E-FILED
Monday, 14 May, 2018 09:54:16 AM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

HOPE FAIR HOUSING CENTER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:17-cv-01360-SLD-JEH
	)	
CITY OF PEORIA, ILLINOIS,	)	
	)	
Defendant.	)	

ORDER

Plaintiff HOPE Fair Housing Center ("HOPE") filed suit against Defendant City of Peoria ("Peoria" or "the City") alleging violations of the Fair Housing Act, 42 U.S.C. §§ 3601–31, and the Illinois Civil Rights Act of 2003, 740 ILCS 23/5. Compl., ECF No. 1. Peoria moves to dismiss the Complaint, arguing that HOPE lacks standing. Mot. Dismiss, ECF No. 11. For the reasons that follow, the motion is DENIED.

BACKGROUND[1]

HOPE "is a non-profit corporation dedicated to eradicating housing discrimination and residential segregation." Compl. ¶ 11. It is based in Wheaton, Illinois and serves north and north-central Illinois, including Peoria. *Id.* HOPE challenges Peoria's chronic nuisance ordinance. Under this ordinance, a property can be deemed a chronic nuisance if three triggering events—which range from housing code or noise violations to serious violent crimes—occur within 365 days. Peoria has vast discretion to determine whether triggering events have occurred and to determine which properties to deem nuisances. It delegates enforcement of the ordinance

[1] When reviewing a motion to dismiss for lack of standing under Federal Rule of Civil Procedure 12(b)(1), a court must "accept[] as true all well-pleaded factual allegations and draw[] reasonable inferences in favor of the plaintiff[]." *Bultasa Buddhist Temple of Chi. v. Nielson*, 878 F.3d 570, 573 (7th Cir. 2017). The facts related here are, unless otherwise noted, taken from the Complaint.

to the Neighborhood Services Unit of the police department. The ordinance provides that after the police chief receives "two or more police reports documenting the occurrence of nuisance activity" at a particular property, he may issue a warning to the property's owner. *Id.* ¶ 31 (quoting Peoria Code § 20-203(1)). Police can demand that within ten days the owner propose "a course of action that the superintendent of police agrees will abate the nuisance activities." *Id.* (quoting Peoria Code § 20-203(1)). After the next police report documenting a third triggering event, the police chief can declare the property a chronic nuisance. The owner then has ten days "to convince the police chief that the nuisance is being sufficiently 'abated,' or else the City may take legal action to enforce the ordinance." *Id.* ¶ 32 (quoting Peoria Code § 20-203(2)). The ordinance does not dictate a particular method of abatement, but Peoria has primarily required abatement by eviction of tenants, "through informal or illegal means if necessary." *Id.* ¶ 50.

HOPE conducted an investigation into Peoria's enforcement of the ordinance. It made public records requests for all nuisance citations issued during a three-year period and reviewed police calls made in the same time period. It also interviewed people affected in Peoria. Based on the results of its investigation, HOPE alleges that the ordinance disproportionately harms non-white Peoria residents and women in a number of ways. It alleges that properties in majority African-American neighborhoods were more likely to be deemed nuisances than properties in majority white neighborhoods. For instance, it alleges that although there was a large pool of potentially eligible properties—i.e., those with three triggering events—only 148 nuisance citations were issued. Of those 148 citations, 101 (71.6 percent) were issued to properties located in predominantly African-American neighborhoods even though African Americans constitute only 27 percent of Peoria's population. This selective enforcement, HOPE alleges, perpetuates Peoria's historical housing segregation. HOPE also alleges that Peoria has enforced

the ordinance in a manner that punishes crime victims, including domestic violence survivors—most of whom are women—by requiring eviction of entire households, even tenants uninvolved in an alleged crime.

HOPE alleges that it has been injured because it has had to divert scarce resources to its investigation of and efforts to remedy Peoria's discriminatory conduct, which frustrates its mission of eliminating housing discrimination and segregation within its service area. It has conducted interviews, filed information requests, advocated to the state legislature, and educated area residents and officials in nearby municipalities about this ordinance and its effects. These efforts were undertaken to the exclusion of other planned activities that further HOPE's mission, including conducting follow up investigations into inaccessible housing, providing public testimony in other municipalities within its service area, issuing public newsletters, and applying for funding.

