UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

INTERNATIONAL ALLIANCE OF THEATER STAGE EMPLOYEES LOCAL 927, Plaintiff, v. JOHN FERVIER, et al., Defendants.	Case No. 1:23-cv-04929-JPB

PLAINTIFF'S RESPONSE TO ORDER TO SHOW CAUSE

On July 31, 2024, this Court denied Plaintiff International Alliance of Theatrical Stage Employees Local 927's ("IATSE") motion for a preliminary injunction on two grounds: first, the Court found that IATSE had "failed to clearly establish that it is substantially likely to show [associational] standing" based on the germaneness requirement, Order Denying Plaintiffs Motion for Preliminary Injunction at 5–13, ECF No. 106 ("PI Order"); second, the Court found that the *Purcell* doctrine barred relief in advance of the 2024 general election, *id.* at 14–17. On August 9, 2024, IATSE moved this Court to reconsider both grounds. *See* ECF No. 113. That motion remains pending.

On November 15, 2024, this Court ordered IATSE to show cause why it has standing in this case, with focus on (1) the germaneness requirement addressed in

the Court's order denying the motion for preliminary injunction, and (2) whether relief is appropriate where election officials from only one county are named defendants. ECF No. 121. The Court also directed IATSE to show cause as to why the pending motion for reconsideration should not be denied as moot now that the 2024 election has passed. *Id.*

On the question of the continuing vitality of the motion to reconsider the Court's decision on IATSE's preliminary injunction motion, that motion sought relief "applicable to the 2024 cycle." Because the 2024 cycle has concluded, the Court can no longer grant the requested relief, and IATSE agrees that the motion for reconsideration is moot. On the question of standing, however, IATSE has standing to seek prospective relief for the same reasons explained in that motion: IATSE's allegations easily satisfy the standards in this circuit and other courts for establishing germaneness because IATSE's primary purpose is to ensure the "just treatment of all its members," particularly when engaged in the work that forms the basis of their membership in IATSE. And the evidence submitted shows that the challenged absentee ballot application deadline affects IATSE's traveling members precisely *because* of the work they obtain through the organization. IATSE furthermore satisfies the other standing requirements to maintain its claim against the remaining Defendants. Finally, the fact that election officials from only one county have been

named is not a basis upon which to deny relief because an injunction that extends beyond Fulton County is not necessary for standing, nor is it required by the Equal Protection Clause.

ARGUMENT

I. This litigation is germane to IATSE's purpose of protecting the rights of its traveling members who vote absentee because of their work.

As this Court recognized, "the germaneness requirement is 'undemanding' and requires 'mere pertinence' between the litigation at issue and the organization's purpose." PI Order at 6 (quoting *Schalamar Creek Mobile Homeowner's Ass'n, Inc. v. Adler*, 855 F. App'x 546 (11th Cir. 2021)). There does not need to be a "substantial overlap" between the legal issue and the organization's interests, and the issue need not be "central" to the organization's purpose; a "connection" is enough. *Humane Soc. of the U.S. v. Hodel*, 840 F.2d 45, 56–57 (D.C. Cir. 1988). The standard is so forgiving that the Eleventh Circuit has only once found that an association lacked standing because it could not establish germaneness—and that was more than 20 years ago. *See Schalamar Creek*, 855 F. App'x at 553 (discussing *White's Place,*

Inc. v. Glover, 222 F.3d 1327, 1328 (11th Cir. 2000)).[1] Here, there is more than a sufficient connection between this litigation and IATSE's core purpose of ensuring the "just treatment" of its members who are traveling on assignment, Am. Compl. ¶ 13, ECF No. 62, *inter alia* by ensuring that those members can cast votes for candidates that advance the physical, social, and economic wellbeing of theater stage workers, Decl. of Allan Herman ¶ 5, ECF No. 83-3.

When assessing the germaneness requirement, the appropriate question is not whether "one of Plaintiff's purposes is to protect its members' voting rights" in the abstract, PI Order at 9–10; but rather whether the subject matter of this action—the absentee ballot application deadline—bears a "connection" to, and thus is germane to, IATSE's purposes. IATSE, through this litigation, does not simply seek to protect voting rights as a general matter; this is not, for example, a challenge to a voter identification requirement. Instead, IATSE specifically seeks to protect its members' statutory right to sufficient time to apply for an absentee ballot *while traveling for work*. Mem. of Law in Supp. of Pl.'s Mot. for Prelim. Inj. at 20, ECF No. 83-1. As IATSE members' declarations in support of IATSE's Motion for Preliminary

[1] Though *Schalamar Creek* is unpublished, it constitutes the only time the Eleventh Circuit has cited the germaneness analysis from *White's Place*—and the Eleventh Circuit did so only to distinguish and confine the holding of *White's Place*.

