

**IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI**

MISSOURI STATE CONFERENCE OF
THE NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED
PEOPLE, *et al.*,

Plaintiffs,

v.

STATE OF MISSOURI, *et al.*,

Defendants.

Case No. 22AC-CC04439

ORDER AND JUDGMENT

Before the Court is Defendants' Motion to Dismiss for lack of standing and for failure to plead a legally protectable interest. For the reasons stated below, the Motion is granted, the Petition is dismissed, and judgment is hereby entered in favor of Defendants.

FINDINGS OF FACT

1. On May 12, 2022, the Missouri General Assembly enacted House Bill 1878 ("HB 1878"), which regulates elections in Missouri. Governor Parson signed HB 1878 into law on June 29, 2022.

2. HB 1878 makes several changes to Missouri's election laws. As relevant here, HB 1878 amends § 115.427, RSMo, to provide two options for voting in-person: (1) a photo identification requirement that applies to all in-person voting, both in-person absentee voting and in-person voting on Election Day; and (2) a provisional ballot option for those who arrive at the polls on Election Day without a photo identification. *See* § 115.472.1, RSMo.

3. In addition, HB 1878 expands in-person absentee voting by creating a two-week period for early in-person absentee voting with no excuse required. The six-week period for in-person absentee voting with excuses remains in effect. Both forms of in-person absentee voting are subject to the photo identification requirement. § 115.427.1, RSMo.

4. The photo identification requirement, therefore, is already in effect in Missouri for the November 2022 general election. Excuse-based in-person absentee voters have been subject to the requirement since Tuesday, September 27, 2022—six weeks before Election Day.

5. On August 23, 2022, Plaintiffs filed their Petition in this matter, three and a half months after HB 1878 was approved by the General Assembly and two months after the Governor signed it. On September 9, 2022, Defendants filed their Motion to Dismiss.

CONCLUSIONS OF LAW

6. Defendants may challenge Plaintiffs' standing in a motion to dismiss. "Dismissal for lack of subject-matter jurisdiction is appropriate when it appears, by suggestion of the parties or otherwise, that the court is without jurisdiction." *Mo. Soybean Ass'n v. Mo. Clean Water Comm'n*, 102 S.W.3d 10, 22 (Mo. banc 2003). Standing is "a matter of justiciability, that is, of a court's authority to address a particular issue when the party suing has no justiciable interest in the subject matter of the action." *Schweich v. Nixon*, 408 S.W.3d 769, 774 n.5 (Mo. banc 2013). "Regardless of an action's merits, unless the parties to the action have proper standing, a court may not entertain the action." *Lee's Summit License, LLC v. Office of Admin.*, 486 S.W.3d 409, 416 (Mo. Ct. App. 2016) (quoting *E. Mo. Laborers Dist. Council v. St. Louis Cnty.*, 781 S.W.2d 43, 45–46 (Mo. banc 1989)).

7. In addition, "[t]o state a claim for a declaratory judgment: 'The court must be presented with: (1) a justiciable controversy that presents a real, substantial, presently-existing

controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation; (2) a plaintiff with a legally protectable interest at stake; (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law.” *Mo. State Conf. of Nat’l Ass’n for Advancement of Colored People v. State*, 601 S.W.3d 241, 246 (Mo. 2020) (alterations omitted) (quoting *Mo. Soybean Ass’n*, 102 S.W.3d at 25). Plaintiffs who lack standing fail to satisfy elements (1) and (2) of this test, because they seek relief on a hypothetical situation, and they lack a legally protectable interest in the case.

A. The Individual Plaintiffs, Ms. Powell and Ms. Morgan, Lack Standing or a Legally Protectable Interest in the Case.

8. The Petition names only two individual Plaintiffs: Ms. Rene Powell and Ms. Kimberly Morgan. The facts alleged in the Petition fail to establish that these two Plaintiffs have standing and a legally protectable interest in the case.

9. First, Ms. Morgan alleges that she has a valid photo ID, but that the photo ID includes an extra “e” in her name: it says “Kimberley Morgan” instead of “Kimberly Morgan,” which is the name reflected in the voter registration record. Pet. ¶ 64.

