UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ARTHUR_CHEN,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF STATE,

BLUEKILLERFOREVER, in his official capacity as the Secretary of State,

FLOURSOUP, in his official capacity as the Deputy Secretary of State,

ITSYABOIFEE, in his official capacity as a United States Regional Ambassador,

NELSONFOLEY, in his official capacity as a United States Regional Ambassador,

LEONARDOCASTERWELL, in his official capacity as a United States Regional Ambassador,

HUDSON88888, in his official capacity as a United States Regional Ambassador,

Defendants.

Civil Action No. 4:21-0034-LFP

***SUA SPONTE* MEMORANDUM OPINION AND ORDER OF DISMISSAL WITH PREJUDICE**

Lewis F. Powell, Jr., Associate Justice (Ret.):[1]

Under the United States, federal courts are courts of limited jurisdiction, and the doctrine of standing is derived from this limited jurisdiction. U.S. Const., Art. III, § 2, cl. 1. Plaintiff filed suit challenging the validity of several ambassador appointments to the United States Department of State.

Because plaintiff has not adequately pleaded that he has standing to pursue this case, we dismiss the case with prejudice.

I. Background

The Court has *sua sponte* dismissed this case on its own motion, so we accept as true all the factual allegations in the complaint. *Leatherman v. Tarrant Cty. Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 164 (1993). Plaintiff Arthur_Chen is, according to his complaint, a citizen of the United States of America, as well as a retired general in the United States Military. Chen filed suit in the United States District Court, arguing that several ambassadors were illegally appointed to their positions.

U.S. Const., Art. II, § 2, cl. 2 provides that the President shall "nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors [of the United States]. Chen argues that ambassadors itsyaboifee, NelsonFoley, LeonardoCasterwell, and hudson88888 were not nominated by the President, nor confirmed by the Senate to their positions. Thus, Chen argued that the ambassadors were illegally holding office and should be removed.

[1] The Honorable Lewis F. Powell, Jr., Retired Associate Justice of the United States, sitting by designation.

II. Analysis

Before the Court reaches the merits of Chen's case, it must evaluate its own jurisdiction to do so. We have an independent obligation to examine our own jurisdiction, *United States v. Hays*, 515 U.S. 737, 742 (1995), and we must evaluate whether we have jurisdiction over the suit "even if the parties fail to raise the issue before us." *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 230-231 (1990).

"Federal courts are courts of limited jurisdiction … possess[ing] only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U. S. 375, 377 (1994); see also *Task v. United States*, 11 U.S. ___, ___ (2021) (Powell, J., dissenting) (slip op., at 1). Article III, § 2 of the United States Constitution limits the application of the "judicial power" to "cases and controversies." *Ultiman v. United States*, 6 U.S. 19 (2018); see also *Kirkman v. Nevada Highway Patrol*, 5 U.S. 62 (2018) (per curiam) ("The judicial power is a power to decide not abstract questions but real, concrete Cases and Controversies"); *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160 (2016); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2012). These cases and controversies must be "actual" and "ongoing," *Honig v. Doe*, 484 U.S. 305, 317 (1988), because the case and controversy requirement "subsists through all stages of federal judicial proceedings, trial and appellate." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990)). A plaintiff who brings a valid case or controversy under Article III must establish that he has a "personal stake" in the outcome, see *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 396 (1980), *i.e.* standing to sue. See, e.g., *United States v. Incels Union*, 10 U.S. at 24-28; see also *Bank of America Corp. v. Miami*, 137 S. Ct. 1296, 1302 (2017); *United States House of Reps. v. Mnuchin*, 976 F.3d 1, 6 (D.C. Cir. 2020) ("The case-or-controversy requirement for justiciability

involves certain constitutional minima, one of which is standing"), *vacated as moot sub nom. Yellen v. House of Representatives,* ___ S. Ct. ___, 2021 WL 4733282 (U.S. October 12, 2021).

