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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

MONICA MOYER; ROBERT A. GLEASON, JR.;	:	CIVIL ACTION – EQUITY
JOYCE HAAS; ADRIENNE MITFORD; JOSEPH B.	:	
MAGUIRE; W. CRAIG WILLIAMS; and the	:	Election Matter
REPUBLICAN PARTY OF PENNSYLVANIA,	:	
	:	
Plaintiffs,	:	NO. 497 MD 2008
	:	
v.	:	
	:	
PEDRO A. CORTES, Secretary of the Commonwealth;	:	
ASSOCIATION OF COMMUNITY ORGANIZATIONS	:	
FOR REFORM NOW (ACORN); PHILADELPHIA	:	
ACORN; ALLEGHENY COUNTY ACORN; ERIE	:	
COUNTY ACORN; HARRISBURG ACORN; LEHIGH	:	
VALLEY ACORN; SOUTHEASTERN PA ACORN;	:	
PROJECT VOTE /VOTING FOR AMERICA, INC.;	:	
CITIZENS SERVICES, INC.; and ALL OTHER ACORN	:	
AFFILIATES AND SUBSIDIARIES OPERATING IN	:	
PENNSYLVANIA, the identity of which are currently	:	
unknown,	:	
	:	
Defendants.	:	

**SUPPLEMENTAL BRIEF IN SUPPORT OF PLAINTIFFS’ MOTION
FOR SPECIAL, PRELIMINARY AND PERMANENT INJUNCTION**

COMES NOW, five Pennsylvania electors, one candidate, and the Republican Party of Pennsylvania (“Plaintiff”) and files this Supplementary Brief in Support of Plaintiffs’ Motion for Special, Preliminary and Permanent Injunction against the Association of Community Organizations for Reform Now (“ACORN”) and the Secretary of the Commonwealth (“Secretary”).

ARGUMENT

In its Answer, Defendant ACORN argues that Plaintiffs do not have standing to bring this suit because any claim for relief resulting from the fraud alleged by Plaintiffs would lie exclusively with the Commonwealth of Pennsylvania and the federal government. This argument finds no support in either the law or the facts.

The “purpose of the requirement of standing is to protect against improper plaintiffs.” *Application of Biester v. Thornburgh*, 487 Pa. 438, 442-43, 409 A.2d 848, 851 (1979). In practical terms, a plaintiff presents the court with a legitimate controversy if it can allege facts establishing it has somehow been “aggrieved” by the matter he seeks to challenge. *In re Hickson*, 573 Pa. 127, 135, 821 A.2d 1238, 1243 (2003); *Indep. State Store Union v. Pa. Liquor Control Bd.*, 495 Pa. 145, 432 A.2d 1375 (1981). In turn, to be an “aggrieved party,” a litigant must allege that it has “a substantial, direct, and immediate interest in the outcome of the litigation.” *Id.*; *Commonwealth v. J.H.*, 563 Pa. 248, 759 A.2d 1269, 1271 (2000); *Oliviero v. Diven*, 908 A.2d 933, 935 (Pa. Commw. Ct. 2006).

Plaintiffs Have a Substantial Interest

A substantial interest is one that surpasses the common interest of all citizens in procuring obedience to the law. *Pittsburgh Palisades Park, L.L.C. v. Commonwealth*, 585 Pa. 196, 888 A.2d 655, 660 (2005); *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269, 281 (1975). Courts in this Commonwealth have recognized the substantial interest that voters have in ensuring the legitimacy of the election process. Most notably, the Supreme Court of Pennsylvania has determined that a voter's interest in having their vote properly counted and weighted is substantial and therefore sufficient to confer standing. *Wm. Penn Parking Garage*, 464 Pa. at 193, 346 A.2d at 281 (citing, *inter alia*, *Baker v. Carr*, 369 U.S. 186, (1962) (finding standing to challenge action where the value of a vote was subject to dilution); *see also United States v. Saylor*, 322 U.S. 385, 387-88 (1944) (recognizing a voter's interest in having their vote counted at full value without dilution or discount). In addition, where the plaintiffs, as registered voters, assert an interest in "protect[ing] the integrity of the election process," courts have deemed this interest substantial for purposes of finding standing. *Oliviero*, 908 A.2d at 937 (Pa. Commw. Ct. 2006) (concluding that voters' interest surpassed "the common interest of all citizens in procuring obedience to the law" where they challenged the Secretary of State's certification of a political candidate).

