

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN**

PUBLIC INTEREST LEGAL
FOUNDATION,

Plaintiff,

v.

JOCELYN BENSON, in her official
capacity as Michigan Secretary of State,

Defendant.

CIVIL ACTION

No. 1:21-cv-00929

**INTERVENOR-DEFENDANTS' PROPOSED ANSWER TO PLAINTIFF'S
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Intervenor-Defendants the Detroit/Downriver Chapter of the A. Philip Randolph Institute ("APRI"), the Michigan Alliance for Retired Americans ("MiARA") and Rise, Inc. (together, "Intervenors"), by and through their undersigned counsel of record, answer Plaintiff's Complaint for Declaratory and Injunctive Relief (the "Complaint") as set forth below. Unless expressly admitted, each allegation in the Complaint is denied, and Intervenors demand strict proof thereof.

"JURISDICTION AND VENUE"

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, as the action arises under the laws of the United States. This Court also has

jurisdiction under 52 U.S.C. § 20510(b), as the action seeks injunctive and declaratory relief under the NVRA.

Answer: Paragraph 1 contains legal contentions, characterizations, conclusions, and opinions to which no response is required.

2. Venue in this Court is proper under 28 U.S.C. § 1391(b)(1) because the Defendant resides in this district, and under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this district.

Answer: Paragraph 2 contains legal contentions, characterizations, conclusions, and opinions to which no response is required.

“PARTIES”

3. The Plaintiff, the Public Interest Legal Foundation, Inc., (the “Foundation”) is a nonpartisan, non-profit, public interest organization incorporated and based in Indianapolis, Indiana. The Foundation seeks to promote the integrity of elections in Michigan and other jurisdictions nationwide through research, education, remedial programs, and litigation. The Foundation has dedicated significant time and resources to ensure that voter rolls in the state of Michigan do not contain ineligible registrants. The Foundation communicates with election officials about problems or defects found in list maintenance practices and about ways to improve those practices. The Foundation relies on accurate voter rolls to

conduct analyses and to educate the public in Michigan and across the nation about the integrity of their elections.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 3.

4. The Foundation's analysis of Michigan's voter roll and verifiable death records reveals that, as of August 2021, 25,975 potentially deceased registrants are on Michigan's voter rolls. Of those, 23,663 registrants have been dead for five years or more, 17,479 registrants have been dead for at least ten years, and 3,956 registrants have been dead for at least *twenty* years.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 4.

5. Defendant Jocelyn Benson is the Michigan Secretary of State. Secretary Benson is the chief election officer of Michigan for the purposes of the NVRA. Mich. Comp. Laws § 168.21; Mich. Comp. Laws § 168.509n. Secretary Benson is sued in her official capacity.

Answer: Intervenors admit that Jocelyn Benson is the Secretary of State of Michigan with certain responsibilities described by law and is sued in her official capacity. The remaining allegations in Paragraph 5 contain legal contentions, characterizations, conclusions, and opinions to which no response is required.

6. Because Defendant does not maintain accurate voter rolls, the Foundation must spend more time and resources evaluating Michigan's rolls and attempting to correct the problems. The Foundation has spent many thousands of dollars reviewing Michigan's election procedures and documented failures to maintain an accurate and correct voter roll as required by the NVRA. Defendant's unlawful list maintenance program has forced the Foundation to incur substantial costs comparing Michigan's voter rolls to the Social Security Death Index, various commercial databases, and other sources in order to identify deceased registrants.

Answer: Intervenors deny the allegations in Paragraph 6.

7. Defendant's violations of the NVRA have harmed and continue to harm and frustrate the Foundation's purpose of protecting the integrity of the electoral process, ensuring that accurate and current voter registration rolls are maintained, and educating the public about the same. The Foundation's expenditure of significant time and money in Michigan seeking to rectify Defendant's failure to clean up the voter rolls by removing the surfeit of deceased registrants from such rolls has also forced the Foundation to divert its limited resources from other states with similar issues. All of these harms confer standing upon the Foundation to assert the claim raised in this case.

Answer: Intervenors deny the allegations in Paragraph 7.

“STATEMENT OF FACTS AND LAW”

8. Section 8 of the NVRA requires Michigan to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of,” *inter alia*, “the death of the registrant.” 52 U.S.C. § 20507(a)(4)(A).

Answer: Paragraph 8 contains legal contentions, characterizations, conclusions, and opinions to which no response is required and purports to quote a statute that speaks for itself.

9. Section 8 of the NVRA also requires that Michigan shall “complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.” 52 U.S.C. § 20507(c)(2)(A).