10. This allegation does not establish any non-speculative injury to Ms. Morgan. Section 115.427.1(3) permits use of a document if it “contains the name of the individual to whom the document was issued, and the name *substantially conforms* to the most recent signature on the individual’s voter registration record.” § 115.427.1(3), RSMo (emphasis added). A difference of an “e” constitutes substantial conformity, especially since Ms. Morgan does not allege any other significant variation between her photo ID and her voter registration record. By its plain terms, the statute permits Ms. Morgan to vote with that photo ID, and any allegation that she might be prevented to vote by the extra “e” is entirely speculative.

11. Likewise, Ms. Powell does not allege any non-speculative injury from the photo ID law. Ms. Powell alleges that she needs to get a photo ID to vote because her Missouri state non-driver's ID expired on December 29, 2021. *See* Pet. ¶¶ 50, 52.

12. Section 115.427.1(3) provides that a person may vote with a state-issued photo ID provided that “if expired, the document expired after the date of the most recent general election.” § 115.427.1(3), RSMo. The most recent general election was on November 3, 2020, and so Ms. Powell's ID expired after the date of the most recent general election.

13. Because Ms. Powell's ID expired “after the date of the most recent general election,” she will be able to vote in the November 2022 general election, based on her own allegations. § 115.427.1(3). Plaintiffs concede that Ms. Powell faces no obstacle to voting with her recently expired photo ID in the November 2022 general election.

14. Ms. Powell alleges that she will have to obtain a non-expired photo ID before voting in future elections, but her allegations as to future elections likewise fail to rise to the level of a non-speculative injury or a legally protectable interest.

15. Plaintiffs admit in the Petition—and the law provides—an individual may receive “one free copy of a nondriver's license,” Pet. ¶ 124 (emphasis omitted); *see* § 115.427.6. This will permit Ms. Powell to vote in future elections without casting a provisional ballot under § 115.427.1. *See* Pet. ¶¶ 46, 50, 52. And Ms. Powell's allegations that it might be unduly burdensome to obtain that free photo ID are speculative at best.

16. Further, the Court finds that Missouri voters do not have a legally protectable interest in avoiding the everyday burdens of getting an expired license renewed. Standing is keyed to the “nature and source of the claim asserted.” *Warth*, 422 U.S. at 500. Here, the claim asserted is individuals' right to avoid a “more than *de minimis* burden on their suffrage.” *Weinschenk v.*

State, 203 S.W.3d 201, 213 (Mo. banc 2006) (per curiam). However, individuals do not have a right to be free from “[b]urdens of [the] sort arising from life’s vagaries [that] are neither so serious nor so frequent as to raise any question about the constitutionality of” the voter ID provisions. *Crawford v. Marion Cty. Elec. Bd.*, 553 U.S. 181, 197 (2008) (plurality opinion).

17. Such burdens as the administrative efforts required to renew a license or photo ID—which virtually all Missourians must undergo periodically—are not a specific, concrete injury but a “generalized grievance” shared by the population as a whole.

18. Thus, neither Ms. Powell nor Ms. Morgan has alleged a specific, concrete, non-speculative injury or legally protectable interest in challenging the photo ID requirement. Ms. Morgan has a photo ID that legally qualifies her to vote, and Ms. Powell has a photo ID that legally qualifies her to vote in November 2022, as well as the right to obtain a non-expired ID for future elections free of charge. These facts, alleged in the Petition, fatally undermine their standing.

19. Further, even if Ms. Powell or Ms. Morgan had alleged a non-speculative obstacle to voting with a photo ID, both would have the option of casting a provisional ballot under HB 1878. Ms. Powell and Ms. Morgan allege that the signature-matching process for provisional ballots is an “arbitrary review process” that includes some “risk of rejection” of their ballot. Pet. ¶ 152. But neither Ms. Powell nor Ms. Morgan alleges facts that would establish a specific, concrete, non-speculative risk of erroneous rejection as to themselves specifically.

20. Courts “do not recognize the concept of ‘probabilistic standing’ based on a non-particularized ‘increased risk’—that is, an increased risk that equally affects the general public.” *Shrimpers & Fishermen of RGV v. Tex. Comm’n on Env’tl. Quality*, 968 F.3d 419, 424 (5th Cir. 2020). Ms. Powell and Ms. Morgan fail to show how the risk of erroneously rejecting their provision ballot is any different than the risk to the general public; that is, their injury is not

“particularized,” *id.*, or “specific” to them, *Metro Auto Auction*, 707 S.W.2d at 400. They instead seek to advance the public’s “generalized interest” in having the State follow the law. *Mo. Coal. for Env’t*, 579 S.W.3d at 927 (quotations omitted).

