IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CELISHA TOWERS, Plaintiff, v. UNIFIED GOVERNMENT OF WYANDOTTE COUNTY, KANSAS, et al., Defendants.	Case No. 21-4089-EFM-ADM

REPORT AND RECOMMENDATION

This lawsuit arises out of pro se plaintiff Celisha Towers' ("Towers") unsuccessful candidacy for Wyandotte County Sheriff. The named defendants include the Unified Government of Wyandotte County and Kansas City, Kansas (the "Unified Government"); Wyandotte County Election Commissioner Michael Abbott; and a number of individuals, including the current Wyandotte County Sheriff Daniel Soptic, previous Wyandotte County Sheriff Don Ash, Kansas Secretary of State Scott Schwab, members of the Wyandotte County Board of Canvassers, and individuals who appear to be Wyandotte County employees or officials.[1] (ECF 11-1.) The court previously granted Towers leave to proceed in forma pauperis ("IFP"). (ECF 8.) As discussed in further detail below, the court now recommends that the district judge dismiss plaintiff's amended complaint without prejudice.

I. THE COURT RECOMMENDS THAT THE DISTRICT JUDGE DISMISS TOWERS' CLAIMS WITHOUT PREJUDICE.

When a plaintiff proceeds IFP, the court may screen the complaint under 28 U.S.C. § 1915(e)(2)(B). The court may dismiss the complaint if it determines that the action "(i) is frivolous

[1] Towers names the individual defendants in their individual and official capacities.

or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). The purpose of § 1915(e)(2) is to "discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate." *Buchheit v. Green*, 705 F.3d 1157, 1161 (10th Cir. 2012).

In addition, "[i]f 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). "[F]ederal courts are courts of limited subject-matter jurisdiction," and they "may only hear cases when empowered to do so by the Constitution and by act of Congress." *Gad v. Kan. State Univ.*, 787 F.3d 1032, 1035 (10th Cir. 2015) (quotation omitted). The power to hear a case "can never be forfeited or waived," and therefore the court always has an independent obligation to determine whether subject-matter jurisdiction exists. *Id.* (quotation omitted); *see also Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974) ("If the parties do not raise the question of lack of jurisdiction, it is the duty of the federal court to determine the matter sua sponte.").

A. Legal Standard

Dismissal under § 1915(e)(2)(B)(ii) is governed by the same standard that applies to motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). *Kay v. Bemis*, 500 F.3d 1214, 1217 (10th Cir. 2007). To withstand dismissal, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "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." *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements," are not

sufficient to state a claim for relief. *Id.* Dismissal of a pro se plaintiff's complaint for failure to state a claim is "proper only where it is obvious that the plaintiff cannot prevail on the facts . . . alleged and it would be futile to give [plaintiff] an opportunity to amend." *Curley v. Perry*, 246 F.3d 1278, 1281 (10th Cir. 2001). The court must "accept the facts alleged in the complaint as true and view them in the light most favorable to the plaintiff." *Mayfield v. Bethards*, 826 F.3d 1252, 1255 (10th Cir. 2016).

Similarly, to determine whether a plaintiff has adequately alleged subject-matter jurisdiction, the court looks to the face of the complaint. *Penteco Corp. v. Union Gas Sys., Inc.*, 929 F.2d 1519, 1521 (10th Cir. 1991). The court accepts "the well-pleaded factual allegations as true, . . . but ignor[es] conclusory allegations of jurisdiction." *Kucera v. CIA*, 347 F. Supp. 3d 653, 659 (D.N.M. 2018) (citing *United States v. Rodriguez-Aguirre*, 264 F.3d 1195, 1203 (10th Cir. 2001), and *Groundhog v. Keeler*, 442 F.2d 674, 677 (10th Cir. 1971)), *aff'd*, 754 F. App'x 735 (10th Cir. 2018). "The party seeking the exercise of jurisdiction in his favor 'must allege in his pleading the facts essential to show jurisdiction.'" *Penteco*, 929 F.2d at 1521 (quoting *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

