

April 15, 2024

BEST PRACTICES FOR LITIGATION

Recordkeeping



Presented By:
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW & LWVUS

Housekeeping



This training will be recorded, and slides will be shared. We will turn off the recording during Q&A.



If you are not speaking, please mute yourself to minimize sound issues.



Make sure you identify yourself (name, League, State & pronouns) when asking questions



Staff will be monitoring the chat. If you have any questions or thoughts throughout the call, please feel free to drop them in the chat, and we will do our best to answer them.

Community Norms

Bring your full self and limit distractions.

What is learned here, leaves here.

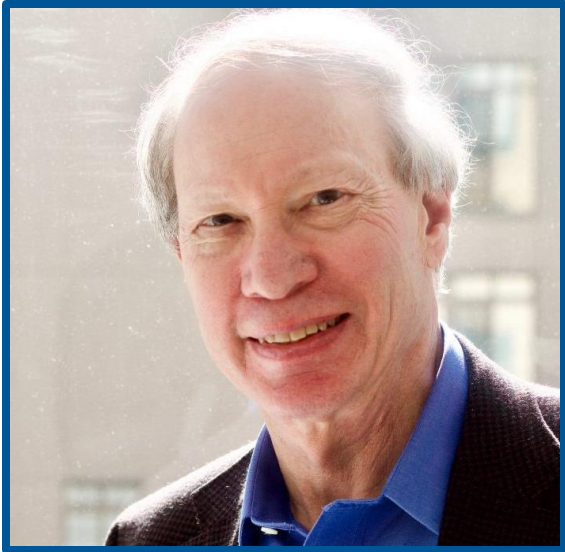
No one knows everything, but together we know a lot.

Don't yuck my yum.

Oops, ouch, and educate.

Assume best intentions.

Presenters



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Agenda



Why is Recordkeeping Important in Litigation?



Legal Standing Requirement



Best Practices for Recordkeeping



Best Practices for Document Storage & Retention



Questions





Poll

1. To your knowledge, does your League currently track or record volunteer hours?
2. How would you describe your League's process for tracking League work and managing documents?
3. What supports would help your League in tracking work and managing documents?

Litigation & Recordkeeping

LWV a Critical Voting Rights Plaintiff in Litigation Across the Country

COMMON CAUSE V. RAFFENSPERGER

- Case filed in January 2022
- Challenged three congressional districts as racial gerrymanders
- LWVGA has **members** in each of the challenged districts

LWVAZ V. LIONS OF LIBERTY

- October 2022, armed intimidation at drop boxes
- LWVAZ working to protect voters, spent **time and resources** responding to the intimidation that would have been spent on mission work.
- Filed suit to stop the intimidation ahead of election



LITIGATION GUIDE: WHAT TO EXPECT WHEN YOU'RE EXPECTING...LITIGATION

A brief guide for Leagues considering federal litigation.

Overview

This guide is meant to provide Leagues who are considering federal litigation an overview of:

1. what to expect before and during litigation;
2. the role and responsibilities of the League in legal advocacy/litigation; and
3. how LWVUS will support the League taking legal action.

LWVUS Litigation Resources

[LWVUS Guidance for Leagues Considering Litigation](#)

[Litigation Guide: What to Expect When You're Expecting ... Litigation](#)

[Federal Action Request Form](#)

[Litigation Office Hours](#)

[LWV Legal Center](#)

[LWVUS Litigation Team](#)

Contact us at litigation@lww.org

Legal Standing Requirement

What is Standing?

- Every lawsuit has a plaintiff and a defendant
- For every lawsuit, you must have an “**actual case or controversy**” (this is a constitutional requirement)
- For that, you need to prove that the plaintiff has **STANDING**



What is Standing?

