

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:20-cv-02992-PAB-KLM

JUDICIAL WATCH, INC., et al.,
Plaintiffs,
v.

JENA GRISWOLD, Colorado Secretary of State in her official capacities,
Defendant.

ANSWER TO FIRST
AMENDED COMPLAINT

Defendant, Jena Griswold, in her official capacity as the Colorado Secretary of State (the “Secretary”), submits her Answer to Plaintiffs’ First Amended Complaint (Doc. No. 95).

1. Plaintiffs seek declaratory and injunctive relief to compel Defendants to comply with their voter list maintenance obligations under Section 8 of the National Voter Registration Act of 1993 (“NVRA” or “Act”), 52 U.S.C. § 20507. Plaintiffs also seek reasonable attorneys’ fees, litigation expenses, and costs, which are available to prevailing parties under the Act. *Id.*, § 20510(c).

The allegations in Paragraph 1 are legal contentions to which no response is required. To the extent a response is required, Defendant admits that Paragraph 1 accurately reflects the relief requested in Plaintiffs’ lawsuit.

ANSWER TO JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as this action arises under the laws of the United States, and in particular under 52 U.S.C. §§ 20507 and 20510(b).

Defendant admits the Court has jurisdiction over the claims asserted by Plaintiffs under the statutory sections cited by Plaintiffs if Plaintiffs satisfy their burden of proving standing; Defendant denies that Plaintiffs have standing. Any remaining allegations in Paragraph 2 are legal contentions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 2.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a defendant resides in this district and all defendants reside in Colorado, and because a substantial

part of the events and omissions giving rise to the claims herein occurred in this district.

Defendant admits venue is proper in this district over the claims asserted by Plaintiffs. Any remaining allegations in Paragraph 3 are legal contentions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 3.

ANSWER TO PARTIES

4. Plaintiff Judicial Watch, Inc. (“Judicial Watch”) is a not-for-profit, educational organization incorporated under the laws of the District of Columbia and headquartered at 425 Third Street SW, Suite 800, Washington, D.C. 20024.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 4, and therefore denies them.

5. Plaintiff Elizabeth Miller is a member of Judicial Watch and a resident and a registered voter in El Paso County, Colorado, who has voted and intends to vote in the County.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 5, and therefore denies them.

6. Plaintiff Lorri Hovey is a resident and a registered voter in Adams County, Colorado, who has voted and intends to vote in the County.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 6, and therefore denies them.

7. Plaintiff Mark Sutfin is a resident and a registered voter in Elbert County, Colorado, who has voted and intends to vote in the County.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 7, and therefore denies them.

8. Plaintiff American Constitution Party of Colorado is a registered political party in Colorado and a state affiliate of the national Constitution Party, and is devoted to electing candidates in Colorado who espouse its principles.

Defendant admits the American Constitution Party of Colorado is a registered political party in Colorado. Defendant is without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 8, and therefore denies them.

9. Plaintiff Libertarian Party of Colorado is a registered political party in Colorado and a state affiliate of the national Libertarian Party, and is devoted to electing candidates in Colorado who espouse its principles.

Defendant admits the Libertarian Party of Colorado is a registered political party in Colorado. Defendant is without sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 9, and therefore denies them.

10. Defendant Jena Griswold is Colorado's Secretary of State and, as such, is Colorado's chief State election official. 52 U.S.C. § 20509; COLO. REV. STAT. § 1-1-107(1)(d), (e). As chief State election official, Defendant Griswold is responsible for the coordination, implementation, and enforcement of the NVRA in Colorado. She is sued in her official capacity.

Defendant admits that Jena Griswold is Colorado's Secretary of State, and that she is sued in her official capacity. Defendant further admits that the Secretary is Colorado's chief election official. Defendant further admits that as the state's chief election official, the Secretary is responsible for the coordination of Colorado's responsibilities under the NVRA. Defendant denies any remaining allegations in Paragraph 10.

ANSWER TO STATUTORY BACKGROUND

11. The NVRA requires states to "conduct a general program that makes a reasonable effort to remove ... from the official lists of eligible voters" the names of voters who have become ineligible by reason of death or a change of residence. 52 U.S.C. § 20507(a)(4).

Defendant states that the allegations in Paragraph 11 are legal contentions to which no response is required. To the extent a response is required, Defendant states that the text of the NVRA speaks for itself.

