

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

FRATERNAL ORDER OF POLICE,)	
METROPOLITAN POLICE DEP,)	
Plaintiff,)	Case No. 2020 CA 003492 B
)	
v.)	Judge William M. Jackson
)	
THE DISTRICT OF COLUMBIA, <i>et al.</i> ,)	
Defendants.)	

ORDER GRANTING MOTION TO DISMISS

This matter is before the Court on Defendants’ Motion to Dismiss Plaintiff’s Amended Complaint. Plaintiff filed an opposition, and the defendants then filed a reply. Upon consideration of the motions, the opposition, the reply and the entire record herein, the Court grants the motion to dismiss and closes the case.

I. FACTUAL BACKGROUND

On August 7, 2020, the Fraternal Order of Police, Metropolitan Police Department Labor Committee, D.C. Police Union filed the instant suit against the District of Columbia and Mayor Muriel Bowser seeking injunctive relief arising out of several provisions contained in the Comprehensive Policing and Justice Reform Second Temporary Amendment Act of 2020 (the “Temporary Act”). In the statute, it mandated that Mayor Bowser shall publicly release the following:

- (I) Within 5 business days after an officer-involved death or the serious use of force, publicly release the names and body-worn camera recordings of all officers who committed the officer-involved death or serious use of force; and
- (II) By August 15, 2020, publicly release the names and body-worn camera recordings of all officers who have committed an officer-involved death since the Body-Worn Camera Program was launched on October 1, 2014[.]

D.C. Code § 5-116.33(c)(1)(B). Specifically, the plaintiffs seek an injunction to prevent Mayor Bowser from publicly release the body-worn camera recordings and the names of officers involved in officer-involved deaths mandated by the statute.

In October 2014, the Metropolitan Police Department (“MPD”) established the Body-Worn Camera program and the Mayor possessed authority to establish rules regarding public access to body-worn camera recordings: “The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, and in accordance with this section, shall issue rules regarding the Metropolitan Police Department’s Body-Worn Camera Program.” D.C. Code § 5-116.32(a). These rules had to provide “standards for public access to body-worn camera recordings.” D.C. Code § 5-116.32(a)(1). Furthermore, in relation to the public release of body-worn camera recordings, the relevant D.C. Municipal Regulations stated that

The Mayor may, on a case-by-case basis in matters of significant public interest and after consultation with the Chief of Police, the United States Attorney's Office for the District of Columbia, and the Office of the Attorney General, release BWC recordings that would otherwise not be releasable pursuant to a FOIA request. Examples of matters of significant public interest include officer-involved shootings, serious use of force by an officer, and assaults on an officer requiring hospitalization.

24 DCMR § 3900.10. Eventually, on July 7, 2020, the Council of the District of Columbia approved and signed into law the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020 (the “Emergency Act”). The statute was passed on an emergency basis and signed by Mayor Bowser on July 22, 2020. In this statute, the language mandating the Mayor’s release of the body-worn camera recordings and the names of the officers involved in officer-involved deaths were added to the existing statute.

The plaintiffs take the position that the release of the footage and the names of officers will result in “unjust reputational harm and will unjustly malign and permanently tarnish the

reputation and good name of any officer that is later cleared of misconduct concerning the use of force.” Am. Compl. ¶ 15. Therefore, the plaintiffs filed the instant Complaint which included two separate counts. First, Count I for a Request for Declaratory Judgment and Injunctive Relief that Subtitle B of the Temporary Act is in violation of the separation of powers of the District of Columbia government in the District of Columbia Home Rule Act and D.C. Code § 1-301.44(b). Am. Compl. ¶¶ 23-35. Second, Count II for another Request for Declaratory Judgment and Injunctive Relief that Subtitle B of the Temporary Act is in violation of the Due Process protections contained in the District of Columbia Home Rule Act. Am. Compl. ¶ 36-42.

After the filing of the instant lawsuit, the plaintiffs amended their Complaint and filed the Amended Verified Complaint on October 27, 2020. The defendants filed the instant Motion to Dismiss Amended Complaint thereafter, and the plaintiffs filed an opposition, followed by a reply brief from the defendants. Prior to the filing of the Amended Complaint, the Court also granted a Motion for Leave to File Amici Curiae Brief in Support of Motion to Dismiss from the Lawyers’ Committee for Civil Rights Under Law, the Public Defender Service of the District of Columbia, American Civil Liberties Union of the District of Columbia, Washington Lawyers’ Committee for Civil Rights and Urban Affairs, and Law4BlackLives DC.¹ Upon consideration of the motion, the opposition, the reply, the *amici curiae* brief, and the entire record herein, the Court grants the motion to dismiss and closes the instant case.

