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 *District Court Case No. 24-262*

AMICUS CURIAE BRIEF IN SUPPORT OF APPELLEES

Aria C. Branch
Chris D. Dodge
Tina Meng Morrison
William K. Hancock
ELIAS LAW GROUP LLP
250 Massachusetts Ave NW, Suite 400
Washington, DC 20001
(202) 968-4490
abranch@elias.law
cdodge@elias.law
tmengmorrison@elias.law
whancock@elias.law

Sarah S. Prescott (P70510)
SALVATORE PRESCOTT
PORTER & PORTER, PLLC
105 East Main Street
Northville, Michigan 48167
(248) 679-8711
sprescott@spplawyers.com

Counsel for Amici Curiae
Detroit Disability Power and Alliance for Retired Americans

CORPORATE DISCLOSURE STATEMENT

Pursuant to the Federal Rules of Appellate Procedure and Sixth Circuit Rule 26.1, counsel for Amici Curiae certifies that both organizations are nonprofit corporations which are not a subsidiary or affiliate of a publicly owned corporation, and no publicly owned corporation that is not a party to this appeal has a financial interest in its outcome.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF INTEREST[1]

Amici Curiae are two nonprofit organizations dedicated to promoting the electoral franchise and protecting the constitutional rights of their members. Amici submit this brief in support of Appellees' position that the district court's dismissal of the complaint should be affirmed.

Detroit Disability Power is a Michigan nonprofit with approximately 300 members with the mission of building the political power of the disabled community in the Detroit region. Many of the organization's members have disabilities that make them particularly vulnerable to being erroneously removed from the voter rolls. This includes disabilities that limit their capacity to access written information, such as blindness, impaired vision, and reading disabilities. Voter purges, which rely on written notice to inform registered voters that their registrations will be cancelled absent corrective action, *see* 52 U.S.C. § 20507(d)(1)(B)(i), (2); Mich. Comp. Laws § 168.509aa(5), expose these voters to an elevated risk of erroneous cancellation. Voters with disabilities also face elevated risks of unemployment, poverty, and housing insecurity, which further increases the risk of erroneous registration

[1] All parties have consented to the filing of this amicus curiae brief. *See* Fed. R. App. P. 29(a)(2). No party or party's counsel authored this brief in whole or in part; nor did any party or party's counsel contribute money to fund the preparation of this brief. Neither Detroit Disability Powers nor Alliance for Retired Americans earmarked or contributed funds for the preparation of this brief. Funding for the preparation of this brief was contributed by a non-party, Priorities USA Action.

cancellation. If Plaintiffs succeed in obtaining a court order requiring the purging of voters, Detroit Disability Power will need to devote staff and volunteer time to inform its members of the voter purge, help them confirm their registrations, and assist if their registrations are cancelled.

The Alliance for Retired Americans is a nonprofit organization with over 4.4 million members nationwide. Its mission is to ensure the social and economic justice and full civil rights that retirees have earned after a lifetime of work, with a particular emphasis on safeguarding the right to vote. The Alliance's Michigan chapter has more than 200,000 members comprising retirees from 23 public and private sector unions, members of community organizations, and individual activists. The Alliance's members are particularly vulnerable to being erroneously removed from the voter rolls because many retirees relocate within Michigan or spend extended periods of the year outside of Michigan. Because Michigan uses returned election mail and mailed notices to determine whether a voter is still a Michigan resident, moving and traveling increases a voter's risk of wrongful removal. Given the impact Plaintiffs' requested relief would have on its members, Alliance leadership would need to devote time and resources to informing its members of the purge and helping them remain registered and re-register if their registrations are erroneously cancelled.

INTRODUCTION

Plaintiffs the Republican National Committee and two Michigan voters brought this lawsuit seeking to obtain a court order that would require Appellees to initiate a sweeping voter purge on the eve of the November 2024 election. Plaintiffs' complaint draws on unsupported allegations of "inflated" voter rolls to support a single claim: that Michigan has failed to comply with its responsibility under the National Voter Registration Act ("NVRA") to make "reasonable efforts" to conduct list maintenance. 52 U.S.C. § 20507(a)(4). The district court correctly dismissed Plaintiffs' complaint for two reasons. First, as a threshold matter, Plaintiffs failed to plausibly allege Article III standing under Rule 12(b)(1). Second, Plaintiffs failed to plausibly state a claim for relief under Rule 12(b)(6). Amici Curiae Detroit Disability Power and Alliance for Retired Americans urge the Court to affirm the district court's decision.

ARGUMENT

This lawsuit is barred both procedurally and on the merits. First, the alleged injuries that Plaintiffs assert—concerns over election integrity and vote dilution, and the expenditure of resources to combat those concerns—are not sufficient for Article III standing. As a result, the federal courts lack jurisdiction to even consider the claim. But even beyond this fundamental jurisdictional defect, Plaintiffs fail to state a claim upon which relief may be granted. Simply alleging that Michigan *must* be

violating the NVRA because several counties have—in Plaintiffs' view—"impossibly high" voter registration rates, is insufficient to state a plausible claim under Section 8 of the NVRA. To protect against the risk of erroneous cancellation of valid voter registrations, the NVRA *requires* that States maintain inactive voters on the rolls until their lack of eligibility is confirmed either in writing or based on non-participation in two consecutive federal general elections. A mere assertion that Michigan's rolls contained a high number of inactive voters when this case was filed—right before a federal election—indicates the State's *compliance* with the law and is far from a sufficient basis to plausibly allege its violation. As the district court noted, Michigan has scheduled 500,000 voters for removal this year. Opinion, R. 35, PageID # 493. That is fully consistent with Michigan's compliance with both prongs of the NVRA: protections for voters with unconfirmed address changes and diligent removal of voters "from Michigan's voter rolls on a regular and ongoing basis." *Pub. Int. Legal Found.* ("*PILF*") *v. Benson*, 721 F. Supp. 3d 580, 596 (W.D. Mich. 2024). And the district court was right to conclude that, absent some specific allegation of purportedly illegal or unreasonable conduct, Plaintiffs' claims cannot properly be sustained. This is not a new standard; it is required by longstanding Sixth Circuit and Supreme Court precedent. *Bates v. Green Farms Condo. Ass'n*, 958 F.3d 470, 480 (6th Cir. 2020) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)) (a plaintiff cannot state a claim with only allegations that "are 'merely consistent

with' a defendant's liability"). Because Plaintiffs lack standing and their allegations lack "factual context to 'nudge' their statutory violation claim 'across the line from conceivable to plausible.'" Opinion, R. 35, Page ID # 512 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 683 (2009)), the district court's dismissal should be affirmed.

I. The Court should affirm the district court's conclusion that Plaintiffs failed to plausibly allege Article III standing.

Plaintiffs fail to allege any "concrete and particularized" injuries-in-fact that are sufficient to satisfy Article III. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). The district court's dismissal for lack of standing should be affirmed.

The individual plaintiffs have asserted—at best—only generalized grievances. They first allege that they "reasonably fear[] that ineligible voters can and do vote in Michigan elections," which "undermine[s] their confidence in the integrity of the electoral process." Compl., R. 1, Page ID # 5, 19, ¶¶ 19, 93. As the district court properly held, this is "an insufficient basis for properly invoking federal-court jurisdiction." Opinion, R. 35, Page ID # 501. This type of unsubstantiated "fear" of unlawful voting is precisely the sort of "psychic injury [that] falls well short of a concrete harm needed to establish Article III standing." *Glennborough Homeowners Ass'n v. United States Postal Serv.*, 21 F.4th 410, 415 (6th Cir. 2021); *cf. Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 619–20 (2007) (Scalia, J., concurring) (recognizing that a plaintiff whose only injury is subjective mental angst "lacks a concrete and particularized injury" under Article

III). All Michigan residents share a common interest in fair and honest elections, and in the State's proper compliance with federal law. The individual plaintiffs' subjective "fears" about election integrity are the type of quintessential "generally available grievance about government" that rely upon assertions of "harm to [plaintiffs'] *and every* citizen's interest in proper application of the Constitution and laws." *Crawford v. United States Dep't of Treasury*, 868 F.3d 438, 453 (6th Cir. 2017) (quoting *Lujan*, 504 U.S. at 573–74) (emphasis added by Sixth Circuit).

