[Cite as *League of United Latin Am. Citizens v. Strickland*, 2012-Ohio-947.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

League of United Latin American Citizens ("LULAC"),	:	
Plaintiff-Appellant,	:	
v.	:	No. 10AP-639
	:	(C.P.C. No. 09CVH-11-17559)
Ohio Governor [John Kasich] et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on March 6, 2012

E. Dennis Muchnicki, for appellant.

Michael DeWine, Attorney General, *Aaron D. Epstein*, *Pearl M. Chin*, *John T. Williams*, and *Hilary R. Damaser*, for appellees.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} Plaintiff-appellant, League of United Latin American Citizens ("LULAC" or "appellant"), appeals from two judgment entries entered in the Franklin County Court of Common Pleas. In the first judgment entry, the trial court overruled appellant's objections to the magistrate's decision denying appellant's request for a preliminary injunction and recommending dismissal of the action and adopted the magistrate's findings of fact and conclusions of law in their entirety. In the second judgment entry, the trial court granted the Civ.R. 12(B)(6) motions to dismiss filed by defendants-appellees,

Ohio Department of Public Safety Director Cathy Collins-Taylor, Acting Registrar of the Ohio Bureau of Motor Vehicles Carolyn Y. Williams, and Ohio Governor [John Kasich] (collectively "appellees"). We now reverse those judgments to the extent explained more fully below.

{¶ 2} In a letter dated October 8, 2009, the Ohio Department of Public Safety, Bureau of Motor Vehicles ("BMV") issued a notice to approximately 47,000 Ohio residents regarding their Ohio vehicle registrations. The letter advised those residents that their previously accepted vehicle registration applications failed to include a social security number, an Ohio driver's license number, or an Ohio identification number, as required pursuant to R.C. 4503.10. The letter instructed the recipients to visit a deputy registrar in person within 60 days of the notice to update the information. According to the letter, the cost for updating the vehicle registration was $3.50. The letter further informed the recipients that failure to update the registration on or before December 8, 2009 would result in cancellation of the vehicle registration. Finally, the letter indicated that if the recipient's vehicle registration was cancelled, he or she could request an administrative hearing. Attached to the letter was a two-page "Acceptable Documents List" which set forth acceptable types of proof of the recipient's social security number, in the event the recipient did not possess an Ohio driver's license number or an Ohio identification number.

{¶ 3} On November 19, 2009, the BMV mailed a second and final notice to those 47,000 Ohio residents reiterating the same information that was provided in the October 8, 2009 notice.

{¶ 4} On November 24, 2009, LULAC filed a complaint and motion for preliminary injunction against appellees seeking declaratory and injunctive relief or, in the alternative, a writ of mandamus, ordering appellees to forego the policy set forth in the October 8, 2009 letter. The complaint alleges the BMV's actions violate R.C. 4503.10(B). The complaint further alleges the BMV's policy is preempted by federal law under the REAL ID Act of 2005 (codified at 49 U.S.C. 30301).

{¶ 5} In the complaint, LULAC describes itself as a not for profit corporation organized in 1929 with a chapter located in Cincinnati, Ohio. The complaint asserted

LULAC's primary purpose "is to advance the economic conditions, educational attainment, political influence, health, housing and civil rights of Latino Americans through community-based programs and to advocate on behalf of the needs of Latino Americans." (Complaint, at ¶ 2; R. 2-3 at 2.)

{¶ 6} A hearing was scheduled for December 1, 2009 before a magistrate of the Franklin County Court of Common Pleas. On that date, LULAC introduced the testimony of several witnesses, including Neftali Roblero, Attorney Jorge Martinez, Liborio Alcauter, Jason Riveiro, and Attorney Joseph Mas.[1]

{¶ 7} Several of these witnesses are members of LULAC. Two of these witnesses testified that the BMV's registration policy, as announced in its October 8, 2009 letter, had caused a decline in sales at their businesses, which target the Latino community. One of the business owners also testified some of his Latino customers had recently left the state of Ohio and asked permission to leave their motor vehicles in his grocery store parking lots with "for sale" signs displayed. Another witness, an attorney, testified he had experienced a decline in the volume of his practice, which primarily serves the Latino community. He attributed this decline to his Latino clients' inability to comply with the BMV directive. The Ohio director for LULAC testified he believed LULAC members were leaving Ohio due to an inability to comply with the BMV's October 8, 2009 directive. Finally, Attorney Mas testified he believed the BMV policy would cause: (1) a significant number of motor vehicles to be abandoned in Ohio as Latinos flee the state; (2) Latino children to withdraw from schools in Ohio; and (3) an increase in the number of Latino school children who are referred to school counselors.

{¶ 8} In addition, appellees introduced the testimony of one witness, Jeffrey Rose, the administrator of field services for the BMV. Rose testified as to the state of Ohio's compelling interest in verifying that an individual who registers a motor vehicle with the BMV is actually the legal owner of the vehicle.

{¶ 9} On December 7, 2010, the magistrate issued a decision, which included findings of fact and conclusions of law, denying LULAC's motion for preliminary

[1] For reasons which shall be explained more fully below, the facts as established at the hearing are based upon the findings of fact as set forth by the magistrate.

injunction. In her decision, the magistrate determined LULAC lacked standing to bring this action. Because she found none of LULAC's witnesses presented clear and convincing evidence to support their speculations with respect to the injury to be suffered, and because she found the members of LULAC had not sustained an injury which was different in character from that of the public in general, the magistrate concluded LULAC could not demonstrate a substantial likelihood that it would prevail on the merits of its complaint. Therefore, the magistrate denied the motion for a preliminary injunction.

