IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
CENTRAL DIVISION

ARKANSAS STATE CONFERENCE NAACP *et al.* **PLAINTIFFS**

v. **Case No.: 4:21-cv-01239-LPR**

THE ARKANSAS BOARD OF APPORTIONMENT *et al.* **DEFENDANTS**

ORDER

The Court has an independent obligation to ensure it has jurisdiction over this case.[1] That obligation includes analyzing whether Plaintiffs have standing to bring this suit.[2] There are no actual voters named as Plaintiffs here. The only Plaintiffs currently in this case are non-profit membership organizations. They say they are bringing suit on behalf of their members. These membership organizations are attempting to proceed under a doctrine known as "associational standing." Associational standing allows an organization to bring suit on behalf of its members when: (1) that organization's members would "have standing to sue in their own right"; (2) the "interests" that the lawsuit "seeks to protect are germane to the organization's purpose"; and (3) "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."[3]

The Court's concern focuses on the first prong of the test. Plaintiffs' Complaint states that they have "members who are African-American registered voters *in each of the areas* where the

[1] *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011) ("[F]ederal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction . . . .").

[2] *Miller v. Redwood Toxicology Lab., Inc.*, 688 F.3d 928, 934 (8th Cir. 2012) ("Article III standing must be decided first by the court and presents a question of justiciability; if it is lacking, a federal court has no subject-matter jurisdiction over the claim.")

[3] *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977).

plaintiffs allege that vote dilution is occurring. These members are irreparably harmed by living and voting in districts whose boundaries dilute Black voting strength."[4] This language—especially the phrase "each of these areas"—is vague and general. Plaintiffs at no point expressly identify the particular districts in which these members live. That is a potential problem because, as I currently understand the precedent, the Supreme Court has been clear that redistricting lawsuits must proceed district-by-district.[5] Accordingly, to have constitutional standing to bring a vote-dilution claim, an individual plaintiff (or in this case, a member of an organization) must live in a district that is allegedly "packed" or "cracked."[6]

In *Alabama Legislative Black Caucus v. Alabama*, Justice Breyer, writing for the Supreme Court, recognized that, in some circumstances, "elementary principles of procedural fairness" may require a district court to give a membership organization "an opportunity to provide evidence of member residence."[7] Given that we are in the very early stages of the case at bar, and that there is a pending preliminary injunction motion, the fairest way to proceed is to give each Plaintiff an opportunity to alleviate the Court's concern by supplementing its vague standing allegations with a more detailed affidavit or declaration.

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[4] Compl. (Doc. 1) ¶¶ 3–4 (emphasis added).

[5] *See Gill v. Whitford*, 138 S.Ct. 1916, 1930 (2018) ("To the extent the plaintiffs' alleged harm is the dilution of their votes, that injury is district specific. . . . The boundaries of the district, and the composition of its voters, determine whether and to what extent a particular voter is packed or cracked. This disadvantage to the voter as an individual, therefore results from the boundaries of the particular district in which he resides.") (cleaned up); *see also Ala. Legislative Black Caucus v. Alabama*, 575 U.S. 254, 262–63 (2015) (racial gerrymandering claims must proceed "district-by-district").

[6] *Gill*, 138 S.Ct. at 1930–31. *Gill* was a partisan gerrymandering case. The Court reached its conclusion by relying on racial gerrymandering cases such as *United States v. Hays*, 515 U.S. 737 (1995). Many lower courts have applied the reasoning of *Hays* and *Gill* to determine whether a plaintiff has standing to pursue a Section 2 vote-dilution claim. *See Larry v. Arkansas*, No. 4:18-cv-00116-KGB, 2018 WL 4858956, at *5–8 (E.D. Ark. Aug. 3, 2018) (collecting cases).

[7] 575 U.S. at 270–71.

The Court therefore directs each Plaintiff to file an affidavit or declaration under penalty of perjury that: (1) separately identifies each district of the 2021 Arkansas House of Representatives reapportionment map that Plaintiffs claim is "packed" or "cracked"; and (2) for each such district, provides a statement that informs the Court whether the Plaintiff has as a member of its organization an "African-American registered voter"[8] who lives in the district.[9] The affidavits or declarations must be filed on or before Friday, January 14, 2022.

IT IS SO ORDERED this 10th day of January 2022.

LEE P. RUDOFSKY
UNITED STATES DISTRICT JUDGE

[8] It may be that this category is narrower than standing doctrine requires. The Court's focus on African-American registered voters reflects Plaintiffs' use of this category in their Complaint. *See* Compl. (Doc. 1) ¶¶ 3–4.

[9] To be clear, the Court is not requesting the names or addresses of any of Plaintiffs' members.