

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

RICHARD E. SUYDAM,)
)
 Plaintiff,)
)
 v.) 2:15-cv-00203-NT
)
 TOWN OF RUMFORD, et al.,)
)
 Defendants.)

RECOMMENDED DECISION

In this action, Plaintiff Richard Suydam, proceeding *pro se*, filed a complaint in which he requests an injunction that would require Defendant Town of Rumford to facilitate absentee voting in an upcoming municipal vote. Plaintiff apparently contends that Defendant’s municipal charter does not permit absentee voting on certain matters on which a vote is required. Plaintiff complains that the unavailability of absentee voting effectively disenfranchises a number of people who, due to a variety of circumstances, cannot be present to vote. Plaintiff also arguably requests emergency injunctive relief.

Plaintiff filed an application to proceed *in forma pauperis*. Plaintiff, however, did not sign or date the declaration contained in the application. Instead, he wrote “see past IFP application.”¹ (ECF No. 3.) The Clerk thereafter notified Plaintiff that his application was defective due to his failure to sign the declaration. On June 2, 2015, Plaintiff filed a document stating that his failure to sign was an oversight, and “praying that the Court will accept my amended document relating to the current I.F.P application.” (ECF No. 6.) Although Plaintiff signed his June 2 filing, Plaintiff

¹ This is a reference to case 2:14-cv-00047-JDL, in which Plaintiff filed, and the Court granted, an IFP application dated February 4, 2014.

did not file an amended IFP application containing his signature. Plaintiff, however, did assert that “none of my financial history has changed since my last IFP application ...” (*Id.*) Based on that representation, the Court granted Plaintiff’s motion to proceed *in forma pauperis*. (ECF No. 7.)

In accordance with the *in forma pauperis* statute, a preliminary review of Plaintiff’s complaint is appropriate. 28 U.S.C. § 1915(e)(2). As explained below, following that review, the recommendation is that the Court dismiss Plaintiff’s complaint.

STANDARD OF REVIEW

When a party is proceeding *in forma pauperis*, “the court shall dismiss the case at any time if the court determines,” *inter alia*, that the action is “frivolous or malicious” or “fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B). “Dismissals [under 28 U.S.C. § 1915] are often made *sua sponte* prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints.” *Neitzke v. Williams*, 490 U.S. 319, 324 (1989); *see also Mallard v. U.S. Dist. Ct. S.D. Iowa*, 490 U.S. 296, 307-308 (1989) (“Section 1915(d) ... authorizes courts to dismiss a ‘frivolous or malicious’ action, but there is little doubt they would have power to do so even in the absence of this statutory provision.”).

When considering whether a complaint states a claim for which relief may be granted, courts must assume the truth of all well-plead facts and give the plaintiff the benefit of all reasonable inferences therefrom. *Ocasio-Hernandez v. Fortuno-Burset*, 640 F.3d 1, 12 (1st Cir. 2011). A complaint fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “The relevant question ... in assessing plausibility is not whether the

complaint makes any particular factual allegations but, rather, whether ‘the complaint warrant[s] dismissal because it failed *in toto* to render plaintiffs’ entitlement to relief plausible.’” *Rodríguez–Reyes v. Molina–Rodríguez*, 711 F.3d 49, 55 (1st Cir. 2013) (quoting *Twombly*, 550 U.S. at 569 n. 14 (2007)). Generally, a *pro se* plaintiff’s complaint is subject to “less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520 (1972). However, the liberal standard applied to the pleadings of *pro se* plaintiffs “is not to say that *pro se* plaintiffs are not required to plead basic facts sufficient to state a claim.” *Ferranti v. Moran*, 618 F.2d 888, 890 (1st Cir. 1980).

FACTUAL BACKGROUND

Plaintiff asserts his claim not only against the Town of Rumford, but also the “Town Charter of Rumford.” (Complaint p. 1.) According to Plaintiff:

The Town has a 1 June vote which consists of two parts. The 1st vote can be accessed by absentee ballot.

The second part of the vote [sic]

The Rumford Charter states that voters “must” be present for the “secret ballot”. This disenfranchises a number of taxpayer/voters who cannot be physically present to partake in their 14th Amendment rights to vote. Under the current Maine (Rumford) charter, NO absentee ballots will/can be issued

(*Id.* p. 2.)² Plaintiff describes those “disenfranchised” as a group that includes soldiers on active duty, emergency personnel, incapacitated or hospitalized taxpayers, clergy, doctors on call, persons with business elsewhere, and “a host of others.” (*Id.* p. 3.) For relief, Plaintiff requests an injunction “so all may vote by absentee ballot contrary to the unconstitutional writing(s) of the Rumford Charter (Town) which disenfranchises many, and to place all items on the absentee ballot.” (*Id.* p. 5.) Plaintiff’s complaint is verified. (*Id.* p. 6.)

² Plaintiff did not attach to his complaint a copy of the Rumford Charter or any related municipal warrant(s) that pertain to his claim. Based on material available on the Town of Rumford’s website, this litigation apparently concerns a budgetary matter, and a warrant has issued that schedules a vote for June 9, not June 1 as alleged.

DISCUSSION

Preliminarily, Plaintiff has not demonstrated that he has standing to represent the rights of those he describes as disenfranchised by the Rumford Charter. Federal courts are courts of limited jurisdiction and, among other requirements for instituting an action in federal court, a plaintiff must demonstrate that he has a concrete and personal stake in the outcome of the litigation; *i.e.*, that he seeks relief for an injury that affects him personally. *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2662 (2013). Plaintiff does not allege that he is unable to vote. On the current pleadings, therefore, dismissal is appropriate based on Plaintiff's failure to demonstrate that he has standing to assert the alleged claims. Assuming, *arguendo*, that Plaintiff could amend his complaint to establish his standing to prosecute the alleged claims, Plaintiff's complaint nevertheless fails to state a constitutional claim.

