

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

MONTGOMERY BLAIR SIBLEY,

Plaintiff

v.

YVETTE ALEXANDER, et al.,

Defendants

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Civil Case No. 2012 CA 008644 B
Calendar II
Judge John M. Mott

ORDER

This matter is before the court on the plaintiff Montgomery Blair Sibley's Motion for Preliminary Injunction, and the defendants Yvette Alexander, Donald Dinan, and William Lightfoot's opposition thereto. The court conducted a Motion Hearing on November 29, 2012, after which the action was removed to the United States District Court for the District of Columbia. On June 8, 2013, Judge John Bates granted the defendant's Motion to Dismiss for lack of subject matter jurisdiction, denied the motion for a preliminary injunction on mootness grounds and remanded the case back to this court. For the reasons stated below, this court finds that the plaintiff has failed to meet his burden of clearly demonstrating that emergency injunctive relief is warranted. When analyzing the likelihood that the plaintiff will prevail on the merits of this case, the court concludes that the plaintiff cannot do so because he lacks standing to bring the present suit. Further, the defendants have now cast the District's electoral votes, rendering this lawsuit moot. As such, this case is dismissed.¹

¹ While the defendants have not filed a formal Motion to Dismiss for Lack of Standing, the defendants did orally request such action at the November 29, 2012 Motion Hearing. Even if such a request had not been made, the court finds that maintaining this case after concluding that the plaintiff lacks standing, for the mere purpose of having the defendants file a formal Motion to Dismiss, would cause the parties to expend unnecessary time and expense and would waste judicial resources. In making this decision, the court notes that the defendants fully briefed their standing challenges in their opposition to the Motion for Preliminary Injunction, and the plaintiff had an opportunity to address the standing issue at the November 29, 2012 hearing. Plaintiff's entire defense to the defendants' standing challenge amounts to his belief that the United States Supreme Court's standing doctrine is "heinous"—hardly a legally cognizable position.

Background

Plaintiff, who claims in his complaint that he is a District of Columbia voter and that he was a write-in candidate for President in the 2012 Presidential Election, has filed the present lawsuit against the three individuals whom the Democratic Party of the District of Columbia selected to cast the District's three electoral votes in the 2012 Presidential Election in an attempt to prevent the three defendants from casting their electoral votes for President Obama. Plaintiff contends that the defendants, who are bound to cast their votes for President Obama, in compliance with D.C. Code § 1-1001.08(g)(2), cannot legally vote for President Obama because he is not an eligible candidate for President of the United States, as mandated in Article II, Sec. I, Cl. 5 of the United States Constitution. Plaintiff rests this argument on the claim that President Obama is not "a natural born [c]itizen" because President Obama's father was not a citizen of the United States at the time of President Obama's birth. Plaintiff has filed a Motion for Preliminary Injunction, asking the court to order the defendants "not to cast their Twelfth Amendment votes" for President Obama. In the time period between the Motion Hearing in this case and the date of this Order, the case was removed to the United States District Court, the defendants cast their votes, and the case was remanded back to this court.

Standard of Review

The preliminary injunction standard is well known to all concerned with this case. "The decision to grant or deny preliminary injunctive relief is committed to the sound discretion of the trial court.'" *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 21 (D.C. 1993) (quoting *Stamenich v. Markovic*, 462 A.2d 452, 456 (D.C. 1983)). "A preliminary injunction is an extraordinary remedy, and the trial court's power to issue it should be exercised only after

careful deliberation has persuaded it of the necessity for the relief.” *Id.* (quoting *Wieck v. Sterenbuch*, 350 A.2d 384, 387 (D.C. 1976)).

A preliminary injunction may not be granted unless:

the moving party has clearly demonstrated (1) that there is a substantial likelihood [the moving party] will prevail on the merits; (2) that [the moving party] is in danger of suffering irreparable harm during the pendency of the action; (3) that more harm will result to [the moving party] from the denial of the injunction than will result to the defendant from its grant; and, in appropriate cases, (4) that the public interest will not be disserved by the issuance of the requested order.

