No. 24-1985

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPUBLICAN NATIONAL COMMITTEE, JORDAN JORRITSMA, and EMERSON SILVERNAIL,

Plaintiffs-Appellants,

v.

JOCELYN BENSON, in her official capacity as Michigan Secretary of State; JONATHAN BRATER, in his official capacity as Director of the Michigan Bureau of Elections,

Defendants-Appellees.

On Appeal from the United States District Court for the Western District of Michigan, No. 1:24-cv-262 (Beckering, J.)

APPELLANTS' OPENING BRIEF

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit Case Number: 24-1985 Case Name: Republican National Comm. v. Benson

Name of counsel: Thomas R. McCarthy

Pursuant to 6th Cir. R. 26.1, Republican National Committee
Name of Party

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on January 16, 2025 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Thomas R. McCarthy

This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Under Federal Rule of Appellate Procedure 34(a) and Sixth Circuit Rule 34(a), Appellants respectfully request oral argument. This case raises numerous important questions, including whether a political party has standing when it alleges that a State's failure to maintain voter registration data frustrates its core activities, and whether voter registration rates that exceed 100% of the voting-age population in multiple counties raise a plausible inference that a State has failed to maintain accurate voter rolls in violation of the National Voter Registration Act.

The district court answered both questions in the negative, creating a direct conflict with Supreme Court and Sixth Circuit precedent on standing, as well as with the district court's own prior decisions in NVRA cases. Oral argument will allow the Court to clarify the precedent and allegations supporting Appellants' legal claims, providing "information and perspective that the briefs don't and can't contain." Antonin Scalia & Bryan Garner, *Making Your Case* 139-40 (2008).

INTRODUCTION

Michigan has a perennial problem with its voter rolls. The National Voter Registration Act requires States to maintain clean and accurate voter registration records. But time and again, Michigan falls short of those federal requirements. In 2021, the Michigan Secretary of State and the Director of Elections settled a case that alleged they had violated the NVRA by failing to make reasonable efforts to remove ineligible voters from the rolls. *See Daunt v. Benson*, Doc. 58, No. 1:20-cv-522 (W.D. Mich. Feb. 16, 2021). But since then, Michigan's list maintenance has gotten worse. That case alleged that one county had a voter registration rate above 100%. This case alleges that at least 53 Michigan counties have more active registered voters than they have adult citizens who are over the age of 18. That number of voters is impossibly high.

Political parties such as the RNC are injured when a State fails to maintain accurate voter registration lists. They rely on voter registration data to form their plans and campaign strategies. When States such as Michigan fail to remove ineligible voters from their rolls, it impedes the RNC's ability to form those strategies, turn out Republican voters, and elect Republican candidates.

These injuries are exactly the kind of harm to ongoing, preexisting activities that support organizational standing. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). So the Republican National Committee sent a letter to the Secretary and the Director of Elections, informing them of these problems. When the Defendants refused to acknowledge the problem, the RNC filed this lawsuit.

But the district court dismissed Plaintiffs' lawsuit before it could even begin. It ruled that the RNC—the national political committee of the Republican Party—suffers no injury when a State fails to remove ineligible voters in violation of federal law. That decision departs from recent decisions confirming that the RNC's electoral injuries satisfy Article III. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 393 (2024). The Fourth Circuit, for example, held that the RNC had standing to sue the North Carolina Board of Elections for similar NVRA violations. *RNC v. N.C. State Bd. of Elections*, 120 F.4th 390, 398-99 (4th Cir. 2024). North Carolina's inaccurate voter rolls harmed the RNC's "core mission" of "counsel[ing] voters to support Republican candidates," *id.* at 397, not some new proposed activity that would permit an organization to "spend its way to standing," *All. for Hippocractic Med.*, 602 U.S. at 394. The district court inverted this mine-run application of standing, requiring the RNC to plead injuries to activities that it does not "normally engage[]" in, Op., R.35, PageID#508. Rather than split with the Fourth Circuit's straightforward application of the standing requirement, this Court should reverse the district court.

Even though the district court dismissed the complaint on standing grounds, it went on to address the merits. Here too, it split with the weight of authority. Every district court to consider these issues has ruled that implausibly high voter-registration rates raise a plausible inference that state officials are violating the NVRA. And this case presents the worst data yet. The district court nevertheless disregarded that uniform precedent, splitting even with its own prior decision in *Daunt v. Benson*. It

instead required Plaintiffs to plead specific failures of Michigan's list-maintenance program that can be found only through discovery. The complaint raises a plausible inference that Defendants are violating the NVRA.

This Court should reverse the district court's judgment.

JURISDICTIONAL STATEMENT

The district court had subject-matter jurisdiction as Plaintiffs' suit presents a federal question concerning whether Michigan's election officials have violated the NVRA. 28 U.S.C. §§1331, 1343. On October 22, 2024, the district court dismissed the case under Fed. R. Civ. P. 12(b)(1) for lack of standing and under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. Op., R.35, PageID#30. Plaintiffs filed a notice of appeal on November 8, 2024, R.37, PageID#1, which is timely under Fed. R. App. P. 3(a)(1), 4(a)(1), and 26(a)(1)(A)-(C). This Court has appellate jurisdiction under 28 U.S.C. §§1291, 1294(1).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1) Whether the district court erred by holding that Plaintiffs' complaint does not allege organizational standing to bring suit under the NVRA.

2) Whether the district court erred by ruling that a voter registration rate exceeding 100% of the voting-age population in 53 Michigan counties—plus other evidence—does not raise a plausible inference that Defendants have failed to maintain clean and accurate voter rolls in violation of the NVRA.

STATEMENT OF THE CASE

I. History of Michigan's NVRA violations

Section 8 of the National Voter Registration Act requires each State to administer a "program" to "protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office." 52 U.S.C. §20507(b). The "program" must "remove the names of ineligible voters from the official lists of eligible voters." *Id.* §20507(a)(4). Registrants must be removed if they are "ineligible" for numerous reasons, including "criminal conviction or mental incapacity," "the death of the registrant" or "a change" in "residence." *Id.* §20507(3)-(4). "[F]ederal law makes this removal mandatory." *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 767 (2018).

But over the past two election cycles, Michigan has stopped maintaining accurate voter rolls. Under the tenure of Michigan Secretary of State Jocelyn Benson, Michigan has failed to remove ineligible persons from the rolls. Secretary Benson assumed office in January 2019, and by December 2019, Detroit "had more registered voters than adult citizens of voting age (106%)." Compl., R.1, PageID#15. Election officials in Detroit were sued under the NVRA, and the suit was later dismissed after Detroit removed substantial numbers of invalid registrations. *Id.* In June 2020, Michigan voter Tony Daunt sued Secretary Benson for violating the NVRA. *Daunt v. Benson*, Doc. 1, No. 1:20-cv-522 (W.D. Mich. June 9, 2020). Daunt's complaint alleged that one Michigan county had more registered voters than voting age residents, and an additional fifteen

counties had voter registration rates above 90% of their voting-age populations. Compl., R.1, PageID#16. After the district court denied the Secretary's motion to dismiss, Secretary Benson agreed to cancel 177,000 erroneous registrations and implement other list-maintenance reforms. *Id.* The suit was then voluntarily dismissed in February 2021. *Id.*

But since *Daunt*, Michigan's voter rolls have only gotten worse. In 2020, Michigan had one county with a registration rate above 100% of the voting-age population. Now, it has 53. *Id.* Over 60% of the State's counties have more active registered voters than voting-age residents. *Id.* Twenty-three other Michigan counties have voter registration rates of 90% or greater. *Id.* at PageID#11-12. In total, 76 of Michigan's 83 counties have voter registration rates above 90%. *Id.* at PageID#12. A voter registration rate that exceeds 90% is over twenty percentage points higher than the national average voter registration rate of 69.1%. *Id.*

In addition to impossibly high voter registration rates, the number of inactive registrations in Michigan is higher than the national average, with several Michigan counties posting inactive registration rates of 15% or greater. *Id.* at PageID#13. Despite soaring inactive registration rates, many Michigan counties reported cancelling less than 2% of their registration lists for residency changes from 2020 to 2022. *Id.* at PageID#14. Those same counties reported that between 7.4% to 12.8% of their populations changed residences over the same period. *Id.* Other counties are experiencing even higher relocation rates with still relatively few cancellations. In Isabella County, for

example, 23.5% of residents moved in the year before this suit was filed, but the county removed on average only 1.4% of its registered voters for residency changes during that time. *Id.* Despite the frequent moves, Michigan sent out address confirmation notices to just 8.1% of active voters from 2020 to 2022. *Id.* Over 30% of those notices were returned as undeliverable, 14% were returned as invalid, and only 0.1% of confirmation notices sent out to Michigan voters were confirmed as valid. *Id.* Nonetheless, Michigan removed just 5.9% of registrations from 2020 to 2022, with nearly half of those cancellations because the voters were deceased. *Id.* at PageID#15. Michigan's impossibly high registration rates, large rates of inactive registered voters, low numbers of address confirmations, and low numbers of removals reflect an ongoing, systemic refusal to maintain its voter list as required by federal law.

