

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

FLORIDA STATE CONFERENCE
OF THE NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF
COLORED PEOPLE (NAACP),
as an organization and representative
of its members; et al.;

Plaintiffs,
v.
CASE NO. 4:07CV-402-SPM/WCS

KURT S. BROWNING, in his official
capacity as Secretary of State
for the State of Florida,

Defendant.

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ORDER ON STANDING

The Secretary of State for the State of Florida, Kurt S. Browning, has challenged Plaintiffs' standing to bring this lawsuit. Doc. 93. The Court heard arguments on December 11, 2007, and allowed the parties to follow-up with written memoranda. Docs. 100 and 102.

I. BACKGROUND

Plaintiffs are the Florida State Conference for the National Association for the Advancement of Colored People (NAACP), the Southwest Voter Registration Education Project, and the Haitian-American Grassroots Coalition. Each

organization conducts voter registration activities as a means to increase political participation among minorities. They seek to strike down Subsection Six of Section 97.053, Florida Statutes, which requires information on a voter registration application to match existing driver's license or Social Security records before the voter can be registered.

The alleged problems with Subsection Six stem from the fact that it cannot be implemented without error. A failed match can result from a variety of transcription, data entry, and programming errors, but Subsection Six places the burden on the prospective voter to provide verification to make a match. Until there is a match, an otherwise eligible voter cannot cast a valid ballot.

Plaintiffs contend that Subsection Six presents an undue obstacle to voting that results in the effective disenfranchisement of thousands of Florida voters. They seek to enjoin the implementation of Subsection Six and allege violations of the Help America Vote Act of 2002, the Voting Rights Act, the National Voter Registration Act, and rights guaranteed under the First and Fourteenth Amendments of the United States Constitution.

II. DISCUSSION

Before reaching the merits of any case, a federal court has the duty to inquire into the court's subject matter jurisdiction, or lack thereof, including whether or not the plaintiff has standing to bring the action. Univ. of S. Ala. v.

Am. Tobacco Co., 168 F. 3d 405, 410 (11th Cir. 1999). The party seeking to invoke the court's jurisdiction has the burden of establishing standing. Parker v. Scrap Metal Processors, Inc., 386 F.3d 993, 1003 (11th Cir. 2004).

A. Organizational Standing

Organizations are entitled to sue for injuries sustained by the organization. To establish standing, a plaintiff organization must allege (1) an injury-in-fact, which is particularized to the plaintiff and actual or imminent, as opposed to conjectural or hypothetical; (2) a causal link between the injury and the defendant's conduct; and (3) redressability of the injury through a favorable court decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992).

Defendant challenges the ability of Plaintiffs to establish an injury-in-fact under the first prong of the test.

In their amended complaint, each of the Plaintiffs allege that voter registration activities are central to their organizational missions to empower the minority communities that they serve. Plaintiffs also allege that because Subsection Six will impede the ability of their members and recruits to cast valid ballots, Plaintiffs will be forced to divert resources from other organizational purposes to address Subsection Six's matching requirement. These allegations are sufficient to establish standing.

In Havens Realty Corp. v. Coleman, the United States Supreme Court

held that an organization suffers an injury-in-fact when its organizational purpose is impeded and it suffers a drain on resources as a result. 455 U.S. 363, 379 (1982). This is precisely what Plaintiffs allege. The injury to Plaintiffs is actual, because failed matches impede Plaintiffs from registering their members and recruits to vote. The injury is not merely conjectural or hypothetical given the relationship between voting and civic empowerment, which Plaintiff organizations seek to develop within their constituent communities.

Contrary to Defendant's argument, Havens is not limited to cases involving the Fair Housing Act. The principal of organizational standing from Havens has been applied to immigration cases, Haitian Refugee Ctr., Inc. v. Nelson, 872 F.2d 1555, 1561 n.8 (11th Cir. 1989), as well as voting rights cases, Crawford v. Marion County Election Bd., 472 F.3d 949, 951 (7th Cir. 2007); Fla. Democratic Party v. Hood, 342 F. Supp.2d 1073, 1079 (N.D. Fla. 2004).

Although Plaintiffs have not shown that they have already suffered an injury from Subsection Six, this does not render Plaintiffs' claim of imminent injury to be conjectural or hypothetical, as Defendant argues. Plaintiffs explain that they conducted little or no voter registration activity in 2006 and 2007 due to problems with a separate Florida law that has since been enjoined. League of Women Voters of Fla. v. Cobb, 447 F. Supp.2d 1314 (S.D. Fla. 2006). Plaintiffs also explain that they were not aware of the problems with Subsection Six until

they conducted research and made demands for information. With their present knowledge of Subsection Six and with voter registration activities planned for the upcoming Presidential election, Plaintiffs allege that Subsection Six will impede their organizational missions and require additional resources to ensure that voter registration drives lead to actual registration.