Id. (quoting *Wieck*, 350 A.2d at 387). In determining whether to grant a motion for a preliminary injunction, “the most important inquiry is that concerning irreparable injury ... because the primary justification for the issuance of a preliminary injunction ‘is always to prevent irreparable injury so as to preserve the court’s ability to render a meaningful decision on the merits.’” *Id.* at 22 (quoting *Wieck*, 350 A.2d at 387-88). Moreover, a party who seeks to “alter the status quo rather than maintain it”—as the plaintiff does in this case—faces a “substantially higher standard than in the usual case.” *Fountain v. Kelly*, 630 A.2d 684, 688 (D.C. 1993). In such a situation, a court should not grant such emergency relief altering the status quo “‘unless the law and the facts clearly support the moving party.’” *Id.* at 689 (quoting *Doe v. New York University*, 666 F.2d 762, 773 (2d. Cir. 1981)). They do not.

Analysis

I. Mootness

“A case is moot if the parties have presented no justiciable controversy to the ... court.” *Thorn v. Walker*, 912 A.2d 1192, 1195 (D.C. 2006). Put another way, “[a] case is moot when the legal issues presented are no longer “live” or when the parties lack a legally cognizable interest in the outcome.” *Id.* (quoting *Cripp v. Williams*, 841 A.2d 328, 330 (D.C. 2004)). The

court may decide a moot case if the issues concerned are “capable of repetition, yet evading review.” *In re Johnson*, 691 A.2d 628, 631 (D.C. 1999). The United States Supreme Court has adopted a two-prong test for determining if a court should consider a moot issue because it is capable of repetition, yet evading review: “(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.” *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975). While the District of Columbia Court of Appeals considers the *Weinstein* factors, the court has “declined to adhere strictly to the requirements set forth in *Weinstein*.” *In re W.L.*, 603 A.2d 839, 841 (D.C. 1991).

In this case, the legal issues involved are no longer “live.” The plaintiff attempted, through this lawsuit, to prevent the defendants from casting the District’s three electoral votes for President Obama. However, the defendants have already cast their votes, and President Obama has been inaugurated for his second term. Therefore, no justiciable controversy exists at this time.

To the extent that the plaintiff would argue that this is a situation where the relevant issues are capable of repetition, yet evading review, this court finds that the second prong of the *Weinstein* factors has not been met. The plaintiff cannot show that a reasonable expectation exists that he will be subjected to the same action again. Among other issues, even if the District of Columbia Court of Appeals did adhere to the *Weinstein* factors, President Obama cannot be elected to a third term, and to find that the same issue in this case affecting the plaintiff is capable of repetition, yet evading review is entirely hypothetical or conjectural. Therefore, this court finds that no justiciable issue exists and, as a result, the case is dismissed on mootness grounds.

II. Preliminary Injunction

The court could end its analysis with the mootness decision but find that, even if this case had been decided prior to the defendants casting their votes, or if this court was to find that the issue was capable of repetition, yet evading review, this court would still dismiss the case because the plaintiff lacks standing to bring the claim. Turning to the preliminary injunction standard, plaintiff argues that he has clearly demonstrated all four prongs necessary for this court to grant a preliminary injunction that prohibits the defendants from casting their votes for President Obama. The defendants argue that the plaintiff has not clearly demonstrated any of the four factors and, thus, the motion should be denied.²

A. Substantial Likelihood of Prevailing on the Merits

Article II of the United States Constitution states “No Person except a natural born Citizen ... shall be eligible to the Office of President.” In his motion, plaintiff states, “The phrase ‘natural born Citizen’ is an 18th Century legal-term-of-art defined as: ‘The natives, or natural-born citizens, are those born in the country, of parents who are citizens.’”³ Pl. Mot. For Preliminary Injunction at 2. Plaintiff contends that, as such, because President Obama’s father was not a United States citizen, President Obama is not a “natural born Citizen” under Article II and, thus, is ineligible to serve as President of the United States. Consequently, plaintiff argues, he has clearly demonstrated that a substantial likelihood exists that the plaintiff will prevail on the merits. The defendants respond that the plaintiff has not only failed to show a substantial likelihood that he will prevail on the merits; in fact, no likelihood exists that the plaintiff will prevail on the merits because the plaintiff lacks standing to bring this suit.