Michigan's ill-maintained voter rolls harm the electoral process, heighten the risk of electoral fraud, and undermine voter confidence in elections. Bloated "registration lists lie at the root of most problems encountered in U.S. elections." *Id.* at PageID#8 (quoting Comm. on Federal Election Reform, *Building Confidence in U.S. Elections* 10 (Sept. 2005) (Carter-Baker Report)). Inaccurate voter rolls that contain "ineligible, duplicate, fictional, or deceased voters" invite "fraud." *Id.* Criminal cases of confirmed voter fraud have plagued each election in Michigan over the past two election cycles before this suit was filed. *Id.* at PageID#9. Voter fraud is inherently difficult to detect, a fact which underscores the ongoing problem Michigan is experiencing due to its bloated voter list. *Id.* at PageID#8. Since even "the perception of possible fraud

contributes to low confidence in the system," *id.* (quoting Carter-Baker Report), repeated confirmed criminal convictions for voter fraud are devastating to voter trust and confidence.

To encourage compliance with federal election law, the NVRA provides a private right of action, empowering any "person who is aggrieved by a violation" to "provide written notice of the violation to the chief election official of the State involved." 52 U.S.C. §20510(b)(1). "If the violation is not corrected within 90 days after receipt of a notice," the "aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief." *Id.* §20510(b)(2). Defendants have the ultimate responsibility for maintaining Michigan's voter rolls. Compl., R.1, PageID#10.

II. Plaintiffs provide Defendants with pre-suit notice of their violations

On December 8, 2023, Plaintiffs—the Republican National Committee, Republican candidate Jordan Jorritsma, and Republican voter Emerson Silvernail—mailed a statutory notice letter to Defendants, identifying Plaintiffs by name as required by the NVRA. Pls.' NVRA Notice, R.1-1, PageID#24. The notice presented U.S. Census data showing that voter registration rates in many Michigan counties are abnormally or impossibly high. *Id.* at PageID##25-26. It identified those counties by name and alleged that Michigan is "violating Section 8 of the NVRA." *Id.* at PageID#24. It outlined "the curative steps needed" to bring Michigan into compliance and warned that taking these steps was necessary to "avoid litigation." *Id.* The notice specifically asserted that Michigan's list maintenance program "must identify and

remove" from the rolls all registrants "who are ineligible to vote by reason of a change in residence," those who are "[d]eceased" or "incarcerated," and "[a]ll other ineligible voters." *Id.* at PageID#27. Finally, the notice requested a description of Defendants' "plan" to "bring Michigan into compliance with Section 8" before the 2024 election *Id.*

In response, Defendants admitted that the percentage of active voters in at least 18 Michigan counties exceeds 90% of those counties' voting age populations. Defs.' Response to Notice, R.19-3, PageID#320. Defendants also conceded that the total number of registrants exceeds 100% of the voting age population in all counties that Plaintiffs listed in their letter if the "numbers used" include "both active and inactive registered voters." *Id.* But the Defendants denied any liability under the NVRA and refused to remove a single invalid registration before the 2024 general election. *Id.*

III. Plaintiffs sue over Michigan's failure to maintain accurate voter rolls

On March 13, 2024, Plaintiffs filed their complaint seeking declaratory and injunctive relief to remedy Defendants' failure to conduct a program that makes a "reasonable" effort to remove the names of ineligible voters from the official lists of eligible voters in violation of Section 8 of the NVRA. Compl., R.1, PageID##19-20. Plaintiffs presented U.S. Census data showing that 76 of Michigan's 83 counties had voter registration rates that are above 90% of their voting age populations and 53 of Michigan's counties had voter registration rates greater than 100% of their voting age populations. *Id.* at PageID##11-12.

The complaint alleges that Michigan's refusal to comply with its obligations under the NVRA concretely harms the RNC's core activities. The RNC is the national committee of the Republican Party and represents over 30 million registered Republicans throughout the country. Compl., R.1, PageID#3. Its core mission includes electing Republicans to state and federal office, and turning out Republican voters to vote in elections across the country. *Id.* at PageID##3-6. To achieve that mission, the RNC must estimate "the number of staff the RNC needs in a given jurisdiction, the number of volunteers needed to contact voters, and how much the RNC will spend on paid voter contacts." *Id.* at PageID#4. "The RNC relies on registration lists to estimate voter turnout," which informs each of those plans. *Id.* at PageID#4. Poor list maintenance frustrates the RNC's core electoral mission by depriving the RNC of accurate voter information upon which to craft effective plans and strategies. *Id.* at PageID##4-6; *see also* Pls.' Response, R.27, PageID#405 (describing frustration of mission injury). To mitigate that injury, the RNC must divert resources from other projects to ensure that their voter-registration information is accurate. Compl., R.1, PageID##4-6. All of this hinders the RNC's mission to elect Republican candidates and turn out Republican voters.

Defendants moved to dismiss Plaintiffs' complaint under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure. Mot. to Dismiss, R.19, PageID#272. They argued that the Plaintiffs do not have standing, and that Plaintiffs' allegations do not state a claim under the NVRA. *Id.* at PageID##289, 296. The district court granted

Defendants' motion to dismiss on both grounds. Op., R.35, PageID#514. Plaintiffs timely appealed to this Court. Not. of Appeal, R.37, PageID#516.

STANDARD OF REVIEW

Standing is a legal issue "reviewed *de novo*." *McGlone v. Bell*, 681 F.3d 718, 728 (6th Cir. 2012). At the pleading stage, the Court must accept "the complaint's factual allegations" as "true," and ask whether the plaintiff asserts "a 'plausible claim' that it "has standing." *Ass'n of Am. Physicians & Surgeons v. FDA*, 13 F.4th 531, 544 (6th Cir. 2021).

The same standard applies to this Court's review of the plausibility of Plaintiffs' claims. This Court "review[s] de novo a district court's decision to grant a Rule 12(b)(6) motion." *Carrier Corp. v. Outokumpu Oyj*, 673 F.3d 430, 444 (6th Cir. 2012). "To survive a motion to dismiss under Rule 12(b)(6), a complaint need only contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Id.* (quoting Fed. R. Civ. P. 8(a)(2)). A complaint "does not need detailed factual allegations." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). And when Plaintiffs make factual allegations, those assertions "are entitled to a presumption of truth." *Carrier Corp.*, 673 F.3d at 444. The Court must "construe the complaint in the light most favorable" to Plaintiffs and draw "all reasonable inferences" in their favor. *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007). And a Defendants' plausible alternative explanations don't defeat otherwise plausible inferences of liability. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). "Ferreting out the most likely reason for the defendants' actions" is

simply "not appropriate at the pleadings stage." *Watson Carpet & Floor Covering v. Mohawk Indus.*, 648 F.3d 452, 458 (6th Cir. 2011).

SUMMARY OF THE ARGUMENT

The district court erred by dismissing Plaintiffs' complaint. Plaintiffs plausibly pled that Defendants' failure to conduct reasonable voter-list maintenance as required by the NVRA injures the RNC's ability to pursue its core activities.

I. The RNC has standing. As the national committee of the Republican Party, the RNC's chief mission includes turning out Republican voters and electing Republican candidates. The RNC alleged that Defendants' inadequate list maintenance impairs that mission. *Havens Realty Corporation v. Coleman*, 455 U.S. 363, 379 (1982). The RNC relies on the accuracy of Michigan's voter registration lists to accomplish its reporting requirements to Republican candidates, to make its campaign plans, to estimate voter turnout, and to determine the number of staff and volunteers needed in a given jurisdiction. Compl., R.1, PageID#3. Without accurate and up-to-date voter registration information, the RNC's daily activities are stymied, as they can no longer report accurate voter turnout data and craft effective campaign strategies for Republican candidates to win elections. The Fourth Circuit recently agreed. *RNC v. N.C. State Bd. of Elections*, 120 F.4th 390, 398-99 (4th Cir. 2024). The district court erred by disregarding that injury.

