

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

MARYLAND ELECTION INTEGRITY,
LLC, *et al.*,

Plaintiffs,

v.

No. 1:24-cv-00672-SAG

MARYLAND STATE BOARD OF
ELECTIONS,

Defendant.

* * * * *

MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS

Defendant Maryland State Board of Elections (the “State Board”) by undersigned counsel submits this memorandum in support of its motion to dismiss plaintiffs’ complaint (ECF 1) for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted.

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Plaintiffs are a Maryland limited liability company and Missouri nonprofit corporation (ECF 1 ¶¶ 1-2) (the “companies”) who seek, among other things, to prevent Maryland from holding any local, state, or federal election in November 2024 (ECF 1 at 30-31 ¶¶ B-F). The companies accuse the Maryland State Board of Elections (the “State Board”) of “flaunt[ing] the Constitutional requirement to only allow known citizens eligible to vote, to vote” and “los[ing] control of [Maryland’s] voting system.” (ECF 1 ¶¶ 177, 180.) They therefore request this Court grant declaratory and injunctive relief for perceived violations of the Help America Vote Act (“HAVA”), 52 U.S.C. §§ 20901–21145; the National Voter Registration Act (“NVRA”), 52. U.S.C. §§ 20501–20511; provisions of state election law, Md. Code. Ann. (LexisNexis 2023), Elec. Law Art., §§ 1-101–16-1004; *and* COMAR 33.01.01.01–33.22.03.02; and, provisions of state public information access law, Md. Code Ann. (LexisNexis 2019), Gen. Prov. Art., §§ 4-101–4-601.

The companies' complaint, however, fails to vest this Court with jurisdiction to entertain their accusations; and, fails to factually allege a claim upon which relief could be granted. The companies allege no "injury in fact" explaining how their allegations of election maladministration affected their individual members "in a personal and individual way." *Gill v. Whitford*, 585 U.S. 48, 65 (2018) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 & n. 1 (1992)). The federal statutes cited in the complaint do not provide the companies with causes of action, leaving only state law claims before the Court. *See Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir. 1999) ("The mere assertion of a federal claim is not sufficient to obtain jurisdiction.") And the companies plead "conclusory factual allegations devoid of any reference to actual events." *Chambers v. King Buick GMC, LLC*, 43 F. Supp. 3d 575, 586 (D. Md 2014).

The complaint (ECF 1) should therefore be dismissed for lack of subject matter jurisdiction and for failure to state a claim upon which relief could be granted.

STATEMENT OF FACTS

Pertinent Federal Election Laws

The Help America Vote Act "was enacted in 2002 to help improve the equipment to cast votes, the way registration lists are maintained, and how polling operations are conducted." *American Civil Rights Union v. Philadelphia City Commissioners*, 872 F.3d 175, 180 (3d Cir. 2017). Pertinent to this suit, HAVA imposes requirements on "voting systems used in an election for Federal office" including standards for audit capability, accessibility, and error rates. 52. U.S.C. § 21081(a). HAVA also establishes the

Election Assistance Commission, *id* at § 20921, which, among other duties, provides for the “testing, certification, decertification, and recertification of voting system hardware and software,” *id* at § 20971(a)(1). States are not required by the federal law to have their voting systems tested or certified by the Commission. *Id.* at § 20971(a)(2).

HAVA accomplishes enforcement of its requirements by two methods. First, the law authorizes the United States’ Attorney General to seek declaratory and injunctive relief “as may be necessary to carry out” the voting system requirements codified at 52 U.S.C. § 21081. And second, the law requires states who receive HAVA funding to “establish and maintain State-based administrative complaint procedures,” for the adjudication and disposition of complaints relating to HAVA’s requirements. 52 U.S.C. § 21112(a)(1)&(2)(B). HAVA does not provide a private cause of action against election officials who administer voting systems pursuant to HAVA’s requirements.

