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,

REPUBLICAN NATIONAL COMMITTEE; and GEORGIA REPUBLICAN PARTY, INC.,
Intervenor-Defendants.

No. 1:23-cv-04929-JPB

INTERVENORS' RESPONSE TO PLAINTIFF'S BRIEF ON STANDING

The International Alliance of Theater Stage Employees is a labor union, not a voting organization. It represents the interests of its members as laborers in a particular industry, not as voters in the State of Georgia. This Court often hears cases challenging Georgia's election laws brought by voting organizations whose missions include registering voters, running vote drives, or organizing campaign activities. Other cases are brought by political parties or candidates who have a direct stake in elections. Still other cases are brought by the United States or by county election officials responsible for enforcing voting laws. IATSE fits none of those categories.

As a labor union, IATSE does not have a direct interest in how Georgia conducts its elections. Other than filing this lawsuit, IATSE doesn't allege it

takes any action to help its members register or vote. And its members didn't join IATSE to get help with those activities. If IATSE has standing to challenge Georgia's election laws based on a broadly stated interest in protecting the well-being of its members, then every organization whose membership includes adult U.S. citizens has standing to file the same lawsuit. Article III demands more, as this Court recognized when denying IATSE's preliminary-injunction motion. The Court should thus dismiss the amended complaint.

BACKGROUND

IATSE filed its amended complaint in January 2024. *See* Am. Compl. (Doc 62). The Court granted the State Defendants' motion to dismiss, ruling that IATSE failed to show standing as to the State Defendants because its alleged injuries were not traceable to those defendants or redressable by an order issued against them. *See* Order on Mot. to Dismiss (Doc. 97). In April, the Plaintiffs moved for a preliminary injunction. *See* PI Mot. (Doc. 83). The Court denied the motion, ruling that IATSE lacked standing because it failed to show that the lawsuit is germane to IATSE's activities. PI Order (Doc. 106) at 9-10. In August, IATSE moved to reconsider the preliminary-injunction order. *See* Mot. to Reconsider (Doc. 113).

Last month, the Court ordered IATSE to show cause as to why it has standing and whether the motion for reconsideration is moot. *See* Show Cause Order (Doc. 121) at 2-3. IATSE "agrees that the motion for reconsideration is moot" now that the 2024 election has concluded. Pl. Resp. (Doc. 122) at 2. But IATSE maintains that it "has standing to seek prospective relief" because its amended complaint satisfies the criteria for associational standing. Pl. Resp.

2. Focusing on the germaneness element as the Court directed, IATSE argues that this lawsuit is germane to its organizational purposes "because IATSE's primary purpose is to ensure the 'just treatment of all its members.'" Pl. Resp. 2. The Court directed the County Defendants, the Republican Intervenors, and the United States to respond. *See* Show Cause Order 3.

ARGUMENT

To invoke this Court's jurisdiction, IATSE must plead an injury that is caused by the Defendants' conduct and redressable by the Court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). These "elements 'are not mere pleading requirements but rather an indispensable part of the plaintiff's case.'" *Ga. Ass'n of Latino Elected Offs., Inc. v. Gwinnett Cnty. Bd. of Registration & Elections*, 36 F.4th 1100, 1113 (11th Cir. 2022) (quoting *Lujan*, 504 U.S. at 561).

IATSE argues that it can sue on behalf of its members, whom IATSE alleges might be denied "the right to cast an absentee ballot" because of the challenged law. Am. Compl. ¶31. To prevail on that associational-standing theory, IATSE's members must "have standing to sue in their own right," the "interests at stake" in the case must be "germane to the organization's purpose," and the lawsuit must not "require[] the participation of individual members." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000). The Court directed IATSE to "focus on the germaneness prong and whether relief is appropriate when only one Georgia county is a named defendant." Show Cause Order 2.

IATSE still fails the germaneness prong. The Court can dismiss the amended complaint for the same reasons it denied the preliminary-injunction motion. But even if IATSE had pleaded organizational interests that are germane to this case, the amended complaint fails to allege that IATSE's members would "have standing to sue in their own right." *Friends of the Earth*, 528 U.S. at 181. IATSE has not identified a single member who faces a realistic danger of being denied the right to vote because of Georgia's application deadline.