Answer: Paragraph 9 contains legal contentions, characterizations, conclusions, and opinions to which no response is required and purports to quote a statute that speaks for itself.

10. Although Section 8 of the NVRA generally restricts states from removing ineligible registrants from the voter rolls within 90 days of a primary or general election, Congress permitted the removal of registrants who have died. 52 U.S.C. § 20507(c)(2)(B)(i). So has Michigan. Mich. Comp. Laws § 168.509dd(2)(b).

Registrants who have died may be removed *at any time*. See also U.S. Dep't of Justice, the National Voter Registration Act Of 1993 (NVRA) Questions and Answers, *available at* <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra> (“This 90 day deadline does not, however, preclude removal of names at the request of the registrant, removal due to death of the registrant, removal due to criminal conviction or mental incapacity of the registrant as provided by State law, nor does the deadline preclude correction of a registrant’s information.”).

Answer: Paragraph 10 contains legal contentions, characterizations, conclusions, and opinions to which no response is required and purports to quote a website that speaks for itself.

11. Defendant is the chief election official of Michigan and is responsible for coordination of Michigan’s responsibilities under the NVRA. 52 U.S.C. § 20509.

Answer: Intervenors admit that Jocelyn Benson is the Secretary of State of Michigan with certain responsibilities described by law. The remaining allegations in Paragraph 11 contain legal contentions, characterizations, conclusions, and opinions to which no response is required.

12. Congress intended for the chief election official to be “responsible for implementing the state’s function under the [NVRA].” S. REP. No. 103-6, at 39 (1993).

Answer: Paragraph 12 contains legal contentions, characterizations, conclusions, and opinions to which no response is required and purports to quote a statute that speaks for itself.

13. Although a state may assign certain tasks associated with the voter registration process to different officials in the state, the chief election official remains responsible at all times—pursuant to *federal* law—for coordinating and implementing the NVRA’s myriad legal mandates.

Answer: Paragraph 13 contains legal contentions, characterizations, conclusions, and opinions to which no response is required.

14. According to the U.S. Department of Justice, the chief state election official for NVRA purposes is a proper defendant in any statewide NVRA action. *See* Statement of Interest of the United States at 7, Doc. 36, *Public Interest Legal Foundation v. Boockvar*, Civ. No. 1:20-cv1905 (attached here as **Exhibit 1**).

Answer: Paragraph 14 contains legal contentions, characterizations, conclusions, and opinions to which no response is required.

15. Defendant’s responsibility for coordinating with local election officials to ensure the removal of deceased electors from the voter rolls is a core component of her NVRA statutory obligation. It is also mandated by the federal Help America Vote Act (“HAVA”). 52 U.S.C. § 21083(a)(2)(A)(ii)(II). For example, Michigan’s State Plan under HAVA states that “[i]n order to provide local election officials the

tools to comply with the National Voter Registration Act (NVRA), the State of Michigan enhanced the [Qualified Voter File] to automate the cancellation process...the QVA will automatically forward lists of registered voters subject to cancellation to each election official.” Publication of State Plan Pursuant to Help America Vote Act, 70 Fed. Reg. 69,530, 69,546 (Nov. 16, 2005).

Answer: Paragraph 15 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. The final sentence of Paragraph 15 purports to quote a regulation that speaks for itself.

“Michigan’s Program for Removing Deceased Residents”

16. Pursuant to Michigan law, Defendant “shall direct and supervise the establishment and maintenance of a statewide qualified voter file.” Mich. Comp. Laws § 168.509o(1).

Answer: Paragraph 16 contains legal contentions, characterizations, conclusions, and opinions to which no response is required and purports to quote a statute that speaks for itself.

17. Specifically, Michigan law requires Defendant to

develop and utilize a process by which information obtained through the United States Social Security Administration’s death master file that is used to cancel an operator’s or chauffeur’s license...of a deceased resident of this state is also used at least once a month to update the qualified voter file to cancel the voter registration of any elector determined to be deceased. The secretary of state shall make the canceled voter registration information under this section available to the clerk of each city or township to assist with the clerk’s obligations under section 510.

Mich. Comp. Laws § 168.509o(4).

Answer: Paragraph 17 contains legal contentions, characterizations, conclusions, and opinions to which no response is required and purports to quote a statute that speaks for itself.

