

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 20-cv-02992-PAB-KMT

JUDICIAL WATCH, INC., et al.,

Plaintiffs,

v.

JENA GRISWOLD,

Defendant.

**PLAINTIFFS' RESPONSE TO DEFENDANT'S
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs Judicial Watch, Inc., Elizabeth Miller, Lorri Hovey, and Mark Sutfin (“Plaintiffs”) file this memorandum of law in response to Defendant Secretary Griswold’s Notice of Supplement Authority (Doc. No. 82).

Secretary Griswold (“Defendant”) cites as supplemental authority on the issue of standing the unpublished decision in *O’Rourke v. Dominion Voting Sys., Inc.*, No. 21-1161 (10th Cir. May 27, 2022) (Order and Judgment) (Doc. No. 82-1). The plaintiffs there had alleged, in a class action complaint, that the defendants’ wrongful conduct “hurt[] every registered voter in the country, no matter whose side the voter is on”; injured “the Plaintiffs, but more broadly, every registered voter in America, all of whom have an interest in free and fair [presidential] elections”; and “violated the rights of Plaintiffs and all registered voters in the United States.” Doc. No. 82-1 at 2 (citing pleadings). The Tenth Circuit upheld the district court’s determination that the plaintiffs had failed “to identify any injury to any named plaintiff that is in any way different than the alleged injuries to every registered voter in the United States.” Doc. 82-1 at 6.

O'Rourke does not conflict with this Court's August 16, 2021 Order. *Judicial Watch v. Griswold*, 554 F. Supp. 3d 1091 (D. Colo. 2021). This Court likewise rejected one form of standing that it determined to be "a generalized grievance ... shared equally by all voters." *Id.* at 1103 (discussing prospective vote dilution). But the Court then held that Plaintiffs had established standing on different grounds, by alleging that "noncompliance with the NVRA undermines the individual plaintiffs' confidence in the integrity of the electoral process and discourages their participation":

The Secretary insists that these purported injuries are also generalized and hypothetical, yet there is no indication that undermined confidence and discouraged participation are "common to all members of the public." ... Nor are these fears speculative or hypothetical. The individual plaintiffs are not worried that their confidence could be undermined at some point in the future; their confidence is undermined now.

Id. at 1103-1104 (citations omitted). Because individual Plaintiffs had "properly established standing," the Court also held that *Judicial Watch* "has associational standing." *Id.* at 1104, 1105.

Because *O'Rourke* does not conflict with this Court's order, it is not relevant to Defendant's motion to reconsider it.

Respectfully submitted,

Date: June 3, 2022

/s Eric W. Lee
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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2022, I served a true and complete copy of the foregoing PLAINTIFFS' RESPONSE TO DEFENDANT'S NOTICE OF SUPPLEMENTAL AUTHORITY upon all parties through ECF.

/s Eric W. Lee

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