IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

DUSTIN KITTLE, *Plaintiff,* v. JOSEPH R. BIDEN, JR., in his official capacity as President of the United States of America, *Defendant.*	)	Case No.: 1:24-cv-00025 CHIEF JUDGE CAMPBELL MAGISTRATE JUDGE HOLMES

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

The United States of America, pursuant to Local Rule 7.03, submits this memorandum in support of its Motion to Dismiss.

INTRODUCTION

In this action, the plaintiff, Dustin Kittle ("Plaintiff"), pursues equitable remedies aimed at compelling the defendant, Joseph R. Biden, Jr. in his official capacity ("the President"), to appoint two new members to the Farm Credit Administration ("FCA") board. The Plaintiff's claims, however, should be dismissed. First, this Court is generally without jurisdiction to enjoin or enter a declaratory judgment against the President, and while certain ministerial acts may be the subject of a mandamus writ, discretionary acts - like appointments - cannot be compelled by the Court. Further, even if the Court had such jurisdiction, the Plaintiff's allegations do not state a claim for such drastic remedies. Second, the Plaintiff's pleadings fail to demonstrate standing to bring the claims lodged because he has failed to show a particularized injury and the relief the relief requested will not address any alleged injury. Third, to the extent any of the Plaintiffs' claims are viable at this stage, this litigation concerns farm loans and past litigation conducted in the Northern

District of Alabama. As such, the case should be dismissed or transferred in favor of adjudication in that forum, not the Middle District of Tennessee.

BACKGROUND

Much of the Plaintiff's Complaint provides a history of the FCA and the federal government's regulation of the farm credit system. Therein, the Plaintiff digests various criticisms of the FCA in recent years. (D.E. 1, Complaint at PageID# 5-21.) In general, these criticisms target problems the Plaintiff theorizes stem from not having new Farm Credit Administration board members appointed by the President. (Id. at PageID#20-21.)

The focus of the Complaint is the fact that two FCA board members are in "holdover status," meaning their terms have expired but they are authorized by statute to continue to serve indefinitely pending the appointment of a successor. (*See* id at PageID#24-25.) This situation, according to the Plaintiff's speculation, creates a host of potential problems like making the board "more vulnerable to the vagaries of politics," "increased reimbursed travel expense," and "inability of the Board to effectively execute its oversight." (Id.) These are the potential harms the Complaint seeks to remedy with the requested relief. However, the Plaintiff does not describe precisely how such relief will remedy any specific losses he has sustained by the alleged lack of a Board without any members in "holdover status." (*See* id. *passim*.)

As for the Plaintiff's interaction with the FCA, the Complaint cites a lending relationship the Plaintiff had with Alabama Farm Credit and litigation that stemmed from it. (Id. at PageID# 38-63.) For his injuries, the Plaintiff claims that as a result of "rogue" actions by Alabama Farm Credit and their Birmingham-based attorney, he was forced to liquidate farm holdings and property to satisfy an outstanding loan from Alabama Farm Credit. (Id.) It is not clear from the Complaint, though, how the relief requested – appointing new Farm Credit Administration board members –

would have any effect on these alleged, past injuries. Instead, the Complaint seems to suggest that it would be generally better for all farmer borrowers to have a changing of the guard at the Farm Credit Administration. This would, so the argument goes, likely lead to better regulatory decisions in the future. Regardless of whether these contentions have merit, as discussed below, the Complaint should be dismissed.

LEGAL STANDARD

In general, the President respectfully submits that most, if not all, of the Plaintiff's claims are premised on matters over which this Court lacks jurisdiction or concern allegations for which there is no constitutional case or controversy. To the extent the Court finds that it has authority to entertain one or more of Plaintiff's requests for relief, the President respectfully submits that the Complaint fails to demonstrate a valid cause of action and should be dismissed for failure to state a claim. Accordingly, the following standards apply to this Court's consideration of the President's Motion to Dismiss.

