

Cleveland Branch, N.A.A.C.P. v. City of Parma, OH, 263 F.3d 513 (2001)

86 Fair Empl.Prac.Cas. (BNA) 936, 81 Empl. Prac. Dec. P 40,762, 2001 Fed.App. 0290P

263 F.3d 513
United States Court of Appeals,
Sixth Circuit.

CLEVELAND BRANCH, NATIONAL
ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, and National
Association for the Advancement of
Colored People, Plaintiffs–Appellants,

v.

CITY OF PARMA, OHIO, Defendant–Appellee.

No. 99–3546.

|
Argued Jan. 23, 2001.

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Decided and Filed Aug. 28, 2001.

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Rehearing En Banc Denied Oct. 29, 2001.*

Advocacy association sued **city** alleging discrimination on basis of race in recruitment, selection, and hiring of municipal employees. The United States District Court for the Northern District of Ohio, **Kathleen McDonald O'Malley, J.**, entered summary judgment for **city**. Association appealed. The Court of Appeals, **Moore**, Circuit Judge, held that: (1) association needed to establish standing only at time complaint was filed; (2) association's member met standing requirements, and association thus had standing; (3) action was not moot; (4) action was ripe; (5) association's challenge to **city's** police, firefighter, and other examinations was within scope of association's Equal Employment Opportunity Commission (EEOC) charge; and (6) association was not required to file its EEOC charge within 300 days of enactment of ordinance that allegedly accorded unfair preference to **city's** residents.

Reversed and remanded.

Boggs, Circuit Judge, dissented and filed opinion.

Attorneys and Law Firms

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Joseph D. King, Joseph J. Morford (argued and briefed), Arter & Hadden, **Cleveland**, OH, for Defendant–Appellee.

Before: **BOGGS** and **MOORE**, Circuit Judges; **COHN**, Senior District Judge.**

OPINION

MOORE, Circuit Judge.

On August 6, 1990, Plaintiffs–Appellants, the **Cleveland Branch** of the National Association for the Advancement of Colored People (“**NAACP**”) and the **NAACP** (collectively referred to as “the **NAACP**”), filed this action against the **City of Parma**, Ohio (“**Parma**”), alleging that **Parma** discriminates on the basis of race in its recruitment, selection, and hiring of municipal employees. On March 30, 1998, nearly eight years later and after the lawsuit had been transferred twice within the United States District Court for the Northern District of Ohio,¹ the district court granted *517 summary judgment in favor of **Parma**, holding both that the **NAACP** lacked standing to assert its claims and that its claims were moot. The **NAACP** now appeals the district court's decision. For the reasons that follow, we **REVERSE** the judgment of the district court and **REMAND** for further proceedings consistent with this opinion.

I. BACKGROUND

A. PARMA'S RACIAL HISTORY

Parma is a suburb of **Cleveland**, Ohio, located on the southern border of **Cleveland** near the center of the east-west axis of Cuyahoga County. In 1980, a federal district court judge found that **Parma**, a predominantly white **city**, had discriminated against Blacks in providing low and moderate income housing and issued a remedial order requiring **Parma** to take affirmative steps to eliminate its discriminatory housing practices and their effects. See *United States v. City of Parma*, 494 F.Supp. 1049 (N.D. Ohio 1980), *aff'd*, 661 F.2d 562 (6th Cir. 1981), *cert. denied*, 456 U.S. 926, 102 S.Ct. 1972, 72 L.Ed.2d 441 (1983); see also *United States v. City of Parma*, 504 F.Supp. 913 (N.D. Ohio 1980) (remedial order), *aff'd in part and rev'd in part*, 661 F.2d 562 (6th Cir. 1981), *cert. denied*, 456 U.S. 926, 102 S.Ct. 1972, 72

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L.Ed.2d 441 (1983). Despite efforts by the city to diversify, however, the minority population of Parma has grown only slightly. Specifically, Parma's black population has remained very small. For example, in 1970, Blacks comprised approximately .05%, or 50 persons, out of Parma's 100,216 resident population, see Parma, 494 F.Supp. at 1056, and twenty years later, in 1990, Blacks still comprised less one percent of Parma's resident population, namely only .73%, or 639 persons, out of Parma's 87,876 resident population. U.S. Census Bureau, 1990 Census of Population and Housing (1990).²

Like the resident population of Parma, data suggest that the racial composition of Parma's municipal workforce also lacks diversity. For example, despite the enactment in 1981 of a formal affirmative action program,³ by 1988, Parma had only one black employee out of more than 460 full-time employees, a number equivalent to approximately .22% of the city's full-time workforce. Joint Appendix ("J.A.") at 780 (1991 Expert Report of Herbert Hammerman), 811 (1990 Ries Dep.). Six years later, in 1996, Parma employed only two *518 black full-time employees out of 464 full-time employees and no black part-time employees out of 314 part-time employees, a number which represents approximately .26% of the city's entire municipal workforce.⁴ J.A. at 936–936A. Apart from these two black full-time employees, only one other employee of Parma was non-white in 1996; that employee was listed as an Asian or Pacific Islander. J.A. at 936, 936A, 1310.

Parma's statistics regarding the employment of Blacks in municipal jobs stand in stark contrast to those regarding the employment of Blacks in the private sector of Parma and in the private and public sectors of the Cleveland metropolitan area.⁵ According to an Equal Employment Opportunity ("EEO") report in 1994, Blacks constituted a significantly higher portion of the private workforce in Parma than in its municipal workforce, making up 9.5% or 2,224 of the 23,476 workers in private employment in Parma. J.A. at 956 (1997 Expert Report of Herbert Hammerman). Similarly, a 1995 report of the racial composition of the private workforce in the Cleveland metropolitan area showed that Blacks comprised 15.2% of the workers in that area's private sector. J.A. at 956 (1997 Expert Report of Herbert Hammerman). More importantly, state and local government employers in the Cleveland metropolitan area employed a workforce that was

31.5% black, nearly double that of the metropolitan area's private sector, more than triple that of Parma's private sector, and more than thirty-two times that of Parma's public sector. See J.A. at 957 (1997 Expert Report of Herbert Hammerman). In the opinion of the NAACP's expert, Herbert Hammerman, a labor market economist, this vast difference between the percentage of employees in the public and private sectors of Parma was unusual because "the employment of blacks by the state and local government public sector is [generally] substantially higher than private employment." J.A. at 956 (1997 Expert Report of Herbert Hammerman). According to Hammerman, "[t]he ratio of the percentage of blacks in public sector jobs [in 1994] to the percentage of blacks in private establishment jobs [was] 1.42," and "[a]pplying [that] national ratio, black employment available to Parma would be 13.5%." J.A. at 956 (1997 Expert Report of Herbert Hammerman). See also NAACP v. Town of East Haven, 892 F.Supp. 46, 50 (D.Conn.1995) (noting that "Blacks generally have a higher representation in government than private industry").

Hammerman also explained that Parma's percentage of black municipal workers not only appeared low when compared to the percentage of black workers in the city's private sector or the public and private sectors of the Cleveland metropolitan area but also when viewed in light of the black workforce available to municipal employers in Parma, which Hammerman estimated to be about 19.7% of the available workforce. Using this estimate in an analysis of the racial composition of Parma's new municipal hires in 1996, Hammerman calculated between 2.9 and 7.5 standard deviations when he analyzed the statistical probability that random selection was responsible for the absence of Blacks from the group of new employees hired in fiscal year 1996, figures which indicated "very little probability that the failure to hire *519 any blacks was due to chance."⁶ J.A. at 967 (1997 Expert Report of Herbert Hammerman).

B. PARMA'S HIRING REQUIREMENTS

Before 1988, Parma limited eligibility for municipal employment to "bona fide" residents of Parma, and employees of Parma were required to remain residents during their employment with Parma. J.A. at 308 (Ordinance 223–76). In 1988, however, Parma modified its residency requirement to permit a non-resident applicant to compete for a municipal position so long as that applicant established

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“permanent” residence in the **city** within eighteen months after starting employment. Those who were employees on the effective date were required to remain residents of **Parma** until the fifth anniversary of the commencement of their employment; thereafter, employees could reside in any municipality bordering **Parma**. J.A. at 192, 309, 311 (Ordinance 86–88).

In 1995, **Parma** once again amended its residency ordinance to allow non-resident applicants to obtain municipal jobs so long as they moved within fifteen miles of the outer boundary of **Parma** within eighteen months of becoming a municipal employee. J.A. at 311 (Ordinance 299–95). This fifteen-mile boundary incorporated virtually all of Cuyahoga County, which had a black population of 24.8%, or 350,185, of the county's 1,412,140 residents in 1990.⁷ U.S. Census Bureau, 1990 Census of Population and Housing (1990). On June 3, 1996, **Parma** extended the boundary to twenty-two miles. J.A. at 313 (Ordinance 191–96).

Despite the changes that have been made to **Parma's** municipal job requirements, the record shows that **Parma** still continues to ask job applicants for information regarding their residency beyond their mailing address on its employment application. Specifically, **Parma** asks applicants to specify how many years and months they have lived in **Parma** if they are residents, whether they have relatives employed by the **city**, and what is the residence of any person recommending them for employment with **Parma**. J.A. at 1183 (Employment Application). Also, in September 1989, more than a year after repealing its official residency requirement, **Parma** hired three individuals, Greg Kohler, Vincent Semanik, and Robert Tarro, from an eligibility list that was created before **Parma** repealed its residency requirement, *see* Supplemental (“Supp.”) J.A. at 58; J.A. at 978, 982, 984, and a few months thereafter, in April 1990, **Parma** hired three more individuals, Joseph Bobak, Daniel Heinz, and Orville Hildebrand, from an eligibility list that was created before **Parma** repealed its residency requirement, *see* Supp. J.A. at 58; J.A. at 974, 977.

