

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street, Room 256 Denver, Colorado 80202	DATE FILED: January 4, 2024 2:16 PM CASE NUMBER: 2022CV33456
VET VOICE FOUNDATION, et al., Plaintiffs, v. JENA GRISWOLD, Defendant, and VERA ORTEGON, et al., Intervenors.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
	Case No.: 2022CV33456 Courtroom: 215
ORDER ON MOTION TO DISMISS COUNT TWO	

THIS MATTER comes before the Court on The Secretary’s Motion to Dismiss Count Two for Lack of Subject Matter Jurisdiction (“Motion”). The Motion is opposed by Plaintiffs and fully briefed.¹ Having considered the parties’ briefs, relevant case law, the submitted evidence, and the file, the Court finds and Orders as follows.

I. INTRODUCTION

Plaintiffs are a veterans’ advocacy organization and three individuals. The instant action alleges that Defendant (who is sued in her official capacity as the Colorado Secretary of State) has implemented certain signature verification procedures which have deprived the individuals of their ability to cast ballots in past elections and may do so in the future. Formerly included as plaintiffs in this action were Leslie Diaz and Gegory Williams, both of whom identified as a minority. The remaining individual plaintiffs do not so identify.

¹ It does not appear that the Intervenors have filed a brief with respect to this Motion.

Based on the dismissal of these two individuals, Defendant moves to dismiss count two for lack of subject matter jurisdiction.² On generally the same basis, Defendant also seeks to dismiss the equal protection claims based on behalf of “young” veteran voters (defined by the parties as individuals between the ages of 18 and 21).³

Defendant argues that neither the individuals nor Vet Voice has the required associational standing to assert equal protection claims on behalf of minorities or young people and moves for dismissal of count two of the Second Amended Complaint.

II. STANDARD OF REVIEW

The Court has previously set forth the standard of review in evaluating a motion to dismiss under C.R.C.P. 12(b)(1) and will not repeat it here. *See* Order on Motion to Dismiss (filed April 17, 2023).

III. ANALYSIS

Despite the departure of the two individual defendants mentioned above, Vet Voice argues that it continues to have associational standing for the purposes of count two. An “organization has associational standing when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it 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 of the lawsuit.” *Colorado Union of Taxpayers Foundation v. City of Aspen*, 418 P.3d 506, 511 (Colo. 2018).

The Court previously ruled that Vet Voice satisfied the first prong of *City of Aspen* by virtue of the presence of the individual defendants. Now, however, that has changed. The only two individuals who identified as a minority have been dismissed, and Vet Voice has offered no evidence regarding the make-up of its members.⁴ Specifically, Vet Voice has not demonstrated that it has members that are of a racial minority or that constitute “young people.” Thus, Vet Voice has failed to demonstrate that its members would have standing to bring an equal protection claim based on minority or age status.

² The Court previously denied Defendant’s motion to dismiss Vet Voice based on lack of standing. *See* Order on Motion to Dismiss (filed April 17, 2023). However, the earlier motion did not raise the issue of associational standing with respect to minorities (or young people) because two of the individual plaintiffs at that time identified as minority.

³ It is unclear why Defendant did not bring this portion of her Motion before now. The youngest individual plaintiff (who was an originally-named plaintiff and remains in the case) is 27. Nevertheless, Rule 12 allows motions contesting subject matter jurisdiction to be brought “whenever it appears” that the court lacks it. C.R.C.P. 12(h)(3).

⁴ The Court assumes for the purposes of this Motion that Vet Voice has “members” as that term is used in *City of Aspen*.

While it may be obvious that a portion of its members are of a racial minority or are under 21 years of age, Vet Voice has offered no such evidence. And even under Colorado's more lenient standing requirements, absent some showing "establishing that at least one identified member had suffered or would suffer harm," Vet Voice cannot establish standing for its equal protection claim. *Summers v. Earth Island Institute*, 555 U.S. 488, 498 (2009). A mere showing of a probability of harm to some of its members is insufficient. *Id.*; *City of Aspen*, 418 P.3d at 511. For these reasons, the Goldbeck Declaration is insufficient to establish harm to an identified member. Resp. Decl. of Janessa Goldbeck (filed Dec. 11, 2023). Because Vet Voice has failed to demonstrate that "its members would otherwise have standing to sue in their own right," count two must be dismissed for lack of standing. *City of Aspen*, 418 P.3d at 510.

Nor is the alleged equal protection harm germane to Vet Voice's stated purpose. *See id.* Vet Voice's avowed purpose is, among other things, to increase the voice of veteran voters in elections. The alleged disparate treatment of minorities and young people resulting from the state's signature verification procedures is a step removed from that purpose. To the extent that the disparate treatment discourages veterans from voting, that claim is addressed in count one. The separate claim of disparate treatment in count two is removed from Vet Voice's interests, and is indirect and incidental to the actual injury claimed. *Hickenlooper v. Freedom from Religion Foundation, Inc.*, 338 P.3d 1002, 1006 (Colo. 2014).


Because Vet Voice does not satisfy the first two *City of Aspen* factors, the Court will not address the third factor of individual participation.

IV. CONCLUSION

For the reasons set forth above, The Secretary's Motion to Dismiss Count Two for Lack of Subject Matter Jurisdiction is GRANTED. Count Two of the Second Amended Complaint is DISMISSED with prejudice.

ENTERED this 4th day of January, 2024.

BY THE COURT:



J. Eric Elliff
District Court Judge