

## **APPENDIX**

Appendix A-1: Opinion of the United States Court of Appeals for the Fifth Circuit, date.

Appendix A-2: Opinion of the United States District Court at Austin.

## **APPENDIX**

## **APPENDIX A-1**

**United States Court of Appeals  
for the Fifth Circuit**

**Opinion**

# United States Court of Appeals for the Fifth Circuit

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No. 23-50841  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit  
**FILED**  
September 26, 2024

Lyle W. Cayce  
Clerk

DESSIE ANDREWS,

*Plaintiff—Appellant,*

*versus*

ALMA S. ADAMS, *in their personal and official capacity*; CURRENT AND FORMER MEMBERS OF CONGRESS, *in their personal and official capacity*; ROBERT B. ADERHOLT, *in their personal and official capacity*; PETE AGUILAR, *in their personal and official capacity*; RICK W. ALLEN, *in their personal and official capacity*; ET AL.,

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 1:23-CV-95

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Before WIENER, STEWART, and DOUGLAS, *Circuit Judges.*

PER CURIAM:\*

Plaintiff-Appellant Dessie Andrews appeals the district court's dismissal of her claims against more than five hundred current and former

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\* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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members of Congress (collectively, “Appellees”) for lack of subject-matter jurisdiction. Concluding that the district court correctly applied well-established law in dismissing Andrews’s complaint, we AFFIRM.

Andrews initiated this action against Appellees, seeking monetary and injunctive relief, for numerous acts of Congress from the American Civil War to the present. More specifically, Andrews challenges as unconstitutional Congress’s decision to (1) abandon the gold standard, (2) permit the country to accumulate debt and pass “omnibus spending bills,” and (3) take actions pursuant to the “War Powers.”<sup>1</sup> These actions, says Andrews, violated the Congressmembers’ oaths of office, her constitutional rights, and the constitutional rights of the public generally. Appellees filed a motion to dismiss for lack of subject matter jurisdiction and failure to state a claim, contending that Andrews lacked standing and sovereign and legislative immunity barred her claims. Andrews objected on various grounds, including that dismissal would violate her due process rights. The district court overruled her objections and adopted the Magistrate Judge’s report and recommendation. The district court concluded that Andrews had not established a concrete and particularized injury-in-fact sufficient to establish standing. It also determined that the United States had not waived sovereign immunity and that the Speech or Debate Clause barred her claims against members of Congress.

“We review *de novo* the district court’s grant of a Rule 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction.” *Morris v. Thompson*, 852 F.3d 416, 419 (5th Cir. 2017). The party asserting jurisdiction “constantly bears the burden of proof that jurisdiction does in fact exist.” *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001). “In reviewing a Rule 12(b)(1)

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<sup>1</sup> Andrews characterized these claims as promissory estoppel claims (with respect to the gold standard and debt accumulation) and conspiracy claims (with respect to the gold standard and the War Powers).

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motion to dismiss where the district court relied only on the face of the complaint, as here, ‘our review is limited to determining whether the district court’s application of the law is correct.’” *Fort Bend Cnty. v. United States Army Corps of Eng’rs*, 59 F.4th 180, 188 (5th Cir. 2023) (quoting *Rollerson v. Brazos River Harbor Navigation Dist.*, 6 F.4th 633, 639 (5th Cir. 2021)).

The district court correctly applied the law in rejecting Andrews’s assertion of Article III standing because she failed to demonstrate that she suffered an injury-in-fact that is “concrete and particularized” to her. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Andrews alleged that her injuries “are not merely speculative or hypothetical, but directly impact [her] financial stability, erode [her] trust in the democratic process, restrict [her] economic opportunities, and compromise [her] personal safety and liberties.” However, the district court correctly concluded that such injuries are the kind of “undifferentiated, generalized grievance about government that is insufficient to establish standing.” It is well established that, to assert an injury-in-fact, a plaintiff must show more than “a general interest common to all members of the public.” *Id.* at 575 (quoting *Ex parte Levitt*, 302 U.S. 633, 634 (1937)). The district court thus did not err in holding that Andrews lacked Article III standing because she was “no more directly impacted by her allegations of official misconduct than any other citizen of the United States.”

We also agree that Andrews failed to overcome Appellees’ affirmative defenses of sovereign and legislative immunity. The United States “may not be sued without its consent and [] the existence of consent is a prerequisite for jurisdiction.” *United States v. Mitchell*, 463 U.S. 206, 212 (1983). Andrews “bears the burden of showing Congress’s unequivocal waiver” of immunity. *Franklin v. United States*, 49 F.4th 429, 434 (5th Cir. 2022) (brackets omitted). She failed to meet this burden. The district court correctly concluded that, to the extent that they were alleged violations of her

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constitutional rights, her claims for monetary and injunctive relief are barred. Sovereign immunity also bars Andrews's promissory estoppel claims. *See Hercules, Inc. v. United States*, 516 U.S. 417, 423 (1996) (noting that the United States has not waived sovereign immunity for "implied in fact" agreements, which are the basis of claims for promissory estoppel). To the extent that Andrews's claims could be considered tort claims, the Federal Tort Claims Act's limited waiver of sovereign immunity does not save them. *See* 28 U.S.C. § 1346(b)(1). Finally, with respect to her claims against members of Congress, Andrews has not sufficiently alleged actions outside the scope of their constitutional authority, as required to overcome sovereign immunity as to those claims.

