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APPENDIX A

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604**

Submitted December 22, 2021*

Decided December 23, 2021

Before

MICHAEL S. KANNE, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 21-2039

DAVID H. PENNY,
Plaintiff-Appellant,

Appeal from the United
States District Court for the
Central District of Illinois.

v.

No. 20-CV-2047

NANCY PELOSI, et al.,
Defendants-Appellees. Colin S. Bruce,
Judge.

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

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ORDER

(Filed Dec. 23, 2021)

David Penny, a private citizen, sued the 230 members of the United States House of Representatives who voted in 2019 to impeach then-President Donald J. Trump. Penny alleged that President Trump had not committed an impeachable offense and that the defendants therefore violated the Constitution by voting to impeach. The district court dismissed the complaint on jurisdictional grounds based on a lack of standing and the defendants' absolute immunity. We affirm the dismissal for lack of jurisdiction.

In their motion under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, the defendants raised a host of grounds for dismissing Penny's complaint. They argued, among other things, that Penny had suffered no concrete injury and therefore lacked Article III standing and that the Speech or Debate Clause, U.S. CONST. art. I, § 6, cl. 1, bars suits against them for their legislative acts. The district court agreed with both of these arguments and dismissed the action for lack of jurisdiction, without giving plaintiff an opportunity to amend his complaint.

In our de novo review of the jurisdictional dismissal, see *Democratic Party of Wisconsin v. Vos*, 966 F.3d 581, 584-85 (7th Cir. 2020), we need look no further than Article III standing. Penny argues on appeal that he suffered an injury-in-fact because the impeachment eroded constitutional norms and threatened to remove from office a President for whom he voted. To meet his

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burden, however, Penny had to show that he personally suffered an injury that was “concrete and particularized,” not “conjectural or hypothetical.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotations omitted). Taking his allegations at face value, Penny’s concerns are rooted in “his and every citizen’s interest in proper application of the Constitution and laws” and are precisely the sorts of widely shared grievances about government that the Supreme Court has long held insufficient to generate a case or controversy under Article III. *Id.* at 573; *Warth v. Seldin*, 422 U.S. 490, 499 (1975) (no Article III standing based on “generalized grievance shared . . . by all or a large class of citizens”). Insofar as Penny also argues that his vote for the impeached President supplies a particularized injury, this argument fails for the same reason.

Penny also argues that the district court should have allowed him to amend his complaint. Ordinarily he would be correct, see *Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 518 (7th Cir. 2015), but any attempt to amend would be futile here because he could allege no injury sufficient to establish standing. See *Access Living of Metro. Chicago v. Uber Techs., Inc.*, 958 F.3d 604, 614 (7th Cir. 2020). Indeed, the proposed amended complaint that he submits with his appellate brief describes no particularized or concrete injury. See *id.*

Because Penny lacks standing, we need not address his other arguments. The judgment of the district

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court is AFFIRMED with the clarification that the dismissal is for lack of subject-matter jurisdiction.

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**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

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United States Courthouse
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FINAL JUDGMENT

December 23, 2021

Before

MICHAEL S. KANNE, *Circuit Judge*
ILANA DIAMOND ROVNER, *Circuit Judge*
DAVID F. HAMILTON, *Circuit Judge*

No. 21-2039	DAVID HAROLD PENNY, Plaintiff - Appellant v. NANCY PELOSI, et al., Defendants - Appellees
Originating Case Information District Court No: 2:20-cv-02047-CSB-EIL Central District of Illinois District Judge Colin S. Bruce	

The judgment of the District Court is **AFFIRMED**,
with costs, and with the clarification that the dismissal

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is for lack of subject-matter jurisdiction. The above is
in accordance with the decision of this court entered on
this date.

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APPENDIX B
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

DAVID HAROLD PENNY,)	Case No. 20-CV-2047
Plaintiff,)	
)	
v.)	
)	
NANCY PELOSI, United)	
States Representative,)	
et al.,)	
)	
Defendants.)	