Additionally, based on the data presented to the district court, the vast majority of recent hires for **Parma** have been residents of the **city**. For example, of the twenty-eight applicants who secured employment with **Parma** in early 1997, twenty-five *520 were residents of **Parma**, and eight of the twenty-eight had close relatives who

were **Parma** employees. J.A. at 1380–1473. Furthermore, **Parma** has hired a substantial number of its full-time municipal employees from its pool of provisional, part-time, or temporary employees, many of whom were recommended by current employees of **Parma**. J.A. at 1188–1216, 1230–31. For example, out of thirteen full-time positions posted for new hires between November 20, 1995, and March 8, 1996, at least six were filled by former part-time employees, and two others were filled by transfer or promotion without any indication of a change from part-time to full-time. J.A. at 1165 (noting that Cheri Meadows was a part-time employee before she was transferred to a full-time position), 1188–1217.⁸

According to **Parma**, however, it has made efforts to recruit Blacks to its municipal workforce. Specifically, **Parma** claims that it has attempted to recruit Blacks by developing, distributing, and displaying posters and brochures directed at minorities at all three campuses of Cuyahoga Community College, **Cleveland** State University, Lorain Community College, and Lakeland Community College, *see* J.A. at 337, 409; Supp. J.A. at 144, 183; listing scheduled civil service examinations in the **Cleveland Plain Dealer**, the *Communicator* and the *Call & Post*, newspapers targeted to **Cleveland's** black community, and the *Sun* newspapers, *see* J.A. at 340–47, 358–60, 1069–78, 1302–09; Supp. J.A. at 142–43, 153–55 (1991 Ponstingle Dep.); and working with a consulting company to create a new test for hiring police officers and firefighters, *see* J.A. at 416.

C. NAACP'S ALLEGATIONS

The **NAACP** argues that the low percentage of Blacks in **Parma's** municipal workforce is not the result of chance, but of discriminatory practices used by **Parma** in its hiring process. Specifically, the **NAACP** maintains that **Parma** discriminates against Blacks in hiring:

- a. By failing or refusing to recruit and hire blacks on the same basis as whites;
- b. By following recruitment practices which advise residents of **Parma**, and friends and relatives of incumbent employees of **Parma**, of employment opportunities in the municipal employment of **Parma** without advising black persons in the relevant labor market of such opportunities;

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- c. By following recruitment practices which have the effect of deterring non-residents, including almost all blacks, from applying for employment opportunities with **Parma**;
- d. By traditionally requiring that appointments be limited to residents of **Parma**, and by requiring that employees of defendant establish and maintain their residence in **Parma** for forty-two months, a requirement that was intended to exclude and does disproportionately exclude blacks from municipal employment;
- e. By failing and refusing to take the appropriate recruitment measures to correct the effects of the defendant's past discriminatory policies and practices;
- f. By limiting hiring, until very recently, to lists of eligible[sic] created when appointments were limited to residents of **Parma**;
- g. By using unvalidated selection procedures that have the effect of disproportionately excluding from employment *521 those black applicants who do obtain timely information regarding employment opportunities and who are not deterred by the discriminatory practices of defendant.

J.A. at 230–31 (Second Amended Complaint).⁹

In making these allegations, the **NAACP** cited to seven different alleged victims of **Parma's** discriminatory practices. These individuals include: (1) Marlon Allen, who was interested in employment as a **Parma** firefighter but “did not hear of any opportunities to apply for the examination”; (2) Rodney Blanton, who applied for a police officer position with **Parma** but was “disqualified for ‘background’ reasons”; (3) Wendy Childress, who was interested in working for **Parma** as a firefighter but never saw any advertisements for municipal jobs in **Parma** and “would not take a job that required her to live in **Parma**”; (4) Rhonda Crayton, who wanted to obtain a job as a **Parma** police officer but failed the agility portion of the required police examination; (5) Maurice McIntosh, who visited **Parma City** Hall in February of 1990 and attempted to apply for a position with the **city** but “was informed that the **City** already had enough minorities, and was told that he would be notified if any openings in the positions he had identified came up”; (6) Artis Tomblin,

who inquired about employment opportunities with **Parma** but was never contacted; and (7) Arthur Collins, who inquired about jobs for **Parma** in 1990 but “would not accept a job with **Parma** if he had to move there.” J.A. at 232–34 (Second Amended Complaint).¹⁰

D. DISTRICT COURT'S ANALYSIS

1. Scope of EEOC Charge

In its decision on the **NAACP's** claims, the district court first identified the claims it deemed to be properly before the court. These claims included: (1) “the **NAACP's** claims regarding **Parma's** residency requirement in both its 1976 (to the extent and only to the extent eligibility lists continued to be constructed from applicants who sought employment prior to the 1988 change) and 1988 incarnations;” and (2) “the **NAACP's** claims regarding **Parma's** reliance on word-of-mouth and **City** Hall postings to recruit applicants for jobs.” J.A. at 52.

The district court then held that the **NAACP's** challenge to **Parma's** police, firefighter, and other examinations were “not properly before [the] Court” because such “claim was neither expressly made in the EEOC charge, nor could it fairly be said to have ‘grown out of’ that charge.” J.A. at *522 52. The district court reasoned that “[t]he EEOC charge read as a whole clearly focus [ed] on the residency requirement and other recruitment practices,” and as a result, the charge “did not put the EEOC or **Parma** on notice that such a practice was being challenged, and did not allow a meaningful opportunity for the accomplishment of Title VII's mediation goals.” J.A. at 52. The district court further reasoned that the EEOC charge was not entitled to any leniency because it was drafted by a representative of the **NAACP** and because later filings by the **NAACP**, including its complaint and amendments, failed specifically to identify a challenge to **Parma's** civil service examinations. J.A. at 53, 55.

2. Mootness

After identifying the claims in the case, the district court then held that they were moot because “**Parma's** elimination of the residency requirement [in 1988] and its affirmative—and active—efforts to recruit individuals, including minorities, outside of **Parma**, have given the **NAACP** what they sought to achieve by this action.” J.A. at 58. The district court held

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that there was “no reasonable expectation that **Parma** [would] reenact the challenged ordinance or practices, and **Parma's** repeal of the residency requirement and other affirmative actions have eradicated the effects of what properly has been challenged in this case.” J.A. at 58. In so holding, the district court noted that municipal employees of **Parma** were “free to live anywhere in Cuyahoga [C]ounty, and may even live in surrounding counties” and that **Parma** had taken other steps to improve its recruitment efforts by “advertis[ing] in three newspapers, one of which has a predominately black readership, regularly post [ing] job openings at several local colleges which have significant black student bodies (using brochures directed at recruiting blacks), ... routinely mail[ing] postcards notifying anyone who requests to be informed about upcoming civil service, police officer, and fire fighter examinations,” and “volunteering to use whatever police officer examination the **NAACP** wants and representing that it would do the same for the fire fighter examination.” J.A. at 57, 59. According to the district court, “[t]he status quo [in **Parma**] in 1998 ... [did] not mirror the status quo twenty years earlier [because] [i]n the intervening years since the late 1970's and early 1980's, **Parma's** laws and practices have changed to such a degree that the **NAACP** is left complaining about what was wrong in the past, rather than what is wrong today.” J.A. at 62.

3. Standing

Finally, the district court held that, even if the case were not moot, it would still grant summary judgment in favor of **Parma** because the **NAACP** lacked standing. Specifically, the district court held that the **NAACP** lacked standing because “none of the individuals identified as members of the organization have standing in their own right.” J.A. at 62.

In reaching this conclusion, the district court first asserted that each individual plaintiff had to show that there was a substantial likelihood that the alleged injurious practice or practices would be applied to him or her to establish an injury-in-fact, one prerequisite for standing. J.A. at 66. The district court further noted that, because the **NAACP** sought only prospective relief and because “the *only* injury which [the district court] possibly could remedy in this case [was] a *future* injury,” an individual plaintiff would have to show that “he or she still seeks to work for **Parma**, and has taken some action toward that end ... that shows a present intent” in order to establish an injury-in-fact. J.A. at 67, 68.

*523 The district court then analyzed each individual plaintiff to determine if he or she had standing. In so doing, the district court held that (1) Collins and McIntosh lacked standing because they were not members of the **NAACP** at any time during the litigation, *see* J.A. at 69; (2) Crayton lacked standing because she had “not inquired about obtaining a position with the **Parma** Police or taken any other steps which would indicate a sincere desire or genuine interest in obtaining such a position” since 1990 and thus failed to show imminent injury and because “her claim [was] premised solely on her failure of the agility portion of the police examination,” which she contends “was a product of gender discrimination” and thus failed to demonstrate causation and redressability, *see* J.A. at 70; (3) Tomblin lacked standing because he had shown only that he was “‘generally interested’ ” in working for **Parma** and because the elimination of the residency requirement “serves to redress the very injury about which Tomblin complained,” *see* J.A. at 72–73; (4) Blanton lacked standing because he had no further interest in working for the **Parma** police department and because he had failed to show redressability because his complaint did not concern **Parma's** residency requirement or recruitment practices but its refusal to retain him on its eligibility list, *see* J.A. at 74–75; (5) Childress lacked standing because she “has never contacted or taken even the smallest step to determine what she would have to do to obtain employment with **Parma**” and “has absolutely no interest in applying for employment with **Parma**” and thus can establish no injury-in-fact, *see* J.A. at 75; and (6) Allen lacked standing because he lived in Atlanta and had no interest in returning to the **Cleveland** area, *see* J.A. at 75.

After discussing each individual plaintiff, the district court then noted that Tomblin, Childress, and Blanton did not have standing for an additional reason: they failed to maintain their membership throughout the entire litigation. According to the district court, for the **NAACP** to continue this lawsuit based upon standing through a particular member of the **NAACP**, that member had to maintain his membership until the completion of litigation to ensure that such member had some level of control over the organization throughout the litigation. J.A. at 79–80. In other words, according to the district court, standing must exist not only at the start of a case but also throughout its course.

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sue on behalf of Tomblin, who satisfied all the necessary requirements for standing.

II. ANALYSIS

We review de novo a district court's grant of summary judgment. See *Nguyen v. City of Cleveland*, 229 F.3d 559, 562 (6th Cir.2000). Summary judgment is proper only when there is no dispute as to a material question of fact and one party is entitled to a judgment as a matter of law. Fed.R.Civ.P. 56(c). Viewing all facts and inferences drawn therefrom in the light most favorable to the nonmovant, we then determine whether the evidence presented is such that a reasonable jury could find for that party. See *Nguyen*, 229 F.3d at 562 (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986)).

A. STANDING

[1] [2] [3] The NAACP argues that the district court erred in determining that the NAACP did not have standing to pursue its claims. Whether a party has standing is a legal question reviewed de novo. *Ohio Ass'n of Indep. Schs. v. Goff*, 92 F.3d 419, 421 (6th Cir.1996), cert. denied, 520 U.S. 1104, 117 S.Ct. 1107, 137 L.Ed.2d 309 (1997). To satisfy Article III's standing requirements, a plaintiff must show: “(1) it has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; *524 (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 Env'tl. Servs.*, 528 U.S. 167, 180–81, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). An association may obtain “standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Id.* at 181, 120 S.Ct. 693 (citing *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977)).

