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

JUDICIAL WATCH, INC., *et al.*,	)	
	)	
Plaintiffs,	)	Case No. 1:24-CV-01867
v.	)	
	)	Judge Sara L. Ellis
THE ILLINOIS STATE BOARD OF ELECTIONS, *et al.*,	)	
	)	
	)	
Defendants.	)	

STATE DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS

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INTRODUCTION

Congress passed the National Voter Registration Act's ("NVRA") to "enhance the participation of eligible citizens as voters." 52 U.S.C. § 20501(b). Yet, contrary to this goal, Plaintiffs ask this Court to order the State Defendants to systematically *remove* Illinois voters, even though Illinois law already requires local election authorities to remove ineligible voters.[1] As established in the State Defendants' opening brief, Plaintiffs' claims should be dismissed for lack of standing and failure to state a claim. Recent case law from the Third Circuit confirms that Plaintiffs lack standing to bring their claims—either as organizations or individually—because they have not identified any injuries sufficient to establish standing. Plaintiffs also have not stated a claim in either Count I or Count II because they rely solely on conclusory allegations and data that, at best, confirms that dismissal is appropriate.

ARGUMENT

I. Plaintiffs' theories fail to establish standing.

As the State Defendants explained in their motion to dismiss, Plaintiffs lack standing to pursue their claims because they have not alleged concrete and particularized injuries. ECF No. 80-1 at 10-21. Moreover, the Organizational Plaintiffs also lack standing because they cannot establish that their injuries are fairly traceable to the State Defendants or that a favorable judicial decision will redress their injury. ECF No. 80-1 at 17-19. In response, Plaintiffs fail to establish any legitimate basis for standing. While Plaintiffs advance arguments relating to economic damages, diversion of resources, and diminished confidence in the electoral system, these theories are simply generalized grievances regarding Illinois's compliance with the NVRA, which does not establish standing. *See Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013) ("We have repeatedly

[1] *See, e.g.*, 10 ILCS 5/4-14.1, 4-17, 5-9.1, 5-24, 6-35.

held that such a 'generalized grievance,' no matter how sincere, is insufficient to confer standing."). Because it is Plaintiffs' burden to establish standing, their failure to do so is fatal to their claims.

A. None of the Plaintiffs have standing to pursue Count I.

1. Plaintiffs Breakthrough Ideas and Illinois Family Action have not established organizational standing.

As discussed in the State Defendants' Motion to Dismiss (ECF No. 80-1 at 13-19) and as previously recognized by this Court (ECF No. 69 at 14-15), the Northern District, the Seventh Circuit, and the United States Supreme Court, "[a]n organization does not have standing simply because a defendant has 'impaired' its 'ability to provide services and achieve their organizational missions.'" *Legal Aid Chicago v. Hunter Props., Inc.*, No. 23 CV 4809, 2024 U.S. Dist. LEXIS 177188, *25-26 (N.D. Ill. Sept. 30, 2024) (citing *Fed. Drug. Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 394 (2024)), *see also Plotkin v. Ryan*, 239 F.3d 882, 886 (7th Cir. 2001) (An organization's ordinary expenditures that are "part of an organization's purpose do not constitute the necessary injury-in-fact required for standing."). Plaintiffs Breakthrough Ideas and Illinois Family Action (the "Organizational Plaintiffs")[2] have not established organizational standing, either through direct economic injury or through diversion of resources.

a. The Organizational Plaintiffs do not have any direct, economic injury sufficient to establish standing.

In their response, the Organizational Plaintiffs argue that *any* economic injury, no matter how *de minimus*, is sufficient for Article III standing. ECF No. 94 at 15-16. But this argument

[2] In their motion to dismiss, the State Defendants defined the organizational plaintiffs to include Judicial Watch. However, Plaintiffs confirmed in their response that Judicial Watch is not claiming organizational standing. ECF No. 94 at 14 n.5. Based on these representations, the State Defendants will only refer to Breakthrough Ideas and Illinois Family Action as the Organizational Plaintiffs for purposes of organizational standing.

ignores binding case law holding that an organization's ordinary expenditures that are "part of an organization's purpose do not constitute the necessary injury-in-fact required for standing." *Plotkin*, 239 F.3d at 886. This rule is particularly significant here, because a "plaintiff must show '*far more* than simply a setback to the organization's abstract social interests.'" *All. For Hippocratic Med.*, 602 U.S. at 394 (emphasis added).

