis previously explained the standard that Plaintiff would be required to

[2] Among other documents that Plaintiff filed under seal following his filing of an Amended Complaint is a document entitled "Clarification of Plaintiffs Standing Under Seal" (Doc. No. 39). Like Plaintiff's Amended Complaint, this document consists almost entirely of legal conclusions. The document contains no new factual allegations, but vaguely restates his allegations that he is a "sole proprietor . . . engaged in commerce constructing buildings for profit" and that "[t]he terms and conditions of Plaintiff's pre-hire CBA [collective bargaining agreement] . . . is a private matter." (Id. ¶¶ 2, 5.) Thus, even considering this submission as part of Plaintiff's Amended Complaint, Plaintiff has still failed to demonstrate standing under Article III.

meet. Because Plaintiff's Amended Complaint again fails to meet that standard, further leave would be inequitable.

19. Moreover, further amendment would be futile as Plaintiff's declaratory judgment claims—which, in sum, contend that federal laws and regulations setting a minimum wage violate due process and other constitutional provisions—are wholly insubstantial and frivolous in light of nearly 80 years of established case law.[3]

WHEREFORE, it is hereby **ORDERED** that:

- Defendants' "Motion to Dismiss Amended Complaint" (Doc. No. 31) is **GRANTED**.
- Plaintiff's "Motion for Summary Judgment" (Doc. No. 30), "Motion to Proceed to Trial" (Doc. No. 38), and "Motion to Correct, The Record" (Doc. No. 40) are **DENIED AS MOOT**.
- Plaintiff's "Motion Under Seal to Review this Matter in Private" (Doc. No. 36) and "Rule 5.1.5 Motion to Seal this Matter" (Doc. No. 44) are **DENIED**. The Clerk of Court shall **UNSEAL** Document Numbers 36 through 44.[4]

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[3] See, e.g., United States v. Darby, 312 U.S. 100, 125 (1941) (rejecting claims that minimum wage requirements of the Fair Labor Standards Act of 1938 exceeded Congress's commerce power and violated the Due Process Clause of the Fifth Amendment, noting that "it is no longer open to question that the fixing of a minimum wage is within the legislative power and that the fact of its exercise is not a denial of due process under the Fifth . . . Amendment").

[4] "[T]here is a strong presumption of public access to 'judicial records and documents.'" Haque v. Swarthmore Coll., No. 15-cv-1355, 2017 WL 3218073, at *1 (July 28, 2017) (quoting Leucadia, Inc. v. Applied Extrusion Tech., Inc., 998 F.2d 157, 161 (3d Cir. 1993)). Thus, a "party seeking to seal any part of a judicial record bears the heavy burden of showing that the material is the kind of information that courts will protect and that disclosure will work a clearly defined and serious injury to the party seeking closure." Miller v. Ind. Hosp., 16 F.3d 549, 551 (3d Cir. 1994). Neither Plaintiff's "Motion Under Seal to Review this Matter in Private" (Doc. No. 36), "Rule 5.1.5 Motion to Seal this Matter" (Doc. No. 44), nor any of Plaintiff's other filings under seal, explain why disclosure of the material contained in these filings would work any injury to Plaintiff. Rather, these materials contain—in addition to arguments about the merits of Plaintiff's case—only vague assertions that Plaintiff's case is "sensitive" and that there are "potential risks to Plaintiff's physical safety if this mater [sic] were to make the front pages." Such

- Plaintiff's Amended Complaint is **DISMISSED WITH PREJUDICE**.
- The Clerk of Court shall **CLOSE** this case.

BY THE COURT:

/s/ Mitchell S.Goldberg

MITCHELL S. GOLDBERG, J.

unsupported, conclusory statements do not meet the heavy burden required to seal documents filed with the Court.