IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

LOY ARLAN BRUNSON, Plaintiff, v. ADAMS, et al., Defendants.	**REPORT AND RECOMMENDATION** Case No. 2:21-cv-00175-RJS-CMR District Judge Robert J. Shelby Magistrate Judge Cecilia M. Romero

This matter is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) (ECF 8). Before the court is Defendants' [1] Motion to Dismiss (Motion) (ECF 62) Plaintiff Loy Arlan Brunson's (Plaintiff or Mr. Brunson) Fourth Amended Complaint (ECF 41). Having carefully considered the relevant filings, the court finds that oral argument is not necessary and will decide this matter on the basis of written memoranda. See DUCivR 7-1(g). For

[1] Defendants consist of 387 current or former federal government officials including members of the U.S. Congress, President Biden, Vice President Harris, and former Vice President Pence.

the reasons set forth below, the undersigned RECOMMENDS that the court GRANT the Motion and dismiss this action without prejudice for lack of subject matter jurisdiction.

I. BACKGROUND

Plaintiff initiated this suit on March 23, 2021 (ECF 2). Plaintiff later filed an Amended Complaint (ECF 10) and a Second Amended Complaint (ECF 21) with leave of court (ECF 15). When the court granted Plaintiff's request for leave to file a third amended complaint (ECF 33), Plaintiff filed a document erroneously entitled "fourth amended complaint" that was lodged on the docket (ECF 36). After the court clarified that this document would be the operative pleading (ECF 40), Plaintiff's Fourth Amended Complaint (ECF 41) was officially entered on the docket.

As set forth in the Fourth Amended Complaint, Plaintiff brings suit as a voter claiming that the 2020 United States presidential election was fraudulent and that Defendants violated their oaths of office by failing to investigate claims

of election fraud (ECF 41, ¶¶ 32–35). Plaintiff asserts the following six causes of action against all Defendants: (1) promissory estoppel based on Defendants failing to protect his right to participate in an honest and fair election (id. ¶¶ 73–87); (2) promissory estoppel based on Defendants giving aid and comfort to enemies of his right to vote in an honest and fair election (id. ¶¶ 88–92); (3) negligence (id. ¶¶ 93–96); (4) intentional infliction of emotional distress (id. ¶¶ 97–105); (5) fraud (id. ¶¶ 106–27); and (6) civil conspiracy (id. ¶¶ 128– 33). Plaintiff's requested relief includes monetary relief totaling over $2.9 billion derived from fines against each Defendant; declaratory relief in the form of an order stating that Defendants "failed to protect the U.S. Constitution" and "gave aid and comfort to enemies of the U.S. Constitution" and that former President Trump "immediately be allowed to be inaugurated President of the U.S.A."; and injunctive relief removing Defendants from office, prohibiting them from serving in any government office or the legal profession, forbidding them from

collecting further income or retirement, and investigating each of them for treason (*id.* ¶¶ 134-82).

On July 1, 2022, Defendants filed the instant Motion (ECF 62) seeking dismissal of the Fourth Amended Complaint on the grounds that Plaintiff has failed to establish Article III standing, and Plaintiff's claims are barred by sovereign and legislative immunity. Plaintiff filed a timely Response (ECF 64) arguing that the United States does not have the authority to represent the named Defendants, and that Utah law and the U.S. Constitution provide a basis for his claims to proceed (ECF 64). Defendants filed a Reply (ECF 65) responding that none of Plaintiff's arguments overcome the jurisdictional defects in his pleading. Plaintiff then submitted the matter for decision (ECF 66).

II. LEGAL STANDARD

Defendants seek dismissal of the Fourth Amended Complaint pursuant to Rule 12(b)(1) for "lack of subject-matter jurisdiction." Fed. R. Civ. P. 12(b)(1). Federal courts

"are courts of limited subject-matter jurisdiction." Gad v. Kan. State Univ., 787 F.3d 1032, 1035 (10th Cir. 2015). Because of this, "there is a presumption against [this court's] jurisdiction, and the party invoking federal jurisdiction bears the burden of proof." Merida Delgado v. Gonzales, 428 F.3d 916, 919 (10th Cir. 2005). To establish jurisdiction, the plaintiff "must 'allege in his pleading the facts essential to show jurisdiction' and 'must support [those facts] by competent proof.'" United States ex rel Precision Co. v. Koch Indus., 971 F.2d 548, 551 (10th Cir. 1991) (quoting McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178, 189 (1936)).

Because Plaintiff is proceeding pro se, the court construes his pleadings liberally and holds them to a less stringent standard than formal pleadings drafted by lawyers. See Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). However, it is not the court's function to assume the role of advocate on behalf of pro se litigants. See id. The court "will not supply additional factual allegations to

round out a plaintiff's complaint or construct a legal theory on a plaintiff's behalf." Whitney v. New Mexico, 113 F.3d 1170, 1173–74 (10th Cir. 1997). The court reviews the Fourth Amended Complaint in light of these standards.

III. DISCUSSION

Defendants argue that Plaintiff has failed to meet his burden to establish standing by failing to sufficiently allege an injury in fact and redressability of his injury (ECF 62 at 4–6). Article III of the U.S. Constitution limits federal jurisdiction to the resolution of actual cases and controversies. U.S. Const. art. III, § 2. Standing "is an essential and unchanging part of the case- or-controversy requirement of Article III." Comm. to *Save the Rio Hondo v. Lucero*, 102 F.3d 445, 447 (10th Cir. 1996) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). To maintain standing in this action, the plaintiff must establish that he "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial

decision." *Spokeo, Inc. v. Robbins*, 578 U.S. 330, 337 (2016) (citing *Lujan*, 504 U.S. at 560). The key issue in determining standing is "whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to assure . . . concrete adverseness . . ." *United States v. Richardson*, 418 U.S. 166, 173 (1974) (quoting *Flast v. Cohen*, 392 U.S. 83, 99 (1968)).

To establish an injury in fact, "the plaintiff must show 'a distinct and palpable injury to [him]self.' An abstract injury is not enough . . ." *Ash Creek Mining Co. v. Lujan*, 969 F.2d 868, 875 (10th Cir. 1992) (quoting *Glover River Org. v. United States Dep't of Interior*, 675 F.2d 251, 254 (10th Cir. 1982)). Here, Plaintiff's claims are based on the alleged deprivation of his right to participate in an honest and fair election as a voter in the 2020 U.S. presidential election (ECF 41). Defendants argue that Plaintiff has alleged only a generally available grievance about government and therefore fails to establish Article III standing (ECF 62 at 5). Defendants note that a similar case was recently

dismissed by this court based on lack of standing. In *Raland Brunson v. Adams, et al.*, the plaintiff asserted nearly identical claims based on the premise that the 2020 election was fraudulent. *See Brunson v. Adams*, No. 1:21-cv-0111-JNP-JCB, 2022 WL 316718, at *1 (D. Utah Jan. 6, 2022), *report and recommendation adopted* 2022 WL 306499 (D. Utah Feb. 2, 2022), *aff'd* No. 22-4007, 2022 WL 5238706 (10th Cir. Oct. 6, 2022). In that case, the district court held that the plaintiff "failed to establish standing . . . because all of his causes of action plead generalized claims of legislative nonfeasance arising out of the counting of electors' votes." *Brunson*, 2022 WL 316718, at *3. The court reasoned that the plaintiff's purported injury was "precisely the type of undifferentiated and generalized grievance about the conduct of government that courts have declined to consider based on standing." *Id.*