II. Plaintiffs alleged facts that raise a plausible inference that Defendants are violating their NVRA obligations to remove ineligible voters from Michigan's rolls.

Plaintiffs allege that over four dozen counties in the State have more registered voters on their rolls than they have voting-age residents in the county. Compl., R.1, PageID##11-12. Plaintiffs provided data and reasoning to back up that allegation. And every district court to consider identical allegations in other jurisdictions has held that implausibly high registration rates state an NVRA claim. The district court rejected that uniform consensus.

In departing from that precedent, the district court overlooked many of Plaintiffs' allegations. It refused to draw inferences in Plaintiffs' favor. It created a novel requirement that Plaintiffs must allege a "specific breakdown" in Michigan's list-maintenance program. Op., R.35, PageID#512. It required Plaintiffs to produce evidence of their claims, rather than the allegations required by Rule 8. And it demanded that Plaintiffs spell out the scope of their requested relief, even though a motion to dismiss tests only whether they are *entitled* to relief.

For each of these reasons, this Court should reverse the district court's ruling and allow Plaintiffs' suit to proceed. At a minimum, the Court should vacate and remand with instructions to allow the Plaintiffs to amend their complaint.

ARGUMENT

I. The RNC has standing because it suffers an injury to its electoral mission.

The "essence" of standing is whether the plaintiff "has alleged such a personal stake in the outcome of the controversy as to warrant his invocation of federal-court

jurisdiction." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 260-61 (1977) (cleaned up). Under Supreme Court "precedents," organizations (no less than individuals) "have standing to sue on their own behalf for injuries they have sustained." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 393 (2024) (cleaned up). And no organization has more of a "personal stake" in clean voter rolls than the political parties and campaigns who rely on them daily. *Arlington Heights*, 429 U.S. at 261.

To establish standing, an organization must allege a "'concrete and particularized' injury" that is caused by "the defendant's conduct" and can be redressed by "the requested remedy." *Tenn. Conf. of the NAACP v. Lee*, 105 F.4th 888, 902 (6th Cir. 2024) (cleaned up). One way an organization can plead an "injury in fact" is by alleging a "concrete and demonstrable injury to the organization's activities" accompanied by a "consequent drain on the organization's resources." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). The "injury to the organization's activities" is a necessary ingredient. *Id.* The standard for an injury is one of kind and not degree, as even an "identifiable trifle" will suffice. *United States v. Students Challenging Regul. Agency Procs.*, 412 U.S. 669, 689 n.14 (1973). And at the pleading stage, Plaintiffs don't need "to back up their diversion-of-resources allegations with adequate proof." *Tenn. Conf. of the NAACP*, 105 F.4th at 903. Instead, they must simply "assert[] a 'plausible claim'" that they suffer an injury to their activities. *Ass'n of Am. Physicians & Surgeons v. FDA*, 13 F.4th 531, 544 (6th Cir. 2021).

A. Defendant's NVRA violations impede the RNC's ability to turn out and elect Republicans.

The RNC alleges an injury to its core activities. The RNC's mission is "to elect Republican candidates to state and federal office." Compl., R.1, PageID#3. To accomplish that mission, "the RNC relies on voter registration lists to determine its plans" and "to estimate voter turnout, which informs the number of staff the RNC needs in a given jurisdiction, the number of volunteers needed to contact voters, and how much the RNC will spend on paid voter contacts." *Id.* at PageID#4. "Because Defendants do not maintain accurate voter rolls," the RNC "must deploy their time and resources to spend more of them monitoring Michigan elections." *Id.* at PageID#5. And because "[r]etaining voter rolls bloated with ineligible voters … heightens the risk of electoral fraud," the RNC "must deploy their time and resources to spend more of them monitoring Michigan elections for fraud and abuse" and "mobilizing voters to counteract it." *Id.* at PageID##5-7. Defendants' NVRA violations thus directly harm the RNC's core activities by making it more difficult to elect Republican candidates and turn out Republican voters.

The RNC's injury in this case is the same kind of "direct informational injury" that the Supreme Court has recognized. *Tenn. Conf. of the NAACP*, 105 F.4th at 903. In *Havens*, the plaintiff HOME provided "counseling and referral services for low-and moderate-income homeseekers." *Havens Realty*, 455 U.S. at 379. HOME alleged that the defendant realtor made "false statements" to a HOME employee about housing

availability, which "perceptibly impaired" HOME's business of placing clients in housing. *Id.* Just as HOME facilitated housing, the RNC facilitates voting and campaigning. While HOME's business was ensuring that "homeseekers" find homes, *id.*, the RNC's business is ensuring "the ability of Republican voters to cast, and Republican candidates to receive, effective votes in Michigan elections," Compl., R.1, PageID#3. Just as HOME's business was impaired by the defendant providing bad information in violation of federal law, *Havens Realty*, 455 U.S. at 379, the RNC's business is impaired by the defendant providing inaccurate and outdated voter rolls in violation of federal law, Compl., R.1, at PageID#3-4.

The RNC's list-maintenance injuries are particularized. Even if the NVRA imposes on the Defendants a general duty to maintain their voter rolls, not every organization relies on voter registration data in the same manner as the RNC. That is, "the injury alleged is not that the defendants are merely failing to obey the law, it is that they are disobeying the law in failing to provide information that the plaintiffs desire and allegedly need." *Am. Canoe Ass'n v. City of Louisa Water & Sewer Comm'n*, 389 F.3d 536, 546 (6th Cir. 2004). Plaintiffs' complaint includes specific allegations of some of those needs: to "estimate voter turnout," determine "the number of staff the RNC needs in a given jurisdiction," estimate "the number of volunteers needed to contact voters," and calculate "how much the RNC will spend on paid voter contacts." Compl., R.1, PageID#4. These "daily operations are stymied" due to Defendants' legal violations, which is a concrete organizational injury. *Am. Canoe Ass'n*, 389 F.3d at 546.

In any event, "[t]o the extent that" a plaintiff needs to show "some reason" it specifically "need[s] the information" required by federal law, "that requirement is liberally construed." *Id.*

Likewise, being forced to change campaign plans and strategies is not a trivial injury. Where a challenged practice "directly affects" a political party's ability to "campaign for political office," the party has standing. *Green Party of Tenn. v. Hargett*, 767 F.3d 533, 544 (6th Cir. 2014). "[C]hanging one's campaign plans or strategies" because of Defendants' wrongful acts "can itself be a sufficient injury to confer standing." *Zimmerman v. City of Austin*, 881 F.3d 378, 390 (5th Cir. 2018); *see also Shays v. FEC*, 414 F.3d 76, 87 (D.C. Cir. 2005) (the "need to adjust" one's "campaign strategy" is a "harm" to "legally protected interests"); *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 36-37 (1st Cir. 1993) (an "impact on the strategy and conduct of an office-seeker's political campaign constitutes an injury of a kind sufficient to confer standing").

That the RNC diverts "resources" to counteract these injuries shows that Defendants' legal violations have "perceptibly impaired" the RNC's activities. *Havens Realty*, 455 U.S. at 379. The Supreme Court has clarified that diverting resources alone does not establish organizational standing. *All. for Hippocratic Med.*, 602 U.S. at 395. That's because any organization could divert resources to address any "policy that they dislike," regardless of whether the policy actually affects the organization. *Id.* at 395. But the RNC doesn't rely on resource diversion as the injury itself—it alleges that Defendants' "actions directly affect[] and interfere[] with [their] core business activities"

to turn out and elect Republicans. *Id.* Unlike the medical associations in *Alliance for Hippocratic Medicine*, the RNC does not rely merely on resources spent to avoid injury to others. *See Tenn. Conf. of the NAACP*, 105 F.4th at 903 ("These associations argued that the regulations forced them to spend time and money on studies showing the drug's safety risks and 'public education' informing patients about those risks."). Instead, the RNC is diverting resources to counteract injuries to *its own* "core business activities." *All. for Hippocratic Med.*, 602 U.S. at 395. That makes this case like *Havens*, and unlike *Alliance for Hippocratic Medicine*.

At this stage, Plaintiffs need not prove an injury—they need only allege one. And their numerous injuries mirror those in *Havens*. This Court recently held that the NAACP didn't prove standing for its NVRA case with "specific facts" on summary judgment. *Tenn. Conf. of the NAACP*, 105 F.4th at 905. But it hinted that the NAACP's "business of registering voters" would be sufficient if it provided evidence of injury to those activities at trial. *Id.* at 905 ("[T]he NAACP arguably alleges that it is in the business of registering voters—not merely gathering information and advocating against the law."). The RNC alleges at least as much here, and the motion-to-dismiss standard requires even more deference to Plaintiffs' allegations at the pleading stage. It was thus "improper for the District Court to dismiss for lack of standing the claims of the organization in its own right." *Havens Realty*, 455 U.S. at 379.

