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**FILED**
**United States Court Of Appeals**
**Tenth Circuit**

**October 6, 2022**

**Christopher M. Wolpert**
**Clerk of Court**

# UNITED STATES COURT OF APPEALS

# FOR THE TENTH CIRCUIT

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| RALAND BRUNSON,<br><br>Plaintiff – Appellant,<br><br>v.<br><br>ALAMA S. ADAMS, et al.,<br><br>Defendants. | No. 22-4007<br>(D.C. No. 1:21-CV-00111-NP)<br>(D. Utah) |

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## ORDER AND JUDGMENT*

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Before **TYMKOVICH**, **BALDOCK** and **CARSON**, Circuit Judges.

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* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request of a decision on the briefs without oral argument. See Fed R. App, P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppels. It may be cited, however, for its persuasive value consistent with Fed. R. App. P 32.1 and 10th Cir. R. 321..

Raland Brunson appeals the district court's dismissal of his action for lack of jurisdiction. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

## I. Background

Mr. Brunson filed a pro se civil action in Utah state court against hundreds of members of Congress, President Joseph Biden, Vice President Kamala Harris, and former Vice President Michael Pence. He alleged that before accepting the electoral votes on January 6, 2021, defendants intentionally refused to investigate evidence that the November 2020 presidential election was fraudulent. Mr. Brunson likened defendants' conduct to an act of war against the United States Constitution that violated their oath to uphold the Constitution and his right to participate in an honest and fair election. He advanced constitutional, tort, and promissory estoppel claims and sought almost three billion dollars in damages. He also asked for injunctive relief including removal of

defendants from office and reinstatement of Donald Trump as President of the United States.

Defendants removed the case to federal district court and filed a motion to dismiss under Federal Rules of Civil Procedure 12(b)(1) (lack of jurisdiction) and 12(b)(6) (failure to state a claim). Mr. Brunson filed an opposition to the motion to dismiss. A magistrate judge issued a report and recommendation (Recommendation) that the action be dismissed for two independent reasons: (1) Mr. Brunson lacked constitutional standing because his claimed injury was not concrete and personal to him but only the same as any citizen, and (2) Eleventh Amendment sovereign immunity barred the claims against the defendants, who were sued in their official capacity only, and Mr. Brunson failed to identify any statute or other express provision that unequivocally waives that immunity for his claims.[1]

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[1] The magistrate judge provided various alternative grounds for dismissal, but we need not consider them in this appeal.

Mr. Brunson filed a timely objection to the Recommendation, arguing only that the magistrate judge did not address the arguments in his opposition to the motion to dismiss and thereby deprived him of due process. The district court overruled the objection, concluding there was no authority for Mr. Brunson's proposition "that a reviewing court must specially address arguments made in a brief," and finding he "was afforded procedural due process by receiving notice of the motion to dismiss and having a reasonable opportunity to respond to it." R. at 510. Because Mr. Brunson did not assert any objections to the magistrate judge's conclusions that he lacked standing or that the defendants were entitled to sovereign immunity, the district court determined he had "waived any objections to [those] conclusions." *Id.* The court then adopted the Recommendation in full, dismissed the action without prejudice for lack of jurisdiction, and entered a separate judgment. This appeal followed.

## II. Discussion

We review de novo a district court's dismissal of an action under Rule 12(b)(1). *Chance v. Zinke*, 898 F.3d 1025, 1028 (10th Cir. 2018). We construe Mr. Brunson's pro se filings liberally, but we may not act as his advocate. *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

Mr. Brunson first argues that the district court's separate judgment is invalid because it fails to set forth the legal basis for the judgment.[2] This argument is frivolous. Federal Rule of Civil Procedure 58 requires a district court to set out its judgment in a document separate from the court's explanation of the reasons for the disposition. *See Taumoepeau v. Mfrs. & Traders Tr. Co. (In re Taumoepeau)*, 523 F.3d 1213, 1217 & n.4 (10th Cir. 2008). The district court's judgment did just that, and the reasons for the dismissal were thoroughly explained in

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[2] The body of the judgment states: "IT IS ORDERED AND ADJUDGED that plaintiff Raland Brunson's action is dismissed without prejudice." R at 512.

the Recommendation and the district court's order adopting it.

Mr. Brunson next contests the merits of the magistrate judge's standing analysis. But as noted, in his objection, he did not address the standing analysis; he only faulted the magistrate judge for not discussing the arguments he raised in his opposition to the motion to dismiss. This court has "adopted a firm waiver rule" with regard to objections to a magistrate judge's findings and recommendations. *United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1059 (10th Cir. 1996) (internal quotation marks omitted). To avoid waiving appellate review of factual and legal questions, "a party's objections to [a] magistrate judge's report and recommendation must be both timely *and specific*." *Id.* at 1060 (emphasis added). This means the objection must be "sufficiently specific to focus the district court's attention on the factual and legal issues that are truly in dispute." *Id.*

Although Mr. Brunson's objection was timely, he did not specifically challenge the magistrate judge's standing analysis. The firm waiver rule therefore applies unless the interests of justice dictate otherwise.[3] "[F]actors this court has considered in determining whether to invoke the [interests-of-justice] exception" are "a *pro se* litigant's effort to comply, the force and plausibility of the explanation for his failure to comply, and the importance of the issues raised." *Morales-Fernandez v. INS*, 418 F.3d 1116, 1120 (10th Cir. 2005).

Mr. Brunson makes no effort to explain why he failed to specifically challenge the magistrate judge's standing analysis. The first two factors therefore weigh against invoking the exception.

In considering the third factor, "the importance of the issues raised," we conduct an analysis akin to plain-error

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[3] This rule also does not apply when "a *pro se* litigant has not been informed of the time period for objecting and the consequences of failing to object." Morales-Fernandez v. INS, 418 F.3d 1116, 1119 (10th Cir. 2005). But Mr. Brunson received the proper warning in this case.

review. *See id.* "Plain error occurs when there is (1) error, (2) that is plain, which (3) affects substantial rights, and which (4) seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* at 1122–23 (internal quotation marks omitted). We cannot say the district court's conclusion that Mr. Brunson lacked standing is plainly erroneous. As the magistrate judge explained, the relevant Article III standing inquiry is "'whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to assure concrete adverseness.'" R. at 395 (ellipsis and emphasis omitted) (quoting *United States v. Richardson*, 418 U.S. 166, 173 (1974)). And a plaintiff like Mr. Brunson, who

> raise[s] only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy.

*Lujan v. Defs. of Wildlife*, 504 U.S. 555, 573–74 (1992). Thus, the district court did not plainly err in concluding Mr. Brunson lacked standing.