12. With respect to voters who have changed residence, the NVRA provides that they must be removed from a jurisdiction's voter rolls, but only if such registrants either (1) confirm in writing that they have moved outside the jurisdiction, or (2) fail to respond to an address confirmation notice and then fail to vote during a statutory waiting period extending from the date of the notice through the next two general federal elections. 52 U.S.C. §§ 20507(d)(1), (d)(3); 52 U.S.C. § 21083(a)(4)(A).

Defendant states that the allegations in Paragraph 12 are legal contentions to which no response is required. To the extent a response is required, Defendant states that the text of the statutes cited speak for themselves.

13. Federal regulations and Colorado law refer to voter registrations as "inactive" when a registrant has failed to respond to a notice and will be subject to removal if the registrant then fails to vote in the next two general federal elections. 11 C.F.R. § 9428.7; COLO. REV. STAT. § 1-2-605.

Defendant states that the allegations in Paragraph 13 are legal contentions to which no response is required. To the extent a response is required, Defendant states that the text of the Code of Federal Regulations and the Colorado Revised Statutes speak for themselves.

14. Under both the NVRA and Colorado law, voters whose registrations are inactive may still vote on election day. 52 U.S.C. § 20507(d)(2)(A); COLO. REV. STAT. § 1-2-605(3). Accordingly, inactive voters are still registered voters.

Defendant states that the allegations in Paragraph 14 are legal contentions to which no response is required. To the extent a response is required, Defendant states that the text of the NVRA and the Colorado Revised Statutes speak for themselves.

15. In June of each odd-numbered year, the U.S. Election Assistance Commission (“EAC”) is required by law to report to Congress its findings relating to state voter registration practices. 52 U.S.C. § 20508(a)(3). Federal regulations require states to provide various kinds of data to the EAC for use in this biennial report, including the numbers of active and inactive registered voters in the last two federal elections, and the numbers of registrations removed from the rolls for any reason between those elections. 11 C.F.R. § 9428.7(b)(1), (2), (5).

Defendant states that the allegations in Paragraph 15 are legal contentions to which no response is required. To the extent a response is required, Defendant states that the text of the NVRA and the Code of Federal Regulations speak for themselves.

16. The NVRA affords a private right of action to any “person who is aggrieved by a violation of” the Act. 52 U.S.C. § 20510(b). Ordinarily, a private litigant is required to send notice of a violation to the chief State election official prior to commencing a lawsuit. *Id.*, § 20510(b)(1),(2). However, no such notice is required “[i]f the violation occurred within 30 days before the date of an election for Federal office.” *Id.*, § 20510(b)(3).

Defendant states that the allegations in Paragraph 16 are legal contentions to which no response is required. To the extent a response is required, Defendant states that the text of the NVRA speaks for itself.

ANSWER TO FACTS

I. Answer to Judicial Watch’s Background, Mission, and Membership.

17. Judicial Watch’s mission is to promote transparency, integrity, and accountability in government and fidelity to the rule of law. The organization, which has been in existence since 1994, fulfills its mission through public records requests and litigation, among other means.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 17 and therefore denies them.

18. Judicial Watch is supported in its mission by hundreds of thousands of individuals across the nation. An individual becomes a member of Judicial Watch by making a financial contribution, in any amount, to the organization. Members’ financial contributions are by far the single most important source of income to Judicial Watch and provide the means by

which the organization finances its activities in support of its mission. Judicial Watch in turn represents the interests of its members.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 18 and therefore denies them.

19. Over the past several years, Judicial Watch's members have become increasingly concerned about the state of the nation's voter registration rolls, including whether state and local officials are complying with the NVRA's voter list maintenance obligations.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 19 and therefore denies them.

20. Members are concerned that failing to comply with the NVRA's voter list maintenance obligations undermines the integrity of elections by increasing the opportunity for ineligible voters or voters intent on fraud to cast ballots.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 20 and therefore denies them.

21. In response to this concern, Judicial Watch commenced a nationwide program to monitor state and local election officials' compliance with their NVRA list maintenance obligations. As part of this program, Judicial Watch utilizes public records laws to request and receive records and data from jurisdictions across the nation about their voter list maintenance efforts. It then analyzes these records and data and publishes the results of its findings to the jurisdictions, to its members, and to the general public.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 21 and therefore denies them.

II. Answer to Judicial Watch's Findings Regarding Violations of the List Maintenance Provisions of the NVRA.

22. In June 2019, the EAC published its biennial, NVRA-related report, entitled ELECTION ADMINISTRATION AND VOTING SURVEY, 2018 COMPREHENSIVE REPORT, A REPORT TO THE 116TH CONGRESS.

Defendant admits that in June 2019 the Election Assistance Commission published a biennial report, entitled Election Administration and Voting Survey, 2018 Comprehensive Report, a Report to the 116th Congress.