The court agrees that Plaintiff's claims are subject to dismissal for the same reasons. Courts have consistently held that, as here, "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." *See, e.g.*, *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (quoting *Lujan*, 504 U.S. at 573–74); *see also Cogswell v. United States Senate*, 353 F. App'x 175, 175–76 (10th Cir. 2009) (affirming dismissal of generalized grievance alleging unconstitutional Senate delay in filling two district court vacancies); *Raiser v. Daschle*, 54 F. App'x 305, 306–07 (10th Cir. 2002) (affirming dismissal of challenge to Senate's rule referring judicial nominations to Judiciary Committee, holding that "claims of alleged delay because of vacancies in the courts do not establish an injury"). Plaintiff's generalized grievances as a voter in the 2020 election as set forth in the Fourth Amended Complaint (ECF 41) are insufficient to establish Article III standing as required for federal jurisdiction. Plaintiff's claims are therefore subject

to dismissal under Rule 12(b)(1) for lack of subject matter jurisdiction.[2]

The court also notes that Plaintiff does not directly respond to the standing argument made by Defendants. Rather Plaintiff focuses on the authority of the United States to represent the Defendants, argues Utah law provides him a cause of action in federal court and cites to the Utah State Constitution arguing it gives him a claim in federal court (ECF 65). These arguments have no merit as Congress has authorized the Department of Justice to represent federal employees, *see* 28 U.S.C. § 516, and Utah state law cannot be a basis for federal jurisdiction, *see* 28 U.S.C. § 1331. Considering that Plaintiff failed to directly respond to this argument, his claims should be dismissed. *See, e.g., Davis v. Utah*, No. 2:18-cv-926-TS, 2019 WL 2929770, *7 (D. Utah July 18, 2019) ("Defendants also seek dismissal of Plaintiffs' freedom of association claim.

[2] Given that the court has determined that the Fourth Amended Complaint is subject to dismissal in its entirety, the court does not reach Defendants' alternative arguments for dismissal.

Plaintiffs have failed to respond to this argument. Therefore, the Court will dismiss this claim."); *Knudsen v. Country wide Home Loans, Inc.*, No. 2:11-cv-429-TS, 2011 WL 3236000, *2 (D. Utah July 26, 2011) ("Plaintiff has failed to respond to Defendants' arguments concerning his negligent misrepresentation claim. Therefore, the Court finds that Plaintiff has abandoned this claim and it will be dismissed").

RECOMMENDATION

In summary, IT IS HEREBY RECOMMENDED that Defendants' Motion to Dismiss (ECF 62) be GRANTED and this action be DISMISSED without prejudice.

NOTICE

Copies of the foregoing Report and Recommendation are being sent to all parties who are hereby notified of their right to object. Within **fourteen (14) days** of being served with a copy, any party may serve and file written objections. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Failure to object may constitute a waiver of objections upon subsequent review.

DATED this 6 January 2023.

/s/ Cecilia M. Romero
Magistrate Judge Cecilia M. Romero
United States District Court of the District of Utah

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

LOY ARLAN BRUNSON in his personal capacity and as a member of "We The People", Plaintiff, vs. ALMA S. ADAMS ; et al., Defendants.	**PLAINTIFF'S OBJECTION TO THE REPORT AND RECOMMENDATION** Case No. 2:21-cv-00175 Judge: Robert J. Shelby Magistrate Judge: Cecilia M. Romero

Plaintiff Loy Arlan Brunson ("Brunson") in pro se, and pursuant to Fed. R. Civil P. 72(b)(2)[3] hereby moves this court with his OBJECTION TO REPORT AND RECOMMENDATION ("R&R") (ECF 69) and states:

Plaintiff objects to the R&R because it mischaracterizes

[3] Within 14 days after any report and recommendation has been filed a party may file an objection, Brunson's objection is timely as the R&R was filed Jan. 6, 2023.

serious controlling points of Brunson's complaint and of his opposition to Defendants motion to dismiss ("Opposition"), and it overlooks how the causes of action against Defendants clearly represent how Defendants have personally seriously damaged Brunson beyond irreparable harm, and how these damages coincidentally are so covert and benign that nobody can see how these damages committed against Brunson have also caused a national security breach to such a level that they are to be counted as acts of treason.

First point —Article III Standing

On page 9 of Brunson's Opposition it clearly points out that this court had already ruled that Brunson has standing. The court did so by allowing Brunson's fourth amended complaint ("Complaint") to be filed when earlier this court rejected the first complaint stating that certain deficiencies need to be cured or the court would dismiss Brunson's claims. See ECF 15.

This said ruling is controlling under the law of the case doctrine. "[U]nder the law of the case doctrine, a decision

made on an issue during one stage of a case is binding in successive stages of the same litigation." *IHC Health Servs., Inc.*, 2008 UT 73 ¶ 26 (quotation omitted). But the law of the case doctrine does not apply in "three exceptional circumstances" including "(1) when there has been an intervening change of controlling authority; (2) when new evidence has become available; or (3) when the court is convinced that its prior decision was clearly erroneous and would work a manifest injustice." *Id.* ¶ 34 (citation omitted). When one of these circumstances is present, "reconsideration is mandatory." *McLaughlin v. Schenk*, 2013 UT 20, ¶ 22, 299 P.3d 1139. Otherwise, however, the law of the case doctrine is "a sound presumptive rule and its application should not be disregarded . . . unless a compelling reason exists." *In re Adoption of E.H.*, 2004 UT App 419, ¶ 23, 103 P.3d 177.

The R&R fails to recognize that pursuant to the law of the case doctrine this court has ruled that Brunson does have Article III standing.

The R&R also mischaracterizes Brunson's claims against Defendants as not being against his person. Brunson's claims stem from personal injury he suffered by the hands of Defendants. Nowhere can it be found that Brunson included any other person or persons in any way shape or form besides himself under each of his claims against Defendants. This is controlling.

The R&R points to the case of "*Comm.*" arguing that in order to have Article III standing it cannot claim that "it may be expected to suffer" or claim that it "can imagine circumstances which could be affected." It states that claims must be "actual, threatened, or imminent, not merely conjectural or hypothetical." The R&R does not specifically identify any of Brunson's claims that fail to be actual, threatened, or imminent nor could it, because Brunson's claims are actual, threatened or imminent. For example, beginning at ¶73 of Brunson's Complaint, Brunson's claims allege that the Defendants personally damaged him by failing to protect his vote which by law

they were obligated to, and they illegally violated his right to vote, and they illegally invalidated his vote, and they gave aid and comfort to those enemies obstructing Brunson's right to vote, and they set precedence ensuring that Brunson's vote would never be validated.

The Defendants also caused Brunson severe emotional damage because it puts them on a path to violate Brunson's right to freely travel, to freely make a living, to freely have privacy, to freely own property. Essentially Defendants are destroying Brunson's liberties causing Brunson constant emotional damage.

In addition, Brunson further alleges that the said damages he suffered at the hands of Defendants was brought on by their acts of fraud. Brunson's Complaint alleges fraud against the Defendants with specificity.

Furthermore, it is the law and fact that no court of law can overcome that voting is the greatest power that Brunson has as an individual to exercise in a Republic; it is

his vote and the way he can help protect his Constitutional guaranteed rights and the U.S. Constitution.

These issues the R&R does not address and as such Brunson objects to the R&R.

Second Point — National Security Breach

In addition to the damages the Defendants have made against Brunson, this case also represents on how these damages are acting as a very powerful domestic covert operation that is so benign that it cannot been seen on how it has breached our national security, and how it is affecting the national security of both Canada and Mexico, and how it has circulated fears that we might soon see the destruction of property along with a large volume of conflict, violence and death in our own streets if the Defendants aren't removed from office by the power of this court.

If war was declared against the United States we would see the loss of life and property. If the attacker won, their leader would be put into power to rule over us all. A

successful rigged election has the same effect as war, it puts into power its victor without the loss of life and property. Defendants refused to investigate the allegations of a rigged election and as such have caused damages against Brunson.

Again the U.S. Constitution, statutes, law and acts of congress cannot protect the failure of the Defendants to investigate the serious allegations of a rigged election which is an act of fraud and fraud vitiates everything. Defendants cannot hide behind or be protected under their jurisdictional claims from Brunson's fraud claims because it is a "stern but just maxim of law that fraud vitiates everything into which it enters"[4].

