UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., et al.,

Plaintiffs,

v.

LAUREL M. LEE, in her official capacity as Florida Secretary of State, et al.,

Defendants,

and

REPUBLICAN NATIONAL COMMITTEE, and NATIONAL REPUBLICAN SENATORIAL COMMITTEE,

Intervenor-Defendants.

Cases Consolidated for Trial:

Nos.: 4:21-cv-186-MW/MAF
4:21-cv-187-MW/MAF
4:21-cv-201-MW/MAF
4:21-cv-242-MW/MAF



**PLAINTIFFS' JOINT BRIEF IN RESPONSE TO COURT'S ORDER REQUESTING BRIEFING ON SPECIFIC QUESTIONS RELATED TO STANDING**

Pursuant to the Court's Order for Briefing on Standing (ECF No. 543), Plaintiffs in the above-captioned consolidated cases respond to the Court's specific questions as follows[1]:

**FIRST QUESTION (ECF No. 543 at 1-2): What is the best controlling authority from the U.S. Supreme Court or the Eleventh Circuit addressing whether this Court's analysis of associational standing differs, if at all, when an organization has only "constituents" rather than traditional, individual members?**

Organizations without formal "members" may have associational standing on behalf of their constituents if their constituents possess relevant indicia of membership in the organization. The analysis is the same, regardless of the terminology used.

- ***Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977):** An organization need not have individual "members" for associational standing if it represents a constituency and provides means by which constituents express "their collective views and protect their collective interests." *Id*. at 345.

- ***Doe v. Stincer*, 175 F.3d 879 (11th Cir. 1999):** A "protection and advocacy" organization authorized by Congress to serve as a representative body for individuals with mental illness had standing to sue on behalf of its constituents. The Eleventh Circuit concluded that the composition of the organization's Board and Advisory Council meant that constituents of the organization "possess the means to influence the priorities and activities" of the organization, and that the organization could therefore sue on its constituents' behalf. *Id.* at 886

In addition, an organization whose members are themselves organizations has standing to sue on behalf of its member organizations' members:

- ***New York State Club Association, Inc. v. City of New York*, 487 U.S. 1 (1988):** A consortium organization made up of member organizations has

[1] In this joint filing, Plaintiffs address only the specific questions asked by the Court, with the brevity requested by the Court. Plaintiffs do not address other authority for standing (including, e.g., direct organizational standing, injury to an organization's First Amendment speech rights, or reputational harm).

standing to sue on behalf of its member organizations' members, as long as those member organizations would have standing to bring the same challenge. *Id.* at 9-10.

**What are the best non-controlling persuasive cases on the same question?**

- ***America Unites for Kids v. Rousseau*, 985 F.3d 1075 (9th Cir. 2021):** Organization without members that advocated on behalf of public employees concerned about exposure to environmental risk had standing to sue on behalf of a "supporter," because organization served a "specialized segment" of the community that was the "primary beneficiary" of its activities, even in the absence of direct evidence that the organization was subject to the influence of its constituents. *Id.* at 1096-97.

- ***Flyers Rights Education Fund, Inc. v. U.S. Dep't of Transportation*, 957 F.3d 1359 (D.C. Cir. 2020):** Organization without formal members that advocated for airline passengers could sue on behalf of those who signed up to receive information from it, where the organization operated a hotline for such individuals, frequently polled them to determine what issues to pursue on their behalf, and considered their views in decision-making, because that member input guided the organization's activities. *Id.* at 1361-62.

- ***Oregon Advocacy Center v. Mink*, 322 F.3d 1101 (9th Cir. 2003):** Rejected an "overly formalistic" argument to conclude that organization representing persons with mental illness could sue on that constituency's behalf, even though they were not its members and could not actually control organization's finances and activities: its constituents were functionally equivalent to members for standing purposes, because they were a "specialized segment of Oregon's community" and the primary beneficiary of the organization's activities. *Id.* at 1110-11.

**Other Persuasive Authority [*applicable to Plaintiff Disability Rights Florida*]:**

- **42 U.S.C. § 15043(a)(2)(A)(i)**: Each state's Protection and Advocacy system "shall have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of" disabled individuals, "with particular attention to members of ethnic and racial minority groups."