23. Along with its 2019 report, the EAC published the responses it received to a voter registration survey it sent to the states. The survey instrument is available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys> under the category heading of "2018," at a link entitled "2018 Election Administration and Voting Survey

Instrument.” The states, in consultation with their county and local officials, certify their answers to this survey directly to the EAC. The states’ responses are compiled on the same webpage under the heading “EAVS Datasets.” The initial version of these compiled responses was released on June 27, 2019, and has been periodically updated since then.

Defendant admits that the Election Assistance Commission publishes the responses it receives to the survey it sends to states, and that the survey instrument is available at the link provided. Defendant further admits that states provide data to the EAC’s vendor, and certify that the data submitted is complete and accurate to the best of their knowledge. Defendant admits that states’ 2018 responses are compiled on the same webpage under the heading “EAVS Datasets,” and that the initial version of those responses was released on June 27, 2019, and has been updated three times since that date.

24. In August 2021, the EAC published its next biennial, NVRA-related report, entitled ELECTION ADMINISTRATION AND VOTING SURVEY 2020 COMPREHENSIVE REPORT, A REPORT FROM THE U.S. ELECTION ASSISTANCE COMMISSION TO THE 117TH CONGRESS.

Defendant admits that in August 2021 the Election Assistance Commission published a biennial report, entitled Election Administration and Voting Survey 2020 Comprehensive Report, a Report from the U.S. Election Assistance Commission to the 117th Congress.

25. Along with its 2021 report, the EAC published the responses it received to the voter registration survey it sent to the state. The survey instrument is available at <https://www.eac.gov/research-and-data/datasets-codebooks-and-surveys> under the category heading of “2020,” at a link entitled “2020 Election Administration and Voting Survey Instrument.” The states’ responses are compiled on the same webpage under the heading “EAVS Datasets.” The initial version of these compiled responses was released on August 16, 2021, and was updated on October 21, 2021.

Defendant admits that the Election Assistance Commission publishes the responses it receives to the survey it sends to states, and that the survey instrument is available at the link provided. Defendant further admits that states provide data to the EAC’s vendor, and certify that the data submitted is complete and accurate to the best of their knowledge. Defendant admits that states’ 2020 responses are compiled on the same webpage under the heading “EAVS Datasets,” and that the initial version of those responses was released on August 16, 2021, and has been updated one time since that date.

26. The State of Colorado posts its registration figures on the Secretary of State’s website, at this address: <https://www.sos.state.co.us/pubs/elections/VoterRegNumbers/VoterRegNumbers.html>. This site links to the monthly registration statistics for each Colorado county, separately listing the active and inactive registrations.

Defendant admits that the State of Colorado posts voter registration figures on the Secretary of State’s website at the link provided. Among other items found at the link provided, the Secretary of State also posts registration statistics for each Colorado county, which are updated monthly. These reports list both active and inactive voters.

27. The American Community Survey (“ACS”) is an enormous survey run by the Census Bureau. It is sent every month to about 3.5 million addresses. The five-year ACS survey consists of a rolling average of 60 months and is considered to be the most authoritative population estimate outside of the national, decennial census. Among other things, the ACS provides an estimate of the citizen population over the age of 18 for each U.S. county.

Defendant admits that the American Community Survey (“ACS”) is a survey run by the Census Bureau. Defendant denies that it is sent every month to about 3.5 million addresses. Defendant denies that there is such a thing as a “five-year ACS survey.” Defendant admits that the ACS releases a “5-year estimates” dataset, which includes 60-months of collected data. Defendant is without sufficient information to form a belief as to whether it is “the most authoritative estimate outside of the national, decennial census,” and therefore denies that allegation. Defendant admits that the ACS 5-year estimates datafile includes an estimate of the citizen population over the age of 18 for each U.S. county.

28. Judicial Watch’s analysis of the foregoing records and data from the EAC, the State of Colorado, and the Census Bureau shows that Colorado has failed to make a reasonable effort to remove ineligible registrants from the rolls.

Defendant denies the allegations in Paragraph 28.

A. Answer to The Excessive Registration Rates in Numerous Colorado Counties.

29. A jurisdiction’s “registration rate” is (1) the number of its voter registrations, divided by (2) the number of citizens over the age of 18 who live there.