ORDER

(Filed May 10, 2021

____Pro se Plaintiff David Harold Penny filed a Complaint (#1) on February 27, 2020, against Defendants Speaker of the United States House of Representatives Nancy Pelosi and all the members of the House of Representatives Democratic caucus who voted in favor of impeaching former U.S. President Donald J. Trump on December 18, 2019, on abuse of power and obstruction of Congress charges concerning Trump's dealings with Ukraine and attempt to influence the 2020 U.S. presidential election by requesting Ukraine investigate potential Democratic nominee for president Joseph R. Biden in exchange for U.S. military aid.

Plaintiff states as the basis for his Complaint conspiracy to defraud the United States, defrauding the

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government of money or property, obstructing a legitimate government activity, treason, rebellion or insurrection, seditious conspiracy, and advocating the overthrow of the U.S. government Specifically, Plaintiff claims that Defendants violated the U.S. Constitution by voting to impeach the president when the president had not committed a crime.

Plaintiff states:

Each of the individual defendants in their voting for, participation in, proceedings, processes, procedures, in the submission of invalid, illegal, unconstitutional, and unfounded Articles of Impeachment against President Donald J. Trump, and funding of these activities using tax payer money to remove the President in a political coup, attempting to nullify my vote, and all votes cast for President Trump: through these unprecedented acts their misfeasance, malfeasance, and non-feasance violated the cited sections of the Constitution, federal criminal statutes, and their oaths.

Plaintiff, in later filings, clarified that he is bringing his claims against Defendants in both their official and individual capacities. In his original Complaint, in terms of requested relief, Plaintiff asked the court to imprison some, not all, of Defendants, along with fines, and to bar some Defendants from running for office for 10 years, while others could be barred for 5 years. In his Response (#23) to Defendants' Motion to Dismiss, Plaintiff clarifies that he requests only that

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Defendants be barred from running for election for 10 years, starting with the completion of their current term.

Defendants filed a Motion to Dismiss (#19) on December 2, 2020, to which Plaintiff filed his Response (#23) on February 12, 2021. Defendants filed a Reply (#26) on March 12, 2021, and Plaintiff filed a Sur-Reply (#27) on March 26, 2021. The matter is now fully briefed. In their Motion to Dismiss, Defendants argue that Plaintiff's Complaint should be dismissed with prejudice for the following reasons: (1) under Federal Rule of Civil Procedure 12(b)(1), the Speech or Clause of the U.S. Constitution deprives this court of subject matter jurisdiction to consider this Complaint; (2) under the Political Question Doctrine, Plaintiff lacks Article III standing to sue these individual members of Congress for their legislative actions taken as members of Congress, and thus this court lacks subject matter jurisdiction under Rule 12(b)(1); (3) under Rule 12(b)(6), the Complaint fails to state a valid cause of action because it is barred by sovereign immunity, which protects members of Congress from complaints like Plaintiff's; (4) there is no legal precedent that recognizes a cause of action against members of Congress because Plaintiff is dissatisfied with their performance and participation in the impeachment of President Trump; and (5) the Complaint is frivolous.

ANALYSIS

Standards Governing Rule 12(b)(1) Motions

Defendants have moved to dismiss Plaintiff's Complaint under both Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. "When a motion to dismiss is based on a lack of subject matter jurisdiction pursuant to Rule 12(b)(1), as well as other Rule 12(b)(6) defenses, the court should consider the Rule 12(b)(1) challenge first." *Rizzi v. Calumet City*, 11 F.Supp.2d 994, 995 (N.D. Ill. 1998), citing *Bell v. Hood*, 327 U.S. 678, 682 (1946); *In re Stirlen*, 614 B.R. 837, 849 (N.D. Ill. 2020). If the court dismisses Plaintiff's Complaint for lack of subject matter jurisdiction, the accompanying Rule 12(b)(6) defenses become moot and need not be addressed. See *Rizzi*, 11 F.Supp.2d at 995.

