

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

ABDUL KARIM HASSAN,	)	
	)	
Plaintiff,	)	
	)	CIVIL NO. 4-11-CV-00574
vs.	)	
	)	
THE STATE OF IOWA, and	)	ORDER
MATT SCHULTZ, IN HIS OFFICIAL	)	
CAPACITY AS IOWA SECRETARY	)	
OF STATE,	)	
	)	
Defendants.	)	

THE COURT HAS BEFORE IT defendants' motion to dismiss, filed December 27, 2011. Plaintiff resisted the motions on January 10, 2012, and defendant filed a reply on January 20, 2012.¹ The motion is considered fully submitted.

I. BACKGROUND

The following facts are accepted as true as alleged in plaintiff's complaint.

Iowa law requires a person seeking to be placed on the Iowa General Election Ballot to submit an Affidavit of Candidacy in which he or she swears or affirms that, if elected, he or she is qualified to hold the office at issue. The Affidavit must be signed in the presence of a notary public. Complaint, Exh. 1.²

Plaintiff Abdul Karim Hassan is a naturalized United States citizen. In 2008, plaintiff declared himself a candidate for President of the United States. Since that time, plaintiff has

¹ With permission from the Court, plaintiff filed a "sur-reply" on February 17, 2012.

² A summary of the full process for obtaining placement on the General Election Ballot is set forth in defendants' opening brief.

established a website, run videos on youtube.com, and implemented a paid advertising campaign through the Google search engine to promote his candidacy. His campaign also has been featured in both print and broadcast media.

On or about July 18, 2011, plaintiff submitted a letter requesting an Advisory Opinion from Iowa Secretary of State Matt Schultz. Complaint, Exh. 2. His letter introduced his candidacy and sought an opinion on the following question: “Assuming I satisfy all requirements for a place on your state’s ballot for the 2012 presidential elections, either as an independent candidate or the nominee of a party, whether I would nonetheless be denied a place on said ballot because of my status as a naturalized citizens.” To date, defendants have not responded to this request.

Plaintiff filed the present complaint on December 1, 2011, seeking a declaration from this Court that Iowa’s Affidavit of Candidacy, as well as defendants’ requirement that plaintiff execute and file this Affidavit prior to being named on the Iowa General Election Ballot, are wholly or partially invalid under the United States Constitution. He also seeks a ruling that the Natural Born Citizen Clause contained in Article II, section 1 of the United States Constitution³ “has been trumped, abrogated and implicitly repealed by the equal protection guarantee of the Fifth and Fourteenth Amendments, as well as the Citizenship Clause and the Privileges and Immunities Clause of the Fourteenth Amendment.” Complaint at 1.

In their present motion to dismiss, defendants contend that plaintiff lacks standing to maintain the action, and that even if he is found to have standing, he has failed to state a claim

³ Article II, section 1 of the Constitution provides in relevant part: “No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President U.S. Const. Art. II, § 1.

upon which relief may be granted.

II. APPLICABLE LAW AND DISCUSSION

A. Whether Plaintiff has Standing to Bring Suit

Initially, the Court must determine whether plaintiff has standing to bring the present litigation. *See, e.g., Delorme v. United States*, 354 F.3d 810, 815 (8th Cir. 2004) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). Constitutional standing has three essential elements: 1) that the plaintiff suffered an “injury in fact” that is actual, concrete and particularized; 2) a causal connection between the challenged conduct and the injury; and 3) that the injury “will be redressed by a favorable decision.” *Id.* (quoting *Lujan*, 504 U.S. at 560-61 (additional quotations and citations omitted)).

“A party invoking federal jurisdiction must support each of the standing requirements with the same kind and degree of evidence at the successive states of litigation as any other matter on which a plaintiff bears the burden of proof.” *Constitution Party of South Dakota v. Nelson*, 639 F.3d 417, 420 (8th Cir. 2011) (citing *Lujan*, 504 U.S. at 561). Accordingly, for purposes of the present motion to dismiss, the court will “presume that general allegations embrace those specific facts that are necessary to support [a contested] claim.” *Id.* (quoting *Lujan*, 504 U.S. at 561).