Defendant states that most, but not all, states, including Colorado, report to the EAC their total number of “registered and eligible” voters, including both active and inactive voters. The EAC notes that this data should be “used with caution, as these totals can include registrants who are no longer eligible to vote in that state but who have not been removed from the registration rolls because the removal process laid out by the NVRA can take up to two election cycles to be completed.” Defendant admits that the EAC calculates “registration rate” by dividing the total number of “registered and eligible voters,” including the caveat above, by the Citizen Voting Age Population (CVAP), which is “provided by the U.S. Census Bureau and reports the estimated number of citizens of voting age by jurisdiction and by state.”

30. When a registration rate exceeds 100%—so that there are more registrations than

citizens old enough to register—it is an indication that a jurisdiction is not taking steps required by law to cancel the registrations of ineligible registrants.

Defendant denies the allegations in Paragraph 30.

31. In the summer of 2019, Judicial Watch compared the Colorado county registration numbers published by the EAC in June 2019 with the then-most-recent five-year ACS estimates of citizen voting-age population (for the period from 2013 to 2017). Forty of Colorado’s 64 counties—or 62% of the total number—had registration rates exceeding 100%.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 31 and therefore denies them.

32. Judicial Watch used the same methodology and the same data sources to determine the registration rates of other counties and states. The percentage of Colorado counties with registration rates exceeding 100% was *the highest in the nation*.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 32 and therefore denies them.

33. In September 2020, Judicial Watch compared the most recent five-year ACS data released by the Census Bureau (for the period from 2014 through 2018) with the contemporaneous 60 months of registration data for those same years, which data was reported online by Colorado’s Secretary of State.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 33 and therefore denies them.

34. The September 2020 study showed that, in an average month of that 60-month period, 20 Colorado counties had registration rates exceeding 100%.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 34 and therefore denies them.

35. The September 2020 study showed that as many as 39 Colorado counties had registration rates exceeding 100% during a single month of that period.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 35 and therefore denies them.

36. The September 2020 study showed that nine Colorado counties—Cheyenne, Dolores, Jackson, Mineral, Ouray, Phillips, Pitkin, San Juan, and Summit—had registration rates exceeding 100% during *every single month* of that 60-month period. A tenth county, Moffat, had registration rates exceeding 100% during every month except one during that period.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 36 and therefore denies them.

37. The September 2020 study showed that six other Colorado counties—Baca, Boulder, Clear Creek, Douglas, Hinsdale, and San Miguel—had registration rates exceeding 100% during a majority of the months in that 60-month period.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 37 and therefore denies them.

38. In October 2022, Judicial Watch repeated the September 2020 study, but with the most recent data. Specifically, Judicial Watch compared the most recent five-year ACS data released by the Census Bureau (this time for the period from 2016 through 2020) with the contemporaneous 60 months of registration data for those same years, which data was reported online by Colorado’s Secretary of State.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 38 and therefore denies them.

39. The October 2022 study showed that, in an average month of that 60-month period, 18 Colorado counties had registration rates exceeding 100%.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 39 and therefore denies them.

40. The October 2022 study showed that as many as 42 Colorado counties had registration rates exceeding 100% during a single month of that period.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 40 and therefore denies them.

41. The October 2022 study showed that ten Colorado counties—Baca, Cheyenne, Dolores, Hinsdale, Jackson, Mineral, Ouray, Phillips, San Juan, and Sedgwick—had registration rates exceeding 100% during every single month of that 60-month period.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 41 and therefore denies them.

42. The October 2022 study showed that seven other Colorado counties—Pitkin, Summit, Moffat, Clear Creek, Gilpin, San Miguel, and Elbert—had registration rates exceeding 100% during a majority of the months in that 60-month period.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 42 and therefore denies them.

43. The summer 2019 study, the September 2022 study, and the October 2022 study all consistently show that Colorado counties have chronically high registration rates, which is evidence of an ongoing, systemic problem with its voter list maintenance efforts.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 43 and therefore denies them.

B. Answer To Low Numbers of Removals for Failing to Respond to An Address Confirmation Notice and Failing to Vote or Otherwise Appear.

44. If a jurisdiction removes relatively few registration records belonging to electors who fail to respond to an address confirmation notice and fail to vote in two consecutive federal elections, that jurisdiction is not complying with Section 8(d) of the NVRA.

The allegations in Paragraph 44 are legal contentions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 44.

45. Question A9e of the EAC's survey for the period 2018-2020 asked jurisdictions to report the number of registrations removed during the most recent two-year reporting period where the "[r]eason for [r]emoval" was "[f]ailure to respond to notice sent and failure to vote in two most recent federal elections." This question plainly refers to removals under Section 8(d)(1)(b)(ii) of the NVRA.