Because Towers is proceeding pro se, the court construes her pleadings liberally and holds them "to a less stringent standard than those drafted by attorneys." *Johnson v. Johnson*, 466 F.3d 1213, 1214 (10th Cir. 2006). In doing so, the court does not "assume the role of advocate for the pro se litigant." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). The plaintiff still bears "the burden of alleging sufficient facts on which a recognized legal claim could be based." *Id.*

B. Analysis

Towers ran for Wyandotte County Sheriff in 2021. Her amended complaint alleges that she "received the majority of the votes in the Sheriff race over Caucasian male candidate Daniel Soptic" during the general election held on November 2, 2021. (ECF 11-1, at 6.) Towers contends

that Wyandotte County Election Commissioner Michael Abbott, acting under color of state law, "illegally rejected valid eligible ballots" that were cast by African-American and women voters in favor of her and two other candidates, African Americans Melvin Williams and Gwendolyn Bass. (*Id.* at 6-7.) Towers states that Abbott "purposely report[ed] fraudulent numbers" that prevented her and the other candidates from obtaining their elected seats over Caucasian opponents, and that Abbott, the Wyandotte County Board of Canvassers, the County Administrator, election workers, the Kansas Secretary of State, and Wyandotte County attorneys "refused to issue Certificate of Elections to African American Candidates who received the majority of the votes." (*Id.* at 6.)

Towers alleges that Abbott and his staff, employed by the Unified Government, violated the Voting Rights Act of 1965 and the Civil Rights Act of 1964. She also brings claims under 42 U.S.C. § 1983 in which she contends that Abbott and his staff deprived women voters of rights under the Nineteenth Amendment and deprived her and other African-American candidates of rights under the Equal Protection Clause of the Fourteenth Amendment. She asks the court to order an inspection of the voting machines, a manual ballot recount, and an update of voting records on turnout and ballots cast. She further asks the court to revoke the certificate establishing the validity of the election results in favor of Sheriff Soptic and any other candidate who did not win a majority of votes. In the alternative, she asks the court to order a run-off election supervised by the Department of Justice. Towers also seeks sheriff salary back pay from December 13, 2021, at least $25,000,000 in punitive damages, and attorneys' fees.

In November 2021, before filing this lawsuit, Towers initiated an action in Wyandotte County District Court— *Towers v. Soptic et al.*—to contest her loss in the general election pursuant to KAN. STAT. ANN. § 25-1434, *et seq*.[2] On December 1, Towers attempted to remove the case to

[2] *See* ECF 1-1 in Case No. 21-2564-HLT-TJJ.

federal court,[3] but the presiding district judge remanded that case the following day because a plaintiff is not allowed to remove a case to federal court.[4] Towers then filed the current lawsuit approximately one week later. (ECF 1.)

1. Towers' claims on her own behalf are subject to dismissal.

The court first addresses the claims that it appears Towers is bringing on her own behalf.

a. Voting Rights Act

A litigant must have standing to bring claims in federal court. *See Kowalski v. Tesmer*, 543 U.S. 125, 128 (2004) ("The doctrine of standing asks whether a litigant is entitled to have a federal court resolve [her] grievance."). The inquiry into standing "involves 'both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise.'" *Id.* (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). To establish standing under Article III of the Constitution, a plaintiff must show that she "(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. Robins*, 578 U.S. 330, 338 (2016) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)), *as revised* (May 24, 2016).

Towers does not have constitutional standing to bring a Voting Rights Act claim. Under the Voting Rights Act, "[n]o person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote . . . or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote." 52 U.S.C. § 10307(a). The Attorney General or an "aggrieved person" may institute a proceeding to enforce voting rights. *See* 52 U.S.C. § 10302; *Roberts v. Wamser*, 883 F.2d 617, 621 (8th Cir. 1989) ("Congress amended the Voting Rights Act in 1975 to reflect the standing of 'aggrieved persons' to enforce their right to vote.").

[3] *See* ECF 1 in Case No. 21-2564-HLT-TJJ.
[4] *See* ECF 3 in Case No. 21-2564-HLT-TJJ.