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[4] "Our courts have consistently held that fraud vitiates whatever it touches, *Morris v. House*, 32 Tex. 492 (1870)". *Estate of Stonecipher v. Estate of Butts*, 591 SW 2d 806. And ""It is a stern but just maxim of law that fraud vitiates everything into which it enters." *Veterans Service Club v. Sweeney*, 252 S.W.2d 25, 27 (Ky.1952)." *Radioshack Corp. v. ComSmart*, Inc., 222 SW 3d 256.

Vitiate; "To impair or make void; to destroy or annul, either completely or partially, the force and effect of an act or instrument." West's Encyclopedia of American Law, edition 2.

Brunson's Opposition succinctly and factually points out that the Defendants have given aid and comfort to an enemy of the Constitution of the United States who has breached our national security, and has attacked the United States of America under an act of war without arms. One need not pick up arms in order to "levy war". US v Burr (1807) 4 Cranch (8 US) 4669, 2 L.Ed. 684. To this allegation the R&R did not address, rather it ignored it, thus giving the Defendants comfort and aid from prosecution.

The serious nature of this alone requires this court to dismiss Defendants motion to dismiss with an order that Defendants shall answer the complaint within 10 days of dismissal.

Third Point—Due Process

The R&R did not address many controlling points of the Opposition and as such has violated Brunson's due process rights. Addressing Brunson's controlling points satisfies Brunson's due process right to be heard. Brunson has the

right to be heard by this court by addressing his controlling points. Hearing his arguments is addressing Brunson's controlling points which the R&R did not do. Brunson's due process argument is succinctly and legally pointed out in Brunson's Opposition to which the R&R has violated.

CONCLUSION

WHEREFORE, in the name of justice for Brunson and for our national security, and as a matter of jurisprudence, and as an act to right the wrongs Defendants have caused against Brunson, and as an act to save protect and defend the Constitution, and to protect Brunson's rights, Brunson moves this court to deny Defendants motion to dismiss with an order that Defendants answer the complaint within 10 days after the court's dismissal of their motion to dismiss.

Humbly submitted this the 22nd day of January, 2023.

/s/ Loy Arlan Brunson
Loy Arlan Brunson, Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of January, 2023 I caused to be mailed by United States first class mail, to the parties named below, a true and correct copy of **PLAINTIFF'S OBJECTION TO THE REPORT AND RECOMMENDATION.**

Trina A. Higgins
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/s/ Loy Arlan Brunson
Loy Arlan Brunson

Case 2:21-cv-00175-RJS-CMR Document 62 Filed 07/01/22 PageID.2122 Page 1 of 16

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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

LOY ARLAN BRUNSON, Plaintiff, v.	**MOTION TO DISMISS FOR LACK OF JURISDICTION AND FAILURE TO STATE A CLAIM FOR RELIEF**

ALMA S. ADAMS, *et al.*, Defendants.	Case No. 2:21-cv-00175 Judge: Robert J. Shelby Magistrate Judge: Cecilia M. Romero

INTRODUCTION

Plaintiff Loy Arlan Brunson, appearing pro se, filed this action against 388 federal officers in their official capacities ("Defendants"). In his Fourth Amended Complaint, Brunson asserts a variety of tort claims—including promissory estoppel, negligence, intentional infliction of emotional distress, fraud, and civil conspiracy—against Defendants for "refus[ing] to investigate" the 2020 "rigged and fraudulent election."[5] Defendants now move to dismiss this action pursuant to because this Court lacks subject-matter jurisdiction over Brunson's claims. First, Brunson lacks Article III standing to pursue his claims. Second, Brunson has failed to identify a waiver of sovereign

[5] Fourth Am. Compl. ("FAC") ¶¶ 9, 13 (Docket No. 41).

immunity that authorizes any of his causes of action. Third, Brunson's claims are barred by absolute legislative immunity.

Alternatively, dismissal pursuant to Fed. R. Civ. P. 12(b)(6) is appropriate because Brunson has failed to state a claim for relief.[6]

FACTUAL BACKGROUND

Brunson's current complaint is nearly identical to an earlier complaint filed by Brunson's brother.[7] That action was dismissed for want of subject-matter jurisdiction by this Court on February 2, 2022.[8]

Brunson alleges that he is an individual residing in Utah County, Utah, and that he voted in the 2020

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[6] This matter should also be dismissed because Brunson has failed to timely and properly serve the United States. *See* Fed. R. Civ. P. 4(i). While Brunson asserts that a copy of his fourth amended complaint was served by mail on each defendant, there is no evidence on the docket that he delivered a copy to the United States Attorney's Office, as required.

[7] See generally Complaint, Raland Brunson v. Adams, et al., No. 1:21-cv-00111-JNP (Docket No. 2–1).

[8] *Raland Brunson v. Adams*, No. 1:21-cv-00111-JNP, 2022 WL 306499 (D. Utah Feb. 2, 2022), *appeal docketed*, No. 22-4007 (10th Cir. Feb. 10, 2022).

presidential election.[9] He claims that the 2020 Presidential Election was fraudulent and that elected members of the United States Congress, Vice President Kamala Harris, former Vice President Michael Pence, and President Joseph Biden violated their oaths of office and failed to investigate claims of election fraud.[10] Brunson alleges six causes of action against the defendants in this matter, all based on his argument that the 2020 presidential election was fraudulent: (1) promissory estoppel based on Defendants allegedly failing to protect Brunson's right to participate in an honest and fair election;[11] (2) promissory estoppel based on Defendants allegedly giving aid and comfort to enemies of Brunson's right to vote in an honest and fair election;[12] (3) negligence;[13] (4) intentional infliction of emotional distress;[14] (5) fraud;[15] and (6) civil conspiracy.[16] As redress

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[9] FAC ¶¶ 1–2
[10] *Id.* ¶¶ 32–35.
[11] *Id.* ¶¶ 73–87.
[12] *Id.* ¶¶ 88–92.
[13] *Id.* ¶¶ 93–96.
[14] *Id.* ¶¶ 97–105.
[15] *Id.* ¶¶ 106–27.

for his alleged injuries, Brunson seeks approximately $2.9 billion in money damages and an order from this Court removing Defendants from office and referring each defendant to be investigated for treason, among other things.[17]

STANDARD OF REVIEW

Under Fed. R. Civ. P. 12(b)(1), a court should "presume no jurisdiction exists."[18] The burden of establishing subject-matter jurisdiction "rests upon the party asserting jurisdiction."[19] To establish jurisdiction, a plaintiff "must 'allege in his pleading the facts essential to show jurisdiction' and 'must support [those facts] by competent proof.'"[20]

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[16] *Id.* ¶¶ 128–33.
[17] *Id.* ¶¶ 182–83.

[18] *United States ex rel. Precision Co. v. Koch Indus.*, 971 F.2d 548, 551 (10th Cir. 1992).
[19] *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).
[20] *Koch Indus.*, 971 F.2d at 551 (quoting *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

Generally, *pro se* pleadings should "be liberally construed."[21] However, even lay plaintiffs must comply with the same pleading standards and rules as other litigants and the same jurisdictional, procedural, and factual standards for pleadings apply to *pro se* litigants.[22] Courts should not advocate for litigants who elect to proceed without counsel[23] and need not provide leave for a plaintiff to amend their pleadings if it finds such amendments futile.[24]

ARGUMENT

I. Brunson has failed to establish Article III Standing.

In order to maintain standing in this suit, Brunson must establish that he: "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a

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[21] *Estell v. Gamble*, 429 U.S. 97, 106 (1996); FED. R. CIV. P. 8(e).
[22] *See Ogden v. San Juan County*, 32 F.3d 452, 455 (10th Cir. 1994) (citing *Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994).
[23] *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991).
[24] *Bradley v. Val-Mejias*, 379 F.3d 892, 900–01 (10th Cir. 2004).

favorable judicial decision."[25] Because Brunson cannot demonstrate that he has suffered an injury in fact or that his claims can be successfully redressed by this Court, his suit must be dismissed.

