UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

REPUBLICAN NATIONAL COMMITTEE; DONALD J. TRUMP FOR PRESIDENT 2024, INC.; MICHIGAN REPUBLICAN PARTY; and RYAN KIDD, in his official capacity as Clerk of Georgetown Township,

Plaintiffs,

v.

GRETCHEN WHITMER, in her official capacity as Governor of Michigan; 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; U.S. SMALL BUSINESS ADMINISTRATION; ISABEL GUZMAN, in her official capacity as Administrator of the Small Business Administration; DEPARTMENT OF VETERANS AFFAIRS; and DENIS McDONOUGH, in his official capacity as Secretary of Veterans Affairs,

Defendants.

CIVIL ACTION

Case No. 1:24-cv-720-PLM-SJB

Hon. Paul L. Maloney
Hon. Sally J. Berens

VET VOICE FOUNDATION'S MOTION TO INTERVENE

ORAL ARGUMENT REQUESTED

Proposed Intervenor-Defendant Vet Voice Foundation ("Vet Voice") seeks to intervene as defendant in the above-captioned lawsuit to safeguard its and its subscribers and constituents' substantial and distinct legal interests, which will otherwise be inadequately represented. For the reasons discussed in the memorandum in support, filed herewith, Vet Voice is entitled to intervene in this case as a matter of right under Federal Rule of Civil Procedure 24(a)(2). In the alternative, Vet Voice requests permissive intervention under Rule 24(b). In compliance with Rule 24(c), Vet Voice has filed a proposed Motion to Dismiss as Exhibit A to this motion.

Vet Voice respectfully requests that the Court set a schedule regarding this motion to intervene that allows for Vet Voice's participation in any future briefing or hearings. Otherwise,

Vet Voice's and its subscribers and constituents' fundamental rights are at risk of irreparable harm, as described more fully in the memorandum in support of this motion. At bottom, this lawsuit directly threatens the voter registration of veterans. Vet Voice is an organization that is dedicated to serving and enfranchising veterans. It is entitled to intervene in this action to represent their interests. In the alternative, permissive intervention is appropriate to ensure that these proceedings are not decided with their critical perspective.

Pursuant to Local Rule 7.1(d) and Section III(B) of this Court's Information and Guidelines for Civil Practice, counsel for Vet Voice conferred with counsel for Plaintiffs and Defendants about their positions on this motion on July 24, 2024. Plaintiffs oppose intervention. State Defendants neither concur with nor object to intervention. Federal Defendants indicated that they would determine their position on intervention after reviewing Vet Voice's as-filed intervention papers.

WHEREFORE, Vet Voice requests that the Court grant it leave to intervene in the above-captioned matter and to file its proposed motion to dismiss.

Dated: July 24, 2024.

Respectfully submitted,

/s/ *Sarah S. Prescott*

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Counsel for Proposed Intervenor-Defendant Vet Voice Foundation

*Admission pending

CERTIFICATE OF SERVICE

I certify that on this 24th day of July, 2024, I caused to be served a copy of the above document on all counsel of record and parties via the ECF system.

/s/ *Sarah S. Prescott*
Sarah S. Prescott

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TABLE OF CONTENTS

INTRODUCTION

This case aims to make it harder for veterans to register to vote just months before a presidential election. Accordingly, the justification for this motion to intervene is straightforward and uncontestable: veterans deserve a voice in how the case is resolved. Since 2023, Michigan has designated offices of the Department of Veterans Affairs ("VA") as "voter registration agencies" under the National Voter Registration Act ("NVRA"). In practice, that means anyone who applies for assistance at a VA office must be offered the opportunity to register to vote there. Because VA offices overwhelmingly serve veterans, so, too, does their designation as registration agencies—veterans now have an easy way to register at a location they were likely to visit for other purposes.

Plaintiffs inexplicably aim to end this arrangement. But their case is meritless: as explained in the Proposed Motion to Dismiss filed herewith, Ex. A, Plaintiffs lack a coherent theory of standing; the court lacks subject-matter jurisdiction over the state-law claim at the heart of Plaintiffs' case; and each of their three counts is subject to dismissal under Rule 12(b)(6). More importantly for present purposes, none of the Plaintiffs can claim to speak for veterans. Nor can any of the Defendants, all of whom are government officers or agencies with an array of official obligations. But Proposed Intervenor Vet Voice Foundation ("Vet Voice") can speak for veterans—that is why Vet Voice was founded, and that is what it does every single day. And this case threatens its substantial interests, including its ongoing effort to turn out as many veteran and active-duty military voters in Michigan as possible. To protect its interests, Vet Voice is entitled to intervene as of right under Rule 24(a)(2). Alternatively, Vet Voice respectfully requests that it be granted permissive intervention under Rule 24(b) to ensure that veterans are not deprived of a voice in this case.

BACKGROUND

I. Voter Registration Agencies under the NVRA and Michigan Law

The NVRA is a federal law that requires states to provide simplified, voter-friendly systems for registering to vote. In enacting the NVRA, Congress aimed to increase access to the franchise by establishing "procedures that will increase the number of eligible citizens who register to vote in elections for Federal office" and by making it "possible for Federal, State, and local governments to implement [the NVRA] in a manner that enhances the participation of eligible citizens as voters in elections for Federal office." 52 U.S.C. § 20501(b)(1)–(2).

To further its pro-voter purposes, the NVRA requires states to designate state government offices that provide public assistance or disability services as voter registration agencies. *Id.* § 20506(a)(2). All designated offices in a state must offer the opportunity to register to vote with each application for service or assistance. *Id.* § 20506(a)(6). For instance, each person who applies for Medicaid at an office of the Michigan Department of Human Services must be offered the opportunity to register to vote.

The NVRA further requires that, "in addition to," the above state offices, a state must designate "other offices within the State as voter registration agencies." *Id.* § 20506(a)(3)(A). Those offices "may include" "[s]tate or local government offices" and "[f]ederal and nongovernmental offices, with the agreement of such offices." *Id.* § 20506(a)(3)(B). Federal agencies, in turn, are charged "to the greatest extent practicable" to "cooperate with the States in carrying out" the NVRA's mandate to designate voter registration agencies. *Id.* § 20506(b).

Shortly after the NVRA's 1994 enactment, the Michigan legislature enacted MCL § 168.509u, which delegates to the governor the authority to prepare a list of "the executive departments, state agencies, or other offices that will perform voter registration activities in this state." Then-Governor Engler subsequently issued Executive Order 1995-1, designating various

public-assistance offices as voter registration agencies and reserving the right to so designate "[a]ny other public office . . . by Executive Directive."

In May 2022, Governor Whitmer issued Executive Directive 2022-4, which noted that in the nearly three decades since Governor Engler's original designation, Michigan had witnessed "myriad changes to public assistance programs and programs that provide services to persons with disabilities, as well as to the offices that accept applications for and administer these programs." Yet no update to Michigan's NVRA designations had accompanied those changes. Accordingly, Governor Whitmer ordered a detailed examination of which Michigan offices should be designated registration agencies under the NVRA. In December 2023, Governor Whitmer acted on the results of the 2022 study by issuing Executive Directive 2023-6, which designated eight Michigan agencies voter registration agencies. In addition, and as is most relevant here, ED 2023-6 also designated the VA as a Michigan voter registration agency pursuant to an agreement between Michigan and the VA. Finally, in June 2024, Governor Whitmer issued Executive Directive 2024-3, designating the Small Business Administration as a registration agency.

