

Appendix

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11738
Non-Argument Calendar

BRIAN D. SWANSON,

Plaintiff-Appellant,

versus

SECRETARY OF STATE, STATE OF GEORGIA,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia
D.C. Docket No. 1:22-cv-00152-JRH-BKE

Opinion of the Court

Before WILSON, LUCK, and ANDERSON, Circuit Judges.

PER CURIAM:

Brian D. Swanson, proceeding *pro se*, appeals the dismissal of his suit against the Georgia Secretary of State (Secretary), alleging that the 2022 United States Senate runoff election in Georgia was unconstitutional because the Seventeenth Amendment to the United States Constitution does not apply in Georgia.

“We review standing determinations *de novo*.” *Tanner Advert. Grp., L.L.C. v. Fayette Cnty.*, 451 F.3d 777, 784 (11th Cir. 2006) (en banc). When plaintiffs lack Article III standing, “we lack jurisdiction to consider the merits of their claims.” *Gardner v. Mutz*, 962 F.3d 1329, 1344 (11th Cir. 2020).

A plaintiff who invokes the jurisdiction of a federal court bears the burden to show the Constitutional limitations on standing: (1) an injury in fact, (2) a causal connection between the injury and the causal conduct, and (3) a likelihood that the injury will be redressed by a favorable decision. *Tanner Advert. Grp., L.L.C.*, 451 F.3d at 791. “An injury in fact consists of an invasion of a legally protected interest that is both concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 996 (11th Cir. 2020) (quotation marks omitted). “A concrete injury must be *de facto*; that is, it must actually exist, as opposed to being hypothetical or speculative.”

Salcedo v. Hanna, 936 F.3d 1162, 1167 (11th Cir. 2019) (quotation marks omitted). A “particularized” injury must affect the plaintiff in a personal and individual way; the injury must be “distinct from a generally available grievance about government.” *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018).

Here, Swanson claims he was “issued an illegal ballot” authorized by the Secretary, which could subject him to criminal prosecution for casting a “potentially illegal vote” in violation of 52 U.S.C. §10307(c). Swanson further states he could be penalized in the form of a \$10,000 fine and up to five years of imprisonment “due to the [Defendant]’s illegal actions.” Swanson urges us to recognize that the runoff election was unconstitutional, and that he indeed has a “concrete and particularized injury traceable to the [Defendant]”—namely, the possibility of a fine and imprisonment for violating 52 U.S.C. §10307(c). This simply cannot be so.

The district court did not err in concluding that Swanson lacked standing because he failed to show that he suffered an injury in fact. Swanson’s allegation that the runoff election was unconstitutional amounts to nothing more than a generalized grievance against the government; he cannot describe how his desire to defend the Constitution differs from any of his fellow citizens. Even assuming *arguendo* the runoff election was unconstitutional and Swanson could face prosecution as a result of participating, Swanson has not described how the possible criminal prosecution is a grievance undifferentiated from everyone else who voted in the election. In sum, Swanson’s alleged

injuries do not create standing because the alleged injuries are not concrete and particularized.

Because Swanson lacks standing, we lack jurisdiction to address issues surrounding the merits of his complaint. Accordingly, we affirm.

AFFIRMED

IN THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

BRIAN D. SWANSON,
Plaintiff,

CV 122-152

v.

BRAD RAFFENSPERGER,
Defendant.

ORDER

Before the Court is Defendant's motion to dismiss. (Doc. 7.) For the following reasons, Defendant's motion is GRANTED.

I. BACKGROUND

Plaintiff Brian Swanson, proceeding pro se, brings the present action against Defendant, Georgia's Secretary of State Brad Raffensperger, for holding the December 6, 2022 United States Senate runoff election ("the Runoff Election") in Georgia.¹ (Doc.

¹ Although this is the first action Plaintiff brings to challenge the Runoff Election, he has brought two other actions challenging the November 3, 2020 general election that this Court dismissed for lack of subject matter jurisdiction. See *Swanson v. Raffensperger*, No. 1:22-cv-011, 2022 WL 16964751 (S.D. Ga. Nov. 16, 2022) (dismissed for lack of subject matter jurisdiction because Plaintiff lacked standing); see also

1, at 4.) Plaintiff alleges the Runoff Election was unconstitutional and seeks an order declaring the same, as well as a court order instructing "the Georgia State Legislature to appoint Senators to the United States Senate in accordance with Article 1 Sec. 3 of the Constitution." (Id. at 5.) Plaintiff also seeks a court order directing Secretary Raffensperger "to cease his encouragement of illegal voting by authorizing illegal ballots for United States Senator for ineligible voters in the State of Georgia in violation of 52 U.S.C. §10307(c)" and an award of \$10,000 in compensatory and punitive damages "as compensation for the emotional distress of placing Plaintiff in legal [jeopardy] of criminal prosecution due to Defendant's illegal actions and as a deterrent against Defendant continuing his illegal activity in the future." (Id.) Defendant moves to dismiss Plaintiff's claims for lack of standing, mootness, and failure to state a claim. (Doc. 7-1, at 2.) For the reasons explained below, Defendant's motion is GRANTED.