Defendant admits that Question A9a of the 2018 EAVS, which was "the EAC's most recent survey" as of the date of Plaintiffs' complaint, asked jurisdictions to report: "the total number of voters removed from the registration rolls in your jurisdiction in the period between the close of registration for the November 2016 general election and the close of registration for the November 2018 general election." Defendant further admits that Questions A9b-A9g asked jurisdictions to "divide the total number of voters removed (as reported in A9a) into the categories listed below," and that the category at A9e is "Failure to respond to notice sent and failure to vote in two most recent federal elections." The remaining allegations in Paragraph 45 are legal contentions to which no Answer is required. To the extent an answer is required, Defendant denies the allegations.

46. In response to question A9e of the EAC's survey for the period from 2018-2020, 23 Colorado counties reported removing less than 4% of their registration list during that period pursuant to the Section 8(d) procedures. Because the reporting period was two years, that means that these counties removed on average less than 2% of their registration list per year. The 23 counties are: Baca, Bent, Broomfield, Chaffee, Cheyenne, Costilla, Crowley, Custer, Delta, Dolores, Elbert, Garfield, Gilpin, Grand, Jackson, Kiowa, Lake, Mineral, Montrose, Morgan, Otero, Phillips, and Washington.

Defendant is without sufficient information as to the methodology used to calculate the percentages in Paragraph 46, and on that basis denies the allegations.

47. The most recent census data shows that 18% of Colorado’s residents were not living in the same house as a year ago.

Defendant is without sufficient information as to the methodology used to calculate the percentages in Paragraph 47, and on that basis denies the allegations.

48. The most recent census data shows that, for the 23 counties listed in paragraph 45, the percentage of those changing residence *each year* is as follows: Baca (11.6%), Bent (10.2%), Broomfield (19.2%), Chaffee (11.7%), Cheyenne (8.2%), Costilla (13.0%), Crowley (9.3%), Custer (10.4%), Delta (12.1%), Dolores (5.3%), Elbert (13.0%), Garfield (15.0%), Gilpin (18.4%), Grand (15.2%), Jackson (17.5%), Kiowa (21.6%), Lake (11.9%), Mineral (19.7%), Montrose (11.4%), Morgan (15.3%), Otero (14.3%), Phillips (10.5%), and Washington (21.3%).

Defendant is without sufficient information as to the methodology used to calculate the percentages in Paragraph 48, and on that basis denies the allegations.

49. A removal rate below 2% per year under Section 8(d) is too low to comply with the NVRA’s reasonable efforts requirement.

The allegations in Paragraph 49 are legal contentions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 49.

50. The low numbers of removals per year under Section 8(d) are consistent with evidence of Colorado’s high registration rates, and indicate an ongoing, systemic problem with its voter list maintenance efforts

Defendant denies the allegations in Paragraph 50.

C. Answer to Low Numbers of Address Confirmation Notices Sent to Colorado Registrants.

51. One of the core responsibilities under the NVRA is sending address confirmation notices pursuant to Section 8(d) to registrants who are believed to have moved. If a jurisdiction sends relatively few such notices, it cannot be compliant with the NVRA.

The allegations in Paragraph 51 are legal contentions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 51.

52. Question A8a of the EAC’s 2019 survey asked jurisdictions to report the number of address confirmation notices sent during a two-year reporting period.

Defendant admits that Question A8a of the 2018 EAVS, which was “the EAC’s most recent survey” as of the date of Plaintiffs’ complaint, asked jurisdictions to report: “the total

number of confirmation notices sent to registered voters” between the close of registration for the November 2016 general election and the close of registration for the November 2018 general election.

53. In response to question A8a of the EAC’s 2016-2018 survey, 25 Colorado counties reported sending address confirmation notices to less than 2% of their registrants during that period. Because the reporting period was two years, that means that these counties sent address confirmation notices on average to less than 1% of their registrants each year. These 25 counties are: Archuleta, Conejos, Costilla, Custer, Delta, Eagle, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, La Plata, Las Animas, Lincoln, Mineral, Moffat, Ouray, Phillips, Prowers, RioBlanco, Rio Grande, Saguache, San Juan, and San Miguel.

Defendant is without sufficient information as to the methodology used to calculate the percentages in Paragraph 53, and on that basis denies the allegations.

54. Sending address confirmation notices to less than 1% of a registration list each year does not comply with the requirements of the NVRA.

The allegations in Paragraph 54 are legal contentions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 54.

55. The low numbers of address confirmation notices sent during the 2016-2018 reporting period are consistent with evidence of Colorado’s high registration rates and low Section 8(d) removals, and indicate an ongoing, systemic problem with Colorado’s voter list maintenance efforts.