"[A]n unsuccessful candidate attempting to challenge election results does not have standing under the Voting Rights Act" because the asserted injury is not the denial of voting rights. *Roberts*, 883 F.2d at 621. "The purpose of the Voting Rights Act is to protect minority voters, not to give unsuccessful candidates for state or local office a federal forum in which to challenge elections." *Id.*

Here, Towers is an unsuccessful candidate seeking to challenge the November 2021 Wyandotte County election results. She contends that Abbott "denied and rejected over 15,000 valid and eligible valid casts by the majority of African American voters in Wyandotte County" (ECF 11-1, at 8), but she does not allege that Abbott or any other defendant refused to tabulate, count, or report her *own* vote. Because it does not appear from the face of the complaint that Towers is an "aggrieved person" under the Voting Rights Act, she lacks standing and fails to state a claim under that statute. *See Roberts*, 883 F.2d at 621; *see also White-Battle v. Democratic Party of Va.*, 323 F. Supp. 2d 696, 702 (E.D. Va. 2004) ("It is well-settled that unsuccessful candidates lack standing to sue under the Voting Rights Act of 1965."), *aff'd* 134 F. App'x 641 (4th Cir. 2005); *McGee v. City of Warrensville Heights*, 16 F. Supp. 2d 837, 845 (N.D. Ohio 1998) ("An unsuccessful candidate attempting to challenge election results does not have standing to sue under the Voting Rights Act."); *Oh v. Philadelphia Cty. Bd. Of Elections*, No. CIV.A.08-0081, 2008 WL 4787583, at *7 (E.D. Pa. Oct. 31, 2008) (dismissing unsuccessful candidate's Voting Rights Act lawsuit for lack of standing).

b. Civil Rights Act

Towers appears to be bringing a Civil Rights Act claim under Title I, which relates to voting. (*See* ECF 11-1, at 6 (stating federal question jurisdiction is founded on, *inter alia*, "Violation of The Civil Rights Act of 1964" and "Violation of Civil Rights: Voting").) Title I

provides that United States citizens "who are otherwise qualified by law to vote at any election . . . shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude." 52 U.S.C. § 10101(a)(1). The statute specifically prohibits persons acting under color of state law from (1) applying "any standard, practice, or procedure different from the standards, practices, or procedures applied . . . to other individuals within the same county" in determining whether an individual is a qualified voter; (2) denying an individual the right to vote because of an immaterial "error or omission on any record or paper relating to any application, registration, or other act requisite to voting"; and (3) generally requiring literacy tests as a qualification for voting. *Id.* § 10101(a)(2). The Tenth Circuit has not decided whether a private right of action exists to enforce Title I. *See Reyes v. Oliver*, 345 F. App'x 329, 331 n.4 (10th Cir. 2009) (discussing 42 U.S.C. § 1971, where Title 1 was previously codified, and declining to reach the question); *see also Good v. Roy*, 459 F. Supp. 403, 406 (D. Kan. 1978) ("[W]e believe that the unambiguous language of Section 1971 will not permit us to imply a private right of action.").

But even if the court were to assume that a private right of action exists, Towers fails to state any claim for relief under § 10101. She does not allege that she is a qualified voter who was prevented from voting in the November 2021 election on account of her race. She also does not allege that she was subjected to different standards than others or required to take a literacy test to become a qualified voter, or that she was denied the right to vote because of an immaterial paperwork error or omission. Thus, this claim should also be dismissed. *See Reyes*, 345 F. App'x at 331 (affirming dismissal of complaint where the pro se plaintiff did not allege that he was a qualified voter or that the defendant acted based on race, color, or previous condition of servitude).

The court notes also that individuals generally cannot be held personally liable under the Civil Rights Act. *See, e.g.*, *Haynes v. Williams*, 88 F.3d 898, 901 (10th Cir. 1996) (finding personal capacity lawsuits against individuals under Title VII inappropriate); *Silva v. St. Anne Cath. Sch.*, 595 F. Supp. 2d 1171, 1179 (D. Kan. 2009) ("The law is clear that individuals are not subject to liability under Title VI in their individual capacities."). So, to the extent that Towers seeks to hold individual defendants personally liable for alleged violations of Title I, her claims should also be dismissed on this basis. *See, e.g.*, *Greene v. Sampson*, No. 18-CV-06103 (PMH), 2021 WL 355477, at *4 (S.D.N.Y. Feb. 2, 2021) (noting that it was unclear which Title the plaintiff intended to proceed under but dismissing claims against individuals because "individual liability is generally precluded under the Civil Rights Act").