A. Dismissal for lack of subject matter jurisdiction

Fed. R. Civ. P. 12(b)(1) provides a formal mechanism for a defendant who wishes to contest subject-matter jurisdiction in a newly filed case. *Mucerino v. Martin*, 2021 WL 5585637, at *3 (M.D. Tenn. Nov. 30, 2021). Motions to dismiss for lack of subject-matter jurisdiction fall into two general categories: facial attacks and factual attacks. *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994). A motion to dismiss under Rule 12(b)(1) for lack of subject-matter jurisdiction "may either attack the claim of jurisdiction on its face or it can attack the factual basis of jurisdiction." *Coutu v. Bridgestone Americas, Inc.*, No. 3:17-CV-01492, 2019 WL 6492899, at *1 (M.D. Tenn. Dec. 3, 2019)(quoting *Golden v. Gorno Bros., Inc.*, 410 F.3d 879, 881 (6th Cir. 2005)). "A facial attack challenges the sufficiency of the pleading" and "requires the Court to take

all factual allegations in the pleading as true." *Id.* A factual attack challenges the allegations supporting jurisdiction, raising "a factual controversy requiring the district court to 'weigh the conflicting evidence to arrive at the factual predicate that subject-matter does or does not exist.'" *Id*. As discussed in more detail herein, the Court does not have the jurisdiction to grant the Plaintiff's requests for injunctive, declaratory. and mandamus relief concerning the appointment of officers to the Farm Credit Administration board.

B. Dismissal for failure to state a claim

In deciding a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6), federal courts are required to "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007); *Inge v. Rock Fin. Corp.*, 281 F.3d 613, 619 (6th Cir. 2002). The complaint's allegations, however, "must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Generally, when a Court considers matters of whether a plaintiff has "statutory standing" or, more simply "a cause of action," federal courts will consider this challenge under Fed. R. Civ. P. 12(b)(6). *Coutu*, 2019 WL 6492899, at *4. In this case, to the extent the Court finds that it does have authority to entertain one or more of Plaintiff's requests for relief, the President respectfully submits that the Complaint fails to demonstrate a valid cause of action and should be dismissed for failure to state a claim.

ARGUMENT

I. EQUITABLE RELIEF FOR DISCRETIONARY DECISIONS IS NOT PROPER

A. The Court cannot grant injunctive or declaratory relief against the President

The Plaintiff seeks, in part, "[a] declaratory judgment pursuant to 28 U.S.C. § 2201 that President Biden is in violation of 12 U.S.C. § 2242" and "[a]n injunction requiring President Biden, within 60 days of the order, to appoint two Members to the Farm Credit Administration Board." (D.E. 1 at PageID#63-64.) However, neither injunctive nor declaratory relief is proper against the President in his official capacity.[1] Rather, "[w]ith regard to the President, courts do not have jurisdiction to enjoin him and have never submitted the President to declaratory relief." *Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) (citations omitted); *see Franklin v. Massachusetts*, 505 U.S. 788, 802–03 (1992) ("[I]n general 'this court has no jurisdiction of a bill to enjoin the President in the performance of his official duties.'")(quoting *Mississippi v. Johnson*, 71 U.S. 475, 501 (1866)); *Swan v. Clinton*, 100 F.3d 973, 976 n.1, 978 (D.C. Cir. 1996) (courts lack the authority to enjoin the President in the performance of his official duties and "similar considerations" restrict a court's power to issue a declaratory judgment against the President); *Newdow v. Bush*, 355 F. Supp. 2d 265, 280 (D.D.C. 2005) (similar).

Justice Scalia explained in *Franklin*, an "apparently unbroken historical tradition supports the view, . . . implicit in the separation of powers established by the Constitution, that the principals in whom the executive and legislative powers are ultimately vested . . . may not be ordered to

[1] Even if the Constitution permitted the Plaintiff to seek declaratory or injunctive relief against the President, he would still need to identify a relevant waiver of sovereign immunity. Plaintiff invokes the Declaratory Judgment Act, but that Act "'does not constitute an independent basis for jurisdiction.'" *Gabriel v. GSA*, 547 F. App'x 829, 831 (9th Cir. 2013) (quoting *Morongo Band of Mission Indians v. Calif. State Bd. Of Equalization*, 858 F.2d 1376, 1382−83 (9th Cir. 1988)). Plaintiff identifies no other waiver that might apply here, and the case should thus be dismissed.