The doctrine of standing determines whether a litigant is entitled to have the court decide "the merits of the dispute or of particular issues." *Incels Union,* 10 U.S., at 24; *Warth v. Seldin,* 422 U.S. 490, 498 (1975). The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches. *Clapper, supra,* at 408. Article III's standing requirement is meant to "help[] preserve the Constitution's separation of powers and demarcates `the proper—and properly limited—role of the courts in a democratic society.'" *PETA v. U.S. Dep't of Agriculture,* 797 F.3d 1087, 1103 (D.C. Cir. 2015) (quoting *Coalition for Mercury-Free Drugs v. Sebelius,* 671 F.3d 1275, 1278-1279 (D.C.Cir. 2012)). Article III standing is jurisdictional, so it "can be raised at any point in a case proceeding and, as a jurisdictional matter, may be raised, *sua sponte,* by the court." *Bauer v. Marmara,* 774 F.3d 1026, 1029 (D.C. Cir. 2014). "When there is doubt about a party's constitutional standing, the court must resolve the doubt, *sua sponte* if need be." *Id.* (cleaned up).

The "irreducible constitutional minimum of standing" consists of three elements. *Spokeo, Inc. v. Robins,* 578 U.S. 330, 338 (2016) (internal quotation marks omitted). For a litigant to successfully establish standing within a federal court, they must first present "a harm suffered by the plaintiff that is 'concrete' and 'actual or imminent,' not 'conjectural' or 'hypothetical.'" *Incels Union,* 10 U.S., at 25; *Steel Co.,* 523 U.S., at 103; *United States v. City of Las Vegas,* 4 U.S. 1, 4 (2017). Second, the harm must be "fairly traceable to the defendant's challenged action," and third, it must be "redressable by a favorable ruling." *Monsanto Co. v. Geertson Seed Farms,* 561 U.S. 139, 149 (2010); *Horne v. Flores,* 557 U.S. 433, 445 (2009) (citing *Lujan v.*

Defenders of Wildlife, 504 U.S. 555, 560–561 (1992)); *Lexmark Int'l Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125 (2014). All three of these factors must be satisfied, *Tools v. United States*, 9 U.S. 113, 128 (2020) (Bork, J., dissenting), and if a plaintiff fails to demonstrate even one, the case "begins with and ends with standing." *Carney v. Adams*, 141 S. Ct. 493, 498 (2020).

To establish injury in fact, a plaintiff must show that he or she suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Spokeo*, 578 U.S., at 339. A concrete injury-in-fact must be "real, and not abstract," *Spokeo*, 578 U.S., at 340, and must "have a tangible impact," *Tools v. United States*, 9 U.S. 113, 128 (2020) (Bork, J., dissenting). In determining whether an injury is concrete, courts should assess whether the alleged injury to the plaintiff has a "close relationship" to a harm "traditionally" recognized as providing a basis for a lawsuit in American courts, *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2204 (2021) (quoting *Spokeo*, 578 U.S. at 341), and determine if the injury "affect[s] the plaintiff in a personal and individual way." *Spokeo*, 578 U.S. at 339.

The requirement of a concrete and particularized injury-in-fact is a hallmark of federal courts' limited jurisdiction under Article III and that a private plaintiff cannot attempt to sue in order to "vindicate the infringement of public rights." *Spokeo*, 578 U.S. at 346 (Thomas, J., concurring). As the Supreme Court has previously held,

> "Federal courts, outside of anytime review, do not have a freestanding power to review and annul [executive or legislative action] on the ground that they are unconstitutional. "That question may be considered only when the justification for some direct injury

suffered or threatened, presenting a justiciable issue, is made to rest upon such an act." Massachusetts v. Mellon, 262 U. S. 448, 488 (1923)."

Incels Union, 10 U.S., at 26.