Injunction show, the need to cast an absentee ballot arises directly from the work that forms the basis of their membership—and Georgia's early deadline imposes costs upon IATSE's members due to the particular demands of their profession. Decl. of Allan Herman ¶¶ 9–19, ECF No. 83-3; Decl. of Kelsey Bailey ¶¶ 4–9, ECF No. 83-4; Decl. of Justin Michel ¶¶ 4–11, ECF No. 83-5; Decl. of Justin Gamerl ¶¶ 4–10, ECF No. 83-6. In sum, members joined the organization to vindicate their work-related rights and to ensure "just treatment" when engaged in their work. Am. Compl. ¶ 13, ECF No. 62. IATSE's litigation does just that.

In denying the motion for preliminary injunction, the Court also observed that IATSE's members may not have specifically "joined to protect their voting rights," PI Order at 11, but courts have not required an exact match between members' motivation for membership—or even the purpose of the organization—and the interests advanced through litigation. In *Schalamar Creek Mobile Homeowner's Association v. Adler*, a homeowner's association sued the owners and operators of a mobile home park, alleging that some of the common areas of the park were not accessible to disabled residents in violation of the Americans with Disabilities Act. 855 Fed. App'x at 548. Applying similar reasoning to this Court, the district court there found that enforcement of the Americans with Disabilities Act was not germane to the HOA's purpose because the organization "is not a disability

advocacy group." *Id.* at 553. The Eleventh Circuit disagreed, recognizing that "the district court's understanding of what is germane was too limited." *Id.* at 553. Emphasizing the "undemanding" nature of the germaneness requirement, the Eleventh Circuit looked more broadly to the HOA's purpose, concluding that the germaneness requirement was satisfied because the HOA's members had "an interest in making sure that the clubhouse is accessible." *Id.* at 554. Likewise, IATSE has an interest in ensuring its members have access to the elective franchise while traveling for work, so that they may exercise their right to vote and collectively support candidates and policies that are critical to protecting members' pay, benefits, and workplace safety. Decl. of Allan Herman ¶ 6, ECF No. 83-3.

Other courts have adopted a similar approach to the germaneness inquiry. In *Building & Construction Trades Council of Buffalo, New York & Vicinity v. Downtown Development, Inc.*, 448 F.3d 138 (2d Cir. 2006), a trade union sued various defendants alleging violations of environmental laws. The district court found that the germaneness requirement was not met, because "as a labor organization, the Council was not established for the purpose of enforcing environmental laws." *Id.* at 147. The Second Circuit rejected that finding and reversed the district court. Rather than seeking specific expertise in environmental law, the Second Circuit explained that it was enough that the lawsuit, if successful,

would result in safer working conditions for the union's members, consistent with its purposes of "improv[ing] working conditions and the occupational safety and health of its members." *Id.* at 149 (quotation marks omitted). Here, too, IATSE's success in this suit will protect its members' right to vote absentee when traveling for work, consistent with its purpose to ensure "just treatment of all members" and support aligned candidates that will advance the members' physical, social, and economic wellbeing.

The Eleventh Circuit has only once found a wholesale mismatch between an organization's interests and the claim it asserted—and there, the legal challenge and the organization's purpose had no relationship at all. *See White's Place, Inc. v. Glover*, 222 F.3d at 1328. At issue in *White's Place* was a local ordinance that made it a misdemeanor to "resist or oppose a police officer" who was discharging his duties. *See id*. The plaintiff was a strip club and its primary purpose was to "present erotic dancing for profit." *Id*. at 1330. But erotic dancing bore no relationship to the restricted activity: verbally opposing police officers. *Id*. And there was no suggestion that the "normal conduct of the [organization's] affairs [would] involve opposition to police officers." *Id.* at 1329–1330. Under those circumstances, the organization could not maintain suit. Here, by contrast, the infringement on the voting rights of IATSE's members directly flows from their membership. IATSE's

responsibility to protect the rights of traveling members arises from one of IATSE's most basic functions—connecting members to work—and much of that work takes place in distant locations and demands long, unpredictable hours. Decl. of Allan Herman ¶ 8, ECF No. 83-3. Allowing members to be deprived of voting rights solely *because* of their attendance at work would disserve those members' interests.

