

APPENDIX

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United States Appeals Court of the Tenth Circuit Judgment and Order.....	1a
Utah District Court Memorandum and Order.....	8a
Constitutional and statutory provisions involved.....	16a

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

GIAN MARTINEZ-
FERRATE; ANDRE
MARTINEZ FERRATE;
MARILYN WESTENSKOW

Plaintiffs-Appellants

and

ANGELA ROHR; LOUIS
ROHR,

Plaintiffs,

V.

2:24-CV-00659

STATE OF UTAH; OFFICE
OF THE LIEUTENANT
GOVERNOR; DIEDRE
M. HENDERSON; SHELLY
JACKSON; RYAN
COWLEY,

Defendants - Appellees

FILED
United States Court of Appeals
Tenth Circuit

February 27, 2026

Christopher M. Wolpert
Clerk of Court

No. 25-4073
(D.C No. -AMA)
(D. Utah)

ORDER AND JUDGMENT

BACHARACH, KELLY, and FEDERICO,
Circuit Judges”

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** The court initially set this matter on the oral argument calendar to be submitted on the briefs. After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Plaintiffs-Appellants Gian Martinez-Ferrate, Andre Martinez-Ferrate, and Marilyn (or Marylin) Westenskow were proposed presidential electors in Utah.¹ They appeal from the dismissal of their complaint against Defendants-Appellees — the State of Utah, the Office of the Lieutenant Governor, Lieutenant Governor Deidre M. Henderson, Deputy Director of Elections Shelly Jackson, and Director of Elections Ryan Cowley — for lack of standing. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

Background

In advance of the 2024 presidential election, Dr. Shiva Ayyadurai (“Dr. Shiva”) submitted a declaration of candidacy² to be placed on Utah’s ballot for President of the United States as an unaffiliated candidate. R. 84. Pursuant to Utah law, which requires unaffiliated candidates to name their presidential electors, Utah Code Ann. § 20A-13-301(1)(c) (LexisNexis 2025), Dr. Shiva named Plaintiffs and others as his electors, R. 51–52. To be added to the presidential ballot in Utah, candidates must attest that they meet the qualifications to be President, including that they are natural born citizens. U.S. Const. art. II, § 1, cl. 5; Utah Code Ann. §§ 20A

¹ After filing this appeal, two of the original appellants, Angela Rohr and Louis Rohr, moved to withdraw as Plaintiffs-Appellants. App. Ct. Dkt. No. 28. The motion was granted and the other three Plaintiffs continue with this appeal. App. Ct. Dkt. No. 31.

² Defendants note that the correct term for this filing is a “certificate of nomination” and not a “declaration of candidacy” but that they are “functionally equivalent.” Applee. Br. at 6 n.4. The district court used the latter term, so we do the same. R. 177. 9-201(1)(b), -502(1)(a). On his

filing form, Dr. Shiva stated that he was a U.S. citizen but was born in India. R. 103. In July 2024, Utah's lieutenant governor, the state's chief elections official, id. at 83, disqualified Dr. Shiva from the ballot because he was not a natural born citizen and could not run for President, id. at 110. Crystal Ellis, Dr. Shiva's running mate, then filed her candidacy for Vice President; the lieutenant governor rejected her filing because of Dr. Shiva's disqualification. Id. at 105–06, 108.

In September 2024, proceeding under 42 U.S.C. § 1983, Plaintiffs filed their complaint for “unlawfully remov[ing]” them as electors from Utah's 2024 general election ballot. Id. at 8–42. They also moved to preliminarily enjoin Defendants from removing them as electors, raising similar claims. Id. at 49–60. Neither Dr. Shiva nor Ms. Ellis were parties to the suit or sought to intervene below.

In October 2024, the district court denied the motion for injunctive relief for lack of standing, finding that Plaintiffs failed to meet the injury in fact and redressability requirements. Id. at 117–23. The district court then issued a show cause order as to standing; after additional briefing, the district court dismissed the complaint for similar reasons. Id. at 131, 176–82.

