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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

MARCH FOR OUR LIVES IDAHO and **IDAHO ALLIANCE FOR RETIRED AMERICANS**,

Plaintiffs,

v.

PHIL MCGRANE, in his official capacity as Idaho Secretary of State,

Defendant.

Case No.: 1:23-cv-00107-AKB

PLAINTIFFS' RESPONSE TO DEFENDANT'S NOTICE OF SUPPLEMENTAL AUTHORITY [ECF NO. 64]

INTRODUCTION

The Supreme Court's opinion in *Food and Drug Administration v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), has no effect on the standing analysis in this case, for two reasons.

First, *Alliance for Hippocratic Medicine* did not "reject[] 'diversion of resources' organizational standing," as Secretary McGrane argues. ECF No. 64 at 1 ("Notice"). Rather, it reaffirmed and applied the well-established standard for organizational standing. That standard has always required a showing of actual injury to a plaintiff's core activities, and Plaintiffs make that showing here. House Bill 124 and House Bill 340 (the "challenged laws") directly regulate Plaintiffs' core voter registration and voter turnout activities, injure Plaintiffs by making those activities more difficult, and consequently cause the diversion of Plaintiffs' volunteer resources. *See* ECF No. 47 at 8–10; ECF No. 57 at 2–5. Plaintiffs thus have organizational standing.

Second, Secretary McGrane is wrong to assert that Plaintiffs have "advanced no other Article III injury." Notice at 1. Organizational standing aside, Plaintiffs also have associational standing to sue on behalf of their injured members and constituents. *See* ECF No. 47 at 10–12; ECF No. 57 at 5–8; *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1096 (9th Cir. 2021) ("An association or organization can sue based on injuries to itself *or* to its members." (emphasis added)). The associational standing inquiry is entirely unaffected by *Alliance for Hippocratic Medicine*, and associational standing—on its own—fully supports Plaintiffs' claims in this case.

For both reasons, *Alliance for Hippocratic Medicine* poses no barrier to Plaintiffs' claims in this case.

ARGUMENT

I. *Alliance for Hippocratic Medicine* affirmed and applied the well-established standard for organizational standing.

Defendant boldly asserts that in *Alliance for Hippocratic Medicine*, the Supreme Court

"rejected 'diversion of resources' organizational standing." Notice at 1. Not so. Rather, *Alliance for Hippocratic Medicine* merely applied the well-established standard for organizational standing to hold that the plaintiffs there lacked such standing when they could only claim "sincere legal, moral, ideological, and policy objections" to government action, and did not suffer any actual or potential injury. 602 U.S. at 396.

The factual circumstances in *Alliance for Hippocratic Medicine* were unique. The plaintiffs—individual physicians and medical associations opposed to reproductive rights—challenged government regulations that relaxed the requirements for prescribing and obtaining mifepristone, a drug approved 24 years ago for use in the early termination of pregnancies. *Id.* at 386. The plaintiffs were not themselves affected by the challenged regulations: they did not prescribe or use mifepristone, did not have to treat patients who took mifepristone, and were not otherwise directly regulated by the approval of mifepristone in any way. *Id.* at 386–90. Rather, their assertions of injury relied entirely on the costs they incurred to challenge the FDA's regulations and to advocate against the use of mifepristone. *Id.* at 390. The associations argued that those costs, for activities such as "conduct[ing] their own studies on mifepristone so that the associations can better inform their members and the public about mifepristone's risks" and "drafting citizen petitions to FDA, as well as engaging in public advocacy and public education" in opposition to the use of mifepristone, gave them organizational standing based on their diversion of resources. *Id.* at 394.

Alliance for Hippocratic Medicine unanimously rejected this theory of standing as inconsistent with longstanding precedent. It reaffirmed that organizations may have standing "to sue on their own behalf for injuries they have sustained" if they satisfy the usual standards for injury in fact, causation, and redressability that apply to individuals. *Id*. at 393–94 (quoting *Havens*

Realty Corp. v. Coleman, 455 U.S. 363, 3779 & n.19 (1982)). Organizations do not meet this standard merely by "incurring costs to oppose [] actions" to which they object, but which do not concretely harm them. *Id*. at 394. Instead, the organization must also show that the defendant's conduct "perceptibly impair[s]" the organization's ability to carry out its "core [] activities," whether that is providing services for housing counseling, legal services, labor organizing, or as in this case, voter registration. *Id*. at 395. *Alliance for Hippocratic Medicine* thus requires some impairment of activities, beyond pure advocacy, that are important to the organization's mission. It does not categorically reject all evidence of an organization's expenditure of "time, energy, and resources" to combat the effects of government action; it holds only that "an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action." *Id.* at 394–95. Otherwise, "all the organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies." *Id*.