Attempting to manufacture a direct, economic injury, the Organizational Plaintiffs identify their standard expenditures and then label them as "tangible, out-of-pocket monetary injuries." ECF No. 94 at 16. But the Organizational Plaintiffs define themselves as "non-profits, who engage in voter outreach in furtherance of their core political activities." ECF No. 94 at 16. The Organizational Plaintiffs then confirm that their "*core* activities include engaging in public advocacy and education about … core issues, persuading voters to support favored policies and candidates, *setting up targeted mailings and door-to-door visits* for political groups and candidates who work with BI, and contributing funds directly to candidates it prefers." ECF 94 at 5 (emphasis added), *see also* ECF No. 94 at 7. By describing mailings, door-to-door visits, and public education, as their core activities, the Organizational Plaintiffs admit that they are claiming their baseline operations as an injury. And while the Organizational Plaintiffs may claim that their cost of mailings is higher than it would be if the State Defendants were not allegedly violating the NVRA, this speculative assertion hardly rises to the level necessary to establish standing, especially when the Organizational Plaintiffs have not alleged any actual setback to their organizational missions. Courts have frequently rejected similar claims. *See Legal Aid Chicago*,

2024 U.S. Dist. LEXIS 177188 at *25-26; *All. for Hippocratic Med.*, 602 U.S. at 394; *Plotkin*, 239 F.3d at 886.

This case is no different than *Legal Aid Chicago*. There, the plaintiff was a legal aid organization providing free legal services to low-income individuals in Cook County, including defending tenants in eviction cases and assisting them in sealing eviction records. *See Legal Aid Chicago*, 2024 U.S. Dist. LEXIS 177188 at *2-3. In challenging the defendant's "no eviction policy," the plaintiff asserted that the policy "undermines its work of sealing eviction records," diverts its limited resources, and "forces the group to more aggressively litigate cases and seal all types of eviction records, not just the most pressing or promising ones." *Id*. at 9-10, 15. In finding that the plaintiff lacked standing, the court reasoned that spending more time and resources working on eviction cases looks "a lot like ordinary expenditures that are part of [the plaintiff's] core mission." *Id*. at 27. The court further made the following analogy:

> Think about it this way: Legal Aid Chicago is like an emergency-room physician. Hunter Properties is creating more patients, with more severe illnesses, for that doctor. That makes the doctor's job harder. The doctor might have to devote more resources of time, energy, and attention to her patients. But that's not a diversion of resources. It's not even 'an impairment of its ability to do work *within* its core mission.' It doesn't stop the doctor from doing her job.

Id. at 27-28. This analogy similarly applies here. Like Hunter Properties, the State Defendants are not preventing the Organizational Plaintiffs from doing their jobs. And while the Organizational Plaintiffs claim to have monetary injuries, they admit that these alleged injuries arise simply from "*increased* costs of mailing, door-to-door visits, and voter telephone calls" (ECF No. 94 at 16) (emphasis added), which is no different than the emergency room physician needing to devote

more resources to her patients. Nor is it any different than the plaintiff in *Legal Aid Chicago* needing to spend more time and resources working on eviction cases.

Plaintiffs' attempt to distinguish *Legal Aid Chicago*, *Alliance for Hippocratic Medicine*, and *Democratic Party of Wisconsin v. Vos*, 966 F.3d 581 (7th Cir. 2020), fails. The Organizational Plaintiffs argue that the claimed expenditures in these cases "seem like choices that these organizations could—but did not have to—make," and as such, the plaintiffs in these cases did not have standing because they "all run afoul of the principle that an 'organization that has not suffered a concrete injury *caused by* a defendant's action cannot spend its way into standing simply [by] expending money to gather information and advocate against the defendant's actions." ECF No. 94 at 17. This distinction fails because the plaintiff in *Legal Aid Chicago* was not making voluntary expenditures, but rather, it was having to spend more time and resources performing its baseline operations. *See* 2024 U.S. Dist. LEXIS 177188 at *2-3, 9-10, 15. The plaintiffs in *Alliance for Hippocratic Medicine* similarly alleged that the change in regulations would cause them to spend more time and resources treating pregnant women with medication complications, and the medical associations also had to "'expend considerable time, energy, and resources' drafting citizen petitions to [the Food and Drug Administration], as well as engaging in public advocacy and public education." 602 U.S. at 390, 394. And finally, the alleged injuries in *Vos* were similarly found to be baseline work, which is different from voluntary expenditures. 966 F.3d at 587.

Texas Democratic Party v. Benkiser is similarly inapplicable. In *Benkiser*, the court held that the defendant had standing because the party would "need to raise and expend additional funds and resources to *prepare a new and different campaign*" on a short timeframe. *Tex. Dem. Party v. Benkiser*, 459 F.3d 582, 586 (5th Cir. 2006) (emphasis added). This is significant because the plaintiff was going to have to completely change its political campaign if the court allowed the

opposing candidate to be replaced. But here, the Organizational Plaintiffs have not alleged any new or different work that is outside of their baseline operations, making *Benkiser* inapplicable. This Court already recognized this difference when it distinguished this case from *Lawson*, finding that "[u]nlike the plaintiffs in *Lawson*, however, IFA and Breakthrough Ideas do not allege that the State Defendants' actions have forced them to spend time and money to amend and adapt their public education or outreach." ECF No. 69 at 14 (*citing Lawson*, 937 F.3d 944, 951–52 (7th Cir. 2017)). As in their previous complaint, the Organizational Plaintiffs still have not alleged that they have had "to spend time and money to amend and adapt their public education or outreach." Thus, *Benkiser* is inapplicable for the same reason as *Lawson*.

b. The Organizational Plaintiffs have not pled a diversion of resources sufficient to establish standing.