After filing their appeal, Plaintiffs filed a motion to add Dr. Shiva and Ms. Ellis as appellants, to which Defendants responded. App. Ct. Dkt. No. 12; App. Ct. Dkt. No. 18. That motion is also before us.

Discussion

We give pro se pleadings a mandated liberal construction. Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005). But while we may “make some allowances for the pro se plaintiff's failure to cite proper legal authority,” we will not excuse a failure to follow rules of procedure or act as the party's advocate. Id. (citation modified); Yang v. Archuleta, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

We begin with the motion to add Dr. Shiva and Ms.

Ellis as parties. No legal authority to support their motion is cited, which is required under the Federal Rules of Appellate Procedure. Fed. R. App. P. 27(a)(2)(A). Because Plaintiffs-Appellants have failed to comply with our procedural rules, we deny their motion. See Garrett, 425 F.3d at 840–41.

We turn now to the issue of standing. Article III limits the power of the federal courts to resolve only “Cases” and “Controversies.” U.S. Const. art. III, § 2, cl. 1. “For there to be a case or controversy under Article III, the plaintiff must have . . . standing.” TransUnion LLC v. Ramirez, 594 U.S. 413, 423 (2021). To establish standing, a plaintiff bears the burden of showing (1) an injury in fact, (2) that the injury was likely caused by the defendant, and (3) that the injury would likely be redressed by judicial relief. Food & Drug Admin. v. All. for Hippocratic Med., 602 U.S. 367, 380 (2024). At the pleading stage, “the plaintiff must clearly allege facts demonstrating each element” of standing. Spokeo, Inc. v. Robins, 578 U.S. 330, 338 (2016) (citation modified).

To establish an injury in fact, the plaintiff “must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” Id. at 339 (citation modified). “The injury must affect the plaintiff in a personal and individual way and not be a generalized grievance.” All. for Hippocratic Med., 602 U.S. at 381 (citation modified).

In their complaint, Plaintiffs argued that Defendants lacked authority to (1) remove Dr. Shiva and Ms. Ellis from the ballot because Utah voters cast votes for presidential electors rather than candidates, (2) remove Plaintiffs (the potential electors) from the ballot because Defendants did not notify them of the rejection of Dr. Shiva’s or Ms. Ellis’s candidacy, and (3) remove Plaintiffs from the ballot because they had no grounds to do so. R. 27–40. Underlying each of these arguments is the claim that electors, rather than candidates, are on the ballot. But that claim is inaccurate.

The Constitution delegates the process of selecting

presidential electors to the states. U.S. Const. art. II, § 1, cl. 2. Accordingly, states have “far-reaching authority” over the appointment of electors. Chiafalo v. Washington, 591 U.S. 578, 588–89 (2020).

As stated above, Utah requires unaffiliated candidates to name their proposed presidential electors. Utah Code Ann. § 20A-13-301(1)(c) (LexisNexis 2025). Those electors then cast votes for President and Vice President of the United States. Id. § 20A-13-304; U.S. Const. amend. XII. Utah specifically excludes presidential electors from its definition of “[c]andidates for elective office[.]” Utah Code Ann. § 20A-9-101(1)(a), (b)(ii). Thus, as the district court recognized, “a logical forerunner to the appointing of a presidential elector . . . is [a] . . . candidate for the office of president of the United States.” R. 122. Dr. Shiva and Ms. Ellis were never candidates or on the ballot because the Lieutenant Governor rejected their declarations of candidacy. Id. at 108, 110.

Thus, Plaintiffs were not on the presidential ballot and had no right to be presidential electors. Moreover, neither Dr. Shiva nor Ms. Ellis are parties to the instant suit, and Plaintiffs have not shown that they have third-party standing to assert Dr. Shiva’s or Ms. Ellis’s rights. See Hill v. Warsewa, 947 F.3d 1305, 1309–10 (10th Cir. 2020). And to the extent that Plaintiffs allege that they were entitled to notice of Dr. Shiva’s or Ms. Ellis’s disqualifications, Utah law only requires notification to putative candidates — here, Dr. Shiva and Ms. Ellis. Utah Code Ann. § 20A-9-202(5)(a)–(c).