In the present case, defendants challenge plaintiff’s ability to satisfy any of the three elements of standing. Defendants argue that “the only injury asserted is a conjectural, hypothetical one: that Plaintiff would be denied access to the ballot should he seek such access.” Defendant’s Brief in Support of Motion to Dismiss, at 5. Defendants note that plaintiff has

failed to plead facts to indicate he has or will soon fulfill the other requirements for placement on the ballot, preventing him from claiming that “but-for” defendants’ conduct in requiring the Affidavit of Candidacy, plaintiff would have access to the ballot. Additionally, defendants assert that plaintiff is unable to show that his purported injury would be redressed by a favorable decision.

Plaintiff disputes that his injury is either hypothetical or conjectural. Rather, plaintiff contends that in equal protection cases challenging a competitive process, the United States Supreme Court has found the injury to be “that a ‘discriminatory classification prevent[s] the plaintiff from competing on an equal footing.’” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 211-12 (1995) (quoting *Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville*, 508 U.S. 656, 667 (1993)). *See also, Gratz v. Bollinger*, 539 U.S. 244, 259-63 (2003) (in equal protection challenge filed by rejected Caucasian applicants for admission to University of Michigan, Court characterized injury as inability to compete on an equal basis).

In *Adarand*, the United States Supreme Court held that a subcontractor had standing to challenge the constitutionality of a federal program by seeking both damages *and* declaratory and injunctive relief. In finding that the subcontractor’s injuries were sufficiently “concrete and particularized” to seek these latter forms of “forward-looking” relief, the Court reasoned:

Because the evidence in this case indicates that the [government] is likely to let contracts . . . that contain [the challenged] compensation clause at least once per year in Colorado, that [the subcontractor] is very likely to bid on each such contract, and that [it] often must compete for such contracts against small disadvantaged business, we are satisfied that [it] has standing to bring this lawsuit.

Id. at 212. Significantly, the Court further held that the aggrieved party “‘need not allege that he

would have obtained the benefit but for the barrier in order to establish standing.” *Id.* at 211 (quoting *Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville*, 508 U.S. 656, 666 (1993)). “Rather, a plaintiff obtains redress in such a case because a favorable court decision eliminates the discrimination that tainted the process and permits competition on an equal basis.” *National Wrestling Coaches Ass’n v. Department of Educ.*, 366 F.3d 930, 944 (D.C. Cir. 2004).

In the present case, plaintiff has alleged that if he succeeds with this litigation, “he will execute Iowa’s Affidavit of Candidacy and seek a place on the Iowa Presidential ballot.” Complaint at ¶ 31. In essence, this assertion suggests plaintiff is “able and ready” to fulfill all requirements for placement on Iowa’s General Election Ballot other than affirming in the Affidavit of Candidacy that he is “qualified” to hold office.⁴ *See, e.g., Gratz*, 539 U.S. at 262 (Court found standing to challenge application process even though plaintiff had not yet submitted transfer application, based on fact plaintiff demonstrated he was “able and ready” to apply). Because defendants likely will continue to require candidates to complete the Affidavit of Candidacy prior to being placed on the Iowa General Election Ballot, and because defendants’ inclusion of this allegedly discriminatory requirement in the Affidavit of Candidacy effectively places plaintiff on unequal footing with natural born candidates for the United States Presidency, the Court finds plaintiff has standing to bring the present matter. *But see National Wrestling Coaches*, 366 F.3d at 944 (concluding appellants lacked standing based on fact injuries at issue

⁴ As noted by defendants, plaintiff has not alleged that he has selected a running mate or created a Nominating Petition, both of which are required under Iowa law prior to placement on the Ballot. *See* Iowa Code §45.1. Nevertheless, at this early stage of the litigation, the Court will presume that his general allegations as to “readiness” will suffice for purposes of standing. *See, e.g., Constitution Party of South Dakota*, 639 F.3d at 420 (citing *Lujan*, 504 U.S. at 561).

allegedly were caused by *third parties*, thereby distinguishing “unequal footing” cases such as *Adarand* and *Gratz*).

