IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

DEMOCRATIC PARTY OF VIRGINIA AND DCCC,	)	
Plaintiffs,	)	
v.	)	**Case No. 3:21-CV-00756-HEH**
ROBERT H. BRINK, JOHN O'BANNON, JAMILAH D. LECRUISE, AND CHRISTOPHER E. PIPER, in their official capacities,	)	
Defendants.	)	

PUBLIC INTEREST LEGAL FOUNDATION'S *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Amicus Public Interest Legal Foundation files this *amicus curiae* brief in support of Defendants' Motion to Dismiss (ECF No. 29), pursuant to this Court's Order granting leave to do so (ECF No. 37, Page ID # 365).

INTRODUCTION

Plaintiffs bring the instant case to challenge two aspects of Virginia's elections laws: the requirement that voter registration applicants provide their social security number on applications, and the time period a voter is given to correct certain deficiencies on an absentee ballot. Plaintiffs do not have standing to bring many of the claims listed in the complaint. While Defendants hint at this issue as it relates to one cause of action, the issue is much more pervasive than either the Defendants or the Intervenor-Defendant suggest, and amicus focuses on this issue solely to supplement the analysis already filed with the Court.

ANALYSIS

This Court lacks subject matter jurisdiction to hear many of the claims that Plaintiffs bring because Plaintiffs lack standing. Standing is a subject matter jurisdiction issue. *See Beyond Sys., Inc. v. Kraft Foods, Inc.*, 777 F.3d 712, 715 (4th Cir. 2015).

I. Plaintiff DCCC does not have constitutional standing to bring the claims it alleges.

"Article III of the Constitution limits federal courts' jurisdiction to certain 'Cases' and 'Controversies.'" *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408 (2013). "[T]he standing question in its Art. III aspect is whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant His invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Simon v. E. Kentucky Welfare Rts. Org.*, 426 U.S. 26, 38 (1976) (internal quotations removed). *See also White Tail Park, Inc. v. Stroube*, 413 F.3d 451, 458 (4th Cir. 2005); *Planned Parenthood of South Carolina v. Rose*, 361 F.3d 786, 789 (4th Cir. 2004). "The doctrine limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), as revised (May 24, 2016). Whether a party has Article III standing is properly an issue of a court's subject matter jurisdiction under Rule 12(b)(1). *White Tail Park, Inc.*, 413 F.3d at 459.

The Supreme Court has established three elements of constitutional standing: (1) the plaintiff must have suffered "an invasion of a legally protected interest" which is "concrete and particularized . . . actual or imminent, not 'conjectural' or 'hypothetical,'"; (2) "there must be a causal connection between the injury and the conduct complained of" and not traced to the actions of a third party, and; (3) it must be likely that the injury can be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). *See also TransUnion LLC v. Ramirez*,

141 S. Ct. 2190, 2203 (2021). "[A]llegations of possible future injury are not sufficient." *Clapper*, 568 U.S. at 409 (internal quotations removed).

The plaintiff bears the burden of establishing these elements by clearly alleging facts demonstrating each element in the pleading. *See Spokeo, Inc.*, 578 U.S. at 338. *See also S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 181 (4th Cir. 2013). "When standing is challenged on the pleadings, we accept as true all material allegations of the complaint and construe the complaint in favor of the complaining party." *S. Walk at Broadlands Homeowner's Ass'n, Inc.*, 713 F. 3d at 181-182 (quoting *David v. Alphin*, 704 F.3d 327, 333 (4th Cir. 2013)).

An organizational plaintiff may establish standing to bring suit on its own behalf. It can seek redress for an injury suffered by the organization itself, or it may establish associational standing to bring an action in federal court on behalf of its members. *Maryland Highways Contractors Ass'n, Inc. v. State of Md.*, 933 F.2d 1246, 1250 (4th Cir. 1991). "An organizational plaintiff must still demonstrate personal harm both traceable to the challenged provisions and redressable by a federal court." *S. Walk at Broadlands Homeowner's Ass'n, Inc.*, 713 F.3d at 182. "[A]n injury to organizational purpose, without more, does not provide a basis for standing." *Id.* at 183.

