UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No: 18-cv-81738-MIDDLEBROOKS

MATTHEW 25 MINISTRIES, INC.,
A Florida Not-for-Profit Corporation,

Plaintiff,

v.

RICHARD L. SWEARINGEN, in his official capacity as Commissioner of the Florida Department of Law Enforcement,

Defendant.
_____/

ORDER ON MOTION TO DISMISS

THIS CAUSE comes before the Court upon Defendant Richard L. Swearingen's ("Defendant") Motion to Dismiss, filed on February 8, 2019. (DE 18). Plaintiff Matthew 25 Ministries, Inc. ("Plaintiff") filed a response on February 18, 2019 (DE 19), to which Defendant replied on February 22, 2019. (DE 22).

BACKGROUND

This putative class action challenges the constitutionality of certain in-person "sex offender" registration requirements contained in the Florida Statutes. Plaintiff is a not-for-profit corporation that operates an isolated prison-aftercare ministry and community east of Pahokee, Florida that is known as "Miracle Village." (Amended Complaint ¶¶ 8–10). The community's isolation is by design: it houses over one hundred individuals subject to the residency restrictions and registration requirements that the state of Florida imposes on those who have been convicted of certain sexual offenses. (*Id.* ¶¶ 9, 11). This action challenges the components of these laws that require in-person registration for a range of activities as set forth in Fla. Stat. §§ 775.21 and

943.0435 Plaintiff does not challenge the in-person component of the initial and regular re-registration requirements, but rather challenges, for example, the requirement that individuals register *in person* to the sheriff within 48 hours after any change in vehicles owned, § 943.0435(2)(b)(3), and the requirement that individuals report to the sheriff *in person* within 48 hours before travel out of the state, § 943.0435(7). Plaintiff alleges that these in-person requirements, in conjunction with the facts that each county maintains only one registration location and that these locations generally have very limited hours of operation, make compliance difficult to the point that they infringe on registrants' constitutional rights. (*Id.* ¶¶ 27–34).

Plaintiff alleges that the in-person requirements violate the Ex Post Facto Clause (Count I), the First Amendment right to petition for grievances (Count II), the Florida and Federal right to travel (Count III), and the Fourteenth Amendment's Due Process clause (Count IV). Defendant moves to dismiss on the grounds that Plaintiff lacks standing, its claims are time-barred, and that its Ex Post Facto claim is foreclosed. Defendant also argues that the in-person registration requirements do not implicate the right to petition, do not violate the right to travel, and do not violate due process.

LEGAL STANDARD

A. Rule 12(b)(1)

Rule 12(b)(1) attacks on subject matter jurisdiction may be facial or factual. *Carmichael v. Kellogg, Brown & Root Servs., Inc.*, 572 F.3d 1271, 1279 (11th Cir. 2009). For facial attacks, a court accepts the complaint's allegations as true. *Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys. Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008). Factual attacks, in contrast, allow a court "to consider extrinsic evidence such as deposition testimony and affidavits." *Carmichael*, 572 F.3d at 1279. Factual attacks place the burden on the plaintiff to show that jurisdiction exists. *OSI, Inc. v. United States*, 285 F.3d 947, 951 (11th Cir. 2002).

Article III, Section 2 of the United States Constitution limits federal courts' jurisdiction to actual cases and controversies. Standing is a part of this limitation, as a "threshold jurisdictional question" that must be resolved before a court can turn to a claim's merits. *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005). Courts determine standing at the time of filing. *Id.* at 976 (citing *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1275 (11th Cir. 2003)).

B. Rule 12(b)(6)

A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of a complaint. *See* Fed. R. Civ. P. 12(b)(6). To satisfy the pleading standard of Rule 8(a)(2), as articulated in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), a complaint "must . . . contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1289 (11th Cir. 2010) (quoting *Twombly*, 550 U.S. at 570). "Dismissal is therefore permitted when on the basis of a dispositive issue of law, no construction of the factual allegations will support the cause of action." *Glover v. Liggett Grp., Inc.*, 459 F.3d 1304, 1308 (11th Cir. 2006) (internal quotations omitted) (citing *Marshall Cty. Bd. of Educ. v. Marshall Cty. Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993)).

When reviewing a motion to dismiss, a court must construe a plaintiff's complaint in the light most favorable to the plaintiff and take the complaint's factual allegations as true. *See Erickson v. Pardus*, 551 U.S. 89, 93 (2007); *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1369 (11th Cir. 1997). Pleadings that "are no more than conclusions[] are not entitled to the assumption of truth," however. *Iqbal*, 556 U.S. at 678. "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.*

ANALYSIS

In order to have standing under Article III of the Constitution, Plaintiff has the burden of showing: "(1) an injury in fact, meaning an injury that is concrete and particularized, and actual or imminent, (2) a causal connection between the injury and the causal conduct, and (3) a likelihood that the injury will be redressed by a favorable decision." *CAMP Legal Def. Fund, Inc. v. City of Atlanta*, 451 F.3d 1257, 1269 (11th Cir. 2006) (quotations omitted). At the pleading stage, this burden is not particularly onerous and will be satisfied by "general factual allegations of injury resulting from the defendant's conduct." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

It has long been settled that an organization has standing to sue to redress injuries suffered by its members without a showing of injury to the association itself and without a statute explicitly permitting associational standing.[1] *Doe v. Stincer*, 175 F.3d 879, 882 (11th Cir. 1999). An association may bring suit on behalf of its members or constituents despite the fact that individual members have not actually brought suit themselves, nor must the association name the members on whose behalf suit is brought. *Id.* at 882. "Neither unusual circumstances, inability of individual members to assert rights nor an explicit statement of representation are requisites." *Church of Scientology v. Cazares*, 638 F.2d 1272, 1279 (5th Cir. 1981). A bid for associational standing implicates the injury prong of standing. This prong is met when the injury is "imminent—not abstract, hypothetical, or conjectural," *Alabama–Tombigbee Rivers Coalition v. Norton*, 338 F.3d 1244, 1253 (11th Cir. 2003), or when application of the challenged statute is likely, or there is a credible threat of application. *See Ga. Latino Alliance for Human Rights v. Governor of Ga.*, 691 F.3d 1250, 1257–58 (11th Cir. 2012).

