

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Wisconsin Voters Alliance, et al.

Plaintiffs,

v.

Case No. 1:20-cv-01487-WCG

City of Racine, et al.

Defendants.

**DEFENDANTS' JOINT BRIEF IN OPPOSITION TO PLAINTIFFS'
MOTION FOR TEMPORARY STAY OF BRIEFING**

Defendants City of Racine, City of Milwaukee, City of Kenosha, City of Green Bay, and City of Madison (“Cities”), respectfully submit this Brief in Opposition to Plaintiffs’ Motion for Temporary Stay of Briefing. Although Plaintiffs filed an Amended Complaint, nothing therein cures the deficiencies outlined in the Cities’ Motion to Dismiss pursuant to Federal Rule 12(b)(1) and the memorandum filed in support thereof. Accordingly, the Cities’ Motion to Dismiss is not moot, and the Cities therefore request that the Court deny Plaintiffs’ motion for a temporary stay of briefing, order Plaintiffs to respond to the Cities’ Rule 12(b)(1) motion, and permit the Cities to file a reply in due course. The Cities reserve their right to file a motion to dismiss the Amended Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b), including, but not limited to, failure to state a claim upon which relief can be granted and failure to join a party under Rule 19.

ARGUMENT

Although Plaintiffs have asserted new legal theories in the Amended Complaint, the allegations therein do not cure the standing-related deficiencies identified in Defendants’ initial

motion. Defendants therefore reassert their original arguments in support of their Motion to Dismiss pursuant to Rule 12(b)(1). *See Patton Elec. Co., Inc. v. Rampart Air, Inc.*, 777 F. Supp. 704, 712-13 (N.D. Ind. 1991) (finding that motions to dismiss, which were directed at the original complaint, were sufficient to defend against an amended complaint where the original and amended complaint suffered from the same deficiencies); 6 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1476 (2d ed. 2009) (“Defendants should not be required to file a new motion to dismiss simply because an amended pleading was introduced while their motion was pending. If some of the defects raised in the original motion remain in the new pleading, the court simply may consider the motion as being addressed to the amended pleading”) (collecting cases). The remainder of this brief will summarize the ways in which Plaintiffs’ Amended Complaint suffers from the same Article III standing deficiencies the Cities identified in the original complaint. *See* ECF 24 at 1-6.

A. Injury in Fact

In the Amended Complaint, as in the original, Plaintiffs allege a generalized grievance that does not constitute actionable injuries in fact under Article III. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157-58 (2014); *see* ECF 24 at 2-4. Plaintiffs allege that they are harmed by the Cities’ acceptance of election administration grants from the Center for Tech and Civic Life (“CTCL”) because such acceptance “interferes with the integrity” of the election process. Am. Compl. ¶ 119. Such a nebulous theory of injury to the administrative structure of elections is not cognizable as an injury in fact for Article III purposes. To the contrary, Plaintiffs’ alleged harms are “precisely the kind of undifferentiated, generalized grievance about the conduct of government that [courts] have refused to countenance.” *Lance v. Coffman*, 549 U.S. 437, 442 (2007) (Plaintiff-

voters had “no particularized injury” because “[t]he only injury [they] allege is that the law—specifically the Elections Clause—has not been followed.”).

Indeed, several courts have recently concluded that nearly identical cases also suffered from standing defects. Judge Brann in Pennsylvania held that “any right to political representation would be one ‘held in common by all members’ of the county,” such that the alleged “injury is not sufficiently particularized” to confer standing. *Pennsylvania Voters Alliance v. Centre Cty.*, No. 20 Civ. 1761 (M.D. Pa. Oct. 21, 2020). In Texas, Judge Mazzant held that “[m]erely alleging that the grants may influence the election result . . . is not an injury-in-fact.” *Texas Voters Alliance v. Dallas Cty.*, No. 20 Civ. 775 (E.D. Tex. Oct. 20, 2020). Additionally, Judge Davis in Minnesota concluded that a similar argument about plaintiffs’ “interest in their collective representation in government” presented an “undifferentiated, generalized grievance” that failed to establish Article III standing. *Minnesota Voters Alliance v. City of Minneapolis*, No. 20 Civ. 2049 (D. Minn. Oct. 16, 2020). In the same way, here, Plaintiffs’ alleged injury—to wit, the impairment of the integrity of the electoral process as a result of the Cities’ acceptance of CTCL grants—is a harm that could be asserted by any voter in the State of Wisconsin. It is therefore not “sufficiently particularized” to constitute an injury in fact, and Plaintiffs therefore fail to satisfy the first standing requirement.

Similarly, Plaintiffs’ new allegations that the Cities’ receipt of CTCL’s grants impairs Plaintiffs’ “fundamental right to vote” does not establish an injury in fact under Article III. *See, e.g.*, ¶¶104, 181. The Cities have utilized the grant funds to make it easier and safer for *everyone* to vote in the middle of a pandemic. *See* ECF 27 at 2 (noting the Cities’ expenditures of CTCL funds to safely conduct the election in the midst of the COVID-19 pandemic). Indeed, as Judge Mazzant reasoned, “it is a mystery how the expansion of voting opportunities burdens anyone’s right to vote.” *Texas Voters Alliance*, No. 20 Civ. 775 (internal quotes and citation omitted).