perform particular executive or legislative acts at the behest of the Judiciary." 505 U.S. at 827 (Scalia, J., concurring in part). "For similar reasons," courts "cannot issue a declaratory judgment against the President." *Id.* The reasons for this rule are "painfully obvious." *Swan*, 100 F.3d at 978. The President and the judiciary are co-equal branches of government, and the latter ordering the former to perform specific executive acts "at best creates an unseemly appearance of constitutional tension and at worst risks a violation of the constitutional separation of powers." *Id.*; *accord Kendall v. U.S. ex rel. Stokes*, 37 U.S. 524, 610 (1838) ("The executive power is vested in a President; and as far as his powers are derived from the constitution, he is beyond the reach of any other department, except in the mode prescribed by the constitution through the impeaching power"). The Supreme Court further warned of its lack of "power to enforce its process" in support of any injunction against the President. *Mississippi v. Johnson*, 71 U.S. at 501. For those reasons, the Court concluded that an "attempt on the part of the judicial department . . . to enforce the performance of [executive and political] duties by the President [is] . . . 'an absurd and excessive extravagance.'" *Id.* at 499. This Court should likewise find that the relief requested by the Plaintiff is simply not available to him and that this case should, therefore, be dismissed.

B. The All Writs Act does not confer jurisdiction

In addition – or perhaps alternatively – the Plaintiff requests that the Court issue a "writ of mandamus pursuant to 28 U.S.C. § 1651 directing President Biden, within 60 days of the order, to appoint two Members to the Farm Credit Administration Board." (D.E. 1: Complaint at PageID# 64.) The cited statute, 28 U.S.C. § 1651, is known as the All Writs Act. To be sure, the All Writs Act may allow federal courts to issue writs of mandamus in some circumstances pursuant the broad authority granted by the statute. *See* 28 U.S.C. § 1651. Still, it is an "extraordinary" remedy designed to confine a court to its proper authority or to require it to undertake a clearly articulated

duty. *Will v. United States*, 389 U.S. 90, 95 (1967). To obtain a mandamus writ under the All Writs Act, the Plaintiff must show: (1) "[he does] not have any other method of obtaining relief"; (2) "he has a 'clear and indisputable' legal right"; and (3) "he still must convince the court that the 'writ is appropriate under the circumstances.'" *United States v. Martirossian*, 917 F.3d 883, 889 (6th Cir. 2019)(*Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380–81 (2004)).

Furthermore, the All Writs Act, 28 U.S.C. § 1651, provides only for the power of a federal court to issue writs once its jurisdiction has been established, and does not of itself confer jurisdiction. *Honicker v. Hendrie*, 465 F. Supp. 414, 419 (M.D. Tenn. 1979). Indeed, a court may only issue writs that are "in aid of the issuing court's existing jurisdiction." *United States v. Shakir*, 113 F. Supp. 2d 1182, 1190 (M.D. Tenn. 2000) (citing *Clinton v. Goldsmith*, 526 U.S. 529 (1999)). "The [All Writs Act] does not grant new jurisdiction or expand a court's jurisdiction otherwise provided or limited by law." *Burns v. Helper*, 2019 WL 5987707, at *4 (M.D. Tenn. Oct. 24, 2019), *report and recommendation adopted*, No. 3:18-CV-01231, 2019 WL 5964546 (M.D. Tenn. Nov. 13, 2019). Thus, the Plaintiff must first establish a viable jurisdictional basis before this Court could consider issuing the requested writ.

Here, the Plaintiff has not identified a viable, independent ground upon which this Court has jurisdiction to act. The Plaintiff does not identify what duty the President owes him with respect to the appointments at issue in the Complaint beyond that of what he claims to be a general duty owed to the public. As such, it does not meet a threshold requirement for issuance of any writ under the All Writs Act. Further, he has not identified a "clear legal right" to a writ. The Plaintiff expresses no specific interest or standing in this suit other than general concerns over the management or alleged mismanagement of the farm credit system.