I. IATSE has not adequately alleged that its interests in this lawsuit are germane to its organizational purpose.

When this Court denied IATSE's preliminary-injunction motion, it ruled that IATSE could not show that this case is germane to the organization's purpose. PI Order at 5-13. IATSE's associational-standing theory fares no better at the pleading stage. To plead associational standing, the complaint must allege facts indicating that the "lawsuit would, if successful, reasonably tend to further the general interests that individual members sought to vindicate in joining the association," and the lawsuit must "bear[] a reasonable connection to the association's knowledge and experience." *Bldg. & Const. Trades Council of Buffalo v. Downtown Dev., Inc.*, 448 F.3d 138, 149 (2d Cir. 2006); *accord Schalamar Creek Mobile Homeowner's Ass'n v. Adler*, 855 F. App'x 546, 553 (11th Cir. 2021). For at least three reasons, the allegations in the amended complaint don't satisfy the germaneness element of associational standing.

First, the amended complaint does not allege that IATSE's purpose is to protect its members' voting rights. IATSE alleges that it is "dedicated to

protecting the dignity and both the financial and physical well-being of its members." Am. Compl. ¶13. It protects that dignity and well-being "by advocating for safe working conditions, fair wages, and just treatment of all its members." *Id.* ¶13. But the rules governing how voters apply for mail ballots in statewide elections have nothing to do with "working conditions" or "fair wages," nor do they implicate the "financial and physical well-being" of IATSE members. *Id.* ¶13. This case is "not related sufficiently" to those purposes. *White's Place, Inc. v. Glover*, 222 F.3d 1327, 1330 (11th Cir. 2000). It is thus unsurprising that IATSE barely mentions those purposes. *See* Pl. Resp. 3-10.

Instead, IATSE hangs its hat on its "primary purpose," which IATSE claims "is to ensure the 'just treatment of all its members.'" Pl. Resp. 2. But "dignity" and "just treatment," Am. Compl. ¶13, are precisely the sort of "abstract" interests that do not satisfy Article III, *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016). If broad statements about "advanc[ing] the members' physical, social, and economic wellbeing" were sufficient, Pl. Resp. 7, any organization could show associational standing by alleging interests at that high level of generality. *Cf. White's Place*, 222 F.3d at 1330 (rejecting the plaintiff's "creative[]" claim "that its purpose" was to protect the First Amendment rights of its employees).

IATSE points to its activities in lobbying for favorable labor policies. But as this Court explained, "germaneness requires more than advocating for candidates and issues—otherwise, every organization would have standing to bring claims under the VRA." PI Order 9 (footnote omitted). Lobbying for policies is different from facilitating voting. *Cf. Fla. State Conf. of NAACP v.*

Browning, 522 F.3d 1153, 1158 (11th Cir. 2008) (ruling that "the interests of voters in being able to register are clearly germane" to the purposes of voter organizations who worked "to increase voter registration and participation" in elections). IATSE cites no authority that suggests an organization has standing to challenge election rules just because those elections might have downstream effects on policy decisions that could affect its members.

IATSE also confuses injuries for interests. That union members travel for work says nothing about IATSE's interest in voting. IATSE argues that this case bears a "connection" to the union because it "seeks to protect its members' statutory right to sufficient time to apply for an absentee ballot *while traveling for work*." Pl. Resp. 4. That argument confuses the first element of associational standing (individual injury) with the second element (germaneness). For the reasons explained *infra* Section II, that workers might have last-minute travel isn't an injury that would give them "standing to sue in their own right" to challenge the application deadline. *Friends of the Earth*, 528 U.S. at 181. Even if it were, the travel obligations of IATSE members says nothing about IATSE's interest in *voting*. No doubt the travel schedules of IATSE members affect their private lives in a variety of ways. That fact does not confer on IATSE an interest in each of those private activities, just as the plaintiff in *White's Place* didn't have an interest in protecting "its employees" from threatened arrest, even though those employees "were engaged in demonstrations in front of the club owned by the corporation." 222 F.3d at 1329.