Plaintiffs' allegations are sufficient under Havens to allege an injury-in-fact. Plaintiffs have also demonstrated the other elements for organizational standing. That is, there is a causal connection between Subsection Six and Plaintiffs' injury. The injury can be redressed by this Court through injunctive relief. Accordingly, the Court finds that Plaintiffs have established organizational standing.

2. Associational and Third-Party Standing

Plaintiffs acknowledge that the Southwest Voter Registration Education Project is not asserting associational standing because it is not a membership organization. The NAACP and the Haitian-American Grassroots Coalition are membership organizations, however, and they are asserting associational standing.

The three-prong test for associational standing was laid out in Hunt v. Wash. St. Apple Advert. Com'n, 432 U.S. 343 (1977). A plaintiff claiming such standing must establish (1) that at least one of its members could have sued in

his or her own right; (2) that the interests sought to be protected are related to the association's purpose; and (3) that the individual member as a party is not indispensable to the litigation. Id. at 343. There is no issue as to Plaintiffs' ability to meet the second and third parts of the test. As to the first part of the test, Defendant argues that Plaintiffs' failure to identify any of their members that have been injured by Subsection Six prevents their assertion of associational standing.

For the prospective relief that Plaintiffs seek, the probability of harm to its members may be sufficient to establish standing. “[E]ven a small probability of injury is sufficient to create a case or controversy” Village of Elk Grove v. Evans, 997 F.2d 328, 329 (7th Cir. 1993). Additionally, when the injury at issue is a threatened future act, an organization may not be able to identify in advance a member who will be injured. Fla. Democratic Party v. Hood, 342 F. Supp.2d 1073, 1079 (N.D. Fla. 2004). “There is [] no absolute requirement that individual members be identified in order to confer [associational] standing.” NYC C.L.A.S.H. v. City of New York, 315 F. Supp.2d 461, 468 (S.D.N.Y. 2004).

Assuming, however, that the probability of injury to Plaintiffs' members is too remote or speculative to establish associational standing, Plaintiffs may still have standing on behalf of non-member registrants who will be denied the right to vote. A plaintiff can establish such third-party standing if the plaintiff

demonstrates (1) an injury-in-fact to itself, and (2) a close relationship to the third-party, and (3) a hindrance to the third-party's ability to assert its own interests. Powers v. Ohio, 499 U.S. 400, 410-11 (1991).

As to the first part of this test, Plaintiffs have established an injury-in-fact under Havens by showing that Subsection Six impedes their organizational missions and that they will suffer a drain on resources as a result. Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982). Plaintiffs also satisfy the second part of the test because they have a close relationship with the minority community members who participate in their voter registration activities. The close relationship requirement is satisfied by a commonality of interests when that commonality demonstrates that a plaintiff is "fully, or very nearly, as effective a proponent of the rights" of the third-parties. See Harris v. Evans, 20 F.3d 1118, 1123 (11th Cir. 1994). In this case, just as registrants have an interest in having their votes count, Plaintiffs have a interest in empowering the communities that they serve. Plaintiffs have a close relationship with the registrants and are well-suited to represent their interests.

Finally, the registrants are hindered from protecting their own interests. Due to inadequacies with notice, many will not know why they were unable to register or how to correct the problem. Additionally, the election clock may not permit registrants injured by Subsection Six to assert their rights in time to protect

their right to vote. These are legitimate reasons for recognizing Plaintiffs' standing to sue on behalf of non-member registrants.

III. CONCLUSION

Plaintiffs have the burden to establish standing to sue. They have met this burden. Each Plaintiff has suffered an injury-in-fact. The injury is causally related to Subsection Six. The injury can be redressed through a favorable decision.

Plaintiffs have demonstrated a probability that one of its members will be injured by Subsection Six. Plaintiffs have also demonstrated standing to sue on behalf of non-member third parties based on a close relationship with third-parties who will be injured and the inability of those third-parties to adequately protect their interests. Accordingly, it is

ORDERED AND ADJUDGED that Plaintiffs have demonstrated standing.

DONE AND ORDERED this 18th day of December, 2007.

s/ Stephan P. Mickle
Stephan P. Mickle
United States District Judge