Finally, this Court should not be convinced that such an extraordinary remedy is warranted in this case. In some ways, the Plaintiff is seeking to effect political action against the President insofar as he wants this Court to compel the President to make appointments that the Plaintiff believes will cure the ills of the farm credit system as he perceives them. There is no guarantee, however, that even if the Plaintiff obtains the relief he asks for, any of the problems he alleges would be solved. Respectfully, the Court should find that there are no grounds upon which a writ of mandamus under the All Writs Act should be granted in this case.

C. Mandamus writs cannot compel the exercise of presidential discretion

Although he relies upon the All Writs Act, as discussed above, the Plaintiff cites *McQueary v. Laird*, 449 F.2d 608 (10th Cir. 1971). *McQueary* concerns what is known as the Mandamus Act, 28 U.S.C. § 1361, under which "a district court has 'jurisdiction [over] any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.'" *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 766 (5th Cir. 2011) (quoting 28 U.S.C. § 1361). "The plain language of § 1361 is clear that it only grants jurisdiction to consider a mandamus action; it does not grant jurisdiction to consider actions asking for other types of relief—such as injunctive relief." *Id.* To the extent the Plaintiff suggests that he is entitled to relief under this statute or any of the precedent construing it, his reliance is misplaced. Similar to the request for relief under the All Writs Act, the Plaintiff's action does not qualify for relief under the Mandamus Act.

"[M]andamus commands the performance of a particular duty that rests on the defendant or respondent, by operation or law or because of official status." *Id.* (quoting 42 Am. Jur. 2d *Injunctions* § 7 (citations omitted)). The Mandamus Act, 28 U.S.C. § 1361, gives district courts "jurisdiction [over] any action in the nature of mandamus to compel an officer or employee of the

United States or any agency thereof to perform a duty owed **to the plaintiff**." *Singh v. Mayorkas*, No. 3:23-CV-00527, 2024 WL 420124, at *2 (M.D. Tenn. Feb. 5, 2024) (emphasis supplied). Moreover, "'[t]he common-law writ of mandamus, as codified in 28 U.S.C. § 1361, is intended to provide a remedy for a plaintiff only if he has exhausted all other avenues of relief and only if the defendant owes him a clear nondiscretionary duty.'" *Whitaker v. Mattis*, 2018 WL 6171426, at *3 (M.D. Tenn. Nov. 26, 2018)(quoting *Heckler v. Ringer*, 466 U.S. 602, 616 (1984)). Further, "[m]andamus is available only if: (1) the [petitioner] has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is no other adequate remedy available to the [petitioner]." *Gratton v. Cochran.*, No. 3:20-CV-00742, 2021 WL 3603789, at *3 (M.D. Tenn. Aug. 13, 2021), *aff'd sub nom. Gratton v. Wildasin*, 2022 WL 3969833 (6th Cir. June 22, 2022)(citations and quotations omitted).

As this Court has observed, "[m]andamus relief is a 'drastic' remedy, 'to be invoked only in extraordinary situations.'" *Id.* It "is not an appropriate remedy if the action that the petitioner seeks to compel is discretionary." *Id.* (internal quotations omitted). In sum, "[a] mandamus action may be brought under 28 U.S.C. § 1361 to compel an employee of the United States to perform a duty owed, but the duty owed must be mandatory and not discretionary." *Spencer v. Gasper*, 2022 WL 20730193, at *2 (6th Cir. Aug. 9, 2022), *cert. dismissed*, 144 S. Ct. 271, 217 L. Ed. 2d 114 (2023).

The Plaintiff's Complaint does not identify how the President owes the Plaintiff a "clear duty to act," and he has not established a "clear right to relief." As with the standing issues discussed below, the Plaintiff does not have a particularized injury caused by the delay in appointing new FCA board members. Respectfully, the Plaintiffs grievances, which are not

dissimilar to any other citizen's frustrations with political circumstances, simply does not merit a "drastic" remedy.

