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 REPLY TO ORDER TO SHOW CAUSE

Intervenors take the untenable position that a labor union has no interest in protecting its members from an injury arising directly from the members' engagement in their work. *See* Intervenors' Resp., ECF No. 125. To reach this conclusion, Intervenors twice ask this Court to set aside well-established precedent and apply heightened standards of Intervenors' choosing. The Court should reject both arguments and find that IATSE has sufficiently pled standing to seek relief from the Fulton County Defendants.

First, IATSE has satisfied the germaneness inquiry—the focus of the Court's order and the appropriate standard to apply here. That inquiry requires only that work-related voting hinderances be "pertinent" to a union's purposes for the union to have standing to challenge them. Intervenors' argument that IATSE must prove

that voting is its principal organizational purpose—and that the union has a history of advocacy spanning unrelated issues from voter registration to campaign organizing—is incorrect. IATSE's purpose of protecting its members' work-related rights—which routinely requires travel far from home—plainly encompasses injuries to its members' voting rights when they are engaged in that work-related travel. IATSE's interests are not limited to pay and benefits, nor are they cabined to the worksite or working hours, as Intervenors suggest. To the contrary, for well over half a century federal and state courts, including the Supreme Court, have recognized unions' interests in ensuring that their members' ability to vote is not hindered due to work demands.

Second, Intervenors' claim that IATSE has not adequately alleged that it has suffered a sufficiently "concrete" injury is wrong—both on the facts and the law. Intervenors' suggestion that a state is free to deprive voters of *some* federal rights so long as the deprivation does not result in outright disenfranchisement ignores longstanding Eleventh Circuit precedent, which holds that a plaintiff need not be disenfranchised to establish standing—a burden (even if slight) caused by the deprivation of a federal right is an actionable injury. *Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1351 (11th Cir. 2009). IATSE also has associational standing to pursue its claim on behalf of its members in Fulton County who must comply with

the absentee ballot application deadline when requesting an absentee ballot—a task made more difficult and burdensome by the illegally narrowed window to return those applications. And because it is virtually certain that at least one IATSE member will be deployed outside their jurisdiction on election day and deprived of the absentee voting rights conferred by federal law, Am. Compl. ¶ 15, ECF No. 62, there is no need to identify *which* members will be harmed in its Complaint. *Am. Coll. of Emergency Physicians v. Blue Cross & Blue Shield of Ga.*, 833 F. App'x 235, 240 n.8 (11th Cir. 2020).

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.

Intervenors conflate the exacting injury standard of Article III with the germaneness requirement of associational standing and attempt to erect artificial goalposts not required under either doctrine. "[T]he germaneness requirement is 'undemanding' and requires 'mere pertinence' between the litigation at issue and the organization's purpose." PI Order at 6, ECF No. 106 (quoting *Schalamar Creek Mobile Homeowner's Ass'n, Inc. v. Adler*, 855 F. App'x 546, 553 (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, as Intervenors suggest; a "connection" is enough. *Humane Soc'y of the U.S.*

v. Hodel, 840 F.2d 45, 56–57 (D.C. Cir. 1988). 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, *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.

Contrary to Intervenors' claims, a member's rights do not have to be violated during business hours for that violation to be germane to a labor union's purpose, nor are a union's duties to its members limited to safety, wages, and benefits. Courts have, for example, regularly recognized that immigration rights can be germane to a union's purpose, even when they do not directly impact union members' wages or benefits. *Hotel & Rest. Emps. Union, Loc. 25 v. Smith*, 846 F.2d 1499, 1503–04 (D.C. Cir. 1988) (finding federal asylum and deportation policies were germane to a union's purpose of "organizing all workers" and "protecting its members"); *Guilford Coll. v. McAleenan*, 389 F. Supp. 3d 377, 389 (M.D.N.C. 2019) (finding federal immigration policy was germane to a labor union representing school employees to the purpose of "advocating for the civil rights of its members"). As demonstrated by these cases, it is simply not true that a union's purpose of ensuring members' "just treatment" extends only so far as "things like 'safe working

conditions' and 'fair wages'" or is limited to events taking place "in their workplace." Intervenors' Resp. at 7.[1]

Even using Intervenors' overly narrow focus on work-related injuries, this suit would still be germane to IATSE's purpose because the deadline's impact on traveling theater professionals arises directly from their work as members of IATSE. While immigration policy impacts union members because of the manner in which they entered or remained in the U.S. and not their work in a hotel or restaurant, IATSE's members are injured *only* because of the work for which they joined IATSE. This distinction—that the injury arises as a direct result of IATSE members' work—also demonstrates why *Blackwell* is inapposite. *Ne. Ohio Coal. for Homeless & Serv. Emps. Int'l Union, Loc. 1199 v. Blackwell*, 467 F.3d 999 (6th Cir. 2006).