Second, the amended complaint does not allege that IATSE's members joined the labor union in order to vindicate their voting rights. The Court observed that "completely missing" was any "evidence that Plaintiff's members joined the organization to 'vindicate' their voting rights." PI Order 10 (quoting *Bldg. & Const. Trades Council*, 448 F.3d at 149). IATSE doesn't correct that deficiency. Instead, it falls back to vague allegations that "members joined" the union "to ensure 'just treatment' when engaged in their work." Pl. Resp. 5. At most, those allegations support an inference that members joined the union to ensure just treatment *in their workplace* for things like "safe working conditions" and "fair wages." Am. Compl. ¶13. The amended complaint does not allege that anyone joined the union to help them vote, or that IATSE takes any other action to facilitate voting. That this lawsuit is IATSE's only foray into voting is good evidence that voting is not a part of the organization's purpose.

IATSE relies on an unpublished Eleventh Circuit decision, but the case isn't analogous. In *Schalamar Creek*, a homeowner's association sued the owners of a mobile home community for violating the Americans with Disabilities Act by failing to make some of the common areas accessible to disabled residents. *Schalamar Creek Mobile Homeowner's Ass'n, Inc. v. Adler*, 855 F. App'x 546, 547-48 (11th Cir. 2021). The court held that the homeowner's association had standing because ensuring access to the common areas was "closely related to the purposes of the homeowner's association." *Id.* at 553. The court rejected the defendants' argument that germaneness "requires 'complete commonality'" among the Plaintiffs. *Id.* at 554. Even though not all residents

were disabled, the alleged ADA violations affected their rights *as homeowners* and members of the association. *Id.* at 553-54. It was also important that state law gave "the homeowner's association authority to act as a class representative and bring suits 'in its name on behalf of all association members concerning matters of common interest to the members.'" *Id.* (quoting Fla. R. Civ. P. 1.222).

In contrast, IATSE does not invoke any statutory right to act as a class representative. Even if it could, IATSE's theory of germaneness is the inverse of *Schalamar*. The homeowner's association in *Schalamar* had standing because the alleged ADA violations affected its members rights as homeowners. But IATSE does not allege that Georgia's application deadline affects union members' rights *as workers*—it doesn't change their hours, affect their pay, or make it more difficult for them to perform their jobs. Instead, IATSE's theory is that its members' work affects their private activities, including how they vote. Those downstream effects don't mean that IATSE's purpose is to facilitate voting. *See McKinney v. U.S. Dep't of Treasury*, 614 F. Supp. 1226, 1239 (Ct. Int'l Trade 1985) ("The Court does not interpret the [germaneness] rule … to mean that any rights of an individual may be asserted by any organization to which he belongs regardless of the relationship between that organization and the injury alleged."), *aff'd*, 799 F.2d 1544 (Fed. Cir. 1986).

Third, the amended complaint does not allege that this election lawsuit has any reasonable connection to IATSE's knowledge and experience about labor and employment. The Court pointed out that IATSE's experience

"appears to be limited to advocating for better pay and working conditions." PI Order 10. And that "knowledge and experience" does not bear "a reasonable connection" to this election case. *Bldg. & Const. Trades Council*, 448 F.3d at 149. IATSE makes no attempt to address this deficiency. *See* Pl. Resp. 3-10.

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Courts agree that labor unions don't have limitless standing to challenge laws that fall outside the scope of their mission. The Sixth Circuit, for example, held that a labor union of service employees likely did not have associational standing to challenge a state election law because the law was "not primarily related to election or voters' rights issues." *Ne. Ohio Coal. for Homeless & Serv. Emps. Int'l Union v. Blackwell*, 467 F.3d 999, 1010 (6th Cir. 2006). IATSE's standing theory is identical to the plaintiff's in *Blackwell*, which is why this Court properly relied on that case when denying IATSE's preliminary-injunction motion. *See* PI Order at 12-13 & n.12. But IATSE doesn't address *Blackwell* in its response to the show-cause order. *See* Pl. Resp. 3-10.

This Court and the Sixth Circuit are not alone. The Ninth Circuit held that a ranchers' union did not have associational standing to challenge a federal rule regulating the importation of Canadian cattle into the United States. *R–CALF v. USDA*, 415 F.3d 1078, 1104 (9th Cir. 2005). Unlike IATSE's relationship to voting, the rancher's union in *R–CALF* bore at least a subject-matter relationship to the ranching regulation it challenged. But the Ninth Circuit held that the union didn't have standing, reasoning that the union's vague allegation that its "members will also be adversely affected" by the regulation was insufficient to show a "connection … between the purported

environmental interest that [the union] attempts to raise here and the 'trade and marketing' interests it is organized to protect." *Id.* at 1103-04.