Standing describes a plaintiff's capacity to bring a lawsuit

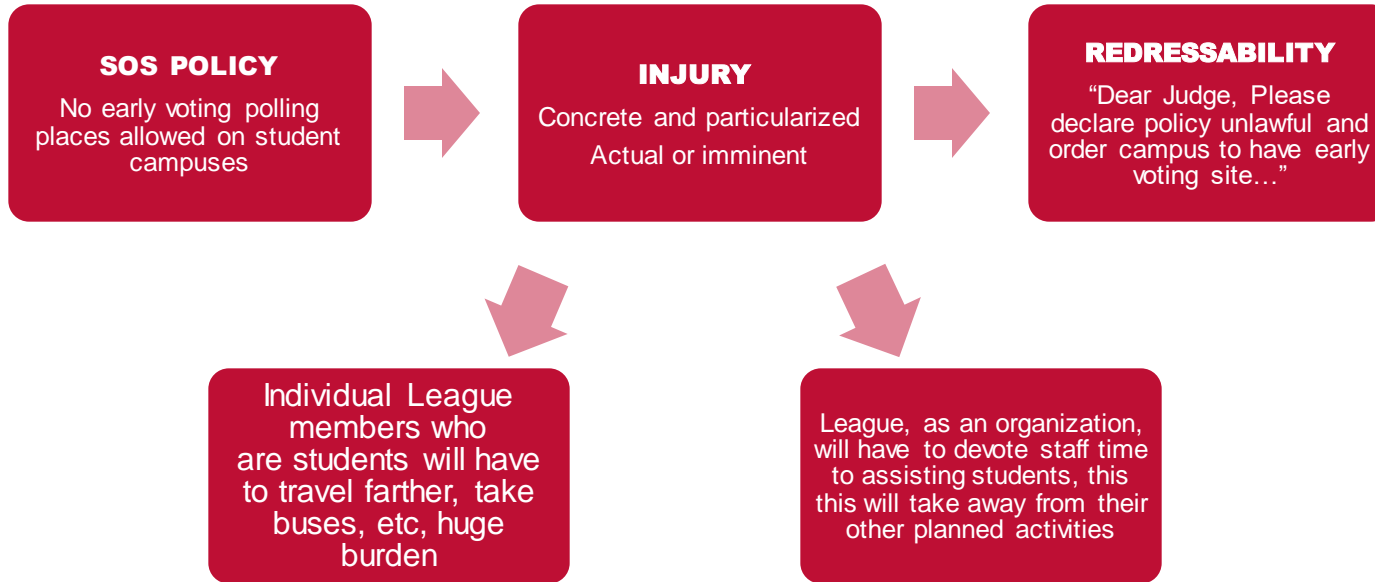
Example: Plaintiff has sustained a direct injury or harm (i.e., “injury in fact”)

As a result of the defendant's actions, that harm or injury is redressable by the court.

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).

Hypothesis

Based on *LWV Florida v. Detzner*, 314 F. Supp. 3d 1205 (N.D. Fla. 2018)



Satisfying Standing Requirements

1. Membership/Associational Standing
2. Organizational Standing i.e., Direct Injury to the Organization's Activities



Membership/Associational Standing

An organization may have standing solely as the representative of its members when:

- Its members would otherwise have **standing to sue in their own right**
- The interests it seeks to protect are **germane to the organization's purpose**
- Neither the claim asserted nor the relief **requires participation of the individual members, i.e., do the individual members need to be plaintiffs**

Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333 (1977)

Proving Membership Standing

An organization has **members**

- What does it mean to be a member/paying dues?
- How many members? Voluntary? Membership lists?
- Statewide membership?
- Local League membership?



How are those members **injured**?



Is the type of injury suffered **relevant to the organization's purpose**?
(ex. Voting-related injury?)



Would the lawsuit require the members to be plaintiffs themselves?

Membership Standing: Scenarios

State law that prohibits use of ballot drop boxes

- Lawyers ask to represent the Statewide League

Secretary of State binding opinion that prohibits early voting sites on college campuses

- Lawyers ask to represent League members who are students on college campuses

County redistricting plan that packs Black voters in one election district diluting their votes

- Lawyers ask to represent League member who lives in the affected district
- Does the member have to identify as African American?



Organizational Standing

An organization may have standing based on direct injury to the organization

- **Diversion of Resources:** Concrete and demonstrable **injury to the organization's activities**—that results in a **drain on organization's resources**—constitutes far more than simply a setback to the organization's abstract social interests.

Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982)

In *Havens*, an organization promoting equal housing alleged that the defendant real estate company's discriminatory practice of “steering” away black renters “had frustrated the organization's counseling and referral services, with a consequent drain on resources,” because it forced the organization “to devote significant resources to identify and counteract the ... racially discriminatory steering practices.”

Hypo: State law that restricts an organization's ability to host voter registration drives that involve registering more than 100 potential voters

Proving Organization / Direct Standing

Key Takeaways

- The injury to the organization does not have to be economic (i.e., losing \$\$)
- The injury to the organization can be non-economic, limited staff time/allocation of time
- If organization has "diverted resources away from something" - we must show what activities the organization had planned to undertake but no longer can undertake because its resources had to be diverted towards addressing the new issue



Scenario: LWV Ohio

- LWV Ohio (LWVOH) advocated multiple secure ballot drop-off boxes
- Since OH's secretary of state Frank LaRose banned counties from installing multiple drop boxes, **LWVOH quickly had to shift its resources**
- LWVOH is **devoting significant time** and staff to educating members about the need to request absentee ballots and educating voters



Scenario: LWV Ohio / Organizational Standing

LWV Ohio (LWVOH) **has advocated** for multiple secure ballot drop-off boxes since the beginning of the pandemic and since more members have been voting by mail. LWVO leadership has written letters to election officials and issued statements in the media about the utility of secure ballot drop boxes.

