

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED SOVEREIGN
AMERICANS, INC., *et al.*,

Petitioners,

v.

AL SCHMIDT, IN HIS
OFFICIAL CAPACITY AS THE
SECRETARY OF THE
COMMONWEALTH, *et al.*,

Respondents.

Case No. 1:24-CV-01003

Hon. Daryl F. Bloom,
Chief Magistrate Judge

**REPLY BRIEF IN SUPPORT OF RESPONDENT GARLAND'S
MOTION TO DISMISS**

Petitioners' response confirms that dismissal of their claims against Respondent Garland is warranted. Petitioners cannot overcome the jurisdictional and pleading issues raised in Respondent Garland's motion to dismiss. Accordingly, the Court should dismiss this matter.

ARGUMENT

A. Petitioners lack standing to proceed.

As an initial matter, Petitioners have not attempted to refute Respondent's claim that United Sovereign Americans and Dean Dreibelbis lack standing; therefore, that issue is forfeited for those two

Petitioners, and they should be dismissed. *See United States of America v. Dowdell*, 70 F.4th 134, 140 (3d Cir. 2023); *Falcone v. Dickstein*, 92 F.4th 193, 209-210 (3d Cir. 2024) (finding failure to raise an argument in district court in opposition to motion for summary judgment forfeited that argument).

Next, Petitioners claim they do not merely ask the Government to act in accordance with the law. Doc. 35 at 3. This argument belies the relief Petitioners request in their Amended Petition's Prayer for Relief:

Petitioners seek and [sic] order in *mandamus* requiring all public officials named as Respondents ***perform their duties as the law intended*** whether it be conducting federal elections in conformity with the law or investigating, and where warranted in their discretion, prosecuting persons or entities for failing to perform their duties in conformity to the law after being given timely notice to do so.

Doc. 12 at 56 (emphasis added). The Supreme Court has repeatedly stated that “an asserted right to have the Government act in accordance with the law is not sufficient, standing alone, to confer jurisdiction on a federal court.” *Allen v. Wright*, 468 U.S. 737, 754 (1984), *abrogated on other grounds by Lexmark Int’l, Inc. v. Static Control Components, Inc.*, --- U.S. ---, 134 S.Ct. 1377 (1994); *see also Cottrell v. Alcon Laboratories*, 874 F.3d 154, 167 (3d Cir. 2017) (“Bare procedural or technical

violations of a statute alone will not satisfy the concreteness requirements.”). Petitioners claim they clear this hurdle by suggesting that their specified claims provide them with a personal stake in the litigation. That argument is without merit.

We start with Petitioner Houser. While the Amended Petition states that Houser reported “numerous issues to authorities,” Doc. 12 at 15, ¶ 77, it does not describe the “numerous issues” that she allegedly observed or how those issues affected her vote. To the extent Houser raises for the first time an impairment in her right to vote, that is without merit because she admits she voted in the 2020 and 2022 elections. *Id.* at 15, ¶ 76; *see also* Exhibit A, at 72-73. Furthermore, Houser’s main contention—that her vote in the 2022 federal election was not recorded—is unsubstantiated speculation¹ insufficient to confer standing. *Id.* at 54-56.

Next, despite indicating that Petitioners disclaim “any relief regarding past conduct,” Doc. 35 at 1, Petitioner Moton claims she

¹ If anything, Houser’s claim that her vote was not recorded has been refuted. *See* Doc. 11 at 10, n. 3; Doc. 20 at 11, n. 2 (wherein Secretary Schmidt provided information indicating that the SURE system recorded Houser’s 2022 votes in the primary and general elections).

establishes standing by inaccurately expending approximately \$32,000 on the microtargeting of voters in her district in prior elections “due to identified discrepancies in the voting process.” *Id.* at 6. But expending money on a political campaign is a routine part of the democratic process, not an “injury,” and her contention that that she “feels” she did not “know[] the location and identity of the voters she attempted to canvas,” *id.* 7, is, once again, speculation untethered to any concrete injury. Moreover, with Petitioners disclaiming any relief related to prior elections, *see id.* at 1; Doc. 12 at 3-7, ¶¶ 1-25, Moton’s alleged injury has no connection to the forward-looking relief sought herein.

