

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

October 26, 2026

Christopher M. Wolpert
Clerk of Court

ADAM HOLLEY,

Plaintiff - Appellant,

v.

BENJAMIN LEPAK, in his official
capacity as Acting Oklahoma Secretary of
State; OKLAHOMA STATE ELECTION
BOARD,

Defendants - Appellees.

No. 26-6020
(D.C. No. 5:25-CV-01485-JD)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **HARTZ**, **TYMKOVICH**, and **McHUGH**, Circuit Judges.

Adam Holley, proceeding pro se,¹ appeals the district court's dismissal, without prejudice, of his complaint alleging violations of 42 U.S.C. § 1983 against

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

¹ Because Mr. Holley proceeds pro se, we construe his arguments liberally, but we “cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record.” *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

the Oklahoma Secretary of State and the Oklahoma State Elections Board. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

BACKGROUND

Mr. Holley’s complaint challenges the constitutionality of Oklahoma State Question No. 836, Initiative Petition No. 448 (SQ 836), alleging that SQ 836, if enacted into law, would be unconstitutional. But SQ 836 has not been enacted into law. The alleged constitutional harm would come into existence only “[i]f [SQ 836] is approved and implemented.” R. at 12. Mr. Holley therefore sought injunctive relief “enjoining Defendants . . . from taking any further steps to certify, place, or maintain [SQ 836] on any ballot prior to the upcoming midterm elections, and directing that the measure be removed from any such ballot unless and until this Court has fully reviewed and determined its constitutional validity.” *Id.* at 13. He also sought a declaration that “if allowed to proceed,” SQ 836 would violate the First and Fourteenth Amendments. *Id.*

The district court ordered Mr. Holley to show cause why the case should not be dismissed for want of subject-matter jurisdiction because his complaint “facially describe[d] a contingent future event,” *id.* at 18, and did not allege the necessary imminent harm to confer standing on himself. Mr. Holley timely responded, but, on review of his response, the court dismissed the complaint without prejudice for lack of subject-matter jurisdiction.

DISCUSSION

“This Court reviews a dismissal for lack of standing de novo, applying the same standard used by the district court.” *Petrella v. Brownback*, 697 F.3d 1285, 1292 (10th Cir. 2012) (internal quotation marks omitted).

“[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). As part of the “irreducible constitutional minimum of standing . . . the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.” *Id.* (citations, footnote, and internal quotation marks omitted). “The party invoking federal jurisdiction,” here Mr. Holley, “bears the burden of establishing” such injury. *Id.* at 561. It “must be supported . . . with the manner and degree of evidence required at the successive stages of the litigation.” *Id.*

Mr. Holley lacks standing to challenge SQ 836 because any injury he may face is hypothetical—applicable *if* the measure becomes law, but not before then.² *See Texas v. United States*, 523 U.S. 296, 300 (1998) (“A claim is not ripe^[3] for

² The district court noted that its order “does not suggest that [Mr.] Holley’s status as a registered voter would necessarily give him standing even if the initiative did become law,” and that it “ha[d] no occasion to examine that question.” R. at 34 n.2. We also express no view on whether Mr. Holley could show standing if SQ 836 becomes law.

³ Although ripeness and standing are distinct legal doctrines, here “the doctrines . . . originate from the same Article III limitation,” and “boil down to the

adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.”). He does not substantially challenge the fairness of this characterization of the allegations in his complaint, asserting SQ 836 “*if approved and implemented, would*” violate the Constitution. Aplt. Opening Br. at 10 (emphasis added).

Mr. Holley invokes *Awad v. Ziriax*, 670 F.3d 1111 (10th Cir. 2012), in support of his argument that he has standing to challenge a not-yet-enacted state law on constitutional grounds. But *Awad* held justiciable a challenge to an Oklahoma ballot measure that had already passed. *See* 670 F.3d at 1118 (“On November 2, 2010, just over 70 percent of Oklahoma voters approved SQ 755. Without intervention, the proposed amendment would likely have been certified on November 9, 2010.”). SQ 836 has not passed. Also, *Awad*’s discussion of standing focused on doctrine that is specific to challenges under the Establishment Clause of the First Amendment. *See id.* at 1120–24. Mr. Holley does not bring an Establishment Clause challenge to SQ 836. In short, his reliance on *Awad* is unavailing.

Mr. Holley counters by pointing out that Section 1 of the Fourteenth Amendment provides that “[n]o State shall *make* . . . any law . . .” (emphasis added). He infers that the use of the term *make*, as opposed to *made*, shows that the constitutional prohibition extends to “the formal act of executing and performing

same question,” so “we use the term ‘standing’ in this” Order and Judgment. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 n.5 (2014) (citations and internal quotation marks omitted).

with due legal formalities the steps that bring a legal instrument into existence.” Aplt. Br. at 13 (emphasis omitted). And, so goes the argument, he has standing because he is challenging one step in the making of the challenged law. This argument is clever but unpersuasive. To begin with, we note that in Section 1 of the Fourteenth Amendment the only clause containing the word *make* is the Privileges or Immunities Clause,⁴ so his argument would not apply to his other claims. But even with respect to that clause, we agree with the district court that “[a] governmental entity does not ‘make’ a law within the meaning of the Fourteenth Amendment until it is enacted.” R. at 35; *cf. New Orleans Water Works Co. v. City of New Orleans*, 164 U.S. 471, 481 (1896) (stating that the Court had no authority “to control the discretion with which municipal assemblies are invested when deliberating upon the adoption or rejection of ordinances proposed for their adoption” but explaining that “[i]f an ordinance be passed, and is invalid, the jurisdiction of the courts *may then be invoked* for the protection of private rights that may be violated by its enforcement.” (emphasis added)). When we say that courts *make* law, we are referring to the end product, not the conferences of the judges composing the court or the drafting process. And we can see no reason why the Framers of the Fourteenth Amendment would have any interest in cutting short the deliberations of state legislators.

⁴The Privileges or Immunities Clause provides: “No State shall *make* or enforce any law which shall abridge the privileges or immunities of citizens of the United States” U.S. Const. Amend. XIV, § 1 (emphasis added).

Mr. Holley also refers to various legal maxims to the effect that the law prohibits indirectly what it also prohibits directly. But whatever (if any) relevance these principles may have to the merits of his constitutional challenges to SQ 836, they do not establish that he had standing to bring them. *See Rural Water Sewer & Solid Waste Mgmt., Dist. No. 1 v. City of Guthrie*, 654 F.3d 1058, 1068–69 (10th Cir. 2011) (“Ordinarily, this court must resolve jurisdictional issues, such as . . . standing, before addressing the merits of the claim” (internal quotation marks omitted)).

Finally, Mr. Holley argues he had standing because he suffered an injury in fact from his “expenditures of time and money” pursuing the action. *Aplt. Opening Br.* at 7. We reject this argument, though, because “reimbursement of the costs of litigation cannot alone support standing.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 108 (1998); *see also Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 773 (2000) (“[A]n interest that is merely a ‘byproduct’ of the suit itself cannot give rise to a cognizable injury in fact for Article III standing purposes.”).

Because Mr. Holley did not plead the existence of an actual or imminent injury stemming from SQ 836, he lacked standing, so the district court was correct to dismiss his complaint for lack of Article III jurisdiction.

CONCLUSION

We affirm the judgment of the district court. We deny as moot Mr. Holley’s “Motion to Submit on the Briefs, Deem Appellee’s Argument Waived, and Expedite Disposition.”

Entered for the Court

Harris L Hartz
Circuit Judge