{¶ 10} The magistrate also went on to address the merits of the substantive claims within the complaint. First, the magistrate analyzed R.C. 4503.10 and determined: (1) an application to register a motor vehicle must contain the owner's social security number, Ohio driver's license number, or Ohio identification number; (2) an application which does not contain such information is not in proper form and, as a result, the application will be refused; and (3) license plates that are erroneously issued when the application does not provide this required information shall be recovered by the county sheriff or local police upon certification of the registrar. The magistrate further found it was not necessary for the statute to specifically list these missing identifiers as a basis for revocation of a motor vehicle registration.

{¶ 11} Next, the magistrate determined the BMV policy as set forth in the October 8, 2009 notice was not preempted by federal law established pursuant to the REAL ID Act of 2005. The magistrate rejected LULAC's contention that the Ohio requirement set forth in R.C. 4503.10(A)(7), which states that individuals applying for a vehicle registration are to provide the vehicle owner's social security number, Ohio driver's license number, or Ohio identification number, was preempted by federal law. The magistrate concluded the federal law requirements applied only to driver's licenses rather than to applications for motor vehicle registrations, as is the case here and, thus, there was no conflict.

{¶ 12} Finally, the magistrate rejected LULAC's alternative request for a writ of mandamus ordering appellees to abandon the policy set forth in the BMV's October 8, 2009 notice, finding the complaint had not been brought in the name of the state, it did

not include an affidavit verifying the allegations of the complaint, and LULAC had failed to establish the necessary elements showing it was entitled to the writ.

{¶ 13} On December 21, 2010, LULAC filed objections to the magistrate's decision. In its first objection, LULAC argued the magistrate erred in determining LULAC lacked standing to bring the action, claiming the magistrate erroneously applied taxpayer lawsuit principles in determining LULAC's status to challenge the policy, and that the magistrate should have given more weight to the testimony of certain witnesses. Next, LULAC objected to the magistrate's determination that R.C. 4503.10(B)(1) and (A)(7) authorized the cancellation of a motor vehicle registration application for failure to include a social security number, which the magistrate found to be a fundamental requirement, asserting the statute does not specifically provide for this, and claiming the magistrate improperly used the doctrine of in pari materia to legislate through interpretation and thereby grant power to an administrative agency (the BMV) that had been withheld by the General Assembly. Finally, in its third objection, LULAC argued the magistrate erred in distinguishing the instant case from *State ex rel. Ten Residents of Franklin Cty. Who Are Fearful of Disclosing Their Names v. Belskis*, 142 Ohio App.3d 296 (10th Dist.2001), in which this court determined that the failure to provide a social security number was not a lawful basis upon which to deny a marriage license.

{¶ 14} Notably, LULAC did not file a transcript of the hearing before the magistrate with its objections for the trial court's review.

{¶ 15} On December 28, 2010, appellees filed their memorandum in opposition to those objections. In responding to LULAC's objections, appellees argued the following: (1) the principles of standing require that all private litigants who challenge the lawfulness of a governmental policy or legislative enactment, not just those suing on the basis of taxpayer status, must suffer an injury different in character from that suffered by the general public, and LULAC did not suffer such an injury; (2) to the extent LULAC challenges the magistrate's factual findings, particularly the conclusion that the purported injury to its members is speculative, the trial court is required to accept the magistrate's factual findings because LULAC failed to provide a transcript and failed to prove its members will suffer an actual injury, and therefore the magistrate properly concluded

LULAC lacked standing; and (3) the magistrate properly determined that R.C. 4503.10 authorizes the BMV to cancel or refuse to issue a vehicle registration where an application does not contain a social security number, Ohio driver's license number, or Ohio identification number.

{¶ 16} In addition, on December 1, 2009, appellees Ohio Department of Public Safety Director Cathy Collins-Taylor and BMV Acting Registrar Carolyn Y. Williams filed a motion to dismiss LULAC's complaint, arguing: (1) LULAC lacks standing to bring the action; (2) the BMV's action complies with applicable law; (3) the REAL ID Act of 2005 does not preempt Ohio's vehicle registration laws; and (4) LULAC has failed to properly petition the court for a writ of mandamus. On December 22, 2009, appellee Governor [Kasich] filed a similar motion to dismiss, claiming: (1) the BMV acted in accordance with the law pursuant to R.C. 4503.10; (2) the action is now moot; (3) the complaint is not a proper action in mandamus; and (4) LULAC lacks standing to pursue the action. LULAC did not file written memoranda in opposition to either of these two motions to dismiss.