After careful review, we conclude that the district court erred in determining that the NAACP did not have standing to bring the case. Instead, we hold that the NAACP had standing to

1. When Standing Is Determined

[4] Before we discuss how the NAACP obtained associational standing through Tomblin, we must first address the question of when standing is to be determined. Our review of Supreme Court and Sixth Circuit case law informs us that, contrary to the district court's conclusion, standing does not have to be maintained throughout all stages of litigation. Instead, it is to be determined as of the time the complaint is filed.

The Supreme Court has consistently held that “jurisdiction is tested by the facts as they existed when the action [was] brought” and “ ‘that after vesting, it cannot be ousted by subsequent events.’ ” “ *Smith v. Sperling*, 354 U.S. 91, 93 n. 1, 77 S.Ct. 1112, 1 L.Ed.2d 1205 (1957) (quoting *Mollan v. Torrance*, 22 U.S. (9 Wheat.) 537, 539, 6 L.Ed. 154 (1824)); see also *Freeport–McMoRan Inc. v. K N Energy, Inc.*, 498 U.S. 426, 428, 111 S.Ct. 858, 112 L.Ed.2d 951 (1991). In *Friends of the Earth*, the Supreme Court applied its “longstanding rule that jurisdiction is to be assessed under the facts existing when the complaint is filed,” *Lujan*, 504 U.S. at 570 n. 4, 112 S.Ct. 2130, when it concluded that the plaintiffs had standing to seek both injunctive relief and civil penalties. In support of its holding, the Supreme Court repeatedly noted that the plaintiffs' injuries were occurring as of the time their complaint was filed. See, e.g., *Friends of the Earth*, 528 U.S. at 184, 120 S.Ct. 693 (“Here, in contrast, it is undisputed that [the] unlawful conduct ... was occurring at the time the complaint was filed.”); at 185, 120 S.Ct. 693 (“It can scarcely be doubted that, for a plaintiff who is injured or faces the threat of future injury due to illegal conduct ongoing at the time of suit”) (emphasis added); see also *Becker v. Federal Election Comm'n*, 230 F.3d 381, 386 n. 3 (1st Cir.2000) (noting that *Lujan* “clearly indicat[es] that standing is to be ‘assessed under the facts existing when the complaint is filed’ ”); *White v. Lee*, 227 F.3d 1214, 1243 (9th Cir.2000) (“Standing is examined at ‘the commencement of the litigation.’ ”); *Park v. Forest Serv. of the United States*, 205 F.3d 1034, 1037 (8th Cir.2000) (“We do not think, however, that the actual use of checkpoints in 1997, 1998, and 1999 is relevant on the issue of standing because all of these events occurred after [the plaintiff] filed her original complaint.”); *Perry v. Village of Arlington Heights*,

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186 F.3d 826, 830 (7th Cir.1999) (“Because standing goes to the jurisdiction of a federal court to hear a particular case, it must exist at the commencement of the suit.”); *525 *Carr v. Alta Verde Indus., Inc.*, 931 F.2d 1055, 1061 (5th Cir.1991) (“As with all questions of subject matter jurisdiction except mootness, standing is determined as of the date of the filing of the complaint, and subsequent events do not deprive the court of jurisdiction.”). The Supreme Court then held that the plaintiff in *Friends of the Earth* had standing to assert its claims because the plaintiff had successfully shown that its injury occurred at the time the complaint was filed. In reaching this decision, the Supreme Court distinguished *Friends of the Earth* from *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983), in which it held that a plaintiff lacked standing to seek an injunction against the enforcement of a police chokehold policy because he could not credibly allege that he faced a realistic threat from that policy, stating “[h]ere [in *Friends of the Earth*], in contrast, it is undisputed that [the defendant's] unlawful conduct ... was occurring at the time the complaint was filed.” *Friends of the Earth*, 528 U.S. at 184, 120 S.Ct. 693 (emphasis added).

[5] [6] The Supreme Court then proceeded to explain how mootness is distinct from standing, noting that the “[s]tanding doctrine functions to ensure, among other things, that the scarce resources of the federal courts are devoted to those disputes in which parties have a concrete stake” while “by the time mootness is an issue, the case has been brought and litigated, often (as here) for years.” *Id.* at 191, 120 S.Ct. 693. In other words, whereas standing requires proof “that, if unchecked by litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the ‘threatened injury [is] certainly impending,’ ” a claim of mootness based on voluntary compliance mandates proof that “the allegedly wrongful behavior [cannot] reasonably be expected to recur.” *Id.* at 190, 120 S.Ct. 693 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990)) (alteration in original). In essence, standing concerns only whether a plaintiff has a viable claim that a defendant's unlawful conduct “was occurring at the time the complaint was filed,” *id.* at 184, 120 S.Ct. 693, while mootness addresses whether that plaintiff continues to have an interest in the outcome of the litigation. *See, e.g., Arizonans for Official English v. Arizona*, 520 U.S. 43, 67, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997) (“As a state employee subject to Article XXVIII, Yniquez had a viable

claim at the outset of the litigation in late 1988.... Yniquez left her state job in April 1990 to take up employment in the private sector, where her speech was not governed by Article XXVIII. At that point, it became plain that she lacked a still vital claim for prospective relief [and that her claim was moot.]”); *see also Friends of the Earth*, 528 U.S. at 192, 120 S.Ct. 693 (describing *Arizonans for Official English*).

[7] Applying the principles of *Friends of the Earth*, we believe that it is clear that the NAACP only needed to establish standing at the time that its complaint was filed. Indeed, in *Senter v. General Motors Corp.*, 532 F.2d 511 (6th Cir.), *cert. denied*, 429 U.S. 870, 97 S.Ct. 182, 50 L.Ed.2d 150 (1976), this court highlighted the importance of determining standing as of the time of the complaint in Title VII cases, such as this one. In *Senter*, an employer challenged an employee's standing to bring a class action based upon alleged discrimination in the company's promotional practices, arguing that the employee had suffered no injury because he was given several opportunities for promotion but rejected them. *Id.* at 518. After noting that there was evidence which showed that the employee had in fact been denied promotions and that the employee had not been offered any promotions until after he had filed a grievance, *526 we held that “[s]tanding is determined as of the date the suit is filed,” *see id.* at 520, and that the “offer of promotion following complaint to the EEOC [did not] affect[] [the employee's] standing to raise the class issue,” *see id.* at 519. As the *Senter* court explained, were it to hold otherwise, an employer could “negate an employee's standing to challenge discriminatory employment practices by the simple expedient of offering [the employee] unilaterally the relief he seeks for the class.” *Id.* Here, the same reasoning applies. If, for example, we were to require an evaluation of standing throughout a Title VII case, in particular cases we would in effect be creating a loophole through which employers could avoid review of their hiring practices by either offering an employee the relief he seeks or by delaying the progress of the case such that the employee no longer maintained an interest in the job. Therefore, as the Supreme Court held in *Friends of the Earth*, we conclude that the court must determine whether standing exists at the time of the filing of the complaint only. ¹¹

2. Associational Standing Through Tomblin

After reviewing the record to determine if the NAACP established standing as of the filing of its complaint,

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we conclude that the **NAACP** successfully obtained associational standing through Tomblin and therefore may pursue the claims it makes. **Parma** does not contest whether the interests at stake are germane to the **NAACP's** purpose or whether the claim or relief requested requires the participation of individual members; instead, it contests only whether the seven individuals listed in the **NAACP's** complaint have standing to sue in their own right. Of these seven individuals, Tomblin has standing to sue in his own right, as the **NAACP** has presented evidence demonstrating that Tomblin suffered a concrete and actual injury, that such injury was traceable to challenged actions by **Parma**, and that such injury is redressable by a favorable decision.

a. Injury

[8] First, the **NAACP** presented evidence demonstrating that Tomblin suffered a concrete and actual injury. The **NAACP** submitted evidence to show that, at the time it filed the complaint, Tomblin had been injured by employment practices that classified black applicants in a way that deprived them of an opportunity to compete for municipal jobs in **Parma**.¹² Specifically, the **NAACP** provided evidence showing that Tomblin was injured by **Parma's** move-in residency requirement, by **Parma's** use of word-of-mouth hiring practices and **City** Hall postings, by **Parma's** alleged failure to advertise municipal job openings in a manner that may help to recruit Blacks to its workforce, and by **Parma's** alleged failure to abide by its practice of routinely mailing notifications of civil service examinations and openings to interested applicants.

*527 In particular, the **NAACP** presented evidence showing that, in 1990, Tomblin chose not to sit for a 1990 civil service examination in **Parma** because of the **city's** move-in residency requirement. J.A. at 649. During his 1997 deposition, Tomblin testified to the following:

Q: But you didn't actually sit for any civil service examination at that time, is that correct?

A: No. Certainly not.

Q: And that's because you decided not to for what reason?

A: *The fact the residency requirement was really a problem, knowing that the **City of Parma** has a reputation of discrimination in housing and it's well known in the black community and throughout the minority community that it is not a place where we are welcomed. I didn't see the point in that.*

J.A. at 649 (1997 Tomblin Dep.) (emphasis added).¹³

The **NAACP** also provided evidence demonstrating that, in February of 1990, Tomblin submitted an application for employment with **Parma** and requested that he be notified of the next available civil service examination so that he could pursue employment with the **Parma** police department, but that **Parma** failed to follow its alleged practice of sending routine notifications through the mail and thus failed to inform Tomblin of the **city's** next civil service examination. The next civil service examination, which was offered on June 1, 1991, and June 23, 1991, served as the basis for creating a July 11, 1991 eligibility list from which two new police officers were hired in 1993.¹⁴ J.A. at 240, 921; *see also* J.A. at 224. As evidence of Tomblin's injury, the **NAACP** presented Tomblin's EEOC affidavit, in which Tomblin stated:

I applied for a position of Safety Forces or Administrative Clerk in February, 1990. At that time, I was informed that my application would be kept and I would be notified of any Civil Services test given.

I am aware that a test is given at least yearly for police and fire fighter [s]. I have never been notified of any test.

