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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-5237 **September Term, 2022**

1:21-cv-02968-CJN

Filed On: November 29, 2022

Larry Eugene Clark,

Appellant

v.

Merrick B. Garland, et al.,

Appellees

BEFORE: Katsas and Walker, Circuit Judges, and Sentelle, Senior Circuit Judge

ORDER

The court concludes, on its own motion, that oral argument will not assist the court in this case. Accordingly, the court will dispose of the appeal without oral argument on the basis of the record and the presentation in appellant's brief. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Tatiana Magruder
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LARRY EUGENE CLARK, *Plaintiff*, v. MERRICK B. GARLAND, et al., *Defendants*.	Civil Action No. 1:21-cv-02968 (CJN)

ORDER

(Filed Sep. 1, 2022)

Larry Eugene Clark brings this pro se writ of quo warranto against a variety of federal officials. *See generally* Compl., ECF No. 1. But two other judges on this court have already dismissed near-identical cases brought by Clark's daughter for lack of standing. *See Ayers v. Wilkinson*, No. 21-cv-551 (ABJ), slip op. at 1 (D.D.C. May 10, 2021); *Ayers v. Garland*, No. 21-cv-1445 (CRC) (June 30, 2021). Because Clark, like his daughter, lacks standing to bring his claims, the Court will dismiss his action, too.

Clark seeks the immediate resignation of Merrick Garland, John Roberts, Joseph Biden, Kamala Harris, Nancy Pelosi, and Michael Pence. *See* Compl. at *1–*2. Because the Attorney General has refused to bring this writ, *see id.* at *2, Clark seeks to bring it himself. The basis of why he wishes these individuals to resign is not clear; it seems that "[t]he man in the video, called

'JohnHereToHelp,' '(JHTH), but who has since publicly identified himself as Dr. John McGreevey, gives testimony of heinous crimes and criminal actions" purportedly done by the named Defendants. *See id.* at *6. People who have committed such crimes, Clark seems to suggest, should not hold office.

"[A] court must dismiss a case *sua sponte* at any time if it concludes that it lacks jurisdiction over the case." *Allen v. Rehman*, 132 F. Supp. 2d 27, 29 (D.D.C. 2000). Standing "limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). "[T]he irreducible constitutional minimum of standing contains three elements," *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992): First, the plaintiffs must have suffered an "injury in fact"—that is, an invasion of a legally protected interest that is both concrete and particularized and actual or imminent (as opposed to conjectural or hypothetical). *Id.* Second, there must be a causal connection between the injury and the conduct complained of. *Id.* at 560–61. Finally, it must be likely, not merely speculative, that the injury will be redressed by a favorable decision of the court. *Id.* at 561. Clark fails to allege facts showing that he has suffered an injury in fact.

The Supreme Court has "consistently held that a plaintiff raising 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." *Id.* at 573–74. But Clark has failed to allege any facts showing that the conduct he complains of affects him differently than any other member of the public—a failure that both Judge Jackson and Judge Cooper noted in dismissing very similar complaints. *See Ayers*, No. 21-cv-551 (ABJ), slip op. at 5; *Ayers*, No. 21-cv-1445 (CRC), slip op. at 3. Indeed, like his daughter, Clark has "style[d] [him]self as a representative of 'We the People,' reinforcing the conclusion that [he] is pressing a generalized, as opposed to a personal, grievance." *See Ayers*, No. 21-cv-551 (ABJ), slip op. at 5; *see also* Compl. at *8.

Perhaps recognizing the shortcomings identified in previous versions of this Complaint, Clark notes that "[i]f this Court requires personal harm to establish standing, other than harm caused to every citizen by abuse of Respond[e]nt's federal position, please see Demand number 13 and footnotes." Compl. at *3. Demand 13, in turn, seeks "all expenses incurred" by Clark for

> not only expenses incurred in this Writ, but for expenses incurred with the loss of time caused by the hours of work John Roberts has caused [Clark] over the last nine years in pursuit of justice after John Roberts allowed an unjust verdict to be given to [Clark's] daughter in his Court, causing years of time and effort lost by [Clark] to repetitive legal filings performed by him on behalf of [his] daughter and years of time in id given to his daughter in her pursuit of justice after John Roberts

> allowed an unjust verdict in his daughter's case."