Legislative immunity also bars Andrews's claims against members of Congress for their "legitimate legislative activity." *See Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 503 (1975). The Speech or Debate Clause of the United States Constitution, on which that doctrine rests, immunizes members of Congress from civil suits for damages "for any Speech or Debate in either House." U.S. CONST., Art. I, § 6, cl. 1. Andrews's claims are based on legislation passed by Congress, an undeniably legislative activity, and the district court correctly held that those Appellees are immune under the Speech or Debate Clause.

Finally, we agree that Andrews's due process rights were not violated by the district court's dismissal of her action. Nothing in the record suggests that she did not receive notice throughout the proceedings. Indeed, she was provided the opportunity to object to the Magistrate Judge's report and recommendations and, although her objections were untimely, the district court took them into consideration.

The district court dismissed all of Andrews's claims with prejudice. However, dismissal was premised on jurisdictional (standing) grounds,

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which generally dictates dismissal without prejudice. *See Ass'n of Am. Physicians & Surgeons Educ. Found. v. Am. Bd. of Internal Med.*, 103 F.4th 383, 396 (5th Cir. 2024) (quoting *Denning v. Bond Pharmacy, Inc.*, 50 F.4th 445, 452 (5th Cir. 2022)). Finding no error in the district court's application of the law, we AFFIRM the grant of Appellees' 12(b)(1) motion to dismiss for lack of subject matter jurisdiction. However, we MODIFY it to be *without prejudice*.

## **APPENDIX A-2**

**United States Court Court  
for the Western District of Texas  
Austin Division**

**Final Judgment**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

DESSIE MARIA ANDREWS,

Plaintiff,

v.

1:23-CV-95-DII

ALMA S. ADAMS, et al.,

Defendants.

**FINAL JUDGMENT**

On this date, the Court adopted United States Magistrate Judge Dustin M. Howell's report and recommendation concerning Defendants' Motion to Dismiss, (Dkt. 10) (R&R, Dkt. 16). The Court granted Defendants' Motion and dismissed Plaintiff's claims with prejudice.

As nothing remains to resolve, the Court renders final judgment pursuant to Federal Rule of Civil Procedure 58.

**IT IS ORDERED** that each party bears its own costs.

**IT IS FURTHER ORDERED** that the case is **CLOSED**.

**SIGNED** on October 20, 2023.

  
ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

DESSIE MARIA ANDREWS,

Plaintiff,

v.

1:23-CV-95-DII

ALMA S. ADAMS, et al.,

Defendants.

**ORDER**

Before the Court is the report and recommendation of United States Magistrate Judge Dustin M. Howell concerning Defendants' Motion to Dismiss (Dkt. 10) (R. & R., Dkt. 16). Plaintiff filed objections to the report and recommendation. (Objs., Dkt. 18).

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Plaintiff objected to the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so and for the reasons given in the report and recommendation, the Court overrules Plaintiff's objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Dustin M. Howell, (Dkt. 16), is **ADOPTED**.

**IT IS FURTHER ORDERED** that Defendants' Motion to Dismiss (Dkt. 10) is **GRANTED**.

**IT IS FINALLY ORDERED** that Plaintiff's claims are **DISMISSED WITH PREJUDICE**.

The Court will enter its final judgment in a separate order.

**SIGNED** on October 20, 2023.

  
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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE

## **APPENDIX C**

### **1 Stat 23 The Laws of the United States Acts of the First Congress**

THE  
LAWS OF THE UNITED STATES.

ACTS OF THE FIRST CONGRESS  
OF THE  
UNITED STATES,

*Passed at the first session, which was begun and held at the City of New York on Wednesday, March 4, 1789, and continued to September 29, 1789.*

GEORGE WASHINGTON, President, JOHN ADAMS, Vice President of the United States, and President of the Senate, FREDERICK AUGUSTUS MUHLENBERG, Speaker of the House of Representatives.

STATUTE I.

CHAPTER I.—*An Act to regulate the Time and Manner of administering certain Oaths.*

June 1, 1789.

SEC. 1. *Be it enacted by the Senate and [House of] Representatives of the United States of America in Congress assembled,* That the oath or affirmation required by the sixth article of the Constitution of the United States, shall be administered in the form following, to wit: “I, A. B. do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States.” The said oath or affirmation shall be administered within three days after the passing of this act, by any one member of the Senate, to the President of the Senate, and by him to all the members and to the secretary; and by the Speaker of the House of Representatives, to all the members who have not taken a similar oath, by virtue of a particular resolution of the said House, and to the clerk: and in case of the absence of any member from the service of either House, at the time prescribed for taking the said oath or affirmation, the same shall be administered to such member, when he shall appear to take his seat.

