

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

Florida Rising Together, Inc., et al.

Plaintiffs,

v.

Case No. 6:24-cv-01682-AGM-NWH

Cord Byrd, et al.,

Defendants.

/

SECRETARY'S REPLY IN SUPPORT OF MOTION TO DISMISS

RETRIEVED FROM DEMOCRACYDOCKET.COM

I. Plaintiffs' conclusory allegations of membership and reliance on rejected caselaw fail to establish associational standing.

Plaintiffs insist that Florida Rising has associational standing. Not so. In fact, Plaintiffs are not even eligible to invoke associational standing because they are not voluntary membership organizations. And even if they could rely on the doctrine, they do not satisfy it because they fail to specifically identify a single member that will be harmed, and do not plausibly allege that any of their members have standing in their own right.

A. The Supreme Court in *Hunt v. Washington State Apple Advertising Comm'n* established that entities other than "traditional voluntary membership organization[s]" may not invoke the associational standing doctrine unless their constituents had specific "indicia of membership." 432 U.S. 333, 344 (1977). In *Hunt*, these included electing the members of the defendant agency, serving on its board, and financing its activities. *Id.* In other words, the organizations must show they "represen[t] the [constituents] and provide[] the means by which they express their collective views and protect their collective interests." *Id.* at 344-45.

The Secretary noted in his Motion that Florida Rising does not have formal members and argued that it therefore cannot invoke the associational standing doctrine because it does not allege that its constituents possess any of the "indicia of membership." MTD at 5-6. Plaintiffs pushed back, arguing that the Supreme Court "rejected" this argument in *Students for Fair Admissions v. President and Fellows of Harvard College*. But the Court's reasoning does not apply here.

The Court determined that “[t]he indicia of membership analysis employed in *Hunt* ha[d] no applicability” there because “SFFA [wa]s indisputably a voluntary membership organization with identifiable members” and “ha[d] identified members and represent[ed] them in good faith.” 600 U.S. 181, 201 (2023). That is not the case here because the Amended Complaint does not plausibly allege that Florida Rising is a traditional voluntary membership organization or identify any members. Instead, it simply alleges that Florida Rising is “made up of members advancing economic and racial justice across Florida” and has “more than 10,000 members.” Am. Compl. ¶ 26. But plausibly alleging that an entity is a membership organization requires more than a conclusory assertion of the group’s purpose and the approximate number of members. And, as discussed below, Florida Rising does not come close to identifying its members, much less with any specificity.

Thus, *Hunt* applies and Plaintiffs must show the “indicia of membership” to invoke associational standing. And because they do not allege any of the indicators – plausibly or otherwise – Florida Rising cannot invoke the associational standing doctrine. But even if it could, Florida Rising does not satisfy it.

B. Plaintiffs insist that Florida Rising has associational standing based on *Florida State Conference of NAACP v. Browning*, arguing that it is “binding, controlling, and dispositive.” Response at 4. But the portions Plaintiffs cite to in *Browning* are none of those things because the Supreme Court and Eleventh Circuit have squarely and repeatedly rejected the probabilistic standing rationale upon which Plaintiffs rely. *Id.*

Plaintiffs argue *Browning* “endorsed a more forgiving standard” whereby they need only “establish . . . that at least one member faces a realistic danger of having his or her application rejected due to a mistaken mismatch.” *Id.* at 6; *Browning*, 522 F.3d 1153, 1163 (11th Cir. 2008). Admittedly, the *Browning* Court engaged in probabilistic analysis when it reasoned that that plaintiff had associational standing because “it is highly unlikely . . . that not a single member will have his or her application rejected due to a mismatch.” *Browning*, 522 F.3d at 1163. In other words, “someone is certain to get injured in the end.” *Id.* at 1164.