The National Voter Registration Act standardizes the means by which each state administers its rolls of registered voters. It requires all states to provided minimal methods by which a person may apply to register to vote. 52 U.S.C. § 20503(a). The law also bars a state from purging eligible voters from its voter rolls, permitting the removal of an individual from a voter registration list only by way of that person’s request, death, disability due to conviction or incapacity, or change in residence. *Id.* at § 20507(a)(4). Finally, the NVRA requires states to maintain publicly-accessible records on their “programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” *Id.* at § 20507(i)(1).

Congress entrusted enforcement of the NVRA’s requirements to both the Attorney General and private individuals. The law grants the Attorney General power to institute a civil action for declaratory and injunctive relief “as is necessary to carry out [the NVRA].” *Id.* at § 20510(a). Additionally, the NVRA grants a private cause of action to “a person who is aggrieved” by an NVRA violation. *Id.* at § 20510(b)(1). The private cause of action, though, is predicated on a plaintiff transmitting timely notice of a claim prior to filing suit. *Id.* at § 20510(b)(2)&(3). Failure to provide the required notice is grounds for dismissing a private plaintiff’s suit. *Scott v. Schedler*, 771 F.3d 831, 836 (5th Cir. 2014).

Allegations in the Complaint

Maryland Election Integrity, LLC, pleads that it is a company “comprised of members who are registered voters in the state of Maryland.” (ECF 1 ¶ 8.) The complaint provides no other details about the company, its purpose, or its members. According to the company’s public filings, it was formed on January 22, 2024. Md. Elec. Integrity, LLC, *Articles of Organization*, filed Jan. 22, 2024, hereafter referred to as “Exhibit A.” The company’s authorizing signatory, Charles S. Strauch, lists a “return address” in Hilton Head Island, South Carolina. (Exhibit A.)

United Sovereign Americans, Inc., pleads that it is a “nonprofit corporation incorporated in the state of Missouri.” (ECF 1 ¶ 2.) The complaint provides no other information on the Missouri corporation.

Together, the companies accuse the State Board of mismanaging State electoral operations in six ways. First, the companies allege that the State’s voter registration list

contained 79,392 “apparent registration violations” between August 2021 and July 2023. (ECF 1 ¶ 23.) According to the companies, the “apparent registration violations” breach both the accuracy requirement of the NVRA and “specific Maryland laws pertaining to voter registration.” (ECF 1 ¶ 27 (citing 52 U.S.C. § 20501(b)(4); *and* Elec. Law §§ 3-101, 3-102, 3-502, 3-503 & 3-504.)) The “violations” also allegedly contravene HAVA’s voting system requirements related to error rates. (ECF 1 ¶ 39.) The companies seek a judgment declaring the State Board in violation of these laws. (ECF 1 at 25, ¶ B.)

Second, the companies claim that 62,075 “apparent voting system errors in counting votes” affected the conduct of the 2020 general election in Maryland; and 27,623 of the same affected the conduct of the 2022 general election. (ECF 1 ¶¶ 45-46.) According to the complaint, these “apparent” errors exceed the “maximum allowable error rate” imposed on voting systems by HAVA. (ECF 1 ¶¶ 49-50 (referring to 52 U.S.C. § 21081(a)(5).) The companies seek judgment declaring as much. (ECF 1 at 25, ¶ C.)

Third, the companies allege that the State Board “did not review the source code for ES&S EVS 5.2.0.0.” (ECF 1 ¶ 69.) Fourth, the State Board allegedly used voting systems with “void” EAC certifications during “elections” prior to 2017. (ECF 1 ¶¶ 90, 91, 95, 98.) Fifth, the State Board allegedly responded inadequately to requests made under the Maryland Public Information Act for voting system audit logs. (ECF 1 ¶¶ 101-102, 125.) And sixth, the companies accuse the State Board of inadequately responding to Public Information Act requests investigating a theory of Maryland’s voting systems improperly counting “blank ballots.” (ECF 1 ¶¶ 129-131, 152-153.) The companies

plead these third, fourth, fifth, and sixth allegations as violations of state law (ECF 1 ¶¶ 69, 94, 125, 151-153), requesting declaratory judgment on each, (ECF 1 at 25-26, ¶¶ D, E, F, G).