² While this motion is ultimately denied on lack of standing and on mootness grounds, the court will address each of the four prongs.

³ Plaintiff cites no support for this assertion and this court could find no controlling authority that supports such a claim.

The District of Columbia Court of Appeals has adopted “the constitutional requirement of a case or controversy and the prudential prerequisites of standing.” *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 1206 (D.C. 2002) (quoting *Speyer v. Barry*, 588 A.2d 1147, 1160 (D.C. 1991)). “The *sine qua non* of constitutional standing to sue is an actual or imminently threatened injury that is attributable to the defendant and capable of redress by the court.” *Id.* at 1206-07. The injury must be “an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized ... and (b) actual or imminent, not conjectural or hypothetical.” *Id.* at 1207 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). In addition to the constitutional requirements for standing, the District of Columbia Court of Appeals has adopted prudential requirements for standing: (1) a party “may not attempt to litigate ‘generalized grievances;’” and (2) a party “may assert only interests that ‘fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.’” *Id.* at 1207 n.5 (quoting *Community Credit Union v. Fed. Express Serv.*, 534 A.2d 331, 333 (D.C. 1987)).

1. Injury

It appears that plaintiff claims that he has been injured in two capacities: (1) as a registered voter in the District of Columbia; and (2) as a write-in candidate for President. The District of Columbia Court of Appeals has already rejected the argument that a voter has standing to challenge an election based purely on the fact that he was injured as a voter. In *Mallof v. D.C. Bd. Of Elections & Ethics*, 1 A.3d 383, 398 (D.C. 2010), the court addressed a number of cases involving voter challenges to various candidates’ use of campaign funds. In these cases, voters argued that they were injured because their influence over the election was diminished as a result of the improper use of campaign funds by other candidates for whom they

did not vote. *Id.* The court found that in each of these situations, the voter had not satisfied the “injury in fact” standing requirement because the injury was not concrete or particularized.⁴ *Id.*; *see also* *Gottlieb v. Fed. Election Commission*, 143 F.3d 618 (D.C. Cir. 1998); *Wimpisinger v. Watson*, 628 F.2d 133 (D.C. Cir. 1980); *Becker v. Fed. Election Commission*, 230 F.3d 381 (1st Cir. 2000); *Colorado Taxpayers Union, Inc. v. Romer*, 963 F.2d 1394 (10th Cir. 1992).

In the present case, the plaintiff is not challenging the election based on an alleged violation of campaign finance laws; however, *Mallof* is applicable in that the plaintiff argues that he has standing because of his status as a voter. Plaintiff does not argue, as the plaintiffs did in *Mallof*, that his injury arises as a result of his influence over the election being diminished by the other side essentially cheating. However, plaintiff’s argument of his injury seems to be even less concrete and particularized—that as a voter he has an interest in seeing that those involved adhere to the Constitution of the United States. This court finds that plaintiff has failed to articulate an injury in fact that he has suffered as a general voter in the 2012 Presidential Election.

Similarly, the court finds that plaintiff has failed to identify an injury in fact that he has suffered as a result of being a write-in candidate for President. Plaintiff seems to take the position that because President Obama is an ineligible candidate for President for whom the