B. Whether Plaintiff’s Complaint Must Nevertheless be Dismissed

1. Governing Law

Regardless of whether plaintiff has standing to bring the present action, defendants argue his complaint must nevertheless be dismissed for failure to state a claim upon which relief may be granted. Pursuant to Federal Rule of Civil Procedure 12(b)(6), this Court must dismiss one or more counts in plaintiff’s complaint if it appears beyond doubt he can prove no set of facts that would entitle him to relief. *Rosenberg v. Crandell*, 56 F.3d 35, 37 (8th Cir. 1995) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). “‘The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims’” *Rosenberg*, 56 F.3d at 37 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

In determining whether to grant a motion to dismiss, this Court must examine the claim in the light most favorable to the nonmoving party, and should “accept the allegations contained in the complaint as true and draw all reasonable inferences in favor of the nonmoving party.” *Cole v. Homier Distributing Co., Inc.*, 599 F.3d 856, 861 (8th Cir. 2010) (quoting *Coons v. Mineta*, 410 F.3d 1036, 1039 (8th Cir. 2005)). Nevertheless, “[a]lthough a complaint need not include detailed factual allegations, ‘a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.’” *Zutz v. Nelson*, 601 F.3d 842, 848 (8th Cir. 2010).

2. Whether Natural Born Clause has been Implicitly Repealed

As set forth above, plaintiff’s claims are premised on his theory that defendants have

unlawfully discriminated against him on the basis of his national origin, by incorporating the Natural Born Citizen Clause into its requirements to appear on the Iowa General Election Ballot. This theory in turn depends upon a finding that the Natural Born Citizen Clause has been trumped, abrogated or implicitly repealed by one or more clauses contained in the Fifth or Fourteenth Amendment.⁵

Initially, the Court notes there is no clear authority for implicit repeal of a Constitutional provision. Rather, Article V of the Constitution sets forth in detail the methods available both to propose and ratify Constitutional amendments. U.S. Const. Amend. V.⁶

⁵ The clauses at issue provide as follows:

- a. the Citizenship Clause: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.” U.S. Const. Amend. XIV, § 1, cl. 1;
- b. the Privileges and Immunities Clause: “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, cl. 2; and
- c. the Equal Protection Clause of the Fourteenth Amendment: “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV.
- d. No person shall . . . be deprived of life, liberty, or property, without due process of law U.S. Const. Amend. V.

This Court will evaluate plaintiff’s claims under the Fourteenth and Fifth Amendments simultaneously. *See, e.g., Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 217 (1995) (“This Court’s approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment.”) (citations and quotations omitted).

⁶ Plaintiff argues that the Supreme Court’s opinion in *Fitzpatrick v. Bitzer*, 427 U.S. 445, 456 (1976), is an example of implicit repeal. *See* Plaintiff’s Brief in Resistance to Motion to

Even assuming that principles of *statutory* repeal apply to the challenged Constitutional provisions, plaintiff has failed as a matter of law to show the intent necessary to effect such a repeal. In the statutory context, the United States Supreme Court has stated that “repeals by implication are not favored.” *Posadas v. National City Bank of N.Y.*, 296 U.S. 497, 503 (1936). Such repeals have been recognized only under limited conditions: “(1) Where provisions in the two acts are in irreconcilable conflict, the later act to the extent of the conflict constitutes an implied repeal of the earlier one; [or] (2) if the later act covers the whole subject of the earlier one and is clearly intended as a substitute it will operate similarly as a repeal of the earlier act.”

Dismiss at 18-19. In *Fitzpatrick*, the Supreme Court considered “the relationship between the Eleventh Amendment and the enforcement power granted to Congress under § 5 of the Fourteenth Amendment,” concluding that the Eleventh Amendment was “necessarily limited” by § 5 of the Fourteenth Amendment. *Fitzpatrick*, 427 U.S. at 456. Specifically, the Court reasoned: “In [§ 5 of the Fourteenth Amendment] Congress is *expressly* granted authority to enforce ‘by appropriate legislation’ the substantive provisions of the Fourteenth Amendment, which themselves embody significant limitations on state authority. When Congress acts pursuant to § 5 . . . it is exercising that authority under one section of a constitutional Amendment whose other sections by their own terms embody limitations on state authority.” (emphasis added). In *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 59 (1996), the Court subsequently clarified that “§ 5 of the Fourteenth Amendment allowed Congress to abrogate [state] immunity from suit guaranteed by that Amendment” under certain circumstances.