{¶ 17} On June 11, 2010, the trial court issued a decision overruling LULAC's objections to the magistrate's decision and adopting the magistrate's decision in its entirety. On that same date, the trial court issued a decision granting the Civ.R. 12(B)(6) motions to dismiss filed by appellees. The trial court cited several reasons in support of its dismissal, including: (1) lack of associational standing and a failure to establish an actual injury different from that sustained by the general public; (2) its interpretation of R.C. 4503.10, which it found would authorize the denial of motor vehicle registration applications which do not contain the owner's social security number, Ohio driver's license number, or Ohio identification number; (3) rejection of LULAC's argument that the federal REAL ID Act of 2005 preempts Ohio's vehicle registration laws; and (4) its determination the complaint is not a proper mandamus pleading and fails to establish the requirements for mandamus relief. This timely appeal now follows and presents two assignments of error for our review:

> I. The Trial Court committed an error of law when it adopted the Magistrate's erroneous misunderstanding of the concept of "the public" and "injury" in the test for determining organizational standing.

> II. Trial Court Committed an Error of Law When It Interpreted Revised Code Section 4503.10(A)(7), 4503.10(B) and 4503.10(E) As Authorizing the Revocation and/or Cancellation of Ohio Motor Vehicle Registrations where the owner of the vehicle has not provided a social security number on the form prepared by the BMV pursuant to Section 4503.10(A)(7).

{¶ 18} In its first assignment of error, LULAC contends the trial court erred in finding it lacked standing because it engaged in an erroneous reasoning process to determine the type of injury LULAC members must have suffered and incorrectly concluded any "injury" suffered was not different from that of the general public. We agree.

{¶ 19} In order to sue, a plaintiff must have standing to bring the suit. LULAC asserts it has organizational or associational standing to pursue this action. An association has standing to bring a lawsuit on behalf of its members when: " '(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.' " *Tiemann v. Univ. of Cincinnati*, 127 Ohio App.3d 312, 324 (10th Dist.1998) (abrogated in part on other grounds), quoting *Ohio Academy of Nursing Homes, Inc. v. Barry*, 37 Ohio App.3d 46, 47 (10th Dist.1987).

{¶ 20} "The question of standing is whether a litigant is entitled to have a court determine the merits of the issues presented. Standing is a threshold test that, if satisfied, permits the court to go on to decide whether the plaintiff has a good cause of action, and whether the relief sought can or should be granted to plaintiff." *Tiemann* at 325, citing *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343 (1975). *See also Ohio Contractors Assn. v. Bicking*, 71 Ohio St.3d 318, 320 (1994) (standing is whether a litigant is entitled to have the court determine the merits of the issues raised).

{¶ 21} Under the doctrine of standing, a litigant must have a personal stake in the matter he or she wishes to litigate. *Tiemann* at 325. Standing requires a litigant to have " 'such a personal stake in the outcome of the controversy as to assure that concrete

adverseness which sharpens the presentation of issues upon which the court so largely depends for the illumination of difficult * * * questions.' " *Id*. at 325, quoting *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663 (1962). In order to have standing, a plaintiff must demonstrate some injury caused by the defendant that has a remedy in law or equity. *Id*. The injury is not required to be large or economic, but it must be palpable. *Id*. Furthermore, the injury cannot be merely speculative, and it must also be an injury to the plaintiff himself or to a class. *Id*. An injury that is borne by the population in general, and which does not affect the plaintiff in particular, is not sufficient to confer standing. *Id*., citing *Allen v. Wright*, 468 U.S. 737, 104 S.Ct. 3315, 82 L.Ed.2d 556 (1984). *See also State ex rel. Masterson v. Ohio State Racing Comm*., 162 Ohio St. 366, 368 (1954) ("private citizens may not restrain official acts when they fail to allege and prove damage to themselves different in character from that sustained by the public generally."). (Citation omitted.)

{¶ 22} Dismissal for lack of standing is a dismissal pursuant to Civ.R. 12(B)(6). *Brown v. Columbus City Schools Bd. of Edn*., 10th Dist. No. 08AP-1067, 2009-Ohio-3230, ¶ 4. "A motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint." *Volbers-Klarich v. Middletown Mgt*., 125 Ohio St.3d 494, 2010-Ohio-2057, ¶ 11. In order to dismiss a complaint for failure to state a claim upon which relief can be granted, it must appear beyond doubt that plaintiff can prove no set of facts entitling him to relief. *O'Brien v. Univ. Community Tenants Union, Inc*., 42 Ohio St.2d 242 (1975), syllabus.

{¶ 23} For purposes of appellate review, a question involving standing is typically a question of law and, as such, it is to be reviewed de novo. *Ohio Concrete Constr. Assn. v. Ohio Dept. of Transp.*, 10th Dist. No. 08AP-905, 2009-Ohio-2400, ¶ 9. However, when a party objecting to a magistrate's report has failed to provide the trial court with the evidence and documents by which the court could make a finding independent of the report, appellate review of the court's findings is limited to whether the trial court abused its discretion in adopting the magistrate's report. *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728 (1995). In those circumstances, the appellate court is precluded from considering the transcript of the hearing submitted with the appellate

record. *Id. See also Taylor v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 11AP-385, 2011-Ohio-6060, ¶ 10 (where the objecting party fails to provide the trial court with a transcript, both the trial court and the appellate court are bound by the magistrate's factual findings), and *Martin v. Ohio Dept. of Rehab. and Corr.*, 10th Dist. No. 07AP-1006, 2008-Ohio-3166, ¶ 10 ("Without a transcript of the hearing before the magistrate, the trial court is limited to consideration of the magistrate's conclusions of law in light of the facts found by the magistrate."). Therefore, we are limited to determining whether the trial court abused its discretion in its application of the law to the facts determined by the magistrate. *Taylor* at ¶ 10.