The individual plaintiffs also allege a fear that "ineligible voters can and do vote in Michigan elections," and that those votes will "dilute" the individual plaintiffs' and RNC members' "legitimate vote." Compl., R. 1, Page ID # 4– 5, ¶¶ 18–19, 21–22. But courts have repeatedly rejected this exact theory as a cognizable basis for standing, finding that it, too, is a generalized grievance that could conceivably be raised by any voter in the state. *See, e.g.*, *Wood v. Raffensperger*, 981 F.3d 1307, 1314–15 (11th Cir. 2020) (finding "[v]ote dilution in this context is a paradigmatic generalized grievance that cannot support standing") (internal quotations omitted); *O'Rourke v. Dominion Voting Sys. Inc.*, No. 20-CV-03747-NRN, 2021 WL 1662742, at *9 (D. Colo. Apr. 28, 2021) (collecting cases), *aff'd,* No. 21-1161, 2022 WL 1699425 (10th Cir. May 27, 2022); *see also Election*

Integrity Project California, Inc. v. Weber, 113 F.4th 1072, 1089 n.13 (9th Cir. 2024) (similar and collecting cases).[2]

The RNC's diversion of resources injury fares no better. The district court properly rejected the RNC's claim that it could establish standing based on its allegations that it (1) "expended substantial time and resources investigating Defendants' failure to comply with their list-maintenance obligations," (2) "communicated with Michigan officials and concerned members about Defendants' failures," and (3) "researched statements made by Defendants in their correspondence." Opinion, R. 35, Page ID # 508. As the district court held, "[t]hese allegations do not describe a personal stake in the outcome of a controversy as to warrant invocation of federal-court jurisdiction" because no resources were

[2] *See also, e.g.*, *Wash. Election Integrity Coal. United v. Wise*, No. 2:21-CV-01394-LK, 2022 WL 4598508, at *4 (W.D. Wash. Sept. 30, 2022) (collecting cases and concluding that allegations of vote dilution do not create standing for plaintiffs); *Feehan v. Wisconsin Elections Comm'n*, 506 F. Supp. 3d 596, 608 (E.D. Wis. 2020) (noting several courts have concluded that claims of vote dilution fall into the "generalized grievance" category); *Martel v. Condos*, 487 F. Supp. 3d 247, 253 (D. Vt. 2020) ("If every voter suffers the same incremental dilution of the franchise caused by some third-party's fraudulent vote, then these voters have experienced a generalized injury."); *Paher v. Cegavske*, 457 F. Supp. 3d 919, 926 (D. Nev. 2020) ("But Plaintiffs' purported injury of having their votes diluted due to ostensible election fraud may be conceivably raised by any Nevada voter. Such claimed injury therefore does not satisfy the requirement that Plaintiffs must state a concrete and particularized injury."); *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 789 (W.D. Tex. 2015) ("[T]he risk of vote dilution[is] speculative and, as such, [is] more akin to a generalized grievance about the government than an injury in fact.").

"diverted to ameliorate and counteract the challenged practices," but were instead were expended "to discover whether any controversy exists." Opinion, R. 35, Page ID # 509; *see also Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013) (a plaintiff "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending").

Plaintiffs' theory of "informational injury" is also insufficient. Appellants' Br. at 14. Just like Plaintiffs' generalized concerns about election integrity, all Michigan voters share an interest in accurate voter rolls and registration information. And the Supreme Court's recognition of "informational injuries" in *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 375 (1982), concerned direct, particularized misrepresentations not present here. Moreover, Plaintiffs' theory fundamentally misunderstands the information provided by the state's voter roll, which is simply the list of voters who are, in fact, registered. It is not intended or represented as a perfect list of all eligible voters and only eligible voters—the NVRA expressly *requires* that some potentially ineligible voters be maintained on the rolls until their ineligibility is confirmed. 52 U.S.C. § 20507(d)(1). Given the nature of voter registration rolls, Plaintiffs have not even identified a misrepresentation on the part of Defendants—let alone one made directly to them in a particularized way, like in *Havens Realty*.

II. The Court should affirm the district court's conclusion that the complaint fails to allege a plausible violation of the NVRA.

Since Plaintiffs' standing allegations fail, the Court need not consider the matter any further, but even if it did, dismissal should be affirmed because Plaintiffs fail to state a claim upon which relief could be granted. Simply put, the complaint did not identify a single act or omission on the part of the Defendants that is illegal or unreasonable under Section 8 of the NVRA. Nor did it identify a single person who should have been removed from the voter rolls but was not removed. The district court's order dismissing the complaint for failure to state a claim should be affirmed. Plaintiffs' arguments to the contrary misstate or misapply the law, including the dismissal standard under Rule 12(b)(6), the State's obligations under the NVRA, and the case law addressing the requisite allegations to state a claim under the NVRA.

A. Plaintiffs' allegations signal compliance with the NVRA, not a violation.

The district court correctly held that, even if it had jurisdiction, Plaintiffs' complaint should be dismissed for failure to state a claim. Opinion, R. 35, Page ID # 514. Plaintiffs allege that Defendants have failed to make "reasonable efforts" to conduct voter-list maintenance under Section 8 of the NVRA, but rather than actually grappling with the state's lawful (and reasonable) processes for removing voters—many of which were described in the State's response to Plaintiffs' NVRA

Notice Letter—Plaintiffs build their claim entirely on purported "discrepancies" in voter registration data. In particular, Plaintiffs allege that the number of registered voters exceeds the possible or likely number of eligible voters. Compl., R. 1, Page ID # 2, ¶ 3. Plaintiffs wrongly assert that "the only explanation for these discrepancies is substandard list maintenance." *Id.* at Page ID # 12, ¶ 55. In reality, there is a perfectly lawful—and far more likely—alternative explanation: Michigan is complying with the express requirements of the NVRA.

The NVRA was passed by Congress to strike a careful balance between two sets of priorities: safeguarding and enhancing the registration and participation of eligible citizens in elections while ensuring that state voter rolls remain accurate and current. *See* 52 U.S.C. § 20501(b). The NVRA accomplishes this goal by purposefully "limit[ing] the methods which a state may use to remove individuals from its voting rolls . . . to ensure that eligible voters are not disenfranchised by improper removal." *U.S. Student Ass'n Found. v. Land*, 546 F.3d 373, 381 (6th Cir. 2008). Under the NVRA, a registrant may not be removed from the official list of eligible voters except (1) at the request of the registrant, (2) by reason of criminal conviction or mental incapacity, or death, or (3) under a program run by the state to remove ineligible voters because the voter has changed residences. 52 U.S.C. § 20507(a)(3)–(4). The manner in which voters can be removed under the state program is carefully choreographed in the statute itself. Voters cannot be removed

unless they confirm their change of residence in writing or fail to respond to a notice sent by election officials about the voter's purported change of residence. *Id.* § 20507(d)(1). If voters fail to respond to a change-of-address notice, the NVRA forbids actual removal of that voter from the rolls until the voter has neglected to vote in at least two federal general elections. This lag period—four years in total—is incorporated directly into Michigan law. *See* Mich. Comp. Laws § 168.509aa(4). Congress, and the Michigan state legislature, therefore made the deliberate decision to permit potentially ineligible voters to remain on the rolls for several years while the statutorily-prescribed removal process plays out. The reason for that is simple: to protect voters from erroneous cancellations and ensure that they are able to exercise their right to vote.

