IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

AMERICA FIRST POLICY INSTITUTE, *et al.*,

Plaintiffs,

v. 2:24-CV-152-Z

JOSEPH R. BIDEN, JR., *et al.*,

Defendants.

ORDER

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Before the Court is Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction ("Motion") (ECF No. 15), filed September 10, 2024. After reviewing the briefing and relevant law, Plaintiffs' Motion for a temporary restraining order is **DENIED**. The Court **DEFERS** ruling on a preliminary injunction at this time.

INTRODUCTION

Plaintiffs argue that "[g]iven that early voting will soon commence (in Pennsylvania on September 16, followed by Virginia and Minnesota on September 20), a temporary restraining order is briefly necessary to prevent additional harm as this Court decides upon a preliminary injunction." ECF No. 16 at 20. No Plaintiff is related to Minnesota, so only Pennsylvania- or Virginia-related Plaintiffs can justify temporary injunctive relief here. *See* ECF No. 11 at 8 (identifying Plaintiff Daniel Meuser as Representative of the 9th District of Pennsylvania in the U.S. House of Representatives) ("Meuser"), 10 (identifying Plaintiff Fairfax County Republican Committee) ("Fairfax"); *TransUnion, LLC v. Ramirez*, 594 U.S. 413, 423 (2021) ("Requiring a plaintiff to demonstrate a concrete and particularized injury . . . ensures that federal courts decide only 'the rights of individuals.'") (quoting *Marbury v. Madison*, 5 U.S. 137, 170 (1803)).

ANALYSIS

I. Each Plaintiff must demonstrate standing at the TRO stage.

"[P]laintiffs bear the burden of demonstrating that they have standing," *TransUnion,* 594 U.S. at 430–31 (2021), even at this expedited stage, *see Speech First, Inc. v. Fenves*, 979 F.3d 319, 329 (5th Cir. 2020) ("A preliminary injunction . . . cannot be requested by a plaintiff who lacks standing to sue."). To satisfy Article III standing, a plaintiff must show (1) that he suffered an injury-in-fact that is concrete, particularized, and actual or imminent; (2) that the injury was likely caused by the defendant; and (3) that the injury would likely be redressed by judicial relief. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). While Plaintiffs must satisfy each standing prong, the first is most demanding. Specifically, an injury-in-fact must be "concrete — that is, real, and not abstract." *TransUnion*, 594 U.S. at 424 (internal marks omitted).

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In the election context, alleged injuries must "present[] more than a generalized allegation of partisan harm . . . ." *Nelson v. Warner*, 12 F.4th 376, 385 (4th Cir. 2021). Those running for political office *can* demonstrate a standing injury based on a "negative impact on [the politician's] vote tally," but that alleged injury must rest on sufficient evidence. *Id.* In *Nelson*, the Democratic candidate's name "was listed beneath the three Republican candidates" on the ballot, which "deprived Nelson of any benefit from [a] windfall vote . . . ." *Id.* at 384. The Fourth Circuit upheld Nelson's standing "[g]iven the expert testimony . . . that it was extremely likely that the primacy effect would have a negative impact on Nelson's vote tally . . . ." *Id.* at 385.

The Supreme Court tailors a plaintiff's Article III burden to the stage of the litigation. *Lujan*, 504 U.S. at 561. At this early and expedited stage, "the movant must clearly show only that each element of standing is likely to obtain in the case at hand." *Speech First*, 979 F.3d at 330.

II. Fairfax's and Meuser's standing theories are too vague at this stage.

Under the foregoing principles, both Fairfax and Meuser's standing theories are too vague at this expedited stage.[1] Fairfax notes that Virginia Governor Glenn Youngkin recently removed 6,303 noncitizens from the Virginia voter rolls, and that in 2011, 117 individuals voted illegally. ECF No. 17 at 29. Fairfax concludes that the challenged programs "will result in more persons registering to vote who will vote for Democratic candidates in the upcoming election." *Id.*

That conclusion does not follow from the foregoing predicates. Fairfax's Declaration does not explain the relationship between past generalized harms (*i.e.*, noncitizen registration and illegal voting) and the alleged imminent harm of increased Democratic voter turnout. In fact, Fairfax's Declaration does not even state that the formerly registered noncitizens or illegal voters had cast their ballot for Democrats. *See id.* ("Here in Fairfax, we know that some of these noncitizens do indeed vote," noting that "117 voted illegally."). With no direct evidence to support its claim of increased Democratic voter turnout, Fairfax instead relies on the generalized statement that "persons who fit various descriptions in terms of their interfacing with the Federal Government [are] likely to vote for Democratic candidates." *Id.* That claim is too broad to plausibly implicate the specific programs Plaintiffs challenge here, or to suggest that Fairfax faces any specific harm as a result. At this stage, Fairfax avers only "generalized allegation[s] of partisan harm," *Nelson*, 12 F.4th at 385, which are insufficient for Article III standing. Therefore, there is no imminent injury that would justify temporary injunctive relief in Virginia.

