Appendix A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1538

REVEREND DR. SAMUEL T. WHATLEY; SAMUEL T. WHATLEY, II,

Plaintiffs - Appellants,

v.

CITY OF NORTH CHARLESTON; NORTH CHARLESTON POLICE DEPARTMENT; NORTH CHARLESTON CODE ENFORCEMENT; CITY OF NORTH CHARLESTON MUNICIPAL COURT,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Sherri A. Lydon, District Judge. (2:23-cv-00516-SAL)

Submitted: October 19, 2023 Decided: October 23, 2023

Before KING and WYNN, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Samuel T. Whatley, Samuel T. Whatley, II, Appellants Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Reverend Dr. Samuel T. Whatley and Samuel T. Whatley, II, appeal the district court's order accepting the recommendation of the magistrate judge and dismissing without prejudice their action brought pursuant to the Freedom of Information Act for lack of subject matter jurisdiction. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *Whatley v. City of N. Charleston*, No. 2:23-cv-00516-SAL (D.S.C. May 12, 2023). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

Appendix B

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Honorable Sherri A Lydon (dena_strickland@scd.uscourts.gov, lydon_ecf@scd.uscourts.gov)
--Non Case Participants: Magistrate Judge Gossett (gossett_ecf@scd.uscourts.gov)
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U.S. District Court

District of South Carolina

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Case Name: Whatley et al v. North Charleston, City of et al
Case Number: 2:23-cv-00516-SAL
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Docket Text:
ORDER RULING ON REPORT AND RECOMMENDATION for [16] Report and Recommendation. The court adopts the Report, ECF No. [16], in its entirety. Plaintiffs have failed to establish FOIA, 5 U.S.C. ◆ 552, extends to requests for information made to states and their municipalities. This matter is DISMISSED without prejudice and without issuance and service of process for lack of subject matter jurisdiction. Signed by the Honorable Sherri A. Lydon on May 12, 2023. (ahil)

2:23-cv-00516-SAL Notice has been electronically mailed to:

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Samuel T Whatley, II
579 Folly Road Unit 14254
Charleston, SC 29422

Samuel T. Whatley
579 Folly Road Unit 14254
Charleston, SC 29422

Appendix C

FILED: November 28, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-1538
(2:23-cv-00516-SAL)

REVEREND DR. SAMUEL T. WHATLEY; SAMUEL T. WHATLEY, II

Plaintiffs - Appellants

v.

CITY OF NORTH CHARLESTON; NORTH CHARLESTON POLICE DEPARTMENT; NORTH CHARLESTON CODE ENFORCEMENT; CITY OF NORTH CHARLESTON MUNICIPAL COURT

Defendants - Appellees

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge King, Judge Wynn, and Senior Judge Traxler.

For the Court

/s/ Nwamaka Anowi, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Reverend Dr. Samuel T. Whatley; Samuel T. Whatley, II, Plaintiffs, v. City of North Charleston; North Charleston Police Department; North Charleston Code Enforcement; City of North Charleston Municipal Court, Defendants.	C/A No. 2:23-516-SAL-PJG **ORDER AND REPORT AND RECOMMENDATION**

Plaintiffs Reverend Dr. Samuel T. Whatley and Samuel T. Whatley, II, proceeding *pro se*, bring this civil action. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for initial review pursuant to 28 U.S.C. § 1915.[1] Having reviewed the Complaint in accordance with applicable law, the court concludes this case should be summarily dismissed without prejudice and without issuance and service of process.

I. Factual and Procedural Background

Plaintiffs purport to bring this action pursuant to the Federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, against the City of North Charleston, South Carolina, and departments and offices within the city. Plaintiffs allege they sent several FOIA requests to the named defendants in the summer of 2022, but the defendants were either unresponsive or claimed not to have any records with which to respond. The requests dealt with the training and certification of municipal judges, grant money information, and body camera footage and police incident reports.

[1] Reverend Dr. Samuel T. Whatley's motion for leave to proceed *in forma pauperis* is granted. (ECF No. 12.)

In this case, Plaintiffs seek the release of the requested information, which relates to another federal lawsuit—C/A No. 2:22-4419-DCN-MHC.

II. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* Complaint. The Complaint has been filed pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. This statute allows a district court to dismiss the case upon a finding that the action "is frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

This court is required to liberally construe *pro se* complaints, which are held to a less stringent standard than those drafted by attorneys. Erickson v. Pardus, 551 U.S. 89, 94 (2007); King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016). Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep't of Soc. Servs., 901 F.2d 387 (4th Cir. 1990); see also Ashcroft v. Iqbal, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for "all civil actions").

B. Analysis

The instant case is subject to summary dismissal because Plaintiffs fail to demonstrate federal jurisdiction over this case. Federal courts are courts of limited jurisdiction, "constrained to exercise only the authority conferred by Article III of the Constitution and affirmatively granted by federal statute." In re Bulldog Trucking, Inc., 147 F.3d 347, 352 (4th Cir. 1998). Accordingly,

a federal court is required, *sua sponte*, to determine if a valid basis for its jurisdiction exists, "and to dismiss the action if no such ground appears." Id. at 352; see also Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Although the absence of subject matter jurisdiction may be raised at any time during the case, determining jurisdiction at the outset of the litigation is the most efficient procedure. Lovern v. Edwards, 190 F.3d 648, 654 (4th Cir. 1999).

There is no presumption that a federal court has jurisdiction over a case, Pinkley, Inc. v. City of Frederick, 191 F.3d 394, 399 (4th Cir. 1999), and plaintiffs must allege facts essential to show jurisdiction in their pleadings. McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189 (1936); see also Dracos v. Hellenic Lines, Ltd., 762 F.2d 348, 350 (4th Cir. 1985) ("[P]laintiffs must affirmatively plead the jurisdiction of the federal court."). To this end, Federal Rule of Civil Procedure 8(a)(1) requires that the complaint provide "a short and plain statement of the grounds for the court's jurisdiction[.]"

The two most commonly recognized and utilized bases for federal court jurisdiction are (1) "federal question" under 28 U.S.C. § 1331 , and (2) "diversity of citizenship" pursuant to 28 U.S.C. § 1332. The allegations contained in Plaintiffs' Complaint do not fall within the scope of either of these forms of this court's limited jurisdiction.

First, federal question jurisdiction requires plaintiffs to show that the case is one "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Plaintiffs indicate that they bring this case pursuant to the Federal Freedom of Information Act, but that statute plainly applies only to federal agencies, not municipalities incorporated under state law. See 5 U.S.C. § 551(1) (defining "agency"). Plaintiffs cannot manufacture federal question jurisdiction merely by citing to a federal law that plainly does not apply. See Burgess v. Charlottesville Sav. & Loan

Ass'n, 477 F.2d 40, 43-44 (4th Cir. 1973) ("[T]he mere assertion in a pleading that the case is one involving the construction or application of the federal laws does not authorize the District Court to entertain the suit[,] nor does federal jurisdiction attach on the bare assertion that a federal right or law has been infringed or violated or that the suit takes its origin in the laws of the United States.") (internal citations and quotation marks omitted); see also Holloway v. Pagan River Dockside Seafood, Inc., 669 F.3d 448, 452-53 (4th Cir. 2012) (finding that where the alleged federal claim is "so insubstantial, implausible, foreclosed by prior decisions of [the United States Supreme Court], or otherwise completely devoid of merit as not to involve a federal controversy," subject matter jurisdiction does not exist over that claim) (citing Steel Company v. Citizens for a Better Environment, 523 U.S. 83, 89 (1998)). Plaintiffs' remedy, if any, would be to file suit pursuant to the South Carolina Freedom of Information Act. Therefore, federal question jurisdiction does not exist in this case.

Second, the diversity statute, 28 U.S.C. § 1332(a), requires complete diversity of parties and an amount in controversy in excess of $75,000. Complete diversity of parties in a case means that no party on one side may be a citizen of the same state as any party on the other side. See Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 372-74 nn. 13-16 (1978). In absence of diversity of citizenship, the amount in controversy is irrelevant. Here, all of the parties are citizens of South Carolina. Therefore, the court lacks diversity jurisdiction in this case.

III. Conclusion

There being no apparent basis of federal jurisdiction over this matter, the court recommends that this case be summarily dismissed without prejudice and without issuance and service of process for lack of subject matter jurisdiction.

