

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DAN MCCONCHIE, <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 1:21-CV-3091
)	
v.)	Circuit Judge Michael B. Brennan
)	Chief District Judge Jon E. DeGuilio
CHARLES W. SCHOLZ, <i>et al.</i> ,)	District Judge Robert M. Dow, Jr.
)	
Defendants.)	Three-Judge Court
)	Pursuant to 28 U.S.C. § 2284(a)
)	

**DEFENDANT MEMBERS OF THE ILLINOIS STATE BOARD OF ELECTIONS’
RESPONSE TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

Defendants Charles W. Scholz¹, Ian K. Linnabary, William M. McGuffage, William J. Cadigan, Katherine S. O’Brien, Laura K. Donahue, Cassandra B. Watson, and William R. Haine² (collectively the “Board Members”), in their official capacities as members of the Illinois State Board of Elections, by their attorney, Kwame Raoul, Attorney General of Illinois, in response to Plaintiffs’ Motion for Summary Judgment state as follows:

INTRODUCTION

The Illinois Constitution requires that the Legislative and Representative District maps be redrawn every ten years in the year after each decennial census. ECF No. 51 at ¶¶ 35-36. In May 2021 the Illinois General Assembly enacted a legislative redistricting plan, which was signed into law on June 4, 2021. ECF No. 78 at 2-3. This map was based on American Community Survey (“ACS”) data instead of the decennial census data. *Id.* at 3. Plaintiffs allege that the redistricting

¹ On July 1, 2021, Member Charles W. Scholz was replaced with Rick S. Terven, and Member Katherine S. O’Brien was replaced with Catherine S. McCrory. Because Members Scholz and O’Brien were named in their official capacity, the new members were automatically substituted as the appropriate defendants pursuant to Federal Rule of Civil Procedure 25(d).

² Member Haine passed away on August 16, 2021.

plan signed into law on June 4, 2021 is malapportioned and violates their rights under the equal protection and due process clauses of the Fourteenth Amendment. *See generally* ECF Nos. 51 & 78.

After Plaintiffs filed their motion for summary judgment, the General Assembly reconvened and passed a new map based on the decennial census data. *See* ECF No. 72 at ¶ 1. The parties generally believe that the new map will be signed into law in the coming weeks. *Id.*

Plaintiffs have named the individual members of the Illinois State Board of Elections (“Board Members”) in their official capacities as defendants based on their erroneous belief that the Board Members must be enjoined from holding elections based on the current map. However, as the Board Members explained in their pending motion to dismiss Plaintiffs’ amended complaint and supporting memorandum (ECF Nos. 66 & 67), Plaintiffs’ claims against them are not viable. Plaintiffs lack Article III standing against the individual Board Members and have failed to state any viable claims against the individual Board Members. Further, Plaintiffs are not entitled to any injunctive relief against the Board Members. Because Plaintiffs cannot state any viable claims against the Board Members, they are not entitled to summary judgment and their motion should be denied.

LEGAL STANDARD

A party is entitled to summary judgment “where there are no issues of material fact and the moving party is entitled to judgment as a matter of law.” *See* Fed. R. Civ. P. 56(a); *Boss v. Castro*, 816 F.3d 910, 916 (7th Cir. 2016). This standard places the initial burden on the moving party to identify those portions of the record that “it believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (internal quotations omitted).

Subject matter jurisdiction is an essential element of any case and a “[i]f a court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ.

P. 12(h)(3). As such, a plaintiff cannot be entitled to judgment as a matter of law if the court does not have subject matter jurisdiction over the case. *See id.*

ARGUMENT

Plaintiffs' Rule 56.1 statement of facts does not provide any additional information about the Board Members beyond what was included in the Amended Complaint. *See* ECF Nos. 51 & 79. Further, Plaintiffs' memorandum in support of their motion for summary judgment only references the Board Members in the context of enjoining them from conducting any elections based on the redistricting map that is now likely moot. *See* ECF No. 78 at 9. As the Board Members discussed in their motion to dismiss Plaintiffs' amended complaint, Plaintiffs have not stated viable claims against any of the Board Members. *See* ECF No. 67 at 3-6. Because Plaintiffs have not added additional factual support to their underlying allegations, Plaintiffs are not entitled to summary judgment for the same reasons their Amended Complaint should be dismissed.

I. PLAINTIFFS ARE NOT ENTITLED TO SUMMARY JUDGMENT BECAUSE THEY LACK STANDING TO BRING THEIR CLAIMS AGAINST THE BOARD MEMBERS.

Plaintiffs have not established that the Board Members' actions have caused any alleged injury. "Article III restricts the judicial power to actual 'Cases' and 'Controversies,' a limitation understood to confine the federal judiciary to the traditional role of Anglo-American courts, which is to redress or prevent actual or imminently threatened injury." *Ezell v. City of Chicago*, 641 F.3d 684, 694–95 (7th Cir. 2011). Accordingly, a plaintiff lacks standing unless (1) "the plaintiff suffers an actual or impending injury;" (2) "the injury is caused by the defendant's acts;" and (3) "a judicial decision in the plaintiff's favor would redress the injury." *Id.* (internal quotations omitted). This "triad of injury in fact, causation, and redressability constitutes the core of Article III's case-or-controversy requirement." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103–04 (1998)

(footnote omitted). A plaintiff must establish each element of Article III standing. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). Here, Plaintiffs have not satisfied the causation requirement because they have not established that the alleged injury is “fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 650 (1992). Plaintiffs also have not established that the Board Members can offer any relief to redress their alleged injury or that their claims are concrete and imminent and not speculative.