⁴ Numerous other courts across the country have similarly held that an individual claiming standing on the mere basis of being a voter lacks the particularized injury required to have standing to challenge eligibility of a candidate for President. *See, e.g., Kerchner v. Obama*, 612 F.3d 204, 208 (3d Cir. 2010) (holding that placing an ineligible candidate for office on the ballot was too general of an injury to satisfy standing requirements because it was an interest shared by all voters); *Berg v. Obama*, 586 F.3d 234, 240 (3d Cir. 2009) (“even if we assume that the placement of an ineligible candidate on the presidential ballot harmed [plaintiff], that injury ... was too general for the purposes of Article III: [plaintiff] shared both his [injury] with all voters; and the relief he sought would have ‘no more directly and tangibly benefited him than the public at large.’”); *Reade v. Galvin*, 2012 U.S. Dist. LEXIS 155943 *8 (D. Mass. Oct. 30, 2012) (“[A] ‘generalized interest of all citizens in constitutional governance’ ... does not suffice to confer standing.”); *Liberty Legal Found. V. Nat’l Democratic Party of the USA, Inc.*, 2012 U.S. Dist. LEXIS 85714 *25 (W.D. Tenn. June 21, 2012) (“It is well-settled that a plaintiff lacks standing ‘to challenge laws of general application where their own injury is not distinct from that suffered in general by other taxpayers or citizens.’”).

defendants are nonetheless required under D.C. statute to cast their electoral votes, plaintiff is somehow deprived of those three electoral votes, thus creating an injury in fact.

Once again, however, this court finds that such an injury does not meet the requirements of a concrete and particularized injury. In a similar case in Tennessee, the United States District Court for the Western District of Tennessee acknowledged that “a candidate for political office has standing to challenge the qualifications of another candidate under a competitive standing theory.” *Liberty Legal Found. V. Nat’l Democratic Party of the USA, Inc.*, 2012 U.S. Dist. LEXIS 85714 (W.D. Tenn. June 21, 2012). However, the court held that the plaintiffs involved in the case before that court did not meet the standing requirement because they had failed to plead facts showing that the plaintiffs were “truly in competition with President Obama for votes in Tennessee’s general election.” *Id.* As a result, the court held that the plaintiffs lacked the “concrete and actual or imminent” injury required to have standing to challenge President Obama’s eligibility as an opposing candidate. *Id.*

The same is true here. The court understands that, in some circumstances, being a candidate for office may place an individual in a position to suffer a concrete injury in fact required to challenge an opposing candidate’s eligibility for that office. However, the plaintiff has failed to allege that he was “truly in competition with President Obama for votes in” the District of Columbia’s 2012 Presidential Election. As a result, the claimed injury—that plaintiff was deprived of votes—remains conjectural and hypothetical and, therefore, is not an injury in fact. As a result, plaintiff has failed to plead the necessary facts to show that he suffered an injury either as a voter or as a write-in candidate for President.

2. Causation

Even if the plaintiff was able to demonstrate that he had suffered some kind of injury in fact, the court finds that he still does not meet the second prong of the constitutional standing requirements—that such an injury is attributable to these particular defendants. The three defendants named in this lawsuit are the individuals who the District of Columbia Democratic Party chose, in compliance with D.C. Code § 1-1001.08, to cast the District’s three electoral votes. The defendants are merely casting their votes as a result of the popular vote in the District of Columbia. Any alleged injury that the plaintiff suffered has not been caused by these defendants.⁵ Therefore, the plaintiff fails to meet the second prong of the three-part constitutional standing requirements.

3. Redressibility

Finally, the court finds that in addition to failing to meet either of the first two prongs to establish standing, the plaintiff has failed to demonstrate how a favorable ruling by this court would redress his alleged injury. The District of Columbia only has three electoral votes. President Obama defeated his opponents by more than three electoral votes in the November 2012 Presidential Election. Therefore, ordering the defendants to refrain from casting their electoral votes for President Obama would have no effect whatsoever, other than depriving the citizens of the District of Columbia from having their votes counted in the Presidential Election. Therefore, plaintiff has failed to meet any of the three constitutional requirements of standing.⁶

⁵ During the November 29, 2012 Preliminary Injunction Hearing, the plaintiff focused some of his argument on challenging the legality of D.C. Code § 1-1001.08(g), which requires electors to take an oath that they will vote for the candidate who received the popular vote in the District. The plaintiff did not raise these same arguments in his written motion and at the hearing the plaintiff provided no controlling authority or other basis upon which this court could find this provision of the D.C. Code unlawful.

⁶ The court notes that in addition to failing to meet the constitutional requirements of standing, the plaintiff has likely failed to meet the prudential requirements of standing in that the plaintiff has articulated merely a generalized grievance. However, because plaintiff lacks constitutional standing, the court finds it unnecessary to evaluate at length the prudential requirements of standing.

