IN THE SUPERIOR COURT OF
THE DISTRICT OF COLUMBIA

MONTGOMERY BLAIR SIBLEY, *Plaintiff*, v. THE HONORABLE MITCH MCCONNELL et al., *Defendants*.	)	Case No. 2015 CA 002442 B Hon. Maurice A. Ross

UNOPPOSED MOTION FOR LEAVE TO FILE REPLY

Pursuant to Rule 7(b) of the District of Columbia Superior Court Rules of Civil Procedure, the Honorable Paul D. Ryan, Speaker of the United States House of Representatives, through counsel, respectfully moves for leave to file a reply memorandum in support of his Opposed Motion to Stay, in Part . . . (Oct. 27, 2015) ("Speaker Stay Motion"). This motion for leave should be granted for the reasons stated below.[1]

[1] Plaintiff Montgomery Blair Sibley initially named the Honorable John A. Boehner as a defendant in this lawsuit. *See* Compl. for Declaratory J. & Mandamus (Apr. 8, 2015); First Am. Compl. for Declaratory J. & Mandamus (Oct. 21, 2015) ("Amended Complaint"). Mr. Sibley was clear in naming Speaker Boehner "SOLELY IN HIS CAPACITY AS SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES." Am. Compl. (caption); *see also id.* ¶ 5 ("The Honorable John A. Boehner is presently the Speaker of the United States House of Representatives and is sued solely in that capacity.").

On October 29, 2015, the House elected a new Speaker: the Honorable Paul D. Ryan. *See* 161 Cong. Rec. H7337-38 (daily ed. Oct. 29, 2015). Pursuant to D.C. Superior Court Civil Rule 25(d)(1): "When a public officer is a party to an action in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party . . . ."

Accordingly, Speaker Ryan submits this motion.

Co-defendant the Honorable Mitch McConnell, Majority Leader of the United States Senate, consents to the relief requested herein. Mr. Sibley does not oppose the requested relief.

MEMORANDUM OF POINTS AND AUTHORITIES

The Speaker moved to stay this action insofar as Mr. Sibley asserts claims against him. *See* Speaker Stay Mot. at 1; Mem. of P. & A. in Supp. of [Speaker Stay Motion] (Oct. 27, 2015). On October 29, 2015, Mr. Sibley served his opposition to that motion, outlining, for the first time, his reasons for objecting to the Speaker's motion. *See* Pl.'s Resp. to Def. Boehner's Mots. to Expedite & Stay (not yet docketed). The undersigned understands that Majority Leader McConnell – who does not oppose the Speaker Stay Motion – does not intend to file any response with respect to that motion.

The attached, proposed reply succinctly states Speaker Ryan's responses to Mr. Sibley's arguments, which responses will be of use to the Court in resolving the Speaker Stay Motion.

A proposed order and the proposed reply are attached. Oral argument is not requested.

Respectfully submitted,

KERRY W. KIRCHER (D.C. Bar No. 386816)
General Counsel
/s/ William Pittard
WILLIAM PITTARD (D.C. Bar No. 482949)
Deputy General Counsel
SARAH CLOUSE (MA Bar No. 688187)
Senior Staff Attorney

OFFICE OF GENERAL COUNSEL[2]
U.S. HOUSE OF REPRESENTATIVES
219 Cannon House Office Building
Washington, D.C. 20515
(202) 225-9700 (telephone)
(202) 226-1360 (facsimile)
William.Pittard@mail.house.gov

Counsel for Defendant the Honorable Paul D. Ryan, Speaker of the United States House of Representatives

November 4, 2015

[2] Attorneys in the Office of General Counsel for the U.S. House of Representatives are "entitled, for the purpose of performing the counsel's functions, to enter an appearance in any proceeding before any court of the United States or of any State or political subdivision thereof without compliance with any requirements for admission to practice before such court." 2 U.S.C. § 5571(a).