Id. at *32–*33 (citation omitted). He further "Demand[s]" that "this court issue forth an order for the Release of a long illegally-withheld public document[—]the audio tape of the trial of case no[.] 3: 11-cv-00434, Ayers v Sheetz in the United States District Court for the Southern District of West Virginia at Huntington, Demandant's daughter's blasting property damage trial, appeal of which came before and was denied by John Roberts and his Court." *Id.* at *33. This second demand, however, does not establish an injury that Clark has suffered, let alone a judicially cognizable one.

As to the first purported harm, an "interest in attorney's fees is, of course, insufficient to create an Article III case or controversy where none exists on the merits of the underlying claim." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 480 (1990). And that assumes that a pro se plaintiff is ever entitled to attorney fees or their equivalency—far from an obvious proposition. *See Nat'l Sec. Counselors v. CIA*, 811 F.3d 22, 28 (D.C. Cir. 2016) (collecting citations). Because Clark offers no other facts to show that he has suffered an injury in fact, the Court thus concludes that it lacks jurisdiction over this matter, and that dismissal is warranted. *See also* Mandate of United States Court of Appeals, 21-cv-1445, ECF No. 10-1, at 1 (affirming dismissal of Clark's daughter's near-identical complaint for lack of standing).

* * *

Accordingly, for the foregoing reasons, it is

ORDERED that this case is **DISMISSED**. All pending Motions are **DENIED AS MOOT**.

This is a final, appealable order. The Clerk is directed to close this case.

DATE: September 1, 2022 /s/ Carl J. Nichols
CARL J. NICHOLS
United States
District Judge

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-5237 **September Term, 2022**

1:21-cv-02968-CJN

Filed On: December 13, 2022

Larry Eugene Clark,

Appellant

v.

Merrick B. Garland, et al.,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Katsas and Walker, Circuit Judges, and Sentelle, Senior Circuit Judge

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's September 1, 2022, order be affirmed. The district court properly dismissed the case because appellant failed to establish his standing to sue. See Lujan

v. Defenders of Wildlife, 504 U.S. 555, 573-74 (1992) ("[A] plaintiff raising 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 Ill case or controversy."). Appellant's allegations about manipulated votes do not constitute a particularized injury. See Lance v. Coffman, 549 U.S. 437, 442 (2007) (per curiam).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

Constitutional Provisions, Statutory Provisions, and Case Law Involved

18 U.S. Code § 2381 *"Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than $10, 000; and shall be incapable of holding any office under the United States." (June 25, 1948, ch. 645, 62 Stat. 807; Pub. L. 103–322, title XXXIII, § 330016(2)(J), Sept. 13, 1994, 108 Stat. 2148.)*

18 U.S. Code §2382. Misprision of treason: *"Whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason and shall be fined under this title or imprisoned not more than seven years, or both."*

18 U.S. Code § 2383 – Rebellion or insurrection *"Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined under this title or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States".*

18 U.S. Code § 2384 – Seditious conspiracy *"If two or more persons in any State or Territory, or in any*

place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both."

United States Constitution Preamble; *"We the People of the United States . . . establish Justice . . . to ourselves and our Posterity"*

United States Constitution Article III, Section 3, Clause 1: *Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.*

United States Constitution, Article IV, Section 1. *"Full faith and credit shall be given in each state to the . . . judicial proceedings of every other state."*

United States Constitution, Article VI "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. The Senators and Representatives before mentioned, and the Members of the several State

Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution;"

U.S. Constitution, Amendment I: "Congress shall make no law . . . prohibiting . . . the right of the people . . . to petition the Government for a redress of grievances.

U.S. Constitution, Amendment V: "No person shall . . . be deprived of life, liberty, or property, without due process of law"

U.S. Constitution, Amendment IX: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

U.S. Constitution, Amendment XII: *"The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; – The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; – the*

person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States."