Defendant denies the allegations in Paragraph 55.

D. Answer to High Inactive Registration Rates.

56. Removing registrations that have been inactive for two general federal elections is a necessary part of any effort to comply with the NVRA’s mandate to conduct a general program that makes a reasonable effort to remove the registrations of ineligible registrants.

The allegations in Paragraph 56 are legal contentions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 56.

57. Having a high percentage of inactive registrations is an indication that a state or jurisdiction is not removing inactive registrations after two general federal elections as the NVRA requires.

The allegations in Paragraph 57 are legal contentions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 57.

58. A jurisdiction's "inactive registration rate" is obtained by dividing (1) the number of inactive registrations, by (2) the total number of registrations for that jurisdiction.

It appears as if this statistic is invented by Plaintiffs. On that basis, Defendant denies that there is a standard definition of "inactive registration rate."

59. In September 2020, Judicial Watch undertook an analysis of Colorado's inactive registration rates, month by month, for the previous two years (*i.e.*, from October 2018 through September 2020). This analysis relied on the data reported on the Colorado's Secretary of State website.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 59 and therefore denies them.

60. The EAC's data for the reporting period from 2016-2018 showed that the median inactive registration rate for all U.S. counties for which data was available was 8.3%.

Defendant is without sufficient information as to the methodology used to calculate the percentages in Paragraph 60, and on that basis denies the allegations. In good faith, Defendant attempted to verify this calculation. To do so, Defendant divided jurisdiction-level responses to Question A1c of the 2018 EAVS (which asks for the "total number of inactive voters," defined as "voters who remain eligible to vote but require address verification under the provisions of the [NVRV]") by Question A1a. Defendant then calculated the median, including only those jurisdictions that reported data for Question A1c. The ensuing rate was not 8.3%. Defendant also tried limiting the dataset to jurisdictions with "county" in their name, but again, the ensuing rate was not 8.3%.

61. Judicial Watch's September 2020 analysis showed that 60 of Colorado's 64 counties had an average monthly inactive registration rate over the past two years that was greater than 8.3%.

Defendant is without sufficient information as to the methodology used to calculate the percentages in Paragraph 61 so as to form a belief as to the truth of the allegations in Paragraph 61 and therefore denies them.

62. Judicial Watch's September 2020 analysis showed that eight of Colorado's counties had an average monthly inactive registration rate over the past two years that was greater than 17%—meaning that one out of every six registrations was inactive. These eight counties are: Bent, Jackson, La Plata, Lake, Las Animas, Phillips, San Juan, and Summit.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 62 and therefore denies them.

63. In October 2022, Judicial Watch undertook the same analysis of Colorado inactive

registration rates, month by month, for the 25-month period following the last study (specifically, from October 2020 through and including October 2022). This updated analysis also relied on the data reported on the Colorado Secretary of State's website.

Defendant is without sufficient information to form a belief as to the truth of the allegations in Paragraph 63 and therefore denies them.

64. The EAC's data for the reporting period from 2018-2020 showed that the median inactive registration rate during that period for all U.S. counties for which data was available was 7.12%.

Defendant is without sufficient information as to the methodology used to calculate the percentages in Paragraph 64, and on that basis denies the allegations. In good faith, Defendant attempted to verify this calculation. To do so, Defendant divided jurisdiction-level responses to Question A1c of the 2020 EAVS (which asks for the "total number of inactive voters," defined as "voters who remain eligible to vote but require address verification under the provisions of the [NVRA]") by Question A1a. Defendant then calculated the median, including only those jurisdictions that reported data for Question A1c. The ensuing rate was not 7.12%. Defendant also tried limiting the dataset to jurisdictions with "county" in their name, but again, the ensuing rate was not 7.12%.

65. Judicial Watch's October 2022 analysis showed that 55 of Colorado's 64 counties had an average monthly inactive registration rate over the past 25 months that was greater than 7.12%.

Defendant is without sufficient information as to the methodology used to calculate the percentages in Paragraph 65 so as to form a belief as to the truth of the allegations in Paragraph 65 and therefore denies them.

66. Judicial Watch's October 2022 analysis showed that 29 of Colorado's 64 counties had a monthly inactive registration rate that exceeded the national median inactive registration rate of 7.12% during every single month for the past 25 months.

Defendant is without sufficient information as to the methodology used to calculate the percentages in Paragraph 66 so as to form a belief as to the truth of the allegations in Paragraph 66 and therefore denies them.