II. LEGAL STANDARD

¹ The *amici curiae* brief addressed only the original Complaint and not the Amended Complaint. However, as the plaintiffs stated in the October 27, 2020 praecipe, the Amended Complaint was filed to reflect a change that the statute shifted from emergency legislation to temporary legislation. Both version of the language at issue in this case, as plaintiff correctly states, are identical. While the Amended Complaint did include limited additional developments, they do not impact the arguments made in the *amici curiae* brief, and therefore the Court will consider all contentions made in the *amici curiae* brief.

Dismissal under Rule 12(b)(6) is warranted “where the complaint fails to allege the elements of a legally viable claim.” *Greenpeace, Inc. v. Dow Chem. Co.*, 97 A.3d 1053, 1060 (D.C. 2014) (quoting *Chamberlain v. Am. Honda Fin. Corp.*, 931 A.2d 1018, 1023 (D.C. 2007); citing *Potomac Dev. Co. v. District of Columbia*, 28 A.3d 531, 543 (D.C. 2011)). In deciding a Rule 12(b)(6) motion this court must accept “all of the allegations in the complaint as true” and “construe all facts and inferences in favor of the plaintiff.” *Id.* (quoting *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 316 (D.C. 2008)). Nevertheless, to survive a motion to dismiss a claim must have facial plausibility, that is, “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Potomac*, 28 A.3d at 544 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009)). Conclusory pleadings are not entitled to an assumption of truth and will not sustain a complaint. *Grimes v. District of Columbia*, 89 A.3d 107, 112 (D.C. 2014) (internal citations omitted).

III. ANALYSIS

In the motion, the defendants District of Columbia and Mayor Muriel Bowser move to dismiss the plaintiff’s Amended Complaint for lack of standing and for failure to state a claim upon which relief can be granted. The defendants claim that the plaintiff lacks organizational standing and third-party standing to assert its claims and fails to allege an injury to its members sufficient to establish any associational standing. Defs.’ Mot. at 1-2. Further, the defendants contend that the plaintiff’s Amended Complaint fails to state any claim because the plaintiff’s separation of powers argument is a policy dispute rather than a legal dispute, and that plaintiff’s members do not have a constitutional right to privacy that prohibits disclosure of their names or camera footage demonstrating the officers publicly engaging in their official duties. Def.’s Mot. at 2.

a. Standing

In the motion, the defendants contend that the plaintiff lacks standing to bring this action because the Amended Complaint fails to allege sufficient injury to the plaintiff itself or to any of its members. Defs.’ Mot. at 11. In the Complaint, the plaintiff states that it “will expend additional resources to pursue grievances based upon public release of [the body-worn camera footage and names of officers].” Am. Compl. ¶ 19. The disclosure will make it “more difficult for the Detectives to solve crimes, which will in turn negatively affect each of the Detectives’ closure rates [...] [which] has been used by the MPD as a basis to transfer or discipline members.” Am. Compl. ¶ 20. “[Plaintiff] has expended resources in the past to challenge improper transfers [...] and this will continue and increase in the future as a result of the release of body-worn camera footage within five days of a serious use of force incident or officer-involved death.” *Id.*

The U.S. Supreme Court has held that “[i]njury in fact is a constitutional requirement, and [i]t is settled that Congress cannot erase Article III’s standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547-48 (2016) (quoting *Raines v. Byrd*, 521 U.S. 811, 820 (1997)). “To satisfy the requirements of “constitutional” standing, a plaintiff in the District of Columbia local courts must adequately allege that: (1) she suffered an injury in fact; (2) the injury is fairly “traceable to the defendant’s action”; and (3) the injury will likely be “redressed” by a favorable decision. A defect of standing is likewise a defect in subject matter jurisdiction.” *UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 42-43 (D.C. 2015).

i. Organizational Standing

“Organizations, like individuals, have legally protected interests. An organization may file suit in its own right so long as it satisfies the constitutional requirements and prudential prerequisites of traditional standing analysis.” *Equal Rights Ctr. v. Props. Int’l*, 110 A.3d 599, 603 (D.C. 2015). An organization's mere interest in a problem or its opposition to an unlawful practice is not sufficient to demonstrate injury in fact, nor is a simple setback to an organization's abstract social interests. *Id.* at 604 (citing *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). “The question of standing turns on whether the organization's activities in pursuit of its mission have been affected in a sufficiently specific manner as to warrant judicial intervention.” *Equal Rights Ctr.*, 110 A.3d at 604 (citing *D.C. Appleseed Ctr. for Law & Justice, Inc. v. D.C. Dep’t of Ins.*, 54 A.3d 1188, 1206 (D.C. 2012)). “This requires a showing that the defendant's unlawful actions have caused a concrete and demonstrable injury to the organization's activities--with the consequent drain on the organization's resources.” *Equal Rights Ctr.*, 110 A.3d at 604 (citing *Havens Realty*, 455 U.S. at 379).