In view of the NVRA's requirements and Michigan's own statutory requirements mirroring those requirements, Plaintiffs' allegation that there are too many voters on the rolls in some Michigan counties fails itself to suggest any violation of the NVRA. As the U.S. Election Assistance Commission has "repeatedly" warned, relying on registration rates to assess NVRA compliance is inappropriate precisely because of the lag time the NVRA requires of states before voters can be removed. *See, e.g.*, U.S. Election Assistance Comm'n, Election Administration and Voting Survey 2022 Comprehensive Report 140, 157, *available at* https://www.eac.gov/sites/default/files/2024-11/2022_EAVS_Report_508c.pdf.

Thus, the numbers Plaintiffs rely on as "evidence" of an NVRA violation are instead fully consistent with Michigan adhering to the rigorous removal processes established by Congress.

Nor is it relevant how Michigan's voter registration levels compare to other states. To hold otherwise would suggest that every state with "below-average results . . . would create a plausible [NVRA] violation." *Smith v. CommonSpirit Health*, 37 F.4th 1160, 1166 (6th Cir. 2022). "That is why disappointing performance by itself does not conclusively point towards deficient decision-making, especially when we account for competing explanations." *Id.* at 1167 (quotations omitted). Here, there are patently obvious competing explanations—such as natural population shifts and mandatory restrictions on voter removal—thus Plaintiffs' "allegations standing alone do not move the claim from possible and conceivable to plausible and cognizable." *Id.* (citing *Twombly*, 550 U.S. at 570).

B. The district court did not err by pointing out Plaintiffs' failure to allege any specific deficiency with Michigan's list maintenance program.

Despite being provided detailed information on Michigan's list maintenance procedures in response to their request for information, Plaintiffs' complaint failed to identify a single action or inaction that could support a violation of the NVRA. Instead, the only references to the State's conduct in the complaint are bare, conclusory assertions that "Defendants are failing to make a reasonable effort to

conduct appropriate list maintenance." *See* Compl., R. 1, Page ID #3, ¶ 9. But, as this Court has repeatedly found, "conclusory allegations in the complaint that the defendant violated the law" are facially insufficient to state a claim. *16630 Southfield Ltd. P'ship v. Flagstar Bank, F.S.B.*, 727 F.3d 502, 504 (6th Cir. 2013).

Similarly, the complaint does not identify a *single* registered voter who Plaintiffs contend should have been removed from the rolls but were not removed. Instead, Plaintiffs "merely alleged their 'belief' that such people exist." *Flagstar Bank, F.S.B.*, 727 F.3d at 505–06. That is not enough. And Plaintiffs' reliance on selective county voter registration rates, which offer just a single snapshot in time of Michigan's voter rolls, can "in no way be taken as a definitive picture of what a county's registration rate is, much less any indication of whether list maintenance is going on and whether it's . . . reasonable." *Bellitto v. Snipes*, 935 F.3d 1192, 1208 (11th Cir. 2019) (citation omitted). "These are precisely the kinds of conclusory allegations that *Iqbal* and *Twombly* condemned and thus told [courts] to ignore when evaluating a complaint's sufficiency." *Flagstar Bank, F.S.B.*, 727 F.3d at 506.

Plaintiffs insist that requiring them to point to specific proof that Michigan is failing to comply with the NVRA is unfair because they claim that, to make such allegations, they would need "evidence unavailable to Plaintiffs without discovery." Appellants' Br. at 42. But it is well-established that "a plaintiff cannot use discovery to bridge the gap between a deficient pleading and the possibility that a claim might

survive upon further investigation." *Kovalchuk v. City of Decherd, Tennessee*, 95 F.4th 1035, 1041–42 (6th Cir. 2024). "[S]peculation about what may be learned during discovery" cannot substitute for factual allegations of misconduct—which a plaintiff must provide to state a claim. *Id.*

Moreover, Plaintiffs' appeal to discovery is particularly misplaced in the context of an NVRA claim, where civil discovery is not needed to obtain information about states' list maintenance procedures. Federal law requires states to maintain and "make available for public inspection . . . all records concerning the implementation of [list maintenance] programs and activities." 52 U.S.C. § 20507(i). Plaintiffs took advantage of that procedure. In response to Plaintiffs' request for information, the Department of State provided detailed information regarding its list maintenance procedures—none of which is referenced in the Complaint as purportedly illegal or unreasonable. *Compare* Letter, R. 19-3, with Compl, R. 1.

Most courts that have considered NVRA claims and allowed them to proceed beyond the motion to dismiss phase did so where the plaintiff either (1) identified voters who should have been removed but were not removed, or (2) identified actions or inactions on the part of Defendants that were allegedly unreasonable.[3]

[3] For example, in *Bellito v. Snipes*, the plaintiff alleged that specific lists of over 200 registered voters who should be removed were provided to the defendants and yet no action was taken to investigate or remove those voters. 221 F. Supp. 3d 1354, 1365 (S.D. Fla. 2016). And in *Voter Integrity Project NC, Inc. v. Wake Cnty. Bd. of*

Plaintiffs failed to do either here. The district court's resulting conclusion that they failed to allege a cognizable claim under the NVRA was consistent with the treatment of similar allegations by other federal courts, which have repeatedly recognized that merely pointing to "high voter registration rates . . . does not seem to provide adequate notice/evidence of non-compliance with the NVRA." *Jud. Watch, Inc. v. North Carolina*, No. 3:20-CV-211-RJC-DCK, 2021 WL 7366792, at *10 (W.D.N.C. Aug. 20, 2021); *see also PILF v. Boockvar*, 495 F. Supp. 3d 354, 359 (M.D. Pa. 2020) ("Without allegation . . . of a specific breakdown in Pennsylvania's voter registration system, we cannot find that the many procedures currently in place are unreasonable [under the NVRA]."). Similarly, earlier this year, a federal court in California dismissed an NVRA claim which exclusively relied on survey population data to infer non-compliance. *See* Order at 8, *Drouillard v. Roberts*, No. 24-cv-06969 (N.D. Cal. Jan. 27, 2025), attached as Exhibit A. Specifically, the court found the complaint insufficient because it did not allege "either that the California Elections Code fails to comply with the NVRA [or] that Defendants have failed to implement the California Elections Code." *Id.* at 7. Plaintiffs' allegations similarly fall short in this case.

Elections, 301 F. Supp. 3d 612, 619 (E.D.N.C. 2017), the plaintiff specifically alleged that the state "failed to use data from jury excusal communication[s]" as part of its list maintenance efforts and that the state's failure to "use a readily available tool" was relevant in determining the reasonableness of the state's list maintenance efforts. *Id.* Plaintiffs made no similar allegations here.

