IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN ANTHONY CASTRO *Plaintiff,* *v.* FEDERAL ELECTION COMMISSION *Defendant*.	No.: 22-cv-02176 MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO THE MOTION TO DISMISS

PLAINTIFF'S REPLY TO DEFENDANT'S MEMORANDUM IN OPPOSITION

Defendant has once again mischaracterized the relief sought by Plaintiff. As such, Plaintiff submits this *Reply to Defendant's Memorandum in Opposition* to accurately and thoroughly explain the facts and law applicable in this case.

I. AGENCY ACTION NOT IN ACCORDANCE WITH THE LAW

A. THE FEDERAL JUDICIARY HAS AN OBLIGATION TO ENJOIN AGENCY ACTION CONTRARY TO THE U.S. CONSTITUTION

Plaintiff does not claim that the Commission has the *explicit* authority to reject a prospective candidate's filings. Plaintiff asserts that the acceptance of Donald J. Trump's FEC Form 2, Statement of Candidacy, would run afoul of the U.S. Constitution and, as such, would constitute agency action "not in accordance with law" that must be enjoined and set aside pending the federal question arising under the U.S. Constitution that Donald J. Trump engaged in, provided aid to, or provided comfort to the insurrectionists that attacked the United States Capitol.

In response, Defendant FEC claims it does not have the authority to reject a filing. This legal argument is identical to the argument made by county employees processing a title to real estate that contained a racially restrictive covenant, which the U.S. Supreme Court held unconstitutional and reversed in *Shelley v. Kraemer*.[1] Defendant FEC may not have the express authority to reject the filing, but if it is contrary to the U.S. Constitution, this Court has a legal obligation to enjoin the agency action that is not in accordance with the law.

B. ALTERNATIVELY, IN THE ABSENCE OF PROPERLY PROMULGATED REGULATIONS, THIS COURT CAN INTERPRET THE TERM "CANDIDATE" AS USED IN FECA

Alternatively, and only in the alternative and secondary to the primary argument, Plaintiff asserts that Donald J. Trump cannot fit into 52 U.S.C. § 30101(2)'s definition of "candidate" since he is ineligible to pursue public office.

In response to this, Defendant claims it does not have the authority to reject a filing and self-servingly cites its own non-binding advisory opinion that is not entitled to judicial deference since it is not a properly promulgated regulation subject to notice and comment, and, as such, is not entitled to *Chevron* deference with regard to statutory interpretation.[2] Because advisory opinions are not entitled to *Chevron* deference, this Court has the authority to interpret 52 U.S.C. § 30101(2) and declare that Congress' use of the term "candidate" implied a presumption of regularity that the candidate is not constitutionally ineligible. Based on Defendant's interpretation of 52 U.S.C. § 30101(2), North Korean dictator Kim Jong-Un could register as a Presidential candidate with the FEC and no one would have standing to stop him

[1] *See Shelley v. Kraemer*, 334 U.S. 1 (1948).
[2] *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc*., 467 U.S. 837 (1984)

until a fellow candidate brought suit at the state-level after both were registered to appear on the ballot. Such an interpretation is ludicrous and patently frivolous.

II. IRREPARABLE HARM

A. VERIFIED FACTS ARE THE EVIDENCE

Plaintiff submitted a Verification that declared, under the penalty of perjury, that all statements of fact in the Original Complaint, Plaintiff's Memorandum Of Points And Authorities In Opposition To The Motion To Dismiss, and the Memorandum Of Points And Authorities In Support of the Motion for a Temporary Restraining Order (jointly the "Now-Verified Original Complaint and Memoranda") were true and correct pursuant to 28 U.S.C. § 1746.

Facts that are verified under 28 U.S.C. § 1746 are treated as evidence.[3] The very purpose of verified facts in a Motion for a Temporary Restraining Order pursuant to Fed. R. Civ. P. 65(b)(1)(A) is to make the facts reliable evidence upon which the Court can rely for the purpose of granting immediate injunctive relief.[4]

B. INCREASED COMPETITION INJURY

The Now-Verified Original Complaint and Memoranda made it clear that established case law has recognized that agency action that increases competition constitutes irreparable harm. Defendant's assertion that it is powerless to redress Plaintiff's grievances further

[3] *See* In re Veiga, 746 F. Supp. 2d 27 (D.D.C. 2010); *Gonzales v. Brevard*, 531 F. Supp. 2d 1019 (W.D. Wis. 2008); *Hayes v. Compass Grp. USA, Inc.*, 343 F. Supp. 2d 112 (D. Conn. 2004); *Davis v. Frapolly*, 756 F. Supp. 1065 (N.D. Ill. 1991); *Owens-Corning Fiberglas Corp. v. U.S. Air*, 853 F. Supp. 656 (E.D.N.Y. 1994); In re McGuire, 450 B.R. 68 (Bankr. D.N.J. 2011); *Lelieve v. Oroso*, 846 F. Supp. 2d 1294 (S.D. Fla. 2012).
[4] *See Gibbs v. Titelman*, 369 F. Supp. 38 (E.D. Pa. 1973), rev'd on other grounds, 502 F.2d 1107 (3d Cir. 1974).

illustrates the irreparability of the Increase Competition Injury. Evidence is not required to support the obvious fact that agency action has increased competition for Plaintiff.

