UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PASTOR LEVON YUILLE,

Plaintiff,

vs.

BILL SCHUETTE, in his official capacity as Attorney General, State of Michigan; and BRIAN L. MACKIE, in his official capacity as Prosecuting Attorney, Washtenaw County, Michigan,

Defendants.
_____/

No. 2:12-CV-14652

Hon. Gerald E. Rosen

OPINION AND ORDER DISMISSING PLAINTIFF'S CLAIM FOR LACK OF STANDING

I. INTRODUCTION

This case challenges the constitutionality, under the First and Fourteenth Amendments, of MCL § 168.931(1)(e), which provides:

> A priest, pastor, curate, or other officer of a religious society shall not for the purpose of influencing a voter at an election, impose or threaten to impose upon the voter a penalty of excommunication, dismissal, or expulsion, or command or advise the voter, under pain of religious disapproval.

Plaintiff, Pastor Levon Yuille, commenced this suit on October 22, 2012, requesting this Court to (1) declare MCL § 168.931(1)(e) unconstitutional and (2) permanently enjoin Attorney General Bill Schuette and Prosecuting Attorney for Washtenaw County Brian Mackie (Defendants) from enforcing this Michigan

statute. Plaintiff challenges the statute both facially and as-applied. On October 23, 2012, Plaintiff filed a Motion for Temporary Restraining Order (TRO) / Preliminary Injunction to enjoin enforcement of MCL § 168.931(1)(e) in advance of the November 6, 2012 federal election. Defendants responded to Plaintiff's motion on October 26, and Plaintiff replied on October 29, 2012. In addition, Attorney General Schuette moved to file an *amicus curiae* brief in his personal capacity, which the Court granted on October 30, 2012.

The threshold issue, and the only one reached by the Court, is whether Plaintiff has standing to seek review of this statute in federal court. Since the Court concludes that he does not, this Court lacks jurisdiction over his dispute, and Plaintiff's complaint is hereby DISMISSED.

II. STATEMENT OF FACTS

A. Statutory Background

Michigan Compiled Law § 168.931(1)(e) provides:

> A priest, pastor, curate, or other officer of a religious society shall not for the purpose of influencing a voter at an election, impose or threaten to impose upon the voter a penalty of excommunication, dismissal, or expulsion, or command or advise the voter, under pain of religious disapproval.

Mich. Comp. Laws Ann. § 168.931 (West).

A violation of § 931(1)(e) is punishable as a misdemeanor. While this particular incarnation of the statute was adopted in 1955, § 931(1)(e) has existed in substantially the same form since 1877. The original version, under the note "Intimidation of voter by threatening to discharge, excommunicate, etc.," read as follows:

> Sec. 6 Any person who shall directly or indirectly discharge or threaten to discharge any person who may be in his employ for the purpose of influencing his vote at any election in this State, and any priest, pastor, curate or other officer of any religious association or society, who shall impose or threaten to impose any penalty of excommunication, dismissal or expulsion, or who shall command or advise under pain of religious disapproval, for the purpose of influencing any voter at an election in this State, shall be deemed guilty of corrupt practice, and on conviction thereof shall be punished as provided for in section four of this act.

Michigan Public Acts of 1877, No. 190.

Although this statute has been on the books for over 130 years, it appears to be undisputed that no one has ever been prosecuted -- or even threatened with prosecution -- for a violation of this subsection. Similarly, it appears undisputed that Pastor Yuille himself has never been prosecuted or threatened with prosecution for violating this statute.[1]

B. Plaintiff's Claim / Defendants' Response

Plaintiff is the pastor of The Bible Church, based in Ypsilanti, MI, the National Director of the National Black Pro-Life Congress, the former Chairman of the Michigan Black Republican Council of Southern Michigan, and the host of *Joshua's Trail*, a Christian radio talk show. He firmly believes that "excommunication occurs when a person separates himself or herself from the body of Christ," and that voting for a politician who publicly supports abortion and gay marriage is "contrary to God's Word, it

[1] The Court notes that at the October 30, 2012 hearing on Plaintiff's TRO motion, the Court gave Plaintiff's counsel numerous opportunities to address whether there was any evidence that Plaintiff himself -- or anyone -- had ever been prosecuted, or threatened with prosecution, under this statute. Plaintiff's counsel conceded that there was no such evidence.

is a sin, and it is looked upon with religious disapproval, and it could endanger their soul and separate them from the body of Christ." Compl. ¶¶ 15, 21.

Plaintiff expresses and desires to continue expressing these views, both publicly and privately, "for the purpose of influencing a voter at an election." Compl. ¶ 23. Plaintiff contends that his role as a pastor places both his public and private speech within the parameters of MCL § 168.931(1)(e), thereby subjecting him to criminal prosecution and chilling the exercise of his First and Fourteenth Amendment rights.