J.A. at 240; *see also* J.A. at 212 (First Amendment To The Complaint). Additionally, the **NAACP** presented a January 20, 1993 letter, in which Gerianne Vanek, **Parma's** personnel director, noted that Tomblin had submitted an application and signed up for **Parma's** mailing list in February 1990. J.A. at 921.

In addition to providing evidence of Tomblin's injury due to **Parma's** failure to notify Tomblin of available civil service examinations, the **NAACP** presented evidence demonstrating that, at the time it filed the complaint, Tomblin suffered a similar injury due to **Parma's** use of word-of-mouth hiring practices and **City** Hall postings and by **Parma's** alleged

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failure to advertise its municipal positions in manner that could more easily reach Blacks in the greater **Cleveland** community. Cf. *Thomas v. Washington County Sch. Bd.*, 915 F.2d 922, 925 (4th Cir.1990) (noting that “word-of-mouth hiring, ... in the context *528 of a predominantly white work force, serve[s] to freeze the effects of past discrimination”). According to the **NAACP**, because of **Parma's** allegedly deficient advertising,¹⁵ Tomblin (and other Blacks) did not learn of the dates for **Parma's** civil service examinations or of any of **Parma's** municipal job openings.

[9] [10] More importantly, the **NAACP** demonstrated that Tomblin's injury was such that it warranted injunctive relief. The Supreme Court has consistently noted that, unless a past injury is accompanied by “continuing, present adverse effects,” it “does not in itself show a present case or controversy regarding injunctive relief.” *Lyons*, 461 U.S. at 102, 103 S.Ct. 1660 (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495–96, 94 S.Ct. 669, 38 L.Ed.2d 674 (1974)). The Supreme Court has further specified that “ ‘some day’ intentions-without any description of concrete plans, or indeed even any specification of *when* the some day will be” are insufficient to support a finding of the kind of injury required to warrant injunctive relief. *Lujan*, 504 U.S. at 564, 112 S.Ct. 2130; see also *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 211, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995). In this case, at the time the **NAACP** filed its complaint, Tomblin had more than “some day intentions” of seeking and obtaining employment with **Parma**. In fact, as shown by Tomblin's correspondence with the **city**, he was still attempting to obtain employment with **Parma** as late as May 1993. As of May 4, 1993, Tomblin had written **Parma** the following letter to express his interest in obtaining employment with **Parma** as a police officer or firefighter:

I'm distressed[sic] over the fact that you stated that I would be notified of all upcoming Police and Fire exams. I was not notified of any exams, past or present. I don't believe that you realize the importance in me[sic] receiving notification of upcoming Police and Fire exams.

Not being notified of past exams limits my opportunity to become a Police Officer for the **City** of **Parma** due to the fact that such openings are highly sought after and there is historically very little employment turn-over within **Parma's** safety forces. I would appreciate a response to

why I was not properly notified, presumed, like other prospective Civil Service applicants.

J.A. at 677. In sum, we conclude that, at the time the **NAACP** filed its complaint, Tomblin had satisfied the first requirement necessary for Article III standing: proof of injury.

b. Causation

[11] Second, the **NAACP** provided evidence showing that Tomblin's injuries were fairly traceable to the challenged actions of **Parma**. To begin, the **NAACP** submitted Tomblin's deposition testimony in which Tomblin asserted that he decided not to sit for a civil service examination in 1990 because of **Parma's** move-in residency requirement. J.A. at 649.

Then, through Tomblin's testimony and correspondence between Tomblin and **Parma**, the **NAACP** showed that Tomblin's injury from failing to hear about available civil service examinations or job opportunities in **Parma** was fairly traceable to **Parma's** alleged failure to follow its practice of routinely mailing notifications of jobs and examinations. Likewise, the **NAACP** presented evidence that showed that Tomblin's injuries were fairly traceable to **Parma's** use of word-of-mouth hiring practices *529 and **City** Hall postings as well as to **Parma's** failure during the relevant time frame to advertise in a manner that was more likely to reach Blacks in the greater **Cleveland** community, as such practices arguably prevented Tomblin, a black non-resident of **Parma**, from learning about available municipal positions and civil service examinations. As many courts have recognized, in the context of a virtually all-white workforce and a virtually all-white **city** (as **Parma** certainly was between 1990 and 1994 when Tomblin was actively seeking a job with the **city**), word-of-mouth hiring and similar types of recruiting practices, such as posting job openings in the municipal buildings of a non-diverse **city**, have a “tendency to perpetuate the all-white composition of a work force.” *Thomas*, 915 F.2d at 925 (citation omitted); see also *Barnett v. W.T. Grant Co.*, 518 F.2d 543, 549 (4th Cir.1975). While **Parma** has submitted evidence of its efforts to recruit minorities to its workforce through advertisements in newspapers, its evidence primarily concerns advertisements run in 1996, see J.A. at 340–47, 358–60, 1069–78, 1302–09, and only four advertisements (all

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for the same examination) made between 1990 and 1994,¹⁶ when Tomblin was actively seeking a job with **Parma**. In sum, we conclude that, at the time the **NAACP** filed its complaint, Tomblin had satisfied the second requirement necessary for Article III standing: that his injuries were fairly traceable to the challenged actions.

c. Redressability

[12] Third, the **NAACP** presented evidence demonstrating that Tomblin's injuries are redressable by a favorable decision, as Tomblin would benefit from an injunction prohibiting **Parma** from using its allegedly discriminatory recruitment, selection, and hiring practices. Indeed, Tomblin expressly stated that he was “currently interested in working for the **Parma** Fire Department” and that he would seriously consider a job in **Parma** if the “police department, **city** council, and **city** government” abolished their past discriminatory ways and attitudes. J.A. at 660–61.

[13] [14] The fact that Tomblin does not express a present concrete interest in obtaining employment in **Parma** does not divest him, and consequently the **NAACP**, of standing. As the Supreme Court has previously recognized, Title VII litigation often involves lengthy delays, and “[t]he extended time it frequently takes to obtain satisfaction in the courts may force a discrimination claimant to suffer through years of underemployment or unemployment” before any resolution occurs. *Ford Motor Co. v. EEOC*, 458 U.S. 219, 221, 102 S.Ct. 3057, 73 L.Ed.2d 721 (1982). To allow employers to negate a plaintiff's standing by strategically delaying resolution of an employment discrimination case until the plaintiff is no longer interested in obtaining the position would place any plaintiff, including those seeking only injunctive relief, in an impossible dilemma. In most cases, a plaintiff “cannot afford to stand aside while the wheels of justice grind slowly toward the ultimate resolution of the lawsuit.... A job is needed-now.” *Id.* Therefore, requiring a plaintiff to maintain a concrete interest in the sought-after employment throughout all stages of the litigation would effectively force that plaintiff to choose between finding new employment to feed and shelter himself and his family and foregoing other employment to maintain his standing to sue. Additionally, such a requirement would unjustly compel a plaintiff, who was seeking injunctive relief and who was

fortunate enough to find *530 satisfactory employment elsewhere, to assert a present, concrete interest in a position that he had applied for in the distant past, even though a delayed move to that position could require the plaintiff to lose valued seniority, benefits, and status he had accrued at his current job during the pendency of often lengthy litigation.¹⁷ Cf. *Senter*, 532 F.2d at 519 (“It would be anomalous to hold that an employee, in the process of exhausting administrative remedies, should lose standing to contest the very practices of which he complained in his charge to the EEOC merely because his employer, in the interim, offers him a promotion which he rejects.”). In sum, the **NAACP** has presented evidence to show that Tomblin satisfies the redressability requirement¹⁸ and thus has shown that it has standing to bring this lawsuit.¹⁹

B. MOOTNESS

[15] The **NAACP** also argues that the district court erred in granting summary judgment on mootness grounds. We review de novo a district court's decision regarding mootness. *Craft v. United States*, 233 F.3d 358, 373 (6th Cir.2000).

[16] [17] [18] [19] A federal court has no authority to render a decision upon moot questions or to declare rules of law that cannot affect the matter at issue. *Church of Scientology v. United States*, 506 U.S. 9, 12, 113 S.Ct. 447, 121 L.Ed.2d 313 (1992). A case becomes moot “ ‘when the issues presented are no longer ‘live’ or parties lack a legally cognizable interest in the outcome.’ ” *County of Los Angeles v. Davis*, 440 U.S. 625, 631, 99 S.Ct. 1379, 59 L.Ed.2d 642 (1979) (quoting *Powell v. McCormack*, 395 U.S. 486, 496, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969)). In other words, a case becomes moot only when subsequent events make it absolutely clear that the allegedly wrongful behavior cannot reasonably be expected to recur and “interim relief or events have completely and irrevocably eradicated the effects of *531 the alleged violation.” *Id.* The heavy burden of demonstrating mootness rests on the party claiming mootness. *Id.*

In this case, we conclude that the district court erred in determining that the **NAACP's** claims regarding **Parma's** alleged discriminatory recruitment, selection, and hiring practices had become moot. We believe that **Parma** failed to meet its burden of proving mootness.

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1. Likely To Recur

[20] First, **Parma** failed to prove that its alleged discriminatory recruitment, selection, and hiring practices, including the use of a residency requirement, could not reasonably be expected to recur. Indeed, **Parma** failed to show that its alleged discriminatory practices had ceased at all. See *Northeastern Fla. Chapter of the Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 662, 113 S.Ct. 2297, 124 L.Ed.2d 586 (1993) (“There is no mere risk that Jacksonville will repeat its allegedly wrongful conduct; it has already done so.”). As an initial matter, **Parma** failed to rebut the **NAACP's** proof of a genuine issue of material fact regarding whether **Parma** was still enforcing a residency requirement even after it had officially repealed such requirement in 1988. Less than two years after repealing its residency requirement, **Parma** had hired a total of six individuals, Greg Kohler, Vincent Semanik, Robert Tarro, Joseph Bobak, Daniel Heinz, and Orville Hildebrand, from an eligibility list that was created before **Parma** repealed its residency requirement. See Supp. J.A. at 58; J.A. at 974, 977–78, 982, 984. Additionally, as the evidence presented by the **NAACP** revealed, almost five years after **Parma** had “officially” repealed its residency requirement, **Parma's** personnel director informed a black applicant, specifically Tomblin, that “[t]he residency requirement still applies in the **City of Parma.**” J.A. at 921. On January 20, 1993, the personnel director wrote in response to an inquiry from Tomblin:

The Personnel Department is in receipt of your inquiry regarding employment with the **City of Parma.**

Your resume and cover letter remain active in our file but we are providing you another application due to the fact your application dates back to February of 1990.