c. Nineteenth Amendment

The Nineteenth Amendment states that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex." U.S. CONST. amend. XIX. To state a § 1983 claim for deprivation of rights under this amendment, "a plaintiff must allege that his or her right to vote has been abridged on the basis of sex" by a person acting under color of state law. *Seale v. Madison Cty.*, 929 F. Supp. 2d 51, 71 (N.D.N.Y. 2013); *see also* 42 U.S.C. § 1983. For the same reasons as discussed above, Towers fails to state a Nineteenth Amendment claim. Although Towers contends that Abbott refused to count votes cast by unnamed Wyandotte County women, she does not allege that her own vote was not counted, or that her voting rights were otherwise abridged on account of her sex. So this claim should also be dismissed.

d. Fourteenth Amendment

The Fourteenth Amendment guarantees that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. The Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." *Requena v. Roberts*, 893 F.3d 1195, 1210 (10th Cir. 2018) (quoting *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)). To state a § 1983 equal protection claim, a plaintiff must allege that the state actor defendant treated her differently than similarly situated individuals, *i.e.* individuals who "are alike 'in all relevant respects.'" *Id.* (quoting *Coal. for Equal Rights, Inc. v. Ritter*, 517 F.3d 1195, 1199 (10th Cir. 2008). "Moreover, to state a race-based equal protection claim, '[a] plaintiff must sufficiently allege that defendants were motivated by racial animus.'" *Id.* (quoting *Phelps v. Wichita Eagle–Beacon*, 886 F.2d 1262, 1269 (10th Cir. 1989)).

Here, Towers alleges that Abbott, acting under color of state law, purposely rejected ballots cast by African-American voters for Towers and other African-American candidates. She further alleges that Abbott's actions denied "African American Candidates the right to be elected to office for the elected position in which they rightfully obtained the majority of the votes cast over Caucasian candidates." (ECF 11-1, at 7.) But Towers does not allege any facts to support what is essentially conclusory allegations to the effect that Abbott acted out of racial animus. Towers has therefore failed to state an equal protection claim against Abbott.

Towers also does not state a claim against any of the other defendants. In addition to Abbott, Towers' amended complaint names as defendants Sheriff Soptic, eight Wyandotte County Commissioners, one Assistant County Commissioner, five individuals who appear to be employed by the County in election-related capacities, another individual employed by the County in an unspecified capacity, three County attorneys, now-retired Sheriff Ash, and Secretary of State

Schwab. But Towers does not make any specific allegations as to any individual defendant, save Abbott. "Individual liability under § 1983 must be based on personal involvement in the alleged constitutional violation." *Wilson v. Montano*, 715 F.3d 847, 854 (10th Cir. 2013). Because Towers does not specify what actions any of these individuals took that allegedly deprived her of equal protection, her claims against them should be dismissed.

Towers also names the Unified Government as a defendant. A municipality can be liable under § 1983 only when the entity's "policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the [constitutional] injury." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). "A plaintiff suing a municipality under Section 1983 for the acts of one of its employees must prove: (1) that a municipal employee committed a constitutional violation; and (2) that a municipal policy or custom was the moving force behind the constitutional deprivation." *Cavanaugh v. Woods Cross City*, 625 F.3d 661, 667 (10th Cir. 2010). A municipal policy or custom may be

> (1) a formal regulation or policy statement; (2) an informal custom amoun[ting] to a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law; (3) the decisions of employees with final policymaking authority; (4) the ratification by such final policymakers of the decisions—and the basis for them—of subordinates to whom authority was delegated subject to these policymakers' review and approval; or (5) the failure to adequately train or supervise employees, so long as that failure results from deliberate indifference to the injuries that may be caused.

Bryson v. City of Okla. City, 627 F.3d 784, 788 (10th Cir. 2010) (alteration in original) (internal quotation marks omitted).