Contrary to plaintiff’s argument, however, a majority of federal courts have declined to view *Fitzpatrick* as holding that the Fourteenth Amendment effected an *implicit repeal* of the Eleventh Amendment. See, e.g., *United States v. Union Gas Co.*, 832 F.2d 1343, 1352 (3rd Cir. 1987) (citing with approval *In re McVey Trucking, Inc.*, 812 F.2d 311, 316 (7th Cir. 1987) for the latter court’s refusal “to accept the notion that the fourteenth amendment ‘repealed’ the eleventh [amendment]”); *Jennings v. Illinois Office of Ed.*, 589 F.2d 935, 942 (7th Cir. 1979) (“[A]s indicated, we think that the proper reading of *Fitzpatrick* reveals that it turns on delegation of powers, rather than repeal.”); *Jagnandan v. Giles*, 538 F.2d 1166, 1188 (5th Cir. 1976) (“[As pointed out by the majority], the emanations from *Edleman* [v. Jordan, 415 U.S. 651 (1974)] and *Fitzpatrick* make it seem very unlikely that a majority of the present Supreme Court would sustain a holding that the fourteenth amendment, of its own force, represents a pro tanto repeal of the eleventh amendment.) (Brown, C.J., concurring); *Townsend v. Edelman*, 518 F.2d 116, 120 (7th Cir. 1975) (emphasizing that “the two amendments must be interpreted in light of each other.”).

Id. at 503. In either context, a repeal will not be presumed “unless the intention of the legislature to repeal [is] clear and manifest.” *Nat’l Ass’n of Homebuilders v. Defenders of Wildlife*, 551 U.S. 644, 662 (2007).

The constitutionality of the Natural Born Citizen Clause recently was considered by a New Hampshire federal district court in parallel litigation filed by plaintiff in that state. *See Hassan v. New Hampshire*, Civ. No. 11-cv-552-JD, 2012 WL 405620 (D.N.H. Feb. 8, 2012). In the New Hampshire case, the court concluded that plaintiff failed to demonstrate that the provisions at issue fit within either of the two categories of implicit repeal. *Id.*, 2012 WL 405620 at *2-3. First, there was no evidence of a “positive repugnancy” between the Natural Born Citizen Clause and any of the provisions cited in the Fifth or Fourteenth Amendment. *Id.*, 2012 WL 405620 at * 2 (citations omitted). As reasoned by the court: “[i]t is not enough to show that the two statutes produce differing results when applied to the same factual situation” *Id.*, 2012 WL 405620 at *3 (quoting *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 155 (1976)). With regard to the second category of implicit repeal, the New Hampshire court noted that the Natural Born Citizen Clause addressed the “‘narrow, precise, and specific subject’” of the qualifications needed to hold the office of the presidency. Accordingly, the more generalized Fourteenth Amendment could not be viewed as “covering the whole subject” of the earlier provision. *Id.*, 2012 WL 405620 at *3 (citing *National Ass’n of Home Builders*, 551 U.S. at 663 (“a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum”)) (internal citation and quotation omitted).

Perhaps most importantly, however, the court found plaintiff unable to meet his high burden to show a Congressional intent to repeal the Natural Born Citizen Clause: “[I]n the few

years following the ratification of the Fourteenth Amendment, Congress considered and rejected numerous proposals to amend or repeal the Natural Born Citizen Clause.” *Id.* (citing law review articles addressing issue). As noted by the New Hampshire court, Supreme Court “cases discussing the equal rights of naturalized citizens often distinguish the Natural Born Citizen Clause.” *Id.* See, e.g., *Schneider v. Rusk*, 377 U.S. 163, 165 (1964) (“The only difference drawn by the Constitution is that only the ‘natural born’ citizen is eligible to be President.”); *Knauer v. United States*, 328 U.S. 654, 658 (1946) (“It has been said that citizenship carries with it all of the rights and prerogatives of citizenship obtained by birth in this country ‘save that of eligibility to the Presidency.’”) (quoting *Luria v. United States*, 231 U.S. 9, 22 (1913)); *Baumgartner v. United States*, 322 U.S. 665, 673 (1944) (““Under our Constitution, a naturalized citizen stands on an equal footing with the native citizen in all respects save that of eligibility to the Presidency.”) (quoting *Luria*, 231 U.S. at 22)).⁷