While a small number of district courts have permitted NVRA claims to proceed merely based on allegations of inflated voter rolls, those decisions are the exception, not the rule. Notably, none of the courts that have done so are within the Sixth Circuit. *See, e.g.*, *Jud. Watch, Inc. v. Griswold*, 554 F. Supp. 3d 1091 (D. Colo. 2021); *Am. C.R. Union v. Martinez-Rivera*, 166 F. Supp. 3d 779 (W.D. Tex. 2015); *Green v. Bell*, No. 3:21-CV-00493-RJC-DCK, 2023 WL 2572210, at *1 (W.D.N.C. Mar. 20, 2023).[4] This is for good reason: the holdings of those district courts directly contravene Sixth Circuit and Supreme Court precedent that a plaintiff cannot state a claim by alleging facts that "are 'merely consistent with' a defendant's liability." *Bates*, 958 F.3d at 480 (quoting *Twombly*, 550 U.S. at 557). And the requirement that plaintiffs allege some form of illegal or unreasonable conduct holds true for prior NVRA litigation in Michigan as well. For example, in *PILF v. Benson*, the plaintiff specifically identified over 27,000 voters whom the plaintiff alleged should have been removed from the rolls, but who had not been removed. *See PILF v. Benson*, No. 1:21-CV-929, 2022 WL 21295936, at *3, *10 (W.D. Mich. Aug. 25, 2022). Similarly, in *Daunt*, the Court denied the motion to dismiss because the plaintiffs provided "a fairly detailed statement of why . . . defendants haven't

[4] In addition, in *Judicial Watch v. King*, the district court denied a motion to dismiss an NVRA claim only after Defendants waived the argument that "the Complaint fail[ed] to state a claim due to the same lack of specificity." *Jud. Watch, Inc. v. King*, 993 F. Supp. 2d 919, 922 n.1 (S.D. Ind. 2012).

followed through on their obligation to come up with [a removal program]." *Daunt v. Benson*, Doc. 46, No. 1:20-cv-522 (W.D. Mich. Nov. 3, 2020), R. 27-1, Page ID # 434.[5] Here, there is no comparable allegation that the State is failing to "use a readily available tool" to discern which voters should be removed from the rolls. *Voter Integrity Project NC*, 301 F. Supp. 3d at 619. Dismissal was appropriate and should be affirmed.

CONCLUSION

Amici Curiae respectfully urge that the Court affirm the district court's dismissal.

[5] The *Daunt* plaintiffs specifically alleged that Michigan did not "require clerks, when conducting list maintenance, to use information from the U.S. Postal Services' National Change of Address system." Compl., *Daunt v. Benson*, No. 1:20-cv-522 (W.D. Mich. Nov. 3, 2020) (Complaint, attached as Exhibit B, at 13).

Date: March 11, 2025

Respectfully submitted,

/s/ Sarah S. Prescott

Sarah S. Prescott (P70510)
SALVATORE PRESCOTT
PORTER & PORTER, PLLC
105 East Main Street
Northville, Michigan 48167
(248) 679-8711
sprescott@sppplaw.com

Aria C. Branch
Chris D. Dodge
Tina Meng Morrison
William K. Hancock
ELIAS LAW GROUP LLP
250 Massachusetts Ave NW, Suite 400
Washington, DC 20001
(202) 968-4490
abranch@elias.law
cdodge@elias.law
tmengmorrison@elias.law
whancock@elias.law

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

I hereby certify, in accordance with Rule 32(g) of the Federal Rules of Appellate Procedure, that this motion complies with the type-volume requirements of an amicus brief and contains 4,138 words. *See* Fed. R. App. P. 28.1(e)(2)(B).

I further certify that this motion complies with the typeface requirements of Federal Rule 32(a)(5) and the type-style requirements of Federal Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point font.

Respectfully submitted,

Sarah S. Prescott
Sarah S. Prescott

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2025, I electronically filed the above document with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

Respectfully submitted,

Sarah S. Prescott
Sarah S. Prescott

Exhibit A

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRANCIS DROUILLARD, et al.,

Plaintiffs,

v.

LYNDA ROBERTS, et al.,

Defendants.

Case No. 24-cv-06969-CRB

ORDER GRANTING MOTION TO DISMISS

On October 4, 2024, pro se Plaintiffs brought suit against Defendants, alleging that Marin County failed to remove ineligible voters from the voter rolls in the lead-up to the November 5, 2024 General Election. See Compl. (dkt. 1). The complaint included claims under the Fourteenth Amendment's Equal Protection Clause, the National Voter Registration Act (NVRA), and the Help America Vote Act (HAVA). Id. Plaintiffs filed a First Amended Complaint (FAC) ten days later with the same three claims. See FAC (dkt. 9). Plaintiffs then filed an application for a TRO on October 24, 2024. See App. for TRO (dkts. 10, 12). They asked the Court to (1) order Defendants "to intercept and sequester ballots returned by ineligible voters" and (2) enjoin Defendants "from opening envelopes of ballots returned by ineligible voters, or processing or counting those ballots." See Proposed TRO (dkt. 10-4). The Court denied the application on November 4, 2024, holding that Plaintiffs lacked Article III standing and that all three claims in the "sparse" FAC were unlikely to succeed. See Order Denying TRO (dkt. 31) at 2.[1]

The election went forward without interference from this Court. Plaintiffs did not

[1] That order provides a more detailed discussion of this case's background. The Court will not repeat it here.

amend their complaint, despite having expressed an intent to do so. See Mot. (dkt. 37) at 3; Stip. (dkt. 32) at 2. Defendants have now moved to dismiss the FAC, arguing that Plaintiffs lack standing and fail to state a claim. See Mot.; Reply (dkt. 41). Plaintiffs oppose the motion. See Opp'n (dkt. 38).

I. LEGAL STANDARD

Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a complaint may be dismissed for lack of subject matter jurisdiction. Article III standing is a threshold requirement for federal court jurisdiction. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992); Maya v. Centex Corp., 658 F.3d 1060, 1067 (9th Cir. 2011). To establish standing, a plaintiff must show that "(1) he or she has suffered an injury in fact that is concrete and particularized, and actual or imminent; (2) the injury is fairly traceable to the challenged conduct; and (3) the injury is likely to be redressed by a favorable court decision." Salmon Spawning & Recovery Alliance v. Gutierrez, 545 F.3d 1220, 1225 (9th Cir. 2008); see also Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S. 464, 472 (1982). A qualifying injury-in-fact is one that is "distinct and palpable, as opposed to merely abstract . . . or hypothetical." Whitmore v. Ark., 495 U.S. 149, 155 (1990). "The party invoking federal jurisdiction bears the burden of establishing these elements." Lujan, 504 U.S. at 561.

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a claim may be dismissed for failure to state a claim upon which relief may be granted. Dismissal may be based on either "the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." Godecke v. Kinetic Concepts, Inc., 937 F.3d 1201, 1208 (9th Cir. 2019). When evaluating a motion to dismiss, the Court "must presume all factual allegations of the [claim] to be true and draw all reasonable inferences in favor of the nonmoving party." Usher v. City of Los Angeles, 828 F.2d 556, 561 (9th Cir. 1987). A pleading must allege "enough facts to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 697 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is plausible "when the plaintiff pleads

factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. at 678. While a court must liberally construe pro se pleadings, Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988), such pleadings must nonetheless "meet some minimum threshold in providing a defendant with notice of what it is that it allegedly did wrong," Brazil v. U.S. Dep't of Navy, 66 F.3d 193, 199 (9th Cir. 1995).

II. DISCUSSION

Defendants argue that the Court should dismiss the FAC because (A) Plaintiffs lack standing to bring suit and (B) Plaintiffs fail to state a claim as to any of the causes of action. See Mot. at 5–12.[2] Plaintiffs agree to dismiss their Equal Protection claim and their HAVA claim, but insist that they do have standing and that they have stated a claim under the NVRA. See Opp'n at 1–3.

A. Standing

Defendants argue that Plaintiffs lack standing because—as the Court concluded in denying the application—Plaintiffs alleged no particularized injury. Mot. at 5–7 (citing Order Denying TRO at 7–8). Plaintiffs respond that the inclusion of ineligible voters on Marin County's voter rolls directly harms Plaintiffs because it means that their votes are diluted, and it undermines the integrity of elections, "directly impact[ing] Plaintiffs' ability to participate in fair elections." Opp'n at 2. The Court again agrees with Defendants.