U.S. Constitution, Amendment XIV: *"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor*

shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." . . . "No 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. But Congress may by a vote of two-thirds of each House, remove such disability."

Help America Vote Act of 2002, (HAVA), Pub. L. No. 107-252, 116 Stat. 1666 (2002) codified at 52 U.S.C. 20901 to 21145

Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) *"when a state officer acts under a state law in a manner violative of the Federal Constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." [Emphasis supplied in original]. By law, a judge is a state officer.*

Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958) *"No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it."*

PIERSON v. RAY, et al, 386 U.S. 547 (1967) *"When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudices. [386 U.S. 547, 568]; A judge is liable for injury caused by a ministerial act; to have immunity the judge must be performing a judicial function. See, e. g., Ex parte Virginia, 100 U.S. 339; 2 Harper & James, The Law of Torts 1642-1643 (1956). The presence of malice and the intention to deprive a person of his civil rights is wholly incompatible with the judicial function."*

Code of the District of Columbia Chapter 35. Quo Warranto, Subchapter I. Actions Against Officers of the United States. § 16–3502. Parties who may institute; ex rel. proceedings. *"The Attorney General of the United States or the United States attorney may institute a proceeding pursuant to this subchapter on his own motion or on the relation of a third person. The writ may not be issued on the relation of a third person except by leave of the court, to be applied for by the relator, by a petition duly verified setting forth the grounds of the application, or until the relator files a bond with sufficient surety, to be approved by the clerk of the court, in such penalty as the court prescribes, conditioned on the payment by him of all costs incurred in the prosecution of the writ if costs are not recovered*

from and paid by the defendant." **Subchapter III. Procedures and Judgments § 16–3542. Notice to defendant**. *"On the issuing of a writ of quo warranto the court may fix a time within which the defendant may appear and answer the writ. When the defendant cannot be found in the District of Columbia, the court may direct notice to be given to him by publication as in other cases of proceedings against nonresident defendants, and upon proof of publication, if the defendant does not appear, judgment may be rendered as if he had been personally served"* § **16–3543. Proceedings on default**. *"If the defendant does not appear as required by a writ of quo warranto, after being served, the court may proceed to hear proof in support of the writ and render judgment accordingly"* § **16–3544. Pleading; jury trial.** *"In a quo warranto proceeding, the defendant may demur, plead specially, or plead "not guilty" as the general issue, and the United States or the District of Columbia, as the case may be, may reply as in other actions of a civil character. Issues of fact shall be tried by a jury if either party requests it. Otherwise they shall be determined by the court."* § **16–3545. Verdict and judgment.** *"Where a defendant in a quo warranto proceeding is found by the jury to have usurped, intruded into, or unlawfully held or exercised an office or franchise, the verdict shall be that he is guilty of the act or acts in question, and judgment shall be rendered that he be ousted and excluded therefrom and that the relator recover his costs."*

Ex parte Young, 209 U.S. 123 (1908) *If government officials attempt to enforce an unconstitutional law,*

sovereign immunity does not prevent people whom the law harms from suing those officials in their individual capacity for injunctive relief. This is because they are not acting on behalf of the state in this situation. "The attempt of a State officer to enforce an unconstitutional statute is a proceeding without authority of, and does not affect, the State in its sovereign or governmental capacity, and is an illegal act, and the officer is stripped of his official character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to its officer immunity from responsibility to the supreme authority of the United States."

Two recent State Supreme Court Decisions affirming injured voters have standing:

1) ***S22g0039. Sons Of Confederate Veterans Et Al. V. Henry County Board Of Commissioners. S22g0045. Sons Of Confederate Veterans Et Al. V. Newton County Board Of Commissioners:*** Decided October 25, 2022, in the Supreme Court of Georgia:

   "For the lesser requirement—that the plaintiff has suffered some kind of injury, albeit one that may be shared by all other members of the community—Georgia has long recognized that members of a community, whether as citizens, residents, taxpayers, or voters, may be injured when their local government fails to follow the law. Government at all levels has a legal duty to follow the law; a local government owes that legal duty to its citizens, residents, taxpayers, or voters (i.e., community stakeholders), and the violation of that legal duty

constitutes an injury that our case law has recognized as conferring standing to those community stakeholders, even if the plaintiff suffered no individualized injury." And it is unsurprising that we have extended this logic to "voters," because they, like citizens and taxpayers, are community stakeholders. Voters may be injured when elections are not administered according to the law or when elected officials fail to follow the voters' referendum for increased taxes to fund a particular project, so voters may have standing to vindicate public rights. See, e.g., Barrow v. Raffensperger, 308 Ga. 660, 667(2)(b) (842 SE2d 884)

2) **Albence v Higgins Case No. 342, 2022,** Decided in the Supreme Court of the State of Delaware, October 7, 2022. As of yet, only the abbreviated Per Curiam Order of this ruling has been published for this case which also affirmed injured voters have standing, formal opinion not yet issued. Quote from a judge at the en banc panel as related by winning attorney Julianne Murray, *"the Court cannot accept that a Citizen does not have a remedy in a voting act."*[1]

United States v. Throckmorton, 98 U.S. 61 (1878)
"There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments."

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[1] Statement from attorney Julianne Murray heard starting at the 4:25 mark in this interview hyperlink: Julianne Murray: Delaware's No-Excuse Vote By Mail Has Been Eliminated In Time For The 2022 Midterms (rumble.com) weblink: https://rumble.com/v1nnmtg-julianne-murray-delawaresno-excuse-vote-by-mail-has-been-eliminated-in-tim.html

Cramer v. United States, 325 US 1 – Supreme Court 1945 *"We believe in short that no more need be laid for an overt act of treason than for an overt act of conspiracy . . . Hence we hold the overt acts relied on were sufficient to be submitted to the jury, even though they perhaps may have appeared as innocent on their face." A similar conclusion was reached in United States v. Fricke,*[6] *it is: "An overt act in itself may be a perfectly innocent act standing by itself; it must be in some manner in furtherance of the crime."*

Ex parte Bollman, 8 U.S. (4 Cranch) 75 (1807) *"Chief Justice Marshall was careful, however, to state that the Court did not mean that no person could be guilty of this crime who had not appeared in arms against the country. On the contrary, if war be actually levied, that is, if a body of men be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors. But there must be an actual assembling of men, for the treasonable purpose, to constitute a levying of war."*

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803) "A Law repugnant to the Constitution is void."

Boag v. MacDougall, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982); Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)); Haines v. Kerner, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); McDowell v. Delaware State Police, 88

F.3d 188, 189 (3rd Cir. 1996); United States v. Day, 969 F.2d 39, 42 (3rd Cir. 1992) "Pro se litigants' court submissions are to be construed liberally and held to less stringent standards than submissions of lawyers. If the court can reasonably read the submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements."

S.E.C. v. Elliott, 953 F.2d 1560, 1582 (11th Cir. 1992). See also, United States v. Miller, 197 F.3d 644, 648 (3rd Cir. 1999) (*Court has special obligation to construe pro se litigants' pleadings liberally*)

Poling v. K.Hovnanian Enterprises, 99 F.Supp.2d 502, 506-07 (D.N.J. 2000). *"The courts provide pro se parties wide latitude when construing their pleadings and papers. When interpreting pro se papers, the Court should use common sense to determine what relief the party desires."*

Bonner v. Circuit Court of St. Louis, 526 F.2d 1331, 1334 (8th Cir. 1975) (quoting Bramlet v. Wilson, 495 F.2d 714, 716 (8th Cir. 1974) *"the court is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory."*

Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971) *"Brennan found that the absence of any federal remedy for the violation of a constitutional right could not be contemplated because every wrong must have a remedy. Therefore, he found it possible to infer a private right of action for damages even*

when it was not expressly provided. Brennan did leave open an exception when Congress has specifically provided that there may be no such cause of action, or when there are certain circumstances that would make a court reluctant to infer it, although he did not define what those circumstances might be. Broadly speaking, however, the majority opinion issued a clear rule that federal courts may award damages for any violations of constitutionally protected interests by using traditional remedies such as money damages." and "In furtherance of the majority's conclusions, Harlan pointed out that federal courts could issue injunctions for violations of constitutional rights. Money damages typically have been considered a less drastic remedy than injunctions, so it was logical to think that the courts could award them if they could award a more significant remedy. This concurrence also stated that constitutional rights are some of the most important that an individual can have, so it is particularly critical to give citizens the power to enforce them."

