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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 the Idaho Secretary of State,

Defendant.

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

REPLY REGARDING NOTICE OF SUPPLEMENTAL AUTHORITY [DKT. 65]

INTRODUCTION

The U.S. Supreme Court held in no uncertain terms that the theory that "standing exists when an organization diverts its resources in response to a defendant's action" is an incorrect theory because "that theory would mean that 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." *Food and Drug Admin. v. Alliance for Hippocratic Med.*, 602 U.S. 367, 395 (2024). The Court made clear that its previous caselaw "does not support such an expansive theory of standing." *Id.* As Plaintiffs' theory of standing[1] rests upon its argument that "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," Dkt. 66 at 7 (internal quotations omitted), the Court's rejection of this "expansive theory of standing" in *Alliance* is fatal to Plaintiffs' claim for organizational standing. This Court should therefore find that Plaintiffs lack standing and grant the Defendant's motion for summary judgment.

[1] While Plaintiffs do advance an associational standing argument, that argument is frivolous, leaving the organizational standing argument as their sole arguable Article III injury. As argued in Defendant's Memorandum of Law in Support of Motion for Summary Judgment, to establish associational standing, Plaintiffs must identify with specific allegations at least one member with standing. Dkt. 54-1 at 13 (citing *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.,* 517 U.S. 544, 555 (1996) and *Assoc. Gen. Contractors of Am., San Diego Chapter, Inc. v. Cal. Dep't of Transp.,* 713 F.3d 1187, 1194 (9th Cir. 2013)). Plaintiffs have failed to meet this basic requirement, improperly relying at the summary judgment stage only on conjecture. *See* Dkt. 59 at 5; 54-1 at 13.

ARGUMENT

I. The Asserted Injury In This Case Is Indistinguishable From The Insufficient Injury In *Alliance*.

The Supreme Court has been clear—diversion of resources is not sufficient for standing except in "unusual" circumstances where an organization is concretely and directly impacted by the defendant's actions. The "unusual" facts in *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), supported standing not because the HOME organization had to divert its resources to respond to the defendant's actions, but because the defendant had directly injured HOME by lying to a HOME employee, which "directly affected and interfered with HOME's core business activities." *Alliance*, 602 U.S. at 395; *see also Tennessee Conf. of the Nat'l Ass'n for the Advancement of Colored People v. Lee*, 105 F.4th 888, 904 (6th Cir. 2024) ("Havens had directly harmed HOME because it had given one of HOME's own employees 'false information' and so had violated HOME's right to truthful information under the Fair Housing Act.").

By contrast, Plaintiffs cannot show any organizational harm distinct from the Alliance for Hippocratic Medicine—indirect effects on an entity due to the challenged laws' operation on third parties. Alliance and its fellow plaintiffs were pro-life organizations opposed to the use of mifepristone in abortions and sued the FDA for relaxing its standards in regulating the use of the drug. *Alliance*, 602 U.S. at 372–76; 396–97. Alliance and the individual doctors who sued claimed an injury in fact based on several causation theories, one of which was diversion of resources. *Id.* at

385. Alliance specifically argued that "FDA has impaired their ability to provide services and achieve their organizational missions," through such a diversion. *Id.* at 394 (internal quotation marks omitted). Alliance's theory was that the approval of mifepristone and concurrent lack of regulation required them to incur additional costs to avert harm to their organizational mission. Alliance incurred costs by having to "conduct their own studies . . . so that the associations can better inform their members and the public," by "expend[ing] considerable time, energy and resources drafting citizen petitions" and "engaging in public advocacy and public education" to "the detriment of other spending priorities." *Id.*[2]

Like Plaintiffs, Alliance argued that "they have demonstrated something more here. They claim to have standing not based on their mere disagreement with FDA's policies, but based on their incurring costs to oppose FDA's actions." *Id.* Even though Alliance couched its argument in terms of remediating the *effects* of the challenged policy through education to the public and research in the performance of their mission, these efforts were *nonetheless* insufficiently connected to the challenged agency action to confer standing upon the Alliance.

[2] The *Alliance* Plaintiffs also included individual doctors who alleged their own diversion of resources standing. *See* 602 U.S. at 390–91. They alleged that the FDA's lack of regulation would lead to them spending more time and resources dealing with resulting complications. *Id.* The Court's rejection of this argument, though concerning individual standing, is helpful here because the hurdles for Plaintiffs here in reaching an injury-in-fact are similar: lack of evidence in the record (*see generally* Dkt. 54-2) and causation. The effect of a change to voting registration requirements is too attenuated to effect any of MFOL or Alliance for Retired Americans' political goals, and dependent on innumerable third-party actions—like which voters choose to obtain what form of identification.