Plaintiffs have not clearly alleged facts sufficient to establish an injury in fact. Spokeo, 578 U.S. at 338. Therefore, they have no standing and our analysis need go no further. See Lupia v. Medicredit, Inc., 8 F.4th 1184, 1190 (10th Cir. 2021); Carpenter v. Vilsack, No. 22-8079, 2023 WL 6810960, at *8 n.13 (10th Cir. Oct. 16, 2023).

7a

Accordingly, the district court's dismissal of the complaint is AFFIRMED.

Entered for the Court

Per Curiam

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ANGELA ROHR, et al.,

Plaintiffs,

v.

STATE OF UTAH et al.,

Defendants.

**MEMORANDUM
DECISION AND ORDER
DISMISSING
PLAINTIFFS VERIFIED
COMPLAINT**

Case No. 2:24-cv-00659-

AMA-DBP

District Judge Ann Marie

McIff Allen

Magistrate Judge Dustin B.

Pead

IT IS ORDERED AND ADJUDGED

that Plaintiffs case is dismissed.

SIGNED this 15th of May 2025.

BY THE COURT:



Hon. Ann Marie McIff Allen
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ANGELA ROHR, et al.,

Plaintiffs,

v.

STATE OF UTAH et al.,

Defendants.

**MEMORANDUM
DECISION AND ORDER
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District Judge Ann Marie

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On September 9, 2024, *pro se* Plaintiffs filed their Emergency Motion for Temporary Restraining Order and Preliminary Injunction.¹ This Court denied the motion because Plaintiffs lacked Article III injury in fact and redressability for a preliminary injunction.² Later, the Court issued an order to show why this case should not be dismissed for lack of Article III standing.³ The parties have briefed the issue.⁴ For the reasons included in its prior Order,⁵ and as further explained below, the Court will DISMISS Plaintiffs' Verified Complaint for lack of Article III standing.

¹ Docket No. 2:24-cv-659, ECF No. 3.

² Memorandum Decision and Order on Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction ("Order Denying Preliminary Injunction"), ECF No. 23.

³ Order to Show Cause, ECF No. 28.

⁴ Plaintiffs' Brief, ECF No. 29; Defendants' Response to Order to Show Cause RE: Standing ("Opp'n"), ECF No. 30; Plaintiffs' Response to Defendants' Response to Order to Show Cause RE: Standing ("Reply"), ECF No. 31.

⁵ Order Denying Preliminary Injunction, ECF No. 23.

I. BACKGROUND

In preparation for the 2024 General Election, Plaintiffs filed Certificates of Nomination with the Utah Office of Lieutenant Governor seeking to be listed as presidential electors for the State of Utah, designated and pledged for the candidacy of Dr. Shiva Ayyarudai ("Dr. Shiva") for President of the United States.⁶ Dr. Shiva submitted a Declaration of Candidacy to be placed on the ballot in Utah as a candidate for the office of President of the United States.⁷

In a letter dated July 17, 2024, the Lieutenant Governor's Office informed Dr. Shiva that he was disqualified from the Utah ballot because he was not a "natural born citizen" and was thus constitutionally ineligible to run for the office of President of the United States,⁸ which resulted in Plaintiffs' non-selection as presidential electors.

On September 9, 2024, Plaintiffs brought this suit against relevant Utah state actors under 42 U.S.C. § 1983 alleging First and Fourteenth Amendment and Due Process violations for deprivation of the right to vote as presidential electors.⁹ Plaintiffs seek injunctive, monetary, and declaratory relief.¹⁰ Dr. Shiva is not a party to this suit.

⁶ Verified Compl., ECF No. 1, at 2 ¶ 1.

