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

VOTE.ORG, *et al.*,

Plaintiffs,

v.

GEORGIA STATE ELECTION BOARD, *et al.*,

Defendants,

GEORGIA REPUBLICAN PARTY, INC., *et al.*,

Intervenor-Defendants.

Civil Action No.: 1:22-cv-01734-JPB

PLAINTIFFS' RESPONSE TO STATE DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

State Defendants offer *Food & Drug Administration v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), and *Arizona Alliance for Retired Americans v. Mayes*, No. 22-16490, 2024 WL 4246721 (9th Cir. Sept. 20, 2024), as supplemental authority in favor of an argument that is not supported by either court's decision, and in any event does not implicate Plaintiffs' standing in the present case. First, neither *Alliance for Hippocratic Medicine* nor *Arizona Alliance for Retired Americans* wholly rejects diversion of resources as a basis for Article III standing.

Second, Plaintiffs here have shown standing consistent with the holdings of both cases.

I. *Alliance for Hippocratic Medicine* and *Arizona Alliance for Retired Americans* did not outright reject diversion of resources as a basis for standing.

Contrary to State Defendants' contention, *Alliance for Hippocratic Medicine* and *Arizona Alliance for Retired Americans* did not hold that diversion of resources is no longer sufficient to establish Article III standing. In *Alliance for Hippocratic Medicine*, the Supreme Court simply reaffirmed "well-known" "fundamentals of standing." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. at 380. Specifically, the Court found that medical associations with "moral . . . objections to elective abortion and to FDA's relaxed regulation" of an abortion drug lacked organizational standing because the FDA's actions did not "perceptibly impair[] [their] ability" to conduct any of their core activities. *Id.* at 395-96. Although the medical associations argued that they had "incurr[ed] costs to oppose FDA's actions" by "conduct[ing] their own studies on mifepristone" to "better inform their members and the public about mifepristone's risks," *id.* at 394, the Court reaffirmed its longstanding command that an organization "cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action," *id.*; *see also La. Fair Hous. Action Ctr., Inc. v. Azalea Garden Props., L.L.C.*, 82 F.4th 345, 353 (5th Cir. 2023) ("*LaFHAC*") (explaining "an

organization does not automatically suffer a cognizable injury in fact by diverting resources in response to a defendant's conduct" (citing *El Paso Cnty. v. Trump*, 982 F.3d 332, 343 (5th Cir. 2020)). In effect, the medical associations were mere bystanders, with an interest, but not a stake, in the FDA's actions.

At the same time, the Supreme Court was careful to reaffirm that "[g]overnment regulations that require or forbid some action by the plaintiff almost invariably satisfy both the injury in fact and causation requirements." *All. for Hippocratic Med.*, 602 U.S. at 382. It further emphasized that *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), remains good law, reinforcing that, to have standing under that precedent, an organization must show that the challenged practice "perceptibly impair[s]" the organization's ability to carry out its core activities—be that providing services for housing counseling (as in *Havens*) or engaging with and turning out voters in Georgia (as here). *All. for Hippocratic Med.*, 602 U.S. at 395 (quoting *Havens Realty*, 455 U.S. at 379). Thus, the touchstone inquiry for organizational standing remains whether a challenged policy "perceptibly impair[s]," or "affect[s] and interfere[s]" with, an organization's work, activities, or operations. *Id.* Such an "impediment" to an organization's ability to carry out its work, is an actionable injury. *Id.*

In *Arizona Alliance for Retired Americans*, the Ninth Circuit held that the plaintiffs lacked standing based on its finding that they "misread" one of the

challenged provisions to permit actions by county officials (cancellation of voter registrations) that would impact the organization's voter registration activities. *Ariz. All. for Retired Ams.*, 2024 WL 4246721, at *9-10. Because the court concluded that the plaintiffs' injuries rested on a misunderstanding of the challenged provision, they could not satisfy Article III. *Id*. The court did not reject the use of diversion of resources to establish standing, but merely reiterated the well-settled rule that simply "spending money voluntarily in response to a governmental policy cannot be an injury in fact." *Id.* at *9. To the extent the Ninth Circuit's decision goes further, it misreads *Alliance for Hippocratic Medicine* and is not binding on this court.[1]

II. Neither *Alliance for Hippocratic Medicine* nor *Arizona Alliance for Retired Americans* casts doubt on Plaintiffs' standing in this case.