In addition to declaratory judgment, the companies request injunctive relief. The injunctive relief, however, does not seek to have the State Board comply with the applicable federal and State laws. Instead, the companies ask this Court to impose voter registration and voting systems on the State that comply with the companies' personal preferences. (ECF 1 at 30-32.) And until that time, the companies ask this Court to enjoin the administration or certification of any election in the State; and ask for the appointment of a "Special Master" to "guide" the State Board in adopting an acceptable voting system (ECF 1 at 32, ¶ M.)

ARGUMENT

I. A FAILURE TO ESTABLISH SUBJECT MATTER JURISDICTION WARRANTS DISMISSAL; LIKEWISE, RELIANCE ON CONCLUSORY FACTUAL ALLEGATIONS WARRANTS DISMISSAL FOR FAILURE TO STATE A CLAIM.

A motion to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) is properly granted "where a claim fails to allege facts upon which the court may base jurisdiction." *Pruitt v. Resurgent Capital Serv.*, 610 F. Supp. 3d 775, 779 (D. Md. 2022). The plaintiff bears the burden of establishing subject matter jurisdiction. *People for the Ethical Treatment of Animals, Inc. v. Tabak*, 662 F. Supp. 3d 581, 588 (D. Md. 2023). This Court looks to the complaint as "mere evidence on the issue, and may consider evidence outside the pleadings without converting the

proceeding to one for summary judgment.” *Evans v. B.F. Perkins, Co.*, 166 F.3d 642, 647 (4th Cir. 1999). If the complaint “fails to allege facts upon which the court may base jurisdiction,” the complaint must be dismissed. *Davis v. Thompson*, 367 F. Supp. 2d 792, 799 (D. Md. 2005).

Under Rule 12(b)(6), a motion to dismiss tests the sufficiency of the complaint placed before the court. *Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006). The complaint must contain “sufficient factual matter” to present a “plausible” claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation omitted). Judging the plausibility of a claim requires a court to draw on “its judicial experience and common sense.” *Id.* at 679. And only “well-pleaded” allegations must be considered true. *Chambers v. King Buick GMC, LLC*, 43 F.Supp.3d 575, 586 (D. Md. 2014). Legal conclusions disguised as factual allegations may be rejected. *Iqbal*, 556 U.S. at 678. And conclusory factual allegations “devoid of any reference to actual events” may also be discounted. *Chambers*, 43 F.Supp.3d at 586 (citing *United Black Firefighters v. Hirst*, 604 F.2d 844 (4th Cir. 1979)).

II. THE COMPLAINT FAILS TO ESTABLISH SUBJECT MATTER JURISDICTION BY FAILING TO ESTABLISH STANDING FOR EITHER PLAINTIFF AND BY FAILING TO PLEAD A COGNIZABLE FEDERAL QUESTION.

A. Both Organizational Plaintiffs Fail to Establish Standing by Neglecting to Show Injury to Their Members.

Article III of the United States Constitution limits the jurisdiction of federal courts to “cases” and “controversies.” U.S. Const. Art. III, § 2. The maintenance of a case or controversy relies, among other things, on standing—a plaintiff’s ability to plead a

“personal stake in the outcome of the controversy.” *Buscemi v. Bell*, 964 F.3d 252, 258 (4th Cir. 2020) (quotation omitted). To establish standing, it is the plaintiff’s burden to sufficiently plead “injury in fact, causation, and redressability.” *Lance v. Coffman*, 549 U.S. 437, 439 (2007). The failure to establish standing is a failure to establish subject matter jurisdiction. *Stone v. Trump*, 400 F. Supp. 3d 317, 333 (D. Md. 2019).

An “injury in fact” is an injury that is “concrete,” “particularized,” and “actual or imminent, not conjectural or hypothetical.” *Bell*, 964 F.3d at 258-59 (quoting *Lujan*, 504 U.S. at 560)). Plaintiffs must identify a harm, an “invasion of a legally protected interest,” and adequately identify how that harm affects them “in a personal and individual way.” *Gill*, 138 S. Ct. at 1929 (quoting *Lujan*, 504 U.S. at 560 n. 1)). Asserting the violation of an interest “which is held in common by all members of the public” fails as a matter of law to establish Article III standing. *Schlesinger v. Reservist Comm. to Stop the War*, 418 U.S. 208, 220 (1974).