18. Upon information and belief, Defendant, and not any local election official, is responsible for receiving and acting upon Social Security Death Index (“SSDI”) information. In response to a complaint filed by the Foundation against City of Detroit election officials regarding deceased registrants the Foundation identified, the defendants attached to a declaration an email from Rachel Clone, Data Analytics and Support Manager at the Department of State, Bureau of Elections. A true and correct copy of the declaration and relevant attachment is included herein as **Exhibit 2**. Specifically, Ms. Clone stated the following,

To answer your earlier question regarding the Social Security Death Index and its role in voter registration file maintenance, I can confirm that the MI Secretary of State receives this data and through a comparison process updates records as deceased within the driver and State Personal ID file. Through an automated process, the information interfaces with the Qualified Voter File in order to cancel corresponding voter registrations.

Exhibit 2 at 8.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 18.

19. City of Detroit election officials also stated that they provided the State of Michigan with the potentially deceased registrant data provided by the Foundation. According to the City of Detroit election officials, “The State discovered that in many cases, discrepancies between the information contained in the SSDI and the QVF has made it difficult to confirm the deaths of the voters at issue. However, the State is continuing its investigation, and is cancelling voters as deceased as it deems appropriate.” Exhibit 2 at 5.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 19.

20. Michigan law provides,

At least once a month, the county clerk shall forward a list of the last known address and birth date of all persons over 18 years of age who have died within the county to the clerk of each city or township within the county. The city or township clerk shall compare this list with the registration records and cancel the registration of all deceased electors.

Mich. Comp. Laws § 168.510.

Answer: Paragraph 20 contains legal contentions, characterizations, conclusions, and opinions to which no response is required and purports to quote a statute that speaks for itself.

21. According to Michigan law, Defendant “shall notify each clerk of the following information regarding residents or former residents of the clerk’s city or

township...(c) Death notices received by the secretary of state.” Mich. Comp. Laws § 168.509z.

Answer: Paragraph 21 contains legal contentions, characterizations, conclusions, and opinions to which no response is required and purports to quote a statute that speaks for itself.

22. Additionally, Michigan law provides that local election officials “may conduct a house-to-house canvass or use such other means of checking the correctness of registration records as may seem expedient.” Mich. Comp. Laws § 168.515.

Answer: Paragraph 22 contains legal contentions, characterizations, conclusions, and opinions to which no response is required and purports to quote a statute that speaks for itself.

23. The Michigan Election Officials’ Manual is a document that “is designed to serve as a lasting information resource on election related matters.” Introduction, Michigan Election Officials’ Manual, *available at* https://www.michigan.gov/documents/sos/June_2011_Clerk_Accredi_Manual_Cover-Content_362765_7.pdf (last accessed November 3, 2021). Pursuant to the Michigan Election Officials’ Manual, local election officials are authorized to cancel registration records when, for example, “The clerk receives or obtains information that the voter has died. Sources: QVF inbox notification; county clerk; *death notices*

published in newspaper; personal firsthand knowledge.” Michigan Election Officials’ Manual, Chapter 2, Page 20, *available at* https://www.michigan.gov/docuemnts/sos/II_Voter_Registration_265983_7.pdf (last accessed November 3, 2021) (emphasis added).

Answer: Paragraph 23 purports to quote from the Michigan Election Officials’ Manual that speaks for itself.

“Michigan’s List Maintenance Programs and Activities Are Unreasonable”

24. As explained by the U.S. Department of Justice, “the question whether the general program of list maintenance [a chief election official] undertakes in fact amounts to a ‘reasonable effort’ to remove ineligible voters under Section 8 of the NVRA goes beyond the simple existence of state laws and procedures, to include consideration of the actual efforts undertaken pursuant to those laws and procedures.” Exhibit 1 at 13.

Answer: Paragraph 24 contains legal contentions, characterizations, conclusions, and opinions to which no response is required and purports to quote a document that speaks for itself.

25. Michigan’s list maintenance activities have proven unreasonably inadequate to identify many registrants who are deceased, some of which have been deceased for a significant number of years and been published in newspaper death notices. The Foundation was able to find copies of death notices and pictures of

grave markers for individuals included on the Foundation's list of likely deceased registrants. *See Exhibit 3* (with some information redacted for the purpose of this filing).

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations regarding Plaintiff's activities in Paragraph 25. The remaining allegations in Paragraph 25 are denied.

26. Michigan's activities for removing the names of deceased registrants from the list of eligible voters, overseen by the Defendant in her capacity as the state's chief election official, are unreasonable and inadequate to meet the obligations required by the NVRA. Defendant is not following the existing federal and state laws and procedures, and to the extent she is, her efforts are inadequate. Among the evidentiary bases for this allegation are (a) the presence of significant numbers of registrants on the rolls who have been deceased for many years or even decades and (b) Defendant's refusal to act despite specific information about deceased active registrants being brought to her attention. Defendant's actions and inactions in this regard constitute a clear failure to conduct reasonable list maintenance under the NVRA.

