

1 AARON D. FORD
Attorney General
2 LAENA ST-JULES (Bar No. 15156)
Senior Deputy Attorney General
3 Office of the Attorney General
100 North Carson Street
4 Carson City, Nevada 89701-4717
T: (775) 684-1100
5 E: lstjules@ag.nv.gov

6 *Attorneys for Secretary of State*

7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9 REPUBLICAN NATIONAL COMMITTEE,
NEVADA REPUBLICAN PARTY, and
10 SCOTT JOHNSTON,

11 Plaintiffs,

12 vs.

13 FRANCISCO AGUILAR, in his official
capacity as Nevada Secretary of State;
14 LORENA PORTILLO, in her official capacity
as the Registrar of Voters for Clark County;
15 WILLIAM "SCOTT" HOEN, AMY
BURGANS, STACI LINDBERG, and JIM
16 HINDLE, in their official capacities as
County Clerks,

17 Defendants.

Case No. 2:24-cv-00518-CDS-MDC

**DEFENDANT SECRETARY OF
STATE'S MOTION TO DISMISS
FIRST AMENDED COMPLAINT**

18
19 Defendant Francisco Aguilar, in his official capacity as Nevada Secretary of State
20 ("Secretary of State"), moves to dismiss Plaintiffs Republican National Committee ("RNC"),
21 Nevada Republican Party (together with the RNC, the "Organizational Plaintiffs"), and
22 Scott Johnston's (together with the Organizational Plaintiffs, "Plaintiffs") First Amended
23 Complaint for Declaratory and Injunctive Relief ("FAC") (ECF No. 98) pursuant to Fed. R.
24 Civ. P. 12(b)(1) for lack of subject-matter jurisdiction and Fed. R. Civ. P. 12(b)(6) for failure
25 to state a claim.

26 **I. INTRODUCTION**

27 The National Voter Registration Act of 1993 ("NVRA") "was intended as a shield to
28 protect the right to vote, not as a sword to pierce it." *Am. Civil Rights Union v. Philadelphia*

1 *City Comm'rs*, 872 F.3d 175, 182 (3d Cir. 2017). Yet Plaintiffs, through this lawsuit, are
2 attempting to use it as a sword to pierce Nevadans' right to vote. Plaintiffs claim, based on
3 mismatched, cherrypicked, and outdated data, that Nevada and certain counties are failing
4 to make reasonable efforts to remove voters from voter rolls as required by the NVRA.

5 The Court dismissed Plaintiffs' initial Complaint for Declaratory and Injunctive Relief
6 ("Complaint"), ECF No. 1, because Plaintiffs had failed to establish standing and because the
7 case was not prudentially ripe. *See* Reporter's Transcript of Proceedings, ECF No. 96 at 23:2–
8 4, 72:17–73:23 ("Hr'g Tr."). Plaintiffs amended their Complaint, but their amendments do
9 not save their claim from dismissal.

10 The individual plaintiff's alleged injuries of undermined confidence in elections and
11 vote dilution based on voter fraud remain too generalized and speculative to confer standing.
12 The RNC similarly cannot premise standing on expenditures to combat the risk of voter fraud
13 because that risk is speculative. And the Organizational Plaintiffs cannot invoke the NVRA's
14 cause of action because their alleged injuries do not fall within the NVRA's zone of interests.
15 Further, Plaintiffs fail to allege facts that plausibly state an NVRA violation. The inferences
16 they ask the Court to draw based on misleading data are unwarranted, unreasonable, and
17 implausible in the face of judicially noticeable data that shows that Nevada is a leader in list
18 maintenance. The case also remains prudentially unripe. The FAC should be dismissed.

19 **II. BACKGROUND**

20 **A. List Maintenance Under the NVRA**

21 Under the NVRA, states may only remove voters (1) at the voter's request; (2) if a voter
22 becomes ineligible under state law "by reason of criminal conviction or mental incapacity";
23 (3) if the voter died; or (4) if the voter changed residence. 52 U.S.C. § 20507(a)(3)-(4). While
24 states are permitted to remove registrants "at the request of the voter, by reason of criminal
25 conviction or mental incapacity as provided in state law, or because of death or change of
26 residence," the NVRA only requires states "to conduct a general program that makes a
27 reasonable effort to remove the names of voters who have become ineligible on account of
28 death or change of address." *Bellitto v. Snipes*, 935 F.3d 1192, 1199 (11th Cir. 2019); 52 U.S.C.

1 § 20507(a)(4). Any general program to remove voters must be “uniform, nondiscriminatory,
2 and in compliance with the Voting Rights Act of 1965,” and may not be based solely on a
3 voter’s failure to vote. 52 U.S.C. § 20507(b)(1)-(2).

4 For the general program to remove voters based on a change of address, the NVRA
5 imposes limitations on immediate removal. If a registrant moves outside of the jurisdiction,
6 a registrar will send a notice to the registrant for the registrant to respond to. 52 U.S.C.
7 § 20507(d)(1)(B), (d)(2). A registrar cannot immediately remove a voter who does not respond
8 to the notice; instead the registrar can only remove a non-responsive registrant if the
9 registrant does not appear to vote in the next two federal general elections. 52 U.S.C.
10 § 20507(d)(1)(B).

11 **B. Nevada’s General List Maintenance Program for Voters Who Change**
12 **Residence**

13 Nevada’s counties ensure maintenance of their respective voter lists when a voter
14 changes residence pursuant to NRS 293.530. Counties can “use any reliable and reasonable
15 means . . . to determine whether a registered voter’s current residence is other than that
16 indicated on the voter’s application to register to vote.” NRS 293.530(1). After identifying
17 voters whose residences may have changed, the counties will then mail those voters a
18 written notice with a postage guaranteed return postcard that has a space for the voter to
19 write in his or her new address. NRS 293.530(1)(c)(1)-(2). If a voter returns the postcard
20 with updated information, the county will correct the voter registration list.
21 NRS 293.530(f). However, if a voter does not return the postcard within 33 days of its
22 mailing, the county will designate the voter as inactive. NRS 293.530(1)(d), (g). And if an
23 inactive voter fails to vote for two general elections after the mailing of the notice and
24 postcard and the voter’s registration information is not updated as specified in statute
25 during that time, the county will cancel the voter’s registration. NRS 293.530(1)(c)(4)-(5).

26 **C. Nevada’s Safeguards Against Voter Fraud**

27 Nevada has in place laws that safeguard against voter fraud, including, among
28 others, the following five categories. First, votes cast by mail ballot and in person are

1 subject to signature verification. NRS 293.269927(1) (mail ballots), 293.3075(1)(c) (ballots
2 cast in person on election day), 293.3585(1)(c) (ballots cast early in person). Second,
3 inactive voters are not sent mail ballots. *See* NRS 293.269911(1). Third, voter fraud is
4 criminalized, NRS 293.775 (category D felony for voting or attempting to vote when not
5 qualified or using another person’s name), 293.780 (category D felony for voting or
6 attempting to vote twice at same election), and as Plaintiffs note, is prosecuted in Nevada,
7 FAC ¶¶ 47–49. Fourth, the results of each election are subject to risk-limiting audits
8 designed to limit the risk of certifying incorrect election outcomes. NRS 293.394(2)–(3).
9 And fifth, registered voters can, based on personal knowledge, challenge other voters’
10 ability to cast votes or remain on the voter rolls. *See* NRS 293.303(1), 293.547.

11 **D. This Lawsuit**

12 On December 4, 2023, Plaintiffs sent the Secretary of State a letter claiming that
13 Nevada was in violation of the NVRA. FAC. Ex. A, ECF No. 98-1. Plaintiffs did not request
14 any of the publicly available records relating to Nevada’s general programs to remove
15 ineligible voters. *Id.* Instead, the basis for the letter’s claim was a comparison of reported
16 active registrations in eight Nevada counties against the U.S. Census Bureau’s 5-Year
17 Citizen Voting Age Population (“CVAP”) data for 2017–2021, and a comparison of alleged
18 registration rates against the U.S. Census Bureau’s Current Population Survey (“CPS”).
19 *Id.* at 2–3.

20 Plaintiffs commenced this action on March 18, 2024, and the Secretary of State
21 moved to dismiss the Complaint on April 15, 2024. The Court held a hearing on the motion
22 to dismiss on June 18, 2024 and dismissed the Complaint because the Plaintiffs lacked
23 standing. *See* Hr’g Tr. at 73:24–25. The Court found that the individual plaintiff lacked
24 standing because “[h]is bas[e]s for alleging standing are far too generalized and speculative
25 to confer standing.” *Id.* at 23:2–4. The Court also found that the Organizational Plaintiffs
26 lacked standing because their alleged injury could not be redressed at the time the
27 Complaint was filed and because the case was not prudentially ripe. *See id.* at 72:17–73:23.

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1 Plaintiffs were granted leave to amend, *id.* at 75:2, and they filed their FAC on July
2 2, 2024.

3 **III. LEGAL STANDARDS**

4 **A. Lack of Subject-Matter Jurisdiction**

5 Article III, § 2 of the U.S. Constitution limits federal court jurisdiction to “Cases”
6 and “Controversies.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337 (2016). “One element of the
7 case-or-controversy requirement’ is that plaintiffs ‘must establish that they have standing
8 to sue.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 408 (2013) (citations omitted). To
9 establish the irreducible constitutional minimum of standing, “[t]he plaintiff must have
10 (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the
11 defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo,*
12 *Inc.*, 578 U.S. at 338 (citations omitted). The injury in fact must be “an invasion of a legally
13 protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not
14 conjectural or hypothetical.” *Id.* at 339 (citation omitted). And because “[i]njury in fact is
15 a constitutional requirement, . . . Congress cannot erase Article III’s standing requirements
16 by statutorily granting the right to sue to a plaintiff who would not otherwise have
17 standing.” *Id.* (internal quotation marks and citations omitted).

18 **B. Failure to State a Claim**

19 Fed. R. Civ. P. 12(b)(6) provides for dismissal of a complaint for failure to state a
20 claim upon which relief may be granted. “To survive a motion to dismiss, a complaint must
21 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible
22 on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,
23 550 U.S. 544, 570 (2007)). It must also contain “more than labels and conclusions, and a
24 formulaic recitation of a cause of action’s elements.” *Twombly*, 550 U.S. at 555. “Factual
25 allegations must be enough to raise a right to relief above the speculative level” and
26 “nudge[] [a plaintiff’s] claims across the line from conceivable to plausible.” *Id.* at 555, 570
27 (citations omitted). Factual allegations that “do not permit the court to infer more than the
28 mere possibility of misconduct,” and that do not actually “show[]” that the defendant acted

1 unlawfully, cannot sustain a claim. *Iqbal*, 556 U.S. at 679 (citing Fed. R. Civ. P. 8(a)(2)).
2 Accordingly, an “obvious alternative explanation” left un rebutted by the factual allegations
3 will doom a complaint. *See Twombly*, 550 U.S. at 567–69.

4 **IV. ARGUMENT**

5 **A. Plaintiffs Have Failed to Allege an Adequate Theory of Injury**

6 Plaintiffs claim several purported injuries. The individual plaintiff claims vote
7 dilution based on voter fraud and undermined confidence in elections as injuries. FAC ¶¶
8 28, 104–05. The Organizational Plaintiffs allege direct organizational standing based on
9 diversions of resources to combat the risk of voter fraud and claim purported inaccuracies
10 on voter rolls make it more expensive and burdensome for them to ensure election of
11 Republican candidates. *Id.* ¶¶ 13–20, 24–26. Finally, the Organizational Plaintiffs further
12 claim associational standing on behalf of their members. *Id.* ¶¶ 12, 23. These theories of
13 injury are insufficient as they do not each establish standing and a right to invoke the
14 NVRA’s cause of action.

15 **1. The Individual Plaintiff Does Not Have Standing**

16 The Court previously found that Plaintiff Johnston did not have standing because
17 “[h]is bas[e]s for alleging standing are far too generalized and speculative to confer
18 standing.” Hr’g Tr. at 23:2–4. Plaintiffs have not added any allegations in their FAC that
19 would change this law of the case in this second motion to dismiss. *See United States v.*
20 *Jingles*, 702 F.3d 494, 499 (9th Cir. 2012) (“Under the ‘law of the case’ doctrine, a court is
21 ordinarily precluded from reexamining an issue previously decided by the same court, or a
22 higher court, in the same case.”). As in the Complaint, Johnston’s alleged injuries in the
23 FAC are again (1) vote dilution premised on voter fraud, and (2) undermined confidence in
24 elections. *Compare* Compl. ¶¶ 19, 90–91 *with* FAC ¶¶ 28, 104–05.

25 **a. Vote Dilution Is Generalized and Speculative**

26 The Court held that Johnston’s “injury of vote dilution is impermissibly generalized
27 and speculative.” Hr’g Tr. at 24:2–18 (citing *Donald J. Trump for President, Inc. v.*
28 *Cegavske*, 488 F. Supp. 3d 993 (D. Nev. 2020); *Wood v. Raffensperger*, 981 F.3d 1307 (11th

1 Cir. 2020)). There is no basis to revisit this holding. The only additions to the FAC that
2 could conceivably relate to alleged vote dilution are the same types of allegations that were
3 already included in the Complaint. See Compl. ¶ 40 (citing voter fraud prosecutions).
4 Plaintiffs add new allegations of prosecutions and criminal referrals, but they again fail to
5 tie any of those allegations to list maintenance under the NVRA. See FAC ¶¶ 47, 49 (citing
6 criminal prosecution referrals and prosecutions for registering under a false name). The
7 new allegations, like the old ones, do not even suggest, must less establish, that voter fraud
8 and consequent vote dilution caused by improper list maintenance is “certainly impending,”
9 *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014), or that the risk of such voter
10 fraud and vote dilution is “sufficiently imminent and substantial,” *TransUnion LLC v.*
11 *Ramirez*, 594 U.S. 413, 435 (2021) (citation omitted).

12 **b. Undermined Confidence Is Generalized and Speculative**

13 The Court also held that “a loss of confidence in the electoral system . . . is too
14 general” and “too speculative.” Hr’g Tr. at 23:6–25. Nothing in the FAC rehabilitates
15 Plaintiffs’ theory of injury based on undermined confidence. Because undermined
16 confidence is premised on the subjective fear of vote dilution, see FAC ¶ 18, and because
17 that fear is too speculative, it cannot support standing, see *Clapper*, 568 U.S. at 418
18 (“[Respondents’] subjective fear of surveillance does not give rise to standing.”); *Munns v.*
19 *Kerry*, 782 F.3d 402, 410 (9th Cir. 2015) (Plaintiff’s “deterrence from seeking employment
20 is ultimately based on his fear of an injury that we have already determined is too
21 speculative to confer standing.”). The claimed injury to voter confidence is therefore
22 inadequate. See *Thielman v. Fagan*, Case No. 3:22-cv-01516-SB, 2023 WL 4267434, at *4
23 (D. Or. June 29, 2023) (“The Court finds that Plaintiffs’ lack of confidence in Oregon’s voting
24 systems is a generalized grievance not particularized to the plaintiffs in this litigation and
25 too speculative to qualify as a concrete injury.”), *aff’d sub nom. Thielman v. Griffin-Valade*,
26 No. 23-35452, 2023 WL 8594389, at *1 (9th Cir. Dec. 12, 2023) (“Plaintiffs allege that they
27 are injured by ‘a lack of confidence in the integrity of the election system.’ But that alleged
28 injury represents nothing more than the ‘kind of speculation that stretches the concept of

1 imminence beyond its purpose.”); *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp.
2 3d 779, 803 (W.D. Tex. 2015) (“[C]omplaints of undermined confidence and potential vote
3 dilution are nothing but a generalized grievance about government, complaining that an
4 official should be required to follow the law.”).

5 **2. The RNC’s Expenditures Based on the Alleged Risk of Voter**
6 **Fraud Do Not Confer Standing**

7 Plaintiffs claim that improper list maintenance increases the risk of voter fraud and
8 thereby impacts the RNC’s “core electoral missions.” FAC ¶ 18. They further allege that
9 based on the defendants’ failure to maintain voter rolls, the RNC must divert resources to
10 counteract the risk of fraud. *See id.* ¶¶ 19–20. These allegations do not establish standing.

11 An organizational plaintiff cannot base an Article III injury on the “intensity of [its]
12 interest” or by simply “expending money to gather information and advocate against the
13 defendant’s action[s].” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024) (citation
14 omitted). Instead, to establish standing, an organizational plaintiff’s core business
15 activities must be “directly” and “perceptibly impaired” by the defendant’s actions. *See id.*
16 at 395 (citation omitted). There is no such direct effect or interference with the RNC’s core
17 activities here.

18 “[O]rganizations must satisfy the usual standards for injury in fact . . . that apply
19 to individuals.” *Id.* at 393–94 (citation omitted). And as the Supreme Court held in
20 *Clapper*, plaintiffs do not “have standing because they incur[] certain costs as a reasonable
21 reaction to a risk of harm” if that harm “is not certainly impending.” 568 U.S. at 416
22 (citation omitted); *see also La Asociacion de Trabajadores de Lake Forest v. City of Lake*
23 *Forest*, 624 F.3d 1083, 1088 (9th Cir. 2010) (Organization must “show that it would have
24 suffered some other injury if it had not diverted resources to counteracting the problem.”).
25 The alleged harm to the RNC here is the speculative risk of voter fraud based on inaccurate
26 voter rolls that supposedly impacts its core mission of electing Republican candidates.
27 Because voter fraud resulting from improperly maintained voter rolls is speculative, as
28 discussed above, there is no “direct[]” or “perceptibl[e] impair[ment]” to the RNC’s core

1 mission. *See FDA*, 602 U.S. at 395 (citation omitted). The “links in the chain of causation”
2 are “too speculative” to confer standing. *Id.* at 383 (citations omitted).

3 **3. The Organizational Plaintiffs’ Injuries Do Not Fall Within the**
4 **NVRA’s Zone of Interests**

5 The Organizational Plaintiffs claim injury to their core business objectives of electing
6 Republican candidates and turning out Republican votes. FAC ¶¶ 13–14, 18, 25. This set
7 of allegations is insufficient for the independent reason that it does not fall within the
8 NVRA’s zone of interests. In addition to their voter fraud allegations, Plaintiffs further
9 allege that the Organizational Plaintiffs rely on voter rolls for voter contact, staffing,
10 forming electoral strategies, chasing ballots, and advising candidates, and inaccurate voter
11 rolls cause them to waste effort and resources. *Id.* ¶¶ 13–17, 24–26. But the Organizational
12 Plaintiffs are asserting a statutory cause of action based on the NVRA, and their interests
13 must therefore “fall within the zone of interests protected by the law invoked.” *Lexmark*
14 *Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 129 (2014) (citation omitted).
15 There must also be “a sufficiently close connection” between Plaintiffs’ alleged injuries and
16 “the conduct the statute prohibits”—otherwise there is no proximate causation. *Id.* at 133.

17 “[T]he breadth of the zone of interests varies according to the provisions of law at
18 issue” *Id.* at 130 (citation omitted). Identifying the interests protected by the NVRA
19 “requires no guesswork” because they are clearly defined in the NVRA itself. *See id.* at
20 131. The NVRA’s stated purposes are:

- 21 (1) to establish procedures that will increase the number of
22 eligible citizens who register to vote in elections for Federal office;
23 (2) to make it possible for Federal State, and local
24 governments to implement this chapter in a manner that
25 enhances the participation of eligible citizens as voters in
elections for Federal office;
(3) to protect the integrity of the electoral process; and
(4) to ensure that accurate and current voter registration rolls
are maintained.

26 52 U.S.C. § 20501(b).

27 Each of these purposes fundamentally concerns the process of non-partisan, public
28 participation in federal election—in service of the public interest at large, not any private

1 or partisan entity. Moreover, as discussed in Section IV.B.2, *infra*, 52 U.S.C. § 20507's
2 design allows for voter rolls to include a substantial number of voters who are no longer
3 eligible, demonstrating that the purpose was not to give a private, partisan party a
4 roadmap to who to reach out to for electoral support. The Organizational Plaintiffs' use of
5 voter rolls to advance their private purposes is entirely outside the zone of interests
6 protected by the NVRA and any alleged injuries lack connection to the conduct the NVRA
7 prohibits. It is explicitly a private, partisan aim accruing to the benefit of a private,
8 partisan entity.

9 Even if the Organizational Plaintiffs' injuries constituted an Article III injury, that
10 would not be enough because "the injury that supplies constitutional standing must be the
11 same as the injury within the requisite 'zone of interests.'" *Mountain States Legal Found.*
12 *v. Glickman*, 92 F.3d 1228, 1232 (D.C. Cir. 1996); *see also Oberdorfer v. Jewkes*, 583
13 F. App'x 770, 773 (9th Cir. 2014) ("Western Radio could not file suit under the National
14 Environmental Protection Act (NEPA) because its asserted injuries either cannot establish
15 standing under Article III or do not fall within NEPA's zone of interests . . ."); *Triumvirate,*
16 *LLC v. Zinke*, Case No. 3:18-cv-0091-HRH, 2018 WL 2770634, at *5 (D. Ala. June 8, 2018)
17 ("Article III standing and the NEPA zone of interests test must be satisfied by the same
18 injury."); *Nw. Immigrant Rts. Project v. USCIS*, 325 F.R.D. 671, 687 (W.D. Wash. 2016)
19 ("[T]he Ninth Circuit and several district courts therein equate a party's 'interests' with
20 the 'injuries' that confer constitutional standing upon that party."); *Yount v. Salazar*, Nos.
21 CV11-8171 PCT-DGC, CV12-8038 PCT DGC, CV12-8042 PCT DGC, CV12-8075 PCT DGC,
22 2014 WL 4904423, at *6 (D. Ariz. Sept. 30, 2014) ("Article III standing and the NEPA zone
23 of interests test must be satisfied by the same injury.").

24 Because the Organizational Plaintiffs' alleged injuries do not fall within the NVRA's
25 zone of interests, they may not "invoke the [NVRA's] cause of action." *Lexmark*, 572 U.S.
26 at 130.

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1 **4. The Organizational Plaintiffs Cannot Establish Associational**
2 **Standing**

3 The Organizational Plaintiffs do not have associational standing here to bring suit
4 on behalf of their members. See FAC ¶¶ 12, 23. They would have to have members who
5 “would otherwise have standing to sue in their own right.” *Hunt v. Wash. State Apple*
6 *Advert. Comm’n*, 432 U.S. 333, 343 (1977). But for the same reasons Johnston does not
7 have standing, the Organizational Plaintiffs do not have associational standing.

8 **B. Plaintiffs Do Not State a Claim**

9 Plaintiffs’ FAC lacks plausible allegations of an NVRA violation.¹

10 **1. The Court Can Consider the Data Cited in This Motion**

11 Plaintiffs rely in their FAC on U.S. Census Bureau data, Secretary of State voter
12 registration and voter roll data, and data from the U.S. Election Assistance Commission
13 (“EAC”) to purport to support their claim. See FAC ¶¶ 58–65, 69–73, 75–77, 79. This same
14 data, as well as additional data and documentation from the same government agencies
15 (i.e., the U.S. Census Bureau, the Secretary of State, and the EAC), is cited below. This
16 data is all appropriate for judicial notice, and where relied on in the FAC to form a basis of
17 Plaintiffs’ claims, is incorporated by reference, and can be considered on this motion to
18 dismiss without converting it to a motion for summary judgment. *Khoja v. Orexigen*
19 *Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018) (“[A] court may take judicial notice of
20 matters of public record without converting a motion to dismiss into a motion for summary
21 judgment.”); *id.* at 1002 (“[I]ncorporation-by-reference is a judicially created doctrine that
22 treats certain documents as though they are part of the complaint itself. The doctrine
23 prevents plaintiffs from selecting only portions of documents that support their claims,
24 while omitting portions of those very documents that weaken—or doom—their claims.”);
25 Fed. R. Evid. 201(b)(1)-(2).

26
27 ¹ The Court previously denied the Secretary of State’s motion to dismiss the Complaint based on the
28 argument that Plaintiffs’ pre-litigation notice was deficient. See Hr’g Tr. at 71:5–13. Because that holding
is law of the case at this stage, see *Jingles*, 702 F.3d at 499, the Secretary of State does not re-raise the notice’s
sufficiency here but preserves the issue on any appeal.

1 Agency reports are “generally susceptible to judicial notice,” and there can be no
2 reasonable dispute as to what the data and documentation cited below establish. *See*
3 *Khoja*, 899 F.3d at 1001 (citation omitted). This is particularly true here where Plaintiffs
4 rely on similar data from the very same agencies to support their claim, thereby
5 acknowledging the agencies’ data is not subject to reasonable dispute. *See United States v.*
6 *Esquivel*, 88 F.3d 722, 726–27 (9th Cir. 1996) (taking judicial notice of U.S. Census Bureau
7 documents because they met the requirements of Fed. R. Evid. 201(b) and were “of the
8 same type and taken from the same source” as the defendant’s own data). The Court should
9 therefore take judicial notice of data cited below. *See* Fed. R. Evid. 201(c).

10 **2. Active Voter Registration Rates Do Not Plausibly Suggest Non-**
11 **Compliance with the NVRA**

12 Key purposes of the NVRA include “establish[ing] procedures that will increase the
13 number of eligible citizens who register to vote in elections for Federal office” and “mak[ing]
14 it possible for Federal, State, and local government to implement [the NVRA] in a manner
15 that enhances the participation of eligible citizens as voters in elections for Federal office.”
16 52 U.S.C. § 20501(b)(1)-(2); *see also* 52 U.S.C. § 20501(a)(1)-(2) (“The Congress finds that the
17 right of citizens of the United States to vote is a fundamental right” and “it is the duty of the
18 Federal, State, and local governments to promote the exercise of that right . . .”).

19 In light of the NVRA’s purposes, there is nothing nefarious about a state encouraging
20 and having high active registration rates. While the NVRA requires states to conduct a
21 general program that makes a reasonable effort to remove voters who become ineligible based
22 on death or change of residence, the NVRA does not provide a numerical threshold to
23 establish compliance or lack thereof. Use of active registration rates alone does not
24 demonstrate a failure to comply with the NVRA; registration rates may far exceed the eligible
25 voting pool without any violation. This is true for several reasons.

26 First, the NVRA creates a safe harbor for states who use U.S. Postal Service
27 information to identify individuals who have become ineligible based on a change of residence
28 address (the “NCOA Process”). *Bellitto*, 935 F.3d at 1205. If a state uses the NCOA Process,

1 it meets the NVRA’s minimum statutory requirements with respect to voters who have
2 moved. *Id.* This process is sufficient even though it may not lead to the removal of some
3 ineligible voters. In fact, “[a]s many as 40 percent of people who move do not inform the Postal
4 Service.” *Id.* at 1204 (quoting *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 765 (2018)).
5 Thus, the NVRA itself establishes that it is acceptable for a substantial number of voters who
6 have moved out of the jurisdiction to properly remain on the voter rolls.

7 Second, the NVRA only requires states to remove voters based on a change of address
8 or death. *Bellitto*, 935 F.3d at 1195; 52 U.S.C. § 20507(a)(4). Under the NVRA, therefore,
9 voters who are ineligible may properly remain on the voter rolls, resulting in higher
10 registration numbers. The NVRA itself is, in fact, “partly responsible” for high voter
11 registration rates. *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 192 (2008).

12 Third, the NVRA prohibits a state from taking action in connection with certain
13 ineligible voters through its general removal program during the 90-day period before a
14 federal primary and general election. 52 U.S.C. § 20507(c)(2)(A). This can result in higher
15 registration numbers because a state would be unable to systematically act on certain voters
16 through its general programs, while new voters are still able to register. *See Bellitto*, 935 F.3d
17 at 1208. The ballooning effect of the 90-day restriction period is plain to see in this case.

18 Nevada had a presidential preference primary election on February 6, 2024,
19 NRS 298.650(1), and a primary election on June 11, 2024, NRS 293.175(1). Under Nevada
20 law, voters who may have changed residence cannot be inactivated for 33 days after the
21 mailing of a confirmation notice. NRS 293.530(1)(d), (g). This means that, under Nevada law
22 and the NVRA, Nevada has been unable to practicably implement its general program to
23 remove voters from the active rolls since November 8, 2023. At the time Plaintiffs sent their
24 pre-litigation notice letter, they relied on active registration numbers from December 1, 2023,
25 *see* FAC Ex. A at 2, when there were 1,907,794 active registered voters.² By the time Plaintiffs
26 filed their original complaint, they were relying on active registration numbers from March
27

28 ² Nev. Sec’y of State, Voter Registration Statistics, 12/01/2023, Active Voters by County & Party,
<https://tinyurl.com/5yctauc8>.

1 1, 2024, *see* Compl. ¶ 49, when there were 1,937,225 active registered voters.³ And now in
2 their FAC, Plaintiffs are using the active registration numbers from June 1, 2024. *See* FAC
3 ¶ 58. As of June 1, 2024, there were 1,997,473 active registered voters.⁴ In the seven months
4 since Nevada has been unable to reduce its active registered voters through its general
5 program for voters who have changed residence, Nevada saw an increase of approximately
6 90,000 voters.

7 Taken together, the NVRA’s statutory scheme reflects that active registration rates
8 may properly be significantly higher than the actual pool of eligible voters. It is also
9 consistent with the conclusion that Congress recognized that the risk of voter fraud would not
10 be materially increased if ineligible voters remained on voter rolls. A violation of the NVRA
11 based on high registration rates is therefore an “unreasonable inference” and need not be
12 accepted as true. *See Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010)
13 (citation omitted); *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (“We
14 take a plaintiff’s allegations in the complaint as true, but we are ‘not required to indulge
15 unwarranted inferences.’”). Plaintiffs’ allegations based on active registration rates are
16 insufficient because they do not permit the court to do more than “infer . . . the mere possibility
17 of misconduct.” *Iqbal*, 556 U.S. at 679 (citation omitted).

18 **3. Plaintiffs’ Active Registration Rate Calculations Do Not Reflect** 19 **Current Reality**

20 Plaintiffs rely on misleading calculations to allege a violation of the NVRA based on
21 active voter registration rates. Actual, real-time numbers establish Nevada’s consistent
22 position as a leader in list maintenance.

23 In the FAC, Plaintiffs primarily rely on the 2018–2022 CVAP data⁵ to purportedly
24 establish that certain counties’ active registration rates are too high. *See* FAC ¶¶ 58–60, 65.

26 ³ Nev. Sec’y of State, Voter Registration Statistics 03/01/2024, Active Voters by County & Party,
<https://tinyurl.com/28a5jee8>.

27 ⁴ Nev. Sec’y of State, Voter Registration Statistics, 06/01/2024, Active Voters by County & Party,
<https://tinyurl.com/2syypme9>.

28 ⁵ U.S. Census Bureau, CVAP Special Tabulation from the 2018–2022 5-Year American Community
Survey, County Spreadsheet, <https://tinyurl.com/y63a252y>.

1 They compare the 2018–2022 CVAP data against active registration numbers from June 1,
2 2024 to calculate supposed active registration rates. *See id.* The CVAP data is derived from
3 the U.S. Census Bureau’s American Community Survey (“ACS”).⁶ But registration rates
4 calculated using ACS data, and specifically the ACS citizen population averages, have been
5 found to be misleading and inaccurate, and insufficient to prove an NVRA violation, even
6 when registration rates calculated using citizen population averages from the ACS exceeded
7 100% for a county. *Bellitto*, 935 F.3d at 1207–08.

8 There are two key problems with using the ACS data here. First, the ACS population
9 data “significantly underestimate[s] the population.” *See id.* at 1208. For instance, the ACS
10 data excludes many individuals who may be eligible voters but do not reside in a county for
11 the entire year, such as military personnel and college students. *Id.* Thus, using the ACS
12 data as the denominator in an active registration rate calculation will yield a too-high active
13 registration rate. Second, the ACS data “takes data drawn from the preceding five years and
14 estimates the midpoint of that data.” *Id.* The 2018–2022 CVAP data, therefore, estimates
15 the population at the middle of 2020, *see id.*, and it does not take into account population
16 growth after that.

17 Performing Plaintiffs’ same active registration rate calculations over time would
18 suggest that Nevada has, for years, been in violation of the NVRA. But real-time numbers
19 show how misleading Plaintiffs’ calculations are. The below table shows the active
20 registration rates for 2017–2020 using (1) Plaintiffs’ methodology and (2) a real-time
21 comparison. For Plaintiffs’ methodology, the rate is calculated by dividing active registration
22 numbers from approximately four years after the year identified in the table by the 5-year
23 CVAP data that estimates the midpoint of the year identified in the table. Thus, for example,
24 the 2017 rate divides the total active registered voters in Nevada reported as of June 1, 2021
25 by the 2015–2019 CVAP estimate of Nevada’s citizen voting age population, which estimates

26
27 ⁶ U.S. Census Bureau, Citizen Voting Age Population (CVAP) Special Tabulation From the 2017–
28 2021 5-Year American Community Survey (ACS), at 1, <https://tinyurl.com/3rbmcm8t>; U.S. Census Bureau,
Citizen Voting Age Population (CVAP) Special Tabulation From the 2018–2022 5-Year American Community
Survey (ACS), at 1, <https://tinyurl.com/5xd32exy>; *see also* FAC. ¶ 58.

1 the population at the middle of 2017. For the real-time comparison, the active registration
 2 rate is calculated by dividing active registration numbers from the midpoint of the year
 3 identified by the 5-year CVAP data that estimates the midpoint of the year identified. Thus,
 4 for example, the 2017 rate divides the total active registered voters in Nevada reported as of
 5 July 5, 2017 by the 2015–2019 CVAP estimate of Nevada’s citizen voting age population,
 6 which estimates the population at the middle of 2017.

| Year | Plaintiffs’ Methodology | Real-Time Comparison |
|------|-------------------------|----------------------|
| 2017 | 90.37% ⁷ | 72.92% ⁸ |
| 2018 | 87.92% ⁹ | 70.58% ¹⁰ |
| 2019 | 89.50% ¹¹ | 74.72% ¹² |
| 2020 | 92.89% ¹³ | 75.36% ¹⁴ |

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 12 The misleading nature of Plaintiffs’ calculations is put into sharp relief by other real-
 13 time data. As shown by the EAC’s Election Administration and Voting Survey
 14 Comprehensive Reports, Nevada has consistently maintained (1) an active registration rate

15
 16 ⁷ See Nev. Sec’y of State, Voter Registration Statistics, May 2021, Active Voters by County and Party,
<https://tinyurl.com/5dtpaypa> (last updated June 1, 2021) (1,824,418 active registered voters); U.S. Census
 Bureau, CVAP Special Tabulation from the 2015–2019 5-Year ACS, County Spreadsheet,
<https://tinyurl.com/5tsaazv4> (“2019 5-Year CVAP”) (2,018,925 estimated citizen voting age Nevadans).

17
 18 ⁸ See Nev. Sec’y of State, June 2017 Voter Registration Statistics, Active Voters by County and Party,
<https://tinyurl.com/yc3fmbj3> (last updated July 5, 2017) (1,472,259 active registered voters); 2019 5-Year
 CVAP.

19
 20 ⁹ See Nev. Sec’y of State, Voter Registration Statistics, May 2022, Active Voters by County and Party,
<https://tinyurl.com/56t33p82> (last updated June 1, 2022) (1,821,058 active registered voters); U.S. Census
 Bureau, CVAP Special Tabulation from the 2016–2020 5-Year ACS, County Spreadsheet,
<https://tinyurl.com/yue9my3f> (“2020 5-Year CVAP”) (2,071,285 estimated citizen voting age Nevadans).

21
 22 ¹⁰ See Nev. Sec’y of State, June 2018 Voter Registration Statistics, Active Voters by County and Party,
<https://tinyurl.com/2p8yzbrm> (last updated July 2, 2018) (1,461,833 total active registered voters); 2020 5-
 Year CVAP.

23
 24 ¹¹ See Nev. Sec’y of State, Voter Registration Statistics, 06/01/2023, Active Voters by County & Party,
<https://tinyurl.com/mr47t498> (1,878,692 active registered voters); U.S. Census Bureau, CVAP Special
 Tabulation from the 2017–2021 5-Year ACS, County Spreadsheet, <https://tinyurl.com/mth2dwdy> (“2021 5-
 Year CVAP”) (2,099,150 estimated citizen voting age Nevadans).

25
 26 ¹² See Nev. Sec’y of State, June 2019 Voter Registration Statistics, Active Voters by County and Party,
<https://tinyurl.com/ypvy7c3> (1,568,468 total active registered voters); 2021 5-Year CVAP.

27
 28 ¹³ See Nev. Sec’y of State, Voter Registration Statistics, 06/01/2024, Active Voters by County & Party,
<https://tinyurl.com/2syppme9> (1,997,473 active registered voters); U.S. Census Bureau, CVAP Special
 Tabulation from the 2018–2022 5-Year ACS, County Spreadsheet, <https://tinyurl.com/y63a252y> (“2022 5-
 Year CVAP”) (2,150,290 estimated citizen voting age Nevadans).

¹⁴ See Nev. Sec’y of State, Voter Registration Statistics June 2020, Active Voters by County and Party,
<https://tinyurl.com/fh9ny72z> (last updated July 1, 2020) (1,620,457 active registered voters); 2022 5-Year
 CVAP.

1 below national averages based on 1-year CVAP data; (2) rates of sending confirmation notices
 2 to active voters as part of its general program to remove voters who have changed residence
 3 above the national average; and (3) inactivation rates above the national average.

| Action | Year | Nevada | U.S. |
|---|------|--------|-------|
| Active Registrations (% of CVAP) ¹⁵ | 2022 | 83.9% | 85.4% |
| | 2020 | 86.9% | 88.1% |
| | 2018 | 77.0% | 82.5% |
| Inactive Registrations (% of Total Registrations) ¹⁶ | 2022 | 16.3% | 11.1% |
| | 2020 | 10.0% | 9.1% |
| | 2018 | 11.8% | 11.3% |
| Confirmation Notices Sent (% of Active Voters) ¹⁷ | 2022 | 22.0% | 13.7% |
| | 2020 | 19.7% | 14.3% |
| | 2018 | 16.6% | 11.6% |

13 If Nevada has in fact been in violation of the NVRA for years, as Plaintiffs' methodology
 14 suggests, the EAC's real-time numbers would not show that Nevada has had consistently
 15 lower active registration rates than the national average, higher rates of sending confirmation
 16 notices than the national average, and higher rates of inactivation than the national average.
 17 There is, of course, an "obvious alternative explanation," *see Twombly*, 550 U.S. at 567–69,
 18 for why Plaintiffs' calculations result in high active registration rates. Nevada has a
 19 substantially growing population,¹⁸ and the 2018–2022 CVAP data does not account for
 20 population growth over the past four years. *See Bellitto*, 935 F.3d at 1208. Plaintiffs offer
 21 nothing that "tend[s] to exclude the possibility that the alternative explanation is true." *See*
 22 *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1108 (9th Cir. 2013).

23 ¹⁵ EAC, Election Administration and Voting Survey 2022 Comprehensive Report, at 164, 166,
 24 <https://tinyurl.com/nhx86v7k> ("2022 EAC Report"). The EAC uses 1-year CVAP estimates for its calculations
 as opposed to 5-year CVAP estimates. *See id.* at 166.

25 ¹⁶ *Id.* at 164, 166.

26 ¹⁷ *Id.* at 158, 182–83; EAC, Election Administration and Voting Survey 2020 Comprehensive Report,
 at 133, 159–60, <https://tinyurl.com/y95rcm95> ("2020 EAC Report"); EAC, Election Administration and Voting
 Survey 2018 Comprehensive Report, at 52, 79, <https://tinyurl.com/49bpuzym> ("2018 EAC Report").

27 ¹⁸ *Compare, e.g.*, U.S. Census Bureau, Nevada 2019 Citizen, Voting-Age Population,
 28 <https://tinyurl.com/4k3jxcn3> (estimating Nevada's voting population to be 2,111,932 in 2019) with U.S.
 Census Bureau, Nevada 2022 Citizen, Voting-Age Population, <https://tinyurl.com/2p8x5b7j> (estimating
 Nevada's voting population to be 2,227,239 in 2022).

1 Plaintiffs' active registrations rate calculations based on a comparison of citizen voting
2 age estimates from the midpoint of 2020 against active voter registration numbers from June
3 1, 2024 do not support a plausible inference of an NVRA violation. "In assessing the
4 plausibility of an inference, [courts] draw on [their] judicial experience and common sense
5 and consider obvious alternative explanations." *Cafasso v. Gen. Dynamics C4 Sys., Inc.*,
6 637 F.3d 1047, 1057 (9th Cir. 2011) (cleaned up); *see also Iqbal*, 556 U.S. at 679. Here,
7 everything demonstrates the implausibility of Plaintiffs' allegations. No case brought on
8 similar allegations has ever succeeded on the merits. There is an obvious alternative
9 explanation. And common sense dictates that a state that performs better than the national
10 average in every relevant metric is not in violation of the NVRA.

11 Finally, because Plaintiffs' active registration rate calculations are misleading,
12 Plaintiffs' comparisons of those calculations to the CPS are irrelevant. *See* FAC ¶¶ 61–64.
13 As shown above, Nevada's active registration rate comparing active registration numbers
14 from the middle of 2020 against the 2018–2022 CVAP data is 75.36%, which is close to the
15 nationwide CPS rate for 2020 (72.7%). *See* FAC ¶ 63. Further, comparing nationwide CPS
16 registration rates for 2020 (72.7%) and 2022 (69.1%), FAC ¶¶ 62–63, against active voter
17 registration rates reported by the EAC for the same years reveals that only one single state
18 had an active voter registration rate below the national CPS average in 2022, and only three
19 states had active voter registration rates below the national CPS average in 2020.¹⁹ The CPS
20 voter registration rates are crude estimates based on historical recall, obtained through
21 personal or telephone interviews from approximately 54,00 households nationwide.²⁰ They
22 are flatly untethered to reality and any inference of an NVRA violation based on them would
23 be "unreasonable." *Daniels-Hall*, 629 F.3d at 998 (citation omitted).

24 In short, Plaintiffs do not plausibly allege an NVRA violation based on a grab bag of
25 incompatible data; there is no basis "to infer more than the mere possibility of misconduct."