{¶ 24} Nevertheless, " '[r]egardless of whether a transcript has been filed, the trial judge always has the authority to determine if the [magistrate]'s findings of fact are sufficient to support the conclusions of law drawn therefrom [and] come to a different legal conclusion *if* that conclusion is supported by the [magistrate]'s findings of fact.' " *Wade v. Wade*, 113 Ohio App.3d 414, 419 (11th Dist.1996), quoting *Hearn v. Broadwater*, 105 Ohio App.3d 586, 588 (11th Dist.1995). (Emphasis sic.)

{¶ 25} Despite its failure to provide a transcript to the trial court for its review, LULAC asserts that we must conduct a de novo review of the facts in this case as they relate to issues of standing. LULAC cites to *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, as well as *Enertech Elec., Inc. v. Ashtabula Area City Sch. Dist. Bd. of Ed.*, 11th Dist. No. 2009-A-0046, 2010-Ohio-2815, in support of its position.

{¶ 26} In *Portage Cty. Bd. of Commrs.*, the Supreme Court of Ohio stated, "[w]hether established facts confer standing to assert a claim is a matter of law. We review questions of law de novo." *Id.* at ¶ 90. Later, in *Enertech Elec., Inc.*, the Eleventh District noted that its district, as well as other Ohio appellate districts, had employed the de novo standard of review when reviewing standing determinations. The court in *Enertech Elec., Inc.* cited to several cases in support, including *State ex rel. Butler Twp. Bd. of Trustees v. Montgomery Cty. Bd. of Commrs.*, 2d Dist. No. 22664, 2008-Ohio-6542, ¶ 11 (when an appellate court is presented with a standing issue, it is generally a question of law, which requires application of a de novo standard of review); *Koehring v. Ohio State Dept. of*

Rehab. & Corr., 10th Dist. No. 06AP-396, 2007-Ohio-2652, ¶ 11 (applying a de novo standard of review, we independently and nondeferentially examined the common pleas court's legal conclusion that plaintiff lacked standing); and *State ex rel. N. Ohio Chapter of Associated Builders & Contractors, Inc. v. Barberton City School Dist. Bd. of Edn.*, 188 Ohio App.3d 395, 2010-Ohio-1826, ¶ 10 (because standing presents the court with a question of law, the matter is reviewed de novo).

{¶ 27} However, in asserting its argument in favor of a de novo review, LULAC has failed to note an important distinction. The case law supports the application of a de novo review on standing issues as it relates to an independent, nondeferential examination of the trial court's *legal conclusion* that the appellant lacked standing. Such a review is conducted using the *established facts*. Here, because LULAC failed to provide the trial court with a transcript of the hearing before the magistrate, the trial court had no choice but to accept the magistrate's factual findings. Therefore, the facts in this matter were "established" and we do not conduct a de novo review of the facts as asserted by LULAC. Consequently, we are unable to review and determine whether LULAC is correct in asserting that the magistrate failed to give proper weight to certain evidence presented to her. Nevertheless, we shall review the trial court's legal conclusion pursuant to a de novo standard of review.

{¶ 28} LULAC previously raised three alternative theories as to how its members were injured by the October 8, 2009 BMV notice. First, LULAC alleged its members were injured because they were going to be forced to spend time driving to the deputy registrar to stand in line in order to pay the $3.50 fee to update their registrations or face cancellation of those registrations. Next, LULAC argued its members were unable to comply with the notice because they have not been assigned social security numbers and therefore they faced the threat of vehicle registration cancellation. Third, LULAC argued its members would suffer indirect economic harm. Because many LULAC members could not provide a social security number to comply with the BMV notice, LULAC presented testimony claiming many members had fled the state of Ohio, thereby adversely affecting those LULAC members who own businesses which target the Latino community.

{¶ 29} In her factual findings, the magistrate definitively determined that the testimony asserting the BMV directive had produced a negative impact upon those LULAC members who owned Latino-targeted businesses was merely speculative and not supported by clear and convincing evidence. Because we cannot review the magistrate's factual findings on this issue, as explained above, and because LULAC has not asserted on appeal that these findings are in error, we accept this particular determination without further analysis.

{¶ 30} However, the magistrate further considered LULAC's assertion that, due to the BMV's directive, many of its members were going to be forced to spend time driving to the deputy registrar to stand in line to pay the $3.50 fee to update their registrations or face cancellation of their registrations and, as a result, they suffered injury. In essence, the magistrate's rationale for determining that LULAC lacks standing to bring this action on these grounds is based upon her conclusion that LULAC's members are no different from any other member of the public who received the October 8, 2009 notice and who will also be compelled to stand in line at the deputy registrar, provide the identifying information, and pay the $3.50 processing fee, or otherwise face cancellation of his or her motor vehicle registration and confiscation of his or her license plates. As a result, the magistrate concluded the damage LULAC's members would allegedly sustain as a result of the BMV's directive is no different from the damage that the public generally would sustain as a result of the directive. However, we disagree with the magistrate's interpretation of what constitutes "the public generally."