Here, in accepting all the allegations in the Amended Complaint as true, the Court finds that the plaintiff has failed to allege an adequate injury. While publicly defending its members is part of the plaintiff’s mission as an organization, there are no allegations of any impediment to its ability to continue that mission after the passage of the Temporary Act. Allegations in the Amended Complaint consist primarily of speculations and allegations of potential future harm as opposed to concrete and imminent injuries. Plaintiff’s contention that it will have to expend additional resources representing its members in the future does not amount to a concrete and imminent injury. “The court has distinguished between organizations that allege that their activities have been impeded from those that merely allege that their mission has been

compromised." *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015).

Simply stating that more resources will be expended is insufficient because the passing of the Temporary Act did not prevent the plaintiffs from performing tasks or actions that they previously could prior the Temporary Act. In other words, the Temporary Act did not impede the plaintiffs to represent their members in any fashion.

Further, plaintiff's alleged future injuries are too speculative to establish organizational standing. The plaintiff alleges that it will have to expended resources to challenge improper transfers of Detectives, but as the defendants pointed out, such an allegation is based a series of potential future events. It is not concrete or imminent injury when the allegations involve a chain of events that essentially start from the Mayor's release of the footage, to less witnesses willing to testify, to a more difficult investigation, to a lower closure rate, to potential transfers or disciplinary action, and then to plaintiff's decision whether to represent the officer, assuming that the officer is one of plaintiff's members. The Amended Complaint itself does not make any allegations that the plaintiff had already expended resources defending any officers where any information was already released. Therefore, plaintiff's pure speculation about potential future harm is insufficient to establish organizational standing.

ii. Third-Party Standing

Next, the defendants contend that the plaintiff cannot establish Third-Party Standing for the claims asserted by the plaintiffs. In order to bring an action on behalf of a third-party, three criteria must be satisfied: "(1) the litigant must have suffered an injury in fact, thus giving him or her a sufficiently concrete interest in the outcome of the issue in dispute; (2) the litigant must have a close relationship to the third party; and (3) the litigant must demonstrate some hindrance to the third party's ability to protect his or her own interests." *Riverside Hosp. v. D.C. Dep't of*

Health, 944 A.2d 1098, 1105 (D.C. 2008) (citing *Powers v. Ohio*, 499 U.S. 400, 411 (1991)). In the Complaint, the plaintiff alleges that the Temporary Act will infringe on the rights of citizens of the District, such as infringing on their privacy rights. *See* Am. Compl. ¶¶ 30, 40. However, it is unclear how the plaintiff can establish a close relationship with every member of the general public who are not members of the plaintiff's organization. Furthermore, there is no allegation of any "hindrance" to the ability of the public to protect their own interests. Therefore, the Court finds that there are no allegations to support Third-Party Standing.

iii. Associational Standing

"An association [...] can establish standing without asserting injury to itself, if it meets the requirements of associational standing." *D.C. Library Renaissance Project/West End Library Advisory Group v. District of Columbia Zoning Comm'n*, 73 A.3d 107, 115 (D.C. 2013); *see also Warth v. Seldin*, 422 U.S. 490, 511 (1975) ("[e]ven in the absence of injury to itself, an association may have standing solely as the representative of its members."). In the motion, the defendants contend that the plaintiff has failed to allege sufficient injury or threat of injury to its members to establish standing. *Defs.' Mot.* at 18. The Court agrees.