II. Proposed Intervenor

Vet Voice Foundation is a nonpartisan nonprofit organization organized under section 501(c)(3) of the Internal Revenue Code. Ex. B, Decl. of Janessa Goldbeck ¶ 4 ("Goldbeck Decl."). Vet Voice's mission is to empower veterans across the country to become civic leaders and policy advocates. *Id.* ¶ 7. In particular, Vet Voice educates veterans on issues such as voting rights, disinformation, environmental protection, health care, and jobs. *Id.* Vet Voice has over 1.5 million subscribers across the country and nearly 127,000 in Michigan. *Id.* ¶¶ 5, 6. All its subscribers take affirmative steps to receive communications from Vet Voice. *Id.*

Increasing voter turnout among its subscribers, and among veterans and active-duty military voters more generally, is central to Vet Voice's mission: by turning out such voters, Vet

Voice builds its constituency's political power. *Id.* ¶ 9. To support its voter turnout work, Vet Voice has built a first-of-its-kind military voter file—comprising veterans, activity-duty military, and family—which includes over 357,000 Michigan voters. *Id.* ¶ 11. Vet Voice targets those voters through its communications to ensure they are registered, informed about the issues, and turn out to vote. *Id.* ¶¶ 12–13. This program is highly effective: For lower-propensity voters, engagement by a Vet Voice volunteer makes it three times more likely that the voter will turn out to vote. *Id.* ¶ 12. Vet Voice plans to target approximately 70,000 Michigan voters as part of its 2024 mobilization effort. *Id.* ¶ 14.

Voter registration is fundamental to Vet Voice's work. It cannot effectively educate and turn out Michiganders who are not registered because registration is a prerequisite to voting in Michigan. *Id.* ¶ 16. And voter registration at VA offices is an invaluable tool for Vet Voice, its subscribers, and its wider constituency of military and veteran voters. *Id.* ¶ 18. Most veterans interact with the VA frequently, as do many active-duty servicemembers. *Id.* Michigan's decision to offer voter registration at VA offices therefore gives veterans, their families, and many active-duty servicemembers an easy and convenient option for registering to vote or updating a voter registration. *Id.* And that option is particularly important for the many veterans who have service-connected disabilities—30 percent of all veterans and 46 percent of post-September 11 veterans. *Id.* ¶ 19. Such veterans generally visit VA facilities frequently and may face physical or other barriers to registration. *Id.* The option to register at VA offices therefore makes the franchise much more accessible for such veterans. *Id.*

ARGUMENT

I. Vet Voice is entitled to intervene as of right.

"Under Federal Rule of Civil Procedure 24(a)(2), district courts must permit anyone to intervene who, (1) in a timely motion, shows that (2) they have a substantial legal interest in the

case, (3) their absence from the case would impair that interest, and (4) their interest is inadequately represented by the parties." *Wineries of the Old Mission Peninsula Ass'n v. Township of Peninsula*, 41 F.4th 767, 771 (6th Cir. 2022) (*"Wineries*") (citation omitted). The Sixth Circuit instructs that "Rule 24 should be 'broadly construed in favor of potential intervenors.'" *Stupak-Thrall v. Glickman*, 226 F.3d 467, 472 (6th Cir. 2000) (quoting *Purnell v. City of Akron*, 925 F.2d 941, 950 (6th Cir. 1991)). In election law cases, this is doubly true, "and for good reason—the right to vote 'is regarded as a fundamental political right, because [it is] preservative of all rights.'" *Serv. Emps. Int'l Union Loc. 1 v. Husted*, 515 F. App'x 539, 543 (6th Cir. 2013) (per curiam) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)).

A. The motion to intervene is timely.

This motion is indisputably timely: It comes mere days after this suit was filed and before any substantive activity has occurred in the case. *See Priorities USA v. Benson*, 448 F. Supp. 3d 755, 763 (E.D. Mich. 2020) (suggesting that it would be "difficult to imagine a more timely intervention" than one filed within a few weeks of the complaint). Vet Voice seeks intervention to safeguard its and its subscribers and constituents' fundamental rights: a "legitimate" purpose, rendering the motion "timely in light of the stated purpose for intervening." *Kirsch v. Dean*, 733 F.App'x 268, 275 (6th Cir. 2018). And intervention will inflict no prejudice on the other parties: Vet Voice is prepared to follow any briefing schedule the Court sets and to participate in any future hearings or oral arguments, without delay.

B. Plaintiffs' claims threaten to impair the substantial interests of Vet Voice and its constituents.

This case threatens Vet Voice's and its subscribers and constituents' substantial interests. The Sixth Circuit describes the requirement of an impaired interest as "rather expansive," *Mich. State AFL–CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997), and one that "is to be construed

liberally," *Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987). Thus, an intervenor need not have the standing necessary to initiate a lawsuit, nor must an intervenor identify a "specific legal or equitable interest." *Mich. State AFL–CIO*, 103 F.3d at 1245 (quoting *Purnell*, 925 F.2d at 948). Rather, the intervenor's burden of establishing impairment of a protectable interest is "minimal," *id.* at 1247, and the alleged impairment need only be possible, not certain, *see Purnell*, 925 F.2d at 948, with "close cases" resolved "in favor of recognizing an interest under Rule 24(a)," *Mich. State AFL-CIO*, 103 F.3d at 1247.

Vet Voice has three interests which this lawsuit threatens to impair.

First, Vet Voice's mission is to mobilize as many Michigan veterans and military voters as possible. Goldbeck Decl. ¶¶ 9–14. The relief Plaintiffs seek would deprive veterans of the option to register to vote in a convenient manner at VA offices they are likely to frequent for other reasons. *Id.* ¶¶ 18–19. Such relief would necessarily harm Vet Voice's ability to achieve its mission—it would decrease the number of registered veterans in Michigan and increase the barriers to registering voters going forward. *Id.* ¶ 20. Both effects would, in turn, decrease the degree to which Vet Voice is able to mobilize veterans to vote. *Id.* ¶ 21. Such an injury to mission has been held to constitute irreparable harm for purposes of a preliminary injunction, *E. Bay Sanctuary Covenant v. Garland*, 994 F.3d 962, 984 (9th Cir. 2020)—a higher showing than is required for intervention.

Second, Vet Voice also has a substantial *representative* interest at stake: ensuring that its subscribers—and Michigan's veterans and military voters more generally—are able to register to vote. Goldbeck Decl. ¶ 21. A derivative interest in protecting members or constituents' access to the franchise is a well-established basis for intervention in NVRA litigation. *See, e.g.*, *Bellitto v. Snipes*, No. 16-cv-61474, 2016 WL 5118568 (S.D. Fla. Sept. 21, 2016) ("*Bellitto I*") (granting organization intervention of right); Op. & Order, *Judicial Watch, Inc. v. Ill. State Bd. of Elections*,

No. 24-cv-1867 (N.D. Ill. July 18, 2024), ECF No. 52 (same); *see also Pub. Int. Legal Found., Inc. v. Winfrey*, 463 F. Supp. 3d 795, 799 (E.D. Mich. 2020) (granting organization permissive intervention); Order Granting Mot. to Intervene, *Daunt v. Benson*, No. 1:20-cv-522 (W.D. Mich. Sept. 28, 2020), ECF No. 30 (same); Order Granting Mot. to Intervene, *Voter Integrity Project NC, Inc. v. Wake Cnty. Bd. of Elections*, No. 5:16-cv-683 (E.D.N.C. Dec. 1, 2016), ECF No. 26 (granting voters permissive intervention). In *Bellitto I*, for example, the district court permitted a union with many members in Florida to intervene because "the interests of its members would be threatened by [any] court-ordered 'voter list maintenance' sought by Plaintiffs," a "potential harm" the court found "particularly great in light of the upcoming 2016 General Election." *Bellitto I*, 2016 WL 5118568, at *2. And just last week, in *Judicial Watch*, the district court granted two unions intervention as of right to oppose the purging of Illinois's voter rolls, explaining that all "Rule 24 requires is that Proposed Intervenors identify an interest that a favorable result for Plaintiffs would damage." *Judicial Watch*, No. 1:24-cv-1867, slip op. at *8.

Similarly, here, Vet Voice seeks to intervene because its subscribers and constituents will be harmed by elimination of a valuable avenue for voter registration just months before a general election. The Sixth Circuit has held that an organization's interest in preserving its members' access to the franchise creates Article III standing—again, a higher burden than that required to intervene as of right. *See Am. C.L. Union of Ohio, Inc. v. Taft*, 385 F.3d 641, 646 (6th Cir. 2004) (holding that organization had standing where its members were "threatened with the imminent denial of their right to vote" and where preserving that right was "germane to the organization's purpose").