Defendants' motion to dismiss under Rule 12(b)(1) contends that the court lacks subject matter jurisdiction to hear Plaintiff's Complaint. Fed.R.Civ.P. 12(b)(1). "Motions to dismiss under Rule 12(b)(1) are meant to test the sufficiency of the complaint, not to decide the merits of the case," and "[i]n the context of a motion to dismiss for lack of subject matter jurisdiction, [the court] accept[s] as true the well pleaded factual allegations, drawing all reasonable inferences in favor of the plaintiff[.]" *Center for Dermatology & Skin Cancer, Ltd. v. Burwell*, 770 F.3d 586, 588 (7th Cir. 2014). However, "a plaintiff faced with a 12(b)(1) motion to dismiss bears the burden of establishing that the jurisdictional requirements have been met" *Burwell*, 770 F.3d at 588-89.

Further, the district court may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists. *Evers v. Astrue*, 536 F.3d 651, 656-57 (7th Cir. 2008). “When subject-matter jurisdiction—which is to say, the power to hear and decide the case at all—is at stake, a district judge may resolve factual disputes and make any findings necessary to determine the court’s adjudicatory competence.” *Craftwood II, Inc. v. Generac Power Systems, Inc.*, 920 F.3d 479, 481 (7th Cir. 2019).

The Speech or Debate Clause

Defendants first argue that this court lacks subject matter jurisdiction over Plaintiff’s Complaint because it is barred by the Speech or Debate Clause of the U.S. Constitution. Plaintiff responds that the Speech or Debate Clause does not protect Defendants because they “did not conduct legitimate legislative activity when they illegally and unconstitutionally voted for the impeachment of President Trump.”

The Speech or Debate Clause provides that “The Senators and Representatives . . . for any Speech or Debate in either House . . . shall not be questioned in any other Place. U.S. Const., art. I, § 6, cl. 1. “The Clause reflects the Founders’ belief in legislative independence[,]” and, “[a]lthough criminal liability was the ‘chief fear’ of our forebears, [citation omitted] the Speech or Debate Clause also provides absolute immunity from civil suit.” *Rangel v. Boehner*, 785 F.3d 19,

23 (D.C. Cir. 2015). The prospect of civil liability lessens the ability of the members of Congress to represent the interests of their constituents, and litigation itself creates a distraction and forces members to divert their time, energy, and attention from their legislative tasks. *Rangel*, 785 F.3d at 23. "Such litigation also undermines the separation of powers." *Rangel*, 785 F.3d at 23.

The Supreme Court has consistently read the Speech or Debate Clause "broadly" to achieve its purposes, "[a]nd although the Clause speaks of 'Speech or Debate,' it extends further to all 'legislative acts.'" *Rangel*, 785 F.3d at 23, citing *Doe v. McMillan*, 412 U.S. 306, 312 (1973). "An act is 'legislative' if it is 'generally done in a session of the House by one of its members in relation to the business before it.'" *Rangel*, 785 F.3d at 23, quoting *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1880). Specifically, the U.S. Supreme Court has stated:

The heart of the Clause is speech or debate in either House. Insofar as the Clause is construed to reach other matters, they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.

Gravel v. United States, 408 U.S. 606, 625 (1972).

Impeachment is considered “legislative activity” for purposes of the Speech or Debate Clause. “[I]mpeachment is viewed as a legislative activity in the sense that it is one of the ‘other matters which the Constitution places within the jurisdiction of either House.’” *In re Request for Access to Grand Jury Materials Grand Jury No. 81-1, Miami*, 833 F.2d 1438, 1446 (11th Cir. 1987), quoting *Gravel*, 408 U.S. at 625. “Though the aim of an impeachment inquiry is not to enact legislation, such inquiry is undoubtedly a ‘matter[] which the Constitution places within the jurisdiction of either House.’” *Judicial Watch, Inc. v. Schiff*, 474 F.Supp.3d 305, 317 (D.D.C. 2020), quoting *Gravel*, 408 U.S. at 625. The U.S. “Constitution specifically entrusts the House of Representatives with ‘the sole Power of Impeachment.’” *Judicial Watch*, 474 F.Supp.3d at 317-18, quoting U.S. Const., art. I, § 2, cl. 5.