A. Brunson has not suffered an injury in fact that is personal to him.

To establish an injury in fact, a plaintiff must show that they suffered "an invasion of a legally protected interest" at the hands of the Defendants that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."[26] For an injury to be "particularized," it "must affect the plaintiff in a personal individual way."[27] For an injury to be concrete, it must be "real" and "actually exist."[28] In this matter, Brunson alleges that the 2020 presidential election was fraudulent or rigged and that certain legislators and executive officials did

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[25] *Spokeo, Inc. v. Robbins*, 578 U.S. 330, 337 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)); *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 180–81 (2000).
[26] *Id.* at 339 (quoting *Lujan*, 504 U.S. at 560).
[27] *Id.*

nothing to investigate the results of the election, but has failed to establish how this caused him a particularized injury. Courts have consistently held that a plaintiff claiming only a generally available grievance about government, unconnected with a threatened concrete interest of his own, does not state an Article III case or controversy.[29] This is the case because "[v]indicating the public interest is the function of the Congress and the Chief Executive.[30]

In *Raland Brunson v. Adams, et al.*, plaintiff Raland Brunson raised exactly the same grievances as Brunson does in this case. In considering the motion to dismiss filed

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[28] *Id.* at 340.

[29] *Lujan*, 504 U.S. at 555 (citing *Fairchild v. Hughes*, 258 U.S. 126, 129-130 (1922)) (generally available grievance about government unconnected with a concrete injury does not confer standing); *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (dismissing for lack of Article III injury in fact the voters' challenge to redistricting plan); *Cogswell v. United States Senate*, 353 F. App'x 175, 175–76 (10th Cir. 2009) *(unpublished)* (affirming dismissal of generalized grievance alleging unconstitutional Senate delay in filling two district court vacancies); *Raiser v. Daschle*, 54 F. App'x 305, 306–07 (10th Cir. 2002) *(unpublished)* (affirming dismissal of challenge to Senate's rule referring judicial nominations to Judiciary Committee, holding that pendency of plaintiff's other cases and "claims of alleged delay because of vacancies in the courts do not establish an injury").

[30] *Lujan*, 504 U.S. at 576.

by Defendants in that case, Magistrate Judge Bennett held that Raland Brunson had "failed to establish standing . . . because all of his causes of action plead generalized claims of legislative nonfeasance arising out of the counting of electors' votes." As Magistrate Judge Bennett explained, "Mr. Brunson's purported injury is precisely the type of undifferentiated and generalized grievance about the conduct of government that courts have declined to consider based on standing.[31] The same is true here. Brunson has failed to show anything more than a generalized grievance about the government and a claim that officials from the executive and legislative branches of the United States Government failed to follow the law. There is no claimed injury that separates him from any other citizen of the United States who can lawfully vote, and because of that, Brunson has failed to show any injury that is concrete or personal to him. Therefore, Brunson lacks standing to pursue this action

and his complaint should be dismissed.

B. Brunson's claims cannot be redressed by this Court.

In order to have standing, Brunson must also establish thatr his alleged injury is likely to be redressed by a favorable judicial decision.[32] Here, even if Brunson could establish that he has suffered an injury in fact sufficient for Article III standing, this Court cannot order the equitable relief he seeks. Specifically, this Court cannot order that members of Congress be removed from office or require that Congress investigate the matters before them.[33] Because Brunson's alleged

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[31] *Raland Brunson v. Adams*, No. 1:21-cv-00111-JNP, 2022 WL 316718, at *3 (D. Utah Jan. 6, 2022) (unpublished).
[32] *Spokeo*, 578 U.S. at 338.

[33] *See Roudebush v. Hartke*, 405 U.S. 15, 18–19 (1972) (recognizing that "who is entitled to the office of Senator" is an "unconditional and final" judgment exercised by the Senate alone) (citing Senate's constitutional power to Judge elections); *Barry v. United States ex rel. Cunningham*, 279 U.S. 597, 613 (1929) (Senate power to Judge the elections of its Members authorizes it to "render a judgment which is beyond the authority of any other tribunal to review"); *Wright v. Brady*, No. Civ. A. H-06-2021, 2006 WL 2371327, at *1 (S.D. Tex. Aug. 15, 2006) (unpublished) ("This court has no authority to order a sitting congressman removed from Congress."); *see also Kelley v. Wall*, No. Civ. A. 10-233 ML, 2010 WL 5176172, at *5 (D. R.I. Nov. 30, 2010) (unpublished) ("[I]t is not within the purview of the Court to order

injuries and equitable relief sought may not be redressed by a favorable judicial decision, Brunson lacks Article III standing in this matter.

II. The United States has not waived its sovereign immunity for any of Brunson's claims.

"[T]he United States, as a sovereign, is immune from suit save as it consents to be sue"[34] "In general, federal agencies and officers acting in their official capacities are also shielded by sovereign immunity."[35] The United States' consent to be sued is "a perquisite for jurisdiction."[36] In order for the United States to waive this sovereign immunity, the waiver "cannot be implied but must be unequivocally expressed."[37] When the United States has not waived its sovereign immunity, the lawsuit must be

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Congress to undertake an investigation."), *adopted by Kelley v. Wall*, No. Civ. A. 10-233 ML, 2010 WL 5313296 (D. R.I. Dec. 20, 2010) (unpublished).

[34] *United States v. Mitchell*, 445 U.S. 535, 538 (1980) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941).

[35] *Merida Delgado v. Gonzales*, 428 F.3d 916, 919 (10th Cir. 2005) (citing *Wyoming v. United States*, 279 F.3d 1214, 1225 (10th Cir. 2002).

[36] *United States v. Mitchell*, 463 U.S. 206, 212 (1983).

[37] *Id.* (quoting *United States v. King*, 395 U.S. 1, 4 (1969)).

dismissed.[38] Even if a lawsuit is brought pursuant to a statute in which the United States expressly waives its sovereign immunity, the suit must strictly comply with the terms of the statute or else it is subject to dismissal.[39]

This Court lacks subject-matter jurisdiction over this action because Brunson has failed establish that any waiver of sovereign immunity is applicable to his claims. First, the United States has not waived its sovereign Immunity of any claims of promissory extoppel. Second, which the Federal Tort Claims Act provides a limited saiver of sovereign immunity for tort claims against the United States, there is no evidence, or even allegation, that Brunson has exhausted his administrative remedies before filing suit, as required. And finally, the United States has no waived its sovereign immunity for any constitutional claims. Therefore, the court lacks subject-matter jurisdiction.

A. Promissory Estoppel Claims.

Brunson's first two causes of action for alleged promissory estoppel are barred because he has not plead any basis for waiver of sovereign immunity for those

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[38] *Id.* (quoting *United States v. King*, 395 U.S. 1, 4 (1969)
[39] *Sherwood*, 312 U.S. at 590

claims.[40] And even if Brunson had a proper claim for promissory estoppel, such claim could only be brought in the Court of Federal Claims. Specifically, 28 U.S.C. § 1346(a)(2) precludes federal district court jurisdiction over contract actions against the United States where more than $10,000 is sought.