Answer: Intervenors deny the allegations in Paragraph 26.

“Thousands of Deceased Registrants Remain on the Voter Rolls”

“The Foundation’s Discovery of the Problem”

27. The Defendant’s failures have occurred over an extended period of time. The Foundation, in turn, has sought to remedy these failures over an extended period of time. The Foundation first analyzed the accuracy of Michigan’s voter rolls with respect to deceased registrants in early 2020 after obtaining a copy of the State’s Qualified Voter File (“QVF”) as of September 2019.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations regarding Plaintiff’s activities in Paragraph 27. The remaining allegations in Paragraph 27 are denied.

28. The Foundation’s research sampled registrants classified as “active.” Under Michigan law, Defendant “shall create an inactive voter file.” Mich. Comp. Laws § 168.509r(5). A registrant appears on the inactive voter file if he or she was “sent a notice under section 509aa to confirm the elector’s residence information or if an elector does not vote for 6 consecutive years.” Mich. Comp. Laws § 168.509r(6).

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations regarding Plaintiff’s activities in Paragraph 28. The remaining allegations in Paragraph 28 contain legal

contentions, characterizations, conclusions, and opinions to which no response is required and purports to quote a statute that speaks for itself.

29. A registrant listed in the inactive voter file “remains eligible to vote and his or her name must appear on the precinct voter registration list.” Mich. Comp. Laws § 168.509r(7).

Answer: Paragraph 29 contains legal contentions, characterizations, conclusions, and opinions to which no response is required and purports to quote a statute that speaks for itself.

30. The Foundation procured a data analytics expert to identify **active status** registrants who are deceased in a sample study. Because the state of Michigan does not publish the full dates of birth of registrants on the QVF, the data analytics expert first cross-referenced the voter registration file provided by Defendant with commercial databases (e.g. credit reporting agencies and other licensed databases) to ascertain full dates of birth. The expert also checked for evidence of commercial activity to help limit the possibility of false positives. If an individual was found to have had any recent financial activity, the expert went no further in trying to determine if the individual is deceased and assumed the individual to be alive.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 30.

31. The data analytics expert then took the sampling of active registrants with no recent commercial activity (“Registrant Sample #1”) and sent the names, dates of birth, and addresses for those registrants to a federally licensed database vendor which has access to the Social Security Administration’s databases. After matching Social Security Numbers to Registrant Sample #1, the resulting list was examined against the Social Security Death Index (“SSDI”)¹ to identify the names of those registrants who are deceased. This process identified 34,000 potentially deceased registrants on Michigan’s voter rolls.

Answer: Intervenor’s lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 31 and footnote 1.

32. In a letter dated September 18, 2020, the Foundation alerted Defendant to its research and findings, including the fact that approximately 34,000 registrants appeared to be deceased. This letter also served as statutory notice to Defendant that Michigan was in violation of the NVRA, 52 U.S.C. § 20510(b). *See Exhibit 4* (“Notice Letter”).

¹ Although extremely rare, the SSDI does occasionally include the names of individuals who have not died. The data analytics expert hired by the Foundation seeks to guard against this by further comparing the names of individuals on the SSDI to obituaries and other publicly available sources of deceased individuals (e.g., credit reporting agencies). Anyone with commercial activity following a reported date of death is eliminated as well.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations regarding Plaintiff's activities in Paragraph 32. The remaining allegations in Paragraph 32 contain legal contentions, characterizations, conclusions, and opinions to which no response is required.

33. The Notice Letter was sent to Defendant via U.S. Postal Service (USPS) certified mail with return receipt requested. According to USPS, the Notice Letter was delivered and signed for on September 21, 2020. See **Exhibit 5**, USPS certified mail delivery confirmation.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 33.

34. In response to the Notice Letter, Defendant asked the Foundation for additional information about its methodology, which the Foundation provided on October 5, 2020. Due to the importance of this issue and the imminence of the November 2020 election, the Foundation provided the Defendant a spreadsheet listing the voter ID numbers of all 34,000 registrants the Foundation identified. See **Exhibit 6**, Correspondence dated October 5, 2020.²

² In an abundance of caution regarding the potential disclosure of personally identifying information, the Foundation is not attaching copies of the spreadsheets provided to the Defendant herein.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 34 and footnote 2.