II. LEGAL STANDARD

Federal courts are courts of limited jurisdiction, and an action may proceed in federal court only if subject matter jurisdiction exists. Bochese v. Town of Ponce Inlet, 405 F. 3d 964, 974-75 (11th Cir. 2005). Federal Rule of Civil Procedure 12(b) (1) permits litigants to move for dismissal when the court lacks jurisdiction over the subject matter of the dispute. Fed. R. Civ. p. 12(b)(1). "A federal court must always dismiss a case upon determining that it lacks subject

Swanson v. State of Georgia, No. 1:21-cv-020, 2022 WL 193726 (S.D. Ga. Jan. 20, 2022) (same).

matter jurisdiction, regardless of the stage of the proceedings." Goodman ex rel. Goodman v. Sipos, 259 F.3d 1327, 1331 n.6 (11th Cir. 2001) (citations omitted).

"Standing is a threshold jurisdictional question which must be addressed prior to and independent of the merits of a party's claims." Bochese, 405 F.3d at 974; see also Austin & Laurato, P.A. V. U.S., 539 F. App'x 957, 960 (11th Cir. 2013) ("An essential prerequisite to a federal court's power to entertain a suit is an Article III case or controversy"), *cert. denied*, 571 U.S. 1201 (2014). "In the absence of standing, a court is not free to opine in an advisory capacity about the merits of a plaintiff's claims." Bochese, 405 F.3d at 974.

The party invoking federal jurisdiction — in this case, Plaintiff — bears the burden of establishing standing. Bischoff V. Osceola Cnty., 222 F.3d 874, 878 (11th Cir. 2000) (citing Lujan V. Defs. of Wildlife, 504 U.S. 555, 561 (1992)). "[E]ach element of standing '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.'" Id. (quoting Defs. of Wildlife, 504 U.S. at 561). Thus, "[a]t the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim." Defs. of Wildlife, 504 U.S. at 561 (quoting Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 889 (1990)); see also Bischoff, 222 F.3d at 878 ("[W]hen standing becomes an issue on a motion to dismiss, general factual allegations of injury resulting from the defendant's conduct may be sufficient to show standing."].

The three requirements for Article III standing are familiar: the plaintiff must allege that he suffered an 'injury in fact' that is 'concrete and particularized' and 'actual or imminent'; that injury must be 'fairly traceable to the challenged action of the defendant'; and it must be 'likely . . . that the injury will be redressed by a favorable decision.'

Cordoba v. DIRECTV, LLC, 942 F.3d 1259, 1268 (11th Cir. 2019) (quoting Defs. of Wildlife, 504 U.S. at 560-61).

III. DISCUSSION

Plaintiff fails to allege an injury sufficient to establish standing. "A 'concrete' injury must be *facto*' - that is, it must be real, and not abstract." Trichell v. Midland Credit Mgmt., Inc., 964 F.3d 990, 996 (11th Cir. 2020) (citation omitted). "[A] plaintiff seeking relief in federal court must . . . [have] a personal stake in the outcome . . . distinct from a generally available grievance about government." Gill v. Whitford, 138 S. Ct. 1916, 1923 (2018) (internal quotation marks and citation omitted).

Here, Plaintiff alleges that he was "issued an illegal ballot for United States Senator that was authorized by [Defendant]," which subjects him to possible criminal prosecution for casting a "potentially illegal vote" in violation of 52 U.S.C. §10307(c). (Doc. 1, at 4.) Specifically, Plaintiff claims that he may be subject to a \$10, 000 fine and up to five years of imprisonment "due to the [Defendant]'s illegal actions," and "[Defendant] may be guilty of over 4,000,000 individual acts of encouraging illegal

voting under 52 U.S.C. §10307 (c), and subject to \$40 billion in fines and 20 million years [of] imprisonment." (Id.) Plaintiff alleges that because the Runoff Election was unconstitutional, his "concrete and particularized injury traceable to the [Defendant]" is the possibility of a fine and imprisonment for violating 52 U.S.C. §10307(c). (Doc. 9, at 3.) However, Plaintiff's allegation that the Runoff Election was unconstitutional is a generalized grievance because he cannot explain how his interest in upholding the Constitution is different from that of any other person. See e.g., Gill, 138 S. Ct. at 1923. Moreover, even assuming the Runoff Election was unconstitutional and subjected Plaintiff to possible criminal prosecution. Plaintiff still cannot explain how the possible criminal prosecution is "undifferentiated and common to all members of the public" who voted in the Runoff Election. Defs. Of Wildlife, 504 U.S. at 575 (internal quotation marks omitted). Therefore, Plaintiff's alleged injuries are insufficient to establish standing, and thus, the Court lacks subject matter jurisdiction over this case.² Accordingly, Plaintiff's claims are DISMISSED.

Finally, the Court warns Plaintiff that should he continue to file frivolous lawsuits, his ability to seek redress with this Court will be sharply limited. See Cofield v. Ala. Pub. Serv. Comm'n, 936 F.2d 512, 517 (11th Cir. 1991) (holding that access to courts "may be counterbalanced by the traditional right of courts to manage their dockets and limit abusive filings").

² Because Plaintiff lacks standing to bring this suit, the Court does not address Defendant's remaining arguments.

IV. CONCLUSION

For the foregoing reasons, IT IS HEREBY ORDERED that Defendant's motion to dismiss (Doc. 7) is GRANTED. The Clerk is DIRECTED to TERMINATE all pending motions and deadlines, if any, and CLOSE this case,

ORDER ENTERED at Augusta, Georgia, this 16th day of May, 2023.

/S/ J.RANDAL HALL
J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA