UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA, **PLAINTIFF,** **V.** **PROUD BOYS INTERNATIONAL, LLC, et al.,** **DEFENDANTS.**	**CASE NO. 1:21-cv-03267**

DEFENDANT BRIAN ULRICH'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

COMES NOW, Defendant Brian Ulrich, (hereafter "Defendant") and hereby moves the Court, under Federal Rule of Civil Procedure 12(b)(6), to dismiss Plaintiff District of Columbia's (hereinafter "the District") Amended Complaint because the District lacks standing to bring the Complaint. In support of his motion, Defendant submits the statement of points and authorities in his brief filed with this motion.

Respectfully submitted this 16th day of June, 2022.

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DEFENDANT BRIAN ULRICH'S BRIEF IN SUPPORT OF HIS MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

COMES NOW, Defendant Brian Ulrich, (hereafter "Defendant") and submits this Brief in Support of his Motion to Dismiss for Failure to State a Claim pursuant to Federal Rule of Civil Procedure 12(b)(6) as Plaintiff lacks standing to bring the allegations against this Defendant.

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INTRODUCTION

Defendant asks the Court, under Federal Rule of Civil Procedure 12(b)(6), to dismiss the Amended Complaint against him because the District lacks standing to bring its claims for: Count 1: Conspiracy to prevent U.S. officials from discharging their duties in certifying the 2020 Presidential election, violating 42 U.S.C. § 1985(1); Count 2: Conspiracy to not prevent the wrongful acts act the Capitol, violating 42 U.S.C. § 1986; Count 3 : Conspiracy to assault; Count 4: Conspiracy to commit battery; and Count 5: Conspiracy to intentionally inflict emotional distress. The District, like any plaintiff, must suffer some injury-in-fact to have standing to bring a civil claim. But the District brings two claims under a civil rights statute, 42 U.S.C. § 1985(1), that expressly limits standing to injured federal officials or officers, not a governmental entity. The District also brings intentional tort claims for physical and psychological injuries suffered by disparate, nameless natural persons. None of these alleged injuries belong to the District nor inflict any other injury-in-fact on the District that would confer standing. Because of these defects, Defendant asks the Court to dismiss the Complaint.

STATEMENT OF FACTS

The District asserts five claims arising from the 2020 Presidential election controversy that ended with the protests at the United States Capitol:

- Count 1 - Conspiracy to prevent U.S. officials from discharging their duties in certifying the 2020 Presidential election, violating 42 U.S.C. § 1985(1);
- Count 2 - Conspiracy to not prevent the wrongful acts act the Capitol, violating 42 U.S.C. § 1986;
- Count 3 - Conspiracy to assault;
- Count 4 - Conspiracy to commit battery; and

- Count 5 - Conspiracy to intentionally inflict emotional distress.

The District claims damages against Defendant and others under 42 U.S.C. § 1985(1) and 42 U.S.C. § 1986 for preventing federal officers from performing their official duties and preventing Congress and other United States officials from certifying the 2020 Presidential election results. See Amended Complaint, 281-83. The Amended Complaint does not identify any purported injury to the District. See Amended Complaint 279-87. The District alleges as damages: the cost of deploying D.C. police officers, the cost to treat injured officers, and the costs for paid leave for injured officers. The District also alleges damages for the torts of assault, battery, and intentional infliction of emotional distress.

ARGUMENT AND CITATION TO AUTHORITY

I. STANDARD FOR DEFENDANT'S RULE 12(b)(6) MOTION TO DISMISS

In deciding a FRCP Rule 12(b)(6) motion, a court "construe[es] the complaint liberally in the Plaintiff's favor, accept[ing] as true all of the factual allegations contained in the complaint, with the benefit of all reasonable inferences derived from the facts alleged." Aktieselskabet v. Fame Jeans Inc., 525 F.3d 8, 13 (D.C. Cir. 2008) (internal quotations and citations omitted). However, a Rule 12(b)(6) motion to dismiss permits the defendant to test whether the complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b) (6) (2022). "The court need not accept inferences drawn by Plaintiff if such inferences are unsupported by the facts set out in the complaint. Nor must the court accept legal conclusions cast in the form of factual allegations." Kowal, et al v. MCI Communications Corp., 16 F.3d 1271, 1276 (D.C. Cir. 1994); Alexis v. District of Columbia, 44 F. Supp.2d 331, 336-37 (D.D.C. 1999); and Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1964-65 (2007) ("a plaintiff's obligation [is] to provide the grounds

of entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of the cause of action will not do").

Dismissal is appropriate when a complaint, construed with all well-pleaded facts viewed in the light most favorable to Plaintiff, fails "to state a claim to relief that is plausible on its face." Id. at 570 (2007). The burden of establishing the elements of standing "rests upon the party asserting jurisdiction." Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377, 114 S.Ct. 1673 (1994); see Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 112 S.Ct. 2130 (1992). A plaintiff must establish standing for each claim and for each form of relief sought "with the manner and degree of evidence required at the successive stages of litigation," Id. at 561.