To satisfy Article III's injury requirement, a plaintiff must show that he suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." Lujan, 504 U.S. at 560. For an injury to be "particularized," it "must affect the plaintiff in a personal and individual way." Spokeo, Inc. v. Robins, 578 U.S. 330, 339 (2016). To be "concrete," it must not be a "bare procedural violation." Id. at 341. "A litigant raising only a generally available grievance about the government—claiming only harm to his and every citizen's interest in proper

[2] Defendants also ask the Court to deny leave to amend and to stay discovery. Id. at 12–14.

application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy." Hollingsworth v. Perry, 570 U.S. 693, 705 (2013) (internal quotation marks omitted). "A citizen may not sue based only on an asserted right to have the Government act in accordance with law." FDA v. Alliance for Hippocratic Medicine, 602 U.S. 367, 381 (2024) (internal quotation marks omitted). In voting cases specifically, only "voters who allege facts showing disadvantage to themselves as individuals have standing to sue to remedy that disadvantage." Gill v. Whitford, 585 U.S. 48, 65–66 (2018) (cleaned up).

As this Court explained previously, Plaintiffs' assertion that they have been injured because their votes were diluted by the inclusion of ineligible voters on the voter rolls "is plainly inadequate." See Order Denying TRO at 7. The Ninth Circuit held last year that vote dilution is not actionable where "any diminishment in voting power that resulted was distributed across all votes equally." Election Integrity Project California, Inc. v. Weber, 113 F.4th 1072, 1085–87 (9th Cir. 2024). The reason for that is that "any ballot—whether valid or invalid—will always dilute the electoral power of all other votes in the electoral unit equally." Id. at 1087. "Vote dilution in a legal sense occurs only when disproportionate weight is given to some votes over others within the same electoral unit." Id.; see also 1089 n.13 ("[T]he mere fact that some invalid ballots have been inadvertently counted, without more, does not suffice to show a distinct harm to any group of voters over any other."). District courts within the Ninth Circuit have also so held. See Republican National Comm. v. Francisco Aguilar, No. 2:24-cv-00518-CDS-MDC, 2024 WL 4529358, at *3–4 (D. Nev. Oct. 18 2024) ("Johnston's vote dilution claim is nothing more than a generalized grievance" and "can be raised by every and any voter in the State of Nevada."); Strong Cmtys. Found. of Ariz. Inc. v. Stephen Richer, No. CV-24-02030-PHX-KML, 2024 WL 4475248, at *8 (D. Ariz. Oct. 11, 2024) (rejecting argument, in voter list maintenance action, that individual plaintiff suffered injury "because greater numbers of potentially-ineligible registrants dilute her vote" and explaining that "even if [plaintiff's] vote was 'diluted' in the colloquial sense plaintiffs allege, that type of 'dilution' does not

give [her] particularized injury in fact because it is also suffered by every other voter.").[3]

Plaintiffs' related assertion that the inclusion of ineligible voters on the voter rolls undermines the integrity of the election, see Opp'n at 2, also falls flat because it "can be raised by every and any voter in" Marin County. See Aguilar, 2024 WL 4529358, at *3–4; cf. Mussi v. Fontes, No. CV-24-01310-PHX-DWL, 2024 WL 4988589, at *8 (D. Ariz. Dec. 5, 2024) (where plaintiffs asserted "that their fear of vote dilution . . . erodes their confidence in the electoral process and discourages their participation," and the claim of vote dilution was "too generalized, too speculative, and premised on too many hypothetical contingencies to qualify as an injury-in-fact," plaintiffs could not "repackage[e] their fear of vote dilution (and attendant lack of confidence in the electoral process) as an independent theory.").

Plaintiffs make an additional argument for standing—that "Defendants failed to comply with NVRA requirements to make a 'reasonable effort' to maintain accurate voter rolls," which "harms Plaintiffs as eligible voters, satisfying the standing requirement." Opp'n at 2 (citing no authority). The Court reads that argument as conflating the question of Article III standing with the question of whether Plaintiffs have plausibly alleged an NVRA claim. Those are two separate questions. Defendants read that argument as conflating the question of Article III standing with the question of statutory standing under the NVRA, which requires that a plaintiff be "aggrieved." See Reply at 4 (citing 52 U.S.C. § 20510(b)(2)). But Plaintiffs have not plausibly alleged that they were aggrieved. See Dobrovolny v. Nebraska, 100 F. Supp. 2d 1012, 1032 (D. Neb. 2000) ("plaintiffs do not have standing as 'aggrieved persons' under the NVRA because they do not allege that their rights to vote in a federal election have been denied or impaired."); Order Denying TRO at 7 n.12 ("Further, any suggestion that Plaintiffs "los[t]" their "constitutional right" to vote, see Mem. ¶ 25, is plainly wrong. Nothing prevents Plaintiffs from voting."). And, even if Plaintiffs had satisfied statutory standing, Article III standing requires more. While the

[3] Plaintiffs assert that "courts have recognized" that vote dilution is sufficient to confer standing, but they cite to no cases in support of that assertion. See Opp'n at 2.

"NVRA may bolster the concreteness of certain injuries that flow from statutory noncompliance," Article III injury must be "both concrete and particularized." See Mussi, 2024 WL 4988589, at *4. Defendants' alleged violation of the NVRA here would not injure only Plaintiffs; it would be shared by all Marin County voters. See id. at *6 (generalized grievance does not confer standing).

Because Plaintiffs have no particularized injury and sue only "'to have the Government act in accordance with law,'" see Alliance for Hippocratic Medicine, 602 U.S. at 381, they lack standing.

B. Failure to State a Claim

Defendants next argue that the FAC fails to state a claim for violation of the NVRA. Mot. at 10–12. The NVRA requires states to conduct "a general program that makes a reasonable effort to remove the names of ineligible voters from official lists of eligible voters by reasons of . . . a change in the residence of the registrant." 52 U.S.C. § 20507(a)(4)(B). The NVRA's safe harbor provision is one way that states can demonstrate compliance with that requirement. See id. § 20507(c)(1). The FAC alleges only that the NVRA requires states to "conduct programs to ensure only eligible voters remain on voter registration rolls," and that "Defendants' failure to implement these programs . . . has allowed thousands of ineligible voters to remain on the voter rolls." FAC ¶¶ 16–17.[4] That allegation does not state a claim.

First, setting aside the evidence of compliance presented to the Court in connection with the application for a TRO, see Order Denying TRO at 17–18 ("Defendants do have programs in place to remove ineligible voters, as evidenced by some of Plaintiffs' own exhibits . . ."), Plaintiffs' allegation is conclusory. See In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008) (citations omitted) (courts must "accept the plaintiff['s]

[4] As the Court explained previously, "the FAC offers no support for the 'thousands of ineligible voters' allegation, and the memorandum in support of the application for a TRO abandons that allegation entirely," instead asserting that "89 'confirmed out-of-state voters,' and 994 'alleged out-of-county voters' remain on the voter rolls." See Order Denying TRO at 17 (citing Mem. (dkt. 10-1) ¶¶ 21, 22).

allegations as true and construe them in the light most favorable to the plaintiff[],'' but need not "accept as true" "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences."). The FAC fails to allege how Defendants' voter list maintenance programs violate the NVRA.