Butz V. Economou 438 U.S. 478 (1978) "2. Without congressional directions to the contrary, it would be untenable to draw a distinction for purposes of immunity law between suits brought against state officials under 42 U.S.C. § 1983, *Scheuer v. Rhodes*, 416 U. S. 232, and suits brought directly under the Constitution against federal officials, *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388. Federal officials should enjoy no greater zone of protection when they violate federal constitutional rules than do state officers. Pp. 438 U. S. 496-504 . . . " "While federal officials will not

be liable for mere mistakes in judgment, whether the mistake is one of fact or one of law, there is no substantial basis for holding that executive officers generally may with impunity discharge their duties in a way that is known to them to violate the Constitution, or in a manner that they should know transgresses a clearly established constitutional rule. Pp. 438 U. S. 504-508."

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BETTY JANE AYERS, Plaintiff, v. ROBERT M. WILKINSON, *et al.*, Defendants.	Civil Action No. 21-0551 (ABJ)

ORDER

(Filed May 10, 2021)

On March 1, 2021, plaintiff filed a complaint against a number of government officials, including the then-Acting Attorney General of the United States, Robert M. Wilkinson; the Chief Justice of the United States Supreme Court, John G. Roberts Jr; the Speaker of the United States House of Representatives, Nancy Pelosi; the President of the United States, Joseph R. Biden, Jr; the Vice President of the United States, Kamala Harris; and every Member of the United States Congress. Compl. [Dkt. # 1].

The complaint alleges that certain government officials have either participated in, or are aware of other officials' participation in, the "repeated rape of [] innocent, defenseless babies." Compl. at 6. The complaint adds that videos of these actions were made "for purposes of blackmail," and that Chief Justice Roberts has been recorded plotting the murder of other justices of

the Supreme Court. Compl. at 6–7. In support of these allegations, plaintiff submitted a link to a video from a man whose online persona is "JohnHereToHelp," which allegedly reveals that these "heinous crimes" have been documented "on video and in audio tapes," but have been laying dormant with various government agencies for years. Compl. at 6. She adds that "Chief Justice Roberts is wrongfully exercising his power in being a judge, and all others appearing in these tapes, involved in the making of and subsequent hiding of these tapes have wrongfully exercised their powers." Compl. at 7.

In order to remedy this, the complaint requests, among other things, that the Court order: (1) public officials to resign; (2) the military to arrest and prosecute defendants for treason; (3) the military "to look through the entirety of *all* government resources, records, division, and agencies for ALL blackmail tapes of anyone in any government position past or present"; (4) the military or other government officials to confer with private citizens in order to obtain evidence; and (5) the military to oversee replacement elections. Compl. at 15–26 (emphasis in original).

On April 7, 2021, the Court issued an order [Dkt. # 2] ("Order") detailing the requirements set forth in *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992) and directing plaintiff to show cause by April 28, 2021 why it had subject matter jurisdiction to hear the case. Specifically, plaintiff was ordered to explain: (1) "why she has alleged sufficient facts to establish that she has suffered the injury-in-fact that is necessary to confer

standing to pursue this action"; and (2) why her claims are redressable under D.C. Code §§ 16-3501–03, that is, "why the Court would be capable of ordering any of the things she requests." Order at 3.

As of the date of this order, plaintiff has not responded directly to the order to show cause. However, on May 5, 2021, she filed a motion to "dismiss" the Order "as unconstitutional," arguing that she is "a demandant" as opposed to a plaintiff, that the burden of proof should be on the respondents, and that it violates the First Amendment of the Constitution[1] to order her "to show cause under any other law than the Constitution." Mot. to Dismiss as Unconstitutional [Dkt. # 3] ("Mot.") at 1. This filing makes it clear for the record that she received the order and has had time to compose and docket a response.