In a case strikingly similar to the instant matter, the Commonwealth Court found that electors had a substantial interest, and therefore standing, in their challenge of the Secretary's use of electronic voting machines where electors asserted in their complaint that the machines were "not reliable or secure" and therefore compromised the election process. *Banfield v. Cortes*, 922 A.2d 36, 44 (Pa. Commw. Ct. 2007). Likewise, Plaintiffs here have sufficiently alleged that both the actions and inaction on the part of the Secretary have created a system without checks and balances that threatens to call into question the legality of the General Election.

Courts have also concluded that political parties may have a substantial interest in the election process as long as a few preconditions are satisfied. As a preliminary matter, it is well-established that an unincorporated association has standing, “even in the absence of injury to the association itself,” as long as one of its members alleges that they suffered a substantial, direct, and immediate injury. *Lincoln Party v. General Assembly*, 682 A.2d 1326, 1330 ((Pa. Commw. Ct. 1996). In *Lincoln Party*, the court determined that the political party plaintiff did not have standing because its petition for review “was devoid of any averment” that would establish it had standing and instead included only a general allegation with regard to the harm it would suffer if its requested relief was not granted. *Id.* (asserting as its interest the “God-given right” to be free of governmental abuse in criminal prosecutions, namely the right to cross-examine witnesses). In stark contrast, Plaintiffs have alleged with acute particularity the precise harms it will suffer if ACORN’s fraudulent activities and the Secretary’s failure to abide by its duties under state and federal election law are not enjoined.

In addition, a political party has standing to maintain an action when the Election Code specifically affords the party such standing. For example, the Democratic State Committee was found to have standing, pursuant to Section 310 of the Election Code, to pursue its challenge of the Elections Board’s handling of third-party absentee ballots where a provision of the Code granted the party those specific rights. *In re Canvass of Absentee Ballots of November 4, 2003 General Election*, 839 A.2d 451, 462 (Pa. Commw. Ct. 2003) (citing Section 310 of the Election Code), *rev’d on other grounds*, 577 Pa. 231, 843 A.2d 1223 (2004). In addition to Section 310, 25 Pa. Stat. 3050 also explicitly provides a political party, including Plaintiffs here, with the right to enforce the rules associated with the challenging of provisional ballots and the method through

which such a challenge is conducted. *See* 25 Pa. Stat. 3050(a.4)(4)-(5)(iii). The Republican Party of Pennsylvania thus has standing to pursue its claims in this case.¹

Plaintiffs Interest Is Direct

To satisfy the second prong of the standing analysis, a plaintiff must allege that they have a “direct” interest, which requires a showing that the matter complained of caused harm to the party's interest. *Banfield*, 922 A.2d at 44. Although there “are no simple rules for determining precisely how close a causal connection between the conduct complained of and the injury to challenger” is to confer standing, *Wm. Penn Parking Garage*, 346 A.2d at 287, recent decisions by the courts of this Commonwealth have provided the necessary guidance. For instance, electors were found to have a direct interest where they asserted that deficiencies in the election process created a situation where it was unknown whether their votes were going to be counted and weighted appropriately. *Id.*

Here, the causal connection between both ACORN’s fraudulent actions and the Secretary’s inaction to the injury Plaintiffs would suffer is sufficiently close to afford Plaintiffs standing. As explained in Plaintiffs’ Original Brief, ACORN has flooded local election offices with fraudulent voter registrations, placing an undue burden on these officials and their ability to properly excise such registrations from the voter rolls. Despite these well-documented fraudulent activities, the Secretary has nevertheless failed to use legally-required tools to detect and deter fraud. For instance, state law requires local officials to require identification from first-time voters. Were there to be inconsistent enforcement of this legal requirement, this would constitute a failure that certainly causes direct harm to Plaintiffs.