67. Judicial Watch's October 2022 analysis showed that 61 of Colorado's 64 counties had a monthly inactive registration rate that exceeded the national median inactive registration rate of 7.12% during more than half of the past 25 months.

Defendant is without sufficient information as to the methodology used to calculate the percentages in Paragraph 67 so as to form a belief as to the truth of the allegations in Paragraph 67 and therefore denies them.

68. Colorado's counties have high inactive registration rates.

Defendant denies the allegations in Paragraph 68.

69. These high inactive registration rates are consistent with evidence of Colorado's high general registration rates, low Section 8(d) removals, and low numbers of address confirmations sent, and indicate an ongoing, systemic problem with Colorado's voter list maintenance efforts.

Defendant denies the allegations in Paragraph 69.

III. Answer to Plaintiffs' Injuries.

70. Judicial Watch's concerns with Colorado's list maintenance practices led it to send a letter in April 2019 to seven Colorado counties and to the Secretary of State requesting documents relating to the state's list maintenance practices, and to analyze the state's documentary responses to that request.

Defendant admits that the Secretary of State received a letter in April 2019 in which Judicial Watch requested documents relating to Colorado's list maintenance practices. Defendant also admits that the letter purported to have been sent to seven Colorado counties as well. Defendant is without sufficient information to form a belief as to the remaining allegations in Paragraph 70, and therefore denies them.

71. Judicial Watch's concerns also caused it to send a notice letter threatening a Section 8 lawsuit to the Secretary of State as chief State election official, and to Jefferson County, in December 2019, and to research and analyze the Secretary's response.

Defendant admits that the Secretary of State received a letter from Judicial Watch in December 2019, and that the letter threatened a Section 8 lawsuit. Defendant is without sufficient information to form a belief as to the remaining allegations in Paragraph 71, and therefore denies them.

72. Judicial Watch's concerns also led it to conduct analyses of Colorado's registration rates, removal rates, address confirmation notice statistics, and inactive rates previously set forth in this complaint.

Defendant is without sufficient information to form a belief as to the allegations in Paragraph 72, and therefore denies them.

73. Judicial Watch has expended substantial resources, including staff time, investigating Defendants' failure to comply with their NVRA voter list maintenance obligations, communicating with Colorado officials and concerned members about Defendants'

failure, and researching statements made by Defendants in their correspondence.

Defendant is without sufficient information to form a belief as to the allegations in Paragraph 73, and therefore denies them.

74. The resources expended by Judicial Watch to investigate, address, research, and counteract Defendants' failure to comply with their NVRA voter list maintenance obligations are distinct from and above and beyond Judicial Watch's regular, programmatic efforts to monitor state and local election officials' NVRA compliance.

Defendant is without sufficient information to form a belief as to the allegations in Paragraph 74, and therefore denies them.

75. Were it not for Defendants' failure to comply with their NVRA voter list maintenance obligations, Judicial Watch would have expended these same resources on its regular, programmatic activities or would not have expended them at all. Instead, it diverted its resources to counteract Defendants' noncompliance and to protect members' rights.

Defendant is without sufficient information to form a belief as to the allegations in Paragraph 75, and therefore denies them.

76. Plaintiffs Miller, Hovey, and Sutfin, and all individual members of Judicial Watch who are lawfully registered to vote in Colorado, have rights under both the U.S. Constitution and the Colorado Constitution to vote in federal and state elections, as well as statutory rights under both federal and state law to the safeguards and protections set forth in the NVRA.

The allegations in Paragraph 76 are legal contentions to which no response is required. To the extent a response is required, Defendant admits that all registered voters have rights under the U.S. and Colorado Constitutions, and under the NVRA.

77. Defendants' failure to comply with their NVRA voter list maintenance obligations burdens the federal and state constitutional rights to vote of Plaintiffs Miller, Hovey, and Sutfin, and of all individual members of Judicial Watch who are lawfully registered to vote in Colorado, by undermining their confidence in the integrity of the electoral process, discouraging their participation in the democratic process, and instilling in them the fear that their legitimate votes will be nullified or diluted.

Defendant denies the allegations in Paragraph 77.

78. Defendants' failure to satisfy their NVRA voter list maintenance obligations also infringes the federal and state statutory rights of Plaintiffs Miller, Hovey, and Sutfin, and of all

individual members of Judicial Watch who are lawfully registered to vote in Colorado. These individuals have a statutory right to vote in elections for federal office that comply with the procedures and protections required by the NVRA, including the voter list maintenance obligations set forth in Section 8.

Defendant denies the allegations in Paragraph 78.