[1] Nor does Intervenors' position comport with common sense or real-world concerns. Just this week national media observed the direct consequences to work opportunities available to union members of tax policies adopted (or not) by their elected representatives. Kurtis Lee, *As Hollywood Struggles, the Region's Economy Feels the Pain*, The New York Times (Dec. 26, 2024), available at https://www.nytimes.com/2024/12/26/business/economy/hollywood-southern-california-economy.html ("Georgia has an uncapped tax incentive program that has given billions of dollars to Hollywood studios. … A member of the International Alliance of Theatrical Stage Employees union, [Ms. Humphries] has in recent months started a biweekly food bank to support struggling Hollywood workers … of all ages and experience who gather at a union hall to commiserate and offer one another support.").

The issue in *Blackwell* was not with the union's *theory* of associational standing, it was with the adequacy of their *pleadings*. *Id.* at 1010. The union in *Blackwell* failed because—unlike IATSE, which has provided sworn affidavits from named members and union officials detailing the need for their federal absentee voting rights—the Service Employee International Union's "complaint contain[ed] no reference at all to injury to the plaintiffs' members." *Id.*

Members' opportunity to vote is so fundamental to the work of unions that they have long negotiated into contracts time off for voting and have taken the issue to state and federal courts where the unions' interests have been recognized for at least 70 years. *See, e.g., Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 428 (1952) (Jackson, J., dissenting) ("It undoubtedly is the right of every union negotiating with an employer to bargain for voting time without loss of pay"); *Retail Clerks Int'l Ass'n, Loc. 1625, AFL-CIO v. Schermerhorn*, 373 U.S. 746, 748 (1963) (noting a union negotiated a contract that entitled members to "paid time off to vote"); *Torrington Co. v. Metal Prods. Workers Union Loc. 1645, UAW, AFL-CIO*, 362 F.2d 677, 677–78 (2d Cir. 1966) (considering arbitration between a union and employer regarding time off to vote); *State v. Int'l Harvester Co.*, 241 Minn. 367, 368 (1954) (noting a union contract's allowance for time to vote); *Benane v. Int'l Harvester Co.*, 142 Cal. App. 2d Supp. 874, 876 (Cal. App. Dep't Super. Ct. 1956)

(similar). Merely negotiating for a few hours of unpaid leave would do nothing for IATSE members who are working in other states or even other countries, so IATSE seeks instead to protect its members' ability to vote by mail. That IATSE protects members' absentee rather than in-person voting opportunities makes the issue no less germane to its purpose.

IATSE's interests, moreover, are even more direct here because it acts as a "hiring house"—meaning that IATSE does not merely represent its members in contract negotiations with employers, it also receives hiring requests from employers and fills those requests from its membership on a job-by-job basis. Decl. of Allan Herman ¶ 8. IATSE's very existence relies on removing barriers that might hinder members from taking jobs.

Intervenors' related argument that IATSE's members did not join the union in order to "vindicate their voting rights," Intervenors' Resp. at 7, ignores that courts have long recognized the right of associations that are not "voting organizations" to vindicate the voting rights of members when an injury relates to the reason the members joined the organization. *See, e.g.*, *Fla. State Conf. of NAACP v. Lee,* 576 F. Supp. 3d 974, 981–82 (N.D. Fla. 2021) (recognizing the associational standing of Disability Rights Florida to bring a voting rights challenge); *Disability Rts. N.C. v. N.C. State Bd. of Elections*, No. 5:21-CV-361-BO, 2022 WL 2678884, at *2

(E.D.N.C. July 11, 2022) (finding that "ensuring access to voting by people with disabilities is germane to [Disability Rights North Carolina's] purpose" of protecting the rights of individuals with disabilities); *Nat'l Org. on Disability v. Tartaglione*, No. CIV. A. 01-1923, 2001 WL 1231717, at *1 (E.D. Pa. Oct. 11, 2001) (finding the National Organization on Disability, the Pennsylvania Council of the Blind, and the National Federation of the Blind of Pennsylvania, groups with the purpose to "advocate for the disabled," had associational standing to bring a voting rights challenge). These organizations had standing to vindicate the rights of their members because the basis for their membership (their disability), was related to the reason they were injured by the challenged statute. The pursuit that drew members to IATSE (working in live and recorded shows that require travel) is also the reason they are injured when they are deprived of their full absentee voting rights.