In election and voting rights challenges, a plaintiff’s standing is naturally entwined with their “individual and personal” right to vote. *Gill*, 138 S. Ct. at 1929 (quoting *Reynolds v. Sims*, 377 U.S. 533, 561 (1964)). “[V]oters who allege facts showing disadvantage to themselves as individuals have standing to sue to remedy that disadvantage.” *Id.* (quoting *Baker*, 369 U.S. at 206)). In contrast, voters who fail to plead any personal disadvantage or impairment of the ability to vote cannot maintain Article III standing. *See, e.g., Bell*, 964 F.3d at 260 (holding that North Carolina voter challenging state write-in vote restrictions failed to establish standing by failing to allege how restrictions impaired his personal ability to cast a write-in vote).

The complaint names two companies as plaintiffs but fails to establish standing for either one. In relation to United Sovereign Americans, Inc., the complaint acknowledges that United Sovereign Americans could not “satisfy independently the demands of Article III.” (ECF 1 ¶ 11.) And it concedes that any alleged controversy only exists between the State Board and Maryland Election Integrity, LLC. (ECF 1 ¶ 156.)

In relation to Maryland Election Integrity, LLC, the complaint claims that the company is “comprised of members who are registered voters in the state of Maryland.” (ECF 1 ¶ 8.) But the corporation’s Articles of Organization belies that assertion, demonstrating that the “authorizing” member of the company is a South Carolina resident. (Exhibit A.) With the complaint providing no other information about the company’s members, or if it even has other members, Maryland Election Integrity has not carried its burden of proving that it is actually comprised of voters registered in Maryland.

Moreover, “[a]n organizational plaintiff can satisfy the standing requirements in two ways: either injury in its own right, or injury as a representative of its members.” *Voto Latino v. Hirsch*, ___ F. Supp. 3d. ___, ___, 2024 WL 230931, *9 (M.D.N.C. 2024). The complaint alleges nothing about the mission of Maryland Election Integrity or how it was impeded by any of the State Board’s conduct. Seemingly, the company was established for the purpose of filing this civil suit. (See Exhibit A (providing that the company was formed, with plaintiff’s counsel as its resident agent, 44 days before the filing of this suit).) The complaint therefore does not establish Maryland Election Integrity’s standing to assert its own injury. See *Lane v. Holder*, 703 F.3d 668, 674-75

(4th Cir. 2012) (“An organization may suffer an injury in fact when a defendant's actions impede its efforts to carry out its mission.”)

As a representative of its members, Member Election Integrity can only maintain standing in the this suit by demonstrating: “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Students for Fair Admissions, Inc. v. Pres. & Fellows of Harvard*, 600 U.S. 181, 199 (2023). The complaint provides conclusory assertions that the members “have been and are currently harmed” (ECF 1 ¶ 9) and that the voter registration system and voting system errors diluted “Plaintiff’s votes” (ECF 1 ¶ 166). But it provides no factual allegations about the company’s members or the harm they’ve suffered, different from the harm any eligible voter would suffer from the alleged systematic violation of election laws. *See United States v. Hayes*, 515 U.S. 737, 743 (1995) (“[W]e have repeatedly refused to recognize a generalized grievance against allegedly illegal governmental conduct as sufficient for standing to invoke the federal judicial power”); *see also Gibson v. Frederick County*, 2022 WL 17740406, slip op. at *5 (filed Dec. 16, 2022) (collecting cases in which recent suits alleging widespread electoral violations were dismissed to due to lack of standing).

To assert its members’ standing, Maryland Election Integrity was obliged to plead “facts showing disadvantage to [the members of Maryland Election Integrity] as individuals.” *Gill*, 138 S. Ct. at 1929. But the complaint does not even allege whether the members of the company voted in any Maryland election, much less how the State Board

diluted members' individual votes or defeated members' supported causes. The complaint is simply bereft of any mention of the company's members and how an "invasion of a legally protected interest," affected them "in a personal and individual way." *Gill*, 138 S. Ct. at 1929 (quoting *Lujan*, 504 U.S. at 560 & n. 1)).