The only allegations that relate to the Board Members simply identify the Board Members and allege that “[a]n actual controversy exists between Plaintiffs and the individual Board Member Defendants regarding whether the individual Board Member Defendants may enforce the Redistricting Plan or conduct any elections based on the Redistricting Plan.” ECF No. 51 at ¶¶ 22-29, 110 & ECF No. 79 at ¶¶ 6-14. Plaintiffs have not established that the Board Members have taken any specific actions, let alone any actions that injured Plaintiffs. *See* ECF No. 51 78, 79. Without establishing any connection between the Board Members’ actions and Plaintiffs’ alleged injury, Plaintiffs have “fail[ed] to show a nexus between the alleged violations and their claimed injury.” *Paher v. Cegavske*, No. 3:20-cv-00243, 2020 WL 2748301 (D. Nev. May 27, 2020). Other than merely identifying the Board Members and speculating about what they may do in the future, every factual assertion in Plaintiffs’ motion for summary judgment refers to alleged conduct of other individuals. Because Plaintiffs have failed to sufficiently establish that any activity fairly traceable to the Board Members caused any injury, “they fall short in their attempt to establish standing.” *Hope, Inc. v. DuPage County, Ill.*, 738 F.2d 797, 807–808 (7th Cir. 1984).

Moreover, Plaintiffs cannot satisfy the Article III “case-or-controversy” requirement because they cannot receive any requested relief from the Board Members. The Board Members

have no authority over redistricting. The Illinois Constitution gives the Illinois Supreme Court “exclusive jurisdiction over actions concerning redistricting the House and Senate.” Ill. Const. art. IV, § 3. This also shows Plaintiffs’ lack of standing because they do not and cannot establish that an order in their favor against the Board Members would redress their alleged injuries. *Lujan*, 504 U.S. at 561. For these reasons, Plaintiffs cannot obtain relief under the Declaratory Judgment Act, 28 U.S.C. 2201, 2202. *See* ECF No. 51 at Count II. The Declaratory Judgment Act is not an independent basis for jurisdiction. *Rueth v. U.S. E.P.A.*, 13 F.3d 227, 231 (7th Cir. 1993). Because Plaintiffs lack standing to bring their claims against the Board Members, they cannot seek relief under the Declaratory Judgment Act. *See MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007) (explaining that suits under the Declaratory Judgment Act must satisfy the Article III case-or-controversy requirement). Further, declaratory judgment is also inappropriate because, as discussed above, the Board Members do not have an adverse legal interest to any Plaintiffs.

Additionally, Plaintiffs seek injunctive relief against the Board Members preventing them from conducting an election based on the allegedly unconstitutional, and now likely moot, June 4, 2021 map. ECF No. 78 at 9. To be ripe, a claim must point to an alleged injury that is “actual and imminent, not ‘conjectural’ or ‘hypothetical.’” *Lujan*, 504 U.S. at 560. However, Plaintiffs’ allegations supporting their request for injunctive relief against the Board Members are speculative; they rely on the assumption that if this Court finds that the Redistricting Plan is deemed unconstitutional, the Board Members will still conduct an election in approximately ten months based on the Redistricting Plan in violation of this Court’s holding. Thus, Plaintiffs’ allegations are purely speculative and not ripe for review. *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148 (1967) (ripeness requirement “prevent[s] the courts, through the avoidance of premature adjudication, from entangling themselves in abstract disagreements”). Plaintiffs have

provided no reason to believe that the Board will violate any orders entered in this case, and this Court should presume that the Board Members will properly discharge their official duties. *See U.S. v. Lee*, 502 U.S. 691, 697 (7th Cir. 2007) (it is presumed that the official acts of public officers will be discharged properly). For these reasons, Plaintiffs lack standing to bring their claims against the Board Members.

II. PLAINTIFFS ARE NOT ENTITLED TO SUMMARY JUDGMENT AGAINST THE BOARD MEMBERS ON THEIR EQUAL PROTECTION CLAIM.

Finally, Plaintiffs' equal protection claim against the Board Members fails. As noted in Defendants' motion to dismiss, Section 1983 limits liability to "a defendant's personal acts or decisions." ECF No. 67 at 6, citing *Vinning-El v. Evans*, 657 F.3d 591, 592 (7th Cir. 2011). Here, Plaintiffs have not alleged, much less presented facts showing that the Board Members have taken any personal or official actions or made any decisions with regard to the 2021 redistricting process. Accordingly, Plaintiffs are not entitled to summary judgment on their equal protection claim.

CONCLUSION

Because the undisputed facts show that Plaintiffs do not and cannot state viable claims against the Members of the State Board of Elections, Defendants respectfully request that this Court deny Plaintiffs' Motion for Summary Judgment and dismiss the claims against them.

September 10, 2021

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

/s/ Mary A. Johnston
Mary A. Johnston
Office of the Illinois Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-4417
Mary.johnston@ilag.gov

*Counsel for Illinois State Board of
Elections' Member Defendants*