*The residency requirement still applies in the **City of Parma.***

J.A. at 921 (emphasis added).

Moreover, the evidence in the record suggests that **Parma** may have a “de facto” residency requirement, revealing that, despite the official elimination of its residency requirement in 1988, **Parma** still asks a municipal job applicant a variety of questions regarding his connection to the **city**, including

the number of years and months that the applicant has resided in **Parma**; whether the applicant has any relatives employed by the **Parma**; who recommended the applicant for employment with **Parma**; and where the recommender(s) lived. J.A. at 1183. Additionally, the evidence shows that, despite the repeal of the residency requirement in **Parma**, the overwhelming majority of new hires for **Parma** are **Parma** residents. For example, in 1997, twenty-five out of the twenty-eight applicants who secured employment with **Parma** were already residents of **Parma**, and eight of those twenty-eight applicants had close relatives who were **Parma** employees. J.A. at 1380–1473.

In addition to failing to prove that it was not still enforcing a residency requirement for municipal jobs, **Parma** also failed to show that it had stopped its alleged discriminatory practices with regard to advertising jobs to recruit black workers and with regard to the actual recruitment of black workers to its municipal workforce. For example, **Parma** failed to rebut completely *532 the **NAACP's** evidence that **Parma** hires many of its municipal employees from **City Hall** postings and through word-of-mouth from its municipal employees, two methods which are claimed to have a disproportionate impact on Blacks. As the evidence in the record reveals, in 1995 and 1996, **Parma** hired a substantial number of its full-time municipal employees from its pool of provisional, part-time, or temporary employees, many of whom were recommended by current employees of **Parma**. J.A. at 1188–1216, 1230–31. Out of thirteen full-time positions posted for new hires between November 20, 1995, and March 8, 1996, at least six were filled by former part-time employees, and two others were filled by transfer or promotion without any indication of a change from part-time to full-time.²⁰ J.A. at 1165, 1189–1217. While **Parma** produced evidence of its attempts to recruit Blacks through local schools and local newspapers, including those with predominantly black readerships, such evidence was sparse. See *infra* Part II(B)(2). In sum, **Parma** failed to show that the recruitment, selection, and hiring practices challenged in this lawsuit are not likely to recur in the future.

2. Interim Relief Or Events Eradicating Effects

[21] Second, **Parma** failed to prove that interim relief or events had irrevocably eradicated the effects of the allegedly discriminatory conduct. Although **Parma** claimed that it eradicated the effects of its allegedly discriminatory conduct

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through expanding its methods of advertising to recruit minorities through developing and distributing brochures at local colleges and malls and listing scheduled civil service examinations in various **Cleveland** newspapers, its proof of these new advertising schemes was scarce. *See, e.g.*, J.A. at 337. **Parma** presented evidence of newspaper advertisements covering *only four* civil service examinations over the course of a ten-year period: (1) a police officer examination in June 1991; (2) a clerk typist examination in February or March 1996; (3) a firefighter examination in March 1996; and (4) a police officer examination in May 1996. Such evidence included (1) two **Cleveland Plain Dealer** and three *Sun Post* advertisements in Lakewood, and Brunswick, Ohio (two suburbs for which **Parma** provided no statistics concerning their racial composition) for an examination on June 1, 1991, *see* J.A. at 1069–72; Supp. J.A. at 153–55(2) individual letters ordering advertisements in the **Cleveland Plain Dealer**, *Sun* Newspapers, *The Call & Post*, and Cuyahoga Community College for an examination on March 16, 1996, *see* J.A. at 340–47, 1302–05; and (3) individual letters ordering advertisements in the **Cleveland Plain Dealer**, *Sun* Newspapers, and *The Call & Post*, for an examination on May 4, 1996, *see* J.A. at 340–47, 1307–09. **Parma** also presented deposition testimony from Elizabeth Woolson, Secretary of the Civil Service Commission, who testified to **Parma's** placing two clerk typist advertisements in February 1996, two police officer advertisements in April 1996, one firefighter advertisement in February *533 1996, in the *Plain Dealer*, *see* J.A. at 340–43, 358, 365, 367; one firefighter advertisement and one clerk typist advertisement in February 1996 and two police officer advertisements in *The Call & Post* in April 1996, *see* J.A. at 322–24, 359, 368; one clerk typist advertisement in February 1996 and two police officer and firefighter advertisements in the *Sun* newspapers in April 1996,²¹ *see* J.A. at 322–24, 342, 360, 364.

The alleged deficiency in **Parma's** recruitment efforts has arguably resulted in virtually no change in the racial composition of **Parma's** municipal workforce, even further indicating **Parma's** failure to eradicate the effects of the allegedly discriminatory actions in this case. As the evidence shows, despite the elimination of **Parma's** official residency requirement and its allegedly increased recruitment efforts through local newspapers and schools, the percentage of black workers in **Parma's** municipal workforce has still remained practically non-existent. For example, between 1988 and

1996, **Parma** had hired only three black full-time employees out of more than 460 full-time municipal employees, resulting in Blacks comprising only .26% of the **city's** entire municipal workforce in 1996. As Hammerman noted in his affidavit, this percentage of black employees in **Parma's** public sector was exceedingly low, equaling less than one-ninth of the percentage in its private sector, one-fifteenth of that in the private sector of the **Cleveland** metropolitan area, and one-thirty-second of that in the public sector of the **Cleveland** metropolitan area. *See* J.A. at 957 (1997 Expert Report of Herbert Hammerman). In sum, contrary to the district court's conclusion, we conclude that **Parma** failed to show that its interim actions completely eradicated the effects of its allegedly discriminatory conduct in applying a “residency” requirement and in failing to advertise in a manner effective for reaching Blacks in the greater **Cleveland** community.

C. RIPENESS

[22] **Parma** argues that the **NAACP's** claims are not ripe for adjudication. “Ripeness requires that the ‘injury in fact be certainly impending.’ ” *National Rifle Ass'n of Am. v. Magaw*, 132 F.3d 272, 280 (6th Cir.1997) (citation omitted). “Ripeness becomes an issue when a case is anchored in future events that may not occur as anticipated, or at all.” *Magaw*, 132 F.3d at 284. Thus, ripeness is “a question of timing.” *Id.* A ripeness inquiry requires an analysis of two factors: (1) whether the issues at stake are fit for judicial decision; and (2) the extent of the hardship to the parties of withholding court consideration. *Nationwide Mut. Ins. Co. v. Cisneros*, 52 F.3d 1351, 1362 (6th Cir.1995), *cert. denied*, 516 U.S. 1140, 116 S.Ct. 973, 133 L.Ed.2d 893 (1996).

[23] In this case, **Parma** challenges only the first factor of the ripeness inquiry, arguing that the **NAACP's** claims are not ripe because “[n]o **NAACP** members allege that any of **Parma's** past or present residency requirements were ever applied to them in a concrete fashion.” **Parma's** Br. at 44. **Parma's** argument is completely without merit.

This case is not anchored in future events that have not occurred, but in events that have already occurred. As already noted, one **NAACP** member, Tomblin, did assert that **Parma's** residency requirements were applied to him in a concrete *534 way. Specifically, Tomblin asserted that he was deterred from sitting for a civil service examination in **Parma** in 1990 because of the **city's** move-in residency

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requirement. J.A. at 649. Furthermore, as shown by the **NAACP's** complaint, the **NAACP** is challenging more than the application of **Parma's** past and present residency requirements, including **Parma's** refusal to treat black and white applicants equally, its use of word-of-mouth hiring and **City** Hall postings, and its minimal advertising. As evidenced by Tomblin's EEOC affidavit and deposition testimony, claims regarding these practices are ripe for adjudication, as the **NAACP** has created a genuine issue of material fact regarding whether Tomblin and other Blacks were harmed by **Parma's** allegedly discriminatory recruitment, selection, and hiring practices.

D. BREADTH OF THE EEOC CHARGE

[24] Finally, the **NAACP** argues that the district court erred by limiting the scope of this action to a challenge to **Parma's** former residency requirement and alleged practice of limiting the recruitment of municipal employees to word-of-mouth through friends and relatives of **Parma's** municipal employees and by excluding any challenges to the testing procedures and examinations used by **Parma**. We agree with the **NAACP**.

The purpose of filing a charge of discrimination is to trigger the investigatory and conciliatory procedures of the EEOC. An EEOC charge notifies potential defendants of the nature of a plaintiff's claims and provides the opportunity for the parties to settle claims before the EEOC instead of litigate them. *Davis v. Sodexho, Cumberland Coll. Cafeteria*, 157 F.3d 460, 463 (6th Cir.1998). Therefore, courts preclude a plaintiff from asserting a claim that was not within the scope of his EEOC charge. However, "[b]ecause Title VII is a remedial statute, many courts refuse to narrowly construe the charge where such a construction would preclude a plaintiff from bringing a claim." *Ang v. Procter & Gamble Co.*, 932 F.2d 540, 546 (6th Cir.1991). Consequently, "[c]ourts have expanded upon the charge filing requirement ... to provide that a party's discrimination claim ... may include claims 'limited to the scope of the EEOC investigation reasonably expected to grow out of the charge of discrimination.'" *Davis*, 157 F.3d at 463 (quoting *EEOC v. McCall Printing Corp.*, 633 F.2d 1232, 1235 (6th Cir.1980)); see also *Duggins v. Steak 'N Shake, Inc.*, 195 F.3d 828, 832 (6th Cir.1999) (holding that the district court erred by not considering evidence of alleged retaliatory acts where the plaintiff "related facts to the EEOC which would have prompted

an investigation into retaliation"); *Farmer v. ARA Servs., Inc.*, 660 F.2d 1096, 1105 (6th Cir.1981) (holding that the charge of the female plaintiffs, which specified denial of fair representation by their union, would have led the EEOC to investigate the plaintiffs' equal pay claim and challenge to certain collective bargaining provisions).

We conclude that the district court erred in determining that the **NAACP's** challenge to **Parma's** police, firefighter, and other examinations did not fit within the scope of its EEOC charge. While much of the **NAACP's** charge focuses on **Parma's** residency requirements and recruiting practices, it also explicitly refers to **Parma's** hiring practices with "civil service jobs" and notes that "**Parma** discriminates in hiring by refusing to recruit, consider, *select* and employ blacks on the same basis as whites." J.A. at 193 (emphasis added). In light of the fact that civil service examinations are the very means by which **Parma** creates the eligibility lists for its civil service jobs, we believe that it was error to conclude that an investigation of such examinations would not reasonably be expected *535 to grow out of the **NAACP's** charge of discrimination.

