

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

CITY OF HAMMOND, et al.,)	
)	
Plaintiffs,)	CASE NO. 2:21-cv-00160-PPS-JEM
)	
vs.)	
)	
STATE OF INDIANA, INDIANA)	
SECRETARY OF STATE)	
DIEGO MORALES, in his official)	
Capacity, and THE LAKE COUNTY)	
BOARD OF ELECTIONS,)	
)	
Defendants.)	

DEFENDANT’S, LAKE COUNTY BOARD OF ELECTIONS AND
REGISTRATION, RESPONSE TO PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT

Comes now Defendant, the Lake County Board of Elections, whose true name is Lake County Board of Elections and Registration, (“Election Board”), and file their Response to Plaintiffs’ Motion for Summary Judgment. In support thereof, the Court is shown the following:

I. LEGAL ARGUMENT

A. Legal Standard

A party is entitled to summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A fact is material if it is outcome determinative. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986). An issue is genuine “only when a reasonable jury could find for the party opposing the motion based on the record as a whole.” *Pipitone v. United States*, 180 F.3d 859, 861 (7th Cir. 1999).

In determining whether a genuine issue of material fact exists, the court must view the record and all reasonable inferences in the light most favorable to the non-moving party. *National Soffit & Escutcheons, Inc. v. Superior Systems, Inc.*, 98 F.3d 262, 265 (7th Cir. 1996). The moving party bears the burden of demonstrating the “absence of evidence on an essential element of the non-moving party's case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). The non-moving party may not, however, simply rest on the pleadings, but must demonstrate by specific factual allegations that a genuine issue of material fact exists for trial. *National Soffit & Escutcheons, Inc.*, 98 F.3d at 265.

B. The Plaintiffs’ Motion for Summary Judgment Must Be Denied Because They Lack Standing to Sue the Election Board and There Has Been No Evidence Designated Demonstrating that the Election Board Engaged In Any Wrongdoing.

A party is entitled to summary judgment only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). The record presently before the Court shows that this requirement has not been satisfied by the Plaintiffs as it relates to the Election Board Defendant.

The judicial authority under Article III of the United States Constitution is limited to "cases or controversies." To have standing to sue, a plaintiff must have "an injury in fact," a causal connection between the injury and the conduct complained of, and it must be likely (as opposed to speculative), that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The injury must be fairly traceable to the challenged action of the defendant. *Id.* The suit should be brought against entities that have legal responsibilities for the flaws Plaintiffs perceive in the system and from whom they ask something which would conceivably help their cause. *Hearne v. Board of Education*, 185 F.3d 770, 777 (7th Cir. 1999) The

party invoking federal jurisdiction bears the burden of establishing the elements of standing. *Lujan* at 561.

In the present case, the only allegation brought against the Election Board simply states that “The Lake County Board of Elections is a local governmental unit that oversees elections in Lake County Indiana and administers the retention votes for Lake County Superior Court judges. Ind. Code § 33-33-45-42(e).” [See Exhibit 2, at p. 3, ¶ 14.] The Election Board does not have the power to confer or deny the Plaintiffs, or others similarly situated, the right to vote for Judges in Lake County. Nor does the Election Board have the power to authorize the remedies sought by the Plaintiffs described in their Second Amended Complaint.

To that end, there is no causal connection between any conduct of the Election Board in following the existing Indiana law as it relates to the selection of judges in the counties identified by the Plaintiffs in the Second Amended Complaint and the Plaintiffs’ alleged injury asserted in their pleading. In their Second Amended Complaint, the Plaintiffs are not alleging that the Election Board has done anything wrong or failed to do something. *Id.* The harms alleged in the Plaintiffs’ Second Amended Complaint are simply not fairly traceable to any conduct of the Election Board. Simply stated, the Plaintiffs have failed to meet their necessary burden under Federal Rule of Civil Procedure 56(c) and are not entitled to judgment as a matter of law with respect to the Election Board Defendant.

For the above reasons, the Plaintiffs’ Motion for Summary Judgment must be denied with respect to the Election Board Defendant and this Court should grant the Election Board’s pending Motion for Summary Judgment.

C. The Plaintiffs’ Motion for Summary Judgment Must Be Denied Because Any Declaratory Judgment Action Brought Against the Election Board Is Procedurally Improper.

The Declaratory Judgment Act authorizes federal courts to “declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.” See *Northland Ins. Co. v. Gray*, 240 F. Supp. 2d 846 (N.D. Ind. 2003); 28 U.S.C. § 2201. The existence of a controversy is crucial, because the “case or controversy” requirement of Article III of the Constitution is applicable to declaratory judgments. *Foster v. Center Twnshp. of LaPorte County*, 798 F.2d 237, 239 (7th Cir.1986).

To show an “actual controversy” as required by 28 U.S.C. § 2201, the plaintiff in a declaratory judgment action must show that she has sustained, or is in immediate danger of sustaining, a direct injury as the result of the defendant's conduct. *Gray*, 240 F Supp. 2d at 848. The threat of injury must be real and immediate, not conjectural or hypothetical. *Id.* at 848. There must be a substantial controversy between parties having adverse legal interests that is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment. *Id.*

In the present case, the Plaintiffs’ Second Amended Complaint seeks the entry of a declaratory judgment in counts 2, 3, and 4. [See Exhibit 2, at pp. 9-12.] However, the Second Amended Complaint is non-specific and makes no reference to any actual controversy between the Plaintiffs and the Election Board. *Id.* There is no evidence that shows that the Plaintiffs sustained a direct injury at the hands of the Election Board or is in any immediate danger because of some action taken by the Election Board. [See Exhibits 3 and 4 which are the Affidavits of Plaintiffs Lonnie Randolph and Eduardo Fontanez respectively.] There is no evidence in the record which shows the existence of an “actual controversy” between the Plaintiffs and the Election Board.

For the above reasons, the Plaintiffs' Motion for Summary Judgment must be denied with respect to the Election Board Defendant and this Court should grant the Election Board's pending Motion for Summary Judgment.

II. CONCLUSION

The Plaintiffs lack standing under Article III of the United States Constitution to sue the Election Board. The injuries alleged by the Plaintiffs in this case are not fairly traceable to the Election Board. Also, there is no "actual controversy", as required by 28 U.S.C. § 2201 for a declaratory judgment action, between the Plaintiffs and the Election Board. The Plaintiffs' Motion for Summary Judgment should be denied, and the Election Board's Motion for Summary Judgment granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 10th day of August 2023, service of a true, correct and complete copy of the foregoing pleading and/or paper was made upon all counsel of record via the Court's Pacer system and/or via United States first class mail with the proper postage affixed to:

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