Mr. Brunson's argument does not persuade us otherwise. Essentially, he contends that because he alleged the defendants acted fraudulently, and because "'fraud vitiates whatever it touches,'" Aplt. Opening Br. at 5 (quoting *Est. of Stonecipher v. Est. of Butts*, 591 S.W.2d 806, 809 (Tex. 1979)), he has an "unfettered right to sue the Defendants," *id.* at 2, and any federal law or case law is inapplicable if it "support[s] treason, acts of war or the violation of Brunson's inherent unalienable (God-given) rights," *id.* at 8. But none of his supporting authorities suggests that allegations of fraud, acts of war, or the violation of allegedly "inherent unalienable (God-given) rights," *id.*, relieve a plaintiff from demonstrating Article III standing.

Finally, Mr. Brunson briefly mentions the magistrate judge's Eleventh Amendment sovereign immunity

analysis, but he develops no argument addressing the magistrate judge's reasoning other than to direct us to his opposition to the motion to dismiss. That is insufficient to meet this court's requirements for developing an argument on appeal. *See United States v. Patterson*, 713 F.3d 1237, 1250 (10th Cir. 2013). Thus, setting aside the antecedent inquiry whether the firm waiver rule precludes our review of this aspect of the dismissal, we conclude Mr. Brunson has waived appellate review of the sovereign-immunity basis for dismissal due to insufficient argument. *See id.* [4]

## III. Conclusion

The district court's judgment is affirmed.

Entered for the Court

Bobby R. Baldock
Circuit Judge

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[4] And even if we were to overlook this obstacle to review, Mr. Brunson's lack of success on the merits of his arguments relating to standing is, by itself, a sufficient basis for affirming the district court's judgment regardless of the merits of his argument relating to sovereign immunity. *See Murrell v. Shalala*, 43 F.3d 1388, 1390 (10th Cir. 1994).

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

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| RALAND J BRUNSON,<br><br>Appellant,<br><br>vs.<br>ALMA S. ADAMS ; et al.,<br><br>Appellees | **APPELLANT'S OPENING BRIEF**<br><br>Case No. 22-4007<br><br>Trial Court Case No. 1:21-cv-00111-CMR |

## APPELLANT'S OPENING BRIEF

### 1. Statement of the case.

The trial court granted Appellees' (Defendants) motion to dismiss. Raland J Brunson ("Brunson") appellant now appeals the order granting Defendants' motion to dismiss.

### 1. Statement of Facts Relevant to the Issues Presented for Review.

Defendants timely filed a motion to dismiss ('Motion") Brunson's complaint. Brunson timely filed his opposition ("Opposition") (ECF 20), Defendants timely filed their reply. The trial court filed their report and recommendation ("R&R") on January 06, 2022 (ECF 23)

granting Defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(1), and then Brunson timely filed his objection to this report and recommendation, and then the court entered a judgment on February 2nd, 2022 ("Judgment") wherein all that it states is "IT IS ORDERED AND ADJUDGED that plaintiff Raland Brunson's action is dismissed without prejudice."

**2. Statement of Issues.**

**a. First issue:** The Judgment failed to give a legal basis for its judgment and as such must be remanded for a legal analysis of its decision.

**b. Argument and Authorities:**

The full language of the Judgment states ""IT IS ORDERED AND ADJUDGED that plaintiff Raland Brunson's action is dismissed without prejudice." Without giving a legal basis for its Judgment it becomes subject to remand on appeal. "Similarly, in *Neerings v. Utah State Bar*, we stated that, "[w]hile it may be instructive for [a] trial court to inform the litigants of the legal basis for its

decision, we are not persuaded that failure to do so constitutes reversible error." Instead, we concluded that "failure to state the grounds for [a] decision. . . . may only justify *remand* to the trial court." *State v. Ruiz*, 2012 UT 29, 282 P.3d 998. Also the Utah State Supreme Court stated in the case of *Determination Of Rights To Use Of Water*, 2008 UT 25 182 P.3d 362 that "While we are comfortable with granting deference to factual findings of a district court, we are less eager to simply defer to a ruling that contains no declaration of the legal test used to reach the result. In this setting, we do not hesitate to state the legal test the district court should have applied and require it to do so on remand."

**c. Second Issue:** The R&R committed an error by stating that Brunson does not have standing. In so doing it did not address Brunson's Opposition on the subject of fraud, instead it agreed with Defendant's Motion while adding its own additional language in support of Defendants, thus helping Defendants to Brunson's demise.

**Argument and Authorities:**

Brunson does have standing and subject matter jurisdiction as stated below.

The R&R's failure to address Brunson's Opposition on the subject of fraud requires remand as stated above to address this argument raised in Brunson's Opposition.

Brunson's unfettered right to sue the Defendants in the trial court is governed by the following.

Article III Courts have a tie to the first and second clauses of the Declaration of Independence which states:

> "When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.
>
> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of

these ends, it is the Right of the People to alter or to abolish it . . ."

These two clauses of the Declaration of Independence is also connected to Amendment IX of the Constitution of the USA which states "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." Therefore the purpose of the Constitution was written to protect our self evident unalienable rights. The Constitution cannot be construed by any means, by any legislative, judicial and executive bodies, by any court of law to deny or disparage our unalienable rights. This is the supreme law of the land. "This Constitution, and the Laws of the United States which shall be made Pursuance thereof; . . .shall be the supreme Law of the land; and the Judges in every State shall be bound thereby." Article VI of the Constitution.

Furthermore, the Utah State Supreme court has recognized that legislative bodies along with courts of law are not creator of your rights, nor are they the interpreter of your rights especially when force is used. *American*

*Bush v. City Of South Salt Lake,* 2006 UT 40 140 P.3d.1235 states ""... In considering State constitutions we must not commit the mistake of supposing that, because individual rights are guarded and protected by them, they must also be considered as owing their origin to them. These instruments measure the powers of the rulers, but they do not measure the rights of the governed. . . . [A state constitution] is not the beginning of a community, nor the origin of private rights; it is not the fountain of law, nor the incipient state of government; it is not the cause, but consequence, of personal and political freedom; **it grants no rights to the people**, but is the creature of their power, the instrument of their convenience. Designed for their protection in the enjoyment of the **rights and powers which they possessed before the constitution was made,** it is but the framework of the political government, and necessarily based upon the pre-existing condition of laws, rights, habits, and modes of thought. There is nothing primitive in it: it is all derived from a

known source. It presupposes an organized society, law, order, property, personal freedom, a love of political liberty, and enough of cultivated intelligence to know how to guard it against the encroachments of tyranny." (Bold emphasis added)

Article III Courts are a platform wherein a person may use to protect their self evident unalienable rights against any attack or violation.

The First Amended of the Constitution states that Congress shall make no law prohibiting the right of the people to petition the Government for a redress of grievances. Brunson's complaint is also a petition for a redress of grievances colored under his causes of actions.

The legislative body of the U.S., or the Constitution, legally cannot protect fraud or violations of the Oath of Office or acts of treason nor deprive an individual from petition for a redress of grievances as alleged in Brunson's complaint. These acts cannot be protected in such a way that the technical nuances of the law and legal procedure

reach such a high standard that that a laymen cannot reach or they become highly discouraged from seeking redresses in a court of law. This is self evident as it ties to the Amendment IX and the First and Second clause of the Declaration of Independence.