Associational standing is established when: "(1) its members would otherwise have standing to sue as individuals; (2) the interests at stake are germane to the group's purpose; and (3) neither the claim made nor the relief requested requires the participation of individual members in the suit." *White Tail Park, Inc.*, 413 F.3d at 458. "[T]o show that its members would have standing, an organization must 'make specific allegations establishing that at least one *identified member* had suffered or would suffer harm.'" *S. Walk at Broadlands Homeowner's Ass'n, Inc*,

713 F.3d at 184 (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009) (emphasis added)).

A. Plaintiffs do not have standing to bring the First Amendment freedom of association claim in Count I because they have not clearly stated an injury.

Plaintiffs claim that they run voter registration drives in Virginia and requiring the social security number on the voter registration form "severely hampers . . . their ability to broadly associate with every eligible citizen who would otherwise register to vote and support Plaintiffs' candidates." (Complaint, ECF No. 1, ¶ 3.) Yet the plain language of the Complaint demonstrates that any injury is purely speculative: "At best, these issues increase the cost and slow the pace of voter registration activities in the Commonwealth. At worst, they make undertaking voter registration activities so burdensome as to inhibit the activity." (Complaint, ECF No. 1, ¶ 4.)

In the Complaint, no concrete example of an increase in the costs or pace of voter registration activities is listed. No instance of a voter registration being so burdensome that the activity was canceled is revealed. No identified member of the organization is provided that has suffered harm. For two organizations allegedly involved in voter registration activities, they give the Court no specific allegations of any concrete injury of the supposed unconstitutional law. To establish a claim, Plaintiffs must plead factual content of an injury in fact, which they have not done. *See S. Walk at Broadlands Homeowner's Ass'n, Inc*, 713 F.3d at 184.

It is unclear whether Plaintiff DCCC has adequately alleged that it even runs voter registration drives at all. If the answer is no, DCCC lacks standing. Defendant DCCC claims it currently only "coordinates with and relies on DPVA and other similar organizations to conduct voter registration drives in Virginia." (Complaint, ECF No. 1, ¶ 22.) Later Plaintiff DCCC states it plans to do its own voter registration drives "in 2022." (Complaint, ECF No. 1, ¶ 23.) Because the DCCC does not currently engage in the activity complained of, it does not have standing to

bring suit. Allegations of possible future injury do not constitute an injury of fact. *See Clapper*, 568 U.S. at 409.

B. As organizations, Plaintiffs do not have standing to bring the Civil Rights Act claim in Count II or the privacy right claim in Count III.

Plaintiffs state that Count II is brought "on their own behalf, as well as on behalf of their members, constituents, and supporters, who are denied the right to vote." (ECF No. 1, Complaint ¶ 118.) But Plaintiffs cannot bring the claim on behalf of themselves because as organizations, they do not have the right to vote. For sure, they do not like Virginia's laws, but they are not themselves harmed by them. To the extent they seek to bring the suit on behalf of their members, Plaintiffs have not pled that they are organizations with members who are Virginia voters,[1] nor have they identified one single specific member who has suffered harm.

The Civil Rights Act of 1957 protects individual rights not organizational rights, and the claim made and the relief requested are of the type that requires the participation of individual members in the suit. *White Tail Park, Inc.*, 413 F.3d at 458.

Similarly, Plaintiffs do not have the privacy rights regarding a social security number that the plain text of the Privacy Act seeks to ensure. Section 7(a)(1) of the Privacy Act of 1974, codified into the notes section of 5 U.S.C. § 552a, states: "It shall be unlawful for any Federal, State or local government agency to deny to any *individual* any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number" (emphasis added). Even assuming this section of the code applies to Virginia, Plaintiffs have not been injured, because they have not had anything denied to them. The right enumerated explicitly

[1] To the contrary, the DCCC describes itself as "the national congressional campaign committee of the Democratic Party, as defined by 52 U.S.C. § 30101(14)," which states that the term "national committee" means the organization which, "by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission." (Complaint, ECF No. 1, ¶ 22.)

states it is for individuals, and Fourth Circuit precedent indicates that individuals are the proper plaintiffs. *See, e.g., Tankersly v. Almand,* 837 F. 3d 390 (2016) (where an individual brought suit under section 7(a)(2)); *Greidinger v. Davis*, 988 F.2d 1344 (1993) (where an individual brought suit under section 7(b)); *Deed v. County of Fairfax, Va.*, 151 F.3d 1028 (1998) (where an individual brought suit under section 7(b)). Considering the claim made and the relief requested, individuals, and not organizations, are the proper plaintiffs to enforce this federally protected right.

