UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
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January 18, 2019

By the Court:

No. 18-3429	ALEXANDER A. FELS, Plaintiff - Appellant v. MITCH MCCONNELL, United States Senator, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:18-cv-05284 Northern District of Illinois, Eastern Division District Judge Virginia M. Kendall	

This cause, docketed on November 13, 2018, is **DISMISSED** for failure to timely pay the required docketing fee, pursuant to Circuit Rule 3(b).

form name: **c7_FinalOrderWMandate**(form ID: **137**)

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ORDER

January 9, 2019

Before

JOEL M. FLAUM, *Circuit Judge*
DIANE S. SYKES, *Circuit Judge*

No. 18-3429	ALEXANDER A. FELS, Plaintiff - Appellant v. MITCH MCCONNELL, United States Senator, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 1:18-cv-05284 Northern District of Illinois, Eastern Division District Judge Virginia M. Kendall	

Upon consideration of the **MOTION FOR RECONSIDERATION OF ORDER OF DECEMBER 19, 2018**, filed on January 9, 2019, by the pro se appellant,

IT IS ORDERED that the motion for reconsideration is **DENIED.**

form name: **c7_Order_3J**(form ID: **177**)

(5)

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ORDER

December 19, 2018

Before

JOEL M. FLAUM, *Circuit Judge*
DIANE S. SYKES, *Circuit Judge*

No. 18-3429	ALEXANDER A. FELS, Plaintiff - Appellant v. MITCH MCCONNELL, United States Senator, et al., Defendants - Appellees

Originating Case Information:

District Court No: 1:18-cv-05284
Northern District of Illinois, Eastern Division
District Judge Virginia M. Kendall

Upon consideration of the **AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS**, filed on December 13, 2018, by pro se Appellant,

IT IS ORDERED that the motion for leave to proceed on appeal in forma pauperis is **DENIED**. Appellant has not raised a potentially meritorious argument for appeal. Appellant shall pay the required docketing fee within 14 days or else this appeal will be dismissed for failure to prosecute pursuant to Circuit Rule 3(b).

form name: **c7_Order_3J**(form ID: **177**)

(1)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Alexander A. Fels	)	
	)	
Plaintiff,	)	No. 18 C 5284
	)	
v.	)	Judge Virginia M. Kendall
	)	
Mitch McConnell, et al	)	
	)	
	)	
Defendants.	)	

ORDER

On 8/8/18, the Court dismissed *pro se* Plaintiff Alexander Fels's complaint—styled as a Motion for Temporary Restraining Order and Germane Subpoena(s)—without prejudice for lack of Article III standing and entered judgment. (Dkt. [9]). On 8/22/18, Fels moved for reconsideration. (Dkt. [11]). Although Fels does not indicate the rule he invokes in seeking reconsideration, because his motion was filed 14 days after judgment was entered in this case the Court will construe the motion as brought pursuant to Federal Rule of Civil Procedure 59(e). *See Obriecht v. Raemisch*, 517 F.3d 489, 493 (7th Cir. 2008) (motions filed within Rule 59(e) period construed based on their substance, not their timing or label). Under Rule 59(e), the Court has an opportunity to consider newly discovered material evidence or intervening changes in the controlling law or to correct its own manifest errors of law or fact to avoid unnecessary appellate procedures. *Harrington v. City of Chicago*, 433 F.3d 542, 546 (7th Cir. 2006); *see also Cincinnati Life Ins. Co. v. Beyrer*, 722 F.3d 939, 954 (7th Cir. 2013). Here, Fels discusses recent news events (for example, the President's action of rescinding of security clearances for former intelligence community officials and the conviction of Paul Manafort), but these events do not warrant reconsideration of the Court's prior order—nor are they even relevant to this proceeding. More to the point on standing, Fels argues that he currently is undergoing cancer treatment, that he will need treatment for his lower back on some later date because of injuries sustained in a car accident in 1985, and that a former medical issue with his neck has re-emerged. (Dkt. [11]) at 9. He argues that if he does not receive proper treatment for his maladies, he could end up paralyzed or reliant on a ventilator. His concern is that the current Supreme Court nominee may someday be part of a Supreme Court decision that negatively affects the Affordable Care Act—in particular, its provisions about the coverage of individuals with pre-existing conditions. He argues that this gives him standing to enjoin the confirmation proceedings. First, Fels has not made any showing that this evidence was newly discovered or previously unavailable at the time he submitted his complaint on 8/2/18, and he failed to set forth this standing theory at that time. A motion to reconsider cannot "be employed as a vehicle to introduce new evidence that could have been adduced" earlier, *Caisse Nationale De Credit Agricole v. CBI Indus., Inc.*, 90 F.3d 1264, 1270 (7th Cir. 1996) (citation omitted), or "to tender new legal theories for the first time," *Rothwell Cotton Co. v. Rosenthal & Co.*, 827 F.2d 246, 251 (7th Cir. 1987). But even if he had, these new facts and arguments do not expose any error in the Court's prior reasoning because Fels still fails to show that he has suffered an injury that is (1) concrete and particularized and