As plaintiff notes, she is pro se and is not an attorney. Compl. at 12. *Pro se* pleadings are "to be liberally construed," *Estelle v. Gamble*, 429 U.S. 97, 106 (1995), and "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Id.* (internal quotation marks omitted). That being said, plaintiff cannot simply assert that her "writ shall not be set aside for mistake in form, citation of law, or submission, or for any other reason." Compl. at 12. Indeed, the order to

[1] The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

show case is specifically based on the Constitution—as plaintiff maintains it should be. It is because the Court's authority is limited by Article III of the Constitution that the Court cannot accede to plaintiff's demand to be treated differently from other would-be claimants; a federal court is "forbidden . . . from acting beyond [its] authority, and 'no action of the parties can confer subject-matter jurisdiction upon a federal court.'" *NetworkIP, LLC v. FCC*, 548 F.3d 116, 120 (D.C. Cir. 2008), quoting *Akinseye v. Dist. of Columbia*, 339 F.3d 970, 971 (D.C. Cir. 2003).

Federal courts are courts of limited jurisdiction and the law presumes that "a cause lies outside this limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *see also Gen. Motors Corp. v. EPA*, 363 F.3d 442, 448 (D.C. Cir. 2004) ("As a court of limited jurisdiction, we begin, and end, with an examination of our jurisdiction."). Subject matter jurisdiction may not be waived, and "courts may raise the issue *sua sponte*." *NetworkIP*, 548 F.3d at 120, quoting *Athens Cmty. Hosp., Inc. v. Schweiker*, 686 F.2d 989, 992 (D.C. Cir. 1982).

"To state a case or controversy under Article III, a plaintiff must establish standing." *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 133 (2011), citing *Allen v. Wright*, 468 U.S. 737, 751 (1984); *see also Lujan*, 504 U.S. at 560. Standing is a necessary predicate to any exercise of federal jurisdiction, and if it is lacking, then the dispute is not a proper case or controversy under Article III, and federal courts have no

subject-matter jurisdiction to decide the case. *Dominguez v. UAL Corp.*, 666 F.3d 1359, 1361 (D. C. Cir. 2012).

To establish constitutional standing, a plaintiff must demonstrate that (1) she has suffered an injury-in-fact; (2) the injury is "fairly traceable to the challenged action of the defendant"; and (3) it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 560–61, quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41–43 (1976) (internal quotation marks and edits omitted); *see also Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. Inc.*, 528 U.S. 167, 180–81 (2000). The party invoking federal jurisdiction bears the burden of establishing standing. *Lujan*, 504 U.S. at 561.

The first problem with plaintiff's complaint is that she has not pled facts sufficient to establish the first element of standing, injury-in-fact. To show injury-in-fact, a plaintiff must demonstrate that she has "suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016), quoting *Lujan*, 504 U.S. at 560. To be "concrete," the injury "must actually exist," meaning that it is real, and not abstract, although concreteness is "not . . . necessarily synonymous with 'tangible.'" *Id.* at 1548–49. And to be "particularized," the injury must affect a plaintiff "in a personal and individual way." *Id.* at 1548, quoting *Lujan*, 504 U.S. at 560 n.1. Significantly for this case, a "plaintiff raising only a generally available grievance about government—claiming only harm to [her] and

every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits [her] than it does the public at large—does not state an Article III case or controversy." *Lujan*, 504 U.S. at 573–74; *see also Am. Legal Found. v. FCC*, 808 F.2d 84, 92 (D.C. Cir. 1987) (observing that such a showing requires "more than allegations of damage to an interest in 'seeing' the law obeyed or a social goal furthered").

Here plaintiff has not alleged any facts to show that the complained of circumstances or the relief she seeks would affect her differently than the public at large. In fact, throughout the complaint plaintiff styles herself as a representative of "We the People," reinforcing the conclusion that she is pressing a generalized, as opposed to a personal, grievance.