B. Tort Claims

Nor is there is a waiver of immunity for Brunson's claims that sound in tort. The only waiver of federal sovereign immunity for tort claims is under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b)(1), 2671–2680.[41] The FTCA is a limited waiver of the United States' sovereign immunity. The FTCA's waiver of immunity is limited to causes of action against the United States arising out of certain torts committed by federal employees acting within the scope of their employment.[42] Because the FTCA

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[40] *See* Coulibaly v. Kerry, 213 F. Supp. 3d 93, 126–28 (D.D.C. 2016) (dismissing promissory estoppel claims against federal government employees, regardless whether claims sounded in contract or tort); *Orleans Parish Commc'n Dist. v. FEMA*, No. 11-209, 2011 WL 4829887, at *8 n.5 (E.D. La. Oct. 12, 2011) (same) (unpublished); *see also Jablon v. United States*, 657 F.2d 1064, 1070 (9th Cir. 1981) (dismissing promissory estoppel claim against government, stating "[w]e have not discovered, and the parties have not cited, any precedent in this circuit for an independent cause of action against the government founded upon promissory estoppel. Neither have we discovered a statute which would allow Dr. Jablon to sue the United States in this instance.").

[41] In re Franklin Savings Corp., 385 F.3d 1279, 1286 (10th Cir. 2004).

[42] *See United States v. Orleans*, 425 U.S. 807, 813 (1976).

is only a limited waiver of the United States' sovereign immunity, it is subject to a number of exceptions.[43] These exceptions are to be "strictly observed and exceptions thereto are not to be implied."[44]

First, only the United States and not its officers, such as Defendants, can be sued under the FTCA.[45] Moreover, Brunson cannot pursue his tort claims because the FTCA does not waive sovereign immunity where there is a failure to exhaust administrative remedies before filing suit. To invoked the FTCA's limited waiver of sovereign immunity, Congress requires each plaintiff to first present the claim to the agency whose employees allegedly committed the negligent or swrongful act, and, absent an agency denial, wait six months for the agency to act, before filing suite.[46] Accordingly, failure to exhaust administrative remedies precludes a court from exercising subject-natter jurisdiction over any alleged tort claim.[47] Brunson does not allege that the presented any of his claims to be appropriate federal

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[43] *See, e.g.*, 28 U.S.C. §§ 1346(b), 2680; *Orleans*, 425 U.S. at 813.
[44] *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981) (quoting *Soriano v. United States*, 352 U.S. 270, 276 (1957)).
[45] 28 U.S.C. §§ 2679(a)–(b); *Smith v. United States*, 561 F.3d 1090, 1099 (10th Cir. 2009)
[46] 28 U.S.C. § 2675(a).
[47] *See, e.g., McNeil v. United States*, 508 U.S. 106, 113 (1993) ("The FTCA bars claimants from bringing suit in federal court until they have exhausted their administrative remedies. Because petitioner failed to heed that clear statutory command, the District Court properly

agency or body or that any such claims have been denied.[48] Therefore, Brunson cannot invoked the FTCA's limited waiver of sovereign immunity, and dismissal is appropriate.[49]

C. Constitutional Claims.

Finally, it is unclear from Brunson's complaint if he is asserting constitutional claims against the Defendants. To

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dismissed his suit."); *Lopez v. United States*, 823 F.3d 970, 976 (10th Cir. 2016).

[48] *See Sunnen v. N. Y. State Dep't of Health*, 544 F. App'x 15, 17 (2d Cir. 2013) (unpublished) (affirming dismissal of claims against senator for failure to exhaust administrative remedies); *Keyter v. McCain*, No. 06-15253, 207 F. App'x 801, 802 (9th Cir. 2006) (unpublished) (affirming FTCA dismissal for failure to exhaust in action against Senator for allegedly conspiring against plaintiff); *Brawner v. Educ. Mgmt. Corp.*, No. Civ. A. 11-6131, 2012 WL 3064019, at *6 (E.D. Pa. July 27, 2012) (unpublished) (stating, in dismissing action against Senator, that "[n]othing in the Complaint or in plaintiff's responsive briefs, read in the light most favorable to him, suggests that he took steps to exhaust his administrative remedies before filing a suit in federal court") (citation omitted), *aff'd*, 513 F. App'x 148, 151 n.3 (3d Cir. 2013); *De Masi v. Schumer*, 608 F. Supp. 2d 516, 524–25 (S.D.N.Y. 2009) (same, "fail[ure] to allege" exhaustion).

[49] While plaintiff's failure to allege exhaustion of his FTCA administrative remedies is dispositive, the Office of the Senate Sergeant at Arms, which is charged with processing administrative tort claims filed with the Senate under the Act, see S. Res. 492, 97th Cong. (1982), reprinted in Senate Manual, S. Doc. No. 116-1, § 112 (2020), available at S. Doc. 116-1 - Section 112: TORT CLAIMS PROCEDURES - Content Details - SMAN-116-pg182-2 (govinfo.gov), has confirmed that, as of May 3, 2022, it has no record of any claim submitted by the plaintiff. Even if plaintiff submitted an FTCA claim after May 3, 2022, and obtained a denial of that claim, his complaint would nevertheless be barred because this jurisdictional prerequisite must be completed prior to filing suit. *See McNeil*, 508 U.S. at 112-13. Likewise, there is no record of an administrative tort claim submitted by plaintiff to the U.S. House of Representatives.

the extent he seeks to do so, though, those claims should fail. The United States has not waived its sovereign immunity for it, its agencies, or employees in their official capacities to be sued for damages for allegedly violating the Constitution.[50] Thus, to the extent Brunson is seeking to assert any constitutional claims against Defendants, such claims should be dismissed.[51]

III. Brunson's claims are barred by absolute legislative immunity.

One of the important constitutional functions performed by members of Congress and the Vice President is to count the electoral college votes for President and Vice President, and "announce the[ir] decision," as mandated by the Twelfth Amendment and federal statutory law.[52] All of Brunson's claims against members of Congress and the former Vice President concern the performance of those duties during a constitutionally mandated joint session of

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[50] *F.D.I.C. v. Meyer*, 510 U.S. 471, 478 (1994) ("[T]he United States simply has not rendered itself liable . . . for constitutional tort claims."); *Martinez v. Winner*, 771 F.2d 424, 442 (10th Cir. 1985) (holding that there was no waiver of sovereign immunity to bring constitutional claims against the Department of Justice or its employees sued in their official capacities).

[51] *See* FAC ¶¶ 17, 20–22, 29–31.

[52] 3 U.S.C. § 15.

Congress with the former Vice President, as President of the Senate, serving as the presiding officer. Thus, these causes of action are also barred by the doctrine of absolute legislative immunity under the Speech or Debate clause of the Constitution found in Article I, section 6. It states: "The Senators and Representatives . . . for any Speech or Debate in either House, . . . shall not be questioned in any other Place." This clause affords Members of Congress an absolute immunity from all claims arising out of their conduct in the legislative sphere.[53] "[T]he Clause applies not just to speech and debate in the literal sense, but to all 'legislative acts.'"[54] "The power of the Congress to conduct investigations is inherent in the legislative process."[55]

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[53] 28 U.S.C. § 2674 (preserving legislative immunity as a defense in FTCA actions); *see also McCarthy v. Pelosi*, 5 F.4th 34, 38 (D.C. Cir. 2021), *cert. denied*, 142 S. Ct. 897 (2022) ("[T]he Supreme Court has consistently read the Speech or Debate Clause broadly to achieve its purposes.") (internal quotations and citations omitted).

[54] *McCarthy*, 5 F.4th at 39 (quoting *Doe v. McMillan*, 412 U.S. 306, 311–12 (1973)).

[55] *Watkins v. United States*, 354 U.S. 178, 187 (1957).