Third, Vet Voice will be forced to divert its scarce resources if Plaintiffs obtain the relief they seek. Goldbeck Decl. ¶ 21. Veterans who do not register at VA offices will have to register

somewhere else for Vet Voice to effectively mobilize them. And Vet Voice will need to devote additional resources to ensuring that they do—resources that could otherwise be directed toward Vet Voice's turnout efforts and issue advocacy. *Id.* As with the above interests, an organization's interest in avoiding impairment of its mission due to a need to divert resources satisfies the higher burden required for standing. *See, e.g.*, *Mia. Valley Fair Hous. Ctr. v. Metro Dev. LLC*, No. 2:16-cv-607, 2018 WL 1229841, at *3 (S.D. Ohio Mar. 7, 2018); *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 663 (9th Cir. 2021) ("[A]n organization has direct standing to sue where it establishes that the defendant's behavior has frustrated its mission and caused it to divert resources in response to that frustration of purpose."). That interest therefore more than suffices to make the minimal showing required here.

C. The existing parties may not adequately represent Vet Voice's interests.

Vet Voice will not be assured adequate representation in this matter if it is denied intervention. "Rule 24(a) is satisfied if the applicant shows that representation of his interest '*may be*' inadequate; and the burden of making that showing should be treated as minimal." *Wineries*, 41 F.4th at 774 (alteration accepted) (emphasis added by Sixth Circuit) (quoting *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972)). "One is not required to show that the representation will in fact be inadequate." *Mich. State AFL-CIO*, 103 F.3d at 1247. Accordingly, courts are "liberal in finding" this requirement to be met because "there is good reason in most cases to suppose that the applicant is the best judge of the representation of the applicant's own interests." 7C Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1909 (3d ed. 2024).

Here, neither Plaintiffs nor Defendants are assured to adequately represent Vet Voice's interests. Just months before a federal election, Plaintiffs seek to eliminate veterans' option to register to vote at VA facilities. Vet Voice strongly opposes that result, which is directly contrary

to its interests. As to Defendants, although they are likely to oppose relief, it does not follow that they adequately represent Vet Voice's interests. To the contrary, in another NVRA case, "[t]he Sixth Circuit has recognized that the interests of election officials" are "sufficiently distinct from those of . . . their constituents to warrant intervention by those who could be impacted" by the relief sought. *Winfrey*, 463 F. Supp. 3d at 799 (citing *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018)). As the state officials who administer Michigan's elections, Secretary Benson and Director Brater are charged with "protecting electoral integrity." *Bellitto v. Snipes*, 935 F.3d 1192, 1198 (11th Cir. 2019) ("*Bellitto II*"). In contrast, Vet Voice has "[t]he mission and interest . . . explicitly to pursue the second of the expressly recognized interests that motivated Congress to enact [the NVRA]," *Winfrey*, 463 F. Supp. 3d at 801, *i.e.*, to eliminate "barriers to registration and voting," *Bellitto II*, 935 F.3d at 1198. Because this goal "naturally create[s] some tension" with Defendants' administrative obligations, *id.*, Defendants' representation of Vet Voice cannot be presumed to be adequate. *See also Judicial Watch*, No. 1:24-cv-01867, slip op. at *9 ("The State Board's execution of its duties may be in tension with Proposed Intervenors' interests.").

Just two terms ago, the Supreme Court made clear that state executive officers will not often be adequate representatives for partisan or private actors who seek to intervene under Rule 24. *See Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 194–97 (2022). In *Berger*, the Supreme Court reiterated its longstanding instruction that even when state agents pursue "related" interests to political actors, those interests are not properly considered "identical." *Id.* at 2204 (quoting *Trbovich*, 404 U.S. at 538–39). The Court then explained that "[w]here 'the absentee's interest is similar to, but not identical with, that of one of the parties,' that normally is not enough to trigger a presumption of adequate representation." *Id.* (quoting Wright & Miller, *supra*, § 1909).

None of the named Defendants' interests are "identical" to Vet Voice, because none is a nonprofit veterans advocacy organization.

Nor can the VA's representation of Vet Voice be assumed to be adequate just because its overarching mandate is to provide services to veterans. Part of Vet Voice's work is to lobby the VA, hold it to account, and shape its policy. Goldbeck Decl. ¶ 8. Vet Voice represents the veterans who seek services from the VA; the VA provides those services. As the Supreme Court recognized over 50 years ago, providing services and representing those seeking services are distinct roles. *Trbovich*, 404 U.S. at 538–39 ("Even if the Secretary is performing his duties, broadly conceived, as well as can be expected, the union member may have a valid complaint about the performance of 'his lawyer.'"). Just as the Secretary of Labor cannot be assumed always to represent the interests of each individual union member, the VA cannot be assumed to represent the interests of each individual veteran. *Id.*

II. Alternatively, Vet Voice should be granted permissive intervention.

Permissive intervention is warranted under Rule 24(b). "Permissive intervention has a less exacting standard than mandatory intervention and courts are given greater discretion to decide motions for permissive intervention." *Priorities USA*, 448 F. Supp. 3d at 759–60 (citing *Grubbs v. Norris*, 870 F.2d 343, 345 (6th Cir. 1989)). "On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). The interest of an intervenor, for the purposes of permissive intervention, needs only to be "different" from the defendants, regardless of whether it is "substantial." *League of Women Voters of Mich.*, 902 F.3d at 579.

Vet Voice easily meets these requirements. First, the motion is timely, and intervention will not unduly delay or prejudice the adjudication of the original parties' rights. *See supra* Section I.B. Second, its interests plainly are different from those of existing litigants. No existing Plaintiff or Defendant is a nonprofit veterans' advocacy organization, nor do the existing parties share any of Vet Voice's substantive voter education goals or resource-diversion concerns. *See supra* Section I.C. And Vet Voice will raise common questions of law in opposing Plaintiffs' suit—in particular, whether the relief Plaintiffs seek is available in federal court at all.

The Court also has good reason to exercise its discretion to grant the motion. Plaintiffs seek sweeping judicial intervention in Michigan's voter registration regime in an election year. In adjudicating Plaintiffs' claims, the Court will benefit from hearing from the voters, particularly veterans—the ones who will be most directly affected by the case's resolution. Each time this nation goes to the polls, it exercises rights that veterans have sacrificed to uphold. Goldbeck Decl. ¶ 22. Michigan has made the wise choice to make it easier for those who have rendered honorable service to vote. This Court should exercise its discretion to give them a voice in this litigation.

CONCLUSION

For the foregoing reasons, Vet Voice respectfully requests that this Court grant its motion to intervene.

Dated: July 24, 2024.

Respectfully submitted,

/s/ *Sarah S. Prescott*

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Counsel for Proposed Intervenor-Defendant Vet Voice Foundation

*Admission pending

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with LCivR 7.3(b)(i)'s word limit. From Introduction through Conclusion, this brief contains 3,521 words as measured by Microsoft Word.

/s/ *Sarah S. Prescott*
Sarah S. Prescott

CERTIFICATE OF SERVICE

I certify that on this 24th day of July, 2024, I caused to be served a copy of the above document on all counsel of record and parties via the ECF system.

/s/ *Sarah S. Prescott*
Sarah S. Prescott

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INDEX OF EXHIBITS

Exhibits	Description
A.	Vet Voice Foundation's [Proposed] Motion to Dismiss
B.	Declaration of Janessa Goldbeck

EXHIBIT A

UNITED STATES DISTRICT COURT
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VET VOICE FOUNDATION'S [PROPOSED] MOTION TO DISMISS

ORAL ARGUMENT REQUESTED

Proposed Intervenor-Defendant Vet Voice Foundation moves to dismiss Plaintiffs' Complaint in its entirety pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 19(b). Plaintiffs lack Article III standing to bring their claims, the Court lacks subject matter jurisdiction to enforce state law against state officials, the State Defendants are necessary parties absent which Rule 19 requires dismissal, and all three counts fail as a matter of law. The reasons to grant the motion to dismiss are set forth in more detail in the accompanying brief.