As a result, this court finds that not only will plaintiff fail to prevail on the merits of this case, as is required to grant emergency injunctive relief but, also, that such a finding must result in this court dismissing the case in its entirety for lack of standing.

B. Irreparable Harm to Plaintiff

Even if this court had found that plaintiff had demonstrated a substantial likelihood of prevailing on the merits, the court would still not grant injunctive relief because the plaintiff has failed to show that he is in danger of suffering irreparable harm during the pendency of this action. As was discussed in detail above, the court first finds that the plaintiff has failed to articulate any real harm that he would suffer as a result of the defendants casting their votes for President Obama. Further, as was also stated above, even if the court were to have granted the injunctive relief requested and prohibited the defendants from casting their votes for President Obama, it is unlikely that such action would have any effect. President Obama would still be elected as President of the United States. Therefore, plaintiff is not in danger of suffering irreparable harm during the pendency of this action as a result of this court not granting injunctive relief.

C. Balancing the Harms

Plaintiff also fails to satisfy the third requirement for seeking injunctive relief—that more harm will result to plaintiff from denying the injunction than will result to the defendant from its grant. As has already been stated, the court finds that plaintiff is not in danger of suffering a real harm. Moreover, if the court would have granted the requested injunctive relief the defendants would have been stripped of their ability to cast the District's electoral votes. Therefore, the court finds that the harm to the defendants that will result from granting plaintiff's motion outweighs any alleged harm the plaintiff will suffer by denying it.

D. Public Interest

Finally, the court finds that the public interest is disserved by granting the requested injunctive relief. By granting the plaintiff's motion, the court would, in essence, deprive the voters of the District of Columbia from casting its electoral votes for President Obama. Therefore, this court finds that the plaintiff has failed to meet any of the four requirements for granting injunctive relief. As a result, the plaintiff's Motion for Preliminary Injunction is denied. Further, because this court has found that the issues in this case are now moot and the plaintiff lacks standing to bring this claim, this court dismisses the case in its entirety.

III. Remaining Issues

Plaintiff has also filed a Motion to Show Cause, asking the court to order President Obama to show cause why he should not be held in contempt of court for failing to appear at the November 29, 2012 hearing after being subpoenaed. Setting aside any issues of immunity that may present themselves, the court finds that the plaintiff has not adequately shown that President Obama was, in fact, served with the subpoena. In his motion, the plaintiff admits that, due to Secret Service issues, he was unable to personally serve the President with the subpoena. Therefore, he mailed a copy to the White House. However, the signed certified mail receipt that the plaintiff attaches to the motion does not appear to be signed by President Obama. Therefore, it is unclear whether President Obama ever received actual service of the subpoena. For this reason and after consideration of the entire record of this case, this court denies the Motion to Show Cause. Finally, this court finds that all remaining motions are mooted by the dismissal of this action.

Therefore, it is this 5th day of **March, 2013**, hereby

ORDERED that the plaintiff's Motion for Preliminary Injunction is **DENIED**; and it is further

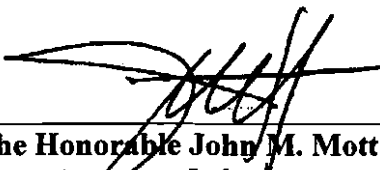
ORDERED that the plaintiff's Verified Motion for Rule to Show Cause is **DENIED**; and it is further

ORDERED that the plaintiff's First Motion for Appointment of an Examiner to Take Out-of-State Deposition is **DENIED AS MOOT**; and it is further

ORDERED that the defendants' Consent Motion for Extension of Time to Answer Complaint is **DENIED AS MOOT**; and it is further

ORDERED that the plaintiff's First Motion for Order to Release Privacy Act-Protected Records and Expedited Consideration is **DENIED AS MOOT**; and it is further

ORDERED that this case is **DISMISSED** for lack of standing and mootness.



The Honorable John M. Mott
Associate Judge
(Signed in Chambers)

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