

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PRISONERS LEGAL)
ADVOCACY NETWORK,)
)
 Plaintiff,) C.A. No. 23-1397-JLH
)
v.)
)
CARNEY, et al.,)
)
 Defendants.)

Friday, August 23, 2024
3:00 p.m.
Teleconference

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE JENNIFER L. HALL
United States District Court Judge

APPEARANCES:

SHAW KELLER,
BY: EMILY DiBENEDETTO, ESQ.
BY: KAREN KELLER, ESQ.

-and-

ACLU OF DELAWARE
BY: DWAYNE J. BENSING, ESQ.
BY: ANDREW BERNSTEIN, ESQ.

-and-

PROSKAUER ROSE, LLP
BY: AARON M. FRANCIS, ESQ.

Counsel for the Plaintiff

1 APPEARANCES CONTINUED:

2

3

DELAWARE DEPARTMENT OF JUSTICE,

4

BY: LYNN KELLY, ESQ.

5

BY: KENNETH WAN, ESQ.

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BY: JULIA C. MAYER, ESQ.

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Counsel for the Defendant

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14:59:54

THE COURT: Good afternoon, everyone. This is

14:59:55

Jen Hall. We're here today for Prisoners Legal Advocacy

15:00:02

Network v. Carney, et al., civil action number 23-1396.

15:00:08

May I please have appearances for plaintiffs?

15:00:10

MS. DIBENEDETTO: Good afternoon, Your Honor.

15:00:12

This is Emily DiBenedetto for plaintiff from Shaw Keller.

15:00:16

Joining me today is Karen Keller from my office, Dwayne

15:00:20

Bensing and Andrew Bernstein from American Civil Liberties

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Union of Delaware, also Jonathan Topaz from the American

15:00:26

Civil Liberties Union Foundation, Incorporated, and Aaron

15:00:31

Francis from Proskauer Rose LLP.

15:00:31

THE COURT: Good afternoon to all of you.

15:00:33

And do we have somebody on the line for

15:00:36

defendants?

15:00:37

MS. KELLY: Yes, Your Honor. Lynn Kelly from

15:00:40

the department, Delaware Department of Justice on behalf of

15:00:44

the defendants. I believe Kenneth Wan and also Julia Mayer

15:00:48 1 on the line from my office as well.

15:00:50 2 THE COURT: Great. Good afternoon to all of
15:00:52 3 you.

15:00:52 4 Currently pending before the Court is plaintiff
15:00:57 5 Prisoners Legal Advocacy Network's ("PLAN's") motion for a
15:01:03 6 preliminary injunction to require State of Delaware
15:01:05 7 officials to provide in-person voting machines at state
15:01:09 8 prisons for eligible incarcerated voters in upcoming
15:01:13 9 elections, including the November 2024 general election.
15:01:17 10 That motion is at Docket No. 9. For the reasons I'm about
15:01:21 11 to explain, the Court will dismiss the case for lack of
15:01:25 12 subject matter jurisdiction.

15:01:27 13 As I know many of you all aware, I inherited a
15:01:32 14 significant number of already pending motions when I was
15:01:34 15 confirmed as a district judge, of which this was one. We
15:01:38 16 are issuing decisions on these as quickly as we can and we
15:01:41 17 are issuing this decision from the bench in order to get it
15:01:44 18 to you as soon as possible, as it concerns the upcoming
15:01:48 19 election.

15:01:49 20 I will only summarize the facts and allegations
15:01:52 21 necessary to understand the Court's decision. Nonetheless,
15:01:56 22 some background is in order. Article V, Section 4A of the
15:02:01 23 Delaware Constitution pertains to absentee voting. That
15:02:07 24 section requires the Delaware General Assembly to enact laws
15:02:11 25 providing that qualified Delaware voters may cast an

15:02:14 1 absentee ballot under certain circumstances, including, as
15:02:19 2 relevant here, circumstances where the voter is unable to
15:02:23 3 cast his or her ballot at their regular polling place due
15:02:27 4 to, quote, "the nature of his or her business or
15:02:30 5 occupation."