The problem for Plaintiffs is that “since *Browning*, the Supreme Court has rejected probabilistic analysis as a basis for conferring standing.” *Ga. Republican Party v. Secs. & Exchange Comm’n*, 888 F.3d 1198, 1204 (11th Cir. 2018). Indeed, in *Summers v. Earth Island Institute*, the majority squarely rejected the dissent’s theory that an organization has standing if “there is a statistical probability that some of [its] members are threatened with concrete injury.” 555 U.S. 488, 497 (2009). The Court explained that “standing is not an ingenious academic exercise in the conceivable . . . [but] requires . . . a factual showing of perceptible harm.” *Id.* at 499 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 566) (cleaned up); *see id.* at 499-500 (noting the dissent’s test would “have [the Court] replace the requirement of imminent harm . . . with the requirement of a *realistic* threat that reoccurrence of the challenged activity would cause [the plaintiff] harm”) (cleaned up). Thus, “[w]hile it is certainly possible – perhaps even likely – that one

individual will” be harmed by the voter verification process, “that speculation does not suffice” to show associational standing. *Id.*

Instead, organizations must “make specific allegations establishing that at least one *identified* member had suffered or would suffer harm.” *Id.* at 498 (emphasis added); *see also id.* at 498-99 (“This requirement of naming the affected members has never been dispensed with in light of statistical probabilities.”). Put differently, “the Court has required plaintiffs claiming an organizational standing to *identify* members who have suffered the requisite harm.” *Id.* at 499 (emphasis added); *see also, e.g., Ga. Republican Party*, 888 F.3d at 1204 (“We did not relax the requirement that an organization name at least one member who can establish an actual or imminent injury.”). And the Eleventh Circuit routinely holds that organizations lack standing when they do not identify a specific member that will be harmed. *See, e.g., Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1249 (11th Cir. 2020) (organization “failed to identify any of its members, much less one who will be injured by the [challenged statute]”); *Ga. Republican Party*, 888 F.3d at 1203-14 (“[Plaintiff organization] has failed to identify at least one member who has or will suffer harm from [the challenged rule] as required to show injury in fact.”).

The Amended Complaint, however, does not identify a single member of either organization, much less one who will be injured by the voter verification process. Instead, it simply alleges that “Florida Rising has identified nearly 150 members” who are currently “unverified” and lists the numbers in each Florida county. Am. Compl. ¶ 27. But listing the number of yet-to-be-verified members and

their home county does nothing to establish who they are, the reason they are unverified, or explain why they have standing – i.e., identify them. Indeed, “unverified” applicants necessarily include those who applied with an *inauthentic* driver license, identification card, or social security number, or *falsely* stated they have no such number. *See* Fla. Stat. § 97.053(6). In other words, being in placed in “unverified” status does not necessarily mean an applicant is otherwise eligible and therefore injured. Thus, identification is necessary and Plaintiffs “fail[] to identify any of [Florida Rising]’s members, much less one who will be injured by the [voter verification process].” *Jacobson*, 974 F.3d at 1249.

But rather than grapple with *Summers*, *Jacobson*, and *Ga. Republican Party*, Plaintiffs reject them simply because they “were decided at later stages of litigation when plaintiffs must provide evidence.” Response at 7. True, but beside the point. Each case reiterates that to establish associational standing, organizations must “make specific allegations establishing that at least one identified member ha[s] suffered or [will] suffer harm.” *Summers*, 555 U.S. at 498; *Ga. Republican Party*, 888 F.3d at 1204. The Secretary is not arguing that Plaintiffs have failed to provide evidence of standing – he is arguing that Plaintiffs have not even made the necessary allegations of plausible standing. Thus, the procedural posture of those cases does not change Plaintiffs’ pleading requirement.