In the Eleventh Circuit, an association has standing to sue on behalf of its members when: "(a) its members would otherwise have standing to sue in their own right; (b) the interests

[1] Plaintiff does not argue that it has standing on its own behalf.

it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Stincer*, 175 F.3d at 882 (quoting *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)).

Defendant argues that Plaintiff has no members and therefore cannot show that at least one of its members could meet the three standing requirements on his or her own. A party seeking associational standing need not have "members," *per se*, but the individuals it seeks to represent must "possess the indicia of membership in an organization." *Hunt*, 432 U.S. at 344. In *Hunt*, the Supreme Court considered the following indicia before determining that the Washington State Apple Advertising Commission had standing to sue on behalf of its constituent apple growers and dealers:

> [The growers and dealers] alone elect the members of the Commission; they alone may serve on the Commission; they alone finance its activities, including the costs of this lawsuit, through assessments levied upon them. In a very real sense, therefore, the Commission represents the State's growers and dealers and provides the means by which they express their collective views and protect their collective interests.

Id. at 344–45.

While the Amended Complaint does not provide examples of relevant indicia of membership, Plaintiff attempts to meet its burden through a signed declaration by Ted Rodarm, Plaintiff's Executive Director, which is appended to Plaintiff's Response. The declaration states that, while Plaintiff has a Board of Directors, its "day to day management and operations are performed by the members of Matthew 25. Before anyone is accepted into Matthew 25 they must undergo a selection process which involves the screening and approval of a majority of current members." (DE 19-1 at 2). Defendant argues that information outside of the operative complaint, such as affidavits, are improperly considered when adjudicating a motion to dismiss. Even if the information were considered, however, it would not support standing.

The makeup of an entity's governing body and the ability of purported "members" to exert meaningful influence over those bodies are significant considerations. In *Stincer*, the Eleventh Circuit determined that individuals with mental illness possessed sufficient indicia of membership in the Advocacy Center for Persons With Disabilities, Inc. (the "Advocacy Center")[2] based in part on the fact that its governing board was required to be composed of "members who broadly represent or are knowledgeable about the needs of clients served by the system" and to "include individuals who have received or are receiving mental health services and family members of such individuals." 175 F.3d at 886 (citations omitted). The organization was also required to have an advisory council, "sixty percent of whose membership as well as the chair of the council must be "comprised of individuals who have received or are receiving mental health services or who are family members of such individuals." *Id.* (citation omitted). Additionally, the Advocacy Center was required to afford the public with an opportunity to comment on the priorities and activities of the protection and advocacy system. *Id.* In sum, "[m]uch like members of a traditional association, the constituents of the Advocacy Center possess the means to influence the priorities and activities the Advocacy Center undertakes." *Id. See also Am. Legal Found. v. F.C.C.*, 808 F.2d 84, 90 (D.C. Cir. 1987) (noting, in determining that the American Legal Foundation's "supporters" lacked indicia of membership, that the "supporters" did not "play any role in selecting ALF's leadership, guiding ALF's activities, or financing those activities").

While the residents of Miracle Village may have some degree of autonomy in the selection of new residents and in the community's daily operation, there is no indication that Plaintiff, a not-for-profit corporation, constitutes the means by which the community's residents "express their collective views and protect their collective interests." *Hunt*, 432 U.S. at 345. I appreciate the

[2] The Advocacy Center is a federally-authorized protection and advocacy organization established under the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. § 10801, and the Protection and Advocacy of Individual Rights Act, 29 U.S.C. § 794e.

unique circumstances of Plaintiff's operation, and on the basis of the Amended Complaint I do not doubt that the residents of Miracle Village, given the option, may support this suit. But the residents' lack of agency to express such a preference is fatal to Plaintiff's bid for standing. I have no reason to doubt that Plaintiff brings this suit in good faith, for the benefit of its residents, but the relationship between Plaintiffs and its residents appears more akin to a landlord-tenant relationship than anything resembling a traditional membership organization. Accordingly, even assuming Plaintiff can satisfy the second and third elements of the *Hunt* analysis, it lacks associational standing.

CONCLUSION

"Truly I tell you," reads the verse for which Plaintiff is named, "whatever you did for one of the least of these brothers and sisters of mine, you did for me." *Matthew* 25:40 (NIV). In designing the myriad requirements that pertain to those convicted of sexual offenses, the Florida Legislature may have fallen short of both this creed and the Constitution. Plaintiff lacks standing to contest the latter, however, and its suit must be dismissed.

In light of the foregoing, the Court does not reach Defendant's remaining arguments, and it is **ORDERED and ADJUDGED** as follows:

(1) Defendant Richard L. Swearingen's Motion to Dismiss (DE 18) is **GRANTED**.

(2) Plaintiff's Amended Complaint is **DISMISSED WITH PREJUDICE**.

(3) The Clerk of Court is directed to **CLOSE THIS CASE** and **DENY** all pending motions **AS MOOT**.

SIGNED in Chambers at West Palm Beach, Florida this 21 day of August, 2019.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record