WHEREFORE, Vet Voice respectfully requests that the Court dismiss this action in its entirety with prejudice and award any other relief that the Court deems appropriate in the circumstances.

Dated: July 24, 2024.

Respectfully submitted,

/s/ *Sarah S. Prescott*

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*Admission pending

CERTIFICATE OF SERVICE

I certify that on this 24th day of July, 2024, I caused to be served a copy of the above document on all counsel of record and parties via the ECF system.

/s/ *Sarah S. Prescott*
Sarah S. Prescott

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ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

INTRODUCTION

Through this lawsuit, the Republican National Committee, Donald J. Trump for President 2024, Inc., the Michigan Republican Party, and Ryan Kidd ("Plaintiffs"), seek to make it more difficult for veterans and small business owners to register to vote. Section 7 of the National Voter Registration Act directs states to designate various offices, including (with their agreement) Federal offices, as voter registration agencies at which voters can obtain voter registration forms, receive assistance with registration paperwork, and submit completed forms. 52 U.S.C. § 20506. Consistent with this directive, Michigan's Secretary of State entered into agreements with the U.S. Small Business Administration ("SBA") and the Department of Veterans Affairs ("VA") to make it easier for Michiganders visiting VA and SBA offices to participate in the democratic process. These agreements do not in any way change the substantive requirements for registering to vote; they make the registration process simpler and more convenient for veterans who have served their country and entrepreneurs who are the engine of its economy.

Rather than celebrating Michigan's effort to encourage voter registration, Plaintiffs have sued to stop it. But their meritless Complaint should be dismissed. First, this Court lacks subject-matter jurisdiction under Fed. R. Civ. P. 12(b)(1). Plaintiffs lack standing to challenge the agreements between Michigan and the VA and SBA because the designation of voter registration agencies at those offices in no way injures them. Moreover, this Court lacks jurisdiction over Plaintiffs' Count I because the Eleventh Amendment bars it from considering Plaintiffs' state-law claim against the State Defendants. But if the State Defendants are dismissed from the case—and they must be under the Eleventh Amendment—then they cannot protect the Michigan's interest in the designations of the SBA and the VA as voter registration agencies, and the entire action must therefore be dismissed. Fed. R. Civ. P. 19; *see also Republic of Philippines v. Pimentel*, 553 U.S. 851, 867 (2008) (because "[a] case may not proceed when a required-entity sovereign is not

amenable to suit," the entire action must be dismissed). Alternatively, even if this Court has jurisdiction, each of Plaintiffs' three claims should be dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

BACKGROUND

In 1993, Congress passed the National Voter Registration Act "to establish procedures that will increase the number of eligible citizens who register to vote." 52 U.S.C. § 20501. In enacting the NVRA, Congress recognized that "the right of citizens of the United States to vote is a fundamental right" and that "[i]t is the duty of the Federal, State, and local governments to promote the exercise of that right." *Id.* Section 7 of the NVRA, codified at 52 U.S.C. § 20506, expands opportunities for citizens to register to vote by directing states to designate "all offices in the State that provide public assistance" and "all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities" as voter registration agencies. 52 U.S.C. § 20506. States also are directed to designate other offices, including "Federal and nongovernmental offices, with the agreement of such offices." *Id.* Federal entities in turn must, "to the greatest extent practicable, cooperate with the States in carrying out" these responsibilities. *Id.*

Voter registration agencies are required to offer certain services, including distribution of mail voter registration application forms; assistance in completing voter registration application forms; and acceptance (and subsequent transmittal to the appropriate official) of completed forms. *Id.* The individuals providing these services are strictly prohibited from partisan activities and from conditioning other services or benefits on either registering or not registering to vote. *Id.*

In early January 1995, shortly after Congress enacted the NVRA, the Michigan Legislature enacted a law providing that "[n]ot later than the thirtieth day after the effective date of this section, the governor shall provide a list to the secretary of state designating the executive departments, state agencies, or other offices that will perform voter registration activities in this state." MCL

§ 168.509u. The then-governor complied with this mandate, issuing an Executive Order designating several categories of offices, including "[a]ny other public office . . . which the Governor may from time-to-time designate by Executive Directive." Mich. E.O. No. 1995-1 ("EO 1995-1")[1].

Consistent with Section 7 of the NVRA, President Biden in 2021 directed federal agencies to partner with state officials to promote voter registration and voter participation, and specifically to agree to state requests to designate voter registration agencies. Compl. ¶¶ 60–61, PageID.12–13. In May 2022, Governor Whitmer determined that because Michigan had not updated its list of voter registration agencies since 1995 despite "myriad changes to public assistance programs and programs that provide services to persons with disabilities, as well as to the offices that accept applications for and administer these programs," the state would undertake a comprehensive review of which offices should be so designated. Executive Directive 2022-4.[2] That review ultimately led to voter registration agency agreements between the Michigan Department of State and the VA and SBA and their designation via Executive Directives 2023-6[3] and 2024-3.[4]

Plaintiffs now seek to invalidate those agreements and so deprive veterans and small business owners of a convenient option for registering to vote. But their vehicle is fatally flawed: they have brought a *federal* lawsuit premised on the claims that *Michigan* officials violated

[1] *Available at* https://www.legislature.mi.gov/documents/1995-1996/executiveorder/archive/1995-EO-01.htm.
[2] *Available at* https://www.michigan.gov/whitmer/news/state-orders-and-directives/2022/05/01/executive-directive-2022-4.
[3] *Available at* https://www.michigan.gov/whitmer/-/media/Project/Websites/Whitmer/Documents/Exec-Directives/ED-20236-signed.pdf?rev=a2278328062d4fb7823a8713eca6575c&hash=7A1E593F41B2E960FCE3B81A0404CDEC.
[4] *Available at* https://www.michigan.gov/whitmer/-/media/Project/Websites/Whitmer/Documents/Exec-Directives/ED-20243-signed.pdf?rev=1600c3de9ee74cc493c70467e5f4395b&hash=6CD97BD63A77223D008E1A30CC5CBE56.

Michigan law when they designated the VA and SBA as voter registration agencies. For the reasons set forth herein, this suit must be dismissed.

LEGAL STANDARDS

Three primary legal standards are relevant to the Court's adjudication of this motion. First, under Federal Rule of Civil Procedure 12(b)(1), when a motion challenges "the sufficiency of the pleading itself" with respect to subject-matter jurisdiction, a court assesses whether, taking "the allegations of the complaint as true," the complaint validly states "a basis for subject matter jurisdiction." *Cartwright v. Garner*, 751 F.3d 752, 759 (6th Cir. 2014).

Second, under Federal Rule of Civil Procedure 19(b), if a required party cannot be sued in federal court, the court "must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed," considering factors including "the extent to which a judgment rendered in [the party's] absence might prejudice" that party or other parties and "whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder."

Finally, under Federal Rule of Civil Procedure 12(b)(6), a count must be dismissed for failure to state a claim unless the "[f]actual allegations [are] enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). While a court presumes that all well-pleaded material allegations in the complaint are true, *see Total Benefits Plan. Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 434 (6th Cir. 2008), "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (alteration in original) (quoting Fed. R. Civ. P. 8(a)).

ARGUMENT

Plaintiffs' Complaint is defective from beginning to end. First, Plaintiffs lack standing because they have not alleged any cognizable injury. Plaintiffs are not injured by Defendants' efforts to make it easier for eligible citizens to register to vote. Second, Plaintiffs' Count I alleges a claim against state officials for violations of state law, but under the U.S. Constitution and settled Supreme Court precedent such claims cannot be adjudicated in federal court—and, under Rule 19, neither can the dependent claims against the Federal Defendants. Third, Plaintiffs' Count II alleges a claim under the NVRA against the VA, the SBA, and those agencies' heads, but there is no private right of action under the NVRA to sue federal agencies or officials, and nothing in the NVRA prohibits those agencies from acquiescing to Michigan's designations. Finally, Plaintiffs' Count III alleges that the agencies violated the Administrative Procedures Act by failing to explain how the designations satisfied the requirements of the NVRA, but the agencies in fact *did* provide such an explanation.

