IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE GEORGIA SENATE BILL 202	Master Case No. 1:21-MI-55555-JPB
NEW GEORGIA PROJECT, *et al.*, Plaintiffs, v. BRAD RAFFENSPERGER, *et al.*, Defendants, REPUBLICAN NATIONAL COMMITTEE, *et al.*, Intervenor-Defendants.	Civil Action No. 1:21-CV-01229-JPB

NGP Plaintiffs' Response to
State Defendants' Notice of Supplemental Authority

State Defendants have submitted a nine-page "Notice of Supplemental Authority," ECF No. 876 ("Notice"), in which they argue that two recent Supreme Court decisions—*FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024) ("*Alliance*"), and *Murthy v. Missouri*, 144 S. Ct. 1972 (2024)—require the Court to enter summary judgment against Plaintiffs for lack of standing. Notice at 1. That contention is incorrect: Neither *Alliance* nor *Murthy* casts any doubt on NGP Plaintiffs' standing.

I. In *Alliance*, the Supreme Court held that pro-life doctors and associations lacked standing to challenge the FDA's approval of mifepristone—a drug that the plaintiffs admitted they did not "prescribe or use." 602 U.S. at 374. *Alliance* thus stands mainly for the principle that *entirely unregulated* persons and organizations "may have more difficulty . . . linking their asserted injuries to the government's regulation . . . of someone else." *Id*. at 382.

That uncontroversial principle has nothing to do with this case. As Plaintiffs explain in their opposition to summary judgment on jurisdiction, ECF No. 826 at 11–21, NGP Plaintiffs and their constituents are directly regulated by S.B. 202's challenged provisions in multiple ways. Where the regulations at issue in *Alliance* simply *permitted* the plaintiffs to take actions they desired to avoid, S.B. 202 *prohibits* NGP Plaintiffs from taking actions they would otherwise take. That distinction is critical: the physicians in *Alliance* remained free to refrain from

prescribing mifepristone; the individual plaintiffs in this action, by contrast, can no longer vote at mobile polling units, at drop boxes after business hours, or at unassigned precincts. The organizational plaintiffs, in turn, cannot effectuate their voter-mobilization missions by directing aspiring electors to utilize these accessible voting options, nor can they approach queuing voters with food or water. In fact, the Line-Relief Ban effectively criminalizes much of New Georgia Project's Party at the Polls program, which has been "whittled down almost entirely" post–S.B. 202. *Id.* at 11–12 (quoting SAMF ¶ 914). And because NGP's constituents vote absentee, they are harmed directly by S.B. 202's provision disqualifying absentee applications that lack a driver's license or identification card number. *Id.* at 16. State Defendants' Notice does not grapple with these facts. Indeed, the Notice does not grapple with *any* of the facts underpinning any Plaintiff's injuries. *See* Notice at 4–5.

II. In *Murthy*, the Supreme Court held that several individual social media users and two states lacked standing to seek an injunction against "dozens of Executive Branch officials and agencies" based on allegations "that they pressured [social media] platforms to suppress protected speech." 144 S. Ct. at 1981. *Murthy* is a factbound decision involving "a review of the years-long communications between dozens of federal officials, across different agencies, with different social-media platforms, about different topics." *Id*. at 1997. It has no obvious relevance here.

State Defendants nonetheless suggest that *Murthy* defeats Plaintiffs' standing because "an injury to Plaintiffs . . . would only potentially exist if county officials or other law-enforcement officials took action." Notice at 7–8. But those officials operate under the control and supervision of State Defendants. *See, e.g.*, O.G.C.A. § 21-2-33.2. And to the limited extent that county officials have discretion in enforcing S.B. 202, NGP Plaintiffs have already named those officials as Defendants.

Lastly, State Defendants misstate the law of standing in one additional respect. They interpret the Supreme Court's instruction in *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021), that "standing is not dispensed in gross," to mean that the Court must "determine whether each Plaintiff in each operative complaint has standing," Notice at 8. Not so—as *Murthy* itself explains, Article III requires only that "for every defendant, there must be at least one plaintiff with standing." 144 S. Ct. at 1988. Plaintiffs have satisfied that requirement.

For these reasons, and those given in prior briefing, State Defendants' Motion for Summary Judgment on Jurisdiction should be denied.

Respectfully submitted this 2nd day of August, 2024,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document has been prepared in accordance with the font type and margin requirements of L.R. 5.1, using font type of Times New Roman and a point size of 14.

Dated: August 2, 2024

/s/ Uzoma N. Nkwonta
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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2024, I electronically filed this document with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

Dated: August 2, 2024

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