II. DISTRICT LACKS STANDING TO BRING ITS CLAIMS AGAINST DEFENDANT

The District's common and primary claim is that Defendant violated 42 U.S.C. § 1985(1), a provision of a Reconstruction-Era statute known as the Ku Klux Klan Act of 1871. The Act was aimed at eliminating extralegal violence committed by white supremacist and vigilante groups like the Ku Klux Klan and protecting the civil rights of freedmen and freedwomen secured by the Fourteenth Amendment. Section 1985(1) is not, however, strictly speaking a civil rights provision; rather, it safeguards federal officials and employees against conspiratorial acts directed at preventing them from performing their duties. Thompson v. Trump, No. 21-cv-00400 (APM), 2022 U.S. Dist. LEXIS 30049, at 79-80 (D.D.C. Feb. 18, 2022). § 1985(1) provides:

> **If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge**

> **thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties.**

42 U.S.C. § 1985(1) (emphasis added.). The statute, in short, proscribes conspiracies that, by means of force, intimidation, or threats, prevent federal officers from discharging their duties or accepting or holding office. A party injured by such a conspiracy can sue any coconspirator to recover damages.

A plaintiff in federal court bears the burden of showing that she meets the "irreducible constitutional minimum" of Article III standing: (1) injury in fact, (2) causation, and (3) redressability. Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992). To establish standing at the motion to dismiss stage, the plaintiff "must state a plausible claim that [she has] suffered an injury in fact fairly traceable to the actions of the defendant that is likely to be redressed by a favorable decision on the merits." Food & Water Watch, Inc. v. Vilsack, 808 F.3d 905, 913 (D.C. Cir. 2015) (internal quotation marks omitted). The court must accept the well-pleaded allegations of the complaint as true and draw all inferences in favor of the plaintiff. Arpaio v. Obama, 797 F.3d 11, 19 (D.C. Cir. 2015). The injury in fact alleged must be 1) "concrete and particularized;" 2) "fairly traceable to the challenged action of the defendant;" and 3) that can be redressed by a favorable decision of the Court. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).

The plain language of Section 1985(1) bars Count 1 of the Amended Complaint because only federal officers and office holders have standing to assert a claim under that section. Under Section 1985, if a party interferes with or injures a federal officer or office holder, then "the party so injured or deprived may have an action for the recovery of damages." 42 U.S.C. § 1985(1), (3); see also Thompson, 2022 U.S. Dist. LEXIS 30049, at 79-88. In Thompson, this Court found that eleven members of the House of Representatives and two Capitol police officers had statutory standing to bring claims under 1985(1) for the events on January 6, 2021. Id. In analyzing the

standing requirement, the Court found that Section 1985 had a broad reach, but only for federal, not state or municipal, officers or office holders. State, municipal, or other non-federal officers lack standing under Section 1985(1), see Canlis v. San Joaquin Sheriff's Posse Comitatus, 641 F.2d 711, 718 (9th Cir. 1981), where a County sheriff's department officers lacked standing to bring a claim under Section 1985(1); Rossy v. P.R. Police Dep't, No. 08-2167 (GAG)(CVR), 2009 U.S. Dist. LEXIS 35553 (D.P.R. Apr. 24, 2009) where Puerto Rico police officers lack standing to bring a claim under Section 1985(1); and Baron v. Carson, 410 F. Supp. 299, 300 (N.D. Ill. 1976) where County health board members lacked standing to bring a claim under Section 1985(1). The District is not a federal officer or office holder, and thus lacks the standing to bring Count 1.

The District also lacks standing under Section 1985(1) because its alleged injuries are not traceable to the Defendant. Even if the District had statutory standing, the District lacks Article III standing to bring a claim under Section 1985(1) because it suffered no injury-in-fact. The District alleges Defendant Ulrich and others conspired to prevent Congress and other United States officials from certifying the 2020 Presidential election results. Amended Complaint, 281-83. But any injury to a federal official or office holder lacks any relation to the District, and the Complaint does not identify the purported injury to the District. See Amended Complaint, 279-87. The District's alleged damages, the costs of deploying D.C. police officers, the costs to treat injured officers, and the costs for paid leave for injured officers, do not confer Article III standing. See Arias v. DynCorp, 752 F.3d 1011 (2014). Even if these damages were an "injury" for standing analysis, they are not fairly traceable to Defendant's conduct. The District alleges that, at most, eighty-nine (89) individuals, thirty-nine (39) named and fifty (50) unnamed John and Jane Does, participated in the conspiracy. Amended Complaint, Paragraphs 10-50. But thousands of people descended on the Capitol, overwhelmed the police, and entered the Capitol. The District would

have incurred most or all of these costs regardless of Defendant's conduct, and the Amended Complaint does not segregate the injuries specifically caused by Defendants from those caused by the thousands of other rioters at the Capitol. Thus, the District cannot fairly trace any injury to the Defendant's conduct.