This Court finds the New Hampshire court’s reasoning highly persuasive in the present case. Plaintiff has failed to highlight any language in the Fifth or Fourteenth Amendment clauses at issue that would create an “irreconcilable conflict” with the Natural Born Citizen Clause, nor does the Court find that the Fourteenth Amendment clearly was intended as a substitute for Art. II, section 1. Absent evidence that plaintiff can meet the “high burden” necessary to show

⁷ Plaintiff argues that in *Afroyim v. Rusk*, 387 U.S. 253, 261 (1967), the Supreme Court described the rights of a naturalized citizen without expressly excluding the Office of the Presidency. See Plaintiff’s Brief at 17. In fact, however, the language referenced by plaintiff was itself described as “dictum” from an earlier Supreme Court decision describing the impact of naturalization. *Afroyim*, 387 U.S. at 261 (citing *Osborn v. Bank of the United States*, 22 U.S. 738, 827 (1824)). The fact the Office of the Presidency was omitted from this language was at best an oversight, and does not suggest a Congressional intent to repeal the Natural Born Citizen Clause.

Congressional intent to repeal, trump or abrogate the Natural Born Citizen Clause, the Court finds no reason to stray from the New Hampshire court's conclusion.

3. Whether Natural Born Provision is Invalid under Absurdity Doctrine

Alternatively, plaintiff argues that the Natural Born Citizen Clause is invalid under the Absurdity Doctrine. Under this doctrine: "interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) (internal citations omitted). This Court does not agree. First, the doctrine has been applied on a limited basis to *statutes*—not to Constitutional provisions. As set forth above, Article V of the Constitution outlines the sole method by which to amend its' provisions. U.S. Const. Art. V. Secondly, plaintiff has failed to point to an alternative interpretation of the Natural Born Citizen Clause that would be consistent with the legislative purpose behind the provision *and* enable plaintiff to be placed on the Ballot.⁸ Rather, as noted by defendants, plaintiff's "alternative interpretation" is that the Clause has been *nullified* by the Fifth or Fourteenth Amendments.

4. Whether Natural Born Provision is Moot

Lastly, plaintiff contends the Natural Born Citizen Clause is moot, because the Supreme Court already has rejected the "distrust" rationale upon which the clause is based. In support of this argument, plaintiff cites to language from a political blog suggesting that the phrase "natural born" arose out of a concern that "wealthy European aristocracy or royalty" would come to

⁸ Plaintiff argues in his sur-reply brief that "the alternative interpretation is the equality guarantee in the Fourteenth Amendment." Sur-reply at 6. This statement does not put to alternative use the language explicitly stating that only "natural born citizens" shall be eligible to hold the office of the Presidency.

America and “buy or scheme” their way to the presidency. Plaintiff’s Brief in Resistance to Motion to Dismiss at 28 (citing “Qualifications for President and the ‘Natural Born’ Citizenship Eligibility Requirement - CRS Report, *Legistorm*, http://www.legistorm.com/score_crs/show/id/82388.html (Nov. 15. 2011)). It is not clear whether plaintiff desired to apply this commentary to his implied repeal theory. In any event, the proposition falls far short of establishing the “clear and manifest intent” necessary to effect an implicit repeal.⁹ Absent such an intent, the sole method by which to modify, or remove, a Constitutional provision is set forth in Article V of the Constitution itself. It is up to Congress, not this Court, to begin any amendment process.

⁹ Again, the Court is assuming without deciding that the principles of implied repeal apply to Constitutional provisions.

III. CONCLUSION

For the reasons outlined above, the Court concludes that it appears beyond doubt plaintiff can prove no set of facts that would entitle him to relief. *Rosenberg*, 56 F.3d at 37 (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). Defendants' motion to dismiss is therefore granted in its entirety. The Clerk of Court is directed to enter judgment in favor of defendants and against plaintiff.

IT IS ORDERED.

Dated this 26th day of April, 2012.



RONALD E. LONGSTAFF, Senior Judge
United States District Court