**SECOND QUESTION (ECF No. 543 at 2): What is the best controlling authority from either the U.S. Supreme Court or the Eleventh Circuit addressing what an organization must demonstrate for associational standing if the organization does not have individual members and/or constituents testify about any injury to those individual members and/or constituents?**

There is no requirement that an organization must have individual members or constituents testify about injury to them, so long as the organization offers evidence that one or more of its members or constituents has been or will be injured.

- ***Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977):** The Court emphasized that "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Id.* The association's claims did not "require[] individualized proof" from specific members. *Id.* at 344. Indeed, the fact that proof from individual members was unnecessary is why the claims were "properly resolved in a group context." *Id.*

- ***Florida State Conference of NAACP v. Browning*, 522 F.3d 1153 (11th Cir. 2008):** Organizations representing interests of racial and ethnic minority communities had standing to challenge voter registration statute even though it was impossible to know in advance which members would be left off the rolls, and no individual members testified to their injuries (which had not yet happened). *Id.* at 1160. "When the alleged harm is prospective, [the Eleventh Circuit has] not required that the organizational plaintiffs *name names* because *every member* faces a *probability* of harm in the near and definite future." *Id.* (emphases added). All that an organization must demonstrate is "when and in what manner the alleged [members'] injuries are likely to occur." *Id.* at 1161.

- ***Doe v. Stincer*, 175 F.3d 879 (11th Cir. 1999):** A "protection and advocacy" organization authorized by Congress to serve as a representative body for individuals with mental illness had standing to sue on behalf of that constituency, even though no constituents testified at trial. *Id.* at 882. To establish associational standing under *Hunt*, "an association may bring suit on behalf of its members or constituents despite the fact that individual members have not actually brought suit themselves. Nor must the association name the

members on whose behalf suit is brought." *Id.*

Decisions rejecting "probabilistic standing" are not to the contrary, but merely require concrete evidence that particular members face injury, rather than just statistical probabilities:

- ***Summers v. Earth Island Institute*, 555 U.S. 488 (2009)**: While the Court rejected organizational standing based on "a statistical probability that some . . . members are threatened with concrete injury" and required "specific allegations establishing that at least one identified member had suffered or would suffer harm," it never required such evidence via the affected member's own testimony, and it clarified that the organization need not name a specific member "where all the members of the organization are affected by the challenged activity." *Id*. at 497-99.

- ***Georgia Republican Party v. Securities and Exchange Commission*, 888 F.3d 1198 (11th Cir. 2018).** To establish associational standing, an organization must make specific allegations that at least one identified member has, or will, suffer harm, but the court did not require that the member's own testimony be used to show such harm. Rather, the plaintiff had offered no evidence *of any kind* that "at least one of [its] members is certain to be injured" by the challenged conduct. *Id.* at 1203-04.



**What are the best non-controlling persuasive cases on the same question?**

- ***Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004):** Political parties and labor unions had standing to challenge voting procedures involving provisional ballots, even though they "ha[d] not identified specific voters" who were members and would be allegedly injured by the challenged law. *Id.* at 574. The Sixth Circuit explained that "this is understandable" because "a voter cannot know in advance that his or her name will be dropped from the rolls, or listed in an incorrect precinct, or listed correctly but subject to a human error by an election worker who mistakenly believes the voter is at the wrong polling place." *Id.*

- ***Hotel & Restaurant Employees Union, Local 25 v. Smith*, 846 F.2d 1499 (D.C. Cir. 1988):** Union had standing to challenge immigration regulations on behalf of anonymous members, because union had shown that the injured members existed, and the identity of the members "adds no essential

information bearing on the injury component of standing." *Id.* at 1506.

- ***Gwinnett County NAACP v. Gwinnett County Board of Registration & Elections*, 446 F. Supp. 3d 1111 (N.D. Ga. 2020):** Organization had associational standing based on testimony from its Executive Director that its 5,000 members included unnamed "registered Gwinnett County voters who intended to vote at one of the seven satellite locations" that would have fewer days of early voting under the challenged law. *Id.* at 1120. "While [the executive director] did not read off a list of names, she specifically articulated that some Gwinnett County voters, who are represented by GCPA, will be harmed by Defendants' decision. This would be sufficient to allow the individual voters to sue in their own right. Accordingly, GCPA has associational standing." *Id.*

- ***Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250 (N.D. Fla. 2016):** "[P]olitical parties have standing to assert, at least, the rights of [their] members who will vote in an upcoming election." *Id.* at 1254. "That was so even though the political party could not identify specific voters that would be affected; it is sufficient that some inevitably would." *Id.*

- ***Fla. Democratic Party v. Hood*, 342 F. Supp. 2d 1073 (N.D. Fla. 2004):** A political party had "standing to assert, at least, the rights of its members who will vote in the November 2004 election," even though it had not "identified specific voters who will seek to vote at a polling place that will be deemed wrong by election workers," as "by their nature, mistakes cannot be specifically identified in advance." *Id.* at 1078.