The second problem with the complaint is that plaintiff has not shown that her injury would be redressed by a favorable decision. "To satisfy this element, a plaintiff must show in the first instance that the court is capable of granting the relief sought." *Love v. Vilsack*, 908 F. Supp. 2d 139, 144–45 (D.D.C. 2012); *Swan v. Clinton*, 100 F.3d 973, 976 (D.C. Cir. 1996) (indicating that the "redressability" element of standing entails the question of "whether a federal court has the power to grant [the plaintiff's requested] relief").

Here, plaintiff seeks a writ of quo warranto under D.C. Code §§ 16-3501–03. That provision states:

> A quo warranto may be issued from the United States District Court for the District

> of Columbia in the name of the United States against a person who within the District of Columbia usurps, intrudes into, or unlawfully holds or exercises, a franchise conferred by the United States or a public office of the United States, civil or military. The proceedings shall be deemed a civil action.

D.C. Code § 16-3501.

Notwithstanding that provision, the Court lacks the authority to compel the executive branch to initiate a prosecution. *See generally Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."). Also, plaintiff has not provided any support for her suggestion that this Court—or any court—can compel the military to undertake an investigation, oversee an election, or unseat duly elected or appointed federal officials. In sum, the remedies plaintiff seeks are not supplied by the statute on which she predicates her case, and such wide-ranging relief is simply beyond the power of a federal court.

Because plaintiff does not have standing under Article III of the Constitution to pursue her claims, the complaint is **DISMISSED** for lack of subject matter jurisdiction.

This is a final, appealable order.

/s/ Amy B. Jackson
AMY BERMAN JACKSON
United States District Judge

DATE: May 10, 2021

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BETTY JANE AYERS, Plaintiff, v. MERRICK GARLAND, *et al.*, Defendants.	Case No. 21-cv-1445 (CRC)

ORDER

(Filed Jun. 30, 2021)

For the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that this case is DISMISSED.

This is a final, appealable order.

[SEAL]

/s/ Christopher R. Cooper
CHRISTOPHER R. COOPER
United States District Judge

Date: June 30, 2021

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BETTY JANE AYERS, Plaintiff, v. MERRICK GARLAND, *et al.*, Defendants.	Case No. 21-cv-1445 (CRC)

MEMORANDUM OPINION

(Filed Jun. 30, 2021)

Plaintiff Betty Jane Ayers filed this *pro se* action after a fellow judge of this court dismissed a virtually identical case for lack of standing. Because the prior ruling correctly determined that Ayers does not have standing to bring her claims, the Court will dismiss this case.

I. Background

In March 2021, Ms. Ayers filed a complaint against numerous government officials including then-acting Attorney General Robert M. Wilkinson, Chief Justice of the United States John G. Roberts Jr., President Joseph R. Biden Jr., Vice President Kamala Harris, Speaker of the House Nancy Pelosi, and many other members of Congress. Ayers v. Wilkinson, No. 21-cv-551 (ABJ), slip op. at 1 (D.D.C. May 10, 2021). In that

complaint, Ayers alleged that certain defendants participated in, or knew about and failed to report, the "repeated rape" of "innocent, defenseless babies." Id. She further alleged that these crimes were captured on audio and video tapes. Id. Ayers requested, among other relief, an order requiring certain officials to resign, directing the military to prosecute defendants (including every member of Congress who voted to certify the election of President Biden and Vice President Harris) for treason, and setting new elections to be conducted under military supervision. Id. at 2; see also Compl. at 15-26, Ayers v. Wilkinson, No. 21-cv-551 (ABJ).

Judge Amy Berman Jackson issued an order to show cause why the case should not be dismissed for lack of standing. Ayers responded with a filing styled as a motion to "dismiss" the order to show cause as "unconstitutional." Ayers, No. 21-cv-551 (ABJ), slip op. at 2-3. Judge Jackson then dismissed Ayers's complaint on May 10, 2021, concluding that Ayers lacked standing to bring her claims. Judge Jackson found that Ayers failed to allege "any facts to show that the complained of circumstances or the relief she seeks would affect her differently than the public at large." Id. at 5. Indeed, Judge Jackson noted that "throughout the complaint plaintiff styles herself as a representative of 'We the People,' reinforcing the conclusion that she is pressing a generalized, as opposed to a personal, grievance." Id. Ayers also failed to "show[] that her injury would be redressed by a favorable decision," because the Court lacked power to "compel the executive branch to initiate a prosecution" or "compel the military to

undertake an investigation, oversee an election, or unseat duly elected or appointed federal officials." Id. at 5-6.