“The Foundation’s Efforts Before the November 2020 Election”

35. As an additional effort, the Foundation sought to purchase an updated copy of the QVF for the entire state of Michigan from Defendant’s office. The Foundation’s request was dated September 21, 2020, but it was not acknowledged as received by Defendant’s office until the Foundation sent additional correspondence on September 29, 2020. *See Exhibit 7*, Email correspondence. In response to the Foundation’s request for expedited processing, Defendant’s office informed the Foundation that relevant staff at the Office of the Secretary of State was “only in the office on Mondays.” *Exhibit 7* at 2. To ensure that it received the requested data in a timely manner, a Foundation representative drove from Indianapolis to Defendant’s office on October 5, 2020, to pay for and retrieve the requested data. *Exhibit 7*.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 35.

36. The Foundation again hired a data analytics expert to identify deceased registrants. The Foundation incurs costs based on the number of registrations examined. In order to not simply duplicate prior work and in order to ascertain whether not-yet-identified deceased registrants are in the QVF, the Foundation

altered its research in two ways. First, it requested that the data analytics expert research all individuals who registered after October 1, 2019, as those individuals would not have been included in the Foundation's previous copy of the QVF. Second, the Foundation requested that the data analytics expert build a sample eventually totaling 3.2 million registrants who fit the following criteria: 1) they registered to vote after October 1, 2019; 2) they are listed as inactive or "CHA" status; or 3) they did not show recent financial activity from credit reporting bureaus for an extended period of time leading up to the study.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 36.

37. The data analytics expert then took that list of 3.2 million registrants to a federally licensed database vendor which has access to the Social Security Administration's databases. After matching Social Security Numbers to registrants, the resulting list was examined against the SSDI³ to identify the names of those registrants who are deceased. This process identified more than 27,500 potentially deceased registrants out of the examined subset of Michigan's QVF.

³ To improve the confidence of its matches, the data analytics expert hired by the Foundation further compares the names of individuals on the SSDI to, where available, obituaries and other publicly available sources of deceased individuals (e.g., credit reporting agencies). Anyone with commercial activity following a reported date of death is eliminated as well.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 37 and footnote 3.

38. The Foundation alerted the Defendant to these additional findings on November 25, 2020. *See Exhibit 8.*

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 38.

39. On December 11, 2020, the Foundation requested the opportunity to inspect records pursuant to the NVRA concerning Defendant's efforts to remove deceased registrants from the QVF. The Foundation stated its intention to conduct the inspection on December 18, 2020. *See Exhibit 9.*

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 39.

40. After multiple attempts to reach Defendant's office, the Foundation received an email from Defendant's office late on December 17, 2020, denying the Foundation's request to inspect documents in person on December 18, 2020. *See Exhibit 10.* In the same email, Defendant's representative stated that Defendant's office is "still awaiting your matching criteria, which was requested on September 30th" even though the Foundation provided the requested information on October 5, 2020. *See Exhibit 6.*

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 40.

41. On December 18, 2020, the Foundation informed Defendant that she was in violation of the NVRA for failing to permit inspection and duplication of public records as required by 52 U.S.C. § 20507(i). *See Exhibit 11.* (“Inspection Notice Letter”).

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 41.

42. The Inspection Notice Letter was sent to Defendant via email and U.S. Postal Service (USPS) certified mail with return receipt requested. On December 18, 2020, the Foundation received an email response from Defendant stating, “Thank you for contacting my office. Your message is important to me. This email confirms I have received your correspondence. Please know my staff and I read every email and appreciate your patience as we respond to your message.” According to USPS, the Inspection Notice Letter was delivered and signed for on December 23, 2020. *See Exhibit 12,* Email and USPS certified mail delivery confirmation.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 42.

43. Defendant did not respond to the Inspection Notice letter.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 43.

44. On January 13, 2021, the Foundation sent a letter to the Defendant reiterating the information it provided on October 5, 2020. The Foundation included a spreadsheet listing the voter registration numbers of the registrants it identified in its most recent research so that Defendant could review the findings. *See Exhibit 13.*

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 44.

45. Defendant did not reply to the January 13, 2021, correspondence from the Foundation.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 45.

“Defendant Acknowledges Pattern of List Maintenance Failures, But Does Not Address the Foundation’s Concerns”

46. On January 28, 2021, Defendant issued a press release concerning so-called “ongoing voter registration list maintenance.” Press Release, *Secretary Benson continues to bolster election security* (Jan. 28, 2021), attached as **Exhibit 14**. Specifically, Defendant references “approximately 177,000 voter registrations slated for cancellation because the state has reason to believe the voter has moved away from the registration address.” Nowhere in this press release does Defendant

reference list maintenance because of the death of the registrant. There is no reason to believe that the failures identified by the Foundation have been corrected.