B. Recent precedents confirm that the RNC's list-maintenance injuries satisfy Article III.

Just a few months ago, the Fourth Circuit held that the RNC's list-maintenance injuries are no different from the plaintiff's injuries in *Havens*. The RNC sued the North Carolina State Board of Elections for violating the NVRA's sister law, the Help America Vote Act. *RNC v. N.C. State Bd. of Elections*, 120 F.4th 390, 398-99 (4th Cir. 2024). The RNC alleged that the board violated HAVA by processing voter-registration forms that "did not clearly indicate that an applicant … was required to list her driver's license number or the last four digits of her social security number." *Id.* at 399. In response, the board updated its voter-registration forms, but it refused to clean its voter rolls of the registrations it had already processed. *Id.* The RNC sued the board in state court for those registration and list-maintenance violations. *Id.* The defendants removed to federal court, which dismissed one claim and remanded the other back to state court. *Id.* at 394. The defendants then appealed the remand order. *Id.*

On appeal, the Fourth Circuit held that the RNC had organizational standing to pursue its list-maintenance claims. *Id.* at 395-97. The RNC alleged there—as it alleges here—that its "'core mission involves organizing lawful voters and encouraging them to support Republican candidates at all levels of government' and that it 'expends significant time and resources fighting for election security and voting integrity across the nation.'" *Id.* at 397. "'Defendants' actions and inaction directly impact Plaintiffs' core organizational missions of election security and providing services aimed at

promoting Republican voter engagement and electing Republican candidates for office.'" *Id.* at 396-97. The RNC had standing because it alleged that "the State Board's violations of HAVA forced them to 'divert significantly more of their resources into combatting election fraud in North Carolina,'" which "frustrated their organizational and voter outreach efforts." *Id.* at 397. "Under Supreme Court precedent," those "allegations suffice to allege organization injury under Article III." *Id.*

The Fourth Circuit analogized the RNC's list-maintenance injuries to *Havens*. Just as in *Havens*, where "the plaintiff's core mission included counseling low-and moderate-income home buyers," the "core mission of the RNC … is to counsel voters to support Republican candidates." *Id.* Here, the RNC alleges that Michigan's list-maintenance violations harm its mission to "counsel voters to support Republican candidates," just as North Carolina's violations harmed that mission. *Id.* This case, just like the RNC's challenge to North Carolina's voter-roll maintenance, "involves more than simply an organization's efforts to 'spend its way into standing.'" *Id.* at 396 (quoting *Havens Realty*, 455 U.S. at 394).

The Fifth Circuit agrees. Last year, the RNC challenged Mississippi's law permitting mail ballots to be received up to five business days after the election. On summary judgment, the defendants challenged the RNC's standing. The district court rejected their arguments in a thorough opinion. "The RNC and the Mississippi Republican Party have established that they suffered concrete injuries in the form of economic loss and diversion of resources." *RNC v. Wetzel*, 2024 WL 3559623, at *5

(S.D. Miss. July 28, 2024), *rev'd on other grounds*, 120 F.4th 200 (5th Cir. 2024). On appeal, no party challenged the district court's ruling that the RNC had organizational standing. *See RNC v. Wetzel*, 120 F.4th 200, 205 n.3 (5th Cir. 2024). But each court "has an independent obligation to assure that standing exists, regardless of whether it is challenged by any of the parties." *Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009). And like the Fourth Circuit, the Fifth Circuit concluded that "[j]urisdiction is proper" because "this case fits comfortably within our precedents." *RNC v. Wetzel*, 120 F.4th at 205 & n.3.

These circuit opinions faithfully apply recent Supreme Court precedent. In *Alliance for Hippocratic Medicine*, the Supreme Court held that medical associations did not have standing to challenge an FDA regulation on the basis of "incurring costs to oppose FDA's actions." 602 U.S. at 394. But here, the RNC doesn't rely on costs incurred "to oppose" Michigan's NVRA violations. *Contra id.* Rather, it relies on injury to its "core business activities" to turn out and elect Republicans. *Id.* at 395. The RNC "contend[s] that this core mission is directly 'affected and interfered with,'" because it is "unable to ascertain" which voters are "registered improperly" and which voters "will be able to vote in the upcoming election." *RNC v. N.C. State Bd. of Elections*, 120 F.4th at 397 (citing *All. for Hippocratic Med.*, 602 U.S. at 395); *accord* Compl., R.1, PageID##4-5.

This would be a different case if the RNC relied on money spent to oppose Michigan's deficient list-maintenance efforts because they harmed Republican values or conflicted with the RNC's ideals. Those are the sort of "abstract social interests" that

the Supreme Court warned against. *Havens Realty*, 455 U.S. at 379. But just because "organizations devote themselves" to political causes does not mean their injuries are "based upon a purely ideological or societal interest." *Am. Canoe Ass'n*, 389 F.3d at 546. The RNC alleges injuries to its core activities that occur regardless of whether it acts "to oppose" Michigan's NVRA violations. *All. for Hippocratic Med.*, 602 U.S. at 394. Its "claims rest upon [its] organizational interests which are negatively affected by the defendants' failure to fulfill its monitoring and reporting obligations." *Am. Canoe Ass'n*, 389 F.3d at 546. After recent "legal developments since *Havens*," *Tenn. Conf. of the NAACP*, 105 F.4th at 903, the Fourth and Fifth Circuits have upheld the RNC's organizational standing in election cases. This Court should, too.

Indeed, before *Alliance for Hippocratic Medicine*, numerous federal courts upheld organizations' standing to sue state officials for violating the NVRA. This Court instructed a district court to permit plaintiffs to amend their complaint to add allegations that the organization "would not have expended" funds "but for defendants' NVRA violations," which would "demonstrate[] an injury in fact and give[] rise to individual standing in its own right." *Harkless v. Brunner*, 545 F.3d 445, 458 (6th Cir. 2008). The Eleventh Circuit held that organizations had standing based on affidavits that they had to redirect resources "to counteract" an alleged NVRA violation that would impede the organizations' activities of "voter registration and education." *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1342 (11th Cir. 2014). The Fifth and Seventh Circuits reached similar conclusions. *See Scott v. Schedler*, 771 F.3d 831, 837 (5th Cir. 2014);

Common Cause Ind. v. Lawson, 937 F.3d 944, 954 (7th Cir. 2019). Each of these cases is consistent with *Havens* to the extent they concerned an independent injury to the organization's activities in addition to the resource diversion. But the district court's decision, if upheld, would depart from this Court's precedents and create a split with several other circuits.

C. The district court misunderstood the RNC's injuries and misapplied precedent.

The district court committed multiple errors in rejecting the RNC's injuries.

First, the district court inverted the organizational standing test by requiring the RNC to plead injuries to new activities rather than existing activities. The district court acknowledged that "perceptible impairment to an organization's 'activities'" is an Article III injury. Op., R.35, PageID#506. But the district court rejected injuries to the RNC's electoral activities simply because they are "activities in which the RNC normally engages." *Id.* PageID#508. That reasoning is backwards. *Havens* does not require an organization to adopt new activities in response to the defendants' legal violations. Quite the contrary: "within-mission organizational expenditures are enough to establish direct organizational standing." *Online Merchants Guild v. Cameron*, 995 F.3d 540, 548 (6th Cir. 2021). Or, as the Ninth Circuit put it, "*Havens Realty*, as clarified by *Hippocratic Medicine*," requires that the defendants' actions "directly injure the organizations' *pre-existing* core activities, apart from the plaintiffs' response to that provision." *Ariz. All. for Retired Ams. v. Mayes*, 117 F.4th 1165, 1180 (9th Cir. 2024) (emphasis added). In

contrast, injury to new activities is the sort of allegation the Supreme Court has cautioned against because "[a]n organization cannot manufacture its own standing." *All. for Hippocratic Med.*, 602 U.S. at 394. By requiring the RNC to plead injuries to activities that it does not "normally engage[]" in, Op., R.35, PageID#508, the district court mandated what *Hippocratic Medicine* condemned.