Although the United States Constitution may be invoked to ensure that state and local elections do not offend equal protection and due process precepts, “[e]lection law, as it pertains to state and local elections, is for the most part a preserve that lies within the exclusive competence of the state courts.” *Town of N. Smithfield*, 265 F.3d 69, 74 (1st Cir. 2001). To raise a plausible equal protection claim, Plaintiff would have to assert facts that “a discrete group of voters suffers a denial of equal protection.” *Id.* Alternatively, to raise a due process concern, Plaintiff might allege facts showing that “the election process itself reache[d] the point of patent and fundamental unfairness,” *id.* (quoting *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978)), or that there was a “total and complete disenfranchisement of the electorate as a whole,” *Bonas v. Town of N. Smithfield*, 265 F.3d 69, 75 (1st Cir. 2001).³

³ With respect to due process claims, federal courts require litigants to use “adequate state administrative or judicial process to address a local election dispute” before seeking federal intervention. *Gonzalez-Cancel v. Partido Nuevo Progresista*, 696 F.3d 115, 120 (1st Cir. 2012). Because Plaintiff has failed to raise a constitutional concern with his allegations, there is no need to address this potential impediment to this action.

Plaintiff does not allege circumstances that would support a plausible inference that the municipal charter of the Town of Rumford denies Rumford voters equal protection of the law or violates their fundamental right to a fair election process. Instead, Plaintiff describes a charter that purportedly denies *all* Rumford voters the right to vote by absentee ballot on the particular issue. Additionally, insofar as Plaintiff has not alleged an unexpected or unreasonable change in the voting procedure, Plaintiff's complaint lacks any facts that might support a due process challenge. In short, because Plaintiff has not alleged facts from which the Court might infer the existence of a discriminatory purpose or impact, or the existence of a fundamentally unfair process, Plaintiff has failed to state a constitutional-based claim.

The Supreme Court's decision in *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969), supports, at least implicitly, the determination that Plaintiff has failed to state a constitutional deprivation. In *McDonald*, Cook County inmates who were not disenfranchised by a challenged law, alleged that an Illinois absentee-voting law infringed their constitutional rights because it did not permit them to cast a vote by absentee ballot in a Cook County election. Under the law, in order to be eligible to vote by absentee ballot, a person must be absent from the County on the day of the election. At issue was "[t]he constitutionality of Illinois' failure to include them with those who are entitled to vote absentee." *Id.* at 803. The Supreme Court rejected the inmates' contention that the law was invalid because pretrial detainees in other states or in other counties in Illinois were permitted to vote by absentee ballot. *Id.* at 806. The Supreme Court reasoned that while the Illinois legislature could make the ability to vote more convenient for many classes of citizens who were not covered by the absentee voting law, the legislature's limitation on those who are eligible for absentee voting was lawful provided the law

did not discriminate on the basis of wealth or race, and did not deny the plaintiffs their “fundamental right to vote.” *Id.* at 807.

Persuasive authority from the Seventh Circuit Court of Appeals reinforces this conclusion. In *Griffin v. Roupas*, 285 F.3d 1128 (7th Cir. 2004), the court affirmed a district court order dismissing a complaint brought on behalf of working mothers who challenged the applicable absentee voter law. The plaintiffs alleged that to appear at the polls constituted a hardship, yet they were not eligible to vote by absentee ballot because they would not be absent from the county on election day, and they were not within any of the other eligible groups such as those unable to vote due to physical incapacity or religious observance. The court concluded that a person did not have a “blanket right” under the Constitution to vote by absentee ballot. *Id.* at 1130.

In this case, Plaintiff essentially argues that one has a “right” under the Constitution to vote by absentee ballot. Simply stated, courts have not recognized such a right. Plaintiff thus has not stated a federal claim.⁴

CONCLUSION

Based on the foregoing analysis, the recommendation is that the Court dismiss Plaintiff’s complaint for failure to state a claim. If the Court adopts the recommendation, the further recommendation is that the Court declare Plaintiff’s request for injunctive relief, including any request for emergency injunctive relief, moot.

⁴ Dismissal of Plaintiff’s complaint would moot Plaintiff’s request for injunctive relief, including any request for emergency relief. Even if the Court did not dismiss the complaint, Plaintiff is not entitled to the emergency injunctive relief that he seeks. To obtain emergency injunctive relief without notice to Defendant (Plaintiff has not filed a return of service), Plaintiff must “clearly show [through an affidavit or verified complaint] that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b). In addition, to obtain injunctive relief generally, Plaintiff is required to demonstrate “(1) a substantial likelihood of success on the merits, (2) a significant risk of irreparable harm if the injunction is withheld, (3) a favorable balance of hardships, and (4) a fit (or lack of friction) between the injunction and the public interest.” *Nieves-Marquez v. Puerto Rico*, 353 F.3d 108, 120 (1st Cir.2003); *Hoffman v. Sec’y of State of Me.*, 574 F. Supp. 2d 179, 186 (D. Me. 2008). Plaintiff has not satisfied any of the requirements for emergency injunctive relief.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 4th day of June, 2015.

SUYDAM v. TOWN OF RUMFORD et al
Assigned to: JUDGE NANCY TORRESEN
Referred to: MAGISTRATE JUDGE JOHN C.
NIVISON
Cause: 42:1981 Civil Rights

Date Filed: 05/29/2015
Jury Demand: None
Nature of Suit: 950 Constitutional -
State Statute
Jurisdiction: Federal Question

Plaintiff

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V.

Defendant

TOWN OF RUMFORD

Defendant

RUMFORD TOWN CHARTER