15:02:31 6 The Delaware General Assembly has implemented
15:02:35 7 that command by enacting 15 Delaware Code Section 5502,
15:02:40 8 entitled Persons Eligible to Vote by Absentee Ballot, and
15:02:46 9 that statute contains a list of circumstances under which a
15:02:50 10 voter can cast an absentee ballot. Relevant here, it
15:02:54 11 provides that an eligible Delaware voter may cast an
15:02:57 12 absentee ballot, quote, "because of the nature of such
15:03:02 13 person's business or occupation, including the business or
15:03:05 14 occupation of providing care to his or her parent, spouse,
15:03:11 15 or child who is living at home and requires constant care
15:03:14 16 due to illness, disability or injury." The parties refer to
15:03:18 17 this circumstance as, quote, the "business and occupation
15:03:24 18 exception," end quote, or, quote, the "business and
15:03:27 19 occupation reason," end quote, and I will too.

15:03:33 20 Delaware law requires the Delaware Attorney
15:03:35 21 General to "personally approve" the absentee ballot
15:03:39 22 application prepared by the Delaware Department of
15:03:43 23 Elections. That's in 15 Delaware Code Section 5503.
15:03:48 24 Delaware law also requires the Delaware Attorney General to
15:03:51 25 prepare the absentee ballot instructions and the absentee

15:03:55 1 ballot envelopes and that's in Sections 5506 and 5512.

15:04:01 2 The record in this case contains a declaration
15:04:04 3 from Defendant Anthony J. Albence, the State Election
15:04:09 4 Commissioner for the Delaware Department of Elections or
15:04:12 5 DDOE. The declaration is at Docket No. 22. The DDOE is a
15:04:20 6 state agency that administers all aspects of elections in
15:04:24 7 Delaware. Mr. Albence's declaration and attached exhibits
15:04:29 8 evidence, that since at least 1980, the DDOE as treated an
15:04:35 9 otherwise eligible voter's incarceration status as falling
15:04:39 10 into one of the enumerated circumstances set forth in the
15:04:43 11 Delaware Constitution and laws that would allow for voting
15:04:48 12 via absentee ballot.

15:04:51 13 The DDOE over the years has applied varying
15:04:56 14 rationales for allowing incarcerated individuals to vote by
15:05:00 15 absentee ballot. But at least since 2018, the official
15:05:04 16 absentee ballot application, again, was just approved by the
15:05:10 17 Delaware Attorney General, has treated incarcerated
15:05:13 18 individuals as eligible under the business and occupation
15:05:16 19 exception. The version of the absentee ballot application
15:05:23 20 as of 2022, which is the same version used today, has a
15:05:26 21 section that says, quote, "Select the reasons you are voting
15:05:31 22 by absentee ballot," end quote, with a bunch of checkboxes
15:05:35 23 under it. And that's exhibit E to the declaration of Mr.
15:05:41 24 Albence at D.I. 22. The third checkbox state, "(3) Due to
15:05:49 25 the nature of my business or occupation. This reason

includes: the business or occupation of providing care to my parents, spouse, or child who is living at home and requires constant care due to illness, disability, or injury, students; and otherwise eligible persons who are incarcerated."

In the 2022 election, the Delaware Department of Elections received absentee ballots from a total of four incarcerated individuals.

In December 2022, the Delaware Supreme Court held in *Albence v. Higgin* that the categories of voters authorized to vote via absentee ballot enumerated in Article 5, Section 4A of the Delaware Constitution are exclusive and cannot be expanded through a statute enacted by the General Assembly. That case is at 295 A.3d 1065, and again, it's from 2022. Accordingly, in that case, the Delaware Supreme Court struck down a state statute that authorized universal mail-in voting regardless of whether the voter was able to appear at their regular polling place. The *Higgin* Court did not interpret or analyze the scope of the business or occupation exception or any of the other constitutionally enumerated categories. The *Higgin* Court merely held that the General Assembly cannot expand absentee voting to categories of voters that don't fall within the categories set forth in the Delaware Constitution.

