

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

VOTE.ORG,

Plaintiff,

v.

Case No. SA-21-CV-00649-JKP-HJB

JACQUELYN CALLANEN, in her official
capacity as the Bexar County Elections
Administrator; et al.,

Defendants.

ORDER DENYING MOTION TO DISMISS

Before the Court is a motion to dismiss filed by Defendant Remi Garza (ECF No. 31). Plaintiff Vote.org filed a response (ECF No. 41). Plaintiff did not file a reply. For the reasons set forth below, the Court denies the motion.

Defendant Garza challenges Plaintiff's standing to bring this suit. The doctrine of standing is an essential part of the case-or-controversy requirement of Article III and is a constitutional prerequisite to the Court's subject matter jurisdiction. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). "The party invoking federal jurisdiction bears the burden of establishing the[] elements [of standing]." *Id.* at 561.

If challenged, to establish Article III standing, a plaintiff must demonstrate: (1) it suffered (or will suffer) an injury in fact; (2) that is fairly traceable to the challenged conduct of the defendant (causation); and (3) that is likely to be redressed by a favorable judicial decision (redressability). *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). An "organization can establish standing in its own name if it meets the same standing test that applies to individuals." *OCA-Greater Houston v. Texas*, 867 F.3d 604, 610 (5th Cir. 2017). "The injury alleged as an Article III injury-in-fact need not be substantial; it need not measure more

than an identifiable trifle.” *OCA-Greater Hous.*, 867 F.3d at 612. “For a threatened future injury to satisfy the imminence requirement, there must be at least a ‘substantial risk’ that the injury will occur.” *Stringer v. Whitley*, 942 F.3d 715, 721 (5th Cir. 2019) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014)).

Challenging only the first element of *Lujan*, “injury in fact,” Defendant maintains that Vote.org “has not demonstrated that Cameron County voter registration applicants used [its] services and their registration forms were rejected or if any local applicants intended to utilize its services to register in upcoming elections.” ECF No. 31 ¶ 5.5. Therefore, Defendant contends, Vote.org “has failed to show that its local members face an actual and imminent danger of an injury in fact” and 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 [“Wet Signature Rule”], Plaintiff cannot have standing to sue Defendant.” *Id.*

However, to establish organizational standing, as Plaintiff seeks to do here, “an organization may establish injury in fact by showing it diverted significant resources to counteract the defendant’s conduct; hence, the defendant’s conduct significantly and ‘perceptibly impaired’ the organization’s ability to provide its ‘activities—with the consequent drain on the organization’s resources” *N.A.A.C.P. v. City of Kyle, Tex.*, 626 F.3d 233, 238 (5th Cir. 2010) (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982)). Such injury must be “concrete and demonstrable.” *Id.* “The fact that the added cost has not been estimated and may be slight does not affect standing, which requires only a minimal showing of injury.” *Crawford v. Marion Cty. Election Bd.*, 472 F.3d 949, 951 (7th Cir. 2007), *aff’d*, 553 U.S. 181 (2008).

Plaintiff’s complaint states that the organization “uses technology to simplify political engagement, increase voter turnout, and strengthen American democracy.” ECF No. 31 ¶ 17.

That it “works extensively to support low-propensity voters, including racial and ethnic minorities and younger voters who tend to have lower voter-turnout rates” and since 2012, “it has helped over 776,000 Texans register to vote and 1.9 million Texans verify their [voter] registration.” *Id.*

Plaintiff’s complaint alleges that in 2018, Vote.org invested significant resources in developing and deploying “a web application to assist voters with completing their registration forms.” *Id.* ¶¶ 17, 27. And from September through early October 2018, “more than 2,400 voters in Texas used Vote.org’s web application, including the e-signature function, to complete their voter registration applications.” *Id.* ¶ 19. Five days before the voter registration deadline for the 2018 midterm election, then-Secretary of State Roland Pablos instructed county registrars to reject “all of the registration applications prepared using the e-signature function of Plaintiff’s web application, claiming that the registration applications were incomplete because they lacked original, wet signatures.” *Id.* ¶¶ 19, 27. “Secretary Pablos’s announcement created confusion among Texas counties and voters” and the decision of Texas counties to abide by Secretary Pablos’s announcement “effectively ended Vote.org’s use of the e-signature function included in its voter registration web application.” *Id.* ¶¶ 19, 28. Plaintiffs further allege that in 2021, the Texas Legislature codified the rule announced by Secretary Pablos—termed the “Wet Signature Rule”—through House Bill 3107. HB 3107, 87th Leg., Reg. Sess. (Tex. 2021).

Plaintiff’s complaint sufficiently alleges its injury in fact is the additional time, effort, and money expended to “redesign its Texas voter registration programs.” *Id.* ¶ 20. Specifically, “Vote.org has been forced to divert resources from its general, nationwide operations—as well as its specific programs in other states—to redesign its Texas voter registration and [get out the vote] programs and utilize more expensive (and less effective) means of achieving its voter

registration goals in the State.” *Id.* Thus, Vote.org has been forced to expend additional resources to assist “low-propensity voters, including racial and ethnic minorities and younger voters” with completing their Texas voter registration and these resources would have been otherwise spent registering more Texas voters—a task central to its mission. *Id.* ¶¶ 17, 20. This additional time and resources included redeveloping its strategic plan and operations within Texas and having to deploy more expensive alternatives to ensure that voters are able to register to vote in accordance with the “Wet Signature Rule.” ECF No. 41 at 8 n.1.

The alleged diversion of resources in Plaintiff’s complaint is in line with other recent persuasive findings of injury in fact by organizational plaintiffs in similar context. *See, e.g., OCA*, 867 F.3d at 612 (challenged statute perceptibly impaired OCA’s ability to “get out the vote”); *Scott v. Schedler*, 771 F.3d 831, 836-39 (5th Cir. 2014) (NAACP spent more time on voter registration drives); *Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195, 209 (W.D. Tex. 2020) (injury in fact demonstrated with evidence organization spent “additional time and resources to try to make polling places safer and this time would have been otherwise spent educating voters on issues central to its mission”); *Richardson v. Tex. Sec’y of State*, 485 F. Supp. 3d 744, 761-63 (W.D. Tex. 2020) (staff and volunteer time and resources producing video training and social media posts expended to mitigate the effects of the challenged signature-comparison procedures in the Texas Election Code) (citing *Frederick v. Lawson*, No. 1:19-cv-01959-SEB-MJD, 481 F.Supp.3d 774, 789–91 (S.D. Ind. Aug. 20, 2020) (“even though the additional burdens identified by the plaintiff organization were not ‘overwhelming’ organization had standing to challenge Indiana’s mail-in ballot signature-comparison procedures because ‘it already has diverted and expects to continue in the future diverting their limited resources, including money, time, or both, away from other tasks and toward educating voters about the challenged

statutes.”); *Lewis v. Hughs*, No. 5:20-CV-00577-OLG, 2020 WL 4344432, at *10 (W.D. Tex. July 28, 2020) (NAACP’s educational efforts to counteract restrictions’ effect on right to vote); *Common Cause Ind. v. Lawson*, 937 F.3d 944, 952 (7th Cir. 2019) (citing cases recognizing standing with similar diversions of resources).

For these reasons, Plaintiff’s complaint sufficiently establishes that Vote.org suffered an injury in fact. Because the motion challenges only this element of *Lujan*, the Court **DENIES** Defendant Remi Garza’s Motion to Dismiss (ECF No. 31).

It is so ORDERED this 27th day of October 2021.



JASON PULLIAM
UNITED STATES DISTRICT JUDGE

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