Furthermore, contrary to the district court's assertions, we believe that **Parma** had notice of the **NAACP's** intent to challenge **Parma's** civil service testing procedures and that **Parma** was not prejudiced by statements made in pleadings filed by the **NAACP** during this litigation. The **NAACP** explicitly stated in its complaint that it was challenging **Parma's** use of "unvalidated selection procedures that have the effect of disproportionately excluding from employment those black applicants who do obtain timely information regarding employment opportunities and who are not deterred by the discriminatory practices of defendant." J.A. at 231. Early in the course of this litigation, the **NAACP** questioned several of **Parma's** civil service administrators and other witnesses about the validity of **Parma's** examinations. J.A. at 1085, 1100–06 (1991 Dep. of James Merlino, Chairman of the **Parma** Civil Serv. Comm'n); 1245–51, 1259–77 (1991 Dep. of Edward McCaffery). For example, in his deposition in September 1991, James Merlino, the Chairman of the Civil Service Commission was questioned as follows:

Q: And that also from your prior testimony that the test they gave that led to the 1990 police test was the first one, the first test for entry level police officer that McCaffery did for the **city** of **Parma**?

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A: Yes.

Q: Did Mr. or Captain McCaffery or his associate present to you anything that they described as a validity study to the best of your knowledge?

* * * * *

A: For the police entry level examination?

Q: Yes.

A: As I recall, no, they did not present one.

J.A. at 1100–01. Similarly, in September 1991, Edward McCaffery, an individual who had designed one of **Parma's** police examinations in the early 1990s, engaged in the following colloquy during his deposition:

Q: Turning to your letter, Captain, if you would. And making reference to the written examination with the five parts that are listed on pages 1 and 2 of Plaintiff's Exhibit Number 1. Do you have any knowledge as to whether written examinations of the kind that are described here in parts 1, 2, 3, 4 and 5, whether whites and blacks score differently or the same in tests of this kind?

* * * * *

Q: Sure. Have you seen any studies or literature as to whether written examinations of the general kind that you have here as a whole tend to have an adverse impact on blacks?

A: That's quite a jump logically. Yes, I've read material that stated that written examinations did have adverse impact on various groups.

J.A. at 1259–61. Furthermore, **Parma** knew that one of the **NAACP's** individual plaintiffs was Crayton, who had failed the agility portion of the police civil service examination and was challenging certain aspects of that test as applied to Blacks. J.A. at 349–52 (1990 Dep. of Elizabeth Woolson, Sec'y of Civil Serv. Comm'n) (questioning Woolson about the procedure for scoring Crayton's examination). In fact, during the course of this litigation, the **NAACP** presented a October 1991 affidavit from one expert, Lance Seberhagen, regarding

the disparate impact that **Parma's** civil service examination allegedly had on Blacks. J.A. at 930–33. In essence, in light of the **NAACP's** actions *536 during discovery, **Parma** cannot now claim ignorance of the **NAACP's** interest in challenging its testing procedures.

[25] Moreover, the fact that a representative of the **NAACP** drafted the charge in this case does not require us to conclude that a challenge to **Parma's** civil service examinations is not within the scope of the charge. While the representative of the **NAACP** may have been more familiar with “the technicalities of the law” as a result of her work, there is nothing to suggest that such representative was a lawyer or well-versed in the law. See *Ang*, 932 F.2d at 546. Furthermore, the fact that a broader reading of a charge is required where a plaintiff does not have an attorney, see *Duggins*, 195 F.3d at 832 (noting that a broader reading is compelled where a plaintiff is unrepresented by an attorney), does not mean that a broad reading may not, or should not, be given in cases where a plaintiff has counsel. In sum, we hold that the **NAACP's** challenge to **Parma's** testing procedures was within the scope of its EEOC charge and, as a result, hold that the district court erred in excluding such challenge from this case.

E. TIMELINESS OF EEOC CHARGE

[26] **Parma** also argues that the **NAACP** failed to file its EEOC charge within 300 days of the alleged unlawful employment practice, as required by 42 U.S.C. § 2000e–5(e), because no EEOC charge was filed within 300 days of the enactment of **Parma's** 1988 ordinance repealing the residency requirement. We reject this argument.

The **NAACP** was not required to file an EEOC charge within 300 days of the enactment of the 1988 ordinance, as the **NAACP** argues, in part, that **Parma** is still according an unfair preference to its residents. Furthermore, as shown by the allegations in the **NAACP's** complaint, the **NAACP** is challenging more than **Parma's** residency requirement, including its move-in residency requirement and a variety of recruitment, selection, and hiring practices used by **Parma** both before and after the repeal of its residency requirement. See J.A. at 230–31. For example, the **NAACP** is challenging **Parma's** use of word-of-mouth hiring practices and its failure to advertise in a manner that could effectively aid the recruitment of Blacks to its municipal workforce.

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III. CONCLUSION

In conclusion, we hold that the **NAACP** established associational standing through Tomblin, that the **NAACP's** claims are not moot, that the **NAACP's** claims are ripe, that the **NAACP's** charge was such that an investigation of **Parma's** testing procedures could reasonably be expected to grow out of its EEOC charge, and that the **NAACP** timely filed its charge. For the foregoing reasons, we **REVERSE** the judgment of the district court and **REMAND** for further proceedings consistent with this opinion.

BOGGS, Circuit Judge, dissenting.

I would affirm the district court's decision granting summary judgment to the **City of Parma**.

I agree with the court that the **NAACP** had standing to sue **Parma** at the time the **NAACP** brought suit. I also agree with the court that the **NAACP's** claims have not become moot *solely* because of actions that **Parma** has taken subsequent to the institution of this lawsuit. I believe, however, that the **NAACP's** claims have become moot because the *sole* **NAACP** member that the court relies upon to grant the **NAACP** standing, Artis Tomblin, has lost a personal interest in this litigation. Tomblin is no longer a member of the **NAACP** and he no longer has an injury that this ***537** court can redress. Since Tomblin no longer has a personal interest in this litigation, his claim, and, therefore, the **NAACP's** claim, have become moot. Because the court fails to analyze whether Tomblin continues to have a personal interest in this litigation, I respectfully dissent.

I

Both the district court's and our court's opinions appear to conflate standing and mootness. There is an important difference: "The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 68 n. 22, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997) (citing *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 397, 100 S.Ct. 1202, 63 L.Ed.2d 479 (1980)) (quoting Monaghan, *Constitutional Adjudication*:

The Who and When, 82 Yale L.J. 1363, 1384 (1973)) (internal quotation omitted). In *Arizonans for Official English*, the Court ruled that a plaintiff who challenged the State of Arizona's policy declaring English the official language of the state by attempting to use her bilingual skills in state employment "mooted the case stated in her complaint" when she resigned from state employment to pursue work in the private sector. *Id.* at 72, 117 S.Ct. 1055. The Court noted that the plaintiff's claim sought only injunctive relief and rejected the plaintiff's attempt to revive the case through an implied plea for nominal damages. *Id.* at 68–71, 117 S.Ct. 1055.

The distinction between standing and mootness was again discussed in *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 191–92, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000). There, the Supreme Court stated:

Standing doctrine functions to ensure, among other things, that the scarce resources of the federal courts are devoted to those disputes in which the parties have a concrete stake. In contrast, by the time mootness is an issue, the case has been brought and litigated, often (as here) for years. To abandon the case at an advanced stage may prove more wasteful than frugal. *This argument from sunk costs does not license courts to retain jurisdiction over cases in which one or both of the parties lacks a continuing interest* But the argument surely highlights an important difference between the two doctrines.

Ibid. (emphasis added). The Court's discussion indicates that although a party may have standing at the time a complaint is filed, and even though a case, such as this one, may continue on for years, a party may lose a continuing interest in the litigation, and therefore cause its claim to become moot.

The requirement that a party must have a personal interest in ongoing litigation in order to avoid mootness is well-recognized within the law:

Mootness doctrine encompasses the circumstances that destroy the

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justiciability of a suit previously suitable for determination. It is not enough that the initial requirements of standing and ripeness have been satisfied; *the suit must remain alive throughout the course of litigation, to the moment of final appellate disposition.* The need for continuing vitality is attributed both to Article III and to more openly discretionary doctrines of remedial utility and judicial administration.

13A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3533, at 211 (2d ed.1984) (emphasis added). This court has noted that, “[t]he mootness inquiry must be made *at every stage of a case*; thus, if a case becomes moot during an appeal, the judgment below must be vacated and the *538 case remanded with instructions to dismiss.” *McPherson v. Michigan High Sch. Athletic Ass'n*, 119 F.3d 453, 458 (6th Cir.1997) (emphasis added). Furthermore, “[i]n analyzing issues of mootness it is helpful to keep in mind that ‘[t]hese problems often require a highly individualistic, and usually intuitive, appraisal of the facts of each case.’ ” *McPherson*, 119 F.3d at 465 (Moore, J., dissenting) (quoting Wright et al., *supra*, § 3533, at 211–12).

The court recognizes the requirement that a plaintiff must continue to have a personal interest in ongoing litigation by citing language to that effect from *Friends of the Earth and Arizonans for Official English*. However, the court fails to apply this language and undertake this required analysis, seemingly concluding that once the NAACP met the requirements for associational standing through Tomblin, the NAACP's task in avoiding mootness was over.

The court discusses in great detail the principle that standing must be determined at the time a complaint is filed. I agree that the initial determination of a party's standing to bring a lawsuit must be made at that point. I note, however, that the court's broad statement, “standing does not have to be maintained throughout all stages of litigation,” Maj. Op. at p. 524, appears to overrule previous binding authority of this court. This court has previously held that “[a] plaintiff must maintain standing throughout all stages of his litigation.” *City Communications, Inc. v. City of Detroit*, 888 F.2d 1081, 1086 (6th Cir.1989). The court's language, which directly

contravenes that of *City Communications*, appears to overrule *City Communications*.