Plaintiff interprets the *Higgin* decision to mean

15:07:42 1 that otherwise eligible incarcerated voters can no longer
15:07:47 2 legally vote. The argument is essentially this: *Higgin*
15:07:52 3 says that the categories enumerated in the Delaware
15:07:56 4 Constitution are the only categories of people that the
15:07:58 5 General Assembly can authorize to vote by absentee ballot.
15:08:03 6 The constitution doesn't refer to incarcerated individuals
15:08:06 7 but, as already mentioned, it does refer to those who can
15:08:09 8 not vote in person due to, quote, "the nature of his or her
15:08:14 9 business or occupation," end quote. The statute passed by
15:08:20 10 the General Assembly likewise does not refer to incarcerated
15:08:23 11 individuals, but it does permit absentee voting from those
15:08:28 12 who cannot vote because of the nature of such person's
15:08:28 13 business or occupation, including the business or occupation
15:08:32 14 of providing care to family members. Notwithstanding that
15:08:37 15 (1) no court has interpreted *Higgin* to say that incarcerated
15:08:42 16 individuals cannot cast absentee ballots, and (2) that the
15:08:46 17 absentee ballot currently used, which is approved by the
15:08:49 18 DDOE and the Delaware AG, allows incarcerated voters to
15:08:53 19 apply for an absentee ballot and expressly states that they
15:08:57 20 qualify due to the nature of their business or occupation,
15:09:01 21 plaintiff nevertheless maintains that *Higgin* prohibits
15:09:05 22 incarcerated individuals from voting absentee and that such
15:09:09 23 voters risk possible felony prosecution if they try to vote.
15:09:14 24 Because the state does not provide in-person voting machines
15:09:21 25 in the jails, plaintiff says, the state is preventing

15:09:23 1 otherwise eligible incarcerated voters from exercising their
15:09:27 2 right to vote.

15:09:28 3 The plaintiff in this case is PLAN, a New
15:09:33 4 York-based nonprofit corporation and nonpartisan coalition
15:09:39 5 of jailhouse lawyers, attorneys, advocates, and partner
15:09:42 6 organizations that provide legal services and support for
15:09:46 7 system-impacted individuals. PLAN's mission is to defend
15:09:50 8 and expand the legal rights of presently and formerly
15:09:54 9 incarcerated individuals so that those that are directly
15:09:59 10 impacted by the U.S. criminal legal system can live with
15:10:03 11 dignity and without fear.

15:10:04 12 As mentioned, in the wake of the *Higgin*
15:10:09 13 decision, PLAN became concerned that eligible incarcerated
15:10:11 14 voters would be ineligible to cast absentee ballots. PLAN
15:10:16 15 asserts, and I accept as true, that it diverted its
15:10:20 16 resources away from other projects and devoted resources to
15:10:25 17 informing individuals incarcerated in Delaware that they may
15:10:27 18 no longer be able to vote absentee. PLAN also demanded that
15:10:32 19 defendants, the Delaware Department of Corrections and the
15:10:35 20 DDOE provide in-person voting machine for incarcerated
15:10:40 21 individuals. After defendants refused that request due to
15:10:46 22 alleged concerns about the cost, PLAN brought this suit
15:10:49 23 seeking an injunction to require defendants to provide
15:10:53 24 in-person voting options for incarcerated individuals.

15:10:57 25 The named defendants are the Governor, the State

15:11:01 1 Election Commissioner of the DDOE, the acting Commissioner
15:11:05 2 of the Delaware Department of correction or DDOC.

15:11:10 3 Both sides agree that defendants need to provide
15:11:13 4 a mechanism for otherwise eligible incarcerated individuals
15:11:17 5 to vote.

15:11:18 6 Plaintiff says that absentee voting by
15:11:21 7 incarcerated individuals is illegal under Delaware law and
15:11:25 8 defendants must therefore provide voting machines at the
15:11:28 9 prison.

15:11:30 10 Defendants say that incarcerated individuals
15:11:32 11 fall under the business and occupation exception and that
15:11:36 12 incarcerated individuals can apply for an absentee ballot
15:11:40 13 using the application approved by DDOE and the AG. In
15:11:45 14 addition, defendants submitted a declaration from the State
15:11:49 15 Solicitor for the Delaware Department of Justice that
15:11:52 16 confirms that the Delaware Department of Justice will not
15:11:56 17 prosecute eligible individuals incarcerated in DDOC
15:12:00 18 facilities for voting or attempting to vote by absentee
15:12:03 19 ballot in the 2024 general election.

