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

AMERICA FIRST POLICY INSTITUTE, et al.,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official capacity as President of the United States, *et al.*,

Defendants.

Civil Action No.: 2:24-cv-00152-Z

PLAINTIFFS' RESPONSE TO DEFENDANTS' NOTICE

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Plaintiffs respectfully respond to Defendants' argument embedded in their Notice, ECF No. 70, relevant both to securing a preliminary injunction and to denying the Motion to Dismiss, or at minimum deferring that motion in part pending targeted jurisdictional discovery. In sum, Defendants' Notice argument is meritless, because Plaintiffs here allege concrete past and continuing harms instead of future harms, Plaintiffs quantify certain injuries, and both administrative and competitive injuries are cognizable without quantitative precision.

Contrary to Defendants' argument in their Notice, this case is not like *Ashcroft*. Plaintiffs pleaded and briefed specific allegations of completed and ongoing financial and competitive harms, not claiming potential future harms, as the Supreme Court found in *Murthy v. Missouri*, 144 S. Ct. 1972 (2024). And Plaintiffs are not spending their way into standing, as the Supreme Court found in *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 394 (2024).

Plaintiffs here instead plead and brief compliance costs, including additional training for election administrators and costs arising from candidates and political parties hiring experts to advise on tactical responses to the EO and additional costs offsetting government-imposed disadvantages. Plaintiffs quantified some of those burdens and costs, *see, e.g.*, ECF No. 61 ("App.") 12, 17, 21–22, 45–46, 63, while other burdens and costs cannot yet be quantified, *see, e.g.*, App. 21–23, 31, 39–40, 44–48, 56, but need not be (at least at this stage), ECF No. 60 at 7, 23 (citing cases). Plaintiffs' injuries are neither speculative nor attenuated. The spending effects here are those of specific administrators, candidates, and political parties, not effects on States.

Ashcroft alleged future injuries. ECF No. 70-1 ("Op.") 5–6 (noting allegations phrased as "will produce … will be forced," etc.). The court concluded that Ashcroft thus "predict[ed], rather than "allege[d], increased costs, and … provide[d] nothing specific or concrete to support those predications." Op. 6. Here, Plaintiffs allege specific costs already incurred. At App. 11, 17, 28, 32, 52, 56–59, 63, Plaintiffs also provide evidence and "specifically allege the involvement of … third-party organization[s] in implementing the EO." Op. 6. Plaintiffs have expended additional resources to combat the effects of actions implementing the EO by Defendants and third parties known to partner with Defendants to implement the EO. *See* App. 12. These include acts in the Amarillo Division by third parties affiliated with Defendants. *See* App. 11. Several Plaintiffs cite their competitive injuries from these activities, *see*, *e.g.*, App. 58, and expert testimony showed that the referenced actions result in such disadvantages, App. 67–70. Election administrators are claiming specific instances of illegal alien registrations and even voting. App. 36. And at App. 36, 45–46, Plaintiffs provide evidence and "allege a causal link between the EO and … submissions of duplicative or ineligible voter registration forms." Op. 6.

Plaintiffs allege and provide evidence of fairly traceable injuries because Defendants' actions need be only contributing factors, not the but-for cause, of Plaintiffs' injuries. ECF No. 60 at 13–14 (citing cases). And beyond the 2024 election, enjoining Defendants' actions would mitigate ongoing injuries in 2026 and beyond. The Court should reject Defendants' argument.

November 5, 2024

Respectfully submitted,

/s/ Kenneth A. Klukowski

H. CHRISTOPHER BARTOLOMUCCI* D.C. Bar No. 453423 KENNETH A. KLUKOWSKI D.C. Bar No. 1046093 JUSTIN A. MILLER Tex. Bar No. 24116768 SCHAERR | JAFFE LLP 1717 K Street NW, Suite 900 Washington, DC 20006 Telephone: (202) 787-1060 Facsimile: (202) 776-0136 kklukowski@schaerr-jaffe.com

JESSICA HART STEINMANN Tex. Bar No. 24067647 MICHAEL D. BERRY Tex. Bar No. 24085835 AMERICA FIRST POLICY INSTITUTE 1635 Rogers Road Fort Worth, TX 76107 Telephone: (571) 348-1802

*Admitted pro hac vice

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

On November 5, 2024, the foregoing document was filed with the Clerk of Court for the United States District Court, Northern District of Texas using the Court's CM/EC system. I hereby certify that I have served the document on all counsel of record by manner authorized by Federal Rule of Civil Procedure 5(b)(2) (ECF system).

<u>/s/ Kenneth A. Klukowski</u> Kenneth A. Klukowski *Counsel for Plaintiffs*