DISCUSSION

Peoria argues that HOPE[2] has not alleged an injury sufficient to confer standing because its "only interest in the Peoria ordinance that is being challenged is an ideological opposition" to similar nuisance ordinances across the country. Mot. Dismiss 1. Without standing to bring its claims, Peoria argues, HOPE's Complaint must be dismissed for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). *Id.*

I. Legal Standard

At the motion to dismiss stage, a court must "accept[] as true all well-pleaded factual allegations and draw[] reasonable inferences in favor of the plaintiff[]." *Bultasa Buddhist*

[2] Peoria attaches to its motion a corporation file detail report from the Illinois Secretary of State's website and asserts that HOPE should properly be referred to as H.O.P.E., Inc. Mem. Supp. Mot. Dismiss Ex. 1, ECF No. 12-1. HOPE Fair Housing Center is listed on the report as an assumed name for H.O.P.E., Inc. *Id.* Without an explanation of its significance or any argument from Peoria, the Court cannot determine if HOPE's choice of name has any bearing on its constitutional standing.

Temple of Chi. v. Nielson, 878 F.3d 570, 573 (7th Cir. 2017). Standing is a "jurisdictional requirement" that the plaintiff bears the burden of establishing. *Apex Dig., Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443 (7th Cir. 2009). Standing to sue under the Fair Housing Act extends to the limits of Article III standing. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372 (1982). The three elements a plaintiff must prove to establish Article III standing are: (1) an "injury in fact" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"; (2) "a causal connection between the injury and the conduct complained of"; and (3) a likelihood "that the injury will be redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (quotation marks omitted).

II. Analysis

An organization may assert that it has standing in a representative capacity—on behalf of its members—or that it has standing in its own right as an organization. *See Havens*, 455 U.S. at 378. HOPE asserts organizational standing only. Therefore, HOPE must sufficiently allege that it has suffered an injury in fact that is traceable to Peoria's actions. In *Havens*, the Supreme Court held that dismissing a fair housing organization, HOME, for lack of standing was improper where it alleged that a property management company's racial steering "impaired [its] ability to provide counseling and referral services for low-and moderate-income homeseekers." *Id.* at 379. HOME alleged in its complaint that the racial steering "frustrated" its efforts and that it "had to devote significant resources to identify and counteract" the discriminatory practices. *Id.* (quotation marks omitted). The Supreme Court explained that "[s]uch concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources—constitute[d] far more than simply a setback to the organization's abstract social interests," which would not confer standing. *Id.* (citing *Sierra Club v. Morton*,

405 U.S. 727, 739 (1972)); *see also Williams v. Adams*, 625 F. Supp. 256, 260 (N.D. Ill. 1985) ("[I]t is not enough that an organization allege that a particular defendant's conduct is against the policies or goals of that organization."). The Seventh Circuit has interpreted *Havens* to mean "that the only injury which need be shown to confer standing on a fair-housing agency is deflection of the agency's time and money from counseling to legal efforts directed against discrimination." *Vill. of Bellwood v. Dwivedi*, 895 F.2d 1521, 1526 (7th Cir. 1990).

Peoria challenges only the first element of standing—injury in fact—arguing that HOPE has not suffered an injury as a result of the chronic nuisance ordinance. Mem. Supp. Mot. Dismiss 1, ECF No. 12. The Court disagrees. HOPE has sufficiently alleged an injury under *Havens* and *Dwivedi*. It alleges that Peoria's discriminatory enforcement of the nuisance ordinance frustrates its mission of "ensuring that all people have equal access to housing opportunities, in Peoria and elsewhere in the region that HOPE serves." Compl. ¶ 88. It alleges that this discriminatory conduct has caused it to divert resources from its other work into "legal efforts directed against discrimination," *see Dwivedi*, 895 F.2d at 1526, including "analyzing the nature and scope of Peoria's discriminatory conduct" through interviewing affected people and filing and analyzing public records requests, Compl. ¶ 90. HOPE shared its concern with Peoria, and unsuccessfully asked Peoria to repeal or modify its ordinance accordingly. *Id.* ¶ 69. It has also used its experience with Peoria's ordinance to advocate at the state legislature and has sought to educate community members and other municipalities about nuisance ordinances. *Id.* ¶ 91.