Speech or Debate immunity thus bars claims about the use, or lack of use, of that power.[56] Thus the Speech or Debate Clause also bars Brunson's claims.[57]

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[56] *See Rockefeller v. Bingaman*, 234 F. App'x 852, 855 (10th Cir. 2007) (unpublished) (holding that Speech or Debate immunity barred suit challenging the "decision of individual Congressmen not to take legislative action in response to [plaintiff's] prompts") (emphasis added); *Peterson v. Hatch*, No. 96-4023, 1996 WL 421946, at *1 (10th Cir. July 26, 1996) (unpublished) ("The essence of the complaint in this case is that Appellant disagrees with Senator Hatch's legislative judgment.....[T]he Speech and Debate Clause precludes judicial reexamination of those legislative policy choices "); *Voinche v. Fine*, 278 F. App'x 373, 374 (5th Cir. 2008) (unpublished) (Speech or Debate immunity barred suit against Congressmen "for their alleged failure to investigate his claims"); *Ray v. U.S. Senate*, 892 F.2d 1041, 1989 WL 156929 (4th Cir. 1989) (unpublished) (holding Speech or Debate Clause barred suit, stating plaintiff "cannot claim damages for a committee's or a senator's failure to act on her behalf"); *Schacher v. Feinstein*, 2:16-cv-08726, 2017 WL 7833631, at *1 (C.D. Cal. Jan. 11, 2017) (unpublished) (dismissing on Speech or Debate grounds "frivolous" suit against Senator to compel her to investigate).

[57] Brunson's claims against the Members of Congress not elected from Utah are also subject to dismissal for lack of personal jurisdiction because the Fourth Amended Complaint fails to allege the requisite minimum contacts with the forum state to subject them to suit in this state. *See Liberation News Serv. v. Eastland*, 426 F.2d 1379, 1384-85 (2d Cir. 1970) (affirming dismissal of suit against United States Senators for lack of personal jurisdiction); *Subramaniam v. Beal*, 2013 WL 5462339, at *3 (D. Or. Sept. 27, 2013) *(unpublished)* (dismissal for lack of personal jurisdiction of action against former Senator for conduct arising out of the performance of official duties); *Wade v. Akaka*, 2012 WL 6115656, at *4 (S.D. Tex. Nov. 2, 2012) (unpublished) (recommending dismissal for lack of personal jurisdiction action alleging that Senators not elected from forum state failed to take action in response to plaintiff's request), *adopted by*, 2012 WL 6115056 (S.D. Tex. Dec. 10, 2012) (unpublished).

IV. Brunson has failed to state a plausible claim for relief.

In considering 12(b)(6) motions, the court starts by examining the complaint. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."[58] "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[59] The court must "accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff."[60] That said, a court is not required to accept as true conclusory statements or legal conclusions couched as

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[58] *Burnett v. Mortgage Elec. Registration Sys., Inc.*, 706 F.3d 1231, 1235 (10th Cir. 2013).

[59] *Id.*

[60] *Albers v. Board of Cty. Comm'rs*, 771 F.3d 697, 700 (10th Cir. 2014); *see also Garcia- Rodriguez v. Gomm*, 169 F. Supp. 3d 1221, 1225 (D. Utah 2016).

factual allegations.[61] "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'"[62] A court must "draw on its judicial experience and common sense" to determine "whether a complaint states a plausible claim for relief."[63]

Here, the plausibility requirement of Rule 8 has not been met. Just because a few members of Congress may have claimed there were improprieties in the election or that further investigation was proper, other members of Congress were under no duty to agree and Brunson has not adequately alleged a proper legal basis to compel further investigation to have been undertaken before Defendants counted the electoral votes properly presented. Claims that cannot state a proper basis for relief are subject to dismissal with prejudice under Rule 12(b)(6) for failure to state a proper claim for relief. The claims presented by Brunson are implausible by their very nature, and the billions of dollars demanded, in addition to the other relief sought, show how frivolous the claims of Brunson are. Further, a court is not "required to review voluminous

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[61] *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009) (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007)).
[62] *Id.* at 678.
[63] *Id.* at 679; *see also Warnick v. Cooley*, 895 F.3d 746, 751 (10th Cir. 2018).

extraneous materials [like those Brunson attached to his fourth amended complaint] in an effort to address deficiencies in the complaint and identify facts to support a plaintiff's legal theories."[64]

No court, to Defendants' knowledge, has ever recognized a cause of action against a Member of Congress for the alleged failure to take legislative action to a constituent's satisfaction.[65] Accordingly, Brunson's complaint is also and alternatively subject to dismissal with prejudice for failure to state a cognizable claim.

CONCLUSION

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[64] *Rusk v. Univ. of Utah Healthcare Risk Mgmt.*, 2016 UT App 243, ¶ 7, 391 P.3d 325, 327.

[65] *See Apple v. Glenn*, 183 F.3d 477, 478–79 (6th Cir. 1999) (affirming sua sponte dismissal for lack of subject matter jurisdiction of action based on implausibility of First Amendment claims against United States Senator and other top government officials for their alleged failure both to respond and to take action in response to plaintiff's requests); *Newell v. Brown*, 981 F.2d 880, 887 (6th Cir. 1992) (upholding dismissal of claim against congressman arising out of service to a constituent, stating "[f]or the federal judiciary to subject members of Congress to liability for simply doing their jobs would be unthinkable" because it would violate the separation of powers doctrine); *Richards v. Harper*, 864 F.2d 85, 88 (9th Cir. 1988) (holding that a congressman's "failure to assist [a constituent] was neither inappropriate nor actionable"); *Daviscourt v. Claybrook*, No. C18-1148, 2019 WL 3458000, at *5 (W.D. Wash., July 31, 2019) (unpublished) (dismissing claims that Senate staffer "fail[ed] to investigate the IRS' alleged wrongdoing"), *aff'd*, 821 F. App'x 855, 856 (9th Cir. 2020); *Damato v. Rell*, No. 3:09-cv-1485, 2010 WL 2475666, at *3 (D. Conn. June 14, 2010) (unpublished) ("The refusal of a member of Congress to assist a constituent . . . does not constitute a cognizable claim"); *Lannak v. Biden*, No. Civ.06 180, 2007 WL 625849, at *2 (D. Del. Feb. 27, 2007) (unpublished) (same).

For the foregoing reasons, Defendants request that this action be dismissed without prejudice for lack of subject matter jurisdiction, or alternatively dismissed with prejudice for failure to state a claim.

Dated this 1st day of July, 2022.

TRINA A. HIGGINS
United States Attorney

/s/ Andrew Choate
ANDREW CHOATE
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that on July 1, 2022, the following document:

Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim

was served by U.S. Mail and e-mail to the following individuals:

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/s/ Andrew Choate
ANDREW CHOATE
Assistant United States Attorney

Case 2:21-cv-00175-RJS Document 64 Filed 07/07/22 PageID.2141
Page 1 of 11

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

LOY ARLAN BRUNSON in his personal capacity and as a member of "We The People", Plaintiff, vs. ALMA S. ADAMS ; et al., Defendants.	**PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS FOR LACK OF JURISDICTION AND FAILURE TO STATE A CLAIM FOR RELIF** Case No. 2:21-cv-00175 Judge: Robert J. Shelby Magistrate Judge: Cecilia M. Romero

ARGUMENT

The notice of appearance (ECF 63) states that Andrew Choate and Trina A. Higgins are attorneys for Defendant the United States of America which is not a Defendant in this case. The motion to dismiss (ECF 62) should be denied

because these two attorneys do not represent the Defendants of this case.

It is the design of Defendants to paint Brunson's complaint as having no merit so that this court will not address Brunson's arguments regardless of Brunson's right to be heard.[66]

Brunson's complaint has nothing to do with the outcome of the most recent presidential election. It has everything to do with how the Defendants voted against **investigating** the allegations that the last presidential election was rigged.

Brunson's complaint alleges that 100 members of U.S. Congress supported with over 1,000 affidavits testified that the election needed to be **investigated** due to allegations that there was a serious threat to our election process. This is not disputed.

The Defendants under their oath of office has sworn that they would protect and defend the U.S. Constitution

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[66] "The right of a litigant to be heard is one of the fundamental rights of due process of law. A denial of the right requires a reversal." Council Of Federated Organizations v. MIZE, 339 F.2d 898 (5th Cir. 1964). And "(". . . an opportunity to be heard in a meaningful way are at the very heart of procedural fairness . . .")" Brent Brown Dealerships v. Tax Com'n, MVED, 2006 UT App 261. And "[E]very person who brings a claim in a court or at a hearing held before an administrative agency has a due process right to receive a fair trial in front of a fair tribunal." Id. (quotations and citations omitted)." *Brent Brown Dealerships v. Tax Com'n*, MVED, 2006 UT App 261.

against all enemies foreign and domestic. Therefore they were obligated by their oath to **investigate** allegations if there was or was not a threat to the election process. See the whole of Brunson's complaint.