actual or imminent, (2) fairly traceable to the conduct of the defendants, and (3) likely and redressable by a favorable decision. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000). Fels's alleged injury is based on nothing other than conjecture and hypotheses; it entails the satisfaction of far too many conditions—some very remote—to be considered a concrete and imminent injury that can be remedied simply by enjoining Senate confirmation proceedings on a specific nominee for a time. Further, by Fels's own admission, even this alleged injury is not particularized: "I am not alone in this fiasco. Roughly half of the 36 [] percent of our populace still believing in Trump will find themselves similarly devoid of health care coverage." (Dkt. [11]) at 10; *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 344 (2006) (no standing where an alleged injury is more accurately characterized as a grievance that the plaintiff "suffers in some indefinite way in common with people generally") (citation omitted). For these reasons, Fels's Motion for Reconsideration (Dkt. [11]) is denied.

Date: September 11, 2018

Hon. Virginia M. Kendall
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALEXANDER A. FELS, Plaintiff, v. UNITED STATES SENATOR MITCH MCCONNELL and PRESIDENT DONALD TRUMP, Defendants.	)	Case No. 18 C 5284 Hon. Virginia M. Kendall

ORDER

Currently before the Court are *pro se* Plaintiff Alexander Fels's Motion for Temporary Restraining Order and Germane Subpoena(s) (Dkt. 1) and application for leave to proceed *in forma pauperis* (Dkt. 3). For the reasons explained below, the Court dismisses Fels's Motion and denies as moot his *in forma pauperis* application.

STATEMENT

Under 28 U.S.C. § 1915(e)(2), the Court is required to screen the complaint of a plaintiff who seeks to proceed *in forma pauperis* and dismiss a complaint, or any claims therein, if the Court determines that the complaint or claim is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. *See Jones v. Bock*, 549 U.S. 199, 214 (2007). Also, federal courts may raise their subject matter jurisdiction at any stage of the proceedings. *See Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012); *Evergreen Square of Cudahy v. Wis. Hous. & Econ. Dev. Auth.*, 776 F.3d 463, 465 (7th Cir. 2015).

On August 2, 2018, Fels filed what he labeled a "Motion [for] Temporary Restraining Order and Germane Subpoena(s)" (Dkt. 1), along with an application for leave to proceed *in forma pauperis* in this matter (Dkt. 3). Construed liberally, *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam), Fels's Motion seeks to compel the production of unredacted financial documents from President Trump and to enjoin the United States Senate from continuing confirmation proceedings in relation to any United States Supreme Court nominee by President Trump before the President's financial documents are produced and reviewed. (Dkt. 1) at 9.

Supporting his motion, Fels explains that he is a Republican who voted for President Trump in the 2016 election on the hope that President Trump would fix the American healthcare system. *Id.* at 3–4. However, Fels has since become disenchanted with the President based on his actions on healthcare, his "unrelenting assault on truth," and his recent performance in Helsinki, Finland after meeting with Russian President Vladimir Putin. *Id.* at 4. Fels speculates, relying on a handful

(2)

of newspaper and television sources, that President Trump's "deference to Putin in direct contradiction of our entire intelligence community" may be on account of his financial interests with and other connections to Russia. *Id.* at 5–7. Moreover, Fels complains about (1) the President's statements that he potentially could pardon himself one day and (2) the prospect that the rushed confirmation of President Trump's nominee for the United States Supreme Court could lead to a Supreme Court justice that would try to "protect President Trump" against potential criminal charges resulting from Special Counsel Robert Muller's investigation. *Id.* at 9. And because the President's approval rating is at 36 percent, Fels fears that the "very legitimacy of the Supreme Court itself may be called into question" if the Court were required in the future to take up the issue of "President Trump's fate." *Id.* at 10.