Answer: Paragraph 46 purports to quote a press release that speaks for itself. Intervenors deny allegations in Paragraph 46 regarding the purported “failures” identified by the Foundation.

47. In the same press release, Defendant stated, “The work that we are doing now will ensure the list of registered voters, which had gone over a decade without sufficient comprehensive efforts to ensure its accuracy, is updated and modernized with methods to promote integrity and prevent any eligible voter from disenfranchisement.” Exhibit 14 at 2. Upon information and belief, the work to which Defendant refers are the efforts outlined in the press release regarding registrants who have moved, not any list maintenance efforts based on the death of the registrant. Even if the press release purports to address deceased registrants, the efforts were a failure.

Answer: Paragraph 47 purports to quote a press release that speaks for itself. The remaining allegations in Paragraph 47 are denied.

48. To confirm the Foundation’s understanding that Defendant still had not corrected list maintenance efforts based on the death of the registrant in light of the January 28, 2021, announcement, the Foundation accessed the Defendant’s list of 177,000 voter registrations slated for cancellation and compared it against the

Foundation's latest sampling of approximately 27,500 potentially deceased registrants. The Foundation found no pattern of overlapping records to indicate that registrants within the collection of 27,500 were within the listing of 177,000 officially slated for removal.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations regarding Plaintiff's activities in Paragraph 48. The remaining allegations in Paragraph 48 are denied.

"The Foundation's Efforts Following the November 2020 Election"

49. To provide additional confirmation that Defendant had not corrected her list maintenance failures based on the death of the registrant following the November 2020 election, the Foundation purchased, *for the third time*, an updated QVF for the entire state of Michigan from Defendant's office in March 2021. Again, to ensure that it received the requested data in a timely manner, a Foundation representative drove to Defendant's office to pay for and retrieve the requested data.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations regarding Plaintiff's activities in Paragraph 49. The remaining allegations in Paragraph 49 are denied.

50. The Foundation then had the data analytics expert compare the list of likely deceased registrants sent to Defendant in November 2020 (Exhibit 8) against the March 2021 QVF file. The Foundation did so to ascertain whether any

individuals previously identified by the Foundation as deceased had since been removed. The Foundation did not expand its research to ascertain whether *additional* registrants were deceased.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 50.

51. As a result of this analysis, the Foundation confirmed that all of the more than 27,500 potentially deceased registrants previously identified out of the examined subset of Michigan's QVF *remained on the rolls* as of March 1, 2021.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 51.

52. Then, in August 2021, the Foundation *for the fourth time* purchased an updated copy of Michigan's QVF to verify its previous research. As it did before, the Foundation had the data analytics expert compare the list of likely deceased registrants sent to Defendant in November 2020 (Exhibit 8) against the updated QVF file. Again, the Foundation did not expand its research to ascertain whether *additional* registrants were deceased.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 52.

53. As a result of this analysis, the Foundation confirmed that 25,975, or 94 percent of the more than 27,500 potentially deceased registrants previously

identified out of the examined subset of Michigan's QVF *remained on the rolls* as of August 5, 2021. The 25,975 consisted of 24,645 active registrants and 1,330 inactive of "CHA" registrants.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 53.

"Numerous Registrants Have Voter Registration Dates After the Reported Date of their Death"

54. The Foundation's August 2021 analysis also identified registrations where dates of death per the SSDI *preceded* dates of registration as shown in the official QVF extract. These sequence conflicts are distributed throughout time and do not appear to heighten at any particular point. The August 2021 analysis ultimately found 334 registration records established after death – 15 of those occurred in year 2020.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 54.

55. Without further inquiry, there is no way to know for certain whether these post-death registrations are the result of identity theft, data input error, or some other reason.⁴ But this kind of issue would not arise if Michigan cross-referenced

⁴ Michigan, like many other states, employs a system of inserting fictitious or placeholder dates into the qualified voter file. A standardized date of "1-1-1900" can

new registrations to the SSDI. With such a high prevalence of apparent post-death registrations, it is only reasonable to incorporate (and unreasonable to not incorporate) SSDI cross-references in the registration process.

Answer: Intervenors lack knowledge and information sufficient to form a belief as to the truth of the allegations regarding Plaintiff's activities in Paragraph 55 or the allegations in footnote 4. The remaining allegations in Paragraph 55 are denied.