Further, the President's decision "whether or not to exercise his appointment power is discretionary." *Dysart v. United States*, 369 F.3d 1303, 1317 (Fed. Cir. 2004). As a discretionary act, the President's decisions cannot be reviewed by a court. *See, e.g., Marbury v. Madison*, 5 U.S. 137, 165–67 (1803). In *Marbury*, the Court held that it could not review the President's exercise of his appointment power because it is discretionary: "The power of nominating to the senate, and the power of appointing the person nominated, are political powers, to be exercised by the president according to his own discretion." *Id.* at 166–67. Indeed, "here a statute ... commits decisionmaking to the discretion of the President, judicial review of the President's decision is not available." *Id.* at 477; *Dalton v. Specter*, 511 U.S. 462, 477 (1994). The same is necessarily true where the President is afforded discretion by the Constitution itself. The United States does not dispute that in the case of mistrial actions - e.g. delivering commission documents as was the case in *Marbury* – but this Court does not have the power to mandate that the President exercise his discretionary appointment powers.

Furthermore, the Plaintiff's demands suffer from a much more practical problem. While two board members are holdovers, the situation is authorized by the Act. The Plaintiff acknowledges this. (D.E. 1, Complaint at PageID# 22, ¶14.) The Act states, in part, that "[a]ny vacancy shall be filled for the unexpired term on like appointment. Any member of the board shall continue to serve as such after the expiration of the member's term until a successor has been appointed and qualified." 12 U.S.C. § 2242. Also, the Plaintiff does not identify a timeframe mandated by the statute in which the President must appoint members of the board. Therefore, based on the Complaint's allegations, it is not at all clearly articulated that the situation at issue

runs afoul of any statutory requirement, and certainly not the "clear obligation" that is required to justify a writ of mandamus. As such, it would make even less sense for the Court to order the President to take action he is not - practically speaking - required to take at any specific time.

Thus, while the Plaintiff expresses thorough frustrations with the President and the FCA, there is simply no avenue through which a decision from this Court can meet his demands. As such, the Plaintiff's Complaint should be dismissed.

II. PLAINTIFF LACKS STANDING

The Plaintiff's case suffers from another threshold defect in that the Complaint does not establish standing. "Article III of the United States Constitution requires the party invoking federal jurisdiction to establish standing to pursue the relief requested." *Gratton v. Cochran.*, 2021 WL 3603789, at *4. To establish standing, the Plaintiff must show "(1) an injury in fact (2) that is traceable to the defendant's conduct and (3) that the courts can redress." *Taylor v. Byers*, No. 3:22-cv-00689, 2023 WL 6393174, at *2 (M.D. Tenn. Sept. 29, 2023) (citing *Gerber v. Herskovitz*, 14 F.4th 500, 505 (6th Cir. 2021)). Although the Complaint provides a thorough sampling of complaints about the federal farm credit system's alleged mismanagement, the Plaintiff has not articulated an injury in fact, nor conduct that can be redressed by the Court. In many respects, the Plaintiff's lawsuit is not premised on a particular injury experienced by the Plaintiff, but rather an attempt at forcing a desired political action by the President. As such, the Plaintiff's case does not present a controversy for which this Court can fashion a remedy.

A. The Plaintiff's injuries are not concrete and particularized

For the purpose of establishing standing, an injury in fact cannot be conjectural or hypothetical. *Id.* (citing *CHKRS, LLC v. City of Dublin*, 984 F. 3d 483, 488 (6th Cir. 2021));

(quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016)). Rather, Article III requires a plaintiff to demonstrate injuries that are concrete and particularized. *Id.*

Here, Plaintiff emphasizes alleged ineffective management of the farm credit system as a result of having two FCA board members who are serving on expired terms. But, this seems to suggest potential harm to the FCA and their borrowers generally, not the Plaintiff, directly. (D.E. 1 at PageID # 24, ¶30.) The Complaint only describes potential harms that could result, not harms or injuries that have actually been sustained by the Plaintiff. These potential problems include things like making the board "more vulnerable to the vagaries of politics," "increased reimbursed travel expense," and "inability of the Board to effectively execute its oversight." (*See* id at PageID#24-25.)