The Organizational Plaintiffs' diversion of resources argument similarly fails. As the Supreme Court recently held, "an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action." *All. for Hippocratic Med.*, 602 U.S. at 394. In contrast to this recent holding, Plaintiffs' response does not identify anything that they have had to change other than their basic outreach programs.

For this reason, Plaintiffs' reliance on *Republican National Committee v. Wetzel* and *Lawson* is misplaced. In *Wetzel*, the court held that "[a]n organization's diversion of significant resources to counteract the defendant's conduct will also satisfy" the concrete injury requirement, "as long as the organization identifie[s] any specific projects that [it] had to put on hold or otherwise curtail in order to respond to the defendant's actions." *Republican Nat'l Comm. v. Wetzel*, 742 F. Supp. 3d 587, 592 (S.D. Miss. 2024) (quotations omitted). *Lawson* similarly held—as Plaintiff acknowledges (ECF No. 94 at 19)—that "[t]he question is what additional or new

burdens are created by the law the organization is challenging." *Lawson*, 937 F. 3d at 955. But the Organizational Plaintiffs have not identified any additional or new work that they have done to "undo a frustrated mission." Nor could they, because any link between the State's list maintenance efforts and the Organizational Plaintiffs' voter outreach programs is too attenuated for standing purposes, as argued by the Intervenor Defendants in their motion to dismiss. ECF No. 77 at 8-10. The Organizational Plaintiffs identify nothing new that they have had to do or change that is outside of their basic voter outreach programs, making these cases inapplicable. ECF No. 69 at 14 ("Unlike the plaintiffs in *Lawson*, however, IFA and Breakthrough Ideas do not allege that the State Defendants' actions have forced them to spend time and money to amend and adapt their public education or outreach.").

The Organizational Plaintiffs have also not established that their missions have been thwarted. On the contrary, they are still performing their standard outreach services. Although Breakthrough Ideas cites two radio programs that it asserts were somehow affected (ECF No. 94 at 6-7), its own website[3] shows that those programs are still operational, with episodes airing as recently as May 11, 2025.[4] To the extent that the Organizational Plaintiffs have adjusted where they focus their voter outreach or the platform on which they air a program, this is far from the "frustration of mission" necessary to establish standing. The Organizational Plaintiffs' allegations instead establish only that they may have had to engage in additional outreach—to do more of

[3] For a motion to dismiss, "a court may consider, in addition to the allegations set forth in the complaint itself, documents that are attached to the complaint, documents that are central to the complaint and are referred to in it, and information that is properly subject to judicial notice." *Williamson v. Curran*, 714 F.3d 432, 436 (7th Cir. 2013). Here, the Organizational Plaintiffs placed their radio shows at issue in their amended complaint (ECF No. 70 at ¶ 109), and as such, the Court may properly take judicial notice of them.

[4] *Available at* https://www.breakthrough-ideas.com/ (last visited May 12, 2025) and https://www.breakthrough-ideas.com/watch-listen/reveille (last visited May 12, 2025).

what they were already doing—to achieve their mission and goals, which is exactly the kind of injury that the Supreme Court rejected in *Hippocratic Medicine*. 602 U.S. at 395, *see also* ECF No. 69 at 14 ("Furthermore, IFA and Breakthrough Ideas also fail to satisfy the infringement on business standard as set out in *Havens* because their assertion that the Board's failure to comply with the NVRA makes it more difficult for them to contact Illinois voters falls short of showing that it 'perceptibly impaired' their advocacy interests.").

c. The Organizational Plaintiffs have not established causation or redressability.

The Organizational Plaintiffs also have not established causation or redressability. As explained in the State Defendants' motion to dismiss (ECF No. 80-1 at 17-19), a voter who has moved can be removed from the statewide voter registration list only if the registrant fails to respond to a confirmation notice *and* then fails to vote "during the *statutory waiting period* extending from the date of the notice through the next two general federal elections." ECF No. 70 at ¶ 12 (emphasis added). As a result, the Organizational Plaintiffs' alleged injury—difficulty contacting Illinois voters through mailings and walking programs resulting from the voter registration list allegedly including ineligible voters—is not traceable to the State's action; rather, it is caused by the NVRA requirement that the State keep ineligible voters on the voter registration list during this statutory waiting period that extends from the date of notice through the next two general federal elections. For this same reason, Plaintiffs cannot show that any order from this Court would redress their injuries.