Vote.org and Priorities USA have organizational standing, consistent with the longstanding principles announced in *Havens*, *Alliance for Hippocratic Medicine*, and countless Eleventh Circuit decisions.

Vote.org developed technology to mobilize voters, particularly from minority and overlooked communities. ECF No. 191-2 ¶¶ 42–44. One of the organization's core activities is engaging voters to register and vote absentee through its online

[1] Consistent with *Havens* and *Alliance for Hippocratic Medicine*, the Eleventh Circuit has long recognized that "an organization has standing to sue when a defendant's illegal acts impair the organization's ability to engage in its own projects by forcing the organization to divert resources in response." *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014).

application tools, which allow voters to complete necessary applications by uploading an image of their signature onto a digital application form. *See id.* ¶¶ 45–46. The pen and ink rule directly interferes with Vote.org's core activity because it renders Vote.org's absentee ballot application tool virtually functionless in Georgia. ECF No. 191-2 ¶¶ 49–50. In response, Vote.org has had to divert significant resources to launch a print-and-mail program at the expense of its ability to engage in other organizational activities. *See id.* ¶¶ 49, 51–67; *see also* ECF No. 159-3. The pen and ink rule "perceptibly impair[s]" Vote.org's "ability to provide [voter engagement] services" using its online tool—that is plainly sufficient for standing. *All. for Hippocratic Med.*, 602 U.S. at 395; *Arcia*, 772 F.3d at 1341; *see also Ariz. All. for Retired Ams.*, 2024 WL 4246721, at *9 (explaining that plaintiffs may show injury-in-fact where challenged provision "directly affect[s] their pre-existing core activities").

Likewise, Priorities USA is a voter-centric, progressive advocacy organization dedicated to educating and turning out voters. ECF No. 191-2 ¶¶ 68–71. Mobilizing voters and communicating with them about their voting options—including through digital advertising—are core activities central to Priorities' mission; the pen and ink rule restricts a method of applying for absentee ballots that Priorities relies on as part of its GOTV strategy in Georgia and therefore interferes with Priorities' existing programming. *See id.* ¶¶ 72–77. In response to the pen and

ink rule, for example, Priorities has been forced to modify a digital advertising program to provide "extra runway" for voters to apply for absentee ballots and ensure they had adequate time to make alternative plans to vote in the December 2022 runoff. *Id.* ¶¶ 76–78. And Priorities will be forced to divert more resources towards customizing future digital advertising programs designed to ensure Georgia voters are equipped to navigate the administrative hurdles imposed by the pen and ink rule. *Id.* ¶ 80. Accordingly, Priorities USA also has standing.

In any event, "the presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v. F. for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 52 n.2 (2006). State Defendants do not argue that either supplemental authority is applicable to Plaintiffs Georgia Alliance for Retired Americans or the Communications Workers of America Local 3204 Retired Members Council, both of which also have standing to challenge the pen and ink rule. Therefore, the Court has jurisdiction to resolve this case on the merits.

Dated: October 23, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing **Plaintiffs' Response to State Defendants' Notice of Supplemental Authority** has been prepared in accordance with the font type and margin requirements of LR 5.1, N.D. Ga., using font type of Times New Roman and a point size of 14.

Dated: October 23, 2024

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CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused to be electronically filed a copy of the foregoing **Plaintiffs' Response to State Defendants' Notice of Supplemental Authority** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to counsel of record.

Dated: October 23, 2024

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