

STATE OF MICHIGAN
COURT OF CLAIMS

DAN RYAN, PAUL DISCOLL, JOELLEN M.
PISARCZYK, and MYRON ZOLKEWSKY,

OPINION AND ORDER

Plaintiffs,

v

Case No. 20-000198-MZ

JOCELYN BENSON, in her official capacity as
Secretary of State,

Hon. Thomas C. Cameron

Defendant.

_____ /

Pending before the Court is defendant Secretary of State Jocelyn Benson's December 17, 2021 motion for summary disposition filed under MCR 2.116(C)(8) and (C)(10). Because plaintiffs lack standing, defendant's motion is GRANTED under MCR 2.116(C)(10).

I. BACKGROUND

Plaintiffs allege in their first amended complaint that they are registered voters who live in Oakland, Macomb, and/or Livingston Counties who voted in the November 3, 2020 general election. The first amended complaint contains various allegations about the Center for Technology and Civic Life (CTCL) and how CTCL and its primary donors sought to influence the 2020 general election results by making funds available to local election jurisdictions in a targeted fashion. The funds made available by the CTCL are the focus of the complaint; more specifically, the complaint alleges that defendant should have taken action in response to local election officials' receipt of funds made available by the CTCL. According to ¶ 13 of the first amended complaint,

plaintiffs contend that this state’s “voters have suffered an irreparable constitutional injury as a result of Secretary Benson’s failure to supervise and regulate the conduct of the 2020 general election” as required by law. In particular, ¶ 13 continues, defendant “failed to prevent public election officials in selected jurisdictions . . . from accepting financial backing from private interests and conducting the election under the direction of those private parties.” According to plaintiffs, this state’s election laws do not permit local election officials in “favored jurisdictions” to receive funding from private donors.

The amended complaint alleges that the CTCL “paid millions of dollars to Michigan election authorities in predominantly urban and Democrat jurisdictions.” Paragraph 32 of the complaint asserts that the donated funds were used to cover expenses incurred by local election offices during the time period of June 15, 2020, through December 21, 2020, and that the CTCL funds could be used to cover expenses such as expanded voter education and outreach as well as support for “Early In-Person Voting and Vote by Mail.” Local election officials who received funds were allegedly required to submit reports to the CTCL that explained how funds were spent.

Plaintiffs do not allege that defendant received funding from the CTCL; rather, they allege that she failed to prevent local election officials from accepting funds offered by the CTCL. Count I of the amended complaint alleges that defendant’s failure to prevent local election officials from accepting private funds in “targeted” jurisdictions violates the Equal Protection Clause of the Michigan Constitution. Plaintiffs assert that these targeted funding decisions amounted to a government scheme designed to “get-out-the-vote” for a favored demographic group. They allege that defendant violated their rights to equal protection by permitting officials to accept and spend private money intended to favor one group of voters over another group. Plaintiffs contend that defendant should have instructed local election officials to refuse private funds.

Count II of the amended complaint alleges that defendant violated Const 1963, art 2, § 4, which states that the Legislature shall enact laws to preserve the purity of elections. According to plaintiffs, art 2, § 4 is violated when local election officials favor one group of voters over another. Plaintiffs allege in ¶ 59 that they “are from precincts that did not have the benefit of private funding for the 2020 general election, but instead relied on state and local budgets providing taxpayer funds to pay for the cost of conducting the election.” The complaint faults defendant for allowing local election officials in purportedly Democratic-leaning jurisdictions to accept and spend private funds offered by the CTCL. Plaintiffs assert that defendant’s decision to “allow” such conduct diminished their voting rights and violated art 2, § 4.

Count III asserts a violation of Const 1963 art 7, § 26 and of art 9, § 18, because, according to plaintiffs, “[s]pending public funds for a private purpose in Michigan is illegal.” Plaintiffs assert that, once funds are received by a public official, they are “public” and they are subject to constitutional restrictions placed on the expenditure of public funds. In this case, plaintiffs allege that local officials who received funds from the CTCL were not permitted to spend the funds on the terms and conditions dictated by the CTCL. And, insofar as defendant is concerned, plaintiffs contend that defendant violated her duty to supervise the conduct of this state’s elections by allowing and encouraging election officials to accept and spend CTCL funds.

Count IV alleges that defendant ran afoul of this state’s election laws by allowing the “illegal acquisition” of ballot containers. Paragraph 70 of the complaint asserts that MCL 168.669 requires the use of public funds for purchasing “approved ballot containers” for use in a particular election precinct. According to plaintiffs, because state law requires the use of public funds for ballot containers, buying such containers with private funds is illegal. It was up to defendant,

allege plaintiffs, to prohibit local election officials from using funds to purchase ballot containers and other election supplies.

Count V of the amended complaint alleges that defendant violated this state's election laws by allowing and even encouraging the use of "unapproved, insecure, unmonitored drop boxes" for ballots. Plaintiffs assert defendant did not approve the ballot containers purchased with CTCL funds and therefore their acquisition and use were illegal under MCL 168.24j and MCL 168.665. According to plaintiffs, defendant improperly allowed the use of illegal, unapproved ballot containers, and thereby breached her duties to issue instructions for the conduct of elections.