The R&R dismissed Brunson's complaint based upon subject matter jurisdiction because Brunson did not satisfy FTCA nor did Brunson get consent to sue in order to overcome "sovereign immunity" claims. As it sets, Brunson's complaint is already riddled with strong technical nuances of the law and legal procedures that adding requirements of the FTCA and seeking consent to sue Defendants, which Brunson might not get, protects Defendants in violation of Brunson's right to seek a redress against them. Again, the legislative and judicial body of the U.S., or the Constitution, legally cannot protect fraud or violations of the Oath of Office or acts of treason, or deprive an individual from petition for a redress of grievances by

creating the FTCA and giving "sovereign immunity" to the Defendants in this matter.

Brunson's complaint alleges fraud, violation of the Oath of Office and touches treason against the Defendants. These are serious offenses which need to be addressed immediately with the least amount of technical nuances of the law and legal procedures because these offenses are flowing continually against Brunson's liberties and life to which Patrick Henry stated "Give me liberty or give me death."

Brunson's claim against the Defendants for fraud is on a scale like never before seen. To this fraud claim "Our courts have consistently held that fraud vitiates whatever it touches, *Morris v. House,* 32 Tex. 492 (1870)". *Estate of Stonecipher v. Estate of Butts*, 591 SW 2d 806. And ""It is a stern but just maxim of law that fraud vitiates everything into which it enters." *Veterans Service Club v. Sweeney*, 252 S.W.2d 25, 27 (Ky.1952)." *Radioshack Corp. v. ComSmart*, Inc., 222 SW 3d 256.

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

The Defendants in the course of their duties have no business committing fraud on the large scale that they did as alleged in Brunson's complaint. They cannot enjoy a shield of defense found under the FTCA or sovereign immunity claims which stands in the way of Brunson's absolute right to bring legal action against them in the trial court as stated above.

"Common-law courts traditionally have vindicated deprivations of certain "absolute" rights that are not shown to have caused actual injury through the award of a nominal sum of money. By making the deprivation of such rights actionable for nominal damages without proof of actual injury, the law recognizes the importance to organized society that those rights be scrupulously observed; but at the same time, it remains true to the

principle that substantial damages should be awarded only to compensate actual injury or, in the case of exemplary or punitive damages, to deter or punish malicious deprivations of rights." *Carey v. Piphus*, 435 US 247 "Courts must be cautious in applying Article III standing requirements in procedural due process cases. When asserting procedural rights, Article III standing does not require plaintiffs to demonstrate that they would obtain concrete relief from the desired process. *Lujan,* 504 U.S. at 573 n. 7, 112 S.Ct. 2130; *see also Catron County Bd. of Comm'rs v. United States Fish & Wildlife Serv.,* 75 F.3d 1429, 1433 (10th Cir.1996) . . . Parties may suffer injury in fact from defective procedures even if, at the end of the day, they would not have prevailed on the merits. The Court has observed that "the right to procedural due process is `absolute' in the sense that it does not depend upon the merits of a claimant's substantive assertions." *Carey v. Piphus*, 435 U.S. 247, 266, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978) (citations omitted). In cases where the procedural

due process rights of a person have been violated but the outcome was unaffected because the claim was not meritorious, the Court has held that plaintiffs are entitled to nominal damages. *Id.*" *Rector v. City and County of Denver*, 348 F. 3d 935

The R&R claims that Brunson does not have standing because one of the remedies Brunson seeks is to have the Defendants removed from office which is beyond the authority of the courts power.

Courts do have authority to remove a sitting congressman as shown in 18 U.S. Code § 2381 which states "Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than $10,000; and shall be incapable of holding any office under the United States." A court adjudicating that a

sitting congressman is incapable of holding his office is a removal of his office.

In addition to Brunson's unfettered right to sue the Defendants in the trial court as described above, Brunson's fraud claims against the Defendants does not sit under their legislative, judicial or executive duties, they sit under their administrative acts which are not protected under any sovereign immunity claims. See Brunson's Opposition.

Also as stated in Brunson's Opposition, Brunson does have a personal stake in the outcome of his Complaint, for example, the Opposition states:

1. "Voting is the greatest power an individual can exercise in a Republic; it is Brunson's personal voice and the way he can protect his personal constitutional protected rights and the U.S. Constitution." See ¶ 71 of the Complaint.

2. That an honest and fair election can only be supported by legal votes, this is sacred. It is the basis of our U.S. Republican Form of Government protected by the

U.S. Constitution. The efforts made, as stated in the complaint, that avoided an investigation of how Biden won the election, is an act of treason and an act of levying war against the U. S. Constitution which violated Brunson's unfettered right to vote in an honest and fair election and as such it wrongfully invalidated his vote.

3. Acts of Congress, or case law like those cited in Defendant's motion cannot proceed or have merit when they support treason, acts of war or the violations of Brunson's inherent unalienable (God-given) rights. Complaint at ¶ 18 & 19.

4. The only laws Congress has the power to enact are those that protect Brunson's unalienable rights. Complaint at ¶ 20.

5. The plenary power of Amendment IX of the U.S. Constitution nullifies any kind of legal protection that an enemy against the U.S.

6. Constitution claims to have. Complaint at 29.

7. The plenary power of Amendment IX nullifies any interpretation of Amendment XII that would keep Defendants from investigating the claims of voter fraud. Complaint at 30.

8. A rigged election is an attack against the U.S. Constitution especially against the equal protection clause of 14th Amendment of the U.S. Constitution. Complaint at 31.

9. Despite the claims of evidence that the November 3, 2020 U.S. Presidential general election was fraudulent, affecting the President of the United States, the Vice President of the United States and members of the United States Congress, the Defendants intentionally voted against investigating the claimed evidence and conspired to cover up the "evidence" to fraudulently have Joseph Robinette Biden Jr. ("Biden") inaugurated as President and Kamala Harris ("Harris") inaugurated as Vice President. Complaint at 32.

10. This act of conspiracy has the same end result as an act of war; to place into power whom the Defendants want, which in this case is Biden. Complaint at 33.

11. Brunson's fifth cause of action against Defendants is for fraud. And Paragraph 34 of Brunson's complaint alleges that "Fraud vitiates everything". Defendants under their sworn duty promised that they would protect Brunson's vote in the 2020 Presidential Election ("Election") which they fraudulently did not do as alleged in the Complaint.

Brunson's claims and remedies against the Defendants gives Brunson standing.

**3. Do you think the district court applied the wrong law? If so, what law do you want to apply?**

The district court should apply the 9th Amendment of the Constitution as it ties to the 1st and 2nd clause of the Declaration of independence and Article VI of the Constitution. For the reasons stated above.

**4. Did the district court incorrectly decide the facts? If so, what facts?**

Brunson is not suing the United States of America.

**5. Did the district court fail to consider the important grounds for relief? If so, what grounds?**

The grounds for relief pertaining to the issues stated above were not considered.