Defendants contend that Plaintiff's speech does not fall within § 931(1)(e) because the statute only restricts speech "at an election"[2] and Plaintiff has "not alleged he plans to engage in the prohibited actions at the polls during the November 6, 2012 general election." Defs.' Resp. 12. They further argue that Plaintiff has not alleged that he has been threatened with prosecution under either interpretation of this statute, and that his actions in expressing his views during elections over the years demonstrate that his speech has not, in fact, been chilled. *E.g.*, Compl. ¶ 23 ("Pastor Yuille is a pastor, who, for the purpose of influencing a voter at an election, including those voters who are members of his church, ***advises*** [present tense] the voter, under pain of religious disapproval and the potential for suffering separation from the body of Christ, to vote consistent with God's Word.") (emphasis added). Finally, Defendants argue that because § 931(1)(e) has never been enforced against anyone, it cannot chill Plaintiff's speech. Defs.' Resp. 12 ("any allegations of chill based on future prosecution are highly

[2] "A priest, pastor, curate, or other officer of a religious society shall not for the purpose of influencing a voter **at an election**, impose or threaten to impose upon the voter a penalty of excommunication, dismissal, or expulsion, or command or advise the voter, under pain of religious disapproval." MCL § 168.931(1)(e) (emphasis added).

speculative given that there is no evidence of § 931[1](e) ever having been enforced against anyone, despite its long history.").

III. ANALYSIS

The Constitution of the United States expressly limits the jurisdiction of the federal courts to "Cases" and "Controversies," *i.e.*, specific, live grievances wherein the interests of the litigants "*require* the use of this judicial authority for their protection against *actual* interference." *United Public Workers of America (C.I.O.) v. Mitchell*, 330 U.S. 75, 89 (1947) (emphasis added). The doctrine of standing separates "Cases" and "Controversies" -- disputes properly resolved through the judicial process -- from non-justiciable disputes, and is "an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Unless the party invoking federal jurisdiction establishes the elements of standing, a federal court is powerless to grant relief. *See, e.g., Golden v. Zwickler*, 394 U.S. 103, 110 (1969) ("No federal court . . . has jurisdiction to pronounce any statute, either of a state or of the United States, void, because irreconcilable with the constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies.") (internal citations omitted); *Zurich Ins. Co. v. Logitrans, Inc.*, 297 F.3d 528, 531 (6th Cir. 2002) (quoting *Kardules v. City of Columbus*, 95 F.3d 1335, 1346 (6th Cir. 1996)) ("In order for a federal court to exercise jurisdiction over a matter, the party seeking relief must have standing to sue.").

The "irreducible constitutional minimum" of standing requires that Plaintiff show: "(1) [he] has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is 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." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 180–81 (2000) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). The limited jurisdiction of the federal courts is not dependent upon the nature of the suit, as even purported violations of the First and Fourteenth Amendments must satisfy the requirements of standing. *Golden v. Zwickler*, 394 U.S. 103, 110 (1969) ("The constitutional question, First Amendment or otherwise, must be presented in the context of a specific live grievance."). This includes an actual or imminent injury-in-fact.

Plaintiff asserts two theories to demonstrate injury-in-fact. First, Plaintiff claims that the mere existence of a statute criminalizing his speech is sufficient to confer standing. This is simply incorrect. The Supreme Court has been firm in its insistence that the mere existence of a statute is *insufficient* to create standing without a real threat of enforcement. As the Court stated in *Poe v. Ullman*, "[i]t is clear that the mere existence of a state penal statute would constitute insufficient grounds to support a federal court's adjudication of its constitutionality in proceedings brought against the State's prosecuting officials if real threat of enforcement is wanting." 367 U.S. 497, 507-08 (1961). At its core, this rule is nothing more than a restatement of Article III's "Case" or "Controversy" requirement: without an actual harm or immediate threat to the rights of

one "who is himself" threatened, the federal courts simply lack the constitutional authority to strike down democratically enacted legislation. *State of Georgia v. Stanton*, 6 Wall. 50, 75 (1867) ("This court can have no right to pronounce an abstract opinion upon the constitutionality of a State law. Such law must be brought into actual or threatened operation upon rights properly falling under judicial cognizance, or a remedy is not to be had here.").

Stated differently, the federal courts are not given immediate and general supervision of the constitutionality of legislation. *Chicago & Grand Trunk R. Co. v. Wellman*, 143 U.S. 339, 344-45 (1892) ("The theory upon which, apparently, this suit was brought is that parties have an appeal from the legislature to the courts, and that the latter are given an immediate and general supervision of the constitutionality of the acts of the former. Such is not true.").

Plaintiff's second theory of his asserted injury-in-fact is that his speech has actually been chilled by the existence of § 931(1)(e). While Plaintiff is correct that regulation creates a present and actionable injury-in-fact when it "chills" a plaintiff from exercising her constitutional rights, *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1076 (6th Cir. 1994), "[a]llegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm." *Morrison v. Board of Educ. of Boyd County*, 521 F.3d 602, 608 (6th Cir. 2008) (citing *Laird v. Tatum*, 408 U.S. 1, 13 (1972)).