Peoria argues that this case is similar to cases where housing organizations have been denied standing. *See* Mem. Supp. Mot. Dismiss 2–4 (citing *Warth v. Seldin*, 422 U.S. 490, 516–17 (1975), *HOPE, Inc. v. Cty. of DuPage*, 738 F.2d 797, 803–04, 813–16 (7th Cir. 1984), and

H.O.P.E., Inc. v. Eden Mgmt., LLC, 128 F. Supp. 3d 1066, 1077–78 (N.D. Ill. 2015)). But considering all of the Complaint's allegations in the light most favorable to HOPE, these cases actually support a finding of standing at this stage. In *Warth*, 422 U.S. at 516–17, the Supreme Court noted, in denying standing to a housing council seeking to join the case as a plaintiff, that the council had little connection to the town whose zoning ordinance the plaintiffs were challenging—only one of its member groups had sought to develop low- or moderate-income housing in that town, but there was no live controversy between that group and the town. Peoria argues that HOPE similarly is "an advocacy group opposed to . . . nuisance ordinances throughout the country" with no specific connection to Peoria. Mem. Supp. Mot. Dismiss 4. But HOPE clearly alleges in its Complaint that it operates in "northern and north-central Illinois, including Peoria County," Compl. ¶¶ 4, 87, so it has a distinct interest in promoting fair housing in Peoria. It has also advocated against this ordinance directly to Peoria and in nearby communities.

In *HOPE, Inc.*, 738 F.2d at 815, the Seventh Circuit denied a housing organization standing because it "failed to show a causal connection between its alleged injury [to its corporate purpose of finding housing for low and moderate income persons in DuPage County] and any challenged activity on the part of the DuPage County Board." The plaintiffs in that case, individual and organizational alike, had failed "to allege specific and particular discriminatory acts such as denial of zoning variations and special-use permits for low and moderate income housing projects." *Id.* They merely "claim[ed] that the defendants, through their enforcement of [a] zoning ordinance and other discriminatory housing practices, deterred developers and builders from constructing housing suitable to their needs at prices which they could afford." *Id.* at 807. Likewise, in *H.O.P.E., Inc.*, 128 F. Supp. 3d at 1079, the issue was that that the

organization "failed to allege an injury that [was] fairly traceable to" one group of the defendants—representatives of the state. The complaint only detailed discriminatory conduct by the private defendants, so the organization had no standing to pursue claims against the state defendants. Peoria seems to characterize these cases as standing for the proposition that the time and resources spent researching and bringing a lawsuit are not proper injuries. *See* Mem. Supp. Mot. Dismiss 3–4. It is clear that HOPE's alleged injury involves more than just the research involved in bringing suit—it investigated the alleged discrimination and has advocated against it at the municipal and state levels and educated area residents about the discrimination. And regardless, these cases are not about whether the alleged injuries were sufficient; instead, they stand for the proposition that a housing organization plaintiff must adequately allege specific conduct by the defendant that led it to expend its resources.[3] And here, HOPE has alleged that its injury is traceable to Peoria's specific conduct—its selective and discriminatory enforcement of the chronic nuisance ordinance.

Peoria's last argument seems to be that only an organization's expenditure of resources on testers—people who pose as prospective buyers or renters—has been recognized as a sufficient injury. Mem. Supp. Mot. Dismiss 5. But this distinction does not appear in the cases cited and other courts have granted standing to housing organizations that used their resources to conduct investigations into alleged discrimination without making reference to whether testers were used as part of those investigations, suggesting that the distinction has no consequence. *See, e.g.*, *Housing Opportunities Made Equal, Inc. v. Cincinnati Enquirer, Inc.*, 943 F.2d 644, 646 (6th Cir. 1991) (holding that a fair housing organization had standing because the defendant's discriminatory advertising "deterred potential renters from seeking housing at the

[3] In fact, the organization in *H.O.P.E., Inc.* was permitted to file an amended complaint that contained allegations about the state defendants' conduct which cured the standing deficiencies the court had identified earlier. *H.O.P.E., Inc. v. Eden Mgmt. LLC*, No. 13-cv-7391, 2016 WL 4011225, at *4–5 (N.D. Ill. July 27, 2016).

advertised complexes" and as a result it had "to devote resources to investigate and negate the impact of [the] advertisements"); *Simovits v. Chanticleer Condo. Ass'n*, 933 F. Supp. 1394, 1400–01 (N.D. Ill. 1996) (holding that a fair housing organization had standing because it "direct[ed] [its] time and resources away from . . . counseling projects to investigate" the defendant's alleged discrimination).

Viewing the Complaint as a whole and its allegations in the light most favorable to HOPE, it easily satisfies the *Havens* and *Dwivedi* tests for establishing an injury in fact. HOPE asserts that Peoria's allegedly discriminatory enforcement has frustrated its mission and has caused it to divert resources from its other activities into efforts to combat the discrimination—investigation, advocacy, and education.

CONCLUSION

Accordingly, Peoria's Motion to Dismiss for Lack of Standing, ECF No. 11, is DENIED.

Entered this 14th day of May, 2018.

s/ Sara Darrow
SARA DARROW
UNITED STATES DISTRICT JUDGE