**6. Do you feel that there are other reasons why the district court's judgment was wrong. If so, what?**

No.

**7. What action do you want this court to take in your case?**

To reverse the Judgment with an order that the Defendants are to answer Brunson's complaint within 10 days of this court's order.

**8. Do you think the court should hear oral argument in this case? If so, why?**

No.

Humbly submitted this the 21st day of March 2022.

/s/ Raland J Brunson
Raland J Brunson, Appellant

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## CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of March, 2022 I personally placed in the United States Mail to the individuals named below low a true and correct copy of **APPELLANT'S OPENING BRIEF**.

Jennifer P. Williams
JOHN K. MANGUM
111 South Main Street, #1800
Salt Lake City, Utah 84111

/s/ Raland Brunson
Raland Brunson, Pro Se

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U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

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| RALAND BRUNSON,<br><br>Plaintiff,<br>v.<br><br>ALMA S. ADAMS ; et al.,<br><br>Defendants. | **JUDGMENT**<br><br>Case No.<br>1:21-cv-00111-JNP-JCB<br><br>Judge Jill N. Parrish |

IT IS ORDERED AND ADJUDGED that plaintiff Raland Brunson's action is dismissed without prejudice.

**DATED** February 2, 2022.

BY THE COURT:

/s/ Jill N. Parrish
JILL N. PARRISH
United States District Judge

establish that the United States has waived sovereign immunity for his claims.

Brunson filed an objection to the Report and Recommendation. The objection has two main components. First, Brunson argues that the court should not adopt the Report and Recommendation because it does not specifically address his response brief. Brunson contends that this failure to address his arguments violates the Due Process Clause of the Fourteenth Amendment and provisions of the Utah Constitution. Second, Brunson requests leave of court to file an amended complaint.

## I. OBJECTION TO REPORT AND RECOMMENDATION

The court reviews de novo the portions of the Report and Recommendation to which Brunson has objected. FED. R. CIV. P. 72(b)(3). Brunson raises only one objection. He argues that the court should not adopt the Report and Recommendation because it does not specifically address the arguments made in his response brief. He contends that this

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

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| RALAND BRUNSON,<br><br>Plaintiff,<br><br>v.<br><br>ALMA S. ADAMS, et al.,<br><br>Defendants. | **ORDER ADOPTING REPORT AND RECOMMENDATION AND DENYING REQUEST TO AMEND COMPMLAINT**<br><br>Case No. 1:21-cv-00111-JNP-JCB<br><br>Judge Jill N. Parrish |

Magistrate Judge Jared C. Bennett issued a Report and Recommendation that the court grant the defendants' motion to dismiss for two independent reasons. ECF No. 23. First, Judge Bennett reasoned that the court does not have subject matter jurisdiction over plaintiff Raland Brunson's action because he lacks standing to assert his claims. Second, Judge Benson determined that Brunson failed to

failure violates his rights under the Due Process Clause of the Fourteenth Amendment and the Due Process and Open Courts Clauses of the Utah Constitution.

The court overrules Brunson's objection. He cites no caselaw supporting his assertion that a reviewing court must specifically address arguments made in a brief. Brunson was afforded procedural due process by receiving notice of the motion to dismiss and having a reasonable opportunity to respond to it. *See United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 48 (1993) (procedural due process requires "notice and an opportunity to be heard"). And the Open Courts Clause of the Utah Constitution does not guaranty specific responses to arguments in a response brief. *See Berry ex rel. Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 675 (Utah 1985) (the Open Courts Clause "guarantees access to the courts and a judicial procedure that is based on fairness and equality").

Brunson does not raise any objection to the Report and Recommendation's conclusions that Brunson lacks standing

to assert his claims and that the defendants are entitled to sovereign immunity. Thus, Brunson has waived any objection to these conclusions. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996)

## I. REQUEST TO AMEND

Brunson also requests leave of court to amend his complaint. He states that the only proposed change to the complaint is to recast his breach of duty claim as a negligence claim. "Refusing leave to amend is generally only justified upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment." *Bylin v. Billings*, 568 F.3d 1224, 1229 (10th Cir. 2009) (citation omitted)

The court finds that the requested amendments are futile. Brunson does not argue that the changes to his complaint would affect his lack of standing to bring his claims. And the court is unable to discern any way in which the proposed

changes would affect his standing to sue members of Congress. Accordingly, Brunson's request to file an amended complaint is denied.

## CONCLUSION AND ORDER

For the foregoing reasons, the court ORDERS as follows:

1 The Report and Recommendation, ECF No. 23, is ADOPTED IN FULL.

2 The court GRANTS the defendants' motion to dismiss Brunson's action. ECF No. 3. Because the court lacks subject matter jurisdiction over this action, dismissal is without prejudice.

**DATED** February 2, 2022.

BY THE COURT:

/s/ Jill N. Parrish
JILL N. PARRISH
United States District Judge

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**IN THE UNITED STATES DISTRICT COURT**
**DISTRICT OF UTAH**

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| **RALAND BRUNSON,**<br><br>**Plaintiff,**<br><br>**v.**<br><br>**ALMA S. ADAMS ; et al.,**<br><br>**Defendants.** | **REPORT AND RECOMMENDATION**<br><br>**Case No. 1:21-cv-00111-JNP-JCB**<br><br>**District Judge Jill N. Parrish**<br><br>**Magistrate Judge Jared C. Bennett** |

District Judge Jill N. Parrish referred this case to Magistrate Judge Jared C. Bennett under 28 U.S.C. § 636(b)(1)(B).[5] Before the court is Defendants'[6] motion to dismiss this action for lack of subject matter jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1), or, in the alternative, to dismiss the complaint for failure to state a claim,

[5] ECF No. 16

[6] Defendants consist of 388 current or former federal officers which include: 291 members of the United States House of Representatives, 94 Senators, President Biden, Vice President Harris, and former Vice President Pence. ECF No. 2-1 at 1-3.

pursuant to Fed. R. Civ. P. 12(b)(6).[7] For the reasons set forth below, the court respectfully recommends that this action be dismissed for lack of subject matter jurisdiction

## BACKGROUND

Raland J. Brunson ("Mr. Brunson"), appearing pro se, commenced this action on June 21, 2021, in the Second District Court of the State of Utah against Defendants in their official capacities. Mr. Brunson seeks redress for the violation of his "constitutional[ly] protected right to participate in an honest and fair election."[8] His claims are based on, inter alia, the United States Constitution and Defendants' sworn oaths of office to "support and defend the Constitution of the United States against all enemies, foreign and domestic."[9] More specifically, Mr. Brunson alleges that Defendants violated their oaths of office and the Constitution by neither ensuring a fair election nor investigating claims that the Presidential election was

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[7] ECF No. 3.

[8] ECF No. 2-1 ¶¶ 55, 57, 66.