In a recent case where a plaintiff attempted to *remove* former President Trump from office, the district court concluded it lacked subject matter jurisdiction to hear the case, holding that “to the extent that Plaintiff seeks the removal of President Trump from office, it is well established that, because the United States Constitution confers upon the House of Representatives and the Senate, respectively, the power to impeach and the power to try all impeachments, ‘a federal court cannot exercise judicial authority to order impeachment of the President of the United States or to conduct an impeachment proceeding.’” *Cobble v. Trump*, 2020 WL 3452986, at *2 (W.D. Ky. June 24, 2020), quoting *Hyland v. Clinton*, 208 F.3d 213 (Table), 2000 WL 125876,

at *1 (6th Cir. Jan. 28, 2000). Indeed, in terms of reading the Constitution's impeachment provision, the D.C. Circuit Court of Appeals has stated that "a more plausible reading is that the [F]ramers simply assumed that courts had nothing whatever to do with impeachments." *Nixon v. United States*, 938 F.2d 239, 243 (D.C. Cir. 1991).

Thus, based on the above, Defendants' decision to investigate President Trump, move to impeach President Trump, and then subsequently vote to impeach President Trump, is clearly legislative activity covered by the absolute immunity conveyed by the U.S. Constitution's Speech or Debate Clause.

Plaintiff contends that Defendants' conduct cannot be "legislative" because it was, in his view, illegal. "This 'familiar' argument—made in almost every Speech or Debate Clause case—has been rejected time and again." *Rangel*, 785 F.3d at 24. This is because "[a]n act does not lose its legislative character simply because a plaintiff alleges that it violated the House Rules, [citation omitted] or even the Constitution[.]" *Rangel*, 785 F.3d at 24. "Such is the nature of absolute immunity, which is—in a word—absolute." *Rangel*, 785 F.3d at 24. "The claim of an unworthy purpose does not destroy the privilege." *United States v. Johnson*, 383 U.S. 169, 180 (1966).

Thus, Plaintiff's claim is clearly barred by the absolute immunity provided under the Constitution's Speech or Debate Clause, and must be dismissed for lack of subject matter jurisdiction. If Plaintiff seeks

redress on this claim, the solution is not a judicial one, but rather a political one which must be resolved at the ballot box.

Standing

Even were the court to find the claim not barred by the Speech or Debate Clause, the court would still find the absence of subject matter jurisdiction due to Plaintiff's lack of Article III standing.

Standing is an essential component of Article III's case-or-controversy requirement. In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or particular issues. As a jurisdictional requirement, the plaintiff bears the burden of establishing standing. Because standing is not [a] mere pleading requirement[] but rather an indispensable part of the plaintiff's case, [it] must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation.

Apex Digital, Inc. v. Sears, Roebuck & Co., 572 F.3d 440, 443 (7th Cir. 2009) (internal citations and quotations omitted).

For Plaintiff to have Article III standing, three requirements must be satisfied: (1) he must have suffered an actual or imminent, concrete and particularized injury-in-fact; (2) there must be a causal connection between his injury and the conduct complained of; and

(3) there must be a likelihood that this injury will be redressed by a favorable decision. *Bryant v. Compass Group USA, Inc.*, 958 F.3d 617, 620-21 (7th Cir. 2020), citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

The court understands that Plaintiff is proceeding pro se, and is thus entitled to some leniency, and the court should construe his pleadings liberally. This principle does not, however, dispense with the constitutional requirement that a plaintiff have standing to bring his claims. *Dorsey v. District of Columbia*, 747 F.Supp.2d 22, 26 (D.D.C. 2010).

