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December 7, 2021

VIA ECF

The Honorable Gary R. Brown
United States District Judge
Eastern District of New York
100 Federal Plaza, Courtroom 840
Central Islip, New York 11722

Re: *Chrysafis et al. v. Marks et al.*, No. 2:21-cv-02516-GRB-AYS

Dear Judge Brown:

I write in response to the State's letter of December 1, in which the Attorney General's Office asks this Court to summarily dismiss Plaintiffs' Amended Complaint based on the Court's November 29 decision denying Plaintiffs' application for a preliminary injunction. The State's request should be denied.

It is well-settled that "the findings of fact and conclusions of law" made in ruling on a preliminary injunction application are "not binding" on the merits, and that "it is generally inappropriate for a federal court at the preliminary injunction stage to give a final judgment on the merits." *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). And, although the Second Circuit does not appear to have resolved the specific issue of the status of a ruling relating to standing made in the context of a preliminary injunction denial, multiple other circuits have held that a party's failure to establish standing for purposes of a preliminary injunction application does not compel dismissal on the merits. *See Memphis A. Philip Randolph Institute v. Hargett*, 978 F.3d 378, 386 (6th Cir. 2020); *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015). Here, the Court expressly declined to consolidate Plaintiffs' preliminary injunction application with the merits of the case. *See* Dkt. 134 at 26-27. And rightly so. *See Camenisch*, 451 U.S. at 495 ("[T]he courts have commonly required that the parties . . . receive clear and unambiguous notice" of the Court's intent to consolidate "either before the [preliminary injunction] hearing commences or at a time which will still afford the parties a full opportunity to present their respective cases.").

Thus, to the extent the State wishes to move to dismiss this case based on the adequacy of Plaintiffs' pleadings—whether as to standing or any other issue—it should do so in the ordinary course. But the State is not entitled to dismissal simply because the Court found that Plaintiffs did not make a sufficient showing of standing to obtain a preliminary injunction.

For avoidance of doubt, Plaintiffs' respectfully disagree with this Court's decision denying preliminary injunctive relief and reserve their appellate rights. Plaintiffs likewise reserve all rights with respect to a potential motion to dismiss, including their right to seek leave to further amend the pleadings to cure any purported defects, jurisdictional or otherwise.

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Respectfully,

/s/ Randy M. Mastro

Randy M. Mastro

cc: All counsel of record (via ECF)