"rigged" and "fraudulent" prior to accepting the electoral votes on January 6, 2021.[10] According to Mr. Brunson, "the plenary power of [the Ninth Amendment] of the U.S. Constitution nullifies any interpretation of [the Twelfth Amendment] that would allow Congress to accept and count fraudulent votes."[11] Mr. Brunson asserts that Defendants' conduct constituted "an attack against the U.S. Constitution" that resulted in the fraudulent inauguration of President Biden and Vice President Harris.[12]

Mr. Brunson's Complaint sets forth six causes of action that apply to all Defendants:

(1) Promissory estoppel – based on Defendants' failure to fulfill their respective oaths of office to ensure an honest and fair election; (2) Promissory estoppel – for giving "aid and comfort" to those whose sought to wrongfully invalidate Mr. Brunson's vote and his right to

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[9] *Id.* ¶ 10. *See generally id.* ¶¶ 9-23.

[10] *Id.* ¶¶ 9-19, 31-34, 38-58, 62 & 66.

[11] *Id.* ¶¶ 29-31.

[12] *Id.* ¶¶ 31, 32, 55.

a fair election;

(3) Breach of Duty – for failing to protect Mr. Brunson's right to vote in an honest and fair election; (4) Intentional infliction of emotional distress – because as a consequence of Defendants' wrongful conduct, Mr. Brunson now fears Defendants are "on a course" to destroy his liberties and violate other significant rights; (5) Fraud – based on Defendants' misrepresentations that they would protect his vote and voting rights; and (6) Civil conspiracy – because Defendants worked together to "skirt any kind of investigation into whether or not the election was indeed rigged."[13]

According to Mr. Brunson, Defendants' conduct has damaged him to the extent of $484 million for each of the six causes of action, for a total of $2.905 billion, which he requests be provided tax free.[14] Additionally, Mr. Brunson requests: (1) the immediate removal of all Defendants from

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[13] *Id.* at 15-23

[14] *Id.* at 23-28

office; (2) that they never be able to collect any further pay from the United States for their official service in Congress or as President or Vice President; (3) that they never be able to again practice law or again serve as an elected office-holder in this country; (4) that they each be investigated for treason; and (5) that former president Trump be immediately inaugurated as President.[15]

Defendants filed a motion to dismiss the Complaint under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.[16] Defendants argue, alternatively, that this court lacks subject matter jurisdiction over Mr. Brunson's claims because the United States has not waived its sovereign immunity, and that Mr. Brunson has failed to state a claim on which relief can be granted because his claims fail to satisfy the plausibility requirement of Fed. R. Civ. P. 8. After careful consideration of the written briefs, relevant facts and law, the court concludes that this action

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[15] *Id.*

[16] ECF No. 3.

should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. Because this court lacks jurisdiction, it does not discuss whether Mr. Brunson's claims should be dismissed under Fed. R. Civ. P. 12(b)(6).

## DISCUSSION

"Because the jurisdiction of the federal courts is limited, there is a presumption against our jurisdiction, and the party invoking federal jurisdiction bears the burden of proof."[17] To establish jurisdiction, the asserting party "must 'allege in [its] pleading the facts essential to show jurisdiction,' and 'must support [those facts] by competent proof.'"[18] Applying these principles, the court finds that Mr. Brunson's claims should be dismissed because he cannot satisfy his burden to show that subject matter jurisdiction exists. Specifically, Mr. Brunson has failed to: (I) establish

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[17] *Merida Delgado v. Gonzales*, 428 F.3d 916, 919 (10th Cir. 2005); *see also Kokkonen v. Guradian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (providing that the burden to establish jurisdiction rests upon the party asserting that jurisdiction exists).

Article III or Prudential Standing and (II) that the United States has waived its sovereign immunity for any of his causes of action.[19] Thus, this action should be dismissed.

## I. Mr. Brunson Has Failed to Establish Standing

Although Defendants raise the issue in passing,[20] the court begins with the "threshold inquiry of standing."[21] "The issue of Article III standing implicates federal jurisdiction."[22] Thus, the court is required to consider standing, and may "consider the issue *sua sponte*" if necessary, "to ensure there is an Article III case or

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[18] *United States ex rel. Precision Co. v. Koch Indus., Inc.*, 971 F.2d 548, 551 (10th Cir. 1992) (quoting *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

[19] Generally, pro se pleadings should "be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, it is not "the proper function of the district court to assume the role of advocate for the pro se litigant," and even lay plaintiffs must satisfy the jurisdictional, procedural, and factual standards for pleadings that apply to other litigants. *Id.*; *see also Ogden v. San Juan Cnty.*, 32 F.3d 452, 455 (10th Cir. 1994) (providing that pro se parties must comply with the same requirements that govern all other litigants).

[20] ECF No. 3 at 9.

[21] *Santa Fe All. for Public Health & Safety v. City of Santa Fe*, 993 F.3d 802, 813 (10th Cir. 2021).

[22] *Id.* at 813 n.5; *Rector v. City and Cnty. of Denver*, 348 F.3d 935, 942 (2003).

controversy" before it.[23] Mr. Brunson, as the party invoking the federal court's jurisdiction, bears the burden of establishing standing.[24] Mr. Brunson has failed to show that he has standing to bring his claims.

Article III of the Constitution limits the jurisdiction of the federal courts to the resolution of actual cases and controversies.[25] One component of the case-or-controversy requirement is standing.[26] "The doctrine of standing is an essential and unchanging part of the case-or-controversy requirement of Article III."[27] "Standing doctrine embraces several judicially self-imposed limits on the exercise of federal jurisdiction, such as the general prohibition on a litigant's raising another person's legal rights"[28] "The gist of the question of standing is whether the party seeking relief has alleged such a personal stake in the outcome of the

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[23] *Rector,* 348 F.3d at 942.

[24] *Id.*

[25] *See* U.S. Const. art. III, § 2.

[26] *Lance v. Coffman,* 549 U.S. 437, 439 (2007).

[27] *Comm. To Save the Rio Hondo v. Jucero.* 102 F.3d 445, 447 (10th Cir. 1996) (citation and quotations omitted).

controversy as to assure . . . concrete adverseness"[29] To prove this "personal stake" in the outcome of this action, Article III requires that Mr. Brunson's Complaint show, among other things, that he has suffered an "injury in fact" that was caused by Defendants.[30] "To establish an injury in fact, the plaintiff must show a distinct and palpable injury to [him]self. An abstract injury is not enough . . ."[31] Indeed, the United States Supreme Court has "repeatedly held that an asserted right to have the Government act in accordance with law is not sufficient, standing alone, to confer jurisdiction on a federal court."[32] To determine whether Mr. Brunson has carried his burden to establish standing, the court engages in "careful judicial examination of a complaint's allegations"[33] on a "claim-by-claim basis."[34]

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[28] *Allen v. Wright* 468 U.S. 737, 751 (1984).

[29] *United States v. Richardson,* 418 U.S. 166, 173 (1974) (emphasis added) (citations and quotations omitted).

[30] *Lucero*, 102 F.3d at 477.

[31] *Ash Creek Mining Co. v. Lujan*, 969 F.2d 868, 875 (10th Cir. 1992) (citations, quotations, and modifications omitted).