Just as disability advocates were not required to be election law experts to vindicate voting rights and labor unions were not required to be immigration experts to vindicate immigration rights, IATSE need not demonstrate expertise in voting statutes to protect its members' ability to vote absentee. The test set forth in *Hunt v. Washington State Apple Advert. Comm'n,* 432 U.S. 333 (1977), "does not contain a requirement that an association maintain a certain level of expertise with regard to

the subject matter of the litigation." *Retired Chi. Police Ass'n v. City of Chicago*, 76 F.3d 856, 863 (7th Cir. 1996).

Finally, Intervenors assert that IATSE "confuses injuries for interests," Intervenors' Resp. at 6, but it is Intervenors who have erroneously blended Article III's injury requirement with the germaneness requirement of associational standing. Intervenors allege that IATSE's interests are too "abstract," relying on *Spokeo, Inc. v. Robbins*, 578 U.S. 330 (2016), to support the assertion. Intervenors' Resp. at 5. But the Court in *Spokeo* was considering whether a plaintiff's injury was sufficiently "concrete" to establish an Article III injury, *Spokeo,* 578 U.S. at 330, which is an entirely separate question from that of whether a challenge is germane to an organization's purpose. *Bldg. & Constr. Trades Council of Buffalo, N.Y. & Vicinity v. Downtown Dev., Inc.*, 448 F.3d 138, 146–47 (2d Cir. 2006).

II. IATSE is entitled to relief against Fulton County Defendants on behalf of its members.

IATSE is entitled to seek relief from Fulton County Defendants, whose enforcement of Georgia's absentee ballot application deadline restricts the window in which IATSE's members in Fulton County must find time to request an absentee ballot. Every IATSE member applying for an absentee ballot must meet the strictures of this narrower timeframe, which "makes it more difficult for IATSE members to ensure that their applications are timely submitted." Am. Compl. ¶ 5. This is a

sufficient burden to establish an injury-in-fact. Indeed, where a law directly regulates the actions of plaintiff's members, "there is ordinarily little question that the [law] has caused [their] injury." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561–62 (1992). IATSE's pleading has met this modest standard.

In light of the straightforward impact of Georgia's absentee ballot application deadline on IATSE's members, Intervenors artificially elevate the standard for establishing an injury-in-fact in two ways. First, Intervenors wrongly suggest that the only cognizable injury is "not being able to vote as a result of Georgia's application deadline." Intervenors' Resp. at 10. But the Eleventh Circuit has stated clearly that "[a] plaintiff need not have the franchise wholly denied to suffer injury." *Common Cause/Ga.*, 554 F.3d at 1351. Even if all of IATSE's members are able to rearrange their schedules to comply with the absentee ballot request deadline, "the imposition of that burden is an injury sufficient to confer standing." *Id.* While Intervenors dismiss the members' burden as slight, this too distorts the law: the "slightness of their burden [] is not dispositive" because even "an identifiable trifle is sufficient to confer standing." *Id.* (quotation omitted).

Second, Intervenors misstate IATSE's burden at the pleading stage—using out-of-circuit precedent to suggest IATSE must identify a specific injured member at the pleading stage for the case to proceed. *See* Intervenors' Resp. at 11 (citing

Pharm. Rsch. & Mfrs. of Am. v. HHS, 656 F. Supp. 3d 137, 154 (D.D.C. 2023)). To the contrary, the Eleventh Circuit has acknowledged that "for prospective equitable relief […] requiring specific names at the motion to dismiss stage is inappropriate." *Am. Coll. of Emergency Physicians,* 833 F. App'x at 240 n.8. Here IATSE has pled that "it is a virtual certainty that [its] members will be called on to work outside of their voting jurisdiction . . . as evidenced by the fact that in every year dating back to at least 2016—except for 2020, during the pandemic—members have been on the road [on election day]." Am. Compl. ¶ 15. And IATSE has even identified members who were previously absent from their voting jurisdiction on election day. *See* Decl. of Brian Nunnally ¶ 5, ECF No. 98-2; Decl. of Kelsey Bailey ¶ 5, ECF No. 83-4; Decl. of Justin Michel ¶ 5, ECF No. 83-5; Decl. of Justin Gamerl ¶ 5, ECF No. 83-6. Because IATSE has "identified a whole category of its members who are harmed and will be harmed," IATSE has associational standing to pursue its claim on their behalf. *Am. Coll. of Emergency Physicians*, 833 F. App'x at 240.

CONCLUSION

For the reasons above and those stated in Plaintiff's Response to the Order to Show Cause, IATSE has sufficiently pled standing to seek relief from Fulton County Defendants.

Dated: December 27, 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: December 27, 2024

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