15:12:06 20 The Court held a hearing on plaintiff's
15:12:09 21 preliminary injunction motion in April 2024, at which I
15:12:14 22 expressed my concern that the Court may lack subject matter
15:12:17 23 jurisdiction. Because the Court has an independent
15:12:20 24 obligation to ensure that it has subject matter
15:12:24 25 jurisdiction, I ordered the parties to provide supplemental

15:12:27 1 briefing on the issue of whether PLAN lacks standing. In
15:12:31 2 addition, because PLAN's claim to relief rests on a
15:12:36 3 particular interpretation of Delaware state law that has not
15:12:39 4 been adopted by any Delaware Court and is contrary to the
15:12:42 5 position of defendants (who are charged with enforcing that
15:12:45 6 law), I asked the parties for their positions about whether,
15:12:49 7 if the Court did have subject matter jurisdiction, it would
15:12:52 8 be appropriate to certify a question to the Delaware Supreme
15:12:56 9 Court. On the latter issue, plaintiffs contend that I
15:13:00 10 should not certify a question to the Delaware Supreme Court
15:13:04 11 and defendants contend that I should. Nonetheless, having
15:13:07 12 considered all of the parties' submissions - and those are
15:13:10 13 at D.I. 9, 10, 11, 21, 22, 23, 25, 26, 29 and 30 - as well
15:13:21 14 as the arguments made at the hearing, the Court concludes
15:13:25 15 that plaintiff lacks standing and therefore the Court lacks
15:13:28 16 subject matter jurisdiction over the case.

15:13:31 17 Article III of the U.S. Constitution confines
15:13:36 18 the jurisdiction of the federal courts to "cases" and
15:13:40 19 "controversies." This "case or controversy" provision
15:13:43 20 requires a plaintiff to establish standing. To establish
15:13:46 21 standing, "a plaintiff must demonstrate (i) that she has
15:13:50 22 suffered or likely will suffer an injury in fact, (ii) that
15:13:55 23 the injury likely was caused or will be caused by the
15:13:59 24 defendant, and (iii) that the injury likely would be
15:14:02 25 redressed by the requested judicial relief." And I'll point

15:14:07 1 to support in the *FDA v. Alliance Hippocratic Medicine* case
15:14:15 2 that recently came out from the Supreme Court. That's at
15:14:17 3 602 U.S. 367 from 2024.

15:14:23 4 Standing "tends to assure that the legal
15:14:26 5 questions presented to the court will be resolved, not in
15:14:29 6 the rarified atmosphere of a debate go society, but in a
15:14:33 7 concrete factual context conducive to a realistic
15:14:37 8 appreciation of the consequences of judicial action."

15:14:41 9 Injury "must be actual or imminent, not
15:14:44 10 speculative -- meaning that the injury must have already
15:14:47 11 occurred or be likely to occur soon." A threatened future
15:14:52 12 injure "must be certainly impending to constitute injury in
15:14:57 13 fact" and "allegations of possible future injury" are not
15:15:01 14 sufficient. That's from the *Clapper* case from the Supreme
15:15:05 15 Court, 568 U.S. 398 from 2013. Also, when a plaintiff seeks
15:15:13 16 an injunction, "the plaintiff must establish a sufficient
15:15:18 17 likelihood of future injury." And that's, again, from the
15:15:24 18 *Alliance for Hippocratic Medicine* case.

15:15:25 19 PLAN asserts both organizational and
15:15:28 20 associational standing. I'll address organizational
15:15:31 21 standing first.

15:15:33 22 Organizations may assert standing "to sue on
15:15:38 23 their own behalf for injuries they have sustained."
15:15:40 24 Organizations nonetheless must "satisfy the usual standards
15:15:44 25 for injury in fact, causation, and redressability that apply

15:15:50 1 to individuals." An organization plaintiff cannot rely
15:15:54 2 merely on its objections to the government's actions,
15:15:58 3 instead, it must show "far more than simply a setback to the
15:16:02 4 organization's abstract social interests." What's more, an
15:16:07 5 organization that has not suffered a concrete injury caused
15:16:10 6 by a defendant's actions cannot spend its way into standing
15:16:15 7 simply by spending money to gather information and advocate
15:16:20 8 against the defendant's action. An organization cannot
15:16:23 9 manufacture its own standing in that way. Moreover, a
15:16:28 10 plaintiff "cannot manufacture standing merely by inflicting
15:16:32 11 harm on themselves based on their fears of hypothetical
15:16:36 12 future harm that is certainly not impending." And that law
15:16:40 13 all comes from the *Alliance for Hippocratic Medicine* case
15:16:42 14 and the *Clapper* case.