[32] *Allen*, 468 U.S. at 754.

[33] *Id.* at 752

Mr. Brunson has failed to establish standing under Article III of the United States Constitution because all of his causes of action plead generalized claims of legislative nonfeasance arising out of the counting of electors' votes. Mr. Brunson's purported injury is precisely the type of undifferentiated and generalized grievance about the conduct of government that courts have declined to consider based on standing.[35] The United States Supreme Court has consistently held:

> A plaintiff raising only a generally available grievance about government – claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large – does not state an Article III case or controversy.[36]

The allegations in Mr. Brunson's Complaint are insufficient to show how or why the purported government wrongs pled

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[34] *Santa Fe All. for Public Health & Safety*, 993 F.3d at 813.

[35] *See Lance*, 549 U.S. at 439 (dismissing for lack of Article III injury in fact the voters' challenge to redistricting plan); *Cogswell v. United States Senate*, 353 F. App'x 175, 175-76 (10th Cir. 2009) (affirming dismissal of generalized grievance alleging unconstitutional Senate delay in filling two district court vacancies).

[36] *Lance*, 549 U.S. at 439

in his causes of action show that he has suffered a "distinct and palpable injury to [him]self." Indeed, Mr. Brunson's only claimed injury is that the Defendants did not follow the law, which is not enough for this court to have jurisdiction under Article III over Mr. Brunson's claims even the in context of an election.[37] Mr. Brunson's failure to plead an injury that is concrete and personal to him fails to show that he has standing for any of his claims.[38] Accordingly, his claims should be dismissed.

## II. Mr. Brunson has failed to Established Waiver of Sovereign Immunity

Even if Mr. Brunson has established standing, he cannot show that the United States has waived its sovereign

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[37] *See,e.g., Nolles v. State Comm. for Reorganization of Sch. Dists.*, 524 F.3d 892, 900 (8th Cir. 2008) (stating that voters lacked standing to challenge legislative action because they brought a "generalized grievance shared by all the voters" who voted for a certain issue).

[38] In addition to failing to state an injury, Mr. Brunson lacks Article III standing for the additional reason that the injuries he alleges may not be redressed by the equitable relief he seeks. For example, courts lack the authority to remove members of Congress from office, to disqualify them from holding future office, or to require Congress to investigate matters before them. *Roudebush v. Hartke*, 405 U.S. 15, 18-19 (1972); *see Wright v. Brady*, 2006 WL 2371327, at *1 (S.D. Tex. Aug. 15, 2006) ("This court has no authority to order a sitting congressman removed from Congress.")

immunity as to any of his causes of action. "The United States and its officers enjoy immunity from suit except in instances where the United States has expressly waived that protection."[39] "The policy behind this rule is that the government should not be hampered in its performance of activities essential to the governing of the nation, unless it has given its consent."[40] "Thus, if the government has not consented to suit, the courts have no jurisdiction to either restrain the government from acting, or to compel it to act."[41] Simply put, "the existence of consent is a prerequisite for jurisdiction."[42]

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[39] *Flute v. United States, Flute v. United States*, 808 F.3d 1234, 1239 (10th Cir. 2015); *see also United States v. Mitchell*, 463 U.S. 206, 212 (1983) ("It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction."); *Merida Delgado,* 428 F.3d at 919 ("In general, federal agencies and officers acting in their official capacities are also shielded by sovereign immunity."); *Judicial Watch, Inc. v. Schiff*, 474 F. Supp. 3d 305, 310 (D.D.C. 2020) (providing that sovereign immunity extends to Congress when sued as a branch of government "and makes members of Congress immune from liability for actions within their legislative sphere").

[40] *United States v. Murdock Mach. & Eng'g Co. of Utah*, 81 F.3d 922, 930 (10th Cir. 1996).

[41] *Id.* (internal quotation marks omitted).

[42] *Mitchell*, 463 U.S. at 212.

"A waiver of sovereign immunity cannot be implied."[43] "The government consents to be sued only when Congress unequivocally expresses its intention to waive the government's sovereign immunity in the statutory text."[44] Moreover, even where the United States has waived its sovereign immunity via express and unequivocal statutory language, the claim or cause of action must strictly comply with the statute's terms and requirements or be subject to dismissal.[45] In this case, Mr. Brunson has failed to identify any statutory language or other express provision that unequivocally waives sovereign immunity for his claims against Defendants in his constitutional, tort, and promissory estoppel claims, which are discussed in order below.

First, Mr. Brunson has failed to establish a waiver of sovereign immunity for his claims based on the United

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[43] *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 95 (1990).

[44] *Murdock Mach.*, 81 F.3d at 930; *see United States v. Mitchell*, 445 U.S. 535, 538 (1980) ("If waiver is not unequivocal from the text, the government retains its sovereign immunity."

[45] *See United States v. Sherwood*, 312 U.S. 584, 590-91 (1941).

States Constitution. The United States has not waived sovereign immunity for it, its agencies, or its employees in their official capacities, to be sued for damages for allegedly violating the Constitution.[46] Therefore, the court lacks jurisdiction to hear any of Mr. Brunson's constitutional claims.

Second, to the extent some or all of Mr. Brunson's causes of action might be construed as tort claims, the relevant waiver of sovereign immunity is the Federal Tort Claims Act ("FTCA").[47] Although the FTCA provides a limited waiver of the United States' sovereign immunity, that waiver does not apply to Mr. Brunson's claims against Defendants in this case. The FTCA's limited waiver of

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[46] *See, e.g., F.D.I.C. v. Meyer*, 510 U.S. 471, 478 (1994) ("[T]he United States simply has not rendered itself liable under § 1346(b) [of the Federal Tort Claims Act] for constitutional tort claims."); *Martinez v. Winner*, 771 F.2d 424, 442 (10th Cir. 1985) (concluding that there was no waiver of immunity to permit constitutional claims against the Department of Justice or its employees to be sued in their official capacities); *Coulibaly v. Kerry*, 213 F. Supp. 3d 93, 125-26 (2016) (providing that the FTCA does not extend to constitutional tort claims); *see also Flute*, 808 F.3d at 1239 (providing that sovereign immunity extends to requests for injunctive relief).

[47] *See generally* 28 U.S.C. §§ 2671-2680.

sovereign immunity makes the federal government liable to the same extent as a private party for injuries caused by the negligent or wrongful acts or omissions of government employees acting within the scope of their employment.[48] However, this limited waiver allows only the United States, and not its officers – including the federal officer defendants in this case – to be sued under the FTCA.[49] Thus, all the causes of action against the individually named defendants that sound in tort must be dismissed.