56. The Foundation's findings merit investigation and action by the Defendant. Litigation brought by the Foundation in Pennsylvania shortly before the 2020 General Election revealed more than 400 instances of the same sequence conflict. In early 2021, a Pennsylvania widower was indicted for allegedly impersonating his wife by registering to vote after she died and requesting an absentee ballot. The deceased wife appeared on the Foundation's list of active registrants provided to Pennsylvania. The man is accused of impersonating his deceased wife in the final days of the 2020 Election, despite her death in 2013.⁵ The deceased was credited for voting absentee during the 2020 General Election.

be seen within the date of registration field when the actual date is not kept on record. Within the 25,975 deceased list from August 2021, over 2,000 show placeholder dates of registration. No registrants showing placeholder data were counted in the sequence conflict total.

⁵ "South Park man charged with casting ballot in dead wife's name" Pittsburgh Post-Gazette (Jan. 29, 2021), available at <https://www.post-gazette.com/news/crime->

Answer: Intervenors deny that Plaintiff’s findings merit investigation and action by Defendant. Intervenors lack knowledge and information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 56 and footnote 5.

57. Defendant cannot justify her failures by pointing to a state statute or practice delegating to local election officials the responsibility for removing deceased registrants from the voter rolls. Under the NVRA, it is the obligation of Defendant to conduct a reasonable program to remove the names of deceased registrants from the state’s list of eligible registrants. Defendant has failed to fulfill her legal requirement in this regard, and she cannot avoid her culpability by citing to state law or procedures that might allegedly complicate her task or seek to thrust the duties assigned to her under federal law to one or more third parties.

Answer: Intervenors deny the allegations in Paragraph 57 regarding Defendant’s purported “failures” to comply with state or federal law. The remaining allegations in Paragraph 57 contain legal contentions, characterizations, conclusions, and opinions to which no response is required.

58. Further, Defendant’s obligation to maintain accurate voter rolls necessitates that accurate data has been entered. For example, if a date of birth has

[courts/2021/01/29/voterfraud-francis-presto-south-park-republican-election-ballot-dead-wife/stories/202101290136](https://www.courts/2021/01/29/voterfraud-francis-presto-south-park-republican-election-ballot-dead-wife/stories/202101290136).

been entered incorrectly, then any list maintenance attempted thereafter cannot be effective.

Answer: Paragraph 58 contains legal contentions, characterizations, conclusions, and opinions to which no response is required.

59. Having a process in place that systematically removes deceased registrants is not just a good idea, it is the law. 52 U.S.C. § 20507(a)(4)(A). For the Foundation to be able to identify more than 25,000 deceased registrants on a conservative sample of the QVF it examined, and for Defendant to fail to act upon the information provided by the Foundation over the course of many months, demonstrates emphatically that Michigan has failed to reasonably implement and/or conduct a systematic list maintenance program that complies with federal law requiring deceased electors to be removed from the voter rolls.

Answer: Intervenors deny the allegations in Paragraph 59.

60. The NVRA's requirement that each state make a reasonable effort to remove the names of deceased registrants from their list of eligible voters also necessitates that the state consider and act upon credible data from sources outside its normal procedures, including but not limited to SSDI-refined information provided by the Foundation.

Answer: Intervenors deny the allegations in Paragraph 60.

“Plaintiff’s Statutory Right to Bring this Action Under the NVRA”

61. The Foundation is entitled to bring this civil action pursuant to Section 11(b)(2) of the NVRA, 52 U.S.C. § 20510(b)(2), because the Foundation provided statutory notice to Defendant, Michigan’s chief election official, that Michigan was in violation of the NVRA. *See* Exhibits 4 and 11. Following the receipt of the Foundation’s formal Notice Letter, the Defendant failed to timely correct Michigan’s NVRA violations by conducting reasonable list maintenance to ensure that deceased registrants were timely removed from Michigan’s voting rolls.

Answer: Intervenors deny that Defendant violated or failed to correct violations of the NVRA. The remaining allegations in Paragraph 61 contain legal contentions, characterizations, conclusions, and opinions to which no response is required.

COUNT I

“Violation of the NVRA: Failure to Conduct List Maintenance”

62. The Foundation re-alleges paragraphs 1 through 61 as if fully stated herein.

Answer: Intervenors incorporate the responses to Paragraphs 1–61 as if set forth fully herein.

63. Defendant has failed to make reasonable efforts to conduct voter list maintenance programs that ensure that the deceased do not remain registered to vote, in violation of Section 8 of NVRA, 52 U.S.C. § 20507.

Answer: Intervenors deny the allegations in Paragraph 63.

64. Defendant's failure has not been corrected within 20 days of the Foundation's notice of the violation on September 18, 2020. 52 U.S.C. § 20510(b)(2) ("If the violation is not corrected...within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.")