**<u>THIRD QUESTION (ECF No. 543 at 2):</u> What is the best controlling authority from either the U.S. Supreme Court or the Eleventh Circuit addressing whether a diversion-of-resources injury exists when the diversion involves an organization's time, separate and apart from the organization's funds?**

Organizations can establish standing based on diversion of any type of resources; it need not involve and is not limited to diversion of funds.

- ***Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 11 F.4th 1266 (11th Cir. 2021):** Plaintiff organization had standing based on diversion of resources where challenged ordinance caused the organization "to expend resources in the form of volunteer time, including efforts to collect bail money and organize legal representation for its members who were arrested under the Ordinance," and where "volunteers who would have normally worked on

preparing for food-sharing demonstrations had to divert their energies to advocacy activities such as attending City meetings and organizing protests against the Ordinance." *Id.* at 1287.

- ***Arcia v. Florida Secretary of State*, 772 F.3d 1335 (11th Cir. 2014):** "[O]ur precedent provides that organizations can establish standing to challenge election laws by showing that they will have to divert personnel and time to educating potential voters on compliance with the laws and assisting voters who might be left off the registration rolls on Election Day." *Id.* at 1341.

- ***Fla. State Conference of NAACP v. Browning*, 522 F.3d 1153 (11th Cir. 2008):** Organizations have diversion-of-resources standing where they "reasonably anticipate that they will have to divert personnel and time to educating volunteers and voters on compliance with Subsection 6 and to resolving the problem of voters left off the registration rolls on election day. *Id.* at 1158, 1165-66. These resources would otherwise be spent on registration drives and election-day education and monitoring." *Id.* This was so "[e]ven though the injuries are anticipated rather than completed events." *Id.*

**What are the best non-controlling persuasive cases on the same question?**

- ***Common Cause Indiana v. Lawson*, 937 F.3d 944 (7th Cir. 2019):** Affirmed standing on a diversion-of-resources theory where plaintiff organizations would "be required to increase the time or funds (or both) spent on certain activities to alleviate potentially harmful effects of" challenged law. *Id.* at 952.

- ***OCA-Greater Houston v. Texas*, 867 F.3d 604 (5th Cir. 2017):** Found diversion-of-resources standing based on organizational plaintiff's "additional time and effort spent explaining the Texas provisions at issue to limited English proficient voters," which meant that "OCA must spend more time on each call (and reach fewer people in the same amount of time) because of" the challenged law. *Id.* at 610.

- ***National Council of La Raza v. Cegavske*, 800 F.3d 1032 (9th Cir. 2015):** Plaintiff organization alleged it had "expended additional resources, including staff and volunteer time, on efforts to assist individuals with voter registration" as a result of the challenged law. *Id.* at 1039-40. The court held that "injuries of the sort that Plaintiffs allege are concrete and particular for purposes of Article III" and found standing based on diversion of resources. *Id.*

- ***Scott v. Schedler*, 771 F.3d 831 (5th Cir. 2014):** NAACP had standing to sue because its head of voter registration spent additional time on voter registration drives as a result of the challenged action: "Even if Taylor had spent none of the NAACP's money, the NAACP would have still devoted resources to counteract Schedler's allegedly unlawful practices because Taylor devoted his time to the drives." *Id.* at 837.

- ***Georgia State Conf. of NAACP v. Kemp*, 841 F. Supp. 2d 1320 (N.D. Ga. 2012):** Allegations that plaintiff organization had "expended additional resources—such as staff and volunteer time—on efforts to assist individuals with voter registration" as a result of the challenged conduct "plainly satisfy the injury prong of the Article III test for standing." *Id.* at 1336.

Respectfully submitted this 7th day of February, 2022.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 7, 2022 I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel in the Service List below.

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