Even though the FTCA provides a limited waiver of sovereign immunity against the United States, such waiver applies only when the claimant has exhausted his administrative remedies, which Mr. Brunson has failed to do.[50] To exhaust administrative remedies under the FTCA,

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

[49] 28 U.S.C. § 2679(a) & (b); *Smith v. United States*, 561 F.3d 1090, 1099 (10th Cir. 2009); *Coulibaly*, 213 F. Supp. 3d at 124 (providing that because the FTCA accords federal employees absolute immunity from common-law tort claims arising out of acts they undertake in the course of their official duties, a plaintiff "may not bring tort claims against federal officials in their official capacities or against federal agencies; the proper defendant is the United States itself").

[50] 28 U.S.C. § 2675(a).

Congress requires a plaintiff to first present the claim to the agency whose employees allegedly committed the negligent or wrongful act and wait six months for the agency to act before filing suit.[51] The failure to exhaust administrative remedies precludes a court from exercising subject matter jurisdiction over any alleged tort claim.[52] Relevant here, "[b]efore initiating a lawsuit against a United States Senator, a plaintiff is first required to file an administrative tort claim with the United States Senate under the FTCA."[53] Thus, even assuming, *arguendo,* that Mr. Brunson had alleged claims falling within the limited waiver of sovereign immunity under the FTCA, his failure to exhaust administrative remedies would nonetheless preclude this court from exercising jurisdiction over those

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[51] *Id.*

[52] *See, e.g., McNeil v. United States*, 508 U.S. 106, 113 (1993) ("The FTCA bars claimants from bringing suit in federal court until they have exhausted their administrative remedies. Because petitioner failed to heed that clear statutory command, the District Court properly dismissed his suit.").

[53] *DeMasi v. Schumer*, 608 F. Supp. 2d 516, 525 (S.D.N.Y. 2009).

claims.[54] Therefore, the United States has not waived it sovereign immunity to be sued under the FTCA for any of Mr. Brunson's claims sounding in tort.

Finally, Mr. Brunson has also failed to provide any basis for waiver of sovereign immunity for the two causes of action couched in terms of "promissory estoppel."[55] For starters, the there is no independent cause of action against the government founded on promissory estoppel.[56] To the extent the promissory estoppel causes of action are more properly construed as tort claims, the court lacks

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[54] *Id.* (dismissing case against United States Senator for failure to allege compliance with exhaustion requirement).

[55] *See* ECF No. 2-1 at 15-18.

[56] *See, e.g., Jablon v. United States*, 657 F.2d 1064, 1070 (9th Cir. 1981) (dismissing promissory estoppel claim against government, stating "[w]e have not discovered, and the parties have not cited, any precedent in this circuit for an independent cause of action against the government founded upon promissory estoppel. Neither have we discovered a statute which would allow [plaintiff] to sue the United States in this instance."); *see also, e.g., Santoni v. Fed. Deposit Ins. Corp.*, 677 F.2d 174, 179 (1st Cir. 1982) (holding that claims based on promissory estoppel sounded in tort for misrepresentation and therefore were barred by the FTCA); *Coulibaly*, 213 F. Supp. 3d at 126-28 (dismissing promissory estoppel claims against federal government employees, regardless of whether claims sounded in tort or contract); *Orleans Parish Communication Dist. v. FEMA*, No. 11-209, 2011 2011 WL 4829887, at *8 n.5 (E.D. La. Oct. 12, 2011) (same).

jurisdiction over those claims for the reasons set forth above.

To the extent the promissory estoppel causes of action could somehow be read as contract claims, subject matter jurisdiction would still be lacking. The Tucker Act provides a limited waiver of sovereign immunity with respect to certain claims "against the United States ... upon any express or implied contract with the United States."[57] However, where a plaintiff seeks damages in excess of $10,000, as Mr. Brunson does here, the jurisdiction of the United States Court of Federal Claims is exclusive.[58] Accordingly, Mr. Brunson cannot show that the United States has waived its sovereign immunity for his estoppel, tort, or constitutional claims. Therefore, the court lacks

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[57] 28 U.S.C. § 1491(a)(1).

[58] *Id.*; *Greenhill v. Spellings*, 482 F.3d 569, 573 (D.C. Cir. 2007) ("If [the plaintiff] explicitly or in essence seeks money damages in excess of $10,000, jurisdiction rests exclusively with the Court of Federal Claims."); *cf.* 28 U.S.C. § 1346(a)(2) (stating that the United States district courts exercise concurrent jurisdiction over "[a]ny ... claim against the United States, *not exceeding $10,000 in amount*, founded ... upon any express or implied contract with the United States" (emphasis added))

subject matter jurisdiction over this action and should dismiss it.[59]

## CONCLUSION

Based on the foregoing analysis of sovereign immunity and standing, the court lacks subject matter jurisdiction over the causes of action set forth in Mr. Brunson's Complaint.

Therefore, the court recommends that the action be dismissed, in its entirety, without prejudice under Fed. R. Civ. P. 12(b)(1).

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[59] Mr. Brunson's claims against defendant members of Congress and former Vice President Pence, alleging failure to investigate election fraud prior to accepting the electoral college votes, are also likely barred by absolute legislative immunity under the Speech or Debate clause of the Constitution. Article I, section 6 of the Constitution provides: "The Senators and Representatives ... for any speech or Debate in either House, ... shall not be questioned in any other Place." This clause affords Members of Congress absolute immunity from all claims arising out of their conduct in the legislative sphere. *See, e.g., Rockefeller v. Bingaman*, 234 F. App'x 852, 855 (10th Cir.) (holding that Speech or Debate immunity barred suit challenging the "decision of individual Congressmen not to take legislative action in response to [plaintiff's] prompts"), *cert. denied*, 552 U.S. 1022 (2007); *see also Rangel v. Boehner*, 785 F.3d 19, 23 (D.C. Cir. 2015) (providing that the "Supreme Court has consistently read the Speech or Debate Clause 'broadly' to achieve its purposes")

Copies of this Report and Recommendation are being sent to all parties, who are hereby notified of their right to object.[60] The parties must file any objection to this Report and Recommendation within 14 days after being served with a copy of it.[61] Failure to object may constitute waiver of objections upon subsequent review.

DATED January 6, 2022

BY THE COURT:

/s/ Jared C. Bennett
JARED C. BENNETT
United States Magistrate Judge.