In *City Communications*, 888 F.2d at 1086 n. 3, the court noted that its holding “might appear to be at odds” with this court's previous holding in *Senter v. General Motors Corporation*, 532 F.2d 511, 520 (6th Cir.1976), in which this court stated that “[s]tanding is determined as of the date the suit is filed.” The court in this case chooses to apply *Senter* while ignoring *City Communications*. I believe that both cases bind us and both need to be applied to the facts of this case. I believe that the court does not err in applying *Senter*, but I believe that it does err in not applying the legal principles underlying *City Communications*.

The court in *City Communications* uses the language of standing to apply a mootness analysis. The court's statement that a plaintiff must maintain standing throughout all stages of litigation is really a requirement that the plaintiff have a continuing interest in the litigation in order to prevent the litigation from becoming moot. In *City Communications*, the court was determining whether the plaintiff had a continuing interest in the litigation after the plaintiff had been dissolved and later renewed as a corporation. 888 F.2d at 1086.

As *Parma* admitted at oral argument, the Supreme Court has not specifically held that standing must be evaluated at the time it is challenged. Instead, the Court has consistently held that a plaintiff must maintain a continuing interest in ongoing litigation. Indeed, the Supreme Court cases cited in *City Communications* for the proposition that standing must be evaluated at the time it is challenged do not apply that rule, but rather evaluate whether a party had a continuing interest in ongoing litigation. See *Karcher v. May*, 484 U.S. 72, 77–78, 108 S.Ct. 388, 98 L.Ed.2d 327 (1987) (holding that former speaker of New Jersey General Assembly and president of New Jersey Senate who intervened and participated in lawsuit challenging constitutionality of New Jersey statute providing for one minute of silence at beginning of school day lost continuing *539 interest in litigation after they lost their status as presiding officers of state legislature); *Golden v. Zwickler*, 394 U.S. 103, 108, 89 S.Ct. 956, 22 L.Ed.2d 113 (1969) (holding that plaintiff no longer had a continuing interest in declaratory judgment action challenging statute making it a crime to distribute anonymous literature in an election campaign, since plaintiff's claim related to a particular congressman who had left office

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after the commencement of litigation). Recent Supreme Court cases, namely *Friends of the Earth* and *Arizonans for Official English*, continue to espouse the principle that a plaintiff must have a continuing interest in ongoing litigation.

The *City Communications* court's use of standing language to engage in a mootness inquiry is understandable. "Mootness principles may indeed blend quite directly with standing.... The blend may be reflected simply in the phrases of decisions." Wright et al., *supra*, § 3533.1, at 219. Certain principles of standing, then, may affect a mootness inquiry. This was demonstrated in a recent Supreme Court case in which the Court assessed whether a habeas corpus petitioner's "subsequent release caused the petition to be moot because it no longer presented a case or controversy under Article III." *Spencer v. Kemna*, 523 U.S. 1, 7, 118 S.Ct. 978, 140 L.Ed.2d 43 (1998). The Court stated that "[t]he parties must continue to have a 'personal stake in the outcome' of the lawsuit." *Ibid.* (quoting *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477–78, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990)). The Court made clear that, "[t]his means that, *throughout the litigation*, the plaintiff 'must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.'" *Ibid.* (quoting *Lewis*, 494 U.S. at 477, 110 S.Ct. 1249) (emphasis added). In *Spencer*, the Supreme Court directly used elements of the standing inquiry to determine that the petitioner no longer had an injury in fact and that, therefore, his claim had become moot.

II

The court concludes that the **NAACP** has standing to sue on behalf of *only one* of its seven plaintiffs, Tomblin, because he satisfied all the necessary requirements for standing at the time this litigation commenced. The court fails to engage in a mootness inquiry, however. There are two ways in which Tomblin lost a personal interest in this litigation, causing his claim, and, therefore, the **NAACP's** claim, to be rendered moot.

The **NAACP** has asserted that it has associational standing to sue **Parma**. The court concludes that the **NAACP** had associational standing when it brought suit against **Parma** because Tomblin was a member of the **NAACP** at that time. See *Hunt v. Washington State Apple Advertising Comm'n*, 432

U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977) ("an association has standing to bring suit on behalf of its members when ... its members would otherwise have standing to sue in their own right"). Tomblin is no longer a member of the **NAACP**. Tomblin testified in his 1997 deposition that he was no longer a member of the **NAACP** and that he had ceased being a member in the past few years prior to 1997. He stated that he stopped being a member of the **NAACP** because, "I probably just shifted my intentions to other things." In order for this case to be justiciable, "[t]he association must allege that its members, *or any one of them*, are suffering immediate or threatened injury as a result of a challenged action of the sort that would make out a justiciable case had the members themselves brought suit." *Warth v. Seldin*, 422 U.S. 490, 511, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975) (emphasis added). The **NAACP** is unable to demonstrate that any *540 one of its members continues to have a personal interest in this litigation.¹ Since the **NAACP** is no longer representing interests of any specific members, its claims have become moot. Cf. *Hope, Inc. v. County of DuPage*, 738 F.2d 797, 814 (7th Cir.1984) ("The Supreme Court has *not* seen fit to extend representational capacity standing to entities other than associations which actually represent interests of parties whose affiliation with the representational litigant is that of membership ... or substantial equivalent of membership.").

Not only is Tomblin no longer a member of the **NAACP**, but he no longer alleges an injury that can be redressed by a favorable judicial decision. See *Spencer*, 523 U.S. at 7, 118 S.Ct. 978. It is true that Tomblin maintains an interest in working for **Parma**, but his deposition testimony indicates that since the commencement of this litigation, any injury that he might have sufficiently alleged for standing purposes no longer exists. Tomblin admits that after his May 4, 1993 letter to **Parma** complaining that he was not notified of municipal police and fire examinations, he did receive a postcard informing him of the exam. In addition, Tomblin stated that after he received the postcard, "I just did not sit for the exam." Finally, Tomblin stated that "there was nothing else **Parma** could do" "[o]ther than the fact of informing me of the examination, lifting the residency requirement, having a validated test, putting a notification in the *Plain Dealer* or *Call & Post* saying that or [declaring] that the **City of Parma** does not discriminate against minorities, especially blacks, in the safety forces or civil service positions and hiring me ... [i]f I scored high enough with a validated test." All of the actions

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that Tomblin stated that **Parma** could do, **Parma** had done, either by the time Tomblin received the postcard notifying him of the next municipal police and fire examination or soon after. The only action **Parma** did not do—hiring Tomblin—is not because of any discrimination on **Parma's** part, but because Tomblin did not sit for the examination.

Tomblin admits that there was nothing else **Parma** could do to redress the injury he claimed to have suffered when he brought suit against **Parma**. Moreover, Tomblin seeks only future injunctive relief, not damages for past injuries he has suffered. Since there is no future injunctive relief that this court can give to Tomblin to redress his injuries, his claim has become moot. According to this court, “[t]he test for mootness is whether the relief sought would, if granted, make a difference to the legal interests of the parties...” *McPherson*, 119 F.3d at 458 (internal quotations omitted). Any future injunctive relief that this court could grant Tomblin would not make a difference to him since he has stated that **Parma** has done all it could for him.² See *541 *Spencer*, 523 U.S. at 18, 118 S.Ct. 978 (“mootness, however it may have come about, simply deprives us of our power to act; there is nothing for us to remedy, even if we were disposed to do so”).

The fact that the **NAACP** in general may still believe that **Parma's** recruitment and hiring practices are discriminatory does not prevent this case from becoming moot.³ See *Sample v. Johnson*, 771 F.2d 1335, 1339 (9th Cir.1985) (“That other persons may litigate a similar claim does not save a case from mootness.”). None of the plaintiffs that the **NAACP** relied upon to achieve standing in this case continue to have a

“personal stake” in the outcome of this litigation. *Warth*, 422 U.S. at 498, 95 S.Ct. 2197.⁴ The single plaintiff that the court relies upon in order to hold that the **NAACP** has standing, Tomblin, no longer has a personal stake in two ways: (1) he is no longer a member of the **NAACP**, and (2) he no longer alleges an injury that can be redressed by a favorable judicial decision.

I realize that this case has been litigated for over ten years. I also realize that the **NAACP** believes that, even with the changes made by the **City of Parma** to its municipal recruitment and hiring practices over these past ten years, the system is still discriminatory. However, neither the delay in this litigation nor the serious claims that the **NAACP** is bringing justify a departure from the fundamental requirement that a plaintiff must have a continuing interest in the ongoing litigation in order for this court to exercise the limited jurisdiction it is granted by the Constitution. See *Iron Arrow Honor Soc’y v. Heckler*, 464 U.S. 67, 70, 104 S.Ct. 373, 78 L.Ed.2d 58 (1983) (“Federal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to actual cases and controversies.”). This case is moot because Tomblin—and, therefore, the **NAACP**—no longer have a continuing *542 interest in this litigation. I therefore respectfully dissent.

All Citations

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Footnotes

- * Judge **BOGGS** would grant rehearing for the reasons stated in his dissent.
- ** The Honorable **Avern Cohn**, Senior United States District Judge for the Eastern District of Michigan, sitting by designation.
- 1 This case was originally assigned to the late Judge Frank Battisti. After his death, the case was transferred in November of 1994 to Judge Robert Krupansky, who was then sitting as a district judge by designation. On April 18, 1996, Judge Kathleen O'Malley, the judge to whom this case had been transferred the previous month, entered an order to which the parties agreed. This order denied without prejudice as moot all pending motions, some of which had been pending for more than four years, and requested that the parties settle or renew any previous motions. In 1997, **Parma** and the **NAACP** filed renewed motions for summary judgment.
- 2 In 1990, **Parma** was 98% white, with 86,028 Whites, 957 Asians or Pacific Islanders, 639 Blacks, 85 American Indians, Eskimos, or Aleuts, and 167 persons belonging to other races, in its resident population. Excluding Blacks, the non-white population of **Parma** equaled approximately 1.3% of **Parma's** resident population. 1990 Census, General Population and Housing Characteristics: 1990. According to the 2000 Census, 95.7% of **Parma's** resident population is white. The remainder of the population in **Parma** is as follows, Black or African American, 1.1%; American Indian and Alaska Native,

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0.1%; Asian, 1.6%; other races, 0.4%, and two or more races, 1.1%. U.S. Census Bureau, Census 2000 Redistricting Data (2000). A separate calculation reflects that 1.5% of the year 2000 population is Hispanic or Latino. *Id.*

3 **Parma's** 1981 Affirmative Action Policy provides:

"Affirmative Action" shall connote the **City of Parma's** positive and unequivocal commitment to such measures that it deems necessary to eradicate any or all vestigium of discriminatory employment practices that may have inhibited and contravened all minorities, women, the aged, and disabled from full and equal participation....