In response, Plaintiffs assert that all factual allegations must be construed as true with all inferences drawn in favor of Plaintiffs. But because Defendants have asserted that "there is *in fact* no subject matter jurisdiction," the Court "may look beyond the pleadings and view any evidence submitted to determine if subject matter jurisdiction exists." *Silha v. ACT, Inc.*, 807 F.3d 169, 173

(7th Cir. 2015) (internal quotations omitted) (emphasis in original). In such an instance, "[t]here is substantial authority that the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case," which means that "no presumptive truthfulness attaches to plaintiff's allegations." *Apex Dig., Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 444 (7th Cir. 2009) (quoting *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977)). This approach is necessary "because the causation inquiry can be heavily fact-dependent." *All. for Hippocratic Medicine*, 602 U.S. at 384.

Plaintiffs also misapprehend the State Defendants' arguments as to these points. The State Defendants' argument does not require Plaintiffs to "disprove a specific factual contention." ECF No. 94 at 21. Instead, it identifies the list maintenance procedures established by the NVRA and recognizes that the statutory system itself *requires* that the voter registration list always be outdated. The NVRA requires the statewide voter registration list to always have inactive voters, who must stay on the list for a significant amount of time. Plaintiffs cannot evade these statutory requirements by construing a statutory requirement as a factual assertion.

Finally, Plaintiffs reiterate the statistics from their complaint (ECF No. 94 at 21-22), but do not explain how an order requiring the State Defendants to follow the NVRA would redress the Organizational Plaintiffs' injuries when compliance with any court order would *still* result in outdated registrations being on the statewide voter registration list. To the extent that they are relevant at all, these statistics support the State Defendants' arguments. Plaintiffs emphasize that a large number of people move out of the state every year (ECF No. 94 at 22), but this fact would also mean that those same individuals—assuming they are registered to vote and did not request

removal from the list—would have to remain on the statewide voter registration list for the next two election cycles as required by the NVRA.[5]

In summary, the Organizational Plaintiffs have not established organizational standing. Their argument simply focuses on their baseline operations without any factual allegations that the State Defendants have somehow thwarted their organizational mission. And while the Organizational Plaintiffs claim to have spent more resources doing the work that they were already doing, established case law has already held this to be insufficient. Finally, given the statutory requirements of the NVRA, the Organizational Plaintiffs have not shown that the State Defendants caused any injury. Nor can the Organizational Plaintiffs show that any court order would redress any alleged injury; any court order would still result in an outdated voter registration list because individuals would still be required to remain on the statewide voter registration list for at least two election cycles.

2. Carol Davis and Judicial Watch do not have standing to pursue Count I.

Plaintiffs Carol Davis and Judicial Watch also do not have standing to pursue Count I. In their response, Judicial Watch claims to have standing because the State Defendants have undermined their members' confidence "in the integrity of the electoral process, discourage[ed] their participation in the democratic process, and instill[ed] in them the fear that their legitimate votes will be nullified or diluted." ECF No. 94, at 22 (citing ECF No. 70 ¶ 85). But this Court and others have already rejected these same claims as insufficient to confer standing. *See* ECF

[5] To the extent Plaintiffs are trying to argue that the large number of people moving out of the state is evidence that counties with lower removal rates are not complying with the NVRA's requirements, Plaintiffs incorrectly assume that this number applies consistently across the State of Illinois. But as discussed further *infra*, it is highly likely that a smaller county with a smaller population will have much fewer individuals moving out of state than a county like Cook. Plaintiffs thus cannot establish that a smaller county with a lower removal rate is somehow not following the NVRA.

No. 69 at 10 (citing *Bost v. Ill. State Bd. of Elections*, 114 F.4th 634, 640 (7th Cir. 2024)). Because Plaintiffs continue to assert generalized grievances that would result in relief that no more directly and tangibly benefit Plaintiffs than it would the public at large, Plaintiffs Davis and Judicial Watch do not have standing. *Lujan*, *v. Defenders of Wildlife*, 504 U.S. at 573–74.

Plaintiff Davis also lacks standing. Davis attempts to apply *Judicial Watch v. King*, 993 F. Supp. 2d 919, 924 (S.D. Ind. 2012) to this case (ECF No. 94 at 23-25), even though this Court already found that *King* is an "outlier" and rejected that approach. ECF No. 69 at 10-11. Plaintiff Davis argues that the intensity of her interest creates Article III standing, but this distinction fails. Plaintiffs detail Ms. Davis's participation in political causes and organizations, arguing that this commitment "makes her keenly interested in the integrity of Illinois's elections and keenly aware of the consequences of Defendants' failure to fully comply with the NVRA." ECF No. 94 at 25. But the Supreme Court has rejected this argument, holding that the intensity of a litigant's interest does not confer Article III standing. *See All. for Hippocratic Med.*, 602 U.S. at 381 ("Article III standing screens out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action"); *Valley Forge Christian College v. Americans United for Separation of Church & State*, 454 U.S. 464, 486 (1982) ("It is evident that respondents are firmly committed to the constitutional principle of separation of church and State, but standing is not measured by the intensity of the litigant's interest or the fervor of his advocacy"). *See also Maly v. Pritzker*, No. 22 CV 4778, 2024 U.S. Dist. LEXIS 177196, 7-8 (N.D. Ill. Sept. 30, 2024) (finding that the plaintiffs lacked standing, despite their "attempt to differentiate themselves by highlighting the degree of their involvement in the electoral process, most notably by alleging that

one Plaintiff—Stirn—had previously served as election judge but no longer plans to do so given his newfound mistrust of electronic voting machines.").

Plaintiffs Davis and Judicial Watch have not set forth any basis for standing. While Ms. Davis and members of Judicial Watch may participate in the electoral process to a greater degree than other members of the public, that fact does not make their injury particularized or concrete. It is still a generalized grievance that is insufficient to create standing.

B. Plaintiff Judicial Watch does not have standing to bring Count II because it has not sufficiently alleged an informational injury.

Count II must be dismissed because Plaintiff Judicial Watch does not have standing to assert a violation of Section 8(i) of the NVRA. In its response, Plaintiff Judicial Watch indicates that because the Court has already found that Judicial Watch sufficiently alleged an injury, it "will not recapitulate and renew its arguments in opposition to" the State Defendants' motion to dismiss. ECF No. 94 at 33-34. However, after the State Defendants' motion to dismiss and Plaintiffs' response, the Third Circuit issued an opinion on this same issue, finding that the plaintiff lacked standing to allege a violation of Section 8(i) of the NVRA. *See Public Interest Legal Foundation v. Sec Commonwealth Penn.* ("*PILF*"), _ F.4th _, 2025 U.S. App. LEXIS 9871 (3d Cir. Apr. 25, 2025).

The *PILF* opinion applies to this case.[6] In *PILF*, the plaintiff, "a self-described 'public interest organization that seeks to promote the integrity of elections nationwide,'" requested records from Pennsylvania pursuant to Section 8(i) of the NVRA after various media outlets reported a "glitch" in the computer system that allowed ineligible persons to register to vote "as part of the process of applying for or renewing a driver's license or vehicle registration." *Id.* at 2-

[6] While the Third Circuit reviewed the lower court's decision on summary judgment, the court emphasized that the downstream consequences requirement is not burdensome, describing it as a "low evidentiary hurdle." Based on this implication, this standing issue is appropriate for a motion to dismiss.

3. The defendant denied the request, and the plaintiff subsequently sued, alleging that it had suffered an informational injury. *Id.*

Relying on the Supreme Court's decision in *TransUnion v. Ramirez*, 594 U.S. 413 (2021), the Third Circuit held that the plaintiff lacked standing. The *PILF* court found it significant that in *TransUnion*, the Supreme Court clarified that "central to assessing concreteness is whether the asserted harm has a 'close relationship' to a harm traditionally recognized as providing a basis for a lawsuit in American courts—such as physical harm, monetary harm, or various intangible harms." *PILF*, 2025 U.S. App. LEXIS 9871, at 12. In *TransUnion*, the Supreme Court found it significant that the plaintiffs identified "no 'downstream consequences' from failing to receive [any] required information," ultimately holding that "[a]n asserted informational injury that causes no adverse effects cannot satisfy Article III." *PILF*, 2025 U.S. App. LEXIS 9871, at 13.

The Third Circuit then looked to its previous decision in *Kelly v. RealPage Inc.*, 47 F.4th 202 (3d Cir. 2022) to expand upon this principle. In *Kelly*, the Third Circuit recognized that "other Courts of Appeals have … concluded that 'depriv[ation] of information to which [one] is legally entitled' constitutes a sufficiently concrete informational injury *when that omission causes 'adverse effects'* and the information has 'some relevance' to an interest of the litigant that *the statute was intended to protect*." *PILF*, 2025 U.S. App. LEXIS 9871, at 14-15 (emphasis in original) (citing *Kelly*, 47 F.4th at 211). As such, "a plaintiff seeking to assert an informational injury must establish *a nexus* among the omitted information to which she has entitlement, the purport harm *actually caused* by the specific violation, and *the 'concrete interest'* that Congress

identified as 'deserving of protection' when it created the disclosure requirement." *PILF*, 2025 U.S. App. LEXIS 9871, at 15-16.

Using this precedent, the *PILF* court then reviewed the purpose of the NVRA to determine whether the plaintiff had a sufficient nexus to establish standing. The court held that "[a]lthough PILF contends that without the records it 'cannot effectively evaluate the accuracy of the Commonwealth's voter rolls nor the effectiveness of investigation and remedies under by the Commonwealth in response to the … glitch … its desire to have such records for these purposes does not entitle it to sue." *Id*. at 24. "[I]n the absence of proof that it maintains a personal and constitutionally significant stake in the matter," the plaintiff did not have standing to sue simply because it was denied access to records under Section 8(i) of the NVRA. *Id*. at 25. The court similarly rejected the plaintiff's other arguments that (1) its educational aspect of its mission was frustrated; (2) it could not study and analyze the defendant's voter list maintenance activities, which affects its promotion of election integrity and compliance with federal and state statutes, and (3) it expended considerable time and resources to vindicate its rights. *Id*. at 25-28.

PILF's holding is particularly salient to this litigation. As discussed in the State Defendants' motion to dismiss, Judicial Watch does not identify *any* downstream consequences, which is insufficient to establish standing. ECF No. 80-1 at 19-21. And as the *PILF* court held—and as other courts have subsequently held following the decision in *PILF*—Judicial Watch must not only allege harm caused by the State Defendants' alleged violation of Section 8(i), but it must also identify the concrete interest that Congress identified as deserving of protection when it created this disclosure requirement. *See Pub. Int. Legal Found. v. Benson*, No. 24 CV 1255, 2025 U.S. App. LEXIS 10850, *40 (6th Cir. May 7, 2025) ("The combination of analogous case law from the Fifth and Third Circuits and PILF's failure to articulate specific downstream

consequences [from the denial of its request for documents under Section 8(i) of the NVRA] demonstrates that PILF has failed to show a sufficient injury to confer Article III standing."); *1789 Found, Inc. v. Schmidt*, No. 24 CV 1865, 2025 U.S. Dist. LEXIS 84243, *80-81 (M.D. Penn. May 2, 2025) ("Accordingly, even if [the plaintiff] was denied any information, because he has alleged no downstream consequences flowing from Defendant Schmidt's failure to disclose and failed to allege any nexus to the interest Congress sought to protect in the NVRA, the Court concludes that [the plaintiff] fails to allege Article III standing as to the public disclosure claim."). Judicial Watch has not satisfied either of these requirements and Count II must therefore be dismissed.

II. Plaintiffs have not stated a claim under Section 8(a)(4) in Count I.

As discussed in the State Defendants' motion to dismiss, Plaintiffs have not stated a claim under Section 8(a)(4) in Count I. ECF No. 80-1 at 21-25. While Plaintiffs rely on EAVS data to assert this claim, they argue that this Court *cannot* rely on data from the same report to decide a motion to dismiss. ECF No. 94 at 25-33. But Plaintiffs cannot have it both ways. Because Plaintiffs have placed the EAVS data at issue, this Court may consider it for a motion to dismiss. *See Williamson v. Curran*, 714 F.3d 432, 436 (7th Cir. 2013) (for a motion to dismiss, "a court may consider, in addition to the allegations set forth in the complaint itself, documents that are attached to the complaint, documents that are central to the complaint and are referred to in it, and information that is properly subject to judicial notice"); *Geinosky v. City of Chicago*, 675 F.3d 743, 745 n.1 (7th Cir. 2012).

This argument is also appropriate for a motion to dismiss. While Plaintiffs assert that this argument includes factual assertions that are inappropriate for a motion to dismiss, the court in *Republican National Committee v. Benson* recently granted a motion to dismiss, finding that these same types of claims were insufficient to state a cause of action. *Republican Nat'l Committee v. Benson*, 754 F. Supp. 3d 773, 792-93 (W.D. Mich. 2024). There, the plaintiffs alleged that

Michigan's list maintenance violated the NVRA because "certain Michigan counties have either 'impossibly' or 'suspiciously' high rates of registered voters relative to the population." *Id*. at 792. The court held that this conclusory allegation was insufficient to state a claim for violation of the NVRA. *Id*. The court reasoned that "even assuming certain Michigan counties canceled fewer than '2% of [registrations] for residency changes' from 2020 to 2022 despite population data showing that anywhere from 12 percent to 23.5 percent of residents changed houses during that time, that cancellation rate over a short period of time would not offend the NVRA," which only requires a reasonable effort. *Id*. at 793.

And finally, the court held that the plaintiffs' requested relief—to ensure ineligible voters do not remain on the statewide voter registration list—"flips the statutory mandate on its head." *Id*. The NVRA requires states "to 'ensure' that 'any *eligible* applicant is registered to vote,' 52 U.S.C. § 20507(a)(1), and to make a 'reasonable effort' to remove the names of ineligible voters, 52 U.S.C. § 20507(a)(4). *Id*. (emphasis added in opinion). "Absent Plaintiffs' legal conclusions and unwarranted factual inferences," which the court was "not required to accept as true," the plaintiffs had not shown "more than a mere possibility of misconduct." *Id*. Here, too, Plaintiffs' conclusory allegations raise nothing more than a mere possibility of misconduct, and they should similarly be dismissed.

Despite Plaintiffs' arguments to the contrary, the EAVS data conclusively shows that Defendants are fulfilling their obligations under the NVRA to maintain 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' only two things: death or change of address." *Bellitto v. Snipes*, 935 F. 3d 1192, 1200 (11th Cir. 2019) (citing 52 U.S.C. § 20507(a)(4)) (emphasis added).[7] While Plaintiffs

[7] While Plaintiffs claim that reasonableness is an issue that is inappropriate for a motion to dismiss, "when the allegations of a complaint affirmatively demonstrate that all elements of an affirmative defense are

claim that 12 Illinois counties removed fewer than 15 registrations and another 11 Illinois counties removed zero registrations pursuant to Section 8(d)(1)(B) (ECF No. 70, ¶¶ 28, 29), these 23 Illinois counties removed nearly 74,000 ineligible voters from the statewide voter list; nearly 52,000 of these registration removals occurred due to a cross-jurisdiction change of address.[8] Moreover, Plaintiffs' argument relies upon the assumption that a significant number of individuals moved from those counties, and as such, the numbers for removals due to a failure to return confirmation notices must be higher. But while Plaintiffs frequently rely on the general census data for the entire State, the granular county data[9] confirms that Plaintiffs' assumption is incorrect. For example, Plaintiffs assert that it is unreasonable that Edwards County removed only 12 individuals pursuant to Section(d)(1)(B), but the census shows that the population of Edwards County only decreased by 294 individuals (from 6,245 to 5,984) between April 2020 and July 2024—and that figure includes people under 18, who cannot register to vote.[10] Considering that Edwards County's population decreased by only 294 people over a four-year period, its removal of only 12 voters pursuant to Section (d)(1)(B) and total removal of 597 ineligible voters is far from unreasonable.

The statewide data further establishes that Illinois maintains a general program that makes a reasonable effort to remove ineligible voters as required by the NVRA. According to the EAVS,

satisfied (as they do here), dismissal is appropriate." *Huynh v. Rivera*, No. 10 CV 0194, 2011 U.S. Dist. LEXIS 9033, *12 (N.D. Ill. Jan. 31, 2011).

[8] *See* EAVS Datasets Version 1.1. (December 18, 2023), rows 732-839 and columns CV-DB, *available at* https://www.eac.gov/research-and-data/studies-and-reports (last visited May 16, 2025). This dataset includes new information submitted by Delaware, Hawaii, West Virginia, and Wisconsin.

[9] Plaintiffs argue that the Court should not look at granular data for a motion to dismiss. But like the EAVS report, Plaintiffs specifically relied on granular data from that report to substantially support their claim. Plaintiffs cannot place the granular data at issue, but then claim that the Court should refrain from relying on it as a basis for dismissal.

[10] *See* 2024 Census Information for Edwards County, *available at* https://www.census.gov/quickfacts/fact/table/edwardscountyillinois/PST045224 (last visited May 12, 2025).

Illinois removed 692,003 ineligible voters, representing 7.9% of their registered voters. *See* ECF No. 80-2, EAVS 2022 Comprehensive Report at p. 188-89. Illinois removed the ninth highest number of registered voters of the responding States and territories, and its percentage of removal was greater than or equal to over half of the responding States and territories. *Id*. Contrary to Plaintiffs' assertions in their response, Defendants are not using the statewide data to "argue that counties that *do* appear to remove adequate numbers of ineligible registrations under the NVRA's notice-and-waiting-period procedure … somehow 'make up for' counties that do not." ECF No. 94 at 33. Rather, given the drastic variations in populations by county, this statewide data is important because it establishes that the State is removing a reasonable number of people across all categories. This is particularly important because the county numbers that Plaintiffs rely upon do not reflect or consider the county's population size or how the population of that county changed within those two years.

As the Sixth Circuit recently observed, "the language of the NVRA does not require a perfect effort, nor does it require the most optimal effort, nor does it even require a very good effort. Instead, the NVRA only requires a reasonable effort." *Public Interest Legal Foundation v. Benson*, No. 24-1255, -- F.4th ----, 2025 WL 1300245, at *10 (6th Cir. May 6, 2025). Here, the data upon which Plaintiffs base their claims does not show a violation of the NVRA, but instead confirms that Illinois's processes is resulting in the reasonable removal of ineligible voters. Plaintiffs thus have not stated a claim and Count I must be dismissed.

III. Count II does not state a claim for violation of Section 8(i) of the NVRA.

Finally, Judicial Watch has not stated a claim in Count II for violation of Section 8(i) of the NVRA. In its response, Judicial Watch attempts to narrowly define Section 8(i)'s use of the term "State" to argue that the language is unambiguous. ECF No. 94 at 33-39. However, the NVRA gives the States wide discretion in their implementation and maintenance of voter registration,

which specifically contemplates the use of local election authorities. *See Voter Integrity Project NC, Inc. v. Wake Cnty. Bd. of Elections*, 301 F. Supp. 3d 612, 615 (E.D.N.C. 2017) ("However, the NVRA also contemplates local government involvement in carrying out the State's obligations."). Considering the tasks delegated to registrars by the NVRA, it is not unreasonable for the local election authorities to maintain the documents requested by Judicial Watch.

Plaintiffs' reliance on *United States v. Louisiana* is misplaced because it conflates the use of local election authorities—as allowed by the NVRA—with an attempt to transfer liability. ECF No. 94 at 35-36. In their response, Plaintiffs cite *United States v. Louisiana* for the proposition that states must take specific actions and bear ultimate liability for nonaction under the NVRA. *Id*. (citing *United States v. Louisiana*, 196 F. Supp. 3d 612 (M.D. La. 2016)). Plaintiffs then assert that the State Defendants are claiming that the use of registrars "in other parts of Section 8 must reflect a statutory intent to place '[ultimate] liability and final responsibility' on more than 'each State.'" *Id*. at 36. But the State Defendants have never sought to transfer ultimate liability. Nor could they have done so. Plaintiffs never sought these records from local election authorities, and the local election authorities never denied them access to these records; there is thus no outstanding liability to transfer. The State Defendants instead explained that the State uses a "bottom up" system—similar to several other states—and as such, the documents that Judicial Watch requested are maintained by the local election authorities. ECF No. 80-1 at 25-27. Plaintiffs mistake the delegation of tasks within Illinois' system as failing to enforce the NVRA or attempting to transfer liability to local election authorities.

Plaintiffs' argument also forces a narrow interpretation on Section 8(i) that would lead to an absurd result. While not specifically analyzing the term "State" in Section 8(i), multiple courts have broadly interpreted other terms in this section to give the statute a more expansive breadth.

See Palast v. Kemp, No. 18 CV 4809, 2020 U.S. Dist. LEXIS 269327, *10 (N.D. Georgia Feb. 4, 2020) ("This Court has also emphasized a broad interpretation of the documents required to be disclosed under the notice provisions of the NVRA"); *Pub. Int. Legal Found., Inc. v. Griswold*, No. 21-cv-03384, 2023 U.S. Dist. LEXIS 176231, *12 (D. Colo. Sep. 29, 2023) (holding that "the terms in the disclosure provision are broad in nature and the plain meaning of the disclosure provision 'favors providing access to the deceased voter records,'"; "this definition was in line with other courts' broad interpretations of the disclosure provision"). Given the broad interpretation of other terms in the disclosure provision, particularly in terms of records accessible under the NVRA, it follows that the term "State" should also be broadly interpreted to include the local election authorities, who have been delegated the responsibility of updating and maintaining voter registration records for their residents.

Finally, the NVRA gives deference to states in implementing voter registration, which makes the principles of federalism and comity particularly salient here. Plaintiffs limit their response on this issue to a footnote, asserting that they "cannot, however, identify a single case involving any part of the NVRA where constitutional concerns about federalism trumped Congress' constitutional authority to regulate the time, place, and manner of federal elections." ECF No. 94 at fn. 15. But Plaintiffs again misapprehend the State Defendants' argument. Congress's constitutional authority to regulate the time, place, and manner of federal elections is not at issue here. Rather, Plaintiffs claim that the State Defendants violated Section 8(i) of the NVRA, and the "NVRA does not usurp broad areas of state authority or impose federal supervision on the legislative process." *Pub. Int. Legal Found., Inc. v. Wolfe*, No. 24-cv-285, 2024 U.S. Dist. LEXIS 216250, *25 (W.D. Wis. Nov. 26, 2024). The NVRA involves voter registration and enhancing voter participation (*see Republican National Committee*. 754 F. Supp. 3d at 793), and

Section 8(i) involves the disclosure of certain documents (52 U.S.C. § 20507(i)), neither of which deal with the time, place, and manner of elections. This distinction is important because—when interpreting a federal statute that places obligations on states—the Court should choose an interpretation that is most consistent with the principles of federalism and comity. *See Bond v. United States*, 572 U.S. 844, 856 (2014); *see also Snyder v. United States*, 603 U.S. 1, 15 (2024) (federal government's broad interpretation of a federal statute would "exacerbate the already serious federalism problems" with the Government's reading of the provision); *McDonnell v. United States*, 579 U.S. 550, 576-77 (2016) ("The Government's position also raises significant federalism concerns. . . . Here, where a more limited interpretation of "official act" is supported by both text and precedent, we decline to construe the statute in a manner that leaves its outer boundaries ambiguous and involves the Federal Government in setting standards . . . for local and state officials."); *Rizzo v. Goode*, 423 U.S. 362, 379-80 (1976) ("delicate issues of federal state relationships," which are premised on "the principles of equity, comity, and federalism," counsel against imposing intrusive injunctive relief on state agencies). Count II thus does not state a claim and should be dismissed accordingly.

CONCLUSION

Wherefore, the State Defendants respectfully request that this Court dismiss Plaintiffs' Complaint with prejudice and order any further just and proper relief.

Respectfully submitted,

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