Second, the district court erred by misconstruing the RNC's injuries as hypothetical. The district court fixated on the Complaint's use of the word "may" in describing how the RNC "may misallocate its scarce resources" if voter registration lists "include names of voters who should no longer be on the list." *Id.* The court thought that the word "may" indicates that the RNC's injuries are hypothetical. *Id.* But at most, that allegation confirms that the RNC's injuries are contingent on the Defendants' NVRA violations, not that those injuries are hypothetical. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) ("[T]here must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." (cleaned up)). As the rest of the Complaint makes clear, whether the RNC's injuries "may" occur depends on whether Defendants are complying with the NVRA. So "there is no issue regarding the speculative nature of the harm." *Online Merchants Guild*, 995 F.3d at 548. To the extent there's any ambiguity, the Court must "construe the complaint in the light most favorable" to Plaintiffs and draw "all reasonable inferences" in their favor. *Directv*, 487 F.3d at 476.

Third, the district court misunderstood the RNC's injuries in ruling that they are self-inflicted. The court reasoned that the RNC "'cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending.'" Op., R.35, PageID#509 (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013)). But Plaintiffs' claims are not merely premised upon the allegation that in the "future" Defendants will fail to conduct reasonable voter list maintenance as required by the NVRA. *Contra Clapper*, 568 U.S. at 422. Rather, Plaintiffs allege that these violations have already occurred, they informed Defendants of their violations, and yet Defendants persist in their refusal to remove ineligible voters from Michigan's rolls. Compl., R.1, PageID##17-19. The RNC thus "diverted its resources to counteract Defendants' noncompliance and to protect its members' rights." Compl., R.1, PageID#6.

Those diversions are in response to an existing *injury*, not a hypothetical event. Because Defendants don't maintain their rolls, the RNC can't reliably "determine its plans and budgets," "estimate voter turnout" in Michigan, decide "the number of volunteers needed to contact voters" throughout the State, or calculate "how much the RNC will spend on paid voter contacts." *Id.* PageID##3-4. Each activity is necessary for the RNC to effectively achieve its mission to turn out Republican voters and elect Republican candidates, and each is impeded by Defendants' refusal to clean up their voter rolls. Because Defendants' violations are ongoing, the RNC's injuries are, too. That the RNC diverts resources to address those injuries doesn't make them willingly

incurred any more than the "drain on the organization's resources" was willingly incurred in *Havens Realty,* 455 U.S. at 379, or a tort victim willingly incurs hospital bills to treat an injury.

Fourth, the district court failed to credit Plaintiffs' allegations that Defendants' NVRA violations frustrate the RNC's electoral plans and strategies. The perceptible impairment of the RNC's political mission is an injury sufficient to confer standing. *See Havens Realty*, 455 U.S. at 379. Michigan's inaccurate voter rolls cause the RNC to campaign less effectively by "misallocat[ing]" scarce resources "among different jurisdictions" in "ways they otherwise would not have." Compl., R.1, PageID##4, 19. Because the RNC's "campaign planning decisions have to be made months, or even years, in advance of the election to be effective, the plaintiffs' alleged injuries are actual and threatened." *Miller v. Brown,* 462 F.3d 312, 317-18 (4th Cir. 2006); *accord New Mexicans for Bill Richardson v. Gonzales,* 64 F.3d 1495, 1500-01 (10th Cir. 1995).

Hence, "[t]he mere existence" of inaccuracies in Michigan's voter lists due to Defendants' failure to maintain them "causes" the RNC's "decisions to be made differently than they would absent" the inaccuracies. *Miller*, 462 F.3d at 318. And those electoral injuries satisfy "the standing inquiry's second requirement of a causal connection between the plaintiffs' injuries" and the actions "they challenge." *Id.* Defendants' failure to clean up Michigan's voter rolls thus frustrates the RNC's political mission by "directly affect[ing]" the RNC's ability to "campaign for political office." *Green Party of Tenn.*, 767 F.3d at 544. Indeed, the Western District of Michigan itself has

recognized that organizations have standing when "Secretary Benson's failure to comply with the NVRA impairs [their] essential and core mission." *Pub. Int. Legal Found. v. Benson*, 2022 WL 21295936, at *6 (W.D. Mich. Aug. 25, 2022). Other district courts agree. *See, e.g.*, *Jud. Watch, Inc. v. King*, 993 F. Supp. 2d 919, 925 (S.D. Ind. 2012). But this time, the district court rejected those allegations.

Fifth, the district court misinterpreted *Havens* and recent Supreme Court precedent. The district court reasoned that *Havens* "no longer supports an expansive theory of standing for organizations" after *Alliance for Hippocratic Medicine*. Op., R.35, PageID#507. But the Supreme Court did not overrule *Havens*—it reaffirmed it. *All. for Hippocratic Med.*, 602 U.S. at 393. *Havens* still holds that an organization has standing when it alleges it has "devote[d] significant resources to identify and counteract" legal violations that impair its "activities." *Havens Realty*, 455 U.S. at 379. Plaintiffs allege exactly that by asserting that the RNC must divert resources to investigate and counteract inaccuracies in Michigan's voter rolls, which impairs its ability to turn out and elect Republicans. Compl., R.1, PageID#6. Under "Supreme Court precedent," these allegations "suffice to allege organization injury under Article III." *RNC v. N.C. State Bd. of Elections*, 120 F.4th at 397.

Sixth, by holding the RNC to the same standard applied in *Tennessee Conference of the NAACP*, the district court erroneously raised the RNC's pleading standard. In that case, this Court acknowledged that the Supreme Court in *Alliance for Hippocratic Medicine* "did not question—and, indeed, approvingly cited—many other cases in which the

Court has allowed 'unregulated' parties to sue a defendant even though the defendant's conduct harmed those parties indirectly." *Tenn. Conf. of the NAACP*, 105 F.4th at 905. And it noted that the NAACP in *Lee* could have relied on "a *Havens*-like standing theory." *Id.* The problem was that the NAACP did not present sufficient evidence at the summary judgment stage "to prove the theory." *Id.* While "the NAACP had to prove that it *actually* had standing," *id.* at 907, the RNC—at the pleading stage—need only plausibly allege standing, *Bennett v. Spear*, 520 U.S. 154, 167-68 (1997). The district court's reliance on *Tennessee Conference of the NAACP* shows that it applied the wrong standard of review to Plaintiffs' claims.

* * *

At a minimum, the Court should vacate the final judgment and remand with instructions to allow Plaintiffs to amend their complaint. A "'dismissal for lack of subject matter jurisdiction does not operate as an adjudication on the merits for preclusive purposes,'" and is therefore typically "without prejudice." *Pratt v. Ventas, Inc.*, 365 F.3d 514, 523 (6th Cir. 2004). But the district court didn't permit Plaintiffs the opportunity to amend. Instead, the court dismissed the Plaintiffs' initial complaint, immediately entered a final judgment, and closed the case. Op., R.35, PageID#514; Final J., R.36, PageID#515. That step terminated Plaintiffs' opportunity to seek leave to amend under Rule 15(a). *Morse v. McWhorter*, 290 F.3d 795, 799 (6th Cir. 2002).

Denying the Plaintiffs an opportunity to amend is made worse by the district court reaching the merits of Plaintiffs' claims. "[I]f a court does not have jurisdiction

over a matter, it cannot properly reach the merits of the case." *Wilkins v. Jakeway*, 183 F.3d 528, 533 n.6 (6th Cir. 1999). Despite concluding that it "lacks subject-matter jurisdiction, and dismissal under Rule 12(b)(1) is warranted," the district court "h[eld] that Plaintiffs' allegations also do not state a plausible claim for relief." Op., R.35, PageID#510. That holding now looks like "a dismissal on the merits," even though the court lacked jurisdiction to make that ruling. *Wilkins*, 183 F.3d at 533 n.6.

Worse still, the district court based its standing decision on intervening precedent that was not available when the Plaintiffs filed their initial complaint. Plaintiffs filed their complaint in March 2024, well before the opinions in *Alliance for Hippocratic Medicine* and *Tennessee Conference of the NAACP* came down. Even without the benefit of those decisions, Plaintiffs pleaded injuries that satisfy Article III, as this brief explains. But even if this Court rules that those cases foreclose Plaintiffs' injuries as pled in their initial complaint, those cases do not make it "'clear on de novo review that the complaint could not be saved by amendment.'" *Newberry v. Silverman*, 789 F.3d 636, 646 (6th Cir. 2015). The District of Nevada recognized as much when it allowed the RNC to amend its NVRA complaint because it "did not have the benefit" of that intervening precedent "at the time it filed its amended complaint." *RNC v. Aguilar*, 2024 WL 4529358, at *10 (D. Nev. Oct. 18, 2024). "The district court should therefore have dismissed the claim, but without prejudice and with leave to amend." *Newberry*, 789 F.3d at 646 (cleaned up).