I. Plaintiffs lack Article III standing.

Federal court jurisdiction is limited to actual "cases" and "controversies," U.S. Const. Art. III, § 2, cl. 1, and Plaintiffs fail to clear that bar because they do not allege a cognizable injury in fact. To establish Article III standing, a plaintiff must show that it has "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Buchholz v. Meyer Njus Tanick, PA*, 946 F.3d 855, 861 (6th Cir. 2020) (quoting *Spokeo Inc. v. Robins*, 578 U.S. 330, 338 (2016)). Absent this "irreducible constitutional minimum," a plaintiff has no right to invoke federal jurisdiction. *Spokeo*, 578 U.S. at 338 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

An "'injury in fact'" is "an invasion of a legally protected interest which is (a) concrete and particularized" and "(b) actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S.

at 560 (cleaned up). Plaintiffs' purported injuries, as alleged in their Complaint, do not satisfy any of these standards: they are abstract, generalized, remote, and entirely conjectural. The Complaint should therefore be dismissed in its entirety.

A. The RNC, Donald J. Trump for President 2024, Inc., and the Michigan Republican Party have not alleged any cognizable injury in fact.

Plaintiffs lack any right to enlist this Court in their anti-democratic effort to make it more difficult for veterans and others to register to vote. The organizational Plaintiffs are not injured in any way by Defendants' designation of VA and SBA offices as voter registration agencies. And their generalized interest in enforcing compliance with the law is not cognizable under Article III.

In *Food and Drug Administration v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024) ("*Alliance*"), decided just over a month ago, the Supreme Court confirmed that a plaintiff organization may not invoke federal jurisdiction when, as here, its only purpose in doing so is to make it more difficult for others to obtain some benefit. In *Alliance*, "pro-life doctors and associations" sued the FDA under the Administrative Procedures Act but did not allege that the FDA was "requiring them to do or refrain from doing anything." *Id.* at 372–74. Rather, the plaintiffs wanted the FDA to make the drug mifepristone "more difficult for other doctors to prescribe and for pregnant women to obtain." *Id.* at 374. The Court explained that "a plaintiff's desire to make a drug less available *for others* does not establish standing to sue." *Id.* The same principle applies here. *Alliance* confirms that the organizational Plaintiffs lack standing: they do not allege that any Defendant is "requiring them to do or refrain from doing anything," and their desire to make voter registration "less available *for others*"—particularly veterans—"does not establish standing to sue." *Id.* at 372–74.

The organizational Plaintiffs attempt to cast their purported injuries in more favorable terms, but those attempts fail. For example, the RNC and MRP claim shared "interests in ensuring

that they and their candidates compete for votes in a lawfully structured competitive environment." Compl. ¶ 17, PageID.5. But they do not allege a true competitive injury—they never claim (nor could they) that registration at VA or SBA offices somehow unfairly tilts the electoral playing field against them. *See, e.g.*, *Republican Nat'l Comm. v. Burgess*, No. 3:24-CV-00198-MMD-CLB, 2024 WL 3445254, at *3 (D. Nev. July 17, 2024) ("[It] was not the mere illegality of the competitive environment but instead the resultant unfair disadvantage from that illegality which constituted an injury in fact."). At bottom, their interest is entirely abstract, and therefore not cognizable in this Court. The federal courts are not a "vehicle for the vindication of the value interests of concerned bystanders." *Allen v. Wright*, 468 U.S. 737, 756 (1984) (quoting *United States v. SCRAP*, 412 U.S. 669, 687 (1973)).

The RNC and MRP also allege that Defendants' designation of voter registration agencies "undermines the integrity of elections by increasing the opportunity for individuals to register to vote even though they are ineligible to do so." Compl. ¶ 18, PageID.5. Yet Plaintiffs do not allege that *substantively ineligible* voters are registering at VA and SBA offices, nor do they allege that ineligible voters are more likely to register at VA and SBA offices than elsewhere. Their theory appears to be that any action that encourages voter registration undermines the integrity of elections, but that theory is both untenable and unsupported. This 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. U.S. 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). And to the extent that Plaintiffs' objection to the use of VA offices for voter registration is purely *procedural*, based on

their theory that such offices have not properly been authorized to process registrations, that cannot constitute an injury in fact. *Alliance*, 602 U.S. at 381 ("[A] citizen does not have standing to challenge a government regulation simply because the plaintiff believes that the government is acting illegally.").

Finally, the RNC and MRP claim that Defendants' designations are "sowing confusion." Compl. ¶ 18, PageID.5. But that allegation is hypothetical and conclusory. Plaintiffs do not identify any specific person who is allegedly confused. Nor is the status quo in fact confusing: VA and SBA offices are simply processing voter registrations just like other registration agencies in Michigan.[5] In sum, the RNC and MRP plainly lack an injury in fact. As for the Trump Campaign, Plaintiffs assert that it "has the same interests in this case as the RNC" without providing further specifics. *Id.* ¶ 20, PageID.5. Those interests fail to give rise to an injury in fact for all the same reasons.

B. Plaintiff Ryan Kidd has not alleged a cognizable injury in fact.

The individual Plaintiff, the elected clerk of Georgetown Township, also lacks standing to sue in federal court. Like the organizational Plaintiffs, the clerk lacks a cognizable injury in fact. While Michigan law requires the clerk to receive completed, processed voter registrations made at VA and SBA offices, the clerk substantially overstates his role in that process. *See id.* ¶ 22, PageID.6 Although he implies that he is responsible for substantively assessing whether such

[5] The RNC and MRP purport to have standing on behalf of their members as well as in their own right. Compl. ¶¶ 17, 21, PageID.5. Although "it is common ground" that "organizations can assert the standing of their members," *Summers v. Earth Island Inst.*, 555 U.S. 488, 494 (2009), neither party committee makes the requisite allegations to do so here. In particular, to plead membership-based standing under *Summers*, an organization must allege that that it has members and specifically articulate how they are injured by the challenged provision. Neither party committee satisfies that standard. *See* Compl. ¶¶ 15–24, PageID.4–6. The RNC alleges that it has only three members in Michigan, all of whom are already registered to vote. *Id.* ¶ 15, PageID.4. And the MRP does not even squarely allege that it has members—let alone provide any information about who these members are or what injury they might suffer.

registrations are valid, *see id.*, he plainly lacks any such authority under the statute's unambiguous text. Rather, under Section 168.509w, the substantive validation of each voter registration application occurs at the "designated voter registration agency" itself. MCL § 168.509w(1). A city or township clerk's only role under the statute is to receive the already-validated application when it is transmitted by the processing agency. *Id.* § 168.509w(2). The clerk is therefore wrong to claim that under Section 168.509w he has "'a designated role to play in the interpretation and enforcement of' state election law." Compl. ¶ 22, PageID.6 (quoting *Voting for Am. Inc. v. Andrade*, 888 F. Supp. 2d 816, 833 (S.D. Tex. 2012)). Section 168.509w leaves him nothing to interpret or enforce. His only duty of any sort is a purely clerical and automatic one: to *receive* an already-validated application. Accordingly, he does not need "a declaration" to "guide his future conduct." The clerk's interest in this case amounts to a request for an advisory opinion. As the Supreme Court "explained to President George Washington in 1793 . . . federal courts do not issue advisory opinions about the law—even when requested by the President." *Alliance*, 602 U.S. at 378–79.