Second, the FAC does not allege either that the California Elections Code fails to comply with the NVRA, that Defendants have failed to implement the California Elections Code, or even that Marin County has failed to satisfy the NVRA's safe harbor provision. But see Opp'n at 3 (asserting in conclusory fashion that Defendants' implementation of the safe harbor provision "is insufficient and fails to meet the 'reasonable effort' standard set by federal law."). Nor does the FAC allege why the presence of some ineligible voters on Marin County's voter rolls means that California's general program of voter list maintenance is not reasonable. But see id. (asserting in conclusory fashion that the inclusion of out-of-state voters on the voter rolls demonstrates "that Defendants have not implemented a reasonable program to ensure the accuracy of voter registration rolls").[5] The NVRA does not require perfect voter list maintenance programs. See Bellitto v. Snipes, 935 F.3d 1192, 1207 (11th Cir. 2019) ("the NVRA only requires that Broward County make a reasonable effort, not an exhaustive one."); see also Husted v. A. Philip Randolph Institute, 584 U.S. 756, 778 (2018) (expressing skepticism of "supposed 'reasonableness' requirement").

Plaintiffs add, in their opposition brief, that "Defendants failed to follow required procedures, such as changing a voter's status . . . when learning that the voter moved . . .

[5] The presence of out-of-state voters on the voter rolls does not mean that there are ineligible voters on the voter rolls. As the Court explained previously, "[n]ot all voters who change their address are ineligible to vote: a voter does not necessarily lose his residency if he moves to another state, and the California Elections Code specifically allows voters to temporarily change a mailing address but maintain their domicile for purposes of voting if, for example, they are attending school or serving in the military elsewhere. See, e.g., Cal. Elec. Code. § 2021(a) ('A person who leaves his or her home to go into another state or precinct in this state for temporary purposes merely, with the intention of returning, does not lose his or her domicile.'), § 2025 ('A person does not . . . lose a domicile solely by reason of his or her . . . absence from a place while employed in the service of the United States or of this state . . . nor while a student of any institution of learning, nor while kept in an almshouse, asylum or prison.')." Order Denying TRO at 13.

sending residency confirmation cards and adhering to timelines for removing ineligible voters." Opp'n at 3. Those allegations are not in the FAC. Even so, failing to change a voter's status when learning that the voter moved out of state is not actually a requirement of the NVRA. See 52 U.S.C. § 20507; Reply at 5 n.2 (asserting that it is a requirement under the California Elections Code §§ 2225(f); 2226(a)(2), (c)). And Plaintiffs' assertions about residency confirmation cards and timelines are conclusory. Plaintiffs insist that those assertions are "verifiable" and that they can be "fully substantiate[d]" if the Court grants them "access to voter roll maintenance records and related data exclusively within Defendants' position." Opp'n at 3 (adding that "[a]llowing limited discovery on the NVRA claim will ensure that Plaintiffs can present evidence supporting their allegations."). That is not how discovery works. See Matilock, Inc. v. Pouladdej, No. 20-CV-01186-HSG, 2020 WL 3187198, at *4 (N.D. Cal. June 15, 2020) ("Rule 8 is . . . designed to prevent parties from filing complaints to conduct fishing expeditions in the hope that they may uncover some helpful evidence. See Iqbal, 556 U.S. at 678–79 ('Rule 8 . . . does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.')."); Lloyd v. Lakritz, No. 15-cv-02478-PHX-DLR, 2016 WL 2865873, at *6–7 (D. Ariz. May 17, 2016) (plaintiff "may not throw out conclusory allegations in hopes of supporting her claims through discovery").

Plaintiffs also submit—but do not address in their opposition brief—a declaration by Plaintiff Francis Drouillard. See Drouillard Decl. (dkt. 38-1). Drouillard asserts that he purchased elections results data on the November 5, 2024 General Election, which shows that 516 registered voters who moved out of state and 60 confirmed out-of-state voters participated in the election. Id. ¶¶ 3, 4. Even if these assertions were allegations in the FAC, the presence of out-of-state voters on the voter rolls does not support a reasonable inference that Defendants' voter roll maintenance program is unreasonable. Again, "[n]ot all voters who change their address are ineligible to vote." Order Denying TRO at 13 (citing Cal. Elec. Code. §§ 2021(a), 2025).

Plaintiffs have failed to state a claim under the NVRA.

III. CONCLUSION

Because Plaintiffs lack standing and fail to state a claim for violation of the NVRA, the Court GRANTS the motion, without leave to amend.

IT IS SO ORDERED.

Dated: January 27 , 2025

CHARLES R. BREYER
United States District Judge

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

ANTHONY DAUNT,

Plaintiff,

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; SHERYL GUY, in her official capacity as Antrim County Clerk; DAWN OLNEY, in her official capacity as Benzie County Clerk; CHERYL POTTER BROWE, in her official capacity as Charlevoix County Clerk; KAREN BREWSTER, in her official capacity as Cheboygan County Clerk; SUZANNE KANINE, in her official capacity as Emmet County Clerk; BONNIE SCHEELE, in her official capacity as Grand Traverse County Clerk; NANCY HUEBEL, in her official capacity as Iosco County Clerk; DEBORAH HILL, in her official capacity as Kalkaska County Clerk; JULIE A. CARLSON, in her official capacity as Keweenaw County Clerk; MICHELLE L. CROCKER, in her official capacity as Leelanau County Clerk; ELIZABETH HUNDLEY, in her official capacity as Livingston County Clerk; LORI JOHNSON, in her official capacity as Mackinac County Clerk; LISA BROWN, in her official capacity as Oakland County Clerk; SUSAN I. DEFEYTER, in her official capacity as Otsego County Clerk; MICHELLE STEVENSON, in her official capacity as Roscommon County Clerk; and LAWRENCE KESTENBAUM, in his official capacity as Washtenaw County Clerk,

Defendants.

COMPLAINT

Case No. 1:20-cv-522

Plaintiff, Anthony ("Tony") Daunt, brings this action under the National Voter Registration Act of 1993 (NVRA), 52 U.S.C. §20507, against Defendants for declaratory and injunctive relief, and alleges as follows:

INTRODUCTION

1. Section 8 of the NVRA requires States to maintain clean and accurate voter registration records.

2. For at least 16 of its counties, Michigan has failed to live up to this requirement.

3. Leelanau County has more registered voters than it has adult citizens who are over the age of 18. That number of voters on the rolls is impossibly high.

4. An additional 15 counties—Antrim, Benzie, Charlevoix, Cheboygan, Emmet, Grand Traverse, Iosco, Kalkaska, Keweenaw, Livingston, Mackinac, Oakland, Otsego, Roscommon, and Washtenaw—have voter registration rates that exceed 90 percent of adult citizens over the age of 18. That figure far eclipses the national and statewide voter registration rate in recent elections.

5. Based on this and other evidence, Defendants are failing to make a reasonable effort to conduct appropriate list maintenance as required by the NVRA.

JURISDICTION AND VENUE

6. The Court has subject-matter jurisdiction because this case alleges violations of the NVRA. 28 U.S.C. §1331.

7. Venue is proper because a substantial part of the events or omissions giving rise to the claims occurred in this District and because some Defendants "reside" here. 28 U.S.C. §1391.

PARTIES

8. Plaintiff, Tony Daunt, is a duly registered Michigan voter. Daunt regularly votes in Michigan's primary and general elections. He plans to vote in Michigan's November 2020 general election, including for U.S. President, U.S. Senate, and other offices and ballot measures on the ballot.

9. Because Defendants do not maintain accurate voter rolls, Daunt reasonably fears that ineligible voters can and do vote in Michigan elections. Those votes will dilute his legitimate vote. And Michigan's inaccurate rolls undermine Daunt's confidence in the integrity of Michigan elections, which also burdens his right to vote.