If President Trump had won the election and 100 members of U.S. Congress made the same allegation of there being a serious threat to the election process, Brunson's position with this lawsuit would be the same. If Defendants motion to dismiss is granted they will no doubt thwart any **investigation** of future crime and corruption tied to our voting system.

To correct, clarify and avoid any possible further confusion on Brunson's position;

A win for Defendants is a win against **INVESTIGATING** fraud in the next election.

A win for Defendants is a win against **INVESTIGATING** any Russian interference in the next election.

A win for Defendants is a win against **INVESTIGATING** Trump if he chooses to rig his next election.

A win for Defendants is a win against **INVESTIGATING** Democrats or Republicans if they choose to rig an election.

A win for Defendants is a win for enemies against a Constitutional sound election.

A win for Defendants is a win against **INVESTIGATING** foreign and domestic enemies against the Constitution of the United States who operate under our election process.

A win for Defendants is a win against Article VI of the U.S. Constitution that requires all Defendants be bound by oath. It is impossible for Defendants to be bound by oath if they are allowed protections through required waivers, jurisdictional and legislative immunity from being prosecuted in this action.

Also under Amendment 1 of the U.S. Constitution Defendants in this case have no jurisdictional or legislative immunity. The Defendants' argument that Brunson must get permission to bring his action only in the U.S. Federal Court of Claims violates the 1st Amendment which mandates that Congress cannot make any law that would keep Brunson from bringing this action against the Defendants for a redress of his grievances.

Again, Brunson's complaint has nothing to do with the results of the said election as the Defendants would like the court to believe.

Allegations that our election integrity has been compromised need to be investigated in order to discover if

the allegations are true, otherwise we know not if the election was compromised thus potentially giving aid and comfort to enemies of the U.S. Constitution. Such enemies cannot be protected by any court of law under any argument whatsoever.

If war was declared against the United States we would see the loss of life and property. If the attacker won, their leader would be put into power to rule over us all. A successful rigged election is a domestic enemy moving as an act of war without the loss of life and property and it puts into power their victor.

Again the U.S. Constitution, statutes, law and acts of congress cannot protect the failure of the Defendants to investigate the serious allegations of a rigged election which is an act of fraud and fraud vitiates everything[67].

Defendants cannot hide behind or be protected under their jurisdictional claims from Brunson's fraud claims because it is a "stern but just maxim of law that fraud vitiates everything into which it enters". *Id footnote 1.*

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[67] "Our courts have consistently held that fraud vitiates whatever it touches, *Morris v. House,* 32 Tex. 492 (1870)". *Estate of Stonecipher v. Estate of Butts*, 591 SW 2d 806. And ""It is a stern but just maxim of law that fraud vitiates everything into which it enters." *Veterans Service Club v. Sweeney,* 252 S.W.2d 25, 27 (Ky.1952)." *Radioshack Corp. v. ComSmart*, Inc., 222 SW 3d 256.

Vitiate; "To impair or make void; to destroy or annul, either completely or partially, the force and effect of an act or instrument." West's Encyclopedia of American Law, edition 2.

In addition to Defendants jurisdictional claims being vitiated by fraud, Brunson has an unfettered right to bring this action against the Defendants in this court. The Utah Supreme Court in the case of *American Bush v. City Of South Salt Lake,* 2006 UT 40 140 P.3d.1235 has ruled that Brunson's unfettered right to sue the Defendants is "not measured by the powers of the rulers" and that Governmental powers "do not measure the rights of the governed". Therefore Defendants jurisdictional claims that are developed by statute are powers that measure Brunson's right to sue the Defendants in this court which is unconstitutional. In a most recent decision by the Supreme Court of the United States stated that " . . . we have made clear that individual rights enumerated in the Bill of Rights and made applicable against the States through the Fourteenth Amendment have the same scope as against the Federal Government". *New York State Rifle & Pistol Association, Inc., et al. v. Bruen, et al.*, 597 U. S. ____ (2022). This also means that this court can remove the Defendants from their elected offices.[68]

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[68] Fourteenth Amendment, Section 3: "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

The jurisdictional statutes and case law cited by Defendants wrongfully measure Brunson's right to sue the Defendants in this court and as such are null and void in this case.

Brunson's unfettered right to sue Defendants in this court is also guarded by the U.S. Constitution, "In considering State constitutions we must not commit the mistake of supposing that, because individual rights are guarded and protected by them, they must also be considered as owing their origin to them. These instruments measure the powers of the rulers, but they do not measure the rights of the governed." They do not measure Brunson's right to sue the Defendants in this court. *Id* for quotations.

It is Brunson's unfettered right to sue Defendants for their breach of their Oath of office, which oath was made to protect Brunson's personal rights. Brunson's personal "rights are guarded and protected by them". The Oath of office is "Designed for their protection in the enjoyment of the rights and powers" of Brunson, and to sue Defendants for a redress of grievances found under his causes of actions against the Defendants. *Id* for quotations.

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insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."

All of the statutes and case law cited by Defendants in support of their jurisdictional claims do not apply in this case because they stand in the way of Brunson's unfettered right to sue Defendants. (Maybe their jurisdictional claims are better fitted in a criminal proceeding against them.)

Again, Congress, nor any other legislative branch of Government, has not the right to curtail Brunson's unfettered right to require Defendants to answer his complaint within this court. Statutes and case law "grants no rights to the people", rather they are "Designed for their protection in the enjoyment of the rights and powers which" Brunson has always possessed. It is Brunson's unfettered right to sue the Defendants herein which requires them to answer his complaint. *Id* for quotations.

Statutes and case law are "not the beginning of a community, nor the origin of private rights; it is not the fountain of law, nor the incipient state of government . . . it grants no rights to the people." In complete disregard of the Constitution of the United States, Defendants expound statutes and case law in order to be exempt from Brunson's claims. ". . . In considering State constitutions we must not commit the mistake of supposing that, because individual rights are guarded and protected by them, they must also be considered as owing their origin to them. These instruments measure the powers of the rulers, but they do

not measure the rights of the governed [. . . . [A state constitution] is not the beginning of a community, nor the origin of private rights; it is not the fountain of law (statutes and case law cannot be the foundation of law), nor the incipient state of government; it is not the cause, but consequence, of personal and political freedom; **it grants no rights to the people**, but is the creature of their power, the instrument of their convenience. Designed for their protection in the enjoyment of the **rights and powers which they possessed before the constitution was made,** it is but the framework of the political government, and necessarily based upon the pre-existing condition of laws, rights, habits, and modes of thought. There is nothing primitive in it: it is all derived from a known source. It presupposes an organized society, law, order, property, personal freedom, a love of political liberty, and enough of cultivated intelligence to know how to guard it against the encroachments of tyranny." (Bold emphasis and parenthesis added) *American Bush v. City Of South Salt Lake,* 2006 UT 40 140 P.3d.1235. Then the statutes and case law cited by Defendants do NOT protect Brunson's right to sue the Defendants because the only statutes that can ever be enacted by any legislative body are those that further and protect Brunson's rights.

Article III courts cannot be a creation that would violate any part of Brunson right to sue the Defendants in this court. They were created as an avenue that Brunson could seek redress of grievances especially where Defendants have violated their oath of office against Brunson, and committed treason against Brunson as outlined in Brunson's causes of action against the Defendants.

Brunson's right to sue the Defendants in this court cannot be blocked by Defendants jurisdictional arguments.