Thus, to survive Defendants' motion to dismiss, for the first prong of standing, Plaintiff must demonstrate that he has suffered an actual or imminent, concrete and particularized injury-in-fact. Plaintiff, in his Response (#23) at pages 11-12, argues that he has suffered a "direct injury and imminent threat of further injury[.]" in that the unconstitutional impeachment of the president "will set a precedent to force the Executive Branch to submit at times to the Legislative Branch[.]" and "once one part of the Constitution is violated without a redress of grievance petitioned for and won, there is nothing to stop the slow and steady erosion of other parts of the Constitution to include the Plaintiff['s] other Constitutional rights." Plaintiff goes on to say that, whether Defendants' action "nullifies a vote for the [p]resident I voted for or not, the threat is to all citizens whether they realize it or not, but this citizen does perceive the current injury (the beginning of the erosion of the Constitution) and imminent threat

of losing rights over time without remedy and the disintegration now of the separation of powers.”

Plaintiff’s claimed injury is exactly the type of generalized injury courts have found insufficient to satisfy Article III standing. Plaintiff is not alleging that he has suffered a direct and immediate violation of *his* constitutional or other federal rights, but rather he claims Defendants’ legislative activity in impeaching former President Trump threatens the rights of all citizens by eroding the Constitution and leading to the “disintegration of the separation of powers.” “The Supreme Court, however, has made it clear that ‘a plaintiff claiming only a generally available grievance about government—claiming only harm to his and every citizen’s interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.’” *Cobble*, 2020 WL 3452986, at *2, quoting *Lujan*, 504 U.S. at 573-74.

Plaintiff’s claimed injury is abstract, and any citizen could raise it. See *McMahon v. Cruz*, 2020 WL 821024, at *3 (D.D.C. Feb. 19, 2020). He claims injury because Defendants’ actions are a threat to “all citizens whether they realize it or not,” but the Supreme Court “has held that when the asserted harm is a ‘generalized grievance’ shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction.” *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Because Plaintiff has pleaded only a generalized grievance that

APPENDIX C

Revised Complaint

Case issues: Violation of the U.S. Constitution Article II Sec 4 and Article VI para 3; I Amendment; XIV Amendment sec 1; 18 U.S.C Codes 371 923 Conspiracy to Defraud the United States; and 925 Obstructing or Impairing Legitimate Government Activity; 18 U.S.C Codes 2381 Treason, 2383 Rebellion or Insurrection, 2384 Seditious Conspiracy and 2385 Advocating the Overthrow of Government; and 5 U.S. Code 3331 Oath of Office.

Statement of Claim: Defendants in individual official agreement in their voting for and submitting of Articles of Impeachment against President Trump in 2019/2020, conducted illegitimate legislative activity, exceeding U.S. Constitutional limits on impeachment, and violated felony statutes and their oaths in the attempted overthrow of the legitimately elected government, and of defrauding plaintiff as a voter for and contributor to the Trump campaign of his political speech; which threats continue regardless of which party controls the House. Any House controlling faction can still capriciously violate plaintiffs' rights and the law in attempted unlawful removal and harassment of any sitting President.

Relief: According to U.S. Constitution Article XIV section 3, to prevent any more violations of plaintiff's rights, the law, and exceeding of Constitutional authority, Defendants should be disqualified from ever holding government office again whether retired, currently

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in office, or not. If currently in office at the time of ruling or verdict to preserve government functionality and integrity, Defendants should be allowed to complete current term and be disqualified from running for office again. And or as is appropriate to the court and according to the common law punishments included in the felonies committed by the Defendants to effect prevention of the further violation of these laws, oaths, Constitutional limits, and of course the Plaintiffs rights now and in the future.