Towers does not allege a failure to train, or the existence of any formal policy or informal custom. Nor does she allege that Abbott was a final policymaker or that his actions were ratified by a final policymaker. But even if Towers had alleged these latter two scenarios, "[a] municipality

may not be held liable where there was no underlying constitutional violation by any of its officers." *Hinton v. City of Elwood, Kan.*, 997 F.2d 774, 782 (10th Cir. 1993). And, as discussed above, Towers has not sufficiently alleged an equal protection claim against Abbott. Thus, any claim against the Unified Government should also be dismissed.

2. Towers' claims on behalf of third-party voters

The court next addresses the claims Towers appears to be bringing on behalf of 15,000 African-American and women voters in Wyandotte County.

a. Towers lacks standing to bring claims on behalf of third-party voters.

As discussed above, a litigant must have standing to bring claims in federal court. *See Kowalski*, 543 U.S. at 128 ("The doctrine of standing asks whether a litigant is entitled to have a federal court resolve [her] grievance."). The standing inquiry "involves 'both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise.'" *Id.* (quoting *Warth*, 422 U.S. at 498). Prudential standing is concerned with "the proper—and properly limited—role of the courts in a democratic society." *Hill v. Warsewa*, 947 F.3d 1305, 1309 (10th Cir. 2020) (quoting *Bennett v. Spear*, 520 U.S. 154, 162 (1997)). The court may proceed to analyze prudential standing "without [first] addressing other jurisdictional issues," such as constitutional standing. *Id.* at 1308.

Here, Towers alleges that Abbott and his staff refused to count the ballots of 15,000 Wyandotte County voters and, in doing so, interfered with their constitutional and statutory rights. But the prudential standing doctrine requires that a "plaintiff generally must assert [her] own legal rights and interests, and cannot rest [her] claim to relief on the legal rights or interests of third parties." *The Wilderness Soc. v. Kane Cty., Utah*, 632 F.3d 1162, 1168 (10th Cir. 2011) (quoting *Warth*, 422 U.S. at 499). As discussed in further detail above, although Towers alleges that

Abbott's actions prevented her from winning the November 2021 election, she does not allege that her own voting-related rights were violated—only those of third parties.

Third-party standing, an exception to the general rule, is allowed in some cases. A plaintiff who has satisfied the requirements of constitutional standing may assert the rights of others where (1) the plaintiff has a close relationship with the person possessing the right, and (2) the person possessing the right is hindered in the ability to protect it. *Kowalski*, 543 U.S. at 128-30; *Aid for Women v. Foulston*, 441 F.3d 1101, 1112 (10th Cir. 2006). Even if the court were to assume that Towers has constitutional standing, her amended complaint does not contain any factual allegations from which the court could infer that she somehow has a special relationship with the referenced unnamed 15,000 Wyandotte County voters. Further, plaintiff has not alleged any facts from which it could be inferred that the unnamed voters were unable to assert their own rights. Thus, Towers has not established that she has standing to bring claims on behalf of the 15,000 Wyandotte County voters whose ballots Abbott allegedly rejected. *See, e.g.*, *Somers v. S.C. State Election Comm'n*, 871 F. Supp. 2d 490, 498 (D.S.C. 2012) (determining that a candidate lacked standing to bring claims on behalf of overseas voters, where the candidate did not allege any close relationship with the voters or show they were unable to assert their own rights); *see also Stiles v. Blunt*, 912 F.2d 260, 265 (8th Cir. 1990) ("[W]e are unpersuaded that [the candidate] appellant has standing to raise the voters' claims."); *cf. Fleming v. Gutierrez*, No. 13-CV-222 WJ/RHS, 2014 WL 11398558, at *4 (D.N.M. Oct. 7, 2014) (determining candidates had standing as both candidates and voters, where the complaint alleged the candidates were registered voters in the jurisdiction).

b. Towers fails to state a claim as to most of named defendants.

Even if Towers could properly assert claims on behalf of the 15,000 Wyandotte County voters, she has failed to state any claim against the vast majority of the named defendants. Under

Rule 8(a), a complaint must 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." These pleading standards are designed to give a "defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (alteration in original) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). To comply with Rule 8(a), a plaintiff's complaint "must explain what each defendant did to him or her; when the defendant did it; how the defendant's action harmed him or her; and, what specific legal right the plaintiff believes the defendant violated." *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007).