The other cases cited in the PI Order provide little support for the conclusion that this litigation is not germane to IATSE's purposes. In *Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. U.S.D.A.*, 415 F.3d 1078 (9th Cir. 2005), the Ninth Circuit's germaneness finding was limited to a single issue—the cattle association's assertion of a procedural claim under the National Environmental Policy Act. *See* 415 F.3d at 1104 ("We therefore hold that R-CALF lacks standing *to bring a NEPA challenge* to the Final Rule." (emphasis added)). While NEPA claims must allege "injury to the physical environment," the cattle organization merely alleged that its members would "be adversely affected by the increased risk of disease they face when Canadian beef enters the U.S. meat supply." *Id.* at 1103–04. The court concluded that this claimed interest had "no connection to the physical environment; rather, it is solely a matter of human health." *Id.* But the court did *not* extend this reasoning to the association's Administrative Procedure Act and Regulatory Flexibility Act claims. *Id.* at 1093–1102. It simply found that

the organization lacked standing to challenge the regulation on grounds that it would injure the physical environment when the complaint contained no allegations whatsoever that the organization had any purpose related to the preservation of the physical environment. *See id.* at 1103–04.

The cursory analysis in *Minnesota Federation of Teachers v. Randall*, 891 F.2d 1354 (8th Cir. 1989), is also far afield from this case. There, a teachers' union challenged a law that allowed for the diversion of taxpayer funds away from public schools and to private schools. *Id.* at 1358. The Eighth Circuit found that the union did not have standing to represent its "members' interests in the use of their tax money to support sectarian schools," because "taxpayer interests" were not germane to the union. *Id.* at 1359. IATSE here does not assert injuries on its members' behalf as taxpayers or as members of the general public; it asserts injuries arising directly from its members' work. The Eighth Circuit's taxpayer standing determination therefore is irrelevant. And, as the dissent pointed out, the court simply ignored the teachers' union's asserted interest in preventing deterioration in the teacher's working conditions, potential terminations, and reductions in compensation. *Id.* at 1365 (Heaney, S.J., dissenting). The majority provided no explanation whatsoever for why these injuries did not satisfy the germaneness requirement; clearly, the working conditions and compensation of teachers are germane to a teachers' union.

Notably, in the 35 years since this decision, the Eighth Circuit has never once cited *Minnesota Federation of Teachers* to support a finding that an organization lacked associational standing.

Just like the HOA in *Schalamar* and the Council in *Building and Construction Trades Council of Buffalo*, IATSE's lawsuit advances the work-related interests of its members and thus satisfies the germaneness requirement. And IATSE's interest in ensuring that its members can travel *for work* without sacrificing their voting rights due to a discrete provision of state law is particularly pertinent because IATSE's normal activities include advocating for candidates and policies that promote workers' rights and educating members about the importance of voting to achieve these goals. Decl. of Allan Herman ¶ 7, ECF No. 83-3. If its members are unable to vote in elections that decide these important questions, the organization is clearly injured. That is sufficient to satisfy this element of the standing inquiry.

II. IATSE is entitled to relief against Fulton County Defendants.

Members of the Fulton County Registration and Elections Board ("Fulton County Defendants") are proper defendants because IATSE's members satisfy the three elements of Article III standing with respect to them: "(1) an injury in fact that (2) is fairly traceable to the challenged action[s] of the defendant[s] and (3) is likely to be redressed by a favorable decision." *Ga. Ass'n of Latino Elected Offs., Inc. v.*

Gwinnett Cnty. Bd. of Registration & Elections, 36 F.4th 1100, 1113 (11th Cir. 2022) ("*GALEO*").

First, IATSE's traveling members are injured by the Fulton County Defendants' enforcement of Georgia's eleven-day absentee ballot deadline because it shortens the period during which its members who are registered to vote in Fulton County can apply for an absentee ballot. Fulton County is IATSE's largest source of membership, constituting a plurality of IATSE's members. Supp. Decl. of Allan Herman ¶ 3, ECF No. 98-1. And IATSE invariably has members who must travel for work during each presidential election—requiring them to depend upon absentee voting. *Id.* ¶¶ 4–5.

