



## AlaFile E-Notice

03-CV-2019-900283.00

Judge: JAMES H ANDERSON

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ANTHONY KEITH ET AL V. LANCE R. LEFLEUR, DIR., ADEM ET AL  
03-CV-2019-900283.00

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## IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

ANTHONY KEITH, RONALD C. SMITH,  
ESTHER CALHOUN, WILLIAM T.  
GIPSON, and LATONYA GIPSON,

Plaintiffs,

v.

CIVIL ACTION NO.:  
03-CV-2019-900283.00-JHA

LANCE R. LEFLEUR, in his official  
capacity as Director of the Alabama  
Department of Environmental Management;  
and, MARILYN G. ELLIOTT, in her official  
capacity as Deputy Director and Nondiscrimination  
Coordinator of the Alabama Department  
of Environmental Management,

Defendants.

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ORDER

Before the Court are the parties' cross-motions for summary judgment and accompanying materials. At the hearing on the motions, the Court received argument from the attorneys for the parties.

Here, Plaintiffs' challenge the validity of the Alabama Department of Environmental Management's (ADEM) Nondiscrimination Grievance Investigation Procedures. To do that, though, Plaintiffs must establish their standing. Standing is a jurisdictional requirement that is Plaintiffs' burden to prove. *Boys & Girls Clubs of S. Ala., Inc. v. Fairhope-Point Clear Rotary*

*Youth Programs, Inc.*, 114 So. 3d 817, 820 (Ala. 2012).

At summary judgment, that burden consists of proving the following with “specific facts” which demonstrate that: (1) Plaintiffs suffered an “injury in fact,” (2) there exists a causal connection between the injury and the conduct complained of – the injury has to be fairly traceable to the challenged action of the defendant,” and (3) it is “likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 560 (1992) (cleaned up). Alabama has adopted the *Lujan* test for standing. *Ex parte King*, 50 So. 3d, 1056, 1059 (Ala. 2010.)

Of course, “[t]he person who has been accorded a procedural right to protect his concrete interests can assert that right without meeting all the normal standards for redressability and immediacy.” *Lujan*, 504 U.S. at 572, n. 7. But, deprivation of a procedural right without some concrete interest that is affected by the deprivation is insufficient to create standing. *Summers v. Earth Island Institute*. 555 U.S. 488, 496 (2009). This requirement is reflected in the Alabama Administrative Procedure Act’s declaratory judgment statute, Ala. Code §41-22-10, which provides for relief only if the challenged rule “interferes with or impairs or threatens to interfere with or impair, the legal rights or privileges of the plaintiff.”

Whether asserting a procedural injury or not, then, Plaintiffs must demonstrate that the Plaintiffs' injury is connected to the challenged action. And, because standing is an indispensable part of the Plaintiffs' case, each element must be supported in the same way as any other matter on which the Plaintiffs bear the burden of proof, i.e. with the manner and degree of evidence required at the successive stages of the litigation. *Lujan*, 497 U.S. 871, 883-889 (1992).

Plaintiffs' challenges, procedural or substantive, fall short in connecting their injuries to the challenged Procedures. Specifically, Plaintiffs argue that the invalidity of the challenged Procedures means that ADEM can give them no valid relief from ills they suffer from ADEM-regulated facilities. But Plaintiffs have not shown that to be true. If, for instance, Plaintiffs file a discrimination claim with ADEM and ADEM provides Plaintiffs real-world relief, then the challenged Procedures have not harmed Plaintiffs in any way. To be sure, Plaintiffs contend that such relief would be voidable, but they do not explain how that would happen absent a third-party challenge to the relief—a prospect far too speculative at this point to support standing.

And Plaintiffs' theory for why such relief would be invalid fails in any event because it assumes that ADEM's authority to take action as a regulator

comes from the Procedures. It does not. Rather, ADEM's authority to address any departure from its standards comes from its enabling statutes. Thus, Plaintiffs cannot prove this needed link for standing.

Plaintiffs' failure to establish standing is a jurisdictional defect.

It is therefore ORDERED that this case is DISMISSED. Costs taxed as paid.

**DONE this 11<sup>th</sup> day of June, 2021.**

**/s/ JAMES H ANDERSON**  
**CIRCUIT JUDGE**