CERTIFICATE OF SERVICE

I certify that on November 4, 2015, I electronically filed the foregoing Unopposed Motion for Leave to File Reply via the CaseFileXpress system of the Superior Court of the District of Columbia, which I understand caused service on all registered parties. I further certify that I served one copy by first-class mail (postage prepaid) and electronic mail, on:

Montgomery Blair Sibley, Esquire
402 King Farm Boulevard, Suite 125-145
Rockville, Maryland 20850
montybsibley@gmail.com
Plaintiff, pro se

/s/ William Pittard
William Pittard

IN THE SUPERIOR COURT OF
THE DISTRICT OF COLUMBIA

MONTGOMERY BLAIR SIBLEY, *Plaintiff*, v. THE HONORABLE MITCH MCCONNELL et al., *Defendants*.	)	Case No. 2015 CA 002442 B Hon. Maurice A. Ross

[PROPOSED] ORDER

UPON CONSIDERATION OF the Unopposed Motion for Leave to File Reply ("Motion"), the memorandum of points and authorities in support thereof, the response(s) thereto, if any, and the entire record herein, it is by the Court this _____ day of _____, 2015 ORDERED

That the Motion is GRANTED for all the reasons set forth in the memorandum of points and authorities in support; it is further ORDERED

That the Clerk shall file the attached Reply in Support of Speaker's Motion to Stay, in Part.

_____
HONORABLE MAURICE A. ROSS
Associate Judge

Copies to:

Montgomery Blair Sibley, Esquire
402 King Farm Boulevard, Suite 125-145
Rockville, Maryland 20850
montybsibley@gmail.com
Plaintiff, pro se

Peter Maier, Special Assistant U.S. Attorney
555 Fourth Street, Northwest
Washington, D.C. 20530
Peter.Maier2@usdoj.gov
Counsel for Defendant the Honorable Mitch McConnell

Kerry W. Kircher, General Counsel
William Pittard, Deputy General Counsel
Sarah Clouse, Senior Staff Attorney
219 Cannon House Office Building
Washington, D.C. 20515
Kerry.Kircher@mail.house.gov
William.Pittard@mail.house.gov
Sarah.Clouse@mail.house.gov
Counsel for Defendant the Honorable Paul D. Ryan

IN THE SUPERIOR COURT OF
THE DISTRICT OF COLUMBIA

MONTGOMERY BLAIR SIBLEY, *Plaintiff*, v. THE HONORABLE MITCH MCCONNELL et al., *Defendants*.	)	Case No. 2015 CA 002442 B Hon. Maurice A. Ross

REPLY IN SUPPORT OF SPEAKER'S MOTION TO STAY, IN PART

On October 27, 2015, then Speaker of the United States House of Representatives and defendant, the Honorable John A. Boehner, moved this Court for a stay of consideration of Plaintiff Montgomery Blair Sibley's claims against the Speaker of the House. *See* Opposed Motion to Stay, in Part . . . (Oct. 27, 2015) ("Speaker Stay Motion"); Mem. of P. & A. in Supp. of Opposed Mot. to Stay, in Part . . . (Oct. 27, 2015) ("Speaker Stay Memorandum").

On October 29, 2015, Congressman Boehner resigned as Speaker, effective that day; the Honorable Paul D. Ryan was elected Speaker of the House, *see* 161 Cong. Rec. H7337-38 (daily ed. Oct. 29, 2015); and Speaker Ryan was substituted as the defendant in this matter by operation of law, *see* D.C. Super. Ct. Civ. R. 25(d)(1). That same day, October 29, Mr. Sibley served an opposition to the Speaker Stay Motion. *See* Pl.'s Resp. to Def. Boehner's Mots. to Expedite & Stay (not yet docketed) ("Sibley Stay Opposition").

Speaker Ryan now respectfully replies to the Sibley Stay Opposition, and in support of the Speaker Stay Motion.

ARGUMENT

None of Mr. Sibley's four arguments in opposition to the Speaker Stay Motion withstands scrutiny.

I. This Court May Grant the Requested Stay.

Mr. Sibley first argues that the Speaker should have asked a federal court for relief, rather than asking this Court. *See* Sibley Stay Opp'n at 2-3 ("[The Speaker]'s Motion to Stay is in the wrong court."). While the Speaker *could* have moved in the federal courts for a stay, he also could, and did, seek that relief in this Court. *Compare* Speaker Stay Mem. at 3 (citing authority establishing this Court's authority to issue stay), *with* Sibley Stay Opp'n at 2-3 (citing no authority otherwise; instead citing only authority establishing that Speaker could have sought stay from federal courts). The Speaker deemed the more respectful approach to be to seek, at least initially, the stay in this Court; accordingly, the Speaker chose that approach.