Maryland Election Integrity therefore cannot maintain standing to assert its own injury and cannot maintain standing asserting the injury of its members in a representative capacity.¹ The companies failed to establish their standing, depriving this Court of subject matter jurisdiction.

B. The Complaint Presents No Federal Question Because It Lacks a Cognizable Federal Claim.

By congressional grant, this Court possesses subject matter jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. The companies invoke this federal question jurisdiction as the jurisdictional basis for their complaint. (ECF 1 ¶ 4.) But "[t]he mere assertion of a federal claim is not sufficient to obtain jurisdiction under 28 U.S.C. § 1331." *PEM Entities, LLC v. County of Franklin*, 57 F.4th 178, 183 (4th Cir. 2023). The asserted

¹ This is also true for the allegations Maryland Election Integrity makes about the State Board's responses to Maryland Public Information Act requests. The complaint specifies how requests under the state information access law "were made" (ECF 1 ¶ 96) or "were requested" (ECF 1 ¶¶ 117, 147, 152), but never provides any further information. It is not clear whether members of Maryland Election Integrity made the requests, when they did so, and what responses they received. Such information is integral to the question of subject matter jurisdiction, as the State law only provides a cause of action to a person who is "denied inspection of a public record or is not provided with a copy, printout, or photograph of a public record as requested," Gen. Prov. § 4-62(a)(1); and imposes a two-year statute of limitations to bring the action, Cts. & Jud. Proc. § 5-110.

claim must be one “for which federal law creates a cause of action.” *Krist v. Erck*, 616 F. Supp. 3d 471, 474 (D. Md. 2022). The wholesale absence of a cognizable federal cause of action leaves a district court without jurisdiction to entertain a suit under § 1331. *Lovern v. Edwards*, 190 F.3d 648, 654-55 (4th Cir. 1999); *see also Dinkins v. Region Ten CSB*, 289 F. Supp. 3d 756, 758-59 (W.D. Va. 2018) (finding federal question jurisdiction lacking where plaintiff alleged violations of the Federal Rules of Civil Procedure and the Rules of Decision Act in addition to state law claims).

In this suit, the companies primarily claim that the State Board violated state laws governing election operations and public information access. (See ECF 1 ¶¶ 27, 69, 94, 100, 125, 153, 156.) The only federal statutes mentioned in the complaint are HAVA, the NVRA, and 28 U.S.C. § 2201 (providing a declaratory judgment remedy). None of those federal statutes, though, provide the companies with a private cause of action.

In the jurisdictional section of the complaint, the companies plead that this Court “has authority to issue a declaratory judgment and to order injunctive and other relief” under 28 U.S.C. § 2201. (ECF 1 ¶ 5.) But “[t]he Declaratory Judgment Act, 28 U.S.C. § 2201, alone does not provide a court with jurisdiction.” *California v. Texas*, 593 U.S. 659, 672 (2021). The Declaratory Judgment Act provides a potential remedy for other causes of action, “it does not create an independent cause of action.” *Profiles, Inc. v. Bank of America*, 453 F. Supp. 3d 742, 752 n. 6 (D. Md. 2020). The companies therefore cannot rely on a claim for federal declaratory judgment as a basis for federal question jurisdiction.

Elsewhere in the complaint, the companies plead that the State Board allegedly violated various provisions of HAVA. (ECF ¶¶ 40, 54, 126, 156). The Help America Vote Act, however, contains no private cause of action.² See e.g. *Brunner v. Ohio Republican Party*, 555 U.S. 5, 6 (2008); *Bellitto v. Snipes*, 935 F.3d 1192, 1202 (11th Cir. 2019); *American Civil Rights Union*, 872 F.3d 175, 181 (3d Cir. 2017); *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 572 (6th Cir. 2004); *Georgia Voter Alliance v. Fulton County*, 499 F. Supp. 3d 1250, 1256 (N.D. Ga. 2020); *Texas Voters Alliance v. Dallas County*, 495 F. Supp. 3d 441, 458-59 (E.D. Tex. 2020). HAVA provides only two methods of enforcement: (1) civil suit for declaratory and/or injunctive relief brought by the Attorney General, 52 U.S.C. § 21111; and (2) “State-based administrative complaint procedures,”³ 52 U.S.C. § 21112(a)(1). Pleading a violation of HAVA, then, does not present this Court with federal question jurisdiction.