{¶ 31} The magistrate seems to conclude that "the public generally" consists of the approximately 47,000 individuals who received the October 8, 2009 notice from the BMV. To the extent LULAC's standing depends on demonstrating an injury separate from that of "the public generally," LULAC has demonstrated such an injury. We believe that "the public generally" consists of all persons who apply to register their motor vehicles, not just those individuals who received the October 8, 2009 notice.

{¶ 32} Under the new policy, as announced by the BMV, all persons who have applied and registered their motor vehicles are required to provide the identifying information as previously noted above. The majority of the applicants are not subject to

revocation or cancellation of their registrations because they provided the identifying information now mandated under the new policy. However, the group of individuals who received a letter notifying them of the impending cancellation of their registrations (unless they promptly submit additional information) is impacted in a way that other applicants registering their motor vehicle are not. This group of individuals includes LULAC members. This group of individuals presented applications which were accepted and their registrations were awarded based upon the information provided at that time. Yet, pursuant to the new policy announced in the October 8, 2009 letter from the BMV, they face cancellation of those registrations unless they comply with the directive to appear in person at the BMV, provide the identifying information outlined in the letter, and pay a new $3.50 processing fee to update their information. Clearly, this group of individuals suffers an injury different in manner or degree from that of the members of the public generally, who previously registered their motor vehicles and who have not received a letter from the BMV notifying them of the impending cancellation of their registration, and who do not have to appear at the deputy registrar to provide additional information and pay an additional fee. Furthermore, even if the merits of LULAC's action is unsuccessful, its members could still show harm and/or damage that is separate from any harm suffered by "the public generally." *See Brown*, 10th Dist. No. 08AP-1067, 2009-Ohio-3230, at ¶ 13.

{¶ 33} In its brief, appellees state as follows: "The only contested issue with respect to standing is the first prong: whether LULAC established that any of its members were injured by the BMV letter and thus have standing to sue in their own right." Appellees' brief, at 9. Appellees argue that LULAC failed to present the testimony of any witness who personally had his or her registration cancelled or who had to drive to the deputy registrar in order to wait in line, provide the additional information, and pay the $3.50 processing fee. However, we fail to see why this deprives LULAC of standing, as it is evident that LULAC members were subject to the requirements set forth in the letter. The magistrate specifically found that LULAC's state director filed this lawsuit as a result of a request made by approximately one-fourth of its members who claimed injury on this basis.

{¶ 34} Appellees also dispute that the BMV directive causes "injury" to the members of LULAC. As previously stated above, to establish standing, one must demonstrate that the challenged action has caused or will cause him or her injury in fact, whether it is economic or otherwise. *Stark-Tuscarawas-Wayne Joint Solid Waste Mgt. Dist. v. Republic Waste Services of Ohio II, LLC.*, 10th Dist. No. 07AP-599, 2009-Ohio-2143, ¶ 24. The alleged injury must be concrete, not abstract or suspected. *Id.* Furthermore, the party must show he or she has suffered or will suffer a specific injury, even if it is slight, as a result of the challenged action or inaction, and that the injury is likely to be redressed if the court invalidates the action or inaction. *Id.* The alleged injury may be actual and immediate, or threatened. *Id. See also State ex rel. Consumers League of Ohio v. Ratchford*, 8 Ohio App.3d 420, 424 (10th Dist.1982) ("Demonstration of injury in fact is limited to those situations where an individual can show he has suffered or will suffer a specific injury, even if slight, from the challenged action or inaction, and that this injury is likely to be redressed if the court invalidates the action or inaction.").

{¶ 35} Although the task of gathering the additional information requested, driving to the deputy registrar, standing in line, providing the requested information, and paying an additional $3.50 processing fee may not be a particularly daunting one in and of itself, we believe it is a concrete "injury," however slight. Furthermore, the demands of the requirement were imminent (within 60 days), as were the consequences of failing to comply with the requirement (*i.e.*, cancellation of the registration).

{¶ 36} Our conclusion is based in part upon a review of *Ohio Licensed Beverage Assn. v. Ohio Dept. of Health*, 10th Dist. No. 07AP-490, 2007-Ohio-7147, a case in which the plaintiff, a trade association suing on behalf of its members, which included bar owners affected by a no smoking ban, was found to have associational standing. Specifically, we determined the plaintiff met the requirements of associational standing necessary to challenge the private club exemption to the SmokeFree Workplace Act, which generally prohibited the smoking of tobacco products in public places and places of employment, including most public restaurants and bars. We found the association alleged sufficient facts to demonstrate at least one of its members was suffering immediate or threatened injury as a result of the challenged action, due to the unfair

competition resulting from an allegedly invalid action instituted by a government agency that bestowed an exemption upon private clubs, but not public bars. In reviewing our decision, it is evident we did not consider "the public generally" to consist only of public bar owners affected by the smoking ban and then require the association's members to show how they were impacted in a manner different from all other public bar owners subject to the smoking ban. Instead, it is apparent that we incorporated a much broader view in categorizing those affected by the legislation. We believe our analysis in *Ohio Licensed Beverage Assn*. was sound and consequently, that "the public generally" should not be defined in this case so as to only include those persons who received the October 8, 2009 BMV notice.