Since Ohio Secretary of State Frank LaRose issued Directive 2020-16 banning counties from installing multiple secure ballot drop boxes except a single one at their board of elections office, **LWVOH has had to quickly shift its resources** to educating membership about Directive 2020-16, speaking with other voter advocates and voting rights groups about the Directive and its impact on Ohio's electorate including on LWVO's members, and publicly opposing Secretary LaRose's ban.

Scenario: LWV Ohio / Organizational Standing

LWVOH **is now devoting significant time** and resources to Zoom video calls and virtual town halls to educate members about why they need to request absentee ballots early given USPS delays, and fielding questions about ways that members can return their absentee ballots without having to rely on the postal service.

LWVOH has **limited staff time**, and it has had to **divert its staff time and resources away from planned activities**, including educating voters about voting safely during the pandemic and working with election officials to encourage that they provide hand sanitizer and masks and other items to help voters vote safely.

Can LWVOH Prove Organizational Standing?

Yes, because...

- ✓ Issue within the LWVOH's interest
- ✓ Use of significant resources (i.e., time, staff)
- ✓ Takes LWVOH away from other activities it had planned



Best Practices for Recordkeeping

Proving Membership Standing for the League

- Members have been or will be harmed
- May be required to produce names
- Individual members are helpful, but not required
- Knowledge of membership demographics, locations
- Ability to contact membership
- Maintain accurate lists





Documenting League Work

- ✓ Start with your yearly goals, projects, priorities, strategic plan.
- ✓ Keep track of the work you end up completing over the year.
- ✓ Compare it to your goals you hoped to achieve.
- ✓ Keep track of resources expended: volunteer hours, money, in-kind donations, etc.
- ✓ Assess at regular intervals
- ✓ What did you have to forego?




What to Track

 Yearly League Goals, Projects, & Priorities

 Leadership Work

 Volunteer Work

 Money & Resources Sought/Received

 Money & Resources Expended

 Projects

 Events



How to Track



Google Forms and Sheets



Excel Spreadsheets



[LWVUS Volunteer Data Collection Google Form](#) (scroll to Google Form)



Tracking Volunteer Hours

WHAT TO TRACK

- **Who did the work?**
- **When did they do the work?**
- **What issue are they working on?**
- **What activity are they doing?**
- **How long did they spend?**



Tracking Volunteer Work

- Who did the work? → • Joanne Jackson
- When did they do the work? → • April 1, 2024
- What issue were they working on? → • Voter Registration
- What activity did they do? → • Collected and returned completed voter registration forms to registrar.
- How long did they spend? → • 5 hours, 15 minutes (includes driving time)

Recent case proving organizational standing

Democracy North Carolina v. Hirsch

LWV North Carolina successfully survived a motion to dismiss its complaint challenging SB747.

The League gave specific examples of its work on voter registration, GOTV, voter education, and work to engage young voters.

The League alleges that S. 747 “**directly impacts and frustrates [its] civic engagement missions and will result in a drain on their time and resources.**” Specifically, it contends that the alleged disenfranchisement will require its members to “**devote more resources to independent voter registration efforts**” before the traditional twenty-five-day cutoff for registration because SDR voters “can no longer rely on their ballots being counted.” Additionally, the League alleges that it will be “force[d] to **divert time and resources away from their many other civic engagement activities** in order to bolster their [get-out-the-vote], voter education, voter protection and voter registration efforts to **counteract and overcome the harm caused by SB 747 to the communities they serve.**” The court finds that the League’s allegations suffice to establish standing at this stage. In particular, **the alleged erroneous disenfranchisement of SDR voters would hinder the League’s mission of registering eligible voters and engaging in voter advocacy.**

Data Collection Resources

LWVUS Evaluation & Outcomes Department

Focuses on promoting and creating a culture of effective data use at all levels of League, including providing guidance to staff and League members on data collection methods (quantitative and qualitative), data collection processes (how to collect data), and how to use data effectively.

evaluation@lww.org

[Data Collection Office Hours](#)

Best Practices for Document Storage & Retention

Dedicated League Accounts

Set up dedicated accounts for official League business that are separate from your personal and external work. This helps you stay organized!

Set up a League-specific email account and League-only accounts for creating and storing League documents and records.

Be sure to only give access to your League accounts to those authorized.



File Organization & Retention

In your electronic files (email, documents, etc.), take care not to delete anything that relates to League work. This includes text messages if you use your phone for League business.

Create folders to keep it organized. These can be very general and broad.

When in doubt, **don't** throw it out.





Recap

1. Standing is a legal requirement for plaintiffs to prove they have the right to bring a case.
2. Leagues can demonstrate standing by proving either its members or the League itself have been harmed.
3. Demonstrating harm to the League means showing that we have diverted resources away from work that we would have done, but for the challenged law.
4. Take care to track, record, store, and protect your League's work with reliable systems, and reach out to LWVUS for support!

Questions?