II. Plaintiffs plausibly alleged that Defendants are violating the NVRA.

Section 8 of the NVRA "requires States to 'conduct a general program that makes a reasonable effort to remove the names' of voters who are ineligible 'by reason of' death or change in residence." *Husted*, 584 U.S. at 761 (quoting 52 U.S.C. §20507(a)(4)). Removing dead or relocated voters is "mandatory." *Id.* at 767. Plaintiffs plausibly alleged that Michigan is not complying with this duty.

District courts across the country have consistently held that inflated voter rolls raise a plausible inference that state officials are not complying with their Section 8 list-maintenance obligations. In fact, in 2020 the Western District of Michigan denied a motion to dismiss an NVRA complaint that relied on some of the same evidence here: high registration rates compared to publicly available census data. *See Daunt v. Benson*, Doc. 46, No. 1:20-cv-522 (W.D. Mich. Nov. 3, 2020) (oral opinion, included at Ex. A, R.27-1, PageID##419-445). More recently, the same court denied another motion to dismiss a complaint that, like this one, alleged Defendants had "failed to make reasonable efforts to conduct voter list maintenance programs … in violation of Section 8 of NVRA." *Pub. Int. Legal Found.*, 2022 WL 21295936, at *4, *13. The Western District of Michigan thus agreed with numerous "[o]ther courts" that "a registration rate in excess of 100%" indicates that a jurisdiction is "not making a reasonable effort to conduct a voter list maintenance program in accordance with the NVRA." *Jud. Watch, Inc. v. Griswold*, 554 F. Supp. 3d 1091, 1107 (D. Colo. 2021).

But when the RNC filed this case, the district court reversed course. Michigan's voter rolls are some of the worst maintained in the country. Well over half the State's counties report more active registered voters than they have voting-age residents. Compl., R.1, PageID#16. Those allegations alone were enough to state an NVRA claim in *Daunt* and many other cases. *E.g.*, *Daunt*, Doc. 46 at 19, No. 1:20-cv-522 (Ex. A, R.27-1, PageID#438); *Griswold*, 554 F. Supp. 3d at 1107. And the complaint here does not rest on those numbers alone. The complaint rules out alternative explanations for these inflated rolls. Compl., R.1, PageID#12. It details even more data demonstrating that certain counties are not keeping up with residency changes, and not removing voters even after marking them inactive. *Id.* at PageID##13-15. And it documents six jurisdictions with similarly high registration rates who, after they were sued, essentially agreed that their rolls were inflated. *Id.* at PageID##15-16. The district court disregarded these allegations, disputing Plaintiffs' factual allegations and drawing inferences against them. Its decision conflicts not only with its own precedent in *Daunt*, but with every other district court to decide this issue.

A. County voter registration rates above 100% of the voting-age population raise a plausible inference of an NVRA violation.

Plaintiffs' allegations of high registration rates alone raise a reasonable inference of liability. Plaintiffs alleged that based on the most recent U.S. Census figures available, the voter registration rates in 53 Michigan counties are above 100% of the voting-age populations in those counties. Compl., R.1, PageID#11. No one disputes that those

voter registration numbers are mathematically impossible. And it's not just a few outlier counties—over half the State reports more registered voters than voting-age residents. Some counties border on the ridiculous: Kalkaska County reports a 115% registration rate, Keweenaw and Mackinac Counties 114%, and Alcona County 112%. *Id.* These "unreasonably high registration rate[s]" create a "strong inference of a violation of the NVRA" that is "sufficient," on its own, to survive a motion to dismiss. *Am. C.R. Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 805 (W.D. Tex. 2015).

Every district court to address this issue agrees. In the three-decade history of the NVRA, every complaint that has alleged registration rates above 100% has survived a motion to dismiss. Both the Eastern and Western Districts of North Carolina have ruled that a "greater than 100% registration" is "strong enough" to state a claim. *Green v. Bell*, 2023 WL 2572210, at *5 (W.D.N.C. Mar. 20, 2023); *accord Voter Integrity Project NC, Inc. v. Wake Cnty. Bd. of Elections*, 301 F. Supp. 3d 612, 619-20 (E.D.N.C. 2017) (greater than 100% registration rate creates "a reasonable inference" the NVRA has been violated). The Southern District of Indiana denied a motion to dismiss a complaint alleging that "by a comparison of 2010 Census data and voter registration data … the number of persons registered to vote exceeded the total voting population in twelve Indiana counties." *King*, 993 F. Supp. 2d at 921. The Western District of Texas concluded that "an implausible 105% voter registration rate" in just one county "indicates that Defendant has failed to make reasonable efforts to conduct voter list maintenance programs." *Am. C.R. Union*, 166 F. Supp. 3d at 805. And the Western

District of Michigan—before reversing course in this case—concluded that in just one Michigan county "if you have more registered voters than eligible voters living, at least based on the census data," that allegation raises "at least a plausible inference" that "there's a problem with the system that's been used to address the voter registration list." *Daunt*, Doc. 46 at 16, No. 1:20-cv-522 (Ex. A, R.27-1, PageID#435).

The District of Colorado noted this universal agreement, observing that "[o]ther courts examining this issue have agreed that a registration rate in excess of 100% may be an indicator of a jurisdiction not making a reasonable effort to conduct a voter list maintenance program in accordance with the NVRA." *Griswold*, 554 F. Supp. 3d at 1107. And the Western District of Michigan again noted its agreement with these cases, approvingly citing them when holding that an organization "stated a plausible claim for relief" under the NVRA. *Pub. Int. Legal Found.*, 2022 WL 21295936, *10. The Southern District of Florida even held that a voter registration rate as high as 108.5% in a single county is enough to stave off a summary judgment motion. *Bellitto v. Snipes*, 302 F. Supp. 3d 1335, 1357-58 (S.D. Fla. 2017).

Most of these complaints rested on just one or two counties in a State with an impossibly high registration rate. For example, when the Western District of Michigan previously denied Secretary Benson's motion to dismiss a Section 8 case, Leelanau County had a voter registration rate of 102%, and it was the only county above 100%. *See Daunt*, Doc. 31 at 9, No. 1:20-cv-522. Under the same methodology, Leelanau County's registration rate is now 108%. *See* Compl., R.1, PageID#11. And it has 52

companion counties above 100%. *Id.* Michigan's rolls have gotten much worse. But the same district court ruled that those increasing problems don't state a claim.

The complaint doesn't stop with impossibly high registration rates. It also points to registration rates that are implausibly high—well in excess of the national average voter registration rate. Twenty-three Michigan counties "have more than 90 percent of their citizen voting-age populations registered and active." *Id.* at PageID##11-12. But according to the U.S. Census Bureau, only 69.1% of the citizen voting-age population was registered nationwide in the November 2022 election, and only 72.7% of the citizen voting-age population was registered nationwide in the November 2020 election. *Id.* at PageID#12. Those 23 counties are thus significant outliers among the rest of the country, but "[t]here is no evidence that these counties experienced above-average voter participation compared to the rest of the country or State." *Id.* Hence, the "only explanation for these discrepancies is substandard list maintenance." *Id.* Again, courts agree. *See, e.g.*, *Green*, 2023 WL 2572210, at *5.

These courts have approved the same methodology Plaintiffs use here. Even though reliable evidence is not part of Plaintiffs' pleading burden, Plaintiffs' "census data is reliable," *Am. C.R. Union*, 166 F. Supp. 3d at 791, especially since they used "the most recent census data available at the time of the filing of [their] complaint," *Voter Integrity Proj. NC*, 301 F. Supp. 3d at 619. Indeed, the U.S. Election Assistance Commission uses the census numbers to estimate voter turnout and registration "because of its availability for the majority of jurisdictions … and because it provides a

more accurate picture of the population covered by the [survey]." U.S. Election Assistance Comm'n, *Election Administration and Voting Survey 2022 Comprehensive Report* 7 (June 2023), perma.cc/M8ET-DNRQ (cited at Compl., R.1, PageID#13). And Michigan self-reported the third-highest active registration rate in the country to the Commission in 2022—one of only three States (including D.C.) with a statewide active registration rate above 95%. *Id.* at 162-66.