{¶ 37} Because we find the magistrate erred in defining "the public generally," and as a consequence, the magistrate erred in concluding LULAC did not have standing to bring this action, we find the trial court failed to correctly apply the law to the facts as set forth in the magistrate's decision. Therefore, we find the trial court erred when it adopted the magistrate's decision with respect to the issue of standing. Accordingly, we sustain LULAC's first assignment of error.

{¶ 38} In its second assignment of error, LULAC argues the trial court's determination that the informational requirements set forth in the October 8, 2009 BMV letter are authorized pursuant to R.C. 4503.10 is contrary to law. Specifically, LULAC takes issue with the magistrate's application of the doctrine of in pari materia and her conclusion that the language in R.C. 4503.10 supports the policy set forth in the October 8, 2009 BMV letter. The policy allows the BMV to require applicants who previously registered their motor vehicles without providing an Ohio driver's license number, Ohio identification number, or a social security number to appear in person at the deputy registrar within 60 days with the information and to pay a processing fee or face cancellation of the previously awarded registration. Upon review, we find the policy to be unlawful.

{¶ 39} R.C. 4503.10 governs applications for registration or renewal as well as the associated fees. It reads, in relevant part, as follows:

(A) * * * Except as provided in division (J) of this section, applications for registration shall be made on blanks furnished by the registrar for that purpose, containing the following information:

(1) A brief description of the motor vehicle to be registered, including the year, make, model, and vehicle identification number, and, in the case of commercial cars, the gross weight of the vehicle fully equipped computed in the manner prescribed in section 4503.08 of the Revised Code;

(2) The name and residence address of the owner, and the township and municipal corporation in which the owner resides;

(3) The district of registration, which shall be determined as follows:

* * *

(4) Whether the motor vehicle is a new or used motor vehicle;

(5) The date of purchase of the motor vehicle;

(6) Whether the fees required to be paid for the registration or transfer of the motor vehicle, during the preceding registration year and during the preceding period of the current registration year, have been paid. Each application for registration shall be signed by the owner, either manually or by electronic signature, or pursuant to obtaining a limited power of attorney authorized by the registrar for registration, or other document authorizing such signature. If the owner elects to apply for or renew the motor vehicle registration with the registrar by electronic means, the owner's manual signature is not required.

(7) The owner's social security number, driver's license number, or state identification number, or, where a motor vehicle to be registered is used for hire or principally in connection with any established business, the owner's federal taxpayer identification number. The bureau of motor vehicles shall retain in its records all social security numbers provided under this section, but the bureau shall not place social security numbers on motor vehicle certificates of registration.

(B) Except as otherwise provided in this division, each time an applicant first registers a motor vehicle in the applicant's name, the applicant shall present for inspection a physical certificate of title or memorandum certificate showing title to the motor vehicle to be registered in the name of the applicant if a physical certificate of title or memorandum certificate has been issued by a clerk of a court of common pleas. * * * The application shall be refused if any of the following applies:

(1) The application is not in proper form.

(2) The application is prohibited from being accepted by division (D) of section 2935.27, division (A) of section 2937.221, division (A) of section 4503.13, division (B) of section 4510.22, or division (B)(1) of section 4521.10 of the Revised Code.

(3) A certificate of title or memorandum certificate of title is required but does not accompany the application or, in the case of an electronic certificate of title, is required but is not presented in a manner prescribed by the registrar's rules.

(4) All registration and transfer fees for the motor vehicle, for the preceding year or the preceding period of the current registration year, have not been paid.

(5) The owner or lessee does not have an inspection certificate for the motor vehicle as provided in section 3704.14 of the Revised Code, and rules adopted under it, if that section is applicable.

* * *

(D) Each deputy registrar shall be allowed a fee of three dollars and fifty cents for each application for registration and registration renewal notice the deputy registrar receives, which shall be for the purpose of compensating the deputy registrar for the deputy registrar's services, and such office and rental expenses, as may be necessary for the proper discharge of the deputy registrar's duties in the receiving of applications and renewal notices and the issuing of registrations.

> (E) Upon the certification of the registrar, the county sheriff or local police officials shall recover license plates erroneously or fraudulently issued.

{¶ 40} The magistrate determined the BMV's policy as set forth in its October 8, 2009 letter was lawful and was authorized by the statutory language set forth in R.C. 4503.10. Specifically, in reading the various provisions of that statute in pari materia, the magistrate found the following: (1) an application to register a motor vehicle must contain the owner's social security number, Ohio driver's license number, or Ohio identification number; (2) an application is not in the proper form when it fails to contain such information; (3) the application will be refused if it fails to contain such information; and (4) license plates that are erroneously issued when an application fails to contain this information shall be recovered by the county sheriff or the local police upon certification of the registrar.

{¶ 41} The magistrate further determined the legislature, pursuant to R.C. 4503.10(A)(7), has made it a fundamental requirement that an individual who wants to register a motor vehicle must provide one of the three identifiers. As a result, the magistrate found R.C. 4503.10 authorized the BMV to cancel the motor vehicle registrations of individuals who had not provided one of the three identifiers in their registration application because such an application was not in proper form and thus was subject to cancellation. The magistrate also cited to R.C. 4503.10(E), which authorizes a county sheriff or local police official to recover license plates which were erroneously issued. In addition, the magistrate found the BMV notice notified all recipients that, in the event their motor vehicle registration was cancelled, they could request an administrative hearing pursuant to R.C. Chapter 119.

