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CASE NUMBER: 2022CV33456

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202	
VET VOICE FOUNDATION, et al., Plaintiffs, v. JENA GRISWOLD, Defendant.	▲ COURT USE ONLY ▲
	Case No.: 2022CV33456 Courtroom: 215

ORDER ON MOTION TO DISMISS

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THIS MATTER comes before the Court on Defendant's Motion to Dismiss for Lack of Standing Under Rule 12(b)(1) ("Motion"). The Motion is opposed and fully briefed. Having considered the parties' briefs, relevant case law, the submitted evidence, and the file, the Court finds and Orders as follows.

I. INTRODUCTION

Plaintiffs are a veterans' advocacy organization and five individuals. The instant action alleges that Defendant (who is sued in her official capacity as the Colorado Secretary of State) has implemented certain signature verification procedures which have deprived the individuals of their ability to cast ballots in past elections and may do so in the future. Plaintiffs seek declaratory and injunctive relief to prevent Defendant from implementing these procedures in future elections.

Defendant moves for dismissal of this action on the grounds that all the Plaintiffs lack the necessary standing under C.R.C.P. 12(b)(1).

II. STANDARD OF REVIEW

Under C.R.C.P. 12(b)(1), a trial court determines standing by examining the substance of the claim based on the facts alleged and the relief requested. *City of Aspen v. Kinder Morgan,*

Inc., 143 P.3d 1076, 1078 (Colo. App. 2006). The plaintiff has the burden of proving jurisdiction. *Id.* A trial court may consider any competent evidence pertaining to a Rule 12(b)(1) motion without converting the motion into a summary judgment motion. *Lee v. Banner Health*, 214 P.3d 589, 593 (Colo. App. 2009) (citing *Trinity Broad. of Denver, Inc. v. City of Westminster*, 848 P.2d 916, 924 (Colo. 1993)). When considering a motion to dismiss under Rule 12(b)(1), the Court does not give the non-moving party the benefit of all favorable inferences, but instead is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. *Trinity Broad.*, 848 P.2d at 925.

Standing is a "jurisdictional prerequisite." *Hickenlooper v. Freedom from Religion Found., Inc.*, 338 P.3d 1002 (Colo. 2014). If Plaintiffs do not have standing, the court does not have jurisdiction. *Hotaling v. Hickenlooper*, 275 P.3d 723, 725 (Colo. App. 2011). "To establish standing, a plaintiff must demonstrate (1) that the plaintiff suffered injury in fact, and (2) that the injury was to a legally protected interest." *Tabor Foundation v. Colorado Dept. of Health Care Policy and Financing*, 487 P.3d 1277, 1280 (Colo. App. 2020) (citing *Barber v. Ritter*, 196 P.3d 238, 245 (Colo. 2008)) (internal quotations omitted).

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The "injury in fact" requirement limits the judiciary's invasion of the executive and legislative spheres of government by ensuring that a judicial determination "may not be had at the suit of any and all members of the public." *Hickenlooper v. Freedom from Religion Foundation, Inc.*, 338 P.3d 1002, 1006 (Colo. 2014). It also ensures that courts are limited to hearing actual controversies. *Id.* Both tangible and intangible injuries qualify; however, the injury must not be so indirect and incidental, or so speculative, as to vitiate the limiting purposes of the injury in fact requirement. *Id.* Claims for relief under the constitution, the common law, a statute, or a rule or regulation satisfy the legally-protected-interest requirement. *Id.* In short, Colorado's standing requirement is more encompassing than the federal standard.[1] *Compare*, *Shelby Advocates for Valid Elections v. Hargett*, 947 F.3d 977 (6th Cir. 2020).