Meuser's standing theory suffers from the same defects. First, he argues that he is "injured because these agency actions benefit [his] Democratic opponents, giving [his] political

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[1] Given Defendants' pending Motion to Dismiss, ECF No. 25, the Court offers no definitive ruling on standing for any Plaintiff until that motion has been fully briefed and argued.

competition an advantage in their upcoming 2024 elections." ECF No. 16 at 57–58. But this statement lacks credible support. Unlike Fairfax, Meuser submitted no separate Declaration in support of standing. Instead, he relies on media assertions that the challenged Executive Order[2] ("EO") exists "'to try to boost turnout among key voting blocs this November,' giving Democrats — including Vice President Harris herself — a partisan advantage." *Id.* at 17 (quoting Eugene Scott, *VP Harris to Announce Biden Team's Plans to Boost Voting Access*, AXIOS (Feb. 27, 2024), https://tinyurl.com/nu77tch6). Even if taken at face value, generalized media statements about the EO do not indicate Meuser-specific harm. Yet that is what he must demonstrate for Article III standing. *TransUnion*, 594 U.S. at 423.

Second, Meuser argues that Defendants' "actions make it necessary to commit additional resources to counteract the undesired effects of those unlawful actions." ECF No. 16 at 58. This claim is too vague. First, it is nondescript. What kinds of additional resources? How many? Second, it is not clear to this Court that committing additional resources in a political election is a cognizable standing injury anyway. Elections require resources. At a minimum, Meuser should have demonstrated how the foregoing "additional resources," *id.*, push him beyond the threshold of ordinary campaigning into an Article III injury. But he did not, and this dissuades the Court that he can show "concrete," "real," and "not abstract" injuries at present. *TransUnion*, 594 U.S. at 424. Accordingly, there is no imminent injury that would justify temporary injunctive relief in Pennsylvania either.

The only remaining justification for emergency injunctive relief is Plaintiffs' requested nationwide injunction. ECF No. 16 at 60. But, as Plaintiffs themselves admit, that relief is extreme and inapposite here. *See id.* at 61 ("Plaintiffs cannot fully prove prior to commencing discovery

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[2] Executive Order 14019, *Promoting Access to Voting*, 86 Fed. Reg. 13,623 (Mar. 7, 2021).

that a nationwide injunction is necessary to avert further irreparable injury."). Thus, the Court will not afford Plaintiffs nationwide injunctive relief at this stage, meaning that Plaintiffs lack any justification for emergency injunctive relief.

* * *

In conclusion, while early voting might commence in Pennsylvania, Minnesota, and Virginia shortly, no Plaintiff related to those states can demonstrate standing at this stage. Among other requirements for a temporary restraining order, Plaintiffs must demonstrate a substantial threat that they will suffer irreparable injury if injunctive relief is denied. *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987). That threat is absent at this expedited stage of the litigation.

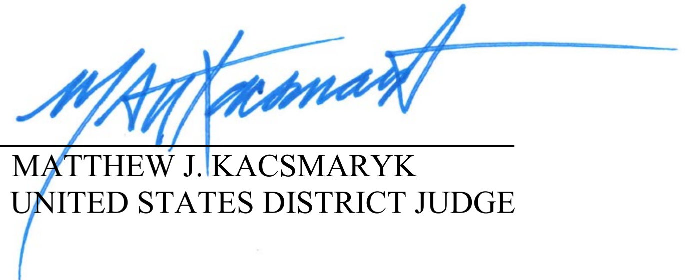
CONCLUSION

Plaintiffs' Motion for a temporary restraining order is **DENIED** while the Court considers a preliminary injunction.

The Court is aware that "Plaintiffs will timely file a 25-page brief in opposition to the part of ECF No. 25 that is an MTD . . . ." ECF No. 38 at 2 n.1. Plaintiffs are **ORDERED** to further address *each* Plaintiff's individual standing to sue in that opposition brief.

SO ORDERED.

September 15, 2024.



MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE

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