It does require that vigorous action be taken to find ways to locate and attract qualified minorities, women, the aged and disabled and to include minorities, women, the aged and disabled in training programs so that their movement will be accelerated into those occupations and lev[is] in which they are significantly underrepresented.

Joint Appendix ("J.A.") at 942, 944 (emphasis added).

4 For that fiscal year, **Parma** hired 32 new municipal employees, none of whom were black. J.A. at 936A.

5 The **Cleveland** metropolitan area generally consists of Cuyahoga, Geauga, Lake, and Medina counties. This area "is considered by the federal government to be a realistic commuting area for geographic entities within which it is located." J.A. at 956 (1997 Expert Report of Herbert Hammerman).

6 Using the more conservative estimate of 9.5%, which equals the percentage of black workers in **Parma's** private workforce, Hammerman calculated a disparity of 6.7 standard deviations between the expected and actual number of black employees in **Parma's** municipal workforce. J.A. at 957 (1997 Expert Report of Herbert Hammerman) (stating that this "indicates no meaningful probability that the event has occurred by chance").

7 The 2000 Census shows that the percentage of Blacks in Cuyahoga County had not changed since 1990, with Blacks comprising 24.7%, or 382,634 individuals, out of the county's 1,393,978 resident population. U.S. Census Bureau, Census 2000 Redistricting Data (2000).

8 A union contract required **Parma** to consider applications from employees within the bargaining unit before considering any other applications. J.A. at 1160–60A.

9 On September 27, 1991, **Parma** moved to dismiss the **NAACP's** claims, arguing that the **NAACP** lacked standing to sue and that the **NAACP's** claims were time-barred. On December 12, 1991, the district court entered an order requiring the **NAACP** to submit "further particularized allegations of fact" to support its standing. J.A. at 206 (citation omitted). In response, the **NAACP** filed an amendment to the complaint and then moved for a second amendment. This motion for leave to file a second amended complaint was among those denied as moot but without prejudice to its refile in the district court's 1996 order. See *supra* n. 1. Even though the **NAACP** later filed a renewed motion for summary judgment, it never renewed the earlier motion for leave to file a second amended complaint. However, because the parties' briefs and the district court's order address only the **NAACP's** second amended complaint, our review of this case is governed by the claims in the second amended complaint. See, e.g., *Gillis v. United States Dep't of Health and Human Servs.*, 759 F.2d 565, 570–71 (6th Cir.1985).

10 The **NAACP** requested injunctive relief, enjoining **Parma** from continuing the alleged discriminatory practices, costs, attorneys' fees, expert witness fees, and "such additional relief as may be appropriate in the interests of justice." J.A. at 235–37 (Second Amended Complaint).

11 We join the First, Fifth, Seventh, Eighth, and Ninth Circuits, which have all explicitly held that standing is determined as of the time the complaint is filed. See *Becker v. Federal Election Comm'n*, 230 F.3d 381, 386 n. 3 (1st Cir.2000); *White v. Lee*, 227 F.3d 1214, 1243 (9th Cir.2000); *Park v. Forest Serv. of the United States*, 205 F.3d 1034, 1037 (8th Cir.2000); *Perry v. Village of Arlington Heights*, 186 F.3d 826, 831 (7th Cir.1999); *Carr v. Alta Verde Indus., Inc.*, 931 F.2d 1055, 1061 (5th Cir.1991). These cases are cited more thoroughly above. See *supra* pp. 524–25.

12 On December 20, 1991, Tomblin was included in the **NAACP's** first amendment to its complaint, which was entered pursuant to the district court's December 12, 1991 order requiring the **NAACP** to submit "further particularized allegations of fact." J.A. at 11, 206–07.

13 We assume that Tomblin is referring to the physical portion of **Parma's** civil service examination, which was given on February 11, 1990. **Parma** offered the written portion of its civil service examination on November 29, 1989 and the physical portion on February 11, 1990. J.A. at 30.

14 We do not believe that Tomblin's assertion that he did not sit for a civil service examination in 1990 due to **Parma's** move-in residency requirement is inconsistent with his claim that he was injured by **Parma's** failure to notify him of its

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June 1991 civil service examination. At a minimum, Tomblin was entitled to have the opportunity to decide if he wished to take the examination.

15 **Parma** presented evidence of job advertisements in several **Cleveland** newspapers, including those with black readerships, and of its efforts to recruit minorities in **Cleveland's** local colleges. Most of this evidence, however, concerns only practices which were undertaken in 1996 and thereafter. See *infra* Part II(B)(2).

16 The only other pre 1996 evidence concerns four advertisements run in May of 1991 for civil service examinations held in June 1991, the first examination for which Tomblin claims he was not notified. Supp. J.A. at 153–55; J.A. at 1069–78.

17 In cases where the plaintiff is also seeking monetary relief, such as backpay, such a requirement would force a plaintiff to fail in his duty to mitigate damages by seeking substantially comparable work so that he could maintain standing, which would, in turn, strip the plaintiff of any claim to backpay. See *Suggs v. ServiceMaster Educ. Food Mgmt.*, 72 F.3d 1228, 1233 (6th Cir.1996) (“A plaintiff in an action under Title VII has a duty to mitigate damages; she may not remain unemployed and collect a windfall.”).

18 Moreover, as this court noted in *Gillis*, “once an organization has alleged actual injury to ‘its members, or any one of them ... it may then argue on behalf of the ‘public interest.’ ... By joining an organization dedicated to a particular goal in the public interest, members indicate a willingness to make certain sacrifices productive of that goal.” *Gillis*, 759 F.2d at 572 (quotations omitted).

19 Because Tomblin was a member of the **NAACP** at the time the **NAACP** filed its complaint and the **NAACP** has presented evidence to demonstrate that Tomblin had standing to sue in his own right at the time it filed its complaint, we need not address whether Collins, Childress, Blanton, or McIntosh did not have standing to sue in their own right because they were not members of the **NAACP** at the time the complaint was filed. Although Allen was a member of the **NAACP** at the time the complaint was filed, the **NAACP** could not obtain associational standing through Allen because he never submitted an application to **Parma**, never inquired about jobs in **Parma**, or even asserted that he would have applied had he seen or heard any advertisements and therefore suffered no actual injury. J.A. at 836–46. Finally, although Crayton was a member of the **NAACP** at the time the complaint was filed, the **NAACP** could not obtain associational standing through her because Crayton could not show that **Parma's** decision not to hire her was fairly traceable to her race. J.A. at 584–85.

As noted earlier, **Parma** does not dispute that the interests at stake are germane to the **NAACP's** purpose or that the **NAACP's** claims do not require the participation of individual members.

20 Likewise, during his deposition in December 1990, Jack Krise, the cash manager for **Parma** testified that just about every person he hired in **Parma's** tax division was a part-time employee or had been recommended by a current employee of **Parma**:

A: In just about every case, it's been somebody who knows somebody to recommend. Usually I will indicate to the office through—nothing formal. I don't say hey, I need to hire somebody, but somebody will hear, if you need anybody, and you know our filing is backing up, and we can sure use a person, I have somebody I can recommend, and that's generally how it's been.

J.A. at 1231 (1990 Krise Dep.).

21 Blanton and Childress, however, did testify that they may have seen advertisements for a civil service examination in **Parma** in 1989 and 1990. J.A. at 574, 717. McIntosh stated that he had received notification of a civil service examination in the mail in 1993. J.A. at 609.

1 The only plaintiff who was a member of the **NAACP** at the time the **NAACP** filed its complaint and who has continued to be a member of the **NAACP** throughout this litigation is Rhonda Crayton, who the court concedes cannot be relied upon by the **NAACP** to obtain standing since she cannot demonstrate that **Parma's** decision not to hire her was fairly traceable to her race. See Maj. Op. at n. 19.

2 This case differs from *McPherson*, in which this court held that the fact the plaintiff had graduated from high school did not make a case challenging the Michigan High School Athletic Association's eight-semester eligibility rule moot. 119 F.3d at 459. The court ruled that the controversy remained alive because the district court had granted a preliminary injunction allowing McPherson to play high school basketball despite his ineligibility under the rule. The court ruled that if the association was able to have the injunction reversed on appeal, the legal interests of both McPherson and the association would be affected since McPherson's high school would have to forfeit any victories in games in which McPherson played and the association could vacate or strike the records of McPherson and his high school basketball team. *Id.* at 458–

Cleveland Branch, N.A.A.C.P. v. City of Parma, OH, 263 F.3d 513 (2001)

86 Fair Empl.Prac.Cas. (BNA) 936, 81 Empl. Prac. Dec. P 40,762, 2001 Fed.App. 0290P

59. In this case, however, Tomblin's legal interests would not be affected by any action of this court since there is no more relief that Tomblin continues to seek.

3 This is not to say that the **NAACP** would be prevented from bringing another complaint against **Parma**. Cf. **NAACP v. Town of Harrison**, 749 F.Supp. 1327 (D.N.J.1990) (noting that **NAACP's** initial complaint was dismissed because the **NAACP** had not demonstrated that **NAACP** members would have standing if they had brought suit, but finding that standing deficiencies had been cured by new complaint brought by **NAACP**).

4 It should also be noted that the **NAACP** did not seek to certify a class pursuant to Fed R. Civ. P. 23. If it had done so, and if Tomblin had been the class representative, it is likely that the **NAACP's** case could proceed even though Tomblin's claim had become moot. See *Sosna v. Iowa*, 419 U.S. 393, 397–403, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). The Court in *Sosna* recognized that when the district court certified the class, “the class of unnamed persons described in the certification acquired a legal status separate from the interest asserted by [the class representative].” *Id.* at 399, 95 S.Ct. 553. The Court held that:

There must not only be a named plaintiff who has such a case or controversy at the time the complaint is filed, and at the time the class action is certified by the District Court pursuant to Rule 23, but there must be a live controversy at the time this Court reviews the case.... The controversy may exist, however, between a named defendant and a member of the class represented by the named plaintiff, even though the claim of the named plaintiff has become moot.

Id. at 402, 95 S.Ct. 553. Since the **NAACP** did not seek to obtain class certification, the fact that a controversy may continue to exist between unnamed members of the **NAACP** and **Parma** does not save this case from becoming moot once the claims of the **NAACP's** named plaintiffs have become moot, as I believe they have.