With respect to Petitioner Selker, his generalized claim that a failure to enforce election law will adversely affect the election is insufficient to establish standing. Two recent cases in the Middle District of Pennsylvania illustrate the insufficiency of Selker’s claim. In *Reschenthaler v. Schmidt*, plaintiffs lacked standing because they failed to adequately allege how state directives for foreign ballots would harm their electoral prospects. No. 1:24-CV-01671, 2024 WL 46608582, at *7 (M.D. Pa. October 29, 2024) (“At bottom, plaintiffs claim that ‘the law ... has not been followed,’ which ‘is precisely the kind of undifferentiated,

generalized grievance’ that the Supreme Court has ‘refused to countenance.’”) (citing *Lance v. Coffman*, 549 U.S. 437, 442 (2007)). In *Keefer v. Biden*, plaintiffs lacked standing because their claim that executive actions would undermine the election was a “vague, generalized allegation” that was “not the type of case or controversy that this court may rule on under Article III.” 725 F.Supp.3d 491, 504 (M.D. Pa. Mar. 26, 2024). Similarly, Selker’s claim that the (already completed) election may be “adversely affect[ed],” Doc. 12 at 7, is insufficient.

Petitioners’ Amended Petition should also be dismissed because they cannot meet the remaining elements of causation or redressability. Indeed, Petitioners do not address causation or redressability in their Opposition; therefore, this argument is forfeited, and Petitioners cannot meet the elements necessary for standing. *See Falcone*, 92 F.4th at 209-210. Even still, the Amended Petition does not satisfy either element, as Petitioners’ alleged harms do not relate to action (or inaction) by Respondent Garland, nor does this Court have authority to order the Respondent to perform discretionary duties. Because Petitioners cannot establish standing, their claims should be dismissed.

B. Petitioners' mandamus claim must be dismissed.

Petitioners' mandamus claim also fails for lack of jurisdiction. In attempting to establish jurisdiction, Petitioners highlight generally that the Department of Justice, and Respondent Garland as Attorney General, are charged with enforcing the law, *see* Doc. 35 at 9, and a "writ of *mandamus* is the enforcement mechanism through which Respondent Garland can be held accountable to Congress for refusing to enforce Congressional legislation." *Id.* at 11. Yet mandamus is available "only if the defendant owes [the plaintiff] a clear nondiscretionary duty." *Heckler v. Ringer*, 466 U.S. 602, 616 (1984). Because Petitioners do not identify a non-discretionary duty to act, the mandamus claim must fail.

C. Petitioners cannot pursue their claims under the All Writs Act.

Finally, Petitioners concede that they have invoked the All Writs Act as a last-ditch effort because no other statute provides them a cause of action against Respondent Garland. *See* Doc. 12 at 53-54. This concession defeats their claim, however, because the All Writs Act, alone, cannot sustain Petitioners' claims against Respondent Garland. *See Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 33 (2002) ("the All

Writs Act does not confer jurisdiction under federal courts”). Therefore, the All Writs Act provides no basis for Petitioners to sue Respondent Garland and compel discretionary action to be taken.

CONCLUSION

For these reasons, and as stated in Respondent Garland’s opening brief, the Court should grant Respondent’s motion and dismiss all claims against Respondent Garland.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on December 20, 2024, he served a copy of the foregoing

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by electronic service pursuant to Local Rule 5.7 and Standing Order 05-6 & 12.2 to all counsel of record in the above-captioned matter.

/s/ Stephanie Kakareka
STEPHANIE KAKAREKA
Legal Administrative Specialist