{¶ 42} The trial court adopted the magistrate's findings of fact and conclusions of law in their entirety and relied upon them in conducting its own review as to the objections filed by LULAC, as well as in its analysis of appellees' motions to dismiss.

{¶ 43} LULAC argues the statutory language in R.C. 4503.10 does not authorize the BMV to deny motor vehicle registrations on the grounds that the applicant failed to include a social security number, Ohio driver's license number, or Ohio identification

number. LULAC contends R.C. 4503.10(B) lists very specific grounds upon which the registrar is authorized to deny an application for registration, and because it does not list failure to provide one of those three identifiers as a basis for denial, there is no authority to support the BMV's new policy for cancelling the registrations of persons who failed to provide a social security number, Ohio identification number, or Ohio driver's license number on their registration application.

{¶ 44} Appellees, on the other hand, argue that an application is "not in proper form" pursuant to R.C. 4503.10(B) and must be refused if it fails to include the motor vehicle owner's social security number, Ohio driver's license number, or Ohio identification number, which appellees claim is a mandatory requirement.

{¶ 45} R.C. 4503.10(B) expressly sets forth circumstances under which the application shall be refused. One of these circumstances includes when the "application is not in proper form." *See* R.C. 4503.10(B)(1). If we accepted as plausible the BMV's assertion that "in proper form" pursuant to R.C. 4503.10(B)(1) means the application must include the owner's social security number, Ohio driver's license number, or Ohio identification number, then it would logically follow that "in proper form" also requires inclusion of all the other information set forth in R.C. 4503.10(A)(1)-(7). Yet, in applying the principle of in pari materia, which requires all statutory provisions pertaining to the same general subject matter to be construed together, this cannot be a proper interpretation since R.C. 4503.10(B)(4) specifically mentions again the registration and transfer fees previously referred to above in R.C. 4503.10(A)(6). If "in proper form" were intended to include that information set forth in R.C. 4503.10(A)(1)-(7), it would not be necessary to repeat the reference to registration and transfer fees in R.C. 4503.10(B)(4), as those fees would already be considered a requirement pursuant to the reference made in R.C. 4503.10(A)(6). *See generally*, *State v. Cook*, 128 Ohio St.3d 120, 2010-Ohio-6305, ¶ 45 (in reading statutory provisions in pari materia and in construing them together, courts must give a reasonable construction so as to give the proper force and effect to each and all provisions; all provisions bearing upon the same subject matter should be construed harmoniously and should be given full application unless the provisions are irreconcilable and in hopeless conflict).

{¶ 46} Appellees further argue the BMV has the authority to cancel any vehicle registrations which were issued erroneously, *i.e.*, without having first obtained the vehicle owner's social security number, Ohio driver's license number, or Ohio identification number, based upon the authority set forth in R.C. 4503.10(E), which states the county sheriff or the local police official shall recover license plates which were erroneously or fraudulently issued, upon certification of the registrar. However, we find this provision does not authorize the policy set forth in the BMV's October 8, 2009 letter.

{¶ 47} An administrative agency can only exercise those powers which are expressly conferred upon it by the Ohio General Assembly. *Shell v. Ohio Veterinary Med. Licensing Bd.*, 105 Ohio St.3d 420, 2005-Ohio-2423, ¶ 32. "[A]uthority that is conferred upon an administrative agency by the General Assembly cannot be extended by the agency." *Burger Brewing Co. v. Thomas*, 42 Ohio St.2d 377, 379 (1975).

{¶ 48} In construing a grant of administrative power from a legislative body, the intention of that grant of power, as well as the extent of the grant, must be clear, and, if there is doubt, that doubt must be resolved against the grant of power. *D.A.B.E. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250, 2002-Ohio-4172, ¶ 40.

{¶ 49} In addition, where jurisdiction is dependent upon a statutory grant, courts are without authority to create jurisdiction when the statutory language does not. Only the General Assembly can do that. *Waltco Truck Equip. Co. v. Tallmadge Bd. of Zoning Appeals*, 40 Ohio St.3d 41, 43 (1988).

{¶ 50} "A basic rule of statutory construction requires that 'words in statutes should not be construed to be redundant, nor should any words be ignored.' " *D.A.B.E.* at ¶ 26, quoting *E. Ohio Gas Co. v. Pub. Util. Comm.*, 39 Ohio St.3d, 295, 299 (1988).

{¶ 51} Furthermore, statutory language " 'must be construed as a whole and given such interpretation as will give effect to every word and clause in it.' " *D.A.B.E.* at ¶ 26, quoting *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.*, 95 Ohio St. 367, 372-73 (1917).

{¶ 52} Although administrative agencies may exercise quasi-judicial powers and may have some of the attributes of a court, they are not courts, and under the Ohio Constitution, they cannot be considered as such. *Application of Milton Hardware Co.*, 19

Ohio App.2d 157, 160 (10th Dist.1969). "Where * * * illegal agency action or agency action in excess of delegated authority is at issue, the judiciary provides the proper forum for the resolution of the dispute." *Racing Guild of Ohio, Local 304, Serv. Emps. Internatl. Union, AFL-CIO, CLC v. Ohio State Racing Comm.*, 28 Ohio St.3d 317, 322 (1986).