In their prayer for relief, plaintiffs ask the Court to declare that defendant violated this state's Constitution by allowing the use of private funds in select jurisdictions. They also ask the Court to declare that defendant violated MCL 168.31 by allowing election officials to engage in conduct that violates the Constitution. Plaintiffs ask the Court to enjoin defendant from allowing local officials to accept funds or direction from the CTCL or any private party.

II. ANALYSIS

Defendant moved for summary disposition under MCR 2.116(C)(8) and (C)(10). Defendant's argument under subrule (C)(10) asserts that plaintiffs lack standing to bring their claims, based on circumstances that have come to light following the filing of the amended complaint. See *Le Gassick v Univ of Mich Regents*, 330 Mich App 487, 494 n 2; 948 NW2d 452 (2019) (noting that a "motion for summary disposition premised on the doctrine of standing as a defense may be pursued pursuant to MCR 2.116(C)(8) or MCR 2.116(C)(10) contingent upon the pleadings or other circumstances of the particular case"). The Court will first turn to that argument,

because if plaintiffs lack standing, there is no need to address the remaining arguments presented in the motion for summary disposition.

Defendant argues that plaintiffs lack standing to bring this action and that declaratory relief is unnecessary to guide plaintiffs' conduct or to preserve their legal rights. Defendant points out that plaintiffs' discovery responses reveal that plaintiffs live in jurisdictions that also received CTCL funds. According to defendant, this means that plaintiffs have not been injured and instead benefited from the very grants they have challenged.

In response, plaintiffs note the October 16, 2020 opinion and order issued by predecessor Judge Christopher M. Murray in regard to plaintiffs' emergency motion for declaratory judgment. Pages 4-5 of that opinion stated that, "because plaintiffs have a cause of action for a violation of the equal protection clause, and their rights could be substantially and detrimentally affected differently than others within the general public, they have standing to bring these claims." In a footnote included within the passage quoted in the preceding sentence, Judge Murray noted that plaintiffs at that time had alleged that the counties in which they resided "have not had access to the grant monies that other counties have," and thus, at the time and under those circumstances, plaintiffs satisfied the standards for establishing standing.

At the outset, the Court rejects the notion that the question of standing has been settled or that it cannot otherwise be revisited. For one, a trial court may revisit its prior decisions while the proceedings remain pending before it. See *Hill v City of Warren*, 276 Mich App 299, 306-307; 740 NW2d 706 (2007). Additionally, the statement from the prior decision reads more like an assumption that plaintiffs had standing at that time—as evidenced by the qualifying footnote—rather than a determination that plaintiffs had standing. And as discussed below, the facts assumed

in the footnote—that the jurisdictions in which plaintiffs lived did not have access to the same funds like other jurisdictions had—were before plaintiffs’ admissions in their discovery responses. As a result, the question of plaintiffs’ standing is properly before this Court.

As it concerns the issue of standing, the Supreme Court explained in *Lansing Schs Ed Ass’n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010), that a litigant has standing whenever a cause of action has been provided by law. A litigant may also have standing if he or she meets the requirements of MCR 2.605 for obtaining declaratory relief, or “if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.” *Id.* Here, there is no argument about whether a cause of action has been expressly provided by law—there has not been. Rather, the primary arguments are whether plaintiffs satisfy the requirements of MCR 2.605, or whether they have a special injury or right that will be detrimentally affected in a manner different from the citizenry at large.

With respect to the requirements for obtaining declaratory relief, MCR 2.605(A)(1) specifies that the plaintiff must establish the existence of a “case of actual controversy.” “An actual controversy exists when a declaratory judgment is needed to guide a party’s future conduct in order to preserve that party’s legal rights.” *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 586; 957 NW2d 731 (2020). The Court agrees with defendant that the allegations fail to show the existence of a present legal controversy that necessitates declaratory relief. Simply put, “[a] declaratory judgment is not *needed* to guide plaintiffs’ future conduct.” *Id.* Plaintiffs have not explained what they would do differently, nor have they specified how their future conduct requires guidance from the Court. See *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012) (“An ‘actual controversy’ under MCR 2.605(A)(1)

exists when a declaratory judgment is necessary *to guide a plaintiff's future conduct in order to preserve legal rights*") (emphasis added). At most, and for the sake of argument, a decision from the Court on the allegations pleaded in the complaint might change how defendant exercises her supervisory authority under certain statutes, but there are no assertions or allegations about how a decision from the Court would guide plaintiffs' future conduct in order to preserve plaintiffs' legal rights. Thus, declaratory relief is not available in this case.