II. No Federal Statute Bars This Court from Issuing a Stay.

Mr. Sibley reprises his "wrong court" contention by next arguing that Congress, via 28 U.S.C. § 1447, has barred this Court from issuing a stay. *See* Sibley Stay Opp'n at 3 ("Congress has already made clear that this Court is to proceed after remand absent an Article III stay."). Congress has done no such thing. Section 1447 states only that, upon remand, "[t]he State court *may* . . . proceed with [the] case." § 1447(c) (emphasis added). That is a sensible direction in that orders remanding cases *generally* may not be appealed. *See, e.g.*, § 1447(d) ("An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, *except that* an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise." (emphasis added)). Obviously, however, § 1447(d), on its face, does not bar an appeal where, as

here, the order from which the appeal is taken is "an order remanding a case to the State court from which it was removed pursuant to section 1442." Moreover, § 1447(c), on its face, is permissive only ("may . . . proceed"), and thus it does not purport to require a local court to proceed, much less to strip that court of its ability to issue a stay at any point during the litigation. *See also, e.g.*, Speaker Stay Mem. at 3 (citing authority establishing this court's authority to issue stay).

Beyond § 1447 itself, Mr. Sibley cites only to two opinions from intermediate appellate courts in Texas: *Gonzelez Guilbot v. Estate of Gonzelez y Vellejo*, 267 S.W.3d 556 (Tex. App. 2008), *aff'd in part, rev'd in part*, 315 S.W.3d 533 (Tex. 2010), and *Drew v. Unauthorized Practice of Law Committee*, 970 S.W.2d 152 (Tex. App. 1998). Neither case assists Mr. Sibley because neither purports to bar the issuance of a stay in any circumstances, much less in the circumstances present here. *Gonzalez Guilbot* in fact says nothing at all about a stay, other than to comment that "[n]o stay order [had been] issued" in that case (nor, apparently, even sought). *See* 267 S.W.3d at 560. *Drew*, on the other hand, indicates only that, where plaintiff's right to appeal the relevant remand order was "doubtful" – unlike here, *see* § 1447(d) – "the state district court was not *obligated*" to grant a stay motion. 970 S.W.2d at 156 (emphasis added). Neither case involved circumstances like those present here, in which the Speaker has a clear statutory right to appeal, in a case raising important questions about the federal officer removal statute, and in which the plaintiff self-evidently will suffer no harm from any delay. *See* Speaker Stay Mem. at 2-4; *infra* Argument, Part IV.

III. The Nature of Mr. Sibley's Claims Supports the Grant of a Stay.

Mr. Sibley next argues that the nature of his claims should be irrelevant to this Court's decision on the Speaker Stay Motion. *See* Sibley Stay Opp'n at 3-4 ("[T]he question presented

by the [Speaker Stay Motion] is not the merits of the [Amended Complaint], but instead whether a stay pending appeal is equitable given all the circumstances."). However, the case Mr. Sibley himself cites, *Shinholt v. Angle*, 90 F.2d 297, 298 (5th Cir. 1937), emphasizes "consideration of all the facts" when a Court is determining whether to grant a stay. Here, one relevant circumstance is the nature of Mr. Sibley's claims, on which the U.S. District Court already has commented. *See, e.g.*, Mem. Op. at 7, 12, *Sibley v. McConnell*, No. 1:15-cv-00730 (D.D.C. Oct. 13, 2015) (ECF No. 38) ("District Court Memorandum Opinion") ("[G]iven the law set forth in *Grayson [v. AT&T Corp.*, 15 A.3d 219, 233 (D.C. 2011) (en banc)], Sibley's cause may not remain alive in Superior Court for long."; "[T]here is no doubt that [Mr. Sibley] lacks standing to demand that a court require the leaders of the House and Senate to call for a constitutional convention."). The nature of those claims supports the requested stay.

IV. Mr. Sibley Will Not Be Harmed by a Stay.

Finally, Mr. Sibley attempts to walk back his federal court admissions regarding not having suffered a cognizable injury. *See* Sibley Stay Opp'n at 4 (arguing that, while he has conceded that he "has not suggested an injury-in-fact which is concrete and particularized," that concession cabined to Article III context, leaving open possibility that such injury exists in non-Article III context). This Court can make of Mr. Sibley's argument what it will; what Mr. Sibley certainly does not do is offer any affirmative support for his naked assertion that he "is most emphatically claiming harm." *Id.* (quotation marks omitted).