Allegations of mismanagement of the farm credit system notwithstanding, the Plaintiff must show that he was harmed by a defendant in a personal way instead of a generalized manner that affects everyone equally. *Id*. (citing *Lance v. Coffman*, 549 U.S. 437, 439 (2007)). Here, Plaintiff's basis is the negative impact that is brought by having an "incomplete" FCA board. Plaintiff's allegations, though, admit that the potential harms discussed affects the FCA and farm credit system, not just the Plaintiff. The Plaintiff only alleges potential, generalized grievances. The Complaint does not offer a concrete injury that can be remedied by the relief requested.

B. The conduct of "rogue" actors in Alabama are not fairly traceable to the President

As discussed throughout this Memorandum, the Plaintiff's Complaint is a generalized expression of frustration with the management of the farm credit system. As it relates to the Plaintiff, he speculates that a general lack of "effective" management led to rogue action of Alabama Farm Credit and its attorney in Alabama. However, assuming the Plaintiff's allegations are true, it is pure speculation as to how this fairly traces back to the President's decision on

whether to appoint new FCA board members and what difference, if any, new board members might have made in the situations described in the Complaint. Here the request for relief is disjoined from the alleged injuries the Plaintiff claims to have sustained from the continued service of "holdover" FCA board members. As such, the Plaintiff has failed to show an actual controversy over which this Court should exercise jurisdiction.

C. *The conduct alleged by the Plaintiff cannot be redressed by the Court*

Furthermore, the Complaint's allegations beg the question: if new board members were appointed, what difference would it make in the Plaintiff's alleged predicament with Alabama Farm Credit and its agents? Respectfully, it does not appear that the Plaintiff will obtain any direct relief from the desired outcome, and as a result, his claims fail to demonstrate an actual case or controversy over which this Court can exercise jurisdiction. In this regard, a plaintiff must show that the relief that it requests would remedy the injury that it alleged. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 353 (2006).

When evaluating standing, federal courts consider the relationship between the judicial relief requested and the injury suffered when deciding if an injury is redressable. *California v. Texas*, 593 U.S. 659, 672 (2021) (citing *Allen*, 468 U.S., at 753, n. 19). A remedy that will redress the individual plaintiff's injuries is required by Article III of the United States Constitution. *Id*. at 660.

Here, the Plaintiff does not allege an injury specific to him that would be solved if this Court were to grant him the requested relief. The only harms discussed by Plaintiff were those of potential harms that could have resulted to the FCA and farm credit system, generally. (D.E. 1 at PageID # 24, ¶30.) Of course, "disagreements" with the management of the farm credit system are not injuries, no matter how "sharp and acrimonious" they may be. *See Ass'n of Am. Physicians*

and Surgeons, 13 F.4th 531, 537 (citing *Hollingsworth v. Perry*, 570 U.S. 693, 704 (2013)). Further, the Plaintiff seeks equitable remedies and Plaintiff's attorney's fees and costs. (*Id*. at PageID # 63-64.) Even giving the Plaintiff the benefit of the doubt, it is difficult to see how the Court will fashion a remedy for past conduct of third parties not named in this lawsuit, such as Alabama Farm Credit and its attorneys. Therefore, the Complaint should be dismissed for lack of Article III standing.

III. THE CASE SHOULD BE DISMISSED OR TRANSFERRED ON VENUE GROUNDS

In this matter, the Plaintiff relies upon 28 U.S.C. § 1391(e)(1)(C). (D.E. 1 at PageID# 4, ¶3.) Under 28 U.S.C. § 1391(e),when a plaintiff sues a federal government actor in their official capacity, venue is proper in a district where: "(A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (C) the plaintiff resides if no real property is involved in the action." 28 U.S.C. § 1391(e). "A court considering the issue of venue must initially determine whether the case falls within one of these three categories." *Owens v. Hill*, No. 3:23-CV-01093, 2024 WL 1895112, at *2 (M.D. Tenn. Apr. 30, 2024)(citing *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 571 U.S. 49, 56 (2013)). However, even if venue is proper, "the court in its discretion may still dismiss or transfer the case in the interest of justice and for the sake of convenience of parties and witnesses under 28 U.S.C. § 1404(a), "a codification of the doctrine of *forum non conveniens.*" *Id*.