Plaintiff has failed to demonstrate any present objective harm or any threat of a specific future harm. First, it is clear from the face of Plaintiff's complaint -- which

repeatedly notes that he "expresses his beliefs publicly and privately" and that he "is violating MCL § 168.931(1)(e)" -- that the statute has not chilled his speech. Compl. ¶¶ 20, 24. Further, Plaintiff does not allege that he has been threatened with prosecution -- under either interpretation of the statute -- nor that he is aware of anyone who has ever been threatened with prosecution in the statute's 130 year history.

Indeed, Plaintiff's broad interpretation of the statute decreases the likelihood of future prosecution, and therefore undermines his claim of standing. Defendants (the Attorney General of Michigan and Prosecuting Attorney in Plaintiff's county) not only disavow Plaintiff's interpretation of the statute, but expressly stated at oral argument that they had no intention to prosecute anyone -- including Plaintiff -- under that interpretation, thus leaving Plaintiff free to continue expressing his views as he has been for years, including around election time. While this Court does not reach the question of how § 931(1)(e) should be interpreted, it notes that this situation seems to vindicate the canon of constitutional avoidance, which demonstrates respect for the democratic process and avoids judicial overreach by choosing the constitutionally sound, plausible reading of a statute over an understanding that would nullify the statute -- particularly where that more limited reading of the statute is the one which apparently has been given, and is currently being given, by the relevant law enforcement authorities. As neither the Attorney General nor the Prosecuting Attorney agree with -- nor intend to enforce -- Plaintiff's broad construction of the text, it would be the very definition of judicial

overreach to strike down a democratically enacted statute when a plausible, narrower, and constitutionally sound interpretation is available.[3]

However, even if the Court were to read Plaintiff's complaint as alleging a clear threat of actual chill, it is "not bound to accept as true all that is alleged on the face of the complaint." *Poe*, 367 U.S. at 501. *Poe* is instructive here. In that case, plaintiff challenged a Connecticut statute that had not been enforced in eighty years. The Supreme Court denied plaintiff standing, holding that such a lack of prosecution:

> deprives these controversies of the immediacy which is an indispensable condition of constitutional adjudication. *This Court cannot be umpire to debates concerning harmless, empty shadows*. To find it necessary to pass on these statutes now, in order to protect appellants from the hazards of prosecution, would be to close our eyes to reality.

Id. (emphasis added).

Similarly, MCL § 168.931(1)(e) has been on the books in Michigan since 1877, and neither party has been able to produce even a whit of evidence that anyone -- including Plaintiff -- has ever been threatened with prosecution under that statute. As in *Poe*, this Court "cannot accept, as the basis of constitutional adjudication, other than as chimerical the fear of enforcement of provisions that have during so many years gone uniformly and without exception unenforced." *Poe*, 367 U.S. at 508.

[3] The Court declines Plaintiff's invitation to wade into the speculative thicket of whether the statute is unconstitutional if applied to his or anyone else's speech at an actual election site (as Defendants would construe and, perhaps, enforce the statute), as such a circumstance is not before the court. In any event, any judicial pronouncement on this issue would certainly turn on factual nuances too numerous and conjectural to even postulate here -- much less attempt to anticipate and resolve -- and which, of course, are not before the Court. (Such factual issues may include, among others: the precise nature of the speech; any associated conduct of the speaker; the timing and location of the speech; and whether any other statutes or ordinances may be implicated in the actual factual circumstances).

In short, this lawsuit strikes the Court more as an election-eve manufactured controversy than a real case or controversy requiring judicial resolution.[4] It is not, of course, the role of federal courts to host a forum for political debate. *Baker v. Carr*, 369 U.S. 186, 259 (1962) ("The federal courts are of course not forums for political debate[.]").

IV. CONCLUSION

It is the general practice of this Court to provide an opportunity to amend when a plaintiff is faced with a dismissal that is readily curable, since slight defects should not condemn an otherwise viable complaint. Here, however, amendment of Plaintiff's complaint would be futile. While Plaintiff has proffered a number of claims, his allegations are fundamentally insufficient to satisfy the "irreducible constitutional minimum" of standing. Subsequent amendment would not cure this defect. Therefore, for the reasons stated in this opinion, dismissal of Plaintiff's complaint is warranted.

IT IS HEREBY ORDERED that Plaintiff's Complaint **[Dkt. # 1]** is DISMISSED for lack of jurisdiction.

IT IS FURTHER ORDERED that Plaintiff's Motion for Temporary Restraining Order (TRO) / Preliminary Injunction **[Dkt. # 6]** is DENIED as moot.

IT IS SO ORDERED.

Date: October 31, 2012

s/Gerald E. Rosen
United States District Judge

[4] In this context, Plaintiff's counsel -- who the Court knows to be one of the leading attorneys in the country in the area of protecting religious freedoms and speech -- indicated at the hearing that he only "discovered" this 130-year-old Michigan statute very recently, even though Michigan is his own state.