C. COMPETITIVE FINANCIAL INJURY

With regard to the competitive financial injury, Plaintiff asserts that its verified statement that it would suffer a competitive financial injury coupled with the obviousness of that assertion is sufficient for this Court to apply common sense to conclude this is true.'

III. DEFENDANT CANNOT LITIGATE FOR TRUMP

Defendant's third and final argument is that injunctive relief would be inequitable to the constitutional rights of Donald J. Trump. Defendant FEC does not have standing to assert any defenses on behalf of Mr. Trump.

Furthermore, Mr. Trump is not a party to this suit and has intentionally failed to Motion to Intervene As of Right pursuant to Fed. R. Civ. P. 24(a)(2) under the failed assumption this will permit an appeal for lack of notice. Defendant FEC has notified Donald J. Trump of this litigation, it is public record, and Mr. Trump has actual or constructive notice of the ongoing litigation. His strategic silence and avoidance of this case cannot be considered by this Court until he properly motions to intervene.

IV. THE SLIDING SCALE STANDARD

The U.S. Court of Appeals for the D.C. Circuit has not formally abandoned the "sliding scale" standard. In *Archdiocese of Washington*, the D.C. Circuit expressly held that the "instant case likewise 'presents no occasion for the court to decide whether the 'sliding scale' approach remains valid."[5] This has even been recognized by the U.S. Supreme Court in the

[5] *See Archdiocese of Washington v. Washington Metro. Area Transit Auth*., 897 F.3d 314, 334 (D.C. Cir. 2018)

Winter case: "Consistent with equity's character, courts do not insist that litigants uniformly show a particular, predetermined quantum of probable success or injury before awarding equitable relief. Instead, courts have evaluated claims for equitable relief on a 'sliding scale,' sometimes awarding relief based on a lower likelihood of harm when the likelihood of success is very high. This Court has never rejected that formulation, and I do not believe it does so today."[6] Therefore, in effect, Defendant FEC is asking for a change to the existing law since all legal authorities on which it relies were statements in *dicta*.

V. THE ALLEGED "DELAY" WAS DUE TO LACK OF RIPENESS

Defendant claims there can be no emergency since Plaintiff delayed in seeking injunctive relief. Because Donald J. Trump was not yet a "candidate," Count II was not ripe. This is precisely why Plaintiff referred to Count II as a "contingent claim under Fed. R. Civ. P. 18(b)." Had Plaintiff motioned for injunctive relief on Count II prior to Mr. Trump's candidacy announcement, it would have been dismissed as not yet ripe.

This contention by Defendant is bordering on sanctionable frivolity under Fed. R. Civ. P. 18(b). Plaintiff reminds Defendant of its duty of candor to this Honorable Court.

VI. CONCLUSION

Plaintiff asks this Court to grant the temporary injunctive relief sought, or, in the alternative, to grant a hearing and expedited briefing for a preliminary injunction at which Donald J. Trump can motion to intervene.

[6] *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 51 (2008) (Ginsburg and Souter, dissenting).

Dated: November 17, 2022

Respectfully submitted,

By 

John Anthony Castro
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Tel. (202) 594-4344
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Plaintiff, *Pro Se*

VERIFICATION

I, John Anthony Castro, declare as follows:

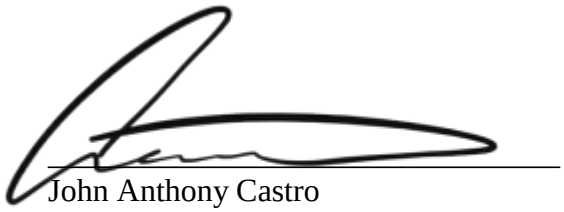
1. I am the plaintiff in the present case, a U.S. citizen, and an FEC-registered Republican primary presidential candidate (Candidate FEC ID Number P40007320) for the 2024 Presidential Election.

2. The FEC's acceptance of Donald J. Trump's Form 2, Statement of Candidacy, would increase political competition and increased financial competition thereby injuring me.

3. The FEC's unlawful acceptance and processing of Donald J. Trump's Form 2, Statement of Candidacy, would render me unable to raise campaign funds and to reshape the Republican Party due to Mr. Trump's obvious control and influence over the Republican Party.

4. Pursuant to 28 U.S.C. § 1746, I verify under penalty of perjury that the foregoing is true and correct, including the incorporation of all matters referenced in the Original Complaint.

Executed on November 17, 2022.



John Anthony Castro

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on November 17, 2022. I further certify that a true and accurate copy of the foregoing document was served by electronic mail on the following recipients on November 17, 2022:

Federal Election Commission
Litigation Division
Attorney Shaina Ward
1050 First Street NE
Washington, DC 20463
(202) 694-1650

/s/ John Anthony Castro
John Anthony Castro