15:16:44 15 For organizational standing, PLAN contends that
15:16:50 16 it suffered a concrete injury in the form of diversion of
15:16:53 17 resources resulting from defendants' inaction after the
15:16:57 18 *Higgin* decision. PLAN submitted a declaration detailing
15:17:00 19 costs it says it incurred as a result of "mass confusion"
15:17:04 20 after *Higgin*. Those are set forth in the Declaration of
15:17:08 21 Paul Stanley Holdorf at Document No. 26. PLAN asserts that,
15:17:15 22 as a result of the *Higgin* decision, "PLAN was forced to
15:17:20 23 divert disproportionate resources to Delaware to, among
15:17:25 24 other things: (i) revise legal questionnaires and
15:17:29 25 investigate the experiences of incarcerated voters; (ii)

15:17:29 1 revise presentations, materials, and trainings for staff;
15:17:33 2 (iii) revise guidance for incarcerated voters; (iv) adapt
15:17:37 3 legal resource materials for jailhouse lawyers and
15:17:40 4 incarcerated voters; (v) invest in software to broaden
15:17:46 5 accessibility to legal resource materials; (vi) expand
15:17:49 6 publication of general voting rights resources; and (vii)
15:17:52 7 increase the frequency of meetings."

15:17:55 8 I disagree that PLAN has organizational
15:17:59 9 standing. The fundamental problem with PLAN's standing
15:18:02 10 theory is that even if its diversion of resources did
15:18:08 11 qualify as an organizational injury, PLAN has failed to
15:18:10 12 establish that its diversion of resources was caused by the
15:18:16 13 defendants.

15:18:17 14 On the record before the Court, the only person
15:18:19 15 or entity telling eligible incarcerated voters that they
15:18:25 16 cannot legally vote with an absentee ballot is PLAN itself.
15:18:29 17 The record reflects that eligible incarcerated voters could
15:18:33 18 vote via absentee ballot before *Higgin* and they can vote via
15:18:37 19 absentee ballot now. The absentee ballot application form
15:18:42 20 being used in the upcoming election, which, again, has been
15:18:44 21 approved by the DDOE and the AG, expressly allows
15:18:46 22 incarcerated individuals to request an absentee ballot. The
15:18:51 23 AG, through the state solicitor, has confirmed that the DDOJ
15:18:56 24 will not prosecute eligible individuals incarcerated in DDOC
15:19:00 25 facilities for voting or attempting to vote by absentee

1 ballot in the upcoming election. In short, defendants
2 interpret incarcerated individuals as falling within the
3 business or occupation reason for absentee voting. That
4 interpretation is not inconsistent with *Higgin* (which didn't
5 address the scope of the enumerated categories), and it is
6 not an unreasonable interpretation of the scope of the word
7 "occupation." PLAN may have diverted its resources, but it
8 was not in response to an injury or threatened injury caused
9 by the defendants.

10 PLAN also asserts associational standing based
11 on its members' injuries. "An association has standing to
12 bring suit on behalf of its members when" (a) its members
13 would otherwise have standing to sue in their own right; (b)
14 the interests it seeks to protect are germane to the
15 organization's purpose; and (c) neither the claim asserted
16 nor the relief requested requires participation of
17 individual members in the lawsuit." That's from the *Hunt v.*
18 *Washington State Apple case*. It's 432 U.S. 333 from the
19 Supreme Court in 1977.

20 PLAN cannot satisfy element (a). PLAN asserts
21 two theories for that element: (1) PLAN's members who are
22 prison paralegals and jailhouse lawyers have standing; and
23 (2) PLAN's incarcerated members who want to vote in the 2024
24 general election have standing. I will address each theory
25 in turn.