Plaintiffs do not allege any “facts showing disadvantage of themselves as individuals” with respect to voting. *Gill v. Whitford*, 136 S. Ct. 1916, 1931 (2018) (citations omitted); *see also* ECF 24 at 2-4. Correspondingly, they have not alleged any injury in fact related to their right to vote that is sufficient to confer Article III standing upon them.

B. Causal Connection

The Amended Complaint likewise does not cure Plaintiffs’ deficiencies with respect to the second element of Article III standing: a causal connection between the Cities’ acceptance of CTCL grant funds and Plaintiffs’ alleged harm. *See* ECF 24 at 4-5. Plaintiffs hypothesize that a “congressional house” might invalidate elections and “refuse[] to seat the representative” because the Cities received CTCL grants. Am. Compl. ¶¶ 127, 223. Such an allegation of harm cannot satisfy the second prong of the standing analysis because it is purely “conjectural,” rather than “certainly impending.” *See Susan B. Anthony List*, 573 U.S. at 158 (citations omitted).

Examining similar claims in the Pennsylvania case, Judge Brann held that Plaintiffs’ theory—“that a party will challenge the election if this Court does not grant [p]laintiffs’ motion and that challenge will result in the invalidation of the election results”—relied on a “highly attenuated causal chain of events” and was “too speculative and not sufficiently imminent to support standing.” *Pennsylvania Voters Alliance*, No. 20 Civ. 2761. Judge Mazzant also found a similar theory to “include many ‘what ifs’” and thus to be facially deficient. *Texas Voters Alliance*, No. 20 Civ. 775. This claim was “so speculative,” he emphasized, that the plaintiffs before him “could only characterize this series of unfortunate events as ‘possible.’”

Not only is Plaintiffs’ claimed election-invalidation injury speculative and conjectural, the Cities cannot find any basis in law or history to support Plaintiffs’ assertions that a municipality’s receipt of private funding for neutral, generally-applicable election administration affords any

basis to doubt the integrity or outcome of the election. Plaintiffs here and in cases around the country have not offered a plausible argument to support their position. Indeed, although Plaintiffs here and similarly situated plaintiffs in other jurisdictions have raised the specter of election invalidation, Plaintiffs have not persuaded a single court to uphold their position. *See, e.g., Pennsylvania Voters Alliance*, No. 20 Civ. 1761; *Texas Voters Alliance v. Dallas Cty.*, No. 20 Civ. 775; *Minnesota Voters Alliance*, No. 20 Civ. 2049.

CONCLUSION

The Amended Complaint thus presents no need for a stay of briefing. The Cities respectfully request that the Court deny Plaintiffs' motion, order Plaintiffs to respond to the Cities' 12(b)(1) motion, and permit the Cities to file a reply in due course.

Dated at Green Bay, Wisconsin, this 2nd day of November, 2020.

s/ Lindsay J. Mather

Vanessa R. Chavez (State Bar No. 1103015)

Lindsay J. Mather (State Bar No. 1086849)

Attorneys for Defendant, City of Green Bay

CITY OF GREEN BAY

100 N. Jefferson Street, Room 200

Green Bay, WI 54301

Telephone: (920) 448-3080

Facsimile: (920) 448-3081

Vanessa.Chavez@greenbaywi.gov

Lindsay.Mather@greenbaywi.gov

s/ Bryan A. Charbogian

Bryan A. Charbogian (State Bar No. 1113801)

Edward R. Antaramian (State Bar No. 1019160)

Christine M. Genthner (State Bar No. 1000608)

Attorneys for Defendant, City of Kenosha

CITY OF KENOSHA

Kenosha City Attorney's Office

625 52nd Street

Kenosha, WI 53140-3480

Telephone: (262) 653-4170
Facsimile: (262) 925-5933
eataramian@kenosha.org
cgenthner@kenosha.org
bcharbogian@kenosha.org

s/ Michael R. Haas

Michael R. Haas (State Bar No. 1020889)
Patricia A. Lauten (State Bar No. 1030520)
Steven C. Brist (State Bar No. 1005479)
Attorneys for Defendant, City of Madison
CITY OF MADISON
Office of the City Attorney
City-County Building, Room 401
210 Martin Luther King, Jr. Boulevard
Madison, WI 53703-3345
Telephone: (608) 266-4511
Facsimile: (608) 267-8715
mhaas@cityofmadison.com
plauten@cityofmadison.com
sbrist@cityofmadison.com

s/ Scott R. Letteney

Scott R. Letteney (State Bar No. 1000559)
Attorney for Defendant, City of Racine
CITY OF RACINE
730 Washington Avenue, Room 201
Racine, WI 53403
Telephone: (262) 636-9115
Facsimile: (262) 636-9570
scott.letteney@cityofracine.org

s/ Kathryn Z. Block

Kathryn Z. Block (State Bar No. 1029749)
James M. Carroll (State Bar No. 1068910)
Attorneys for Defendant, City of Milwaukee
CITY OF MILWAUKEE
Milwaukee City Attorney's Office
200 E. Wells Street, Room 800
Milwaukee, WI 53202-3515
Telephone: (414) 286-2601
Facsimile: (414) 286-8550
kblock@milwaukee.gov
jmcarr@milwaukee.gov