⁷ See *id.* at 13 (letter sent from the Office of the Lieutenant Governor to Dr. Shiva rejecting his declaration of candidacy).

⁸ *Id.*

⁹ See *id.* at 2 ¶ 1, 7 ¶¶ 17-18, 22 ¶ 48, 29 ¶ 77 (Plaintiffs alleging that their First and Fourteenth Amendment and Due Process rights were violated because they were removed from the Utah ballot resulting in deprivation of the opportunity to vote as presidential electors in the 2024 General Election.).

¹⁰ *Id.*

II. LEGAL STANDARD

“The law of Art. III standing is built on a single basic idea – the idea of separation of powers.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 422 (2021) (cleaned up, citation and quotation marks omitted). To have Article III standing to bring a claim, a plaintiff must have (1) suffered an injury in fact, (2) a traceable connection between the injury and alleged conduct, and (3) an injury that will be redressed by a favorable court decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal citations omitted). Plaintiffs “bear[] the burden of establishing standing as of the time [they] brought the lawsuit and maintaining it thereafter.” *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (cleaned up).

III. ANALYSIS

A. Injury in Fact

The U.S. Constitution commands that “[e]ach State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors” U.S. CONST. art. II, § 1, cl. 2. Relevant Utah law requires that presidential electors be “selected by” an “unaffiliated or write-in candidate for the office of President of the United States” Utah Code Ann. § 20A-13-301(1)(c). Dr. Shiva was

disqualified as a candidate for the office of President of the United States. Plaintiffs were thus not selected as presidential electors. "[R]aising only a generally available grievance about government . . . does not state an Article III case or controversy." *Lujan*, 504 U.S. at 573-74. No citizen has an unfettered right to be selected as a presidential elector, therefore Plaintiffs' grievance creates no Article III injury.

Plaintiffs also allege that they were entitled to notice of removal when Dr. Shiva was disqualified from the Utah ballot.¹¹ However, Plaintiffs' cited statutory language refers only to notice to a candidate. Utah Code § 20A-9-202(5)(a)-(c). The relevant candidate here, Dr. Shiva, is not a party and has not challenged his disqualification or ensuing notice. Plaintiffs may not do so for him.

B. Redressability

As to redressability, Plaintiffs claim that the Court may (1) enjoin Plaintiffs' removal from the Utah ballot and the printing of ballots for the election; (2) award monetary damages; and, (3) declare that the state erroneously removed Plaintiffs from the Utah ballot because they could have become electors to vote for whomever they chose, and that the state prematurely adjudicated the matter.¹²

1. Injunctive Relief

As explained in the Court's previous Order, Utah's legislature elected to have the candidate running for the office of President of the United States appoint presidential electors. Utah Code Ann. § 20A-13-301(1)(c). That Plaintiffs have expended time, effort, and resources to qualify for this appointment is unfortunate, but it cannot change the Constitution's delegated authority to the state legislature to facilitate elector appointments. As the

Court stated in its previous decision, “[n]o command from this Court can confer presidential electorship on the Plaintiffs.”¹³

¹¹ Verified Compl., ECF No. 1, at 28.

¹² Verified Compl., ECF No. 1, at 3; Reply, ECF No. 31, at 5-6.

¹³ Order Denying Preliminary Injunction, ECF No. 23, at 7.

2. Monetary Damages

Plaintiffs do not specify the type of monetary damages they seek, so the Court will read the request broadly, consistent with its duty to construe *pro se* filings liberally. *Lundahl v. Halabi*, 600 Fed. Appx. 596, 600-01 (10th Cir. 2014) (internal citations omitted). Plaintiffs may mean nominal, compensatory, or punitive damages. Plaintiffs may also refer to their request for attorney’s fees and costs.