² Two courts have held that specific provisions within HAVA create private rights enforceable under 42 U.S.C. § 1983. See *Colon-Marrero v. Velez*, 813 F.3d 1, 22 (1st Cir. 2016) (provision of HAVA requiring removal of ineligible individuals from voter registration list created enforceable right under § 1983); *Blackwell*, 387 F.3d at 572-573 (HAVA provision requiring states to permit individuals to cast a provisional ballot under certain circumstances created enforceable right under § 1983). But the companies have not plead a cause of action under § 1983; and the HAVA violations they allege, having to do with voting system requirements rather than individual rights to cast ballots, do not arise from sections that can support an enforceable right under § 1983. See *Colon-Marrero*, 814 F.3d at 15-22 (explaining and undertaking analysis of when statutory language creates a private right of action enforceable by § 1983).

³ Pursuant to HAVA’s requirements, Maryland provides an administrative complaint procedure for any alleged violations of HAVA’s voting system requirements. See COMAR 33.01.05.01–.08 (providing an administrative process for the filing and adjudication of complaints alleging a violation of pertinent HAVA provisions). The companies allege that their members “exhausted every administrative remedy known to

Finally, the companies specify in the complaint one instance where the State Board allegedly violated the NVRA—52 U.S.C. § 20501(b)(4). (ECF 1 ¶ 22.) The NVRA contains a private cause of action, 52 U.S.C. § 20510(b)(1), but it is not available to the companies in this suit, 52 U.S.C. § 20510(b)(2). The companies failed to transmit the prerequisite notice mandated by the NVRA, rendering a private cause of action under the NVRA unavailable to them. *See e.g. Scott*, 771 F.3d at 836 (“[Appellant’s] failure to provide notice is fatal to his [NVRA] suit.”); *Judicial Watch v. Pennsylvania*, 524 F. Supp. 3d 399, 408-09 (M.D. Pa. 2021) (“Notice is a precondition to filing a suit under the NVRA.”)

Additionally, the NVRA only permits a private cause of action when a person is aggrieved “by a violation of [the NVRA].” 52 U.S.C. § 20510. The companies allege that 52 U.S.C. § 20501(b)(4) was violated, but that provision furnishes the congressional findings and purposes for the NVRA. Section 20501(b)(4), read in context, provides: “The purposes of this chapter are . . . to ensure that accurate and current voter registration rolls are maintained.” It imposes no requirements on the states or on election officials. It therefore has no requirements that can be violated, giving rise to a private cause of action. The companies’ allegation that Maryland’s voter rolls are not “accurate and current as required by the NVRA: 52 USC § 20501(b)(4)” (ECF 1 ¶ 27) does not present this Court with a federal question.

them in advance of the 2022 general election,” (ECF 1 ¶ 52), but failed to explain how they availed themselves of this administrative complaint procedure.

None of the federal statutes cited by the companies, then, provide this Court with a federal question. All that is cognizable before this Court are questions of state law.⁴ This Court should consequently dismiss the complaint for lack of subject matter jurisdiction. *Lovern*, 190 F.3d at 654.