The two clauses of the Declaration of Independence[69] are connected to Amendment IX of the Constitution of the USA which states "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Therefore, the purpose of the Constitution guarantees Brunson's right to sue the Defendants and cannot be overturned by statutes or case

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[69] "When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it . . ."

laws. The Constitution cannot be construed by any means, by any legislative, judicial and executive bodies, by any court of law to deny or disparage our unalienable rights. This is the supreme law of the land. "This Constitution, and the Laws of the United States which shall be made Pursuance thereof; . . .shall be the supreme Law of the land; and the Judges in every State shall be bound thereby." *See* Article VI of the Constitution.

Furthermore "All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending **before any tribunal in this State**, by himself or counsel, any civil cause to which he is a party." (bold and underline emphasis added) Article I Section 2 of the Utah State Constitution. The Utah State Constitution protects Brunson's rights to sue Defendants in this state.

Also ""The right of petition is one of the freedoms protected by the Bill of Rights, and we cannot, of course, lightly impute to Congress an intent to invade these freedoms." *Id.,* at 138. . . .The same philosophy governs the approach of citizens or groups of them to administrative agencies (which are both creatures of the legislature, and arms of the executive) and to courts, the third branch of

Government. Certainly the right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition." (Internal citations omitted) *California Motor Transport Co. Et Al. v. Trucking Unlimited Et Al*. 404 U.S. 508 (1972). Brunson's right to sue Defendants is not barred by Defendants sovereign or jurisdictional immunity claims.

In addition, Defendants immunity claims would grant them a title of nobility from being sued in this court which is unconstitutional and is not recognized in Utah. Article I Section 10 Clause 1 states "No State shall . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

Defendants' claim that Brunson did not state a claim upon which relief can be granted is self conclusory and as such has no merit. Defendants had every opportunity to show the elements required to state a claim for each cause of action and how Brunson did not do this, but Defendants chose not to do this. And if there is any doubt as to Brunson's claims "The courts are a forum for settling controversies, and if there is any doubt about whether a claim should be dismissed for **the lack of factual basis, the issue should be resolved in favor of giving the party an opportunity to present its proof.**" *Colman v.*

Utah State Land Bd., 795 P.2d 622, 624 (Utah 1990) (citations omitted, bold emphasis added).

In addition, this court has already ruled that Brunson's complaint (fourth amended complaint) is sufficient to pass muster under Rule 8. The court ruled in (ECF 15) that "Rule 8 of the Federal Rules of Civil Procedure requires a complaint to contain "(1) a short and plain statement of the grounds for the court's jurisdiction . . .; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought." The requirements of Rule 8 mean to guarantee "that defendants enjoy fair notice of what the claims against them are and the grounds upon which they rest." *TV Commc'ns Network, Inc. v ESPN, Inc.*, 767 F. Supp. 1062, 1069 (D. Colo. 1991)" And "To satisfy Rule 8, Plaintiff must clearly state what each defendant—typically, a named government employee—did to violate Plaintiff's civil rights. See Bennett v. Passic, 545 F.2d 1260, 1262-63 (10th Cir. 1976) (stating personal participation of each named defendant is essential allegation in civil-rights action). "To state a claim, a complaint must 'make clear exactly who is alleged to have done what to whom.'" Stone v. Albert, 338 F. App'x 757, 759 (10th Cir. 2009) (unpublished) (emphasis in original) (quoting Robbins v. Oklahoma, 519 F.3d 1242, 1250 (10th Cir. 2008)). Furthermore, "[a]ny individual who seeks to

invoke the jurisdiction of the federal courts must allege an actual 'case or controversy.'" Martin v. Box, No. CIV-09-0192, 2009 WL 1605657, at *3 (W.D. Okla. June 5, 2009) (quoting City of Los Angeles v. Lyons, 461 U.S. 95, 101 (1983). That means Plaintiff "must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." Raines v. Byrd, 521 U.S. 811, 818–819 (1997) (quotation omitted)." The court continued by stating that "Plaintiff must, within thirty days of the date of this Order, cure the deficiencies in the Amended Complaint and comply with Rule 8".

This Order eventually lead the court to file Brunson's fourth amended complaint and allowed it to be served with the summons signed by the court. This ruling also acknowledges that this court has jurisdiction to hear this case otherwise it would have stated otherwise.

Defendants also claim that this lawsuit cannot remove the Defendants from their offices. The above stated Order conceded that Brunson's complaint can. In addition, it's self evident that it can. In the protection of Brunson's rights, as pointed out above, he doesn't have to wait for Congress, or any other Governmental body, to remove Defendants when they have violated their oaths by their acts of fraud, and have committed treason.

Courts do have authority to remove the Defendants from their offices as demonstrated in 18 U.S. Code § 2381 which states "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." (Under line emphasis added) A court adjudicating that a sitting congressman is incapable of holding his office also constitutes a removal of his office, otherwise the code in court is useless.

Foot note 2 of Defendants motion alleges that this case should be dismissed because Brunson did not properly serve the United States attorney's office a copy of the complaint. Defendants do not explain how this prejudiced them, and if they didn't have a copy of the complaint how is it that they timely appeared and filed their motion to dismiss?

WHEREFORE, in the interest of justice and as a matter of law, Brunson moves this court to deny Defendant's motion to dismiss and to order the Defendants to answer the complaint within 10 days after the dismissal.

Additionally, both sovereign immunity and legislative immunity bar Brunson's claims. Alternatively, dismissal is appropriate because Brunson has failed to state a claim for relief.

In his response to the Defendants' motion to dismiss, Brunson fails to substantively respond to the motion.[71] Instead he argues that (1) the United States does not have the authority to represent the government-official defendants in this action, (2) Utah law provides Brunson a separate cause of action in federal court, and (3) various clauses found in the U.S. Constitution provide Brunson with a basis for his suit to proceed. None of these arguments overcome the jurisdictional defects in Brunson's complaint.

ARGUMENT

In his response, Brunson first argues that the United States Attorney's Office does not have authority to represent the Defendants in this action. But there is no question that Congress has authorized the Department of Justice to represent federal employees in official capacities.[72] Indeed, the authority to "conduct of litigation in which the United States, an agency, or officer thereof is a

[70] ECF No. 62.
[71] 28 U.S.C. § 516.
[72] Id.

party, or is interested" is reserved exclusively to the Department of Justice.[73]

Brunson next argues that the Utah State Constitution provides Brunson standing to pursue his claims. First, Utah *state* law cannot provide Brunson a cause of action against *federal* officials, as Brunson appears to argue. Nor does Utah state law give Brunson standing to pursue these claims.[74] Thus, because Brunson has failed to establish that he has suffered an injury-in-fact that is personal to him, or that any such injury could be redressed by this Court, dismissal is appropriate.

Finally, Brunson appears to argue that this Court—by allowing summons to be issued— has already determined that the Fourth Amended Complaint states a claim. But that is not the case. Rather, by allowing summons to be issued, the Court has determined only that Brunson had corrected the deficiencies identified by the Court in his earlier complaints. The Court has made no substantive ruling on the sufficiency of Brunson's complaint or his standing to pursue the claims asserted therein.

CONCLUSION

For the foregoing reasons, and for the reasons stated in

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[73] *Id.*

[74] Brunson also cites to various United States' constitutional amendments but fails to explain how those amendments would establish his standing to pursue his claims.

the motion to dismiss, Defendants request that this action be dismissed without prejudice for lack of subject-matter jurisdiction, or alternatively dismissed with prejudice for failure to state a claim.

Dated this 20th day of July, 2022.

TRINA A. HIGGINS
United States Attorney

/s/ Andrew Choate
ANDREW CHOATE
Assistant United States Attorney

CERTIFICATE OF SERVICE

The undersigned Assistant United States Attorney hereby certifies that on July 20, 2022, the following document:

Defendants' Reply Memorandum in Support of Motion to Dismiss

was served by U.S. Mail and e-mail to the following individuals:

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