10. Daunt has long been an active member of the Republican Party. He works in Michigan to advance conservative policies and to help elect Republican candidates. Daunt has served, among other roles, as a field director for the College Republican National Committee and a logistics manager and director for the Michigan Republican Party. He is currently an officer and member of the governing body of the Clinton County Republican Party, a member of the governing body of the Michigan Republican Party Committee, and the executive director of the Michigan Freedom Fund.

11. Because Defendants do not maintain accurate voter rolls, Daunt must spend more of his time and resources monitoring Michigan elections for fraud and

abuse, mobilizing voters to counteract it, educating the public about election-integrity issues, and persuading elected officials to improve list maintenance.

12. Defendant Jocelyn Benson is Michigan's Secretary of State. She is the State's chief election officer, Mich. Comp. Laws Ann. §168.21, and is responsible for coordinating the statewide list maintenance required by the NVRA, 52 U.S.C. §20509. Secretary Benson is sued in her official capacity.

13. Defendant Jonathan Brater is Michigan's Director of Elections. He is responsible for "perform[ing] the duties of the secretary of state under his or her supervision, with respect to the supervision and administration of the election laws." Mich. Comp. Laws Ann. §168.32. Director Brater is sued in his official capacity.

14. Defendant Sheryl Guy is the Clerk of Antrim County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk Guy is sued in her official capacity.

15. Defendant Dawn Olney is the Clerk of Benzie County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk Olney is sued in her official capacity.

16. Defendant Cheryl Potter Browe is the Clerk of Charlevoix County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk Browe is sued in her official capacity.

17. Defendant Karen Brewster is the Clerk of Cheboygan County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk Brewster is sued in her official capacity.

18. Defendant Suzanne Kanine is the Clerk of Emmet County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk Kanine is sued in her official capacity.

19. Defendant Bonnie Scheele is the Clerk of Grand Traverse County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk Scheele is sued in her official capacity.

20. Defendant Nancy Huebel is the Clerk of Iosco County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk Huebel is sued in her official capacity.

21. Defendant Deborah Hill is the Clerk of Kalkaska County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk Hill is sued in her official capacity.

22. Defendant Julie A. Carlson is the Clerk of Keweenaw County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk Carlson is sued in her official capacity.

23. Defendant Michelle L. Crocker is the Clerk of Leelanau County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk Crocker is sued in her official capacity.

24. Defendant Elizabeth Hundley is the Clerk of Livingston County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk Hundley is sued in her official capacity.

25. Defendant Lori Johnston is the Clerk of Mackinac County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk Johnston is sued in her official capacity.

26. Defendant Lisa Brown is the Clerk of Oakland County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk Brown is sued in her official capacity.

27. Defendant Susan I. DeFeyter is the Clerk of Otsego County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk DeFeyter is sued in her official capacity.

28. Defendant Michelle Stevenson is the Clerk of Roscommon County. She is the county's chief election officer and plays a direct role in list maintenance. Clerk Stevenson is sued in her official capacity.

29. Defendant Lawrence Kestenbaum is the Clerk of Washtenaw County. He is the county's chief election officer and plays a direct role in list maintenance. Clerk Kestenbaum is sued in his official capacity.

BACKGROUND

I. Statutory Background

30. Congress enacted the NVRA "to protect the integrity of the electoral process." 52 U.S.C. §20501(b)(3). Specifically, section 8 was enacted "to ensure that accurate and current voter registration rolls are maintained." §20501(b)(4).

31. Retaining voter rolls bloated with ineligible voters harms the electoral process, heightens the risk of electoral fraud, and undermines public confidence in elections. "Confidence in the integrity of our electoral processes is," in turn, "essential to the functioning of our participatory democracy." *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006).

32. Section 8 obligates States to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters" due to death or change of residence. 52 U.S.C. §20507(a)(4). "[F]ederal law makes this removal mandatory." *Husted v. A. Philip Randolph Inst.*, 138 S. Ct. 1833, 1842 (2018).

33. Each State's program for maintaining voter-registration lists must be "uniform, non-discriminatory, and in compliance with the Voting Rights Act." 52 U.S.C. §20507(b)(1).

34. Specifically, section 8 requires States to "remove the names of ineligible voters from the official lists of eligible voters by reason of (A) the death of the registrant;

or (B) a change in the residence of the registrant" to outside her current voting jurisdiction. 52 U.S.C. §20507(4)(A)-(B).

35. The Help America Vote Act (HAVA) also mandates that states adopt computerized statewide voter registration lists and maintain them "on a regular basis" in accordance with the NVRA. 52 U.S.C. §21083(a)(2)(A).

36. States must "ensure that voter registration records in the State are accurate and are updated regularly," an obligation that includes a "reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters." 52 U.S.C. §21083(a)(4).

37. HAVA's list-maintenance requirements include coordination with "State agency records on death" and "State agency records on felony status" to facilitate the removal of individuals who are deceased or rendered ineligible under state law due to a felony conviction. 52 U.S.C. §21083(a)(2)(A)(ii)(I)-(II).

38. According to the bipartisan Carter-Baker Commission, "registration lists lie at the root of most problems encountered in U.S. elections." Inaccurate voter rolls that contain "ineligible, duplicate, fictional, or deceased voters" invite "fraud." "While election fraud is difficult to measure" (because many cases go undetected, uninvestigated, or unprosecuted), "it occurs." "In close or disputed elections, and there are many, a small amount of fraud could make the margin of difference." And "the perception of possible fraud contributes to low confidence in the system." The

Supreme Court agrees. *See Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008) (op. of Stevens, J.).

39. Recognizing these concerns, the NVRA includes a private right of action. It empowers 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." §20510(b)(2).

II. Defendants' Obligations

40. Federal law makes Michigan's Secretary of State primarily responsible for list maintenance.

41. The NVRA requires each State to "designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under" the law. 52 U.S.C. §20509.

42. Michigan law designates the Secretary of State as the State's chief election officer. Mich. Comp. Laws Ann. §168.21. It further instructs the Director of Elections to "perform the duties of the secretary of state under his or her supervision, with respect to the supervision and administration of the election laws." §168.32.

43. County clerks also bear list-maintenance responsibilities, serving as the chief election official for each county.

44. Michigan law provides that "at least once a month, the county clerk shall forward a list of the last known address and birthdate of all persons over 18 years of age who have died within the county to the clerk of each city or township within the county." Mich. Comp. Laws Ann. §168.510. Then, "[t]he city or township clerk shall compare this list with the registration records and cancel the registration of all deceased electors." *Id.*

45. Many county clerks maintain voter registrations directly.

46. Ultimate responsibility for coordinating and overseeing all list-maintenance activities rests with the Secretary. A chief election official "may not delegate the responsibility to conduct a general program to a local official and thereby avoid responsibility if such a program is not reasonably conducted." *United States v. Missouri*, 535 F.3d 844, 850 (8th Cir. 2008).

47. Indeed, "the NVRA's centralization of responsibility counsels against ... buck passing." *Scott v. Schedler*, 771 F.3d 831, 839 (5th Cir. 2014). Courts have rejected the view that, "once the state designates" a local entity to assist with complying with federal law, "her responsibility ends." *Harkless v. Brunner*, 545 F.3d 445, 452 (6th Cir. 2008). "[I]f every state passed legislation delegating" their responsibilities "to local authorities, the fifty states would be completely insulated from any enforcement burdens." *Id.*

III. Defendants' Failure to Meet Their List-Maintenance Obligations

48. An estimated "24 million voter registrations in the United States—about one in eight—are either invalid or significantly inaccurate." *Husted*, 138 S. Ct. at 1838. Michigan is no exception.

49. Based on data gathered from the U.S. Census Bureau's 2014-18 American Community Survey and the most up-to-date count of registered voters available from the Secretary of State's office, one Michigan county has more registered voters than voting-eligible citizens, and 15 others have suspiciously high rates of voter registration. Thus, Michigan is failing to meet its list-maintenance obligations.