As mentioned above, Towers does not make any specific allegations as to any individual defendant except Abbott.[5] It is therefore unclear what actions Towers believes each defendant has taken, when those actions occurred, how those actions harmed her or the unnamed voters, and what particular rights Towers believes each defendant violated. Other than Abbott, the individual defendants do not have fair notice of the specific claims that Towers asserts against them on behalf of the unnamed voters. Because Towers has not met Rule 8(a)'s requirements and clearly fails to state any claim whatsoever against Sheriff Soptic, the County Commissioners and Assistant

[5] Towers' Nineteenth Amendment claim also accuses Secretary Schwab, named in his official and individual capacity, of refusing to count women voters' ballots. (ECF 11-1, at 7.) But it is not clear how the Kansas Secretary of State would be involved in counting Wyandotte County general election ballots. Further, Secretary Schwab is likely entitled to sovereign and/or qualified immunity. *See, e.g.*, *Clark v. Schwab*, 416 F. Supp. 3d 1260, 1277 (D. Kan. 2019) (finding Secretary Schwab was entitled to sovereign immunity in an official capacity lawsuit challenging Kansas electioneering statutes).

County Commissioner, the six County employees and three County attorneys, former Sheriff Ash, and Secretary Schwab, these defendants should be dismissed.[6]

3. It is unclear whether this court should exercise jurisdiction here, given the concurrent state proceeding.

Towers has initiated an election contest under state law.[7] Principles of equity, comity, and federalism underlie a "longstanding public policy against federal court interference with state court proceedings." *Younger v. Harris*, 401 U.S. 37, 43-45 (1971). This policy requires a federal court to abstain from hearing a case when failing to do so would disturb an ongoing state proceeding. *See id.* at 45; *see also Stein v. Cortes*, 223 F. Supp. 3d 423, 435 (E.D. Pa. 2016). Some courts have found abstention under *Younger* or other doctrines appropriate where an unsuccessful candidate institutes a § 1983 action in federal court challenging election results after initiating an election contest in state court. *See, e.g.*, *Stein*, 223 F. Supp. 3d at 434-36 (abstaining under *Younger* and *Rooker-Feldman*, where unsuccessful candidate alleged equal protection, substantive due process, and First Amendment violations in federal court in connection with the 2016 presidential election, after filing in state court to contest the election under state law). The record in this case is not fully developed on this point, so the court cannot at this time conclude whether abstention is appropriate. However, this may be an additional impediment if Towers chooses to file a new federal lawsuit.

II. CONCLUSION

For the reasons discussed above, the court recommends that Towers' amended complaint be dismissed. But because the court cannot rule out that Towers may be able to allege additional

[6] In determining that Towers fails to state a claim against these defendants on behalf of the 15,000 Wyandotte County voters, the court is not suggesting that her claims against Abbott and the Unified Government are viable.

[7] *See* ECF 1-1 in Case No. 21-2564-HLT-TJJ.

facts to correct one or more of the deficiencies identified in this report, the court recommends dismissal without prejudice.

* * * * *

Pursuant to 28 U.S.C. § 636(b)(1), FED. R. CIV. P. 72(b)(2), and D. KAN. RULE 72.1.4(b), plaintiff may file written objections to this report and recommendation within fourteen days after being served with a copy. If plaintiff fails to file objections within the fourteen-day time period, no appellate review of the factual and legal determinations in this report and recommendation will be allowed by any court. *See In re Key Energy Res. Inc.*, 230 F.3d 1197, 1199-1200 (10th Cir. 2000).

IT IS THEREFORE RECOMMENDED that plaintiff Celisha Towers' complaint be dismissed without prejudice.

IT IS FURTHER ORDERED that the clerk's office mail a copy of this Report and Recommendation to Towers via regular mail and certified mail, return receipt requested.

IT IS SO ORDERED.

Dated March 9, 2022, at Kansas City, Kansas.

s/ Angel D. Mitchell
Angel D. Mitchell
U.S. Magistrate Judge