¹ Plaintiff Craig Williams is the endorsed Republican candidate for the office of U.S. Representative for the 7th Congressional District of Pennsylvania. As a candidate Williams has standing to bring this lawsuit because Defendants’ actions could place him in jeopardy of losing the election. *See In re General Election-1985*, 109

Moreover, the Secretary has failed to properly notify absentee voters about the identification requirement, as neither the official absentee ballot application nor the absentee ballot instructions direct, notify, or mention that first-time voters have a duty to provide identification. This failure to ensure that any such absentee ballots cast in the General Election are identified and subjected to the proper verification procedures also constitutes a direct injury to Plaintiffs. Finally, the slow and unreliable SURE system, which permits each county to have “instant access” to the registration records, has experienced documented shortcomings, the nature of which directly affects the accuracy and fairness of the General Election. Though the SURE system is designed to prevent the processing of fraudulent or otherwise ineligible registration applications, the failure to identify the fraudulent registrations submitted to date increase the risk that ineligible voters will dilute the votes of Plaintiffs and the Commonwealth’s electors. *Crawford v. Marion County Election Bd.*, 553 U.S. ____ (2008). Accordingly, because of the fraudulent actions on the part of ACORN and in the absence of properly instituted and managed safeguards on the part of the Secretary, Plaintiffs’ interests in the outcome of this litigation have been directly impacted.

Plaintiffs Have an Immediate Interest

An ‘immediate’ interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it.” *Wm. Penn Parking*, 464 Pa. at 191, 346 A.2d at 280. An interest is “immediate” if the causal connection is not remote or speculative. *Pittsburgh Palisades Park*, 888 A.2d at 660. An immediate interest has been found to exist where an elector simply wants to have any future votes properly counted. *Banfield*, 922 A.2d at 44 (“Electors have alleged an immediate interest by asserting that ‘each wants to cast a

Pa.Cmwlt. 604, 607-08, 531 A.2d 836, 838 (Pa. Cmmw. Ct. 1987) (holding that candidate had standing to challenge actions because the actions could have placed candidate in jeopardy of losing).

ballot' in future elections, and 'each wants their future votes . . . to be properly counted and weighted.' Thus Electors have standing." Similarly, the General Election is less than one week away. It is hard to fathom a more immediate interest than that alleged by Plaintiffs in this matter. Moreover, absentee ballots have already been submitted in the General Election. Once an absentee ballot is placed in the mail, a vote has been cast. Not knowing whether illegally cast votes "have been recorded and will be counted gives [Plaintiffs] a direct and immediate interest in the outcome of this litigation." *Banfield*, 922 A.2d at 44 n.7.

Meanwhile, ACORN cites only one case in support of its argument that the relief sought by Plaintiffs is not their own, but rather the legal right or legal interest of a third party. ACORN Answer at 2 (citing *Storino v. Borough of Point Pleasant Beach*, 322 F.3d 293 (3d Cir. 2003)). In *Storino*, the Third Circuit assessed an equal protection challenge based on third party standing in which the plaintiffs in that case conceded they were not members of the class of persons described in the complaint. The holding in *Storino* is wholly inapposite. Plaintiffs here are directly affected by ACORN's fraudulent activities and the Secretary's refusal to follow state and federal election laws. In addition, Plaintiffs are without question members of the class of person described in its Complaint. Moreover, every illegal, invalidly registered vote that is cast as a result of ACORN's actions and the Secretary's inaction dilutes Plaintiffs' valid, properly cast votes. There are no third-party interests at issue here.

CONCLUSION

For these reasons, Plaintiffs respectfully request that this Court grant the requested relief.

Respectfully submitted,

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