Additionally, the interests at stake in Count III, the third element of associational standing, are not germane to the group's purpose. The Privacy Act's intent is to safeguard the social security numbers of individuals. Neither the DCCC nor the Democratic Party share such a mission. While they might have tangential concerns on the issue, the group's purpose is not to safeguard the social security numbers of Virginians. Since the interest at stake is not germane to the group's purpose, Plaintiffs do not have standing to bring the Privacy Act claim in Count III. *See White Tail Park, Inc.*, 413 F.3d at 458.

C. Plaintiffs do not have standing to bring Counts V and VI because they do not enjoy the rights they claim are being violated.

Plaintiffs lastly argue in Counts V and VI that the social security number requirement and the time period a voter is given to correct certain deficiencies on an absentee ballot constitute unconstitutional burdens on the right to vote. (ECF No. 1, ¶ 85-93). Plaintiffs themselves have no right to vote, and certainly not a right to vote an absentee ballot, and even more absurdly, a right to correct an absentee ballot containing a mistake they made for an interminable about of time. They are not individual citizens, but organizations. (DE 1, ¶ 18-25).

As only citizens enjoy the constitutionally protected right to vote, *see Reynolds v. Sims*, 377 U.S. 533, 567-68 (1964), Plaintiffs again lack standing to raise this argument. *See Warth*, 422

U.S. at 498 (a party "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.").

II. Both Plaintiffs DCCC and the Democratic Party of Virginia lack statutory standing to bring Count II because there is no private right of action for a Civil Rights Act claim.

There is no private right of action in the statute relied on by Plaintiffs. "Statutory standing 'applies only to legislatively-created causes of action' and concerns 'whether a statute creating a private right of action authorizes a particular plaintiff to avail herself of that right of action.'" *CGM, LLC v. BellSouth Telecommunications, Inc.*, 664 F.3d 46, 52 (4th Cir. 2011) (citing Radha A. Pathak, *Statutory Standing and the Tyranny of Labels*, 62 OKLA. L.REV. 89, 91 (2009)). The statutory standing inquiry is "whether the plaintiff is a member of the class given authority by a statute to bring suit." *Id.* (citing *In re Mutual Funds Inv. Litig.*, 529 F.3d 207, 216 (4th Cir. 2008) (examining "statutory standing" under ERISA separately from Article III standing and deeming statutory standing to exist)). To determine if Congress intended to confer standing on a litigant, the court uses statutory construction. *See Washington-Dulles Transp., Ltd. v. Metro. Washington Airports Auth.*, 263 F.3d 371, 377 (4th Cir. 2001).

Here, Plaintiffs lack statutory standing to bring a 52 U.S.C. § 10101(a) claim because the statute explicitly stipulates that only the Attorney General of the United States can bring such a claim. The Civil Rights Act clearly states that when any person has deprived another of "any right or privilege secured by subsection (a) ... , the Attorney General may institute for the United States ... a civil action or other proper proceeding for preventive relief." 52 U.S.C. § 10101(c). Here, the statute specifically designates the enforcement authority for the law to be the Department of Justice, and provides no private right of action. The statute even specifies that the Attorney Genereal protects "the right of any *individual*." 52 U.S.C. § 10101(a)(2)(B) (emphasis added). A

plain reading of the statute indicates that the Department of Justice is the sole enforcer of the law. Indeed, circuit courts of appeal have found that the statute does not permit private rights of action. *See, e.g.*, *Ne. Ohio Coal. for the Homeless v. Husted*, 837 F.3d 612, 630 (6th Cir. 2016), *cert. denied*, 137 S.Ct. 2265 (Jun. 19, 2017); *Schwier v. Cox*, 340 F.3d 1284, 1294-96 (11th Cir. 2003).

Plaintiffs also list 42 U.S.C. § 1983 as a possible remedy to sue. There are two fatal flaws with this argument. First, it assumes § 1983 grants a private right of action regarding the rights secured in the Civil Rights Act of 1957, a proposition for which there is no Fourth Circuit precedent. Second, there is no indication that organizational plaintiffs like Plaintiffs could bring such a claim under this statute. Section 1983 allows "citizen[s]" and "other person[s] within the jurisdiction" of the United States to seek legal and equitable relief. 42 U.S.C. § 1983. Therefore, even if § 1983 did create a private right of action to sue for rights in 52 U.S.C. § 10101, such a right would be reserved for individuals, and not organizations like plaintiffs.

CONCLUSION

For the foregoing reasons, Defendants' motion should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2022, a true and correct copy of the foregoing amicus brief have been served via CM/ECF to:

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