The Sixth Circuit has explained that district courts have broad discretion to determine when party convenience or the interest of justice make transfer appropriate. *Intermed Res. Tn, LLC v. Camber Spine, LLC*, No. 3:22-CV-00850, 2023 WL 8284371, at *1 (M.D. Tenn. Nov. 30, 2023)(citing *Reese v. CNH America LLC*, 574 F.3d 315, 320 (6th Cir. 2009)). The burden of

demonstrating whether transfer is warranted is on the moving party. *Id.* (citing *Means v. United States Conf. of Catholic Bishops*, 836 F.3d 643, 652, n.7 (6th Cir. 2016)). To resolve a motion to transfer venue, a court considers: "the plaintiff's choice of forum, the convenience of the witnesses and the residence of the parties, the location of sources of proof, including the availability of compulsory process to insure witness attendance, the location of the events giving rise to the dispute, any obstacles to a fair trial, the advantage of having the dispute adjudicated by a local court, and all other considerations of a practical nature that make a trial easy, expeditious, and economical." *Maples v. United States*, No. 3:17-CV-00912, 2018 WL 943213, at *1–2 (M.D. Tenn. Feb. 16, 2018).

Plaintiff identifies himself as "a rancher and a former borrower of Alabama Farm Credit, ACA – a System institution – who was wrongfully divested of his Class A Voting Stock by operation of law." (D.E. 1, Complaint at PageID# 4, ¶ 5.) Additionally, this case, insofar as the Plaintiff's alleged injuries are concerned, stems from litigation and attorney conduct in *Alabama Farm Credit, ACA v. Kittle*, 5:23-cv-1739 (N.D. Ala. 2023). (*See id.* at PageID# 40-45, and D.E. 1-4.) In the Plaintiff's view, the overall mismanagement of the farm credit system enabled an Alabama attorney's "egregious campaign of retaliation against [Plaintiff]" and Alabama Farm Credit's violation of federal law. (Id. at PageID#39-41.) Plaintiff's alleged injury, at least in large part, resulted in the liquidation of a business and real property located in Alabama. (Id. at PageID# 44-45.) Thus, other than the Plaintiff's residency in the Middle District of Tennessee and his desire to litigate here, there is no connection of this dispute to this District.

In short, nothing about this case concerns the Middle District of Tennessee. Any potential witnesses, documents, or other things likely relevant to this case are located in Alabama. While the Plaintiff's choice of forum is given great weight in this analysis, it should not outweigh all

other factors point to Alabama as the nucleus of this dispute. Other than the Plaintiff's Tennessee residency, all other considerations weigh in favor of transferring this case to the Northern District of Alabama or dismissal without prejudice to refiling elsewhere.

CONCLUSION

Based on the foregoing, the President respectfully submits that this case should be dismissed or, alternatively, transferred to the Northern District of Alabama.

Respectfully submitted,

HENRY C. LEVENTIS
United States Attorney
Middle District of Tennessee

By: s/ J. Matthew Blackburn
J. MATTHEW BLACKBURN, B.P.R. # 027105
Assistant United States Attorney
719 Church Street, Suite 3300
Nashville, TN 37203
Telephone: (615) 736-5151
Email: matt.blackburn@usdoj.gov
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2024, a copy of the foregoing was filed electronically. A copy will be sent to the following, if registered, by operation of the Court's electronic filing system. If not registered, a copy was sent by United States First Class Mail, postage prepaid, to the following:

Ashley M. Posey
HUMBLE LAW, LLC
2310 Sante Fe Pike
Columbia, TN 38401

s/ J. Matthew Blackburn
J. MATTHEW BLACKBURN
Assistant United States Attorney