Defendant maintains that because Plaintiffs seek injunctive relief, they are held to a higher burden in proving that they have standing. But the "standing requirements for injunctive relief against the enforcement of a regulatory scheme are similar to those for declaratory relief. A plaintiff seeking injunctive relief satisfies the threshold requirement of standing by showing that the action complained of has caused or has threatened to cause imminent injury to an interest protected by law." *Board of County Com'rs, La Plata County v. Bowen/Edwards Assoc., Inc.*, 830 P.2d 1045, 1054 (Colo. 1992). Defendant relies on *State Board of Chiropractic Examiners v. Stjernholm*, 935 P.2d 959, 971 (Colo. 1997), but that case is inapposite. First, standing was not an issue below, and therefore the Supreme Court's comments about standing when injunctive relief is sought are, at most, dicta. Second, even if not dicta, the standing discussion in the opinion concerns injunctive relief under 42 U.S.C. § 1983, something not at issue here. Third,

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[1] Colorado's broad conceptualization standing has been narrowed in recent years. *See e.g. Hickenlooper*, 338 P.3d 1002; *Reeves-Toney v. School Dist. No. 1*, 442 P.3d 81 (Colo. 2019). Both of these cases concern taxpayer standing, which is not asserted here. However, Colorado's general rules for general standing remain more encompassing than the federal standard, and perhaps should be narrowed further to conform more closely with the federal standard. But that decision is for the appellate courts.

the opinion (and Defendant) appears to conflate standing with remedy. A plaintiff may have standing to sue but may not be entitled to injunctive relief, especially when the government is the entity to be enjoined. *See Id.* at 972.

III. ANALYSIS

A. The Individual Plaintiffs have Suffered Injury.

The parties are in agreement that each of the individual plaintiffs in the recent past has had their mail-in ballot signatures rejected. The parties also generally agree that all but one of the individual plaintiffs had to take further action in order for their ballots to be counted, while one did not bother to do so because the elections results were known by the time she was notified. The individuals fear further potential or actual disenfranchisement in future elections.

This is sufficient injury for standing purposes. Even for federal standing (which, as noted, is more restrictive), any "burden on the right to vote" often satisfies the injury prong of a standing analysis. *Common Cause of Colorado v. Buescher*, 750 F. Supp. 2d 1259, 1271 (D. Colo. 2010); *Judicial Watch, Inc. v. Griswold*, 554 F. Supp. 3d 1091, 1102 (D. Colo. 2021) (holding that lack of confidence in the electoral process constitutes injury for federal standing purposes and citing *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008)). Moreover, the individual plaintiffs have alleged threatened injury in that they fear future disenfranchisement through the rejection of their ballot signatures. The individual plaintiffs have sufficiently alleged standing.[2]

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B. Vet Voice has Standing.

Vet Voice argues that it has associational standing. An "organization has associational standing when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted, nor the relief requested, requires the participation of individual members of the lawsuit." *Colorado Union of Taxpayers Foundation v. City of Aspen*, 418 P.3d 506, 511 (Colo. 2018).

As discussed above, the individual plaintiffs, whose interests also are represented by Vets Voice, have standing to sue. So the first prong of the test is satisfied.

The interest that Vet Voice seeks to protect is germane to its purposes. Vet Voice's mission is to "empower Veterans [sic.] . . . to become civic leaders and policy advocates . . . ." Motion Ex. B. Among the ways Vet Voice accomplishes this mission is to help veterans "register and turn out to vote." Id. Thus, this action, which alleges that Defendant has burdened voting rights, is directly relevant to Vet Voice's purpose.

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[2] Defendant's argument that any signature rejection can be easily cured, and that the individuals have since been able to vote, goes to the merits of the action, not standing.

Finally, the relief Vet Voice seeks, namely, to enjoin Defendant from utilizing signature verification procedures, does not require individual participation. Defendant's arguments to the contrary, that Vet Voice must be a membership organization and that it must identify specific members who have been disenfranchised, finds no support in Colorado law and are not requirements included in the three-part test announced in *Colorado Union of Taxpayers Foundation*.

Vet Voice has sufficiently alleged standing.

IV. CONCLUSION

For the reasons set forth above, Defendant's Motion to Dismiss for Lack of Standing Under Rule 12(b)(1) is DENIED.

ENTERED this 17th day of April, 2023.

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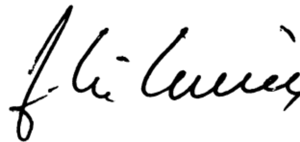
BY THE COURT:



J. Eric Elliff
District Court Judge