

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

VOTE.ORG,	§	
Plaintiff,	§	CIVIL ACTION NO.
	§	5:21-cv-00649-JKP-HJB
v.	§	
	§	
JACQUELYN CALLANEN,	§	
in her Official Capacity as the Bexar	§	
County Elections Administrator, et.	§	
al.	§	
Defendants.	§	

**DEFENDANT REMI GARZA’S MEMORANDUM
IN SUPPORT OF MOTION TO DISMISS**

Defendant Remi Garza files this Motion to Dismiss Plaintiff’s suit for lack of subject-matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1).

A. INTRODUCTION

1.1 Plaintiff is Vote.Org; Defendant is Remi Garza, in his official capacity as the Cameron County Elections Administrator.

1.2 Plaintiff sued Defendant for alleged constitutional violations stemming from 52 U.S.C. § 10101(a)(2)(B) and the First and Fourteenth Amendments of the United States Constitution pursuant to 42 U.S.C. § 1983.

1.3 Plaintiff’s suit should be dismissed because the Court does not have subject matter jurisdiction as required to hear this case.

B. ISSUE

2.1 Whether Plaintiff has properly pleaded constitutional standing given that it

failed to allege facts to support the requisite elements.

C. SUMMARY OF THE ARGUMENT

3.1 This Court's jurisdiction is limited to cases arising under the U.S. Constitution or federal law or cases involving diversity of citizenship. *See* 28 U.S.C. §§ 1331, 1332. In this case, the Court lacks subject-matter jurisdiction over this dispute because Plaintiff does not have standing to bring this suit. Plaintiff failed to establish that it itself sustained an injury in fact, that the injury is fairly traceable to the Defendant's alleged conduct, and the likelihood that the requested relief will remedy the alleged injury.

D. STANDARD OF REVIEW

4.1 Regarding a defendant's 12(b)(1) motion to dismiss for lack of subject matter jurisdiction based on lack of constitutional standing via a facial challenge, courts take the same approach as a 12(b)(6). In a facial attack, a court will accept all material allegations in the complaint as true and construe them in the light most favorable to the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds*, *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). A facial challenge contests the sufficiency of the pleader's allegations of subject matter jurisdiction. *Kamal v. J. Crew Grp., Inc.*, 918 F.3d 102, 109 (3rd Cir. 2019).

E. ARGUMENT

5.1 Although Plaintiff alleged violations of the First and Fourteenth Amendment and 52 U.S.C. 10101, it does not have constitutional standing to bring this suit. See *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157–58 (2014); *Little v. KPMG LLP*,

575 F.3d 533, 540–41 (5th Cir. 2009). To seek injunctive relief, Plaintiff must show that it is faced with suffering an “injury in fact” that is concrete and particularized, actual and imminent, and not conjectural or hypothetical; the injury in fact must be fairly traceable to Defendant’s alleged actions; and it must be likely that a favorable court decision will remedy the injury. *Summers v. Earth Island Institute*, 555 U.S. 488, 493 (2009); citing *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 180-181 (2000). When the Plaintiff itself is not the object of the government action or inaction it challenges, standing is not precluded, but it is ordinarily “substantially more difficult” to establish. *Summers*, 555 U.S. at 494; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992). It is well settled that organizations can assert their members’ standing. 555 U.S. at 494.

5.2 This suit centers on House Bill 3107, 87th Leg., Reg. Sess. (Tex. 2021), also known as the “Wet Signature Rule.” The Rule requires, in part, that the original registration application contain the voter’s original signature. *Id.* It is the wet signature that Plaintiff contested. Dkt 1.

5.3 Plaintiff is a nonprofit organization that offers web-based voter registration services to eligible applicants. Dkt 1. Prior to the 2018 iteration of the Rule, Plaintiff utilized imaged signatures rather than wet signatures when registering voters. Dkt 1. Plaintiff averred that within a two-month period in 2018 more than 2,400 voters in Texas used Vote.Org.’s services to register to vote. Dkt 1.

5.4 Plaintiff insisted that the implementation of the Rule placed an insurmountable and unconstitutional burden on some eligible Texans in their quest

to become a registered voter. Dkt 1. The complaint is silent on how many of those registrations were from Cameron County or how many local applications, if any, Defendant rejected pursuant to the Rule.

5.5 To establish standing, Plaintiff must properly plead that its members are faced with suffering an injury in fact that is concrete and particularized. However, at no point in Plaintiff's complaint did it assert that Cameron County voter registration applicants used Plaintiff's services and their registration forms were rejected or if any local applicants intended to utilize its services to register in upcoming elections. As such, Plaintiff has failed to show that its local members face an actual and imminent danger of an injury in fact. Rather, Plaintiff has relied upon a conjectural and hypothetical injury—the possibility that nebulous Cameron County applicants may be obstructed in utilizing Plaintiff's services at some unknown time. Until an actual Cameron County applicant who is going to utilize Plaintiff's services is faced with suffering an injury in fact due to the enforcement of the Rule, Plaintiff cannot have standing to sue Defendant.

5.6 As the complaint failed to properly the first element, an injury cannot be fairly traceable to Defendant's alleged actions. Consequently, it is unlikely that a favorable decision will remedy the conjectural or hypothetical harm. Resultantly, the Court lacks subject matter jurisdiction to hear this suit as it relates to Defendant.

F. CONCLUSION

6.1 For the reasons above, Plaintiff has failed to satisfy constitutional standing. Therefore as a matter of law this case should be dismissed for lack of subject matter jurisdiction.

Respectfully submitted,
COMMISSIONERS COURT-
CIVIL LEGAL DIVISION
1100 East Monroe Street
Brownsville, Texas 78520
Telephone: (956) 550-1345
Facsimile: (956) 550-1348

By: /s/ Daniel N. Lopez
Daniel N. Lopez
Associate Counsel
Texas State Bar No. 24086699
Southern District No. 3182267
E-mail: daniel.n.lopez@co.cameron.tx.us
Juan A. Gonzalez
Attorney in Charge
Texas State Bar No. 08129310
Southern District No. 3472
E-mail: juan.gonzalez@co.cameron.tx.us
ATTORNEYS FOR DEFENDANT
REMI GARZA

CERTIFICATE OF SERVICE

I, Daniel N. Lopez, do hereby certify that service of a true and correct copy of the foregoing document will be electronically served upon all counsel of record c/o U.S. District Court, Western District of Texas-San Antonio Division, via the Court's Automatic Filing System, this 7th day of September, 2021:

/s/ Daniel N. Lopez
Daniel N. Lopez