The Eighth Circuit similarly ruled that a teachers' union didn't have associational standing to challenge an education rule even though "there is no doubt that many of the members of [the union] are possibly injured as taxpayers." *Minn. Fed'n of Tchrs. v. Randall*, 891 F.2d 1354, 1359 (8th Cir. 1989). Just as the teachers' union "fail[ed] to mention any interest in taxes," *id.*, IATSE fails to mention any interest in voting. Still other courts have rejected unions' associational standing to challenge election laws like the one at issue here. *See AFSCME v. Land*, 583 F. Supp. 2d 840, 844 n.3 (E.D. Mich. 2008) (labor union failed germaneness test in challenging a state law prohibiting the wearing of "campaign paraphernalia" to a polling place). This Court is in good company, and it should again find that this lawsuit is not germane to IATSE's purposes.

II. IATSE's members would not have standing in their own right.

Even if it could show germaneness, IATSE fails the first prong of associational standing. The amended complaint does not show that IATSE's members "would otherwise have standing to sue in their own right." *Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1249 (11th Cir. 2020).

IATSE has not alleged that any member—let alone a member in Fulton County—faces a realistic danger of not being able to vote as a result of Georgia's application deadline. "To satisfy the requirements of associational standing," the plaintiff must show "that at least one member faces a realistic danger" of suffering an injury from the law they challenge. *Browning*, 522 F.3d

at 1163. But the amended complaint doesn't even allege that a single member has been or will be unable to vote because of Georgia's application deadline. Rather, it speculates some members might delay applying for a ballot, be called to travel at the last minute, and encounter unique circumstances that prevent them from applying to vote by mail. Am. Compl. ¶¶15-17. Those are the sort of "highly speculative" events that undermine associational standing. *City of S. Miami v. Governor*, 65 F.4th 631, 637 (11th Cir. 2023).

IATSE cannot avoid the identification requirement by aggregating a minimal "likelihood that some of their members face a risk of harm." *Pharm. Rsch. & Mfrs. of Am. v. HHS*, 656 F. Supp. 3d 137, 154 (D.D.C. 2023). That IATSE "cannot do more than identify an aggregate risk" to its members as a group "highlights fundamental uncertainty about the nature of the supposedly impending injury-in-fact." *Id.* (holding that organizations lacked associational standing to challenge HHS regulation because the injury "depends on the likelihood that an individual member's drug" will be subject to the regulation and the organizations could only "speculate about that likelihood"). No individual member "faces a realistic danger" of suffering an injury from Georgia's application deadline, *Browning*, 522 F.3d at 1163, so IATSE fails the first prong of associational standing.

* * *

The Court also instructed IATSE to address "whether relief is appropriate when only one Georgia county is a named defendant." Show Cause Order 2-3. IATSE responds that the Court does not lack jurisdiction simply because IATSE did not join all possible defendants. *See* Pl. Resp. 10-14.

IATSE's conclusion is basically correct. At most, whether limited relief against a locality is appropriate would be relevant when a court is poised to enter an injunction. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (requiring a plaintiff seeking injunctive relief to demonstrate irreparable injury, that legal remedies are inadequate, that the balance of hardships warrants equitable relief, and that the public interest would not be disserved by a permanent injunction). But to satisfy the court's jurisdiction at the pleading stage, it is enough that the defendants sued are responsible for enforcing the challenged law. *See Moody v. Holman*, 887 F.3d 1281, 1287 (11th Cir. 2018). IATSE's amended complaint fails not because of a deficiency in who is sued, but because, as this brief explains, the complaint fails to allege an associational injury.

CONCLUSION

The Court should dismiss the amended complaint for lack of standing.

Dated: December 13, 2024

Respectfully submitted,

/s/ Gilbert C. Dickey

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CERTIFICATE OF COMPLIANCE

This document complies with Local Rule 5.1(B) because it uses 13-point Century Schoolbook.

/s/ Gilbert C. Dickey

CERTIFICATE OF SERVICE

On December 13, 2024, I e-filed this document on ECF, which will email everyone requiring service.

/s/ Gilbert C. Dickey