This test was already reflected in Ninth Circuit organizational standing precedent—it is not a departure or change from that existing standard. As the Ninth Circuit has held, "under *Havens Realty*, a diversion-of-resources injury is sufficient to establish organizational standing for purposes of Article III if the organization shows that, independent of the litigation, the challenged policy frustrates the organization's goals *and* requires the organization to expend resources in representing clients they otherwise would spend in other ways." *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 765 (9th Cir. 2018) (cleaned up); *see also, e.g.*, *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021) ("We have read *Havens* to hold that an organization has direct standing to sue where it establishes that the defendant's behavior has frustrated its

mission *and* caused it to divert resources in response to that frustration of purpose." (emphasis added)); *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015); *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d 936, 943 (9th Cir. 2011) (day-laborer organization had standing when challenged ordinance frustrated its mission by preventing day laborers from soliciting employment and "the time and resources spent in assisting day laborers during their arrests and meeting with workers about the status of the ordinance would have otherwise been expended toward [the organization's] core organizing activities").

La Raza is particularly instructive. There, the Ninth Circuit applied *Havens* to hold that the plaintiff civil rights organizations, which had a "voter registration mission," had standing to challenge Nevada's failure to comply with the National Voter Registration Act ("NVRA") because that failure caused the plaintiff organizations to "expend[] extra resources registering voters" which "they would have [otherwise] spent on some other aspect of their organizational purpose—such as registering voters the NVRA's provisions do not reach, increasing their voter education efforts, or any other activity that advances their goals." *La Raza*, 800 F.3d at 1036–37, 1040. Unlike the *Alliance for Hippocratic Medicine* organizational plaintiffs, who alleged diversion of resources for mere issue advocacy in opposition to the challenged regulation, *see* 602 U.S. at 394, the organizational plaintiffs in *La Raza* had standing because the challenged conduct "perceptibly impaired" their ability to provide mission-critical voter registration services by making it more costly to register voters. *Id.* at 395; *see also La Raza*, 800 F.3d at 1040.

II. Plaintiffs have organizational standing.

Plaintiffs have established organizational standing under the longstanding test that the Supreme Court reaffirmed in *Alliance for Hippocratic Medicine*. House Bill 340 and House Bill 124 injure both March For Our Lives Idaho ("MFOL Idaho") and the Idaho Alliance for Retired Americans (the "Alliance") as organizations by making it harder for their members and

constituents to register and vote, interfering with their core activities of registering and turning their members and constituents out to vote. As a result, Plaintiffs have been required to divert their resources away from other activities towards "educating voters about the requirements of the new laws and ensuring that voters have required identification," ECF No. 57 at 2, in order to serve their core activities of registering and turning out voters, thus "expend[ing] additional resources that they would not otherwise have expended, and in ways that they would not have expended them." *La Raza*, 800 F.3d at 1036–37, 1039–42.

The impairment Plaintiffs face to their core activities distinguishes them from the organizational plaintiffs in *Alliance for Hippocratic Medicine*, who were not concretely harmed by the challenged regulations in any way. Unlike the organizational plaintiffs in *Alliance for Hippocratic Medicine*, Plaintiffs did not expend resources merely to "gather information and advocate against the defendant's action" to "manufacture its own standing." 602 U.S. at 394. They did not, for example, assert standing based on lobbying against House Bill 124 and House Bill 340 or on expenses incurred in efforts to repeal the bills. Rather, they diverted resources in response to real, direct harms that the challenged laws impose on them and their members and constituents.

Plaintiff MFOL Idaho is dedicated to "organizing young people to fight for common sense solutions to gun violence," and it "conducts advocacy campaigns to bring young activists into the political process, registers voters, and engages in turnout and education activities focused on young voters" in service of that goal. ECF No. 57 at 3. Its constituents are largely high school and college students, and some "lack a driver's license and do not possess or have difficulty accessing other identification documents." *Id.* House Bill 340 and House Bill 124 make it harder for MFOL Idaho's constituents to register and vote and impair its core activities of registering young people, turning them out to vote, and ensuring that they are actually able to vote. To counteract the

detrimental impact of House Bill 340 and House Bill 124 on its voter registration and turnout activities, MFOL Idaho has had to divert resources to help its constituents obtain identification, to create new educational materials on how to obtain acceptable identification and vote under the laws, and to retrain volunteers to combat the effects of House Bill 124 and House Bill 340, leaving it with fewer resources to support other organizational activities central to its mission of fighting gun violence. *Id.*

Similarly, the mission of the Idaho Alliance is to "protect the civil rights of retirees," and it engages in its core activities of "voter registration, get-out-the-vote activities, and other voter engagement and education activities" in service of that mission. ECF No. 57 at 4. House Bill 340 makes it harder for the Alliance to succeed in its core activities and register its members to vote. To combat the effects of House Bill 340 and protect its members' voting rights, the Alliance must divert "resources . . . towards educating its members about the stricter voter registration requirements and helping them obtain acceptable photo identification to register to vote" at the expense of other programming focused on "recruiting new members, opening new chapters, making presentations to members, and promoting substantive policy campaigns in areas such as retirement income security, pension protections, social security, Medicare, Medicaid, and services for older Idahoans." *Id*. Therefore, House Bill 340 directly impairs the ability of the Alliance to carry out its core activities. This Court has already found nearly identical allegations sufficient to show injury-in-fact for both MFOL Idaho and the Alliance. *See* ECF No. 47 at 8–10.