Thus, we have held that 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. Defenders of Wildlife,* 504 U.S. 555, 573–574 (1992); see also *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013) ("[A]n asserted right to have the Government act in accordance with law is not sufficient, standing alone[.]"); *United States v. Hays,* 515 U.S. 737, 743 (1995) (noting that the Supreme Court has refused to "recognize a generalized grievance against allegedly illegal governmental conduct as sufficient for standing to invoke the federal judicial power"). "Refusing to entertain generalized grievances ensures that ... courts exercise power that is judicial in nature." *Perry*, 570 U.S. at 715 (quoting *Lance v. Coffman*, 549 U.S. 437, 441 (2007)). As the Supreme Court recently held, "Article III grants federal courts the power to redress harms that defendants cause plaintiffs, not a freewheeling power to hold defendants accountable for legal infractions." *TransUnion LLC,* 141 S. Ct. at 2205. Thus, the prohibitions against generalized grievances serves to limit judicial power to "disputes capable of judicial resolution," *Geraghty*, 445 U.S., at 396, making standing the "most important" of the jurisdictional doctrines. *Hays,* 515 U.S. at 742; *FW/PBS, Inc.,* 493 U.S., at 231.

To verify, Chen has not alleged a concrete injury-in-fact. Even if the appointment of the four ambassadors was unconstitutional, Chen has not demonstrated how the appointments affect him personally. As the Supreme Court recently announced, demonstrating a personal stake

requires plaintiffs to sufficiently answer the question: "`What's it to you?'" *TransUnion LLC*, 141 S. Ct. at 2203 (quoting Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers,* 17 Suffolk U. L. Rev. 881, 882 (1983)). If the appointments did injure Chen personally, and not merely through a general grievance, then Chen would be able to state a concrete, personalized injury-in-fact. For example, say one misses out on a guaranteed promotion merely because another individual was illegally free-ranked to that position.[2] The person who was originally supposed to be promoted (or appointed) to that office has suffered an injury because they have been deprived of something that they were legally entitled to. This is a tangible injury-in-fact. On the other hand, in this case, Chen was not guaranteed an ambassadorship to the United States, and the record also does not indicate that he was ever looking for one). Chen therefore cannot argue that the appointment would have personally affected him. Cf. *Tools*, 9 U.S. 113, 128-129 (Bork, J., dissenting) (explaining that being deprived of "something [someone] didn't want and [wasn't] going to receive [was not] an injury in fact because, in practical terms, it doesn't mean anything").

Thus, Chen has only stated a general grievance that the Government has not acted in accordance with the law, see *Hollingsworth*, 570 U.S., at 706, and because federal courts are not "a forum for generalized grievances," *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018), he does not have standing to pursue this case.

[2] This was not a previously unusual occurrence. Individuals have previously been free-ranked or even lawfully appointed to positions illegally or unconstitutionally, and lawsuits have been filed challenging the employments of such individuals. See, *e.g.*, *Vinexy v. Gump*, 4:21-0000 (D.D.C. Sep. 16, 2021). However, in most of these cases, plaintiffs did not demonstrate standing because they were not guaranteed the positions held by the individuals who were supposedly appointed to them unlawfully. Cf. *Tools*, 9 U.S., at 128-129 (Bork, J., dissenting). This example highlights another case where the individual is guaranteed to receive the position (*e.g.* the Presidential line of succession) lawfully.

* * *

IV. Conclusion

The Court will dismiss this case for lack of standing. Normally, a dismissal with prejudice is warranted only when a trial court "determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Firestone v. Firestone*, 76 F.3d 1205, 1209 (D.C. Cir. 1996) (internal quotation marks omitted). Because Chen would not have standing in this case even with any amendments to the complaint or any other factual allegations in his complaint, the case is dismissed with prejudice.

So ordered.

Dated: November 10, 2021

LEWIS FRANKLIN POWELL, JR.
ASSOCIATE JUSTICE OF THE UNITED STATES
(RETIRED)