Similar to organizational standing, the plaintiff's claims fail largely as a result of the requirement for concrete injury. In the Amended Complaint, the plaintiff alleges that the release of the camera footage and names of officers will result in "unjust reputational harm, result in "immediate risk of a significant bodily harm," and lead to "psychological trauma" to an officer and his/her family. Am. Compl. ¶¶ 15, 18. However, these allegations are purely speculation and conclusory allegations that the Court has no obligation to accept under the relevant standards. The pure possibility that something *might* happen does not constitute an injury. In fact, the release of said information is equally likely for someone to reach the conclusion that an officer

was justified in utilizing force in a particular instance, which would not result in any reputational harm. While the plaintiff indeed cites to one anonymous social media post and two comments made in relation to said post, such support is insufficient. *See* Am. Compl. ¶ 21. The injury or threat of injury must be both "real and immediate," not "conjectural" or "hypothetical." *Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983). Further, the Amended Complaint also fails to allege how any the alleged injuries can be “fairly traceable” to the defendant’s actions. The defendants are not in control of public opinion and cannot be held responsible if a citizen or citizens criticizes or condemns an officer’s use of force in a particular incident. For the above-stated reasons, the Court finds that the plaintiffs do not have association standing to bring the instant action against the defendants.

b. Failure to State a Claim

i. Count I: Separation of Powers

In Count I, the plaintiffs contend that the Temporary Act infringes on and obstructs the Mayor’s exclusive ability to “preserve the public peace,” “prevent crimes and arrest offenders,” and “protect the rights of persons and of property.” Am. Compl. ¶ 32. Further, that the Temporary Act represents an “intrusion on the Mayor’s authority and ability to perform her specifically delegated executive functions.” Am. Compl. ¶ 33. In the motion, the defendants contend that neither the D.C. Home Rule Act nor the D.C. Code states that these powers are exclusively reserved for the Mayor. Defs.’ Mot. at 24-25. The defendants point to the fact that the Council of the District of Columbia possesses the power to enact legislation that can restrict the actions of the Mayor, and it is precisely the Council that enacted the statute at issue. *Id.* at 25.

The Court concurs with the defendants. The plaintiffs do not dispute that the Council possesses the legislative authority to determine public policy on issues such as the disclosure of

public records. The plaintiffs primarily rely on the statute’s language where the Council delegated authority to the Mayor to “establish rules regarding access to body-worn camera recordings” as its basis for a separation of powers argument. However, the Council itself can modify statutes governing the disclosure of public records. Importantly, as the defendants stated, it is unclear how the disclosure requirements alone is sufficient to state a claim for violation of separation of powers. The concept of separation of powers is not one where the Mayor and Council operate with complete independence and complete freedom from any influence of the other. *See Hessey v. Burden*, 594 A.2d 1, 6 (D.C. 1990) (“the Mayor and Council do not "operate with absolute independence.”). The question of great importance is whether the passing of Subtitle B of the Temporary Act "impermissibly burdens" or "unduly interferes with" the Mayor's charter responsibility. *See id.* The requirements set forth by Subtitle B of the Temporary Act will not lead to either of those outcomes. The Mayor still maintains all the resources that she currently possesses, and the statute simply pushes for greater transparency and requires that the public have greater access to information in incidents where serious uses of police force was utilized. Therefore, the Court finds that Count I fails to state a claim for violation of separate of powers, and grants the motion to dismiss with respect to Count I.

ii. Count II: Violation of Due Process Protections

In Count II, the plaintiffs contend that Subtitle B of the Temporary Act “violates the fundamental right to privacy held by D.C. Police Union members.” Am. Compl. ¶ 39. Specifically, the immediate public release of names of officers and body-worn camera footage “will allow criminal suspects and their associates to identify the officer and potentially seek retribution.” *Id.* First and foremost, there is “no authority that the Constitution imposes on the government an affirmative duty—untethered to specific constitutional provisions such as the


First Amendment—to ‘safeguard personal information’ from the criminal acts of third parties.”
In re United States OPM Data Sec. Breach Litig., 928 F.3d 42, 72 (D.C. Cir. 2019) (internal citations omitted). Importantly, as the defendants mentioned, MPD policy explicitly states that members of the general public have a First Amendment right to record MPD members during official business, unless they interfere with police activity. *See* MPD General Order 304-19 at § 1. If the public is legally able to record officers during official business, it is unclear how any reasonable officer can assume that they have the right to privacy when conducting said official business. Therefore, the Court finds that Count I fails to state a claim for violation of due process guarantees, and grants the motion to dismiss with respect to Count II.

Therefore, on this **16th Day of July, 2021**, it is

ORDERED that Defendants’ Motion to Dismiss Plaintiff’s Amended Complaint is **GRANTED**; and it is further

ORDERED that all future events are **VACATED** and the case is **DISMISSED**.

SO ORDERED.



William M. Jackson
Associate Judge
(Signed in Chambers)

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