{¶ 53} Regardless of whether or not submission of the owner's social security number, Ohio driver's license number, or Ohio identification number is mandatory information which must be provided on a motor vehicle registration application, in our view, there are other grounds upon which we find the BMV's policy announced in its October 8, 2009 letter to be unlawful.

{¶ 54} First, there is nothing within the statute that authorizes the BMV to require applicants to pay an additional processing fee of $3.50 to update their information (in addition to the $3.50 processing fee initially paid pursuant to R.C. 4503.10(D) to receive the registration or the registration renewal) in order to prevent the registration from being cancelled. [2] Our reading of the statute does not provide for this, and we believe the BMV exceeded its authority in incorporating this into its policy.

{¶ 55} Second, the October 8, 2009 notice provides: "If your vehicle registration is canceled, you may request an administrative hearing." However, no further information is provided. The letter fails to provide any additional information, such as how one can request a hearing, how the hearing process will work, or whether a hearing can be requested prior to the cancelation of the registration. Furthermore, there is nothing within the statutory framework of R.C. 4503.10 which sets forth any information as to the availability of such a hearing, thus leaving the recipient of the letter without any point of reference and thereby suggesting that such an option was not contemplated or planned for by the legislature under these circumstances.

{¶ 56} In addition, we find the general focus of R.C. 4503.10 to be on motor vehicle applications which are initiated for the first time or which are subject to renewal, rather

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[2] It is evident that the October 8, 2009 BMV notice did not operate simply as a "renewal" notice in that it expressly stated that "[t]he update to your vehicle registration will cost $3.50. You may pay with cash, money order or check. If your registration expires within the next 90 days, you may also renew your registration at that time." (Emphasis added.)

than the cancellation of previously issued motor vehicle registrations prior to their scheduled expiration for failing to provide certain information. Yet, the trial court's interpretation appears to extend the language in the statute to reach applications which have previously been accepted and to reach applicants who were subsequently awarded with a registration in order to now cancel or revoke said registration on the grounds that the previously accepted application failed to provide required information. We do not interpret the statute as granting this type of authority under these circumstances in order to institute the policy as set forth by the BMV in its October 8, 2009 letter.

{¶ 57} Pursuant to R.C 4503.10(A)(7), applications for registration shall be made on blanks provided by the registrar and contain numerous pieces of information, including the owner's social security number, Ohio driver's license number, or Ohio identification number. And, pursuant to R.C. 4503.10(B)(1), an application shall be *refused* if it is not in proper form, presumably, *i.e.*, it does not contain the information set forth in R.C. 4503.10(A)(1)-(7). Here, however, it is obvious, based upon the language used in the October 8, 2009 letter from the BMV, that the applications at issue were not refused, but had in fact already been previously accepted without issue, and the previously issued registrations were sought to be cancelled.

{¶ 58} Granted, there is a provision in the statute (R.C. 4503.10(E)), which states that "[u]pon the certification of the registrar, the county sheriff or local police officials shall recover license plates erroneously or fraudulently issued." Under this provision, the statute authorizes the recovery of erroneously issued license plates, rather than cancellation of the registration, although the two are arguably intertwined.

{¶ 59} Our independent research reveals a reference in at least one case to the revocation of license plates where an individual appeared at a BMV office to purchase license plates for a business using an Employer Identification Number and the license plates were later revoked on the basis of fraud. In *Drouet v. Bur. of Motor Vehicles*, Ct. of Cl. No. 2009-09825-AD, 2010-Ohio-6186, shortly after the buyer paid the necessary fees, the license plates were confiscated for investigation and then the registration was cancelled pursuant to R.C. 4503.10(E) following a BMV investigation which determined false documentation had been provided to obtain the registration. *See also Drouet v. Bur.*

of Motor Vehicles, Ct. of Cl. No. 2009-09817-AD, 2010-Ohio-6186. However, the circumstances are different here.

{¶ 60} In the instant case, the BMV did not allege in its letter or otherwise that false documentation was used to obtain these registrations. Instead, the BMV argues in its brief that the registrations obtained by nearly 47,000 applicants were issued *erroneously*, since they were issued by the BMV despite the applicant's failure to submit one of the three identifiers listed above. We are hard-pressed to interpret R.C. 4503.10 as authorizing the almost immediate cancellation of nearly 47,000 motor vehicle registrations based solely upon the policy and procedures as set forth in the BMV's October 8, 2009 letter, without more, particularly when the missing information can only be determined at this point to be the result, not of fraud, but of a procedural flaw in the internal administrative policy utilized by the BMV in accepting applications for motor vehicle registrations that do not contain this information, *and* when the procedure set forth in the letter is not supported by the framework of the statute.

{¶ 61} Therefore, based upon the foregoing, we sustain LULAC's second assignment of error to the extent we find the BMV policy as set forth in the October 8, 2009 notice to be unlawful, as it is not authorized by R.C. 4503.10.

{¶ 62} In conclusion, we find LULAC has standing to assert this action, and consequently, we sustain LULAC's first assignment of error. In addition, we sustain LULAC's second assignment of error to the extent indicated above. The judgments of the Franklin County Court of Common Pleas are reversed, subject to these limitations, and we remand these matters to that court for further proceedings consistent with this decision.

Judgments reversed;
cause remanded.

BRYANT and TYACK, JJ., concur.

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