This is not the first time Fels has filed a federal action seeking to enjoin Senate proceedings relating to a Supreme Court nominee, *see Fels v. The United States Senate*, No. 17 C 2398 (N.D. Ill. Mar 30, 2017) (dismissing the case on the basis of legislative immunity), or seeking the production of certain financial documents of the President, *see Fels v. McConnell*, No. 17 C 4771 (N.D. Ill. June 29, 2017) (dismissing case wherein Fels sought a TRO halting the President's healthcare plans, Senator Mitch McConnell's and Speaker Paul Ryan's financial and campaign records, and President Trump's tax returns and campaign records for lack of standing). For the same reasons explained in those two prior proceedings, Fels cannot proceed with his present lawsuit.

Setting aside the fact that Fels' Motion lacks any specific causes of action outside of a vague and incomplete reference to the Federal Tort Claims Act (*see* (Dkt. 1) at 13), the United States Senate has absolute legislative immunity under the Speech or Debate Clause from suits seeking damages, injunctions, and declaratory relief for conduct falling within the sphere of legitimate legislative activity. *See Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 503 (1975); *Doe v. McMillan*, 412 U.S. 306, 312 (1973); *see also United States v. Menendez*, 132 F. Supp. 3d 610, 619 (D.N.J. 2015), aff'd, 831 F.3d 155 (3d Cir. 2016) (immunity protects members of Congress from, among other things, judicial orders, such as injunctions, that interfere with the legislative acts themselves); *Rangel v. Boehner*, 785 F.3d 19, 21 (D.C. Cir. 2015) ("Congressmen, for example, enjoy absolute immunity from suit for their conduct in the legislative arena."). Thus, Fels's claims against Senator Mitch McConnell cannot survive.

Not only that, Fels lacks standing to bring this action. "[T]o satisfy Article III's standing requirements, a plaintiff must show (1) [he] has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant[s]; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000). An injury is not particularized unless it "affect[s] the plaintiff in a personal and individual way." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 n.1 (1992). That is, "[a] plaintiff seeking relief in federal court must first demonstrate . . . that he has a personal stake in the outcome, distinct from a generally available grievance about government." *Gill v. Whitford*, 138 S. Ct. 1916, 1923 (2018) (quotations omitted) (citing *Baker v. Carr*, 369 U.S. 186, 204 (1962), *Lance v. Coffman*, 549 U.S. 437, 439 (2007) (per curiam)); *see also DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 344 (2006) (no standing where an alleged injury is more accurately characterized as a grievance that the plaintiff "suffers in some indefinite way in common with people generally") (citation omitted). In other words, a plaintiff

(3)

Case: 1:18-cv-05284 Document #: 9 Filed: 08/08/18 Page 3 of 3 PageID #:35

"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*, 504 U.S. at 573–74.

Here, Fels sets forth only generalized grievances concerning allegedly illegal government conduct that he shares with a segment of the public generally: protesting a future Senate confirmation vote on a Supreme Court nominee and complaining about President Trump's broken campaign promise to release his tax returns because, in some combination, these events could create a legitimacy crisis within the U.S. system of government. Fels's allegations in favor of standing only further support this conclusion. He alleges that he has standing because he is a "sixth generation American with long standing documentable voting record," he is a "citizen owner of this nation," and President Trump essentially procured his vote by fraud by making false representations about his financial documents during the campaign. But "[b]eing simply a voter and a citizen does not satisfy the standing requirement." *Griffin v. Roupas*, 2003 WL 22232839, at *8 (N.D. Ill. Sept. 22, 2003), *aff'd*, 385 F.3d 1128 (7th Cir. 2004) (citing *U.S. v. Hays*, 515 U.S. 737, 743 (1995)); *see also Weinstein v. Trump*, No. 2017 WL 6544635, at *3 (S.D.N.Y. Dec. 21, 2017) (claims regarding President Trump's failure to honor a campaign promise to donate all profits from foreign governments' patronage of his hotel and related businesses during the course of his presidency were insufficient to confer standing because they were nothing more than a generalized grievance that plaintiff shared with the public). Because Fels has failed to allege a particularized injury that affects him in a "personal and individual way," he lacks standing. Therefore, his Motion (Dkt. 1) is dismissed and his application for leave to proceed *in forma pauperis* (Dkt. 3) is denied as moot.

Virginia M. Kendall

Hon. Virginia M. Kendall
United States District Judge

Date: August 7, 2018

(4)