Constitution  
of the U. S.  
article 6, page 19.

Form of the  
oath or affirma-  
tion to support  
the Constitution  
of the United  
States, to be  
administered to  
the members of  
the Senate and  
to the members  
of the House of  
Repre-  
sentatives.

SEC. 2. *And be it further enacted,* That at the first session of Congress after every general election of Representatives, the oath or affirmation aforesaid, shall be administered by any one member of the House of Representatives to the Speaker; and by him to all the members present, and to the clerk, previous to entering on any other business; and to the members who shall afterwards appear, previous to taking their seats. The President of the Senate for the time being, shall also administer the said oath or affirmation to each Senator who shall hereafter be elected, previous to his taking his seat: and in any future case of a President of the Senate, who shall not have taken the said oath or affirmation, the same shall be administered to him by any one of the members of the Senate.

Manner of ad-  
ministering the  
oath or affirma-  
tion to Speaker  
of the House of  
Repre-  
sentatives.

To each Sena-  
tor.

SEC. 3. *And be it further enacted,* That the members of the several State legislatures, at the next sessions of the said legislatures, respectively, and all executive and judicial officers of the several States, who have been heretofore chosen or appointed, or who shall be chosen or

To the mem-  
bers of the seve-  
ral State Leg-  
islatures, and to all  
executive and  
judicial officers  
of the States.

By whom the oaths or affirmations shall be administered in the several States.

appointed before the first day of August next, and who shall then be in office, shall, within one month thereafter, take the same oath or affirmation, except where they shall have taken it before; which may be administered by any person authorized by the law of the State, in which such office shall be holden, to administer oaths. And the members of the several State legislatures, and all executive and judicial officers of the several States, who shall be chosen or appointed after the said first day of August, shall, before they proceed to execute the duties of their respective offices, take the foregoing oath or affirmation, which shall be administered by the person or persons, who by the law of the State shall be authorized to administer the oath of office; and the person or persons so administering the oath hereby required to be taken, shall cause a record or certificate thereof to be made, in the same manner, as, by the law of the State, he or they shall be directed to record or certify the oath of office.

To all officers of the U. States appointed, or to be appointed, before they act.

SEC. 4. *And be it further enacted*, That all officers appointed, or hereafter to be appointed under the authority of the United States, shall, before they act in their respective offices, take the same oath or affirmation, which shall be administered by the person or persons who shall be authorized by law to administer to such officers their respective oaths of office; and such officers shall incur the same penalties in case of failure, as shall be imposed by law in case of failure in taking their respective oaths of office.

Oath of secretary of the Senate and clerk of the House of Representatives.

SEC. 5. *And be it further enacted*, That the secretary of the Senate, and the clerk of the House of Representatives for the time being, shall, at the time of taking the oath or affirmation aforesaid, each take an oath or affirmation in the words following, to wit: "I, A. B. secretary of the Senate, or clerk of the House of Representatives (as the case may be) of the United States of America, do solemnly swear or affirm, that I will truly and faithfully discharge the duties of my said office, to the best of my knowledge and abilities."

APPROVED, June 1, 1789.

STATUTE I.

July 4, 1789.

[Repealed.]

CHAP. II.—*An Act for laying a Duty on Goods, Wares, and Merchandises imported into the United States.* (a)

SEC. 1. Whereas it is necessary for the support of government, for the discharge of the debts of the United States, and the encouragement and protection of manufactures, that duties be laid on goods, wares and merchandises imported: (b)

Act of August 10, 1790, ch. 39, sec. 1 and 2.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the first day of August next ensuing, the several duties hereinafter mentioned shall be laid on the following goods, wares and merchandises imported into the United States from any foreign port or place, that is to say:

(a) Duty Acts. Act of July 4, 1789, chap. 2; act of August 4, 1790, chap. 35; act of June 5, 1794, chap. 51; act of January 29, 1795, chap. 17; act of March 3, 1797, chap. 10; act of May 13, 1800, chap. 66; act of March 27, 1804, chap. 57; act of June 7, 1794, chap. 54; act of January 29, 1795, chap. 17; act of March 27, 1804, chap. 46; act of July 8, 1797, chap. 15; act of May 7, 1800, chap. 43; act of March 27, 1804, chap. 57; act of July 1, 1812, chap. 112; act of February 25, 1813, chap. 30; act of August 2, 1813, chap. 38; act of April 27, 1816, chap. 107; act of January 14, 1817, chap. 3; act of April 20, 1818, chap. 107; act of April 20, 1818, chap. 98; act of May 21, 1824, chap. 136; act of May 19, 1828, chap. 55; act of May 24, 1828, chap. 103; act of May 28, 1830, chap. 147; act of July 14, 1832, chap. 227; act of March 2, 1833, chap. 62; act of September 11, 1841, chap. 24; act of August 30, 1842, chap. 270.

(b) The powers of Congress to levy and collect taxes, duties, exposts and excises, is co-extensive with the United States. *Loughborough v. Blake*, 5 Wheat. 317; 4 Cond. Rep. 660,