26 ¹⁹ Compare FAC. ¶¶ 62–63 with EAC 2022 Report at 162–65.

27 ²⁰ U.S. Census Bureau, Methodology, [https://www.census.gov/programs-surveys/cps/technical-](https://www.census.gov/programs-surveys/cps/technical-documentation/methodology.html)
28 [documentation/methodology.html](https://www.census.gov/programs-surveys/cps/technical-documentation/methodology.html); U.S. Census Bureau, Current Population Survey, November 2022 Voting
Supplement File, Technical Documentation CPS-22, at 2-1, [https://www2.census.gov/programs-](https://www2.census.gov/programs-surveys/cps/techdocs/cpsnov22.pdf)
[surveys/cps/techdocs/cpsnov22.pdf](https://www2.census.gov/programs-surveys/cps/techdocs/cpsnov22.pdf).

1 *Iqbal*, 556 U.S. at 679 (citation omitted). Plaintiffs’ allegations are, at absolute best, “merely
2 consistent with” liability and therefore “stop[] short of the line between possibility and
3 plausibility of ‘entitlement of relief.’” *Id.* at 678 (citation omitted).

4 **4. Plaintiffs’ New Allegations Do Not Establish that their Claim Is**
5 **Plausible**

6 Plaintiffs’ FAC is entirely devoid of any allegation about Nevada’s efforts to maintain
7 its voter rolls, even though Plaintiffs were entitled to inspect Nevada’s list maintenance
8 records, *see* 52 U.S.C. § 20507(i), and even though this is the precise type of information that
9 courts ultimately rely on in deciding whether a defendant has violated the NVRA, *see Bellitto*,
10 935 F.3d at 1206–07; *Pub. Int. Legal Found. v. Benson*, Case No. 1:21-cv-929, 2024 WL
11 1128565, at *10–12 (W.D. Mich. Mar. 1, 2024) (“*PILF*”).

12 In this vacuum, Plaintiffs allege supposed failures to use information for list
13 maintenance to suggest an NVRA violation. They cite a lawsuit against Clark County
14 relating to voters being registered at non-residential addresses. *See* FAC ¶ 74 (citing *Kraus*
15 *v. Portillo*, Doc. 1, No. A-24-896151-W (8th Judicial Dist. Court June 25, 2024)). Plaintiffs’
16 allegations about this lawsuit do not support their claim. Contrary to Plaintiffs’ assertion, *see*
17 *id.*, voter registration does not require a residential address, *see* NRS 293.486(1) (“[F]or the
18 purposes of preregistering or registering to vote, the address at which the persona actually
19 resides is the street address assigned to the location at which the person actually resides.”);
20 NRS 293.507(4)(c) (voter registration application must include “[a] notice that the applicant
21 may not list a business as the address required [for the address at which the applicant resides]
22 unless the applicant actually resides there”). Just because a voter might list a commercial
23 address as their residence for voter registration purposes, that does not suggest improper
24 voter registration or defective list maintenance.

25 Plaintiffs also allege that the Secretary of State sent postcards to voters in connection
26 with the presidential preference primary election. *See* FAC ¶¶ 80–83. They claim that the
27 Secretary of State should have given the county clerks information about those postcards
28 if they were returned undeliverable so the county clerks could use that information to

1 correct the voter rolls. *See id.* In essence, Plaintiffs are trying to impose their own view of
2 what constitutes reasonable efforts to maintain the voter rolls under the NVRA. Without
3 any allegation of how Nevada maintains its voter rolls, there is no basis to infer that
4 Nevada’s list maintenance processes are unreasonable. Under the NVRA, “[t]he failure to
5 use duplicative tools or to exhaust every conceivable mechanism does not make [a
6 defendant’s] effort unreasonable.” *Bellitto*, 935 F.3d at 1207; *see also PILF*, 2024 WL
7 1128565, at *11 (“PILF’s identification of areas for improvement does not serve to
8 demonstrate that Michigan’s multilateral process for the removal of deceased registrants
9 from the QVF does not meet the threshold of a ‘reasonable effort.’”).

10 As set forth above, Nevada has been a leader in list maintenance, which clearly
11 reflects the reasonableness of its efforts to maintain its voter rolls.

12 **5. Plaintiffs’ Inactive Voter Registration Allegations Are Meritless**

13 Plaintiffs’ allegations relating to inactive voter registrations are paradoxical and in
14 fact undermine their claim. While, as described above, Plaintiffs claim that Nevada has
15 too many active registered voters, they also appear to claim that Nevada and certain
16 counties are *too aggressive* in inactivating voters because they have inactivation rates “well
17 above” the national and state inactivation averages. *See* Compl. ¶¶ 75–76, 78. That
18 Nevada and certain counties have inactivation rates “well above” national and state
19 averages only further demonstrates that Nevada is in fact meeting its obligations under
20 the NVRA. There is an “obvious alternative explanation” for Nevada’s high inactivation
21 numbers other than the one asserted by Plaintiffs: Nevada’s robust compliance with its
22 NVRA’s obligations. *See Twombly*, 550 U.S. at 567–69.

23 The EAC data in the table below underscores that it is logical that Nevada and its
24 counties would have higher-than-average inactivation rates because they undertake
25 significant list maintenance activities.

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| Action | Year | Nevada | U.S. |
|--|------|--------|-------|
| Confirmation Notices Sent (% of Active Voters) ²¹ | 2022 | 22.0% | 13.7% |
| | 2020 | 19.7% | 14.3% |
| | 2018 | 16.6% | 11.6% |
| Voters Removed (% of Registered Voters) ²² | 2022 | 18.0% | 8.5% |
| | 2020 | 7.7% | 8.2% |
| | 2018 | 11.1% | 8.2% |
| Voters Removed for Failure to Return Confirmation Notice (% of Removed Voters) ²³ | 2022 | 41.3% | 25.4% |
| | 2020 | 41.3% | 32.1% |
| | 2018 | 56.9% | 35.3% |

Nevada sends confirmation notices to voters suspected of having moved at rates far higher than the national average. It follows, then, that Nevada would have higher-than-average inactivation rates. But Nevada's list maintenance activities don't stop at inactivation. Nevada generally removes voters at higher rates than the national average, and in fact the latest EAC data shows that only two states and one territory removed voters at rates higher than Nevada for 2022.²⁴ And of voters removed, Nevada's removal rates based on a failure to return a confirmation notice consistently far exceeded the national average.

Plaintiffs appear to try to confuse this issue by claiming that at least 4,684 on the inactive list should have been removed. *See* FAC ¶ 79. 4,684 voters represent a mere 0.20% of voters as of June 1, 2024 (2,339,496).²⁵ “[T]he NVRA requires only a ‘reasonable effort,’ not a perfect effort, to remove registrants” *See PILF*, 2024 WL 1128565, at *11. Furthermore, “[t]he NVRA does not require states to immediately remove every voter who may have become ineligible.” *Id.* In *PILF*, the court concluded that even if 0.3% of the total number of registered voters in Michigan were ineligible and subject to removal, having

²¹ 2022 EAC Report at 158, 182–83; 2020 EAC Report at 133, 159–60; 2018 EAC Report at 52, 79.