Moreover, *Ga. Republican Party* reviewed a petition challenging an SEC order that approved a regulation wherein the petitioners were required to “prove each element of standing as if they were moving for summary judgment in a district

court.” 888 F.3d at 1201 (citation omitted). But the Eleventh Circuit dismissed the petition for lack of jurisdiction because one of the petitioners “failed to allege that a specific member will be injured by the [challenged] rule, and it certainly offers no evidence to support such an allegation.” *Id.* at 1203. In other words, plaintiffs that “fail[] to allege that a specific member will be injured” cannot establish associational standing. *Id.* That is exactly what is going on here. Thus, Florida Rising lacks associational standing.

C. But even if simply listing the number and home counties of the allegedly harmed members was enough to identify them, Florida Rising would still not have associational standing because it does not plausibly allege that those members “would otherwise have standing to sue in their own right.” *Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000).

The Amended Complaint alleges that Florida Rising’s “nearly 150 members” are “currently in unverified status due to the Exact Match Protocol.” Am. Compl. ¶ 27. But an applicant has not been harmed because the applicant has not completed the verification process. That is because “unverified” applicants – i.e., those whose information on their voter registration applications does not match the information on file with the State – can complete the verification process and register simply by presenting, *or sending a copy of*, their driver license, Florida ID card, or Social Security card to their supervisor of elections. § 97.053(6), Fla. Stat. And this final step does not harm applicants. Rather, it is a safeguard to prevent an actual injury – denying eligible voters the right to vote.

Plaintiffs, however, do not allege any of this information for Florida Rising’s “nearly 150 members.” That means the Court does not know if those members are eligible to vote in Florida, can vote simply by following the statute’s procedures, or if they have encountered any obstacles to verification. Put differently, the Amended Complaint has not plausibly alleged that Florida Rising’s members have actually been injured. Until they do, Florida Rising lacks associational standing.

II. The Amended Complaint’s allegations of spending money on voter registration do not establish organizational standing.

Plaintiffs also insist that Florida Rising Together (FRT) has organizational standing because the voter verification statute “is forcing [FRT] to divert its limited resources to resolve voter-registration problems for Floridians they assist with registering to vote.” Am. Compl. ¶ 20. Wrong again.

A. Plaintiffs again rely on *Browning*. Specifically, they note that the plaintiffs there had standing because they diverted time and resources to respond to the voter verification statute. *Browning*, 522 F.3d at 1165-66. And Plaintiffs insist FRT is in the same position because it “deploy[ed] staff and other resources” to “launch an outreach program designed specifically to contact individuals whose . . . applications have been denied or placed in ‘unverified’ status due to the [voter verification statute].” Am. Compl. ¶ 21.

But, again, *Browning* cannot carry the weight Plaintiffs assign to it. That is because since *Browning* – indeed, since all the Eleventh Circuit cases Plaintiffs cite – the Supreme Court has declared that an organization does not have standing

simply by “divert[ing] its resources in response to a defendant’s actions.” *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 395 (2024). Indeed, the Court explained that its precedents “do[] not support such an expansive theory of standing” because such a theory “would mean that all the organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies.” *Id.* Thus, FRT does not have standing simply because it alleges that it “diverted its resources to assist those denied or delayed access to the voter rolls because of the [voter verification statute].” Am. Compl. ¶ 21.

Instead, *FDA* noted that in *Havens Realty Corp. v. Coleman*, which established diversion of resources standing, a housing counseling organization had standing to bring a Fair Housing Act claim against an owner of apartment complexes because the owner “provided [the organization] false information about apartment availability.” *FDA*, 602 U.S. at 395. In doing so, the Court found the owner “perceptibly impaired [the organization’s] ability to provide counseling and referral services for low- and moderate-income homeseekers.” *Id.* (citation omitted). In other words, the organization had standing not because it spent money in response to the owner’s false information, but because “[the owner]’s actions directly affected and interfered with [its] core business activities.” *Id.*

That is not the case here. The voter verification statute does not interfere with FRT’s core practice of “voter registration, voter education, voter engagement, and election protection programs.” Am. Compl. ¶ 19. Indeed, the statute’s

provisions do not prevent FRT from using a specific method to register voters. Nor does it even regulate *how* they register voters. It simply requires applicants to provide specific information. That does not “directly affect[t] and interfere[e] with [FRT’s] core business activit[y]” of registering voters. *See FDA*, 602 U.S. at 395.