III. THE FACTUAL ASSERTIONS IN THE COMPLAINT LACK SUPPORT IN REALITY.

Under Federal Rule of Civil Procedure 8(a)(2), a complaint must plausibly allege a cause of action by containing “a short and plain statement” illustrating how the claimant is entitled to relief. Although the statement need not present “detailed” allegations, it must contain “sufficient factual matter.” *Iqbal*, 556 U.S. at 678. Mere assertions “devoid of further factual enhancement” will not suffice. *Id.* (quotation omitted). And conclusory allegations about electoral irregularities, unsupported by plausible facts, also fail to suffice. *See Voters Organized for the Integrity of Elec. v. Baltimore City Elec. Bd.*, 214 F. Supp. 3d 445, 455-56 (D. Md. 2016)

For their claims relating to violations of federal law, the companies present this Court with factual allegations “devoid of any reference to actual events.” *Chambers*, 43 F.Supp.3d at 586 (citing *Hirst*, 604 F.2d at 844). The lynchpin factual allegations supporting the companies’ NVRA and HAVA accusations present this Court with drastic

⁴ The Maryland Code provides a cause of action in State court for “any act or omission relating to an election, whether or not the election has been held, on the grounds that the act or omission: (1) is inconsistent with this article or other law applicable to the elections process; and (2) may change or has changed the outcome of the election.” Elec. Law § 12-202(a). This cause of action is available to every “registered voter” in the State. *Id.*

numbers of “apparent” errors in Maryland’s voter registration roll and in the results of Maryland’s 2020 and 2022 elections. (ECF 1 ¶¶ 23, 45-46.) But these numbers have no basis.

The exhibits supporting the numbers are decontextualized tables that provide no source or methodology for how the numbers were calculated, created, or recorded. (ECF 1.1 & 1.2.) And the report from which the companies seemingly sourced these tables, transmitted by letter to the State Board a week before the filing of this suit, demonstrates dubious math at best. *See* David Morsberger & Katherine Strauch Sullivan, *Restoring Faith in Maryland’s Elections* (Feb. 27, 2024), hereafter referred to as “Exhibit B,” (providing that the analysis of voter registration and voting system errors it undertook “derived from a universe of 112,506 registered voters across all 24 jurisdictions who voted” in the 2020 general election); *see also* Md. State Bd. Of Elec., *2020 Presidential General Election: Total Voter Turnout*, (Nov. 3, 2020) hereafter referred to as “Exhibit C,” (providing that 3,066,956 registered voters participated in the 2020 general election).

Maryland’s voter registration rolls do not have 79,392 “apparent registration violations”; nor do the results of Maryland’s elections in 2020 and 2022 have approximately 90,000 “apparent voting system errors” between them. *See* Md. State Bd. Of Elec., *State of Maryland: Voter Registration List Maintenance*, accessible at https://elections.maryland.gov/voter_registration/list_maintenance.html (last accessed Mar. 27, 2024); *see also* Md. State Bd. Of Elec., *2022 Gubernatorial Primary and General Elections: Post-Election Ballot Tabulation Audit*, accessible at https://elections.maryland.gov/voting_system/ballot_audit_plan.html (last accessed Mar.

27, 2024). Nothing the companies have provided plausibly gives this Court, using its “judicial experience and common sense,” a basis to draw an inference otherwise. *Iqbal*, 556 U.S. at 679. The companies’ complaint fails to factually state a claim for a violation of federal law upon which any relief can be granted.

And the companies’ state law claims fair no better. In alleging that the State Board “did not review the source code for ES& S EVS 5.2.0.0.” (ECF 1 ¶ 69), the companies support their allegation with a document from 2014 (ECF 1.3). They fail, however, to relate that alleged shortcoming to the elections they challenge—2020, 2022, and, seemingly, 2024. The companies also hypothesize potential flaws with the State’s voting equipment (ECF 1 ¶¶ 91, 131-144); but acknowledge that the flaws were not extant in the conduct of the 2020 and 2022 elections (ECF ¶¶ 89, 95, 130). Ultimately, the companies ask for federal declaratory relief on the general application of State election laws; but those State election laws do not grant the companies any individual, enforceable rights against the State. And this Court could not impose a voting system on the State commensurate with the companies’ demands. (ECF 1 at 30-32.) There therefore exists no “definite and concrete [dispute] . . . affecting the legal relations of parties with adverse interests” that is “amenable to specific, conclusive relief.” *Dyer v. Md. State Bd. Of Educ.*, 187 F. Supp. 3d 599, 609 (D. Md. 2016).

CONCLUSION

The motion to dismiss should be granted and the companies' complaint (ECF 1) should be dismissed.

Respectfully submitted,

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