Paige J. Gossett

March 8, 2023
Columbia, South Carolina

Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

Plaintiff's attention is directed to the important notice on the next page.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Reverend Doctor Samuel T. Whatley; Samuel T. Whatley, II, Plaintiffs, v. City of North Charleston; North Charleston Police Department; North Charleston Code Enforcement; City of North Charleston Municipal Court, Defendants.	)	**Order Adopting Report And Recommendation**

This matter is before the court for review of the Report and Recommendation (Report) of Magistrate Judge Paige J. Gossett, made pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.) for initial review pursuant to 28 U.S.C. § 1915. [ECF No. 16.] For the reasons below, the court adopts the Report.

BACKGROUND AND PROCEDURAL HISTORY

The Reverend Dr. Samuel T. Whatley and Samuel T. Whatley, II (Plaintiffs), proceeding pro se and in forma pauperis, filed their Complaint against the City of North Charleston (city) and various city offices February 6, 2023, pursuant to the Federal Freedom of Information Act (FOIA), 5 U.S.C. §552. [ECF No. 1.] Plaintiffs seek the release of information related to another federal lawsuit, Civil Action No. 2:22-4419-DCN-MHC. *Id.*

In accordance with 28 U.S.C. § 1915, the magistrate judge reviewed Plaintiffs' Complaint to determine whether it set forth a cognizable claim. Because 28 U.S.C. § 1915 allows an indigent litigant to commence an action without prepaying the administrative costs of filing a lawsuit, it is a privilege that can be subject to abuse. To prevent against those abuses, the statute allows a district

court to dismiss a case upon finding that the action fails to state a claim or that it is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(i), (ii). A claim based on a meritless legal theory may be dismissed sua sponte. *See Neitzke v. Williams*, 490 U.S. 319, 321, (1989). The magistrate judge assumed all of Plaintiff's allegations were true, applied the above standard, and concluded that this case should be summarily dismissed because Plaintiffs have not established this court has subject matter jurisdiction over their claim. [ECF No. 16 at 2.]

The magistrate judge issued her Report on March 9, 2023. [ECF No. 16.] Attached to the Report was a Notice of Right to File Objections, which advised the parties they may file "specific written objections to this Report" within fourteen days of the date of service. *Id.* at 6. Plaintiffs timely filed an objection. [ECF No. 20.] The matter is now ripe for ruling.

REVIEW OF A MAGISTRATE JUDGE'S REPORT

The magistrate judge makes only a recommendation. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). In response to a recommendation, any party may serve and file written objections. *Elijah v. Dunbar*, -- F.4th --, 2023 WL 3028346, at * 3 (4th Cir. 2023) (citing 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(3)). The district court then makes a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. *Id.* To trigger de novo review, an objecting party must object with sufficient specificity to reasonably alert the district court of the true ground for the objection. *Id.* (quoting *United States v. Midgette*, 478 F.3d 616, 622 (4th Cir. 2007)). If a litigant objects only generally, the court need not explain adopting the Report and must "only satisfy itself that there is no clear error on the face of the record in order to accept the

recommendation." *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (citing Fed. R. Civ. P. 72 advisory committee's note).

An objection is specific so long as it alerts the district court that the litigant believes the magistrate judge erred in recommending dismissal of that claim. *Elijah*, 2023 WL 3028346, at *3 (4th Cir. 2023). Objections need not be novel to be sufficiently specific. *Id.* Thus, "[i]n the absence of *specific* objections ... this court is not required to give any explanation for adopting the recommendation." *Field v. McMaster*, 663 F. Supp. 2d 449, 451–52 (4th Cir. 2009).

DISCUSSION

The court must liberally construe pro se pleadings, holding them to a less stringent standard than those drafted by attorneys. *Erickson v. Pardus*, 551 U.S. 89 (2007); *Estelle v. Gamble*, 429 U.S. 97 (1976). This does not mean, however, that the court can ignore a pro se party's failure to allege or prove facts that establish a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Services*, 901 F.2d 387, 390-91 (4th Cir. 1990). Federal courts are courts of limited jurisdiction, constrained to exercise only the authority conferred by Article III of the Constitution and affirmatively granted by federal statute. *In re Bulldog Trucking*, 147 F.3d 347, 352 (4th Cir. 1998). Courts must inquire, sua sponte, whether a valid basis for jurisdiction exists and dismiss an action if no such ground appears. *Id.*; *see also* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that is lacks subject matter jurisdiction, the court must dismiss the action.").