21. Moreover, even if they had alleged some minimal risk of rejection specific to them, Ms. Powell and Ms. Morgan would still need to allege a “substantial risk that” their provisional ballot will be rejected. *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2565 (2019) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting another source)). Again, they do not do so. The Petition fails to allege a “substantial risk” of erroneous rejection of provisional ballots that is specific to Ms. Powell or Ms. Morgan.

22. As a result, the claimed harm that casting a provisional ballot has on Ms. Powell’s and Ms. Morgan’s right to vote “is speculative at best,” and “mere speculation” does not “confer standing.” *City of Slater v. State*, 494 S.W.3d 580, 589 (Mo. Ct. App. 2016) (alterations omitted) (second quote from *State ex rel. Parsons v. Bd. of Police Comm’rs of Kan. City*, 245 S.W.3d 851, 854 (Mo. Ct. App. 2007)); *see also, e.g., Laird v. Tatum*, 408 U.S. 1, 13 (1972) (concluding that “speculative apprehensiveness” about future government wrongdoing does not establish injury).

23. The Court concludes that neither Ms. Powell nor Ms. Morgan has alleged facts sufficient to establish standing or a legally protectable interest in the case, because they fail to allege any meaningful “threatened or actual injury resulting from the putatively illegal action.” *Harrison*, 716 S.W.2d at 266 (quotations omitted).

B. The Organizational Plaintiffs, the NAACP and League of Women Voters, Lack Standing or a Legally Protectable Interest in the Case.

24. The Petition names two organizational Plaintiffs—the Missouri State Conference of the National Association for the Advancement of Colored People (“NAACP”) and the League

of Women Voters (“LWV”). The Court holds that the Petition fails to allege facts establishing standing or a legally protectable interest of these Plaintiffs as well.

25. Two years ago, in similar litigation involving the same parties, the Court held that the same Plaintiffs, NAACP and LWV, lacked standing to challenge the signature-notarization requirement for mail-in ballots. *See* Findings of Fact, Conclusions of Law, and Final Judgment in *Mo. State Conference of the NAACP v. State*, No. 20AC-CC00169-01 (Sept. 24, 2020), at ¶¶ 74-82 (“*NAACP II*”). The Court comes to the same conclusion today, for similar reasons.

26. The NAACP and the LWV rest their standing on two theories. First, both organizations appear to claim standing to “sue as representative for [their] members.” *Mo. Health Care Ass’n v. Att’y Gen.*, 953 S.W.3d 617, 620 (Mo. banc 1997). Second, both organizations claim standing based on putative harms the voter ID provisions of HB 1878 inflict on them. The Petition’s allegations are insufficient to support standing or a legally protectable interest on either theory.

27. First, as to representational standing: “Where, as here, plaintiffs are associations of individuals, standing must be predicated, *inter alia*, on the fact that the association members would have standing to bring their claims individually.” *Mo. State Med. Ass’n v. State*, 256 S.W.3d 85, 88 (Mo. banc 2008).

28. Here, Plaintiffs do not identify any specific members adversely affected by the challenged law. Instead, they merely allege that “[u]pon information and belief, members of the Missouri NAACP and the LWVMO do not have acceptable photo ID that complies with the Voter ID Restrictions and will be prohibited from voting in future elections,” Pet. ¶ 133, and that “[u]pon information and belief, members of the Missouri NAACP and the LWVMO face uncertainty and

confusion about the scope and requirements of the Voter ID Restrictions and will be dissuaded from exercising their right to vote.” Pet. ¶ 134 (emphases added).

29. Conspicuously absent from these statement is any specific factual allegation about any specific human being who is a member of NAACP or LWV and who will be harmed by the photo ID requirement. Indeed, other than Ms. Powell and Ms. Morgan, the NAACP and LWV fail to identify even one member who allegedly has standing to sue.

30. These allegations are insufficient to establish representational standing. To establish representational standing, “plaintiff-organizations [must] make specific allegations establishing that at least one *identified* member has suffered or would suffer harm.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009) (emphasis added). As this Court stated in its prior judgment, “Plaintiffs ... lack associational standing because they fail to identify any member of their organizations who has direct standing to challenge the laws at issue, other than the named Plaintiffs who are already participating in the case.” *NAACP II*, ¶ 77.