This Court addressed a similar issue in Arias v. DynCorp, 752 F.3d 1011 (2014). In DynCorp, several Ecuadorian provinces and Ecuadorian individuals brought tort claims against DynCorp, a company that, as part of a plan to combat Columbian drug cartels, sprayed glyphosate on illegal cocoa crops in Columbia. The plaintiffs alleged that the glyphosate crossed the border into Ecuador, damaged crops, and caused physical injuries. The Ecuadorian provinces argued that they had Article III standing because "their budgets had been harmed by reduced tax revenue and by necessary health expenditures to address a public health crisis supposedly caused by the . . . spraying." Id. at 1014. The D.C. Court of Appeals disagreed. The court found that lost revenue generally cannot confer Article III standing on a governmental entity. Id. at 1015 (citing Pennsylvania ex rel. Shapp v. Kleppe, 533 F.2d 668, 672 (D.C. Cir. 1976)). Even if the Ecuadorian provinces' costs "could theoretically constitute an injury-in-fact for standing purposes," those costs were not fairly traceable to the defendants' conduct because the court found several other potential causes of the crop damage and health issues. Id. at 1015. Thus, the court affirmed the dismissal of the provinces' claims for lack of Article III standing.

Here, like the Ecuadorian provinces' costs in DynCorp, the District's costs to deploy its officers, to treat their injuries, and for their lost time, are not an "injury-in-fact" for standing purposes. And those costs are not fairly traceable to Defendant's conduct. The District has identified no particular injury that can be traced to any of the defendants, let alone the Defendant

at issue who was only introduced in the Complaint and then mentioned once. Thus, the District, like the Ecuadorian provinces in DynCorp, lacks Article III standing.

Also, the District cannot bring a claim under Section 1986 because its claim under Section 1985 fails. Section 1986 holds civilly accountable anyone who knows of a conspiracy prohibited by Section 1985 and fails to prevent that conspiracy. Burnett v. Sharma, 511 F. Supp. 2d 136, 145 (D.D.C. 2007). Thus, Section 1986's language "establishes unambiguously that a colorable claim under Section 1985 is a prerequisite" to a claim for neglecting to prevent a conspiracy under Section 1986. Id. Without a viable claim under Section 1985, as described above, the District cannot bring its claim under Section 1986. Therefore, Count 2 should be dismissed.

With regard to the remaining claims for conspiracy to commit the intentional torts of assault, battery, and intentional infliction of emotional distress, the District also lacks standing to bring civil claims for torts allegedly committed against other entities. The District seeks to recover damages from Defendants for intentional torts allegedly inflicted on "individuals in and around the Capitol, including MPD officers." The District does not explain how an assault, a battery, or an intentional infliction of emotional distress inflicts any injury-in-fact on the District itself, as required for Article III standing. See Lujan, 504 U.S. at 560. To the best of the Defendant's knowledge no authority allows a governmental entity to recover damages for an intentional tort committed against an employee. But courts have rejected claims by a private entity, such as a corporation, trying to recover for intentional torts against its employee. For example, a corporation cannot recover for an assault on its employees: "this court rules as a matter of law that there can be no tort of assault against a corporation." Ntron International Sales Co. v. Carroll, 714 F. Supp. 335, 339 (N.D. Ill. 1989). See also Microthin Com, Inc. v. Siliconezone USA, LLC, No. 06 C

1522, 2006 U.S. Dist. LEXIS 82976, at 5 (N.D. Ill. Nov. 14, 2006) (holding the corporation lacked standing to assert claims of assault and battery on behalf of its employees).

Similarly, a corporation cannot suffer a physical injury in its own right. See BMO Harris Bank N.A. v. Bullet Trans Co., No. 19 C 4557, 2020 U.S. Dist. LEXIS 110580 (N.D. Ill. June 24, 2020). In BMO Harris Bank, the court held that a corporation cannot bring a false imprisonment claim because it has no physical form: "Bullet Trans, as a corporate entity, has no physical form and cannot physically be confined." Id. at 6. Likewise, the District cannot suffer an assault, a battery, or experience emotional distress because it lacks physical form. The District's intentional tort claims belong to those physically injured, not to the District itself.

CONCLUSION

The District lacks Article III standing because it failed to allege a plausible claim that it suffered an injury in fact fairly traceable to the actions of the Defendant that is likely to be redressed by a favorable decision on the merits. The plain language of Section 1985(1) bars Count 1 of the Amended Complaint because only federal officers and officer holders have standing to assert a claim under that section and the District is not a federal officer or office holder and Section 1986 fails because the statute relies on a conviction under Section 1985. Finally, District does not explain how an assault, a battery, or an intentional infliction of emotional distress inflicts any injury-in-fact on the District itself, as required for Article III standing.

Respectfully submitted this 16th day of June, 2022.

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