Plaintiffs' citation to *Republican National Committee v. Benson*, No. 24-41 (Mich. Ct. Claims June 12, 2024), does not save the clerk's standing. *See* Compl. ¶ 23, PageID.6. That case analyzed standing under Michigan state law, which, as of 2010, is a "limited, prudential doctrine" that is far less demanding than its federal counterpart. *Lansing Schs. Educ. Ass'n v. Lansing Bd. of Educ.*, 487 Mich. 349, 372, 792 N.W.2d 686 (2010). In particular, under Michigan standing doctrine post–*Lansing Schools*, "a litigant has standing whenever there is a legal cause of action," and any litigant who meets the requirements of the declaratory judgments rule in MCR 2.605 also has standing "to seek a declaratory judgment." *Id. Republican National Committee* concerned a

request for a declaratory judgment, slip op. at *5, so its application of Michigan's relaxed standing requirements does not, without more, support invoking this Court's jurisdiction.

II. The Eleventh Amendment bars this Court from exercising jurisdiction over the State Defendants, and Rule 19(b) consequently requires dismissal of the entire action.

A. This Court lacks jurisdiction over the State Defendants.

Even if Plaintiffs had standing, the Eleventh Amendment bars this Court's exercise of judicial power to issue Plaintiffs' requested relief on Count I. Under the *Pennhurst* doctrine, a federal court cannot order state officials to conform their conduct to state law. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984). The Supreme Court's *Pennhurst* line of cases explains that "the Eleventh Amendment bars the adjudication of pendent state law claims against nonconsenting state defendants in federal court." *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533, 540–41 (2002) (citing *Pennhurst*, 465 U.S. at 120). As state officials sued in their official capacities, the Governor, Secretary of State, and Elections Director are indisputably shielded by the Eleventh Amendment. *See Pennhurst*, 465 U.S. at 117 ("[A] federal suit against state officials on the basis of state law contravenes the Eleventh Amendment when—as here—the relief sought and ordered has an impact directly on the State itself."). Indeed, "it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law." *Id.* at 106.

When analyzing Eleventh Amendment immunity, a "federal court must examine each claim in a case to see if the court's jurisdiction over that claim is barred by the Eleventh Amendment." *Id.* at 121. Here, Count I is expressly pleaded as a state law claim, *see* Compl. at 16, PageID.16 ("Violation of Michigan Law by State Defendants"), and is squarely foreclosed by the Eleventh Amendment. That Plaintiffs' other claims include federal causes of action does not change the analysis. *Pennhurst* itself expressly rejected the "erroneous view" that "once

jurisdiction is established on the basis of a federal question, no further Eleventh Amendment inquiry is necessary with respect to other claims raised in the case." 465 U.S. at 119. As a result, dismissal of Count I is appropriate even if the other claims proceed because "federal courts are simply not open to such state law challenges to official state action, absent explicit state waiver of the federal court immunity found in the Eleventh Amendment." *Experimental Holdings, Inc. v. Farris*, 503 F.3d 514, 520–21 (6th Cir. 2007).

Because the Eleventh Amendment bars this Court from awarding the relief Plaintiffs seek under Count I, and because there are no other claims against the State Defendants, Governor Whitmer, Secretary Benson, and Director Brater should be promptly dismissed from this lawsuit.

B. Because State Defendants are required parties who cannot be joined, the entire action must be dismissed.

Where a party has been dismissed for lack of subject matter jurisdiction but nonetheless "claims an interest relating to the subject of the action and is so situated that disposing of the action" in their absence may "impair or impede" their "ability to protect the interest," the Court must determine whether the action can proceed in that party's absence. Fed. R. Civ. P. 19. Although Rule 19 does not always require dismissal, the Supreme Court has recognized that "where sovereign immunity is asserted . . . dismissal of the action must be ordered where there is a potential for injury to the interests of the absent sovereign." *Republic of Philippines*, 553 U.S. at 867.

Here, the sole substantive claim is that Michigan officials failed to comply with Michigan law, but this court is barred by the Eleventh Amendment from maintaining jurisdiction over State Defendants on that claim. *See supra* II.A. The relief sought against the federal officials and agencies would have the effect of invalidating the state's designation of the SBA and the VA as voter registration agencies. Because Michigan cannot protect its interest in that designation without

participating in the case, the State Defendants are required parties that cannot feasibly be joined. Fed. R. Civ. P. 19(b). And because "[a] case may not proceed when a required-entity sovereign is not amenable to suit," *Republic of Philippines*, 553 U.S. at 867, the entire action must be dismissed. Although full dismissal "when the plaintiff has no alternative remedy may be a harsh result, courts do so when a necessary party cannot be joined because of sovereign immunity." *Webb v. City of Tempe*, No. CV-16-03136-PHX-DGC, 2017 WL 1233827, at *5 (D. Ariz. Apr. 4, 2017), *aff'd*, 703 F. App'x 539 (9th Cir. 2017).[6]

III. Each count of the Complaint fails to state a claim upon which relief can be granted.

A. Count I fails to state a claim under Michigan law.

Governor Whitmer's designation of VA and SBA offices as voter registration agencies is entirely consistent with her authority under Michigan law. By statute, Michigan expressly delegates the authority to designate specific agencies as voter registration agencies to the governor. MCL § 168.509u(1) ("Not later than the thirtieth day after the effective date of this section, the governor shall provide a list to the secretary of state designating the executive departments, state agencies, or other offices that will perform voter registration activities in this state."). Nothing in Section 509u prohibits designations of voter registration offices made after the 30-day deadline; it requires that the Governor provide "a list" by that deadline, but does not by its terms restrict the Governor from modifying or even replacing that list at a later date.

But even if Plaintiffs' interpretation of Section 509(u) is correct, Governor Whitmer still possessed the authority to designate VA and SBA offices as voter registration agencies. As Plaintiffs acknowledge, "[i]n January 1995, Governor Engler complied with that statutory directive by issuing Executive Order 1995-1." Compl. ¶ 53, PageID.11. EO 1995-1 reserves to the governor

[6] Plaintiffs may attempt to overcome sovereign immunity in state court.

the right to designate future public offices. It states: "[T]he following offices are hereby designated to accept applications for voter registration" and lists "[a]ny other public office, whether or not specified by PL 103-31, which the Governor may from time to time designate by Executive Directive." EO 1995-1. Plaintiffs assert that "Executive *Directives* do not have the force and effect of law and are not subject to Legislative review." Compl. ¶ 57, PageID.12. But EO 1995-1 was not an Executive Directive; it was an Executive Order. And Executive Orders related to State functions have the force of law unless expressly disavowed by the Legislature. Mich. Const. art. V, § 2; *see In re Certified Questions from U.S. Dist. Ct., W. Dist. of Mich., S. Div.*, 506 Mich. 332, 343 n.6, 958 N.W.2d 1 (2020); *Whitmer v. Bd. of State Canvassers*, 508 Mich. 980, 966 N.W.2d 21, 22 (2021) (Welch, J., concurring). As a matter of Michigan law, therefore, EO 1995-1 allows governors to "designate by Executive Directive" "any other public office" "to accept applications for voter registration" as a Section 509(u) voter registration agency. That is exactly what Governor Whitmer did when she issued Executive Directives 2023-6 and 2024-3, rendering the voter registration agency designations made in those Directives valid as a matter of state law.

Because Plaintiffs have failed to allege a cognizable violation of Michigan law, this Court should dismiss Count I under Rule 12(b)(6).

B. Count II fails to state a claim under the National Voter Registration Act.

Plaintiffs fail to state a claim under the NVRA for two independently sufficient reasons: the NVRA's private cause of action does not reach the Federal Defendants, and Plaintiffs have failed to allege any actionable violation of the NVRA by either agency.

First, the NVRA's private right of action does not extend to federal officials or agencies at all. *See* 52 U.S.C. § 20510(b). It therefore does not extend to the only Defendants that Plaintiffs have pleaded their NVRA claim against: the VA and its secretary and the SBA and its administrator. *See* Compl. ¶¶ 89–103, PageID.18–20.

