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13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

15 REPUBLICAN NATIONAL COMMITTEE,
NEVADA REPUBLICAN PARTY, and SCOTT
16 JOHNSTON,

17 Plaintiffs,

18 v.

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

22 Defendants.

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

**RESPONSE IN
OPPOSITION TO
INTERVENOR-
DEFENDANTS' MOTION
FOR LEAVE TO FILE
SUPPLEMENTAL
AUTHORITIES**

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1 Plaintiffs file this response to the Intervenor-Defendants’ motion for leave to
2 supplement authorities. *See* Doc. 149. The *pro se* case that Intervenor-Defendants seek
3 to file, *Drouillard v. Roberts*, No. 24-cv-6969, Doc. 42 (N.D. Cal. Jan. 27, 2025), is not
4 “particularly persuasive or helpful,” *Hunt v. Washoe Cnty. Sch. Dist.*, No. 3:18-cv-501, 2019
5 WL 4262510, at *3 (D. Nev. Sept. 9, 2019).

6 *Drouillard* was filed by *pro se* voter plaintiffs who alleged that their votes were
7 diluted by ineligible registrants on the rolls, and that their confidence in the integrity of
8 California’s elections was diminished by the defendants’ alleged NVRA violations. No.
9 24-cv-6969, Doc. 9 at ¶¶2, 11 (N.D. Cal., Oct. 4, 2024). This Court has already agreed
10 with that portion of the court’s opinion, dismissing Plaintiff Scott Johnston “with
11 prejudice” for lack of standing. MTD Order (Doc. 121) at 19. Although Plaintiffs
12 “preserve[]” their objections to that ruling, the latest round of motions to dismiss did
13 not relitigate Mr. Johnston’s standing. Pls.’ Resp. to MTD (Doc. 141) at 3. So
14 supplemental authority concerning Mr. Johnston’s standing isn’t relevant to any issues
15 in the pending motions to dismiss.

16 Neither is the *Drouillard* court’s analysis of the plausibility of the *pro se* plaintiffs’
17 NVRA claim persuasive, because that entire portion of the opinion is “beyond the
18 bounds of authorized judicial action.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83,
19 94 (1998). Since the *Drouillard* court ruled that the *pro se* plaintiffs did not have standing,
20 it had “no power to reach the merits.” *Righthaven LLC v. Hoehn*, 716 F.3d 1166, 1172
21 (9th Cir. 2013). The court’s merits discussion was thus plain error. *See id.* at 1172-73
22 (vacating “the portion of the district court’s order that analyzed the merits” after district
23 court determined it did not have standing). That erroneous opinion should not serve as
24 the persuasive basis for any decision that this Court makes.

1 Even if the *Drouillard* court had power to reach the merits, its opinion is not
2 persuasive for this case. The *pro se* plaintiffs' NVRA allegations consisted of a single
3 paragraph: "Defendants' failure to implement these programs in Marin County has
4 allowed thousands of ineligible voters to remain on the voter rolls, contravening the
5 NVRA's explicit requirements to safeguard the integrity of the electoral process."
6 *Drouillard*, No. 24-cv-6969, Doc. 9 at ¶17. The court ruled that the single allegation was
7 "merely conclusory," and "fail[ed] to allege how Defendants' voter list maintenance
8 programs violate the NVRA." *Id.*, Doc. 42 at 6-7. In contrast to the *Drouillard* plaintiffs'
9 single paragraph, the Plaintiffs here have alleged in detail how "Defendants have failed
10 to implement" various voter-maintenance requirements. *Id.* at 7; *see, e.g.*, 2d Am. Compl.
11 (Doc. 131) ¶¶93-96. Moreover, the *Drouillard* plaintiffs did not allege "why the presence
12 of some ineligible voters on Marin County's voter rolls means that California's general
13 program of voter list maintenance is not reasonable." No. 24-cv-6969, Doc. 42 at 7.
14 But Plaintiffs here provide detailed statistical evidence of how unreasonably bad
15 Nevada's voter rolls are, *see* 2d Am. Compl. ¶¶3-5, 63-71, 76-82, 83-89, which courts
16 have held raises an inference that defendants have "failed to make reasonable efforts to
17 conduct voter list maintenance programs," *ACRU v. Martinez-Rivera*, 166 F. Supp. 3d
18 779, 805 (W.D. Tex. 2015).

19 In any event, Plaintiffs need not allege a specific breakdown in Defendants' list-
20 maintenance program. The NVRA requires "reasonable" list maintenance, not specific
21 policies. *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 761 (2018) (quoting 52 U.S.C.
22 §20507(a)(4)). So "[i]t is enough" at the pleading stage that "the complaint plausibly
23 allege the existence of an ongoing violation" under the NVRA. *Nat'l Council of La Raza*
24 *v. Ceganske*, 800 F.3d 1032, 1044 (9th Cir. 2015). Whether defendants' program is in

1 “compliance” with the NVRA is “a fact-based argument more properly addressed at a
2 later stage of the proceedings.” *Bellitto v. Snipes*, 221 F. Supp. 3d 1354, 1366 (S.D. Fla.
3 2016). The *Drouillard* court did not engage with the body of precedent holding that
4 detailed allegations such as those in Plaintiffs’ Second Amended Complaint state a claim.
5 Its decision dismissing a conclusory *pro se* complaint is thus neither “particularly
6 persuasive [nor] helpful.” *Hunt*, 2019 WL 4262510, at *3.

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8 Dated: February 19, 2025

Respectfully submitted,

/s/ Jeffrey F. Barr

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CERTIFICATE OF SERVICE

This filing was served on all appearing parties on the 19th day of February, 2025 by electronic service by way of the Court’s ECF System.

/s/ Jeffrey F. Barr
An employee of Ashcraft & Barr LLP

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