But the district court bucked this universal precedent. It concluded that "Plaintiffs' census data alone, even assuming its reliability, does not plausibly indicate that Michigan is violating the NVRA." Op., R.35, PageID#513. That ruling is at odds with the district court's own prior decision from the previous presidential election cycle. *Daunt*, Doc. 31 at 9, No. 1:20-cv-522. It's at odds with the district court's continued approval of Plaintiffs' methodology in the next election cycle. *See Pub. Int. Legal Found.*, 2022 WL 21295936, *10. And it's at odds with every other district court to decide this issue. This Court should reverse.

B. Plaintiffs' numerous other allegations bolster their NVRA claim.

Plaintiffs' complaint includes more than just impossible and implausible registration rates across the State. It details how certain counties are not keeping up with residency changes, and other counties are not removing voters even after marking them inactive. Compl., R.1, PageID##13-15. And it documents six jurisdictions—including Michigan—that settled lawsuits after plaintiffs alleged similarly high

registration rates. *Id.* at PageID##15-16. Each allegation supports an inference that Defendants are liable for NVRA violations.

Start with the residency changes. Relying on the federal Election Assistance Commission's report, the complaint alleges that certain Michigan counties canceled fewer than 2% of registrations for residency changes from 2020 to 2022 despite population data showing that anywhere from 7.4% to 12.8% of residents relocated during that time. Compl., R.1, PageID#14. "In Isabella County, for example, 23.5% of residents moved within the last year, but the county removed on average only about 1.4% of its registered voters for residency changes during that time." *Id.* Courts have held that these residency discrepancies raise a plausible inference of a violation. *Compare Griswold*, 554 F. Supp. 3d at 1108 ("the 2018 EAC Report shows that 30 Colorado counties reported removing fewer than 3% of voters," even though "18% of Coloradans were not living in the same house as a year ago"), *with* Compl., R.1, PageID#14 (the 2020-2022 EAC Report shows that "10 Michigan counties reported cancelling less than 2% of their registration lists for residency changes during that period" even though "more than 12% of Michigan's residents were not living in the same house as a year ago").

The district court rejected that inference. It reasoned that an unusually low cancellation rate "would not offend the NVRA" because the NVRA prohibits removing voters who have moved from the rolls unless they fail to respond to a notice sent by the State for "at least two federal general elections." Op., R.35, PageID#513. But the

two-election-cycle requirement applies only to involuntary removals due to "a change in the residence of the registrant." 52 U.S.C. §20507(a)(4). Nothing prohibits Defendants from removing voters immediately upon their "request," *id.*, or when a voter "confirms in writing" that she has changed residence, *id.* §20507(d)(1)(A). Indeed, "the very act of filling out a form to register in another county is by itself a written confirmation of the fact that a voter has changed residence." *Ariz. All. for Retired Ams.*, 117 F.4th at 1187 (Lee, J., concurring). Defendants could also use the U.S. Postal Service's "National Change of Address" program to confirm that voters have moved. *Bellitto*, 302 F. Supp. 3d at 1343. At a minimum, State law requires Defendants to move voters to inactive status after receiving other evidence that they've moved, even without waiting the full two election cycles. *See* Mich. Comp. Laws §§168.509r(5), 509aa. Each of these facts defeats the district court's inference that Michigan's bloated rolls can be explained entirely by the NVRA's two-election-cycle waiting period for residency notices.

Even if the NVRA prohibits removing some of those voters immediately, Plaintiffs alleged several other deficiencies with Michigan's change-of-address procedures. For example, "the entire State sent out only 590,172 confirmation notices during the two-year reporting period, representing just 8.1% of active voters." Compl., R.1, PageID#14. "More than 30% of those notices were returned as undeliverable," and "14% were returned as invalid." *Id.* In fact, "[o]nly 0.1% of confirmation notices sent out to Michigan voters were confirmed as valid." *Id.* But the State "removed only

485,916 registrations during that period, representing just 5.9% of registered voters." *Id.* at PageID#15. And "[n]early half of those cancellations were deceased voters." *Id.* In short, the complaint contrasts a highly mobile population with a low notice rate, and an even lower removal rate. The NVRA's two-election-cycle waiting period has nothing to do with those allegations.

Regardless, the district court's alternative explanation doesn't defeat Plaintiffs' plausible claims. To start, the court's alternative explanation is not inconsistent with Plaintiffs' claims. Even if the two-election-cycle requirement could explain part of the inflated rolls—and neither the Defendants nor the court could say how much—that does not exclude the plausibility that deficient list-maintenance is responsible for the rest. "Often, defendants' conduct has several plausible explanations," but "[f]erreting out the most likely reason for the defendants' actions is not appropriate at the pleadings stage." *Watson Carpet & Floor Covering*, 648 F.3d at 458. Rather, "[p]laintiff's complaint may be dismissed only when defendant's plausible alternative explanation is so convincing that plaintiff's explanation is *im* plausible." *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). So even if "the two-election cycle waiting period" were "a potentially reasonable explanation" for the low cancellation rate, the "validity of that explanation is not appropriate for determination at this early stage of the litigation, where the court views the factual allegations and inferences drawn therefrom in favor of [Plaintiffs]." *Voter Integrity Project*, 301 F. Supp. at 619; *accord Griswold*, 554 F. Supp. at 1108.

Michigan's high rate of inactive registrations is even more evidence that Defendants are failing to maintain their voter rolls. In 2022, the State as a whole "reported 928,845 inactive registrations, representing 11.3% of the total registrations." Compl., R.1, PageID#13. That number "is slightly above the national average of 11.1%." *Id.* But at least ten counties "have inactive registration rates of 15% or greater, well above the state and national averages." *Id.* Gogebic and Washtenaw Counties, for example, reported that 20% of their registered voters were listed as "inactive." *Id.* These high inactive registration rates indicate that these counties are failing to *remove* ineligible voters from the rolls even after marking those voters as inactive. Once again, courts agree: a "high 'inactive registration rate'" of "17%" in "eight counties" is evidence that a State may "not actually be implementing" the NVRA's removal requirements. *Griswold*, 554 F. Supp. 3d at 1097, 1108. The district court dismissed these allegations with virtually no reasoning. *See* Op., R.35, PageID#513.

Michigan's voter rolls display numerous signs that Defendants are shirking their list-maintenance duties. Each sign has been held by many courts to raise a plausible inference of an NVRA violation. And Michigan's rolls are far worse than the rolls in each of those cases. The district court didn't even engage with the unanimous agreement from other district courts on these issues. This Court should acknowledge the wisdom of over half a dozen other courts and reverse the outlier errors below.

C. The district court raised Plaintiffs' pleading burden by demanding violations, evidence, and remedies not appropriate at this early stage.

Besides rejecting Plaintiffs' numerous allegations regarding Michigan's bloated voter rolls, the district court committed at least three other errors: It required plaintiffs to plead specific policy shortcomings beyond what the NVRA requires. It demanded evidence—not just allegations—of Defendants' violations. And it required Plaintiffs to detail the scope of their relief, even though a motion to dismiss tests only whether Plaintiffs are *entitled* to relief. Each error is another reason this Court should reverse the district court's judgment.

First, the district court erred by requiring Plaintiffs to plead violations beyond what the statute commands. Section 8 of the NVRA "requires States to 'conduct a general program that makes a reasonable effort to remove the names' of voters who are ineligible 'by reason of' death or change in residence." *Husted*, 584 U.S. at 761 (quoting 52 U.S.C. §20507(a)(4)). Stating a claim for a Section 8 violation requires only a reasonable inference that "a jurisdiction [is] not making a reasonable effort to conduct a voter list maintenance program." *Griswold*, 554 F. Supp. 3d at 1107. The district court demanded more. It required Plaintiffs to allege in their complaint the "specific breakdown in Michigan's removal program." Op., R.35, PageID##512, 514. But the statute "simply requires 'reasonable effort' on the part of the State," *King*, 993 F. Supp. 2d at 922, so identifying specific policies that Michigan must adopt or repeal cannot be part of Plaintiffs' pleading burden, *Daunt*, No. 1:20-cv-522, ECF No. 46, PageID#376.

The NVRA requires reasonable list maintenance, not specific policies. *King*, 993 F. Supp. 2d at 922 ("It is not surprising that the Letter does not contain any detailed allegations, inasmuch as the NVRA provision at issue does not contain any detailed requirements; it simply requires 'reasonable effort' on the part of the State.").