That the NVRA's right of action does not reach such officials is clear from its plain text. *See* 52 U.S.C. § 20510(b)(1)–(3). For actions brought more than 30 days before an election for federal office, the person aggrieved must make "written notice of the violation *to the chief election official of the State involved.*" *Id.* (emphasis added). For actions brought within 30 days of an election for federal office, the aggrieved person is excused from providing notice "*to the chief election official of the State*." *Id.* (emphasis added). In either case, the statute plainly contemplates only actions against states or state officials. The NVRA only mentions federal officials in the context of enforcement—subsection (a) authorizes the Attorney General to bring actions under the NVRA. 52 U.S.C. § 20510(a). "The preeminent canon of statutory interpretation requires [courts] to 'presume that the legislature says in a statute what it means and means in a statute what it says.'" *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) (quoting *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992)). If Congress had meant to make the federal government a defendant in NVRA actions, not just its enforcer, the private right of action statute would say so. It plainly does not. Because Plaintiffs lack a valid cause of action for Count II, it should be dismissed for failure to state a claim. Fed. R. Civ. P. 12(b)(6).[7]

Second, Plaintiffs have not alleged an actionable violation of the NVRA by the Federal Defendants, a defect which provides a separate basis to dismiss Count II. No provision of the NVRA imposes any relevant substantive duties on the VA or its secretary, or on the SBA or its administrator. Those Defendants therefore cannot have violated the NVRA.

[7] Vet Voice has not been able to identify a single case in the three decades since the NVRA's enactment in which a federal court enforced the NVRA's substantive provisions against a federal agency. This further confirms that the NVRA's private right of action does not reach the VA or SBA.

Instead of alleging that the Federal Defendants have violated any specific provision of the NVRA, the pivotal allegation in Count II is that "the SBA and VA have violated, and unless enjoined, will continue to violate *the election laws of the State of Michigan* related to the designation of VRAs." Compl. ¶ 96, PageID.19 (emphasis added). Of course, as federal agencies, the SBA and VA are not subject to the laws of the State of Michigan. *McCulloch v. Maryland*, 17 U.S. 316, 431 (1819). Nor is there any indication that a violation of state law can give rise to a claim under the NVRA, a federal law. Count II thus fails to plead a claim.

And in any case, nothing in the NVRA imposes any relevant substantive obligation on the Federal Defendants, so Plaintiffs could not have pleaded an NVRA claim even had they tried. The provision most directly implicated here, Section 7, imposes obligations on *states* to designate voter registration agencies. 52 U.S.C. § 20506. It mentions federal agencies only twice. First, subsection (a)(3)(B)(ii) indicates that states may designate "federal and nongovernmental offices" as voter registration agencies "with the agreement of such offices." Second, subsection (b) indicates that all "departments, agencies, and other entities of the executive branch of the Federal Government shall, to the greatest extent practicable, cooperate with the States in carrying out subsection (a)."

Neither of these provisions could anchor Plaintiffs' NVRA claim. The first imposes no substantive obligation on federal agencies at all—it merely indicates that a *state* must obtain a federal agency's agreement to designate its offices as voter registration agencies. The second provision, at most, imposes an obligation on a federal agency to "cooperate" in good faith and to the extent "practicable" with a state's desire to designate that agency as a voter registration agency. But Plaintiffs do not allege that either agency has failed to cooperate with the state in carrying out subsection (a). Instead, they argue that the agencies cannot operate as designated voter registration agencies because they were not properly designated under state law. But nothing in the NVRA

prohibits agencies from operating as voter registration agencies unless a state has followed a particular state-law designation procedure. There is therefore no plausible claim that either agency has violated the NVRA.

Other provisions of the NVRA confirm that its substantive requirements generally apply to the states and not to the federal government. For example, NVRA Section 11 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 this chapter." 52 U.S.C. § 20509. The NVRA imposes no such requirement on the federal government or any federal agency. And NVRA Section 4 provides a carveout for states that satisfy certain criteria from the NVRA's coverage, exempting them from suit. *Id.* § 20503. Again, these provisions do not mention the federal government, federal agencies, or any federal official. "In ascertaining the plain meaning of the statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988). Here, the particular language of the NVRA's private right of action, the surrounding language in other sections of the statute, and design of the statute as a whole are all in accord: the NVRA imposes duties on states and state officials and authorizes suits against them—not against federal agencies or their officials.[8]

In sum, Count II should be dismissed for failure to state a claim. Plaintiffs lack a valid private right of action under the NVRA to sue federal agencies and officers. And Plaintiffs have not pleaded a plausible claim for relief against the federal officials under the NVRA—both because they fail to allege any specific substantive violation of the NVRA on the part of the Federal

[8] Other than the command that federal agencies cooperate with States with respect to VRA designations, the only exception is § 20508, which requires the Election Assistance Commission to develop a mail registration form and to provide information to Congress and to the States.

Defendants and because the NVRA imposes no remotely relevant substantive duty on those Defendants.

C. Count III fails to state a claim under the Administrative Procedures Act.

Plaintiffs' argument that the SBA and VA's agreements to act as voter registration agencies were "not in accordance with law" and "in excess of statutory authority" fails. To the contrary, both agencies are authorized to enter into agreements with state governments to facilitate voter registration—and indeed are strongly encouraged to do so. 52 U.S.C. § 20506(b). The NVRA does not provide any substantive criteria for deciding whether to cooperate with a state's designation beyond whether doing so is "practicable." In particular, the NVRA does not in any way suggest that an agency, before agreeing to cooperate with a designation, must independently assess whether a state is complying with its own laws related to such designation.

Instead, the NVRA directs states to "designate a State officer or employee as the chief State election official to be responsible for coordination of State responsibilities under this chapter." 52 U.S.C. § 20509. Plaintiffs acknowledge that Secretary Benson is Michigan's "chief election official," Compl. ¶ 27, PageID.7. They also identify Secretary Benson as the official who entered into the agreements with both the VA, *id.* ¶ 66, PageID.14, and the SBA, *id.* ¶ 73, PageID.15. According to the Complaint itself, therefore, the SBA and VA entered into agreements with the election official responsible for coordinating Michigan's responsibilities under the NVRA pursuant to Section 20506(a). That is neither in excess of their statutory authority nor in violation of law; it fully complies with the NVRA.

Plaintiffs also claim that the agencies' agreements were arbitrary and capricious solely "because the agencies did not adequately explain how their purported designations as VRAs satisfied the requirements of Section 7 of the NVRA." Compl. ¶ 108, PageID.21. But the agreements incorporated into the Complaint provide such an explanation. For example, the

Memorandum of Agreement between the Michigan Department of State and the SBA ("SBA MOA")[9] explains that "[i]n 1995, then-Governor Engler signed an Executive Order (EO) designating several State agencies as VRAs," and that the order "also allows the Governor to designate additional VRAs through an executive directive." SBA MOA at 1. The MOA also explains that the NVRA requires each state to designate a chief election official, and that "Michigan law makes the Secretary of State responsible for the coordination of the requirements imposed under [the NVRA]." *Id.* (cleaned up). The VA furthermore explained that it was implementing Executive Order 14019, which requires agencies to agree to voter registration agency designations requested by states.[10] Plaintiffs may not *agree* with these explanations, but they cannot plausibly argue that the agencies did not adequately explain their designations.

CONCLUSION

For the foregoing reasons, Vet Voice respectfully requests that the Court dismiss the entire Complaint with prejudice.

[9] *Available at* https://static.foxnews.com/foxnews.com/content/uploads/2024/05/REDACTED-03-MOA-NVRA-Designated-Federal-Agency-Final-Version.pdf.

[10] *See Three Michigan VA locations will pilot voter registration sites*, Mich. Dep't of State (Sept. 19, 2023) https://www.michigan.gov/sos/resources/news/2023/09/19/three-michigan-va-locations-will-pilot-voter-registration-sites.

Dated: July 24, 2024.

Respectfully submitted,

/s/ *Sarah S. Prescott*

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with LCivR 7.2(b)(i)'s word limit. From Introduction through Conclusion, this brief contains 5,830 words as measured by Microsoft Word.