Moreover, while a decision from the Court could in theory direct defendant's conduct, the Court agrees with defendant that plaintiffs have not shown that they are the proper parties to pursue the allegations made in amended complaint. See *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees v Pontiac No 2*, 309 Mich App 611, 620; 873 NW2d 783 (2015) (explaining that a motion for summary disposition "asserting as its basis the doctrine of standing invokes a prudential doctrine that focuses on whether a litigant is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable") (citation and quotation marks omitted). To that end, plaintiffs fail to allege or establish a harm or injury that is different from the citizenry at large. Notably, it appears to be undisputed at this time that no counties or jurisdictions—in particular, the jurisdictions in which plaintiffs reside—were denied access to the funds at issue. This undermines plaintiffs' assertion of standing with respect to the constitutional violations they have alleged. In other words, without the targeted access to funds that was once alleged, plaintiffs fail to state an injury that is different from that of the citizenry at large. And in all other respects, the complaint contains allegations that are not unique to plaintiffs or that are not otherwise distinguishable from any concerns that might be held by the public at large. An interest "in the proper enforcement of a statute has never been thought sufficient to confer standing," *Tuscola Area Airport Zoning Bd of Appeals v Mich Aeronautics Comm*, __ Mich

App __, __; __ NW2d __ (2022) (Docket Nos. 357209; 357210), slip op at 6, and that is essentially all that plaintiffs have alleged in this case. Plaintiffs therefore lack standing.

Before concluding on the issue of standing, the Court notes that the Supreme Court in *League of Women Voters of Mich*, 506 Mich at 587, remarked that “the bar for standing is lower when a case concerns election law.” “For this reason,” the Court continued, “we have found that ordinary citizens have standing to enforce the law in election cases.” *Id.* (citation and quotation marks omitted). However, that is not to say that any citizen can bring an action at any time by merely raising constitutional questions in the context of this state’s election laws. *Id.* Indeed, there must still be “a present legal controversy.” *Id.* at 588. For instance, in *League of Women Voters*, the Supreme Court cited an example from a case where the plaintiffs claimed that a candidate should be placed on the upcoming ballot, as well as an example from a case where it was alleged that a special election must be held. *Id.*, citing *Deleeuw v State Bd of Canvassers*, 263 Mich App 497; 688 NW2d 847 (2004); *Helkamp v Livonia City Council*, 160 Mich App 442; 408 NW2d 470 (1987). Here, plaintiffs have not met the lower bar. There is no present controversy concerning plaintiffs’ claims, and the concerns that militate in favor of a lowered bar for standing in certain election cases are not present in this case. See *id.* at 583 n 27 (“A live controversy is not presented by the speculative difficulties potentially arising from a party’s possible intent to someday do something.”). To that end, the allegations in the complaint no longer concern a looming election and they sound far more hypothetical or anticipated than they do concrete or immediate. In addition, and for the reasons noted above, there is nothing in the complaint

suggesting that plaintiffs are requesting guidance for their future conduct. As a result, plaintiffs cannot meet the lower bar for standing that exists in certain election cases. See *id.* at 587-588.¹

Moreover, plaintiffs' lack of standing is related to another point: the nature and extent of the relief requested in the amended complaint demonstrate that this matter is, in large part, moot.

A case is moot when it:

seeks to get a judgment on a pretended controversy, when in reality there is none, or a decision in advance about a right before it has been actually asserted and contested, or a judgment upon some matter which, when rendered, for any reason, cannot have any practical legal effect upon a then existing controversy. [*League of Women Voters*, 506 Mich at 580 (citation and quotation marks omitted).]

Here, plaintiffs' vote dilution claims have been rendered moot, as noted above, by the notion that the funds were available to all jurisdictions that sought them. In addition, the complained-of conduct occurred nearly 18 months ago and the Court declines to comment on stale conduct at this time.² Further, plaintiffs' requests for forward-looking relief and to ban the receipt of private funds in the future is merely anticipated and hypothetical at this time. Not only is it unclear whether private funds will be offered to local election officials again, but it would require this Court to engage in pure speculation concerning the manner in which such funds might be offered and whether such a hypothetical offering might somehow be impermissible. The Court will not engage

¹ As a final note on standing, plaintiffs' responsive briefing makes a fleeting reference to the concept of "taxpayer standing." The complaint makes no mention of this idea. And in any event, plaintiffs' inability to demonstrate or allege an injury that is distinct from that suffered by the public at large is sufficient for the Court to conclude that this appeal to "taxpayer standing" is without merit. See *Groves v Dep't of Corrections*, 295 Mich App 1, 5; 811 NW2d 563 (2011).

² For instance, would plaintiffs have this Court order the removal of certain ballot boxes—assuming they are still standing—or order that the funds be returned to the private donors from whom they came? It is not entirely apparent what plaintiffs are even seeking at this time, aside from a declaration that, as noted above, does not involve a live controversy at the moment.

in a hypothetical discussion that sometime in the future local election officials will accept private funding in some yet-to-be-determined way.

III. CONCLUSION

IT IS HEREBY ORDERED that defendant's motion for summary disposition is GRANTED because plaintiffs lack standing.

This is a final order that resolves the last pending claim and closes the case.

March 14, 2022



Thomas C. Cameron
Judge, Court of Claims