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[60] 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

[61] 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

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**IN THE UNITED STATES DISTRICT COURT**
**DISTRICT OF UTAH**

| | |
|---|---|
| RALAND BRUNSON,<br><br>Plaintiff,<br><br>vs.<br><br>ALMA S. ADAMS ; et al.,<br><br>Defendants. | **OPPOSITION TO MOTION TO DISMISS FOR LACK OF JURISDICTION AND FAILURE TO STATE A CLAIM FOR RELIEF**<br><br>Case No. 1:21-cv-00111-JNP-JCB<br><br>Judge: Jill N. Parrish<br><br>Magistrate Judge: Jared C. Bennett |

Plaintiff Raland J Brunson ("Brunson") hereby moves this court with his *Opposition To Motion To Dismiss For Lack Of Jurisdiction And Failure To State A Claim For Relief* and states:

As the Supreme Court explained in *Bell Atl. Corp. v. Twombly*, Plaintiff's Complaint need not contain detailed

factual allegations, but it must plead "enough facts to state a claim for relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570, 127 S. Ct. 1955 (2007). And those allegations must be sufficient to create more than a speculative right to relief – a claim is plausible on its face "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555. Here, Plaintiff must be required to frame a complaint with enough "factual matter" to show that he is entitled to relief against Defendant and to "nudge [his] claims across the line from conceivable to plausible." *Ashcroft v. Iqbal,* 129 S.Ct. 1937 (2009) The policy behind this plausibility standard is to expose defects in a case early in the process, "at the point of minimum expenditure of time and money by the parties and the court." *Id.* at *Bell.*

"A rule 12b(6) motion to dismiss admits the facts alleged in the complaint but challenges the plaintiff's right to relief

based upon those facts." *St. Benedict's Development Co. v. St. Benedict's Hosp.*, 811 P.2d 194, 1`96 (Utah 1991) (citing 61 A Am.Jur.2d *Pleading* § 227 (1981)). "Rule 12(b)(6) concerns the sufficiency of the pleadings, not the underlying merits of a particular case," *Alvarez v. Galetka*, 933 P.2d 987, 989 (Utah 1997), and does not serve to establish the facts or resolve the merits of a case, *Whipple v. Am. Fork Irrigation Co.*, 910 P.2d 1218, 1220 (Utah 1996). The sufficiency of a complaint "must be determined by the facts pleaded rather than the conclusions stated." *Franco v. Church of Jesus Christ of Latter-Day Saints*. 2001 UT 25, ¶ 14, 65 P.3d 1184.

**SUBJECT MATTER JURISDICTION**

Defendant's argue that this Court does not have subject matter jurisdiction which is misplaced at best based upon two doctrines; 1) fraud vitiates everything it touches, and 2) administrative functions are not protected by any kind of governmental immunity.

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

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

Brunson's fifth cause of action against Defendants is for fraud. And Paragraph 34 of Brunson's complaint alleges that "Fraud vitiates everything". Defendants under their sworn duty promised that they would protect Brunson's vote in the 2020 Presidential Election ("Election") which they fraudulently did not do as alleged in the Complaint.

On January 6, 2021, the 117th Congress held a proceeding and debate ("Proceeding"). This Proceeding was

for the purpose of counting votes for the President and Vice President of the United States under Amendment XII. See ¶ 35 of the Complaint.

The Complaint alleges that during this Proceeding there was, from certain members of congress, a strong plea to investigate the election. This proceeding, including this plea to investigate the election was witnessed by the entire nation, because there was claims of fraud which included claims of over 1,000 affidavits detailing that the Election was rigged with fraud, and claims that there was massive foreign interference in the Election by helping illegal aliens, and other noncitizens vote in the Election, thereby canceling the votes. The Defendants intentional act to vote against this plea to investigate these claims of fraud threatened the ~~stealing of this~~ Election from every single legal vote cast in the Election.

The Complaint alleges that Defendants voted against investigating these serious claims of a rigged Election. Defendants voted against investigating the claims that

there are over 1,000 affidavits claiming voter fraud, and against investigating the claim that there was massive foreign interference in the Election by helping illegal aliens and non noncitizens to vote thereby canceling the legal votes, and Defendants voted against investigating claims made by the main stream news media who at relevant times almost on a daily basis discredited voter fraud allegations, and Defendants voted against investigating the social media giants who discredited and silenced allegations of election and voter fraud, and Defendants voted against investigating many members of the Executive Branch of Government including State and Federal prosecuting attorneys who allegedly covered up voter fraud, and the Defendants voted against investigating members of the Judicial Branch of Government—Article III courts who allegedly covered up voter fraud. The Defendants voted against investigating all the allegations from many sources across this country in order to determine whether or not the Election was fair and that there were no criminal

actions involved in the Election affecting the outcome of the Presidential Election. See Complaint at ¶ 57.

Defendant Steny H. Hoyer stated, "We, the Member of Congress, who swore an oath before God to preserve and protect the Constitution of the United States and our democracy, must do so now. See ¶ 61 of the Complaint.

The said serious allegation required Defendants to investigate the allegations under their sworn duty to protect Brunson's vote along with every single legal voter that voted in the Election. If there is ever a case where there is an enemy to the Constitution, whether it be foreign or abroad, the only way to determine if it is a threat it must be investigated. Members of Congress who did cry out for an investigation into whether or not there is an enemy attacking the Constitution requires the action of every oath bearing member of congress to execute their duty by conducting such investigation. The Proceeding provides proof that there were members of congress claiming that the Presidential Election was rigged in every single State of

the United States of America giving Biden and Harris a fraudulent win. See ¶ 54 of the Complaint.

In the Proceeding, certain members of congress claimed that the said fraudulent win was accomplished by, but not limited to, the illegal changing of both state and federal election laws, the counting of fraudulent / illegal votes favoring Biden wherein the number of submitted ballots exceeded the number of registered voters, and the voting machines fraudulently switched Trump votes to Biden. See ¶ 56 of the Complaint.

Defendant's voluntary sworn duty as alleged in the Complaint is paramount and guards Defendants from committing any abuse of this duty by exposing them to consequences when they commit fraud. Their acts of fraud, as alleged in the Complaint, vitiates their claim of any kind of immunity.

What happened during the Proceeding was the intentional act of Defendants discrediting these claims of voter fraud without an investigation proving otherwise.

And as such the 12th Amendment cannot be construed to allow the discrediting of claims of voter fraud, otherwise it stands in direct conflict with their oaths of office. Defendants cannot be sworn protectors and defenders of the U.S. Constitution and then be its enemy by discrediting claims of voter fraud as stated above, otherwise they would be giving aid and comfort to enemies of the United States Constitution. See ¶ 63 of the Complaint.

Furthermore, the 12th Amendment is not available for exercise under any acts of fraud, so what took place was not a 12th Amendment procedure, rather it was an administrative act to complete a possible rigged Election.

Defendants vote against investigating the Election aided and abetted an enemy at the gate– Election fraud. See ¶ 79 of the Complaint.

It is not in the capacity of any of the Defendants to vote against investigating the claims of a rigged Election, and as such they are not protected under any claims of immunity.

The Complaint alleges that Defendants vote to not investigate the claims of voter fraud during the Proceeding turned the 12th Amendment Proceeding into an administrative act to where they committed their fraud. Again a 12th Amendment proceeding is not available under acts of fraud.

Governmental administrative acts are not afforded immunity. Under the case of *Forrester v. White*, 484 U.S. 219, 225, 108 S.Ct. 538, 543 it gives an example of how Governmental administrative functions are not warranted any kind of immunity. Forrester was suing a judge to where it was ruled that "judicial immunity should protect only adjudicative functions, and that employment decisions are administrative functions for which judges should not be given absolute immunity."

*Forrester* also stated that "Administrative decisions, even though they may be essential to the very functioning of the courts, have not similarly been regarded as judicial acts. . . . In the case before us, we think it clear that Judge