Plaintiffs’ allegations are not redressable by nominal, compensatory, or punitive damages because they do not sufficiently allege an actual injury or violation of a federally-protected legal right. *Uzuegbunam v. Preczewski*, 592 U.S. 279, 292 (2021) (“[A] request for nominal damages satisfies the redressability element of standing where a plaintiff’s claim is based on a completed violation of a legal right.”); *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 308 (1986) (“no compensatory damages c[an] be awarded for violation of [a constitutional] right absent proof of actual injury.”); *Evans v. Fogarty*, 241 Fed. Appx. 542, 564 (10th Cir. 2007) (“Punitive damages are available in § 1983 actions . . . only . . . ‘when the defendant’s conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.’”).

Plaintiffs allege that they were denied the opportunity to vote as presidential electors in reckless disregard of their due process and equal protection rights.¹⁴ However, Plaintiffs had no legal right to vote as presidential electors. As Plaintiffs acknowledge, ballot access for presidential electorship comes only when the potential

¹⁴ Verified Compl., ECF No. 1, at 25 ¶ 60.

presidential electors “fulfill[] the state requirements.”¹⁵ Dr. Shiva was found unqualified to be a candidate and so could not select Plaintiffs as presidential electors. Plaintiffs therefore did not meet state requirements to vote as presidential electors, so there is no alleged violation of a federally-protected legal right which monetary damages may redress.

Plaintiffs also seek costs and attorney’s fees under 42 U.S.C. § 1988(b),¹⁶ however, given that Plaintiffs have proceeded *pro se*, and are not a “prevailing party,” the Court need not consider this request further. 42 U.S.C. § 1988(b) (awarding costs and attorney’s fees to a prevailing party); *Kay v. Ehrler*, 499 U.S. 432, 433-38 (1991) (holding that *pro se* plaintiffs cannot receive attorney’s fees, even when one of them is an attorney representing herself).

3. Declaratory Relief

The Court cannot grant declaratory relief by ruling Plaintiffs could have become electors to vote for whomever they chose.¹⁷ In Utah, presidential electors may not vote for anyone other than those for whom they pledged their vote. Utah Code § 20A-13-304(3) (With only a couple exceptions irrelevant here, a presidential elector who votes for someone other than the candidate they nominated “is considered to have resigned from office of elector, the elector’s vote may

15a

not be recorded, and the remaining electors shall appoint another individual to fill the vacancy.”); *Chiafalo v. Washington*, 591 U.S. 578, 581 (2020) (upholding such punitive statutes).

¹⁵ Reply, ECF No. 31, at 6.

¹⁶ Verified Compl., ECF No. 1, at 7 ¶ 18.

¹⁷ Verified Compl., ECF No. 1, at 7 ¶ 18.

Further, though dubious is the assertion that Dr. Shiva’s disqualification was meritless, *see Hassan v. Colo.*, 495 Fed. Appx. 947, 948-49 (10th Cir. 2012) (affirming removal from the ballot a naturalized citizen as candidate for the office of President of the United States), the Court will not assess the reasons he was disqualified. He is not a party to this case, so the issue is not properly before the Court.

IV. ORDER

“If a plaintiff lacks standing, the court lacks subject-matter jurisdiction.” *Ceska zbrojovka Defence SE v. Vista Outdoor, Inc.*, 79 F.4th 1255, 1259 (10th Cir. 2023) (citation omitted). “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” FED. R. CIV. P. 12(h)(3). The Court therefore DISMISSES this case for lack of Article III standing.

SIGNED this 15th of May 2025.

BY THE COURT:



Hon. Ann Marie McLiff Allen
United States District Judge

Constitutional and Statutory Provisions Involved

U.S. Const. art. II, § 1, cl. 2 and 3 provides:

"Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an Office of Trust or Profit under the United States shall be appointed an Elector.

The Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States."

U.S. Const. amend. XIV, § 3 provides:

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

17a

Utah Stat. § 20A-9-502 (5)(a)(A) Provides:

20A-9-502 (5)(a)(A) **Certificate of
Nomination**

At least 1,000 registered voters residing
within the state when the nomination is for
an office to be filled by the voters of the
entire state