Answer: Intervenors deny the allegations in Paragraph 64.

65. Defendant's list maintenance programs and activities have demonstrably failed to remove thousands of long-deceased registrants from the state's list of eligible registrants. Whatever efforts are being made by Defendant, they are unreasonable within the meaning of the NVRA because they are demonstrably not working. The NVRA does not simply require a percentage or portion of dead registrants to be removed, it requires a program that actually reasonably detects dead registrants and removes them. When more than 25,000 deceased registrants are identified on the QFV and not removed for an extended period of years, the list maintenance program is not only unreasonable, it is failing.

Answer: Intervenors deny the allegations in Paragraph 65.

66. The Foundation has suffered an irreparable injury as a direct result of Defendant's violation of Section 8 of the NVRA, 52 U.S.C. § 20507. Defendant's failure to comply with the NVRA has aggrieved and continues to aggrieve the Foundation by impairing its essential and core mission of fostering compliance with federal election laws and promoting election integrity. Defendant's failure to comply with the NVRA has caused and continues to cause the Foundation pecuniary injury, perceptibly impairs the Foundation's mission, and frustrates the organization's purposes. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 369 (1982).

Answer: Intervenors deny the allegations in Paragraph 66.

67. The Foundation has no adequate remedy at law.

Answer: Paragraph 67 is a legal contention to which no response is required.

To the extent a response is required, Intervenors deny the same.

COUNT II

“Violation of the NVRA: Failure to Allow Inspection of Records and Data”⁶

68. The Foundation re-alleges paragraph 1 through 67 as if fully stated herein.

⁶ The Complaint contains headings that are not factual allegations and thus do not require a response. To the extent a response is required, all headings are denied.

Answer: Intervenors incorporate the responses to Paragraphs 1–67 as if set forth fully herein.

69. Defendant has failed to allow the Foundation to inspect records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of Michigan’s official lists of eligible voters in violation of Section 8 of the NVRA, 52 U.S.C. § 20507(i).

Answer: Paragraph 69 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, Intervenors deny the same.

70. Defendant’s failure has not been corrected within 90 days of the Foundation’s notice of the violation on December 18, 2020. 52 U.S.C. § 20510(b)(2) (“If the violation is not corrected within 90 days after receipt of a notice under paragraph (1)... the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.”)

Answer: Paragraph 70 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, Intervenors deny the same.

71. The Foundation has suffered an informational injury as a direct result of Defendant’s violations of Section 8 of the NVRA because the Foundation does not have the data and records requested. The NVRA confers upon the Foundation a

right to information, and by denying that information to the Foundation, the Defendants have caused a concrete injury to the Plaintiff. This violation also prevents the Foundation from engaging in its research, educational, and remedial activities.

Answer: Paragraph 71 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, Intervenor deny the same.

72. The Foundation will continue to be injured by Defendant's violations of Section 8 of the NVRA unless and until Defendant is enjoined from continuing to violate the law.

Answer: Paragraph 72 contains legal contentions, characterizations, conclusions, and opinions to which no response is required. To the extent a response is required, Intervenor deny the same.

73. The Foundation has no adequate remedy at law.

Answer: Paragraph 73 consists of a legal contention to which no response is required. To the extent a response is required, Intervenor deny the same.

AFFIRMATIVE DEFENSES

Intervenor assert the following affirmative defenses without accepting any burdens regarding them:

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because this Court lacks jurisdiction to adjudicate Plaintiff's claims.

SECOND AFFIRMATIVE DEFENSE

Plaintiff lacks standing to assert its claims.

THIRD AFFIRMATIVE DEFENSE

The Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the equitable doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff is precluded from bringing these claims under the doctrines of res judicata and collateral estoppel.

Intervenors reserve the right to assert any further defenses that may become evident during the pendency of this matter.

INTERVENORS' REQUEST FOR RELIEF

Having answered Plaintiff's Complaint, Intervenors request that the Court:

1. Deny Plaintiff is entitled to any relief;
2. Dismiss Plaintiff's Complaint with prejudice;

3. Award Intervenors their costs and attorneys' fees incurred in defending against Plaintiff's claims in accordance with 42 U.S.C. § 1988; and
4. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted, this 25th day of January, 2022.

/s/ Uzoma Nkwonta

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Counsel for Intervenors

**Motions for Pro Hac Vice Forthcoming*

CERTIFICATE OF SERVICE

Uzoma N. Nkwonta certifies that on the 25th day of January 2022, he served a copy of the above document in this matter on all counsel of record and parties via the ECF system.

/s/ Uzoma N. Nkwonta

Uzoma N. Nkwonta

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