Second, IATSE members' injuries are traceable to Fulton County Defendants. In the context of elections, "[a]n injury is traceable to an election official responsible for the election administration process or rule that allegedly has caused the plaintiff's injury." *Fair Fight Action, Inc. v. Raffensperger*, 634 F. Supp. 3d 1128, 1185 (N.D. Ga. 2022). Under Georgia law, immediate responsibility for processing absentee ballot applications rests with county election officials, O.C.G.A. § 21-2-384, and Fulton County Defendants therefore directly enforce the absentee ballot application deadline against IATSE members in Fulton County.

Third, the injury to IATSE's members who reside in Fulton County would be fully redressed by an order directing the Fulton County Defendants to comply with federal law. It does not matter that IATSE has members in other counties who may remain injured even if IATSE secures its requested relief. Under Article III, the "remedy need not be complete or relieve every injury alleged" to establish standing. *Reeves v. Comm'r, Alabama Dep't of Corr.*, 23 F.4th 1308, 1318 (11th Cir.), *application granted sub nom. Hamm v. Reeves*, 142 S. Ct. 743 (2022). It is enough that IATSE's requested relief would "effectuate a partial remedy" to the threat facing its members. *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291 (2021).

Finally, granting relief against Fulton County Defendants does not create any constitutional questions as the State Election Board has previously suggested, *see, e.g.*, ECF No. 68-1 at 14 n.5 and ECF No. 95 at 29, nor does it implicate the "rudimentary requirements of equal treatment and fundamental fairness" that the Supreme Court addressed in *Bush v. Gore*, 531 U.S. 98, 109 (2000). Countless courts across the country "have recognized that counties may, consistent with equal protection, employ entirely different election procedures and voting systems within a single state." *Donald J. Trump for President, Inc. v. Boockvar*, 493 F. Supp. 3d 331, 389 (W.D. Pa. 2020) (citing cases). The Supreme Court itself confined its analysis in *Bush* to the unique circumstances before it: where a state court "with the

power to assure uniformity" issues a "*statewide* remedy" with "minimal procedural safeguards," 531 U.S. at 109 (emphasis added); in doing so, the Court disclaimed any attempt to dictate "whether local entities . . . may develop different systems for implementing elections," *id*. And the Court was right to be cautious: most electoral systems would collapse under the weight of an Equal Protection Clause that mandated uniformity in all election procedures. *Donald J. Trump for President*, *Inc*. *v. Bullock*, 491 F. Supp. 3d 814, 836 (D. Mont. 2020).

Demanding *statewide* relief as a remedy for every voting-related dispute would also create an irreconcilable conflict with Article III's case-or-controversy requirement. Such a rule would require voters to seek redress not just from their own local election board but also county officials in every corner of the state, even if those officials took no part in the plaintiff's injury and cannot offer any relief. *But see Vote.org v. Ga. State Election Bd.*, 661 F. Supp. 3d 1329, 1337 (N.D. Ga. 2023) (acknowledging that the plaintiffs' "injury must be 'fairly traceable to the challenged action of the defendant'" (quoting *GALEO*, 36 F.4th at 1115)). The Supreme Court has never suggested that an equal protection issue can arise from failing to join every single defendant that might possibly enforce a challenged law. Nor is it the plaintiff's burden to ensure uniform application of election laws. In fact, Georgia law places that duty squarely on the shoulders of the State Election Board, which has the power

to resolve the dis-uniformity it complained of. *See* O.C.G.A. § 21-2-31(1) ("It shall be the duty of the State Election Board . . . [t]o promulgate rules and regulations so as to obtain uniformity in the practices and proceedings of superintendents, registrars, deputy registrars, poll officers, and other officials"). Plaintiffs need not name all 159 county election superintendents as defendants in this lawsuit in order for the Court to exercise its power—and its duty—to decide the controversy before it. *W.S. Kirkpatrick & Co., Inc. v. Envt'l Tectonics Corp., Int'l*, 493 U.S. 400, 409 (1990) ("Courts in the United States have the power, and ordinarily the obligation, to decide cases and controversies properly presented to them.").

CONCLUSION

Absentee voting is germane to IATSE's central goal of protecting members' work-related rights and these rights are threatened by the actions of the Fulton County Defendants; therefore, the requirements of Article III have been met, and this Court may issue appropriate relief against the named Fulton County officials.

Dated: November 29, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with Local Rule 5.1(C) because it is prepared in Times New Roman font at size 14.

Dated: November 29, 2024

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