The district court also overlooked that Plaintiffs' claim relies on an omission: Defendants are failing to conduct reasonable list maintenance. "[L]ittle factual detail is necessary or available when a plaintiff is alleging that the defendant failed to act." *Arvizu v. Medtronic Inc.*, 41 F. Supp. 3d 783, 792 (D. Ariz. 2014); *accord Washington v. Baenziger*, 673 F. Supp. 1478, 1482 (N.D. Cal. 1987). The NVRA requires States to "conduct" a list-maintenance program, 52 U.S.C. §20507(a)(4), not to simply "have" a program. Defendants might be able to win at trial if they demonstrate as a "factual" matter that they "reasonably used [the enacted] process." *Bellitto*, 935 F.3d at 1205-06. But merely having a policy on the books does not satisfy the NVRA if Defendants are not following the policy. Plaintiffs allege just that, based on the massively inflated voter rolls in over six dozen counties. The correctness of those allegations cannot be resolved at this stage. *See Griswold*, 554 F. Supp. 3d, at 1108 ("While it appears undisputed that this is Colorado's [enacted] program, the Court has no information about Colorado's compliance … without 'further development of the record.'").

Second, the district court demanded evidence beyond what Rule 8 requires. "[W]hether or not the State has a program, whether or not it's implemented a program, and whether or not it's reasonable, those are merits issues that, of course, aren't

decided" at the pleading stage. *Daunt*, Doc. 46 at 16, No. 1:20-cv-522 (Ex. A, R.27-1, PageID#435). The precise failure (or failures) in Michigan's list-maintenance program that has allowed for 53 counties to have impossibly high voter-registration rates "cannot be resolved without further development of the record." *Griswold*, 554 F. Supp. 3d at 1108-09 (cleaned up). "It is enough," at the pleading stage, that "the complaint plausibly allege the existence of an ongoing violation" under the NVRA. *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1044 (9th Cir. 2015); *see also Bellitto v. Snipes*, 221 F. Supp. 3d 1354, 1366 (S.D. Fla. 2016) (whether defendants' program is in "compliance" with the NVRA is "a fact-based argument more properly addressed at a later stage of the proceedings").

The district court cited no authority for its requirement that Plaintiffs must allege a "specific breakdown" in Michigan's removal program. Op., R.35, PageID#512. The language comes from the Middle District of Pennsylvania's decision in *Public Interest Legal Foundation v. Boockvar*, 495 F. Supp. 3d 354, 359 (M.D. Pa. 2020), which Defendants relied on in their motion to dismiss, Defs.' Mot. to Dismiss, R.19, PageID##298-99. But that court required "proof" of "a specific breakdown in Pennsylvania's voter registration system" only because the plaintiffs were requesting a preliminary injunction. *Boockvar*, 495 F. Supp. 3d at 357. Plaintiffs in this case are not requesting such "'extraordinary and drastic'" relief. *Id.* They are simply pleading their claims. To plead those claims, Plaintiffs must merely make "plausible" allegations that give rise to a "reasonable inference" that Defendants are not making a reasonable effort to remove

ineligible registrants from the voter rolls. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiffs thus do not need "proof" that they are "likely to succeed on the merits." *Boockvar*, 495 F. Supp. 3d at 358. The district court erred by applying the wrong standard of review.

The district court even required specific evidence unavailable to Plaintiffs without discovery. The court thought that Plaintiffs could have produced "a spreadsheet identifying the voter ID numbers of the registrants it had identified" that needed to be removed from Michigan's voter rolls. Op., R.35, PageID##512-13. Even if that evidence were necessary at trial, the "complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable," *Twombly*, 550 U.S. at 556.

Though they don't need evidence at this stage, Plaintiffs provided plenty. "[H]aving too many registered voters on county registration rolls is *evidence* that [Defendants have] violated Section 8 of the NVRA." *Am. C.R. Union*, 166 F. Supp. 3d at 795. Plaintiffs' census data is "the best population data available," and at least arguably more reliable for large-scale inferences. *Kirkpatrick v. Preisler*, 394 U.S. 526, 528 (1969). Regardless, the reliability of Plaintiffs' evidence is not relevant at the pleading stage, because a complaint may proceed even if it is "doubtful" there is "actual proof" for the alleged facts. *Twombly*, 550 U.S. at 555-56. Plaintiffs alleged sufficient factual content to raise a reasonable inference of liability. *See, e.g.*, *Green*, 2023 WL 2572210, at *5.

Third, the district court misunderstood Plaintiffs' requested relief. The district court claimed that Plaintiffs have not "requested any specific relief." Op., R.35, PageID#512. The complaint belies that assertion. Plaintiffs requested "[a] permanent injunction" and a "[a] declaratory judgment" to "ensure that ineligible registrants are not on the voter rolls." Compl., R.1, PageID#20. Plaintiffs seek relief that will result in "ineligible registrants" being removed from Michigan's "voter rolls." *Id.* They want a court order directing Defendants perform "reasonable and effective registration list-maintenance programs to cure their failure to comply with section 8 of the NVRA." *Id.* Plaintiffs do not need to name which exact voters are ineligible and need to be removed. *See Daunt*, Doc. 46 at 15-16, No. 1:20-cv-522 (Ex. A, R.27-1, PageID##434-35).

At this stage, Plaintiffs need not describe what exact reforms to Michigan's voter list maintenance program the court should require Defendants to adopt. Those are questions about the scope and nature of the remedy, not whether Plaintiffs state a "claim" showing that they are "entitled to relief."" *Carrier Corp.*, 673 F.3d at 444 (quoting Fed. R. Civ. P. 8(a)(2)). Discovery will reveal the answers to those questions. The federal rules merely require "a demand for the relief sought." Fed. R. Civ. P. 8(a)(3). Plaintiffs' complaint plainly states that declaratory and injunctive relief is being sought to cure the violations identified in the complaint. Compl., R.1, PageID#20. Those allegations satisfy Rule 8's pleading standard.

* * *

In sum, the district court imposed a heightened pleading standard on Plaintiffs. It weighed their factual claims, proposed alternative explanations, demanded additional evidence, and required Plaintiffs to allege violations beyond what the NVRA requires. The court refused to draw inferences in Plaintiffs' favor solely because it believed that the NVRA "prohibits states from removing voters suspected of moving until at least two federal general elections have passed since those voters failed to respond to an official notice." Op., R.35, PageID#513. The district court's inference is unwarranted because it doesn't explain how much inflation is attributable to the NVRA itself; it doesn't account for Plaintiffs' two general election cycles worth of U.S. Census data; and it doesn't address Plaintiffs' other demands to remove deceased, incarcerated, and other ineligible voters.

Regardless, even if "Secretary Benson's position" were "equally plausible," that would be "insufficient to warrant dismissal under Rule 12." *Pub. Int. Legal Found.*, 2022 WL 21295936, at *10. Plaintiffs need only raise a "reasonable inference" that Defendants are "liable." *Iqbal*, 556 U.S. at 678. This Court should reverse the district court's refusal to draw those inferences in Plaintiffs' favor.

CONCLUSION

For the foregoing reasons, this Court should reverse the district court's judgment. In the alternative, the Court should vacate and remand with instructions to allow Plaintiffs to amend their complaint.

Dated: January 16, 2025

Respectfully submitted,

/s/ Thomas R. McCarthy

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CERTIFICATE OF COMPLIANCE

This brief complies with Federal Rule of Appellate Procedure 32(a)(7) because it contains no more than 13,000 words, excluding the parts that can be excluded. This brief also complies with Rule 32(a)(5)-(6) because it is prepared in a proportionally spaced face using Microsoft Word 2016 in 14-point Garamond font.

Dated: January 16, 2025 */s/ Thomas R. McCarthy*

CERTIFICATE OF SERVICE

I filed this brief on the Court's electronic filing system, which will email everyone requiring notice.

Dated: January 16, 2025 */s/ Thomas R. McCarthy*

ADDENDUM

Designation of relevant documents under Local Rules 30(B) and 32.1(a)

Record Entry	Document	Filing Date	PageID#
1	Plaintiffs' Complaint	March 13, 2024	1-21
18	Defendants' Motion to Dismiss	April 15, 2024	261-62
19, 19-1, 19-2, 19-3	Defendants' Brief in Support of Motion to Dismiss with Exhibits	April 15, 2024	263-320
27, 27-1	Plaintiffs' Response in Opposition to Motion to Dismiss with Exhibit	May 20, 2024	395-445
35	District Court's Opinion and Order	October 22, 2024	485-514
37	Plaintiffs' Notice of Appeal	November 8, 2024	516-517
27-1	*Daunt v. Benson*, No. 1:20-cv-522, ECF No. 46 (W.D. Mich. Nov. 3, 2020) (oral opinion)	May 20, 2024	419-45