Mr. Sibley also complains about "ad hominem attacks." Sibley Stay Opp'n at 1-2. While Mr. Sibley does not specify to what this complaint refers, we suspect it may be directed at the quotation, in footnote 1 of the Speaker Stay Memorandum, of the District Court's description of Mr. Sibley and his litigation. *See* Speaker Stay Mem. at 1 n.1. Not only are Mr. Sibley's

complaints misdirected, they pertain to material that plainly bears on any balancing of the harms that would be imposed by the grant or denial of the requested stay.

* * *

In his memorandum opinion finding that Mr. Sibley lacked standing and remanding the matter to this Court, Judge Boasberg observed that "D.C. law seems relatively clear that its courts 'follow[] Supreme Court developments in constitutional standing jurisprudence with respect to whether the plaintiff has made out a case or controversy,' *Grayson v. AT&T Corp.*, 15 A.3d 219, 233 (D.C. 2011) (en banc)." Dist. Ct. Mem. Op. at 10. Accordingly, in light of Mr. Sibley's concessions regarding his standing, Speaker Ryan recognizes that this Court might choose to dismiss the complaint sua sponte. *See, e.g.*, Order at 1 n.1, *Sibley v. Alexander*, No. 2012 CA 008644 B (D.C. Super. Ct. Mar. 5, 2013) (dismissing case, after federal court remand, for lack of standing without requiring "formal Motion to Dismiss"), attached as Ex. A. A sua sponte dismissal obviously would moot the Speaker Stay Motion. Barring that, however, the motion should be granted so that Speaker Ryan may pursue his appeal in the D.C. Circuit – as he has a right to do – unhindered by parallel litigation in this Court.

CONCLUSION

For all the reasons stated in the Speaker Stay Memorandum, and for all the reasons stated above, this Court should grant the Speaker Stay Motion.

Respectfully submitted,

KERRY W. KIRCHER (D.C. Bar No. 386816)
General Counsel
/s/ William Pittard
WILLIAM PITTARD (D.C. Bar No. 482949)
Deputy General Counsel
SARAH CLOUSE (MA Bar No. 688187)
Senior Staff Attorney

OFFICE OF GENERAL COUNSEL
U.S. HOUSE OF REPRESENTATIVES
219 Cannon House Office Building
Washington, D.C. 20515
(202) 225-9700 (telephone)
(202) 226-1360 (facsimile)
William.Pittard@mail.house.gov

Counsel for Defendant the Honorable Paul D. Ryan, Speaker of the United States House of Representatives

November 4, 2015

IN THE SUPERIOR COURT OF
THE DISTRICT OF COLUMBIA

MONTGOMERY BLAIR SIBLEY, *Plaintiff*, v. THE HONORABLE MITCH MCCONNELL et al., *Defendants*.	)	Case No. 2015 CA 002442 B Hon. Maurice A. Ross

EXHIBIT A

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MONTGOMERY BLAIR SIBLEY,	*	
	*	
Plaintiff	*	Civil Case No. 2012 CA 008644 B
	*	Calendar II
v.	*	Judge John M. Mott
	*	
YVETTE ALEXANDER, et al.,	*	
	*	
Defendants	*	

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); *Winpisinger 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)

Copies To:

Montgomery Blair Sibley
4000 Massachusetts Ave., NW #1518
Washington, DC 20016

Andrew J. Saindon
441 Fourth St., NW, 6th Floor South
Washington, DC 20001

Filing Summary

The filing has been successfully received by CaseFileXpress. Below are the details.

Trace Number:	**ED301J000445057**
Case Number:	**2015 CA 002442 B**
Document Type:	**Motion to File:**
Lead Document:	**MotforLeaveReply.pdf**
Filer Name:	**William Pittard**
AttorneyOfRecord Name:	**William Pittard**
Plaintiffs:	
Plaintiffs Attorneys:	
Defendants:	
Defendants Attorneys:	**William Pittard, Peter Maier**
Judges:	**Judge Ross**
Court Reporters:	
Others:	
Total fees:	**$0.00**

Print OK