Undeterred, Ayers responded by filing the present lawsuit, which raises claims materially identical to the ones Judge Jackson dismissed. See generally Am. Compl. It appears from the docket that the Amended Complaint has not yet been served on the defendants.

II. Legal Standard

"[A] court must dismiss a case sua sponte at any time if it concludes that it lacks jurisdiction over the case." Allen v. Rehman, 132 F. Supp. 2d 27, 29 (D.D.C. 2000). For the Court to have jurisdiction over an action, the plaintiff must have standing under Article III of the Constitution. Grocery Mfrs. Ass'n v. EPA, 693 F.3d 169, 174 (D.C. Cir. 2012). "To establish Article III standing, a party must establish three constitutional minima: (1) that the party has suffered an injury in fact, (2) that the injury is fairly traceable to the challenged action of the defendant, and (3) that it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." Id. (internal quotation marks omitted).

III. Analysis

For the same reasons previously explained by Judge Jackson, this Court concludes that Ayers lacks standing to bring her claims. While there are small

differences between the Amended Complaint in this case and the complaint that Judge Jackson dismissed, Ayers still "has not alleged any facts to show that the complained of circumstances or the relief she seeks would affect her differently than the public at large." Ayers, No. 21-cv-551 (ABJ), slip op. at 5. Ayers continues to "style[] herself as a representative of 'We the People,' reinforcing the conclusion that she is pressing a generalized, as opposed to a personal, grievance." Id.; see also Am. Compl. Moreover, the Court agrees with Judge Jackson that any injuries Ayers has suffered are not redressable, as the Court lacks the authority to grant the types of relief she seeks. See Ayers, No. 21-cv-551 (ABJ), slip op. at 5 (citing Heckler v. Chaney, 470 U.S. 821, 831 (1985)).

In any event, the present action is also doomed by collateral estoppel. The doctrine of collateral estoppel, also known as issue preclusion, bars a party from engaging in "successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment." Taylor v. Sturgell, 553 U.S. 880, 892 (2008). This doctrine "applies to jurisdictional issues such as Article III standing." Swanson Group Mfg. LLC v. Jewell, 195 F. Supp. 3d 66, 72 (D.D.C. 2016). The issue of whether Ayers has standing to bring the claims at issue here was previously litigated before Judge Jackson, although Ayers chose to litigate the issue by filing a meritless "motion" that did not directly address the elements of standing. See Ayers, No. 21-cv-551 (ABJ), slip op. at 2-3. Judge

Jackson validly ruled on that issue, which was essential to her judgment.

Accordingly, *sua sponte* dismissal of the instant case is warranted. The Court admonishes Ayers that refiling a complaint that has already been dismissed is not a proper litigation tactic and could subject her to the imposition of sanctions.

IV. Conclusion

For the foregoing reasons, the Court will dismiss the [2] Amended Complaint. A separate Order shall accompany this Memorandum Opinion.

[SEAL]

/s/ Christopher R. Cooper
CHRISTOPHER R. COOPER
United States District Judge

Date: June 30, 2021

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5188 **September Term, 2021**

1:21-cv-01445-CRC

Filed On: November 1, 2021

Betty Jane Ayers,

Appellant

v.

Merrick B. Garland, et al.,

Appellees

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BEFORE: Millett and Katsas, Circuit Judges, and Sentelle, Senior Circuit Judge

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's June 30, 2021 order be affirmed. The district court correctly determined that appellant lacked standing to pursue the relief sought. See Lujan v. Defs. of

Wildlife, 504 U.S. 555, 560–61, 573–74 (1992) ("[A] plaintiff raising 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.").

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk