IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

JUDICIAL WATCH, INC.; ILLINOIS FAMILY ACTION; BREAKTHROUGH IDEAS; and CAROL J. DAVIS,

Plaintiffs,

v.

THE ILLINOIS STATE BOARD OF ELECTIONS; and BERNADETTE MATTHEWS, in her capacity as the Executive Director of the Illinois State Board of Elections,

Defendants,

ILLINOIS AFL-CIO and ILLINOIS FEDERATION OF TEACHERS,

Intervenor-Defendants.

No. 1:24-cv-01867

Hon. Sara L. Ellis

INTERVENOR-DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

TABLE OF CONTENTS

INTRODUCTION

No matter how many times Plaintiffs rewrite their allegations, this case continues to be about one issue: Plaintiffs' inactionable discontent that Illinois does not maintain its voter rolls exactly how they prefer. Plaintiffs lack standing to assert Count I, but the claim also fails on the merits. It must be dismissed under Federal Rule of Civil Procedure 12(b)(1) or Rule 12(b)(6).

The Court correctly found Plaintiffs' first attempt to allege a cognizable injury to support Count I in their original complaint inadequate. Plaintiffs then filed the amended complaint, which remains insufficient for the reasons explained in the Defendants' motions to dismiss. ECF Nos. 77, 80. Now Plaintiffs try a third bite at the apple, attempting to use their response brief to rewrite their amended complaint's allegations about economic harm and resource-diversion. But those theories are doomed either way. First, none of Plaintiffs' handful of additional allegations should change the Court's previous conclusion about the lack of associational and individual standing: that Plaintiffs' purported concerns about vote dilution and fraud are too generalized to support jurisdiction. *See* ECF No. 69 ("Order") at 11. Second, Plaintiffs offer no plausible allegations as to how State Defendants' list maintenance efforts directly cause their organizations economic harm, perceptibly impair their core business activities, or force them to divert resources. The "injuries" Plaintiffs allege lack any nexus to Illinois' voter-roll maintenance, and reflect, at best, the cost-benefit decisions that all organizations make when determining how to allocate limited resources. And, even if the Court granted the relief they request, Plaintiffs still would not have a perfect picture of Illinois' electorate. Their attempt to manufacture standing to sue should be rejected.

Plaintiffs also fail to adequately allege an NVRA list maintenance violation. Repeatedly, they fail to grapple with a fundamental flaw in their amended complaint: it relies almost entirely on EAVS data from a single two-year period, a highly limited snapshot that does not and cannot

demonstrate an NVRA violation, because that Act requires a waiting period of up to four years before most voters may legally be removed from the rolls. Plaintiffs' attempt to fall back on their allegations that certain counties did not report data to the Election Assistance Commission during this two-year time period is equally unavailing. A state's list maintenance efforts are not evaluated by counties' record-keeping practices, and Plaintiffs offer no support for their suggestion otherwise. At bottom, the amended complaint fails to identify any systemic failure in Illinois' list maintenance program or any specific example of Illinois improperly keeping someone on the voter rolls whom the NVRA required be removed. Without more, Plaintiffs have not stated a claim that State Defendants are failing to conduct reasonable list maintenance in violation of the NVRA.

The Court should dismiss the amended complaint.

ARGUMENT

I. Plaintiffs fail to establish they have standing to pursue Count I.

A. Organizational Plaintiffs lack standing in their own right.

BI and IFA continue to spin the normal costs associated with knocking on doors, sending mail, and making calls as "out-of-pocket monetary injuries" because they think it is "more expensive than it should be for them to use Illinois' voter rolls" to "make contact" with voters. ECF No. 94 ("Opp.") at 16–17. But political outreach costs money, and these ordinary costs are not economic injuries sufficient to confer Article III standing—especially when they are not traceable to the actions of any Defendant.

1. Plaintiffs do not sufficiently allege an injury-in-fact.

Plaintiffs have failed to plausibly allege that State Defendants' list-maintenance activities "perceptibly impair[]" Plaintiffs' core business activities. As another court in this district recently found, "[s]pending time and money on campaigning is an inevitable feature of running for office." *Bost v. Illinois State Bd. of Elections*, 684 F. Supp. 3d 720, 739 (N.D. Ill. 2023). What Plaintiffs

call "out-of-pocket monetary injuries" are really just ordinary program costs.

Plaintiffs continue to gloss over *Democratic Party of Wisconsin v. Vos*, 966 F.3d 581, 587 (7th Cir. 2020), but that binding precedent shows why Plaintiffs lack an organizational injury. There, the Democratic Party argued that state laws that reduced the power of the governor and attorney general would lead to a reduced number of political volunteers engaged in "door knocking," "phone banking," and "public education." Brief, *Democratic Party of Wisconsin v. Vos*, 2019 WL 6918337, at *23 (7th Cir. Dec. 9, 2019). The plaintiff would have to "pay staffers to make up for the lost volunteer labor," *id.*, amounting to an "*added financial burden* insofar as it must *spend more money*." *Vos*, 966 F.3d at 587 (emphases added). The Seventh Circuit held this was insufficient: additional costs associated with "mobilizing voters" were, for organizations already engaged in that activity, "ordinary program cost[s]," not injuries in fact. *Id.* (quoting *Common Cause Indiana v. Lawson*, 937 F.3d 944, 955 (7th Cir. 2019)); *see also Legal Aid Chicago v. Hunter Properties, Inc.*, 2024 WL 4346615, at *9 (N.D. Ill. Sept. 30, 2024) (holding an organization cannot claim a perceptible impairment just by "spend[ing] more money") (citing *Vos*, 966 F.3d at 587).

Plaintiffs attempt to distinguish *Vos* by arguing that the plaintiff's added financial burdens there "seem[ed] like choices" that "did not have" to be made, but that BI's and IFA's decisions to rely on state voter lists to reach voters are "not . . . organizational 'choice[s].'" Opp. at 17–18. Those arguments are inconsistent with Plaintiffs' own factual allegations. BI and IFA expressly allege that they *choose* to use voter lists based on the state voter rolls because it is "the least expensive way" to target voters. Am. Compl. ¶¶ 86, 116, ECF. No. 70. That the cheapest option available to Plaintiffs might come with obvious drawbacks is a quintessential feature of economic tradeoffs that organizations like Plaintiffs make daily. They are not Article III injuries.

Plaintiffs also now argue—for the first time—that their expenditures purportedly due to State Defendants' actions have "increased." Opp. at 16. But the amended complaint says no such thing. Plaintiffs have never alleged that their costs have risen above some baseline amount as list inaccuracies have grown over time. To the contrary, the amended complaint consistently describes any "additional" costs stemming from State Defendants' list maintenance activities as theoretical, persistent, and ubiquitous (effectively alleging that they are baked into the costs Plaintiffs have *always* paid). *See* Am. Compl. ¶¶ 100, 107, 124, 117; *see also id.* ¶ 91 (alleging "significant" returned mailings "in *every* mailing . . . that BI participated in") (emphasis added).

The amended complaint simply surmises that these costs *could* be lower if the State managed its voter rolls as Plaintiffs wish it would. But an impairment "need[s] to be 'perceptibl[e],' not theoretical," *Hunter*, 2024 WL 4346615, at *7, and Plaintiffs' claimed harm of the expenditure of "additional funds is purely conjectural." *Colorado Taxpayers Union, Inc. v. Romer*, 963 F.2d 1394, 1397 (10th Cir. 1992); *see also id.* at 1403 (finding no standing where plaintiff alleged the Governor's attempts to defeat ballot initiative "forced" it "to spend additional funds"). Nor can Plaintiffs' persistence in describing their standing theories as alleging "economic loss," Am. Compl. ¶¶ 93, 98, 123, save them from dismissal: "[i]ncanting the legalese in a complaint is not good enough for subject matter jurisdiction, especially when the allegation is at a high level of generality." *Hunter*, 2024 WL 4346615, at *12. Absent more "concrete allegations," the Court cannot assume that BI and IFA "experienced any real 'drain' on their . . . resources that can be attributed to" the State's voter-roll maintenance. *Hughes v. Chattem, Inc.*, 818 F. Supp. 2d 1112, 1117 (S.D. Ind. 2011) (citation omitted). Plaintiffs' allegations continue to "hover at a high level of abstraction" and do not confer standing. *Hunter*, 2024 WL 4346615, at *6.

Plaintiffs' resource diversion arguments are also misguided. *First*, here too, Plaintiffs

attempt to rewrite their pleadings. The amended complaint does not actually allege, as Plaintiffs now claim in their brief, that they "ha[ve] been compelled to divert [] resources, from mailings to . . . billboards and social media." Opp. at 19–20. The amended complaint merely alleges that, as a general matter, BI has "relied more heavily on social media and billboards than they otherwise would" because "of the relatively higher costs of mailings and door-to-door programs." Am. Compl. ¶ 101. Note the distinction: Plaintiffs do not allege that they *shifted* resources in response to any particular state action, just that they wish they had a cheaper option.

Plaintiffs' reliance on *RNC v. Wetzel*, 742 F. Supp. 3d 587 (S.D. Miss. 2024), is misplaced. First, that is an out-of-circuit district court decision in which the plaintiffs pled nearly identical allegations as those pled by the plaintiffs in *Bost*, which the Seventh Circuit held was properly dismissed for lack of standing. *Bost v. Illinois State Bd. of Elections*, 114 F.4th 634, 642 (7th Cir. 2024). Even then, the allegations in *Wetzel* were notably different than Plaintiffs' allegations here. The *Wetzel* plaintiffs at least made some effort to allege the challenged law would "cause them to curtail and *divert resources away* from specific activities and projects" and towards others. *Id.* at 594 (emphasis added). And the allegations in *Lawson*, 937 F.3d at 955, were also both more specific and direct, as evidenced by the *Lawson* complaints Plaintiffs submitted as exhibits. *See* ECF No. 94-1 ¶ 60 (*Lawson* plaintiffs specifically alleging that "additional resources" would be "*diverted* to assisting voters who will have their registration records erroneously removed") (emphasis added); *see also* ECF No. 94-2 ¶ 11 (similar). Yet, BI and IFA leave the most important part of their diversion-of-resource theories—actual "diversion"—out of their pleadings entirely.

Second, even if Plaintiffs did "divert" some money, that alone does not constitute injury-in-fact. Here, again, Plaintiffs misunderstand *Lawson*. There, a new state law "created" "additional or new burdens" on the plaintiffs, who took new actions geared towards "rolling back the effects"

of the state action. *Lawson*, 937 F.3d at 951, 955. Here, Plaintiffs have not taken any actions geared towards addressing the purported defects in the State's voter-roll maintenance. Their allocation of funds across different outreach strategies and prioritization of some projects over others simply reflects commonplace business calculations that any advocacy organization would take after weighing factors like costs and effectiveness. Indeed, they acknowledge that they use the voter file for their business purposes because it is the least expensive way to obtain lists of voters. *See* Am. Compl. ¶¶ 86, 113. Spending money on billboards and social media to also reach voters "look[s] a lot like ordinary expenditures that are part of" Plaintiffs' "core mission." *Hunter*, 2024 WL 4346615, at *10. It is "business as usual," and does not confer standing. *Lawson*, 937 F.3d at 955.

2. Plaintiffs fail to satisfy traceability or redressability requirements.

Plaintiffs separately fail to satisfy Article III's requirements that they show that their injuries are traceable to State Defendants' actions and the injunction they seek would redress those injuries.

First, at its core, this is a case about two advocacy organizations that spend more on voter engagement than they would like, and blame the State for not collecting data in the precise way that would best serve their own narrow interests. But the Supreme Court recently rejected the idea that Article III is satisfied in a case like this, where a plaintiff claims harm based on "downstream economic injuries" from state action that does "not require[] the plaintiffs to do anything or to refrain from doing anything," noting that finding otherwise would allow "virtually every citizen . . . to challenge virtually every government action that they do not like." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 385–86, 392 (2024). Not only are Plaintiffs not regulated by the NVRA themselves, they persistently ignore the entire reason that the NVRA exists: to balance the need for voter list maintenance with the danger that lawful voters may be removed from the rolls by overly-aggressive procedures, thereby suppressing voter participation. *See* 52 U.S.C. § 20501(b).

Though organizations may incidentally benefit from the lists of voters on the State's

registration rolls, the lists themselves are not meant to make it easier for private interest groups to spam voters with mail and automated phone calls. It would be a different story if Plaintiffs alleged that State Defendants' list-maintenance activity actually *made it harder for Plaintiffs' members or voters who they work to enfranchise to vote*. But Plaintiffs' allegation that it makes it more expensive for them to engage in their advocacy work because of the State's activities under the NVRA is too attenuated a theory to support standing. Allowing it would be akin to allowing "[t]eachers in border states . . . to challenge allegedly lax immigration policies that lead to overcrowded classrooms." *All. for Hippocratic Med.*, 602 U.S. at 392.

Second, Plaintiffs fail to address the more granular deficiencies that doom their causation theories. Even where a plaintiff pleads an injury-in-fact, it has to be "fairly . . . trace[able] to the challenged action of the defendant." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Plaintiffs do not (and cannot) plead traceability because the issues Plaintiffs complain of—outdated voter data—are not only permitted by federal law, but expressly *mandated* by it because the NVRA *requires* states to maintain some outdated registration data for at least two election cycles. *See* 52 U.S.C. § 20507(d). Plaintiffs do not quibble with this reading of the NVRA. Instead, they complain that this argument forces them to "disprove a . . . factual contention" that inaccuracies in the voter lists "are due to the ordinary workings of the NVRA" rather than the State's "own neglect." Opp. at 21. This is not quite right.

The burden Plaintiffs bear is "of pleading facts supporting a plausible inference that [the state's] conduct—rather than *some other factor*—caused" the injury of which they complain. *Angulo v. Truist Bank*, 2022 WL 14632991, at *3 (N.D. Ill. Oct. 25, 2022) (emphasis added). The "other factor" Intervenor-Defendants raise here is not, as Plaintiffs characterize it, "too much enforcement" of the NVRA. Opp. at 21. Keeping voters on the rolls for the statutorily mandated

two-year period is just plain "enforcement," and it easily explains why inaccuracies will always exist on the State's voter lists—even if Plaintiffs obtained an order requiring State Defendants to comply with the NVRA. And Plaintiffs also ignore the many "other factor[s]," *Angulo*, 2022 WL 14632991, at *3, that more plausibly explain why they do not reach as many voters as they would like. *Compare* ECF. No. 77 ("Br.") at 10 (listing numerous, obvious reasons why individuals do not answer doors and some mail is returned as undeliverable), *with* Opp. at 20-22 (ignoring these arguments).

Plaintiffs' theories of harm are purely probabilistic, and they more closely resemble the ones in *Marszalek v. Kelly*, 2022 WL 225882, at *1 (N.D. Ill. Jan. 26, 2022), than in *Texas Democratic Party v. Benkiser*, 459 F.3d 582, 586 (5th Cir. 2006), or *Wetzel*, 742 F. Supp. 3d 587. *See* Opp. at 14, 16.[1] In *Marszalek*, a plaintiff rifle association operating a firing range claimed organizational standing against the Illinois State Police. It alleged that by taking too long to process applications for licenses to possess firearms, the police department violated a state statute, and in so doing, caused economic injuries to the shooting range because fewer members would purchase memberships. *See id.* at 4. The court rejected this theory two times over: "speculation that more [plaintiff] members with [firearm] cards would translate to more revenue remained insufficient to confer standing," *id.*, because it was based on the "mere theoretical possibility that someone would

[1] In *Benkiser*, it was self-evident that declaring the Democratic Party's incumbent candidate ineligible for office would be the "but-for cause" of the Party's expenditure of "additional money on a new campaign strategy" because it would have to fund a replacement. 459 F.3d at 586. As for *Wetzel*, that decision is at odds with this Circuit's precedent, *see supra* at 5, and contained very different allegations than those Plaintiffs make here. There, the plaintiffs alleged that an injunction against a longer period of accepting absentee ballots could reduce expenditures towards "a longer period of ballot chasing." *Wetzel*, 742 F. Supp. 3d 587, 593, *rev'd in part, vacated in part*, 120 F.4th 200 (5th Cir. 2024). But here, Plaintiffs' suspicions that the State's voter lists cause doors to go unanswered at "a large" "percentage of addresses" and junk mail to be returned as undeliverable, Am. Compl. ¶¶ 91, 97, are just that: suspicions. *See* Br. at 10.

purchase a range pass." *Marszalek v. Kelly*, 2021 WL 2350913, at *4 (N.D. Ill. June 9, 2021). The same holds here: Plaintiffs offer nothing more than speculation that the individuals who fail to answer the door to Plaintiffs' organizers would do so if Illinois' voter rolls were perfect.

Similarly speculative are Plaintiffs' allegations that additional costs caused by inaccuracies in the State's voters rolls (to the extent those costs exist) directly jeopardized BI's radio show and advertising. Am. Compl. ¶ 109. All Plaintiffs say in response to that argument by Intervenor-Defendants, Br. at 7, is that money is "fungible," Opp. 20 n.7. Though unobjectionable as a general matter, that proposition hardly alleges causation: "[t]here are necessarily many outside unknown influences affecting all aspects of these standing concepts advanced by plaintiffs." *Plotkin v. Ryan*, 239 F.3d 882, 886 (7th Cir. 2001).[2]

B. Plaintiffs lack standing as individuals or on associational grounds.

Plaintiffs acknowledge that this Court already rejected their claims of associational and individual standing, which continue to rest on "generalized grievance[s]" about vote dilution and voter fraud. Opp. 24 (citing Order at 10). Nothing has changed in the law on this point; as before, those standing theories remain widely repudiated. *See Bost*, 114 F.4th at 640; *Wood v. Raffensperger*, 981 F.3d 1307, 1314–15 (11th Cir. 2020); *Election Integrity Project Cal., Inc. v. Weber*, 113 F.4th 1072, 1089 n.13 (9th Cir. 2024); *Bognet v. Sec'y Commonwealth of Pennsylvania*, 980 F.3d 336, 352–60 (3d Cir. 2020), *vacated as moot sub nom. Bognet v. Degraffenreid*, 141 S. Ct. 2508 (2021). In fact, since Intervenor-Defendants filed their motion to dismiss, even more courts have joined that chorus. *See* Order at 4, *Drouillard v. Roberts*, No. 24-CV-06969-CRB (N.D. Cal. Jan. 27, 2025), ECF No. 42 (attached as Exhibit 1) (dismissing NVRA

[2] As for Plaintiffs' other allegations about the effectiveness of their automated calls and emails, they offer no response to Intervenor-Defendants' observation that the amended complaint does not specifically allege how any of those activities are failing in any observable respect. *See* Br. at 10.

suit where vote dilution theory was "plainly inadequate" to confer standing); *1789 Foundation, Inc. v. Schmidt*, 2025 WL 1285663, at *20 (M.D. Pa. May 2, 2025) (same); *Maryland Election Integrity, LLC v. Maryland State Bd. of Elections*, 127 F.4th 534, 540 (4th Cir. 2025) (holding that "vote dilution caused by the counting of an unknown number of invalid third-party votes" does not establish standing).

Still, Plaintiffs persist. They now argue that Plaintiff Davis's new allegations are more "particularized" because Ms. Davis is "an active participant in political causes and organizations," is "involved in the voting process" as a poll watcher and election judge, and therefore has a "particular interest" in the "proper administration of Illinois's voter lists." Opp. at 24–25. None of this makes Ms. Davis's grievances any less generalized. Plaintiffs cannot save their standing theories by "attempt[ing] to differentiate themselves by highlighting the degree of their involvement in the electoral process" as "election judge[s]," even if they harbor individual "mistrust" of election integrity. *Maly v. Pritzker*, 2024 WL 4347110, at *4 (N.D. Ill. Sept. 30, 2024) (dismissing allegations on standing). And recasting their injuries as "*concerns*" about fraud and dilution rather than "*direct*[] harm[]," Opp. at 24, n.10, is similarly insufficient; courts have rejected similar attempts to reframe generalized grievances in that exact way. *E.g.*, Order at 10, *RNC v. Aguilar*, No. 24-CV-518 (D. Nev. Oct. 18, 2024), ECF No. 121 (attached as Exhibit 2) (collecting cases and rejecting allegations of "undermined confidence in the integrity of Nevada's elections" as being not "distinct from that of any other voter"); *RNC v. Benson*, 754 F. Supp. 3d 773, 787 (W.D. Mich. 2024) (same). At bottom, the "concern Plaintiffs express over the integrity of Illinois elections is one that all Illinois voters would share—meaning their injuries are not particularized." *Maly*, 2024 WL 4347110, at *4. Because Judicial Watch's members would not

themselves have standing to sue, Judicial Watch lacks standing to seek to remedy the same harms on their behalf.

II. Count I fails to state a plausible claim upon which relief may be granted.

If the Court were to reach the merits, it should find that Count I must also be dismissed for failure to state a claim under Rule 12(b)(6). Plaintiffs' amended complaint rests on two flawed allegations: that certain Illinois counties removed "too few" registrants under Section 8(d)(1)(B) between the 2020 and 2022 elections, Am. Compl. ¶¶ 27-37, and that other counties did not report data on such removals to the Election Assistance Commission, *id.* ¶¶ 38-48. But Plaintiffs fail to explain how either proves that Illinois is falling short of the NVRA's list maintenance requirements.

Plaintiffs have no answer to Intervenor-Defendants' argument that they cannot plausibly assert an NVRA list maintenance violation by alleging facts focused on a single two-year period. *See* Br. at 12–13. They wholly fail to grapple with the fact that the NVRA *forbids* removing a voter due to a possible change in residence until such a voter fails to vote in at least two federal general elections—a lag period that necessarily takes longer than two years and can take up to four years. *See* 52 U.S.C. § 20507(d). This statutory scheme alone dooms Plaintiffs' list maintenance claim.

Courts agree that the NVRA's mandatory waiting period makes it impossible to determine, based on a two-year snapshot, whether a state is complying with its list maintenance duties. Thus, in *RNC v. Benson*, the district court held that plaintiffs could not state a claim by comparing the removal rates in a two-year period with census data showing higher rates of residents changing houses during the same period. 754 F. Supp. 3d at 792. Because "[t]he NVRA prohibits states from removing voters suspected of moving until at least two federal general elections have passed," the court correctly concluded that the "cancellation rate over a short period of time would not offend the NVRA." *Id.* at 793. As Intervenor-Defendants have explained, Plaintiffs' allegations here

suffer from the same flaws. *See* Br. at 12–15. And, like the plaintiffs in *Benson*, Plaintiffs have "not identif[ed] a single voter in any [Illinois] county who is ineligible to be registered but nonetheless appears as an active voter." *Benson*, 754 F. Supp. 3d at 791. Plaintiffs' factual allegations are therefore "consistent with lawful conduct," and are insufficient to survive a motion to dismiss. *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009).

Similarly, *Judicial Watch v. Pennsylvania* underscores that an EAVS two-year snapshot cannot show noncompliance with the NVRA. 524 F. Supp. 3d 399, 407 (M.D. Pa. 2021). The district court in that case emphasized that the NVRA "does not require a perfect removal effort; it only requires states to 'make[ ] a reasonable effort' to remove registrants who have died or changed their residence." *Jud. Watch, Inc.*, 524 F. Supp. 3d at 407 (quoting 52 U.S.C. § 20507(a)(4)). Accordingly, the court rejected Judicial Watch's attempt to allege an NVRA violation based on a comparison between an EAVS two-year snapshot and U.S. Census population estimates, just as Plaintiffs do here. *Id.* at 407–08.

Contrary to Plaintiffs' suggestion, *see* Opp. at 29–30, the subsequent history of *Judicial Watch v. Pennsylvania* does not suggest purportedly low Section 8(d)(1)(B) removals states a claim under the NVRA. The fact that one court allowed Judicial Watch to amend a complaint to add allegations reflecting up-to-date EAVS data does not mean Plaintiffs here have adequately alleged an NVRA violation. The amended complaint included allegations about reported Section 8(d)(1)(B) removals over a *four-year period* extending from November 2016 through November 2020, and alleged that plaintiffs had identified several Pennsylvania counties that admitted they had not been removing registrants as required until they received a notice letter. *See* Br. in Support of Mot. to Amend Compl., *Jud. Watch, Inc. v. Pennsylvania*, Case No. 1:20-cv-00708 (M.D. Pa. Aug. 25, 2021), ECF No. 79 at 8, 10 (attached as Exhibit 3). The amended complaint did not rely

exclusively on data reported in a single EAVS survey—reflecting a two-year period—to support an inference of an NVRA violation, as Plaintiffs' amended complaint does here.

Once Plaintiffs' allegations focused on a two-year snapshot of EAVS data are properly set aside, all they are left with is their argument that identifying "counties who lack data" on Section 8(d)(1)(B) removals states a claim that Illinois is violating its list maintenance duties. Opp. at 31 (asserting, without citation, that this data is "crucial to list maintenance efforts under the NVRA"). That is plainly wrong. Tellingly, Plaintiffs offer no support whatsoever for their assertion that reporting "data not available" to the EAC plausibly demonstrates that a state is failing to make a reasonable effort to remove ineligible voters. *See id.* at 31–32. That is because nothing in the NVRA suggests an individual county's *record-keeping* practices can be used to evaluate a state's *list maintenance* efforts.

Each of Plaintiffs' attempts to rehabilitate their list maintenance allegations fail. *First*, Plaintiffs insist that Illinois election officials are not following the robust statutory procedures that require them to remove ineligible voters from the rolls. Opp. at 26–27.[3] But as discussed, there is no basis for this beyond their reliance on the facially inadequate data described above. Indeed, they fail to identify any ineligible voter that remains on the rolls; their entire argument in this regard is rank speculation. Moreover, Plaintiffs' insistence that Illinois must be violating the law contravenes the presumption of regularity afforded to public officials in the discharge of their official duties. *Hebrard v. Nofziger*, 90 F.4th 1000, 1009 (9th Cir. 2024). Although Plaintiffs half-heartedly suggest that the presumption might not apply at the motion to dismiss stage, the Ninth

[3] Contrary to Plaintiffs' assertions, Opp. at 30–31, Intervenor-Defendants did not argue that Illinois' participation in ERIC demonstrates their compliance with the NVRA. Rather, Intervenor-Defendants explained that "Illinois does not rely exclusively on ERIC to identify voters who have moved," but employs robust statutory procedures that mirror the NVRA's safe-harbor provision. *See* Br. at 11.

Circuit in *Hebrard* affirmed the dismissal of a claim that depended on the conclusion that a state official violated state law, when the plaintiff failed to allege facts supporting that conclusion. *Id.*

Second, Plaintiffs cite two out-of-circuit cases in which list maintenance claims under the NVRA were allowed to proceed past the motion to dismiss stage based on EAC and Census data, Opp. at 27–28, but both of those cases rest on an incomplete understanding of the NVRA. Neither *Judicial Watch v. Griswold*, 554 F. Supp. 3d 1091 (D. Colo. 2021), nor *Green v. Bell*, 2023 WL 2572210 (W.D.N.C. Mar. 20, 2023), analyzed the NVRA's mandatory waiting period before most voters can be legally removed from the rolls, rendering a two-year snapshot of reported removals inapposite. *See* 52 U.S.C. § 20507(b)(2). By contrast, when the relevance of data from a two-year snapshot was squarely presented in *Benson*, the court held that particular counties' "cancellation rate over a short period of time would not offend the NVRA." 754 F. Supp. 3d at 793.

Third, Plaintiffs attempt to minimize the fact that the data they rely on to accuse counties of removing "absurdly small" numbers of voters also shows that these same counties removed tens of thousands of voters who moved outside those jurisdictions. *See* Am. Compl. ¶ 31; *see also* Br. at 13–14. Plaintiffs argue that these removals are irrelevant to Illinois' NVRA compliance because they do not include voters who failed to respond to confirmation notices and failed to vote in two federal elections. Opp. at 28. But to comply with their list maintenance obligations, the NVRA merely requires that states "conduct a general program that makes a reasonable effort to remove the names of ineligible voters by reason of . . . *a change in residence*." 52 U.S.C. § 20507(a)(4) (emphasis added). It does not specify how states must determine that a voter has changed residence or how quickly they must remove certain categories of potentially ineligible voters. In fact, the NVRA merely *allows* states to remove voters who fail to confirm their addresses once they miss two federal general elections; it does not *require* such removals on any particular timeline, and it

prohibits these removals before the statutory waiting period ends. 52 U.S.C. § 20507(d)(1)(B).[4] Nonetheless, Plaintiffs seek to dictate precisely how and when each Illinois county must conduct its removal program. But "the Supreme Court has instructed that '[r]equiring additional' processes not mandated by the NVRA 'not only second-guesses the congressional judgment embodied in [the NVRA's] removal process, but it also' improperly 'second-guesses the judgment of' state legislatures." *Benson*, 754 F. Supp. 3d at 791 (quoting *Husted v. A. Philip Randolph Inst.*, 584 U.S. 756, 774 (2018)). To the extent Plaintiffs focus on a two-year snapshot, the number of voters Illinois counties have removed for having "moved outside of jurisdiction," *see* Br. at 13 & n.4, is plainly probative of their efforts to remove voters who have changed residence and, in turn, their NVRA compliance. This Court should reject Plaintiffs' attempt to cherry-pick the data they find relevant to their desired outcome.

In sum, Plaintiffs fail to demonstrate that any removable voter has been left on the state's voter rolls or illustrate any systemic issue plaguing Illinois' list maintenance efforts. Without any factual context demonstrating a "specific breakdown in [Illinois'] removal program," the data on which Plaintiffs rely, "even assuming its reliability," cannot plausibly state a violation of the NVRA. *Benson*, 754 F. Supp. 3d at 792. Count I should be dismissed.

CONCLUSION

Intervenor-Defendants Illinois AFL-CIO and Illinois Federation of Teachers respectfully request that the Court dismiss Plaintiffs' amended complaint.

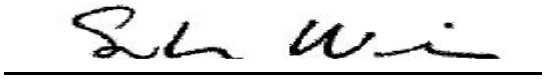
---

[4] Plaintiffs cite *Bellitto v. Snipes*, 935 F.3d 1192, 1204 (11th Cir. 2019), to suggest such removals are required. But *Bellitto* does not say a state must remove voters *immediately* upon their failure to return an address confirmation notice, as Plaintiffs suggest is the case. Moreover, it emphasized that "the Supreme Court referenced the NCOA Process as 'one option' for a procedure to employ before removing a voter from the rolls," indicating that it is *not* required if the state employs another process. *Id.* at 1204.

May 9, 2025

Respectfully Submitted,

JENNER & BLOCK LLP

By: 

Sarah F. Weiss
Jenner & Block LLP
353 N. Clark Street
Chicago, IL 60654
(312) 840-7597
sweiss@jenner.com

Elisabeth C. Frost*
James J. Pinchak*
Julie Zuckerbrod*
Elias Law Group LLP
250 Massachusetts Ave NW, Suite 400
Washington, D.C. 20001
Telephone: (202) 968-4490
Facsimile: (202) 968-4498
efrost@elias.law
jpinchak@elias.law
jzuckerbrod@elias.law
Attorneys for Intervenor-Defendants

**Admitted pro hac vice*

CERTIFICATE OF SERVICE

I, Sarah F. Weiss, certify that on May 9, 2025, I electronically filed the foregoing **INTERVENOR-DEFENDANTS' REPLY IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

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

Sarah F. Weiss
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654
Telephone: (312) 840-7597

Attorney for Intervenor-Defendants