B. Nor could FRT plausibly allege such a significant interruption based on its history of complying with the statute. The Amended Complaint admits that “[f]or many years, [FRT] has assisted voters who are confused about their voter registration status and adversely impacted by the [voter verification statute].” Am. Compl. ¶ 21. In other words, FRT had no problem conducting its voter registration and education programs under the voter verification statute for “many years.” *Id.* And FRT only began allegedly “diverting” its resources to counteract the statute “in light of the magnitude of the [voter verification statute’s] harm.” *Id.*

But if the statute actually “perceptibly impair[ed]” and “directly affect[ed] and interfere[ed] with” FRT’s core voter registration work, surely the group would have quickly began “diverting” resources to counteract its effects. Indeed, that is what happened in the other cases on which Plaintiffs rely. *See, e.g., Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1346 (11th Cir. 2009); *Browning*, 522 F.3d at 1156. Here, however, plaintiffs did nothing for close to 20 years. Their allegations about “diverting” resources show that FRT targeted the statute only because they do not want to comply with it. That is precisely the type of “setback to the organization’s abstract social interests” that does not confer standing. *FDA*, 602 U.S. at 394 (quoting *Havens*, 455 U.S. at 379).

C. Moreover, even putting aside the fact that Plaintiffs cannot show organizational standing under *FDA*, FRT does not allege diversion of resources standing under the cases on which Plaintiffs rely. Indeed, in addition to *Browning*, Plaintiffs' response relies heavily on *Billups*. In both cases, the plaintiffs alleged where they "would divert resources away *from* in order to spend additional resources" on combating the challenged statute. *Jacobson*, 974 F.3d at 1250. In *Browning*, the plaintiffs allegedly deployed resources that "would otherwise be spent on registration drives and election-day education and monitoring" and "helping voters who may need language-translation assistance on election day." 522 F.3d at 1166. Likewise, the plaintiffs in *Billups* alleged that they "divert[ed] volunteers and resources from getting voters to the polls to helping them obtain acceptable photo identification." 554 F.3d at 1350 (cleaned up).

Here, however, the Amended Complaint simply notes that FRT has "deploy[ed] staff and other resources that would otherwise be devoted to the organization's core voter registration, voter education, and get-out-the-vote work.") Am. Compl. ¶ 21. That is not enough, even at the motion to dismiss stage. *See Jacobson*, 974 F.3d at 1250 (finding plaintiffs did not have organizational standing because they did not allege "what activities, if any, might be impaired by [their] decision to allocate 'additional' resources to target districts because of the [challenged statute]").

Dated: March 31, 2026,

Respectfully submitted,

/s/ Ashley E. Davis

ASHLEY E. DAVIS (FBN 48032)

General Counsel

BILAL A. FARUQUI (FBN 15212)

Deputy General Counsel

FLORIDA DEPARTMENT OF STATE

500 South Bronough Street, Suite 100

Tallahassee, Florida 32399

(850) 245-6536

Ashley.Davis@dos.fl.gov

Bilal.Faruqui@dos.fl.gov

/s/ Nicholas J.P. Meros

NICHOLAS J.P. MEROS (FBN 0120270)

AMBER NUNNALLY (FBN 109281)

MARGARET MCCORMICK (FBN 1039517)

SHUTTS & BOWEN LLP

215 South Monroe Street, Suite 804

Tallahassee, Florida 32301

(850) 241-1717

NMeros@shutts.com

ANunnally@shutts.com

MMcCormick@shutts.com

Counsel for Secretary Byrd

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of this motion was served via the Court's CM/ECF system, which provides notice to all parties, on March 31, 2026.

/s/ Nicholas J.P. Meros

Counsel for Secretary Byrd