15:20:44 1 PLAN's first theory is that its members that are
15:20:47 2 prison paralegals and jailhouse lawyers are no longer able
15:20:50 3 to discharge their responsibilities. PLAN asserts that
15:20:54 4 "because of the risks of criminal prosecution, the work of
15:20:59 5 some PLAN members, including prison paralegals and jailhouse
15:21:04 6 lawyers, has been radically altered due to the changes in
15:21:07 7 voting rights, as these members can no longer ethically help
15:21:10 8 eligible incarcerated voters cast ballots. Rather than
15:21:15 9 helping incarcerated voters understand and exercise their
15:21:18 10 voting rights, these members must now caution voters that
15:21:22 11 the State's assertion that incarcerated voters may still
15:21:26 12 vote after *Higgin* may not protect them from prosecution."
15:21:30 13 PLAN also asserts that these prison paralegals and jailhouse
15:21:34 14 lawyers have had to stop their work helping eligible
15:21:37 15 incarcerated individuals cast ballots and divert their
15:21:41 16 attention to "the full-scale, corrective-messaging campaign
15:21:46 17 PLAN has undertaken to ensure eligible incarcerated voters
15:21:50 18 no longer rely on now-outdated information."

15:21:54 19 This theory fails for the same reason that
15:21:56 20 PLAN's organizational injury theory fails: even if these
15:22:03 21 alleged injuries did qualify as injuries for standing
15:22:07 22 purposes, PLAN's members' alleged injuries were not caused
15:22:11 23 by any action of the defendants.

15:22:14 24 The fact that PLAN's members stopped helping
15:22:17 25 eligible incarcerated individuals vote absentee based on

15:22:21 1 PLAN's own interpretation of the law -- an interpretation
15:22:25 2 not held by defendants -- does not represent a concrete
15:22:28 3 injury-in-fact fairly traceable to defendants' actions.

15:22:33 4 PLAN's second associational standing theory is
15:22:35 5 that its members are likely to suffer future injury because
15:22:39 6 "some members residing in DDOC facilities harbor concerns
15:22:44 7 regarding their ability to cast absentee ballots and the
15:22:48 8 repercussions they may face if they attempt to do so."
15:22:52 9 However, as I already mentioned, defendants have confirmed
15:22:55 10 that PLAN members otherwise eligible to vote will not be
15:22:58 11 prosecuted for voting or attempting to vote absentee.

15:23:02 12 To the extent that PLAN contends that some of
15:23:05 13 its members may suffer a future injury in the form of voter
15:23:10 14 challenges brought by a third party, that theory also fails,
15:23:14 15 because -- in addition to having the same problem as the
15:23:17 16 prior theories -- it is also speculative and relies entirely
15:23:22 17 on hypothetical future action by unknown third-parties.
15:23:26 18 There is no evidence that these alleged future injuries
15:23:29 19 would be caused by the defendants. Again, defendants have
15:23:33 20 consistently represented for years that eligible
15:23:36 21 incarcerated voters can vote absentee via the business or
15:23:45 22 occupation exception.

15:23:47 23 What's more, the alleged future injury to PLAN's
15:23:53 24 members is conjecture. There is no suggestion in the record
15:23:56 25 that any third party intends to challenge any prisoners'

15:23:59 1 votes. Plus, it seems exceedingly unlikely that the
15:24:03 2 absentee voters would suffer any injury as a result of such
15:24:07 3 a challenge, as that would require a future court to say (1)
15:24:12 4 that permitting incarcerated persons to vote by absentee
15:24:15 5 ballot violates the Delaware Constitution, which is a
15:24:19 6 position that has been taken by no party except PLAN and has
15:24:23 7 not been adopted by any Delaware Court; (2) that the voters
15:24:28 8 cannot intervene or participate to defend their
15:24:31 9 constitutional rights to vote in response to the challenge;
15:24:34 10 and/or (3) that the result of the future challenge is that
15:24:39 11 PLAN's members' ballots should therefore not be counted,
15:24:42 12 which everyone here agrees would be unconstitutional since
15:24:46 13 there is no other mechanism by which the incarcerated can
15:24:49 14 vote in Delaware.

15:24:51 15 For all of these reasons, PLAN has failed to
15:24:54 16 establish standing and because PLAN lacks standing, this
15:24:58 17 Court lacks subject matter jurisdiction over the case.
15:25:01 18 Accordingly, the case will be dismissed without prejudice.

15:25:06 19 Thanks very much, everyone. Have a great
15:25:08 20 weekend.

15:25:09 21 (Court adjourned at 3:25 p.m.)

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I hereby certify the foregoing is a true and

1 accurate transcript from my stenographic notes in the
2 proceedings.

3 /s/ Stacy M. Ingram, RPR
4 Official Court Reporter
5 U.S. District Court
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