Here, Plaintiffs have the same problem. They have not shown that the law has directly caused them harm as organizations. They have not shown a direct injury like the lie the defendant told the organization in *Havens*, or Justice Kavanaugh's analogy to a supplier selling defective goods to the retailer. Plaintiffs instead challenge H.B. 124 and H.B. 340 based upon the laws' impact out in the world and their desire "to combat the impacts of House Bill 124 and House Bill 340." Dkt. 57 at 9. Plaintiffs argue that they need to educate their constituents and retrain volunteers which will result in "fewer resources to support activities central to its mission of fighting gun violence." *Id.*

This is identical to Alliance—a problem out in the world that the entity believes it needs to fix by way of educating third parties. The problem may well rhyme with the organization's broader mission, whether pro-life advocacy or anti-gun advocacy, but that is not enough to show that the Plaintiffs have been directly injured by the Defendant. Because organizational standing is not based upon the effect of the challenged law on a third party, organizational standing must be based after *Alliance* on the concrete injury of an action on the organization *itself*. In alleging organizational standing based on the impact on others, Plaintiffs have failed to meet their burden of demonstrating an injury to themselves.

The first and only Circuit Court to consider the matter after *Alliance* recognized *Alliance* as a development that "clarified [*Havens*'] narrow domain." *Lee,* 105 F.4th at 903. As the Circuit Court recognized, "Havens's 'unusual' facts did not support a categorical rule allowing standing whenever 'an organization diverts its

resources in response to a defendant's actions.'" *Id.* (quoting *Alliance*, 602 U.S. at 395). Contrary to the Plaintiffs' characterization of *Alliance* as an argument of "diversion of resources for mere issue advocacy," Dkt. 66 at 6, the Sixth Circuit highlighted and identified Alliance's alleged injury as a "pocketbook harm" in that the *Alliance* plaintiffs "argued that the regulations forced them to spend time and money on studies showing the drug's safety risks and public education informing patients about those risks." *Lee,* 105 F.4th at 903–05 (citation and internal quotations omitted). That is the same injury alleged here. Dkt. 57 at 2; *see also* Dkt. 1 at 6, Dkt. 34 at 14–15.

Moreover, the Sixth Circuit correctly noted that the direct harm that supported standing in *Havens* was that "Havens had directly harmed HOME because it had given one of HOME's own employees 'false information' and so had violated HOME's right to truthful information under the Fair Housing Act," which in turn directly resulted in a harm to the housing business run by HOME. *Lee,* 105 F.4th at 903–04 (citation omitted). There is no comparable injury in the instant case, no direct injury to the Plaintiffs, their volunteers or employees—only a claim that the same effort to register voters is now more difficult and therefore more "time and effort" is required to "educate [Plaintiffs'] constituents." Dkt. 55-1 at 12–13. The direct effect of the law on third parties cannot confer standing on an organization not directly impacted by the law, even where that organization spends its resources to educate the public and to help the third parties comply with the law. This is because "an organization . . .

cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action." *Alliance*, 602 U.S. at 394.

The *Alliance* case has clearly held that an organization cannot spend its way into standing, and the organization must instead show that the defendant's actions have "directly affected and interfered with [the organization's] core business activities." *Id.* at 395. Simply spending money to educate voters about the impact of the new law, even if that requires spending money to help voters obtain the necessary documents to register to vote, is insufficient to confer standing under *Alliance*. *See Lee*, 105 F.4th at 904 (citation omitted) (finding that the "NAACP points to no evidence showing that the Documentation Policy 'directly' injured it" despite evidence in the record that the NAACP spent resources driving voters to government offices to obtain required documentation to register to vote and even paid the fees for people to obtain that required documentation). While Plaintiffs argue that this Court should confine *Alliance* to *its* "unique" facts (Dkt. 66 at 4), as the Court held in *Alliance*, it is *Havens* that must be confined to *its* facts. 602 U.S. at 396.

CONCLUSION

For all of the above reasons, in addition to the reasons set forth in Defendant's Motion for Summary Judgment, the Defendant respectfully requests that the Court find that the Plaintiffs lack standing and grant its motion for summary judgment.

DATED: August 2, 2024.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 2, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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