/s/ *Sarah S. Prescott*
Sarah S. Prescott

CERTIFICATE OF SERVICE

I certify that on this 24th day of July, 2024, I caused to be served a copy of the above document on all counsel of record and parties via the ECF system.

/s/ *Sarah S. Prescott*
Sarah S. Prescott

EXHIBIT B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

REPUBLICAN NATIONAL COMMITTEE; DONALD J. TRUMP FOR PRESIDENT 2024, INC.; MICHIGAN REPUBLICAN PARTY; and RYAN KIDD, in his official capacity as Clerk of Georgetown Township,

Plaintiffs,

v.

GRETCHEN WHITMER, in her official capacity as Governor of Michigan; 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; U.S. SMALL BUSINESS ADMINISTRATION; ISABEL GUZMAN, in her official capacity as Administrator of the Small Business Administration; DEPARTMENT OF VETERANS AFFAIRS; and DENIS McDONOUGH, in his official capacity as Secretary of Veterans Affairs,

Defendants.

CIVIL ACTION

Case No. 1:24-cv-720-PLM-SJB

Hon. Paul L. Maloney
Hon. Sally J. Berens

DECLARATION OF JANESSA GOLDBECK

I, Janessa Goldbeck, under penalty of perjury, hereby declare as follows:

1. I am over the age of 18, have personal knowledge of the facts below, and can competently testify to their truth.

2. My name is Janessa Goldbeck and I am currently the Chief Executive Officer at Vet Voice Foundation ("Vet Voice") where I have worked for over two years.

3. Prior to becoming CEO of Vet Voice, I served for seven years as a commissioned combat engineer officer in the U.S. Marine Corps. I left the Marines in 2019 with the rank of captain. During my time in military service, I deployed to military installations throughout the

United States, and to Europe in support of NATO operations. I also performed many collateral duties while serving, including acting as my unit's Voting Assistance Officer.

4. Vet Voice is a national nonpartisan nonprofit organization, founded in 2009 and organized under Section 501(c)(3) of the Internal Revenue Code.

5. As Vet Voice's CEO, my responsibilities include managing personnel and overseeing the operations and funding of programs dedicated to serving our over 1.5 million subscribers across the country.

6. Vet Voice's subscribers are primarily active-duty military members, veterans, and their families. Each of our subscribers takes affirmative steps to receive communications from Vet Voice. Vet Voice has nearly 127,000 subscribers in Michigan.

7. In addition to serving its subscribers, Vet Voice is dedicated to empowering veterans across the country to become civic leaders and policy advocates. We provide the support, training, and tools veterans need to tackle public policy issues at home. We work on issues such as voting rights, combating disinformation, environmental protection, health care, jobs, and more.

8. As part of its work, Vet Voice sometimes lobbies the Department of Veterans Affairs ("VA") to adopt certain policies, particularly policies relating to provision of health care to veterans.

9. Increasing turnout among veterans and military voters—and ensuring that their ballots are counted when they do turn out—is critical to our mission. We are best able to achieve our goals by building the voting and organizing power of our constituents. Accordingly, a key part of our work is mobilizing our subscribers by giving them the knowledge and tools to successfully participate in elections. Vet Voice dedicates significant resources, including money, personnel time, and volunteers, to voter education and mobilization efforts.

10. Vet Voice also believes that growing the "veteran vote" benefits all Americans by engaging those who have served their country in the civic process. As a nonpartisan organization, Vet Voice works to increase turnout of not just its affirmative subscribers but the broader veteran and military community. We encourage each voter to participate in our democracy regardless of political beliefs or party membership.

11. To further that work, Vet Voice has built a first-of-its-kind military voter file covering nearly 14 million active duty, veteran, and military family voters. This voter file allows us to execute a cutting-edge, data-driven voter mobilization, education, and turnout effort. Our voter file includes over 357,000 voters in Michigan.

12. Vet Voice's military voter file is critical to our efforts to target and turn out military voters at an unprecedented scale. In the 2020 election, Vet Voice volunteers sent 2.5 million texts to approximately 1.5 million veterans and military families, driving a significant increase in voter participation among those contacted. When engaged by a Vet Voice volunteer, voters in the lowest 40 percent of turnout propensity were three times more likely to vote early or by mail than peers who were not contacted.

13. Vet Voice is continuing to expand its military voter file as part of its growing efforts to mobilize the military and veteran community, including in Michigan. We are currently in the process of planning our voter engagement and education efforts for the 2024 election and expect to significantly build upon our success from the 2020 and 2022 election cycles.

14. At this time, Vet Voice has identified and plans to target approximately 70,000 individual veteran and military-affiliated voters in Michigan to mobilize them to vote in the 2024 elections using direct mail and text messages.

15. Vet Voice also engages in more traditional forms of voter engagement to educate voters. For instance, Vet Voice plans and executes direct mail campaigns that aim to inform voters about important voting deadlines, including deadlines to register. Vet Voice volunteers also conduct phone banking operations to transmit information about voting to military voters, including registration information. Vet Voice places digital advertising on social media and video platforms to further promote its message and mission. And Vet Voice sometimes advertises on rural radio stations to reach active-duty and military constituents about issues of importance.

16. Voter registration is foundational to every aspect of Vet Voice's voter engagement work. Because only voters who are registered are able to vote in Michigan, encouraging veterans to register is the first step in our voter engagement program in that state. Our turnout and issue education efforts are stymied when they reach veterans who are not registered and are not able to register in time to cast an effective vote.

17. Vet Voice is aware that since 2023 Michigan has authorized voter registration at VA offices. Vet Voice understands that the Plaintiffs in this case seek relief that would prevent VA offices from being used for voter registration in Michigan going forward.

18. Voter registration at VA offices is an invaluable option for Vet Voice's subscribers and other constituents. Most veterans—and many active-duty military—interact with the VA frequently. Offering voter registration at VA offices therefore gives veterans, their families, and many active-duty servicemembers an easy and convenient option for registering to vote or updating a registration.

19. In particular, many of Vet Voice's subscribers and constituents are veterans who suffer from physical disabilities—oftentimes disabilities resulting from their years of military service. According to Bureau of Labor Statistics figures from March 2024, 30 percent of all

veterans have a service-connected disability, including a remarkable 46 percent of veterans who have served since September 2001.[1] For such veterans, voter registration at VA offices is an important way to gain access to the franchise. Veterans with disabilities may face physical or other barriers to making a trip to the local clerk's office for the sole purpose of registering. But such veterans are likely to visit VA facilities frequently. By offering registration at VA offices, Michigan has taken a vital step to ensure that citizens who made great physical sacrifices for this country are able to participate fully in American democracy.

20. Plaintiffs' claims and request for relief in this case threaten access to the franchise in Michigan. And the burden of the relief Plaintiffs seek would fall disproportionately on veterans, who are by far the most likely group of voters to take advantage of voter registration at VA offices.

21. Vet Voice therefore has a strong interest in defending Michigan's designation of VA offices as voter registration locations, because eliminating voter registration at VA offices will harm (1) Vet Voice's mission of turning out as many veteran and military voters as possible; (2) Vet Voice's subscribers and constituents by depriving them of access to a convenient, effective option for registering to vote; and (3) Vet Voice's capacity to do other mission-critical election-year work—particularly educating and turning out already-registered voters by diverting its scarce resources toward registration efforts.

22. America's veterans put their lives, bodies, and health on the line to protect our freedoms, rights, and democracy. By virtue of their service, veterans have earned a sacred right to participate fully in our elections. This case threatens that right. Veterans should have a voice in its resolution.

[1] Bureau of Labor Statistics, *Employment Situation of Veterans – 2023* at 1 (Mar. 20, 2024), https://www.bls.gov/news.release/pdf/vet.pdf.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on 7/24/2024

By: Janessa Goldbeck

Janessa Goldbeck
Chief Executive Officer
Vet Voice Foundation