Thus, Plaintiffs in this case show exactly what *Alliance for Hippocratic Medicine* and longstanding Ninth Circuit precedent require for organizational standing: a perceptible impairment to their core activities of voter registration, turnout, and education for their members and constituents. ECF No. 57 at 2–5. Ninth Circuit precedent has consistently held that civil rights

groups that provide voter registration and turnout services in support of their missions have organizational standing to challenge state actions that make voter registration and voting more difficult and cause them to expend additional resources as a result. *La Raza*, 800 F.3d at 1036–37. Nothing in *Alliance for Hippocratic Medicine* changes that analysis.

Finally, in a footnote, Defendant cites a decision from a *state* court analyzing the standing of *different* organizations that allegations of voter education are insufficient because "the mission of these organizations *is* voter education." Notice at 1 n.1. This critique misses the mark. Plaintiffs' injury is not limited to mere re-education: Plaintiffs have demonstrated that they are injured when fewer of the voters they attempt to register are actually able to successfully register and vote due to the stricter requirements, because Plaintiffs must spend more time and resources on their voter registration and turnout activities to register and turn out the same number of voters as before. Plaintiffs are also injured because they must expend resources helping their members and constituents obtain acceptable identification in order to register and vote. Moreover, the findings of a state court regarding different allegations from different organizations are neither binding nor relevant before this Court.

Plaintiffs therefore satisfy the requirements for organizational standing, which *Alliance for Hippocratic Medicine* did not change.

III. Plaintiffs independently satisfy the requirements for associational standing.

Plaintiffs also sufficiently established associational standing on behalf of their injured members and constituents, which is an alternative basis for standing that is not affected in any way by *Alliance for Hippocratic Medicine*. *See All. for Hippocratic Med.*, 602 U.S. at 405 (Thomas, J., concurring) ("No party challenges our associational-standing doctrine today. . . . [T]he Court consistently applies the doctrine."). An organization satisfies the requirements for associational standing when: "(1) its members would otherwise have standing to sue in their own right; (2) the

interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Am. Unites for Kids*, 985 F.3d at 1096. Plaintiffs satisfy all three requirements: they have provided evidence that (1) their members and constituents—comprised of young voters and students for MFOL Idaho and older voters for the Alliance—are uniquely targeted and impacted by House Bill 124 and House Bill 340, which make it harder for them to register and vote; (2) they seek to protect the ability of their members and constituents to register to vote and vote, which is germane to their missions and purpose; and (3) individual members need not participate because "Plaintiffs seek only declaratory and injunctive relief based on a facial challenge to statutes." ECF No. 57 at 5–6; *see also Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). For these reasons, this Court correctly found that Plaintiffs demonstrated associational standing at the motion to dismiss phase. ECF No. 47 at 10–12. Nothing from Defendant's Notice nor *Alliance for Hippocratic Medicine* calls this analysis into question.

Moreover, the injury to Plaintiffs' members and constituents is entirely unlike the purported injury to individual plaintiffs and members held insufficient in *Alliance for Hippocratic Medicine*. The doctors and medical professionals who comprised the membership of the organizations were "unregulated parties who seek to challenge FDA's regulation of others." *All. for Hippocratic Med.*, 602 U.S. at 385. They could not establish a causal link between FDA's regulatory actions and alleged injuries to them that was not "too speculative or otherwise too attenuated." *Id.* at 390. In contrast, Plaintiffs' members and constituents here are "required" by House Bill 124 and House Bill 340 "to do [] or refrain from doing" something, *id.* at 385—they cannot use student identification to register or vote, and they must pay a government fee for acceptable identification or lose their ability to vote. And unlike the doctors in *Alliance for*

Hippocratic Medicine who suffer no direct monetary, property, or other injury, Plaintiffs' members and constituents suffer an injury to their constitutional rights, a "common" injury in fact. *Id.* at 381, 385.

CONCLUSION

Plaintiffs have both organizational and associational standing, and *Alliance for Hippocratic Medicine* does not change either analysis.

Dated: July 19, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 19, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent a Notice of Electronic Filing to all counsel of record.

/s/ *David Fox*