79. Protecting the voting rights of Judicial Watch members who are lawfully registered to vote in Colorado is germane to Judicial Watch's mission. It also is well within the scope of the reasons why members of Judicial Watch join the organization and support its mission.

Defendant is without sufficient information to form a belief as to the allegations in Paragraph 79, and therefore denies them.

80. In September 2020, 454 Judicial Watch members who are registered to vote throughout Colorado confirmed to Judicial Watch's staff that they were concerned about Defendants' failure to satisfy their voter list maintenance obligations under the NVRA and the resulting harm to these members' voting rights.

Defendant is without sufficient information to form a belief as to the allegations in Paragraph 80, and therefore denies them.

81. Because the relief sought herein will inure to the benefit of Judicial Watch members who are lawfully registered to vote in Colorado, neither the claims asserted nor the relief requested requires the participation of Judicial Watch's individual members.

Defendant is without sufficient information to form a belief as to the allegations in Paragraph 81, and therefore denies them.

82. Plaintiffs American Constitution Party of Colorado (ACP-CO) and Libertarian Party of Colorado (LP-CO) are political parties in the State of Colorado.

Defendant admits the allegations in Paragraph 82.

83. ACP-CO and LP-CO both runs its own candidates for Colorado offices, and seeks to support candidates from other parties who supports its core principles.

Defendant admits that members of the ACP-CO and LP-CO have run as candidates for Colorado offices. Defendant is without sufficient information to form a belief as to the remaining allegations in Paragraph 83, and therefore denies them.

84. ACP-CO and LP-CO rely on Colorado's voter rolls to identify in-state voters who are members of the respective political party, so that it may contact them and encourage them to assist the party by volunteering, organizing, contributing, and voting.

Defendant is without sufficient information to form a belief as to the allegations in Paragraph 84, and therefore denies them.

85. ACP-CO and LP-CO rely on Colorado's voter rolls to identify in-state voters who are registered as independents because they may, after an appropriate contact is made, join or support their respective political party, and may assist the party by volunteering, organizing, contributing, and voting.

Defendant is without sufficient information to form a belief as to the allegations in Paragraph 85, and therefore denies them.

86. Defendant's failure to timely remove ineligible registrants from Colorado's voter rolls causes both ACP-CO and LP-CO to waste significant time, effort, and money trying to contact voters listed on the rolls who have changed their residence or have died.

Defendant is without sufficient information to form a belief as to the allegations in Paragraph 86, and therefore denies them.

ANSWER TO COUNT I

(Violation of Section 8(a)(4) of the NVRA, 52 U.S.C. § 20507(a)(4))

87. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

Defendant realleges all preceding paragraphs.

88. Plaintiffs Judicial Watch, Miller, Hovey, and Sutfin, and all individual members of Judicial Watch who are lawfully registered to vote in Colorado, and ACP-CO and LP-CO are persons aggrieved by a violation of the NVRA, as set forth in 52 U.S.C. § 20510(b).

Defendant denies the allegations in Paragraph 88.

89. Because the violations set forth herein occurred within 30 days before the date of a federal election, no notice is required prior to filing this action. 52 U.S.C. § 20510(b)(3).

Defendant denies the allegations in Paragraph 89.

90. Defendant has failed to fulfill her obligations under Section 8(a)(4) of the NVRA to conduct a general program that makes a reasonable effort to cancel the registrations of

registrants who are ineligible to vote in Colorado's federal elections.

Defendant denies the allegations in Paragraph 90.

91. Defendant Griswold has failed in her responsibilities as Colorado's chief State election official to coordinate, implement, and enforce the NVRA in Colorado.

Defendant denies the allegations in Paragraph 91.

92. Plaintiffs have suffered and will continue to suffer irreparable injury as a direct result of Defendants' failure to fulfill their obligations to comply with Section 8(a)(4) of the NVRA.

Defendant denies the allegations in Paragraph 92.

93. Plaintiffs have no adequate remedy at law.

This allegation in Paragraph 93 is a legal contention to which no response is required. To the extent a response is required, Defendant denies that Plaintiffs have no adequate remedy at law.

AFFIRMATIVE DEFENSES

Defendant submits the following affirmative defenses for which it does not concede that it has the burden of proof or persuasion:

- A. Plaintiffs lack Article III standing to bring this action;
- B. Plaintiffs lack statutory standing to bring this action;
- C. Waiver;
- D. Failure to join all necessary and indispensable parties; and
- E. Laches.

Defendant reserves the right to assert additional affirmative defenses as discovery progresses in this case and the facts become known.

Dated: November 10, 2022

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