31. NAACP’s and LWV’s decision to allege facts about their own members “upon information and belief” demonstrates the speculative nature of these allegations. Counsel have an obligation to conduct a reasonable investigation before making allegations in a Petition, and NAACP and LWV have privileged access to facts about their own members. If they had any members who faced a non-speculative obstacle to voting from the photo ID requirement, there would be no need to make such generic allegations “upon information and belief.”

32. NAACP and LWV also fail to allege facts to support organizational standing based proprietary interests. The organizations claim proprietary injury from having to “divert resources to education and assist their members and eligible voters throughout Missouri to address confusion, uncertainty, and compliance with the” voter ID provisions. Pet. ¶ 165.

33. This alleged diversion of resources is a self-inflicted harm based on the organizations' speculation about how third parties will react to the Voter ID provisions, which establishes neither standing nor a legally protectable interest. *See, e.g., Clapper v. Amnesty International USA*, 568 U.S. 398 (2013). Plaintiffs cannot “manufacture standing . . . by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.” *Id.* at 416; *see also Skorhod v. Stafford*, 550 S.W.2d 799 (Mo. Ct. App. 1977).

34. As this Court stated in its prior judgment, “This ‘diversion-of-resources’ theory of organizational standing fails as a matter of law.... Missouri courts have yet to embrace the liberalized federal rule of organizational standing. Plaintiffs cannot manufacture injury simply by choosing to spend money fixing a problem that otherwise would not affect the organization at all.” *NAACP II*, ¶ 82 (citations and quotation marks omitted).

35. Further, the Petition alleges that the diversion of resources to educate voters about the new law does not stem from the voter ID requirements themselves, but from another part of HB 1878. The Petition alleges: “*As a result* of the elimination of State outreach and funding requirements under HB 1878, the Missouri NAACP and the LWVMO have been and will continue to shift their resources to provide education and assistance to their members and the public regarding the Voter ID Restrictions.” Pet. ¶ 117. But Plaintiffs have not challenged the validity of the “elimination of State outreach and funding requirements under HB 1878.” *Id.* Thus, they do not allege that they are “adversely affected by” the provisions of HB 1878 they challenge—*i.e.*, the requirement that voters show photo ID to vote. *Mo. Coal. for Env’t*, 579 S.W.3d at 927 (quoting *W.R. Grace*, 729 S.W.2d at 206 (quotations and emphasis omitted)); *see also California v. Texas*, 141 S. Ct. 2104 (2021).

36. In addition, Plaintiffs lack standing to pursue a facial challenge. “A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.” *State v. Perry*, 275 S.W.3d 237, 243 (Mo. banc 2009); *see also Artman v. State Bd. of Registration for Healing Arts*, 918 S.W.2d 247, 251 (Mo. banc 1996). A successful facial challenge, therefore, would require a showing that the photo ID requirement is unconstitutionally burdensome for *every* voter in Missouri. *Id.*

37. Here, Plaintiffs cannot pursue a facial challenge because “a plaintiff generally must assert his own legal rights and interests and cannot base a claim for relief on the legal rights of third parties.” *Bannum, Inc. v. City of St. Louis*, 195 S.W.3d 541, 545 (Mo. Ct. App. 2006).

38. The Supreme Court has made clear that “claims of equal protection rights generally may not be raised by third parties.” *Comm. for Educ. Equality v. State*, 294 S.W.3d 477, 486 (Mo. banc 2009) (citing *Comm. for Educ. Equality v. State*, 878 S.W.2d 466, 450 n.3 (Mo. banc 1994)). Since a claim that a State law impairs the fundamental right to vote is an equal protection claim, *see Priorities USA*, 591 S.W.3d at 453; *Weinschenk*, 203 S.W.3d at 211–12, plaintiffs—like Plaintiffs in this case—lack standing to bring a facial challenge to assert the rights of third parties.

CONCLUSION

39. For the reasons stated herein, Plaintiffs’ Petition is hereby DISMISSED and judgment is entered in favor of Defendants. Plaintiffs are granted thirty (30) days in which to replead should they choose to do so and failing to do so will result in a dismissal with prejudice.

Dated: October 12, 2022



Jon E. Beetem, Circuit Judge