²² 2022 EAC Report at 159–60, 188–89; 2020 EAC Report at 135–36, 165–66; 2018 EAC Report at 52–54, 83.

²³ *Id.*

²⁴ 2022 EAC Report at 188–89.

²⁵ Nev. Sec'y of State, Voter Registration Statistics, 06/01/2024 All Voters by County & Party, <https://tinyurl.com/yckc3zed>.

1 them still registered would not be unreasonable under the NVRA. *See id.* at *10. This was
2 especially true where, as here, federally collected data shows that a state is among the most
3 active in removing ineligible individuals. *See id.* The small number of inactive voters that
4 allegedly should have been removed does not plausibly suggest a lack of reasonable effort
5 to remove voters.

6 **6. Relocation Rates Cannot Be Meaningfully Compared to** 7 **Removal Rates**

8 Plaintiffs compare relocation rates reported by the U.S. Census Bureau to removal
9 rates. FAC ¶¶ 71–73. Relocations do not, however, account for individuals who might have
10 moved within the state, or county, and who properly remain on Nevada’s voter rolls. And
11 individuals who relocated outside of the state may have been removed from voter rolls other
12 than through the inactivation and cancelation process; for instance, they could have
13 requested removal or confirmed a change of residence. *See Jud. Watch, Inc. v.*
14 *Pennsylvania*, 524 F. Supp. 3d 399, 407 (M.D. Pa. 2021) (finding implausible the theory of
15 failure to comply with the NVRA based on removal rates not matching or approaching
16 estimated change-of-residence rate).

17 Moreover, cherrypicked snapshots from years ago say little about any supposed
18 current NVRA violation. *See Order, Bellitto v. Snipes*, Case No. 16-cv-61474-
19 BLOOM/Valle, ECF No. 244, at 24 (S.D. Fla. March 30, 2018) (explaining no removal of
20 inactive voters for two years did not paint full picture and finding sufficient evidence to
21 demonstrate ongoing list-maintenance program), *affirmed*, 935 F.3d 1192 (11th Cir. 2019).
22 In any event, each of the counties cited have inactive voters,²⁶ and actively removed many
23 voters over the same period cited by Plaintiffs.²⁷ Plaintiffs’ allegations therefore do not
24 support a plausible inference of an NVRA violation.

25
26 ²⁶ Nev. Sec’y of State, Voter Registration Statistics, 07/01/2024, Inactive Voters by County & Party,
<https://tinyurl.com/365myjsv>.

27 ²⁷ EAC, EAVS Dataset Version 1.1 (released December 18, 2023), <https://tinyurl.com/bdh6s3uh>. Rows
28 2709–2725 contain Nevada’s information. Removal data is in columns CU through DG, and the explanation
of how to understand the removal data is on page 191 of EAC, Election Administration and Voting Survey
2022 Comprehensive Report, <https://tinyurl.com/nhx86v7k>.

1 **C. This Action Is Not Prudentially Ripe**

2 This action should be dismissed because it is not prudentially ripe. The prudential
3 ripeness doctrine has “developed in order to ‘prevent the courts, through avoidance of
4 premature adjudication, from entangling themselves in abstract disagreements *over*
5 *administrative policies*, and also to *protect the agencies* from judicial interference until an
6 administrative decision has been formalized and its effects felt in a concrete way by the
7 challenging parties.” *Golden v. Cal. Emergency Physicians Med. Grp.*, 782 F.3d 1083,
8 1086–87 (9th Cir. 2015) (emphasis in original and citation omitted). It is animated by
9 (1) concerns that a decision would have “consequences for many members of the public” and
10 (2) “concerns over judicial entanglement in administrative agency actions before the
11 agencies have had an opportunity to take actions or make decisions.” *Principal Life Ins.*
12 *Co. v. Robinson*, 394 F.3d 665, 670–71 (2005). The two factors a court evaluates to
13 determine whether a case is prudentially ripe are (1) “the fitness of the issues for judicial
14 decision” and (2) “the hardship to the parties of withholding court consideration.” *Ass’n of*
15 *Irrigated Residents v. EPA*, 10 F.4th 937, 944 (9th Cir. 2021) (citations omitted). Neither
16 factor weighs in favor of Plaintiffs here.

17 “The purpose of the ‘fitness’ test . . . is to delay consideration of the issue until the
18 pertinent facts have been well-developed in cases where further factual development would
19 aid the court’s consideration.” *In re Coleman*, 560 F.3d 1000, 1009 (9th Cir. 2009) (citations
20 omitted). “A claim is fit for decision if the issues raised are primarily legal, do not require
21 further factual development, and the challenged action is final.” *US West Commc’ns v.*
22 *MFS Intelenet, Inc.*, 193 F.3d 1112, 1118 (9th Cir. 1999) (citation omitted). The issues
23 raised by Plaintiffs are not fit for judicial decision. They are highly fact intensive, and
24 Nevada has not been offered an adequate opportunity to take any final action in response
25 to the issues Plaintiffs raised in their pre-litigation notice letter. As noted above, Nevada
26 has been unable to implement its general program to remove voters who have changed
27 residence since November 8, 2023, and between then and June 1, 2024, approximately

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1 90,000 voters have been added to the active registration lists. Delaying adjudication will
2 help define the factual issues.

3 With respect to the second prudential ripeness prong, delaying review would not
4 cause Plaintiffs hardship. “To meet the hardship requirement, a litigant must show that
5 withholding review would result in direct and immediate hardship and would entail more
6 than possible financial loss.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1126 (9th Cir. 2009)
7 (citation omitted). Where there is “no realistic, as opposed to chimeric, danger that [the
8 plaintiffs] will sustain an injury if [a court] await[s] developments,” there is no cognizable
9 hardship. *Nat’l Res. Def. Council v. Abraham*, 388 F.3d 701, 707 (9th Cir. 2004) (citation
10 omitted). Plaintiffs’ alleged injuries relate to electoral activities, but the relief they request
11 would be impossible to implement before the upcoming November 5, 2024 general
12 election.²⁸ By the time briefing on this motion is completed, we will be on the cusp of the
13 August 7, 2024 start of the next 90-day restriction period for implementation of a general
14 program to remove voters who have changed residence. There is therefore no reason to
15 adjudicate this case before Nevada has had an opportunity to complete further list
16 maintenance activities that will better clarify the factual record.

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27 ²⁸ See Hr’g Tr. at 36:11–14 (Plaintiffs’ counsel asserting Plaintiffs “haven’t pressed the Court [for
28 relief or remedy before the November election.]”); *id.* at 36:23–25 (Plaintiffs counsel asserting “we’re not
trying to speed up the case for the sake of obtaining discovery before the November election.”).

1 **V. CONCLUSION**

2 For the foregoing reasons, the Court should dismiss the FAC.

3 DATED this 16th day of July, 2024.

4 AARON D. FORD
5 Attorney General

6 By: /s/Laena St-Jules

7 LAENA ST-JULES (Bar No. 15156)

8 Senior Deputy Attorney General

9 Office of the Attorney General

10 100 North Carson Street

11 Carson City, Nevada 89701-4717

12 T: (775) 684-1100

13 E: lstjules@ag.nv.gov

14 *Attorneys for Secretary of State*

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