50. Comparing the registered voter count to the 2014-18 American Community Survey reveals that Leelanau County has a registration rate of 102%. In other words, there are more registered voters than eligible voters.

51. Additionally, 15 other counties across the State purport to have more than 90% (in some cases, approaching 100%) of their citizen voting-age populations registered to vote: Antrim (97.5%), Benzie (97.2%), Charlevoix (94.4%), Cheboygan (90.2%), Emmet (97.2%), Grand Traverse (95.3%), Iosco (90.4%), Kalkaska (93.5%), Keweenaw (92.1%), Livingston (93.5%), Mackinac (92.3%), Oakland (92.7%), Otsego (93.6%), Roscommon (91.2%), and Washtenaw (91.1%).

52. These voter registration rates are abnormally—or in the case of Leelanau, impossibly—high.

53. According to the U.S. Census Bureau, 66.9% of the citizen voting-age population was registered nationwide in the November 2018 election.

54. Similarly, 70.3% of the citizen voting-age population was registered in the November 2016 election.

55. The U.S. Census Bureau further reports Michigan's statewide voter registration rates for the 2018 and 2016 elections as 73.4% and 74.1% of the citizen voting-age population, respectively.

56. Thus, these 16 counties are significant outliers, touting voter registration rates 20 to 30 percentage points higher than the national figures from 2018 and 2016, and 15 to 25 percentage points higher than the state figures for the same period.

57. There is no evidence that these counties experienced above-average voter participation compared to the rest of the country or State. Instead, the only plausible explanation for these discrepancies is substandard list maintenance.

58. "[S]ignificantly high registration rates," like these, are a telltale sign that clerks are "not properly implementing a program to maintain an accurate and current voter registration roll, in violation of the NVRA." *Am. Civil Rights Union v. Martinez-Rivera*, 166 F. Supp. 3d 779, 791 (W.D. Tex. 2015).

59. For example, the United States sued Indiana for violating the NVRA in 2006, noting in its complaint that "25 counties had registration totals of 90-95%" of their voting-age population. Indiana quickly confessed to violating the NVRA in a consent decree.

60. Judicial Watch and True the Vote sued Indiana in 2012, explaining in their complaint that "26 counties … have voter registration rolls that contain between 90% and 100% of TVAP." Indiana agreed to conduct a significant, statewide process to clean up its voter rolls.

61. Also in 2012, Judicial Watch and True the Vote sued Ohio under the NVRA, alleging that "thirty-one counties … have voter registration rolls that contain between 90% and 100% of total voting age population." Ohio agreed to implement heightened review of the accuracy of its voter rolls.

62. Michigan itself has identified problems with list maintenance in the State.

63. Officials admit that Michigan law does not require clerks, when conducting list maintenance, to use information from the U.S. Postal Service's National Change of Address system.

64. The Qualified Voter File was created to maintain the accuracy of Michigan's voter rolls, but it "does not track automatically" critical information including many "[d]uplicate registrations," "[i]nvalid or rejected applications," "[c]onfirmation cards returned," or "[r]esult[s] of returned confirmation card." While this information can be entered manually, an internal "review" revealed that "information isn't always being entered into QVF properly."

65. Defendants' failure to maintain accurate voter rolls violates federal law and jeopardizes the integrity of the upcoming 2020 election.

IV. Plaintiff's Statutory Notice

66. Under the NVRA, "Plaintiffs have [statutory] standing assuming they provided proper notice within the meaning of 52 U.S.C. §20510(b)(1)." *Bellitto v. Snipes*, 221 F. Supp. 3d 1354, 1362 (S.D. Fla. 2016).

67. On February 26, 2020, Daunt mailed a statutory notice letter to Secretary Benson and Director Brater, notifying them that 19 Michigan counties were in violation of section 8 and formally requesting that Defendants correct these violations within the 90-day timeframe specified in federal law.

68. Daunt has since received updated comparisons based on recently available data, revealing that 16 Michigan counties are in violation of section 8. Those numbers are reflected above.

69. The notice letter stated that Daunt "hope[d] to avoid litigation and would welcome immediate efforts by [Defendants] to bring Michigan into compliance with Section 8."

70. Daunt asked the Secretary and Director to "establish, if one has not already been initiated, a comprehensive and nondiscriminatory list maintenance program in compliance with federal law" and to "identify and remove [several] categories of individuals from the official lists of eligible voters."

71. Daunt asked that the Secretary and Director "respond in writing within 45 days of the date of this letter," "fully describ[ing] the efforts, policies, and programs [Defendants] are taking, or plan to undertake prior to the 2020 general election to bring

Michigan into compliance with Section 8" and "not[ing] when [they] plan to begin and complete each specified measure and the results of any programs or activities you have already undertaken."

72. Additionally, Daunt requested that the Secretary and Director advise him "what policies are presently in place, or will be put in place, to ensure effective and routine coordination of list maintenance activities with the federal, state, and local entities" and to provide him with "a description of the specific steps [they] intend to take to ensure routine and effective list maintenance on a continuing basis beyond the 2020 election.

73. Daunt also requested that all Defendants take steps to preserve documents as required by section 8(i) of the NVRA, 52 U.S.C. §20507(i)(1)-(2), and other federal law. *See e.g.*, *In re Enron Corp. Sec., Derivative & Erisa Litig.*, 762 F. Supp. 2d 942, 963 (S.D. Tex. 2010) ("The obligation to preserve evidence arises when the party has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant to future litigation.").

74. Finally, the notice letter stated that Daunt would file a lawsuit under 52 U.S.C. §20510(b)(2) if the identified violations were not corrected within 90 days of receipt of his letter.

75. Defendants failed to respond to the notice letter.

COUNT
Violation of the NVRA

76. Plaintiff repeats and realleges each of the prior allegations in this complaint.

77. Defendants have failed to make reasonable efforts to conduct voter list-maintenance as required by §20507(a)(4) of the NVRA.

78. Plaintiff has suffered irreparable injuries as a direct result of Defendants' violation of section 8 of the NVRA.

79. Plaintiff will continue to be injured by Defendants' violations of section 8 of the NVRA until Defendants are enjoined from violating the law.

80. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against Defendants and provide the following relief:

A. A declaratory judgment that Defendants are in violation of section 8 of the NVRA;

B. A permanent injunction barring Defendants from violating section 8 of the NVRA;

C. A preliminary injunction ensuring that Defendants' failures to comply with section 8 of the NVRA are cured prior to the 2020 general election.

D. A preliminary injunction compelling Defendants to preserve all election list-maintenance records requested by Plaintiff;

E. An order instructing Defendants to develop and implement reasonable and effective registration list-maintenance programs to cure their failure to comply with section 8 of the NVRA and to ensure that ineligible registrants are not on the voter rolls;

F. Plaintiff's reasonable costs and expenses of this action, including attorneys' fees; and

G. All other further relief that Plaintiff may be entitled to.

Respectfully submitted,

Dated: June 9, 2020

/s/ Cameron T. Norris

William S. Consovoy
Cameron T. Norris
Tiffany H. Bates
CONSOVOY MCCARTHY PLLC
1600 Wilson Blvd., Ste. 700
Arlington, VA 22209
will@consovoymccarthy.com
cam@consovoymccarthy.com
tiffany@consovoymccarthy.com

Jason Torchinsky (application for admission forthcoming)
HOLTZMAN VOGEL
JOSEFIAK TORCHINSKY PLLC
45 North Hill Drive, Ste. 100
Warrenton, VA 20186
(540) 341-8800
JTorchinsky@hvjt.law

Counsel for Plaintiff