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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MAX ENGLERIUS,	)	
	)	CASE NO. C09-172 RSM
Plaintiff,	)	
	)	ORDER GRANTING DEFENDANT’S
v.	)	MOTION TO DISMISS
	)	
UNITED STATES GOVERNMENT	)	
	)	
Defendant.	)	

**I. INTRODUCTION**

This matter comes before the Court on Defendant’s Motion to Dismiss. (Dkt. #4). Defendant argues that this Court lacks jurisdiction to entertain Plaintiff’s claims pursuant to FRCP 12(b)(1). Defendant also indicates that Plaintiff’s claims are frivolous, as they are similar to two previous meritless lawsuits filed by Plaintiff in this District Court that have already been dismissed.

For the reasons set forth below, the Court GRANTS Defendant’s motion.

**II. DISCUSSION**

**A. Background**

Plaintiff Max Englerius, appearing *pro se*, filed the instant lawsuit on February 9, 2009. In his 15-page complaint – which is preceded by a three-page “prologue” that criticizes the concept of a three-branch system of government – Plaintiff accuses the United States

1 Government of several wrongdoings, and attacks the constitutionality of this country's voting  
2 system. Plaintiff specifically seeks to have the 2008 presidential election invalidated as  
3 "illegally contrived." (Pl.'s Compl. at 3). The basis for this request stems from his allegation  
4 that the Federal Election Commission (the "Commission") permitted the major political  
5 parties to manipulate the Presidential debates to exclude certain candidates.

6 The Commission now brings the instant motion to dismiss pursuant to FRCP 12(b)(1),  
7 arguing that this Court lacks jurisdiction to entertain Plaintiff's claims. The Commission  
8 indicates that Plaintiff has failed to follow the proper procedures set forth in the Federal  
9 Election Campaign Act ("FECA"), 2 U.S.C. § 437c, *et seq.* These statutes establish the  
10 authority of the Commission to oversee elections in this country, and also prescribe the  
11 methods in which an individual can assert a complaint against any aspect of an election.  
12 Rather than responding to the Commission's motion, Plaintiff filed two motions of his own,  
13 including a motion to disregard the Commission's motion (Dkt. #5), and a motion for  
14 summary judgment (Dkt. #6). The Court now turns to the substance of the Commission's  
15 jurisdictional argument.

16 **B. FRCP 12(b)(1)**

17 A motion to dismiss under FRCP 12(b)(1) addresses the court's subject matter  
18 jurisdiction. Federal courts are courts of limited jurisdiction, and they possess only that  
19 power authorized by United States Constitution and statute, which is not to be expanded by  
20 judicial decree. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). When  
21 considering a motion to dismiss pursuant to FRCP 12(b)(1), the Court is not restricted to the  
22 face of the pleadings, but may review any evidence, such as affidavits and testimony, to  
23 resolve factual disputes concerning the existence of jurisdiction. *McCarthy v. United States*,  
24 850 F.2d 558, 560 (9th Cir. 1988).

25 In the instant case, it is unequivocally clear that the Court lacks subject matter  
26 jurisdiction to entertain any challenge by Plaintiff against the United States' voting system.  
27 Under 2 U.S.C. § 437g(a)(1), an individual with a complaint against the Commission must  
28 first file an administrative complaint with the Commission. If such a complaint is dismissed

1 by the Commission, or the Commission otherwise fails to respond within 120 days after the  
2 complaint is filed, the complainant may seek judicial review of this action. 2 U.S.C. §  
3 437g(a)(8)(A)-(B). This complaint must be filed only in the United States District Court for  
4 the District of Columbia within 60 days after the date of the dismissal. *Id.*

5 Here, Plaintiff filed an administrative complaint in accordance with 2 U.S.C. §  
6 437g(a)(1). The Commission thereafter dismissed his complaint, and the Commission further  
7 indicates that Plaintiff did not file an appeal within the 60 day window provided by FECA.  
8 Plaintiff does not dispute these contentions. Plaintiff did not file his claim in the United  
9 States District Court for the District of Columbia, therefore Plaintiff's claims should be  
10 dismissed.