In her Report, the magistrate judge reviewed the Complaint for the two most common bases for federal jurisdiction: (1) federal question under 28 U.S.C. § 1331, and (2) diversity of citizenship pursuant to 28 U.S.C. § 1332. [ECF No. 16 at 3.] The magistrate judge found federal question jurisdiction does not apply because FOIA does not apply to municipalities incorporated under state law. *Id.* She also found diversity jurisdiction does not exist because all parties are citizens of South

Carolina. *Id.* at 4. Because Plaintiffs' Complaint falls outside these forms of jurisdiction, the magistrate judge recommended dismissing the case. *Id.* at 5.

Plaintiffs object to the magistrate judge's finding that this court lacks jurisdiction on two grounds. First, Plaintiffs argue FOIA "includes no immunities according to *Chisolm v. Georgia*," 2 U.S. 419 (1793), and the claim that FOIA only applies to federal agencies and not other governmental bodies is "inherently false." [ECF No. 20 at 1.] Additionally, Plaintiffs argue FOIA should apply here because "the request itself was requesting information relating to *federal grant monies*...." *Id.* (emphasis in original). In support of this, Plaintiffs submit screenshots from the city's website showing it receives federal grant money. *Id.* at 2.

Plaintiffs cite to *Chisolm v. Georgia*, 2 U.S. 419 (1793), to support finding this court has jurisdiction over the city under FOIA. In *Chisolm*, our Supreme Court established that federal courts have jurisdiction to hear controversies between states and citizens of another state under Article III, section 2 of the United States Constitution. *Id.* at 420. Plaintiffs appear to argue that because FOIA does not give immunity to the states, this court has jurisdiction to hear their claim against the city. Yet FOIA extends only to requests for information made to an "agency," defined as "each authority of the Government of the United States...." 5 U.S.C. § 551(1). It does not apply to states or their municipalities. *See Bethea v. Chesterfield Marlboro EOC Counsel*, C/A No. 4:12-3577-RBH, 2013 WL 5707320, at *5 (D.S.C. Oct. 18, 2013) ("The federal FOIA is applicable to agencies or departments of the United States, and it is not applicable to agencies or departments of a state."). While Plaintiffs correctly identify *Chisolm* as an important case establishing the court's jurisdiction over sovereign states, it does not extend jurisdiction under a statute that is explicitly limited to federal agencies. *See* 5 U.S.C. §§ 551(1), 552(a). *Chisolm* does not grant this court subject matter jurisdiction in this instance.

Plaintiffs also argue this court has subject matter jurisdiction over this case because their request relates to federal grant monies. But they offer no basis for claiming that the use of federal grant monies by a state obligates it to provide information requested under FOIA. The statute does not require states receiving federal funds to make their information available. Although Plaintiffs submit evidence the city receives funds from federal agencies, that does not establish this court has jurisdiction under FOIA.

Along with these grounds for objection, Plaintiffs cite to part of the South Carolina constitution which states "All political power is vested in and derived from the people only, therefore, they have the right at all times to modify their form of government." S.C. Const. art. I, § 1. Plaintiffs do not explain how this relates to the prior objections or supports finding subject matter jurisdiction over their claim. Without further explanation, the court finds Plaintiffs fail to show how this section of the state constitution vests this court with jurisdiction over the city pursuant to FOIA.

CONCLUSION

The court adopts the Report, ECF No. 16, in its entirety. Plaintiffs have failed to establish FOIA, 5 U.S.C. § 552, extends to requests for information made to states and their municipalities. This matter is **DISMISSED** without prejudice and without issuance and service of process for lack of subject matter jurisdiction.

IT IS SO ORDERED.

May 12, 2023
Columbia, South Carolina

s/Sherri A. Lydon
Sherri A. Lydon
United States District Judge

Additional material from this filing is available in the Clerk's Office.