11 Nevertheless, Plaintiff argues in his response that this case does not implicate the  
12 Commission. Rather, Plaintiff contends that this claim is "a civil rights case questioning  
13 whether the Constitution prescribes that vested interests could form private parties to seize  
14 control and monopolize government offices, by excluding others to benefit themselves."  
15 (Dkt. #5 at 1). Plaintiff further indicates that the Commission is not a named-party in his  
16 case, and therefore he argues that the Commission cannot bring the instant motion to dismiss.

17 Plaintiff's claims are clearly an attack on the Congressionally-mandated power given to  
18 the Commission under FECA to oversee and enforce elections in this country. Therefore his  
19 claims are within the rubric of 2 U.S.C. § 437g, irrespective of how he construes his  
20 complaint, or the entities he chooses to name in his lawsuit. Given that he has not followed  
21 the requirements set forth in this statute, it is clear that the Court lacks subject matter  
22 jurisdiction to entertain Plaintiff's complaint under FRCP 12(b)(1). Furthermore, because this  
23 Court lacks jurisdiction, Plaintiff's subsequent motions shall be stricken as moot.

### 24 **C. Plaintiff's Conduct**

25 As the Commission points out, Plaintiff's instant lawsuit is the most recent iteration of  
26 two previous meritless cases dismissed by this District Court. *See Englerius v. United States*  
27 *Government, et al.*, C00-29097 RSL; *Englerius v. United States Government, et al.*, C05-1515  
28 MJP. Those complaints also sought to attack the Commission's oversight of previous

1 Presidential debates. Both cases were dismissed by this District Court and summarily  
2 affirmed by the Ninth Circuit. (*See* Dkt. #4, Exs. 4 and 7).

3 With this background in mind, the Court finds it worthwhile to advise Plaintiff that  
4 while he has a fundamental right to access the courts, “[f]rivolous and harassing claims crowd  
5 out legitimate ones and need not be tolerated by the district courts.” *O’Loughlin v. Doe*, 920  
6 F.2d 614, 618 (9th Cir. 1990). Accordingly, courts have “the inherent power to enter pre-  
7 filing orders against vexatious litigants.” *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047,  
8 1057 (9th Cir. 2007) (citation omitted); *see also De Long v. Hennessey*, 912 F.2d 1144, 1147  
9 (9th Cir. 1990) (“Under the power of 28 U.S.C. § 1651(a) . . . enjoining litigants with abusive  
10 and lengthy histories is one such form of restriction that the district court may take.”).

11 Although this power is seldom used, courts “bear an affirmative obligation to ensure that  
12 judicial resources are not needlessly squandered on repeated attempts by litigants to misuse  
13 the courts.” *O’Loughlin*, 920 F.2d at 618. The Court does not find it necessary to use this  
14 power in the instant case, but the Court notifies Plaintiff that his conduct is subject to these  
15 well-established rules in the future.

16 The Court also finds it worthwhile to inform Plaintiff that the language he employs  
17 within his pleadings violate the General Rules of this Court. Local Rule GR 8 provides:

18 Litigation, inside and outside the courtroom in the United States District Court for the  
19 Western District of Washington, must be free from prejudice and bias in any form. Fair  
20 and equal treatment must be accorded all courtroom participants, whether judges,  
21 attorneys, witnesses, litigants, or court personnel. *The duty to be respectful of others*  
22 *includes the responsibility to avoid comment or behavior that can reasonably be*  
*interpreted as manifesting prejudice or bias toward another on the basis of categories*  
*such as gender, race, ethnicity, religion, disability, age, or sexual orientation.*

23 Local Rule GR 8 (emphasis added).

24 Here, Plaintiff makes several racist remarks in his pleadings, aimed both at the  
25 President of this country, as well as African-Americans as a whole. Such conduct and  
26 language has no place in this Court and will not be tolerated.  
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